

The Hague, 2 February 2023

## SUMMARY OF THE APPEAL JUDGMENT

*Specialist Prosecutor v. Hysni Gucati & Nasim Haradinaj Case No. KSC-CA-2022-01*

Please find below the summary of the Trial Judgment delivered by a Panel of the Court of Appeals Chamber, as read out by the Presiding Judge.

**A Panel of the Court of Appeals Chamber**, is sitting today to pronounce the Appeal Judgment in the case of the *Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj*. This Appeal Judgment is pronounced in public, in the name of the people of Kosovo, and in the presence of the Accused.

This summary is not a part of the Appeal Judgment nor is it authoritative. The written Judgment is the only authoritative account of the Appeals Panel's findings. The Appeal Judgment, in electronic form will be made available following this hearing and certified copies of this Judgment will be provided in English, to Mr Gucati and Mr Haradinaj.

The Specialist Chambers were created in connection with serious allegations of inhuman treatment, killing of people and other serious crimes during and in the aftermath of the armed conflict in Kosovo. Prior to the establishment of the Specialist Chambers, several impediments to the discovery of the truth by other Courts and Tribunals about these events have been of ongoing concern. These included the reluctance or fear on the part of witnesses to testify and their lack of confidence in protective measures.

It is precisely in that context that the Specialist Chambers were established in order to ensure secure, independent, impartial, fair and efficient criminal proceedings in relation to these allegations of serious crime.

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

This Judgment addresses the appeals against the Trial Panel's findings regarding the responsibility of Mr Gucati (*Chairman of the Kosovo Liberation Army War Veterans' Association* ("KLA WVA")) and Mr Haradinaj (*Deputy Chairman of this same organisation*) in a series of events that took place during a three-week period from 7 September 2020 until 25 September 2020.

On 18 May 2022, the Trial Panel delivered the Trial Judgment, convicting each of the Accused for Criminal Offences Against Public Order and Criminal Offences Against the Administration of Justice and Public Administration. The Accused were found guilty on five counts of the Indictment (Counts 1, 2, 3, 5, 6) and not guilty on one count (Count 4). The Trial Panel sentenced each of the Accused to a single sentence of four and a half years of imprisonment, with credit for the time served, and a fine of 100 euros.

The Trial Panel found that during the Indictment period, the Accused received, from unknown sources, three sets of documents containing confidential and non-public information related to the work and investigations of the Special Investigative Task Force ("SITF") and the Specialist Prosecutor's Office ("SPO").

This material was delivered to the premises of the KLA WVA on 7 September 2020, 16 September 2020 and 22 September 2020.

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

During the same period, the Accused, individually or jointly, gave a number of media interviews regarding this material. They also commented on the material and re-published articles on social media. What was left from the sets of documents was subsequently handed over to the SPO and identified as Batches 1, 2, 3 and 4 (“Batches”).

Both Mr Gucati and Mr Haradinaj filed an appeal challenging their convictions under Counts 1, 2, 3, 5 and 6 of the Indictment and further challenged a number of related findings made by the Trial Panel. They also both challenged their sentence. Mr Gucati’s appeal comprised 20 grounds (and various sub-grounds), and Mr Haradinaj’s appeal comprised 24 grounds (and various sub-grounds).

### **The Appeals Panel’s findings on Challenges Related to Fair Trial and Evidential Issues**

In a preliminary section dealing with fair trial and evidential issues, the Appeals Panel addresses Mr Gucati’s and Mr Haradinaj’s allegations of errors concerning the Trial Panel’s decisions not to disclose or to redact some of the material contained in the Batches. The documents contained in the Batches are not relevant for their content, but for their confidential nature.

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

The Panel further observes that the Defence had the opportunity to cross-examine the SPO investigator (Witness W04841) and that, in addition to this evidence, the Trial Panel established the authenticity and confidential nature of the Batches, by relying on

several other sources. The Appeals Panel finds that the Accused have failed to demonstrate an error in the Trial Panel's findings.

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

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

Other challenges related to fair trial and evidential issues are addressed in the Appeal Judgment. The Panel will now turn to the appeals on Counts 5, 6, 3, 1 and 2 of the Indictment.

