



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

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 Prosecutor

Date: 27 June 2022

Language: English

Classification: Public

**Prosecution request for order to Haradinaj Defence to refile its Notice of Appeal
and related matters**

Specialist Prosecutor's Office

Jack Smith

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

I. INTRODUCTION

1. The Court of Appeals Panel ('Panel') should reject the Haradinaj Notice of Appeal¹ since it fails to comply with the requirements of Article 47(1) of the Practice Direction.² In particular, in relation to multiple grounds of appeal, the Haradinaj Notice of Appeal fails to clearly specify the alleged error, and/or identify the challenged finding or ruling with the required specificity, and/or specify the precise relief sought. These failings by the Haradinaj Defence come after repeated warnings by the Panel to comply with formal requirements on appeal.³

2. Further, the full scope of the Haradinaj Notice of Appeal is unclear given the attempt to also include, by cross-reference, all grounds set out in the Gucati Notice of Appeal,⁴ but only 'to the extent that it does not contradict the position taken' in the Haradinaj Notice of Appeal.⁵

3. Accordingly, the Specialist Prosecutor's Office ('SPO') requests that, pursuant to Rule 177 of the Rules⁶ and Article 46 of the Law,⁷ the Panel reject the Haradinaj Notice of Appeal and issue an order for the Haradinaj Defence to file, forthwith, an updated notice which: (i) fully complies with Article 47(1) of the Practice Direction; and (ii) clarifies which, if any, of the grounds set out in the Gucati Notice of Appeal are joined by the Haradinaj Defence in whole or part ('Request').

¹ Haradinaj Defence Notice of Appeal of Trial Judgment, KSC-CA-2022-01/F00008, 17 June 2022 (notified on 20 June 2022) ('Haradinaj Notice of Appeal').

² KSC Registry Practice Direction, 'Files and Filings before the Kosovo Specialist Chambers', KSC-BD-15, 17 May 2019 ('Practice Direction').

³ See Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA008/F00004, 6 April 2022, paras 16-20.

⁴ Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611 ("Judgement"), KSC-CA-2022-01/F00009, 17 June 2022 (notified on 20 June 2022) ('Gucati Notice of Appeal').

⁵ Haradinaj Notice of Appeal, para.4.

⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁷ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

II. BACKGROUND

4. On 18 May 2022, the Trial Panel issued the Trial Judgment.⁸
5. On 14 June 2022, the Haradinaj Defence requested a 2,500-word extension for the notice of appeal.⁹
6. On 15 June 2022, the Panel granted the latter request in part, authorising an 800-word extension for the notices of appeal.¹⁰
7. On 20 June 2022, the Haradinaj and Gucati Notices of Appeal were notified.
8. On 21 June 2022, the President assigned the Panel.¹¹
9. On 22 June 2022, the Presiding Judge of the Panel scheduled a Pre-Appeal Conference to be held on 5 July 2022.¹²
10. On 23 June 2022, the Haradinaj Defence requested an extension of the word limit for its appeal brief.¹³

III. APPLICABLE LAW

11. Pursuant to Article 47(1) of the Practice Direction, a notice of appeal submitted pursuant to Rules 176 and 186(3) shall contain '[t]he grounds of appeal, clearly specifying in respect of each ground: (1) the alleged error on a question of law invalidating the judgment, the alleged error of fact which has occasioned a miscarriage

⁸ Trial Judgment, KSC-BC-2020-07/F00611, 18 May 2022 ('Trial Judgment').

⁹ Haradinaj Defence Application for an Extension of Word Limit for the Notice of Appeal of Trial Judgement, KSC-CA-2022-01/F00006, 14 June 2022.

¹⁰ Decision on Haradinaj's Request for Variation of Word Limit to File Notice of Appeal, KSC-CA-2022-01/F00007, 15 June 2022 ('Decision on Notice of Appeal Word Limit').

¹¹ Decision Assigning a Court of Appeals Panel, KSC-CA-2022-01/F00011, 21 June 2022.

¹² Order Scheduling a Pre-Appeal Conference and on Related Matters, KSC-CA-2022-01/F00012, 22 June 2022 ('Scheduling Order').

¹³ Haradinaj Defence Application to Extend Word Limit for Appeal Brief, KSC-CA-2022-01/F00013, 23 June 2022 ('Haradinaj Application to Extend Word Limit for Appeal Brief').

of justice and/or the alleged error in sentencing; (2) an identification of the challenged finding or ruling in the judgment, with specific reference to the relevant page and/or paragraph numbers; (3) an identification of any other ruling challenged, with specific reference to the date of its filing, page and paragraph numbers and/or transcript page; and (4) the precise relief sought.'

