



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 22 April 2021

Language: English

Classification: **Public**

Order Setting the Date for the Fourth Status Conference

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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)(d), 95(3) 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, 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.³

3. On 24 February 2021, the Pre-Trial Judge held the second status conference in this case, on the occasion of which the Parties submitted their views on upcoming procedural steps.⁴

4. On 8 March 2021, the Pre-Trial Judge issued a consolidated calendar for the remainder of the pre-trial proceedings, in which he recalled the outstanding time limits from the Framework Decision and other orders, set out further deadlines in order to facilitate Defence investigations and advance the next steps in the pre-

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, public.

³ KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public.

⁴ KSC-BC-2020-07, F00129, Pre-Trial Judge, *Order Setting the Date for the Second Status Conference and Related Matters*, 17 February 2021, public; Transcript, 24 February 2021, public.

trial proceedings and set a tentative date for the transmission of the case file (“Consolidated Calendar”).⁵

5. On 15 March 2021, further to the order of the Pre-Trial Judge,⁶ the Registrar filed written *ex parte* submissions providing up-to-date information on the Registry’s (i) support to persons traveling on official business into the Netherlands and Kosovo; and (ii) available assistance in identifying or connecting Defence Counsel with professionals who can assist in their investigations (“Registrar’s *Ex Parte* Submissions”).⁷

6. On 30 March 2021, the Pre-Trial Judge held the third status conference in this case (“Third Status Conference”).⁸

7. On 1 April 2021, the Pre-Trial Judge set out a revised schedule for the disclosure of Rule 102(3) material (“Decision on Rule 102(3) Material”).⁹

II. APPLICABLE LAW

8. Pursuant to Rule 95(2)(d) of the Rules, the Pre-Trial Judge shall hold any hearing necessary to ensure fair and expeditious proceedings.

9. Pursuant to Rule 95(3) of the Rules, after having heard the Parties, the Pre-Trial Judge shall record points of agreement on matters of law and fact.

10. 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

⁵ KSC-BC-2020-07, F00148, Pre-Trial Judge, *Consolidated Calendar for the Remainder of the Pre-Trial Proceedings* (“Consolidated Calendar”), 8 March 2021, public, para. 6(a)-(c).

⁶ Consolidated Calendar, para. 6(b)(i).

⁷ KSC-BC-2020-07, F00152, Registrar, *Registrar’s Submissions on Support and Assistance Regarding Travel and Investigations Provided to Defence Counsel*, 15 March 2021, confidential and *ex parte*.

⁸ KSC-BC-2020-07, F00160, Pre-Trial Judge, *Order Setting the Date for the Third Status Conference*, 23 March 2021, public; Transcript, 30 March 2021, public.

⁹ KSC-BC-2020-07, F00172, Pre-Trial Judge, *Decision on the Materiality of Information Requested under Rule 102(3) and Related Matters*, 1 April 2021, confidential.

Parties to ensure expeditious preparation for trial; (ii) take steps to ensure that all 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

11. In accordance with Rule 96(1) of the Rules and to ensure expeditious preparation for trial, the Pre-Trial Judge convenes a fourth status conference for Friday, 30 April 2021, at 11:00 hours, to review the progress of disclosure, to receive an update on Defence investigations and to take further necessary steps in the preparation for trial.

12. The Pre-Trial Judge will ask the Parties for their updates, if any, on the outstanding issues addressed in the Framework Decision, the Consolidated Calendar, the Third Status Conference, and the Decision on Rule 102(3) Material. Specifically and in addition, the Pre-Trial Judge will seek submissions on the following issues, in the sequence set out below:

(1) Disclosure:

- a. Whether the SPO has completed disclosure of Rule 103 material by the designated deadline of 9 April 2021;
- b. whether the Parties are facing or foresee any difficulties related to the remainder of the disclosure process, in particular in relation to Rule 102(3) material;
- c. whether the SPO intends to add evidence under Rule 102(2) of the Rules and can provide reasons for the late disclosure should that be the case;
- d. whether and by when the Defence is able to submit its objections, if any, to the evidentiary material disclosed pursuant to Rule 102 of the Rules, as foreseen in Rule 95(2)(e) of the Rules;

(2) Accused's Access to Documents:

- a. whether issues concerning the sharing documents with the Accused at the detention unit have been resolved;

(3) Agreement on Points of Law and Fact:

- a. whether the Parties have been able to reach any agreement on points of law and fact, particularly in light of the 9 April 2021 deadline for doing so in the Consolidated Calendar;
- b. whether and when the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute;

(4) Translations:

- a. whether and to what extent there are outstanding requests for translation, of documents or evidence, into a language the Accused understand, that are required by law to be translated;
- b. whether a timeline can be provided for any outstanding requests for translation;

(5) SPO and Defence Investigations:

- a. whether the SPO has completed its investigations;
- b. whether the Defence is in a position to provide updates on the status of its investigations, taking in consideration the Registrar's *Ex Parte* Submissions, including the estimated overall amount and type of evidence it intends to disclose to the SPO, and whether requests for protective measures are envisaged;
- c. whether the Defence intends to:
 - (i) 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;

- (ii) make any related requests for protective measures; or
- (iii) make requests concerning unique investigative opportunities, pursuant to Rule 99(1) of the Rules; and

d. whether the Defence is on target to meet remaining deadlines set out in the Consolidated Calendar and the Decision on Rule 102(3) Material.

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

14. The Registry is invited to file written submissions on point (4) in paragraph 12, above, by noon on Wednesday, 28 April 2021. The Parties are invited to file written submissions, on any of the above matters, if they so wish, by noon on Wednesday, 28 April 2021.

IV. DISPOSITION

15. 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, on **Friday, 30 April 2021, at 11:00 hours;**
- b. **ORDERS** the Registry to file written submissions, by **noon on Wednesday, 28 April 2021**, on point (4) in paragraph 12, above; and
- c. **ORDERS** the SPO and the Defence to file written submissions, if they so wish, by **noon on Wednesday, 28 April 2021**, on the topics set forth in paragraph 12, above.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 22 April 2021
At The Hague, the Netherlands.