



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** Dr Fidelma Donlon

**Filed by:** Dr Fidelma Donlon

**Date:** 17 January 2022

**Language:** English

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**Public Redacted Version of**

**“Registry Report pursuant to the Oral Order of 1 September 2021 in relation to the Registrar’s Submissions on the Conduct of Proceedings (F00286)”, filing F00310, dated 10 September 2021**

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## I. INTRODUCTION

1. On 27 August 2021, the Registry filed its submissions ('Registry's Submissions') on the conduct of proceedings,<sup>1</sup> which included the Registrar's observations on, *inter alia*, the services offered by the Witness Protection and Support Office ('WPSO') to witnesses.
2. On 1 September 2021, during the trial preparation conference, Trial Panel II ('Panel') issued an Oral Order<sup>2</sup> directing the Parties to indicate to the Registry by 6 September 2021 their agreement, objections, or suggestions regarding the logistical arrangements accompanying initial contact, arrival, and familiarisation of witnesses with reference to paragraphs 5 to 24 of the Registry's Submissions. The Panel further ordered the Registry to report back to the Panel by 10 September 2021 on the outcome of these discussions, raising any unsolved matter.
3. Pursuant to the Oral Order, Article 34(1) and (8) of the Law,<sup>3</sup> and Rules 23(2) and 27 of the Rules,<sup>4</sup> the Registry hereby reports to the Panel on the matters specified above.

## II. REPORT

4. On 6 September 2021, the Defence for Mr Nasim Haradinaj informed the Registry that they agree with the Registry's observations at paragraphs 5 to 24 of the Registry's Submissions.
5. On 6 September 2021, the Defence for Mr Hysni Gucati ('Mr Gucati') conveyed to the Registry the following proposals:

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<sup>1</sup> KSC-BC-2020-07, F00286, Registrar, Registry Submissions for Trial Preparation Conference and on the Draft Order on the Conduct of Proceedings (F000267/A01) with one confidential Annex, 27 August 2021, public ('Registry's Submissions').

<sup>2</sup> KSC-BC-2020-07, Oral Order, Transcript of the Trial Preparation Conference of 1 September 2021 (Open Session), page 480, line 10 to page 480, line 20, public.

<sup>3</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>4</sup> Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020, ('Rules').

- (a) with reference to paragraph 8 of the Registry's Submissions, "that an up-to-date list of witnesses expected to testify is filed 7 days before the first day of testimony rather than 14 days", as requested by WPSO, because "[p]roviding two weeks' notice will cause an unnecessary delay to the proceedings"; and
- (b) with reference to paragraphs 16 and 17 of the Registry's Submissions, "that there is a degree of flexibility afforded to the Defence as regards being able to be in touch with its witnesses shortly before they give evidence".

6. [REDACTED].

### III. UNRESOLVED MATTERS

7. Should the Panel decide on a cut-off date for contact between the Calling Party<sup>5</sup> and the witness prior to testimony, one unresolved issue is the exact timing of the cut-off date. Considering the remarks made by the Defence for Mr Gucati in this respect,<sup>6</sup> the timelines indicated at paragraphs 15-17 of the Registry's Submissions are merely examples and/or suggestions provided for informational purposes and ease of reference. For example, the cut-off date could potentially be the end of the witness preparation meeting, if any, or one day prior to the witness's testimony, or the moment the witness is under oath, or any other date that the Panel may decide. Subject to the Panel's decision on the matter, it may even be beneficial for the well-being of the witness to permit contact between the witness and the Calling Party in case they are anxious about or have questions in relation to their upcoming testimony. That being said, the Registry and WPSO will facilitate any process and contact as decided by the Panel.

8. The Registry notes [REDACTED]<sup>7</sup> and defers to the Panel's decision on this matter.

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<sup>5</sup> Registry Submission, fn. 8.

<sup>6</sup> See para. 5(b) above.

<sup>7</sup> See para. 6 above.

9. A second unresolved issue is WPSO's proposal concerning the initial information provided by the Calling Party to WPSO. To enable logistical preparations for appearances, WPSO has proposed that the Calling Parties file an up-to-date list of witnesses for the following two weeks (14 days) in advance.<sup>8</sup>

10. With regard to the proposal made by the Defence for Mr Gucati for a shorter period of one week (7 days) in advance,<sup>9</sup> and subject to the Panel's determination, WPSO maintains its original proposal in paragraphs 5 to 8 of the Registry's Submissions.

11. As an initial matter, WPSO has proposed that the Calling Parties submit a completed Witness Information Form ('WIF') for each witness no later than 35 days prior to the day the witness is required to testify.<sup>10</sup> WPSO has also proposed that the Calling Parties provide a provisional Witness Appearance List ('WAL') no later than 30 days prior to the first day of testimony.<sup>11</sup> The Parties have not raised any objections to those proposals.

12. What is at issue is the timing of an *up-to-date* list of witnesses expected to testify and whether this list should be provided by the Calling Parties a minimum of 14 days in advance. The proposed 14-day timeline is in order for WPSO to finalise and arrange all necessary travel and logistics for the timely and secure appearance of the witness before the Specialist Chambers ('SC'). The logistical preparation undertaken by WPSO involves securing visas from the Host State, providing any necessary protection and risk management prior to the witness's travel for testimony, as well as other support and assistance such as any medical or psycho-social support required. Sufficient time must also be given for the witness familiarisation process, which may include coordinating any statement reading or witness preparation sessions if so ordered by the Panel.

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<sup>8</sup> Registry Submission, para. 8.

<sup>9</sup> See para. 5(a) above.

<sup>10</sup> Registry Submission, para. 6.

<sup>11</sup> Registry Submission, para. 8.

13. A shorter period than 14 days may be accommodated in exceptional circumstances, for example in case of an emergency or if an unforeseen situation arises; however, the 14-day period is normally the minimum required to ensure the safe, orderly, and timely appearance of a witness before the SC and avoid any unnecessary delays to proceedings.

14. WPSO is able to accomplish logistical arrangements with this minimum amount of notice if as much planning as possible can be accomplished beforehand, based on the Calling Parties providing the WIF and the WAL according to the above time periods.<sup>12</sup>

15. Any significant reduction in the proposed time periods increases the risk of unnecessary delays to the proceedings. That said, the Registry defers to the decision of the Panel on this issue.

#### IV. CLASSIFICATION

16. This submission is filed as confidential as it refers to information submitted as confidential [REDACTED].

**Word count: 1054**



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**Dr Fidelma Donlon**

**Registrar**

Monday, 17 January 2022

At The Hague, the Netherlands

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<sup>12</sup> See para. 11 above.