



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: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 18 December 2020

Language: English

Classification: **Public**

**Order Setting the Date for the Plea Hearing and the First Status Conference and
on Related Matters**

Specialist Prosecutor
Jack Smith

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 92(2)(c) and 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 9 December 2020, in compliance with the two-month detention review process provided in Article 41(10) of the Law, the Pre-Trial Judge ordered the Parties to file written submissions, by 18 December 2020, on whether reasons for the continued detention of Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") still exist or whether their detention should be terminated.²

2. On 18 December 2020, further to the service of an indictment confirmed by the Pre-Trial Judge ("Confirmed Indictment") upon Mr Gucati and Mr Haradinaj (collectively, the "Accused"),³ their initial appearances were held.⁴ During their respective appearances, Mr Haradinaj deferred to enter a plea until a subsequent hearing,⁵ while Mr Gucati pleaded not guilty.⁶

3. On 18 December 2020, the Defence for Mr Gucati filed its submissions on the review of detention, requesting, *inter alia*, for an oral hearing to be held on this

¹ KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public.

² KSC-BC-2020-07, F00073, Pre-Trial Judge, *Order for Submissions on the Review of Detention*, 9 December 2020, public, para. 11.

³ KSC-BC-2020-07, F00074, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 11 December 2020, strictly confidential and *ex parte*. The confirmed Indictment charges Mr Gucati and Mr Haradinaj with offences under Articles 387, 388, 392 and 401 of the Kosovo Criminal Code, Law No. 06/L-074, by virtue of Article 15(2) of the Law. F00075/A02, Specialist Prosecutor, *Redacted Indictment*, 14 December 2020, public.

⁴ KSC-BC-2020-07, F00081, Pre-Trial Judge, *Second Decision Rescheduling the Initial Appearances of Mr Gucati and Mr Haradinaj*, 17 December 2020, public.

⁵ KSC-BC-2020-07, Real-time Transcript, 18 December 2020 (11:00), confidential, p. 12, lines 24-25 to p. 13, lines 1-10.

⁶ KSC-BC-2020-07, Real-time Transcript, 18 December 2020 (14:00), confidential, p. 11, lines 24-25 to p. 13, lines 1-10.

matter before 27 December 2020.⁷ On the same day, the Specialist Prosecutor's Office ("SPO") filed its consolidated submissions on the review of detention.⁸ At the aforementioned initial appearance of Mr Gucati, his Defence reiterated the request for an oral hearing and, as an alternative, sought the opportunity to reply to the submissions made by the SPO on the review of detention.⁹

II. APPLICABLE LAW

A. PLEA HEARING

4. Pursuant to Rule 92(2)(c) of the Rules, the Accused may admit guilt or plead not guilty on each charge, either at his initial appearance or within 30 days of it. Pursuant to Rule 92(2)(f) of the Rules, if the Accused fails to admit guilt or plead not guilty at the initial or any further appearance, the Pre-Trial Judge shall enter a plea of not guilty on his behalf.

B. STATUS CONFERENCE

5. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused in order to, *inter alia*: (i) organise exchanges between the Parties so as to ensure expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

⁷ KSC-BC-2020-07, F00087, Defence for Mr Gucati, *Submissions on the Review of Detention by 27th December 2020*, 18 December 2020 (incorrectly dated 17 December 2020), confidential, para. 31.

⁸ KSC-BC-2020-07, F00088, Specialist Prosecutor, *Prosecution Consolidated Submissions on Review of Detention*, 18 December 2020, public.

⁹ KSC-BC-2020-07, Real-time Transcript, 18 December 2020 (14:00), confidential, p. 15, line 23 to p. 16, lines 1-3.

C. DISCLOSURE

6. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the Accused shall be made available to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied. Pursuant to Rule 102(3) of the Rules, the SPO shall provide detailed notice to the Defence of any material and evidence in its possession.

7. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 106, 107, and 108 of the Rules, the SPO shall make available to the Defence as soon as possible and at least within 30 days of the initial appearance, the supporting material to the Confirmed Indictment as well as any statement obtained from the Accused.

8. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the Accused understand and speak; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

9. Pursuant to Rule 102(2) and (4) of the Rules, any statement of additional SPO witnesses, which have not been disclosed within the 30-day time limit prior to the opening of the Specialist Prosecutor's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible, in a language the Accused understand and speak, and shall be accompanied by reasons for the late disclosure. Such disclosure shall be finalised during the pre-trial stage.

10. Pursuant to Rule 102(3) of the Rules, the SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and allow inspection of other tangible objects in the custody or control of the SPO, which are

deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused.

11. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence any information as soon as it is in its custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the SPO's evidence.

12. Pursuant to Rule 107(1)-(2) of the Rules, the SPO shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information, of which it has custody or control, has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

D. REDACTIONS

13. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, a Panel may order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

14. Pursuant to Rule 80(4)(a)(i)-(iii) and (d) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the Accused and/or the public, where necessary, of the identity and/or whereabouts of a witness, a victim participating in the proceedings or of a person related to or associated with them.

15. Pursuant to Rule 108(1) of the Rules, the SPO may apply confidentially and *ex parte* to the Panel to withhold information in whole or in part where the disclosure of such information may, *inter alia*, prejudice ongoing or future investigations. Pursuant to Rule 108(6) of the Rules, the same applies *mutatis mutandis* to the Defence.

