

1 Thursday, 2 February 2023
2 [Appeal Judgment]
3 [Open session]
4 [The Appellants entered court]
5 --- Upon commencing at 2.00 p.m.

6 PRESIDING JUDGE PICARD: The photograph, yes. I was told you
7 have one minute and a half to take pictures.
8 Thank you, Madam Photographer.

9 So good morning and welcome everyone.

10 Madam Court Officer, could you please call the case.

11 THE COURT OFFICER: Good afternoon, Your Honours. This is case
12 file KSC-CA-2022-01, The Specialist Prosecutor versus Hysni Gucati
13 and Nasim Haradinaj.

14 PRESIDING JUDGE PICARD: Thank you, Madam Court Officer.

15 I note that Mr. Gucati and Mr. Haradinaj are present in the
16 courtroom, so now I will ask kindly the parties to introduce
17 themselves, starting with the counsel for Mr. Gucati.

18 MR. REES: Your Honour, I appear on behalf of Mr. Gucati. I'm
19 assisted by co-counsel Mr. Bowden and Ms. Stephenson, also assisted
20 by Mr. Dashi, Mr. Halilaj, and Mr. Stephen Clarke, BEM.

21 PRESIDING JUDGE PICARD: Thank you.

22 Counsel for Mr. Haradinaj.

23 MR. CADMAN: Good afternoon, Your Honours. I appear on behalf
24 of Mr. Nasim Haradinaj today. I'm assisted by Ms. Bernabeu, Mr.
25 Cubbon, Mr. Soliman, Mr. Berisha, and Ms. Qu.

1 PRESIDING JUDGE PICARD: Thank you.

2 For the Specialist Prosecutor's Office, please.

3 MR. HALLING: Good afternoon, Your Honours. For the SPO today,
4 Ward Ferdinandusse, James Pace, Line Pedersen, and Matt Halling.

5 PRESIDING JUDGE PICARD: Thank you.

6 I turn to the Registry.

7 THE REGISTRAR: Good afternoon, Your Honours. Fidelma Donlon,
8 Registrar, joined today by Mr. Ralph Roche, Head of Judicial Services
9 Division.

10 PRESIDING JUDGE PICARD: Thank you.

11 For the record, I am Michele Picard, Presiding Judge in this
12 case. On my left, Judge Nina Jorgensen; and on my right,
13 Judge Kai Ambos.

14 The Court of Appeals is sitting today to pronounce the judgment,
15 in public, in the name of the people of Kosovo and in the presence of
16 the accused.

17 This case concerns the appeals against the Trial Panel's
18 findings regarding the responsibility of Mr. Gucati, chairman of the
19 Kosovo Liberation Army War Veterans Association, and Mr. Haradinaj,
20 deputy chairman of the same organisation, in a series of events that
21 took place during a three-week period from 7 September 2020 until
22 25 September 2020.

23 On 18 May 2022, the Trial Panel delivered the trial judgment,
24 convicting each of the accused for criminal offences against public
25 order and criminal offences against the administration of justice and

1 public administration. The accused were found guilty on five counts
2 of the indictment, Counts 1, 2, 3, 5 and 6, and not guilty on one
3 count, Count 4. The Trial Panel sentenced each of the accused to a
4 single sentence of four and a half years of imprisonment, with credit
5 for the time served, and a fine of 100 euros.

6 The Trial Panel found that during the indictment period the
7 accused received, from unknown sources, three sets of documents
8 containing confidential and non-public information related to the
9 work and investigations of the Special Investigative Task Force,
10 known as the SITF, and the Specialist Prosecutor's Office, known as
11 the SPO.

12 This material was delivered to the premises of the Kosovo
13 Liberation Army War Veterans Association on 7 September 2020,
14 16 September 2020, and 22 September 2020.

15 After each delivery, the accused called and hosted a press
16 conference where they discussed and made available to journalists
17 each of the sets of documents.

18 During the same period, the accused, individually or jointly,
19 gave a number of media interviews regarding this material. They also
20 commented on the material and republished articles on social media.
21 What was left from the sets of documents was subsequently handed over
22 to the SPO and identified as Batches 1, 2, 3, and 4, referred to as
23 the "Batches."

