

1 Wednesday, 15 December 2021

2 [Open session]

3 [The accused entered court]

4 --- Upon commencing at 9.30 a.m.

5 PRESIDING JUDGE SMITH: Good morning and welcome, everyone.

6 Madam Court Officer, would you please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is
8 KSC-BC-2020-07, The Specialist Prosecutor versus Hysni Gucati and
9 Nasim Haradinaj.

10 PRESIDING JUDGE SMITH: Thank you.

11 Ms. Bolici, any change in your team this morning?

12 MS. BOLICI: No change, Your Honours. Thank you.

13 PRESIDING JUDGE SMITH: Thank you.

14 Mr. Rees.

15 MR. REES: Just one change, Your Honour. I'm not assisted today
16 by Mr. Halilaj because of a medical appointment, but no other change
17 to the team.

18 PRESIDING JUDGE SMITH: Thank you.

19 Mr. Worboys.

20 MR. WORBOYS: No, Your Honour. It's the same as it was last
21 week. Mr. Carl Buckley remains on the screen.

22 PRESIDING JUDGE SMITH: Thank you.

23 Good morning, Mr. Buckley.

24 MR. BUCKLEY: [via videolink] Good morning.

25 PRESIDING JUDGE SMITH: I also note that Mr. Gucati and

1 Mr. Haradinaj are present in the court.

2 We will start with the further cross-examination of the two SPO
3 witnesses. The Panel recalls the following.

4 On December 10th, the Panel granted the Gucati Defence request
5 to further cross-examine Witness 4841 and 4842 and ordered the Gucati
6 Defence to limit its questions to the materials disclosed pursuant to
7 decisions F413 and F435.

8 The Defence should be ready to explain the relevance of any line
9 of questioning pertaining to these materials.

10 The Panel further recalls that for purposes of security,
11 non-disclosure of the identity of witnesses, and the interests of
12 justice, the Defence was directed to conduct its cross-examination in
13 private session.

14 The Panel also noted that it will, in due course, review the
15 transcript and order reclassification if appropriate.

16 Mr. Rees, you indicated you do not envisage cross-examination
17 for either of the witnesses in all likelihood to take more than a
18 half an hour.

19 Mr. Worboys, we received your filing in which you indicate that
20 you will cross-examine the witnesses only if any relevant issue is
21 not raised during the cross-examination by Mr. Rees and that, in any
22 case, your examination would not last more than 30 minutes.

23 We appreciate this information you've provided. We will also
24 allow re-examination if the conditions for it are met.

25 We will begin with Ms. Pumper, and we will follow with

1 Mr. Jukic.

2 Madam Usher, please bring in Ms. Pumper, the first witness.

3 [The witness entered court]

4 THE WITNESS: Good morning.

5 PRESIDING JUDGE SMITH: [Microphone not activated].

6 THE WITNESS: Good morning.

7 PRESIDING JUDGE SMITH: [Microphone not activated].

8 THE WITNESS: Thank you.

9 PRESIDING JUDGE SMITH: [Microphone not activated].

10 THE INTERPRETER: Microphone for Your Honour.

11 PRESIDING JUDGE SMITH: Please remember that you took a solemn
12 declaration at the beginning of your testimony and that still applies
13 to what you will be saying in court today.

14 The Gucati Defence has some questions for you about materials
15 disclosed by the Prosecution pursuant to two decisions of the Panel.

16 Mr. Rees will go first. Next, the lawyers representing
17 Mr. Haradinaj may ask some questions as well. Then the Panel may
18 allow re-examination by the Prosecution if the conditions for it are
19 met and if requested. Lastly, members of the Panel may also ask you
20 some questions.

21 I remind you to please speak into the microphone and to give a
22 pause before answering a question to allow the interpreters to keep
23 up with you.

24 For purposes of security, non-disclosure of the identity of
25 witnesses, and the interests of justice, the Defence will conduct its

Witness: Zdenka Pumper (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

1 cross-examination in private session.

2 Madam Court Officer, can we please move to private session.

3 [Private session]

4 [Private session text removed]

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Witness: Zdenka Pumper (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Zdenka Pumper (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Zdenka Pumper (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Zdenka Pumper (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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15 [Open session]

16 THE COURT OFFICER: Your Honours, we are now in public session.

17 PRESIDING JUDGE SMITH: Thank you.

18 [The witness entered court]

19 PRESIDING JUDGE SMITH: Good morning, Mr. Jukic. Please be
20 seated.

21 THE WITNESS: Thank you, Your Honour.

22 PRESIDING JUDGE SMITH: Please remember that you took a solemn
23 declaration at the beginning of your testimony and that still applies
24 to what you will be saying in court today.

25 The Gucati Defence has some further questions for you about

Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

1 disclosures that were made by the SPO pursuant to two decisions of
2 the Panel. Mr. Rees will go first. Next, the lawyers representing
3 Mr. Haradinaj may have some questions for you. And then the Panel
4 will allow re-examination by the Prosecution, if conditions for that
5 are met and it is requested. Lastly, members of the Panel may also
6 have some questions for you.

7 Please speak into the microphone and wait a five-second pause
8 before answering the question so that the interpreters can stay up
9 with you.

10 For purposes of security, non-disclosure of the identity of
11 witnesses, and the interests of justice, the Defence will conduct its
12 cross-examination in private session.

13 Madam Court Officer, can we please move to private session.

14 [Private session]

15 [Private session text removed]

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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Witness: Miro Jukic (Recalled) (Private Session)

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Further Cross-examination by Mr. Rees

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24 [Open session]

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

1 PRESIDING JUDGE SMITH: Once again, Mr. Jukic, this concludes
2 your testimony. You may leave now. We wish you a good day. Thank
3 you for being with us.

4 Madam Usher, you may escort Mr. Jukic out.

5 THE WITNESS: Thank you, Your Honours.

6 [The witness withdrew]

7 PRESIDING JUDGE SMITH: All right. We'll move on.

8 Mr. Rees, the Panel received your indication that you withdraw
9 Witness 1247. You've had an opportunity to cross-examine the two SPO
10 witnesses. Any further witnesses?

11 MR. REES: Unless Mr. Pace volunteers to give oral evidence and
12 tender himself for cross-examination, I don't anticipate any further
13 oral evidence.

14 PRESIDING JUDGE SMITH: Thank you.

15 MR. REES: There is the outstanding bar table motion and I have
16 a *mea culpa* to make. There is one document that I oversaw in both
17 the evidence of Mr. Gucati himself and in drafting the bar table
18 motion which I'd ask the Panel to look at very briefly. It's
19 DHG0496.

20 And we have raised this with the SPO, and Ms. Bolici very
21 helpfully has indicated that, although there is an objection based on
22 relevance, they do not object to me orally seeking to add this to the
23 bar table motion which they will respond to in full, including in
24 relation to this document. It's a short document. It's a posting
25 from the Hysni Gucati Facebook account for which postings have

1 already been admitted through the bar table motion.

