

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: 5th April 2021

Language: English

Classification: Confidential

**Reply to Prosecution Response to Request for Leave to Appeal the Decision on
Request for Information on Diplomatic Briefing**

Specialist Prosecutor

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I. INTRODUCTION

1. On 30th 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 Application for Leave to Appeal through Certification of Decision KSC-BC-2020-07/F00150 pursuant to Article 45(2) and Rule 77(1) ("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 was filed in time - F00158 was filed by the Accused on 18th March 2021.
4. The Application for Leave to Appeal at paragraph 2 of F00159 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.

¹ "Prosecution Response to Request for Leave to Appeal Decision on Request for Information on Diplomatic Briefing", KSC-BC-2020-07/F00167

² "Application for Leave to Appeal through Certification of Decision KSC-BC-2020-07/F00150 pursuant to Article 45(2) and Rule 77(1)", KSC-BC-2020-07/F00159 and "Joinder re Application for Leave to Appeal through Certification of Decision KSC-BC-2020-07/F00150", KSC-BC-2020-07/F00158

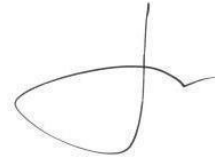
5. The identifiable topic to which each of the five issues relate is the extent of the duty of both the Specialist Prosecutor and the Specialist Chambers to make disclosure of material which might support the submission that, contrary to Article 6(1) of the European Convention on Human Rights, the independence and impartiality of the tribunal – the Specialist Chambers - has been compromised (in fact or in appearance).
6. In paragraphs 3 to 8 of the Response the SPO seeks to argue the merits. Arguments as to the merits or as to the substance of the appeal are *not* factors to be considered at the leave stage – they are factors to be considered and examined by the Court of Appeals Panel³ in the event that leave to appeal is granted.

III. CONCLUSION

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

Word count: 426 words

³ to be assigned, of course, by the President herself (Article 33(1)(c) of the Law and Rule 3 of the Rule on the Assignment of Specialist Chambers Judges from the Roster of International Judges)



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5th April 2021

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