

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: 3rd June 2021

Language: English

Classification: Confidential

Motion for Clarification of Decision KSC-BC-2020-07/F00213

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I. INTRODUCTION

1. On 26th April 2021, the Pre-Trial Judge ordered the SPO to disclose any contemporaneous notes taken during interviews with contacted individuals and on the basis of which the Official Witness Notes and the Declarations were prepared under Rule 102(3) where they contain disclosable information that has not been recorded in the Official Witness Notes and Declarations, such as the questions posed to the contacted individuals¹.
2. Following *inter partes* correspondence and to assist the parties, the Pre-Trial Judge is requested to clarify the following in relation to the above order:

that where the Official Witness Note and the Declaration records information which is not recorded in the contemporaneous note taken during interview with the relevant contacted individual, the contemporaneous note will fall to be disclosed under the order.

II. SUBMISSIONS

3. *The absence of a record in the contemporaneous note is itself 'disclosable information' (that is not discernible from the Official Note and/or the Declaration) and can support an inference of late fabrication, elaboration or exaggeration in the Official Note and/or the Declaration.*

¹ *Decision on Prosecution Requests and Challenges Pursuant to F00172, KSC-BC-2020-07/F00210 at paragraph 54*

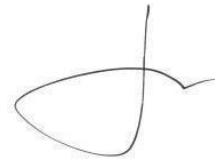
4. For example, if the Official Note was to state that 'witness' A stated that (a) he was 50 years of age, (b) he was intimidated by the holding of a press conference in Sept 2020, and that (c) he had spent October of that year in hospital with stress, and yet the contemporaneous note of the interview with the same witness recorded witness A stating only that (a) he was 50 years of age and that (b) he had spent October 2020 in hospital with stress, the contemporaneous may support an inference that the allegation of intimidation was a late fabrication, elaboration or exaggeration made by the author of the Official Note.
5. In those circumstances, the *absence of a record in the contemporaneous note that witness A complained that he was intimidate by the holding of a press conference* would itself be 'disclosable information' that is contained within the contemporaneous note and has not been recorded in the Official Witness Notes and Declarations.
6. Same considerations must apply whenever there are inconsistencies between the contents of the contemporaneous note and the Official Witness Note and Declaration.

III. CLASSIFICATION

7. This filing has been classified as confidential as decision F00210 was classified likewise. There is no objection to re-classification of this filing as public.
8. Considering the constitutional right in Article 41 of the Constitution of the Republic of Kosovo of access to public documents, and that any interference with that right should be strictly limited only where necessary, indeed there is no reason why this filing should not be reclassified as public.

9. There is a clear and present risk that without the consideration of reclassification for this filing and others preceding it that the operation of Rule 82(4), and the requirement that any response, reply or other filing related to the original filing shall bear the same classification as the original, is rapidly driving these proceedings into a state of secrecy without real justification.

Word count: 517 words



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