III. DISCUSSION

A. REQUEST FOR AN ORAL HEARING OR FOR FILING REPLIES

16. The Pre-Trial Judge notes that the two-month detention review process requires the Pre-Trial Judge to examine whether reasons for detention still exist and render a ruling by which detention is extended or terminated. For the purpose of the pending review process, the Pre-Trial Judge considers that receiving concurrent submissions from the Parties, as ordered, is sufficient for him to render a decision under Article 41(10) of the Law and no further submissions, whether written or oral, are warranted at this stage. The Pre-Trial Judge further notes the impending deadline of the two-month review, which would be jeopardised if further submissions from the Parties were permitted. This does not preclude the Defence from submitting separate challenges on detention or applications for interim or conditional release under Article 41(2) and (12) of the Law and Rules 56(3) and 57(2) of the Rules.

17. For this reason, the Pre-Trial Judge denies the requests of the Defence for Mr Gucati for an oral hearing or an opportunity to submit a reply to the SPO submissions on detention.

B. PLEA HEARING AND FIRST STATUS CONFERENCE

18. Taking into account the availability of the Defence, and considering the time limit set forth in Rule 92(2)(c) of the Rules, the Pre-Trial Judge convenes a hearing on Friday, 8 January 2021, at 15:00 hours.

19. During the first part of the hearing, Mr Haradinaj will be asked to admit guilt or plead not guilty on the charges brought against him in the Confirmed Indictment, pursuant to Rule 92(2)(c) of the Rules. If Mr Haradinaj declines to do so, the Pre-Trial Judge will enter a plea of not guilty on his behalf, pursuant to Rule 92(2)(f) of the Rules.

20. The second part of the hearing will serve as a first status conference in this case. In light of the initial appearances of the Accused, the process of disclosure of evidence and material by the SPO to the Defence is expected to start promptly, in accordance with the above-mentioned legal framework and in a manner and time frame to be regulated by the Pre-Trial Judge. In order to facilitate this disclosure process for the benefit of the Parties, and in particular the Defence, the Pre-Trial Judge shall receive submissions regarding: (i) the items listed in the annex to this order (“Annexed Agenda”); (ii) the redaction regime to be adopted in the present proceedings, as further specified in paragraph 22, below; and (iii) any other related relevant topics not covered by the Annexed Agenda, as deemed necessary by the Parties.

C. SUBMISSIONS PRIOR TO THE FIRST STATUS CONFERENCE

21. Furthermore, the Parties are invited to make submissions, in writing, on any of the items in the Annexed Agenda or other related relevant topics they deem necessary, if they so wish. Where information cannot be shared with either Party for confidentiality and protection purposes, submissions may be made in writing

ex parte. The information provided by the Parties will assist the Pre-Trial Judge when formulating the framework decision on disclosure of evidence and related matters, including time limits for disclosure.

22. The Pre-Trial Judge also considers it necessary to request observations from the Parties, in writing, regarding the regime of redacting information and evidence to be applied in this case along the lines set out in the “Framework Decision on Disclosure of Evidence and Related Matters” in the *Prosecutor v. Salih Mustafa* case.¹⁰ These observations will inform the Pre-Trial Judge when adopting a redaction regime that will ensure efficiency of the disclosure process by striking a balance between the duty to protect the interests of victims and witnesses while upholding the rights of the Accused under Article 21 of the Law.

23. It is recalled that, while the Accused have the right to be present in person, pursuant to Rule 96(2) of the Rules, considering the technical nature of the topics to be discussed, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused’s absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after having received advice from their Counsel, in accordance with Rule 96(2) of the Rules.

24. Should Counsel or the Accused wish to attend the status conference via video-conference, they shall make a request to this effect directly to the Registrar, in accordance with the Registrar’s Practice Direction on Video Links (KSC-BD-

¹⁰ KSC-2020-05, F00034, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 9 October 2020, public, paras 73-89.

23/COR),¹¹ sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge.¹²

IV. DISPOSITION

25. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **DENIES** the requests of the Defence for Mr Gucati for an oral hearing or the opportunity to submit a reply in relation to the pending review of detention process;
- b. **DECIDES** to convene a hearing in the presence of the SPO and the Defence, in line with paragraphs 18-20, on **Friday, 8 January 2021, at 15:00 hours**;
- c. **REQUESTS** the SPO to provide written submissions on: (i) the items listed in the Annexed Agenda; (ii) the redaction regime to be applied in the present proceedings; and/or (iii) other related relevant topics deemed necessary, by **Tuesday, 5 January 2021**; and
- d. **REQUESTS** the Defence to provide written submissions on: (i) the items listed in the Annexed Agenda; (ii) the redaction regime; and/or (iii) any other related relevant topics deemed necessary, by **Thursday, 7 January 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 18 December 2020
At The Hague, the Netherlands.

¹¹ KSC-BD-23/COR, *Registry Practice Direction on Video Links*, Article 3(1).

¹² See also KSC-BC-2020-06, F00062, Pre-Trial Judge, *Decision Authorising Video Link Participation*, 6 November 2020, public, para. 10; F00069, Pre-Trial Judge, *Decision Authorising Video Link Participation*, 9 November 2020, public, para. 9.