24 Before I summarise the findings of the Panel in this case, the
25 Panel wants to stress that the Specialist Chambers were created in

1 connection with serious allegations of inhuman treatment, killing of
2 people and other serious crimes during and in the aftermath of the
3 armed conflict in Kosovo. Prior to the establishment of the
4 Specialist Chambers, several impediments to the discovery of the
5 truth by other courts and tribunals about these events have been of
6 ongoing concern. These included the reluctance or fear on the part
7 of witnesses to testify and their lack of confidence in protective
8 measures.

9 The Panel recalls that it is precisely in that context that the
10 Specialist Chambers were established in order to ensure secure,
11 independent, impartial, fair, and efficient criminal proceedings in
12 relation to these allegations of serious crimes.

13 The nature of the crimes under the jurisdiction of the
14 Specialist Chambers and the context in which they were committed
15 necessitate reliance upon oral evidence. It is fundamental to the
16 fulfilment of the Specialist Chambers's mission that individuals who
17 come to give evidence, often about traumatic or difficult
18 experiences, may do so without fear. The protection of the witnesses
19 from intimidation and harm lies at the very foundation of any system
20 of criminal justice, including the Specialist Chambers. This case
21 concerns, therefore, the proper administration of justice, the
22 integrity and security of proceedings and the safety of witnesses.

23 I will now read the summary of the central findings of the
24 Panel. This summary is not part of the appeal judgment nor is it
25 authoritative. The written judgment is the only authoritative

1 account of the Panel's finding.

2 Both Mr. Gucati and Mr. Haradinaj filed an appeal challenging
3 their convictions under Counts 1, 2, 3, 5 and 6 of the indictment and
4 further challenged a number of related findings made by the
5 Trial Panel. They also both challenged their sentence. Mr. Gucati's
6 appeal comprised 20 grounds and various subgrounds, and
7 Mr. Haradinaj's comprised 24 grounds and various subgrounds.

8 On behalf of the Panel, I will first summarise the findings of
9 the Panel on the alleged errors concerning fair trial and evidential
10 issues. I will then summarise the Panel's findings related to the
11 appeals on Counts 5, 6, 3, 1, 2, and turn next to the defences and
12 grounds excluding responsibility raised by the accused. I will
13 conclude with the sentencing appeals.

14 In a preliminary section dealing with fair trial and evidential
15 issues, the Panel addresses Mr. Gucati's and Mr. Haradinaj's alleged
16 errors concerning the Trial Panel's decision not to disclose or to
17 redact some of the material contained in the Batches. The Panel
18 finds that the documents contained in the Batches are not relevant
19 for their content but for their confidential nature.

20 Considering that the documents contained in the Batches formed
21 part of ongoing SPO investigations, the Panel finds that it was
22 reasonable to order that an SPO investigator would confirm the
23 confidential status of the documents as a counterbalancing measure
24 for the non-disclosure of part of the Batches.

25 The Panel further observes that the Defence had the opportunity

1 to cross-examine the SPO investigator, Witness W04841, and that, in
2 addition to this evidence, the Trial Panel established the
3 authenticity and confidential nature of the Batches by relying on
4 several other sources. The Appeals Panel finds that the accused have
5 failed to demonstrate an error in the Trial Panel's findings.

6 Turning to the Trial Panel's determinations, at hearings
7 *ex parte* the Defence, on material allegedly relevant to the claim of
8 entrapment, the Panel considers that the procedure followed by the
9 Trial Panel when assessing the SPO's request under Rule 108 of the
10 Rules met fair trial standards. The Panel, therefore, rejects
11 Mr. Haradinaj's contentions.

12 The Panel turns to Mr. Haradinaj's argument that the Trial Panel
13 erred in refusing to accept submissions after the closing of the case
14 regarding allegations made by Mr. Dick Marty. The Appeals Panel
15 finds that Mr. Haradinaj failed to demonstrate an error in the
16 Trial Panel's conclusion on the absence of any link between this
17 material and the present case.

18 Other challenges related to fair trial and evidential issues are
19 addressed in the appeal judgment. I, on behalf of the Panel, will
20 now turn to appeals on Counts 5, 6, 3, 1 and 2 of the indictment.

