



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

In: KSC-CA-2022-01
Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Court of Appeals Panel
Judge Michèle Picard, Presiding Judge
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Party: Acting Specialist Prosecutor

Date: 14 December 2022

Language: English

Classification: Public

Public Redacted Version of
Prosecution Response to Haradinaj Request to Release Video Recordings

Specialist Prosecutor's Office

Alex Whiting

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

I. INTRODUCTION

1. The Request¹ is the latest in a series of failed attempts to justify further disclosure without any factual basis, this time not only well after the closing of the case but also after the deadline for the submission of additional evidence on appeal and the appeal hearing. The relief sought also entirely derives from previous litigation, such that the Haradinaj Defence seeks to revisit previously settled matters. The relief sought should be rejected, and judicial intervention is warranted at this point to stop what has become an ever-spiralling series of unjustified disclosure requests.

II. SUBMISSIONS

2. Both parts of the relief sought – namely to disclose any further videos related to the deliveries of the Batches and all SPO contacts with a named person who is not an SPO witness ('Non-Witness')² - are effectively requests to reconsider prior disclosure rulings in this case.

3. The SPO confirmed long ago that it does not possess any disclosable video footage of the kind requested by the Haradinaj Defence.³ This should have ended the matter, as there is no basis for this request. When the SPO did possess videos from 7-25 September 2020 related to the KLA War Veterans Association and not falling under Rule 102(1) or Rule 103, it noticed them under Rule 102(3) and their disclosure was litigated.⁴ The Haradinaj Defence never requested further videos of this kind after this litigation, it never

¹ Public Redacted Version of Haradinaj Request for Order to the SPO to Release Video Recordings, KSC-CA-2022-01/F00098/RED, 11 December 2022 (with two annexes; notified 12 December 2022) ('Request').

² Request, KSC-CA-2022-01/F00098/RED, paras 23-24.

³ *As acknowledged in* Request, KSC-CA-2022-01/F00098/RED, paras 15-19.

⁴ Public Redacted Version of Decision on Prosecution Requests and Challenges Pursuant to F00172, KSC-BC-2020-07/F00210/RED, 26 May 2021 (redacted version notified 15 July 2021), paras 32-41.

sought leave to appeal any rulings made on noticed videos, and it did not challenge these specific findings in its appeal.

4. As for SPO contacts with the Non-Witness, the SPO already confirmed that it has no contacts with this person that are relevant to the case or fall under Rule 103. The Appeals Panel previously determined that no additional disclosure was warranted following this exchange,⁵ and the Request presents no arguments justifying a different assessment.

5. The only basis the Haradinaj Defence attempts to advance to justify a different result from previous failed requests is an 11 November 2022 Defence interview with [REDACTED].⁶ His latest interview does not mention the Non-Witness at all, but he claims the SPO played videos in his 2021 interview and made accusations against him.⁷

6. These claims are completely false. The full, unredacted transcript of this interview was disclosed to the Trial Panel when its redactions were requested,⁸ along with the official note of the interview.⁹ The transcript is clear that no videos were played at any point, including in any of the passages for which redactions were approved, and therefore there is no basis for the Haradinaj defence to seek this relief from the panel.¹⁰

⁵ Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations, KSC-CA-2022-01/F00083, 7 November 2022, Confidential ('7 November 2022 Rule 103 Decision'), para.27.

⁶ Annex B to the Request, KSC-CA-2022-01/F00098/A02. No reason is provided as to why the interview is dated 11 November 2022 (Request, para.12, fn.9) but it appears to have only been signed by [REDACTED] on 8 December 2022 (Annex B to the Request).

⁷ Annex B to the Request, KSC-CA-2022-01/F00098/A02, paras 9-17.

⁸ Annex 3 to Prosecution Report Related to Rule 102(3) Notice Item 201, KSC-BC-2020-07/F00433/A03, 12 November 2021 (later disclosed as 104127-TR-ET Part 1 RED). *Contra* Request, KSC-CA-2022-01/F00098/RED, para.29.

⁹ KSC-BC-2020-07/F00433/A01.

¹⁰ For this approval, *see* Public Redacted Version of Decision on the Prosecution Request Related to Rule 102(3) Notice Item 201, KSC-BC-2020-07/F00435/RED, 15 November 2021 (redacted version notified 16 November 2021).

