



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: 9 June 2021

Language: English

Classification: Public

**Revised Calendar for the Remainder of the Pre-Trial Proceedings and
Order Setting the Date for the Sixth Status Conference**

Specialist Prosecutor

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) and (13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 95(2)(a) and 96 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues this order.

I. PROCEDURAL BACKGROUND

1. 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.²

2. 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*, a deadline for the submission of the Defence Pre-Trial Briefs and a tentative date for the transmission of the case file ("Consolidated Calendar").³

3. 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").⁴

4. 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").⁵

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

² KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters* ("Framework Decision"), 22 January 2021, public.

³ 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).

⁴ 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.

⁵ KSC-BC-2020-07, F00183/A01, Specialist Prosecutor, *Annex 1 to Prosecution/s Consolidated Rule 102(3) Notice*, 14 April 2021, confidential.

5. On 26 April 2021, the SPO submitted a request for the non-disclosure of certain items included on the Consolidated Rule 102(3) Notice, including Items 99, 101-103 and 106-120 (“Letters”), and other material on the grounds that they are not material to the Defence or are subject to Rule 108 of the Rules (“Non-Disclosure Request”).⁶
6. On 20 May 2021, the Pre-Trial Judge ordered the Parties and the Registrar to make written submissions on, *inter alia*, the possibility of specific counterbalancing measures to be adopted in relation to the Letters.⁷
7. On 25 May 2021, further to an outstanding third party request (“Third Party Request”), the SPO disclosed a large amount of documents containing mainly metadata.⁸
8. On 26 May 2021, the Pre-Trial Judge issued a decision (“Decision F00210”) on the Non-Disclosure Request, except in relation to the Letters.⁹
9. On 28 May 2021, at the fifth status conference in the case, the Defence requested the extension of the deadline for filing their Pre-Trial Briefs to 12 July 2021.¹⁰ At the same time, the Parties indicated that they preferred to have an additional status conference after the submission of said Pre-Trial Briefs.¹¹

⁶ KSC-BC-2020-07, F00190, Specialist Prosecutor, *Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172 (“Request”)*, 26 April 2021, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*. See also F00190/RED, Specialist Prosecutor, *Confidential Redacted Version of Prosecution Requests and Challenges Pursuant to KSC-BC-2020-07/F00172*, 28 April 2021, confidential.

⁷ KSC-BC-2020-07, F00204/A01, Pre-Trial Judge, *Annex to the Order Setting the Date for the Fifth Status Conference*, 20 May 2021, confidential.

⁸ KSC-BC-2020-07, Disclosure Package 30, 25 May 2021.

⁹ KSC-BC-2020-07, F00210, Pre-Trial Judge, *Application for Leave to Appeal through Certification from Decision KSC-BC-2020-07-F00210 pursuant to Article 45(2) and Rule 77(1); Alternative Request for Reconsideration under Rule 79(1)*, 3 June 2021, confidential.

¹⁰ KSC-BC-2020-07, Transcript, 28 May 2021, public, pp. 331, 336-337, 340.

¹¹ KSC-BC-2020-07, Transcript, 28 May 2021, public, pp. 347-348.

10. On 1 June 2021, the Pre-Trial Judge ordered the SPO to provide further details to the Defence in relation to the Letters and ordered the Defence to indicate, based on the details received, if they still maintain their request for the disclosure of the Letters or parts thereof.¹²

11. On 2 June 2021, the SPO disclosed certain documents pursuant to Decision F00210.¹³

12. On 3 June 2021, the Defence for Hysni Gucati (“Mr Gucati”) filed an application for leave to appeal or for reconsideration of part of Decision F00210.¹⁴

13. On 3 June 2021, the Defence for Mr Gucati requested clarification of part of Decision F00210.¹⁵

14. On 3 June 2021, the Defence for Nasim Haradinaj (“Mr Haradinaj”) filed an application for leave to appeal part of Decision F00210 and joined the Gucati Defence’s aforementioned request for reconsideration (“Haradinaj Application”).¹⁶

15. On 7 June 2021, the SPO disclosed further documents pursuant to Decision F00210.¹⁷

¹² KSC-BC-2020-07, F00213, Pre-Trial Judge, *Order for Submissions Regarding Items 99, 101-103 and 106-120 of the Consolidated 102(3) Notice*, 1 June 2021, confidential.

¹³ KSC-BC-2020-07, Disclosure Package 33, 2 June 2021.

¹⁴ KSC-BC-2020-07, F00216, Defence for Mr Gucati, *Application for Leave to Appeal through Certification from Decision KSC-BC-2020-07-F00210 pursuant to Article 45(2) and Rule 77(1); Alternative Request for Reconsideration under Rule 79(1)*, 3 June 2021, confidential.

¹⁵ KSC-BC-2020-07, F00217, Defence for Mr Gucati, *Motion for Clarification of Decision KSC-BC-2020-07-F00213*, 3 June 2021, confidential.

¹⁶ KSC-BC-2020-07, F00219, Defence for Mr Haradinaj, *Application for Leave to Appeal the Decision on Prosecution Requests and Challenges Pursuant to F00172*, 3 June 2021, confidential.

¹⁷ KSC-BC-2020-07, Disclosure Package 34, 7 June 2021.

16. On 8 June 2021, the SPO submitted a notice indicating that the Defence no longer seek disclosure of the Letters.¹⁸

II. APPLICABLE LAW

17. Pursuant to Rule 95(2)(a) of the Rules, the Pre-Trial Judge shall set out a calendar and working plan for any pre-trial obligations of the Parties.