21 The parties set out detailed arguments regarding alleged errors
22 by the Trial Panel on the material and mental elements of the
23 offences, and the Panel will summarise the main findings.

24 Count 5 of the indictment pertains to the offence of violating
25 the secrecy of proceedings through the unauthorised revelation of

1 secret information disclosed in official proceedings punishable under
2 Article 392(1) of the Kosovo Criminal Code. The accused challenged
3 the Trial Panel's findings of the *actus reus* of this offence.

4 The Panel will start with the accused's challenges concerning
5 the findings that the protected information was revealed "without
6 authorisation." Mr. Gucati submitted that disclosure of confidential
7 information in the public interest or by a whistleblower is permitted
8 by law. The Panel, however, finds that these defences may exclude
9 criminal liability but would not affect the *actus reus* of the offence
10 under Article 392(1) of the Kosovo Criminal Code. These arguments
11 are, therefore, irrelevant to assess challenges to the *actus reus* of
12 this offence.

13 Mr. Gucati submitted that the perpetrator of the offence can
14 only be the "initial recipient of the information," meaning the SPO
15 or its counterpart. The Panel dismisses Mr. Gucati's interpretation
16 and agrees with the Trial Panel's finding that Article 392(1) of the
17 Kosovo Criminal Code does not specifically require that the
18 information must have been disclosed directly to the perpetrator of
19 the offence.

20 With regard to the nature of the protected information, the
21 Panel recalls that Article 392(1) criminalises two alternatives:
22 First, the unauthorised revelation of information which must not be
23 revealed according to law; and, second, the unauthorised revelation
24 of information that has been declared to be secret by a competent
25 authority.

1 The Panel has assessed the accused's argument in relation to the
2 second alternative. Regarding the interpretation of the term
3 "secret," the Panel finds that Mr. Gucati failed to demonstrate that
4 the Trial Panel erred in finding that information treated as
5 confidential by the SPO had to be regarded as secret within the
6 meaning of Article 392(1) of the Kosovo Criminal Code. In addition,
7 contrary to Mr. Gucati's assertion, the legal framework of the
8 Specialist Chambers contains no obligation for the SPO to prove that
9 the information was lawfully and rightfully classified as secret.

10 Having rejected the challenges to one of the two alternatives
11 under Article 392(1) of the Kosovo Criminal Code, the Panel did not
12 address the challenges to the fulfilment of the other alternative;
13 namely, whether the protected information also qualifies as
14 information "which must not be revealed according to law."

15 In conclusion, for these counts, the Appeals Panel dismisses the
16 Defence's challenges to the Trial Panel's finding in relation to
17 Count 5.

18 Turning to Count 6, Count 6 of the indictment pertains to the
19 offence of unauthorised revelation of the identities and personal
20 data of protected witnesses, punishable under Article 392(2) of the
21 Kosovo Criminal Code. The accused challenged the Trial Panel's
22 findings on the *actus reus* of this offence.

23 The Panel will start with the accused's challenges to the
24 findings on "person" within the context of the formulation "person
25 under protection in the criminal proceedings."

1 The Panel finds that the Defence failed to demonstrate any error
2 in the Trial Panel's finding that, for the purpose of Count 6, the
3 term "person" covered the witnesses and potential witnesses as
4 defined by the SPO investigator, Witness W04841.

5 The Panel turns next to the accused's challenges to the findings
6 on the second part of the formulation that is "under protection in
7 the criminal proceedings."

8 Mr. Gucati argued that the protection must be "granted" rather
9 than assumed. Both accused further argued that the Trial Panel
10 wrongly considered that all persons named within the SITF and SPO
11 documents were *ipso facto* protected.

12 The Panel finds that the reference in the Kosovo Criminal Code
13 to "under protection in the criminal proceedings" does not
14 necessarily require a judicial order and can also entail measures of
15 protection adopted by the SPO during its investigations. These
16 measures do not necessitate the fulfilment of the requirements
17 mentioned by the accused, including a judicial order "granting" the
18 protection, the identification of each of the persons concerned or
19 the consent of the person in respect of whom the protective measures
20 are sought.

