



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 9 November 2021

Language: English

Classification: Public

**Scheduling Order for Work Plan and Time Limits for
the Next Steps in the Proceedings**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Article 40(2) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 72(2), 116, 119, 129 and 130 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 November 2021, the Panel heard the testimony of the last witness of the Specialist Prosecutor’s Office (“SPO”), W04876. On the same day, the Panel ruled on the admissibility of the exhibits tendered through W04841 and indicated that written reasons would follow.¹

2. On the same day, the Panel ordered the Defence to request further cross-examination of W04841 and W04842 within five to eight days of any final ruling of the Rule 102(3) matters.²

3. On 8 November 2021, the Panel heard the Defence on proposed estimates for the filing of any motion to dismiss charges, and if the Panel were to find that there was a case to answer, on the Defence’s case.³

4. On 9 November 2021, the Panel issued a consolidated decision providing written reasons for the oral order on the admission of the exhibits tendered through W04841, ruling upon the classification of a number of exhibits.⁴

II. APPLICABLE LAW

5. Pursuant to Article 40(2) of the Law, the Panel shall ensure fair and expeditious proceedings in accordance with the Rules and full respect for the rights of the

¹ Oral Order, Draft Transcript 5 November 2021, p. 1912 line 21 to p. 1914 line 17.

² Oral Order, Draft Transcript 5 November 2021, p. 1970 line 21 to p. 1971, line 10.

³ Draft Transcript, 8 November 2021, p. 2029.

⁴ F00427, Panel, *Decision on the Admissibility of Deferred Exhibits and the Classification of Certain Admitted Exhibits*, 9 November 2021.

Accused. After having heard the Parties, the Panel may adopt procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings.

6. Pursuant to Rule 72(2) of the Rules, any Panel seized with proceedings under Article 15(2) of the Law may reduce time limits and take any other measures deemed necessary to expedite the proceedings, with due regard to the Accused's right to a fair trial.

7. Pursuant to Rule 119 of the Rules, should the Defence decide to present a case – following a decision pursuant to Rule 130 of the Rules, if any – the Panel shall order the Defence to file the list of witnesses it intends to call and the list of proposed exhibits it intends to present. The Panel shall hold the Defence Preparation Conference within seven (7) days of the filing of these two lists.

8. Pursuant to Rule 129 of the Rules, when there are no more witnesses to be called or other evidentiary material to be presented as part of the case of the Specialist Prosecutor, the latter shall close his case.

9. Pursuant to Rule 130 of the Rules, the Defence shall file any motion to dismiss any or all of the charges in the Indictment within ten (10) days of the closing of the Specialist Prosecutor's case, and the SPO may respond within ten (10) days of the filing of the motion.

III. DISCUSSION

10. At the outset, the Panel observes that there are no more witnesses to be called or other evidentiary material to be presented as part of the case of the Specialist Prosecutor, as confirmed by the SPO.⁵ The Panel further observes that, as announced,⁶

⁵ Draft Transcript, 8 November 2021, p. 2041. *See also* Draft Transcript, 5 November 2021, p. 1966.

⁶ Draft Transcript, 8 November 2021, p. 2030.

its 9 November 2021 consolidated decision ruled on the last outstanding evidentiary matters forming part of the SPO's case.⁷ The Panel therefore directs the Specialist Prosecutor to formally close his case pursuant to Rule 129 of the Rules, by way of a written notification to this effect.

11. The Panel notes that both Defence teams confirmed their intent to file a motion to dismiss any or all charges pursuant to Rule 130 of the Rules and their willingness to do so by 17 November 2021.⁸ The Panel further notes the indication from the Defence that, should there be a case to answer, the Defence intends to call a case, which could start in early December 2021.⁹

12. The Panel considers that the timeline proposed by the Defence is practicable in the current circumstances, save for any unforeseen developments. The Panel further notes that, in accordance with Rule 72(2) of the Rules, the present proceedings can advance with reduced time limits, with due regard to the Accused's right to a fair trial.