2 It's dated 15 September 2020. It has the image that the
3 Trial Panel may recall I asked Ms. Pumper questions about. The
4 relevance of it, we say, is it goes to support Mr. Gucati's account
5 in both his *viva voce* evidence and in the statement admitted under
6 Rule 154 that in the run-up to the second delivery by Lightning
7 Strike 2, he became aware of, or suspicious at least, of being under
8 surveillance. And the posting is dated 15 September 2020, and we say
9 it supports his testimony to that extent.

10 So we ask for that to be considered as part of the bar table
11 motion. I'm very grateful to the SPO for their cooperation in that
12 matter.

13 PRESIDING JUDGE SMITH: [Microphone not activated].

14 MS. BOLICI: Your Honour, although no justification has been
15 adduced for the late request from the Defence, indeed we do not
16 object to the addition of this item to the exhibit list. We will
17 object to the admission of the item, and we will be ready to respond
18 on this item as well with our overall response to the bar table
19 motion which is due later today.

20 PRESIDING JUDGE SMITH: Thank you, Ms. Bolici.

21 Thank you, Mr. Rees.

22 MR. REES: There are two other matters then.

23 In relation to the bar table motion. Before we formally give
24 notice of closure of our case, we would wish to see the Panel's
25 decision on the bar table motion and would request that the

1 Trial Panel allows us, in the same way as it allowed the Trial Panel,
2 for a direction to serve the formal notice by filing once the bar
3 table motion has been received.

4 It's purely as a matter of caution on my part that for us to
5 allow to consider, at least, making an application to the Court if
6 there is any aspect of our bar table motion that's not accepted,
7 permission to call evidence in some other manner. Whatever the
8 likelihood of such an application being allowed to succeed is, I
9 would still appreciate the opportunity to be able to consider that in
10 due course.

11 PRESIDING JUDGE SMITH: Just so you know, we intend to have the
12 decision on the bar table motion yet this week.

13 MR. REES: I'm grateful.

14 The second matter is a matter which I simply want to raise so
15 that the Trial Panel is aware of it. It won't hold up any matters.
16 That's this: There are ongoing discussions about agreed proposed
17 facts on uncontroversial matters, we hope. Again, I stress that does
18 not require any delay in us closing the case because, of course,
19 agreed proposed facts can be admitted at any point during the
20 evidentiary proceedings, including during the course of
21 Mr. Haradinaj's case. All three parties, of course, are required to
22 agree those, and the evidence goes in the case as a whole.

23 PRESIDING JUDGE SMITH: Thank you for that information.

24 Mr. Worboys, as for the Haradinaj Defence. No separate bar
25 table motion was filed by the deadline of December 10th. As I noted

1 earlier, the Haradinaj Defence joined the Gucati bar table motion. I
2 didn't say that earlier, but I'm saying it now.

3 Mr. Worboys, or Mr. Buckley, whoever wishes to speak, we
4 understand this to mean that the Haradinaj Defence will not file a
5 separate bar table motion; is that correct?

6 MR. WORBOYS: Your Honour, that's correct. The rejoinder
7 application was -- or the joinder application was all that will be
8 put in.

9 PRESIDING JUDGE SMITH: I also note that the Haradinaj Defence
10 filed two exhibit lists. The first was filed on 2 December 2021
11 after an extension of the original deadline, which was November 29th,
12 2021. This is filing F469 with Annex 1.

13 The second list was filed on 10 December 2021 further to a
14 renewed order to file an updated exhibit list conforming with our
15 Order on the Conduct of Proceedings. This is filing F489 with
16 Annex 1.

17 What we now have are two almost completely different lists. The
18 first list has 30 exhibits and no indication which of these are
19 intended to be tendered with which witness, despite the Panel's order
20 that it should. This list is almost identical to the Gucati exhibit
21 list save for the last three items.

22 The second list has 23 exhibits, of which 21 do not appear on
23 the first list. For each exhibit on the second list, you indicate
24 the witness, though, through whom you wish to tender it. You also
25 request that these exhibits are added to your first list. Some of

1 these have been disclosed yesterday.

2 Before I ask you some questions on these lists, let me remind
3 you of how this works. Under Rule 119(2)(b), the Defence needs to
4 file a list of proposed exhibits the Defence intends to present.
5 That means to use during your case and/or to tender for admission.

6 Pursuant to paragraph 60 and 61 of our Order on the Conduct of
7 Proceedings, we also require the parties to indicate the witness
8 through whom some of these exhibits are to be tendered.

9 Our goal with this was to avoid the overloading of the exhibit
10 list with material that the parties will neither use nor tender
11 during their case, and this was explicitly said in paragraph 17 of
12 the Order on the Conduct of Proceedings.

13 So with this background in mind, can you explain to the Panel
14 what is the role of these two lists?

15 MR. WORBOYS: Your Honour, my first point is that if there are
16 any mistakes or confusions here, that would be as a result of my
17 decisions on this.

18 The first list, my understanding, needed to be replaced under
19 the order of this Court, and an indication given as to which
20 witnesses would be adducing certain documents. The second list,
21 therefore, replaces and, in effect, is the list which this Court
22 should look at.

23 To explain what the additional documents are, my understanding
24 is that in respect of Witness 1252, there will, obviously, be oral
25 testimony. There are a great number of documents referred to which

1 are, on one view, authorities, but in a technical sense, because this
2 is an expert report, those documents have been added to our list
3 under Rule 119(2)(b) so that they can be adduced and the Court can
4 have sight of those documents.

5 If there is a simpler or more efficient process by which the
6 Court would prefer to have those documents in evidence, I'm happy to
7 assist. What I wanted to guard against and avoid was a situation
8 where we have live evidence but we don't have the necessary documents
9 on the file nor have the SPO had an opportunity to see those
10 documents in advance or to comment on, for example, whether they are,
11 in fact, the correct documents.

12 That was the purpose and it was purely with the intention of
13 ensuring that when we get to 1252 it can be dealt with efficiently
14 and without problems.

15 PRESIDING JUDGE SMITH: So as far as you are concerned, the
16 second list completely replaces the first list and we can disregard
17 the first list?

18 MR. WORBOYS: Yes, Your Honour. We may at some point rely,
19 obviously, on documents that have been tendered through the Gucati
20 exhibit, but those, my understanding, are effectively on the record,
21 so they are fair game, to use a simple term.

22 PRESIDING JUDGE SMITH: So, Madam Prosecutor, or whoever wishes
23 to answer this.

24 MS. BOLICI: Yes.

25 PRESIDING JUDGE SMITH: Do you have any objections to adding the

1 new exhibits of the Haradinaj Defence to their Rule 119(2) list as
2 requested in their filing?

3 MS. BOLICI: We have no objections, Your Honour, to this
4 addition. We would seek, however, some clarity about which exhibits
5 will be used with which witness as required in the order for the
6 conduct of proceedings.