21 The Panel is further mindful that, Count 6 of the indictment,
22 pursuant to Article 392(3) of the Kosovo Criminal Code, provides for
23 two aggravated forms of the basic offence. Only one aggravated form
24 is relevant for this case, which is where the offence in
25 Article 392(2) resulted in "serious consequences" for the person

1 under protection. The accused challenged the Trial Panel's findings
2 on the *actus reus* of this aggravated form.

3 The Panel finds that the accused failed to demonstrate that the
4 Trial Chamber erred in relying on the testimony of SPO
5 Witness W04842. The Panel further finds that Mr. Gucati failed to
6 demonstrate why the Trial Panel's reference to "substantial
7 interference" instead of "serious consequences" in the applicable law
8 section of the judgment would constitute an error. Ultimately, the
9 Trial Panel explicitly referred to "serious consequences" in its
10 findings on Article 392(3) of the Kosovo Criminal Code.

11 Mr. Gucati further challenged the Trial Panel's finding in
12 relation to the witnesses at risk. For the reasons developed in the
13 appeal judgment, the Appeals Panel finds that the Trial Panel did not
14 err in finding that serious consequences occurred for the witnesses
15 who were relocated and subjected to emergency risk planning.
16 However, the Panel finds that this finding can only apply to the two
17 witnesses who were relocated.

18 Turning next to the person identified in the confidential
19 version of the trial judgment. I'm referring here to the person who
20 had made public his cooperation with Prosecutors investigating
21 alleged offences committed by KLA members. The Appeals Panel finds
22 that the findings on this person's "fear and concern resulting from
23 being publicly named as a witness" are not based on the available
24 evidence in this case. The Trial Panel provided no explanation
25 supporting its finding and did not further explain whether it

1 considered that a complaint about the publishing of the leaked
2 documents would amount to a serious consequence.

3 Accordingly, the Appeals Panel agrees with Mr. Gucati that the
4 Trial Panel erred in relation to this specific finding and,
5 therefore, grants Ground 11 of Mr. Gucati's appeal. Any impact on
6 this finding on the sentence will be discussed in a moment.

7 In conclusion, for this count, the Appeals Panel grants
8 Mr. Gucati's Ground 11, and the Panel dismisses all the other
9 challenges to the Trial Panel's findings in relation to Count 6.

10 The Panel turns now to Count 3. Count 3 corresponds to the
11 offence of intimidation during criminal proceedings, punishable under
12 Article 387 of the Kosovo Criminal Code. The Panel will start with
13 the accused's challenges concerning the *actus reus* of the offence.

14 The Appeals Panel preliminarily considers that it is clear that
15 the Trial Panel found that the accused were guilty under the first
16 alternative of Article 387; namely, having used serious threats to
17 induce someone to "refrain from making a statement."

18 The Panel first turns to Mr. Gucati's argument that the
19 Trial Panel erred by finding that the last part of Article 387 of the
20 Kosovo Criminal Code stating "when such information relates to
21 obstruction of criminal proceedings," only qualified the third
22 alternative of Article 387; namely, the person failing to state "true
23 information to the police, a prosecutor or a judge" and not the first
24 alternative. For the reasons set out in the appeal judgment, the
25 Appeals Panel considers that the words "obstruction of criminal

1 proceedings" do not apply to the first alternative of Article 387
2 and, therefore, that the Trial Panel did not err by not finding that
3 the accused used serious threats in relation to the obstruction of
4 criminal proceedings.

5 Regarding the definition of serious threat, the Panel considers,
6 with respect to Article 387 of the Kosovo Criminal Code, that the
7 legislator intended this term to encompass any serious threat of
8 harmful action, not only a threat to use force.

9 The Panel further considers that, regarding Mr. Gucati's
10 argument that a "threat" implies that some harm will be inflicted in
11 the future, the Trial Panel, indeed, made findings that persons will
12 suffer harm as a result of the accused's conduct.

13 Regarding Mr. Gucati's argument that the Trial Panel erred by
14 finding that Article 387 of the Kosovo Criminal Code does not require
15 proof that the "serious threat" did, in fact, induce a person to
16 refrain from making a statement, the Panel considers, for the reasons
17 included in the appeal judgment, that the Trial Panel's
18 interpretation is consistent with the wording of the provision and is
19 in line with its purpose.