7. [REDACTED],¹¹ [REDACTED].¹² This witness has transparent incentives to distort what happened during his 2021 SPO interview for Mr Haradinaj's benefit. No differently than his baseless claims which prompted the SPO's re-interview in 2021,¹³ these latest claims made to the Haradinaj Defence are simply invented.

8. This November 2022 interview is not justification to revisit previous disclosure litigation in any aspect. That the Haradinaj Defence advances this interview now for such purposes reveals that its investigative efforts are late to the point of being wasteful. It is simply not true that the Defence did not have enough information to investigate [REDACTED]'s account during trial¹⁴ – they were aware of his name, had a full transcript of his 2021 interview with judicially approved redactions, and asked questions about him during trial.¹⁵ The Appeals Panel has found that the Defence did not bother to follow-up and investigate this witness's allegations following disclosure at trial,¹⁶ and the Haradinaj Defence's manifestly belated efforts further confirm the correctness of the Appeals Panel's findings.

III. CLASSIFICATION

9. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para.878. This 2021 interview was a counterbalancing measure ordered by the Trial Panel. Public Redacted Version of Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice, KSC-BC-2020-07/F00413/RED, 3 November 2021 (redacted version notified 16 December 2021), paras 75-78 (*following* KSC-BC-2020-07/F00389, para. 13).

¹⁴ *Contra* Request, KSC-CA-2022-01/F00098/RED, para.27.

¹⁵ *See* Transcript of Hearing, 15 December 2021, T.2627-33.

¹⁶ Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing, KSC-CA-2022-01/F00094, 28 November 2022, Confidential ('28 November 2022 Disclosure Decision'), para.22.

IV. RELIEF REQUESTED

10. For the foregoing reasons, the Request should be denied.

11. Additionally, the SPO has a further request in light of the repeated meritless disclosure applications continuing to pervade these appeals.

12. The Defence are unambiguously past the deadline set by the Appeals Panel to submit additional evidence on appeal.¹⁷ The appeals hearing has concluded, and the Appeals Panel is deliberating its judgment.

13. The Defence's campaign of disclosure requests on appeal persists in the face of having these requests rejected at¹⁸ each¹⁹ and²⁰ every²¹ turn.²² These requests needlessly drain judicial resources and distract from the resolution of the appeals in this case.

14. At trial, Rule 136 sets clear limits on the Trial Panel receiving further submissions or hearing further evidence after the case closes.²³ The SPO requests the Appeals Panel to adopt an analogous regime in this case until its judgment. This regime would discourage frivolous litigation, effectively requiring leave to make further submissions which –

¹⁷ See Decision on Defence Requests for Extension of Time to File Potential Motions Pursuant to Rule 181, KSC-CA-2022-01/F00090, 9 November 2022, Confidential.

¹⁸ Decision on Gucati Request for Full Disclosure of the Knowledge of the Court of Appeals Panel Regarding Defence Investigations, KSC-CA-2022-01/F00096, 30 November 2021, Confidential.

¹⁹ 28 November 2022 Disclosure Decision, KSC-CA-2022-01/F00094.

²⁰ 7 November 2022 Rule 103 Decision, KSC-CA-2022-01/F00083.

²¹ Decision on Defence Applications for Reconsideration of "Decision on Defence Requests to Amend the Notices of Appeal Pursuant to Rule 176(3) of the Rules", KSC-CA-2022-01/F00082, 3 November 2022, Confidential.

²² Decision on Defence Requests to Amend the Notices of Appeal Pursuant to Rule 176(3) of the Rules, KSC-CA-2022-01/F00064, 13 October 2022, Confidential.

²³ Rule 136(2)-(3) ('At this stage, no further submissions may be made to the Panel, unless in exceptional circumstances and on showing of good cause. [...] At this stage, the Panel may not receive further submissions or hear evidence, unless exceptional circumstances require otherwise.').

absent exceptional circumstances - could be dismissed without considering the substance of the contemplated request.

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Alex Whiting

Acting Specialist Prosecutor

Wednesday, 14 December 2022

At The Hague, the Netherlands.