

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 Hysni Gucati

Date: 31st March 2021

Language: English

Classification: Public

**Reply to Prosecution Response to Applications for Leave to Appeal the Decision
on Defence Preliminary Motions (F00161)**

Specialist Prosecutor

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I. INTRODUCTION

1. On 25th March 2021, the Accused received notification that the Specialist Prosecutor's Office ('SPO') had filed a submission ("the Response")¹ requesting that the Accused's Request for Leave to Appeal the Decision on Defence Preliminary Motions ("the Application for Leave to Appeal")² be rejected.
2. The Accused hereby replies to the Response, pursuant to rules 9 and 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), without prejudice to the submissions made in the Application for Leave to Appeal and acknowledging that the Panel shall only consider a reply or parts thereof addressing new issues arising from the response.

II. SUBMISSIONS

3. The Application for Leave to Appeal at paragraph 3 has identified five appealable issues: they are discrete; they emanate from the ruling; they relate to an identifiable topic or subject; and they are not abstract, nor hypothetical.
4. Each of the issues in paragraphs 3(i) to (v) respectfully identifies the relevant alleged error of the Pre-Trial Judge by reference to the legal requirement that the learned judge acknowledged but failed to apply.
5. Contrary to the submission of the SPO in paragraph 6 of the Response, the Application for Leave to Appeal does not argue that every alleged defect in an indictment is important enough on its own to justify granting leave to appeal.

¹ "Prosecution Response to Applications for Leave to Appeal the Decision on Defence Preliminary Motions", KSC-BC-2020-07/F00161

² "Application for Leave to Appeal through Certification from Decision KSC-BC-2020-07/F00147 pursuant to Article 45(2) and Rule 77(1)", KSC-BC-2020-07/F00151

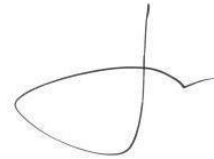
Some defects (such as errors in the accused's stated name, provided that he is described in a manner which is otherwise reasonably sufficient to identify him, or as to the accused's age, date or place of offence where those matters are not material to the offence) may have no significance at all.

6. Instead, the Application for Leave to Appeal argues that leave should be granted in relation to the five specific issues set out in paragraph 3(i) to (v) as they relate directly to the extent to which the indictment is pleaded with enough detail to inform the defendant clearly of the charges against him so that he may prepare his defence, as demonstrated by the five legal requirements referred to in each issue.
7. The submissions of the SPO at paragraph 7 amount to an argument on the merits of the appeal, making the assumption that the approach of the Pre-Trial Judge in the Impugned Decision that the information sought to be particularised in the Indictment was best addressed at trial was correct. Whether or not the Pre-Trial Judge was in error in relation thereto is a factor to be considered and examined by the Court of Appeals Panel in the event that leave to appeal is granted.
8. The submissions made in paragraphs 14 to 23 of the Application for Leave to Appeal properly set out: why (a) the issues at hand would significantly affect (i) the fair and expeditious conduct of proceedings and/or (ii) the outcome of the trial; and (b) an immediate resolution by the Appeals Chamber may materially advance the proceedings.

III. CONCLUSION

9. The Accused maintains the submissions within the Application for Leave to Appeal.
10. For the reasons set out therein, and as supplemented by the matters contained above, leave to appeal as requested should be granted.

Word count: 560 words



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