



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:** 20 May 2021

**Language:** English

**Classification:** **Public**

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**Order Setting the Date for the Fifth Status Conference**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 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.<sup>2</sup>

2. On 22 January 2021, the Pre-Trial Judge issued a framework decision on disclosure, setting out, *inter alia*, time limits for the Specialist Prosecutor's Office ("SPO") to meet its disclosure obligations under the Rules.<sup>3</sup>

3. On 23 February 2021, the Pre-Trial Judge issued a decision on the non-disclosure of documents seized from the Kosovo Liberation Army War Veterans' Association on 8, 17 and 22 September 2020 (respectively, "Batch 1", "Batch 2" and "Batch 3"; and collectively, "Three Batches").<sup>4</sup>

4. On 24 February 2021, the Pre-Trial Judge held the second status conference in this case.<sup>5</sup>

5. On 8 March 2021, the Pre-Trial Judge issued a consolidated calendar for the remainder of the pre-trial proceedings, in which he set out, *inter alia*, deadlines for any joint submission of any agreement on points of law and fact, for Defence

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<sup>1</sup> KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public.

<sup>2</sup> 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.

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

<sup>4</sup> KSC-BC-2020-07, F00141, Pre-Trial Judge, *Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 23 February 2021, confidential.

<sup>5</sup> 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.

submissions regarding alibi, grounds for excluding responsibility or unique investigative measures, for the filing of any Defence Pre-Trial Brief and for the envisaged transmission of the case file (“Consolidated Calendar”).<sup>6</sup>

6. On 30 March 2021, the Pre-Trial Judge held the third status conference in this case.<sup>7</sup>

7. On 1 April 2021, the Pre-Trial Judge set out a revised schedule for the disclosure of Rule 102(3) material and for any requests by the SPO for the non-disclosure of such material (“Decision on Rule 102(3) Material”).<sup>8</sup>

8. On 14 April 2021, further to the Decision on Rule 102(3) Material, the SPO submitted a consolidated detailed notice of Rule 102(3) material in its possession (“Consolidated Rule 102(3) Notice”).<sup>9</sup>

9. On 26 April 2021, the SPO submitted requests for the non-disclosure of, *inter alia*, certain items contained in the Consolidated Rule 102(3) Notice (“SPO Requests for Non-Disclosure”).<sup>10</sup>

10. On 30 April 2021, the Pre-Trial Judge held a fourth status conference in the case.<sup>11</sup>

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<sup>6</sup> KSC-BC-2020-07, F00148, Pre-Trial Judge, *Consolidated Calendar for the Remainder of the Pre-Trial Proceedings*, 8 March 2021, public, para. 6.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> KSC-BC-2020-07, F00183/A01, Specialist Prosecutor, *Annex 1 to Prosecution/s Consolidated Rule 102(3) Notice*, 14 April 2021, confidential.

<sup>10</sup> KSC-BC-2020-07, F00190/RED, Specialist Prosecutor, *Confidential Redacted Version of Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172*, 26 April 2021, confidential.

<sup>11</sup> KSC-BC-2020-07, F00187, Pre-Trial Judge, *Order Setting the Date for the Fourth Status Conference*, 22 April 2021, public; Transcript, 30 April 2021, public.

11. On 10 and 11 May 2021, the Defence for Mr Gucati and the Defence for Mr Haradinaj, respectively, filed their responses to the SPO Requests for Non-Disclosure.<sup>12</sup> On 17 May 2021, the SPO filed a reply.<sup>13</sup>

## II. APPLICABLE LAW

12. 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 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

13. In accordance with Rule 96(1) of the Rules and to ensure expeditious preparation for trial, the Pre-Trial Judge convenes a fifth status conference for Friday, 28 May 2021, at 11:00 hours, to review the progress of disclosure, to receive submissions from the Defence regarding set deadlines and its ongoing investigations as well as to address further questions as set out below.

14. The Pre-Trial Judge will seek submissions on the following issues, in the sequence set out below:

(1) SPO Requests for Non-Disclosure: the Pre-Trial Judge seeks submissions from the Parties and the Registrar as set out in the confidential Annex to the present order;

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<sup>12</sup> KSC-BC-2020-07, F00199, Defence for Mr Gucati, *Response to Confidential Redacted Version of 'Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172'*, KSC-BC-2020-07/F00190 Dated 26 April 2020, 10 May 2021, confidential; F00200, Defence for Mr Haradinaj, *Defence Response to SPO Confidential Redacted Version of 'Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172'*, and F00190, 11 May 2021, confidential.

<sup>13</sup> KSC-BC-2020-07, F00201, Specialist Prosecutor, *Prosecution Reply to Defence Responses to Filing F00190*, 17 May 2021, confidential.

(2) Disclosure:

- a. whether the Defence is able to submit, by **Monday, 14 June 2021**, its objections, if any, to the admissibility of evidentiary material disclosed pursuant to Rule 102 of the Rules, as foreseen in Rule 95(2)(e) of the Rules; and
- b. whether the Parties are facing or foresee any remaining difficulties related to the remainder of the disclosure process;

(3) Agreement on points of law and fact:

- a. given that the deadline of 9 April 2021, as set out in the Consolidated Calendar, has passed, whether the Parties can confirm that no agreement on points of law and fact will be reached before the envisaged transmission of the case file; and
- b. whether the Parties can confirm that no list of issues subject to dispute and no list with issues not subject to dispute will be submitted before the envisaged transmission of the case file;

(4) Defence submissions and investigations:

- a. given that the deadlines of 11 May 2021, as set out in the Consolidated Calendar, have passed, whether the Defence can confirm that they do not intend to offer a defence of alibi or any other grounds excluding responsibility, as foreseen under Rule 95(5) of the Rules, and that no requests for unique investigative measures shall be submitted, as provided by Rule 99(1) of the Rules;
- b. whether the Defence is on target to meet remaining deadlines set out in the Consolidated Calendar; and
- c. whether the Defence is in a position to provide updates on the status of their investigations, including the estimated overall amount and type of

evidence they intend to disclose to the SPO, and whether requests for protective measures are envisaged; and

(5) Detention facilities: whether there has been any follow-up and improvement on the methods of transfer of information between the Accused and their Counsel.

15. Finally, the Parties will be asked to share their views on the need for an additional status conference before the transmission of the case file and, if the answer is affirmative, the proposed date of such a status conference.

#### IV. DISPOSITION

16. 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, 28 May 2021, at 11:00 hours**;
- b. **ORDERS** the Registry to file written submissions, by **16:00 hours on Wednesday, 26 May 2021**, on point (5) of paragraph 14 and, in a confidential annex to the aforementioned filing, submissions on paragraph 5 of the Annex; and
- c. **ORDERS** the SPO and the Defence to file written submissions, by **16:00 hours on Wednesday, 26 May 2021**, on the topics set forth in points (2)-(4) of paragraph 14 and, in a confidential annex to the aforementioned filing, submissions on paragraphs 3-4 of the Annex.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Thursday, 20 May 2021  
At The Hague, the Netherlands.