1 Thursday, 17 March 2022
2 [Open session]
3 [Closing Statements]
4 [The accused entered court]
5 --- Upon commencing at 9.30 a.m.
6 PRESIDING JUDGE SMITH: Madam Court Officer, please call the
7 case.
8 THE COURT OFFICER: Good morning, Your Honours. This is
9 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
10 Nasim Haradinaj.
11 PRESIDING JUDGE SMITH: And, Mr. Halling, please tell us about
12 who's with you today.
13 MR. HALLING: Certainly, Your Honour. Appearing for the SPO,
14 Prosecutor Valeria Bolici; Associate Prosecutor James Pace; Case and
15 Evidence Manager Line Pedersen; legal intern Helena Kruger; and I'm
16 Prosecutor Matt Halling.
17 PRESIDING JUDGE SMITH: Thank you.
18 Mr. Rees.
19 MR. REES: Your Honour, the only change today is that Mr. Dashi
20 is not here to assist me.
21 PRESIDING JUDGE SMITH: Thank you.
22 Mr. Cadman.
23 MR. CADMAN: The only change, as with yesterday afternoon,
24 Mr. Soliman is not with us.
25 PRESIDING JUDGE SMITH: And Mr. Gucati and Mr. Haradinaj are

1 both present in the courtroom, and we are ready to begin.
2 Yesterday we finalised the closing statements of the Defence,
3 and today we will hear the SPO response and any Defence replies. We
4 will then move to sentencing submissions.
5 We expect the schedule to move along. And even if a particular
6 section is finalised earlier than planned, of course, if you have
7 good reason to need more time, let us know. I also invite the
8 parties to incorporate their responses and replies into their
9 responses and replies any further submissions to the questions the
10 Panel asked so far, if they wish to address any of these questions or
11 the answers of the opposing party.
12 Before I give the floor to the SPO, just to let you all know
13 that the Panel rendered a decision yesterday evening on the proposed
14 additional evidence on sentencing. The Panel admitted all the
15 statements in full except that of Mr. Walker, which was admitted only
16 in part. You will find the reasoning in the findings in the
17 decision, which was notified this morning.
18 In light of this decision, the parties may rely on these
19 statements in their sentencing submissions. The Panel asks, however,
20 the parties to refrain from unnecessarily repeating the contents of
21 these statements as we have all read them and they are all now in
22 evidence.
23 Now we will hear the responses of the SPO to the Defence closing
24 statements. According to our schedule, the SPO has one session to do
25 so, but Mr. Halling indicated yesterday it would take up to 45

1 minutes, and the Panel may then have some questions to ask.
2 Mr. Halling, you have the floor.
3 MR. HALLING: Thank you, Your Honour. And, yes, indeed, we do
4 intend to finish well within the time; 30 to 45 minutes. I'm going
5 to try even to be on the low end of that estimate.
6 And the reason why is because the arguments that you've heard in
7 the closing statements the last two days have all been addressed and
8 discussed at length, both in the final briefs and even before.
9 Whatever else that we could say to the new information provided, our
10 responses are predictable. Cross-cutting contextual interpretations
11 of statutory provisions are a cornerstone of statutory
12 interpretation, and the Gucati Defence's lack of willingness to
13 compare Article 387 and 388 of the Kosovo criminal code is
14 interesting, given its heavy reliance on these same kinds of
15 arguments in its brief, including comparisons between Article 387
16 and 386 of the Kosovo criminal code.
17 The M.I. *et al* case cited in the closing statements is a case
18 about obstruction based on the 2003 provisional criminal code, which
19 had an element of force in the threat of force that has sense been
20 amended out of the obstruction counts currently charged, and the
21 authority is, therefore, not meaningful for the proposition cited.
22 Article 62 of the law is not the only statutory basis for
23 classifying documents. Paragraph 37 of the Confirmation Decision
24 alone provides 14 different statutory provisions as to why the SPO
25 and/or the KSC can lawfully protect information.

1 Article 21 of the Kosovo criminal code talks about direct and
2 eventual intent applying to the crimes. All crimes. And it applies
3 to the remainder of a crime's elements even when a specific intent is
4 specified. This is why our answer to Judge Gaynor's hypothetical,
5 posed at page 3744 of yesterday's transcript is: Yes, that is
6 retaliation. And the evidence in the case conforms to that
7 hypothetical.
8 But this is all in the direction of a cross-cutting response.
9 We've done a cross-cutting response on Monday. What I would really
10 like to do today is just to focus on a few key points of emphasis.
11 And, as always, if there is another aspect of the case where Your
12 Honours are interested in our position, please let me know of any
13 questions that you may have.
14 The Specialist Prosecutor and Mr. Pace are going to be
15 addressing you later today on an appropriate sentence in this case.
16 Barring any questions, this is the last time the SPO gets to address
17 the Court on the merits of the case of The Prosecutor versus
18 Hysni Gucati and Nasim Haradinaj.
19 The Defence closing statements, in full clarity, they want to
20 resolve something other than this case. The case of the accused
21 versus Halil Berisha, the case of the accused versus whoever leaked
22 the batches, the case of the SPO versus uncharged people who may or
23 may not be in an Interpol red notice, talking about the SPO's
24 impartiality, what foreign intelligence could have been involved,
25 fair trial procedures, how matters within and beyond the case were

1 investigated, thing after thing, on and on, other than what the
2 accused did.
3 But the evidence is admitted. This is closing statements. This
4 is the time to discuss what the accused did and did not do. And
5 addressing the last arguments Your Honours have heard from the
6 Defence requires a return to focus on this case.
7 The core of the Defence's arguments is actually premised on just
8 a single strand. If you cut it, it falls away and the incriminating
9 evidence is all that remains. They didn't name names. The closing
10 statements are replete with references that they didn't name names.
11 Saying that Mr. Gucati and Mr. Haradinaj never threatened anybody or
12 wanted to threaten anybody is contingent on them not naming names,
13 because they know what happens when names are named.
14 If protected witnesses would be named, they could have felt
15 scared. They could have been scared to death. It could cause their
16 death. Things could happen. It would be intimidation. If they were
17 named, they would be harmed. And qualifying it with "harmed in a
18 way" doesn't show any less clarity in awareness of what would happen.
19 And evidence for all of those propositions can be found at paragraphs
20 208 to 213 of our final brief.
21 The very mantra itself - we didn't name names - that repeated
22 invocation shows that the accused know that the names are protected
23 and that it's wrong to name them. The accused's castigations of the
24 SPO being unable to protect its witnesses again show full awareness
25 of what happens when names are named. We disagree with the Haradinaj

1 Defence when they said yesterday in response to Judge Mettraux's
2 question at pages 3736 to 3737 of the transcript, when it's said that
3 it's words about the SPO creating an unsecure environment were
4 clumsy. The words aren't clumsy.
5 The Haradinaj Defence said what their client says. You can
6 compare the paragraph of the Haradinaj Defence final brief discussed
7 yesterday to something like Haradinaj's written statement where, at
8 2D1-ET, paragraph 101, Haradinaj says:
9 "The SPO did not even protect the witnesses who they promised
10 protection."
11 He is channelling his client.
12 On the accused's own admissions, the crimes fall like ripe fruit
13 if names become public. And this is bolstered further by evidence
14 across the case. Zdenka Pumper's evidence, Miro Jukic's evidence,
15 the climate of intimidation, Robert Reid's comments about the effect
16 of the mandate, all down the line.
17 But the core contradiction of the Defence's arguments presented
18 to you throughout the trial and in these closing statements: They
19 made names public. They made names public. Leaving unredacted
20 protected documents for whatever public person journalists happen to
21 show up is providing names to the public. They threw their names
22 into the world. That names were named inevitably follows from that.
23 This isn't about vocalising names. It's about communicating
24 names. And some of the names were unambiguously vocalised. It's the
25 resolution of this core contradiction and the Defence's arguments to

1 Your Honours that transforms their words into threats, their
2 criticism into obstruction, and their concessions about what happens
3 when names are named into confessions about what happens when they
4 made names public.
5 Consider the constituent parts of the serious threats charged
6 while remembering that they made names public. This is a part of the
7 case which is addressed in the Presiding Judge's questions on Monday.
8 And to recall at the outset of this that the serious threats are a
9 joint effort of the accused and the associates. The Gucati Defence
10 attacked the specificity of what Mr. Gucati actually didn't disavow
11 in Haradinaj's statements at page 3535 of the transcript in the
12 closing. But to be clear, what Mr. Gucati actually said, at
13 paragraph 2376, is that he didn't think he heard one single thing he
14 disavowed. Noting that at the moment of the trial that he said that,
15 every single statement of Mr. Haradinaj that was admitted into
16 evidence during the SPO's case had been disclosed to him.
17 So what do they do? They're disseminating confidential
18 information, but they're disseminating confidential information and
19 making names public. They're stating that identities of all those
20 who cooperated with the SITF and SPO would be publicly known in the
21 course of making the names public. The accused's public assertions
22 that they had recognised several of the names contained in the
23 documents, said while making the names public, that no one would be
24 unknown in the course of making names public. Accusing witnesses of
25 being bloodsuckers while making their names public, of being spies

1 while making their names public, of being liars, criminals, poor
2 morons, fools, and traitors in conjunction with a course of conduct
3 where they made names public.
4 Those are threats. Those are serious threats, especially
5 considering the climate of intimidation in which they were said. And
6 they also called them collaborators. Mr. Rees' interesting
7 discussion of linguistics aside, Mr. Haradinaj said that calling
8 someone a collaborator is the ultimate accusation that you can give.
9 And any non-pejorative interpretation makes no sense.
10 I can give Your Honours an example. One of the instances where
11 the word "collaborator" is used in our evidence is at page 5 of
12 P37-ET. I will read the quote into the record, but I'm going to
13 deliberately change one word. I'm going to change the word
14 "collaborator" to "cooperator," and we can see what impact it has on
15 the meaning of the sentence. This is Mr. Haradinaj:
16 "On the other hand, everyone who's been against the KLA, every
17 cooperator, every quisling, every traitor, every spy, and every
18 family member of a spy is in favour of this tribunal, in favour of
19 this kind of tribunal, we have declared publicly."
20 The meaning doesn't change.
21 There was a lot of discussion in the closing statements about a
22 lack of intent. There is an alternative inference, according to the
23 Defence, but that is all still dependent on this core contradiction.
24 The things that they believe from before the charged timeframe and
25 through it, all the way up until their testimony before Your Honours

1 and today, these things that they have said and these things that
2 they've believed inform their mental state while making names public.
3 They made their intent to obstruct the work of the Court crystal
4 clear, while making names public, to show that the job done is zero,
5 to think twice about confirming indictments, while making names
6 public, that the SPO has lied to witnesses about protecting their
7 secrets, while making names public. While making names public,
8 saying that the KSC will collapse because witnesses know now that
9 others know who they are. And there are other examples like this.
10 We can direct Your Honours to footnotes 538 and 539 of our brief.
11 The actions aimed at undermining the SPO, which they consider to
12 be a racist and biased court that they don't recognise. Those
13 actions in conjunction with making witnesses' names public. To say
14 that the SPO is justice picked up from Milosevic's apparatus, will
15 obstruct it all its life, will be an opponent for forever. This is a
16 mental state that was operating in the charged timeframe in which
17 they were making names public.
18 The repetition of what they do is critical to understanding
19 them. If you take criminal action in the awareness that prohibited
20 consequences can occur and accede to that occurrence, you're guilty
21 of committing a crime with eventual intent under the Kosovo criminal
22 code. But then you do it a second time, and then you do it a third
23 time, and then you vow repeatedly to do it again in the face of
24 judicial orders and a KSC prosecution and potential sentences of
25 somewhere between 5 and 300 years, according to them. A higher

1 degree of intention becomes clear. It becomes what you want.
2 Ultimately, you must be considered as desiring to commit those
3 acts you commit over and over again, with awareness of what will
4 happen when you do, and that awareness would be to any reasonable
5 level of certainty, noting, of course, that there is no specified
6 statutory threshold.
7 What I've just described is direct intent under the Kosovo
8 criminal code. It's defined as when he or she is aware of his or her
9 act and desires its commission.
10 The evidence that we have been discussing goes straight to the
11 elements of the offences. It is built predominantly on evidence for
12 which no inferences are required. If you believe those videos and
13 what is said in them, this conduct can be legally characterised as
14 charged and found beyond reasonable doubt. It is direct evidence.
15 And the circumstantial evidence relied upon supports that direct
16 evidence in all aspects and points to one - and only one - reasonable
17 conclusion.
18 Because the totality of the evidence does show that the accused
19 seriously threatened witnesses and that they did so with direct
20 intent. And these are key pillars in fulfilling the elements of the
21 crimes charged. The accused resolve any reasonable doubt for you.
22 They tell us what will happen if names are named.
23 The core contradiction also informs the closing statements
24 discussion on mistake of law.
25 We learn from the Gucati Defence in their closing statement that

1 the legal advice, which prompted the citation to the second press
2 conference, is legal advice that Mr. Gucati received while on
3 television. The Gucati Defence said that Mr. Gucati's testimony was
4 inconsistent, but it's actually reconcilable. He considers it to be
5 legal advice, what he received on television, and then that explains
6 why, at T2392, he's able to say that, and also that Mr. Gashi was not
7 appointed until after the second press conference. So the
8 non-televised legal portion of the advice doesn't start until
9 17 September, and it's interesting to note that the accused were told
10 multiple times in televised and video appearances that what they were
11 doing wasn't legal. They only seem to have heard the lawyer's advice
12 telling them they could.
13 Incidentally, the instances of accusations of illegality put
14 directly to the accused are collected in footnote 541 of our final
15 brief.
16 But that's not even the most critical part. The most critical
17 part on the mistake of law Defence again goes back to the accused's
18 awareness that naming names was wrong. They made names public, so
19 they knew what they did was against the law. Once Your Honours
20 conclude that they made names public, which is a fact, and I
21 emphasise that, because there is no mistake of fact alleged in the
22 final briefs, there's no more legal ambiguity.
23 As to serious consequences, the Gucati Defence, in their closing
24 statement, significantly mischaracterised the Trial Panel's
25 evidentiary rulings on the consequences suffered by witnesses. At

1 pages 3603 to 3604 of the transcript, Mr. Rees said:
2 "To the extent that the SPO were permitted to adduce any
3 evidence of complaint from an anonymous third party ..."
4 And then it continues in a couple lines later:
5 "... to the extent that they were permitted to adduce any such
6 evidence, that evidence was not admitted as truth of its contents."
7 That's true only for contact notes. That's true only for the
8 contact notes. And the rulings of Your Honours on this are decision
9 F000334, paragraphs 93 to 94, which is the bar table decision; and
10 the further discussion of contact notes in the courtroom on
11 pages 1743 to 44 of the transcript. The contact notes in the case
12 were admitted for a limited purpose. But Miro Jukic's testimony of
13 what witnesses told him is admissible for the truth of its contents.
14 And the same is true, incidentally, for Ms. Pumper's contact with the
15 witness that she describes at page 1012 of the transcript.
16 That is admissible, reliable evidence of state of mind. Even in
17 a courtroom like in the United States which has strict rules against
18 hearsay, it would have still been admissible as state of mind. The
19 contact notes have nothing to do with the admissibility of that
20 testimony.
21 To put it another way. If the contact notes had never existed,
22 would the testimony have been admissible? In our submission, it
23 would. Admissible hearsay has been accepted throughout the trial and
24 is perfectly in conformity with the legal framework to do so.
25 So we're not talking about contact notes anymore. Their dating,

1 their recording, so on. The issue on serious consequences now is the
2 testimony of the trial. What we're talking about now is the stories,
3 the stories heard and discussed in Mr. Jukic's testimony and compiled
4 at paragraph 205 of our final brief.
5 What are the stories? Well, it's a story of someone who does
6 not feel secure at all and that anything could happen to him. A
7 story of someone who is in panic and was scared to go to work.
8 Someone with panic attacks so severe that he ended up in a hospital
9 caused by the stress of the documents leaking to the media. Someone
10 who is very upset and angry, who wanted he and his family to relocate
11 out of Kosovo immediately, who said he could be killed and would not
12 cooperate unless the SPO relocated his family. A story of someone
13 who felt his family was in danger, who tried to take steps to ensure
14 his family's safety, because people did not seem to differentiate
15 between witnesses and spies.
16 You have been told not to believe Mr. Jukic when he reported a
17 witness saying, "'I know very well what happened to the witnesses in
18 Kosovo.'" What's not to believe? The statement and these stories of
19 witnesses show just how scared to death protected people get when
20 they know or think they know their name has been made public. They
21 are the things that can happen. There is no reason not to believe
22 you, not to believe these people, not to believe Mr. Jukic. It's the
23 very things that could happen that the accused told us about.
24 Mr. Rees in his closing statement talked about these people as
25 Person A, Person B, C, D, and so on. And it's obvious why he did so.

1 Mr. Rees doesn't know the names of the people. They weren't provided
2 by virtue of a non-disclosure decision of the Pre-Trial Judge. And
3 even if they did know the names, they wouldn't be able to say them in
4 the public courtroom.
5 But they do have names. These are real people with real
6 families. People who couldn't have their names disclosed because
7 disclosing their identities to these men would pose an unmanageable
8 level of risk. But their stories are still before you and we ask you
9 to consider them.
10 There was discussion in the closing statements, and I point to
11 page 3626 in particular, about the climate of intimidation being 15
12 years old; some sort of historical relic. Where is the modern
13 climate of witness intimidation in the evidence? Look around. This
14 is it. This is what it looks like. This is the modern climate of
15 witness intimidation in Kosovo. This is what the evidence in this
16 case is showing, and these accused are people who have stated an
17 intention to lead that climate. They will threaten. They will
18 retaliate. They will make names public.
19 The Defence wants to make this case about all of those other
20 cases because those cases are complicated. They have elements of
21 vagueness and uncertainty, different answers. This case only has one
22 answer.
23 Thank you.
24 PRESIDING JUDGE SMITH: There are no questions from the Panel.
25 That being the case, we will continue on to the Defence reply.