7 PRESIDING JUDGE SMITH: And can that be done immediately?

8 MR. WORBOYS: Your Honour, my understanding was that the list
9 provided -- had indicated which witness the documents would be
10 relevant to, and the new ones provided are all in relation to 1252.
11 Where they are referred to in the report should be clear from the
12 report itself since, in effect, it's effectively a bundle of
13 documents for the witness.

14 PRESIDING JUDGE SMITH: [Microphone not activated] ... an
15 *inter partes* discussion about this so that Ms. Bolici is clear and
16 Mr. Rees is clear about what your intentions are. If there's a
17 question about which witness and which exhibit, you can clarify that
18 easily. All right?

19 MR. WORBOYS: Of course, Your Honour, I'll ensure that it's
20 clear --

21 PRESIDING JUDGE SMITH: And perhaps we can do that today.

22 MR. WORBOYS: Of course, Your Honour.

23 PRESIDING JUDGE SMITH: Noting that the SPO does not object to
24 the addition of the new exhibits listed in the Haradinaj Defence in
25 F489 Annex 1, the Panel authorises their addition in accordance with

1 Rule 119(5), subject to this *inter partes* discussion on the witness
2 connected to the exhibit. And bring it to our attention immediately
3 if there is any unresolved issue.

4 The Haradinaj Defence is ordered to file an updated consolidated
5 exhibit list by January 6, 2022, listing all exhibits intended to be
6 used and/or tendered during the presentation of its case. For
7 exhibits to be tendered through witnesses, an indication should be
8 made of the witness through which the exhibit is to be tendered. And
9 this concludes the oral order.

10 One more housekeeping matter.

11 On 23 November, the SPO filed proposed public redactions to a
12 number of admitted exhibits. I'm referring to filing F445. Neither
13 Defence team responded to this filing.

14 On Monday, 13 December 2021, the SPO submitted an amended
15 proposal for the public redaction of one of the exhibits. The Panel
16 intends to decide on this request by Friday of this week. Do any of
17 the Defence teams object to the amended proposed version filed on
18 Monday?

19 Mr. Rees?

20 MR. REES: I don't think so. But would Your Honour give us some
21 time just to cast an eye over it, and then we can confirm, either in
22 writing or orally today --

23 PRESIDING JUDGE SMITH: Can that be done today?

24 MR. REES: Yes, absolutely.

25 PRESIDING JUDGE SMITH: Thank you. Let's make it by 4.00 file a

1 written document or -- Mr. Worboys?

2 MR. WORBOYS: The same position, if the Court would be so kind.
3 Thank you.

4 PRESIDING JUDGE SMITH: All right. By 4.00 today we will have a
5 written submission on the one exhibit.

6 We will now address the Haradinaj request for adjournment.

7 On 12 December, the Haradinaj Defence e-mailed the Panel seeking
8 adjournment of the Defence's case until the new year.

9 On 13 December, following the Panel's instructions, the
10 Haradinaj Defence filed a formal request seeking, first, the
11 adjournment of the trial proceedings until January 2022; and, second,
12 extension of time to file Mr. Haradinaj's witness statement.

13 The Haradinaj filing is F491.

14 On the same day, the Panel filed an order informing the
15 Haradinaj Defence and the Registry that Defence Witness 1246 and 1254
16 were no longer expected to appear this week. The Panel also informed
17 the parties that it will hear any further submissions on the
18 Haradinaj Defence's request on today's date.

19 Mr. Worboys or Mr. Buckley you have the floor. Please also
20 indicate whether you are in a position to deliver your opening
21 statement today or tomorrow.

22 MR. WORBOYS: Your Honour, what I won't do now is trail over the
23 ground that has been covered in the adjournment application and the
24 e-mail that was sent.

25 What I will say, though, is that this filing was made in an open

1 and transparent way, and there was clearly a degree of candid
2 assessment on my part as to what was and was not possible, as I'm
3 obliged to consider in my professional obligations.

4 What I can update the Court on since then is, first, that we are
5 able and, indeed, can deliver an opening today, which will hopefully
6 enable the case to progress somewhat. I've spoken to the SPO about
7 this. And unless they say to the contrary now, they have no
8 objection to the opening being delivered.

9 In addition, in an attempt to assist with case management, if I
10 may, I have spoken to the SPO and sort of mapped out a rough time
11 estimate for each of the witnesses that may follow. I can give that
12 to the Court and give the proposal if it would assist.

13 PRESIDING JUDGE SMITH: It would assist and we would like that.

14 MR. WORBOYS: In essence -- and, please, I haven't consulted
15 with the Gucati Defence because it was late in the day, and, of
16 course, the SPO can say anything if they disagree, I have no
17 objection to that. But for Mr. Haradinaj, we estimate half a day of
18 evidence from us. We would be seeking to provide a statement and
19 adduce that pursuant to Rule 154, but there would, of course, be
20 additional questions like has been asked in the Gucati case.

21 The SPO, I understand, estimate around 10 hours which, on a
22 conservative estimate, takes us about three days in total.

23 For Witness 1246, 15 minutes, I think, would be sufficient with
24 a Rule 154 application, and two hours' cross-examination. I should
25 say there that we have endeavoured with the SPO over the weekend to

1 provide some paragraphs which would not be read from this statement.

2 Again, in respect of Mr. Gashi, we would say the same, that it
3 would be 15 minutes under Rule 154 with four hours'
4 cross-examination. And there, we've also sought to be pragmatic over
5 the weekend and to identify some paragraphs that the SPO may well
6 object to and in the spirit of trying to agree and move this forward.

7 And then on 1252, I suspect two hours would be sufficient for
8 examination-in-chief. The SPO has informed me that they expect two
9 hours, approximately, for cross-examination, which is broadly half a
10 day. So while it might be a squeeze, and I don't want to create
11 hostage to fortune, there is some scope that it could be possible to
12 complete those witnesses within the four-and-a-half-day slot in the
13 new year. Obviously, if they do overrun, then that would be out of
14 my control, particularly on the cross-examination side. But that
15 would be the best that I think could be manageable in terms of active
16 case management.

17 One aspect of the application, clearly which Your Honours will
18 have seen, is in relation to the filing of a statement from
19 Mr. Haradinaj.

20 Here on this issue, the reality, without wanting to disclose too
21 much, is that there are logistical and practical challenges,
22 particularly in view of my not understanding or not being aware and
23 familiar with how many of the systems work and also the need to
24 clearly ensure that anything signed by Mr. Haradinaj is correct and,
25 in fact, his evidence.

1 There we would seek to file a statement as soon as possible,
2 clearly. But again, what I really don't want to do, and avoid, is to
3 give false promises to the Court and be in a position where we're
4 creating more problems. So in the interests of caution, I would say
5 that if we can file a signed statement by a week today at 4.00 p.m.,
6 which is 22 December, then that will be achievable, particularly as
7 I've learned it's not possible to see the witness over the weekend in
8 the detention centre.

9 That date, in our submission, it wouldn't give any material
10 prejudice to the SPO nor the process of the proceedings at this
11 point. Clearly, it is not ideal and what was originally envisaged,
12 but it is, with sincerity, I think, the best that can be offered,
13 Your Honour.

