



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

Filed by: Dr Fidelma Donlon, Registrar

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**‘Update to Submission of the Registrar Pursuant to Rule 23(2) on
COVID-19 Risk Mitigation Measures’, filing F00238 dated 16 June 2021**

Specialist Prosecutor’s Office

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1. Pursuant to Rule 23(2)(a) of the Rules,¹ the Registrar hereby updates the Pre-Trial Judge on risk mitigation measures with regard to the novel coronavirus ('COVID-19') on the conduct of proceedings involving Mr Hysni Gucati and Mr Nasim Haradinaj, in particular with regard to the Detention Facilities of the Specialist Chambers ('Detention Facilities') in the Netherlands ('Host State').²

2. This submission addresses the continuous management and active engagement of the Registry with relevant stakeholders, with the aim of working towards a relaxation of restrictions while ensuring the health and safety of all Detainees and others with whom they interact.

I. PROCEDURAL HISTORY

3. On 28 September 2020, the Registrar submitted a filing ('COVID-19 submission') to the Pre-Trial Judge about the risk mitigation measures in place with regard to COVID-19 and the conduct of proceedings.³ The Registrar annexed to her COVID-19 submission the advice of the Medical Officer⁴ on the recommended preventative measures in place in the Detention Facilities in the Host State to safeguard and promote the health of Detainees during the COVID-19 pandemic.⁵

4. The Registry updated the Pre-Trial Judge ahead of and during the fourth and fifth status conferences regarding developments and various efforts undertaken throughout the COVID-19 pandemic to protect the health and safety of Detainees and

¹ Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

² The Detention Facilities are located within Unit 4 of the Host-State prison, PI Haaglanden ('Prison'). [REDACTED].

³ F00022, Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures, 29 September 2020, confidential with one confidential annex. A public redacted version was filed on 14 October 2020 (F00022/RED).

⁴ Pursuant to Detention Rule 2.2, "Medical Officer" is defined as: "The responsible treating physician at the Detention Facilities, his or her deputy, or any other physician hired by competent authorities of the Host State for the purpose of providing medical treatment to a Detainee". See Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, public. Unless otherwise indicated, all references to 'Detention Rule' are to the Rules of Detention.

⁵ F00022/A01, Annex 1 to Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures, 28 September 2020, confidential.

others and to prevent the spread of COVID-19 in the Detention Facilities.⁶ The Registry again noted that its efforts are based on the independent, professional medical advice provided by the Medical Officer.⁷

5. At the fifth status conference on 28 May 2021, the Pre-Trial Judge invited the Registry to provide details on various aspects related to in-person visits in the Detention Facilities, including whether certain mitigation measures used during Counsel visits could be lifted, and when and under what circumstances in-person family visits may again be permitted.⁸ The Registry noted that the risk mitigation measures in place are reviewed on a continuous basis, in consultation with the Medical Officer, and that the Registry continues to advocate for lifting certain measures related to in-person visits as soon as health and safety permit.⁹ Following the update provided by the Registry, the Pre-Trial Judge further advised the Registry to consult with the Medical Officer and provide a target date or guidelines that will explain under which conditions the measures will be lifted.¹⁰

6. On 10 June 2021, the Pre-Trial Judge issued an order setting the date for the sixth status conference and noted that he would seek oral submissions from the Registrar on the measures taken in relation to communication between Defence Counsel and their clients in the Detention Facilities.¹¹

⁶ F00192, Registrar's Submissions on Translations and Access to Documents, 28 April 2021, public; Transcript, 30 April 2021 ('Fourth Status Conference Transcript'), pp. 242-244, 252-253; F00208, Registrar's Submissions for the Fifth Status Conference, 26 May 2021, public with one confidential annex; Transcript, 28 May 2021 ('Fifth Status Conference Transcript'), pp. 277-280, 286 lines 4-24, 288 lines 1-7.

⁷ Fifth Status Conference Transcript, p. 278. *See also* Detention Rule 30(5).

⁸ Fifth Status Conference Transcript, pp. 276-277.

⁹ *Ibid.*, p. 278 lines 18 – 23; *see also* p. 279 lines 5 – 8; p. 288 lines 2 – 7.

