

1 Friday, 18 December 2020

2 [Initial Appearance]

3 [Open session]

4 [The Accused Gucati entered court]

5 --- Upon commencing at 2.00 p.m.

6 JUDGE GUILLOU: Good afternoon and welcome everyone in and
7 outside the courtroom.

8 Madam Court Officer, can you please call the case.

9 THE COURT OFFICER: Good afternoon, Your Honour. This is
10 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
11 Nasim Haradinaj.

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

13 Now I would kindly ask the parties and participants to introduce
14 themselves, starting with the Specialist Prosecutor's Office.

15 Madam Prosecutor.

16 MS. BOLICI: Thank you, Your Honour. On behalf of the
17 Specialist Prosecutor's Office are present today myself,
18 Valeria Bolici, Prosecutor with the SPO; and with me are
19 Nathan Quick, Legal Officer; and Angel Langenberg, Case and Evidence
20 Management Assistant.

21 JUDGE GUILLOU: Thank you, Madam Prosecutor.

22 Now I turn to the Defence, please.

23 Mr. Rees.

24 MR. REES: [Microphone not activated].

25 JUDGE GUILLOU: Sorry, microphone.

1 MR. REES: I appear on behalf of Mr. Gucati, Jonathan Elystan
2 Rees, Queen's Counsel. I am assisted by co-counsel, Mr. Huw Bouden,
3 who sits to my left.

4 JUDGE GUILLOU: Thank you, Mr. Rees.

5 And for the record, I note that your client, Mr. Gucati, is
6 present in the courtroom.

7 Now I turn to the Registrar, please.

8 THE REGISTRAR: [via videolink] Good afternoon, Your Honour.
9 Fidelma Donlon, Registrar.

10 JUDGE GUILLOU: Thank you, Madam Registrar.

11 And for the record, I am Nicolas Guillou, Pre-Trial Judge for
12 this case.

13 The accused is appearing today before the Specialist Chambers
14 following the indictment confirmed against him on 11 December.

15 Mr. Gucati, I already asked you to identify yourself during your
16 First Appearance in September, so I will move straight to the
17 procedural history of the case.

18 On 24 September 2020, I issued an arrest warrant against the
19 suspect, having found grounded suspicion that Mr. Gucati is
20 criminally responsible for the following offences: Intimidation
21 during criminal proceedings; retaliation; and violation of the
22 secrecy of proceedings.

23 The suspect was arrested in Kosovo on 25 September 2020 and was
24 transferred to the detention facilities of the Kosovo Specialist
25 Chambers in The Hague on the same day.

1 On 11 December 2020, in my capacity as Pre-Trial Judge, I
2 confirmed the indictment submitted by the Specialist Prosecutor
3 against the accused, charging him with the crimes of:

4 Count 1: Obstructing official persons in performing official
5 duties, by serious threat;

6 Count 2: Obstructing official persons in performing official
7 duties, by participating in the common action of a group;

8 Count 3: Intimidation during criminal proceedings;

9 Count 4: Retaliation;

10 Count 5: Violating secrecy of proceedings through unauthorised
11 revelation of secret information disclosed in official proceedings;

12 And Count 6: Violating secrecy of proceedings through
13 unauthorised revelation of the identities and personal data of
14 protected witnesses.

15 The Confirmed Indictment was served to the accused on Monday,
16 14 December.

17 Now, allow me to explain the specific purpose of this Initial
18 Appearance for the benefit of the accused, of those joining us in the
19 public gallery, and those following the proceedings online.

20 Today's hearing is not a trial. No evidence will be presented
21 or debated, and the guilt or innocence of the accused will not be
22 discussed or debated.

23 The purpose of this Initial Appearance is regulated by Article
24 39 of the Law and Rule 92 of the Rules. According to these
25 provisions, as Pre-Trial Judge, I shall: Have the charges in the

1 Confirmed Indictment read to the accused in a language he understands
2 and speaks; confirm that the accused understands the indictment;
3 satisfy myself that the rights of the accused, in particular his
4 right to counsel, are respected; inform the accused that within 30
5 days of today's hearing he will be called upon to admit guilt or
6 plead not guilty on each charge set out in the indictment. If the
7 accused wishes to do so, he may immediately admit guilt or plead not
8 guilty. And, finally, I shall also set all the dates as appropriate
9 in performing my functions as Pre-Trial Judge.

