PUBLIC
Date original: 16/12/2021 18:17:00
Date public redacted version: 17/01/2022 13:23:00

In:	**KSC-BC-2020-07**
	The Prosecutor v. Hysni Gucati and Nasim Haradinaj
Before:	**Court of Appeals Panel**
	Judge Michéle Pichard
	Judge Emilio Gatti
	Judge Nina Jørgensen
Registrar:	Dr. Fidelma Donlon
Filing Participant:	Specialist Counsel for Nasim Haradinaj
Date:	16 December 2021
Language:	English
Classification:	**Public**

Publicly Redacted Haradinaj Defence Submissions on Appeal in Respect of Decision KSC-BC-2020-07/F00470

Specialist Prosecutor

Jack Smith

Valeria Bolici

Matthew Halling

James Pace

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

Jonathan Worboys

Counsel for Hysni Gucati

Jonathan Elystan Rees QC

Huw Bowden

Eleanor Stephenson

I. INTRODUCTION

1. On 3 December 2021, the Trial Panel issued its 'Decision on Prosecution Requests in Relation to Proposed Defence Witnesses'[1] ("Impugned Decision").

2. On 6 December 2021, the Defence for Mr. Nasim Haradinaj ("Haradinaj Defence"), as per the invitation of the Trial Panel in the aforesaid Decision, filed its 'Application for Leave to Appeal',[2] having regard to the Decision wherein it confirmed at paragraph 121 that the Haradinaj Defence were "*not required to make submissions regarding the certification test under Rule 77(2) of the Rules in relation to the above issues*".[3]

3. On 8 December 2021, that Decision being communicated on 9 December 2021, the Trial Panel formally granted leave to appeal, 'Decision on Defence Request for Leave to Appeal F00470',[4] certifying the question of whether the Decision to refuse to hear the evidence of DW1250, DW1251, and DW1253 was correct, those issues characterised as being:

   a. The findings of the Trial Panel "*in relation to the irrelevance of the proposed testimony of DW1250 and DW1251 and its decision not to hear these witnesses*";[5] and

[1] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public.
[2] KSC-BC-2020-07/F00474, Defence for Nasim Haradinaj, Defence Application for Leave to Appeal in respect of 'Decision on Prosecution Requests in Relation to Proposed Defence Witnesses', 6 December 2021, Public.
[3] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public.
[4] KSC-BC-2020-07/F00484, Trial Panel, Decision on Defence Request for Leave to Appeal F00470, 8 December 2021, Public.
[5] *Ibid.* at paragraph 1.

b. The findings of the Trial panel "*in relation to the impermissible character of the proposed evidence of DW1253 under Rule 149 of the rules and its decision not to hear this witness*".[6]

4. The Haradinaj Defence, *per* the below, now seeks to make the following submissions.

II. THE IMPUGNED DECISION

5. The relevant sections of the Impugned Decision[7] can be found at paragraphs 80-82 and 102-111, those paragraphs dealing specifically with the three noted witnesses and the question of their admissibility.

6. In terms of Witnesses DW1250 and DW1251, the Trial Panel adopts the position that the two witnesses neglect to "*offer any credible linkage to SITF/SPO investigations, the SITF/SPO's contacts with Serbian authorities or SC proceedings. Furthermore, the statements of the proposed witnesses do not appear to pertain to any fact or circumstance relevant to this case."*[8]

7. Further, in terms of an explicit defence being raised by the Defendant, that "*…the claim that DW1250 and DW1251 are to be regarded as "whistle-blowers" for the purpose of Article 10 of the ECHR is undermined by the fact that, from the material provided by the Defence, it appears that neither DW1250 nor DW1251 was ever in a Relationship of*

[6] *Ibid.*
[7] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public.
[8] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public, at paragraph 80.

employment with the SPO or the SITF that would warrant recognition of whistle-blower status in the present context."[9]

8. The conclusion drawn by the Trial Panel in terms of the aforesaid two witnesses therefore, is that "*…the Haradinaj Defence has failed to demonstrate how either of these witnesses is capable of giving evidence regarding the claim of "public interest" as identified and defined above, and how their proposed evidence is relevant to these proceedings*".[10]

