



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 18 November 2021

Language: English

Classification: Confidential

**Prosecution response to 'Application to Call Witnesses via Video Link', KSC-BC-
2020-07/F00436**

Specialist Prosecutor's Office

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Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

I. SUBMISSIONS

1. The Defence request to call witnesses via video-conference¹ does not provide the names of the witnesses who are the subject of the request and it is not clear whether the references to Witnesses 1 and 2 therein correspond to the persons listed as the first and second witnesses in previous Defence submissions.² This means that the Specialist Prosecutor's Office ('SPO') is not able to provide any informed response in relation to the witness referred to as 'Witness 1' in the Defence Request, whom the Defence requests to examine via video-conference from Pristina.

2. While the Defence does not provide the name of the witness referred to as 'Witness 2' in the Defence Request, the fact that video-conference for this witness is requested from Queensland, Australia, indicates that this might be Witness 18.³ The SPO has requested the Trial Panel to reject the admission of Witness 18's proposed expert report into evidence and not to authorise the testimony, as an expert or otherwise, of this witness.⁴ Should the Trial Panel grant the latter request, the Defence Request would be moot to the extent it refers to Witness 18.

3. Should the Trial Panel authorise the testimony of Witness 18, the SPO would not oppose a request to hear his evidence via video-conference as long as the relevant technology would allow the SPO to show documents to the witness, including some classified as confidential, and allow for part of the proceedings to be held in private session, if necessary. The latter would be consistent with the requirements of Rule

¹ Application to Call Witnesses via Video Link, KSC-BC-2020-07/F00436, 15 November 2021, Confidential ('Defence Request').

² Annex 1 to Defence Pre-Trial Brief on behalf of Hysni Gucati: List of Potential Witnesses the Defence Intends to Call [...], KSC-BC-2020-07/F00258/A01, 12 July 2021, Confidential; Annex 1 to Defence Pre-Trial Brief on behalf of Nasim Haradinaj: List of Potential Witnesses the Defence Intends to Call [...], KSC-BC-2020-07/F00260/A01, 12 July 2021, Confidential; Submission on Witnesses, KSC-BC-2020-07/F00289, 27 August 2021, Confidential; Annex 1 to Written Submissions for the Trial Preparation Conference and Related Matters, KSC-BC-2020-07/F00288/A01, 27 August 2021, Confidential.

³ See KSC-BC-2020-07, 5 November 2021 p.1918, Ins.11-14.

⁴ Prosecution challenge to proposed Defence expert Witness 18 and report, KSC-BC-2020-07/F00438, 16 November 2021, Confidential.

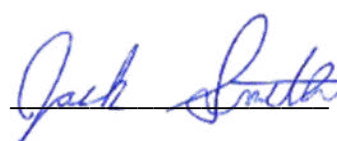
144(1) of the Rules,⁵ which provides that testimony via video-conference may only be authorised when such technology ‘permits the witness to be properly examined.’

4. Accordingly, the SPO asks that the Trial Panel defer any decision in relation to the Defence Request until: (i) the identity of the two witnesses referred to therein is made known; (ii) one or both witnesses are authorised to testify before the Trial Panel; (iii) the Registry confirms that all necessary requirements for testimony via video-conference, including the showing of documents and the ability to hear parts of testimony in private session, can be arranged; and (iv) the SPO is able to meaningfully respond to a request to hear the evidence of one or both witnesses via video-conference.

II. CONFIDENTIALITY

5. Pursuant to Rule 82(4), this filing is confidential in line with the classification of the Defence Request. The SPO would not oppose the reclassification of the filing to public should the Trial Panel deem it appropriate to do so.

Word count: 568



Jack Smith

Specialist Prosecutor

Thursday, 18 November 2021

At The Hague, the Netherlands

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’). All references to ‘Rule’ or ‘Rules’ herein refer to the Rules, unless otherwise specified.