20 Regarding Mr. Haradinaj's argument that his statements were not
21 expressed or inferred threats, the Panel considers that, for the
22 reasons laid out in the appeal judgment, Mr. Haradinaj fails to show
23 that no reasonable trier of fact could have reached the conclusion of
24 the Trial Panel that the accused's acts and statements amounted to a
25 serious threat.

1 The Panel turns to Mr. Gucati's argument concerning the
2 Trial Panel's reliance on the evidence of the SPO investigator,
3 Witness W04841, in relation to Count 3. The Panel recalls its
4 earlier finding that the Trial Panel did not err regarding the
5 non-disclosure of the Batches. The Panel also considers that the
6 fact that the accused publicly identified only six individuals does
7 not reduce the scope of revelation or impact the finding that the
8 *actus reus* of the offence is established.

9 Regarding Mr. Haradinaj's challenges to the methodology of the
10 SPO investigator, Witness W04841, the Panel, based on the reasons set
11 out in the appeal judgment, does not consider that the Trial Panel
12 erred in its assessment of her analysis of the witness lists.

13 In light of the above, the Appeals Panel finds that the accused
14 have failed to demonstrate an error in the Trial Panel's assessment
15 of the *actus reus* of the offence under Count 3.

16 The Panel will turn next to Mr. Gucati's challenges to the
17 Trial Panel's finding on the *mens rea* of Article 387 of the Kosovo
18 Criminal Code. First, the Panel considers that the findings that
19 Mr. Gucati and Mr. Haradinaj possessed the direct intent to use
20 serious threat to dissuade witnesses and potential witnesses from
21 giving evidence to the Specialist Chambers or the SPO are reasonable.

22 Regarding Mr. Gucati's argument that a *mens rea* finding was
23 required as to the truthfulness of the information to be provided by
24 witnesses under Article 387, the Panel recalls that failing to state
25 "true information" is only part of one of the three alternatives

1 under Article 387, and, most importantly, one under which the accused
2 were not convicted. Therefore, there was no error by the
3 Trial Panel.

4 Based on the fact that direct intent was established, the
5 Appeals Panel finds that Mr. Gucati's arguments that eventual intent
6 is not sufficient to sustain a conviction under Article 387 are
7 hypothetical and would have no impact on the findings.

8 Lastly, the Appeals Panel finds that the Trial Panel
9 specifically addressed Mr. Haradinaj's alternative interpretation of
10 the evidence regarding direct intent and therefore did not err.

11 In light of this, the Panel finds that Mr. Gucati and
12 Mr. Haradinaj failed to demonstrate any error in the Trial Panel's
13 assessment of the *mens rea* of the offence of intimidation during
14 criminal proceedings.

15 In conclusion, the Appeals Panel dismisses the Defence's
16 challenges to the Trial Panel's finding in relation to Count 3 and
17 will turn now to Count 1.

18 Count 1 of the indictment pertains to the offence of obstructing
19 official persons in performing official duties by serious threat,
20 punishable under Article 401(1) and (5) of the Kosovo Criminal Code.
21 The Panel will start with the accused's challenges concerning the
22 *actus reus* of the offence.

23 Regarding the definition of "serious threat," the Panel
24 considers that the legislator intended this term to encompass any
25 serious threat of harmful actions, not only a threat to use force.

1 Regarding the direction of serious threat, the Panel,
2 Judge Ambos dissenting, agrees with the Trial Panel's finding that
3 nothing in the language of this provision requires that the serious
4 threat be specifically directed at the official person. The Appeals
5 Panel also considers that the Trial Panel's interpretation is in
6 accordance with the rationale of the offence, which is not to protect
7 the official person as such, but rather to protect them in the
8 exercise of their official duties. Accordingly, the Panel,
9 Judge Ambos dissenting, finds no error in the finding that the
10 offence under Article 401(1) of the Kosovo Criminal Code is
11 established in this case, where the serious threat is directed
12 against those who gave evidence to the Specialist Chambers or the SPO
13 or who were likely to do so.

