



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: 18 May 2022

Language: English

Classification: Public

**Annex 1 to the
Trial Judgment**

Specialist Prosecutor

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1. On 7 September 2020, the Single Judge authorised the seizure by the SPO of a first set of documents allegedly received by the KLA WVA and prohibited the copying and further dissemination of the documents and their content.¹
2. On 17 September 2020, the Single Judge authorised the seizure by the SPO of a second set of documents allegedly received by the KLA WVA and prohibited the recording or copying and further dissemination of the documents or their content.²
3. On 23 September 2020, the SPO notified the Single Judge that, pursuant to an SPO order under Articles 35(2) and 53(1) of the Law, on 22 September 2020, it had seized a third set of documents allegedly received by the KLA WVA.³
4. On 25 September 2020, the Single Judge found that, since the SPO Order did not foresee or result in any search of or compelled intrusion into the KLA WVA premises, and because the documents appeared to have been voluntarily provided to the SPO upon service of the SPO Order, no approval pursuant to Rule 38(3) of the Rules was required.⁴
5. On 24 September 2020, pursuant to the SPO's request,⁵ the Single Judge issued arrest warrants for Mr Gucati and Mr Haradinaj,⁶ together with orders for their

¹ F00005, Single Judge, *Urgent Decision Authorising a Seizure*, 7 September 2020. See also F00028, Specialist Prosecutor, *Prosecution Report Pursuant to Decision KSC-BC-2018-01/F00123*, 29 September 2020, confidential, with Annex 1, confidential. See also F00028/RED.

² F00007, Single Judge, *Decision Authorising a Seizure*, 17 September 2020. See also F00028, Specialist Prosecutor, *Prosecution Report Pursuant to Decision KSC-BC-2018-01/F00123*, 29 September 2020, confidential, with Annex 1, confidential.

³ F00010, Specialist Prosecutor, *Prosecution Notice and Related Request*, 23 September 2020, confidential, with Annex 1, confidential. See also F00010/RED.

⁴ F00017, Single Judge, *Decision on Specialist Prosecutor's Request for Order in Relation to Non-Public and Confidential Documents*, 25 September 2020, confidential, with Annexes 1 and 2, public, para. 9. See also F00017/RED.

⁵ F0009, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders*, strictly confidential and *ex parte*, 1 October 2020. See also F00009/CONF/RED, confidential; F00009/RED.

⁶ F00012/A01, Single Judge, *Arrest Warrant for Hysni Gucati*, 24 September 2020, confidential and *ex parte*; F00012/A03/COR, Single Judge, *Corrected Version of Arrest Warrant for Nasim Haradinaj*, 24 September 2020, confidential and *ex parte*. See also F00012/A01/RED; F00012/A03/COR/RED.

transfer to the detention facilities of the Specialist Chambers in The Hague, the Netherlands (“SC Detention Facilities”).⁷

6. Also on 24 September 2020, pursuant to an SPO request,⁸ the Single Judge authorized, *inter alia*, the search of Mr Gucati and Mr Haradinaj, their location of arrest and the KLA WVA premises, as well as the seizure of any evidence believed to be connected with or relevant to the offences contained in the arrest warrants.⁹

7. On 25 September 2020, the Single Judge issued an order to the KLA WVA and any of its representative, member or agent to: (a) immediately notify the SPO if it has in its possession or in the future obtains any documents which appear to be confidential or non-public and relate to the work of the SITF, the SPO or the Specialist Chambers; and (b) refrain from recording, copying or disseminating such documents or their content, in the absence of authorisation of the SPO or the Single Judge.¹⁰

8. On 25 and 26 September 2020, Mr Gucati and Mr Haradinaj were arrested in Kosovo and transferred to the SC Detention Facilities.¹¹

9. On 29 September and 1 October 2020, Mr Haradinaj and Mr Gucati, respectively, appeared before the Single Judge.¹²

⁷ F00012/A02, Single Judge, *Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, confidential and *ex parte*; F00012/A04, Single Judge, *Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, confidential and *ex parte*. See also F00012/A02/RED; F00012/A04/RED.

⁸ F00009, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders*, strictly confidential and *ex parte*, 1 October 2020. See also F00009/CONF/RED, confidential; F00009/RED.

⁹ F00013, *Decision Authorising Search and Seizure*, 24 September 2020, confidential and *ex parte*; F00014, *Decision Authorising Search and Seizure*, 24 September 2020, confidential and *ex parte*. See also F00013/RED; F00014/RED.

¹⁰ F00017/A01, Single Judge, *Order in Relation to Non-Public and Confidential Documents*, 25 September 2020.

¹¹ F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020; F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020; F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, with Annex 1, confidential; F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, with Annex 1, confidential.

¹² Transcript, 29 September 2020; Transcript, 1 October 2020.

10. On 27 October 2020, the Single Judge issued three decisions on challenges and requests raised by Counsel for Mr Gucati and Counsel for Mr Haradinaj on, *inter alia*, jurisdiction, applicable law and matters related to arrest and detention.¹³

11. On 29 October 2020, the Single Judge issued a decision determining that the working language of the proceedings shall be English.¹⁴

12. On 30 October 2020, the Specialist Prosecutor submitted for confirmation before the Pre-Trial Judge a strictly confidential and *ex parte* indictment against Mr Gucati and Mr Haradinaj.¹⁵

13. On 9 December 2020, the Court of Appeals Panel rendered a decision denying the interlocutory appeal of Mr Gucati against the Single Judge's decision on matters related to arrest and detention.¹⁶

14. On 11 December 2020, the Pre-Trial Judge confirmed in part the indictment against the Accused, and ordered the SPO to submit a revised indictment, as confirmed.¹⁷

15. On 18 December 2020, the Accused had their initial appearances before the Pre-Trial Judge.¹⁸ Mr Gucati pled not guilty,¹⁹ while Mr Haradinaj declined to enter a plea.²⁰

¹³ F00057, Single Judge, *Decision on Defence Challenges*, 27 October 2020; F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020; F00059, Single Judge, *Decision on Application for Bail*, 27 October 2020.

¹⁴ F00060, Single Judge, *Decision on Working Language*, 29 October 2020.

¹⁵ F00063, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 30 October 2020, confidential, with Annexes 1-2, confidential.

¹⁶ IA001-F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020.

¹⁷ F00074, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 11 December 2020, confidential. See also F00074/RED.

¹⁸ Transcript, 18 December 2020.

¹⁹ Transcript, 18 December 2020, p. 78.

²⁰ Transcript, 18 December 2020, pp 58-59.

16. On 24 December 2020, the Pre-Trial Judge reviewed whether reasons for the detention of the Accused still existed and ordered their continued detention.²¹ The Accused's continued detention was thereafter reviewed and confirmed on 24 February 2021,²² 23 April 2021,²³ 23 June 2021,²⁴ 23 August 2021,²⁵ 22 October 2021,²⁶ 21 December 2021,²⁷ 21 February 2022,²⁸ and 21 April 2021.²⁹

17. On 8 January 2021, the Pre-Trial Judge entered a plea of not guilty on behalf of Mr Haradinaj and held the first status conference.³⁰

18. On 22 January 2021, the Pre-Trial Judge issued the framework decision on disclosure of evidence and related matters, setting out the principles governing and the time limits applicable for disclosure, translations of documents and evidence as well as restrictions to disclosure, including the applicable redaction regime.³¹

²¹ F00093, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 December 2021; F00094, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 24 December 2021.

