

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 Nasim Haradinaj

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Response to Prosecution submissions on “good character” evidence

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I. SUBMISSIONS

1. On 3 February 2022, the Panel closed the evidentiary proceedings and informed the Parties that, if any conviction is entered, it intended to impose a sentence together with the pronouncement of the Trial Judgment rather than apply the procedure set out in Rules 162 and 164 of the Rules.¹
2. On 3 March 2022, the SPO filed their respective Final Trial Briefs.² The Defence for Nasim Haradinaj Defence³ and the Defence for Hysni Gucati filed their brief on the same day.⁴
3. On 7 March 2022, the SPO requested the Panel to order the Gucati Defence and the Haradinaj Defence to disclose any further evidence they seek to be considered for sentencing by 11 March 2022 (“SPO’s Request”).
4. On 8 March 2022, the Panel varied the time limit for a response to the Request to 9 March 2022.⁵ On 9 March 2022, both the Gucati Defence and the Haradinaj Defence responded to the SPO ‘s Request.⁶

¹ KSC-BC-2020-07/F00553, Panel, Decision on the Closing of the Evidentiary Proceedings and on Submissions Pursuant to Rules

134(b), (d) and 159(6) of the Rules (“3 February Decision”), 3 February 2022, para. 17.

² KSC-BC-2020-07/F00565, Specialist Prosecutor, Prosecution Final Brief, 3 March 2022, confidential, with Annex 1

³ KSC-BC-2020-07/F00566, Haradinaj Defence, Final Trial Brief on Behalf of Nasim Haradinaj, 3 March 2022.

⁴ KSC-BC-2020-07/F00567, Panel, Final Trial Brief on behalf of Hysni Gucati Specialist, 3 March 2022, para. 170.

⁵ KSC-BC-2020-07/F00569, Panel, Order Varying Time Limit to Respond to F00568 (“Order”), 8 March 2022, paras 8, 10(a).

⁶ KSC-BC-2020-07/F00570, Haradinaj Defence, Haradinaj Defence Reply to F00568 and F00569, 9 March 2022; KSC-BC-2020-07/F00571, Gucati Defence, Response to F00568, 9 March 2022.

5. On 10 March 2022, the Panel ordered both Defence teams to disclose the additional evidence it wishes to adduce in relation to sentencing.⁷
6. On 14 March 2022, the Haradinaj disclosed 13 character references⁸ and on the 14 March 2022, an additional character reference for Mr Haradinaj was disclosed.⁹
7. On 15 March 2022, the SPO submitted an objection to the submission of DNH2617-DNH2619 - a character reference by Former Ambassador William G. Walker - on the basis that it does not constitute a good character reference because of the limited scope of his interactions with Mr Haradinaj and it includes *“irrelevant, improper, and tendentious diatribe about this court and the trial.”*¹⁰
8. The Haradinaj Defence submits, in response to the above, firstly, that the Former Ambassador William G Walker, by virtue of his outstanding professional career and of the fact that he is of high moral calibre, is particularly suited to comment on the character of Mr Haradinaj.
9. Secondly, the Haradinaj Defence submits that the context of two previous meetings that Former Ambassador William G Walker with Mr Haradinaj is highly relevant to establishing the unique approach of Mr Haradinaj while exercising his role as part of the KLA WVA. He provides, as no other person

⁷ KSC-BC-2020-07/F00572, Decision on SPO Request for Disclosure of Additional Sentencing Evidence, 10 March 2022.

⁸ Disclosure packages 82 and 83.

⁹ Disclosure package 84.

¹⁰ KSC-BC-2020-07/F00574, Prosecution submissions on “good character” evidence, para 4.

can, a necessary perspective on Mr Haradinaj’s attitude, unlike other former KLA members, to accept “a call for peace,” to make and most importantly “follow through on a promise of non-violent resolution of disputes with KFOR and the international community,” a promise which is highlighted he has kept for almost 17 years, since 2005.

10. This speaks both to the benevolent character of Mr Haradinaj, to his reasonable and compassionate nature inclined towards peace and the common good and to his commitment to the public interest, which as the Panel will note has consistently been raised by the Defence as the motive for the disclosures and is therefore highly relevant to the Panel’s consideration relating to sentencing both with regards to Mr Haradinaj’s contemporaneous conduct and his conduct following the alleged incidents.

II. CONCLUSION

11. In light of the above, the Haradinaj Defence requests the Trial Panel to overrule the SPO’s objection and allow the Haradinaj Defence to rely on this item for the purposes of sentencing.

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