

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 Counsel for Hysni Gucati

Date: 28th April 2021

Language: English

Classification: Public

Submissions for the Fourth Status Conference

[version of F00194 with corrected title]

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I. INTRODUCTION

1. On 22nd April 2021, the Pre-Trial Judge made an order setting the date for the Fourth Status Conference (“the Order”)¹ and invited submissions from the parties in relation to:
 - a. 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) (paragraph 12); and specifically
 - b. Disclosure (paragraph 12(1));
 - c. Accused’s Access to Documents (paragraph 12(2));
 - d. Agreements on Points of Law and Fact (paragraph 12(3));
 - e. Translations (paragraph 12(4));
 - f. SPO and Defence investigations (paragraph 12(5)); and
 - g. Views on the date of the next status conference (paragraph 13).

2. The defence on behalf of Hysni Gucati responds as follows.

II. PROCEDURAL BACKGROUND

3. The procedural background is as set out in paragraphs 1 to 7 of the Order.

III. APPLICABLE LAW

4. The applicable law is as set out in paragraphs 8 to 10 of the Order.

¹ Order Setting the Date for the Fourth Status Conference, KSC-BC-2020-07/F00187

IV. SUBMISSIONS

Updates, if any, on outstanding issues addressed in the Framework Decision, the Consolidated Calendar, the Third Status Conference and the Decision on Rule 102(3) Material

5. Please see the responses to the specific matters below.

Disclosure (a): whether the SPO has completed disclosure of Rule 103 material by the designated deadline of 9 April 2021

6. This request is specifically addressed to the SPO, and the defence will therefore await the response from the SPO.

Disclosure (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

7. A revised Rule 102(3) notice has been provided with 184 items listed (in contrast to the original notice, which the SPO had assured the court and parties was complete, and which contained only 13 items). It is not conceded that the revised Rule 102(3) notice is complete.

8. The defence have outstanding requests for disclosure of Rule 102(3) material, including material that has not been listed on the revised schedule of Rule

102(3) material (submitted to the SPO on 21st April 2021 in accordance with paragraph 38 of the Decision on Rule 102(3) Material). No response has been received to those requests at all (not even an acknowledgment), despite the Pre-Trial Judge's previous attempts to encourage *inter partes* resolution of disclosure matters. The concern expressed previously regarding continuing difficulties relating to the remainder of the disclosure exercise remains (the disclosure obligations in Articles 21(6) of the Law and Rules 102(3) and 103 of the Rules of Procedure and Evidence are obligations on the SPO which continue throughout proceedings).

Disclosure (c): whether the SPO intends to add evidence under Rule 102(2) of the Rules and can provide reasons for late disclosure should that be the case

9. This request is specifically addressed to the SPO, and the defence will therefore await the response from the SPO.

Disclosure (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

10. The Defence will seek to submit such objections to evidentiary material disclosed pursuant to Rule 102 as have then been identified by 14th June 2021.

Accused's Access to Documents

11. The SEDS system capacity is too low and needs to be expanded.
12. The Legal Workflow system ought to provide the ability to download each disclosure folder by tranche, and to download filings en bloc, for onward

transmission to SEDS (at present, the system requires each individual document to be highlighted and downloaded, which is greatly time-consuming and inefficient).

Agreement on Points of Law and Fact (a): whether the Parties have been able to reach any agreement of points of law and fact, particularly in light of the 9 April 2021 deadline for doing so in the Consolidated Calendar

13. Recalling that there is no obligation on the parties to agree points of law and fact², no agreement has been reached at this stage. It is envisaged that, save in relation to biographical details, the dates of televised press conferences and speakers therein, any further agreement on points of fact is unlikely.

Translations

14. The Pre-Trial Judge is invited to set a timeline for any requests for translation.

SPO and Defence Investigations (a): whether the SPO has completed its investigations

15. This request is specifically addressed to the SPO, and the defence will therefore await the response from the SPO.

² Transcript of 2nd Status Conference, 24/02/21, at page 152 lines 7-8 and page 159 lines 24-25 to page 160 lines 1 to 5 per the Pre-Trial Judge

SPO and Defence 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

16. The defence repeat what has been said at previous status conferences in relation to this aspect.

SPO and Defence Investigations (c): (i) whether the Defence intends to 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

17. The defence repeat what has been said at previous status conferences in relation to this aspect.

SPO and Defence Investigations (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

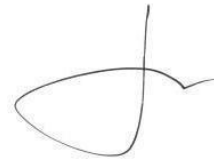
18. The defence presently envisages being able to meet remaining deadlines set out in the Consolidated Calendar.

19. In relation to the Decision on Rule 102(3) material, the defence have outstanding requests pursuant to paragraph 38(b) and (c) thereof. The defence repeat that the disclosure obligations in Articles 21(6) of the Law and Rules 102(3) and 103 of the Rules of Procedure and Evidence are obligations on the SPO which continue throughout proceedings.

Views on the date of the next status conference

20. It is requested that the next status conference should take place on 28th May 2021 (morning).

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