²² F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2020; F00144, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 24 February 2020.

²³ F00188, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 April 2021; F00189, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 23 April 2021; confidential. *See also* F00189/RED.

²⁴ F00245, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 23 June 2021; F00246, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj*, 23 June 2021.

²⁵ F00279, Panel, *Decision on Review of Detention of Hysni Gucati*, 23 August 2021; F00280, Panel, *Decision on Review of Detention of Nasim Haradinaj*, 23 August 2021.

²⁶ F00390, Panel, *Decision on Review of Detention of Hysni Gucati*, 22 October 2021; F00391, Panel, *Decision on Review of Detention of Nasim Haradinaj*, 22 October 2021.

²⁷ F00506, Panel, *Decision on Review of Detention of Hysni Gucati*, 21 December 2021, confidential; F00507, Panel, *Decision on Review of Detention of Nasim Haradinaj*, 21 December 2021, confidential. *See also* F00506/RED; F00507/RED.

²⁸ F00562, Panel, *Decision on Review of Detention of Hysni Gucati*, 21 February 2022; F00563, Panel, *Decision on Review of Detention of Nasim Haradinaj*, 21 February 2022.

²⁹ F00594, Panel, *Decision on Review of Detention of Hysni Gucati*, 21 April 2022; F00595, Panel, *Decision on Review of Detention of Nasim Haradinaj*, 21 April 2022.

³⁰ Transcript, 8 January 2021, p. 90.

³¹ F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021. *See also* F00121, Pre-Trial Judge, *Decision on Submissions on Rule 109(c) Categorisation*, 11 February 2021.

19. On 9 February 2021, the Court of Appeals Panel rendered a decision denying the interlocutory appeal of Mr Haradinaj against the Pre-Trial Judge's decision reviewing detention.³²

20. On 22 February 2021, the Pre-Trial Judge issued a decision on the non-disclosure of SPO official notes containing records of SPO contacts with individuals who addressed the impact of the Accused's actions on them.³³

21. On 23 February 2021, the Pre-Trial Judge issued a decision on the non-disclosure of documents seized from the KLA WVA on 8, 17 and 22 September 2020 and ordered certain counterbalancing measures for the non-disclosure.³⁴

22. On the same day, 24 February 2021, the Pre-Trial Judge held the second status conference.³⁵

23. On 8 March 2021, the Pre-Trial Judge issued a decision on the preliminary motions of the Defence for Mr Gucati ("Gucati Defence") and the Defence for Mr Haradinaj ("Haradinaj Defence") (collectively, the "Defence") finding, *inter alia*, that the indictment as confirmed set out with sufficient clarity and specificity the facts underpinning the charges and the crimes, including the modes of liability charged ("Decision on Preliminary Motions").³⁶

³² IA002-F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021.

³³ F00136, Pre-Trial Judge, *Decision on Non-Disclosure of Certain Witness Contacts*, 22 February 2021, confidential. *See also* F00136/RED. *See also* subsequent, related decisions of the Pre-Trial Judge: Transcript, 30 March 2021, pp 214-215 (Oral Order on SPO's Request for Authorisation of Non-Standard Redactions); F00185, Pre-Trial Judge, *Decision on Request for Authorisation of Non-Standard Redactions*, 20 April 2021.

³⁴ F00141, Pre-Trial Judge *Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 23 February 2021, confidential. *See also* F00141/RED.

³⁵ Transcript, 24 February 2021.

³⁶ F00147, Pre-Trial Judge, *Decision on Defence Preliminary Motions* ("Decision on Preliminary Motions"), 8 March 2021. *See also* F00113, Gucati Defence, *Preliminary Motion Alleging Defects in the Form of the Indictment Pursuant to Rule 97(1)(b)*, 30 January 2021, confidential; F00116, Haradinaj Defence, *Preliminary Motion on the Issue of the Indictment Being Defective*, 3 February 2021. *See also* F00113/RED; F00116/RED.

24. On 15 March 2021, the Defence filed their respective applications for leave to appeal the Decision on Preliminary Motions.³⁷
25. On 30 March 2021, the Pre-Trial Judge held the third status conference.³⁸
26. On 1 April 2021, the Pre-Trial Judge certified the Defence applications for leave to appeal the Decision on Preliminary Motions.³⁹
27. On the same day, 1 April 2021, the Pre-Trial Judge issued a decision on the non-disclosure of, *inter alia*, documents received by the SPO from a media outlet and ordered certain counterbalancing measures for the non-disclosure.⁴⁰
28. Also on 1 April 2021, the Pre-Trial Judge issued a decision on the materiality of information requested by the Defence under Rule 102(3) of the Rules and related matters.⁴¹
29. On 9 April 2021, the SPO submitted its Pre-Trial Brief, list of witnesses, list of proposed exhibits and Rule 109(c) disclosure chart.⁴²
30. On 30 April 2021, the Pre-Trial Judge held the fourth status conference.⁴³

³⁷ F00151, Gucati Defence, *Application for Leave to Appeal Through Certification from Decision KSC-BC-2020-07/F00147 Pursuant to Article 45(2) and Rule 77(1)*, 15 March 2021; F00153, Haradinaj Defence, *Application for Leave to Appeal Through Certification from Decision KSC-BC-2020-07/F00147 Pursuant to Article 45(2) and Rule 77(1)*, 15 March 2021.

³⁸ Transcript, 30 March 2021.

³⁹ F00169, Pre-Trial Judge, *Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions*, 1 April 2021.

⁴⁰ F00171, Pre-Trial Judge, *Decision on the Non-Disclosure of Information Requested by the Defence*, 1 April 2021, strictly confidential and *ex parte*. See also F00171/CONF/RED, confidential; F00171/CONF/RED2, confidential.

⁴¹ F00172, Pre-Trial Judge, *Decision on the Materiality of Information Requested under Rule 102(3) and Related Matters*, 1 April 2021, confidential. See also F00172/RED.

⁴² F00181, Specialist Prosecutor, *Submission of Pre-Trial-Brief, Witness and Exhibit Lists, and Rule 109(c) Chart*, 9 April 2021, with Annex 1 (“SPO Pre-Trial Brief”) and Annexes 2-4, confidential. See also F00181/A01/RED.

⁴³ Transcript, 30 April 2021.

31. On 26 May 2021, further to submissions from the Parties,⁴⁴ the Pre-Trial Judge issued a decision denying disclosure of certain items requested by the Defence under Rule 102(3) of the Rules (“26 May 2021 Decision”).⁴⁵
32. On 28 May 2021, the Pre-Trial Judge held the fifth status conference.⁴⁶
33. On 15 June 2021, further to Defence requests for certification, the Pre-Trial Judge granted leave to appeal his 26 May 2021 Decision.⁴⁷
34. On the same day, 23 June 2021, the Court of Appeals Panel rendered its decision on the Defence appeal against the Decision on Preliminary Motions and, finding that the indictment lacked specificity, ordered the competent Panel to direct the SPO to file a corrected version of the indictment in light of its instructions.⁴⁸
35. Also on 23 June 2021, the Pre-Trial Judge ordered the SPO to file a corrected version of the indictment and informed the Parties that the transmission of the case file under Rule 98(1) of the Rules is set to take place on Friday, 16 July 2021.⁴⁹
36. On 5 July 2021, the SPO filed the corrected indictment (“Indictment”).⁵⁰

⁴⁴ F00190, Specialist Prosecutor, *Prosecution Requests and Challenges Pursuant to KSCBC-2020-07/F00172*, 26 April 2021, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*; F00199, Gucati Defence, *Response to Confidential Redacted Version of ‘Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172’*, KSC-BC-2020-07/F00190 Dated 26 April 2020, 10 May 2021, confidential; F00200, Haradinaj Defence, *Defence Response to SPO Confidential Redacted Version of ‘Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172’*, and F00190, 11 May 2021. See also F00190/CONF/RED, confidential; F00190/RED; F00199/RED.

