

1 Thursday, 7 October 2021

2 [Opening Statement]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 9.34 a.m.

6 PRESIDING JUDGE SMITH: Good morning. Welcome, everyone.

7 Before we start, we'll give an opportunity to the photographers.
8 You may take your pictures. Thank you.

9 In my capacity as Presiding Judge of Trial Panel II and pursuant
10 to Rule 124(1) of the Rules, I hereby open this trial and ask
11 Madam Court Officer to call the case.

12 MR. REES: Your Honour, can I raise a matter before Your Honour
13 proceeds [Microphone not activated].

14 PRESIDING JUDGE SMITH: Please tell me about what subject.

15 MR. REES: That there is still an outstanding motion under
16 Rule 117(2), presumption of which [Microphone not activated] prior to
17 the opening of the case under the rules.

18 THE INTERPRETER: The interpreters kindly ask the speaker to
19 speak into the microphone. Thank you.

20 PRESIDING JUDGE SMITH: Which specific application? For what
21 purpose?

22 MR. REES: [Microphone not activated] An application, a motion to
23 exclude evidence and it's --

24 THE INTERPRETER: Interpreter's apologies. We do not hear the
25 counsel.

1 MR. REES: [Microphone not activated] -- filed under Rule 117 and
2 Rule 118. There was an order to file a reply by Monday, 4 October.

3 PRESIDING JUDGE SMITH: Is the interpreter getting the feed now?

4 THE INTERPRETER: No, Your Honour. We can't hear him.

5 PRESIDING JUDGE SMITH: I'm sorry, Mr. Rees. They cannot hear
6 you.

7 MR. REES: Well, the mic is on, Your Honour.

8 PRESIDING JUDGE SMITH: Okay.

9 MR. REES: I'm using the other microphone. Does that assist?

10 PRESIDING JUDGE SMITH: Yes.

11 MR. REES: The issue is apparently with the interpreter.

12 PRESIDING JUDGE SMITH: Will the interpreter please say a test
13 phrase in Albanian so Mr. Haradinaj can see if his earphones are
14 working? Is it working? Okay. Thank you.

15 Mr. Rees, I understood your point made, that the 117(2)
16 application that you had made to exclude Prosecution witnesses has
17 not been ruled on. I rule on it now orally. We have deliberated on
18 the matter. It is overruled and a written reasoning will follow.

19 MR. REES: [Microphone not activated].

20 PRESIDING JUDGE SMITH: So now I would like to ask the parties
21 to introduce themselves, starting with the Specialist Prosecutor's
22 Office.

23 MS. BOLICI: Good morning, Your Honours.

24 PRESIDING JUDGE SMITH: I'm sorry, we stopped before the
25 Court Officer could call the case.

1 So go ahead, Madam Court Officer.

2 THE COURT OFFICER: Good morning, Your Honours. This is case
3 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
4 Nasim Haradinaj.

5 PRESIDING JUDGE SMITH: Thank you.

6 Now, Madam Prosecutor.

7 MS. BOLICI: Thank you, Your Honours. Good morning. For the
8 Specialist Prosecutor's Office appear today Jack Smith,
9 Specialist Prosecutor; James Pace, Associate Prosecutor;
10 Matthew Halling, Associate Prosecutor; Line Pedersen, Case and
11 Evidence Manager; and I am Valeria Bolici, Prosecutor with the SPO.

12 PRESIDING JUDGE SMITH: Thank you.

13 And now I turn to the Defence.

14 Mr. Rees, please.

15 MR. REES: My name is Jonathan Rees. I appear on behalf of
16 Mr. Gucati. I am assisted by Mr. Huw Bowden, Ms. Eleanor Stephenson,
17 Mr. Remi Halilaj, Ms. Faye Wigmore, and Mr. Joseph Bowden.

18 PRESIDING JUDGE SMITH: Thank you, Mr. Rees.

19 Mr. Cadman, please.

20 MR. CADMAN: Good morning, Your Honours. Toby Cadman,
21 Specialist Counsel for Mr. Nasim Haradinaj who is present in the
22 court today. Beside me, Mr. Carl Buckley, Ms. Miriam Boxberg.
23 Behind me, Mr. Omar Solimon, Ms. Poppy Henderson, and
24 Mr. Admir Berisha.

25 PRESIDING JUDGE SMITH: Thank you, Mr. Cadman.

1 Now I turn to the Registry.

2 MR. ROCHE: Good morning, Your Honours. On behalf of the
3 Registry is the Registrar, Dr. Fidelma Donlon, and myself,
4 Ralph Roche.

5 PRESIDING JUDGE SMITH: Thank you, Mr. Roche.

6 Before we start, I would like to remind everyone of a few rules
7 that must be observed at all times in order to make for a more
8 effective courtroom with an accurate record.

9 So please, before speaking, make sure your microphone is
10 activated and switch it off as soon as you finish. Speak slowly and
11 clearly as we have interpretation from and into Albanian and Serbian.
12 In this way, the interpreters can do their work properly. Before
13 intervening, wait five seconds in order to allow the interpreters to
14 finish the interpretation of the previous sentence.

15 I would also like to remind you that this hearing is held in
16 open session unless otherwise requested by the parties or decided by
17 the Panel. So please give prior notice should any submission require
18 the disclosure of confidential information so that we can go into
19 private or closed session.

20 I would also remind everyone to follow the in-court redactions
21 procedure that we set out in our order for the Conduct of
22 Proceedings.

23 Today's hearing will proceed pursuant to Rules 124, 125, and 126
24 of the Rules of Procedure and Evidence of the Kosovo Specialist
25 Chambers.

1 First, the Specialist Prosecutor will read the indictment.
2 Then, as Presiding Judge, I will ask the accused whether they
3 understand the indictment, and I will give them an opportunity to
4 confirm their initial plea. Further, I will inform the accused of
5 their rights and obligations. Lastly, I will give the floor to the
6 Specialist Prosecutor to make his opening statement.

7 Before that step, I will give some instructions on the
8 presentation of evidence for the coming weeks. Our plan is to
9 finalise this hearing today by 4.00 p.m. But if the SPO needs more
10 time to finish its opening statement, we may also sit for the first
11 session tomorrow.

12 Before we begin, I will provide a short procedural history of
13 this case.

14 On 25 and 26 September 2020, Hysni Gucati and Nasim Haradinaj
15 were arrested in Kosovo and transferred to the Specialist Chambers
16 Detention Facilities in The Hague, the Netherlands.

17 On 30 October 2020, the Specialist Prosecutor submitted for
18 confirmation before the Pre-Trial Judge an indictment against
19 Mr. Gucati and Mr. Haradinaj.

20 On 11 December 2020, the Pre-Trial Judge confirmed, in part, the
21 indictment and ordered the Specialist Prosecutor's Office to submit a
22 revised indictment as confirmed.

23 On 5 July 2021, further to a decision of the Court of Appeals
24 Panel, the SPO filed a corrected indictment.

25 On 16 July 2021, the Pre-Trial Judge transmitted the case file

1 to the Trial Panel.

2 On 8 September 2021, the Panel set a date for the opening of the
3 case for today, 7 October 2021, and decided that the presentation of
4 the SPO case will begin on 18 October 2021.

5 Now, we will continue with the reading of the indictment as
6 provided in Rule 124(2) of the Rules.

7 Mr. Prosecutor, please read the unredacted version of the
8 corrected indictment as filed on 5 July 2021. Where necessary, we
9 will go into private session or closed session to read the
10 confidential parts. Once out of the private session, the Prosecutor
11 will read the redacted version of the same text.

12 Mr. Prosecutor, you have the floor.

13 MR. HALLING: Thank you, Your Honour. I will now read the
14 indictment into the record in accordance with Your Honours'
15 instructions. As the Defence has asked for previously, it will be
16 the entire unredacted indictment. Certain paragraphs in the
17 indictment refer to other paragraph numbers as cross-references. My
18 understanding is that the Defence wants these read into the record as
19 well, so I will do so. And with that, I will begin.

20 The Specialist Prosecutor, pursuant to his authority under
21 Articles 35(2)(i) and 38 of Law No.05/L-053 on Specialist Chambers
22 and Specialist Prosecutor's Office ('Law'), charges:

23 Hysni Gucati and Nasim Haradinaj with Criminal Offences Against
24 the Administration of Justice and Public Administration and Criminal
25 Offences Against Public Order punishable under Chapters II, XXXI, and

1 XXXII of the Criminal Code of the Republic of Kosovo, Code
2 NO.06/L-074 (2019) ('KCC') and Articles 15(2) and 16(3) of the Law, as
3 set forth below:

4 The Accused.

5 Your Honours, at this point we would request to go into private
6 session for about two minutes to read the redacted portion into the
7 record.

8 PRESIDING JUDGE SMITH: All right. Madam Court Officer, we will
9 go into private session.

10 [Private session]

11 [Private session text removed]

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12 [Open session]

13 THE COURT OFFICER: Your Honours, we are back in public session.

14 PRESIDING JUDGE SMITH: All right.

15 You can proceed, Mr. Prosecutor.

16 MR. HALLING: Thank you, Your Honour.

17 The accused.

18 Hysni Gucati, son of, redacted name, was born on 30 March 1967
19 in Morine, Skenderaj municipality, Kosovo. His last known residence
20 is in a redacted address, Kosovo. He has Kosovan nationality,
21 personal number, which is redacted.

22 Nasim Haradinaj, son of, a redacted name, was born on 21 May
23 1963 in Gllogjan, Decan municipality, Kosovo. His last known
24 residence is in a redacted address, Kosovo. He has Kosovan
25 nationality, personal number redacted.

1 At all times relevant to this indictment, Hysni Gucati and
2 Nasim Haradinaj were chairman and deputy chairman respectively of the
3 Kosovo Liberation Army War Veterans Association, or KLA WVA.

4 Statement of facts.

5 All crimes charged in this indictment relate to official
6 proceedings of the Specialist Chambers ('SC'), including
7 investigations of the Specialist Prosecutor's Office ('SPO'). And
8 collectively, this is referred to as 'SC Proceedings.'

9 All references to witnesses in this indictment should be
10 understood to include any persons likely to have information about a
11 crime, the perpetrator, or important circumstances relevant to SC
12 Proceedings.