14 MR. REES: Does it assist if we give some indication as to
15 cross-examination times for the Haradinaj case as well? It comes
16 with the caveat that --

17 PRESIDING JUDGE SMITH: Yes, it would. Yes, please, for the
18 record. Yes, please.

19 MR. REES: It comes with the caveat, of course, that we will be
20 looking very carefully to make sure that all matters are covered, and
21 if there are, we won't take any time in cross-examination.

22 But I think, going through that schedule, we would ask that
23 allowance is made, if necessary, for an hour in relation to
24 Mr. Haradinaj, 30 minutes for Witness 1246, an hour for Mr. Gashi,
25 and an hour for Witness 1252.

1 PRESIDING JUDGE SMITH: That's helpful, Mr. Rees. Thank you
2 very much. And I take it you have no objection to the Haradinaj
3 request for adjournment?

4 MR. REES: No.

5 PRESIDING JUDGE SMITH: Okay.

6 Ms. Bolici.

7 MS. BOLICI: Your Honour, first we would like to highlight that
8 we continue sympathising with Mr. Cadman's current health condition
9 and that we are looking forward to seeing him fully recovered and
10 back in court.

11 In relation to the application for adjournment, we need to
12 observe, however, that it attempts to establish a precedent that we
13 cannot accept as it would be contrary to the principle of efficiency
14 of the proceedings as reflected in the statutory framework.

15 The unavailability of a counsel, although for a compelling
16 reason, cannot be invoked as a justification for the delay of the
17 proceedings when there are two co-counsel available. The function of
18 co-counsel is primarily to assist and ensure the continuity of the
19 Defence when the lead counsel is unavailable, and the temporary
20 unavailability of a counsel is not an entirely unexpected matter,
21 especially at a time of a world pandemic.

22 The Registry Practice Direction on counsel indicates, at
23 article 18, paragraph 2 and 4, that: "In choosing members of his or
24 her team, Counsel shall take into account their experience" and
25 "competence ..."

1 And that:

2 "Chosen Co-Counsel shall have the authority to sign documents
3 and to appear in court on Counsel's behalf, dealing with all arising
4 matters."

5 Furthermore, the application failed to mention that a second
6 co-counsel has been involved in the case from the outset and has been
7 in the position to attend all hearings remotely.

8 Finally, we see no particular reason in the asserted
9 difficulties in communication between the Defence for Mr. Haradinaj
10 and the accused, considering that the SPO understands that the
11 Registry has taken all necessary measures to accommodate
12 communication between the accused and co-counsel over the past days
13 and weeks as and when necessary.

14 We note that arrangements for the next two Haradinaj witnesses
15 have been cancelled, so we will not respond on this particular
16 matter.

17 In relation to the request for a third postponement from the
18 Haradinaj Defence in relation to the indication whether a statement
19 from Mr. Haradinaj is going to be provided and when the statement is
20 going to be provided. We note that the Defence has been on notice of
21 its disclosure obligation under Rule 119 and 104 since the start of
22 these proceedings, that the Scheduling Order of this Trial Panel of
23 9 November initially indicated 29 November as the date for the
24 disclosure of such statements, if any, and that the deadline for the
25 disclosure of such statement has been missed two times already.

1 We understand that there is no obstacle at this point in time
2 for Mr. Haradinaj to sign a written statement if he so wishes. It is
3 prejudicial to the SPO to receive such statement at a very late
4 stage. In fact, it has already been a prejudice to the SPO to
5 conduct the cross-examination of all Defence witnesses so far,
6 including the co-accused, without the benefit of such statement.

7 Therefore, we would request that the deadline for the provision
8 of this statement, if any, is set by the Trial Panel, and we would
9 request that this statement be disclosed this week. Thank you.

10 PRESIDING JUDGE SMITH: Thank you, Ms. Bolici.

11 Any questions from the Panel? Go ahead, Judge Barthe.

12 JUDGE BARTHE: Thank you very much.

13 I don't have a question but would rather make a comment.

14 First, I have to say that contrary to what was indicated in the
15 request for adjournment, I don't have the impression that Mr. Worboys
16 needs more information about this case.

17 In case my impression is wrong, I would like to say,
18 Mr. Buckley, that the Panel expects you, and if possible, Mr. Cadman,
19 to immediately inform your colleague Mr. Worboys properly and
20 completely before the next trial session, before the next trial
21 hearing. I hope this is clear, Mr. Buckley.

22 MR. BUCKLEY: [via videolink] Your Honour, of course. Me and
23 Mr. Worboys are in regular contact. There is no issue whatsoever
24 with a refusal or reluctance to provide instructions to him or a
25 reluctance to communicate with him at each and every available

1 opportunity, and that simply isn't an issue that has arisen at any
2 time.

3 The position we are in, unfortunately, is an incredibly unique
4 position. I accept entirely that the ongoing pandemic has been with
5 us for some near two years now, and there has been a number of
6 significant effects. However, over the past couple of weeks, that
7 situation has deteriorated and developed further, both
8 specifically to the Defence team and more generally across Europe.

9 But again, to reaffirm, there is no issue whatsoever with
10 communication or the provision of instructions between counsel.

11 JUDGE BARTHE: I understand. Thank you very much.

12 PRESIDING JUDGE SMITH: Judge Mettraux has a question.

13 JUDGE METTRAUX: Thank you, Judge Smith.

14 And the question is for you, Mr. Worboys. And I really don't
15 mean it to be taken as a criticism of you. You have been of great
16 assistance to the Panel, and we're grateful for that.

17 But I want to ask you what exactly is holding up the
18 finalisation of the statement of Mr. Haradinaj. We have been given
19 notice, I believe on 3 December of this year, that it was the
20 intention of Mr. Haradinaj to testify, and at that point in time I
21 would expect that work had started on the preparation of that
22 statement. And there was, at that time, no issue of access to
23 Mr. Haradinaj or access by Mr. Cadman to him.

24 So simply to understand from you what is holding things up,
25 whether it's still a matter of signature, so that, indeed, I think,

1 the Prosecution has a point when they say that they should be
2 entitled as soon as possible to a copy of that statement with a view
3 to fair and timely preparations.

4 So can you help us with that?

5 MR. WORBOYS: Of course. Judge Barthe, if I may, just to say
6 that your point is registered and heard and well received.

7 Your Honour, I think the first point in this isn't to make
8 excuses, as I wasn't involved in the case back then, so I can't
9 comment on -- back at the beginning, so I can't comment on what was
10 happening at that time in any great detail.

11 As to where we are now, the reality is I had tried over the
12 weekend to get a -- in contact with Mr. Haradinaj after the hearing
13 on Friday when Mr. Cadman had deteriorated. My efforts to speak to
14 him over the weekend didn't work, because there's no opportunity, as
15 I now understand, to speak to witnesses in detention over the weekend
16 at the last minute. So that entailed a loss of several days.