1 Mr. Rees.
2 MR. REES: Your Honour, we, of course, have made full
3 submissions at some length now both orally and in writing, and I'm
4 very conscious that under Rule 135(4) the right that I have at this
5 stage is not to respond but only to comment on the response that
6 we've just heard from the Specialist Prosecutor.
7 So I won't repeat submissions I've already made, nor will I
8 address the challenges that Mr. Halling says the SPO have laid down,
9 and we've already responded to, and, as Mr. Halling says, the SPO has
10 made their position clear also. We've reached the stage where we ask
11 the Trial Panel now to resolve the disputes that lie between the
12 Specialist Prosecutor and the Defence and which, as Mr. Halling says,
13 have been litigated now at some length and some degree of detail.
14 Commenting on the response then, the Specialist Prosecutor
15 again, we submit, rolls up, summarises, dresses up the evidence with
16 zealous rhetorical flourish, referring this morning, as another
17 example, to falling like ripe fruit. But we ask the Trial Panel to
18 look at the evidence itself, to carry out a sober and detailed
19 analysis of the admissible evidence.
20 Mr. Halling says that there was a mistake made about the
21 reliance or otherwise placed on the SPO of anonymous third party
22 complaint, the SPO claiming to rely now on the truth of the contents
23 of those stories. Well, that was a mistake that was addressed, Your
24 Honours may recall, when Judge Smith asked me not to make a habit of
25 being right about something and acknowledged that I was right that,

1 of course, those accounts were not to be admitted to establish the
2 truth of the matters asserted in them, recognising the fact that they
3 were not accepted, they are not accepted as true accounts, and the
4 Defence have had no ability to cross-examine the persons making those
5 complaints. They have not been called. The SPO has chosen not to
6 call them, if they exist.
7 So we ask the Panel to set aside those passionate pleas that are
8 made with rhetorical flourishes and looking passionately and
9 objectively at the admissible evidence.
10 We ask -- we make the same request in relation to the analysis
11 of the indictment and the charges set out therein. The
12 Specialist Prosecutor has, throughout the trial, taken an approach to
13 the interpretation of the relevant articles in the Kosovo criminal
14 code, which is the widest possible approach, the widest possible
15 interpretation, with six counts and every possible mode of liability
16 relied upon for each of those counts, exhorting the Trial Panel to
17 leave open as many possible options to the SPO as they can properly
18 seek. And obviously we have made submissions in which we reject that
19 petition. We've set out why we say that, in fact, the true scope of
20 those articles is much more narrowly defined than the SPO would have
21 the Trial Panel rule. And we've set out those submissions, both
22 orally and in writing and in detail, and we did so at an earlier
23 stage in the trial, and we did so at the end of the Prosecution
24 cause, and we've done so again. And we ask now for the Trial Panel
25 to resolve those matters.

1 But I make this point in response -- in comment to the response
2 from Mr. Halling. That actually a lot of that is academic in the
3 sense that now, finally - finally - the Specialist Prosecutor appears
4 to nail his colours to the mast, if you will forgive me one
5 rhetorical flourish, because really their case is one of direct
6 intent. And we say, and we've said in relation to the counts in the
7 indictment, where there is a specific intent, where there is -- we
8 say it should be direct intent only, and you should set aside any
9 suggestions from the SPO that alternative, lesser intents suffice.
10 And, indeed, it is their case that the defendants, Mr. Gucati, who I
11 represent, acted with direct intent.
12 And I urge the Trial Panel to take this approach. To hold the
13 SPO to their case. That's consistent, we say, with our submissions
14 on the law. That, in fact, it is, certainly for the intimidation
15 account and retaliation count, they are direct intent only counts.
16 And it is the SPO's case. And they set out to prove their case.
17 They bring these charges. They set out the case that they wish to
18 prove and say they've proved. And if they have proved that beyond
19 reasonable doubt, then a verdict of guilt will follow. And if they
20 haven't proved their case beyond reasonable doubt, then the
21 Trial Panel should acquit.
22 So I urge, both from the analysis of law that we've set out,
23 and, indeed, as a matter of fairness, with the SPO finally - finally
24 - saying our case actually is direct intent, that you should find --
25 you should measure their case, you should test their case on that

1 basis. And if they have not proved beyond reasonable doubt direct
2 intent, you should acquit.
3 I won't repeat myself further or repeat submissions that we've
4 made before. I will simply remind the Trial Panel, if I may, just of
5 the following observations that I did make.
6 The success or failure of a criminal trial, this criminal trial,
7 is not to be measured by whether it returns guilty or not guilty
8 verdicts. It's on its capacity to be fair to the accused, to afford
9 respect and dignity to all participants, and the arguments advanced,
10 it's the ability to judge the evidence, whether called by the
11 Prosecution or Defence, by the same fair standards, and whether it
12 delivers fair, independent, impartial verdicts based only on the
13 evidence, setting aside emotion and passion and an objective analysis
14 of the law.
15 And on behalf of Mr. Gucati, I ask the Trial Panel returns fair,
16 true, and just verdicts, based on that dispassionate analysis of the
17 evidence and the law. And for the reasons we've set out, both orally
18 and in writing, we say those should be verdicts of acquittal.
19 Unless I can assist with any further any questions, Your
20 Honours.
21 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.
22 Mr. Cadman.
23 MR. CADMAN: Thank you, Your Honour.
24 As with Mr. Rees, I'm not going to make what would amount to
25 another closing speech. We've heard from Mr. Halling, once again,

1 with another passionate speech, setting their case high, as one would
2 expect. Certainly Your Honours will be mindful of what we said
3 yesterday, that it is the Prosecution that brings this case, and it
4 is the Prosecution that must prove its case beyond reasonable doubt.
5 And as we had said yesterday, we expect and we know that Your
6 Honours will look at the evidence in its entirety and fairly and
7 justly.
8 This case is not about rhetoric and big picture. It is about
9 detail and careful analysis. We have heard again from the SPO as to
10 why certain statements prove elements of the offence on intent. We
11 maintain that they do not and that there is nothing to see when
12 matters are looked at closely.
13 The analysis of the Trial Panel needs to be careful and
14 critical. Making names public, spies, collaborators, we've been
15 through this before, we've heard from Mr. Haradinaj. I can refer
16 you, once again, to the transcript, 2811, lines 10 to 20, where
17 Mr. Haradinaj explains in detail as to what he means and what he
18 means when he refers to "those that form the Milosevic genocidal
19 regime."
20 Paragraph 179 of its final trial brief, when the full context is
21 read, you will see the discussion arises in the context of a
22 discussion on whether the SPO was falling into disrepute, and the
23 quote relates to collapse for lack of evidence.
24 Paragraph 210 and footnote 621. It does not show his own
25 personal views, as the SPO allege, nor does it show any intent, as

1 this is, in any event, from an unsworn statement. A statement that
2 was not in evidence.
3 Overall, Mr. Halling tried to bring us back to the climate of
4 fear and almost an attempt to get a job done. The whole point of
5 this case is that we say it has been disclosure in the public
6 interest, well motivated and proper action to prevent injustice. We
7 maintain that the public interest works.
8 You will recall that yesterday I said, and I'll repeat it again
9 today, that, as counsel, it's my job in my client's interest to get
10 at the truth; but it is also his determined objective that we should
11 get at the truth about the stench of rot that he sees coming from the
12 SPO.
13 There is something rotten. But unlike Hamlet, it is neither
14 theoretical, theatrical, or taking place in Denmark. It is much
15 closer to home. That's why Mr. Haradinaj took the steps that he took
16 in the first place, to expose what he considered to have been a
17 penetration. He is a whistleblower. But in doing its job of
18 uncovering the truth of this case, we ask that the Court, the
19 Trial Panel, should be guided by public interest in the broadest
20 sense.
21 Whilst the Prosecution seeks to hide the truth about this
22 penetration, it is the job of the Defence and, ultimately, the Court
23 in its judgement, to blow the whistle. This case has been marred by
24 what we haven't seen and what we cannot question. We have been
25 prevented from naming in court publicly names of those who my client

1 believes were involved in the commission of crimes in Kosovo in the
2 numerous massacres that we've heard.
3 We've not seen the documents. And we said yesterday that a
4 central part of this case is the wholly inadequate chain of custody
5 for which Mr. Halling and the rest of the SPO have provided no
6 adequate response. Again, Your Honours, where there is doubt, where
7 there are statements that are unsupported by the evidence, it is your
8 duty to accept or reject them, whether they are presented by the
9 Prosecution or the Defence.
10 There is a grave responsibility on Your Honours in this case, as
11 I said at the outset of my closing yesterday. This is the first case
12 in which judgement will be reached before this Specialist Chambers.
13 That is a grave responsibility. For the people of Kosovo, I only ask
14 that you review the evidence dispassionately, fairly, justly, and
15 return a verdict of acquittal to each and every one of the counts.
16 Nothing further I could say has not already been said in the written
17 or oral submissions, so I will merely stop there.
18 Thank you again, Your Honours.
19 PRESIDING JUDGE SMITH: Thank you, Mr. Cadman.
20 It appears we will be ready for SPO submissions, and I think you
21 wanted a break to go get Mr. Smith. So we'll take a ten-minute break
22 and pick up at that point and start with the SPO submissions on
23 sentencing.
24 --- Recess taken at 10.16 a.m.
25 --- On resuming at 10.27 a.m.

1 PRESIDING JUDGE SMITH: A few inquiries, since we've been moving
2 along fairly quickly.
3 Can you give us an estimate, Mr. Pace, of the time to be taken
4 in your submission? Or Mr. Smith? Either one.
5 MR. PACE: Thank you, Your Honour.
6 Mr. Smith will address the Court first, and his submissions
7 should last around 20 to 25 minutes, after which I will be making my
8 submissions, which I estimate to be in the region of 45 minutes.
9 In terms of scheduling, if we were to perhaps break after
10 Mr. Smith at 11.00, I could resume mine after. Or as Your Honour
11 prefers.
12 PRESIDING JUDGE SMITH: Yes, I'm thinking of the translators.
13 That might be a bit much. So we will probably go up to 11.00 and
14 then -- unless -- we'll finish with Mr. Smith, and then we'll break,
15 and then you can come back and do your submission immediately
16 afterwards.
17 And the other thing is we would then move to your submissions on
18 sentencing. And I guess the most important question is how long will
19 that take? And whether or not your clients would be ready to make
20 their final statement today as well.
21 MR. REES: I think I can make my submissions in approximately 20
22 minutes. Mr. Gucati would be ready to make his statement today as
23 well.
24 PRESIDING JUDGE SMITH: Good.
25 Mr. Cadman.

1 MR. CADMAN: I would estimate around the same, 15, 20 minutes on
2 submissions. And Mr. Haradinaj is ready to make his statement as
3 well.
4 PRESIDING JUDGE SMITH: Excellent. All right. We will proceed
5 under those terms.
6 MR. CADMAN: Your Honour, just one matter. We haven't filed yet
7 the statement of means of Mr. Haradinaj. That is ready to be served.
8 I appreciate that is late, but we can serve it during the break.
9 PRESIDING JUDGE SMITH: [Microphone not activated].
10 Mr. Smith, you have the floor.
11 MR. SMITH: Thank you, Your Honour. Good morning, counsel.
12 As Specialist Prosecutor, I am pleased to have the privilege of
13 addressing you today as we conclude the first trial of this Court. I
14 am before you today personally, because my office has asked this
15 Court to impose significant sentences for the accused in this case.
16 The recommendations we've made for sentence were not made lightly and
17 it was arrived at with significant deliberation. In the course of
18 this trial, we provided you with evidence that amply justifies these
19 sentences, and today I will employ my time with you to argue that the
20 recommended sentence is both necessary and just.
21 Having practiced as a lawyer for over a quarter century and
22 having participated in litigation of literally thousands of cases, I
23 must start by emphasising how unique and rare the case before this
24 Court truly is. How rare is it to have a case where the accused
25 essentially committed the crime on videotape, leaving no question

1 about their malicious intent or their criminal purpose. How rarer
2 still is it for not one but both of the accused to exhibit absolutely
3 no remorse for their actions or the consequences of their actions.
4 MR. REES: Your Honour, I do apologise for interrupting. But we
5 are, of course, at the position where the Trial Panel has made no
6 findings of fact. And whether there's been an offence committed or
7 not remains to be determined. We say that the Prosecution haven't
8 proved beyond reasonable doubt that any offence has been committed.
9 So perhaps Mr. Smith could acknowledge that before he approaches
10 the Trial Panel by making references to videotape evidence and what
11 that amounts to. This is not the opportunity for a further
12 Prosecution speech in closing on the evidence.
13 PRESIDING JUDGE SMITH: You can make your responses when he is
14 finished. This is final arguments.
15 Go ahead, Mr. Smith.
16 MR. SMITH: Thank you, Your Honour.
17 And to be clear, Your Honour, it's the Prosecution's position
18 that this case is proven well beyond any reasonable doubt for each of
19 the counts, and that the evidence I referred to is relevant not only
20 to the guilt of the accused, which has been established, but now to
21 the question before this Court, which is what is the appropriate
22 sentence in this case.
23 As I said, these accused are unique in that they have not only
24 exhibited no remorse. They've gone further and vowed, in as many
25 ways as possible, to commit this crime, or one like it in the future

1 if given the opportunity.
2 If that were not enough, it is the rarest of cases in any
3 jurisdiction to have before you two individuals who are so
4 fanatically committed to their criminal path that they have stated,
5 with utter clarity, that it will require a significant sentence of
6 incarceration if we are to have any hope of deterring them from their
7 campaign to destroy this Court.
8 Perhaps the aspect of this case that makes it most unique is the
9 object of the accused's criminal scheme. It was not a particular
10 witness or a particular case but an entire institution of justice.
11 This institution of justice. The accused did not seek to block the
12 path for a crime victim but for all crime victims under the mandate
13 of this Court.
14 Together, these are facts unlike any I've seen in 27 years of
15 practicing law. The aim of the accused's conduct in the commitment
16 to continue to employ criminal means to meet their goal of causing
17 the total collapse of this Court, Your Honours, these must be driving
18 considerations in reaching the appropriate sentence in this case.
19 A principal focus in determining the appropriate sentences must
20 be the gravity of this crime, an assessment of the scope of what the
21 accused sought to take away from so many victims who are looking to
22 this Court for justice. The accused didn't simply seek to undermine
23 a criminal prosecution or a particular witness coming to court. They
24 sought to destroy a court, an institution of justice created by the
25 will of the Kosovo people and for the benefit of victims throughout

1 Kosovo and beyond. That was the openly stated aim of the accused,
2 and the repeated and defiant conduct was directed at that goal.
3 Justice cannot prevail if witnesses do not feel safe. We know
4 that. The accused know that. They sought to instill fear in the
5 victims and witnesses of this Court so they would stop cooperating
6 with this Court, so they would not be comfortable providing their
7 evidence to this Court, with the goal of bringing down this
8 institution.
9 Let's make no mistake about that point. The accused acted with
10 the intent to shut this Court down, and they did so - they did so -
11 because they are vehemently opposed to any former KLA member being
12 held account for any crime they committed and, thus, the accused, the
13 accused will go to any length to deny justice, not to just one victim
14 or a handful of victims but to an entire witness population.
15 In researching the Kosovo statutes applicable to this case, it's
16 clear there's no precedent for a case like this in Kosovo; a
17 sustained effort to take down an institution of justice. Similarly,
18 a survey of other international tribunals has turned up no similarly
19 broad, brazen, and craven attempt to deny access to justice for so
20 many.
21 To appreciate the aim of the accused in this case, we need only
22 to listen to the words of Mr. Haradinaj, a man who called the
23 witnesses of this Court criminals, bloodsuckers, spies, who stated
24 his intention was that the Court will "totally collapse because the
25 witnesses, too, know now that others know who they are," who stated

1 without caveat that "We will be against this Court as long as we
2 live, as long as we can breathe. Full stop." "We will work against
3 this Court. Full stop."
4 For his part, Mr. Gucati has repeated this stance against the
5 Court in equally clear terms and has endorsed the statements of
6 Mr. Haradinaj at every turn.
7 Where the intent of the accused is so clear and so starkly
8 criminal and the scope of their ambitions and so broad, it puts the
9 protection of the rule of law in the hands of this Court. For the
10 rule of law to function in the real world, when confronted with
11 conduct like the accused, coupled with the promise to commit more
12 crimes in the future, this Court must act with clarity to show that
13 such conduct cannot and will not be tolerated.
14 In this context, showing that such acts will not be tolerated
15 means not just a finding of guilt and not just a condemnation of the
16 conduct but a significant sentence that addresses both the scope of
17 the conduct charged and the need to deter the accused and their
18 associates from doing this again.
19 Mere days before their arrest, Mr. Gucati said he would not have
20 any regrets about publishing these documents if he were imprisoned
21 for five years.
22 Mr. Haradinaj stated at that time he would feel proud to be
23 arrested for his actions. When attending one of the press
24 conferences and someone stated that publicising these documents is
25 prohibited by law and carries a sentence of ten years, Mr. Haradinaj

1 responded:
2 "You think you will scare me with ten years? Even if you
3 sentence me to 300 years, I will still disclose them. I am speaking
4 on my behalf and on the behalf of the whole presidium. We are ready
5 to face 300 years. We are ready to die."
6 "We are ready to die." The accused could not be more clear
7 about the depth of their animus towards this Court and the lengths
8 they are willing to go to achieve their criminal aim, criminal goals.
9 When the opportunity at trial to express remorse for their
10 actions was given to them, the accused pointedly declined to do so.
11 Instead, they made clear they will continue to commit crimes to harm
12 this institution with no regard whatsoever for the pain and the
13 suffering it will cause victims and witnesses, or the damage, the
14 permanent damage it will do to rule of law in Kosovo. Their actions
15 and their words have made it clear there is no limit to what they are
16 willing to do to stop this Court.
17 In the instant case, the plan was to publish and disseminate
18 witness identities and to do so to terrorise those people with the
19 goal of causing this Court to cease to function. In the instant
20 case, nobody died, nobody lost his or her life because of the
21 accused's conduct. But given the actions of the accused, given the
22 climate of witness intimidation in Kosovo, the result could have been
23 very easily and very foreseeably different.
24 Think about all the people who could have been hurt; seriously,
25 physically, and permanently hurt. We need to ponder that for a

1 moment. And the fact that nobody was seriously injured or killed in
2 this case had nothing to do with any real effort by the accused to
3 limit or mitigate the damage they sought. They have pointedly told
4 the world that that is not their problem. Their problem is this
5 Court. And if people have to get hurt for it to end, so be it.
6 In the future, if the accused have another opportunity to
7 further their goals of bringing down this Court, we should be
8 prepared for more serious consequences. More intimidation of
9 witnesses, more retaliation against witnesses, threats, acts of
10 physical violence. This time the SPO was able to act quickly, and
11 many media houses admirably refused to cooperate with this scheme.
12 But make no mistake, the next time the outcome could be very
13 different.
14 Absolutely nothing - nothing - in the words or action of the
15 accused betray any red line that they would not cross if they
16 believed it would serve their goal of silencing witnesses and ending
17 this Court. If a witness had been physically harmed or killed as a
18 result of their conduct in this case, is there anything in the record
19 of this case that would indicate they would have stopped, that they
20 would have reconsidered, that they would have felt remorse?
21 To the contrary. While such an outcome was clearly foreseeable,
22 the evidence is the accused had no real misgivings whatsoever about
23 the possibility of physical violence. For them, it merely would have
24 represented collateral damage, necessary to achieving their ultimate
25 goal.