13 Between at least April and September 2020, Hysni Gucati and
14 Nasim Haradinaj made statements accusing witnesses cooperating with
15 the SPO and other persons of being, *inter alia*, liars, collaborators,
16 and traitors. This conduct demonstrates their intent and motive to
17 undermine and obstruct SC Proceedings.

18 As set out below, between at least 7 and 25 September 2020,
19 Hysni Gucati, Nasim Haradinaj, Faton Klinaku (KLA WVA secretary),
20 Tome Gashi (KLA WVA legal counsel), and other members and
21 representatives of the KLA WVA, collectively with Faton Klinaku and
22 Tome Gashi, called 'Associates,' disseminated without authorisation
23 confidential and non-public information relating to the confidential
24 investigations of the Special Investigative Task Force ('SITF') and
25 SPO, encouraged others to further disseminate confidential and

1 non-public information, and undertook other actions for the declared
2 purpose of obstructing the SC/SPO. This confidential and non-public
3 information included documents marked 'confidential' and the names,
4 personal data, and evidence of hundreds of witnesses under protection
5 in the context of SC Proceedings and prior criminal proceedings in,
6 or relating to, Kosovo.

7 Hysni Gucati and Nasim Haradinaj organised and coordinated the
8 unauthorised dissemination and related actions, including by, with
9 Associates, reviewing the confidential and non-public information,
10 partaking in decisions as to whether and how to disseminate it, and
11 organising and participating in related events, including press
12 conferences and public appearances where confidential and non-public
13 information was publicly disseminated and discussed.

14 First Disclosure.

15 On 7 September 2020, Hysni Gucati and Nasim Haradinaj, acting in
16 their capacities as head and deputy head of the KLA WVA, held a press
17 conference at which Hysni Gucati announced that the KLA WVA had
18 received files relating to the SC/SPO. This is known as the 'First
19 Press Conference.' These files, known as the 'First Disclosure,'
20 were laid out on a table during the press conference.

21 Nasim Haradinaj stated that four copies of the documents were
22 being made available at the First Press Conference. He announced the
23 names, places of residence and employment, or other personal data of
24 four witnesses. Nasim Haradinaj also explained that the names,
25 places of residence, telephone numbers, other personal data,

1 statements, and information relating to the interviews of other
2 witnesses, including Albanians, Romas, and Serbs, were in the First
3 Disclosure. Nasim Haradinaj acknowledged the confidential nature of
4 the documents. He stated that the KLA WVA would send a copy of the
5 documents to members of the Kosovo Assembly and would give those
6 attending the First Press Conference as many copies as they wanted.
7 Nasim Haradinaj urged those in attendance to take a copy of the
8 documents and to review the witnesses' names and statements.

9 On 7 September 2020, the SC Single Judge authorised the seizure
10 of documents forming part of the First Disclosure, recognised the
11 confidential and non-public nature of information from SITF/SPO
12 investigations, and ordered that any individual in possession of the
13 documents or their contents refrain from copying, recording or
14 disseminating them. This is known as the 'First Order.'

15 On 8 September 2020, the SPO served the First Order and seized
16 the documents at the KLA WVA premises. The seized items included
17 confidential and non-public information relating to confidential
18 investigations, including the identities, personal data, and evidence
19 of witnesses.

20 After the First Press Conference, between 7 and 15 September
21 2020, Hysni Gucati and Nasim Haradinaj made multiple public
22 statements relating to the First Disclosure. As part of such
23 statements, Hysni Gucati and/or Nasim Haradinaj publicly:

24 i. confirmed that copies of the First Disclosure had been
25 provided to members of the press;

1 ii. disclosed further contents of the First Disclosure,
2 including details of the confidential investigations;

3 iii. stated that witnesses were named in the documents and
4 referred to the dates and locations of specific interviews;

5 iv. accused witnesses named in the documents of being,
6 *inter alia*, liars, traitors, and spies;

7 v. encouraged --

8 PRESIDING JUDGE SMITH: Excuse me, Mr. Halling. We're having a
9 technical problem again.

10 MR. CADMAN: It keeps clicking offline. [Microphone not
11 activated].

12 PRESIDING JUDGE SMITH: Yes, we're going to have to have someone
13 take a look at it. We're working on it.

14 THE INTERPRETER: Interpreter's note: We apologise, but we
15 still cannot hear counsel.

16 PRESIDING JUDGE SMITH: In order to deal with this, the
17 technician needs to stop the proceedings for the time being for maybe
18 ten minutes. So we will step aside.

19 We are adjourned for a ten-minute period. Please stay close.

20 --- Recess taken at 9.58 a.m.

21 --- On resuming at 10.08 a.m.

22 PRESIDING JUDGE SMITH: Sorry for the interruption.

23 Everyone, apparently we are possibly bumping the connection.
24 None of us have a lot of room, so let's be mindful of where our
25 documents and whatnot are and try to avoid the hookup for the system.

1 Mr. Halling, you can continue.

2 MR. HALLING: Thank you, Your Honour. I'll start from the
3 beginning of the paragraph where we paused.

4 PRESIDING JUDGE SMITH: That's fine. Thank you.

5 MR. HALLING: After the first Press Conference, between 7 and
6 15 September 2020, Hysni Gucati and Nasim Haradinaj made multiple
7 public statements relating to the First Disclosure. As part of such
8 statements, Hysni Gucati and/or Nasim Haradinaj publicly:

9 i. confirmed that copies of the First Disclosure had been
10 provided to members of the press;

11 ii. disclosed further contents of the First Disclosure,
12 including details of the confidential investigations;

13 iii. stated that witnesses were named in the documents and
14 referred to the dates and locations of specific interviews;

15 iv. accused witnesses named in the documents of being,
16 *inter alia*, liars, traitors, and spies;

17 v. encouraged members of the press to publish documents
18 contained in the first disclosure;

19 vi. declared that, if they received further confidential and
20 non-public information, they would publicly disseminate it; and

21 vii. stated that they did not recognise the SC/SPO and that
22 their actions were intended to obstruct the SC/SPO.

23 After the First Press Conference and over the following days,
24 certain members of the press and public further disseminated contents
25 of the First Disclosure, including witness names and personal data,

1 in the press and online.

2 Second Disclosure.

3 On 16 September 2020, Hysni Gucati and Nasim Haradinaj, acting
4 in their capacities as head and deputy head of the KLA WVA, held a
5 press conference, or a Second Press Conference, at which Hysni Gucati
6 stated that the KLA WVA had received another set of documents. He
7 told those who were present that they could take the documents. This
8 is known as the 'Second Disclosure.' While showing one of the
9 documents, Hysni Gucati named two persons who had cooperated with the
10 SITF.

11 Nasim Haradinaj repeated the name of one of the persons already
12 identified by Hysni Gucati, named another person who cooperated with
13 the SITF, and revealed other confidential and non-public information
14 relating to the confidential investigations. Nasim Haradinaj told
15 those present at the Second Press Conference that the documents were
16 available for anyone and told those present to take them.

17 On 17 September 2020, the SC Single Judge authorised the seizure
18 of documents forming part of the Second Disclosure, recognised the
19 confidential and non-public nature of information from SITF/SPO
20 investigations, and ordered that any individual in possession of the
21 documents or their contents refrain from copying, recording, or
22 disseminating them. This is known as the 'Second Order.' Later that
23 day, the SPO served the Second Order and seized documents at the KLA
24 WVA premises. The seized items included (i) documents relating to
25 prior criminal proceedings in Kosovo and before the International

1 Criminal Tribunal for the former Yugoslavia; and (ii) documents
2 relating to confidential investigations, which had also formed part
3 of the First Disclosure and included the identity or personal data of
4 at least three witnesses.

5 After the Second Press Conference, between 17 and 21 September
6 2020, Hysni Gucati, Nasim Haradinaj, and Tome Gashi made multiple
7 public statements relating to the First Disclosure and Second
8 Disclosure. As part of such statements, Hysni Gucati and/or
9 Nasim Haradinaj publicly:

10 i. acknowledged the sensitive, confidential, and non-public
11 nature of the First Disclosure and Second Disclosure;

12 ii. acknowledged that, by law, witness identities and personal
13 data should not be published;

14 iii. claimed that the documents seized by the SPO formed only
15 part of the documents disseminated during and after the Second Press
16 Conference, as the rest had already been taken by members of the
17 press and others;

18 iv. acknowledged that SC orders forbade further dissemination of
19 the contents of the First Disclosure and Second Disclosure;

20 v. confirmed that the Second Disclosure had been made available
21 to and taken by members of the press;

22 vi. disclosed further contents of the First Disclosure and
23 Second Disclosure, including details of the confidential
24 investigations;

25 vii. Confirmed that documents disseminated include names and

1 personal data of witnesses;

2 viii. accused witnesses referred to in the confidential
3 information of being, *inter alia*, liars, spies, and traitors;

4 ix. thanked and praised the persons who had provided the Second
5 Disclosure to the KLA WVA;

6 x. promised to publish any further confidential and non-public
7 information relating to the SC/SPO provided to the KLA WVA;

8 xi. challenged members of the press for not publishing
9 confidential and non-public information;

10 xii. told members of the press to publish confidential and
11 non-public information; and

12 xiii. stated that they did not recognise the SC/SPO and that
13 their actions were intended to obstruct the SC/SPO.

14 Third Disclosure.

15 On 22 September 2020, Hysni Gucati and Nasim Haradinaj, acting
16 in their capacities as head and deputy head of the KLA WVA, held a
17 press conference, or the Third Press Conference, at which
18 Hysni Gucati stated that the KLA WVA had received documents, which
19 they believed had been leaked from the SC/SPO. This is known as the
20 'Third Disclosure.' Hysni Gucati showed one of the documents,
21 inviting those in attendance to move closer to view it.

22 Your Honours, at this point we would ask again to move into
23 private session for the purpose of reading redacted information. It
24 should take about three minutes.

25 PRESIDING JUDGE SMITH: Madam Court Officer, we can go into

1 private session.

2 [Private session]

3 [Private session text removed]

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12 [Open session]

13 THE COURT OFFICER: Your Honours, we're in public session.

14 PRESIDING JUDGE SMITH: Go ahead, Mr. Halling. We are in public
15 session.

16 MR. HALLING: Thank you, Your Honour.

17 Picking up where I left off for the benefit of the public.

18 Nasim Haradinaj stated that the documents bore the SPO's logo
19 and, based on his understanding, concerned a draft indictment.