17 There was an updated statement which was sent to Mr. Haradinaj
18 on Monday with the intention of going through it with him yesterday.
19 However, my understanding is, due to the detention process, that
20 statement didn't actually reach him yesterday. So, again, without
21 wanting to divulge too much, I clearly tried my best to take
22 instructions on the basis of not having a statement, but there's
23 nothing that can be done without the statement being in front of
24 Mr. Haradinaj himself.

25 What I am now proposing to do is to meet with him again tomorrow

1 or this afternoon if it's possible with a view to printing out a
2 statement, if that can be given to him, and ensuring he has a copy.
3 But obviously there may then be some amendments that come back. And,
4 of course, because of languages, there is a translation delay, then
5 we hit a weekend if it's not done by Friday, and then we lose some
6 more days.

7 So it is, in that respect, logistical challenges, and it is my,
8 obviously, as here now, in effect, conducting this, professional
9 obligation to ensure that everything is understood and is correct
10 before it is signed. And that's not an obligation which I clearly
11 take on lightly, nor one that I would want to be done in a sort of
12 fast and loose manner at the last minute for the sake of a couple of
13 days.

14 And as I said, I will, of course, endeavour to get this sorted
15 as soon as possible, but the extension to the 22nd has just been
16 requested so that we don't end up in this position again.

17 As to the point from my learned friend that there's two
18 deadlines missed. I would say there's only one. I had said to the
19 Court on Friday that we would try to get this done by Wednesday. I
20 accept that. However, at that point Mr. Cadman's health really did
21 deteriorate very rapidly. But more to the point, we then came up
22 against these logistical challenges which I hadn't budgeted for and
23 planned for. I am very mindful this is not a helpful situation for
24 anyone to be in, and I am also particularly mindful of my obligations
25 to the counsel. However, I do clearly have overriding obligations to

1 the client that I must discharge.

2 JUDGE METTRAUX: Thank you, Mr. Worboys.

3 [Trial Panel confers]

4 PRESIDING JUDGE SMITH: All right. That concludes all the
5 questions for today. We will take a one-hour or a little more than a
6 one-hour break and come back and issue an order, and you can be
7 prepared to make the opening statement at that time.

8 Has a document or a copy of the opening statement been available
9 to the translators?

10 MR. WORBOYS: Yes, Your Honour. It was sent last night.

11 PRESIDING JUDGE SMITH: Thank you very much.

12 MS. BOLICI: Your Honour, if I may. Just a minor matter. In
13 relation to the estimates for cross-examination that were reported by
14 the Haradinaj Defence. We just would like to highlight that for
15 1252, in light of the material that has been recently disclosed and
16 the apparent intention to tender all these materials through this
17 witness, we would at this point reconsider the estimation to four
18 hours, with a view of keeping it as short as possible if there is no
19 need to cross-examine for the entire four hours. Thank you.

20 PRESIDING JUDGE SMITH: Thank you, Ms. Bolici.

21 Mr. Buckley, we hope you do convey to Mr. Cadman our hope that
22 he is well soon. We are all conscious of his situation and feel bad
23 about that, so please do that.

24 One last thing --

25 MR. BUCKLEY: [via videolink] [Overlapping speakers] ...

1 PRESIDING JUDGE SMITH: -- in the filing that came through or in
2 the e-mail last week concerning this adjournment, there was a
3 statement that was made that the Panel was under pressure.

4 I want to be very clear that the only pressure that this Panel
5 feels on keep this case moving is self-imposed. There is certainly
6 nobody pressuring this Panel to do anything other than to make sure
7 that there is a fair and expeditious trial, and we've done our best
8 to do that and we will continue to do that.

9 So we will be back in an hour and 20 minutes, and we will finish
10 with the orders and be welcoming your opening statement, Mr. Worboys.
11 Thank you.

12 --- Recess taken at 10.38 a.m.

13 --- On resuming at 12.00 p.m.

14 PRESIDING JUDGE SMITH: The Panel will now issue an oral
15 decision on the Haradinaj Defence request for adjournment of the
16 hearing until 2022.

17 There are five issues to address: The role and responsibilities
18 of counsel; the responsibility of the Panel; the opening statement;
19 the statement of Mr. Haradinaj; and the presentation of evidence in
20 the Haradinaj case.

21 First, regarding the responsibilities of counsel.

22 The Panel wishes to make it clear that the absence of lead
23 counsel from the courtroom, or his inability to perform his functions
24 due to ill-health or other considerations, does not on its own
25 justify an adjournment under Rule 123. In this regard, the Panel

1 draws attention to Section 18(4) of the Directive on Counsel,
2 according to which "Co-Counsel shall have the authority to sign
3 documents and to appear in court on Counsel's behalf, dealing with
4 all arising matters."

5 There are two co-counsel in this case who have full competence
6 to represent the accused and to act on his behalf and under his
7 instructions. One of them is physically present in this courtroom
8 and has done so far his best to advance these proceedings. The other
9 co-counsel is participating remotely and, as indicated earlier, is in
10 constant contact with Mr. Worboys. So the Panel emphasises that the
11 practical arrangements and division of labour set by lead counsel or
12 agreed upon between counsel are not in any way qualifying the
13 obligations of counsel towards their client or towards the Panel.

14 Second, the responsibility of this Panel.

15 As I said earlier, this Panel is responsible for the fair and
16 expeditious conduct of the proceedings as set out in Article 40 of
17 the Law and Rule 116.

18 The Panel is mindful that the accused are in detention and that
19 any undue delay in the proceedings might affect their fair trial
20 rights, so it is the Panel's obligation to keep any delay as short as
21 practicably possible and to delay matters only where there is good
22 reason for it.

23 Third, the opening statement.

24 The Panel welcomes the readiness of the Haradinaj Defence to
25 make its opening statement today and will hear it shortly. The

1 Panel, therefore, directs the Haradinaj Defence to open its case
2 today, 15 December 2021.

3 The fourth issue, the request for an extension of time for the
4 submission of the statement of Mr. Haradinaj.

5 The Panel finds that the two reasons initially advanced by the
6 Defence - namely, that Mr. Haradinaj was in quarantine until recently
7 and that key team members have been absent due to COVID-19 - are
8 unpersuasive.

9 The Panel notes at the outset that Mr. Haradinaj's decision to
10 testify was announced almost three months ago, long before any
11 COVID-related issue arose in this case.

12 The Panel, therefore, assumes that the groundwork for that
13 document was prepared and there was no request before the Rule 119
14 deadline for an extension of time to finalise this document.

15 The Panel also observes that Mr. Haradinaj has been present in
16 the courtroom throughout last week and had the opportunity to meet
17 with co-counsel in person.

18 The Panel finally recalls that Mr. Haradinaj and his Defence
19 team have had the possibility to arrange confidential meetings -
20 whether in person, by phone, or by Zoom - since Mr. Haradinaj left
21 quarantine on December 8, and that these contacts can be organised
22 and facilitated with the Registry and the Detention Management Unit.

