



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: 23 June 2021

Language: English

Classification: Public

**Order for the Submission of a Corrected Indictment and
for a Second Revised Calendar for the Remainder of the Pre-Trial Proceedings**

Specialist Prosecutor

Jack Smith

Counsel for Hysni Gucati

Jonathan Elystan Rees

Huw Bowden

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

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 11 December 2020, the Pre-Trial Judge confirmed in part the indictment submitted by the Specialist Prosecutor on 30 October 2020,² and ordered the Specialist Prosecutor's Office ("SPO") to submit a revised indictment, as confirmed ("Indictment").³

2. On 8 March 2021, the Pre-Trial Judge issued a decision on the Defence preliminary motions ("Decision on Preliminary Motions") finding, *inter alia*, that the Indictment set out with sufficient clarity and specificity the facts underpinning the charges and the crimes, including the modes of liability charged.⁴

3. 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

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

² KSC-BC-2020-07, F00063, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 30 October 2020, confidential, with Annexes 1 and 2, confidential.

³ KSC-BC-2020-07, F00074/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment*, 11 December 2020, public; F00075/A02, Specialist Prosecutor, *Redacted Indictment*, 14 December 2020, public.

⁴ KSC-BC-2020-07, F00113/RED, Defence for Mr Gucati, *Public Redacted Version of the Preliminary Motion Alleging Defects in the Form of the Indictment Pursuant to Rule 97(1)(b)*, 2 February 2021 (incorrectly dated 30 January 2021), public; F00116/RED, Defence for Mr Haradinaj, *Amended Filing with Public Redactions Preliminary Motion on the Issue of the Indictment Being Defective*, 31 March 2021 public; F00147, Pre-Trial Judge, *Decision on Defence Preliminary Motions*, 8 March 2021, public.

submission of the Defence Pre-Trial Briefs and a tentative date for the transmission of the case file (“Consolidated Calendar”).⁵

4. On 1 April 2021, further to Defence applications,⁶ the Pre-Trial Judge certified five issues for interlocutory appeal stemming from the Decision on Preliminary Motions.⁷

5. 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 2021.⁸ At the same time, the Parties indicated that they preferred to have an additional status conference after the submission of said Pre-Trial Briefs.⁹

6. On 9 June 2021, the Pre-Trial Judge issued an order for a revised calendar, ordering the Defence to submit their Pre-Trial Briefs by 22 June 2021, setting the date for a sixth status conference to 25 June 2021 and indicating as tentative date for the transmission of the case file to a future trial panel 2 July 2021 (“First Revised Calendar”).¹⁰

7. On 19 June 2021, the Defence for Nasim Haradinaj requested the extension of the time limit for the submission of the Pre-Trial Briefs to 12 July 2021 (“Request for Extension”).¹¹ On 21 June 2021, the Defence for Hysni Gucati joined the Request for

⁵ KSC-BC-2020-07, F00148, Pre-Trial Judge, *Consolidated Calendar for the Remainder of the Pre-Trial Proceedings*, 8 March 2021, public, para. 6(a)-(c).

⁶ KSC-BC-2020-07, F00151, Defence for Mr Gucati, *Application for Leave to Appeal Through Certification from Decision KSC-BC-2020-07/F00147 Pursuant to Article 45(2) and Rule 77(1)*, 15 March 2021, public; F00153, Defence for Mr Haradinaj, *Application for Leave to Appeal Through Certification from Decision KSC-BC-2020-07/F00147 Pursuant to Article 45(2) and Rule 77(1)*, 15 March 2021, public.

⁷ KSC-BC-2020-07, F00169, Pre-Trial Judge, *Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions*, 1 April 2021, public.

⁸ KSC-BC-2020-07, Transcript, 28 May 2021, public, pp. 331, 336-337, 340.

⁹ KSC-BC-2020-07, Transcript, 28 May 2021, public, pp. 347-348.