¹⁰ *Ibid.*, p. 287, lines 4 – 7.

¹¹ F00224, Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference, 9 June 2021, public.

II. APPLICABLE LAW

7. Pursuant to Article 34(12) of the Law¹² and Rule 23(7) of the Rules, the Registrar is responsible for managing and administering the detention function and facilities for the Specialist Chambers ('SC'). In accordance with Article 41 of the Law and Rule 23(7) of the Rules, the Registrar has adopted the Rules of Detention,¹³ as well as related practice directions and instructions, including practice directions on privileged¹⁴ and non-privileged¹⁵ visits and communications with Detainees.

8. In the Detention Facilities, the Medical Officer is responsible for the care of the physical and mental health of Detainees¹⁶ and regularly advises the Chief Detention Officer, as well as the Registrar, on the implementation of the Rules of Detention and any related practice directions and instructions, including those concerning public health measures in the Detention Facilities.¹⁷

III. SUBMISSIONS

9. Since the start of the pandemic, the Registrar has proactively and regularly engaged with relevant stakeholders in order to safeguard the health of Detainees and others, lift temporary restrictions as soon as they are no longer necessary and proportionate, keep Detainees and Counsel updated regarding any developments, all the while providing Detainees with reasonable means of maintaining personal relationships and ensuring adequate facilities for the preparation of the defence.¹⁸

¹² Law on Specialist Chambers and Specialist Prosecutor's Office, Law No.05/L-053, 3 August 2015 ('Law').

¹³ Rules of Detention, KSC-BD-08-Rev1, 23 September 2020, public.

¹⁴ Registry Practice Direction on Detainees, Counsel Visits and Communications, KSC-BD-10-Rev1, 23 September 2020, public.

¹⁵ Registry Practice Direction on Detainees, Visits and Communications, KSC-BD-09-Rev1, 23 September 2020, public.

¹⁶ Detention Rule 30(4).

¹⁷ Detention Rule 30(5)(e).

¹⁸ [REDACTED]. *See* [REDACTED]. In addition, the Registry launched a Secure Electronic Data Sharing System ('SEDS') for the electronic exchange of case-related materials, which provides Counsel and Detainees with additional means of exchanging defence materials through a bespoke file sharing location on the SC network. *See* Registry Instruction on Secure Electronic Data Sharing Between Counsel and Detainees, KSC-BD-39, 4 March 2021. Notably, the SEDS capacity was quadrupled at the

a. Ongoing engagement

10. The Head of the Judicial Services Division of the Registry and the Chief Detention Officer engage on a weekly basis with the Medical Officer to work towards the easing of risk mitigation measures in the Detention Facilities.

11. On 12 April 2021, the Registrar initiated a planning roadmap with the Medical Officer for the resumption of in-person family visits and the lifting of certain mitigation measures used during in-person Counsel visits, at the very earliest that health and safety allow. The Registrar requested the Medical Officer's advice and guidelines on the conditions under which restrictions could be lifted, as well as the envisaged timeline. In response, on 16 April 2021, the Medical Officer advised that [REDACTED] will be reached by the beginning of July 2021, [REDACTED], and that certain mitigating measures may be required in same-room visits until more is known about viral transmission.

12. On 21 April 2021, the Registrar informed all Counsel appearing before the SC that the current risk mitigation measures in the Detention Facilities will remain in place until [REDACTED], which the Medical Officer estimated could occur around July of 2021.

13. The Medical Officer also met with the Detainees personally to explain the roadmap both in April and again in May 2021. The Medical Officer further provided relevant information related to vaccinations and in-person visits in writing to all Detainees in May 2021.

14. On 1 June 2021, the Registrar engaged with the Medical Officer again on the easing of risk mitigation measures at the very earliest that health and safety allow, and in particular if new guidelines are foreseen considering the recent progress of the vaccination programme in the Netherlands. The Registrar requested, *inter alia*,

end of April 2021 after one Counsel noted concerns in transmitting large volumes of information. See Fourth Status Conference Transcript, p. 242 lines 24 – 25. Enhancements were also made to the acoustics in the legal consultation room in the Detention Facilities on 8 April 2021. More recently, computer screens were placed in the legal consultation room in late May 2021 so that both Counsel and Detainees may look at documents simultaneously in real time.

updated information [REDACTED] and whether less restrictive solutions for visits could be explored prior to that date.

b. Updated medical advice

15. On 9 June 2021, the Medical Officer provided updated advice to the Registrar on the roadmap for lifting risk mitigation measures in the Detention Facilities. Based on the Medical Officer's advice, a gradual and progressive approach to the lifting of measures is required, guided by prudence, caution and proportionality.