20 Referring to the contents of the documents, he named five potential
21 accused persons, something which is redacted, and identified other

22 persons and locations mentioned in the document. Nasim Haradinaj

23 invited those in attendance to look at, record, and publish the

24 contents of the documents. He also declared that the KLA WVA would

25 accept and disseminate further confidential and non-public

1 information relating to the SC/SPO.

2 On 22 September 2020, the SPO issued an order for the production
3 of documents forming part of the Third Disclosure and that any
4 individual in possession of the documents or their contents refrain
5 from copying, recording or disseminating them. This is known as the
6 'Third Order.' That same day, the SPO served the Third Order and
7 seized documents at the KLA WVA premises. The seized items included
8 confidential and non-public information relating to confidential
9 investigations, including the identities, personal data, and evidence
10 of witnesses.

11 After the Third Press Conference, between 22 and 25 September
12 2020, Hysni Gucati and Nasim Haradinaj made multiple public
13 statements relating to the Third Disclosure. As part of such
14 statements, Hysni Gucati and/or Nasim Haradinaj publicly:

15 i. confirmed that the third disclosure was disseminated to the
16 press;

17 ii. something which is redacted;

18 iii. encouraged persons with confidential and non-public
19 information relating to the SC/SPO to continue to provide it to the
20 KLA WVA;

21 iv. promised to publish any further confidential and non-public
22 information relating to the SC/SPO provided to the KLA WVA; and

23 v. stated that they did not recognise the SC/SPO and that their
24 actions were intended to obstruct the SC/SPO.

25 Following the Third Press Conference and over the following

1 days, certain members of the press and public further disseminated
2 contents of the Third Disclosure, including witness names and
3 evidence, in the press and online.

4 As a result of the First Disclosure, Second Disclosure, Third
5 Disclosure, and related events set out above, witnesses and/or their
6 family members were intimidated. Their safety, privacy, reputations,
7 and livelihoods were threatened. Further, the SPO was forced to take
8 measures to address actual and potential consequences, including to
9 witnesses in SC Proceedings.

10 The confidential and non-public documents disseminated as part
11 of the First Disclosure, Second Disclosure, and Third Disclosure are
12 hereinafter referred to as the 'Confidential Information.'

13 Crimes.

14 Based on the facts set out in paragraph 4 to 22, Hysni Gucati
15 and Nasim Haradinaj are individually criminally responsible for each
16 of the following crimes. As set out in paragraphs 45 to 46, they had
17 the requisite knowledge and intent for each crime.

18 Obstructing official persons in performing official duties.

19 Between at least 7 and 25 September, Hysni Gucati,
20 Nasim Haradinaj, and Associates, by serious threat and common action,
21 obstructed or attempted to obstruct SC Proceedings. Hysni Gucati and
22 Nasim Haradinaj organised and coordinated the group committing such
23 acts.

24 In particular, as set out in paragraphs 6 to 9, 11 to 14, 16 to
25 18, and 20 to 21, on multiple occasions between at least 7 and

1 25 September 2020, Hysni Gucati, Nasim Haradinaj, and Associates (i)
2 disseminated the Confidential Information; (ii) accused witnesses
3 identified in the Confidential Information of being, *inter alia*,
4 liars, spies, and traitors; and (iii) declared that their purpose in
5 disseminating the Confidential Information and related acts was to
6 obstruct SC Proceedings. Hysni Gucati and Nasim Haradinaj also
7 publicly encouraged, instructed, and advised:

8 i. certain members of the public in possession of or with access
9 to confidential information relating to SC Proceedings to continue
10 providing it to the KLA WVA; and

11 ii. certain members of the press and public to take or record,
12 and further disseminate and publish, Confidential Information.

13 Following, at least, the First Disclosure and Third Disclosure,
14 certain of the Confidential Information was further disseminated in
15 the press and online, as set out in paragraphs 12 and 21.

16 Finally, as set out in paragraph 22, the acts of Hysni Gucati,
17 Nasim Haradinaj, and Associates obstructed or attempted to obstruct
18 SC Proceedings: (i) witnesses were intimidated; (ii) the SPO's
19 ability to effectively investigate and prosecute crimes, including by
20 obtaining and securing relevant evidence, was thereby threatened; and
21 (iii) SPO resources and time were diverted to address actual and
22 potential consequences, including to witnesses and SC Proceedings.

23 Intimidation during criminal proceedings.

24 Between at least 7 and 25 September 2020, Hysni Gucati,
25 Nasim Haradinaj, and Associates used serious threats to induce or

1 attempt to induce witnesses to refrain from making a statement or to
2 make a false statement or otherwise fail to state true information to
3 the SPO and SC.

4 In particular, as set out in paragraphs 6 to 9, 11 to 14, 16 to
5 18, and 20 to 21, on multiple occasions, Hysni Gucati,
6 Nasim Haradinaj, and Associates:

7 i. disseminated the identities, personal data, and evidence of
8 hundreds of witnesses to members of the press and public;

9 ii. acknowledged that the Confidential Information included the
10 identities and data of protected witnesses;

11 iii. in public appearances revealed witness identities, their
12 places of residence, and other personal data, and details, including
13 dates and locations, of witness interviews;

14 iv. accused witnesses identified in the Confidential Information
15 of being, *inter alia*, liars, spies, and traitors;

16 v. encouraged, instructed, and advised certain members of the
17 public in possession of or with access to confidential information
18 relating to SC Proceedings to continue providing it to the KLA WVA;

19 vi. encouraged, instructed, and advised certain members of the
20 press and public to take or record, and further disseminate and
21 publish, Confidential Information;

22 vii. declared that, and by their actions demonstrated, their
23 indifference to the safety of witnesses identified in the
24 Confidential Information; and

25 viii. declared that their purpose in disseminating the

1 Confidential Information and related acts was to obstruct SC
2 Proceedings.

3 Retaliation.

4 Between at least 7 and 25 September 2020, Hysni Gucati,
5 Nasim Haradinaj, and Associates took or attempted to take actions
6 harmful to witnesses with the intent to retaliate for providing
7 truthful information relating to the commission or possible
8 commission of criminal offences to the SPO.

9 In particular, the acts and omissions described in paragraph 30
10 above infringed the witnesses' fundamental rights as guaranteed in
11 the Constitution of the Republic of Kosovo and the European
12 Convention on Human Rights. Witnesses and/or their family members
13 were intimidated. Their safety, privacy, reputations, and
14 livelihoods were threatened.

15 Violating the secrecy of proceedings.

16 As set out in paragraphs 6 to 9, 11 to 14, 16 to 18, and 20 to
17 21, between at least 7 and 25 September 2020, Hysni Gucati,
18 Nasim Haradinaj, and Associates, without authorisation, revealed
19 Confidential Information. They also encouraged, instructed, and
20 advised: (i) certain members of the public in possession of or with
21 access to confidential information relating to SC Proceedings to
22 continue providing it to the KLA WVA; and (ii) certain members of the
23 press and public to take or record, and further disseminate and
24 publish, Confidential Information. The Confidential Information must
25 not be revealed according to the Law and/or was classified by

1 competent authorities, including the SC, SITF/SPO, and cooperating
2 organisations and states pursuant to an agreement with the SITF/SPO.
3 The information was classified in accordance with Articles 4(2), 23,
4 35(2)(d) to (f), 39, 54(8), 61(3) to (4), and 62 of the Law.

5 Further, as set out in paragraphs 6 to 9, 11 to 14, 16 to 18,
6 and 20 to 21, between at least 7 and 25 September 2020, Hysni Gucati,
7 Nasim Haradinaj, and Associates, without authorisation, revealed or
8 attempted to reveal the identities and personal data of witnesses
9 under protection in SC Proceedings and prior criminal proceedings in
10 Kosovo. They also encouraged, instructed, and advised members of the
11 press and public to reveal such information without authorisation.
12 Hysni Gucati, Nasim Haradinaj, and Associates publicly stated that
13 the Confidential Information included identities, personal data, and
14 evidence of witnesses and related to confidential SITF/SPO
15 investigations. Hysni Gucati, Nasim Haradinaj, and Associates
16 acknowledged that the identities and personal data of witnesses
17 should not, by law, be publicly disseminated. Rather, in accordance
18 with the Law, the Confidential Information should only have been
19 disclosed in the context of criminal proceedings, subject to
20 appropriate safeguards and protective measures.

21 As set out in paragraphs 22 and 32 above, the unauthorised
22 revelation of protected witness identities and personal data resulted
23 in serious consequences for the witnesses and severely hindered SPO
24 investigations.

25 Modes of liability.

1 Based on the facts set out in paragraphs 4 to 22, Hysni Gucati
2 and Nasim Haradinaj are individually criminally responsible for the
3 crimes described above through the following modes of liability. As
4 set out in paragraphs 45 to 46, they had the requisite knowledge and
5 intent for each mode of liability and crime.

6 Commission and Attempt.

7 Hysni Gucati and Nasim Haradinaj committed the crimes, through
8 the acts and omissions described above in paragraphs 6 to 9, 11, 13
9 to 14, 16 to 18, and 20.

10 In addition or the alternative, through the acts and omissions
11 described in paragraphs 6 to 9, 11, 13 to 14, 16 to 18, and 20,
12 Hysni Gucati and Nasim Haradinaj attempted, within the meaning of
13 KCC Article 28, the commission of the crimes of obstructing official
14 persons in performing official duties, intimidation during criminal
15 proceedings, retaliation, and violating the secrecy of proceedings
16 through the revelation of the identities and personal data of
17 protected witnesses.

18 Co-perpetration and Agreement to commit criminal offence.

19 As demonstrated by their declared purpose to obstruct the SC/SPO
20 and concerted acts in furtherance of this common purpose, as
21 described in paragraphs 6 to 9, 11 to 14, 16 to 18, and 20 to 21,
22 Hysni Gucati, Nasim Haradinaj, and Associates committed crimes in
23 co-perpetration and/or agreed to commit the crimes.