¹⁰ KSC-BC-2020-07, F00224, Pre-Trial Judge, *Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference (“First Revised Calendar”)*, 9 June 2021, public.

¹¹ KSC-BC-2020-07, F00241, Defence for Mr Haradinaj, *Defence Application to Vary the Consolidated Calendar (“Request for Extension”)*, 19 June 2021, public.

Extension.¹² On 21 June 2021, the SPO responded to the Request for Extension, indicating that it does not oppose it.¹³

8. On 23 June 2021, the Court of Appeals Panel rendered its decision on the Defence appeal against the Decision on Preliminary Motions and ordered the competent Panel to direct the SPO to file a corrected version of the Indictment in light of its instructions (“Decision on the Defence Appeals”).¹⁴

II. APPLICABLE LAW

9. 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.

10. 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.

¹² KSC-BC-2020-07, F00242, Defence for Mr Gucati, *Defence Application to Vary the Consolidated Calendar*, 21 June 2021, public.

¹³ KSC-BC-2020-07, F00243, Specialist Prosecutor, *Prosecution Response to Defence Application to Vary the Consolidated Calendar*, 21 June 2021, public.

¹⁴ KSC-BC-2020-07, IA004/F00007, Court of Appeals Panel, *Decision on the Defence Appeals Against Decision on Preliminary Motions* (“Decision on the Defence Appeals”), 23 June 2021, public.

III. DISCUSSION

A. TIME LIMIT FOR THE SUBMISSION OF THE CORRECTED INDICTMENT

11. The Pre-Trial Judge takes note of the order of the Court of Appeals Panel to direct the SPO to file a corrected version of the Indictment, in light of the following instructions: (a) further particulars as to the identity of the co-perpetrators and accomplices (at a minimum, by group, category or affiliation, and, when available, by name) should be included in the Indictment in conformity with the findings of the Court of Appeals Panel under Grounds 1-3; (b) further particulars as to the categories of incited and assisted persons should be included in paragraphs 41, 42, 43, 44, 45 and 46 of the Indictment in conformity with the findings of the Court of Appeals Panel under Grounds 1-3; (c) the formulation “and/or” in paragraphs 16, 26, 28, 30, 39 and 46 of the Indictment should be amended in conformity with the findings of the Court of Appeals Panel under Ground 4; and (d) the word “including” should be removed from paragraphs 12, 21 and 27 of the Indictment and the formulation of these paragraphs should be reviewed in conformity with the findings of the Court of Appeals Panel under Ground 5.¹⁵

12. The Pre-Trial Judge notes that the instructions of the Court of Appeals Panel as regards the corrected version of the Indictment concern: (i) the addition of further particulars as to the identity of the co-perpetrators and accomplices as well as to the categories of incited and assisted persons; and (ii) the amendment and/or removal of certain formulations, as specified. Given the specific instructions provided by the Court of Appeals Panel, the Pre-Trial Judge considers that such changes can be implemented by the SPO in a relatively short time period.

¹⁵ Decision on the Defence Appeals, para. 90.

13. In light of the foregoing, the Pre-Trial Judge orders the SPO to submit, by 5 July 2021, a corrected version of the Indictment, as per the instructions of the Decision on the Defence Appeals.

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

14. The Pre-Trial Judge recalls that in the First Revised Calendar due regard was given to the disclosures that have taken place since the issuance of the Consolidated Calendar.¹⁶ Furthermore, the Pre-Trial Judge took note of the disclosures stemming from Decision F00210 and subsequent decisions as well as of the possible receipt of any further material stemming from an outstanding third party request.¹⁷ Mindful of these considerations, but also assessing the expected impact of any outstanding disclosures, the Pre-Trial Judge found it appropriate to extend the time limit for the submission of the Defence Pre-Trial Briefs to 22 June 2021.¹⁸

15. The Pre-Trial Judge notes that the Request for Extension rehearses, in large part, submissions previously made by the Defence, which the Pre-Trial Judge has already taken in consideration when issuing the First Revised Calendar.¹⁹ The Pre-Trial Judge shall accordingly not entertain these arguments any further. The only novel submission advanced by the Defence concerns the recent leave to appeal granted by the Pre-Trial Judge (“Gucati Requests B-C Appeal”).²⁰ That being said, the Defence simply states that it may be unlikely that a decision on the Gucati Requests B-C Appeal

¹⁶ First Revised Calendar, para. 19.