9. In terms of witness DW1253, the Trial Panel find that "*…the question for the Panel to resolve is whether his proposed evidence comes within the scope of what is permissible "expert evidence""*.[11]

10. In answering this question, the Trial Panel concludes that it "*is not satisfied that this is the case*",[12] and does so for the following reasons:

a. That the issues to which the evidence relates are those "*which the Panel can determine for itself without the assistance of expert evidence*";[13]

b. That the proposed witness "*does not appear to rely on any sort of expertise – in terms of knowledge or experience – that the Panel does not already possess;*[14]

[9] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public, at paragraph 81.
[10] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public, at paragraph 50.
[11] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public, at paragraph 106.
[12] *Ibid*.
[13] KSCBC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public, at paragraph 107.
[14] *Ibid.*

c. That having regard to point (b) above, that "*…the Defence has not directed the Panel to any precedent where expert evidence was admitted in relation to the general nature of the facts and circumstances which the Haradinaj Defence proposes to explore with DW1253*;[15]

d. That "*…the proposed evidence of DW1253 would usurp…the Panel's responsibilities*",[16] in that:

i. "*[T]he issues upon which he would be asked to testify are matters that fall squarely within the responsibility of the Panel*";[17]

ii. Opinions as to the validity and lawfulness of the search and seizure operations of the Specialist Prosecutor's Office ("SPO") are "*matters within the scope of responsibility of the Panel*;[18]

iii. Any comments or considerations as to whether the search and seizure operations are compatible with relevant international standards and best practices "*is the responsibility of the Panel and cannot validly be subject to expert opinion*";[19]

iv. That as the witness "*…does not claim to have conducted a review similar to that which W04841 said that she conducted…DW1253 has no demonstrated expertise that would put him in a position to offer an expert*

[15] *Ibid.*
[16] *Ibid* at paragraph 108.
[17] *Ibid.*
[18] *Ibid.*
[19] *Ibid.*

opinion on that point" and that "*[i]f he has an opinion, it is not one that would add to what the Panel can determine based on its own knowledge and experience*";[20] and

v. "*[M]ost of what DW1253 would propose to say could be advanced by Counsel as submissions*",[21] noting in particular, the Defence Final Trial Brief and any closing statement.

III. SUBMISSIONS

11. As the questions certified relate to two issues, these submissions will deal with each in isolation in the order they appear within the Impugned Decision.

Witnesses DW1250 and DW1251

12. The Haradinaj Defence respectfully submits and maintains that the proposed evidence of the two aforementioned witnesses is directly relevant to the circumstances of the case, and further, to an explicit defence to be raised by the Haradinaj Defence, namely that of a 'Whistle-blower', or 'Public Interest' defence.

13. Neither witness is or has been previously employed by the SPO, or its precursor the EU Special Investigative Task Force ("SITF"), that is accepted; however, employment is not the sole basis against which the evidence ought to be assessed and it should be noted that the appointing authority for both the EU Rule of Law Mission to Kosovo

[20] *Ibid.* at paragraph 109.
[21] *Ibid.* at paragraph 110.

("EULEX") and the SITF/SPO was the European External Action Service ("EEAS")[22] and the criticisms made by Witnesses DW1250 and DW1251 as to the existence of political interference, widespread corruption, and collaboration with Serbian authorities are relevant to the Defendant's state of mind.

14. A primary theme of the Haradinaj Defence case as a whole, is that any actions that are found to have been taken by the Defendant(s) were justified on the basis that it was in the public interest to do so.

15. That public interest was present for a number of reasons, including, but not limited to, the fact that it is the Defendant's case that the SPO, through its actions and inactions, is said to be a discriminatory institution, being mono-ethnic in its work, targeting members of the KLA exclusively.

16. The Trial Panel at paragraph 58 of the Impugned Decision note that "*…the Defence has not pointed to any material contained in the information allegedly disclosed by the Accused that would support a claim of "bias" on the part of the SC. Accordingly, the Panel will not authorise the Defence to call or seek admission of evidence that purports to support this allegation*".

17. The finding of the Trial Panel on this point raises two specific issues concerning the evidence that fall to be addressed.

