

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

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Haradinaj Defence Application to Extend Word Limit for Appeal Brief

Specialist Prosecutor

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I. INTRODUCTION

1. Specialist Counsel for Mr. Nasim Haradinaj, on 20 June 2022 filed the 'Notice of Appeal' highlighting the thirty (30) grounds of appeal relied upon.¹
2. In accordance with Rule 179(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules")² and the 'Decision on Haradinaj's Request for Clarification on Appeal Timescale',³ the 'Appeal Brief' is to be filed by 17 August 2022.
3. In accordance with Article 48 of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers,⁴ the 'word limit' of that Appeal Brief is limited to 12,000 words, noting Article 48(3):

"Where the appeal is limited to sentencing or where the appeal is against a judgment rendered under Article 6(2) of the Law, the appeal brief shall not exceed 12,000 words."

4. The Appeals Panel is invited to consider that the rationale of Article 48(3) of the Practice Direction was to separate those cases, under Article 6(2) of the Law, namely administration of justice offences, in which the issues were clearly and easily

¹ KSC-CA-2022-01/F00008 – *Haradinaj Defence Notice of Appeal of Trial Judgment*.

² KSC-BD-03/Rev3/2020 – *Rules of Procedure and Evidence before the Kosovo Specialist Chambers*

³ KSC-CA-2022/01/F00005 - *Decision on Haradinaj's Request for Clarification on Appeal Timescale*

⁴ KSC-BD-15 – *Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers*

distinguishable in law and fact from complex multi-defendant, multi-count, war crimes proceedings. It is submitted that this is clearly not such a case.

5. Specialist Counsel for Mr. Nasim Haradinaj seeks to extend that word limit to 30,000 words this application being made in accordance with Article 36(1) of the aforesaid Practice Direction.

II. APPLICATION

6. In seeking to show good cause for the application, the Defence would highlight the following:
 - a. The Appellant was convicted on five counts of a six-count indictment that alleges complex issues of fact, interpretation of Kosovo domestic law, complex modes of liability culminating in a 352-page judgment, with a partially dissenting opinion and three annexes, and was sentenced to a period of four and a half years' imprisonment and a fine of 100 Euros;
 - b. On 20 June 2022 Specialist Counsel for Mr. Nasim Haradinaj submitted its Notice of Appeal⁵ articulating some twenty-nine (29) individual 'Grounds of Appeal' against conviction, and a further 'Ground of Appeal' relating to sentence specifically. It is therefore respectfully submitted that it is not possible to appropriately articulate submissions on each individual ground

⁵ KSC-CA-2022-01/F00008 – *Haradinaj Defence Notice of Appeal of Trial Judgment*'.

of appeal within the proscribed word limit, the word limit amounting to 400 words per Ground;

- c. The issues raised within the Notice of Appeal are highly complex both in terms of law and fact including, *inter alia*:
- i. Complex issues regarding the interpretation of the Law⁶ alongside the Kosovo Constitution, the Kosovo Criminal Code, the European Convention on Human Rights, and the established jurisprudence of other relevant international tribunals;
 - ii. Complex issues of law centring on whether a trial can be considered 'fair' and where verdicts can be appropriately returned when there is a consistent refusal of disclosure of the substantive evidence giving rise to the indicted offences;
 - iii. Complex disclosure issues resulting in the consideration of hearsay principles and the interplay between disclosure, the admission (or otherwise) of evidence, hearsay, and the right to a fair trial under the Law,⁷ the Kosovo Constitution, the Kosovo Criminal Code, and Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms ("ECHR");

⁶ Law No. 05/L-053 – *Law on the Kosovo Specialist Chambers and Specialist Prosecutor's Office*

⁷ *Ibid*

- iv. Complex issues concerning decisions on whether Defence witnesses can be called, and where they can be called, the limitations imposed upon their evidence, the justification for those decision, and how the same affect the right to a fair trial under the Law,⁸ the Kosovo Constitution, the Kosovo Criminal Code, and Article 6 of the ECHR;
- v. Complex issues concerning the definition and elements of offences, and the appropriate *actus reus*, *mens rea*, and relevant 'modes of liability';
- d. Should the verdict have been rendered under 179(1) and/or 186(3) of the Rules, the word limit would have stood at 30,000 words.
- e. Having regard to submissions at (a)-(c) above, the Appellant would be significantly prejudiced in that he would be effectively prevented from arguing that which he seeks to raise before the Appeals Panel;
- f. There are six counts on the indictment, five of which resulted in conviction which in turn necessitates detailed and lengthy submissions on appeal.
- g. It is respectfully submitted that no prejudice will be suffered to either the SPO or the Appeals Panel in granting this request;

⁸ *Ibid*

- h. It is respectfully submitted that the application is being made in a timely manner, the Appeal Notice being filed on 17 June 2022;
 - i. Having regard to (b) above, and the inability to articulate and argue thirty (30) individual grounds of appeal appropriately within 12,000 words, the granting of such an extension is in the interests of justice; and
 - j. The extension requested has been kept to a minimum in the interests of efficiency, and further, to achieve parity with any appeal before the Appeals Panel against a judgment under 179(1) and/or 186(3) of the Rules.
7. It is respectfully submitted that good cause exists to warrant a variation of the word limit, considering (i) the numerous grounds which form the basis of the Appellant's appeal; (ii) the issues that affect the fundamental right to a fair trial; and (iii) the overall complexity of the case. Further, the request is made timely given the deadline for submission of the Appeal Brief is 17 August 2022. Finally, no prejudice is envisioned from granting the request and the Appellant hereby gives its advance consent should the SPO wish a similar proportional word limit variation in response.
8. Having regard to the above, the Defence for Mr. Haradinaj would respectfully submit that the application to extend the word limit ought to be granted.

Word Count: 1,039 words



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