

**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

**Filing Participant:** Specialist Counsel for Hysni Gucati

**Date:** 9 March 2022

**Language:** English

**Classification:** Public

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**Response to F00568**

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**Specialist Prosecutor**

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## I. INTRODUCTION

1. On 7 March 2022, the Specialist Prosecutor's Office ("SPO") requested the Panel to order the Defence for Hysni Gucati ("Gucati Defence") and the Defence for Nasim Haradinaj ("Haradinaj Defence") to disclose any further evidence they seek to be considered for sentencing by 16:00 on Friday, 11 March 2022 ("SPO Request", "F00568")<sup>1</sup>.
2. On 8 March 2022, the Trial Panel ordered the defence to respond to F00568 by noon on 9 March 2022 ("Order")<sup>2</sup>.
3. The Defence for Mr Gucati hereby responds accordingly.

## II. SUBMISSIONS

4. The Defence submit the SPO Request should be refused.
5. The Defence complied with the previous directions of the Trial Panel in relation to the Final Trial Brief, as set out in paragraph 4 of the Order.
6. Those directions did not include a requirement to disclose any additional evidence that the Parties may wish to call for the purposes of sentencing.

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<sup>1</sup> F00568, Specialist Prosecutor, Prosecution Request for Disclosure of Additional Sentencing Evidence ("SPO Request", "F00568"), 7 March 2022.

<sup>2</sup> F00569, Trial Panel II, Order Varying Time Limit to Respond to F00568, 8 March 2022

7. For the reasons set out in paragraphs 161, 162 and 166-172 of the Final Trial Brief<sup>3</sup>, the Defence submit that the Trial Panel, in the circumstances of this case, should proceed in accordance with Rules 162 and 164 if the Panel finds the Accused guilty of one or more crime(s).
8. Rule 162(1) provides for the submission of relevant information to assist the Panel in determining sentence after Trial Judgment, and Rule 162(5) provides for the hearing of additional evidence.
9. There is no requirement in the Rules for the disclosure of such material pre-Trial Judgment.
10. The Defence maintain that the Trial Panel should proceed in the event of a finding of guilt in accordance with Rules 162 and 164.
11. If, despite the above submissions, the Trial Panel is minded to order the defence to disclose any additional evidence for the purpose of sentence prior to hearing submissions on sentence on 17 and 18 March, the Defence anticipate that it would be in a position to disclose the additional sentencing evidence by 4pm on 14 March 2022.

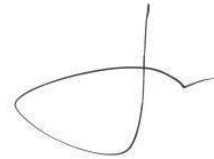
### III. CLASSIFICATION

12. This filing is classified as public.

Word count: 381 words

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<sup>3</sup> F00567, Gucati, Final Trial Brief, 3 March 2022



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9 March 2022

The Hague, Netherlands