18. Firstly, as the Trial Panel is aware, the Haradinaj Defence cannot point to evidence contained within documents said to have been disclosed by the Accused, as the

[22] *See, e.g.*, Article 28(3) of the Law No.05/L-053; EULEX, "The EU in Kosovo", https://www.eulex-kosovo.eu/?page=2,19, last accessed 16 December 2021.

Haradinaj Defence have not had sight of the same, in its entirety, and will not have sight of the same.

19. Further, the Trial Panel have not had sight of the same.

20. The reality of the position is thus that no-one, other than the SPO, knows precisely what is within those documents, given the consistent and ongoing refusal to disclose the same.

21. It is submitted, however, that of the material disclosed during the Prosecution's case, it has been clearly established that the SPO are not pursuing any investigations against Serbian perpetrators,[23] despite the voluminous material demonstrating the criminal responsibility of those persons named in the material said to have been leaked.[24] To suggest that no evidence has been heard in this matter is simply inaccurate. It is of concern that on the one hand, the Trial Panel has prevented any of those Serbian officials accused of war crimes and crimes against humanity from being referred to in open court, and then on the other suggests that no evidence has been heard with regard to the same.

22. The Trial Panel therefore appears to criticise the Defendant for not being able to adduce evidence of something that is beyond his control, and outside of his purview, given the manner in which this case has been brought before the Specialist Chambers.

[23] *See, e.g.,* KSC-BC-2020-07, Trial Hearing, Opening of the Gucati Defence, 3 December 2021, at p. 2117 at lines 8-10; p. 2118 at lines 20-23; p. 2119 at lines 13-18; p. 2120 at lines 5-8; p. 2121 at lines 4-6; p. 2123 at lines 7-10; KSC-BC-2020-07, Trial Hearing, 15 December 2021, Opening of the Haradinaj Defence, p. 2663 at lines 23-25.
[24] *Ibid.*

23. Secondly, even were it to be accepted that no evidence has been adduced of such information being contained within the disclosures, evidence of what the Haradinaj Defence will say is 'bias' has been tendered in oral testimony.

24. As noted above, when asked whether there were any investigations into Serbian officials, Zdenka Pumper [Witness W04841] confirmed that there were not,[25] and thus any allegations made against Serbian forces or other entity were being ignored.

25. The issue has been raised therefore, and where able (without being explicitly prevented from doing so) has also been evidenced.

26. Accordingly, the Trial panel has erred at, but not limited to, paragraph 58 of the Impugned Decision.

27. Further, these allegations of bias contained within the evidence that the Haradinaj Defence seeks to adduce do not simply relate to the cases being investigated, but specifically named individuals, and how those individuals approach cases, decisions, and investigations.

28. Accordingly, it is respectfully submitted that the 'public interest' issue must be viewed 'in the round' and not simply on one individual issue.

29. These issues have been advanced by the Haradinaj Defence on numerous occasions throughout the entirety of these proceedings thus far, and accordingly, those issues are relevant issues for the purposes of the defence.

[25] KSC-BC-2020-07, Trial Transcript, 26 October 2021, p. 1425 at lines 13-18.

30. The fact that the Trial Panel may reject the evidence having heard the same is a matter that is within the mandate of the Trial Panel; however, to prevent evidence of fact being adduced, particularly where that evidence of fact underpins or relates to a specific limb of a defence being advanced, is a direct assault on the fairness of proceedings.

31. To that end, we would highlight the evidence of [REDACTED] [Witness DW1251], in particular the evidence she provides at paragraphs 111-119 of her statement, wherein she [REDACTED].[26] It is noted that at least two of the Prosecutors involved in this matter, [REDACTED] and [REDACTED], were previously part of EULEX/SPRK. That demonstrates the very point that is being made.

32. With this is mind, as much as the witness may not have been employed by the SITF/SPO, they remain capable of commenting on specific and relevant issues in terms of the practices likely to have been adopted by the SPO, and therefore, provides evidence relevant to that which advanced by the Defendant as part of his Defence.

33. Further, the witness can provide evidence of the 'Climate' within which certain actions would have been undertaken, decisions made, and any political pressures exerted on the decision-making process. Those matters are relevant.