24 Hysni Gucati and Nasim Haradinaj substantially contributed to
25 and undertook substantial acts toward the commission of the crimes in

1 furtherance of their common purpose or agreement including in one or
2 more of the following ways, as described in more detail in
3 paragraphs 6 to 9, 11, 13 to 14, 16 to 18, and 20:

4 i. reviewing the Confidential Information;

5 ii. deciding or partaking in decisions about whether and how to
6 disseminate it;

7 iii. organising and partaking in events, including press
8 conferences and public appearances, where Confidential Information
9 was publicly disseminated and discussed;

10 iv. disseminating the Confidential Information;

11 v. revealing the identities and personal data of witnesses,
12 including protected witnesses;

13 vi. making accusations against and derogatory comments about
14 witnesses;

15 vii. encouraging and advising persons with access to
16 confidential information relating to SC Proceedings to continue
17 providing it to the KLA WVA, and promising to continue disseminating
18 such confidential information; and/or

19 viii. encouraging, instructing, and advising members of the
20 media and public to take or record, and further disseminate the
21 Confidential Information.

22 Incitement.

23 Through one or more of the acts described in paragraph 40(ii) to
24 (viii), Hysni Gucati and Nasim Haradinaj incited one another,
25 Associates, and others, namely (i) the persons who, remotely or in

1 person, attended, observed, or were otherwise informed of the three
2 press conferences and other public statements described in
3 paragraphs 8 to 9, 11, 13 to 14, 16 to 18, and 20 above; (ii) certain
4 members of the press; and (iii) persons in possession of or with
5 access to confidential and non-public information relating to SC
6 Proceedings, collectively known as 'Other Persons,' to commit the
7 crimes described above.

8 In addition to or in the alternative, through one or more of the
9 acts described in paragraphs 40(ii) to (viii), Hysni Gucati and
10 Nasim Haradinaj: (i) incited one another, Associates, and Other
11 Persons to commit the crimes of obstructing official persons in
12 performing official duties, intimidation during criminal proceedings,
13 retaliation, and violating the secrecy of proceedings; and (ii) such
14 crimes were attempted.

15 In addition or in the alternative, through one or more of the
16 acts described in paragraphs 40(ii) to (viii), Hysni Gucati and
17 Nasim Haradinaj: (i) incited one another, Associates, and Other
18 Persons to commit the crimes of obstructing official persons in
19 performing official duties, intimidation during criminal proceedings,
20 and violating the secrecy of proceedings through the revelation of
21 the identities and personal data of protected witnesses; and (ii)
22 such crimes were neither committed, nor attempted.

23 Assistance.

24 Finally, through one or more of the acts described in
25 paragraph 40, Hysni Gucati and Nasim Haradinaj provided assistance to

1 one another, Associates, and Other Persons in the commission of the
2 crimes described above.

3 Intent.

4 As demonstrated by their deliberate conduct and statements
5 described in paragraphs 5 to 9, 11 to 14, 16 to 18, and 20 to 21,
6 including dissemination of the Confidential Information, accusations
7 against witnesses, indifference to witness safety, statements
8 acknowledging the confidential nature of the Confidential
9 Information, and declared purpose to obstruct the SC/SPO,
10 Hysni Gucati, Nasim Haradinaj, and, as applicable, Associates and
11 Other Persons intended the commission of the crimes described above
12 and to incite and assist the commission of the crimes.

13 In the alternative, as demonstrated by their deliberate conduct
14 and statements, Hysni Gucati, Nasim Haradinaj, and, as applicable,
15 Associates and Other Persons: (i) were aware that the crimes
16 described above could occur as a result of their acts or omissions,
17 and that their acts or omissions could incite or assist in the
18 commission of crimes; and (ii) acceded to their occurrence.

19 Statement of crimes.

20 Through the acts and omissions described above, Hysni Gucati and
21 Nasim Haradinaj:

22 i. committed, alone or in co-perpetration, the crimes of
23 obstructing official persons in performing official duties,
24 intimidation during criminal proceedings, retaliation, and violating
25 the secrecy of proceedings;

1 ii. attempted to commit the crimes of obstructing official
2 persons in performing official duties, intimidation during criminal
3 proceedings, retaliation, and violating the secrecy of proceedings
4 through the revelation of the identities and personal data of
5 protected witnesses;

6 iii. agreed to commit the crimes of obstructing official persons
7 in performing official duties, intimidation during criminal
8 proceedings, retaliation, and violating the secrecy of proceedings,
9 and took substantial acts towards the commission of these crimes;

10 iv. incited and assisted in the commission of the crimes of
11 obstructing official persons in performing official duties,
12 intimidation during criminal proceedings, retaliation, and violating
13 the secrecy of proceedings;

14 v. incited the commission of the crimes of obstructing official
15 persons in performing official duties, intimidation during criminal
16 proceedings, retaliation, and violating the secrecy of proceedings,
17 and such crimes were attempted; and/or

18 vi. incited the commission of the crimes of obstructing official
19 persons in performing official duties, intimidation during criminal
20 proceedings, and violating the secrecy of proceedings, through the
21 revelation of the identities and personal data of protected
22 witnesses, and such crimes were neither committed, nor attempted.

23 Hysni Gucati and Nasim Haradinaj are individually criminally
24 responsible for:

25 Count 1: Obstructing official persons in performing official

1 duties, by serious threat, between at least 7 and 25 September 2020,
2 a criminal offence against public order, punishable under KCC
3 Articles 17, 28, 31, 32(1) to (3), 33, 35, and 401(1) and (5), and
4 Articles 15(2) and 16(3) of the Law;

5 Count 2: Obstructing official persons in performing official
6 duties, by participating in the common action of a group, between at
7 least 7 and 25 September 2020, a criminal offence against public
8 order, punishable under KCC Articles 17, 28, 32(1) to (3), 33, 35,
9 and 401(2) to (3) and (5), and Articles 15(2) and 16(3) of the Law;

10 Count 3: Intimidation during criminal proceedings, between at
11 least 7 and 25 September 2020, a criminal offence against the
12 administration of justice and public administration, punishable under
13 KCC Articles 17, 28, 31, 32(1) to (3), 33, 35, and 387, and
14 Articles 15(2) and 16(3) of the Law;

15 Count 4: Retaliation, between at least 7 and 25 September 2020,
16 a criminal offence against the administration of justice and public
17 administration, punishable under KCC Articles 17, 28, 31, 32(1) to
18 (2), 33, 35, and 388(1), and Articles 15(2) and 16(3) of the Law;

19 Count 5: Violating secrecy of proceedings, through unauthorised
20 revelation of secret information disclosed in official proceedings,
21 between at least 7 and 25 September 2020, a criminal offence against
22 the administration of justice and public administration, punishable
23 under KCC Articles 17, 31, 32(1) to (2), 33, 35, and 392(1), and
24 Articles 15(2) and 16(3) of the Law; and

25 Count 6: Violating secrecy of proceedings, through unauthorised

1 revelation of the identities and personal data of protected
2 witnesses, between at least 7 and 25 September 2020, a criminal
3 offence against the administration of justice and public
4 administration, punishable under KCC Articles 17, 28, 31, 32(1) to
5 (3), 33, 35, and 392(2) to (3), and Articles 15(2) and 16(3) of the
6 Law.

7 All sections of this indictment should be read in conjunction
8 with one another.

9 And, Your Honours, that concludes the reading. Thank you.

10 PRESIDING JUDGE SMITH: Thank you, Mr. Halling.

11 I now have some questions for the accused.

12 First, Mr. Gucati, would you please stand. I'm asking you,
13 Mr. Gucati, in accordance with Rule 124(3), whether you understand
14 the indictment?

15 THE ACCUSED GUCATI: [Interpretation] Yes, I do.

16 PRESIDING JUDGE SMITH: Mr. Gucati, during your Initial
17 Appearance on 18 December 2020, you pleaded not guilty to all counts
18 of the Confirmed Indictment. You have now the opportunity to confirm
19 this plea. Do you confirm your initial plea?

20 THE ACCUSED GUCATI: [Interpretation] So before that, I want to
21 have two minutes of time in order for myself to provide you with an
22 overview of my biography, if that's possible at all.

23 PRESIDING JUDGE SMITH: Mr. Gucati, right now we are just going
24 to ask the questions that I've asked, and we will deal with anything
25 else later. So you need to respond whether you are still confirming

1 your plea of not guilty.

2 THE ACCUSED GUCATI: [Interpretation] I am innocent. I have no
3 connection to any of the points in the Confirmed Indictment.

4 PRESIDING JUDGE SMITH: Thank you. By that statement, are you
5 saying you confirm your plea of not guilty; yes or no?

6 THE ACCUSED GUCATI: [Interpretation] I feel innocent. I do not
7 feel guilty for any of the points of the indictment that has been
8 raised against me.

9 PRESIDING JUDGE SMITH: Thank you, Mr. Gucati. You may be
10 seated.

11 THE ACCUSED GUCATI: [Interpretation] Thank you.

12 PRESIDING JUDGE SMITH: Now, Mr. Haradinaj, would you please
13 stand.

14 I'm going to ask you the same questions that I just asked to
15 Mr. Gucati. I'm asking you in accordance with Rule 124(3) whether
16 you understand the indictment; yes or no?

17 THE ACCUSED HARADINAJ: [Interpretation] I am innocent and I'm
18 always against injustice.

19 PRESIDING JUDGE SMITH: All right. The first question is
20 whether you understand the indictment; yes or no?

21 THE ACCUSED HARADINAJ: [Interpretation] As a matter of fact, I
22 cannot understand this type of an indictment, but I heard everything
23 that you read.

24 PRESIDING JUDGE SMITH: Do you understand what was said?

25 THE ACCUSED HARADINAJ: [Interpretation] Of course, yes.

1 PRESIDING JUDGE SMITH: All right. And now --

2 THE ACCUSED HARADINAJ: [Interpretation] But I didn't understand
3 the gist of it.

4 PRESIDING JUDGE SMITH: Do you need to stop and ask questions of
5 your attorney?

6 THE ACCUSED HARADINAJ: [Interpretation] No, no, I don't.

7 PRESIDING JUDGE SMITH: Mr. Haradinaj, further to your refusal
8 to enter a plea on January 8, 2021, the Pre-Trial Judge entered on
9 your behalf a plea of not guilty on all charges in the Confirmed
10 Indictment. Do you wish to confirm this plea? Is that still your
11 plea?

12 THE ACCUSED HARADINAJ: [Interpretation] I'm innocent.

13 PRESIDING JUDGE SMITH: Thank you. You may be seated.

14 THE ACCUSED HARADINAJ: [Interpretation] Thank you.

15 PRESIDING JUDGE SMITH: Mr. Gucati and Mr. Haradinaj, I will now
16 inform you of some important rights that are afforded to you before
17 this Court pursuant to its legal framework.

