



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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 July 2021

Language: English

Classification: Confidential

Decision on SPO Request for Disclosure of Summary

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(13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 95(2)(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 July 2021, the Specialist Prosecutor's Office ("SPO") filed a notification in relation to potential witnesses and a request to provide a summary of potentially exculpatory information ("Request").² The confidential and *ex parte* version of the filing contains an annex with the proposed summary.³

2. On 8 July 2021, further to an order for expedited responses,⁴ the Defence for Hysni Gucati ("Mr Gucati") and the Defence for Nasim Haradinaj ("Mr Haradinaj") (collectively, the "Defence") filed their respective responses.⁵

II. SUBMISSIONS

3. The SPO notifies the Pre-Trial Judge of further disclosures under Rules 102(1)(b) and 103 of the Rules regarding witness contacts.⁶ Furthermore, the SPO requests to provide the Defence a summary of a witness's potentially exculpatory information

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

² KSC-BC-2020-07, F00252/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution Notification and Request to Provide Summary'* ("Request"), 5 July 2021, confidential.

³ KSC-BC-2020-07, F00252, Specialist Prosecutor, *Prosecution Notification and Request to Provide Summary*, 5 July 2021, confidential and *ex parte*, with Annex 1, confidential and *ex parte*.

⁴ KSC-BC-2020-07, F00253, Pre-Trial Judge, *Order for Expedited Responses*, 6 July 2021, confidential.

⁵ KSC-BC-2020-07, F00255, Defence for Hysni Gucati, *Defence Response to "Confidential Redacted Version of 'Prosecution Notification and Request to Provide Summary'"* ("Gucati Response"), 8 July 2021, confidential; F00256, Defence for Nasim Haradinaj, *Defence Response to 'Confidential Redacted Version of 'Prosecution Notification and Request to Provide Summary' – KSC-BC-2020-07, F00252/RED* ("Haradinaj Response"), 8 July 2021, confidential.

⁶ Request, para. 1, referring to Disclosure Packages 37 and 38.

relevant to this case.⁷ The SPO submits that no undue prejudice would be caused, as: (i) the summary would provide all potentially exculpatory information; and (ii) the particular witness only plays a small role in this case – he is not being called as a witness and the evidence of his security concerns is cumulative in light of all other official notes disclosed.⁸

4. The Defence responds that the material should be disclosed in full and that the SPO has provided no justification for nondisclosure of the information or the submission of a summary of the information.⁹ The Defence for Mr Haradinaj further submits that, while the SPO have not disclosed upon what date the witness confirmed his position, it is assumed that it was some time ago, and therefore, the SPO have failed to disclose immediately the information.¹⁰ The Defence for Mr Haradinaj requests that, if only the summary is disclosed, the Pre-Trial Judge order that any such evidence cannot be relied upon by the SPO at trial and any charge that is supported by such evidence must be removed from the indictment.¹¹

III. APPLICABLE LAW

5. Pursuant to Rule 95(2)(b) of the Rules, the Pre-Trial Judge shall take any measures to ensure timely disclosure.

⁷ Request, paras 5, 7.

⁸ Request, para. 5.

⁹ Gucati Response, para. 1; Haradinaj Response, paras 17-18.

¹⁰ Haradinaj Response, paras 10-13.

¹¹ Haradinaj Response, paras 20-22.

IV. DISCUSSION

6. The Pre-Trial Judge recalls at the outset that, further to the SPO's undertaking,¹² the deadline to complete all disclosure under Rule 102(1)(b) and to disclose any Rule 103 material in the SPO's possession was set to 9 April 2021.¹³ The Pre-Trial Judge reminds the SPO of its disclosure obligations and cautions against any further late disclosure.

7. As regards the proposed summary, the Pre-Trial Judge is satisfied that it contains the potentially exculpatory information the witness provided. As a result and taking in consideration the limited role of the witness's information in the present case, the Pre-Trial Judge considers that the disclosure of the proposed summary sufficiently informs the Defence under Rule 103 of the Rules. This finding is without prejudice to any further order by a future trial panel as a result of successful admissibility objections or a reassessment of the witness's role at trial.

V. DISPOSITION

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

GRANTS the Request and **ORDERS** the SPO to disclose the proposed summary by **Monday, 12 July 2021, 12:00 noon.**



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 9 July 2021

At The Hague, the Netherlands.

¹² KSC-BC-2020-07, F00140, Specialist Prosecutor, *Prosecution Submissions for Second Status Conference*, 23 February 2021, public, para. 5.

¹³ 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)(viii).