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

### **The Appeals Panel's findings on Challenges Related to Count 5**

Count 5 of the Indictment pertains to the offence of violating the secrecy of proceedings, through the unauthorised revelation of secret information disclosed in official proceedings punishable under Article 392(1) of the Kosovo Criminal Code. The Accused challenged the Trial Panel's findings on the *actus reus* of this offence.

The Panel will start with the Accused's challenges concerning the findings that the protected information was revealed "without authorisation". Mr Gucati submitted that disclosure of confidential information in the public interest or by a whistle blower

is permitted by law. The Panel however finds that these defences may exclude criminal liability, but would not affect the *actus reus* of the offence under Article 392(1) of the Kosovo Criminal Code. These arguments are therefore irrelevant to assess challenges to the *actus reus* of this offence.

Mr Gucati submitted that the perpetrator of the offence can only be the “initial recipient of the information” meaning the SPO or its counterparts. The Panel dismisses Mr Gucati’s interpretation and agrees with the Trial Panel’s finding that Article 392(1) of the Kosovo Criminal Code does not specifically require that the information must have been disclosed directly to the perpetrator of the offence.

With regard to the nature of the protected information, the Panel recalls that Article 392(1) of the Kosovo Criminal Code criminalises two alternatives: i) the unauthorised revelation of information which must not be revealed according to law and; ii) the unauthorised revelation of information that has been declared to be secret by a competent authority.

The Panel has assessed the Accused’s arguments in relation to the second alternative. Regarding the interpretation of the term “secret”, the Panel finds that Mr Gucati failed to demonstrate that the Trial Panel erred in finding that information treated as confidential by the SPO had to be regarded as secret within the meaning of Article 392(1) of the Kosovo Criminal Code. In addition, contrary to Mr Gucati’s assertion, the legal framework of the Specialist Chambers contains no obligation for the SPO to prove that the information was lawfully and rightfully classified as secret.

Having rejected the challenges to one of the two alternatives under Article 392(1) of the Kosovo Criminal Code, the Panel did not address, in the Appeal Judgment, the challenges to the fulfilment of the other alternative, namely whether the protected information also qualifies as information “which must not be revealed according to law”.

In conclusion for this count, the Appeals Panel dismisses the Defence's challenges to the Trial Panel's findings in relation to Count 5.

### **The Appeals Panel's findings on Challenges Related to Count 6**

Count 6 of the Indictment pertains to the offence of unauthorised revelation of the identities and personal data of protected witnesses, punishable under Article 392(2) of the Kosovo Criminal Code. The Accused challenged the Trial Panel's findings on the *actus reus* of this offence.

The Panel will start with the Accused's challenges to the Trial Panel's findings on "person" within the context of the formulation "person [under protection in the criminal proceedings]".

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

The Panel turns next to the Accused's challenges to the Trial Panel's findings on the second part of the formulation that is "under protection in the criminal proceedings". Mr Gucati argued that the protection must be "granted" rather than assumed. Both Accused further argued that the Trial Panel wrongly considered that all persons named within the SITF and SPO documents were *ipso facto* protected.

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

The Panel is further mindful that Count 6 of the Indictment, pursuant to Article 392(3) of the Kosovo Criminal Code, provides for two aggravated forms of the basic offence. Only one aggravated form is relevant for this case, which is where the offence in Article 392(2) of the Kosovo Criminal Code resulted in “serious consequences” for the person under protection. The Accused challenged the Trial Panel’s findings on the *actus reus* of this aggravated form.

The Panel finds that the Accused failed to demonstrate that the Trial Chamber erred in relying on the testimony of SPO Witness W04842. The Panel further finds that Mr Gucati failed to demonstrate why the Trial Panel’s reference to “substantial interference” instead of “serious consequences” in the applicable law section of the Judgment, would constitute an error. Ultimately, the Trial Panel explicitly referred to “serious consequences” in its findings on Article 392(3) of the Kosovo Criminal Code.

Mr Gucati further challenged the Trial Panel’s findings in relation to the witnesses at risk. For the reasons developed in the Appeal Judgment, the Appeals Panel finds that the Trial Panel did not err in finding that serious consequences occurred for the witnesses who were relocated and subjected to emergency risk planning. However, the Panel finds that this finding can only apply to the two witnesses who were relocated.