10 I expect the parties to adhere to these matters, which I will
11 address in turn. Should either party wish to discuss any other
12 matter not expressly foreseen in the context of the Initial
13 Appearance, they're invited to do so in writing by making a filing
14 before me.

15 Mr. Gucati, first may I ask you to confirm that you have
16 received the Confirmed Indictment dated 14 December 2020 in a
17 language that you understand and speak?

18 THE ACCUSED GUCATI: [Interpretation] Yes, I have received it.

19 JUDGE GUILLOU: Thank you, Mr. Gucati.

20 I will now ask Madam Court Officer to read out the charges in
21 the Confirmed Indictment as foreseen in Article 39 of the Law and
22 Rule 92.

23 Madam Court Officer, please proceed.

24 THE COURT OFFICER: Thank you, Your Honour.

25 In the Confirmed Indictment, the Specialist Prosecutor charges

1 Mr. Hysni Gucati with:

2 Count 1: Obstructing official persons in performing official
3 duties, by serious threat, punishable under Article 401(1) and (5) of
4 the Kosovo Criminal Code and Article 15(2) of the Law;

5 Count 2: Obstructing official persons in performing official
6 duties, by participating in the common action of a group, punishable
7 under Article 401(2) to (3) and (5) of the Kosovo Criminal Code and
8 Article 15(2) of the Law;

9 Count 3: Intimidation during criminal proceedings, punishable
10 under Article 387 of the Kosovo Criminal Code and Article 15(2) of
11 the Law;

12 Count 4: Retaliation, punishable under Article 388(1) of the
13 Kosovo Criminal Code and Article 15(2) of the Law;

14 Count 5: Violating the secrecy of proceedings, through
15 unauthorised revelation of secret information disclosed in official
16 proceedings, punishable under Article 392(1) of the Kosovo Criminal
17 Code and Article 15(2) of the Law; and

18 Count 6: Violating the secrecy of proceedings, through
19 unauthorised revelation of the identities and personal data of
20 protected witnesses, punishable under Article 392(2) to (3) of the
21 Kosovo Criminal Code and Article 15(2) of the Law.

22 These offences were committed between at least 7 and
23 25 September 2020.

24 In relation to these offences, there is a well-grounded
25 suspicion that Mr. Hysni Gucati is criminally responsible, pursuant

1 to Article 16(3) of the Law for:

2 a. Committing the offences under Counts 1 to 6, pursuant to
3 Article 17 of the Kosovo Criminal Code;

4 b. Co-perpetrating, with Mr. Nasim Haradinaj and others, the
5 offences under Counts 1 and 3 to 6, pursuant to Article 31 of the
6 Kosovo Criminal Code;

7 c. Inciting the commission of offences under Counts 1 to 6,
8 pursuant to Article 32(1) of the Kosovo Criminal Code;

9 d. Inciting the offences under Counts 1 to 6, pursuant to
10 Article 32(2) of the Kosovo Criminal Code, and those offences were
11 attempted;

12 e. Inciting the offences under Counts 1 to 3 and 6, pursuant to
13 Article 32(3) of the Kosovo Criminal Code, and such offences were
14 neither committed, nor attempted;

15 f. Assisting in the commission of the offences under Counts 1
16 to 6, pursuant to Article 33 of the Kosovo Criminal Code;

17 g. Agreeing to commit with Mr. Nasim Haradinaj and others, the
18 offences under Counts 1 to 6, pursuant to Article 35 of the Kosovo
19 Criminal Code; and/or

20 h. Attempting to commit the offences under Counts 1 to 4 and 6,
21 pursuant to Article 28 of the Kosovo Criminal Code.

22 Thank you.

23 JUDGE GUILLOU: Thank you, Madam Court Officer.

24 Mr. Gucati, I wish to remind you that this is not the time to
25 contest the charges but simply to acknowledge that you understand the

1 charges. You will have ample opportunity to challenge the charges
2 with the assistance of your counsel.

3 Mr. Gucati, did you understand the charges contained in the
4 Confirmed Indictment as read out to you by Madam Court Officer?