⁴⁵ F00210, Pre-Trial Judge, *Decision on Prosecution Requests and Challenges Pursuant to F00172* (“26 May 2021 Decision”), 26 May 2021. See also F00210/RED.

⁴⁶ Transcript, 28 May 2021.

⁴⁷ F00235, Pre-Trial Judge, *Decision on the Defence Applications for Leave to Appeal the Decision on the Gucati Requests B-C*, 15 June 2021.

⁴⁸ IA004-F00007, Court of Appeals Panel, *Decision on the Defence Appeals Against Decision on Preliminary Motions*, 23 June 2021.

⁴⁹ F00244, Pre-Trial Judge, *Order for the Submission of a Corrected Indictment and for a Second Revised Calendar for the Remainder of the Pre-Trial Proceedings*, 23 June 2021.

⁵⁰ F00251/A01, Specialist Prosecutor, *Annex 1 to Submission of Corrected Indictment* (“Indictment”), 5 July 2021, confidential. See also F00251/A02, Specialist Prosecutor, *Annex 2 to Submission of Corrected Indictment*, 5 July 2021. See also F00251/A01/RED.

37. On 12 July 2021, the Defence submitted its Pre-Trial Briefs, lists of potential witnesses, lists of objections to the admissibility of evidence and lists of agreed facts.⁵¹

38. On 14 July 2021, the Pre-Trial Judge held the sixth and last status conference for the pre-trial stage. The Parties raised no objections against the transmission of the case file on 16 July 2021.⁵²

39. On 14 July 2021, the Pre-Trial Judge notified the President that the case file would be ready for transmission to a Trial Panel on Friday, 16 July 2021.⁵³

40. On 15 July 2021, the President assigned Trial Panel II (“Panel”) to the present case upon transmission of the case file.⁵⁴

41. On 16 July 2021, the Pre-Trial Judge transmitted the case file to the Panel pursuant to Rule 98 of the Rules.⁵⁵

42. Also on 16 July 2021, the Panel unanimously elected Judge Charles L. Smith, III as its Presiding Judge.⁵⁶

43. On 21 July 2021, the Panel issued an order for written submissions and set the dates for the Trial Preparation Conference for 1 and 2 September 2021.⁵⁷

44. On 29 July 2021, the Court of Appeals Panel rendered a decision denying the interlocutory appeals of the Defence against the Pre-Trial Judge’s 26 May 2021 decision (“29 July 2021 Court of Appeals Panel Decision”).⁵⁸

⁵¹ F00258, Gucati Defence, *Defence Pre-Trial Brief on Behalf of Hysni Gucati*, 12 July 2021, confidential, with Annexes 1-3, confidential; F00260, Haradinaj Defence, *Submission of Interim Pre-Trial Brief on Behalf of the Defence of Nasim Haradinaj*, 12 July 2021, confidential, with Annexes 1-2, confidential. *See also* F00258/RED; F00260/RED.

⁵² Transcript, 14 July 2021, pp 374-376.

⁵³ F00261, Pre-Trial Judge, *Notification Pursuant to Rule 98(3) of the Rules of Procedure and Evidence*, 14 July 2021.

⁵⁴ F00263, President, *Decision Assigning Trial Panel II*, 15 July 2021.

⁵⁵ F00265, Pre-Trial Judge, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

⁵⁶ F00266, Panel, *Decision Notifying the Election of a Presiding Judge*, 16 July 2021.

⁵⁷ F00267, Panel, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021.

⁵⁸ IA005-F00008, Court of Appeals Panel, *Decision on the Appeals Against Disclosure Decision (“29 July 2021 Court of Appeals Panel Decision”)*, 29 July 2021, confidential. *See also* IA005-F00008/RED.

45. On 1 and 2 September 2021, the Panel held the Trial Preparation Conference and set the dates for the Specialist Prosecutor's Preparation Conference.⁵⁹

46. On 1 September 2021, the Panel ordered the SPO to submit an updated Rule 102(3) notice listing all material in its possession that was subject to the findings of the 29 July 2021 Court of Appeals Panel Decision.⁶⁰ On the same day, the SPO requested to file an application for protective measures to be applied to the updated Rule 102(3) notice.⁶¹

47. On 2 September 2021, the Panel heard oral submissions from both Parties on the updated Rule 102(3) notice.⁶² On the same day, the Panel held an *ex parte* hearing only with the SPO to hear its submissions on the requested redactions.⁶³ Further to those submissions, the Panel ordered the SPO to provide, by 3 September 2021, to the Panel only: (i) an unredacted draft updated Rule 102(3) notice providing detailed notice of the relevant material, enabling a determination of materiality by the Defence; and (ii) a proposed redacted version of the same list.⁶⁴

48. On 3 September 2021, the SPO filed a draft, unredacted updated Rule 102(3) notice and a proposed redacted version thereof.⁶⁵

49. On 7 September 2021, the Panel found that the items on the draft updated Rule 102(3) notice appeared, at least *prima facie*, subject to disclosure under Rules 102 and/or 103 of the Rules. The Panel therefore ordered the SPO to file a redacted updated Rule 102(3) notice.⁶⁶

⁵⁹ Transcripts, 1-2 September 2021; Transcript, 2 September 2021, p. 604 (Oral Order Scheduling the SPO Preparation Conference).

⁶⁰ Transcript, 1 September 2021, pp 442-443 (Oral Order on Disclosure Timeline under Rule 102(3)).

⁶¹ Transcript, 1 September 2021, p. 443.

⁶² Transcript, 2 September 2021, pp 561-600.

⁶³ Transcript, 2 September 2021, confidential and *ex parte*, pp 606-637.

⁶⁴ Transcript, 2 September 2021, p. 638 (Oral Order Regarding SPO Rule 102(3) List).

⁶⁵ F00296, Specialist Prosecutor, *Prosecution Proposed Redactions to Rule 102(3) Notice*, 3 September 2021, with Annexes 1-2, strictly confidential and *ex parte*.

⁶⁶ F00304, Panel, *Order on the Updated Rule 102(3) Detailed Notice*, 7 September 2021, with Annex 1, confidential and *ex parte*.

