

In: KSC-CA-2022-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: A Panel of the Court of Appeals Chamber

Judge Michèle Picard

Judge Kai Ambos

Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

Date: 18 January 2023

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Public Redacted Version of Defence Reply to SPO Consolidated Response to

Defence Rule 103 Requests and Related Reconsideration Requests

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I. INTRODUCTION

1. The Defence for Nasim Haradinaj (“Haradinaj Defence”) joins and adopts the application by the Defence for Hysni Gucati (“Gucati Submission”)¹ in its reply to the ‘Consolidated Response’ of the Specialist Prosecutor’s Office (“SPO”).²
2. As per the Gucati submission, the Haradinaj Defence rejects the Consolidated Response in its entirety.³
3. Further, given the joining of the aforesaid submission, the fact that this reply may not specifically address all individual issues within the ‘Consolidated Response’ ought not to be read as acceptance by the Haradinaj Defence.

II. SUBMISSIONS

4. The Haradinaj Defence rejects the submissions of the SPO and adopts and reaffirms the position as set out in the Gucati Submission without reservation as those matters affect both Appellants on the same grounds
5. The Response is in essence, a further example of the SPO adopting a position that it is not bound by ordinary rules of disclosure, and further, not bound by

¹ KSC-CA-2022-01/F00078

² LSC-CA-2022-01/F00076

³ KSC-CA-2022-01/F00078 at paragraph 1

either that jurisprudence that has gone before it, or those international instruments to which it is bound, including, but not necessarily limited to, the European Convention for the Protection of Human Rights and Fundamental Freedoms, as guaranteed under the Constitution.

6. At the risk of repeating submissions contained within numerous filings, the SPO is not the arbiter of what should and should not be disclosed, nor is the SPO the arbiter of what is relevant or material. It certainly is not the final authority in determining whether matters are material to the defence and whether, and at what stage in the proceedings, notice should be given.
7. The SPO has been reminded of this point on a number of occasions, and yet, it seems content to ignore its obligations, and continue with what can only be considered a cavalier approach.
8. Noting in particular, that which has been outlined in the Gucati Submission at paragraph 3 in that *“The SPO did not notify the Appeals Panel of that interview until [REDACTED], and, more importantly, did not notify the Trial panel of that interview at all. The SPO has provided no explanation as to why the Trial Panel was not immediately notified of the [REDACTED] interview”*.
9. There is no good reason for this failure, and further, it is evident that the SPO do not deem it necessary to provide one.
10. Again therefore, evidence of the cavalier approach that has been adopted.

11. Without rehearsing that which has been submitted by the Gucati defence *ad nauseum*, the simple fact of the matter is that the SPO has summarily failed to comply with its obligations pursuant to Rule 103, accordingly, it cannot be said that disclosure of Rule 103 material was or indeed is, complete, and further, as per the Gucati Submission at paragraph 17, it would appear clear that the Defendant(s) has suffered prejudice on account of this failure.
12. The Defence have been explicitly hampered in their investigations of a valid limb of the defence advanced at trial. It is not suggested that this was in bad faith, or intentional, however whether it was or otherwise, is immaterial as the consequences of the SPO failure remain.
13. The Haradinaj Defence therefore joins and adopts the Gucati Submission in its entirety.

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