¹⁷ First Revised Calendar, paras 19-20.

¹⁸ First Revised Calendar, paras 19-22.

¹⁹ Request for Extension, paras 46-73. The Defence for Mr Haradinaj expressly states that previous submissions are reiterated, *see* paras 46, 65, 70.

²⁰ Request for Extension, paras 74-76, referring to KSC-BC-2020-07, F00235, Pre-Trial Judge, *Decision on the Defence Applications for Leave to Appeal the Decision on the Gucati Requests B-C*, 15 June 2021, confidential.

would be rendered prior to the deadline for submitting the Pre-Trial Briefs and it does not substantiate why and how the finalisation of such briefs would be impacted by an appellate decision on this matter.²¹ The Pre-Trial Judge is accordingly not persuaded that the arguments advanced by the Defence warrant an extension of the 22 June 2021 time-limit.

16. That being said, in view of the Decision on the Defence Appeals and the present order for the SPO to submit a corrected version of the Indictment, the Pre-Trial Judge considers it appropriate to grant the Defence a further extension for the filing of their Pre-Trial Briefs so as to review the corrected version of the Indictment, and adjust, where necessary, the arguments in their briefs. Given that, as per the instructions of the Court of Appeals Panel, the corrected version of the Indictment ought to contain further particulars and the amendment and/or removal of formulations in order to ensure more specificity, the Pre-Trial Judge considers that these changes would in fact facilitate the Defence preparation of their briefs and not constitute an impediment to or a difficulty in their finalisation.

17. In light of the foregoing, the Pre-Trial Judge finds it appropriate to extend the time limit for the submission of the Defence Pre-Trial Briefs to 12 July 2021.

C. SPECIFIC SUBMISSIONS IN THE DEFENCE PRE-TRIAL BRIEFS

18. The Pre-Trial Judge reminds the Defence of his order in the First Revised Calendar 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.²²

²¹ Request for Extension, paras 74-76.

²² First Revised Calendar, paras 24-26.

D. STATUS CONFERENCE

19. The Pre-Trial Judge recalls his order in the First Revised Calendar for a sixth status conference to be held on 25 June 2021. In view of the Decision on the Defence Appeals and the revised time limits herein, the Pre-Trial Judge postpones the sixth status conference to Wednesday, 14 July 2021, 15:00 hours.

20. 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 the sixth status conference 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 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.

21. 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 requests: any outstanding Defence requests in view of the corrected version of the Indictment;

- (5) Defence investigations: whether the Defence is in a position to provide updates on the status of their investigations;
- (6) Transmission of the case file and readiness for trial:
- a. Whether the Parties foresee any significant impediment to the transmission of the case file on 16 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

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

- a. **ORDERS** the SPO to file, by **Monday, 5 July 2021**, a corrected version of the Indictment, as per the instructions of the Decision on the Defence Appeals;
- b. **ORDERS** the Defence to file, by **Monday, 12 July 2021**, if they so wish, their Pre-Trial Briefs as set out in Rule 95(5) of the Rules;
- c. **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 of the First Revised Calendar;

- d. **CANCELS** the hearing scheduled for Friday, 25 June 2021, at 11:00 hours and **DECIDES** to convene a hearing in the presence of the SPO and the Defence, on **Wednesday, 14 July 2021, at 15:00 hours**; and
- e. **SETS** the date for the transmission of the case file under Rule 98(1) of the Rules to **Friday, 16 July 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 23 June 2021

At The Hague, the Netherlands.