50. On 7 September 2021, the Panel denied the SPO's request for protective measures for two of its witnesses.⁶⁷

51. On 8 September 2021, the Panel held the Specialist Prosecutor's Preparation Conference and determined the date for the opening of the case.⁶⁸ The Panel also set target dates for the closing of the Specialist Prosecutor's case and the closing of the case.⁶⁹

52. On 9 September 2021, the SPO filed a redacted updated Rule 102(3) notice.⁷⁰

53. On 13 September 2021, both Defence sought disclosure from the SPO of all items listed in its updated Rule 102(3) notice, which the SPO challenged.⁷¹

54. On 17 September 2021, the Panel issued its order on the conduct of proceedings and determined that the working language of the proceedings shall be English ("Order on the Conduct of Proceedings").⁷²

55. On 22 September 2021, the Panel ordered the SPO to provide further submissions on its challenges to disclosure of the items added to the Rule 102(3) notice, including "the factual basis underpinning its assertion that Items 195-200 contain no information material to the [Entrapment Claim]".⁷³

⁶⁷ F00303, Panel, *Decision on the Prosecution Request for Protective Measures*, 7 September 2021.

⁶⁸ Transcript, 8 September 2021, pp 708-709 (Oral Order on Trial Schedule).

⁶⁹ Transcript, 8 September 2021, pp 708-709 (Oral Order on Trial Schedule).

⁷⁰ F00307, Specialist Prosecutor, *Prosecution Addendum to its Consolidated Rule 102(3) Notice*, 9 September 2021, strictly confidential and *ex parte*, with Annex 1, confidential. *See also* F00307/RED.

⁷¹ F00316/COR, Specialist Prosecutor, *Corrected Version of Prosecution Challenges to Disclosure of Items in Updated Rule 102(3) Notice*, 17 September 2021, strictly confidential and *ex parte*, para. 13; F00325/COR, Gucati Defence, *Corrected Version of Response to Confidential Redacted Version of Prosecution Challenges to Disclosure of Items in Updated Rule 102(3) Notice*, 1 October 2021, confidential, with Annex 1, confidential, para. 8; F00326, Haradinaj Defence, *Defence Response to Prosecution Challenges to Disclosure of Items in Updated Rule 102(3) Notice*, 24 September 2021. *See also* F00316, strictly confidential and *ex parte*; F00316/CONF/RED, confidential; F00316/RED; F00325, confidential, F00325/COR/RED.

⁷² F00314, Panel, *Order on the Conduct of Proceedings*, 17 September 2021.

⁷³ F00320, Panel, *Order for Further Submissions in Relation to the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice*, 22 September 2021.

56. On 27 September 2021, the Panel issued a decision denying the Defence request seeking the non-admission of certain evidence related to two SPO witnesses.⁷⁴

57. On 28 September 2021, pursuant to the Panel's order, the SPO submitted, to the Panel only, further submissions on some of the items listed in the updated Rule 102(3) notice.⁷⁵

58. On 29 September 2021, further to the SPO's request to admit items through the bar table,⁷⁶ the Panel issued a decision ("SPO Bar Table Decision"), admitting a number of items through the bar table,⁷⁷ denying the admission of certain items⁷⁸ and deferring a decision on all other items until such time as they were tendered through a witness at trial.⁷⁹

59. On 29 September 2021, the SPO filed, on a strictly confidential and *ex parte* basis, a transmission of an official note relating to a recent contact with a witness ("Official Note of Contact").⁸⁰

60. On 4 October 2021, the Panel held an *ex parte* hearing only with the SPO to hear further submissions on the Official Note of Contact.⁸¹

⁷⁴ F00328, Panel, *Order on Rule 117 Defence Motions*, 27 September 2021.

⁷⁵ F00331, Specialist Prosecutor, *Prosecution Submission Pursuant to KSC-BC-2020-07/F00320*, 28 September 2021.

⁷⁶ F00291, Specialist Prosecutor, *Prosecution Request for Admission of Items Through the Bar Table*, 31 August 2021, with Annex 1, confidential; F00308, Gucati Defence, *Response to the Prosecution Request for Admission of Items Through the Bar Table*, 10 September 2021, confidential; F00309, Haradinaj Defence, *Defence Response to SPO Bar Table Motion Submissions*, 10 September 2021, confidential; F00311, Specialist Prosecutor, *Prosecution Reply to Defence Responses to Request for Admission of Items Through the Bar Table*, 14 September 2021. *See also* F00308/RED; F00309/RED.

⁷⁷ F00334, Panel, *Decision on the Prosecution Request for Admission of Items Through the Bar Table* ("SPO Bar Table Decision"), 29 September 2021, para. 96(b).

⁷⁸ SPO Bar Table Decision, para. 96(e).

⁷⁹ SPO Bar Table Decision, para. 96(f).

⁸⁰ F00337, Specialist Prosecutor, *Prosecution Transmission of Official Note of Contact and Related Request*, 29 September 2021, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. *See also* F00337/CONF/RED, confidential.

⁸¹ Transcript, 4 October 2021, confidential and *ex parte*, pp 713-746. *See also* F00346, Panel, *Scheduling Order for Ex Parte Hearing*, 1 October 2021, with Annex 1, strictly confidential and *ex parte*.

61. On 7 October 2021, further to the *ex parte* hearing, the Panel ordered the SPO to submit a further addendum to its updated Rule 102(3) notice, listing the Official Note of Contact and providing detailed notice of its content so as to enable the Defence to: (i) determine whether the document could be material to its case; and, if so, (ii) make a disclosure request to the SPO (“Order for an Addendum”).⁸²

62. On 7 October 2021, the Presiding Judge opened the trial and the SPO read out the Indictment.⁸³ The Accused indicated that they understood the Indictment and they confirmed their plea of not guilty.⁸⁴ The Presiding Judge then informed the Accused of their rights and obligations.⁸⁵ On the same day, 7 October 2021, the SPO delivered its opening statement.⁸⁶

63. On 13 October 2021, pursuant to the Order for an Addendum, the SPO filed an addendum to its updated Rule 102(3) notice, adding a new item.⁸⁷

64. On 18 October 2021, the Panel informed the Parties that it would defer its consolidated decision on the outstanding Rule 102(3) matters until after it heard the evidence of two SPO witnesses as it could impact its decision on disclosure.⁸⁸

65. On 18 October 2021, the presentation of evidence for the Specialist Prosecutor began.⁸⁹ As detailed below, the Panel heard the evidence of the SPO over ten (10) hearing days.

66. Between 18 and 26 October 2021, the Panel heard the evidence of Zdenka Pumper (W04841). During her testimony, a number of exhibits were marked for identification

⁸² F00354, Panel, *Order for an Addendum to the Updated Rule 102(3) Detailed Notice* (“Order for an Addendum”), 7 October 2021, para. 11.

⁸³ Transcript, 7 October 2021, pp 747, 752-777.

⁸⁴ Transcript, 7 October 2021, pp 777-779.

⁸⁵ Transcript, 7 October 2021, pp 779-780.

⁸⁶ Transcript, 7 October 2021, pp 784-813.

⁸⁷ F00361, Specialist Prosecutor, *Prosecution Update to Rule 102(3) Notice Addendum*, 13 October 2021, confidential.

⁸⁸ Transcript, 18 October 2021, pp 816-817.