5 THE ACCUSED GUCATI: [Interpretation] Yes, I understood them.

6 JUDGE GUILLOU: Thank you, Mr. Gucati.

7 Now let me inform you of your rights before this Court.

8 The Law on the Specialist Chambers and the Rules of Procedure
9 and Evidence guarantee you a number of rights. I will read out the
10 most important ones.

11 First, you shall be presumed innocent until proven guilty beyond
12 reasonable doubt.

13 In the determination of the charges against you, you are
14 entitled to a fair and public hearing subject to any measures ordered
15 for the protection of victims and witnesses.

16 You have the right to be informed promptly and in detail in a
17 language which you understand of the nature and cause of the charges
18 against you.

19 You have the right to have adequate time and facilities for the
20 preparation of your defence and to communicate with a counsel of your
21 own choosing.

22 You have the right to be tried within a reasonable period of
23 time.

24 You have the right to be tried in your presence and to defend
25 yourself through your counsel.

1 You have the right to have counsel assigned to you and without
2 payment if you do not have sufficient means to pay for it.

3 You have the right to examine or have examined the witnesses
4 against you and to obtain the attendance and examination of witnesses
5 on your behalf.

6 You have the right to have the free assistance of an interpreter
7 if you cannot understand or speak the language used in the court.

8 You have the right not to be compelled to testify against
9 yourself or to admit guilt.

10 You have the right to remain silent and no adverse inference
11 shall be drawn from your silence.

12 You also have the right to make unsworn statements relevant to
13 the case, and you may appear as a witness under oath.

14 You have the right to lodge preliminary motions to challenge the
15 jurisdiction of the Specialist Chambers, to allege defects in the
16 form of the indictment, and to seek the severance of indictment.

17 You have the right to receive within 30 days of today's hearing
18 the supporting material to the indictment submitted for confirmation.

19 You have the right to receive all statements of witnesses whom
20 the Specialist Prosecutor intends to call to testify at trial in the
21 language you understand and speak; namely, Albanian.

22 You have the right to receive immediately any information which
23 may reasonably suggest your innocence or mitigate your guilt or
24 affect the credibility or reliability of the Specialist Prosecutor's
25 evidence as soon as the information is in its custody, control, or

1 actual knowledge.

2 You have the right that all material and relevant evidence of
3 facts in possession of the Specialist Prosecutor be made available to
4 you before the beginning and during the proceedings. This right is
5 only subject to restrictions which are strictly necessary and when
6 any counterbalancing protections are applied.

7 You have the right not to be detained for an unreasonable period
8 prior to the opening of the case, to request review of decisions on
9 your detention, and to appeal such decisions directly before the
10 Court of Appeal.

11 You have the right to appeal directly before the Court of Appeal
12 a decision on preliminary motions challenging the jurisdiction of the
13 Specialist Chambers.

14 And you have the right to seek leave to appeal other decisions.

15 Mr. Gucati, you heard the most important rights that you enjoy
16 in accordance with the applicable legal framework of the
17 Specialist Chambers. Do you understand these rights?

18 THE ACCUSED GUCATI: [Interpretation] Yes, Your Honour.

19 JUDGE GUILLOU: Thank you, Mr. Gucati.

20 I wish to inform that according to Article 21(5) of the Law, you
21 may not represent yourself because you are currently in detention.
22 Representation by Specialist Counsel is therefore mandatory.

23 It is my duty, as Pre-Trial Judge, to ensure that your right to
24 counsel is respected. To this end, I have noted the Registrar's
25 filing informing me of the assignment of counsel. I take from the

1 Registrar's report, and from your counsel's submissions today, that
2 you are represented not only for the purpose of this Initial
3 Appearance but for the entire duration of the proceedings in
4 accordance with Section 14 of the Directive on Counsel.

5 Mr. Gucati, can you confirm that Mr. Rees has been assigned for
6 the entire duration of the proceedings?

7 THE ACCUSED GUCATI: [Interpretation] Yes.

8 JUDGE GUILLOU: Thank you. It follows that the accused is
9 presently represented by counsel.

10 I will now turn to the possibility for the accused to enter a
11 plea, if any, in accordance with Rule 92.

12 Mr. Gucati, within 30 days from today you will be called upon to
13 admit guilt or plead not guilty on each charge in the Confirmed
14 Indictment. If you wish to do so, you may choose to immediately
15 admit guilt or plead not guilty.