18 You have the right to remain silent without such silence being a
19 consideration in the determination of innocence or guilt.

20 You have the right not to be compelled to confess guilt or to
21 testify.

22 You have the right not to incriminate yourself or your immediate
23 family members.

24 You have the right to be represented by a counsel. I note that
25 both of you are represented by Specialist Counsel.

1 You have the right to have adequate time and facilities for the
2 preparation of your defence and to communicate with your counsel.

3 You have the right to be tried within a reasonable time.

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

7 And you have the right to make an unsworn statement relevant to
8 the case and may appear as a witness under oath.

9 Mr. Gucati and Mr. Haradinaj, I have advised you of your rights.
10 But before we go any further, I am also required by our rules to
11 inform you of your obligations and the measures provided for pursuant
12 to Rule 61(2) of the rules.

13 As Presiding Judge, I oversee the order in the courtroom and in
14 the public gallery as well as the conduct of all participants.
15 Although I do not expect it to be necessary, it is my duty to advise
16 you, Mr. Gucati and Mr. Haradinaj, that as Presiding Judge I may
17 order your temporary removal from the courtroom and continue the
18 proceedings in your absence if you persist in disruptive conduct
19 following a warning that such conduct may result in your removal from
20 the courtroom.

21 During any removal, your interests will be represented by your
22 counsel. This Panel will make provisions for you to observe the
23 proceedings and to instruct your counsel from outside the courtroom.
24 However, as I stated, I trust that this type of action will not be
25 necessary.

1 And for everyone else in the courtroom and in the public
2 gallery, I remind you that, as Presiding Judge, I may take
3 appropriate action and measures, including the removal of a person in
4 order to protect the right of the accused to a fair and public trial
5 or to maintain the dignity and decorum of the proceedings, and I may
6 also order a personal search of any person in the courtroom and the
7 public gallery, as necessary, for security reasons or for the proper
8 administration of justice.

9 Before giving the floor to the Specialist Prosecutor to make his
10 opening statement, which we will probably do after the morning break,
11 I want to raise some issues of concern to the Panel.

12 The material that the accused are said to have unlawfully
13 publicised contain names and details of various individuals who are
14 connected to investigations carried out by the SITF or the SPO.
15 Until that time when the Panel determines whether that material was
16 or still is confidential in nature, the parties are ordered not to
17 make public reference to this information in public hearings.

18 We, therefore, expect the parties to exercise due diligence in
19 ensuring that the names and details of such individuals are not
20 disclosed in public sessions, whether in their opening statements,
21 questioning of witnesses, or submissions. If necessary, the parties
22 should request private session if the name or function of any such
23 individual is deemed material to a question they wish to ask or
24 submissions they wish to make. Please consider this an official
25 warning.

1 I also want to make a general statement concerning redactions
2 and closed and private sessions.

3 This Panel is guided by the fact that trials are intended to be
4 public so that the public knows and has confidence in the judicial
5 process as well as an understanding of the issues and decisions in
6 the trial. This belief is reinforced by our Rules of Procedure and
7 Evidence. Redacting names and personal identification of witnesses,
8 victims, and others at risk on account of testimony given by
9 witnesses is, of course, possible, and when ordered by the Panel, a
10 necessary exception to the general rule.

11 That being said, we will be guided by the general rule of
12 publicity and will not be admitting into evidence documents with what
13 is considered by the Panel as excessive redactions that render
14 documents unintelligible and which would leave the public in a state
15 of ignorance concerning the details of the document offered.

16 Private and closed sessions should also be using sparingly and
17 the exception rather than the rule. Counsel are instructed to plan
18 their direct and cross-examinations carefully and in so doing to
19 endeavour to group together any questions that must be asked and
20 answered in private or closed session to avoid repetitive closings.

21 Lastly, I remind all parties to comply with the instructions in
22 the order on the Conduct of Proceedings. In addition, the parties
23 are informed that during the presentation of evidence, parties are
24 expected to use the presentation queue tool in Legal Workflow when
25 questioning witnesses as described in the order on Conduct of

1 Proceedings.

2 Evidence shown in the courtroom will not be broadcast publicly
3 unless the Panel orders otherwise. When referring to any material
4 during the questioning of a witness, the examining party shall
5 identify such material by reference to the relevant exhibit number if
6 already admitted or ERN number, and shall also indicate the
7 corresponding page referenced in the Albanian or English, depending
8 on the language of the particular material.

9 And rather than interrupt the opening statement after just a few
10 minutes, we will break now for the morning session, but I would ask
11 you to be back at 11.25, at which time we will take up the opening
12 statements. So we are in recess at this time, and we will see you in
13 30 minutes.

14 Can this wait?

15 MR. CADMAN: Your Honour had indicated that you were going to
16 make a decision on what Mr. Rees had indicated before the opening.

17 PRESIDING JUDGE SMITH: Pardon me?

18 MR. CADMAN: Your Honour had indicated earlier that you were
19 going to make an oral order on the matter that Mr. Rees had raised
20 earlier before the opening of the Prosecution.

21 PRESIDING JUDGE SMITH: The oral order I've already mentioned.
22 The oral order is that the Rule 117(2) request made both by you and
23 by Mr. Rees separately are overruled, and a written decision is in
24 the process and will be filed shortly.

25 MR. CADMAN: My question was going to be when could we have an

1 estimate of the time? Because the evidence is going to be presented
2 by the Prosecution on the 18th, and we have to consider --

3 PRESIDING JUDGE SMITH: It will be --

4 MR. CADMAN: -- whether we wish to appeal.

5 PRESIDING JUDGE SMITH: You will have it early in the week,
6 perhaps as early as tomorrow.

7 MR. CADMAN: Thank you.

8 PRESIDING JUDGE SMITH: We are in recess.

9 --- Recess taken at 10.53 a.m.

10 --- On resuming at 11.26 a.m.

11 PRESIDING JUDGE SMITH: Before I give the floor to the
12 Specialist Prosecutor's Office, I would like to make it clear that,
13 pursuant to Rule 126, the opening statement of the SPO does not
14 constitute evidence. It gives, however, an opportunity for the SPO
15 to present an overview and give notice of the case it will endeavour
16 to prove at trial.

17 Mr. Prosecutor, the floor is yours.

18 MR. SMITH: Your Honours, Madam Registrar, counsel, good
19 morning. As Specialist Prosecutor, I am pleased to have the
20 privilege of addressing you today as we begin the second trial of
21 this Court.

22 The trial we begin today is different than the trial that began
23 last month, or others that will follow, in that the charges here do
24 not directly concern the events of the war in Kosovo occurring over
25 20 years ago. Instead, the charges concern events that occurred just

1 last year. They concern attempts to intimidate people into not
2 telling this Court what happened to them 20 years ago and attempts to
3 obstruct the work of this institution at any cost. They concern the
4 climate of interference and intimidation that exists in cases and
5 investigations regarding former KLA members which the accused sought
6 to inflame for their own advantage.

7 Your Honours, this is a case about the conditions required for
8 the fair administration of justice, and attempts by the accused to
9 block the path of justice for so many. This is a case about what is
10 required to make rule of law a reality.

11 In any society, the fair administration of justice requires
12 building and fostering institutions that can protect those who seek
13 justice. This court was created by a law passed in Kosovo, and it
14 has the ability to do justice for many, many Kosovar victims. The
15 reason it has this power is that it represents a safe place for
16 witnesses to speak openly, to speak openly about the crimes they saw,
17 the crimes that they themselves were subject to, and the crimes they
18 saw their family members subject to. Most crucially, it represents a
19 place where they can do so without fear of retaliation or
20 retribution.

21 This Court can only work if witnesses feel safe to tell their
22 stories.

23 Our ability as an institution to protect witnesses and their
24 families from intimidation, retribution, and worse is the foundation
25 upon which any effective tribunal of this nature must be built. Put

1 very plainly, the Kosovo Specialist Chambers cannot effectively
2 execute on its mandate if conduct, like that of the accused, is
3 permitted to occur.

4 If we believe this Court, and courts like it, are a good thing,
5 we must empower them fully to protect the very people they serve.
6 This Court was, in fact, built to do just that. That is why those
7 who drafted our Law and created this Court specifically included
8 within its jurisdiction several of the very crimes that are charged
9 in this case: Intimidation during criminal proceedings, retaliation,
10 obstruction of official persons by serious threat, and violation of
11 the secrecy of official proceedings by revealing the identity of
12 protected persons. The statutes the accused are charged with
13 violating are themselves a recognition of the need to empower this
14 institution to protect witnesses and to protect victims.

15 The proof that we will offer that the accused, in fact, violated
16 each these statutes will make clear beyond any reasonable doubt that
17 their intention was to obstruct this institution and to make
18 witnesses fear for their safety.

19 The evidence in this case will show that the accused acted with
20 criminal intent and that their actions and their words had no
21 legitimate or legal purpose. On this point, I want to be very clear:
22 Vigorous debate on important public issues is a sign of a healthy
23 society. Rather than be suppressed, of course, it should be
24 fostered.

25 There are people in Kosovo who believe very strongly in this

1 institution. They see it as a sign of Kosovo's commitment to the
2 rule of law and a place that will give justice to many victims.
3 Others do not yet trust this Court and that is okay. It is okay to
4 question aspects of this Court. It is okay to say what you do not
5 like about this Court, and it's okay to say why you do not like this
6 Court. That is all part of a free society.

7 As I've said in the past, all I ask is that people who do not
8 yet trust this Court take the time to follow it closely, to see how
9 it functions, and then judge. I am confident that if they do,
10 they'll discover that this institution, an institution created by the
11 people of Kosovo, will do justice for a great many Kosovar victims.

12 What you cannot do in a free society, however, is obstruct
13 justice. What you cannot do is publicly disseminate confidential
14 information, information that contains the names of witnesses, and do
15 so with a clear intent to intimidate those witnesses. Truth is the
16 foundation of justice, and there are a few truths that explain why we
17 are here today. These truths help explain the case before the Court
18 and the context in which the accused committed the crimes charged
19 here.

20 The first truth. The first truth is that there is a small but
21 powerful group of persons in Kosovo that do not want this Court to
22 exist and that will do anything - anything - to damage it in a vain
23 attempt to salvage a false narrative that no KLA soldiers committed
24 any crimes during this war.