⁸⁹ Transcript, 18 October 2021, p. 831.

pending a decision on their admissibility and the SPO submitted “associated exhibits” presented for admission together with W04841’s declarations.⁹⁰

67. On 21 October 2021, the Panel held a further *ex parte* hearing only with the SPO, to hear submissions on pending Rule 102(3) disclosure issues and potential counterbalancing measures.⁹¹

68. On 22 October 2021, the SPO filed its challenge to the disclosure of the addendum to the updated Rule 102(3) notice and made submissions on proposed counterbalancing measures.⁹² On 27 and 29 October 2021 respectively, each Defence responded.⁹³ On 1 November, the SPO replied.⁹⁴

69. Between 26 October and 5 November 2021, the Panel heard the evidence of three additional SPO witnesses: Halil Berisha (W04866), Miro Jukić (W04842) and Daniel Moberg (W04876).⁹⁵

70. On 3 November 2021, the Panel issued a consolidated decision on a number of SPO requests for non-disclosure under Rule 102(3) of the Rules (“3 November 2021 Decision”), ordering the non-disclosure of certain items and some counter-balancing measures to the non-disclosure, namely the provision to the Defence of extracts of one

⁹⁰ W04841 (Zdenka Pumper), Transcripts, 18-26 October 2021, pp 831-1490; F00397, *Prosecution Submission on Associated Exhibits for W04841*, 25 October 2021, with Annex 1, confidential. On 28 October 2021, the Panel heard the oral submissions of the Parties on the admissibility of the items that were marked for identification. Transcript, 28 October 2021, pp 1654-1686.

⁹¹ Transcript, 21 October 2021, confidential and *ex parte*, pp 1254-1301. *See also* F00382, Panel, *Scheduling Order for Ex Parte Hearing*, 19 October 2021, confidential, with Annex 1, strictly confidential and *ex parte*.

⁹² F00389, Specialist Prosecutor, *Prosecution Challenge to Disclosure and Proposed Rule 102(3) Notice Counterbalancing Measures*, 22 October 2021, strictly confidential and *ex parte*, with Annex 1, confidential. *See also* F00389/CONF/RED, confidential; F00389/RED.

⁹³ F00404, Haradinaj Defence, *Defence Response to ‘Prosecution Challenge to Disclosure and Proposed Rule 102(3) Notice Counterbalancing Measures’*, 27 October 2021, confidential; F00407, Gucati Defence, *Response to ‘Public Redacted Version Prosecution Challenge to Disclosure and Proposed Rule 102(3) Notice Counterbalancing Measures’ and Ancillary Application*, 29 October 2021, confidential. *See also* F00404/RED; F00407/RED.

⁹⁴ F00409, Specialist Prosecutor, *Prosecution Consolidated Reply to Responses to Challenge to Disclosure and Proposed Counterbalancing Measures*, 1 November 2021.

⁹⁵ W04866 (Halil Berisha), Transcripts, 26-27 October 2021, pp 1512-1640; W04842 (Miro Jukić), Transcripts, 28 October-4 November 2021, pp 1689-1907; W04876 (Daniel Moberg), Transcript, 5 November 2021, pp 1929-1961.

item and a summary of the steps and verifications taken by the SPO in relation to six other items as well as further measures to be taken by the SPO regarding the Official Note of Contact.⁹⁶

71. On 5 November 2021, the SPO requested leave to appeal the 3 November 2021 Decision.⁹⁷ On the same day, the Panel informed the Parties that, to facilitate the expeditious conduct of the proceedings, it would hear oral submissions in response and reply from the Defence and the SPO.⁹⁸

72. On 5 November 2021, the Panel issued an oral order on the exhibits marked for identification during the testimony of W04841 and the “associated exhibits”, admitting all except three exhibits.⁹⁹ Written reasons followed on 9 November 2021.¹⁰⁰

73. On 8 November 2021, the SPO indicated that it did not intend to call additional witnesses.¹⁰¹

74. On 8 November 2021, the Panel heard oral submissions from the Parties on the SPO’s requests for leave to appeal the 3 November 2021 Decision.¹⁰² On the same day, the Panel issued a decision denying the SPO leave to appeal that decision, reiterating its order to the SPO to disclose to the Defence the material identified in the 3 November 2021 Decision.¹⁰³

⁹⁶ F00413, Panel, *Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice*, 3 November 2021, confidential, with Annex 1, strictly confidential and *ex parte*. See also F00413/RED.

⁹⁷ F00420, Specialist Prosecutor, *Prosecution Requests for Leave to Appeal Decision KSC-BC-2020-07/F00413 and Suspensive Effect*, 5 November 2021.

⁹⁸ F00417, Panel, *Agenda for the 8 November 2021 Hearing*, 5 November 2021.

⁹⁹ Transcript, 5 November 2021, pp 1912-1914 (Oral Order on the Admission of Exhibits Through Witness W04841).

¹⁰⁰ F00427, Panel, *Decision on the Admissibility of Deferred Exhibits and the Classification of Certain Admitted Exhibits*, 9 November 2021.

¹⁰¹ Transcript, 8 November 2021, p. 2041.

¹⁰² Transcript, 8 November 2021, pp 1974-2029.

¹⁰³ F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effects*, 8 November 2021.

75. On 9 November 2021, the Panel issued a scheduling order for the work plan and time limits for the next steps in the proceedings (“9 November 2021 Scheduling Order”).¹⁰⁴ The Panel directed the Specialist Prosecutor formally to close his case pursuant to Rule 129 of the Rules, set time limits for filing submissions under Rule 130 of the Rules and set out a tentative schedule for the Defence Preparation Conference, the submissions under Rule 119 of the Rules and the opening of the Defence case.¹⁰⁵

76. On 10 November 2021, the Specialist Prosecutor formally closed his case.¹⁰⁶

77. On 15 November 2021, further to the SPO’s measures and an ensuing request regarding the Official Note of Contact,¹⁰⁷ the Panel ordered the SPO to disclose to the Defence the redacted version thereof.¹⁰⁸

78. On 18 November 2021, the SPO added an item (“Item 202”) to its Rule 102(3) notice and pre-emptively challenged disclosure of Item 202 to the Defence.¹⁰⁹ On 29 November 2021, both Defence responded, seeking disclosure.¹¹⁰

79. On 26 November 2021, further to the Parties’ submissions,¹¹¹ the Panel issued its decision denying the Defence motions to dismiss charges.¹¹²

¹⁰⁴ F00428, Panel, *Scheduling Order for Work Plan and Time Limits for the Next Steps in the Proceedings* (“9 November 2021 Scheduling Order”), 9 November 2021.

¹⁰⁵ 9 November 2021 Scheduling Order, paras 10, 14, 16(a), 17.

¹⁰⁶ F00431, Specialist Prosecutor, *Prosecution Notice of the Closing of its Case*, 10 November 2021.

¹⁰⁷ F00433, Specialist Prosecutor, *Prosecution Report Related to Rule 103(2) Notice Item 201*, 12 November 2021, strictly confidential and *ex parte*, with Annexes 1-4, strictly confidential and *ex parte*. See also F00433/CONF/RED, confidential.

¹⁰⁸ F00435, Panel, *Decision on the Prosecution Request Related to Rule 102(3) Notice Item 201*, 15 November 2021, confidential. See also F00435/RED.

¹⁰⁹ F00442, Specialist Prosecutor, *Prosecution Notice of Additional Item and Challenge to Disclosure*, 18 November 2021, confidential, with Annex 1, strictly confidential and *ex parte*.