16 I would, therefore, like to ask you, Mr. Gucati, if you have had
17 the opportunity to discuss the charges in the Confirmed Indictment
18 with your counsel and if you are prepared to enter a plea at this
19 time. If this is the case, I invite you to stand up while you plead.

20 THE ACCUSED GUCATI: [Interpretation] Before I enter a plea,
21 allow me, Your Honour, two minutes of your time to make a short
22 statement.

23 JUDGE GUILLOU: You can. I invite you to stand up, Mr. Gucati.

24 THE ACCUSED GUCATI: [Interpretation] I, Hysni Gucati, and to my
25 comrades in arms, have protected and defended the thresholds of our

1 homes and our homeland. And as a result, I got wounded on 3 June
2 1999, and today, I am a war invalid of the Kosovo Liberation Army.

3 We did not invade Serbia. We are innocent. We are not guilty.
4 I have the right to be free, and I have the right of freedom of
5 expression and the right to express my own opinions. It is my right
6 so that in a lawful way I defend the values of the Albanian nation
7 and of the Kosovo Liberation Army. And I will continue to defend
8 these values up till the end.

9 Your Honour, in relation to all the counts that were read to me
10 a little while ago, I feel not guilty, and I am completely not
11 guilty.

12 JUDGE GUILLOU: Thank you, Mr. Gucati.

13 Just one small clarification. It's an issue we had before with
14 the translation, because in English it is translated "I feel not
15 guilty." Can you confirm that you plead not guilty, for the record?

16 THE ACCUSED GUCATI: [Interpretation] Your Honour, I plead not
17 guilty to all the charges.

18 JUDGE GUILLOU: Thank you, Mr. Gucati.

19 THE ACCUSED GUCATI: [Interpretation] Thank you.

20 JUDGE GUILLOU: Now let me move to the working language of the
21 proceedings.

22 In the Scheduling Order for this Initial Appearance, I decided
23 that further to my previous decision as a Single Judge, the working
24 language for these proceedings will be English.

25 I inform the parties that all directions and instructions set

1 out in the decision of 29 October 2020 shall remain valid for the
2 pre-trial proceedings.

3 At this point I would like to ask the parties whether they have
4 other issues they would like to raise. I remind the parties to give
5 prior notice should any submission require the disclosure of
6 confidential information so that appropriate measures may be taken.

7 Madam Prosecutor.

8 MS. BOLICI: No issues to raise for the Office of the
9 Prosecutor. Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.
11 Counsel.

12 MR. REES: Two matters, Your Honour.

13 The first is in relation to the date of the Status Conference.
14 Your Honour did ask for oral submissions at today's hearing in
15 relation to that date, and in particular had given advance notice of
16 7 January, a Thursday, as being a potential date for that Status
17 Conference.

18 Unfortunately, because of professional commitments, I'm not
19 available for that date, Your Honour, but I would be available, as
20 would Mr. Bouden, the following day, on 8 January. I have previously
21 discussed the matter with newly appointed counsel for Mr. Haradinaj,
22 and I understand that 8 January would be convenient both to he and
23 also indeed to the Specialist Prosecutor's Office, for which I'm
24 grateful for Ms. Bolici's indication in relation to that date.

25 So I would ask in relation to that Status Conference,

1 Your Honour, that 8 January be the date for that matter.

2 The other matter I wish to raise is in relation to the review of
3 detention, which is due by 27 December. In accordance with
4 Your Honour's previous direction, we have submitted today written
5 submissions. They were uploaded earlier on this afternoon to the
6 Legal Workflow system.

7 At the conclusion of those submissions, paragraph 31 to 34, we
8 have requested there be an oral hearing in relation to that review.
9 Your Honour's earlier direction in relation to the submission of
10 written submissions provided that both the SPO and, indeed,
11 Mr. Gucati and Mr. Haradinaj file their written submissions
12 effectively simultaneously on today's date.

13 We, accordingly, have not had any advance notice of the
14 submissions on the review of detention that are made by the
15 Specialist Prosecutor.

