



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:** 6 January 2021

**Language:** English

**Classification:** **Public**

---

**Decision on Defence Request to Hold Hearing in the Absence of the Accused**

---

**Specialist Prosecutor**

Jack Smith

**Counsel for Hysni Gucati**

Jonathan Elystan Rees

Huw Bowden

**Counsel for Nasim Haradinaj**

Toby Cadman

Carl Buckley

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(5) and (13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 92(2)(c) and 96(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

## I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 18 December 2020, the Pre-Trial Judge issued an order setting the date and time for a hearing to 8 January 2021 at 15:00 hours ("Hearing"), encompassing a plea hearing for Nasim Haradinaj ("Mr Haradinaj") and the first status conference in the present proceedings ("Scheduling Order").<sup>2</sup>

2. On 4 January 2021, the Defence for Mr Haradinaj submitted a request for the Hearing to be held in the absence of Mr Haradinaj ("Request").<sup>3</sup> A signed statement of Mr Haradinaj, confirming his consent not to attend the Hearing after having received advice by Counsel, was attached.<sup>4</sup>

## II. APPLICABLE LAW

3. 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

---

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

<sup>2</sup> KSC-BC-2020-07, F00089, Pre-Trial Judge, *Order Setting the Date for the Plea Hearing and the First Status Conference and on Related Matters* ("Scheduling Order"), 18 December 2020, public. Mr Haradinaj declined to enter a plea at his initial appearance on 18 December 2020. See KSC-BC-2020-07, Transcript, 18 December 2020 (11:00), public, p. 58, lines 23-24 - p. 59, lines 1-11.

<sup>3</sup> KSC-BC-2020-07, F00095, Defence for Mr Haradinaj, *Application for Case Conference to be Conducted in the Defendant's Absence* ("Request"), 4 January 2021, public, paras 3-4, 9, 13.

<sup>4</sup> KSC-BC-2020-07, F00095/A01, 4 January 2021, confidential.

the initial or any further appearance, the Pre-Trial Judge shall enter a plea of not guilty on his behalf.

4. Pursuant to Rule 96(2) of the Rules, with the written consent of the Accused, given after having received advice from his Counsel, a status conference may be conducted: (i) in the presence of the Accused, with Counsel participating via video-conference; (ii) in the presence of Counsel, with the Accused participating via video-conference; or (iii) in the absence of the Accused, with Counsel present or participating via video-conference.

### III. DISCUSSION

5. The Pre-Trial Judge notes that the Scheduling Order identified two separate parts of the Hearing: the plea hearing for Mr Haradinaj (first part) and a first status conference in the present proceedings (second part).<sup>5</sup>

6. In accordance with Rule 92(2)(c) and (f) of the Rules, it is the Accused himself who enters, defers or refuses to enter a plea. This requires that the Accused be present, either physically or via video-conference, at the relevant (plea) hearing. For this reason, the Pre-Trial Judge finds it necessary to order Mr Haradinaj to be present, either in person or via video-conference, for the first part of the Hearing, for the purpose of entering a plea. Counsel is instructed to liaise with the Registry sufficiently in advance so that the relevant arrangements can be made.

7. In accordance with Rule 96(2) of the Rules, a status conference may take place in the absence of the Accused, with his Counsel present or participating via video-conference, if the Accused gives his prior written and informed consent. In the present case, Mr Haradinaj provided such a consent and Counsel has indicated their

---

<sup>5</sup> Scheduling Order, paras 19-20.

participation in person and/or via video-conference.<sup>6</sup> For this reason, Mr Haradinaj may be absent from the second part of the Hearing.

#### IV. DISPOSITION

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

**ORDERS** Mr Haradinaj to appear, in person or via video-conference, for the first part of the Hearing, for the purpose of entering a plea.



---

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

Dated this Wednesday, 6 January 2021  
At The Hague, the Netherlands.

---

<sup>6</sup> Request, paras 15-16.