



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: 3 February 2022

Language: English

Classification: Public

**Decision on the Closing of the Evidentiary Proceedings and
on Submissions Pursuant to Rules 134(b), (d) and 159(6) of the Rules**

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 Rules 134, 135 and 159(6) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 18 October 2021, the presentation of evidence for the Specialist Prosecutor began.¹

2. On 10 November 2021, the Specialist Prosecutor formally closed his case.²

3. On 2 December 2021, the Panel held the Defence Preparation Conference during which the Parties provided tentative estimates for the time needed to file their Final Trial Briefs and make their closing statements.³

4. On 6 December 2021, the presentation of evidence for the Defence for Hysni Gucati (“Gucati Defence”) began.⁴

5. On 11 January 2022, the presentation of evidence for the Defence for Nasim Haradinaj (“Haradinaj Defence”) began.⁵

6. On 28 January 2022, the Gucati Defence and the Haradinaj Defence filed written submissions in advance of a status conference scheduled for 31 January 2022 providing, *inter alia*, updated estimates for the time needed to file their Final Trial Briefs and make their closing statements.⁶

¹ Transcript, 18 October 2021, p. 831.

² F00431, Specialist Prosecutor, *Prosecution Notice of the Closing of its Case*, 10 November 2021.

³ Transcript, 2 December 2021, pp 2093-2094.

⁴ Transcript, 6 December 2021, p. 2151.

⁵ Transcript, 11 January 2022, p. 2689.

⁶ F00538, Haradinaj Defence, *Haradinaj Defence Written Submissions for the Next Status Conference*, 28 January 2022; F00540, Gucati Defence, *Provisional Written Submissions re Agenda for Parties’ Submissions on the Next Steps in the Proceedings F00527*, 28 January 2022.

7. On 31 January 2022, the Panel held a status conference on the next steps in the proceedings and heard further submissions on, *inter alia*, the time the Parties needed to file their Final Trial Briefs and make their closing statements.⁷ At the same status conference, the Specialist Prosecutor's Office ("SPO") indicated that it did not seek leave to present evidence in rebuttal.⁸ Submissions were also received on whether the Panel should impose a sentence with the pronouncement of the Trial Judgment, if there was a conviction, or whether it should hold a separate sentencing procedure.⁹

8. On 2 February 2022, the Gucati Defence and the Haradinaj Defence submitted written notices formally closing their respective cases.¹⁰

9. On 3 February 2022, the Panel took note of the agreed facts.¹¹

10. On the same day, 3 February 2022, the Panel admitted *proprio motu* under Rule 132 of the Rules two items not produced by the Parties.¹²

II. APPLICABLE LAW

11. Pursuant to Rule 134 of the Rules, after ruling on motions pursuant to Rule 133 of the Rules and hearing such evidence, if any, "the Panel shall: (a) announce that the evidentiary proceedings are closed; (b) invite the Specialist Prosecutor and the Defence to file Final Trial Briefs within thirty (30) days; and [...] (d) schedule a hearing for closing statements which shall take place within twenty-one (21) days of the filing of the briefs and statement(s) referred to in (b) and (c)".

12. Pursuant to Rule 135(1) of the Rules, during closing statements, the Specialist Prosecutor shall speak first, followed by Specialist Counsel. The Panel may limit the

⁷ Transcript, 31 January 2022, pp 3393-3397.

⁸ Transcript, 31 January 2022, p. 3391.

⁹ Transcript, 31 January 2022, pp 3401-3405, 3408-3418.

¹⁰ F00549, Gucati Defence, *Defence Notice of the Closing of Its Case*, 2 February 2022; F00550, Haradinaj Defence, *Defence Notice of the Closing of its Case*, 2 February 2022.

¹¹ F00551, Panel, *Decision Taking Note of the Agreed Facts*, 3 February 2022.

¹² F00552, Panel, *Decision Pursuant to Rule 132 of the Rules*, 3 February 2022.

duration of closing statements. Pursuant to Rule 135(2) of the Rules, closing statements may refer to admitted evidence and its reliability, the credibility of witnesses, the record of the proceedings and the applicable law. Illustrative material and summaries of evidence, if they are based on admitted evidence, may be used. As provided in Rule 135(3) of the Rules, the Panel may seek clarification on any matters raised in the Final Trial Briefs. Pursuant to Rule 135(4) of the Rules, the Specialist Prosecutor shall have a right to respond and Specialist Counsel shall have the right to comment on those responses. The Accused shall have the right to speak last.

13. Pursuant to Rule 159(6) of the Rules, if the Panel finds the Accused guilty of one or more crime(s), it shall determine the appropriate sentence to be imposed on the Accused with the pronouncement of the Trial Judgment, unless, having heard the Parties, the Panel decides to proceed in accordance with Rules 162 and 164 of the Rules.

III. DISCUSSION

A. CLOSING OF THE EVIDENTIARY PROCEEDINGS

14. The Panel notes that all Parties have closed their respective cases and that no motions pursuant to Rule 133 of the Rules have been submitted. For these reasons, the Panel considers it appropriate to close the evidentiary proceedings in the present case.

15. This decision is without prejudice to: (i) the ongoing review of the classification of filings and admitted exhibits, including the issuance of public redacted versions; (ii) the bi-monthly or interim review of detention; and (iii) any application regarding the health or detention of the Accused.

B. SENTENCING PROCEDURE

16. The Panel notes at the outset that Rule 159(6) of the Rules provides for a separate sentencing procedure only as a secondary option, “unless, having heard the Parties, the Panel decides to proceed” accordingly. Rule 159(6) of the Rules makes it clear that the Parties should assume that the Panel shall determine the appropriate sentence at the same time as the pronouncement of the Trial Judgment. In the diligent exercise of their responsibilities, Counsel for the Parties must, therefore, have planned for and presented at trial all evidence they considered relevant to sentencing.