¹¹⁰ F00453, Gucati Defence, *Response to Prosecution Notice of Additional Item and Challenge to Disclosure*, 29 November 2021, confidential; F00454, Haradinaj Defence, *Response to ‘Prosecution Notice of Additional Item and Challenge to Disclosure’*, 29 November 2021, confidential.

¹¹¹ F00439, Gucati Defence, *Motion to Dismiss Pursuant to Rule 130*, 17 November 2021, confidential; F00440, Haradinaj Defence, *Defence Motion Under Rule 130 ‘Dismissal of Charges’*, 17 November 2021, confidential; F00447, Specialist Prosecutor, *Prosecution Consolidated Response to Requests to Dismiss the Charges*, 24 November 2021. See also F00439/RED, F00440/RED; F00447/RED.

¹¹² F00450, Panel, *Decision on Motions to Dismiss Charges*, 26 November 2021.

80. On 29 November 2021, in line with the 9 November 2021 Scheduling Order, the Gucati Defence filed its lists of witnesses and exhibits pursuant to Rule 119(2) of the Rules.¹¹³ On the same day, 29 November 2021, the Haradinaj Defence filed its list of witnesses pursuant to Rule 119(2)(a) of the Rules.¹¹⁴

81. On 30 November 2021, the Panel issued a scheduling order for the Defence Preparation Conference.¹¹⁵

82. On 2 December 2021, the Panel held the Defence Preparation Conference and determined the date for the opening of the Defence case and authorised the Haradinaj Defence to deliver its opening statement after the presentation of evidence in the Gucati case finished.¹¹⁶ The Panel also set target dates for the closing of the Defence case and for the closing of the case.¹¹⁷ The Panel ordered the Haradinaj Defence to file its exhibit list under Rule 119(2)(b) of the Rules and for both Defence to file updated exhibit lists conforming with the Order on the Conduct of Proceedings (“Order on Exhibit Lists”).¹¹⁸ At the conclusion of the Defence Preparation Conference, the Panel issued an oral order on the SPO’s requests to exclude in whole or in part the testimony of a number of Defence witnesses.¹¹⁹

¹¹³ F00460, Gucati Defence, *Defence Submission of List of Anticipated Witnesses with Annex 1 and Annex 2*, 29 November 2021.

¹¹⁴ F00461, Haradinaj Defence, *Defence Rule 119 Filing on Behalf of Nasim Haradinaj*, 29 November 2021, with Annex 1, public, and Annex 2, confidential.

¹¹⁵ F00463, Panel, *Scheduling Order for the Defence Preparation Conference*, 30 November 2021.

¹¹⁶ Transcript, 2 December 2021, p. 2109 (Oral Order Scheduling the Defence Opening Statements and Presentation of Defence Evidence).

¹¹⁷ Transcript, 2 December 2021, pp 2110-2111 (Oral Order Setting Target Date for End of Defence Case; Oral Order Setting Target Date for Closing of Case).

¹¹⁸ Transcript, 2 December 2021, p. 2112 (Oral Order on Defence to File Updated Exhibit Lists) (“Order on Exhibit Lists”).

¹¹⁹ Transcript, 2 December 2021, pp 2105-2107 (Summary of Panel’s Decision on SPO Motions to Strike Defence Witnesses). *See also* F00312, Specialist Prosecutor, *Prosecution Requests in relation to Defence Witnesses*, 15 September 2021; F00329, Gucati Defence, *Response to Prosecution Requests in Relation to Defence Witnesses*, 27 September 2021; F00330, Haradinaj Defence, *Defence Response to Prosecution Requests in Relation to Defence Witnesses*, 27 September 2021; F00376, Haradinaj Defence, *Submission of Expert Report from the Defence for Mr. Haradinaj*, 15 October 2021; Transcript, 18 October 2021, p. 817; F00388, Specialist Prosecutor, *Prosecution Challenge to Proposed Defence Expert and Report*, 22 October 2021; F00410, Haradinaj Defence, *Defence Response to Prosecution Challenge to Proposed Defence*

83. Also on 2 December 2021, after an extension of the original time limit and in line with the Order on Exhibit Lists, the Haradinaj Defence filed a tentative list of exhibits.¹²⁰

84. On 3 December 2021, the Defence case was opened and the Gucati Defence delivered its opening statement.¹²¹

85. On the same day, 3 December 2021, the Panel issued the written reasons to its oral order on the SPO's requests to exclude in whole or in part the testimony of a number of Defence witnesses, rendered at the conclusion of the Defence Preparation Conference ("Defence Witnesses Decision"),¹²² declining to exclude the testimony of DW1246 insofar as the proposed evidence could be relevant to the Entrapment Claim.¹²³

86. On 6 December 2021, in line with the Order on Exhibit Lists, the Gucati Defence filed an updated exhibit list.¹²⁴

87. Also on 6 December 2021, the presentation of evidence for the Gucati Defence began.¹²⁵ As detailed below, the Panel heard the evidence of the Gucati Defence over five (5) hearing days.

Expert and Report, 1 November 2021, confidential; F00426, Haradinaj Defence, *Submission of Expert Report from the Defence for Mr Haradinaj*, 9 November 2021, with Annex A, confidential, and Annex B, public; F00438, Specialist Prosecutor, *Prosecution Challenge to Proposed Defence Expert Witness 18 and Report*, 16 November 2021; F00444, Haradinaj Defence, *Haradinaj Defence Response to F00438*, 22 November 2021; F00466, Specialist Prosecutor, *Prosecution Further Requests in Relation to Defence Witnesses*, 1 December 2021. *See also* F00410/RED.

¹²⁰ F00469, Haradinaj Defence, *Submission of Tentative List of Exhibits*, 2 December 2021.

¹²¹ Transcript, 3 December 2021, pp 2115-2132.

¹²² F00470, Panel, *Decision on Prosecution Requests in Relation to Proposed Defence Witnesses* ("Defence Witnesses Decision"), 3 December 2021.

¹²³ Defence Witnesses Decision, paras 77-79.

¹²⁴ F00475, Gucati Defence, *Submission of Exhibit List Pursuant to Paragraph 60(e) of the Order on the Conduct of Proceedings*, 6 December 2021.

¹²⁵ Transcript, 6 December 2021, p. 2151.

88. Between 6 and 8 December 2021, the Panel heard the evidence of Mr Gucati (DW1240).¹²⁶

89. On 7 December 2021, the Panel denied disclosure of Item 202 to the Defence.¹²⁷

90. On 8 December 2021, the Panel granted the Haradinaj Defence leave to appeal certain findings of the Defence Witnesses Decision.¹²⁸

91. Between 9 and 10 December 2021, the Panel heard or received the evidence of six additional witnesses called by the Gucati Defence: Taibe Miftari (DW1241), Elmedina Ballhazhi (DW1242), Pren Marashi (DW1243), Metush Kryeziu (DW1244), Cele Gashi (DW1245) and Joseph Bowden (DW1248).¹²⁹

92. On 10 December 2021, after a further extension of the previous time limit,¹³⁰ the Haradinaj Defence filed an updated list of exhibits.¹³¹

93. On 10 December 2021, the Panel granted the Defence request to further cross-examine SPO witnesses W04841 and W04842 on the basis that the delayed disclosure of certain items resulted from the SPO's resistance to disclosure and that those items, for which the Panel ended up ordering disclosure, reached the Defence after the close of the SPO case and could therefore not be used by the Defence when cross-examining these witnesses.¹³²

¹²⁶ DW1240 (Hysni Gucati), Transcripts, 6-8 December 2021, pp 2151-2439.

