



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: 17 February 2021

Language: English

Classification: **Public**

Order Setting the Date for the Second Status Conference and Related Matters

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,¹ pursuant to Article 39(13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 95(2)(b) and 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 8 January 2021, the Pre-Trial Judge held the first status conference in this case.²

2. On 22 January 2021, further to written and oral submissions from the Parties,³ the Pre-Trial Judge issued a framework decision on disclosure ("Framework Decision"), setting out, *inter alia*, time limits for the Specialist Prosecutor's Office ("SPO") to meet its disclosure obligations under the Rules.⁴

II. APPLICABLE LAW

3. Pursuant to Rule 95(2)(b) of the Rules, the Pre-Trial Judge shall set time limits for disclosure of evidence and take any measure to ensure timely disclosure.

4. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene status conferences as deemed necessary in order to: (i) organise exchanges between the Parties to ensure expeditious preparation for trial; (ii) take steps to ensure that all

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

² 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*, 18 December 2020, public; Transcript, 8 January 2021 ("First Status Conference"), public.

³ KSC-BC-2020-07, F00096, Specialist Prosecutor, *Prosecution Submissions for First Status Conference* ("SPO Submissions"), 5 January 2021, public; F00099, Defence for Mr Haradinaj, *Defence Submissions for First Status Conference on Behalf of Nasim Haradinaj* ("Haradinaj Submissions"), 7 January 2021, public; F00100, Defence for Mr Gucati, *Defence Submissions for the First Status Conference* ("Gucati Submissions"), 7 January 2021, public; First Status Conference, pp. 92-94, 101, 108-120.

⁴ KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters* ("Framework Decision"), 22 January 2021, public.

necessary preparations are being conducted by the Parties in a timely and diligent fashion; and (iii) review the status of the case and allow the Parties the opportunity to raise issues in relation thereto.

III. DISCUSSION

5. The Pre-Trial Judge recalls that, in line with the SPO's submissions and pursuant to the Framework Decision, the SPO is due to complete disclosure under Rule 102(1)(b) of the Rules and provide the Defence with detailed notice under Rule 102(3) of the Rules, by 19 February 2021.⁵ The Pre-Trial Judge also notes that disclosure of exculpatory material under Rule 103 of the Rules took place on 4, 6, 18 and 29 January 2021.⁶ The Pre-Trial Judge notes that a further disclosure under Rule 103 of the Rules took place on 12 February 2021.⁷ The Pre-Trial Judge further recalls the SPO submission that a limited amount of Rule 107 material is subject to disclosure under Rule 102(3) of the Rules.⁸

6. In accordance with Rule 96(1) of the Rules and to ensure expeditious preparation for trial, the Pre-Trial Judge convenes a second status conference for Wednesday, 24 February 2021, at 11:00 hours, to review the progress of disclosure and take further necessary steps in the preparation for trial.

⁵ SPO Submissions, paras 9, 13; First Status Conference, p. 93, lines 2-3, p. 101, lines 4-6, p. 108, lines 3-6; Framework Decision, para. 85(b)-(c).

⁶ KSC-BC-2020-07, Disclosure Batches 2 (as part of Rule 102(1)(a) material), 3-5. *See also* Framework Decision, para. 85(h).

⁷ KSC-BC-2020-07, Disclosure Batch 6.

⁸ SPO Submissions, para. 16; First Status Conference, p. 115, lines 5-11. The Pre-Trial Judge further notes that he is currently seized with two SPO requests and respective Defence responses under Rule 108 of the Rules. *See* KSC-BC-2020-07, F00107, Specialist Prosecutor, *Prosecution Request for Non-Disclosure of Certain Information Pertaining to Contacts with Witnesses*, 29 January 2021, confidential; F00110, Specialist Prosecutor, *Prosecution Submission on the Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 1 February 2021, confidential with Annexes 1-2, strictly confidential and *ex parte*; F00127, Specialist Prosecutor, *Submission of Additional Information Relevant to Filing* KSC-BC-2020-07-F00107, 16 February 2021, confidential, with Annex 1, strictly confidential and *ex parte*.

7. The Pre-Trial Judge will ask the Parties for their updates, if any, on the outstanding issues addressed at the first status conference and in the Framework Decision. Specifically and in addition, the Pre-Trial Judge will seek submissions on the following issues, in the sequence set out below:

(1) Disclosure

a. Rule 102(1)(b) of the Rules:

- i. whether disclosure under this rule has been completed as provided in the Framework Decision; and
- ii. whether any late disclosure under Rule 102(1)(b)(ii) and (iii) of the Rules is expected prior to or in conjunction with the submission of the Pre-Trial Brief and related material under Rule 95(4) of the Rules, including the number and nature of such items, and whether protective measures will be requested in relation thereto;

b. Rule 102(2) of the Rules: whether any late disclosure under this rule is expected prior to or in conjunction with the submission of the Pre-Trial Brief and related material under Rule 95(4) of the Rules, and if so:

- i. the number of items expected to be disclosed, when such disclosure will take place, and whether translations, if required by law, are or will be available to the Accused; and
- ii. the reasons for the late disclosure of each of the aforementioned items;

c. Rule 102(3) of the Rules:

- i. whether detailed notice of evidence under this rule has been provided to the Defence as set out in the Framework Decision;⁹ and

⁹ Framework Decision, para. 85(c).