25 As the people who oppose this Court know well, the cases my

1 office brings, and the facts - the facts - that will be brought to
2 light during these trials held in this courtroom, they will leave no
3 doubt that this narrative is not true. But this false narrative, it
4 is important enough to certain KLA leaders that they will do anything
5 - anything - to prevent information coming to light, facts coming to
6 the public, that show it to be untrue.

7 The accused are part of this group. They want this Court to go
8 away at any cost. Mr. Gucati and Mr. Haradinaj are vocal opponents
9 of this institution, denigrating anyone who would recognise or
10 cooperate with the Kosovo Specialist Chambers or the Specialist
11 Prosecutor's Office as spies, collaborators, and traitors who
12 betrayed their fellow countrymen, despite the fact that this is an
13 institution created by the people of Kosovo and for the people of
14 Kosovo.

15 A second truth is that our institution cannot effectively work
16 towards its mandate if victims and witnesses are too frightened to
17 cooperate. This, Your Honours, is a hard reality but it is a reality
18 nonetheless, and it is a reality that the accused know well. We, as
19 an institution, must not only be able to protect witnesses. We must
20 be able to inspire their confidence that we can, in fact, protect
21 them.

22 The accused know this. And as the evidence will show in this
23 trial, their intent was to disclose confidential information, to
24 retaliate against witnesses for their cooperation with my office, and
25 to sow distrust in this institution and its ability to protect

1 witnesses. Mr. Haradinaj left little doubt of this when, on
2 September 20th of last year, during the course of committing these
3 crimes, he directly addressed the witnesses in this case on a
4 television programme, stating, and I quote: "You spies, do not think
5 that someone will protect you." He then added that: "The Court will
6 totally collapse because the witnesses too know now that others know
7 who they are."

8 Your Honours, this should be a victim-driven court, and the
9 intent of the accused in this case was to inspire fear in victims.
10 To fully understand why the accused thought they could do this
11 through their actions requires an understanding of the context in
12 which they committed these crimes, including the pressure felt by
13 many in Kosovo not to come forward and not to tell the truth about
14 what they saw and what they experienced during the war.

15 Part of the reason this Court was created, and certainly why it
16 has been located here in The Hague, was the often-recognised climate
17 of intimidation of witnesses and the interference with proceedings
18 that exist in criminal cases against former KLA members. That
19 climate continues to exist today and it was the accused's plan to
20 intensify that climate so that witnesses would fear for their safety
21 if they cooperated and end their cooperation with the Court.

22 It is a reality that this climate has worked in the past to
23 prevent witnesses from coming to court to say what they knew about
24 KLA crimes. The accused know this history well and hoped to use this
25 same strategy here, to intimidate witnesses because it had worked in

1 the past.

2 Now, with respect to the charges in this case, I would like to
3 make clear to everyone what is charged in this case and what is not
4 charged in this case. Disseminating confidential documents, the
5 documents in question in this case, disseminating them to the public
6 represents one group of crimes. Stealing those same documents in the
7 first place represents another crime.

8 The accused are charged with illegally disseminating these
9 documents, not with actually stealing them. And to be very clear, we
10 are actively investigating the theft of those documents in question.
11 And make no mistake when - when - we accumulate sufficient evidence
12 against the individuals who did that, those individuals will be
13 arrested and they will be brought to this very same courtroom to face
14 charges for their crimes. As that is a separate, ongoing, and
15 confidential investigation, I will not mention any of the details
16 regarding it here today or its progress.

17 But I do want to make one thing unequivocally clear to everyone:
18 If you commit crimes intending to interfere with witnesses or to
19 retaliate against witnesses, you will be charged. On this particular
20 point, my office will be unrelenting and unrelenting. We need to be
21 for the sake of the victims and witnesses who have placed their trust
22 in this institution to do justice.

23 The accused, in committing their crimes, tried to amplify the
24 damage they caused by exhorting the media in Kosovo to publish and
25 further disseminate the confidential material in this case. In fact,

1 the evidence will show that immediately after receiving each batch of
2 material, they hastily convened a press conference just for that very
3 purpose. The videos of those press conferences will be presented in
4 the course of this case, and they will constitute incontrovertible
5 proof of the accused's crimes and their criminal intent.

6 Immediately after the events which form the basis of this case,
7 I issued a public statement commending the ethical journalists of
8 Kosovo who refused to publish the documents that the accused
9 attempted to provide them, several of whom, in different forums,
10 acknowledged that participating in the dissemination of such
11 information was a crime.

12 These same journalists, as well as others in Kosovo, have also
13 spoken eloquently about how such activities undermine the rule of law
14 and the pursuit of justice in Kosovo. Today, I would like to again
15 thank the ethical journalists of Kosovo. The accused in plotting
16 their crimes badly misjudged how the media in Kosovo would handle
17 this event.

18 We will offer evidence of the accused, and particularly
19 Mr. Haradinaj, berating members of the media for not publishing more
20 of the material the accused sought to provide them. While the
21 accused had hoped all the media would publish witnesses' names and
22 personal information and scare off anyone from cooperating with this
23 Court, that is not, in fact, what happened. The public, this Court,
24 and the accused should know that their efforts to stop this
25 institution have failed.

1 Make no mistake, the accused's actions did seriously obstruct my
2 office, causing my staff to divert significant resources to deal with
3 their actions and seriously hindering my office's investigations.
4 The accused's actions did cause real fear and real anxiety for
5 witnesses and victims throughout Kosovo and elsewhere.

6 Ultimately, however, their efforts to thwart the progress of
7 justice, their efforts to cause the total collapse of this
8 institution have failed. That they did not achieve their ultimate
9 objective makes them no less guilty of the crimes with which they've
10 been charged. That they were not able to close this Court in no way
11 diminishes the intent of what they sought to do or the very real
12 effect it had on witnesses and the Specialist Prosecutor's Office.

13 The accused underestimated the strength and the resilience of
14 this institution and of the people who work here, people who are
15 committed to the mission of justice. Most importantly, they greatly
16 underestimated the will and the courage of the people of Kosovo who
17 have cooperated with this Court, people who have waited 20 years for
18 justice.

19 Thank you, Your Honours, for the opportunity to address you this
20 morning. I will now turn the floor over to Prosecutor Bolici who
21 will set forth to Your Honours and to the public in further detail
22 the case we will present and how we will prove the accused are
23 personally responsible for the crimes with which they have been
24 charged. Thank you.

25 PRESIDING JUDGE SMITH: Thank you, Mr. Smith.

1 Ms. Bolici, you have the floor.

2 MS. BOLICI: Thank you, Your Honour.

3 As you just heard from the words of the Specialist Prosecutor,
4 this case is about two men, Hysni Gucati and Nasim Haradinaj, who are
5 so determined in their opposition to what this Court stands for that
6 they were willing to commit crimes to try to undermine and even stop
7 its work.

8 The evidence will show that in an effort to stop justice from
9 happening in this Court, the two accused themselves broke the law.
10 Over the course of 19 days in September 2020, Hysni Gucati and
11 Nasim Haradinaj repeatedly disseminated confidential information of
12 the Special Investigative Task Force for Kosovo and of the Specialist
13 Prosecutor's Office with the sole aim of obstructing the work of this
14 Court by intimidating witnesses and retaliating against them.

15 The evidence will show that the accused knew what they were
16 doing at every step, they acted wilfully, and they continued to
17 commit crimes even when told that they were breaking the law.

18 The story of this case begins in the morning of 7 September 2020
19 when an unidentified man walked into the premises of the KLA War
20 Veterans Association in Prishtine and departed a few moments later,
21 leaving behind a cardboard box. During the, roughly, three hours
22 that followed, Mr. Gucati and Mr. Haradinaj found hundreds of pages
23 of confidential documents pertaining to SITF investigation, looked
24 through the documents, made a detailed assessment of the kinds of
25 information contained in the documents, and recognised that they were

1 confidential.

2 Did the accused, at this point, contact the Specialist
3 Prosecutor's Office to tell them that they had received confidential
4 documents? No. Did they reach out to the Judges of this Court to
5 tell them about the documents or the Kosovo police? No. Did they
6 take any steps to report to any authority that they had received
7 confidential documents? No. They took none of these steps.

8 What did they do instead? They immediately organised a press
9 conference in order to make the documents public in order to
10 disseminate them as quickly as possible before anyone could stop
11 them. They summonsed the media to their office, and approximately
12 three hours after they had received the documents, they held a press
13 conference and shared them. All of this was captured on video, as
14 were the later press conferences, which means, Your Honours, that the
15 crimes charged in this case were committed on video.

16 You will be able to watch with your own eyes the two accused
17 committing the crimes charged in this case.

18 We will start with some images of the first press conference
19 from item 12 on the SPO's exhibit list. We invite anyone in
20 attendance to follow through the evidence channel, and I ask
21 confirmation from the Court Officer that I can proceed now.

22 Here you see, Your Honour, the two accused, along with the KLA
23 War Veterans Association secretary, Faton Klinaku, making available
24 to the press -- I will wait for the matter to be solved.

25 PRESIDING JUDGE SMITH: Thank you. There's been a pause because

1 of a technical issue.

2 MS. BOLICI: Yes?

3 PRESIDING JUDGE SMITH: You can proceed now, Ms. Bolici.

4 MS. BOLICI: Thank you, Your Honour.

5 So this first screenshot is an excerpt from the first press
6 conference from item 12 on the SPO's exhibit list, and you can see
7 the two accused, along with the KLA War Veterans Association
8 secretary, Faton Klinaku, making available to the press the
9 confidential documents they received.

10 In the second screenshot, you can see Hysni Gucati holding up
11 the documents for the media.

12 This next image, taken from item 249 of the SPO exhibit list,
13 shows Nasim Haradinaj paging through the documents as the media takes
14 photos and videos.

15 And what did the accused say to the media as they were
16 distributing the documents and making them public? What they said
17 showed that they knew what they were doing, they knew what they had,
18 they knew that these documents pertained to a criminal investigation
19 of this institution, and they knew that they were confidential. With
20 their words, they made clear their purpose: To intimidate witnesses,
21 to make them afraid, to retaliate against them, to undermine the work
22 of this Court.

23 We'll consider these words closely because they are important.
24 First, Nasim Haradinaj, with Hysni Gucati at his side, told the media
25 that the documents were confidential and top secret. And, of course,

1 they knew this. They went through the documents. They understood
2 very well that they pertained to criminal investigations carried out
3 by this institution, and they assessed the documents to be
4 confidential. And their assessment was correct. You will hear,
5 Your Honours, evidence during this trial about the confidential
6 nature of these documents.

