



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 15 March 2022

Language: English

Classification: Confidential

Prosecution submissions on “good character” evidence

Specialist Prosecutor’s Office

Jack Smith

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

I. SUBMISSIONS

1. Pursuant to the Trial Panel's Decision,¹ on 15 March 2022, the Specialist Prosecutor's Office ('SPO') communicated, *inter partes*, its proposals in relation to the "good character" material disclosed by the Defence on 14² and 15³ March 2022. The SPO makes these submissions pursuant to the Trial Panel's 15 March 2022 order.⁴

2. Pursuant to the Decision, the Defence should have been operating under the understanding that the Disclosed Material should have been admitted during trial.⁵ The Disclosed Material does not comply with the requirements of Rule 153(2) of the Rules⁶ as admissible written statements.

3. Nevertheless, in a spirit of accommodation and expeditiousness and as communicated to the Defence, the SPO does not oppose the Trial Panel considering the Disclosed Material for the purposes of sentencing.

4. The only exception to this proposal is item DNH2617-DNH2619, disclosed by the Haradinaj Defence, which simply does not constitute "good character" evidence by any definition of that term. The author of this item had very limited interaction with Mr. Haradinaj and is not in a position to provide meaningful evidence about Mr. Haradinaj's character. In fact, nearly the entirety of the statement is not about character at all, but is instead an irrelevant, improper, and tendentious diatribe about this court and the trial of Mr. Haradinaj which has no bearing whatsoever on the

¹ Decision on SPO Request for Disclosure of Additional Sentencing Evidence, KSC-BC-2020/07/F00572, 10 March 2022 ('Decision'), para.19 (c).

² Disclosures 82 and 83; Email from the SPO to the Haradinaj Defence dated 15 March 2022 at 09:13 a.m.; Email from the SPO to the Gucati Defence dated 15 March 2022 at 09:14 a.m.; *See also* Real Time Transcript, 15 March 2022, p.3.

³ Disclosure 84 (together with the items contained in Disclosures 82 and 83, the 'Disclosed Material'); Email from the SPO to the Haradinaj Defence dated 15 March 2022 at 12:27 p.m.

⁴ *See* Real Time Transcript, 15 March 2022, pp.2-3.

⁵ *See* Decision, para.11.

⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.


sentencing of Mr. Haradinaj. The Panel should not allow the Haradinaj Defence, which has indicated its intention to rely on this item despite the SPO's objection, to rely on information of this nature under the guise of "good character" material when it is patently not.

5. The SPO's proposal is without prejudice to the weight, if any, which the SPO believes the Panel should place on such information for the purposes of sentencing.

II. CLASSIFICATION

6. Pursuant to Rule 82(3) and (4), this filing is classified as confidential given that item DNH2617-DNH2619 was disclosed *inter partes* and in view of the fact that the Trial Panel is yet to decide on whether this item may be relied on by the Haradinaj Defence.

Word count: 474



Jack Smith

Specialist Prosecutor

Tuesday, 15 March 2022

At The Hague, the Netherlands