



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: Fidelma Donlon

Date: 20 January 2022

Language: English

Classification: Public

Agenda for Parties' Submissions on the Next Steps in the Proceedings

Specialist Prosecutor

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TRIAL PANEL II ("Panel"), pursuant to Article 40(2) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 116(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 14 January 2022, the Panel informed the Parties that it would request their submissions in relation to Rules 127, 133, 134, 135, 156 and 159(6) of the Rules.¹ The Panel indicated that these submissions would be received in writing or orally once the Defence case is closed and depending on the progress made in the coming weeks.²

II. APPLICABLE LAW

2. Pursuant to Article 40(2) of the Law, the Panel shall ensure fair and expeditious proceedings in accordance with the Rules and full respect for the rights of the Accused. After having heard the Parties, the Panel may adopt procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings.

3. Pursuant to Rule 116(1) of the Rules, the Panel, upon consultation with the Parties, shall establish a work plan indicating the obligations of the Parties and set time limits for the fulfilment of these obligations.

III. DISCUSSION

4. The Panel informs the Parties that, for the time being, it does not intend to call additional evidence *proprio motu* as provided by Rule 132 of the Rules. The Panel

¹ Transcript, 14 January 2022, pp 3037-3038 (Oral Order on Trial Schedule).

² Transcript, 14 January 2022, pp 3037-3038 (Oral Order on Trial Schedule).

reserves its right to revisit this decision once the presentation of the Defence case is finalised. Furthermore, in line with Rule 132 of the Rules, the Panel invites the Parties to consider, including through *inter partes* communication, the submission into evidence of the following material, which was either used in court but not tendered or listed by one of the Parties but not used:

- a. DHG0075-DHG0081;³
- b. Portions of ICTY judgment IT-04-84-T, 3 April 2008 used during examination;⁴
- c. Portions of SPOE00248303-00248304 used during examination.⁵

5. The Panel will inform the Parties in due course whether it wishes to invite the submission of any other additional evidence not produced by the Parties.

6. In accordance with Rules 127, 133, 134, 135, 156 and 159(6) of the Rules and considering that the end of the Defence presentation of evidence is nearing, the Panel hereby notifies the Parties of the following submissions that it will seek in due course:

- a. the Parties' position regarding the Panel's invitation to submit additional evidence as listed in paragraph 4;
- b. Whether the SPO will seek leave to present evidence in rebuttal and if so, for what purpose (Rules 127(2)(d) and 133 of the Rules);
- c. Depending on the answer to the above question and to the extent known, whether the Defence will seek leave to present evidence in rejoinder (Rule 127(2)(e) and 133 of the Rules);

³ Listed in the List of proposed exhibits of the Gucati Defence (F00486/A01), item no. 9, p. 3. Not used or tendered with any witness.

⁴ Paragraph 6 of this publicly available document was referred to by the SPO in the cross-examination of Mr Gucati. Transcript, 7 December 2021, p. 2311.

⁵ Used by the SPO in the cross-examination of Mr Gucati. Transcript, 8 December 2021, pp 2343-2349.

- d. Whether the Parties stand by their previous estimates that they can file their Final Trial Brief three weeks (21 days) from the closing of the evidentiary proceedings (Rule 134(a)-(b) of the Rules);⁶
- e. Whether the Parties stand by their previous estimates that the closing statements can be held one week (7 days) from the filing of the Final Trial Briefs (Rule 134(a) and (c) of the Rules);⁷
- f. The estimated duration of each Party's closing statement (Rule 135(1) of the Rules);
- g. Whether the Haradinaj Defence adopts the list of facts agreed between the Gucati Defence and the SPO (Rule 156);⁸
- h. Whether the Gucati Defence adopts the list of facts agreed between the Haradinaj Defence and the SPO (Rule 156);⁹
- i. Which of the agreed facts can be made public; and
- j. Whether any further points of fact have been agreed to between the Parties.

7. Pursuant to Rule 159(6) of the Rules, if the Panel finds the Accused guilty of one or more offences, it must hear the Parties on whether the appropriate sentence should be imposed with the pronouncement of the Trial Judgment. Given that this decision affects the content of the Final Trial Briefs and the closing statements, the Panel finds it appropriate to receive submissions from the Parties on this matter at the end of the

⁶ Transcript, 2 December 2021, pp 2093-2094.

⁷ Transcript, 2 December 2021, pp 2093-2094.

⁸ Thirteen facts have been agreed upon during the pre-trial stage. See F00262/A01, Specialist Prosecutor, *Prosecution Submissions on Points of Agreement on Matters of Fact*, 14 July 2021, p. 2, confidential; F00258/A03, Gucati Defence, *List of Any Proposed Agreements on Points of Law or Fact*, 12 July 2021, confidential. An additional fact was agreed upon during the trial stage. See F00487/RED, Gucati Defence, *Public Redacted Version of Defence Request for Admission of Items through the Bar Table*, 17 December 2021, para. 4.

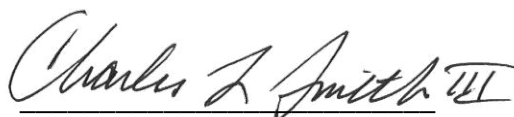
⁹ Three facts have been agreed upon during the pre-trial stage. See F00262/A01, Specialist Prosecutor, *Prosecution Submissions on Points of Agreement on Matters of Fact*, 14 July 2021, p. 3, confidential; F00260/RED, Haradinaj Defence, *Public Redacted Submission of Interim Pre-Trial Brief on behalf of the Defence of Nasim Haradinaj*, 12 July 2021, para. 302.

Defence presentation of evidence. This is without prejudice to the Panel's determination of whether the Accused are guilty or not guilty.

8. The Panel will hear the submissions detailed in paragraphs 4, 6 and 7 orally as soon as the Defence presentation of evidence is finalised, which the Panel anticipates will be on or around 31 January 2022. The Panel will hear these submissions on the same day and/or 4 February 2022, if necessary. In addition or alternatively, if the above dates prove to be impracticable, the Panel may set a time-limit for written submissions. Further guidance will be provided by 31 January 2022 at the latest.

IV. DISPOSITION

9. In light of the foregoing, and in order to facilitate the fair and expeditious conduct of the trial, the Panel hereby informs the Parties that the submissions detailed in paragraphs 4, 6 and 7 will be received orally as soon as the Defence presentation of evidence is finalised, or in written form, within a time-limit set by the Panel.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 20 January 2022
At The Hague, the Netherlands