7 Second, Mr. Haradinaj went on to say that they could have kept
8 the documents secret but they decided to make them public. The
9 following excerpts are from the transcript of the first press
10 conference corresponding to item 11 on the SPO's exhibit list:

11 "... had we wanted, we would not have made these public at all."

12 Mr. Haradinaj told the media, in the course of the first press
13 conference, that he and his co-accused could have kept the documents
14 confidential but they chose to make them public. They made the
15 decision.

16 Third, Mr. Haradinaj told the assembled media what was in the
17 documents. And I'm quoting again from the same transcript:

18 "... here are the names of all the witnesses who they say are
19 under their protection. All of them."

20 And he went on to say the following:

21 "... how can one guarantee protection to the witnesses when
22 everyone can read these today ..."

23 These words of Mr. Haradinaj were aimed at witnesses who had
24 provided evidence to the SITF or SPO to make them feel unsafe,
25 exposed, and unprotected. He urged those attending the press

1 conference to look at the documents and to take them. He told the
2 media that the documents contained all the secret data about the
3 witnesses, including names and surnames of Albanians, Roma, and
4 Serbs, that they contained the date when every person was interviewed
5 and the interview location.

6 And then he went further, revealing the names and occupations of
7 particular persons who had cooperated with the SPO, even going so far
8 as to reveal the location where some of these persons resided.

9 Now, let's see the accused in action because, as I said,
10 everything they did was captured on video. The clip that will follow
11 is from item 12 on the SPO exhibit lists and shows how familiar the
12 accused were with the confidential documents that they were making
13 public and how carefully they looked at the documents before sharing
14 them. We'll be playing a few videos today with the original audio in
15 the Albanian language and subtitles in the English language.

16 There is no need for the English interpretation of the words
17 spoken in Albanian, which also helps avoiding overlapping of sounds.
18 We invite the Panel and those in attendance to follow through the
19 evidentiary channel.

20 [Video-clip played]

21 MS. BOLICI: Let me repeat what you just heard Nasim Haradinaj
22 saying in this excerpt:

23 "These names, these surnames, they must know now that they are
24 known names and that no one is unknown, because the exact place, the
25 exact summons, the statement when he has given it, the next statement

1 when he has given it, are all shown here."

2 Notice the detail in his description and the message he's
3 sending to the witnesses: No one is unknown. They are exposed.

4 And it did not stop with the first press conference.

5 Afterwards, the accused made several televised appearances to ensure
6 that the content of the documents would continue to be known so that
7 they could make further threats against witnesses.

8 In one such appearance, which aired hours after the press
9 conference on 7 September 2020, Hysni Gucati made it clear that he
10 had recognised several of the names of persons he saw in the
11 documents he had made public earlier that day.

12 I will show a brief excerpt from item 34 on the SPO's exhibit
13 list.

14 [Video-clip played]

15 MS. BOLICI: "I saw there lots of people in whom we trusted."
16 The threatening message contained in these words appears even more
17 clear considering that, on the same occasion, Hysni Gucati labelled
18 those identifying as having cooperated with the Specialist Chambers
19 as "traitors of our country who lie."

20 In the course of the same interview, Hysni Gucati stood by his
21 decision to make the document public. Asked whether it was a good
22 idea for him to publish the documents, Gucati stated that he believed
23 it was a good decision and that this decision was discussed with the
24 committee and other people. When the interviewer noted that things
25 could happen because the documents contain names, Gucati acknowledged

1 that things could happen.

2 The following day, on 8 September, pursuant to an order issued
3 by the Court, the SPO seized part of the documents that the accused
4 still had in their possession. As you can see from item 340 on the
5 SPO exhibit list, the order instructed Hysni Gucati, the KLA War
6 Veterans Association, and any other individual in possession of the
7 documents and/or their content to refrain from copying and further
8 disseminating them and their content.

9 But the evidence will show that this order did not stop the
10 accused. They continued to urge dissemination of the material, and
11 they solicited the delivery of even more confidential documents to
12 the KLA War Veterans Association so that they could make those public
13 as well.

14 On your screen is now item 420 from the SPO's exhibit list.
15 It's a post from Nasim Haradinaj's Facebook account dated 8 September
16 2020. Beneath his own post with video footage of the delivery of
17 confidential documents to the KLA War Veterans Association the day
18 before, Nasim Haradinaj has commented: "They can no longer make them
19 disappear." He also noted that three more copies had been
20 distributed, that those copies had been distributed to another ten
21 places, and that it is the task of these ten places to further
22 distribute another three copies each.

23 He's acknowledging and encouraging the continued dissemination
24 of the confidential documents.

25 Meanwhile, the accused continue to make further televised

1 appearances. The following video excerpt from item 110 on the SPO
2 exhibit list is from one such appearance of Nasim Haradinaj on
3 11 September 2020.

4 [Video-clip played]

5 MS. BOLICI: "Whenever we receive any such material, we'll make
6 it public." Far from being deterred, Mr. Haradinaj wants to go
7 further to get more documents to continue to commit acts of
8 obstruction of justice and witness intimidation to undermine the work
9 of this Court.

10 And, in fact, it would not be long before Nasim Haradinaj's plea
11 for more confidential documents would be answered. In the early
12 afternoon of 16 September 2020, an unidentified person again entered
13 the premises of the KLA War Veterans Association in Prishtine, this
14 time carrying multiple boxes and folders, which he left on the floor
15 before leaving.

16 And what did the accused do? Exactly as they had the first
17 time. Despite the judicial order they received the first time, they
18 quickly held another press conference to share this new set of
19 documents. Hysni Gucati and Nasim Haradinaj used the occasion of
20 this second press conference to, once again, urge those in attendance
21 to take the documents. They stated and showed on video that there
22 are three copies available for the press of several hundred pages
23 each. Once again, they revealed confidential information, including
24 names of persons who had cooperated with the Specialist Chambers and
25 location of interest to SITF and SPO investigation.

1 And, once again, Nasim Haradinaj repeated his promise to make
2 documents public whenever the KLA War Veterans Association received
3 them. He noted that it was his duty and the KLA War Veterans
4 Association's duty to discredit the Specialist Court and that this
5 was the reason why the KLA War Veterans Association was disseminating
6 the documents.

7 The following day, on 17 September 2020, again pursuant to an
8 order from the Court, the SPO seized the documents that the accused
9 still had in their possession. Once again, the order instructed all
10 those in possession of the documents to cease any dissemination of
11 them or their contents.

12 The documents seized on this occasion, significantly less than
13 the number of pages that the accused made available to the press,
14 primarily consist of publicly available material. However, six pages
15 are identical to those seized on 8 September 2020, including
16 references to witnesses and potential witnesses and dates of births
17 and professional functions of these persons.

18 The mere words spoken by the accused at this second press
19 conference once again substantiated threat to witnesses, a threat
20 that was reiterated and reinforced.

21 As you can see from the document on your screen from item 5 on
22 the SPO exhibit list, Hysni Gucati signed the document acknowledging
23 this seizure.

24 As they did following the first press conference, the accused
25 made a number of televised appearances after 16 September. We will

1 listen now to Nasim Haradinaj at one of such appearances on the same
2 day as the second press conference. He openly acknowledges his
3 desire to damage the judicial process and obstruct justice through
4 his actions.

5 Here is the first clip from item 100 on the SPO's exhibit list.

6 [Video-clip played]

7 MS. BOLICI: Asked whether he was aware that all that was
8 happening could, in fact, damage the court process, Mr. Haradinaj
9 answered that this is what he likes. And he continued, as shown in
10 the next excerpt, from the same video.

11 [Video-clip played]

12 MS. BOLICI: Damage the court process. That is what
13 Mr. Haradinaj wanted. And as for obstruction of justice, when it
14 comes to this Court, he will do that for all his life.

15 Now, let's listen to Mr. Gucati on 17 September. This excerpt,
16 from item 19 on the SPO's exhibit list, is but one example of many
17 public statements of this nature made by the accused in these days,
18 all of which have been submitted to Your Honours to review and
19 consider. Notice what Mr. Gucati says about what has been ordered by
20 the Court and how he will, nonetheless, defy that order. Here are
21 Mr. Gucati's words.

22 [Video-clip played]

23 MS. BOLICI: "They told me clearly that these documents cannot
24 be multiplied, distributed, or the names of witnesses be published."

25 Mr. Gucati understood that he had been ordered not to

1 disseminate the documents, but he would not stop.

2 As I said at the beginning of this opening statement, he was so
3 determined to undermine the work of this Court that he was willing to
4 defy a judicial order, willing to break the law, to intimidate
5 witnesses, and, as such, obstruct the work of this Court. And it
6 continued.

7 The following excerpt from item 31 on the SPO's exhibit list is
8 an appearance by Nasim Haradinaj a few days later, on 20 September
9 2020. Listen to the words he used to threaten witnesses and what he
10 says about his intent in making public the documents.

11 [Video-clip played]

12 MS. BOLICI: He refers to those who provided information in
13 relation to investigations of this Court as criminals and
14 bloodsuckers. And then he goes on by saying the following.

15 [Video-clip played]

16 MS. BOLICI: He refers to witnesses as fools or spies and says
17 that no one has ever protected a spy. On the contrary, spies have
18 been either killed, discredited, or derided.

19 Again, Mr. Haradinaj continues, this time making his intent very
20 clear.

21 [Video-clip played]

22 MS. BOLICI: Referring to this Court, he said that the Court
23 will totally collapse because the witnesses too know now that others
24 know who they are.

25 And finally from the same video.

1 [Video-clip played]

2 MS. BOLICI: With these words, Mr. Haradinaj openly explains
3 that his aim is to scare and intimidate witnesses in order to bring
4 down the Court. Despite two Court orders, he continues to seek more
5 confidential documents so that they can disclose those as well.
6 Meanwhile, the accused continued to post about the confidential
7 documents on social media.

8 Item 120 from the SPO exhibit list that is now on screen is a
9 21 September 2020 post published on Hysni Gucati's Facebook account,
10 in which he states that the files handed over to the KLA War Veterans
11 Association were official documents of the Special Court which
12 included the names of the majority of witnesses.