16 Obviously, detention concerns a fundamental right of Mr. Gucati,
17 namely, his right to liberty, and the review concerns the issue of
18 the ongoing deprivation of his liberty. The burden in relation to
19 continuing detention sits with the Specialist Prosecutor to justify
20 continued detention. And as you have previously stated, Your Honour,
21 in earlier directions, you have acknowledged that Mr. Gucati has the
22 right to be provided with all essential information in order to be
23 able to obtain an effective review of his detention. And, we would
24 submit, that advance notice of the Specialist Prosecutor's
25 submissions, with an opportunity to comment thereon, would fall

1 within that category of all essential information available.

2 It is our submission that an oral hearing would provide
3 Mr. Gucati with a fair opportunity to respond orally to the written
4 submissions made by the Specialist Prosecutor, and I add that it
5 would also allow counsel for Mr. Haradinaj to make some submissions,
6 albeit oral, in relation to the same issue. It also, of course,
7 would allow each party to directly respond to any questions that
8 Your Honour has and to assist in the just and effective determination
9 of the review.

10 We have proposed -- if Your Honour is minded to grant an oral
11 hearing, we've proposed that a videolink hearing could be held on
12 either Monday, Tuesday, or Wednesday next week, the 21st to 23rd of
13 December. That is our request for an oral hearing on the issue of
14 the review of detention.

15 JUDGE GUILLOU: Thank you, Mr. Rees.

16 Madam Prosecutor, on this last request, and we'll come back to
17 the Status Conference after that, but first on this last request by
18 Mr. Rees, please.

19 MS. BOLICI: Yes, thank you, Your Honour.

20 I observe that Defence counsel has been put on notice since the
21 issuance of the Pre-Trial Judge's order for submission on the review
22 of detention since 9 December 2020 that the parties were requested to
23 file their submission on detention simultaneously.

24 Hence, if the counsel had an idea that he would have wished to
25 ask for a differentiated deadline in presenting the party's

1 submission, he could have raised the matter earlier.

2 In this respect, an oral hearing, according to the Specialist
3 Prosecutor's Office, is not necessary at this stage, considering that
4 both parties have presented their submission in writing and that all
5 matters are before the Pre-Trial Judge for the issuance of its
6 decision.

7 I note that the Court of Appeal, in its written decisions of
8 9 October 2020, when Mr. Gucati's appeals on the Single Judge's
9 decision on application for bail was rejected, also noted that
10 convening an oral hearing on detention matter is a discretionary
11 matter and that it may be regarded as unnecessary when, as in the
12 present case, the information before the Court is sufficient to
13 enable the issuance of a decision.

14 Thank you.

15 JUDGE GUILLOU: Thank you, Madam Prosecutor.

16 Mr. Rees.

17 MR. REES: Just very shortly.

18 Of course, in the Court of Appeal, the appellant, Mr. Gucati, as
19 he was before the Court of Appeal, did have the opportunity to reply
20 in writing to the response to the appeal that had been submitted by
21 the Specialist Prosecutor before the Court of Appeal Panel reached
22 its decision.

23 We do repeat and maintain the request for an oral hearing,
24 proposing the videolink hearing on one of the three dates next week,
25 Monday to Wednesday. An alternative is an opportunity to provide a

1 response to the submissions made in writing by the
2 Specialist Prosecutor before Your Honour reaches the decision on the
3 review.

4 I raise that because we are in a different position procedurally
5 to that which was before the Court of Appeal panel.

6 JUDGE GUILLOU: Thank you, Mr. Rees.

7 On this matter, I'll issue a decision in writing this afternoon
8 or Monday morning at the latest.

9 I will now want to address the issue of the Status Conference
10 that you raised, Mr. Rees, especially concerning the date.

11 It has been indeed my intention to schedule it on Thursday, the
12 7th. The purpose would be to review the status of the case and to
13 organise exchanges between the parties and ensure expeditious
14 preparation for trial.

15 A question, Mr. Rees. If it were to be scheduled on Friday, the
16 8th, would it be possible, both morning or afternoon?

17 MR. REES: It would. We will, in the first instance, be asking
18 to attend remotely, both counsel and indeed Mr. Gucati. We were,
19 nevertheless, going to ask the Court to consider an afternoon
20 listing, so that if nearer the time it became possible to attend in
21 person, we would seek to do that, and an afternoon listing would
22 accommodate travel in those circumstances.

