



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 26 March 2021

Language: English

Classification: Public

Prosecution Submissions for third Status Conference

with Confidential Annex 1

Specialist Prosecutor's Office

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I. SUBMISSIONS

1. Pursuant to the Status Conference Order,¹ the Specialist Prosecutor's Office ('SPO') hereby provides written submissions on the agenda items identified by the Pre-Trial Judge.²

A. Updates on outstanding issues

Points of agreement on matters of law and fact

2. On 12 March 2021, the SPO communicated to the Defence, on an *inter partes* basis, proposed agreed facts pursuant to Rule 95(3) of the Rules³ and requested a response to this proposal by 26 March 2021.⁴ Depending on the receipt of any such response, the SPO may be able to further update the Pre-Trial Judge in relation to any relevant progress in this regard at the Status Conference.

Third-Party Requests

3. In its submissions for, and during, the second Status Conference, the SPO noted that it had two outstanding requests to third parties which may result in the production of relevant material ('Third-Party Requests').⁵ On 18 March 2021, the SPO received a response to one of the Third-Party Requests. The relevant material was disclosed on 19 March 2021 along with a translation thereof.⁶

4. Accordingly, one Third-Party Request remains outstanding. While the SPO is undertaking efforts to ensure that a response to this request is received by 9 April

¹ Order Setting the Date for the Third Status Conference, KSC-BC-2020-07/F00160, Public, 23 March 2021 ('Status Conference Order'), paras 11, 12(b).

² Status Conference Order, KSC-BC-2020-07/F00160, paras 9-10.

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁴ Email from the SPO to Defence Counsel sent on 12 March 2021 at 03:12 p.m. with the subject 'Proposed Agreed Facts'.

⁵ Prosecution Submissions for second Status Conference, KSC-BC-2020-07/F00140, Public, 23 February 2021, para.5; Status Conference, Transcript of 24 February 2021, pp.135, 150.

⁶ 093457-093458; 093457-093458-ET.

2021, it is possible that such response may only be provided shortly thereafter. The SPO does not anticipate that any response would lead to the need to seek protective measures or the receipt of information pursuant to Rule 107. Nevertheless, as previously submitted,⁷ the SPO will file its Pre-Trial Brief and related materials by 9 April 2021, regardless of whether a response to the one outstanding request is received by that date. Any materials received after the submission of the Pre-Trial Brief will be disclosed pursuant to the applicable legal framework.

B. Disclosure

5. In Annex 1, the SPO provides the Pre-Trial Judge with the information requested⁸ in relation to the Gucati Submissions.⁹ The Gucati Defence repeated each of the requests set out at paragraph 7(a)-(aa) of the Gucati Submissions in an *inter partes* communication dated 3 March 2021,¹⁰ and this request was joined by the Haradinaj Defence on 5 March 2021.¹¹ In accordance with the applicable framework,¹²

⁷ Status Conference, Transcript of 24 February 2021, p.135.

⁸ Status Conference Order, KSC-BC-2020-07/F00160, para.9(b).

⁹ Written Submissions on behalf of Hysni Gucati for the Second Status Conference and Related Matters, KSC-BC-2020-07/F00137, Confidential, 23 February 2021, ('Gucati Submissions').

¹⁰ Email from the GUCATI Defence to the SPO sent on 3 March 2021 at 07:01 p.m. ('Gucati email').

¹¹ Email from the HARADINAJ Defence to the SPO sent on 5 March 2021 at 03:52 p.m.

¹² Status Conference, Transcript of 24 February 2021, pp.131, 142; Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-07/F00104, Public, 22 January 2021, para.48.

the SPO filed any necessary requests before the Pre-Trial Judge,¹³ and, on 12 March 2021, responded in detail and on an item-by-item basis to the Defence requests.