18. 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

A. TIME LIMIT FOR THE SUBMISSION OF THE DEFENCE PRE-TRIAL BRIEFS

19. The Pre-Trial Judge notes that, since the issuance of the Consolidated Calendar, as a result of several decisions on disclosure, including the Decision on Rule 102(3) Material, and as a consequence of the Third Party Request, several disclosures have taken place, including a voluminous amount of metadata. Furthermore, the Pre-Trial Judge takes note of the disclosures stemming from and the pending requests in relation to Decision F00210. Mindful of the time needed by the Defence to review the disclosed material and taking in consideration the aforementioned pending requests,

¹⁸ KSC-BC-2020-07, F00223, Specialist Prosecutor, *Prosecution Notification Following Order KSC-BC-2020-07-F00213*, 8 June 2021, confidential.

the Pre-Trial Judge finds it appropriate to extend the time limit for the submission of the Defence Pre-Trial Briefs beyond the currently set deadline of 14 June 2021.

20. That being said, the Pre-Trial Judge also notes that, subject to the determination of the pending requests in relation to Decision F00210 and the receipt of any further material stemming from the Third Party Request, the SPO has finalised the disclosure process. Furthermore, the Pre-Trial Judge notes that the Defence no longer seeks the disclosure of the Letters and that consequently the implementation of counterbalancing measures in the following weeks no longer needs to be contemplated. The Pre-Trial Judge accordingly does not expect that the outstanding disclosures, if any, have a fundamental impact on the finalisation of the Defence Pre-Trial Briefs warranting a four-week extension of the time limit, as requested by the Defence.

21. Moreover, the Pre-Trial Judge observes that the receipt of any further material stemming from the Third Party Request depends principally on the third party or parties involved and that there is no indication as to the time-frame of any such material being received sufficiently in advance, so as to avoid an unwarranted delay in the submission of the Defence Pre-Trial Briefs and the transmission of the case-file.

22. In light of the foregoing, the Pre-Trial Judge finds it appropriate to extend with eight (8) days the current time limit for filing the Defence Pre-Trial Briefs to 22 June 2021.

B. SPECIFIC SUBMISSIONS IN THE DEFENCE PRE-TRIAL BRIEFS

23. The Pre-Trial Judge recalls that, at the fifth status conference, the Defence indicated that they intend to include in their Pre-Trial Briefs objections to the

admissibility of disclosed evidentiary material, any proposed agreements on points of fact and notice as to any grounds excluding responsibility.¹⁹

24. The Pre-Trial Judge accordingly orders the Defence to incorporate in their respective Pre-Trial Briefs, by way of an annexed list or chart, their objections, if any, to the admissibility of disclosed evidentiary material, providing, for each item: (i) the number on the SPO Exhibit list; (ii) the reasons for the objection, stated briefly; and (iii) the relevant provision of the Law or the Rules under which the objection is made.

25. The Pre-Trial Judge further orders the Defence to incorporate in their respective Pre-Trial Briefs, by way of an annexed list or chart, their proposed agreements, if any, to points of law or fact.

26. Lastly, the Pre-Trial Judge orders the Defence to incorporate in their respective Pre-Trial Briefs specific notice of any grounds excluding responsibility on which they intend to rely at trial.

C. STATUS CONFERENCE

27. In accordance with Rule 96(1) of the Rules and taking in consideration the expressed preference of the Parties to hold a status conference after the submission of the Defence Pre-Trial Briefs, the Pre-Trial Judge convenes a sixth status conference for Friday, 25 June 2021, at 11:00 hours, to oversee the final steps of the preparation for the transmission of the case file. In this regard, the Pre-Trial Judge reminds the Parties that the transmission of the case file does not automatically translate into the opening

¹⁹ KSC-BC-2020-07, Transcript, 28 May 2021, public, pp.329-330, 336-337, 344-346; F00207, Defence for Mr Gucati, *Submissions for the Fifth Status Conference*, 26 May 2021, public; F00211, Defence for Mr Haradinaj, *Submissions for the Fifth Case Status Conference*, 26 May 2021, public.

of the case pursuant to Rule 124 of the Rules and that further preparatory steps to be taken by the Trial Panel are provided in Rules 116-119 of the Rules.

28. At the status conference, the Pre-Trial Judge will seek oral submissions on the following issues, in the sequence set out below:

- (1) Detention facilities: an update from the Registrar on the measures taken in relation to communication between Defence Counsel and their clients;
- (2) Translations: any remaining concerns of the Defence as regards translations required by law;
- (3) Disclosure: whether the Parties are facing or foresee any remaining difficulties related to the remainder of the disclosure process;
- (4) Defence investigations: whether the Defence is in a position to provide updates on the status of their investigations;
- (5) Transmission of the case file and readiness for trial:
 - a. Whether the Parties foresee any significant impediment to the transmission of the case file at the beginning of July 2021;
 - b. When would the SPO expect to be ready for the presentation of its case at trial; and
 - c. When would the Defence expect to be ready for the presentation of their respective cases, if any.

IV. DISPOSITION

29. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **ORDERS** the Defence to file, by **Tuesday, 22 June 2021**, if they so wish, their Pre-Trial Briefs as set out in Rule 95(5) of the Rules;
- b. **ORDERS** the Defence to incorporate in their respective Pre-Trial Briefs any objections to the admissibility of disclosed evidentiary material, any proposed agreements on points of law and fact and any notice on grounds excluding responsibility, as set out in paragraphs 24-26;
- c. **DECIDES** to convene a hearing in the presence of the SPO and the Defence, on **Friday, 25 June 2021**, at **11:00 hours**; and
- d. provided that the preliminary motions have been disposed of by the Court of Appeals Panel, **SETS** as tentative date for the transmission of the case file under Rule 98(1) of the Rules the day of **Friday, 2 July 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 9 June 2021

At The Hague, the Netherlands.