



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 16 December 2021

Language: English

Classification: Public

Order on Reclassifications and Public Redacted Versions

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(2), 40(2), (4) and (6)(h) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 82(5), 84(1) and 116(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby issues the following order.

I. APPLICABLE LAW

1. Pursuant to Articles 21(2) and 40(4) of the Law, hearings shall be public, unless the Panel decides otherwise in accordance with the Rules.
2. Pursuant to Rule 82(5) of the Rules, where the basis for reclassification no longer exists, whoever submitted the original filing shall apply to the Panel for reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.
3. Pursuant to Rule 84(1) of Rules, on an ongoing basis and before rendering its Judgment, the Panel shall review the classification of records of proceedings and evidence and, where applicable, order their reclassification.

II. DISCUSSION

4. In accordance with Rule 84(1) of the Rules, the Panel considers it necessary to review the classification of certain filings in the case file, in order to adhere to the principle of publicity of proceedings, which extends beyond hearings in the courtroom to cover filings and any other submissions in the case file.¹

¹ F00225, Pre-Trial Judge, *Order for Submissions on the Reclassification of Filings* (“Pre-Trial Judge Order”), 10 June 2021, para. 8.

5. In doing so, regard must be paid, on the one hand, to the principle of publicity, as enshrined under Articles 21(2) and 40(4) of the Law, and the duty of the Panel to provide for the protection of witnesses and confidential information.² The Panel accordingly has the responsibility to ensure that filings in this case bear the appropriate classification and may, accordingly, reclassify any filing *proprio motu* or upon request, should the basis for the current classification no longer exist.³

6. In accordance with Articles 23 and 62 of the Law, Rule 80 of the Rules and Article 33 of the Practice Direction on Files and Filings, the Panel reminds the Parties that public redacted versions of filings should remove any information revealing: (i) the name, identity or other personal details of SPO staff members (who are not witnesses in this case) and of individuals named in the documents seized or received in the various batches;⁴ (ii) organisations or entities cooperating with the SPO on a confidential basis; (iii) documents or excerpts thereof disclosed to the Defence on a confidential basis; and (iv) the content of any other documents subject to confidentiality pursuant to Specialist Chambers orders.⁵

7. In light of the above, the Panel orders the Registry to reclassify the following filings as **public**:

- F00289, 27 August 2021;⁶
- F00320, 22 September 2021;
- F00326, 24 September 2021;
- F00336, 29 September 2021;

² Pre-Trial Judge Order, para. 9.

³ Pre-Trial Judge Order, para. 10.

⁴ Transcript, 6 December 2021, pp 2146-2147 (except the name mentioned in the transcript as permitted to be mentioned in open session).

⁵ F00328, Panel, *Order on Rule 117 Defence Motions*, 27 September, para. 16.

⁶ F00473, Haradinaj Defence, *Submissions on Reclassification of Filings*, 6 December 2021.

- F00340, 30 September 2021;
- F00346, 1 October 2021;
- F00354, 7 October 2021;
- F00355, 8 October 2021;
- F00364, 14 October 2021;
- F00386/A01, 20 October 2021;⁷
- F00394, 23 October 2021;⁸
- F00420, 5 November 2021;
- F00441, 18 November 2021;
- F00443, 18 November 2021;
- F00493, 13 December 2021;
- F00494, 13 December 2021.

8. The Panel orders the Registry to file a public redacted version or request reclassification as public of F00310, submitted on 10 September 2021 and currently classified as confidential.

9. The Panel orders the SPO to file public redacted versions of the following of its confidential filings or request reclassification as public:

- F00327, 27 September 2021;
- F00409, 1 November 2021;

10. In addition, the Panel orders the SPO to file a confidential and a public redacted version of F00331, submitted on 28 September 2021 and currently classified as strictly confidential and *ex parte*. The Panel also orders the SPO to file a confidential redacted

⁷ F00473, Haradinaj Defence, *Submissions on Reclassification of Filings*, 6 December 2021.

⁸ F00473, Haradinaj Defence, *Submissions on Reclassification of Filings*, 6 December 2021.

version of F00337, 29 September 2021, currently classified as strictly confidential and *ex parte*.

11. The Panel orders the Gucati Defence to file a public redacted version or request reclassification as public of F00436, submitted on 15 November 2021 and currently classified as confidential.

12. The Panel further orders the Gucati Defence to file public redacted versions of the following of its confidential filings:

- F00325/COR, 24 September 2021, aligning the redactions with the classification of F00307/A01 and the content of the public redacted version of F00316;
- F00406/COR, 29 October 2021;
- F00407, 29 October 2021, aligning the redactions with the classification of F00361 and the content of the public redacted version of F00389;

13. The Panel orders the Haradinaj Defence to file public redacted versions of the following of its confidential filings or request their reclassification as public:

- F00461, 29 November 2021;
- F00491, 13 December 2021.

14. The Panel further orders the Haradinaj Defence to file a public redacted version of F00404, submitted on 27 October 2021 and currently classified as confidential, aligning the redactions with the classification of F00361 and the content of the public redacted version of F00389.

15. In addition, the Panel orders the Haradinaj Defence to file a public redacted version of F00471/A02 redacting information in paragraphs 68, 75, 76, 94, 95, 99, 114, 115, 116 and 118, and any other information falling under the direction in paragraph 6 of this decision.

16. The Panel notes that annexes are covered by the above orders only where they are expressly indicated.

III. DISPOSITION

17. For the above-mentioned reasons, the Panel hereby:

- a. **ORDERS** the Registry to reclassify as public the filings referenced in paragraph 7;
- b. **ORDERS** the Registry to submit the relevant filing or request referenced in paragraph 8 by **17 January 2022**
- c. **ORDERS** the SPO to submit the relevant filings or requests referenced in paragraphs 9-10 by **17 January 2022**;
- d. **ORDERS** the Gucati Defence to submit the relevant filings or requests referenced in paragraphs 11-12 by **17 January 2022**; and
- e. **ORDERS** the Haradinaj Defence to submit the relevant filings or requests referenced in paragraphs 13-15 by **17 January 2022**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 16 December 2021

At The Hague, the Netherlands.