13. In light of the above, the Panel considers it appropriate to order the Defence to file any motion under Rule 130 of the Rules by 17 November 2021, 16:00 hours. Any response from the SPO should be filed by 24 November 2021, 16:00 hours. The Panel intends to issue a decision under Rule 130 of the Rules by 26 November 2021, 16:00 hours.

14. Furthermore, in the event that the Panel finds that there is a case to answer, the Defence is ordered to submit their filings under Rule 119(2) of the Rules by 29 November 2021. As a next step, the Panel considers it appropriate to schedule the Defence Preparation Conference for 2-3 December 2021. The Panel notes that the pending requests in relation to proposed Defence Witnesses¹⁰ will also be addressed

⁷ Draft Transcript, 8 November 2021, p. 2030.

⁸ Draft Transcript, 8 November 2021, pp 2032 (Gucati), 2036 (Haradinaj).

⁹ Draft Transcript, 8 November 2021, pp 2034-2035, 2037.

¹⁰ F00312, Specialist Prosecutor, *Prosecution Requests in Relation to Defence Witnesses*, 15 September 2021, confidential; F00329, Guccati Defence, *Response to Prosecution Requests in Relation to Defence Witnesses*, 27 September 2021, confidential; F00330, Haradinaj Defence, *Defence Response to Prosecution Requests in*

at the Defence Preparation Conference, with any decision thereon being issued either orally or in writing by 3 December 2021. The Panel tentatively sets the date of the opening of the Defence case to 6 December 2021. This date shall be revisited at the Defence Preparation Conference. The Panel envisages the Defence to present evidence in their case on 6-9 and 16-17 December 2021 and, if necessary, in January 2022.

15. As regards any further cross-examination of SPO witnesses, the Panel notes that an additional matter under Rule 102(3) of the Rules is still pending. Given that it is unlikely that there will be a final ruling on that matter by 16 November 2021, the Panel considers it appropriate to entertain any such request from the Defence at a later date, within the time limit provided in the above mentioned oral order.

IV. DISPOSITION

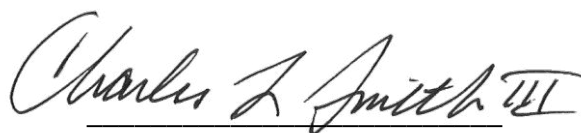
16. In light of the foregoing, and in order to facilitate the fair and expeditious conduct of the trial proceedings, the Panel:

- a. **DIRECTS** the SPO to submit a written notification formally closing its case pursuant to Rule 129 of the Rules, by **10 November 2021 at 16:00**;
- b. **ORDERS** the Defence to file their respective motion pursuant to Rule 130(2) of the Rules by **17 November 2021 at 16:00**; and
- c. **ORDERS** the SPO to file its response pursuant to Rule 130(2) of the Rules by **24 November 2021 at 16:00**.

Relation to Defence Witnesses, 27 September 2021, confidential; F00376, Haradinaj Defence, Submissions of Expert Report from the Defence for Mr Haradinaj and its annex, 15 October 2021; F00386, Haradinaj Defence, Defence Submission of Instructions to Expert Witness 17 with Confidential Annex 1, 20 October 2021; F00388, Specialist Prosecutor, Prosecution Challenge to Proposed Defence Expert and Report, 22 October 2021; F00394, Haradinaj Defence, Defence Request for Addition of an Expert to its List of Potential Witnesses, 23 October 2021, confidential; F00410, Haradinaj Defence, Defence Response to Prosecution Challenge to Proposed Defence Expert and Report, 1 November 2021, confidential; see also F00410RED; F00426, Haradinaj Defence, Submission of Expert Report from the Defence for Mr. Haradinaj and its two annexes, 9 November 2021.

17. In the event the Panel does not dismiss all charges pursuant to Rule 130 of the Rules, the Panel:

- a. **ORDERS** the Defence to submit, by **29 November 2021**, their filings pursuant to Rule 119(2) of the Rules;
- b. **SCHEDULES** the Defence Preparation Conference to be held on **2-3 December 2021**; and
- c. **TENTATIVELY SETS** the date for the opening of the Defence case to **6 December 2021**.

A handwritten signature in cursive script, reading "Charles L. Smith, III", is written over a horizontal line.

Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 9 November 2021
At The Hague, the Netherlands