1 We must ask ourselves if, in the future, Mr. Gucati and
2 Mr. Haradinaj, if they were to commit or incite the gravest of crimes
3 in support of their efforts to close this institution, would we be
4 surprised? Would we be shocked? Or would we be forced to say that
5 we had no reason to be surprised, that they did exactly what they
6 promised to do. That what they did was foreseeable and, thus,
7 preventible. The harm they will cause in the future is foreseeable
8 because they have told us. They have told us point-blank that they
9 will do it again.
10 Now, why is the conduct of the accused so dangerous? One of the
11 reasons is because of the climate of witness intimidation that exists
12 in Kosovo. The acts of the accused both seek to exploit and to
13 contribute to this climate. They have nurtured and they have stoked
14 it at every opportunity as you saw during the evidence of this case.
15 Through their crimes, they seek to take advantage of it. To light
16 the fuse and then wait happily for the destruction that follows.
17 The existence of this climate was made crystal clear by one of
18 the Defence's own witnesses, Mr. Robert Reid. Based on his lengthy
19 experience at the ICTY working on KLA cases, he said:
20 [As read] "Witness intimidation in the trials in Kosovo, I've
21 never seen anything like it before. I was a policeman for 20 years,
22 and I've worked here at the ICTY for 23 years and I've never seen
23 intimidation like it. It was really quite frightening."
24 When confront with this statement, the Court, I'm sure recalls,
25 in this courtroom, the witness stated that he did not take a word of

1 it back.
2 Importantly, for the purposes of sentencing, Mr. Reid also
3 explained the exponential effect the climate has when a single
4 witness information becomes public improperly. Quoting Mr. Reid:
5 [As read] "A leak of any information is detrimental to a
6 prosecution's case. The leak of a witness information is doubly
7 detrimental in that it only impacts the potential of your case but it
8 also impacts the psychology of the particular witness. If it's found
9 to be, if the witness community finds out about it, it also impacts
10 other witnesses. So, you know, if ten other witnesses find out about
11 it, that's a huge impact on your case. You don't have just one
12 witness who you've got to be concerned about it, if it's leaked, if
13 it becomes public knowledge, then you've got 10 to, say, 15 to 20
14 witnesses who it impacts."
15 Imagine now the effect when the acts of obstruction were taken
16 not against a single witness but against dozens and dozens of
17 witnesses.
18 Your Honours, the crimes of the accused affected every potential
19 witness in Kosovo, and the accused knew that well.
20 The accused seek to dismisses the words of their own expert by
21 claiming he was talking about something that existed only in the
22 past. Your Honours, that is just really a bit much, when the
23 evidence you have heard in this case tells you the accused literally
24 spend their days doing all they can to maintain and exploit this
25 climate.

1 Nobody, nobody in Kosovo, believes that the targeting,
2 threatening, and intimidation of witnesses willing to provide
3 evidence against former KLA members is a thing of the past. It is
4 well documented, has been part of this case, and continues to this
5 day. To be very frank, it is a climate denied only by those
6 unfamiliar with Kosovo today or those who seek to employ it in their
7 favour.
8 In fact, part of the reason why this Court was created and why
9 it was relocated here in The Hague was this climate of intimidation.
10 It is a reality that it's worked in the past to prevent witnesses
11 from coming to court and saying what they knew about KLA crimes. The
12 accused know this history well, and they hope to use the same
13 strategy here to intimidate witnesses because it had worked in the
14 past.
15 As this institution moves forward, we will need to do so
16 recognising the continuing reality of this climate and the fact that
17 the accused and their criminal associates will continue to employ it
18 at every opportunity. The question for the Court today is how much
19 opportunity will they have.
20 Given their roles in the KLA War Veterans Association and their
21 willingness to use that organisation's resources, membership, and
22 platform to implement and further their criminal schemes, the
23 existence of this climate expands the scope and the likelihood of
24 harm that the accused can and will cause in the future. It makes the
25 accused even more dangerous individuals, given the unwavering intent

1 they possess to destroy this Court.
2 In fashioning the appropriate sentence, this Court should think
3 not just about the two accused but also about the message that will
4 be sent to others, others outside this courtroom whose conduct will
5 undoubtedly be influenced by this Court's decision. The accused are
6 part of a small group of people in Kosovo who are personally devoted
7 to having this Court fail at any cost. While this group grows
8 smaller by the day, as our cases move forward, and the truth of the
9 crimes we've uncovered becomes public, there will always be those,
10 like the accused, who cannot and will not be swayed by facts, who
11 have a personal interest in clinging - clinging - to a false
12 narrative they have engineered and promoted for two decades that no
13 crimes were committed by anybody in the KLA.
14 People like the accused's co-conspirator, Faton Klinaku. They
15 are watching right now, and they're watching to see what sentence
16 these accused will receive so they can make a determination if they
17 want to follow in their footsteps. Like it or not, the sentences in
18 this case will either serve as a deterrent or as an incentive to
19 people like Mr. Klinaku.
20 We know because the accused have told us they will not be
21 deterred in the slightest if they receive a sentence of five years or
22 less. There is no reason to believe their like-minded associates and
23 co-conspirators would have any different view.
24 For these reasons, we are asking not just for a finding of guilt
25 and a finding that the accused's conduct represents a serious threat

1 to this institution. We are not just asking for a finding that the
2 accused lack remorse or a finding that deterrence is a valid and
3 important consideration in this case. No. We are asking you for a
4 sentence that will actually - actually - serve to deter.
5 Mr. Pace will address the cases from other tribunals in his
6 remarks later this morning, but let me just say this about those
7 other cases. In addition to being factually distinguishable from
8 this case, many of those decisions were, in our view, deficient, and
9 they were deficient because they gave lip service to the need to
10 deter. In fact, many made very clear findings about the need to
11 deter but then issued sentences that had no deterrent value
12 whatsoever, despite the fact that obstruction cases and obstruction
13 of these institutions has been a plague on international tribunals.
14 We are asking this Court to do better. We are asking this Court
15 to learn from past tribunals and issue a sentence that actually
16 deters. A sentence that matches findings of fact and findings of law
17 that are inescapable in this case.
18 Now, I've focused on deterrence to this point, both the
19 deterrents of the accused and the deterrents of others, but let me
20 also talk about why this sentence we are asking for, a significant
21 sentence of six years incarceration, is also a just and proportionate
22 sentence for the acts of the accused.
23 The conduct of the accused was extraordinarily grave, dangerous,
24 repeated, and unrepentant. They were repeatedly told to stop and
25 they continued. They were repeatedly warned they were violating the

1 law and that it could have dangerous consequences for victims and
2 witnesses, and they scoffed. Again and again, they encouraged more
3 deliveries of secret information, and each time they got documents
4 they acted as quickly as they could to disseminate them, goading the
5 press to publish them as widely as possible.
6 Through their actions, the accused sought to intimidate and
7 retaliate against witnesses across Kosovo. They tried to stop the
8 work of this Court in its entirety. The accused sought to cause
9 harm, a scope of harm that's as wide as any in any obstruction case
10 in any international tribunal, and for this reason the sentence we've
11 requested is warranted, it is deserved, and it is just.
12 Having said that, I recognise that handing down a significant
13 sentence, like the one we've asked for, is no easy thing, and I have
14 to imagine the Court no more likes to be in the position of imposing
15 a significant period of incarceration on another human being than I
16 like having to be here standing before you asking for such a
17 sentence.
18 The reality is that imposing a sentence in a case like this
19 represents a choice. A significant sentence represents one choice,
20 but not giving a significant sentence also represents a choice. And
21 each choice will send a message to those who seek to obstruct the
22 work of this Court.
23 This Court, the power of it, resides in it being a safe place
24 for witnesses to speak openly about what they suffered through, about
25 the crimes they saw, about the crimes they saw their family members

1 suffer through. The only way it can work as intended is if witnesses
2 feel safe to come here to this building and tell their stories. If
3 provided the opportunity, the accused will stop at nothing to prevent
4 that very thing from happening.
5 I pray that you give that reality the highest consideration in
6 reaching the appropriate sentences in this case.
7 Thank you.
8 PRESIDING JUDGE SMITH: Thank you, Mr. Smith.
9 We'll take a break now, morning break. We'll be back at 11.30.
10 We'll be ready to start at that time.
11 Mr. Pace, you will be up next.
12 --- Recess taken at 10.53 a.m.
13 --- On resuming at 11.30 a.m.
14 PRESIDING JUDGE SMITH: All right, Mr. Pace, you have the floor.
15 MR. PACE: Thank you, Your Honour.
16 I will continue to address a number of issues relevant to
17 sentencing. I will first focus on the manner in which the accused's
18 conduct harmed the victims. I will then turn to the issue of why it
19 is highly relevant for sentencing purposes --
20 THE INTERPRETER: The interpreters note: Could the speaker
21 kindly slow down for the purposes of the interpretation, particularly
22 when they are reading such complex legal ideas.
23 Thank you very much.
24 PRESIDING JUDGE SMITH: [Microphone not activated].
25 MR. PACE: Yes, I will. That was early and noted.

1 I will then turn to the issue of why it is highly relevant for
2 sentencing purposes that the accused undertook a strategy to
3 obstruct, and intended to obstruct, the entire KSC and SPO. Next, I
4 will address the importance of adequate sentencing in contempt cases,
5 and, finally, the appropriateness of the sentence requested.
6 Throughout, I will show why a number of matters raised by the Defence
7 in relation to sentencing should be given little or no weight.
8 I look forward to answering any questions you may have.
9 In the SPO's final trial brief, the accused's participation in
10 the crimes was described as direct, systematic, persistent,
11 deliberate, and enthusiastic. Those are a lot of adjectives,
12 Your Honours. But for the reasons set out in the brief and on the
13 basis of the evidence before you, they are all accurate and all
14 relevant to your considerations on sentence.
15 While we're on the subject of descriptive terms, I'd like to
16 remind you some of the adjectives used by the accused during
17 televised appearances to describe persons who had cooperated or are
18 cooperating with the SPO. These words, traitors, liars, criminals,
19 bloodsuckers, they're not merely harmful to witnesses because they
20 constitute insults, because they might offend the witnesses.
21 When the Panel considers the context in which they were
22 expressed and the accused's intent, it becomes clear that these words
23 can only be described in one way: as intimidating. They were
24 designed to expose witnesses, to marginalise them, to label them.
25 And such labelling is dangerous, Your Honours. It seeks to have

1 witnesses considered as less than, as enemies, as not deserving of
2 their basic rights. And this labelling by the accused is not only an
3 attack and a threat. It legitimises and invites others to target,
4 attack, and threaten witnesses, isolating them in their communities.
5 Significantly, the accused did not pick the labels they used at
6 random. They chose the ones they knew could lead to the
7 ostracisation of witnesses, to shaming, and to attacks on them.
8 In the context of Kosovo, in the aftermath of the conflict
9 there, being called a traitor or a collaborator, being described as
10 someone who assists the Serb cause in any way, it is the most
11 dangerous and harmful thing you can be called. In a country that has
12 been through so much, seeking to portray someone as somehow being
13 against the national cause, against the country's heroes, is a very
14 dangerous game. The consequences of this are entirely foreseeable:
15 further attacks, harassment, and intimidation.
16 The witnesses brave enough to have cooperated with the SPO and
17 KSC did nothing to deserve attacks by the accused. And there were
18 many victims of the accused's crimes, all of whom were particularly
19 vulnerable or defenceless, if not both. Indeed, the evidence before
20 you establishes that the accused disclosed the identities and
21 personal data of hundreds of witnesses to the public. They did this
22 in the same breath as they labelled them traitors, spies, liars,
23 bloodsuckers.
24 On this issue I note that, as the Specialist Prosecutor
25 mentioned earlier today, you heard one of the Defence's own experts,

1 Mr. Robert Reid, explain, in response to a question put by the Panel,
2 that it's not only any particularly mentioned witness that is
3 impacted by actions such as those of the accused, but the witness
4 community more broadly.
5 Witnesses in many courts, perhaps especially one of this nature,
6 are in an unenviable position. Most of us would be lucky enough
7 never to know what it really feels like to be in their shoes. But
8 try to imagine for a moment that you were. Imagine you provided
9 information to the SPO because you wanted justice to be done. That,
10 for good reason, your identity is protected from everyone but the
11 SPO. Your neighbours, who believe the KLA is incapable of having
12 committed a single crime, have no idea about your cooperation. Maybe
13 your family doesn't know about it either. And then suddenly names of
14 witnesses, such as yourself, are being read out on television.
15 They're being plastered across the media. You know your name is
16 likely in those same documents being made available to anyone who
17 wants to look at them. And you know that soon, all those people
18 whose interests differ to yours, who do not want to seek justice, who
19 want this Court to go away, will know who you are. They may even
20 know what you had said to the SPO. Imagine the fear you would feel,
21 that your name would be read out, that you would be confronted. The
22 evidence is that witnesses in this case felt those fears because of
23 the actions of the accused.
24 None of us would wish that on anyone.
25 Turning to certain Defence submissions.

1 The assertion that the accused only made confidential documents
2 available to the professional press is inaccurate and, even if true,
3 irrelevant. The submission that Mr. Haradinaj did not publish any
4 documents and the argument that press conferences were broadcast by
5 professional media only are also irrelevant.
6 In relation to these submissions, I note another of the
7 Defence's expert witnesses, this time Ms. Anna Myers, describing a
8 person's decision to go public with information as the "nuclear
9 option or the option that is the most difficult to manage."
10 And this is an apt analogy because nuclear weapons are
11 devastating, irreversible, and - and this is particularly important -
12 they have long-term effects.
13 The accused's conscious decision to give these documents out
14 during press conferences to anyone who would have them and after
15 begging for them to be taken was what led their contents to be
16 publicly available. This was a calculated move to use the press to
17 maximise distribution, to maximise the damage to this Court and its
18 witnesses. The moment the accused made these items available, the
19 consequences were, indeed, potentially nuclear. Once unleashed into
20 the world, controlling them would be impossible. Additionally, the
21 accused did not merely hand documents over to the press. They
22 described their detail in great content at the three press
23 conferences and at other televised appears. Their intent in giving
24 the documents to the press was to ensure the broadest as possible
25 dissemination.