6. Separately, on 3 and 5 March 2021, the Defence requested the disclosure of items 1-10 on the Rule 102(3) Notice¹⁴ and inspection of items 11-13.¹⁵ On 10 March 2021, the SPO informed the Defence that the SPO would be requesting protective measures in relation to item 1,¹⁶ disclosed items 2-10,¹⁷ and explained that item 11 should only be accessed, with the intervention of forensic experts, in case of a challenge to the authenticity of item 13.¹⁸ On 15 March 2021, the SPO handed over copies of items 12-13 to the Defence.

7. Additionally, on 13 March 2021, the Haradinaj Defence submitted a further *inter partes* communication containing 39 requests.¹⁹ On 23 March 2021, the SPO responded to this communication, noting that it was understood as seeking information as to whether the SPO is in possession of documentation and/or evidence in relation to the 39 questions, and providing responses to each question.²⁰

8. Subject to the nature and content of any further Defence requests for disclosure, the SPO does not foresee any difficulties related to the remainder of the disclosure

¹³ Prosecution submissions on the materiality of certain information requested by the Defence pursuant to Rule 102(3) Notice, KSC-BC-2020-07/F00149, Confidential, 8 March 2021; Prosecution request for non-disclosure of certain information requested by the Defence pursuant to Rule 102(3), KSC-BC-2020-07/F00154, Strictly Confidential and *Ex Parte*, 17 March 2021 ('*Ex Parte* Request for non-disclosure'); Confidential Redacted Version of 'Prosecution request for non-disclosure of certain information requested by the Defence pursuant to Rule 102(3), with strictly confidential and *ex parte* Annexes 1-3', KSC-BC-2020-07/F00154/CONF/RED, Confidential, 17 March 2021 ('Confidential Request for non-disclosure').

¹⁴ Annex 1 to Prosecution's Rule 102(3) notice, KSC-BC-2020-07/F00133/A01, Confidential, 19 February 2021 ('Rule 102(3) Notice').

¹⁵ Email from the Haradinaj Defence to the SPO dated 3 March 2021 at 07:36 p.m.; Email from the Gucati Defence to the SPO dated 5 March 2021 at 03:52 p.m..

¹⁶ This request was filed on 17 March 2021, *see Ex Parte* request for non-disclosure, KSC-BC-2020-07/F00154, paras 1(a), 14-21; Confidential request for non-disclosure, KSC-BC-2020-07/F00154/CONF/RED, paras 1(a), 14-21.

¹⁷ KSC-BC-2020-07, Disclosure 9.

¹⁸ Email from the SPO to the Defence dated 10 March 2021 at 03:26 p.m. with the subject: 'Disclosure 9 – Items on the 102(3) list'.

¹⁹ Email from Haradinaj Defence to the SPO dated 13 March 2021 at 09:15 p.m.

²⁰ Email from the SPO to the Defence on 23 March 2021 at 05:50 p.m.

process. In this regard, mindful of the fact that the bulk of the SPO's disclosure was completed on 19 February 2021, that the final disclosure deadline is 9 April 2021,²¹ and that the transmission of the case file to the Trial Panel has been tentatively set for 30 June 2021,²² in order to facilitate the expeditiousness of the proceedings, the SPO requests that the Pre-Trial Judge set a deadline by which the Defence is to file any further pre-trial disclosure requests.

C. The date of the next Status Conference

9. The SPO will be available at the court's convenience for the next Status Conference.

II. CONFIDENTIALITY

10. Annex 1 is classified as 'Confidential' since it refers to the content of submissions bearing the same classification and to information related to ongoing SPO investigations.

Word Count: 1,125



Jack Smith
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Friday, 26 March 2021
At The Hague, the Netherlands

²¹ Consolidated Calendar for the Remainder of the Pre-Trial Proceedings, KSC-BC-2020-07/F00148, Public, 8 March 2021 ('Consolidated Calendar'), para.6(a)(viii).

²² Consolidated Calendar, KSC-BC-2020-07/F00148, para.6(c).