12. In the Decision on Notice of Appeal Word Limit, the Panel specifically recalled the requirements of Article 47(1) of the Practice Direction and noted it considers such requirements to apply *mutatis mutandis* to notices of appeal in contempt cases.¹⁴

IV. SUBMISSIONS

13. The purpose of a notice of appeal is to provide the opposite party with sufficient notice of the exact scope of the appeal from the time of the filing of the notice.¹⁵ The Haradinaj Notice of Appeal fails in this regard, placing the SPO at a disadvantage in preparing its response to the challenges to be set out in the Haradinaj appeal brief.

14. Specifically, the Haradinaj Notice of Appeal fails to clearly specify the alleged error in respect of Grounds 20-21, and 26-29. The blanket assertion that 'the grounds of appeal relate to three main categories' of errors¹⁶ cannot relieve the Haradinaj Defence of its obligation to specify the alleged error in respect of each of its grounds.

15. The Haradinaj Notice of Appeal fails to identify the challenged finding or ruling in the judgement or in other rulings challenged in respect of Grounds 1-5, 8, 10, 16, 19, 22, and 27-29. In these grounds the Haradinaj Defence makes broad assertions

¹⁴ Decision on Notice of Appeal Word Limit, para.5, fn.11.

¹⁵ See ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Decision on Prosecution Motion to Strike Grounds 12 and 14 of Valentin Ćorić's Notice of Appeal, 11 December 2014 ('Prlić Decision'), p.3; ICTY, *In the Case Against Florence Hartmann*, IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009 ('Hartmann Decision'), para.12; Decision on Notice of Appeal Word Limit, para.5.

¹⁶ Haradinaj Notice of Appeal, para.3.

concerning seemingly numerous, but unspecified, rulings by the Trial Panel. It should not be for the SPO or the Panel to attempt to decrypt which specific rulings are contested.

16. The Haradinaj Notice of Appeal fails to specify the precise relief sought in respect of any of its grounds of appeal. The blanket assertion that ‘no decision other than a complete reversal of Counts 1, 2, 3, 5, and 6 of the Indictment will remedy the issues raised’¹⁷ cannot absolve the Haradinaj Defence of its obligation to specify the precise relief sought in relation to each of its grounds.

17. Further, the full scope of the Haradinaj Notice of Appeal is unclear. In addition to the thirty grounds of appeal articulated in the Haradinaj Notice of Appeal, the Haradinaj Defence also asserts that it ‘adopts and joins the grounds of appeal as set out in the Gucati Defence Notice of Appeal’.¹⁸ To the extent the Panel deems such incorporation by cross-reference appropriate,¹⁹ the Haradinaj Defence assertion that it adopts and joins the Gucati Notice of Appeal ‘to the extent that it does not contradict the position taken in this Notice’²⁰ requires clarification. It should be the Haradinaj Defence that clearly articulates what its grounds of appeal are; the SPO should not have to try to establish what the Haradinaj Defence may or may not consider to constitute a contradiction in the Gucati Notice of Appeal.

18. Other courts have ordered parties to refile notices of appeal where the parties failed to comply with the requirements therefor, including failing to clearly specify the challenged findings and/or the error in question, finding that such refiling would

¹⁷ Haradinaj Notice of Appeal, para.35.

¹⁸ Haradinaj Notice of Appeal, para.4.

¹⁹ See ICTY, *Prosecutor v. Šainović et al.*, IT-05-87-A, Decision on Nebojša Pavković’s Second Motion to Amend his Notice of Appeal, 22 September 2009, paras 17-18.

²⁰ Haradinaj Notice of Appeal, para.4. To the contrary, the SPO understands the Gucati Notice of Appeal to only include by cross-reference grounds 7, 23-25 of the Haradinaj Notice of Appeal, without any caveats, see Gucati Notice of Appeal, p.20.

be in the interests of justice.²¹ The Panel should follow suit so that the necessary clarity is available to all at this stage of the proceedings.

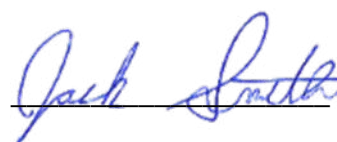
V. CONCLUSION AND RELIEF REQUESTED

19. For the foregoing reasons, the Panel should grant the Request.

20. Unless the Panel requires further submissions on the issues addressed in this filing, there are no other issues the SPO would currently seek to raise during the Pre-Appeal Conference scheduled for 5 July 2022.²²

21. Finally, the SPO takes no position on the Haradinaj Application to Extend Word Limit for Appeal Brief, leaving the matter to the discretion of the Panel. The SPO requests that any extension of words for the Defence be mirrored in a reciprocal extension of the word limit for the consolidated SPO response to the appeals.

Word count: 1483



Jack Smith

Specialist Prosecutor

Monday, 27 June 2022

At The Hague, the Netherlands

²¹ See *Prlić* Decision, pp.2-3; *Hartmann* Decision, paras 12-14, 27(b); ICTR, *Prosecutor v. Renzaho*, ICTR-97-31-A, Order on Tharcisse Renzaho's Notice of Appeal, 14 October 2009, paras 3-5.

²² See Scheduling Order, paras 9, 11.