Turning next to the person identified in the confidential version of the Trial Judgment – who had made public his cooperation with prosecutors investigating alleged offences committed by KLA members – the Appeals Panel finds that the findings on this person’s “fear and concern resulting from being publicly named as a witness” are not based on the available evidence in this case. The Trial Panel provided no explanation supporting its finding and did not further explain whether it considered that a complaint about the publishing of the leaked documents would amount to a “serious consequence”.

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

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

### **The Appeals Panel's findings on Challenges Related to Count 3**

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

The Appeals Panel preliminarily considers that it is clear that the Trial Panel found that the Accused were guilty under the first alternative of Article 387 of the Kosovo Criminal Code, namely having used serious threats to induce someone to "refrain from making a statement".

The Panel first turns to Mr Gucati's argument that the Trial Panel erred by finding that the last part of Article 387 of the Kosovo Criminal Code, stating "when such information relates to obstruction of criminal proceedings", only qualified the third alternative of Article 387, namely the person failing to state "true information to the police, a prosecutor or a judge" and not the first alternative. For the reasons set out in the Appeal Judgment, the Appeals Panel considers that the words "obstruction of criminal proceedings" do not apply to the first alternative of Article 387 of the Kosovo Criminal Code and therefore that the Trial Panel did not err by not finding that the Accused used serious threats in relation to the obstruction of criminal proceedings.

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



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

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

Regarding Mr Haradinaj's argument that his statements were not express or inferred threats, the Panel considers that, for the reasons laid out in the Appeal Judgment, Mr Haradinaj fails to show that no reasonable trier of fact could have reached the conclusion of the Trial Panel that the Accused's acts and statements amounted to a serious threat.

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

Regarding Mr Haradinaj's challenges to the methodology of the SPO investigator (Witness W04841), the Panel, based on the reasons set out in the Appeal Judgment, does not consider that the Trial Panel erred in its assessment of her analysis of the witness lists.

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

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

Regarding Mr Gucati's argument that a *mens rea* finding was required as to the truthfulness of the information to be provided by witnesses under Article 387 of the Kosovo Criminal Code, the Panel recalls that failing to state "true information" is only part of one of the three alternatives under Article 387, and, most importantly, one under which the Accused were not convicted. Therefore, there was no error by the Trial Panel.

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

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

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

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

### **The Appeals Panel's findings on Challenges Related to Counts 1 and 2**

Count 1 of the Indictment pertains to the offence of obstructing official persons in performing official duties by serious threat, punishable under Article 401(1 and 5) of

the Kosovo Criminal Code. The Panel will start with the Accused's challenges concerning the *actus reus* of the offence.

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

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

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

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

The Panel will turn next to Mr Gucati's challenges to the Trial Panel's findings regarding the *mens rea* of this offence. The Appeals Panel considers that although the Trial Panel did not *verbatim* repeat the legal standard in its conclusion on the Accused's intent, it made the appropriate findings elsewhere in the Trial Judgment, namely that

the Accused intended the use of serious threat against witnesses and potential witnesses as the means with which to achieve the result of obstructing Specialist Chambers/SPO officials in performing their work. In light of this, the Panel finds that Mr Gucati failed to demonstrate an error in the Trial Panel's assessment of the *mens rea* of the offence under Count 1.

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

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

However, for the reasons explained in the Appeal Judgment, the Appeals Panel considers that the cumulative conviction test from the international case law applied by the Trial Panel is not appropriate in the specific circumstances of this case. The Panel decided to rely rather on the civil law concept of concurrence. In this regard, it considered, *inter alia*, that the distinction in terms of the minimum punishment between the two provisions can be explained by the fact that the first paragraph of Article 401 of the Kosovo Criminal Code requires specific individual actions of obstruction, while under the second paragraph, it would generally not be possible to establish the specific individual actions of obstruction committed by an accused. In light of this, the Panel considers that the relation between these two provisions is best captured by the rule of subsidiarity and that, in this case, where the Accused's

individual acts have been specified and the Accused have been convicted on the basis of Article 401(1) of the Kosovo Criminal Code, a further conviction for Article 401(2) of the Kosovo Criminal Code is neither warranted nor necessary.

Accordingly, the Panel grants Mr Gucati's Ground 16 and Mr Haradinaj's Ground 3 in part, decides that the Accused can only be convicted under Count 1 of the Indictment and enters a verdict of acquittal under Count 2 of the Indictment. The impact of this finding, if any, on the Accused's sentence will be addressed below.

