



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: 3 February 2022

Language: English

Classification: **Public**

Decision Taking Note of the Agreed Facts

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 156 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 12 July 2021, the Defence for Hysni Gucati (“Gucati Defence”) submitted thirteen and the Defence for Nasim Haradinaj (“Haradinaj Defence”) three facts agreed between the respective Defence and the SPO.¹
2. On 10 December 2021, the Gucati Defence submitted an additional fact agreed with the SPO.²
3. On 17 December 2021, the Panel took note of the additional fact agreed between the Gucati Defence and the SPO.³
4. On 28 January 2022, further to the Panel’s invitation,⁴ the Gucati Defence confirmed that it adopts the facts agreed between the Haradinaj Defence and the SPO and also indicated that no further facts have been agreed to.⁵ The Gucati Defence also indicated that the agreed facts could be made public.⁶

¹ F00258/A03, Gucati Defence, *List of Any Proposed Agreements on Points of Law or Fact*, 12 July 2021, 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. See also F00262/A01, Specialist Prosecutor, *Prosecution Submissions on Points of Agreement on Matters of Fact*, 14 July 2021, p. 2, confidential.

² F00487/RED, Gucati Defence, *Public Redacted Version of Defence Request for Admission of Items through the Bar Table*, 17 January 2022 (confidential version filed on 10 December 2021), para. 4.

³ F00502, Panel, *Decision on the Defence Request for Admission of Items through the Bar Table and Related Matters*, 17 December 2021, para. 14.

⁴ F00527, Panel, *Agenda for Parties’ Submissions on the Next Steps in the Proceedings*, 20 January 2022, para. 6(g)-(h);

⁵ F00540, Gucati Defence, *Provisional Written Submissions re Agenda for Parties’ Submissions on the Next Steps in the Proceedings F00527 (“Gucati Submissions”)*, 28 January 2022, paras 21, 23.

⁶ Gucati Submissions, para. 22.

5. On 31 January 2022, further to the Panel's invitation and written submissions by the Haradinaj Defence,⁷ the latter confirmed that it adopts all facts agreed between the Gucati Defence and the SPO.⁸ The Haradinaj Defence also indicated that while no additional facts have been agreed between the Parties, it has no opposition to making the agreed facts public.⁹ The SPO indicated that, in its view, all agreed facts can be made public.¹⁰

II. APPLICABLE LAW

6. Pursuant to Rule 156 of the Rules, where the Parties have submitted points of agreement on facts pursuant to Rule 95(3) of the Rules and the Presiding Judge has taken note thereof pursuant to Rule 118(4) of the Rules, the Panel may consider such alleged facts as being proved, unless it is of the opinion that a more complete presentation of evidence on the alleged facts is necessary.

III. DISPOSITION

7. Pursuant to Rule 156 of the Rules, the Panel takes note of the following agreed facts and considers them as being proved:

- a. Agreed between the Gucati Defence and the SPO, and adopted by the Haradinaj Defence:
 1. Hysni GUCATI was born on 30 March 1967;
 2. Hysni GUCATI was born in Morinë, Skënderaj/Srbica municipality, Kosovo;

⁷ F00527, Panel, *Agenda for Parties' Submissions on the Next Steps in the Proceedings*, 20 January 2022, para. 6(g)-(h); F00538, Haradinaj Defence, *Haradinaj Defence Written Submissions for the Next Status Conference ("Haradinaj Submissions")*, 28 January 2022, para. 10.

⁸ Draft Transcript, 31 January 2022, pp 3388.

⁹ Haradinaj Submission, para. 10.

¹⁰ Draft Transcript, 31 January 2022, pp 3389.

3. Hysni GUCATI has Kosovan nationality;
4. Hysni GUCATI has served as the chairman of the Kosovo Liberation Army War Veterans Association (“KLA WVA”), including between 7 and 24 September 2020;
5. On 7 September 2020, a press conference was held at the KLA WVA premises in Pristina, Kosovo (“First Press Conference”);
6. Hysni GUCATI attended and spoke at the First Press Conference;
7. Hysni GUCATI can be seen and heard speaking in 089984-02 and 081344-01, videos depicting the First Press Conference;
8. On 16 September 2020, a press conference was held at the KLA WVA premises in Pristina, Kosovo (“Second Press Conference”);
9. Hysni GUCATI attended and spoke at the Second Press Conference;
10. Hysni GUCATI can be seen and heard speaking in 089984-01 and 081344-02, videos depicting the Second Press Conference;
11. On 22 September 2020, a press conference was held at the KLA WVA premises in Pristina, Kosovo (“Third Press Conference”);
12. Hysni GUCATI attended and spoke at the Third Press Conference;
13. Hysni GUCATI can be seen and heard speaking in 081344-03 and 082136-01, videos depicting the Third Press Conference; and
14. that the following words appear in paragraph 8 of the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011: “[...] Nazim Bllaca, the “whistleblower” who publicly admitted to having carried out murders upon the orders of some of today’s high-ranking politicians [...]”.

b. Agreed between the Haradinaj Defence and the SPO, and adopted by the Gucati Defence:

1. That on the dates alleged three Batches of documents were delivered to the officers of the Kosovo Liberation Army War Veterans Association (KLA WVA);
2. That following the delivery of those documents, three press conferences took place;
3. That the Defendant was arrested.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 3 February 2022
At The Hague, the Netherlands