



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: 29 November 2021

Language: English

Classification: Public

**Consolidated Decision on Defence Applications for Leave to Appeal F00450 and
for Extension of Time for Rule 119(2) Filings**

Specialist Prosecutor

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TRIAL PANEL II (“Panel”), pursuant to Article 40 of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 130(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 9 November 2021, the Panel issued an order setting, *inter alia*, the timeline for the prospective motions to dismiss charges pursuant to Rule 130 of the Rules.¹ Therein, in the event it would deny such motions, the Panel ordered the Defence to submit their filings pursuant to Rule 119(2) of the Rules by 29 November 2021.²
2. On 26 November 2021, the Panel issued its decision on the Defence motions to dismiss charges, denying the motions in their entirety (“F00450”).³
3. On 29 November 2021, the Gucati Defence and the Haradinaj Defence respectively filed (i) an application for leave to appeal F00450 (collectively “Applications for Leave to Appeal”);⁴ and (ii) an application seeking extension of time to file their Rule 119(2) filings until the Panel decided upon the Leave to Appeal Application (collectively “Applications for Extension of Time”).⁵

¹ F00428, Panel, *Scheduling Order for Work Plan and Time Limits for the Next Steps in the Proceedings* (“Scheduling Order”), 9 November 2021, para. 16.

² Scheduling Order, para. 17(a).

³ F00450, Panel, *Decision on the Defence Motions to Dismiss Charges* (“F00450”), 26 November 2021.

⁴ F00457, Gucati Defence, *Application for Leave to Appeal Through Certification from Decision KSC-BC-2020-07/F00450* (“Gucati for Application Leave to Appeal”), 29 November 2021; F00455, Haradinaj Defence, *Application for Leave to Appeal Through Certification from Decision KSC-BC-2020-07/F00450* (“Haradinaj for Application Leave to Appeal”), 29 November 2021, confidential.

⁵ F00458, Gucati Defence, *Application for Extension of Time to file Rule 119 Notice* (“Gucati Application for Extension of Time”), 29 November 2021; F00456, Haradinaj Defence, *Haradinaj Defence Application for an Extension of Time for Rule 119 Notice* (“Haradinaj Application for Extension of Time”), 29 November 2021.

II. SUBMISSIONS

4. In their Applications for Leave to Appeal, the Defence submit that, while Rule 130 of the Rules does not allow appeal “as of right”, it does not preclude from seeking “leave to appeal”.⁶ On this premise, they seek leave to appeal F00450 pursuant to Article 45(2) of the Law and Rule 77(2) of the Rules.⁷ They further seek suspensive effect under Rule 171 of the Rules.⁸

5. In their Applications for Extension of Time, the Defence submit that an extension of time to file the Rule 119(2) filings should be granted until after the determination of the Applications for Leave to Appeal.⁹

III. APPLICABLE LAW

6. Pursuant to Rule 130(4) of the Rules, the Defence shall not have a right to appeal a decision rejecting a request for the dismissal of the indictment.

7. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, upon showing of good cause, extend any time limit set by the Panel.

IV. DISCUSSION

A. PRELIMINARY OBSERVATION

8. The Panel recalls that it retains discretion to determine a matter without awaiting responses, where its determination is in favour of, or causes no prejudice to, the Party

⁶ Gucati Application for Leave to Appeal, paras 6-8 and fn. 5; Haradinaj Application for Leave to Appeal, para. 11.

⁷ Gucati Application for Leave to Appeal, paras 13-22; Haradinaj Application for Leave to Appeal, paras 12-30.

⁸ Gucati Application for Leave to Appeal, paras 23-26; Haradinaj Application for Leave to Appeal, paras 31-36.

⁹ Gucati Application for Extension of Time, para. 8; Haradinaj Application for Extension of Time, para. 7.

whose response is pending.¹⁰ In this case, the Panel issues this decision without waiting for an SPO response, as the determination of the present matter causes no prejudice to the Prosecution.

B. APPLICATIONS FOR LEAVE TO APPEAL

9. The Panel observes that Rule 130(4) of the Rules provides that “[t]he Defence shall not have a right to appeal a decision rejecting a request for the dismissal of the indictment”.

10. The Panel notes that the Defence interprets this provision as not permitting an appeal “as of right”, but allowing for a request for certification.¹¹ The Panel considers that this interpretation is without merit. Rule 130(4) of the Rules clearly states that the Defence may not appeal the Panel’s decision under this provision, whether as of right or through certification. If the purpose of the Rule was to indicate that the SPO was permitted to appeal as of right, but the Defence was not, the aforementioned sentence would not have been added by the drafters, as Rule 77 of the Rules would have been implicitly triggered, by virtue of Article 45(2) of the Law. The explicit addition of the aforementioned sentence leaves no doubt that the drafters intended to preclude the Defence from appealing a decision under Rule 130 of the Rules.¹²

11. Moreover, the rationale underlying Rule 130(4) of the Rules rests on the fact that no prejudice is caused to the Defence, as they can ultimately appeal the judgment under Rule 173(1) of the Rules. As a result, the Applications for Leave to Appeal have no legal basis.

¹⁰ F00353, Panel, *Decision on the Defence Requests for Reconsideration of Decision F00328*, 7 October 2021, para. 20.

¹¹ Gucati Application for Leave to Appeal, fn. 5; Haradinaj Application for Leave to Appeal, para. 11.

¹² The Panel notes in this regard that the references to Rule 77 of the Rules in Rules 97(3) and 113(6) of the Rules are meant to delimit the scope of certification requests and clearly depart in their wording from Rule 130(4) of the Rules.

12. The Panel therefore dismisses the Applications for Leave to Appeal.

C. APPLICATIONS FOR EXTENSION OF TIME

13. The Panel notes that the Defence seek extension of time to file their Rule 119(2) filings until after the Panel has rendered its decision on the Applications for Leave to Appeal.¹³ The Panel observes that the present decision adjudicates the Applications for Leave to Appeal.

14. The Panel therefore considers that the Applications for Extension of Time are moot.

V. CLASSIFICATION

15. The Panel observes that the Haradinaj Application for Leave to Appeal (F00455) was filed confidentially. In the absence of any justification to that effect, the Panel will order its reclassification to public.

¹³ Haradinaj Application for Extension of Time, para. 7; Gucati Application for Extension of Time, para. 8.

VI. DISPOSITION

16. For these reasons, the Panel:

- a. **DENIES** the Applications for Leave to Appeal;
- b. **DECLARES** that the Applications for Extension of Time are moot; and
- c. **INSTRUCTS** the Registry to reclassify F00455 as **public**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Monday, 29 November 2021

At The Hague, the Netherlands