17. For the time being, the Panel intends to impose a sentence, if any conviction is entered, together with the pronouncement of the Trial Judgment and does not currently intend to apply the procedure set out in Rules 162 and 164 of the Rules. For this reason, the Panel orders the Parties to address the following matters in their Final Trial Briefs and closing statements: (i) the factors relevant to the determination of sentence; (ii) the gravity of the alleged offences, and any mitigating and/or aggravating circumstances to be taken in consideration as set out in Rule 163(1) of the Rules; (iii) any proposed sentence to be imposed pursuant to Rule 163(4) of the Rules, in particular in light of any domestic or international sentencing practice that the Parties consider relevant; (iv) the relevance, if any, of Rule 165 of the Rules; (v) any specific reasons why the Panel should apply the procedure under Rules 162 and 164 of the Rules; and (vi) should the Panel decide, after receiving these submissions, that the procedure under Rules 162 and 164 of the Rules shall apply: (1) the difference between “any relevant information” that may be submitted under Rule 162(1) of the Rules and “additional evidence” that the Panel may hear under Rule 162(5) of the Rules; and (2) what additional evidence, if any, may the Parties wish to call and why such evidence was not called during the trial.

18. If, after receiving these submissions, the Panel finds that there are specific reasons for proceeding in accordance with Rules 162 and 164 of the Rules, it shall not impose

a sentence with the Trial Judgment, if any conviction is entered, but shall set out the next step at the pronouncement of the Trial Judgment. Should it decide to proceed this way, the Panel would notify the Parties immediately so that they can prepare accordingly.

C. FINAL TRIAL BRIEFS

19. Having heard the Parties, the Panel considers it appropriate to set the time-limit for the submission of the Final Trial Briefs to 3 March 2022.

20. The Panel reminds the Parties that written submissions in the Final Trial Briefs should be focused. They should concentrate on the facts, issues and circumstances relevant to the cases of the Parties and on the aforementioned issues regarding sentencing. The Parties should avoid lengthy recitations of the procedural background and/or verbatim citations of laws or precedents. Political statements, references to crimes committed during the Kosovo conflict or the “justness” of the war shall be avoided.¹³ The Parties should refer to evidence by using the exhibit numbers.

D. CLOSING STATEMENTS

21. Having heard the Parties, the Panel considers it appropriate to schedule the closing statements for 14-18 March 2022.

22. The Panel informs the Parties of the following limits and sequence of the closing statements:

- a. Closing statement of the Specialist Prosecutor and any questions from the Panel (14 March 2022);
- b. Closing statements of the Gucati Defence and the Haradinaj Defence, and any questions from the Panel (15-16 March 2022). Each Defence

¹³ Transcript, 31 January 2022, p. 3397; *Oral Order on Reminder to the Defence Teams on the Questioning of their Witnesses*, Transcript, 2 December 2021, pp 2109-2110.

team shall have one day. They may agree to share time differently, in which case they shall inform the Panel no later than 14 March 2022;

- c. Response by the Specialist Prosecutor and any questions from the Panel (17 March 2022, first session, 1.5 hours);
- d. Comments to the SPO response by the Gucati Defence and the Haradinaj Defence, and any questions from the Panel (17 March 2022, second session, 1.5 hours, to be divided equally);
- e. SPO submissions on sentencing and any questions from the Panel (17 March 2022, third session, 1.5 hours);
- f. Submissions of the Gucati Defence and the Haradinaj Defence on sentencing, any SPO response and any questions from the Panel (18 March 2022, first and second session, 3 hours);
- g. Any last questions from the Panel (18 March 2022, third session, 30 minutes); and
- h. Statements of the Accused (18 March 2022, third session, 30 minutes each).

23. The Panel notifies the Parties that the Panel may put questions to the Parties at any time during their oral submissions. The time limits above include time used by the Panel to put questions and by the Parties for responses to those questions. Where a particular section of the above schedule is finalised earlier than planned, the Panel expects the Parties to move on to the next section of the schedule.

24. The Panel reminds the Parties that, pursuant to Rule 135(2) of the Rules, closing statements may refer to admitted evidence and its reliability, the credibility of witnesses, the record of the proceedings and the applicable law. In line with paragraphs 17 and 22 of this decision, the closing statements shall also address sentencing. Illustrative material and summaries of evidence, if they are based on

admitted evidence, may be used. The Parties should refer to evidence by using the exhibit numbers.

25. The Panel further reminds the Parties that closing statements should avoid repeating submissions already made in the Final Trial Briefs and focus, instead, on issues not yet addressed by the Party and addressing the opposing Party's arguments.¹⁴ Political statements, references to crimes committed during the Kosovo conflict or the "justness" of the war shall be avoided.

IV. DISPOSITION

26. In light of the foregoing and pursuant to Rule 134 of the Rules, the Panel:

- a. **CLOSES** the evidentiary proceedings in the case of the *Prosecutor v. Hysni Gucati and Nasim Haradinaj* (KSC-BC-2020-07);
- b. **ORDERS** the Parties to submit, by **3 March 2022**, their Final Trial Briefs and to comply with the parameters set out in paragraphs 17 and 20; and
- c. **SCHEDULES** the closing statements for **14-18 March 2022**, as set out in paragraph 22 and **ORDERS** the Parties to comply with the parameters set out in paragraphs 17 and 23-25.



Judge Charles L. Smith, III
Presiding Judge

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

¹⁴ Transcript, 31 January 2022, p. 3398.