23 But given the current situation regarding COVID restrictions and
24 the like, in the first instance we will be asking for the Court to
25 permit remote attendance for both counsel and Mr. Gucati. In the

1 circumstances, we would be available for both Monday -- sorry,
2 morning and afternoon listing on that date, 8 January.

3 JUDGE GUILLOU: Thank you, Mr. Rees.

4 Mr. Gucati, I wish to remind you, following what your counsel
5 just mentioned, that you have the right to attend the Status
6 Conference with your counsel.

7 However, with your written consent and after receiving advice
8 from your counsel, pursuant to Rule 96(2), the Status Conference may
9 be attended by you in person, with your counsel participating via
10 video conference link; by your counsel with you, Mr. Gucati,
11 participating via video-conference link; or it may also take place in
12 your absence, with your counsel present or participating via
13 video-conference link.

14 I would just like to ask the Prosecution about the date for the
15 Status Conference.

16 MS. BOLICI: Any date would be fine for the Specialist
17 Prosecutor's Office. Thank you, Your Honour.

18 JUDGE GUILLOU: Noted. I will issue a Scheduling Order very
19 rapidly, and it will include the agenda in due course.

20 After the Status Conference, I will issue a decision on the
21 Specialist Prosecutor's disclosure obligations in accordance with
22 Rule 102.

23 In the Scheduling Order for the Status Conference, I will invite
24 the parties to make written submissions before the hearing on this
25 topic and on any matter that they would like to raise during the

1 Status Conference.

2 Mr. Gucati, as you will remain in detention, I would like to
3 inform you that you may challenge your detention on remand in
4 accordance with Rule 57.

5 As I provided in yesterday's rescheduling decision, I invite the
6 Defence for Mr. Gucati to indicate whether its request to postpone
7 the time for the Initial Appearance hearing, which is filing F00079,
8 filed as confidential, can be reclassified as public, or whether the
9 Defence intends to submit a public redacted version.

10 Mr. Rees.

11 MR. REES: Would Your Honour allow us to consider that and make
12 a filing at short notice, confirming our position?

13 JUDGE GUILLOU: Absolutely.

14 MR. REES: I'm grateful.

15 JUDGE GUILLOU: Thank you, Mr. Rees.

16 In this regard, I would like to remind the parties that filings
17 should be submitted as public unless there are reasons to withhold
18 information contained in the filing. In such a case, according to
19 Rule 82, the party has to state the reasons for a confidential
20 classification.

21 Moreover, when I order a party to make submissions or indicate
22 their views on the reclassification of their filings, it simply means
23 that the parties are invited to state their views on this matter.
24 Filings cannot be reclassified *proprio motu* by the parties but only
25 by judicial decision.

1 I also wish to note that I noted with some concern in the past
2 few days that the media reported information regarding the date of
3 the confirmation decision and the charges in the Confirmed Indictment
4 that had not yet been made public at the time. In this regard, I
5 would like to remind the parties and the accused to respect the
6 confidential nature of some of the information in these proceedings.

7 The Initial Appearance of Mr. Gucati takes place today at this
8 time further to an initial decision, and a second one, rescheduling
9 time and date. While this time, taking in consideration that this is
10 an Initial Appearance of the accused, I exceptionally allowed these
11 changes, future requests for rescheduling hearings will be granted
12 only for compelling reasons. Rescheduling a hearing involves
13 significant additional work for several units of the
14 Specialist Chambers, and therefore such instances shall be kept to a
15 minimum.

16 And on that note, I thank Mr. Rees for giving the availabilities
17 of the Defence with precision today so that we can schedule the
18 Status Conference with a full knowledge of the availabilities of the
19 parties.

20 Finally, I would like to remark that the judicial recess begins
21 on 21 December 2020 and ends on 1 January 2021. During this
22 time-period, I will only be responding to urgent matters. Non-urgent
23 matters should be addressed to the Basic Court after the recess.

24 Unless any party has anything to add, this concludes today's
25 hearing. I thank the parties and the Registry for their attendance.

1 I also wish to thank the interpreters, stenographers, audio-visual
2 technicians, and security personnel for their assistance.

3 The hearing is adjourned. Thank you.

4 --- Whereupon the Initial Appearance adjourned at 2.37p.m.

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