34. Further, the evidence offered at 118-119 of the statement provides essential contextual information and evidence in terms of the allegations of inappropriate influence upon the SPO and the wider KSC by EULEX and EEAS, noting that as much

[26] Annex 1, Witness Statement of [REDACTED], at paragraph 111.

as they be separate entities, as noted above, the EEAS is the 'appointing authority' for both the SPO/KSC and EULEX, and therefore the issue is of direct relevance to that which is being put forward by the Defendant.

35. Again, it is accepted that the Trial Panel may seek to disregard part of this evidence having heard the witness's testimony; however, the question posed for the purposes of this submission, and the original issue giving rise to the Impugned Decision, is not whether the evidence has to be accepted as fact, but rather, whether the evidence is "*relevant*" for the purposes of the case being heard before the Court, and in particular, the defence to be raised.

36. It is submitted that on any assessment, having regard to the defence case, and in particular the criticism of the SPO made by the Defendant, the evidence proposed is relevant, and cannot be seen as anything other than relevant on any impartial assessment.

37. It is noted that whilst the evidence of DW1251 may cause embarrassment to the institution, individual prosecutors and judges, and/or the appointing authority, that is not a sufficient basis by which to exclude the evidence.

38. In a similar vein, the evidence of witness [REDACTED] [Witness DW1250] is equally relevant, noting that the same issues of bias and working practices are raised within the same, in a similar context to that which is raised within the statement of Witness DW1251.

39. Further, the evidence Witness DW1250 adds further credibility to the allegations of bias and selective investigation levied at the SPO, noting in particular, but not limited to, paragraph 45 of the witness statement which refers to Serbian individuals alleged to have been involved in atrocities during the conflict, and the fact that the relevant files were [REDACTED] to Serbian authorities, seemingly to be ignored and no action taken.

40. Accordingly, the evidence is relevant as it demonstrates a potential common purpose from the EULEX mission, to the SPO/KSC, noting that the KSC developed out of the EULEX mission.

41. Further, the evidence of Witness DW1250 makes significant allegations concerning the Trial Panel's Presiding Judge, Vice President Charles Smith III, in particular at paragraphs 54-59 of the statement and the annexed e-mail communications between Vice President Smith and [REDACTED].[27] The Haradinaj Defence makes no further comment in respect of those allegations save to highlight the same, and reaffirm the submission that given the context in which those allegations are being made, it is submitted as being abundantly clear that the proposed evidence is relevant.

42. It respect of Witness DW1250, it is repeated that the risk of causing embarrassment to the institution, individual prosecutors and judges, and/or the appointing authority, is not a sufficient basis by which to exclude this evidence.

[27] Annex 2, Witness Statement of [REDACTED] and Annex.

43. It is further noted that the application seeking the disqualification of Vice President Smith was precisely to avoid this very situation, in which refusing to allow the Haradinaj Defence to call a witness with whom a member of the Trial Panel has a prior relationship puts the judge in question in the impossible position of making a determination of relevance.

44. In light of the above, the conclusion that neither witness can offer evidence that is relevant cannot be sustained.

45. Having regard to the aforesaid, the appeal ought to be allowed, and the two proposed witnesses called.

46. The Haradinaj Defence does not seek to make comment in respect of the finding at paragraph 81 in respect of whether the evidence of the two witnesses ought to be admitted under Rule 149, and the Haradinaj Defence has not at any time maintained that these two witnesses are 'Expert Witnesses' within the context of Rule 149. Both witnesses have been recognised as whistle-blowers and their evidence is relevant as non-experts.

47. The submission is that the evidence to be provided is of relevance to the issues in this case, taking account of the Defendants already raised defence, and the contextual as well as probative value that both witnesses can offer.

Witness DW1253

48. [REDACTED] [Witness DW1253] has been tendered as an Expert Witness.

49. It is noted that in the Impugned Decision,[28] the Trial Panel do not take issue with the qualifications, experience, or expertise of the proposed witness, the issue being one solely of content and whether his evidence is necessary.

50. Consequently, the Haradinaj Defence do not seek to make any further submissions on the issue of whether the Witness is qualified to be an expert as such, other than to confirm he is one of the most experienced international investigators with over thirty years' experience in the field, and instead focusses solely on the evidence and the relevant rules.