16. With this in mind, the Medical Officer has indicated that in-person visits with Counsel in the same room, with the ability to directly exchange paper documents, will likely be possible from early to mid-July 2021 for fully vaccinated Counsel (and team members). The Medical Officer will advise on the precise date based on any potential ramifications of the Delta variant of the novel coronavirus. No more than two visitors at a time will be permitted to attend an in-person Counsel visit (if an interpreter is required, three visitors will be permitted).¹⁹ In addition, video visits should still be used as much as possible.²⁰

17. Should Counsel (or a team member) not meet the vaccination requirement, the Medical Officer has advised that Counsel and Detainees continue to be physically separated during in-person Counsel visits.²¹

18. With regard to in-person family visits, the Medical Officer has also advised a phased approach. During the first phase, in-person family visits will resume from 15 July 2021 for a Detainee's immediate family members (spouse or partner, parents, children, and siblings). Visits with other family members are expected to resume in

¹⁹ See Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020, sect. 5.

²⁰ See Registry Instruction on Video Visits, KSC-BD-34, 23 September 2020, sect. 8.

²¹ To date, full physical separation during in-person Counsel visits has been implemented based on medical advice to protect the health of Detainees and those with whom they interact. Physical separation means a glass window separating Counsel and Detainees during in-person Counsel visits, where Counsel and Detainees communicate through an audio connection. Although physically separated, both Counsel and Detainees may also look at documents simultaneously in real time via computer screens that have been placed in the legal consultation room.

August-September, if the assessment of the first phase is positive.²² Based on the advice of the Medical Officer, the vaccination of family members will not be required for the resumption of such visits. Additionally, video visits will continue to be facilitated with Close Relatives of Detainees as much as possible.²³

19. Based on medical advice, certain public health measures will likely still be in place in the Detention Facilities until more is known about viral transmission risks in society at the time of a visit. For example, visitors may be required to answer certain health screening questions before being allowed entry, as well as observe other public health measures such as the wearing of face masks, physical distancing, good hand hygiene, and the use of plexiglass dividers on meeting room tables.²⁴

20. Initially, the total number of visitors for all Detainees in Unit 4 will be limited to twenty persons per day. The Registry has actively engaged [REDACTED] to optimise this number so that all Detainees can receive a family visit as soon as possible after 15 July 2021.

21. The Registrar will continue to monitor the situation and engage with the Medical Officer to facilitate the easing of risk mitigation measures at the very earliest that health and safety allow. The approach described above remains under continuous review by the Medical Officer, and changes may still occur, particularly in light of any potential ramifications of the Delta variant of the novel coronavirus, which the Medical Officer is currently assessing. Should any change occur, the Registry will inform Detainees, their family members, and Counsel as soon as possible.

22. Detainees and their family members, as well as Counsel, have been informed of the updated roadmap described above and will continue to be informed of relevant developments.

²² The Registry is actively coordinating with the Host State authorities to ensure the most effective process for the issuance of visas by the Host State, in accordance with Article 37 of the Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands (15 February 2016).

²³ See Registry Instruction on Video Visits, KSC-BD-34, 23 September 2020, sect. 7.

²⁴ See Detention Management Unit Instruction on Security Requirements to Enter the Detention Facilities, KSC-BD-32, sect. 11.

IV. CLASSIFICATION

23. This filing is submitted as confidential in accordance with Rule 82(1)(b) and (3) of the Rules because it refers to internal operations of the Registry and [REDACTED]. A public redacted version will be submitted shortly.

Word count: 2175

A handwritten signature in cursive script that reads "Fidelma Donlon".

Dr Fidelma Donlon
Registrar

Thursday, 17 June 2021
At The Hague, the Netherlands