¹²⁷ F00479, Panel, *Decision on Item 202 Disclosure*, 7 December 2021, confidential.

¹²⁸ F00484, Panel, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021.

¹²⁹ DW1241 (Taibe Miftari), Transcript, 9 December 2021, pp 2450-2476; DW1242 (Elmedina Ballhazhi), Transcript, 9 December 2021, pp 2479-2514; DW1243 (Pren Marashi), Transcript, 9 December 2021, pp 2516-2543; DW1244 (Metush Kryeziu), Transcript, 9 December 2021, pp 2545-2554; DW1245 (Cele Gashi), Transcript, 10 December 2021, pp 2573-2608; DW1248 (Joseph Bowden), Transcript, 10 December 2021, pp 2613-2615 and 1D00010 with associated exhibits 1D00011-1D00018.

¹³⁰ Transcript, 8 December 2021, p. 2342.

¹³¹ F00489, Haradinaj Defence, *Updated List of Exhibits and Application for Leave to Add Exhibits Pursuant to Rule 119(2)(b)*, 10 December 2021.

¹³² Transcript, 10 December 2021, pp 2608-2610 (Oral Order on Defence Request to Further Cross-Examine SPO Witnesses W04841 and W04842).

94. On 15 December 2021, further to the Panel's authorisation, SPO witnesses W04841 and W04842 were recalled and further cross-examined by the Gucati Defence.¹³³

95. On the same day, 15 December 2021, the Haradinaj Defence delivered its opening statement.¹³⁴ After that, and further to a request by the Haradinaj Defence based on the health condition of its lead counsel, the Panel adjourned the proceedings until 11 January 2022.¹³⁵

96. On 17 December 2021, further to the request of the Gucati Defence to admit items through the bar table,¹³⁶ the Panel issued a decision admitting a number of items through the bar table and denying the admission of all other items.¹³⁷

97. On 6 January 2022, after the Panel's authorisation to add exhibits and a further extension of the previous time limit, the Haradinaj Defence filed an updated list of exhibits.¹³⁸

98. On 7 January 2022, the Court of Appeals Panel rendered a decision granting in part the interlocutory appeal of the Haradinaj Defence against the Defence Witnesses Decision.¹³⁹

¹³³ W04841 (Zdenka Pumper), Transcript, 15 December 2021, pp 2621-2626; W04842 (Miro Jukić), Transcript, 15 December 2021, pp 2626-2637.

¹³⁴ Transcript, 15 December 2021, pp 2663-2674.

¹³⁵ Transcript, 15 December 2021, pp 2656-2660 (Oral Decision on Haradinaj Defence Request for Adjournment).

¹³⁶ F00487, Gucati Defence, *Defence Request for Admission of Items through the Bar Table and Related Matters*, 10 December 2021, confidential; F00488, Haradinaj Defence, *Haradinaj Defence Joinder of the Gucati Defence Request for Admission of Items through the Bar Table and Related Matters*, 10 December 2021; Transcript, 15 December 2021, pp 2637-2638; F00496, Specialist Prosecutor, *Prosecution Response to Defence Request for Admission of Items through the Bar Table and Related Matters*, 15 December 2021. See also F00487/RED.

¹³⁷ F00502, Panel, *Decision on the Defence Request for Admission of Items through the Bar Table and Related Matters*, 17 December 2021, para. 46(b) and (f).

¹³⁸ F00511, Haradinaj Defence, *Consolidated Witness and Exhibit List of the Haradinaj Defence*, 6 January 2022.

¹³⁹ IA006-F00006, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision on Prosecution Requests in Relation to Proposed Defence Witnesses*, 7 January 2022.

99. On 11 January 2022, the presentation of evidence for the Haradinaj Defence began.¹⁴⁰ As detailed below, the Panel heard the evidence of the Haradinaj Defence over seven (7) hearing days.

100. Between 11 and 14 January 2022, the Panel heard the evidence of Mr Haradinaj (DW1249).¹⁴¹

101. On 12 and 14 January 2022, the SPO added two items (“Item 203” and “Item 204”) to its Rule 102(3) notice and pre-emptively stated the challenges to their disclosure to the Defence.¹⁴² On 20 and 21 January 2022, the Haradinaj Defence and the Gucati Defence respectively responded, seeking disclosure of Item 203 and Item 204.¹⁴³

102. On 14 January 2022, the Panel, overruling the SPO’s objections, admitted the statement and addendum of Rashit Qalaj (DW1246) as it found that his evidence appeared to be put forth by the Defence as relevant to the Entrapment Claim.¹⁴⁴

103. On 14, 21, 24 and 28 January 2022, the Panel heard the evidence of three additional witnesses called by the Haradinaj Defence: Rashit Qalaj (DW1246), Anna Myers (DW1252) and Robert Reid (DW1253).¹⁴⁵

104. On 25 January 2022, the Panel granted the SPO’s requests for non-disclosure of Items 203 and 204.¹⁴⁶

¹⁴⁰ Transcript, 11 January 2022, p. 2692.

¹⁴¹ Transcripts, 11-14 January 2022, pp 2692-3047.

¹⁴² F00517, Specialist Prosecutor, *Prosecution Notice of Additional Item and Challenge to Disclosure*, 12 January 2022, confidential, with Annex 1, strictly confidential and *ex parte*; F00520, Specialist Prosecutor, *Prosecution Notice of Additional Item 204 and Challenge to Disclosure*, 14 January 2022, confidential, with Annex 1, strictly confidential and *ex parte*.

¹⁴³ F00526, Haradinaj Defence, *Defence Response to Prosecution Filings F00517 and F00520*, 20 January 2022, confidential; F00528, Gucati Defence, *Defence Response to Prosecution Challenges to Disclosure of Items 203 and 204 (Filings F00517 and F00520)*, 21 January 2022, confidential.

¹⁴⁴ Transcript, 14 January 2022, pp 3056-3057.

¹⁴⁵ DW1246 (Rashit Qalaj), Transcript, 14 January 2022, pp 3052-3083; DW1252 (Anna Myers), Transcript, 21 January 2022, pp 3103-3188; DW1253 (Robert Reid), Transcripts, 24-28 January 2022, pp 3205-3367.

¹⁴⁶ F00533, Panel, *Decision on the SPO Request Regarding Items 203 and 204*, 25 January 2022, confidential.

105. On the same day, 25 January 2022, the SPO added an item (“Item 205”) to its Rule 102(3) notice and pre-emptively stated its challenge to its disclosure to the Defence.¹⁴⁷

106. On 27 and 28 January 2022, the Defence respectively responded, seeking disclosure of Item 205.¹⁴⁸

107. On 28 January 2022, the Panel granted the SPO’s requests for non-disclosure of Item 205.¹⁴⁹

108. On 31 January 2022, the Panel held a status conference to discuss the next steps of the proceedings with the Parties.¹⁵⁰ At the status conference, the SPO indicated that it would not seek to tender any evidence in rebuttal, which rendered the question as to whether the Defence intend to call evidence in rejoinder moot.¹⁵¹

109. On 1 February 2022, further to a request from the Defence to that effect,¹⁵² the Panel denied the Defence application for leave to appeal, or reconsideration of, its decision granting non-disclosure of Item 205.¹⁵³

110. On 1 February 2022, the Panel directed the Defence to close their case pursuant to Rule 131 of the Rules.¹⁵⁴

¹⁴⁷ F00534, Specialist Prosecutor, *Prosecution Notice of Additional Item 205 and Challenge to Disclosure*, 24 January 2022, confidential, with Annex 1, strictly confidential and *ex parte*.