13 He refers to the documents emerging from the Special Court
14 offices as "very confidential and sensitive."

15 Hysni Gucati states that:

16 "... the files include statements made by witnesses against the
17 KLA ..."

18 And that:

19 "... the people who chose to hand the files over to the KLA War
20 Veterans Association meant to burden it with a great
21 responsibility ..."

22 As Mr. Pace will show you in the next part of this opening
23 statement, the accused's commission of crimes did not stop after
24 these first two press conferences of 7 and 16 September, did not stop
25 with the accused making several televised appearances and uploading

1 multiple posts to social media between 7 and 21 September. Rather,
2 they continued their pattern of criminal conduct until the day of
3 their arrest.

4 I will leave now the floor to Mr. Pace.

5 MR. PACE: Good afternoon, Your Honours.

6 PRESIDING JUDGE SMITH: Mr. Pace.

7 MR. PACE: Just in terms of timing, I'd like to let you know
8 that I understand this session will go up to about 1.00, and I hope
9 to be done with my presentation and the entire opening by that time.

10 As my colleague indicated, I will continue taking you through
11 the key events underlying the charges in the indictment.

12 Specifically, the events that occurred from 22 September onwards.

13 At around 10.30 in the morning on 22 September, an unidentified
14 individual, again, walked into the KLA War Veterans Association
15 premises and delivered another set of documents. Once again, the
16 accused took no steps to alert authorities about these documents but
17 instead they acted quickly to make them public.

18 In fact, less than two hours after the delivery, Hysni Gucati
19 and Nasim Haradinaj held a third press conference during which they
20 invited those in attendance to look at and read the documents, take
21 copies of them, and publicise their contents.

22 The image before you, from item 160 on the exhibit list, will
23 look familiar. It's a similar setup as that in previous press
24 conferences. In this particular image, you can see Hysni Gucati,
25 Nasim Haradinaj, and Faton Klinaku with the documents they are making

1 public in front of them. As Hysni Gucati himself stated at the
2 beginning of this third press conference, and I quote: "It seems it
3 has become a routine. We have made you, the journalists, a little
4 tired by inviting you." Indeed, it had become a routine. A routine
5 of breaking the law, of committing crimes to intimidate witnesses,
6 and obstruct this Court.

7 Before giving the floor to his deputy, Hysni Gucati noted that
8 the documents contained the names of many people. He reinforced the
9 message repeatedly sent to the general public over the previous two
10 weeks. The accused are making public the names of those who
11 cooperated in SPO investigations. Mr. Gucati then stated as follows:

12 "... we will disclose them to Kosovo people, to our country, to
13 everybody. We will show the truth that these ... here tried and are
14 trying to discredit the KLA by all means, but they will never
15 succeed ..."

16 In this excerpt from item 159 on the exhibit list, Mr. Gucati
17 gives away his purpose in making public the names of the witnesses:
18 To expose them as enemies and to ensure that this institution does
19 not succeed.

20 When Nasim Haradinaj took the floor following his co-accused and
21 in his presence, he delivered similar information in even greater
22 detail. He also sent out the same intimidating message.
23 Mr. Haradinaj made clear that he was fully aware of the nature of the
24 documents that the KLA War Veterans Association was making public.
25 He noted that the documents in front of him bear the SPO logo and

1 that he understood that they concerned a draft indictment in relation
2 to five suspects.

3 He named the five suspects one by one and provided the names of
4 several locations referred to in this document. None of the
5 information relating to these alleged crime locations was public at
6 the time. And the accused knew that the documents were confidential
7 because they were clearly marked as such, as we'll see a little
8 later.

9 Mr. Haradinaj underlined that there were details of many people
10 mentioned in the files, just as his co-accused had done a little
11 earlier. Mr. Haradinaj said one of these names out loud and said
12 that there were the names of many, many other people. He then
13 invited the journalists in attendance to read the documents
14 themselves, thanked them for being active, and urged them to do their
15 job and divulge the information he was making available to them.

16 Mr. Gucati further emphasised that the documents were for the
17 media to take, stating, and I quote: "You have the document in front
18 of you. We gave it to you." He also asserted that 80 per cent of
19 the people who gave the evidence set out in the document were
20 Albanian. This shows, Your Honours, that the very moment the accused
21 provided the media with this third set of confidential documents,
22 they were fully aware that they were, in fact, disseminating names of
23 individuals who provided evidence to the SPO.

24 Several exchanges in this third press conference demonstrate not
25 only that the accused's intentions were wilful but also that the

1 accused were determined to commit actions they knew were criminally
2 sanctioned.

3 I will show you two brief excerpts from item 160 on the exhibit
4 list. Here is the first video.

5 [Video-clip played]

6 MR. PACE: And this is the second excerpt from the same video.

7 [Video-clip played]

8 MR. PACE: "We are ready to face 300 years." The words of the
9 accused could not be any more clear. They knew they were breaking
10 the law, but they were willing to go to prison in order to obstruct
11 the work of the Court.

12 As outlined by my colleague earlier, the accused had by now been
13 reminded several times that the dissemination of confidential
14 documents pertaining to SPO investigations was illegal. The accused
15 themselves confirmed the warnings that they had previously received.
16 For example, during this third press conference, when they were asked
17 whether they had been told by the SPO not to disseminate the second
18 set of documents, Mr. Haradinaj gave the response you will hear in
19 the video I will play next.

20 [Video-clip played]

21 MR. PACE: "They asked us to hand them over to them, but we told
22 them we will not cooperate with them. Yes, they did tell us, but we
23 did not listen to them. We are not listening to them and we do not
24 intend to listen to them."

25 That's what you just heard Mr. Haradinaj say in this excerpt

1 from item 160 on the exhibit list.

2 As Hysni Gucati had earlier on during this press conference,
3 Nasim Haradinaj also spelled out his and his co-accused's reasons for
4 continuing to violate the secrecy of proceedings, for publicly
5 intimidating SPO potential witnesses. He stated, and I quote:

6 "We will publish everything that we receive here. We won't keep
7 anything secret. We will publish everything received that exposes
8 this indictment and these indictments they want to file."

9 The last part of this televised press conference from the same
10 video clearly shows how the documents in the accused's possession
11 were accessed by those in attendance.

12 We'll take a look at the video now.

13 [Video-clip played]

14 MR. PACE: Within hours of the 22 September press conference,
15 the SPO served an order instructing Hysni Gucati and/or the KLA War
16 Veterans Association to produce all SPO documents. Nasim Haradinaj
17 signed a document acknowledging receipt of this order, and the
18 documents were handed over to the SPO.

19 The page on your screens now is an excerpt from the documents
20 seized from the KLA War Veterans Association that day. As
21 Your Honours can see from this and other pages available to you, the
22 document contains clear markings with the words "confidential" at the
23 top and bottom of the pages, the words "internal work product," as
24 well as the SPO logo.

25 The actions of the accused did not end with the press conference

1 and handover of documents. Just as they had done before, the accused
2 went on to make a number of televised appearances. Each of these
3 appearances contains highly probative evidence regarding the actions
4 and intent of the accused.

5 I will direct your attention to just a few of the many
6 statements made by the accused in these televised appearances.
7 During one such appearance on 22 September, Mr. Haradinaj confirmed
8 that he and his co-accused had distributed materials from the third
9 set of documents to the press earlier that morning. He then stated
10 the following, as you will see from the next video.

11 [Video-clip played]

12 MR. PACE: "We gave them to you. You have archived them however
13 much you wanted."

14 There, Mr. Haradinaj entirely acknowledges providing the
15 documents to the press. Moreover, he said the press should feel
16 ashamed if it did not take as many documents as it wanted from the
17 KLA War Veterans Association. That was from item 145.

18 At multiple televised appearances after the third press
19 conference, Hysni Gucati again made it clear that his goal, and that
20 of the KLA War Veterans Association, was to obstruct this Court, and
21 that they had every intention to continue doing so and to continue
22 publishing the materials delivered to them.

23 "I hope this Court is abolished as soon as possible and they
24 stop all their activities against members of the Kosovo Liberation
25 Army."

1 [Video-clip played]

2 MR. PACE: And to the next clip.

3 [Video-clip played]

4 MR. PACE: "We will work against this Court. God willing, he
5 will bring us more. We will disclose them to the media."

6 That's what you heard Nasim Haradinaj say in this interview
7 moments before his arrest. That was how determined he and his
8 co-accused were, so determined they were willing to break the law.

9 This pattern of criminal conduct by both accused, which started
10 on 7 September 2020, only came to an end on 25 September when they
11 were arrested and subsequently taken into custody of the Specialist
12 Chambers. The evidence will show that the effects of their criminal
13 conduct outlasted their arrests. The seriousness of the threats made
14 by the accused against witnesses and potential witnesses cooperating
15 with the SPO emerges through the video evidence in this case, some of
16 which has been highlighted today.

17 In particular, the evidence will show the accused affirming
18 publicly and repeatedly that information pertaining to confidential
19 investigations will be used to undermine the work of the Court. The
20 evidence will show the accused exposing witnesses, potential
21 witnesses, and persons who cooperated with the investigative
22 authorities, describing them as traitors and spies, stating that no
23 witness can any longer be protected. These assertions are, in
24 themselves, very serious threats.

25 The evidence will also show the accused indiscriminately

1 distributing documents, including personal data of individuals who
2 cooperated in SITF and SPO investigations. This adds an additional
3 level of intensity to the harmful actions carried out by the accused.

4 To conclude, as you heard today, this trial is about the
5 specific actions undertaken by the accused, who resorted to clearly
6 criminal behaviour to achieve their objectives, leading them to
7 commit the crimes for which they are charged here today. The
8 evidence will show that the accused committed the crimes charged in
9 the indictment repeatedly, knowingly, intentionally, and
10 enthusiastically.

11 After the evidence is presented, we will ask that the accused be
12 held responsible for their actions.

13 Thank you, Your Honours.

14 PRESIDING JUDGE SMITH: Thank you.

15 This concludes the opening statement of the
16 Specialist Prosecutor and the end of today's public hearing. We will
17 resume on October 18 at 9.30 in the morning to hear the testimony of
18 the first SPO witness.

19 I thank the parties and the Registry for their attendance. I
20 also wish to thank the interpreters, stenographers, and audio-visual
21 technicians and security personnel for their assistance.

22 This hearing is adjourned.

23 --- Whereupon the hearing adjourned at 12.34 p.m.

24

25