51. Perhaps the first issue is the Trial Panel's finding that the issues raised within the report are issues that the Panel can determine for itself without the assistance of expert evidence, noting that the expert does not rely on any expertise that the Panel does not already possess, and further, that the Haradinaj Defence has not directed the Trial Panel to any precedent where expert evidence was admitted in relation to the general nature of facts.[29]

52. As a preliminary matter, it is respectfully submitted that the late addition of Witness DW1253 was deemed necessary due to the wholly inadequate investigation undertaken and the evidence of Prosecution Witnesses W04841, W04842 and WO4876 presented at trial that seemed to demonstrate a complete absence of procedures and protocols, record keeping, chain of custody, continuity and professional standards on the conducting of a complex criminal investigation.

[28] KSC-BC-2020-07/F00470, Trial Panel, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 3 December 2021, Public, at paragraphs 105-106.
[29] *Ibid* at paragraph 107.

53. Working backwards, the Haradinaj Defence has not at any time been required to provide precedent as to why the evidence ought to be admitted, merely being required to demonstrate the relevance, probative value, and justification for that expert.

54. The fact that no specific precedent was referred to is, with respect, not part of the test and therefore not an issue that the Trial Panel are at liberty to take into account.

55. Secondly, the evidence to be offered is not of a "*general nature*". Specific reference to the evidence of the SPO, particularly that contained at paragraph 23 onwards of the proposed witness statement, contains specific comment on that which has been undertaken by the SPO, particularly within the evidential framework before the Trial Panel in the instant case. That evidence is therefore specific and relevant to a particular matter, and is in no way 'general'.

56. The final limb of the Trial Panel's finding within paragraph 107 is that the Trial Panel already have this knowledge or experience, and therefore the evidence of the expert is not required.

57. With respect, this conclusion is taken from a position of lack of appreciation of the complex issues under consideration. Whilst it is noted that two of the Trial Panel members are former Prosecutors, the Panel is not composed of senior international criminal investigators, a highly specialised field.

58. The Defendant has consistently challenged the poor investigative practices of the SPO, both in preliminary submissions and in cross-examination at trial. The issue is not one that is new.

59. The expert is a leader in his field whose qualifications are not in question, further, the proposed witness has specific experience of ZyLab as a legal tool,[30] having used it in a professional capacity, something that it is presumed that the Trial Panel may not have.

60. Accordingly, it is respectfully submitted that the Trial Panel do not have the expertise and experience they profess, unless it is that the Trial Panel have received specific training on ZyLab.

61. In terms of the second issue, *per* paragraph 108 of the Impugned Decision, the Trial Panel find that the proposed evidence of Witness DW1253 "*would usurp, in several respects, the Panel's responsibilities*".

62. The Haradinaj Defence maintain that the Trial Panel has erred in making this finding.

63. All issues relevant to this trial fall within the responsibility of the Trial Panel, that includes the reliability, and weight of evidence being presented.

64. The SPO have presented their position as reliable, and SPO witnesses have given evidence as to why it considers that position to be reliable and credible. The Haradinaj Defence seeks to challenge that position, and adduce evidence to

[30] Annex 3, Expert Report of [REDACTED], at paragraph 5.

demonstrate how that position is misconceived. That is one of the purposes of the proposed expert.

65. The Trial Panel has erred in suggesting that this is somehow inappropriate, particularly prior to that evidence being adduced.

66. Further, it is respectfully submitted that it is not for the Judges to conduct an investigation, or to substitute themselves for one of the parties, but to assess the evidence put before it. That should be recognised as a fundamental principle of the adversarial process.

67. The Haradinaj Defence has not at any stage sought to suggest that the evidence of the proposed expert has to be accepted, which is of course a decision falling squarely within the mandate of the Trial Panel to accept that evidence or otherwise; however, the proposed evidence would 'inform' the decision of the Trial Panel and perhaps provide assistance in reaching a final conclusion.

68. Allowing the evidence to be given does not prevent the Trial Panel from reaching a decision, nor does it impinge on their powers. To refuse to allow the evidence to be given does, however, actively prevent the Haradinaj Defence from substantiating a central pillar of the defence being raised.