¹⁴⁸ F00536, Haradinaj Defence, *Defence Response to Prosecution Filings F00534*, 27 January 2022, confidential; F00539, Gucati Defence, *Defence Response to Prosecution Notice of Additional Item 205 and Challenge to Disclosure*, 28 January 2022, confidential.

¹⁴⁹ F00541, Panel, *Decision on the SPO Request Regarding Item 205*, 28 January 2022, confidential.

¹⁵⁰ Transcript, 31 January 2022, pp 3380-3419.

¹⁵¹ Transcript, 31 January 2022, pp 3391-3392.

¹⁵² Transcript, 31 January 2022, pp 3381-3385; F00543, Haradinaj Defence, *Defence Application for Leave to Appeal through Certification from Decision KSC-BC-2020-07/F00541*, 31 January 2022.

¹⁵³ F00546/COR, Panel, *Corrected Version of Decision on Request for Certification or Reconsideration of F00541*, 1 February 2022.

¹⁵⁴ F00547, Panel, *Order Pursuant to Rule 131 of the Rules*, 1 February 2022.

111. On 2 February 2022, pursuant to the Panel's order, both Defence teams formally closed their cases.¹⁵⁵

112. On 3 February 2022, the Panel issued three decisions. First, the Panel took note of the facts agreed upon between the Parties.¹⁵⁶ Second, the Panel admitted two items into evidence pursuant to Rule 132 of the Rules.¹⁵⁷ Third, the Panel closed the evidentiary proceedings in the case ("3 February 2022 Decision").¹⁵⁸

113. On 3 March 2022, pursuant to the 3 February 2022 Decision, the Parties submitted their Final Trial Briefs (respectively "SPO Final Trial Brief"; "Gucati Final Trial Brief"; "Haradinaj Final Trial Brief").¹⁵⁹

114. On 10 March 2022, further to a request from the SPO,¹⁶⁰ the Panel ordered the Defence to disclose any additional evidence it wishes to adduce in relation to sentencing by 14 March 2022.¹⁶¹

115. On 14 and 15 March 2022, the Gucati Defence and the Haradinaj Defence respectively disclosed eleven and six statements for the purposes of sentencing.¹⁶² On 16 March 2022, the Panel admitted one of the statements in part and the remainder of the statements in full.¹⁶³

¹⁵⁵ 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 (dated 1 February 2022; filed 2 February 2022).

¹⁵⁶ F00551, Panel, *Decision Taking Note of the Agreed Facts*, 3 February 2022.

¹⁵⁷ F00552, Panel, *Decision Pursuant to Rule 132 of the Rules*, 3 February 2022.

¹⁵⁸ 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 2022 Decision"), 3 February 2022.

¹⁵⁹ F00565, Specialist Prosecutor, *Prosecution Final Trial Brief* ("SPO Final Trial Brief"), 3 March 2022, confidential, with Annex 1, public; F00566/RED, Haradinaj Defence, *Final Trial Brief on Behalf of Nasim Haradinaj* ("Haradinaj Final Trial Brief"), 3 March 2022; F00567, Gucati Defence, *Final Trial Brief on Behalf of Hysni Gucati* ("Gucati Final Trial Brief"), 3 March 2022 (dated 3 March 2022; filed 4 March 2022), confidential. *See also* F00565/RED; F00566/RED; F00567/RED.

¹⁶⁰ F00568, Specialist Prosecutor, *Prosecution Request for Disclosure of Additional Sentencing Evidence*, 7 March 2022.

¹⁶¹ F00572, Panel, *Decision on SPO Request for Disclosure of Additional Sentencing Evidence*, 10 March 2022.

¹⁶² Disclosure 82; Disclosure 83; Disclosure 84.

¹⁶³ F00578, Panel, *Decision on Sentencing Evidence*, 16 March 2022, para. 23(b) and (c).

116. From 14 to 17 March 2022, pursuant to the Panel's order¹⁶⁴ and in accordance with Rule 135 of the Rules, the Panel heard the Parties' Closing Statements.¹⁶⁵ The Panel further heard the Parties' submissions on sentencing, in the event of a finding of guilt,¹⁶⁶ and the statement of each of the Accused.¹⁶⁷ The Panel also stated that it would determine an appropriate sentence with the pronouncement of the trial judgment should any conviction be entered.¹⁶⁸

117. On 17 March 2022, the Panel closed the case.¹⁶⁹

118. On 6 April 2022, the Court of Appeals Panel denied, in a consolidated decision, both interlocutory appeals of the Haradinaj Defence against the Panel's detention review decisions.¹⁷⁰

119. On 9 May 2022, upon request of the Gucati Defence,¹⁷¹ the Panel granted Mr Gucati a three-day custodial visit on compelling humanitarian grounds.¹⁷²

120. On 17 May 2022, the Panel rejected the request of the Defence for permission to make further submissions on disclosure.¹⁷³

¹⁶⁴ 3 February 2022 Decision, para. 26(c).

¹⁶⁵ Transcripts, 14-17 March 2022, pp 3424-3768.

¹⁶⁶ Transcript, 17 March 2022, pp 3770-3845.

¹⁶⁷ Transcript, 17 March 2022, pp 3845-3853.

¹⁶⁸ Transcript, 17 March 2022, pp 3853-3854 (Oral Order on the Procedure to be Followed Regarding Sentencing in Case of Conviction).

¹⁶⁹ Transcript, 17 March 2022, p. 3855.

¹⁷⁰ IA007-F00004 & IA008-F00004, Court of Appeals Panel, *Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention*, 6 April 2022.

¹⁷¹ F00599, Gucati Defence, *Gucati Request for Temporary Release on Compassionate Grounds*, 9 May 2022, confidential, with four confidential annexes. *See also* F00599/RED. *See also* F00601, Specialist Prosecutor, *Prosecution Response to Gucati Request for Temporary Release on Compassionate Grounds*, 9 May 2022; F00602, Registrar, *Registrar's Submissions on Gucati Request for Temporary Release on Compassionate Grounds*, 9 May 2022, confidential and *ex parte*. *See also* F00602/RED.

¹⁷² F00604, Panel, *Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds*, 9 May 2022, confidential and *ex parte*. *See also* F00604/RED.

¹⁷³ F00610, Panel, *Decision on Defence Requests for Permission to Make Further Submissions on Disclosure*, 17 May 2022. *See also* F00605, Gucati Defence, *Gucati Request for Permission to Make Further Submissions re Disclosure*, 12 May 2022; F00606, Haradinaj Defence, *Haradinaj Request for Permission to Make Further Submissions re: Disclosure*, 12 May 2022; F00608, Specialist Prosecutor, *Prosecution Consolidated Response to Defence Requests Concerning Disclosure*, 16 May 2022.