1 The basis for the Gucati Defence assertion that names mentioned
2 in the press conferences were few in number is unclear. The Panel is
3 seized of evidence in which the accused themselves uttered the names
4 of multiple witnesses. In addition, or alternatively, the accused
5 directly uttered other identifying information.
6 Further, the accused specifically named certain individuals
7 while revealing that the SITF or SPO considered them persons of
8 interest. Unfortunately, these names were not the only ones that the
9 accused made public without authorisation. The accused also uttered
10 the names of various locations in which the SITF or SPO were focusing
11 investigations. Locations in relation to which the SPO was trying to
12 establish whether certain crimes had occurred, whether there were
13 victims whose stories needed to be told. Victims who deserved
14 justice.
15 I hope, Your Honours, that you can fully appreciate the danger
16 of these revelations. They were harmful to witnesses since they
17 created a real risk to the safety and security of persons who were
18 known to have been victims at crimes at these locations.
19 The SPO had never made any of this information on its locations
20 of interest public. Would any prosecution office do so
21 unnecessarily? In a situation when an investigation is ongoing and
22 such revelation could jeopardise it? No.
23 The accused's actions took the SPO's power to choose the
24 appropriate time to reveal such information out of the SPO's hands.
25 The accused's actions forced information into the public sphere

1 prematurely for all with an interest to know about. That was an
2 irreversible, calculated step taken by the accused.
3 In considering all this, it can't be forgotten that even when
4 the accused were not the ones speaking the names and uttering
5 confidential information in televised appearances, the accused are
6 the ones who chose to make such information public by giving it to
7 the press.
8 For a glimpse at the harmful impact of the accused's actions,
9 the Panel may consider, for example, the fact that the names of the
10 locations mentioned by the accused or included in the documents they
11 made available were plastered across articles online for all those to
12 see. I'm here referring, for example, to P121-ET, P121-ET.4, and
13 P155.
14 Not only do such articles list several locations, some also
15 published the names of the victims in relation to each such location
16 and the relevant time-periods of the alleged crimes. This is where
17 the people who cooperated with the SPO could see their names and
18 where they could confirm their worst fears.
19 Considering evidence such as this, of which there is an
20 abundance, it's easy to see how, as a direct consequence of the
21 crimes, witnesses expressed anger, concern and fear, and felt
22 threatened or intimidated, with some requesting not to be contacted
23 again and to even having been relocated.
24 Indeed, Defence assertions that no adverse consequence for any
25 specific investigation or prosecution has been established ignore the

1 evidentiary record and reality. The claim that there is no evidence
2 of threats, intimidation, or reprisals is blind to essentially the
3 entirety of the facts and the evidence in this case.
4 The desperation of witnesses in the wake of, and due to, the
5 crimes committed by the accused is exemplified in the following
6 exchange from Zdenka Pumper's testimony.
7 Witnesses wanted the SPO to act as though they can no longer be
8 traced. That's what the accused's actions led to; a desire to
9 disappear, to be untraceable. And this desire is completely
10 understandable, given what the accused said about such persons, given
11 the means they used to say it - television, social media - and given
12 the knowledge that members of society in Kosovo will have about what
13 has happened to persons who cooperated with authorities in
14 proceedings against the KLA in the past.
15 The fact that despite the accused's best efforts other witnesses
16 have remained unwavering in their commitment to justice, as have the
17 KSC and the SPO, should in no way result in any credit to the
18 accused.
19 Turning to the relevance of the fact that the accused undertook
20 a strategy to obstruct and intended to obstruct the entire KSC and
21 SPO.
22 The accused's conduct was no momentary lapse, no knee-jerk
23 reaction to an allegedly unexpected event. It was a long time in the
24 making. Their conduct built upon their previously failed efforts to
25 stop this Court. This time, clearly crossing the line into the

1 patently criminal.
2 The accused had many options available to them on receipt of the
3 documents at issue. They had choices. The option that they did
4 decide on, following consultation with their peers, was undertaken
5 with full knowledge of what it would and could lead to, of the
6 endless amplification that including the media would result in. They
7 could have chosen another option, but they didn't. And why would
8 they when their goal was to undermine this Court?
9 They made their choice a recurring one, holding press
10 conferences to maximise impact every single time, disseminating the
11 confidential documents received every single time, appearing on
12 television every single time, calling for more leaks, every single
13 time. And all this, despite judicial and prosecutorial warnings.
14 All this until they were arrested. This was a strategy, a campaign.
15 The evidence leaves no doubt about this.
16 The accused also made it crystal clear that they would continue
17 these same actions if given the opportunity.
18 PRESIDING JUDGE SMITH: Mr. Pace, is it your intention to have
19 this in the transcript? Because you'll have to read it aloud if
20 that's the case.
21 MR. PACE: There is no need for that, Your Honour. They've all
22 been used before. I hope by now the Panel is highly familiar with
23 these key pieces of evidence.
24 PRESIDING JUDGE SMITH: Just a reminder, thank you.
25 MR. PACE: Thank you very much.

1 You see here Mr. Gucati stating:
2 [As read] "If we could, we would get rid of this Special Court
3 in five minutes. We will disband the Special Court."
4 These are a few of many assertions by the accused manifesting
5 the intent to obstruct the KSC and SPO as a whole. A review of
6 Exhibits P2, 4, 18, 21, 24, 25, 26, 28, 29, 35. That will show that
7 both accused clearly indicated their intent to commit further crimes
8 of the same nature as those charged, and that includes instances on
9 the 9th, 11th, 16th, 17th, 20th, and 22nd September.
10 The accused also indicated their intent to commit further crimes
11 of the same nature to Your Honours directly during their testimony,
12 as we'll see from the next excerpts. These video excerpts will be
13 with English translation. The interpreters have the equivalent or
14 corresponding Albanian, which they can use for interpretation
15 purposes.
16 [Video-clip played]
17 "Q. Mr. Haradinaj, that doesn't answer my question. I'll ask
18 it again. So you would --
19 "A. No, don't ask the question. If you bring them, I will act
20 the same because I am convinced that I acted rightly and I did it in
21 the interest of informing the public and for the sake of
22 transparency. I think that, I have that conviction, that it was
23 appropriate."
24 [Video-clip played]
25 "Q. ... all over again?

1 "A. I said it earlier as well yesterday and the before. I'm
2 not a guardian of anyone, so of this institution or of the offices
3 here in The Hague. I look after the work for which I'm paid. So
4 please do not provoke me with questions regarding this
5 documentation."
6 These factors, this perseverance and determination by the
7 accused, are highly relevant to Your Honours' determination on
8 sentence. They show the serious nature of the conduct, the objective
9 always being to inflict the maximum possible damage to the KSC and
10 SPO, to force these institutions to cease existence.
11 As professional Judges in a court with a mandate to try crimes,
12 including war crimes and crimes against humanity, you act as
13 guardians of this mandate. The crimes committed by the accused are
14 particularly grave. They threaten everything the KSC and the SPO
15 stand for and have worked towards. They are directly opposed to the
16 fundamental rights of the brave witnesses and victims who have
17 cooperated with our institutions. They threaten the mandate that you
18 guard.
19 The fact that any court has to deal with matters of contempt is
20 by no means novel. Issues of contempt of court have come up time and
21 time again before several other international courts. The
22 punishments in such cases in the past have not even remotely
23 succeeded in deterring further obstructions. Contempt cases, as we
24 all know, are unfortunately a recurring feature at other courts, and
25 we have our first one here today, even before a single judgement on a

1 charge of war crimes or crimes against humanity has been pronounced
2 by this very Court.
3 We need to rethink how we approach obstruction cases, to treat
4 them with the severity they deserve, reflecting the severe
5 consequences the obstructive conduct may have on cases concerning war
6 crimes and crimes against humanity, those cases that the obstructive
7 conduct seeks to destroy. Holding individuals to account for
8 obstruction cannot be seen as just a necessary evil a court such as
9 this has to deal with. If the Court is to succeed in achieving its
10 mandate, obstruction cases must be seen as vital to the Court's
11 mission.
12 We talk a lot at this Court about the importance of victims and
13 witnesses, and rightly so, but this cannot just be lip service. This
14 case is about victims and witnesses, about protecting their
15 interests. They are central figures who deserve the attacks against
16 them to be adequately punished. As the Specialist Prosecutor said
17 earlier, the need for deterrence is important and it's especially
18 acute in contempt cases.
19 The only ingredient necessary for crimes of a similar nature to
20 those we are dealing with today to be committed again is the will of
21 an individual to obstruct, and the accused's actions and their words,
22 their testimony even in this case, leave no doubt about the fact that
23 such will is ongoing. The accused remained unremorseful even during
24 their testimony.
25 [Video-clip played]

1 "Q. Do you have any remorse or regret for the actions you stand
2 trial for?
3 "A. I have never had a chance to regret in the 54 years of my
4 life, 30 years of work, and so on and so forth. Where I make a
5 mistake, I apologise. There is no need for me to apologise for
6 anything. I did not steal these documents and take them to the WVA
7 headquarters. If I'd done that, I would apologise for that burglary.
8 I have not committed any burglary. I have not offended anyone. I
9 haven't insulted any witness or anyone else, so there is absolutely
10 no reason for me to apologise because I have not caused harm to
11 anyone."
12 [Video-clip played]
13 "Q. Mr. Haradinaj, do you have any remorse for what you did
14 with the documents delivered to the KLA War Veterans Association?
15 "A. About the thing that I accepted that I did, I do not feel
16 any remorse. I accept what I've done because I think it's in the
17 interest of transparency and public interest. So I only fulfilled an
18 obligation that I had -- I felt I had to fulfil, and that was taking
19 those documents and moving them from here to there.
20 "And I don't feel remorse or regret about the words I said to
21 the people who tried to confuse me or trick me, because I've not done
22 anything. And I am fully convinced -- I was fully convinced that it
23 was in the public interest and for the sake of transparency. And
24 that's why I did it. And I thought it was my duty, not only my duty
25 as a citizen but the duty of every citizen to promote free speech."

1 MR. PACE: No regrets, no remorse.
2 Further, the accused have already told anyone who would listen
3 that the prospect of imprisonment would not deter them from
4 undertaking criminal actions in the future.
5 [Video-clip played]
6 THE INTERPRETER: [voiceover] "If I was working in the media, you
7 would see if I dared or not. You think you would scare me with 10
8 years? Even if you sentence me to 300 years, I will not [as
9 interpreted] disclose them."
10 [Video-clip played] [No interpretation]
11 MR. PACE: Here we saw the accused, as always, echoing each
12 other. And it is not merely the real risk of the accused committing,
13 once again, the very same crimes that they have already committed
14 that this Panel and those who support this institution should be
15 deeply concerned about.
16 The accused's intent, as established both during the temporal
17 scope of the charges and during their own testimony, makes it clear
18 they'll do whatever it takes to put a halt to this Court's work. If
19 the accused cannot get their hands on further confidential documents,
20 they will find some other way to obstruct the SPO and KSC.
21 Mr. Gucati made this clear when, for example, in response to a
22 question by the Panel, he stated:
23 "I am against this Court and I remain against it."
24 When he stated it is his responsibility to undermine the Court.
25 And when he made no qualms about the fact that, given the

1 opportunity, he and others would disband the KSC.
2 Similarly, Mr. Haradinaj asserted he will not follow the orders
3 of the Court or recognise it, and it was his and others' duty to work
4 against the Court. He said the KSC should pay its price, that he and
5 others in the KLA War Veterans Association "will be against this
6 Court as long as we live, as long as we can breathe" and that "we
7 will work against this Court. Full stop."
8 Mr. Haradinaj said that unless this Court somehow began to
9 function on his terms, he would be the SPO's opponent forever.
10 And, Your Honours, it's not just the accused who you and all
11 those interested in the pursuit of justice should be concerned about.
12 You've heard evidence primarily from the accused themselves and other
13 Defence witnesses that the KLA War Veterans Association is an
14 organised, hierarchal organisation spread out across Kosovo and
15 counting over 10.000 members.
16 You've also heard, in evidence, how the decision leading to the
17 commission of the charged crimes in this case were not only made by
18 the accused but by several other high-ranking KLA War Veterans
19 Association members. And the evidence in this case establishes that
20 such other members or persons affiliated therewith share the same
21 objectives as the accused when it comes to this institution.
22 You heard Mr. Haradinaj saying as much.
23 "God willing, he will bring us more. It does not mean that it
24 has to be only me, Mr. Gucati, Mr. Faton Klinaku who will do it ...
25 even the lowest ranked KLA member here will carry out that task."

1 You also heard one such other KLA War Veterans Association
2 member himself unashamedly express his views on the disclosure of
3 confidential documents in this very courtroom. He remains happy to
4 this day that statements of protected witnesses had been made public.
5 This intent, this support for the accused's crimes, coupled with
6 other factors, such as the specific timing of the offences and the
7 nature and extent of the information made public, are all reasons for
8 Your Honours to dismiss Defence calls to consider sentences in other
9 cases as relevant to your determination of the sentence in this case.
10 I'm here referring to the Gucati Defence assertion that
11 Mr. Gucati will have been in detention for 18 months and that no
12 sentence of that length has been imposed in any previous comparable
13 domestic or international case. I'm also referring to the Haradinaj
14 Defence submission that it's important to pay regard to comparable
15 international practice in imposing sentence.
16 THE INTERPRETER: The interpreters kindly ask the speaker to
17 slow down when reading. Thank you very much.
18 MR. PACE: There is no comparable case to the one we are engaged
19 in today.
20 Jurisprudence from other courts and tribunals makes it clear
21 that the totality principle requires an individualised assessment of
22 the particular circumstances. And this means that any attempt to
23 compare an accused's case with others is of limited, if any,
24 assistance. This is because differences in, for example, the number,
25 the type, and the gravity of the crimes committed, the personal

1 circumstances of the convicted person, the presence of any mitigating
2 or aggravating circumstances dictate different results in different
3 cases.
4 In particular, the cases cited by the Haradinaj Defence in
5 filing F00570 cannot be considered comparable to the case against the
6 accused. The number of witnesses whose identity was disclosed in
7 those cases cannot compare to that in this case. In Marijacic and
8 Rebic and in Jovic, the unauthorised disclosure concerned one witness
9 in each of those two cases. In Al Khayat, it was three. And in
10 Al Amin, it was 32. Not 50 witnesses, Your Honours. Not 75. Not
11 100. Not even the 150 witnesses which, in this case, is the
12 approximate number of witnesses referred to in Batch 3 alone.
13 The nature of the information made public was also different in
14 those cases. None of them included unauthorised disclosure of an
15 internal document analysing evidence and applicable law in relation
16 to persons of interest and identifying information in relation to a
17 large amount of witnesses.
18 The persons convicted in these cited cases did not assert
19 publicly and repeatedly that they would undertake the crimes they
20 were convicted of again. These factors more than suffice to show
21 that Your Honours not only need not, but should not, seek to compare
22 any sentence you have in mind for the accused with those in the other
23 cases referred to by the Defence.
24 And, Your Honours, this point is even made in one of the very
25 cases cited by the Haradinaj Defence, and I'm here referring to the

1 Al Khayat reasons for sentencing judgement at the STL. And at
2 paragraph 22 of that judgement, the Single Judge states:
3 "Finally, I note that the case law of other international
4 tribunals cited by the parties concerns cases that, quite clearly,
5 are factually very different from this case. As a result, in
6 determining the sentence to be imposed on Ms. Khayat in this case, I
7 cannot be guided by the penalties imposed in those cases."
8 Several other Defence submissions on sentencing should be
9 dismissed. Not a single submission is able to detract from the
10 appropriateness of the sentence requested by the Specialist
11 Prosecutor. And that is because the requested sentence would
12 adequately reflect the gravity of the crimes, the accused's specific
13 conduct, recognise the multiple aggravating factor, and, hopefully,
14 serve to deter the accused and others from future commission of
15 crimes of the same or similar nature.
16 Many of the Defence submissions focus on what the accused have
17 not been charged with. These attempts to distract from the grave
18 nature of the accused's crimes and conduct should be dismissed.
19 The Panel has wide discretion as to the weight to be accorded to
20 any mitigating factor it considers. The factors raised by the
21 Defence should be given little or no weight. Even if the Panel were
22 to find that there are certain mitigating circumstances, this would
23 not automatically entitle the accused to a credit in the
24 determination of their sentence; rather, it simply requires the Panel
25 to consider such mitigating circumstance in its final determination.

1 Contrary to Defence assertions, it is irrelevant that the
2 accused may have no had involvement in obtaining, from the SPO or
3 elsewhere, the documents they made available to the public. It's
4 also irrelevant the accused are not charged with stealing such
5 documents. These are extraneous considerations. The accused should
6 be sentenced on the basis of the relevant charges and related
7 factors, not on the basis of anything they may not have done or have
8 not been charged with.
9 The Defence asserts the accused did not use or threaten violence
10 and that there's no evidence of physical harm suffered as a result of
11 the accused's actions. We all know that violence, or the direct
12 threat of violence, or even the inflicting of physical harm, has not
13 been charged. That does not mean that the accused are entitled to
14 any form of discount in sentence. Further, while the accused may not
15 have undertaken acts of violence, or even directly threatened it,
16 they certainly incited people and the public at large to a point
17 where such acts could have been expected.
18 In relation to ill-health, we say only that this should be
19 considered mitigation only in exceptional or rare cases.
20 And as to the Gucati argument that account should be taken of
21 the detention conditions in the context of a global pandemic, this
22 should have no influence on a sentence to be imposed. The Registry
23 has ensured full respect of the accused's rights while detained.
24 There is no reason to doubt the Registry will continue to ensure this
25 is the case, no matter where the accused may be incarcerated upon

1 conviction. Arguments to the contrary should be dismissed as
2 entirely speculative.
3 The Haradinaj Defence argues that the fact that the accused has
4 asserted he was acting in the public interest should be taken into
5 account. Yes, they have asserted that; but no, Your Honours, that
6 should in no way factor into your assessment.
7 Mr. Haradinaj's actions, and Mr. Gucati's for that matter,
8 demonstrate the contrary. The evidence shows they did not undertake
9 their actions because of any public interest. They committed the
10 crimes because they wanted to obstruct the work of this Court, to
11 intimidate and retaliate against witnesses. That is not in the
12 public interest. Calling witnesses liars, spies, traitors is not in
13 the public interest. Seeking to ensure justice will not be served is
14 not in the public interest.
15 Arguments of this nature, asserting that weight should be given
16 to claims an accused's conduct was motivated by a desire to pursue
17 the truth or any particular moral or social value have rightly been
18 rejected at other courts. The main reason for such rejection is that
19 it is immaterial when one considers that the means chosen by those
20 accused amounted to crimes.
21 The Defence submissions that the accused are allegedly of good
22 character are of limited relevance. While good character may be an
23 indicator of a lower risk of recidivism in some cases, it cannot be
24 said to apply in this case. This case, where the accused are
25 resolute in their intention to commit further offences.

