



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: **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: 8 March 2022

Language: English

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Order Varying Time Limit to Respond to F00568

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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 9(5)(a) and 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 7 March 2022, the Specialist Prosecutor’s Office (“SPO”) requested the Panel to order the Defence for Hysni Gucati (“Gucati Defence”) and the Defence for Nasim Haradinaj (“Haradinaj Defence”) to disclose any further evidence they seek to be considered for sentencing by 16:00 on Friday, 11 March 2022 (“SPO Request”, “F00568”).¹

II. APPLICABLE LAW

2. Pursuant to Rule 76 of the Rules, any response to a motion shall be filed within ten (10) days of the motion and any reply shall be filed within five (5) days of the response.

3. Pursuant to Rule 9(5)(a) of the Rules, the Panel may *proprio motu* reduce any time limit prescribed by the Rules.

III. DISCUSSION

4. The Panel recalls that, on 3 February 2022, it stated that, if any conviction is entered, it would consider imposing a sentence together with the pronouncement of the Trial Judgment rather than apply the procedure set out in Rules 162 and 164 of the Rules.² For this reason, the Panel ordered the Parties to address the following matters in their

¹ F00568, Specialist Prosecutor, *Prosecution Request for Disclosure of Additional Sentencing Evidence* (“SPO Request”, “F00568”), 7 March 2022.

² F00553, Panel, *Decision on the Closing of the Evidentiary Proceedings and on Submissions Pursuant to Rules 134(b), (d) and 159(6) of the Rules*, 3 February 2022, para. 17.

Final Trial Briefs and closing statements: (i) the factors relevant to the determination of sentence; (ii) the gravity of the alleged offences, and any mitigating and/or aggravating circumstances to be taken in consideration as set out in Rule 163(1) of the Rules; (iii) any proposed sentence to be imposed pursuant to Rule 163(4) of the Rules, in particular in light of any domestic or international sentencing practice that the Parties consider relevant; (iv) the relevance, if any, of Rule 165 of the Rules; (v) any specific reasons why the Panel should apply the procedure under Rules 162 and 164 of the Rules; and (vi) should the Panel decide, after receiving these submissions, that the procedure under Rules 162 and 164 of the Rules shall apply: (1) the difference between “any relevant information” that may be submitted under Rule 162(1) of the Rules and “additional evidence” that the Panel may hear under Rule 162(5) of the Rules; and (2) what additional evidence, if any, may the Parties wish to call and why such evidence was not called during the trial.³

5. The Panel notes that the Gucati Defence indicated in its Final Trial Brief that, “in the event of a finding of guilty in relation to any or all of the counts, it would wish to adduce additional evidence from family members, local politicians, community leaders and teachers in relation to” a number of issues.⁴ The Panel also notes that the Haradinaj Defence did not address sentencing matters in its Final Trial Brief. The Panel understands from this that the Haradinaj Defence is not seeking to adduce additional evidence in respect of this matter.

6. The SPO submits that it should have notice of any additional evidence proposed for sentencing in order to set out its full position in closing statements.⁵

7. The Panel observes that the Parties are expected to present their closing statements on sentencing on 17 and 18 March 2022. The Panel finds that a decision on the

³ F00553, Panel, *Decision on the Closing of the Evidentiary Proceedings and on Submissions Pursuant to Rules 134(b), (d) and 159(6) of the Rules*, 3 February 2022, para. 17.

⁴ F00567, Panel, *Final Trial Brief on behalf of Hysni Gucati Specialist*, 3 March 2022, para. 170.

⁵ SPO Request, para. 3.

disclosure of additional evidence to be considered for sentencing needs to be issued without delay, to allow the Parties to set out their position in full on 17 and 18 March 2022.

8. The Panel therefore finds it appropriate to reduce the time limit to respond to F00568. The Panel accordingly orders the Gucati Defence to respond to F00568, if it so wishes, by Wednesday, 9 March 2022, noon.

9. For the same reasons, the Panel will not entertain any reply.

IV. DISPOSITION

10. For these reasons, the Panel:

- a. **ORDERS** the Gucati Defence to respond to F00568, if it so wishes, by **Wednesday, 9 March 2022, noon**; and
- b. **INFORMS** the SPO that no reply to the response, if any, will be entertained.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 8 March 2022

At The Hague, the Netherlands