In light of this finding, the Panel finds that it is unnecessary to address Mr Gucati's arguments regarding Count 2 and his allegations of errors on the part of the Trial Panel regarding the *actus reus* and the *mens rea* of Article 401(2) of the Kosovo Criminal Code.

### **The Appeals Panel's findings on Challenges Related to Defences and grounds excluding responsibility**

The Panel will now address Mr Gucati's and Mr Haradinaj's challenges regarding defences and grounds excluding responsibility. At trial, the Accused put forward a number of defences and grounds excluding responsibility for their conduct. The Trial Panel however found that the criminal responsibility of the Accused could not be excluded by any of the defences or grounds excluding responsibility raised.

In their appeals, the Accused challenged the Trial Panel's findings rejecting the arguments they presented in relation to: (i) public interest; (ii) whistle-blowing; (iii) entrapment; (iv) extreme necessity; and (v) act of minor significance.

For the reasons developed in the Appeal Judgment, the Panel rejects all the Accused's grounds of appeal on these points. The Panel will not summarise in details each of its findings. The Panel will, however, address specific issues of interest in this summary.

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

With reference to several sources, the Panel clarifies that there is a difference between the SPO's burden to establish the guilt of the Accused beyond reasonable doubt (burden of persuasion) and the Defence's responsibility to present evidence to substantiate the grounds excluding criminal responsibility (burden of production or evidential burden).

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

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

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

For these reasons, as further detailed and developed in the Appeal Judgment, the Appeals Panel finds that Mr Gucati and Mr Haradinaj failed to demonstrate that the Trial Panel erred in finding that the entrapment claim they raised was wholly improbable and unfounded.

### **The Appeals Panel's findings on Challenges Related to Sentencing**

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

The Panel first turns to Mr Gucati's challenges to the Trial Panel's assessment of gravity. As further developed in the Appeal Judgment, the Panel considers that the Trial Panel did not err in its findings on gravity and the scale on which the Accused committed the offences charged.

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

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

The Panel considers that, as discussed further during the Appeal Hearing, consistency in sentencing is important, but must allow for the Trial Panel's exercise of discretion regarding the individual facts of each case. As developed further in the Appeal Judgment, the Panel considered relevant domestic Kosovo cases and relevant cases from international courts and tribunals submitted by the Parties.

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

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

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

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

### **Disposition**

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

**GRANTS** Mr Gucati's Grounds 11, 16 and 20 in relevant part and Mr Haradinaj's Grounds 3 in relevant part and 24 in relevant part;

**DISMISSES** Mr Gucati's and Mr Haradinaj's appeals in all other respects;

**REVERSES** Mr Gucati's and Mr Haradinaj's conviction for Obstructing Official Persons in Performing Official Duties by participating in the common action of a group under Count 2 of the Indictment;



**AFFIRMS** Mr Gucati's and Mr Haradinaj's conviction for Intimidation During Criminal Proceedings under Count 3 of the Indictment, Violating Secrecy of Proceedings through unauthorised revelation of secret information disclosed in official proceedings under Count 5 of the Indictment, and Violating Secrecy of Proceedings through unauthorised revelation of the identities and personal data of protected witnesses under Count 6 of the Indictment, and **FURTHER AFFIRMS**, Judge Ambos dissenting, Mr Gucati's and Mr Haradinaj's conviction for Obstructing Official Persons in Performing Official Duties by serious threat under Count 1 of the Indictment;

**SETS ASIDE** the single sentence of four and a half years of imprisonment imposed on Mr Gucati and Mr Haradinaj and **IMPOSES**, Judge Ambos dissenting, a single sentence of four years and three months of imprisonment on Mr Gucati, with credit for the time served, and a single sentence of four years and three months of imprisonment on Mr Haradinaj, with credit for the time served;

**AFFIRMS** Mr Gucati's and Mr Haradinaj's additional sentence to pay a fine of one hundred euros (100 EUR);

**RULES** that this Judgment shall be enforced immediately pursuant to Rule 185(1) of the Rules; and

**ORDERS** that, in accordance with Article 50(1) of the Law and Rule 166(3) of the Rules, Mr Gucati and Mr Haradinaj shall remain in the custody of the Specialist Chambers pending the finalisation of the arrangements for their transfer to the State where their sentences will be served.