69. Again within paragraph 108, the Trial Panel determine that "*[t]he Defence also intends to ask DW1253 to opine upon the validity and lawfulness of search and seizure operations*". At no stage has the witness given an opinion on whether the process was lawful, the

witness has merely compared the search to international best practice and reached a conclusion.

70. It is of course outside of the remit of the proposed witness to comment on 'legality'; it is however entirely appropriate to criticise or confirm an approach, based on years of experience and qualifications, both of which the Trial Panel does not dispute.

71. Finally, within paragraph 108, the Trial Panel notes that any comment upon whether the search was in accordance with 'the Rules' is inappropriate. That is not accepted. The expert is perfectly capable of reaching such a conclusion based on the material put before him. However, there is nothing to have prevented the Trial Panel from restricting the evidence to prevent comment upon this specific point, in a similar vein to how the Trial Panel have sought to restrict the evidence of other defence witnesses.[31]

72. The issue of itself does not render the entirety of the evidence of the proposed evidence as inadmissible.

73. At paragraph 109 of the Impugned Decision, the Trial Panel appears to take issue with the fact that the proposed witness "*does not claim to have conducted a review*" similar to that undertaken by Witness W04841.

74. With respect to the Trial Panel, the position is not one that ought to factor into any decision-making process. The Trial Panel knows well that the SPO have consistently and steadfastly refused to disclose the entirety of the documents to anyone, including

[31] KSC-BC-2020-07/F00484, Trial Panel, Decision on Defence Request for Leave to Appeal F00470, 8 December 2021, Public, at paragraphs 98-99.

the Pre-Trial Judge, and the Trial Panel. Accordingly, the proposed witness could not have undertaken any such review, and has instead passed comment upon what Witness W04841 has said was undertaken, which is an entirely legitimate position to take within the circumstances.

75. It is quite an extraordinary point to make considering the inability to review what Witness W04841 reviewed for the very reasons that have been repeatedly made clear during these proceedings, namely the opacity of the prosecution case and its cavalier attitude to disclosure.[32]

76. Regardless, the proposed witness can quite appropriately comment upon whether a process was appropriate or otherwise having undertaken similar processes previously.

77. Finally, at paragraph 110, the Trial Panel finds that the issues raised by the proposed witness "*could be put forth by the Defence as part of its Final Trial Briefs and closing statements*".

78. With the greatest respect the Haradinaj Defence do not accept this to be the most appropriate method of dealing with the issue. However, if it is that this is deemed to be case, it must therefore follow that the Haradinaj Defence cannot be criticised for raising the issue in submissions, nor criticised for not adducing evidence to substantiate the submission given if the decision is upheld on appeal, the Haradinaj Defence will have been actively prevented from adducing that evidence.

[32] KSC-BC-2020-07/F00413, Trial Panel, Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice, 3 November 2021, Confidential, at para. 48.

79. The Trial Panel refers to *Prosecutor v. Nahimana et al*,[33] to lend support to the argument concerning the issues being addressed in Counsel's submissions. However, the relevant paragraphs read "*the Chamber notes that his evidence relates solely to legal matters, not matters of a technical nature*". The issue in that decision therefore relate to evidence related to the principle of free speech and intellectual freedom.

80. The Haradinaj Defence would submit that the issue is thus not analogous to the instant case, in that the proposed witness is to give evidence on matters of a 'technical nature' rather than legal, and therefore the decision does not substantiate the Impugned Decision on this point.

81. Respectfully, the Appeal Judgment[34] does not lend further support to the finding of the Trial Panel within the Impugned Decision, it merely approving of the position regarding legal *vs* technical.

82. The argument therefore stands that the proposed witness ought to have been authorised, the evidence being of a technical nature, and therefore appropriate to be heard by the Trial Panel.

Word Count: 4,282 words

[33] ICTR, 99-52-A, Appeals Chamber, Decision on the Expert Witness for the Defence 24 January 2003, paras 21-22.
[34] ICTR, *Prosecutor v. Nahimana et al*, 99-52-A, Appeals Chamber, Appeal Judgement, 28 November 2007, paras 293-294.

Toby Cadman

Specialist Counsel

Carl Buckley

Specialist Co-Counsel