1 This is not a case where the Panel only heard about the conduct
2 of the accused through witnesses or even through the testimony of the
3 accused themselves. In this case, the vast majority of the relevant
4 criminal actions by the accused are caught on tape. Tape which is in
5 evidence and on which Your Honours are able to see the character of
6 the accused in the relevant context in full, uncensored, unbiased
7 display.
8 Any indication of good character would in no way detract from
9 the actions the accused stand trial for. Assertions of good
10 character, where it matters, are wholly incompatible with, for
11 example, the accused calling witnesses liars, spies, traitors,
12 criminals on television.
13 Another Defence submission which Your Honours should reject is
14 that in which the Gucati Defence argues the Panel may suspend any
15 sentence of imprisonment on the accused, relying on certain
16 provisions of the KCC. And the reason for this is that those KCC
17 provisions do not apply before this Court. This is clear when one
18 considers Article 3(2)(c) and Article 3(4) of the law governing this
19 Court.
20 Article 44(4) of the law states that:
21 "The punishment imposed on persons adjudged guilty of crimes
22 under Article 15(2)," those crimes we're dealing with here today,
23 "shall be in line with the punishments for those crimes" set out in
24 the Kosovo criminal code.
25 This refers to the sentencing ranges provided for in relation to

1 crimes such as those by the accused, which ranges are contained in
2 provisions expressly incorporated in the law.
3 Should the Panel deem, for whatever reason, that it does have
4 the power to suspend a sentence on the accused by virtue of the 2019
5 KCC, then our submission is that on that code's own terms, no such
6 suspension may be imposed in the present case. And that is because
7 of our Article 47 of the KCC, which reads as follows:
8 "The purpose of a suspended sentence is to not impose a
9 punishment for a criminal offence that is not severe when a reprimand
10 with the threat of punishment is sufficient to prevent the
11 perpetrator from committing a criminal offence."
12 The evidence before you, and the nature of the crimes, show that
13 this cannot be said to apply in relation to the accused.
14 Another Defence submission Your Honours should dismiss is the
15 argument that a fine may be appropriate in the circumstances of this
16 case. We address this in paragraphs 418 to 422 of our brief, where
17 we provide the numerous reasons why, to the contrary, the sentences
18 imposed should be primarily custodial. I won't repeat those
19 submissions, other than to reiterate that the Panel should not set a
20 monetary value on the commission of crimes such as those committed by
21 the accused, especially when several persons would be willing and
22 able to incur any such financial cost in order to obstruct the work
23 of this institution in the future.
24 The only appropriate sentence is a custodial one. The
25 Specialist Prosecutor's requested sentence is fully warranted,

1 proportionate, and necessary in this case.
2 To conclude, we, as institutions, we ask a lot of our witnesses.
3 We ask them to harken back to the darkest times of their lives and
4 tell us in detail what happened, how it made them feel, who they
5 lost, how, and why. We ask them to leave their familiar
6 surroundings, put their lives on hold, and appear in a courtroom
7 where every assertion will be analysed and often questioned and
8 dissected. We ask them to wait patiently while the justice they have
9 been looking forward to for several years is served. We cannot ask
10 more of them. We cannot ask them to ignore threats to their lives,
11 to ignore threats to the lives of their loved ones. We cannot ask
12 them to tolerate public calls intended to intimidate them, to turn a
13 blind eye to the fact that two men with thousands of followers are
14 sending them a message to be silent.
15 Your Honours have the power to make sure that more than what is
16 absolutely necessary to see justice through is not asked of these
17 witnesses. And, Your Honours, you can do that by imposing the
18 sentence requested by the SPO, which sentence is fully warranted in
19 the specific circumstances of this case.
20 Thank you.
21 PRESIDING JUDGE SMITH: Judge Mettraux has a question for you,
22 Mr. Pace.
23 JUDGE METTRAUX: Thank you, Judge Smith.
24 Mr. Pace, I have one question for you, and it's a question that
25 goes to a rare point of convergence between you and the Defence, so I

1 can't afford to miss that chance.
2 In your written and oral submissions, you've made reference to a
3 number of cases from international or internationalised tribunals -
4 the ICTY, the ICC, and others - both in relation to the test of
5 cumulative conviction and in relation to the factors of relevance to
6 sentencing.
7 Now, what I want to ask you is: The basis on which you say this
8 Panel would be permitted to apply these authorities or precedents in
9 this particular jurisdiction, are you saying there's a direct legal
10 basis that enables us to do so? Are you saying they reflect general
11 principles of sentencing or cumulative conviction? Or are you saying
12 that this is a non-binding guidance that would be relevant, perhaps,
13 to our discretion?
14 I would be grateful. And I will ask the same question of
15 Mr. Rees when I get a chance.
16 MR. PACE: Thank you, Your Honour.
17 With certainty, it's the latter of the options Your Honour
18 enunciated, which is by way of non-binding guidance. To be clear,
19 the convergence is limited between ourselves and the Defence.
20 We agree you can consider jurisprudence in relation to general
21 principles. But for the reasons I touched upon in my oral and in our
22 written submissions, when it comes to comparing the sentences
23 imposed, that is not going to be of any guidance to Your Honours.
24 JUDGE METTRAUX: Well, at least you converged on a point of law,
25 Mr. Pace. I am grateful.

1 PRESIDING JUDGE SMITH: All right. We will now move to the
2 Defence submissions on sentencing. The Panel asks the Defence, as
3 for all such comments, not to repeat unnecessarily any submissions
4 made in the final trial brief or, in Mr. Cadman's case, in filing
5 F570.
6 Mr. Rees, the floor is yours.
7 MR. REES: Quite right, Your Honour. I will not repeat the
8 submissions we've made at length as to why we say there was no
9 threat, submissions as to intent, submissions as to serious threat,
10 submissions as to harm and consequences. We've made those
11 submissions. And in doing so, we responded to the highly selective
12 approach of the SPO picking out and isolating remarks from Mr. Gucati
13 and inviting Your Honours to look at them in isolation, and we did
14 that by taking Your Honours, we hope, through some of the evidence
15 simply to place that selective approach into some context.
16 And I repeat what I urged previously, and I know the Trial Panel
17 will: Look at all the evidence in the round, in totality, in its
18 context, and make the findings that are required by the indictment.
19 It is your view of the evidence that counts and your view alone.
20 Not that of the Specialist Prosecutor. And I repeat the request that
21 I made previously, both in writing and orally, that the approach that
22 should be taken at this stage is for the Trial Panel to retire to
23 deliberate on the counts, reach judgement, and then allow us to make
24 submissions on your findings of the evidence. Your findings as to
25 issues of threat, intent, harm, consequences, rather than on the

1 SPO's view. And I do repeat that, given that this is a case not
2 involving a single count or, indeed, even a straightforward case. A
3 case involving six counts with multiple different factual outcomes
4 that Your Honour could arrive to. That is our request, but I will
5 continue, nevertheless, to do what I can to assist in the
6 circumstances in the absence of those factual findings.
7 As I say, I won't repeat what I've said on Tuesday or Wednesday,
8 nor will I discuss or treat Your Honours to my own personal
9 experience. We did hear much from the Specialist Prosecutor about
10 his personal experience, referring to his 30 years. It is difficult
11 to understand where Mr. Smith has spent those 30 years if he is yet,
12 in 2022, to come across video-recorded evidence of commission of
13 offences. No CCTV of violence taking place, unlawful violence,
14 whether on the street or, indeed, in the form of the repression of
15 peaceful demonstrations by state authorities. No Smartphone
16 recordings of sexual violence and torture, whether in the home or
17 whether state sponsored. No press footage of police officers using
18 excessive force or of the shooting of civilians during wartime by
19 state forces. Perhaps he has spent it in such rarefied and isolated
20 air that he has no actual experience in his 30 years of common
21 everyday life and common sense.
22 I said at the outset of our closing statement that the
23 Specialist Prosecutor had shown a lack of respect for this Court,
24 daring the Court not to fail it by refusing what was requested by the
25 Specialist Prosecutor. And we can add to that lack of respect,

1 sadly, a lack of respect for every other international tribunal and
2 court that sits in this city that Mr. Smith has demonstrated, clearly
3 stated on camera.
4 However lightly or otherwise the Specialist Prosecutor made his
5 decision about the appropriate length of sentence, it is not his
6 decision to make. It is yours and it is yours alone.
7 Articles 69 and 70 of the Kosovo criminal code set out,
8 helpfully, a list of what they describe as general rules on
9 calculating punishments and, indeed, a series of factors in
10 Article 69(3), and then general rules on mitigation or aggravation of
11 punishment under Article 70. Again, a list helpfully, not
12 exclusively, but setting out a clear list of aggravating
13 circumstances and mitigating circumstances. And I will do my best,
14 in the circumstances, in the absence of your factual findings on the
15 case, to assist as best I can with those.
16 Article 69 refers to the degree of criminal liability.
17 Obviously the greater the degree of criminal liability, the more
18 serious the culpability in the sentence. The lesser the degree of
19 criminal liability, the lesser the appropriate sentence. Article 69
20 refers to the motives for committing the act. It refers to the
21 intensity of danger or injury to a protected value. It refers to the
22 past conduct of the perpetrator.
23 Article 70 refers to the degree of participation, the degree of
24 intention, the presence of actual or threatened violence, whether an
25 offence involved multiple victims, whether there was an abuse of

1 power or official capacity, any relevant prior convictions,
2 circumstances falling short of grounds of exclusion of criminal
3 responsibility. The personal circumstances and character of a
4 convicted person are obviously relevant, whether liability is as a
5 principle or through accessorial liability, one being more serious
6 than the other. And it also refers to cooperation, general
7 cooperation with the trial court itself.
8 Firstly, the Court has observed Mr. Gucati and his cooperation
9 with the Court, both during the course of court proceedings itself
10 and, indeed, while he has been in detention. Your Honours have the
11 character evidence that we put forward, and Your Honours have read
12 that, you've said, and I won't take Your Honours through it. But the
13 bundle of evidence that we provided demonstrates, we say quite
14 clearly, a man who has devoted his life to the service of others. He
15 is a man of sincerity and of duty, to his wife, to his family, to the
16 school children at his place of employment for many years, the school
17 that he has worked at for many years, to his local community where he
18 has lived all his life, and to his former comrades that he fought
19 alongside at the KLA WVA.
20 I made submissions on Tuesday and Wednesday about his stated
21 intention. His motive for acting was, throughout, to act out of that
22 sense of duty, sense of duty to others. Whatever view you form of
23 the facts, this cannot be a case and is not a case where it's alleged
24 that he acted out of personal gain with a motive to further his own
25 personal interest.

1 He is a man of no previous convictions. That is not only
2 relevant to the issue of whether he might offend again, but it is
3 also something that calls for recognition, together with his
4 character, as that man of service to others that he has reached his
5 age without offending. He has committed no previous offence.
6 In relation to consequences, I've made submissions on Tuesday
7 and Wednesday about the evidence in relation to consequences. And I
8 remind the Trial Panel, respectfully, of the burden of proof that
9 falls on the Prosecution, not only at the trial stage, as it were,
10 but also in terms of sentencing, that the burden falls on the
11 Prosecution to prove beyond reasonable doubt any aggravating
12 features. If they rely on consequences, then it's for the
13 Prosecution to prove beyond reasonable doubt the extent of those.
14 And I do not repeat what I've already submitted and the evidence I've
15 referred to on Tuesday and Wednesday about the degree, or otherwise,
16 of such consequences that are claimed. But it is not controversial
17 for me to remind the Trial Panel that there is no evidence in
18 relation to, for example, the count of intimidation that a single
19 person has been induced to provide a false statement or to refuse to
20 provide a statement or that any single person has failed to provide
21 information otherwise.
22 There is no evidence of actual violence used or injury caused,
23 as Mr. Pace acknowledges.
24 And of those names that were mentioned in public, they
25 number 14, we saw on Tuesday and Wednesday. Fourteen only.

1 I do rely upon circumstances, at this stage, which I say amount,
2 in fact, to grounds of exclusion of criminal law; namely, mistake of
3 law. But if Your Honours were against me as to whether Article 21 of
4 the Kosovo criminal code on mistake of law, in fact, applied or not,
5 if you were against me on that, I would ask Your Honours to take that
6 into account in terms of sentence. It is clearly stated in the
7 understanding of the law, if it was wrong and if Article 21 does not
8 apply, nevertheless reflects a lower degree of culpability on his
9 mental state. It's an understanding of the law, an understanding
10 with the position that was reinforced by members of the press,
11 including shared by Mr. Berisha in how he acted, other members of the
12 press, and indeed, from after the first press conference also, by
13 Mr. Tome Gashi, who gave legal advice to that effect also.
14 The nature and degree of Mr. Gucati's participation and intent
15 in relation to any offence is still to be determined by Your Honours,
16 and I say nothing in the circumstances about that in addition to my
17 submissions on Tuesday and Wednesday, other than, of course, the
18 lesser the degree of participation, the lesser the intent, the lesser
19 the culpability, and the lesser the sentence that follows.
20 The SPO has raised abuse of power or official capacity in its
21 final trial brief submissions. We submit that this is patently not a
22 case where it, in fact, is alleged to be an abuse of power or
23 official capacity case. No one's suggesting, for example, that
24 Mr. Gucati was properly in possession of those documents as part of
25 his role as chairman of the WVA. Not suggesting that his access to

1 those documents was part and parcel of his official duties or
2 capacity and then he abused that. This is not a case of abuse of
3 power or official capacity.
4 We also do rely upon the fact that he only revealed the
5 documents themselves or gave access of the documents themselves to
6 members of the press. He did not, and Mr. Haradinaj did not, take
7 them to the street, as Mr. Haradinaj said. They did not publish them
8 directly. They did not take those documents directly to the public.
9 And the SPO mischaracterises the evidence of Anna Myers to suggest
10 that this was a case of taking documents to the nuclear option.
11 What Ms. Myers said, at page 3120 of the transcript, was to
12 refer to going to the public as the nuclear option, but made a
13 distinction, over the page at T3122, where whistleblowers do not go
14 directly to the public but instead go to, for example, she said,
15 non-profit civil society organisations or the press and journalists
16 who have duties of confidentiality that are more clearly defined and
17 can advise and take decisions themselves about what to do, what to
18 publish, and what not to, which is exactly what happened in this
19 case.
20 It is, we submit, difficult for the Prosecution to characterise
21 publication thereafter of information by the press as a serious
22 aggravating feature when, at the same time, the Prosecution praises
23 the press for the way in which they've conducted themselves. Nor is
24 this a case properly characterised as one where victims, if that is
25 your conclusion, victims are particularly vulnerable or defenceless.

1 There has been no proof put forward by the Prosecution that the
2 relevant data related to victims of crime. We simply do not know the
3 content of any communications, any information provided by anyone
4 named in the batches, has not been disclosed, and it has not been put
5 before the Trial Panel. We simply do not know what information any
6 of the persons, for example, that I referred to by letters A to L,
7 simply because I had no other way of referring to them. I meant no
8 disrespect whatsoever. But the persons A to L, we have no idea what
9 is the nature of the information that they had previously provided,
10 if they had provided any to the SPO, and I say it cannot be taken as
11 read that they provided any information because the SPO have included
12 in their definition of witness persons who were potential witnesses;
13 namely, persons who they think might be likely to have information.
14 They have not restricted it only to those who have made witness
15 statements and certainly have not restricted it to those who were
16 only victims, and certainly have given no evidence at all about the
17 nature of information provided such that you could conclude beyond
18 reasonable doubt that they were victims of crime.
19 Indeed, of the 14 names mentioned in public, they are public
20 names already and, in the vast majority, Serbian officials.
21 Nor is it relevant and make victims particularly vulnerable or
22 defenceless in this case to refer to a climate in Kosovo. All
23 offences committed contrary to the Kosovan criminal code are
24 committed in Kosovo. All offences of obstruction, intimidation,
25 retaliation, violating the secrecy of proceedings committed in Kosovo

1 are committed in circumstances in whatever climate exists in Kosovo
2 exists in Kosovo. It cannot make any person involved in this
3 information a particularly vulnerable person, any more vulnerable
4 than any other person in Kosovo that is subject of an offence either
5 of intimidation, retaliation, violating secrecy of proceedings, and
6 so on.
7 So, on proper analysis, not a case where victims can properly be
8 described as particularly vulnerable or defenceless.
9 Deterrence is, of course, a proper factor to consider, but it is
10 not proper to impose a term of imprisonment that is longer than
11 commensurate with the offence simply as a device to, for example,
12 deprive a person of the opportunity to convict -- to commit further
13 offences. That amounts not to deterrence but to penalising future,
14 unproven offending rather than punishing proven conduct. The
15 sentence imposed should be commensurate with the culpability and harm
16 committed by the offence.
17 Imprisonment is not to be used as a device, for example, to
18 incarcerate somebody while ongoing proceedings are taking place in
19 other cases in order to, for example, keep one person away from the
20 opportunity of interfering with another case. That is not a proper
21 purpose of punishment.
22 Nor are Mr. Gucati and Mr. Haradinaj to be punished in any way
23 for events that were described by Mr. Reid as occurring 10 to 15
24 years ago, of which Mr. Reid attributed no particular responsibility
25 to any individual group or party or person, and certainly nothing to

1 do with Mr. Gucati. He played no part in those historic matters, and
2 he is not to be punished in any way for them.
3 In relation to the term that's proposed, then, by the SPO, and I
4 do not suggest on my part, although it is a matter for Your Honours,
5 that Your Honours cannot deal with this matter by way of an
6 appropriate sentence of imprisonment. In relation to the term
7 proposed by the Specialist Prosecutor, it is calculated with no
8 objective basis at all. It is conceded by the SPO that they do not
9 basis the calculation of that figure, for example, on any comparable
10 case that they can find either domestically or, indeed,
11 internationally.
12 They can't because, obviously, of the cases of which they have
13 cited, and they have cited many cases from other international
14 courts, and acknowledging that all cases do, of course, ultimately
15 have to be sentenced on their own facts, the canon of sentences that
16 is set out, that is clearly defined, the range of sentences, that can
17 be appropriate for offences of this type, demonstrates that the term
18 that's already been served by Mr. Gucati, 18 months, whilst he has
19 been awaiting resolution of his trial is, on any view, a very
20 significant term towards the very top of that range of sentences.
21 And we submit it's a term which can properly be regarded as
22 commensurate with any offence that Your Honours find proven in this
23 case, and he can be properly regarded as being, to use the phrase,
24 time served, when the discount that is required to be made for the
25 time served so far is applied to any calculated sentence.