23 That being said, the Panel accepts in this specific instance the
24 submissions of Mr. Worboys about the difficulties in liaising with
25 Mr. Haradinaj in the absence of lead counsel, so the Panel will grant

1 an extension, the very last one, for submitting the written statement
2 of Mr. Haradinaj.

3 While the Panel notes the submissions of the SPO about the
4 prejudice the delay is causing, the Panel prefers at this point to
5 set a more generous deadline so as to make sure that the signed
6 document is finally filed and that no further extension is sought.

7 The Panel, therefore, directs the Haradinaj Defence to file
8 Mr. Haradinaj's statement by Monday, 27 December 2021.

9 The fifth and last issue is the presentation of evidence in the
10 Haradinaj case.

11 While the Panel wishes Mr. Cadman the promptest of recovery, it
12 hereby informs the Haradinaj Defence that the two co-counsels for
13 Mr. Haradinaj are expected to be ready to proceed with all the next
14 stages of the case in early January, even if Mr. Cadman is not in a
15 position to be present.

16 The Panel stresses that it considers the representation via
17 co-counsel amounts to effective representation, and the absence of
18 the lead counsel cannot result in affecting the efficiency of the
19 proceedings.

20 With this in mind, the Panel orders the Haradinaj Defence to
21 submit by Thursday, 6 January 2022, a consolidated filing containing
22 the following: First, any updates or changes to the witness list,
23 that is original filing F461, Annex 1; and also an updated
24 consolidated exhibit list, as we ordered earlier today.

25 The Panel grants the Haradinaj application for adjournment and

1 orders that the presentation of evidence in the Haradinaj case will
2 start on Tuesday, 11 January 2022.

3 The Panel expects the Haradinaj Defence to be ready at that time
4 to start with the testimony of Mr. Haradinaj. The Panel will sit
5 from 11 to 13 January full hearing days. On January 14, the Panel
6 will sit for two morning sessions. On 17 January, it will be a full
7 hearing day.

8 The Panel will also schedule January 21, 24, 31 as additional
9 sitting days.

10 And this concludes the oral order.

11 Mr. Rees, in relation to your submissions regarding the closing
12 of your case, the Panel notes that, according to Rule 131, the
13 Defence case is closed when there are no more witnesses to be called
14 or other evidence to be presented as part of the Defence case of any
15 accused. So there is no requirement to close your case now, as the
16 Haradinaj Defence still needs to present its case.

17 That being said, subject to the resolution of your application
18 for admission of certain exhibits from the bar table, we regard your
19 case as now having been presented to us.

20 As we will approach the end of the Haradinaj case, we will
21 expect counsel to be ready to promptly and formally close the Defence
22 case by written submission.

23 I believe Judge Mettraux has a question for you, Mr. Rees,
24 regarding the document you were adding to your bar table motion, the
25 Facebook post.

1 Judge Mettraux.

2 JUDGE METTRAUX: Thank you, Judge Smith.

3 And I actually have two questions for you, Mr. Rees. The first
4 has to do with this document, which is DHG0496. That's the document
5 for which you sought leave to amend your motion for the bar -- the
6 bar table motion.

7 The question is about the origin of the picture on that
8 document. Am I right to understand that this is a picture taken by
9 your client, Mr. Gucati?

10 MR. REES: I, obviously, am not in a position to give evidence,
11 but I can take instructions on that and assist perhaps later this
12 morning perhaps before we finish.

13 JUDGE METTRAUX: We'd be grateful, Mr. Rees.

14 The second question, and it's really a matter of clarification,
15 but your bar table application includes a number of press articles
16 and NGO reports. Are we to understand you are seeking to rely on the
17 truth of the content of these articles and reports?

18 MR. REES: We submit that they are from reliable sources.
19 They're from well-known and respected agencies, both NGOs and
20 newspapers. To the extent that their content is publicly available,
21 as we have put it in the bar table motion, we submit that they make
22 plain how one can reasonably conclude that the persons named therein
23 can be reasonably described as enemies of the state of Kosovo, which
24 has formed a significant part of the line of cross-examination of
25 Mr. Gucati. And we say that those publicly available sources justify

1 that description irregardless of those named persons' status, if it
2 is their status, as witness. Irregardless of that.

3 JUDGE METTRAUX: So the answer to the question is you are
4 seeking to rely on the truth of the content of these articles and
5 reports.

6 MR. REES: And the fact that they are stated publicly. So it's
7 both the fact of the truth to the extent that the Panel can give
8 weight to what's reported therein, and I accept it's a matter for the
9 Panel as to what weight can be given to those sources. But not just
10 to the contents but also to the fact of those matters being reported
11 publicly.

12 JUDGE METTRAUX: I'm grateful.

13 MR. REES: I hope that assists. So it's the two limbs.

14 JUDGE METTRAUX: Yes, and if you can revert to us in relation to
15 the picture --

16 MR. REES: Yes.

17 JUDGE METTRAUX: -- before the end of the day, we'd be grateful.
18 Thank you.

19 MR. REES: Thank you.

20 PRESIDING JUDGE SMITH: The Panel will now hear the opening
21 statement of the Defence for Nasim Haradinaj pursuant to Rules 126
22 and 127.

23 Before we start, for the benefit of the public, I recall that
24 the Panel held a Defence Preparation Conference on December 2nd,
25 2021. The Panel has already authorised the Haradinaj Defence to make

1 its opening statement after the end of the Gucati case.

2 The Panel recalls that in accordance with Rule 126(1), opening
3 statements shall be made orally and shall be restricted to a
4 principled overview of the subject matter of the case. They may also
5 provide a concise explanation of the evidence to be called and how it
6 impacts on the issues in the case.

7 The presentation of evidence for the Haradinaj Defence case will
8 start on Tuesday, 11 January 2022.

9 And, Mr. Worboys, you now have the floor.

10 MR. WORBOYS: May it please Your Honours. It is a privilege to
11 appear before you in one of the first cases before the Specialist
12 Chambers, a case in which the jurisdiction and appropriateness of
13 jurisdiction imposes grave responsibility.

14 Today, I am reading and delivering the opening speech of
15 Mr. Cadman who, as you all know, is unable to be here due to health
16 conditions.

17 Your Honours, it is notable that courts try cases, but
18 occasionally, cases try courts. This is one such occasion.

19 We've heard from the SPO as to the importance of this
20 institution and how the case is about protection of individuals. We
21 have heard this case is about justice, it is about accountability,
22 and it is about the rule of law.

23 The SPO is correct on each and every one of these points.
24 However, conspicuous by its absence is any reference to the victims
25 of the conflict at the hands of Serbian aggressors.

1 The purpose of this institution is to bring justice to all
2 victims. If anyone deserves justice, then everyone deserves justice.

3 You may consider that it is not relevant to these proceedings.
4 Mr. Haradinaj, however, believes it is directly relevant and it is a
5 central part of the defence that will be presented on his behalf.