- ii. whether any late additions to the detailed notice is expected prior to or in conjunction with the submission of the Pre-Trial Brief and related material under Rule 95(4) of the Rules, and if so:
 - 1. the number and nature of items expected to be added to the list under Rule 102(3) of the Rules, the date when the amended list will be made available to the Defence, whether protective measures will be requested in relation to such material, should the material be disclosed; and
 - 2. the reasons for the late addition of each of the aforementioned items;

d. Rule 103 of the Rules:

- i. whether disclosure under this rule of material in the SPO's possession has been completed;
- ii. the reason for disclosing exculpatory material on 12 February 2021, in view of the calendar in the Framework Decision;¹⁰ and
- iii. whether any future disclosure under this rule is expected prior to or in conjunction with the submission of the Pre-Trial Brief and related material under Rule 95(4) of the Rules, and if so:
 - 1. the number and nature of items expected to be disclosed and when such disclosure will take place; and
 - 2. the circumstances justifying the timing of disclosure of the aforementioned items;

¹⁰ Framework Decision, para. 85(h).

- e. Rules 107-108 of the Rules: whether the SPO anticipates further requests under these rules by the time limit provided in paragraph 10(c), and if so, the number of such requests and the volume of the material subject thereto; and
- f. In light of the completed steps in the SPO disclosure of evidentiary material, whether the Parties are facing or foresee any difficulties related to the remainder of the disclosure process;

(2) SPO investigations, submission of the Pre-Trial Brief and completion of disclosure:

- a. Whether the SPO's outstanding investigative steps have been completed or whether an estimated date of completion can be provided; and
- b. Based on the SPO's estimates on all of the aforementioned points and the remainder of the disclosure process, whether the SPO expects to be in a position to file its Pre-Trial Brief and related material, together with its consolidated Rule 109(c) chart,¹¹ by 9 April 2021, and whether it can complete disclosure under Rule 102 of the Rules by the same date; or
- c. Whether the SPO is in a position to propose an earlier or a later date for the completion of the aforementioned steps;

(3) Points of agreement on matters of law and fact

- a. Whether the Parties have entered into discussions regarding the possibility to submit points of agreement on law and/or facts, pursuant to Rules 95(3) and 156 of the Rules; and
- b. When would the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute;

¹¹ KSC-BC-2020-07, F00121, Pre-Trial Judge, *Decision on Submissions on Rule 109(c) Categorisation*, 11 February 2021, public, para. 23(d).

(4) Defence investigations and related procedural steps:

- a. Whether the Defence is in a position to provide updates on the status of its investigations and approximately how much time it will need to finalise such investigative activities;
- b. Based on the Defence's estimate on the above point, whether, since the first status conference,¹² it has made any progress in relation to:
 - i. any intention to give notice of an alibi or grounds for excluding responsibility, pursuant to Rule 95(5) of the Rules, and any associated disclosure, pursuant to Rule 104(1) and (2) of the Rules; and
 - ii. any intention to make requests concerning unique investigative opportunities, pursuant to Rule 99(1) of the Rules;
- c. Whether the Defence envisage filing a Pre-Trial Brief and related material under Rule 95(5) of the Rules, and if so, when does it expect to be in a position to submit such a filing;

(5) Anticipated transmission of the case file pursuant to Rule 72(1) of the Rules:

subject to outstanding disclosure by the SPO, and provided that the preliminary motions have been disposed of by the Court of Appeals Panel, the Parties' views on the transmission of the case file to the Trial Panel around mid-April 2021 pursuant to Rule 72 of the Rules regarding expedited proceedings; and

(6) When would the Parties expect to be ready for trial.

8. Finally, the Parties will be asked to share their views on the date of the next status conference in this case.

¹² *Gucati* Submissions, para. 14; *Haradinaj* Submissions, para. 6.

9. The Parties are invited to file written submissions, if they so wish, by Tuesday, 23 February 2021, 14:00 hours on any of the above matters, including the topics discussed at the first status conference, or any other related matter not covered in the present order.

IV. DISPOSITION

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

- a. **DECIDES** to convene a hearing in the presence of the SPO and the Defence, in line with paragraphs 6-8, on **Wednesday, 24 February 2021, at 11:00 hours**;
- b. **ORDERS** the SPO and the Defence to file written submissions, if they so wish, by **Tuesday, 23 February 2021, 14:00 hours**, as set forth in paragraph 9;
- c. **ORDERS** the SPO to submit any outstanding requests under Rules 107-108 of the Rules by **Friday, 19 March 2021**, and **ORDERS** the Defence to respond, if it so wishes, to any such requests **within five (5) days** of notification.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 17 February 2021
At The Hague, the Netherlands.