1 Two cases I will refer to of the bundle that's been provided by
2 the Prosecution. In the case of Ngirabatware, which is a recent
3 case, 25 June 2021, it's MICT-18-116-T. In that case, the main
4 defendant, who was himself guilty and convicted of genocide,
5 undertook a three-year campaign, sophisticated campaign, paying
6 thousands of euros to witnesses which had the effect of producing
7 both false witness statements that were submitted in evidence at an
8 appeal stage and, indeed, as I understand it, actual oral testimony
9 in support of those statements that was false. In that case, two
10 years imprisonment was imposed for that sophisticated three-year
11 regime involving the payment of thousands of euros which had the
12 manifest effect of producing false evidence which was submitted
13 before the appeal court.
14 The present proposal by the Prosecution of a sentence three
15 times that length, even allowing for any differences that there may
16 be in the case, is, we would submit, excessive and, indeed, patently
17 and obviously so.
18 Before I leave that case, it is a case, indeed, in which the
19 fact that the defendants had been in custody awaiting trial during
20 the course of the context of the global pandemic and the additional
21 hardship that in all cases, including, no doubt, I'm sure the ICC
22 maintain the same standards of detention as this institution has
23 done. It was proper to take into account the additional hardship
24 that was involved in that case, and we do rely on that as a
25 mitigating feature. Your Honours will find that at paragraph 403

1 and 404 of Ngirabatware.
2 The other case that I'll refer to, again, we say, demonstrates,
3 frankly, the lack of sense, common sense in the proposal that has
4 been reached by the SPO without any objective basis. It's the case
5 of Bemba, 17 September 2018, ICC-01/05-01/13, and the decision on
6 re-sentencing of Mr. Bemba and others.
7 Mr. Bemba was sentenced to a term of one year in relation to
8 corruptly influencing witnesses, soliciting, inducing, or assisting
9 the false testimonies of 14 defence witnesses. So, again, offences
10 that had the manifest effect of adducing false evidence.
11 The prosecution in that case sought terms of five years, and the
12 chamber, Trial Chamber VII, rejected that proposal. One year was
13 sufficient and appropriate in the circumstances of that case.
14 I particularly wish to direct Your Honours to paragraph 138 and
15 footnote 225. In asserting -- the chamber in that case, asserting
16 that the prosecution had failed to appreciate the significance of a
17 term of one year, commented that the term of five years suggested was
18 not necessary for the case to matter, noting, as they did, this
19 comparison:
20 "The five-year sentence sought by the Prosecution would mean the
21 imposition of a sentence equal to or greater than that imposed on a
22 participant in the execution of more than a thousand prisoners. One
23 of the persons responsible for the notorious Omarska camp, a guard at
24 the Keraterm camp, a general who facilitated the Srebrenica genocide,
25 a general who commanded troops involved in war crimes, and a

1 municipal official who oversaw expulsions and killings ..."
2 And provided the references for each of those cases where the
3 prosecution in that case sought a five-year sentence. That would
4 mean that would be equal to or greater than those imposed in those
5 very serious cases involving genocide, the murder of a thousand
6 prisoners, involved in notorious camps, a general commanding troops
7 involved in war crimes, and a municipal official overseeing
8 expulsions and killings.
9 This Prosecution seeks a sentence of six years.
10 The sentencing authorities in other jurisdictions, other
11 tribunals, do not bind. But it is behoven. This Trial Panel is
12 behoven to look at where this case properly sits and to reflect, give
13 due respect to sentencing decisions in other tribunals and courts,
14 including in this city, and not to give a disproportionate sentence
15 at anywhere near, we would submit, the grossly disproportionate six
16 years that is proposed by the Specialist Chambers [sic]. A six-year
17 period, well in excess of sentences that have been imposed in this
18 city, on a participant in the execution of more than a thousand
19 prisoners, one of the persons responsible for the Omarska camp, a
20 guard at the Keraterm camp, a general who facilitated the Srebrenica
21 genocide, a general who commanded troops involved in war crimes, and
22 a municipal official who oversaw expulsions and killings. The
23 proposal from the SPO is grossly disproportionate.
24 We say, I've submitted it already, that the 18 months is clearly
25 within that general canon of authorities at the -- already at the top

1 end of such appropriate punishments that can be properly regarded as
2 cases won where time served is as appropriate outcome.
3 But we say this. That if the Trial Panel was against us and
4 thought a further term was necessary, we do say that that term can be
5 suspended. Mr. Pace has referred to the provision in the law which
6 we say clearly makes it clear, as one would expect, that for offences
7 committed under Article 15(2), which are Kosovan domestic offences,
8 they ought to be punished under the Kosovan system with both the
9 range and type of punishments available to Kosovan courts because
10 this is a Kosovan court, trying Kosovan cases, trying offences under
11 the Kosovan criminal code, and there should be no unfairness to any
12 defendant who is tried under Article 15(2) to face a sentencing
13 regime which is different to the sentencing regime that he would face
14 for exactly the same offence in Kosovo.
15 That's what we say is the purpose of Article 47.
16 In relation to the suspension of a sentence, Mr. Pace refers to
17 Article 47 of the 2019 code and says and refers to the fact that that
18 sets out that the purpose of a suspended sentence is to not impose a
19 punishment for criminal offence that is not severe when a reprimand
20 with the threat of punishment is sufficient to prevent the
21 perpetrator from committing a criminal offence.
22 We say that clearly when Mr. Gucati has already spent 18 months
23 incarcerated, one should not underestimate the effect, both
24 deterrent, general and specific, in that period already been served,
25 in a country not of his own, in a different part of Europe. A

1 suspended sentence can be imposed for any sentence up to two years
2 imprisonment. That, in no way, suggests a punishment which is
3 anything other than severe. No one could suggest that two years in
4 prison is an insignificant punishment.
5 So the qualifying fact has got to be, for any suspended
6 sentence, that the offence is serious enough to merit up to two years
7 imprisonment. In the circumstances of this case, that would mean
8 that, for example, Your Honours could impose a sentence or conclude
9 that a sentence of three years and six months was appropriate and
10 commensurate with this offence and the deduction then of the 18
11 months time served would bring the sentence down to two years, which
12 could be suspended.
13 And we would submit that that would have a real -- that would
14 address some of the concerns that, in fact, the Specialist Prosecutor
15 raises. Because Your Honours will see that there are powers under
16 Article 49 to impose conditions to enter a suspended sentence, and I
17 don't need to go through those, but Your Honours will understand the
18 type of conditions that could be imposed. We've, in fact, put
19 conditions forward previously in relation to bail, for example. I
20 would ask Your Honours to consider those earlier filings.
21 But Your Honours could, we submit, justly, proportionately,
22 commensurately, with any offence that Your Honours find proven in
23 this case, impose a suspended sentence of two years with conditions
24 that would make it very clear to Mr. Gucati, whatever his stated
25 intention, whatever his stated intention he would know that he would

1 have to comply with those conditions. Otherwise he would
2 immediately, without further ado, have to serve that period of
3 imprisonment. We say that that would be a just and proportionate
4 outcome which would meet very clearly the deterrent effect and
5 address any risk of further offending.
6 My submission is, in short, that Your Honours should impose the
7 shorter sentence that is appropriate, the shorter sentence that is
8 commensurate with the offence.
9 Unless I can assist any further.
10 PRESIDING JUDGE SMITH: Thank you.
11 Judge Mettraux.
12 JUDGE METTRAUX: Thank you, Judge Smith. And thank you,
13 Mr. Rees.
14 I will ask you the same question, and I think you've given me
15 the answer in your submissions, to be quite frank, but I will ask you
16 the question nevertheless.
17 I understand you to be relying on these authorities and
18 precedents from international and internationalised criminal
19 jurisdictions not as binding in any way on us. I understand you to
20 suggest we should rely on them in the exercise of our discretion if
21 convictions were to be entered, of course, and as guidance.
22 Am I right in that understanding?
23 MR. REES: Yes, I don't put forward that they are binding. I do
24 put forward that they are persuasive. I do put forward that, of
25 course, they ought to be afforded due respect, and they certainly

1 should not be brushed aside, as the Specialist Prosecutor seeks to
2 do, by claiming that 20 years of jurisprudence from the most senior
3 international practitioners should be brushed aside as wrong.
4 I concede, and I accept -- in fact, I've put forward that
5 there's no one specific case that is on all fours with this case.
6 There is not. But I do say that Your Honours should look at that
7 broad canon of cases which does set out very clearly a general range
8 of sentences, a general range for which the 18 months presently
9 served is already at the -- towards the very top limit of it, and
10 also makes clear that the six years proposed by the
11 Specialist Prosecutor is, frankly, preposterous.
12 JUDGE METTRAUX: And I also noted that in some of your footnotes
13 in your briefs you rely on a test for cumulative conviction that is
14 sometimes referred to as the Blockburger test that these
15 international and internationalised jurisdictions have relied upon.
16 Again, are you suggesting that we are bound in any way to apply
17 that test, or is that again a submission you make in terms of us
18 being guided by these precedents in terms of how a question of
19 cumulative conviction, if it was a question for us to decide, would
20 be resolved?
21 MR. REES: Sorry, can I just check which footnotes in the brief
22 that you're referring to, Your Honour, so I can see it?
23 JUDGE METTRAUX: 67, 68, 73.
24 MR. REES: Well, I say in relation to those matters that,
25 really, they reflect common sense and they reflect fundamental

1 principles of assessing culpability and that they're general sense
2 and principles which I think they should -- that the Court should,
3 indeed, must apply. Not because necessarily Your Honours are bound
4 by those cases from other jurisdictions but only because they set out
5 very neatly what are general principles of assessment of culpability
6 in sentencing.
7 JUDGE METTRAUX: I'm grateful.
8 PRESIDING JUDGE SMITH: Judge Gaynor, anything?
9 JUDGE GAYNOR: Just one question. Thank you, Judge Smith.
10 I have a question about the imposition of suspended sentences
11 under the Kosovo criminal code. And, no doubt, you've had a look at
12 Articles 47, 48, and 49.
13 Is it your understanding that this Panel can or cannot impose,
14 in effect, a partly suspended sentence? Which is to say, possibly
15 impose a custodial sentence on one charge and impose a suspended
16 sentence on a separate charge?
17 MR. REES: Not if the -- how the terms would operate would
18 frustrate the suspended sentence.
19 Now, what do I mean by that? Well, I suppose -- well, the
20 answer must be no, in fact.
21 I'm grateful to Mr. Bowden. Obviously under Rule 163(4), Your
22 Honours are required to impose a single sentence. That's Rule 163(4)
23 of the Kosovan Specialist Chambers rules.
24 So Your Honours are required to impose a single sentence that
25 would either have to be suspended or it would have to be not

1 suspended.
2 JUDGE GAYNOR: So that rules out a partly suspended sentence, in
3 your view?
4 MR. REES: If within the scope of the Kosovo criminal code there
5 is the power to impose a partly suspended sentence, then it wouldn't
6 rule it out because you could impose the partly suspended sentence as
7 a single sentence under the KSC rules.
8 JUDGE GAYNOR: Thank you. We'll take a look at it. Thank you.
9 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.
10 Before we break, Mr. Cadman, and we'll come back to your
11 submission after the noon break, you filed a financial means
12 statement for your client. Do you wish to tender this into evidence?
13 MR. CADMAN: Yes, Your Honour. To the extent that it assists in
14 the event that any financial penalty would be awarded. It's solely
15 for that purpose.
16 PRESIDING JUDGE SMITH: And what would the classification of the
17 document be?
18 MR. CADMAN: Confidential.
19 PRESIDING JUDGE SMITH: Confidential. All right.
20 Any objection to that filing, Mr. Pace?
21 MR. PACE: More of a few short views rather than an objection,
22 Your Honour, if I may.
23 On the statement, we note that the decision of the Panel, F572,
24 in paragraph 19(b)(ii), ordered the Haradinaj Defence to file any
25 additional evidence by last Monday, 14 March. So, in our view, this

1 information is out of time.
2 We also note that we requested what we can call a symbolic fine
3 in our SPO final trial brief. Of course, that being said, if the
4 Panel wishes to consider this, we would not oppose that. But, Your
5 Honours, this must be the last piece of evidence. We are at the
6 closing stages. It's very late. I don't need to tell you that. So
7 if this is to be considered, this must be the last of the exceptions
8 made thus far.
9 Thank you.
10 PRESIDING JUDGE SMITH: I'll take that as a no objection.
11 MR. REES: [Microphone not activated]. That because there is
12 the mandatory provision in relation to financial penalty for some
13 offences, if you return guilty verdicts on those matters and that
14 you're required to consider means, we've also got a statement of
15 means which we will provide for the Trial Panel to consider.
16 PRESIDING JUDGE SMITH: Any reason why that hasn't been filed?
17 MR. REES: It was ready at the time we filed the character
18 statements. We should have filed it at that stage. It was an
19 oversight that we didn't.
20 PRESIDING JUDGE SMITH: Well, you better get it filed then.
21 MR. REES: Your Honour.
22 PRESIDING JUDGE SMITH: We will decide later whether to admit
23 it. Mr. Pace raises a -- he didn't object, but he raised a proper
24 concern. We're trying to get this matter completed today.
25 MR. REES: I know. And we are too, Your Honours.

1 PRESIDING JUDGE SMITH: Okay.
2 MR. REES: And that statement is there to assist the Court.
3 PRESIDING JUDGE SMITH: Thank you.
4 MR. REES: That is, if you are obliged to consider the financial
5 point.
6 MR. WORBOYS: Your Honour, it's a very minor point, and I don't
7 mean to be picky, but our understanding of the order that that
8 Mr. Pace referred to was that actually the Haradinaj Defence had to
9 disclose a summary of additional evidence it would provide by Monday.
10 On Monday, we provided evidence of witness statements, and then we
11 said we would be providing before our sentencing remarks a submission
12 on financial means.
13 Just for the record, we have done that. And in our submission,
14 there would be no breach.
15 PRESIDING JUDGE SMITH: Thank you Mr. Worboys.
16 That will be all for now. We will be back at 2.30, and at that
17 time we will hear submissions by Mr. Cadman and any reply by the
18 Prosecution to that submission. And then we will hear from
19 Mr. Gucati and Mr. Haradinaj.
20 Thank you. We're adjourned.
21 --- Luncheon recess taken at 1.02 p.m.
22 --- On resuming at 2.30 p.m.
23 PRESIDING JUDGE SMITH: On the financial means statement of
24 Mr. Haradinaj, the Panel admits into evidence the financial statement
25 of Mr. Haradinaj for the purpose of sentencing. This is without

1 prejudice to the weight to be given to the statement should a
2 conviction be entered. The classification of the statement shall be
3 confidential, and the Registry will assign exhibit numbers in due
4 course.
5 Now, on Mr. Gucati's financial means statement, which we
6 received a few minutes ago, Mr. Rees, this statement is not signed
7 and we cannot admit an unsigned statement. Do you want to get him to
8 sign it now?
9 MR. REES: [Microphone not activated].
10 PRESIDING JUDGE SMITH: Now?
11 MR. REES: [Microphone not activated].
12 PRESIDING JUDGE SMITH: Yes, so we can move on.
13 MR. REES: [Microphone not activated].
14 THE INTERPRETER: Microphone for Mr. Rees, please.
15 MR. REES: We will -- I'm just repeating it because the
16 microphone wasn't on. We will make sure that there's a hard copy and
17 Mr. Gucati will sign it this session.
18 PRESIDING JUDGE SMITH: Okay. You can sit. That's all.
19 Mr. Cadman, you can now make your sentencing submissions.
20 MR. PACE: I'm sorry, Your Honour.
21 PRESIDING JUDGE SMITH: Oh, I'm sorry.
22 MR. PACE: Just to clarify, Your Honour, the question about the
23 signature of the statement. We were just provided with two
24 statements on behalf of Mr. Gucati, one concerns financial matters
25 and the other is the closing address, I believe. Was Your Honour