6 The defendant, Mr. Haradinaj, is in essence accused of crimes
7 that focus on undermining the process of justice. He has been
8 accused, in one way or another, of seeking to harm this institution.
9 But none of this is true. Mr. Haradinaj is not against justice; he
10 is in favour of it.

11 Mr. Haradinaj has stated on more than one occasion that everyone
12 who has committed a war crime or crime during the armed conflict
13 should be prosecuted. He has stated that nobody should be shielded
14 from justice. Moreover, when Mr. Haradinaj became vice-president of
15 the KLA War Veterans Association, he made one point very clear. That
16 was those persons being summoned should cooperate. They had nothing
17 to hide nor fear.

18 These are not the acts of someone who seeks to prevent justice.
19 Rather, they are the actions of someone who seeks to secure it.

20 Mr. Haradinaj has dedicated his life to the independence and
21 physical integrity of the Republic of Kosovo. He has been persecuted
22 for much of his childhood and his adult life. He has been
23 imprisoned, beaten, and subjugated, and now he is subject to these
24 charges.

25 The Prosecution suggests this is an open-and-shut case.

1 However, it is not.

2 Putting aside the precise details of the case for one second, at
3 the centre of this case is the public interest: Truth, inadequacies,
4 and justice for all. The SPO, in its opening speech, draws reference
5 to this case being about the building of institutions, building
6 institutions that can protect those that assist it and bring justice
7 to all.

8 However, each and every one of the documents said to have been
9 disclosed in this case and that form the centre of this case have
10 come from the Specialist Prosecutor's Office. The defendants did not
11 take those items. Indeed, in his opening, the Specialist Prosecutor
12 confirmed for the first time that the documents were stolen and
13 further confirmed that the defendant were not responsible for it.

14 It follows that the SPO has had inadequate security measures and
15 that is one of the real issues at heart here.

16 In addition, there are open questions as to how the documents
17 came to be at the KLA War Veterans Association, whether the documents
18 are genuine, among other questions. Those questions are all issues
19 that the Court will have to grapple with, but they are difficult
20 questions to answer in a transparent and fair way given the lack of
21 documentation that has been supplied to the Defence in this case and
22 the double-standards that have been seen when it comes to the fact,
23 for example, that Mr. Berisha has been said to not have committed
24 crimes but the accused have.

25 Mr. Haradinaj has sought to expose the failures of the SPO, but

1 the SPO has not sought to speak to him about his concerns. Instead,
2 he has moved to be here today.

3 One defining characteristic of this case is that unlike other
4 trials before this Court, it does not directly involve historical
5 allegations regarding the conflict.

6 THE INTERPRETER: Could the counsel please be asked to slow down
7 for the purposes of interpretation. Thank you.

8 MR. WORBOYS: The SPO would have the Trial Panel therefore
9 believe that history is not relevant to this case at all. However,
10 that is not the case. History is relevant and it cannot be ignored.
11 This is because it forms much of the context of the present case
12 before the Court.

13 As to the history, which I will not dwell on because I am
14 mindful of prior directions of the Trial Panel, which, while we might
15 not agree with, we are bound to follow, the recognised conflict in
16 Kosovo lasted from 1998 to 1999. However, tensions, oppression, and
17 calls for independence and autonomy long pre-date that, as do the
18 massacres.

19 There was immeasurable suffering by the people of Kosovo at the
20 hands of the Serbian state, and this included Mr. Haradinaj and his
21 family. That same Serbian state now refuses to provide the people of
22 Kosovo with the recognition they deserve.

23 This history is recent. It is, therefore, at the forefront of
24 the consciousness of not only a select number of individuals, but
25 that of an entire population that this Court represents and which it

1 is an institution of.

2 A significant and, within some quarters, universal criticism of
3 the KSC and its approach, is it is only targeting allegations made
4 against the KLA. This criticism may be rejected by some but that
5 does not mean the criticism cannot be made. As Mr. Smith,
6 Specialist Prosecutor, stated in his opening, such criticism is
7 welcomed and is an entirely legitimate expression of free speech.

8 During the SPO case, we have not heard that there are any
9 investigations open into any offence committed by individuals who are
10 not part of the KLA. Accordingly, and exercising the right of free
11 speech, there would appear to be no investigation into the Meja
12 massacre where more than 300 Kosovo Albanians, many of whom were
13 under the age of 18, were killed. There would appear to be no
14 investigation into the Drenica massacres, a region that suffered
15 egregious and widespread abuses that Human Rights Watch has noted are
16 well beyond the scope of discussion now.

17 If our understanding of these investigations is correct, these
18 massacres are not subject to the investigation of the SPO and one
19 must question why. Further, one must question why Kosovan civilians
20 are being kept in the dark as to the fact that many incidents are not
21 being investigated.

22 This is not about an impunity gap. Mr. Haradinaj has
23 consistently demanded that all persons face justice. But to do this
24 in a one-sided and mono-ethnic way perpetuates the theory of lasting
25 impunity to the thousands of civilian victims.

1 Turning to the specific facts and allegations in this case. The
2 SPO are asking that this Trial Panel find Mr. Haradinaj guilty of six
3 counts on the indictment, namely the following: One, obstructing
4 official persons in performing official duties by serious threat;
5 two, obstructing official persons in performing duties by
6 participating in a common action of a group; three, intimidation
7 during criminal proceedings; four, retaliation; five, violation of
8 secrecy; and, six, violation of secrecy as well.

9 By way of preliminary observation, I will say that since the
10 leak, it cannot be denied that there has been vigorous debate in
11 Kosovo that has been sparked, including as to what has happened and
12 what has been done. In setting the context for this case, it must,
13 therefore, be asked: Is there not a public interest in knowing what
14 is going on? For example, is there not a public interest in knowing
15 that the SPO are engaging with people who are the subject of Interpol
16 Red Notice alerts?

17 Mr. Haradinaj says yes. But more than saying yes, he believes
18 there is such a public interest in the importance of understanding
19 what is happening and that the people of Kosovo deserve to know.
20 Even Mr. Berisha, an SPO witness, would agree.

21 It is also important to recall that Mr. Haradinaj did not come
22 to this realisation after 7 September 2020. It is something that he
23 has sought to address previously.

24 Before moving on to some observations regarding the counts
25 themselves, and by way of preliminary observation as well, it's

1 necessary to make three overarching points.

2 PRESIDING JUDGE SMITH: Is there a problem with the sound?

3 MR. WORBOYS: Your Honour, I understand there's no --

4 THE ACCUSED HARADINAJ: [No interpretation].

5 PRESIDING JUDGE SMITH: Thank you.

6 MR. WORBOYS: Thank you, Your Honour.

7 I was saying that it's necessary to make three overarching
8 points.

9 First, this investigation and/or the case management has been
10 fundamentally flawed. And when I say "case management" there, I mean
11 the SPO investigation rather than anything before the Court.

12 I simply wish to say there's been no effective chain of custody
13 and the standards of investigation have fallen far below those
14 expected of this institution. This is a point that taints the
15 entirety of this prosecution and ought not to be glossed over.

