

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: 25 March 2021

Language: English

Classification: Public

Defence Submissions for Third Status Conference

Specialist Prosecutor

Jack Smith

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

Counsel for Hysni Gucati

Jonathan Elystan Rees QC

Huw Bowden

I. INTRODUCTION

1. As per the Order of the Pre-Trial Judge dated 23 March 2021, setting the date for the Third Status Conference,¹ the Defence for Mr. Haradinaj now seek to make submissions in accordance with the directions contained within that order.

II. BACKGROUND

2. The chronology relevant for the purposes of the case status hearing is contained within paragraphs 1-5 of the scheduling order.
3. That same chronology is adopted for the purposes of these submissions and thus is not repeated.

III. THE LAW

4. As per Part II above, the law has been identified and highlighted within the order as noted and therefore again, there is no intention to repeat the same here.

¹ KSC-BC-2020-07/F00160

IV. SUBMISSIONS

Disclosure

5. The Defence are reliant upon the SPO disclosing that which it is obliged to. Accordingly, the Defence do not foresee any difficulties related to the remainder of the disclosure process on the assumption that the SPO complies with those obligations.
6. In this regard, it is noted that there remains a significant number of matters unresolved, in particular that the Rule 102(3) notice of all material and evidence that is sufficiently detailed to comply with the prosecutor's obligations under the applicable legal framework. The Defence for Mr. Haradinaj joins the Defence for Mr. Gucati [see paras. 5-15] in submitting that this obligation has not been complied with to the letter and in the spirit the Law and Rules requires. The obstinate approach of the SPO in this regard to what is required has not assisted the Defence in moving this case forward.
7. As has already been demonstrated, there has been a reluctance on the part of the SPO to engage fully with the disclosure process and thus there has been a need to seek the same through formal applications to the Pre-Trial Judge with relevant orders being made.

8. The Defence would hope that the remainder of the process proceeds without further disruption, however, any further difficulties will need to be addressed through relevant applications to the Pre-Trial Judge.

Defence Investigations

9. The Defence can confirm that investigations have commenced, however, as per previous instructions, the same have been hampered given COVID-19 restrictions and the ability to meet and/or travel freely.
10. It is appropriate to note that given the resurgence of COVID-19 across Europe, there is discussion of the entirety of Europe being placed on a 'UK Red List' which will render travel to mainland Europe all but impossible from the UK given the requirement to quarantine for 10 days in a hotel upon return, at a considerable cost, that cost to be borne by the individual, to which there is no exception.
11. Accordingly, subject to further developments, it may be that Defence investigations are delayed further due to circumstances outside of the control of the Defence.
12. Initial investigations were undertaken in Kosovo between 28 February 2021 to 5 March 2021, following which correspondence was sent to the SPO requesting that it be confirmed whether certain investigatory steps highlighted within that letter had been undertaken.

13. The SPO, in its response, have confirmed that not one of the steps highlighted had been undertaken, and therefore none of the information that might then be requested was available.
14. This is of particular concern, as not only does this raise significant issues concerning the efficacy of the investigation, but for the purposes of the case status hearing, it means that any defence investigations will now be prolonged because of that which needs to be undertaken which ordinarily, would have been expected to have already been undertaken.
15. The initial timescale provided in terms of the investigation is therefore still relevant, with the caveat that it might take longer on account of both the extra work that now needs to be undertaken, and further, circumstances beyond the control of the Defence.

Next Status Conference

16. The Defence would suggest that the next Status Conference is scheduled at a date convenient to the parties in approximately one calendar month time, therefore towards the end of April.
17. It is anticipated that at least one further trip to Kosovo by the team for Mr. Haradinaj will have been undertaken and therefore, further updates in terms of investigations can be provided.

18. Finally, the Defence for Mr. Haradinaj joins the Defence for Mr. Gucati in making the request set out in paragraphs 22 and 24 of their submissions

Word Count: 808 words



Toby Cadman

Specialist Counsel



Carl Buckley

Specialist Co-Counsel