1 referring to the financial one?
2 PRESIDING JUDGE SMITH: The financial. We're not going to admit
3 the closing statement because he's going to make it orally.
4 MR. REES: He's going to make it orally.
5 PRESIDING JUDGE SMITH: Yes.
6 MR. REES: It's there to assist the [Overlapping speakers] ...
7 PRESIDING JUDGE SMITH: I appreciate the [overlapping
8 speakers] ...
9 MR. REES: Mr. Madill on the transcription had asked previously
10 for a copy to assist him.
11 PRESIDING JUDGE SMITH: So you've seen the financial statement.
12 Assuming it gets signed, do you have any objection, other than what
13 you noted before?
14 MR. PACE: No, the same position as before. Thank you.
15 PRESIDING JUDGE SMITH: Well, we'll deal with the admission
16 after it's back and signed.
17 Now, Mr. Cadman -- oh, no. Mr. Rees.
18 MR. REES: Your Honour, before Mr. Cadman does make his
19 submissions in sentencing, can I just, having reflected over the
20 lunch on the question from Judge Gaynor about part suspending
21 sentences. We've looked again at the Kosovo criminal code. We can't
22 see any provision there under Kosovo criminal code for part suspended
23 sentences.
24 Indeed, when we look at Article 76 of the Kosovan criminal code
25 that deals with the punishment of concurrent criminal offences -

1 that's how it's headed - the way we read that is exactly the same
2 approach that, effectively, is encapsulated in Rule 163(4) of the
3 Kosovo Specialist Chambers rules. So we say there's actually no
4 distinction in approach between the Kosovan criminal code and the
5 rules in this Specialist Chambers for dealing with sentences imposed
6 on the same occasion in relation to counts on the same indictment.
7 Saying that, as a matter of effect, of course, if you were to
8 suspend a sentence, it would, in effect, have -- it would be
9 equivalent to a part suspended sentence in the sense that Mr. Gucati
10 will have spent in excess of 18 months in custody awaiting trial and
11 then would be facing a sentence of up to two years suspended for an
12 operating period of up to five years with or without conditions.
13 So it would have the same effect of a term of incarceration
14 followed by a suspended sentence.
15 Unless I can assist any further on that.
16 PRESIDING JUDGE SMITH: Anything else?
17 JUDGE GAYNOR: No, that's perfect. Thank you very much.
18 PRESIDING JUDGE SMITH: Thank you.
19 All right, Mr. Cadman.
20 You may make your sentencing submission.
21 MR. CADMAN: Thank you, Your Honour.
22 Before I -- well, let me start by saying what I will talk about
23 and what I won't talk about.
24 So, first of all, I won't be dealing with the matters that
25 Mr. Rees has set out. As has been a theme throughout this case, I

1 support and endorse the matters that Mr. Rees has spoken about in
2 terms of the law and some of the matters that he has looked at as far
3 as deterrent sentencing and some of the authorities that he has
4 referred to.
5 I will also not be using this as an opportunity to make a fourth
6 speech, as we have heard today. But I would like to start by just
7 referring to one matter of earlier, which was in the
8 Specialist Prosecutor's remarks, where he stated that the evidence I
9 refer to is not only to -- is relevant not only to the guilt of the
10 accused which has been established.
11 I'm sure Mr. Smith knows that it is not for him to determine the
12 guilt of the accused. It is for the Trial Panel. Such language, we
13 say, is inappropriate and improper and should not be used in
14 proceedings of this kind.
15 It's quite plain that guilt has not been established.
16 Mr. Haradinaj, as we know, is innocent until proven guilty. We
17 mustn't forget that. Mr. Smith made a series of quotations using
18 words that have come out in these proceedings. I won't go through
19 them because we've dealt with them in our submissions over the last
20 few days.
21 Your Honour, we've maintained that a correct approach in this
22 instance is that sentencing should not be dealt with at this stage.
23 It is a matter that should be dealt with later. We are unaware of
24 any findings of fact, and, therefore, it's impossible to give a full
25 and comprehensive statement on the correct approach in this case.

1 We, therefore, disagree as we have submitted previously that we
2 disagree with the Panel's approach in this regard.
3 To the extent I can address the Court in sentencing, I'll say
4 the following. But I do stress that making these submissions puts me
5 in a very awkward position as Defence counsel where guilt has not
6 been determined and the factual basis for guilt has not been
7 determined.
8 The Court will be aware that a primary applicable legal
9 framework in Article 44 and Rules 163 and 165 which, in key part,
10 provide that what needs to be looked at as aggravating or mitigating
11 circumstances or factors.
12 In determining the appropriate sentence, the Trial Panel must be
13 convinced of the existence of aggravating circumstances beyond
14 reasonable doubt. Factors that can be taken into account are
15 referred to in Rule 163. Prior criminal convictions for crimes under
16 the KSC jurisdiction, abuse of power or official capacity, commission
17 or participation where the victim is particularly vulnerable, or
18 particular cruelty.
19 We say that none of those factors are relevant in this case.
20 None of those factors have been established beyond reasonable doubt.
21 There are no previous convictions under the KSC jurisdiction.
22 We have heard from Mr. Haradinaj in his own evidence of those matters
23 that he suffered being imprisoned as a minor and as a young man
24 during the occupation of an oppressive Serbian state, but those are
25 not matters that are relevant to establishing aggravating factors.

1 We say that there is no evidence of targeting victims that were
2 particularly vulnerable. There was no abuse of power, as that is
3 designed to refer to public officials. And it has not been
4 established that there is any particular cruelty here. So none of
5 the aggravating factors, we say, have been proven beyond reasonable
6 doubt.
7 Mitigating circumstances such as the contemporaneous and a
8 convicted person's conduct after the act should also be given
9 appropriate weight.
10 Conduct of the accused contemporaneously.
11 First, it must be highlighted that mitigating circumstances
12 should be dealt with on the balance of probabilities. Furthermore,
13 in contrast to aggravating factors, that must be alleged on the
14 indictment. We can refer to Prosecutor and Simba from the ICTR at
15 paragraph 850.
16 The Panel should not be limited by the mitigating factors set
17 out in the KSC legal framework. It should, as a matter of Kosovan
18 law and international law, take into account any other factors that
19 it deems pertinent.
20 At risk of repeating some of the matters that have been
21 discussed over the last couple of days, it is relevant to sentencing.
22 The SPO has presented no evidence to suggest that Mr. Haradinaj had
23 any involvement in the breach of SPO security, the leak of the
24 documents, neither did he procure the documents. He took great care
25 to ensure that he did not publicly mention any purported confidential

1 information. He took active steps to request that journalists were
2 mindful of their professional obligations.
3 These steps are demonstrable of his reluctance to put any person
4 at risk and neither is there any evidence that he threatened or
5 intimidated or sought to make contact with any witness. As such, all
6 of these matters should be taken into account in consideration of
7 mitigating factors.
8 At the material time, and after the incidents, he was fully
9 cooperative with SPO officers. When SPO made contact, he ensured
10 that its officers were welcomed at the premises of the KLA WVA.
11 Indeed, he even ensured a copy of the batches were set aside for the
12 SPO and/or the local prosecution or police. He was fully transparent
13 regarding the circumstances of each of the deliveries, offered all
14 the evidence available to the SPO, including the CCTV, and in
15 essence, he facilitated the timely investigation of this matter.
16 He made it very clear that he wanted the circumstances of the
17 leak to be investigated, and the SPO decided to take no action in
18 regard to that.
19 As we've referred to in the STL judgement of Al Jadeed and
20 Ms. Khayat, the cooperation of the accused after deliberate contempt
21 can be accepted as a mitigating factor. And just to remind the
22 Court, in that case, only a fine, a financial penalty, was imposed.
23 When Mr. Haradinaj learned of Mr. Gucati's arrest, he continued
24 his journey towards the premises of the WVA in Prishtine. He made no
25 attempt to evade justice, despite what the Prosecution has sought to

1 argue. He made his presence known and spoke with journalists and
2 local police outside the building, as he said in his evidence. He
3 then made everyone aware that he was scheduled to give a TV
4 interview. And when he was arrested, requesting the involvement of
5 the local Kosovo police, he was fully cooperative.
6 As per international practice, the gravity of the offence is a
7 primary consideration in imposing sentence. Gravity does not refer
8 to a crime's objective gravity. Rather, to the particular
9 circumstances surrounding the case and the form and degree of the
10 accused's participation.
11 In the assessment of gravity must be *in concreto* based on the
12 particular circumstances of the case and the degree of participation,
13 both through a quantitative and qualitative standpoint.
14 In the contempt case of Nshogoza, it was found to be the correct
15 approach that the Trial Chamber did not merely focus on the contempt
16 as an inherently grave offence but addressed the gravity of the
17 particular way in which it was committed.
18 There are several factors that need to be highlighted. No
19 evidence has been presented to show that any individual suffered any
20 physical harm whatsoever as a result of any action Mr. Haradinaj may
21 have committed depending upon Your Honours' findings. The SPO was in
22 no way prevented from either the work of their mandate nor their
23 ability to investigate this case or any other case.
24 In this regard, it is submitted that any custodial sentence
25 would be wholly disproportionate. The Trial Chamber must ensure

1 adherence to the principle of proportionality pursuant to which any
2 punishment must be proportionate to the moral blameworthiness of the
3 offender and must take into account other considerations.
4 An accused's motive can also be considered a mitigating factor.
5 Mr. Haradinaj's motives have been clear throughout. The disclosure
6 was done in the public interest. His only intention was to bring
7 attention to what he considers to be the SPO's inappropriate and
8 unethical collaboration with Serbian officials who he considers, and
9 much of the Kosovo public considers, to have been involved in the
10 perpetration of massacres of hundreds of Albanian civilians during
11 the conflict.
12 It cannot be said, despite what the Specialist Prosecutor has
13 said, that he was motivated by personal gain, but, rather, was done
14 in pursuance of his commitment to bring all perpetrators to justice
15 as he has repeatedly set out during these proceedings.
16 We refer to Rule 163(4), the principle of totality, in our
17 written submissions, and I do not intend to go through that in any
18 detail here and now.
19 But looking at the sentencing for each of the counts.
20 We look at Counts 1 and 2. In our submission, considering that
21 Mr. Haradinaj never directly threatened or, indeed, contacted any of
22 the witnesses or public officials, then the only appropriate
23 sentence, if Your Honours return a verdict of guilt, would be as
24 short a period of imprisonment as possible. And you'll be mindful of
25 the time that Mr. Haradinaj has already spent in detention.

1 In our submission, Mr. Haradinaj's actions did not prevent nor
2 preclude the SPO officials from undertaking any activity within their
3 mandate. Nonetheless, if the Trial Panel is minded delivering a
4 custodial sentence on these counts, which, in our submission, is not
5 justified, any such custodial sentence should be within the lowest
6 range of what is available. And in our submission, it should only be
7 no more than time already served.
8 Regarding Count 3. There is no evidence, certainly no evidence
9 presented during these proceedings, of any SPO witness or any other
10 person being the victim of direct intimidation, nor did Mr. Haradinaj
11 engage with any offers or communications with any witnesses,
12 protected or otherwise. As a result, it is the Defence position, on
13 behalf of Mr. Haradinaj, that any sentence for this count should
14 remain non-custodial.
15 Addressing Count 4. Given the lack of evidence of retaliation,
16 directly or indirectly, implicating Mr. Haradinaj, it is our
17 submission no custodial sentence is warranted. But once again, if
18 the Trial Panel is minded that a custodial sentence is necessary, it
19 should be as short as possible and should be no more than time
20 already served.
21 Count 5. Given Mr. Haradinaj's motivations, which were always
22 in the public interest, we submit that a fine would be the just and
23 appropriate sentence, if a verdict of guilt is returned, to reflect
24 the conduct and the gravity of that offence.
25 And turning to Count 6. Mr. Haradinaj took active steps to not

1 reveal any confidential information and, therefore, does not fall
2 foul of Article 392(2), which requires the imposition of custodial
3 sentence of up to three years. Nor does he fall foul of section 3,
4 as it cannot be stated that there were serious consequences for those
5 under protected status whose names were leaked. Again, as a result,
6 a custodial sentence is not warranted, but, again, should the Panel
7 consider that it is, it should be at the lower range and, again,
8 should be no more than time already served.
9 When dealing with practice amongst the international ad hoc
10 tribunals and sentencing policy, I adopt the same position as
11 Mr. Rees has set out, as requested in questioning by His Honour
12 Judge Mettraux. We say that these are matters that the Trial Panel
13 is entitled to take into account when considering where this case
14 sits as far as sentencing policy is concerned.
15 We refer to Marijacic and Rebic, a journalist who disclosed
16 protected witness information in violation of three court orders who
17 received a fine of 15.000 euros. Similarly, in Josip Jovic, a
18 journalist who published protected witness information and refused to
19 comply with a court order, he was fined 20.000 euros. We also refer
20 to the matters before the Special Tribunal for Lebanon in which
21 journalists published confidential information on protected witnesses
22 despite orders to cease, desist, and remove the information. They
23 were find 10.000 euros and 20.000 euros, respectively, in the two
24 matters that we cite in our earlier filing.
25 It is our submission, considering these authorities, and it is

1 accepted that all matters have to be determined on the individual
2 facts of that particular case. It provides the Trial Panel with some
3 guidance as to what would be the appropriate sentence.
4 Despite all the preceding submissions, should the Trial Panel
5 consider that, notwithstanding the mitigating circumstances advanced,
6 proportionality and the total -- totality principle, a custodial
7 sentence is still warranted. Once again, we submit, Mr. Haradinaj,
8 having served 18 months in custody, these matters should be taken
9 into account.
10 I would like to deal now with some broader personal mitigation
11 that relates to Mr. Haradinaj.
12 We know that his personal circumstances have changed
13 significantly during his detention. Four months after the shock of
14 his arrest, his wife was diagnosed with stage 3 cancer. She had to
15 undergo chemotherapy, and she had to have surgery followed by a
16 period of radiotherapy. His wife was isolated during one of the most
17 difficult chapters in her life. His absence from family life has
18 been particularly felt during these exceptionally challenging times
19 for his wife and the entire family. And even though she is now in
20 remission, the treatment that she has received has taken a
21 significant toll on her body and her mental well-being.
22 As both a husband and a father, Mr. Haradinaj is understandably
23 concerned about the very real possibility that the cancer could come
24 back. And like any husband or father in such circumstances, it is
25 agonisingly difficult for him not to be with his family during this

1 time. A further custodial sentence would have a devastating
2 consequence for his wife's health and his family's well-being going
3 forward.
4 I implore the Trial Panel to take this matter into account.
5 But this situation is further exacerbated by the ill health of
6 his younger brother. I won't go into details, but as you will see
7 from the character reference from his son, he has stated that the
8 health is deteriorating every day. And we have seen for ourselves
9 the toll that this has taken on Mr. Haradinaj during his testimony.
10 You will recall, when speaking about his brother, he was hardly able
11 to hold back tears as to how this has affected him and his
12 well-being.
13 Cumulatively, these personal circumstances clearly amount to
14 exceptional in nature, and the Trial Panel cannot be blind to these
15 when considering mitigation as recognised by previous international
16 courts.
17 Your Honours have the character references on behalf of
18 Mr. Haradinaj in addition to his wife and son. You also have, and I
19 am mindful of the redactions that need to be made to the statement of
20 Ambassador William Walker, but you will see two incidents in which
21 Ambassador Walker interacted with Mr. Haradinaj. These incidents
22 show a clear sense of duty to reach a non-violent approach to
23 resolving a dispute, and it shows very clearly that Mr. Haradinaj is
24 a man who puts others before himself.
25 Today we filed a statement of financial means. I will not go

1 through that financial statement in open session. Your Honours,
2 we've adduced this statement to be transparent and to show that if a
3 -- if a financial penalty is imposed, what Mr. Haradinaj would be in
4 a position to pay. A fine of 20.000 euros, like other tribunals have
5 imposed, is significant and a deterrent contrary to what the
6 Specialist Prosecutor has said.
7 To many of us in this courtroom, a financial penalty of 20.000
8 euros may not seem an exorbitant amount of money. But in Kosovo, it
9 is. And to Mr. Haradinaj, it is. And so we urge you to take the
10 reality of the situation and the context into account, especially as
11 you are ultimately an institution of that country.
12 Finally, on remorse. As to remorse, we say this is a misplaced
13 argument by the Specialist Prosecutor. As you saw in the video that
14 the SPO played, Mr. Haradinaj has considered at all times that he was
15 acting transparently and in the public interest. If ultimately it
16 turns out that you consider that to be unlawful, which we say it was
17 not, then imposing too much of a penalty may well have a broader
18 negative detrimental impact on free speech.
19 My submission is that over-punishing for any crimes that may
20 have an unintentional chilling effect on the people in the Republic
21 of Kosovo should be avoided. And that is, in essence, a further
22 instance of oppression for an oppressed people.
23 I ask you to take all of these matters into account, as I am
24 sure you will, in making a determination of what will be the most
25 appropriate sentence.

1 We submit that his actions would deem a non-custodial sentence
2 as just and appropriate. A financial penalty within his means. And,
3 once again, if the Panel is minded to deliver a custodial sentence,
4 given the totality and proportionality, in addition to his
5 exceptional personal circumstances, any custodial sentence should be
6 as short as possible, especially considering the near 18 months that
7 he has already been detained.
8 He has, *de facto*, already served a significant proportion of any
9 custodial sentence that could be imposed upon him, and he should,
10 therefore, be released at the conclusion of these proceedings and
11 returned to his family as soon as possible.
12 Your Honours, thank you.
13 PRESIDING JUDGE SMITH: Thank you, Mr. Cadman.
14 Mr. Rees, do we have a signed statement at this time?
15 MR. REES: I believe we do. We have it here. We can either
16 provide it to the Court now or we can make sure that it is disclosed
17 via --
18 PRESIDING JUDGE SMITH: Yes, sure, we will take it from you. It
19 should be filed electronically as well, though. And the Panel admits
20 into evidence the signed version of the financial statement of
21 Mr. Gucati.
22 MR. REES: I'm grateful. Thank you, Your Honour.
23 PRESIDING JUDGE SMITH: For the purpose of sentencing. This is
24 without prejudice with the weight to be given to this statement
25 should a conviction be entered.