16 The Defence will demonstrate that the Prosecution was negligent
17 at best in its investigations.

18 Second, while Mr. Haradinaj and his co-accused are alleged to
19 have released the three sets of documents, the Defence has not had
20 access to those documents in their entirety, and the Panel is
21 expected to proceed in the interests of justice purely on the SPO's
22 say so. We have not heard witnesses or had any opportunity to
23 challenge witnesses that make allegations that are central to the
24 Prosecution case.

25 That is no way to conduct open justice and is a fundamental

1 problem that goes to the heart of this case.

2 Third, there is an inherent contradiction in the SPO's
3 submission that again goes to the heart of this case. Even
4 Mr. Berisha, called by the SPO, noted the clear public interest in
5 the publication of documents and maintained that his justification
6 for publication was on the basis of a public interest.

7 He has not been prosecuted for actions which we say rightly so,
8 and in that regard we would support the comments of the SPO at
9 page 1507 of the transcript, that no crimes were committed.

10 But if Mr. Berisha had not done anything wrong and has not
11 committed any crime, how is Mr. Haradinaj here before the Court
12 having been accused of committing a crime?

13 Mr. Rees QC, in his opening, summarised and drew reference to
14 the evidence of Mr. Berisha, which I do not wish to go through now,
15 but I would remind the Court of that. At no stage has a media outlet
16 been asked to remove the articles. At no stage has a media outlet
17 been subject to any form of search. And there are journalists that
18 still have copy of the documents to the best of our knowledge.

19 The question must, therefore, be asked as to why there are
20 defendants before you today when others have been publicly deemed to
21 have committed no crime but took steps that went further and beyond
22 those of the defendant.

23 Moving to the counts and by way of summary and without prejudice
24 to future arguments that will be made.

25 As to counts 1 and 2, Mr. Haradinaj did not obstruct any

1 investigation or the work of the SPO. Instead, the blame for any
2 challenges that the SPO faced must fall squarely at their door. The
3 SPO allowed the documents to end up at the WVA, either intentionally
4 or inadvertently.

5 Moreover, the Specialist Prosecutor confirmed, without doubt,
6 that neither defendant was responsible for the theft or leak of those
7 documents.

8 The public interest is also firmly engaged, and there is no
9 evidence of obstruction on the present facts in any event.

10 Count 3 alleges that Mr. Haradinaj has intimidated witnesses.
11 Mr. Haradinaj denies that he sought to intimidate any individual or
12 did so. And more to the point, the SPO has not adduced any evidence
13 to substantiate this charge. Moreover, the Trial Panel has been
14 prevented from hearing or scrutinising the evidence of the witnesses
15 themselves who lay foundation to the claim of intimidation.

16 Instead, the Trial Panel is being asked to take the SPO's word,
17 and it's heard limited evidence of what there is and what happened.
18 That, in our submission, is not enough.

19 In any event, when the notes of contact that the SPO made with
20 witnesses are read, it is clear many individuals did not express
21 concern for their safety after the leaks, but instead expressed
22 concern that the leaks happened by the SPO in the first place. They
23 also inquired as to whether what had happened was being investigated.

24 To the extent there are problems, again, these must be
25 attributed to the SPO.

1 Mr. Haradinaj does not shy away from the fact that he has been
2 vocal in his criticism. But again, as the Specialist Prosecutor,
3 Mr. Jack Smith, has said, criticism is acceptable.

4 The evidence to be called on behalf of Mr. Haradinaj will
5 demonstrate that no threats were made against protected witnesses or
6 victims of any crime, nor was there ever any intention that such
7 individuals should be targeted, but rather, that Mr. Haradinaj
8 highlighted what had occurred and drew attention to it, acting in the
9 course of his civil duty.

10 The SPO seeks to use terms such as "liar" and "traitors" to
11 strengthen its allegations. However, to understand Mr. Haradinaj's
12 remarks in their entirety, rather than carefully selected segments of
13 quotes, one must understand his words how they were actually used and
14 who they were directed against. Those were the people that
15 orchestrated massacres and people that are wanted by Interpol.

16 Count 4 alleges that Mr. Haradinaj retaliated. As with Count 3,
17 there is no evidence of retaliation. In any event, Mr. Haradinaj is
18 clear in his position and will be clear in his evidence that those
19 investigations, those alleged to have committed offences he would
20 support the prosecution of.

21 We will hear, in particular, how Mr. Haradinaj changed the
22 position of the KLA War Veterans Association when he assumed the
23 vice-presidency and ensured that individuals cooperated with the KSC
24 where they were called to do so.

25 Mr. Haradinaj, by his own words, supports the pursuit of justice

1 and accountability and supports a process that is fair and
2 transparent. In short, his evidence will demonstrate that he
3 supports justice.

4 Mr. Haradinaj has not retaliated nor has the SPO at any stage
5 identified people that support this charge.

6 Count 5 suggests that Mr. Haradinaj violated secrecy of
7 proceedings. This is refuted. He was wholly unaware as to whether
8 the documents in his possession were genuine, and the SPO has not
9 proved they were genuine. This is a fundamental problem.

10 Regardless, there was a genuine belief, and his evidence will
11 show this, that he had no option but to act in his way and he acted
12 in the public interest.

13 Finally, Mr. Haradinaj's evidence will demonstrate how he
14 attempted to raise his concerns with the government, with the
15 international community, and with the media. How he raised concerns
16 with a number of individuals and yet they all went unanswered. The
17 concerns, therefore, remained but no acknowledgement had taken place.

18 Count 6 is similar to Count 5, and I do not intend to repeat
19 myself. However, two salient factors have to be considered. First,
20 and as Mr. Haradinaj will confirm in his evidence, there are a number
21 of individuals whose cooperation with the KSC and SPO is in the
22 public domain and is well known. Certain of those individuals have
23 even publicly disclosed that position themselves. The information is
24 not secret.

25 Second, Mr. Haradinaj has been publicly clear that he requested

1 names were not printed and that any disclosure was in the public
2 interest.

3 Your Honours, to close, the SPO has presented what it seems to
4 consider is an open-and-shut case. The reality, however, is very
5 different, as we've seen from the evidence that's been offered thus
6 far.

7 Mr. Haradinaj is not guilty of the offences on the indictment as
8 alleged. Mr. Haradinaj was justified in what he did, and he was
9 justified within the law.

10 Thank you, Your Honours.

11 PRESIDING JUDGE SMITH: Thank you, Mr. Worboys.

12 It is now time to wrap up for today. We will resume on Tuesday,
13 11 January 2022, at 9.30 a.m., to start the presentation of the
14 evidence of the Haradinaj case.

15 I want to thank the interpreters and translators, the court
16 reporter, the security personnel, and the audio-visual personnel for
17 your help today.

18 This concludes today's public hearing. The hearing is
19 adjourned.

20 --- Whereupon the hearing adjourned at 12.35 p.m.