

In: KSC-CA-2022-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: A Panel of the Court of Appeals Chamber

Judge Michéle Picard

Judge Kai Ambos

Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 30 January 2023

Language: English

Classification: Public

**Public Redacted Version of Urgent Request for Full Disclosure as to Knowledge
of the Court of Appeals Panel as to Defence Investigations**

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I. INTRODUCTION

1. On 28 November 2022, the Court of Appeals Panel refused authorisation for the Appellant to interview two witnesses, [REDACTED] and [REDACTED]¹.
2. In doing so, the Court of Appeals Panel noted that the defence was given access to an official note documenting what was said by another witness, W04349 and alleged (or 'noted' in the Court of Appeals Panel's own words) that the defence 'chose not... to follow up [that note] with further investigations'².
3. That allegation, concerning the extent or otherwise of defence investigations, was wholly remarkable.
4. The Appellant hereby requests that the Court of Appeals Panel urgently discloses *to the Defence only* the full extent of its knowledge of defence investigations and the source(s) of its knowledge.

II. SUBMISSIONS

5. The transcript references in footnote 53 to paragraph 22 say nothing at all about the nature and extent of defence investigations into the official note documenting an account from W04349.

¹ KSC-CA-2022-01/F00094, *Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing*, Court of Appeals Panel, 28 November 2022, Confidential at paragraphs 20 and 22

² KSC-CA -2022-01/F00094, *Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing*, Court of Appeals Panel, 28 November 2022, Confidential at paragraph 22

6. Yet, it is assumed that the Court of Appeals Panel has some basis beyond mere speculation for alleging that the defence 'chose not... to follow up [that note] with further investigations', otherwise that allegation could not possibly have featured as part of the decision of the Court of Appeals Panel.
7. Defence investigations during the course of a criminal adversarial trial are, of course, protected by litigation privilege³.
8. Litigation privilege is an essential component of a fair adversarial trial, as is the right to an independent and impartial tribunal⁴, and a breach of litigation privilege may affect or may appear to affect impartiality, judicial independence or the integrity of the proceedings for the purposes of Rule 20(1) of the Rules of Procedure and Evidence⁵.
9. Accordingly, the Court of Appeals Panel should urgently disclose *to the Defence only* the full extent of its knowledge of defence investigations and the source(s) of its knowledge.

III. CLASSIFICATION

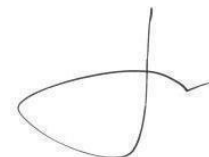
10. This filing is classified as confidential because it relates to information in other filings that is classified as confidential. A public redacted version will be filed also.

³ *Three Rivers District Council v Governor of the Bank of England (No.6)* [2004] UK H L 48 at paragraphs 52, 65 and 102

⁴ *Al Maktoum v Bint* [2021] EWC A C iv 1216 at paragraph 83; Article 6(1) of the European Convention on Human Rights

⁵ KSC-BD-03/Rev3/2020

Word count: 453 words



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