1 What classification do you want the statement to have?
2 MR. REES: Confidential, please. It relates to his private
3 financial circumstances.
4 PRESIDING JUDGE SMITH: Thank you. The Registry will assign
5 exhibit numbers in due course.
6 Any questions of Mr. Cadman from the Panel? No.
7 Does the SPO wish to respond to the sentencing submissions?
8 MR. PACE: Very briefly, if I may, Your Honour. It's a matter
9 of minutes.
10 PRESIDING JUDGE SMITH: Yes.
11 MR. PACE: Thank you.
12 I'll start by addressing the submissions made in passing by
13 counsel for Mr. Haradinaj about the appropriateness of making
14 submissions on sentencing at this stage.
15 And all I want to say in that regard is that this matter has
16 been addressed and decided on. The parties have been on notice of
17 this, both from the Court's regulatory framework and from the
18 decisions by the Panel. The parties have been given equal
19 opportunities and have taken advantage of those opportunities to make
20 the relevant submissions.
21 Turning to the specific cases from other courts cited by the
22 Defence. I've already addressed those cases addressed by the
23 Haradinaj Defence. I will address the two cases counsel for
24 Mr. Gucati mentioned, and those are the ICC's Bemba *et al* case and
25 the MICT's Nzabonimpa *et al*, which includes Mr. Ngirabatware

1 mentioned by counsel.
2 And these two cases, Your Honour, they truly serve to provide
3 additional evidence, not that we submit any was needed, as to why
4 other cases need not be considered in relation to the sentence to be
5 imposed on the accused in this case.
6 The case in which Mr. Ngirabatware was a co-accused concerned
7 alleged interference through bribes to nine individuals. The Bemba
8 *et al* case concerned 14 witnesses. The count of unauthorised
9 disclosure Mr. Ngirabatware was convicted of concerned disclosure to
10 his co-accused, not to the media, not on television.
11 Further, Your Honours, generally bribe cases differ from those
12 which involve threats and intimidation. Bribing five witnesses, for
13 example, does not generally pose a risk to other witnesses in the
14 same way that intimidation and naming in a public sphere can have a
15 risk on other individuals, such as the circumstances in this case.
16 And here again I refer to the evidence you heard on this note by the
17 Defence's own expert, Mr. Reid, that both myself and the
18 Specialist Prosecutor referred to earlier today.
19 The last thing I will say is that neither of these two cases
20 that Mr. Gucati's counsel raised made any findings of threats. In
21 fact, I will just read from paragraph 398 of the Nzabonimpa trial
22 judgement. And there, the Single Judge stated, and I quote:
23 "... I am mindful that it was not established that the Accused
24 employed threats, pressure, or intimidation to secure cooperation and
25 that the witnesses in some cases seemed all too willing to exploit

1 Ngirabatware's need of their participation in the review hearing to
2 present ever increasing demands for money in exchange for their
3 cooperation."
4 Your Honours, unless you have any other questions, those are our
5 submissions.
6 PRESIDING JUDGE SMITH: [Microphone not activated].
7 Thank you, Mr. Pace.
8 At this time, we're going to hear the statements of the accused.
9 Mr. Gucati and Mr. Haradinaj, each of you have 30 minutes at your
10 disposal. You are not required to use the 30 minutes. And when we
11 have finished with Mr. Gucati's statement, we will go directly for
12 Mr. Haradinaj's statement.
13 The statements should focus on and be limited to matters that
14 are relevant to these proceedings. I also ask the accused to speak
15 at a slow pace so the interpreters can translate their statements.
16 Mr. Gucati, and then Mr. Haradinaj, you may feel free to sit
17 while you make your statement or stand, whichever is most comfortable
18 for you. Or if you wish, Mr. Gucati, if you need to stand up during
19 it at some time, that's all right as well.
20 Mr. Gucati, the floor is yours.
21 THE ACCUSED GUCATI: [Interpretation] Thank you.
22 Greetings to Your Honours, Judges. I wish to also thank
23 Mr. Nait Hasani, ambassador of Kosovo, here. And I also wish to
24 greet Yllka Geci and all the other participants in this proceeding.
25 I want to tell you that I'm a very proud citizen of the Republic

1 of Kosovo. I am very proud of where we are today as a nation, and
2 I'm full of hope of what can become in the future. I will continue
3 to fight for the rights of my people up until my dying day.
4 It is the future of all the people of Kosovo that motivates me
5 to do so, to do what I believe will help this.
6 In 1997, I and many peers of mine joined the Kosovo Liberation
7 Army. I did so to defend my homeland and to protect all the people
8 of the Republic of Kosovo. In the course of serving my country, I
9 was severely injured. I witnessed many terrible things during this
10 time. I witnessed war. These are things that I would never wish to
11 see again or would never wish to see repeated in any country of the
12 world.
13 Any victim of crime during war or a victim of crime during peace
14 deserves the right to have those persons who have committed the crime
15 against them to be investigated against and to be prosecuted. I was,
16 of course, the victim of such a crime myself, as were many of my
17 fellow members of the Kosovo Liberation Army and many citizens of
18 Kosovo. And those crimes should have been prosecuted, where
19 possible.
20 Therefore, as a victim of crime myself, I do understand what
21 other victims of crime have suffered, and I sympathise with the pain
22 that they have suffered, and I would defend their right to justice.
23 It can't, however, be right to declare a group responsible for
24 criminal acts when the very establishment of that group was to stop
25 rather than commit criminal acts.

1 When I joined the Kosovo Liberation Army, my only intention was
2 to defend my fellow citizens and to avoid any suffering that might be
3 inflicted upon them. I would be greatly offended and astonished if
4 my time at war from 1997 can be looked as something else rather than
5 a right and proper act on my behalf and on behalf of all the other
6 members of the Kosovo Liberation Army. To do anything other than
7 that, what I did in joining the KLA, would not have been fulfilling
8 my sense of duty to the people of Kosovo.
9 The right of the people of Kosovo, and the rights of the people
10 of any nation, should be that at all times they are able to live in
11 peace, to feel able to express their thoughts through free speech, to
12 live without fear, and for those who do not act in such a way to be
13 prosecuted. These rights should be respected and ensured at all the
14 times and all over the world. I will always stand with anyone who
15 looks to protect these values.
16 I became the chairman of the KLA WVA to ensure these rights for
17 the members of the KLA WVA. I always acted in their best interest
18 and to secure a safe and secure future for them and for their
19 families. This involved me pursuing their cases with various people
20 to include the political establishment of Kosovo and beyond, if so
21 required.
22 At all times, I acted for the KLA WVA members without fear or
23 favour. If I felt that something was sad, if something was done or
24 established that acted against their best interest, as I saw it, it
25 was my duty to protect and serve them. I fully accept that in acting

1 in the best interest of the members, this included expressing the
2 view of the members of the KLA WVA regarding the establishment of the
3 Kosovo Specialist Chambers. It was my duty to do so, namely, to
4 protect them.
5 In September 2020, I was faced with a decision as a chairman. I
6 had to take that decision as a chairman of the WVA upon the totally
7 unexpected arrival of the documents at our offices. I made the
8 decision with the steering council of the KLA WVA. This decision, as
9 far as I am concerned, was in the best interests of the members of
10 the KLA WVA.
11 On 25 September 2020, my life changed and the life of my family
12 changed as well. I have never looked to hide away from the decisions
13 that were made in September 2020. I did face the consequences of my
14 arrest on 25 September 2020. I faced the consequences, and I also
15 respected the same sense of duty that has always been with me.
16 As my counsel has so clearly explained to the Court, I maintain
17 that I am innocent of any criminal charges against me. I acted, as I
18 have done throughout my life, out of sense of duty to others. For
19 the past 25 years in my role as a member of the KLA and as a member
20 of the KLA WVA, I have always tried to act out of that sense of duty
21 and responsibility to the membership of the KLA WVA and to my
22 country.
23 I'm very proud to be a citizen of the Republic of Kosovo, and
24 I'm very proud to be Albanian. The Kosovar nation has never been in
25 any aggressing position against any other country. We must have the

1 right to defend ourselves against those who challenge our right to
2 live in peace. All nations must have the right to defend themselves
3 against an aggressor.
4 I am proud of all my comrades of the KLA WVA, and I will forever
5 act in their best interests.
6 By way of concluding, allow me to say a couple of words as well.
7 I wish to say that any suggestion that has been made on behalf of the
8 KLA being a criminal organisation is utterly untrue and absurd. It
9 is an insult to the martyrs and the fallen who died for the Kosovar
10 state. The KLA was, is, and will always continue to be a symbol for
11 freedom and democracy of the people of Kosovo.
12 Thank you very much for your attention.
13 PRESIDING JUDGE SMITH: Thank you, Mr. Gucati.
14 Mr. Haradinaj, the floor is yours. Remember to speak slowly for
15 the interpreters to catch up. And as I said earlier, you may stand
16 or sit, whichever you wish.
17 THE ACCUSED HARADINAJ: [Interpretation] Thank you, Your Honour.
18 Honourable Judges, and my country, my family, who appear to
19 continue to be persecuted. When the session of 14 March started and
20 I was -- I mean, I heard I was going to be given the chance to speak
21 for another 30 minutes, I never thought that there would be a need
22 for me to speak, regardless of a decision on conviction or not. I
23 had decided not to speak up at all but hear the -- the end of this
24 judicial process.
25 However, when Prosecutor Valeria Bolici took up the floor, she

1 started to unashamedly impose a fait accompli before the Trial
2 Chamber. She made an amateur legal mistake within a judicial
3 proceeding, something that is not supposed to happen even in
4 dictatorial societies, but she insulted us unashamedly and tried to
5 put us and the Trial Chamber before a fait accompli when she said,
6 and I cite, "These two are criminals."
7 Given that the Trial Chamber did not react to that, that
8 prompted me to take up the floor. And let me reiterate that this is
9 an unprecedented -- this is a surrogate prosecutors office. I
10 understand Prosecutor Bolici, I understand that she is angry that she
11 is not in possession of facts to be able to come to the conclusion
12 that she wants, but she needs to be aware that, even to this point,
13 we need to be considered innocent until proven guilty. We have never
14 cooperated with criminals or carried out their orders. We have never
15 taken any advice from criminals either.
16 The fact that you did not disclose the location of those
17 criminals to Interpol and to international justice -- to Interpol,
18 and they are on their red notices, that makes me and many citizens in
19 Kosovo to guess who are you going to prosecute, who are you
20 identifying with.
21 The Special Prosecutor's Office said that we have been
22 obstructing justice for 20 years on end. If that were the truth,
23 Prosecutor Bolici ought to -- is forgetting that this Chambers was
24 formed only seven years ago. It is an amateur mistake,
25 Mrs. Prosecutor, because the indictment -- indictment charges us with

1 a number of crimes carried out over a couple of weeks.
2 If, however, she has in mind the time during which I defended
3 the right of -- the rights and freedoms of my country, she is wrong
4 again. Because since 1978, when I was 15 years of age, for 44 years
5 on end that is, I have fought for the freedom and the legitimate
6 rights of my country, and I have done my utmost to fight against the
7 slavery of my country and for its occupation, and I will continue to
8 do so to the end.
9 I have said twice before the Trial Chamber here that I am
10 innocent, and I shall do the same today. But let me say in the end,
11 because that might help the Prosecutor to, in a way, understand why
12 she insulted me given -- from the podium that she's been given. If I
13 want the human -- I am for the human rights of my country, and I
14 remain committed to fight against the slavery of my own country. If
15 that issue is a crime, then you have problems with countries like
16 mine and with yourself too.
17 This Chambers is here to seek justice, and my opposition is with
18 the Prosecutor's office. It's an office which is not carrying out
19 its tasks vis-à-vis the people of Kosovo.
20 So, honourable Trial Chamber, I expect -- I expect impartial
21 justice on your part, uninfluenced by anyone. I want nothing but
22 justice to triumph. I do not seek anything else apart from impartial
23 justice. Whilst you, Prosecutor Bolici, you need to pull back, to
24 withdraw the term "criminal" because it does not attach to me. It
25 does not belong to me.

1 I should have been able to complete my speech by now, but given
2 that the Specialist Prosecutor is here, and in order for him not to
3 feel insulted that I am not noticing him -- however, it's not that I
4 did not pay attention to his words.
5 Mr. Smith said two things. One, in personal interest, he said
6 that Mr. Haradinaj has a personal stake, a personal interest in this.
7 Everybody knows me, and you know that this is a lie. It's nothing to
8 do with the truth. If I had been seeking personal gain, I would have
9 stayed with my family. I wouldn't have gone and joined the war. I
10 wouldn't have been imprisoned. You, in a way, are trying to seek to
11 influence this Trial Chamber.
12 On the second issue is that you wanted the most severe
13 punishment for me so the others will be deterred. Mr. Prosecutor,
14 listen, Mr. Prosecutor, you're going against yourself. If you
15 remember your first speech, you said it is allowed to think
16 differently. Your views, Mr. Prosecutor, are views of dictatorial
17 prosecutions offices. It's like the Yugoslav system in 1981, at the
18 time when we were not thought to think differently. You should be
19 ashamed. It's an insult on yourself, on the 20 -- on the quarter of
20 a century of experience, and on the country you come from.
21 And Mr. Pace, so he doesn't feel excluded, Mr. Pace said
22 something that I understand from the depth of his soul, even though
23 he tried to hide it. He said in turn to the witness: A lot of
24 massacres, crimes, and killings have occurred in Kosovo, and in that
25 country the witnesses who goes against these heroes are thought as --

1 thought of as traitors. Yes, that is -- that is what my country
2 thinks of. Everybody thinks of. That's what -- what people in
3 Sweden think. And I'm -- I'm a Swedish citizen too.
4 Mr. Pace, if that were true, I mean, you ought to be charged
5 with crimes because you impart -- imparted an intimidating --
6 intimidating message towards witnesses, because if you think that
7 those who come here to witness against national heroes are traitors,
8 it means that you want those -- you want to charge those heroes as
9 the guilty party.
10 Let me reiterate. I have done everything with full transparency
11 and in the full interest of the public in Kosovo.
12 Thank you very much for allowing me to take up the floor and for
13 listening to me.
14 PRESIDING JUDGE SMITH: Thank you, Mr. Haradinaj.
15 Before we continue, the Panel will render an oral order on the
16 procedure to be followed regarding sentencing should a conviction be
17 entered.
18 The Panel took into consideration all relevant factors and the
19 evidence that has been tendered and admitted. The Panel also
20 considers that both parties were in a position to make full and
21 effective submissions on sentencing and to rely on the evidence they
22 tendered for that purpose.
23 The Panel, accordingly, sees no need to entertain the
24 possibility offered by the rules to have a bifurcated sentencing
25 process in case either or both of the accused were to be found guilty

1 of any of the offences with which they are charged.
2 For these reasons, the Panel, pursuant to Rule 159(6) will
3 determine an appropriate sentence with the pronouncement of the trial
4 judgement should any conviction be entered.
5 This concludes the oral order.
6 Do the parties wish to raise any further matters, any questions,
7 any concerns?
8 MR. REES: Only in relation to perhaps planning, looking ahead,
9 travel arrangements, and professional diaries.
10 Does the Trial Panel, at this stage, have any idea as to when
11 pronouncement of judgement may take place?
12 PRESIDING JUDGE SMITH: Not so much that you could count on it.
13 We will be sure and notify you as soon as we can start getting some
14 sort of an idea. It will be in advance so that you don't have to
15 change schedules.
16 MR. REES: I'm very grateful.
17 PRESIDING JUDGE SMITH: We will try to communicate with
18 everybody at the same time by e-mail, get some information back from
19 you, and then set a date.
20 MR. REES: Thank you, Your Honour.
21 PRESIDING JUDGE SMITH: Thank you.
22 Anything from you, Mr. Cadman?
23 Anything further from Prosecution?
24 The Panel will, in due course, request submissions on
25 reclassification of transcripts. And, of course, the detention

1 review also continues.
2 Other than that, pursuant to Rule 135, no further submissions or
3 evidence may be made to the Panel unless in exceptional circumstances
4 and on showing of good cause.
5 The Panel wants to thank all counsel, and those who assisted
6 them, for their individual and collective contribution to this case.
7 We felt greatly assisted by your contributions in ensuring the
8 proceedings were fair and that the defence of both accused was
9 effective at all times.
10 The Panel also thanks the Court Management Unit for their
11 excellent work and for their 24/7 availability throughout the case.
12 The Panel is also grateful to the court reporter, the
13 interpreters, and all involved in the Registry for their assistance.
14 As I said, the Panel will be in touch with the parties in due
15 course regarding the date of the judgement. This case is closed and
16 we are adjourned.
17 Yes, Mr. Cadman.
18 MR. CADMAN: I do apologise for making -- after you closed the
19 proceedings, but as -- I do apologise for raising the issue after
20 closing the proceedings, but you have mentioned the question of
21 detention.
22 I appreciate this is not a matter that is within the
23 Trial Panel's control. We have two appeals pending for some time now
24 before the Court of Appeal on detention. We really don't know when a
25 decision is going to be reached. Again, I appreciate it's outside of

1 your control, but if there is anything that can be done to speed up
2 this process, because you're going to have to consider detention
3 again, and we just don't know when a decision is going to be made on
4 the two appeals.
5 PRESIDING JUDGE SMITH: I will make inquiry and hopefully that
6 -- that I will get some good news. Thank you.
7 --- Whereupon the hearing adjourned at 3.27 p.m.
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