14 Regarding Mr. Gucati's argument that the exercise of force or
15 serious threat must be simultaneous with the exercise of official
16 duties, the Panel considers that such interpretation would be
17 inconsistent with the protection this article aims to afford to the
18 safety of the performance of official duties and is not based on the
19 text of the provision.

20 In light of the above, the Appeals Panel finds, by majority,
21 that the accused have failed to demonstrate an error in the
22 Trial Panel's assessment of the *actus reus* of the offence under
23 Count 1.

24 The Panel will turn next to Mr. Gucati's challenges to the
25 Trial Panel's findings regarding the *mens rea* of this offence. The

1 Appeals Panel considers that although the Trial Panel did not
2 verbatim repeat the legal standard in its conclusion on the accused's
3 intent, it made the appropriate findings elsewhere in the trial
4 judgment; namely, that the accused intended the use of serious threat
5 against witnesses and potential witnesses as the means with which to
6 achieve the result of obstructing Specialist Chambers or SPO
7 officials in performing their work. In light of this, the Panel
8 finds that Mr. Gucati failed to demonstrate an error in the
9 Trial Panel's assessment of the *mens rea* of the offence under
10 Count 1.

11 In conclusion, the Appeals Panel, by majority, dismisses the
12 Defence's challenges to the Trial Panel's findings in relation to
13 Count 1.

14 The Panel will now address Mr. Gucati's and Mr. Haradinaj's
15 grounds of appeal concerning the relation of concurrence between
16 Counts 1 and 2; namely, the offences of obstructing official persons
17 in performing official duties by force or serious threat and
18 obstructing official persons in performing official duties by common
19 action of a group. The Trial Panel applied the cumulative
20 convictions test, which has been applied by the *ad hoc* international
21 criminal tribunals, and allows for criminal convictions under
22 different statutory provisions if each statutory provision involved
23 has a materially distinct element not contained in the other. On the
24 basis of this test, the Trial Panel convicted the accused under both
25 Counts 1 and 2.

1 However, for the reasons explained in the appeals judgment, the
2 Appeals Panel considers that the cumulative conviction test from the
3 international case law applied by the Trial Panel is not appropriate
4 in the specific circumstances of the case. The Panel decided to
5 rely, rather, on the civil law concept of concurrence. In this
6 regard, it considered, *inter alia*, that the distinction in terms of
7 the minimum punishment between the two provisions can be explained by
8 the fact that the first paragraph of Article 401 of the Kosovo
9 Criminal Code requires specific individual actions of obstruction,
10 while under the second paragraph, it would generally not be possible
11 to establish the specific individual actions of obstruction committed
12 by an accused.

13 In light of this, the Panel considers that the relation between
14 these two provisions is best captured by the rule of subsidiarity and
15 that, in this case, where the accused's individual acts have been
16 specified and the accused have been convicted on the basis of
17 Article 401(1) of the Kosovo Criminal Code, a further conviction for
18 Article 401(2) is neither warranted nor necessary.

19 Accordingly, the Panel grants Mr. Gucati's Ground 16 and
20 Mr. Haradinaj's Ground 3 in part; decides that the accused can only
21 be convicted under Count 1 of the indictment; and enters a verdict of
22 acquittal under Count 2 of the indictment. The impact of this
23 finding, if any, on the accused's sentence will be addressed in a
24 moment.

25 In light of this finding, the Panel finds that it is unnecessary

1 to address Mr. Gucati's argument regarding Count 2 and his
2 allegations of errors on the part of the Trial Panel regarding the
3 *actus reus* and the *mens rea* of Article 401(2) of the Kosovo Criminal
4 Code.

5 The Panel will now address Mr. Gucati's and Mr. Haradinaj's
6 challenges regarding defences and grounds excluding responsibility.

7 At trial, the accused put forward a number of defences and
8 grounds excluding responsibility for their conduct. The Trial Panel,
9 however, found that the criminal responsibility of the accused could
10 not be excluded by any of the defences or grounds excluding
11 responsibility raised.

12 In their appeals, the accused challenged the Trial Panel's
13 findings rejecting the arguments they presented in relation to public
14 interest, whistleblowing, entrapment, extreme necessity, and act of
15 minor significance.

