

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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 13 December 2021

Language: English

Classification: **Confidential**

**Defence Application to Adjourn Trial Proceedings Pursuant to Rule 123 and
Application for Extension of Time**

Specialist Prosecutor

Jack Smith

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

Counsel for Hysni Gucati

Jonathan Elystan Rees QC

Huw Bowden

I. INTRODUCTION

1. On 3 December 2021, Leading Counsel, Mr. Toby Cadman was diagnosed with COVID 19.
2. On 4 December 2021, the young daughter of Mr. Buckley (Co-Counsel) was diagnosed with Covid 19. Mr. Buckley was therefore required to isolate at this point.
3. On 6 December 2021, both Mr. Cadman and Mr. Buckley appeared before the Court by way of video-link.
4. On 6 December 2021, Mr. Jonathan Worboys (Co-Counsel) who was only appointed to the team in October 2021 and instructed on a limited basis, appeared before the Trial Panel in person.
5. From 7 December 2021 onwards, Mr. Cadman's health steadily declined and he has been unable to take any further part in proceedings.
6. On 8 December 2021 Mr. Buckley's wife was diagnosed with COVID-19.
7. After 8 December 2021 Mr. Cadman's health declined to such an extent that it remains unclear as to whether he will need emergency hospital admission. He has further been advised by his physician not to work; and could not in any event.
8. Mr Buckley is currently awaiting the results of a PCR test to ascertain whether he is able to travel.
9. Throughout the course of week 6 – 10 December, Mr. Worboys worked with the Trial Panel to ensure that the Gucati Defence could proceed, notwithstanding the

difficulties this presented and with the good faith intention of trying to ensure that the Trial Panel's stated objective of finishing the case in by 17 January 2022 could be met.

II. SUBMISSIONS

10. In view of the deteriorating health of Mr Cadman generally and since Friday 10 December 2021 especially, the Defence applies to adjourn the presentation of the Haradinaj Defence until January 2022 in accordance with Rule 123 of the Rules of Procedure and Evidence.
11. The Trial Panel is aware of the current position in respect of the health of the Haradinaj Defence team and the challenges they have faced.
12. Mr. Worboys was only appointed relatively recently, and only ever instructed on the basis of having a limited and discrete role in this case. He has now been thrust into the position of lead and effectively sole counsel when he was not – and has never been – instructed on this basis, nor had a deep involvement in this case.
13. Forcing Mr. Worboys to continue in these circumstances is resulting in material prejudice to Mr. Haradinaj at a key time, namely the presentation his Defence.
14. Mr. Cadman is unable to take any further part in proceedings until January of 2022 and it is still possible that he will need emergency hospital treatment. Thus far, Mr Cadman has been leading the team and client relationship.

15. Further, it remains unclear as to whether Mr. Buckley will be able to travel pending his PCR result, and the health of his family.

16. With the absence of two senior members of the team, there is material prejudice to Mr. Haradinaj if Mr. Worboys is forced to continue alone at this important stage and in the presentation of Mr Haradinaj's Defence.

17. This matter was discussed at length with Mr. Worboys over the weekend, as per the initial email sent for the attention of the Trial Panel, and the position is re-affirmed that:

"In our professional opinion there will be a material adverse impact on Mr Haradinaj's ability to present a Defence and have effective representation if Mr Worboys is forced to proceed alone next week, as has been the case this week. Among other matters, in the absence of Mr Cadman, Mr Worboys is not able to take instructions properly and / or comply with Panel deadlines, which will clearly impact Mr Haradinaj's Defence. The problems are compounded by the fact that I cannot be present at the opening of the case due to Covid-19 restrictions."

18. Mr. Worboys is particularly concerned that given his late and limited instruction in the case thus far, he cannot provide Mr Haradinaj with effective representation and thus that Mr Haradinaj cannot receive a fair trial. As explained above, Mr. Worboys has, in good faith, progressed matters last week. However, the position is different when it comes to the presentation of Mr. Haradinaj's Defence, especially when Mr. Cadman's health is so poor and has deteriorated since Court on Friday 10 December 2021. Mr. Worboys has not been involved in key prior decisions as to the management of the Defence and / or is unable to take instructions or provide advice

properly at this late stage. He has felt compelled to bring this information to the Trial Panel's attention, in the interests of justice.

19. In addition, as much as Mr. Buckley has been able to communicate electronically during the Court hearing over the past week, it must be noted that last week was the Co-Defendant's case, and therefore Mr. Haradinaj's team involvement at that stage was minimal.
20. It is simply unworkable to expect Examination-in-Chief and any Re-Examination, and further, any oral submissions that may be required, to be conducted and discussed through the use of email and/or instant message.
21. Further, the position regarding the COVID-19 pandemic is well known, with numbers spiralling out of control, with a new virulent strain quickly becoming dominant, (almost 60,000 new cases in the UK on 12 December alone) resulting in further restrictions being enforced in the UK and the Netherlands; the UK now having implemented a further 'work from home' where able recommendations. This presents additional practical complications that the Defence team must deal with at the last minute and are compounding the challenges that are outlined above.
22. The Defence team are well aware of the pressures on the Court in terms of the timetable, and have consistently made every effort possible to ensure that the trial remains 'on track', including making as many accommodations as possible in terms of the amount of evidence to be submitted, the number of witnesses, and the time taken to present those witnesses.

23. However, it is essential that Mr. Haradinaj receives effective representation in the presentation of his Defence. Mr. Worboys has stated his professional opinion and this has now been brought to the attention of the Panel. If the proceedings are not adjourned, it is submitted that Mr. Haradinaj will not be in a position to receive a fair trial.
24. Further, in accordance with Rule 76 and / or the Panel's general discretion, the Defence for Mr. Haradinaj applies for an extension of time to file a witness statement of Mr. Haradinaj. Because Mr. Haradinaj has been in quarantine until recently and because key team members have been absent due to Covid-19, further time is required so that Mr. Haradinaj has an opportunity to put forward his version of events.

Word Count: 1,225 words



Toby Cadman

Specialist Counsel



Carl Buckley

Specialist Co-Counsel