



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

Registrar: Fidelma Donlon

Date: 18 November 2021

Language: English

Classification: Confidential

Order in relation to the Gucati Application to Call Witnesses via Video Link

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Article 40(2) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 116(1) and 144 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 15 November 2021, the Defence for Hysni Gucati (“Defence”) filed an application to call two unidentified witnesses via video link (“Application”).¹
2. On 18 November 2021, the Specialist Prosecutor’s Office (“SPO”) responded to the Application (“Response”).²

II. SUBMISSIONS

3. In the Application, the Defence notifies the Panel and the Registry that, in the event that it would decide to call a case, it requests that the testimony for at least two of its witnesses (“Witnesses”), if called, be provided via video-link.³ The Defence then provides some general information in relation to the Witnesses.⁴ The Defence does not, however, identify either witness by name.

4. The SPO submits that, since the Defence does not provide the names of the Witnesses, it is unable to respond in an informed manner to the Application.⁵ The SPO therefore asks the Panel to defer its decision until: (i) the Witnesses’ identity is known; (ii) one or both Witnesses are authorised to testify; (iii) the Registry confirms that all

¹ F00436, Gucati Defence, *Application to Call Witnesses via Video Link* (“Application”), 15 November 2021, confidential.

² F00441, Specialist Prosecutor, *Prosecution Response to ‘Application to Call Witnesses via Video Link’*, KSC-BC-2020-07/F00436 (“Response”), 18 November 2021, confidential.

³ Application, paras 1-3, 7.

⁴ Application, para. 5.

⁵ Response, para. 1.

necessary requirements for video-link testimony can be arranged; and (iv) the SPO is able to meaningfully respond to the Application.⁶

III. APPLICABLE LAW

5. Pursuant to Article 40(2) of the Law and Rule 116(1) of the Rules, the Panel shall take all measures necessary to facilitate the fair and expeditious conduct of the trial proceedings.

6. Pursuant to Rule 144 of the Rules, the Panel may order that testimony be received via video-conference, provided that such technology permits the witness to be properly examined by the Parties and the Panel. The Registrar shall ensure the efficient and expeditious implementation of any such order.

7. Pursuant to the Panel's order on the conduct of proceedings ("Order on Conduct of Proceedings"),⁷ where the calling Party intends to call a witness via video-conference pursuant to Rule 144 of the Rules, it shall apply to the Panel at least three weeks in advance. To facilitate the Panel's determination of the application, the presenting Party shall provide the Registrar and the Panel with the information required by the Registry Practice Direction on Video Links ("Practice Direction on Video Links").

8. Article 3(1) of the Practice Direction on Video Links provides that:

To ensure the efficient preparation and organization of the Video Link, the Party requesting a Video Link shall, prior to or at the time of the request, inform the Registrar, in writing of the following: a. the envisaged date or date-range; b. the expected duration; c. the country details, where applicable; d. whether protective measures have been ordered, requested or will be requested under Rule 80 of the Rules in relation to a witness due to testify via Video Link, and whether such witness has any special needs (e.g. health issues, presence of a support person near or in the Transmission Room); e. the language of the witness; and f. any other information that may facilitate the preparation of the Video Link.⁸

⁶ Response, para. 4.

⁷ F00314/A01, Panel, *Annex to Order on the Conduct of Proceedings* ("Order on Conduct of Proceedings"), 17 September 2021, para. 57.

⁸ [KSC-BD-23/COR, Registry Practice Direction on Video Links](#).

IV. DISCUSSION

9. At the outset, the Panel notes that it is mindful that: (i) the Defence motion to dismiss charges pursuant to Rules 130 of the Rules (“Motion to Dismiss”) is currently pending;⁹ (ii) pursuant to Rule 119(1) of the Rules, the Defence is entitled to wait until a decision on the Motion to Dismiss is issued before deciding whether to present a case and which witness(es) to call as part of that case; (iii) in the event the Panel does not dismiss all charges pursuant to Rule 130 of the Rules, it has ordered the Defence to file its list of witnesses pursuant to Rule 119(2) of the Rules by 29 November 2021 (“Witness List”).¹⁰

10. The Panel further observes that, by filing the Application on 15 November 2021, *i.e.* three weeks before the tentative date for the commencement of the Defence case on 6 December 2021,¹¹ the Defence complies with the Order on Conduct of Proceedings. Similarly, by providing the envisaged date-range and expected duration of the Witnesses’ testimonies, as well as their country details, languages and the information that none of the Witnesses requires protective measures,¹² the Defence provides the information requested by the Practice Direction on Video Links.¹³

11. However, insofar as the Application seeks permission to call two of its prospective witnesses by video-link, the Defence must identify the witnesses in relation to whom its request pertains. Without such information, the opposing party (the SPO) is not in a position to agree or object to the Application. Nor will the Panel be in a position to decide upon it if and when the Defence gives notice of its intention to call either or both of these Witnesses.

⁹ F00439, Gucati Defence, *Motion to Dismiss Pursuant to Rule 130*, 17 November 2021, confidential.

¹⁰ F00428, Panel, *Scheduling Order for Work Plan and Time Limits for the Next Steps in the Proceedings* (“Scheduling Order”), 9 November 2021, para. 17(a).

¹¹ Scheduling Order, para. 17(c).

¹² Application, para. 5.

¹³ Application, para. 5. *See also* Order on Conduct of Proceedings, para. 57; Article 3(1) of the Practice Direction on Video Links.

12. Accordingly, in order to ensure expeditious proceedings in the event that: (i) the Panel does not dismiss all charges pursuant to Rule 130 of the Rules, and (ii) the Defence decides to call a case, the Panel orders the Defence to identify the Witnesses referred to in its Application upon providing its Witness List.

V. DISPOSITION

13. For these reasons, should the Panel reject the Motion to Dismiss, in whole or in part, and should the Defence decide to present a case, the Panel:

ORDERS the Defence to disclose to the Panel and to the other Parties the identities of the Witnesses upon providing its Witness List by **29 November 2021**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 18 November 2021

At The Hague, the Netherlands