16 For the reasons developed in the appeal judgment, the Panel
17 rejects all the accused's grounds of appeal on these points. The
18 Panel will not summarise in detail each of its findings. The Panel
19 will, however, address specific issues of interest in this summary.

20 First, regarding the defence of public interest, the Panel
21 acknowledges that several of Gucati's arguments pertain to the
22 standard and burden of proof for grounds excluding criminal
23 responsibility, and this specific standard requires particular
24 attention.

25 With reference to several sources, the Panel clarifies that

1 there is a difference between the SPO's burden to establish the guilt
2 of the accused beyond reasonable doubt, burden of persuasion, and the
3 Defence's responsibility to present evidence to substantiate the
4 grounds excluding criminal responsibility, burden of production or
5 evidential burden.

6 Second, regarding the claim of entrapment by the SPO, the Panel
7 is aware that the parties have devoted lengthy submissions on this
8 matter that has been extensively litigated, both at trial and during
9 the appeals phase of these proceedings.

10 The Panel notes that the Trial Panel correctly found that
11 "provided that the accused's allegations are not wholly improbable,
12 it falls on the Prosecution to prove that there was no entrapment,"
13 as well as correctly identified the Court's obligation to "examine
14 the facts of the case and take the necessary steps to uncover whether
15 there was any entrapment." In line with jurisprudence from the
16 European Court of Human Rights, the Trial Panel did not err in
17 referring to a requirement of *prima facie* evidence.

18 The Appeals Panel further finds that the Defence misconstrues
19 the applicable standard from the jurisprudence from the European
20 Court of Human Rights when arguing that the "not wholly improbable"
21 standard is so low that it excludes any evidential requirement on
22 behalf of the Defence.

23 For these reasons, as further detailed and developed in the
24 appeal judgment, the Appeals Panel finds that Mr. Gucati and
25 Mr. Haradinaj failed to demonstrate that the Trial Panel erred in

1 finding that the entrapment claim they raised was wholly improbable
2 and unfounded.

3 The Panel will now address Mr. Gucati's and Mr. Haradinaj's
4 challenges related to sentencing.

5 The Panel first turns to Mr. Gucati's challenges to the
6 Trial Panel's assessment of gravity. As further developed in the
7 appeal judgment, the Panel considers that the Trial Panel did not err
8 in its findings on gravity and the scale on which the accused
9 committed the offences charged.

10 The Panel turns to Mr. Gucati's argument that the Trial Panel
11 erred by failing to appropriately reflect in sentencing Mr. Gucati's
12 specific role in comparison to Mr. Haradinaj's under Count 3. The
13 Panel considers that the Trial Panel carefully assessed the evidence
14 and all of the relevant factors comprising sentencing, including
15 Mr. Gucati's role in the offences in comparison with Mr. Haradinaj's.
16 Thus, the Panel finds that Mr. Gucati failed to demonstrate any error
17 in the Trial Panel's determination of his sentence in relation to
18 Count 3.

19 As reasoned further in the appeal judgment, the Panel also
20 dismissed Mr. Haradinaj's challenges regarding the Trial Panel's
21 findings in sentencing on the climate of witness intimidation in
22 Kosovo and on Mr. Haradinaj exercising his right to free speech.

23 The Panel considers that, as discussed further during the
24 appeals hearing, consistency in sentencing is important, but must
25 allow for the Trial Panel's exercise of discretion regarding the

1 individual facts of each case. As developed further in the appeal
2 judgment, the Panel considered the relevant domestic Kosovo cases and
3 relevant cases from international courts and tribunals submitted by
4 the parties.

5 The Panel is cognisant of the variations in the sentences
6 imposed in international criminal courts and tribunals as compared to
7 the sentences in this case. However, the Appeals Panel cannot ignore
8 the specific facts of this case, viewed within the context of the
9 applicable Kosovo legal framework and the sentencing ranges of the
10 Kosovo Criminal Code. Considering the seriousness of the accused's
11 offences, the Appeals Panel finds that the Trial Panel did not err in
12 its determination of the accused's sentences on the basis of the
13 convicted counts.

