



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

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 28 April 2021

Language: English

Classification: Public

Prosecution submissions for fourth status conference

Specialist Prosecutor's Office

Jack Smith

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

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. UPDATE ON OUTSTANDING ISSUES³

2. The outstanding third party request referenced before the last status conference remains unresolved,⁴ and best efforts to secure a resolution remain ongoing. The SPO remains of the view that any response would not lead to the need to seek protective measures or the receipt of information pursuant to Rule 107 of the Rules.⁵ Any materials received will be disclosed pursuant to the applicable legal framework.

B. DISCLOSURE⁶

3. At this point, the SPO has completed disclosure of all material in its possession falling under Rule 102(1)(a), Rule 102(1)(b), and Rule 103. The last items subject to disclosure pursuant to Rule 102(3) will be disclosed within the timeframe set in the Rule 102(3) Decision.⁷

¹ Order Setting the Date for the Fourth Status Conference, KSC-BC-2020-07/F00187, 22 April 2021 ('Status Conference Order').

² Status Conference Order, KSC-BC-2020-07/F00187, para.12.

³ Status Conference Order, KSC-BC-2020-07/F00187, para.12.

⁴ Prosecution Submissions for third Status Conference, KSC-BC-2020-07/F00165, 26 March 2021 (with annex), para.4.

⁵ 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.

⁶ Status Conference Order, KSC-BC-2020-07/F00187, para.12(1).

⁷ Decision on the Materiality of Information Requested under Rule 102(3) and Related Matters, KSC-BC-2020-07/F00172, 1 April 2021, Confidential ('Rule 102(3) Decision'). *See also* Confidential Redacted Version of 'Prosecution requests and challenges pursuant to KSC-BC-2020-07/F00172', KSC-BC-2020-07/F00190/CONF/RED, 28 April 2021, Confidential.

4. The SPO disclosed one further declaration of W04841, with two annexes, on 14 April 2021 under Rule 102(1)(b).⁸ This was disclosed on this date pursuant to a deadline set by the Pre-Trial Judge.⁹ An Albanian translation of this declaration was recently finalised and disclosed on 28 April 2021. As foreshadowed, the SPO will seek leave to add this declaration and annexes to its exhibit list.¹⁰ This is the only additional evidence request envisaged at this time.

C. AGREEMENT ON POINTS OF LAW AND FACT¹¹

5. On 12 March 2021, the SPO communicated to the Defence, on an *inter partes* basis, 39 proposed agreed facts pursuant to Rule 95(3) of the Rules and requested a response to this proposal by 26 March 2021.¹² No response was received by the requested response date.¹³

6. On 6 April 2021, the SPO reminded the Defence that the Pre-Trial Judge had ordered a joint submission on agreed facts by 9 April 2021 in the Consolidated Calendar.¹⁴ The SPO again sought a final position from the Defence, this time by 7 April 2021, as to what could be agreed upon in the joint submission.¹⁵ Neither Defence team responded to this message, leading the SPO to indicate on the 9 April deadline that no agreements had been reached.¹⁶ To date, the SPO has not received a response from the Defence to its agreed facts proposal.

⁸ 095162-095239.

⁹ Confidential Redacted Version of the Decision on the Non-Disclosure of Information Requested by the Defence, KSC-BC-2020-07/F00171/CONF/RED, 1 April 2021, Confidential, paras 23-24, 39.

¹⁰ See also Prosecution's consolidated Rule 102(3) notice, KSC-BC-2020-07/F00183/A01, 14 April 2021, Confidential, para.2, fn.7.

¹¹ Status Conference Order, KSC-BC-2020-07/F00187, para.12(3).

¹² Email from SPO to Defence, 12 March 2021, at 15:12.

¹³ See also Third Status Conference, 30 March 2021, p.208 (where the HARADINAJ Defence indicated that it 'anticipated that much can be agreed').

¹⁴ See Consolidated Calendar for the Remainder of the Pre-Trial Proceedings, KSC-BC-2020-07/F00148, 8 March 2021 ('Consolidated Calendar'), para.6(a)(vi).

¹⁵ Email from the SPO to the Defence, 6 April 2021, at 12:33.

¹⁶ Submission of Pre-Trial-Brief, witness and exhibit lists, and Rule 109(c) chart, KSC-BC-2020-07/F00181, 9 April 2021, para.3.

D. TRANSLATIONS¹⁷

7. The SPO has completed all translations it is required by law to prepare for the Defence.

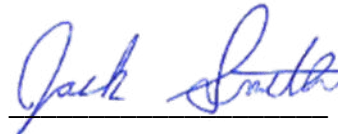
E. SPO INVESTIGATIONS¹⁸

8. No investigative activities are foreseen which would impact the Consolidated Calendar set by the Pre-Trial Judge. The SPO will continue to investigate as needed, particularly in light of any evidence the Defence elects to present.

F. THE DATE OF THE NEXT STATUS CONFERENCE¹⁹

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

Word count: 703



Jack Smith

Specialist Prosecutor

Wednesday, 28 April 2021

At The Hague, the Netherlands

¹⁷ Status Conference Order, KSC-BC-2020-07/F00187, para.12(4).

¹⁸ Status Conference Order, KSC-BC-2020-07/F00187, para.12(5)(a).

¹⁹ Status Conference Order, KSC-BC-2020-07/F00187, para.13.