

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

Before: Pre-Trial Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 4 January 2021

Language: English

Classification: Public

Application for Case Conference to be Conducted in the Defendant's Absence

Specialist Prosecutor

Jack Smith

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

Counsel for Hysni Gucati

Jonathan Elystan Rees QC

Huw Bowden

INTRODUCTION

1. By order dated 18 December 2020, the Pre-Trial Judge set the date for a Status Conference and for submissions.¹
2. That Status Conference is now listed for 8 January 2021 at 15:00 hrs CET.
3. On behalf of Mr. Haradinaj, an application is made for that hearing to be dealt with in the Defendant's absence.
4. Attached to this application at Annex 1, is signed confirmation that Mr. Haradinaj will not be attending and the matter should proceed in his absence.

BACKGROUND

5. On 14 December 2020, notice was given that the Pre-Trial Judge has now confirmed an indictment against Mr. Haradinaj.²
6. The indictment alleges six offences contrary to Article 15(2) and 16(3) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law') and Articles 401, 387, 388 and 392 of the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC 2019').³

¹ 'Order Setting the Date for a Status Conference and for Submissions', KSC-BC-2020-07/F00089/A01

² "*Submission of Confirmed Indictment with strictly confidential Annexes 1 and 2*", KSC-BC-2020-07/F00075 and KSC-BC-2020-07/F00075/A01

³ Note: Article 15 of the Law incorporates Chapters XXXII, XXXIII and XXXIV of the Kosovo Criminal Code 2012, Law No04/L-082.

7. On 18 December 2020, Mr. Haradinaj appeared before the Chamber by way of 'initial appearance' and on that occasion declined to enter a plea.
8. By order dated 18 December 2020, the Pre-Trial Judge set the date for a Status Conference and for submissions.⁴
9. On behalf of Mr. Haradinaj, we now make an application that the forthcoming Case Status Conference be held in his absence.
10. These submissions are limited to that application although further submissions on relevant issues may follow subsequently.

SUBMISSIONS

11. Mr. Haradinaj makes his application as per Rule 96(2)(c) of the Rules of Evidence and Procedure, in that:

(2) With the written consent of the Accused, given after receiving advice from his or her Specialist Counsel, a status conference under this Rule may be conducted"

...

(c) in the absence of the Accused, with his or her Specialist Counsel present or participating via video-conference".

⁴ 'Order Setting the Date for a Status Conference and for Submissions', KSC-BC-2020-07/F00089/A01

12. We confirm that Mr. Haradinaj has received appropriate advice from both Counsel and Co-Counsel, the issue having been discussed in conference with Mr. Haradinaj on 30 December 2020 and 4 January 2021.
13. Further, having taken Mr. Haradinaj's instructions on relevant issues so far as circumstances allow, taking into account that the SPO has not disclosed any evidence at this stage, despite a request being made by Counsel, including any supporting evidence to the confirmed indictment, the scheduled Case Status Conference can appropriately take place without his attendance with no party being prejudiced by this absence.
14. Finally, the written consent of Mr. Haradinaj is attached at Annex 1 to facilitate this application.
15. At this stage, it remains the intention of Counsel for Mr. Haradinaj to attend in person and for Co-Counsel to appear remotely. However, this is subject to the ever changing COVID situation and therefore, it may be that a subsequent application is made so as to allow Counsel to appear remotely.
16. The Chamber will be kept apprised of this situation however and notified accordingly should the position in respect of Counsel's attendance change.
17. Word Count: 624 words



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