14 The Panel further found that the Trial Panel's error it
15 identified in Count 6 in relation to the aggravated form of the
16 offence had no impact on the sentence.

17 However, the Appeals Panel recalls its earlier findings on
18 Counts 1 and 2, in which it reversed Mr. Gucati and Mr. Haradinaj's
19 conviction under Count 2. As a result, the Panel considers that the
20 single sentences imposed by the Trial Panel should be reduced. For
21 the reasons developed in the appeal judgment, the Panel, Judge Ambos
22 dissenting, finds that the single sentence for Mr. Gucati and
23 Mr. Haradinaj each shall be reduced by three months to a single
24 sentence of four years and three months of imprisonment.

25 Judge Ambos concurs with the reasoning and conclusions of the

1 Appeals Panel in relation to Counts 3, 5 and 6. He further agrees
2 with the Appeals Panel's reasoning on the relationship of concurrence
3 between paragraphs 1 and 2 of Article 401 of the Kosovo Criminal
4 Code, Counts 1 and 2. Judge Ambos, however, disagrees with the
5 majority with respect to its interpretation of the *actus reus* of
6 Article 401(1) of the Kosovo Criminal Code. Therefore, on this
7 basis, he would have acquitted the accused in relation to Count 1 of
8 the indictment and would have reduced the single sentence imposed on
9 them to four years.

10 I would like to ask now Mr. Gucati and Mr. Haradinaj to stand
11 while I, on behalf of the Panel, read the full text of the
12 disposition of the appeal judgment.

13 You can stand, no problem? Yes.

14 The Court of Appeals Panel, pursuant to Article 46 of the Law
15 and Rule 182 and 183 of the Rules:

16 Grants Mr. Gucati's Ground 11, 16 and 20, in relevant part, and
17 Mr. Haradinaj's Ground 3, in relevant part, and 24, in relevant part;

18 Dismisses Mr. Gucati's and Mr. Haradinaj's appeals in all other
19 respects;

20 Reverses Mr. Gucati's and Mr. Haradinaj's conviction for
21 obstructing official persons in performing official duties by
22 participating in the common action of a group under Count 2 of the
23 indictment;

24 Affirms that Mr. Gucati's and Mr. Haradinaj's conviction for
25 intimidation during criminal proceedings under Count 3 of the

1 indictment, violating secrecy of proceedings through unauthorised
2 revelation of secret information disclosed in official proceedings
3 under Count 5 of the indictment and violating secrecy of proceedings
4 through unauthorised revelation of the identities and personal data
5 of protected witnesses under Count 6 of the indictment;

6 And further affirms, Judge Ambos dissenting, Mr. Gucati's and
7 Mr. Haradinaj's conviction for obstructing official persons in
8 performing official duties by serious threat under Count 1 of the
9 indictment;

10 Sets aside the single sentence of four and a half years of
11 imprisonment imposed on Mr. Gucati and Mr. Haradinaj, and imposes,
12 Judge Ambos dissenting, a single sentence of four years and three
13 months imprisonment on Mr. Gucati with credit for the time served,
14 and a single sentence of four years and three months of imprisonment
15 on Mr. Haradinaj, with credit for the time served;

16 Affirms Mr. Gucati's and Mr. Haradinaj's additional sentence to
17 pay a fine of 100 euros;

18 Rules that this judgment shall be enforced immediately, pursuant
19 to Rule 185(1) of the Rules;

20 And orders that, in accordance with Article 50(1) of the Law and
21 Rule 166(3) of the Rules, Mr. Gucati and Mr. Haradinaj shall remain
22 in the custody of the Specialist Chambers pending the finalisation of
23 the arrangements for their transfer to the state where their
24 sentences will be served.

25 Mr. Gucati and Mr. Haradinaj, you may be seated.

1 The Registry shall now distribute the appeal judgment in
2 electronic form and provide certified copies of the English version
3 to Mr. Gucati and Mr. Haradinaj. The Albanian version shall be
4 served on them once it is ready.

5 So I note that the certified copies have been distributed to
6 Mr. Gucati and Mr. Haradinaj.

7 And this concludes the appellate proceedings in this case.

8 The Court stands adjourned.

9 --- Whereupon the hearing adjourned at 2.46 p.m.

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