

In: KSC-BC-2020-07

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 16 November 2020

Language: English

Classification: Confidential

**Submissions on the Conduct of Proceedings Concerning the Review of the
Indictment**

Specialist Prosecutor

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees QC

Huw Bowden

Counsel for Nasim Haradinaj

Bastiaan Martens

I. BACKGROUND

1. By order dated 11 November 2020, the Pre-Trial Judge informed Mr Gucati and his co-suspect, Mr Haradinaj ('the Suspects') that the SPO had filed a strictly confidential and *ex parte* indictment ('the Indictment') against them¹.
2. This followed the SPO publicly stating their intention to file against the Suspects by the end of October 2020 during the hearing on 1 October 2020².
3. At paragraph 10 of the same order, the Pre-Trial Judge noted that³:
 - (a) Mr Gucati has already been arrested and is continuing to be held in detention;
 - (b) Mr Gucati does not, however, know of the specific charges levied against him in the indictment; and that
 - (c) Mr Gucati has a right to be provided with all essential information in order to be able to obtain an effective review of his detention.
4. In the circumstances, the Pre-Trial Judge stated that⁴:

¹ KSC-BC-2020-07, F00065, Pre-Trial Judge, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment*, 11 November 2020, confidential, para.5.

² KSC-BC-2020-07, Transcript, 1 October 2020, public, p.15

³ KSC-BC-2020-07, F00065, Pre-Trial Judge, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment*, 11 November 2020, confidential, para.10.

⁴ KSC-BC-2020-07, F00065, Pre-Trial Judge, *Order for Submissions on the Conduct of Proceedings Concerning the Review of the Indictment*, 11 November 2020, confidential, para.11.

“...[he is] minded, in the specific circumstances of the present case, to make available to the Suspects the Indictment, if necessary with redactions. Then, if they so wish, for reasons of fairness, they may also make submissions on the Indictment while it is being reviewed by the Pre-Trial Judge. This is without prejudice to the Suspects’ exercise of rights under the Laws and the Rules”.

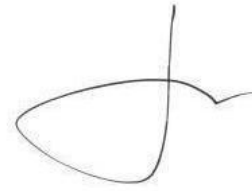
5. The Pre-Trial Judge invited submissions from the parties on the issue by 17 November 2020.

II. . SUBMISSION ON THE CONDUCT OF PROCEEDINGS CONCERNING THE REVIEW OF THE INDICTMENT

6. For the reasons set out by the Pre-Trial Judge at paragraphs 10 and 11 of the order dated 11 November 2020, and without prejudice to the exercise of Mr Gucati’s rights under the Laws and the Rule, it is submitted that (i) the Indictment, with Annexes 1-3⁵, is made available to the Defence, as the Pre-Trial Judge is so minded to order, and (ii) thereafter the Defence are allowed to make submissions on the Indictment while it is being reviewed, as the Pre-Trial Judge is again so minded to order.
7. In relation to any redactions, it is submitted that the SPO should identify the category of any proposed redactions and why it is said to be necessary to redact the same, with an opportunity given to the Defence to respond thereafter.

⁵ KSC-BC-2020-07, F00063, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 30 October 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

Word count: 483 words

A handwritten signature in black ink, appearing to be 'Jonathan Elystan Rees'. The signature is stylized, with a large loop at the beginning and a vertical line extending upwards from the end.

Jonathan Elystan Rees QC

Specialist Counsel for Hysni Gucati

Huw Bowden

Specialist Co-Counsel for Hysni Gucati

16/11/2020

Cardiff, UK