



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-CA-2022-01**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 1 July 2022

Original language: English

Classification: **Public**

**Decision on Haradinaj's Request for Variation of Word Limit to File Appeal Brief
and SPO's Request for Order to Re-File Haradinaj's Notice of Appeal**

Specialist Prosecutor's Office:
Jack Smith

Counsel for Hysni Gucati:
Jonathan Elystan Rees

Counsel for Nasim Haradinaj:
Toby Cadman

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”), is seised of: (1) the “Haradinaj Defence Application to Extend Word Limit for Appeal Brief” filed on 23 June 2022;² and (2) the “Prosecution request for order to Haradinaj Defence to refile its Notice of Appeal and related matters” filed on 27 June 2022.³

I. HARADINAJ’S REQUEST

1. Nasim Haradinaj (“Haradinaj”) requests an extension of the word limit prescribed in Article 48 of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers (“Practice Direction”)⁴ for filing an appeal brief against the Trial Judgment to 30,000 words.⁵ Haradinaj argues that good cause exists considering the numerous grounds of appeal included in his notice of appeal, the issues that affect the right to a fair trial and the overall complexity of the case⁶ and that if his request were not granted, he would be significantly prejudiced.⁷ According to him, his request is made in advance of the applicable deadline and no prejudice would be caused to the other parties if the Panel grants it.⁸ The SPO takes no position on Haradinaj’s Request

¹ F00011, Decision Assigning a Court of Appeals Panel, 21 June 2022.

² F00013, Haradinaj Defence Application to Extend Word Limit for Appeal Brief, 23 June 2022 (“Haradinaj’s Request”). See F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) (“Trial Judgment”).

³ F00014, Prosecution request for order to Haradinaj Defence to refile its Notice of Appeal and related matters, 27 June 2022 (“SPO’s Request”).

⁴ KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019.

⁵ Haradinaj’s Request, paras 5, 8. See also Haradinaj’s Request, paras 6(d), 6(j). See Trial Judgment.

⁶ Haradinaj’s Request, paras 6-7. See also Haradinaj’s Request, paras 1, 4. See F00008, Haradinaj Defence Notice of Appeal of Trial Judgement, 17 June 2022 (distributed on 20 June 2022) (“Haradinaj’s Notice of Appeal”).

⁷ Haradinaj’s Request, paras 6(e), 6(i). See also F00015, Haradinaj Defence Notification of Agenda Items ahead of the Pre-Appeal Conference of 5 July 2022, 27 June 2022, para. 12.

⁸ Haradinaj’s Request, para. 6(g). See also Haradinaj’s Request, para. 7.

and asks that any extension granted be mirrored in a reciprocal extension of the word limit for the consolidated SPO response to the appeal briefs.⁹

2. The Panel notes that Article 48(3) of the Practice Direction stipulates that an appeal brief against a judgment rendered under Article 6(2) of the Law, as in the present case,¹⁰ shall not exceed 12,000 words. In addition, Article 36(1) of the Practice Direction states that participants to proceedings may seek, sufficiently in advance, an extension of the word limit upon showing that good cause exists constituting exceptional circumstances.

3. Regarding the timeliness of Haradinaj's Request, the Panel notes that Haradinaj's Notice of Appeal, as well as that of his co-accused Hysni Gucati ("Gucati"),¹¹ were distributed on 20 June 2022. Accordingly, the Panel would like to clarify that, in accordance with Rules 9(2) and 179(1) of the Rules, the appeal briefs are due on Friday, 19 August 2022. In view of this deadline and the fact that Haradinaj's Request was filed within four working days of his notice of appeal, the Panel considers the request timely.

4. As to good cause, the Panel recalls that the quality and effectiveness of appellate submissions do not depend on their length, but rather on their clarity and cogency and that, therefore, excessively lengthy appellate submissions do not necessarily serve the cause of an efficient administration of justice.¹² The Panel observes that the word limit requested by Haradinaj corresponds to the word limit applicable to appeal briefs for core crimes cases, which is more than two times what

⁹ SPO's Request, para. 21.

¹⁰ See Trial Judgment, paras 10, 65, 1012, 1015.

¹¹ F00009/RED, Public Redacted Version of Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611 ("Judgment") Pursuant to Art. 46(1)(a), (b) and (c) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 176(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), 17 June 2022 (distributed on 20 June 2022; confidential version filed on 17 June 2022) ("Gucati's Notice of Appeal").

¹² See F00007, Decision on Haradinaj's Request for Variation of Word Limit to File Notice of Appeal, 15 June 2022 ("Decision on Variation of Word Limit for Notices of Appeal"), para. 4.

would normally apply to appeal briefs against judgements issued under Article 6(2) of the Law.¹³ Haradinaj's submission that the distinction between the word limit applicable to core crimes cases and those under Article 6(2) of the Law is meant to separate the latter from complex multi-defendant, multi-count war crimes proceedings¹⁴ is baseless. The 30,000-word limit would apply to any case of core crimes, which by their nature are more complex than cases under Article 6(2) of the Law.

5. The Panel is mindful of the length and complexity of the Trial Judgment when compared to judgments in other cases concerning offenses against the administration of justice.¹⁵ Nevertheless, the number of grounds and sub-grounds of appeal do not inevitably impede an appellant's ability to present salient and cogent appeal briefs within the prescribed word limit and, as such, they do not in and of themselves, constitute exceptional circumstances.¹⁶ In the present instance, some grounds of appeal, and notably the whole section A of Haradinaj's Notice of Appeal entitled "Overall Concerns as to the Safety of the Conviction on All Counts", are very broad and appear to contain general assertions that largely fail to identify the specific findings in the Trial Judgment or any other ruling that is being challenged.¹⁷ In addition, certain issues in Haradinaj's Notice of Appeal appear to be connected and could be consolidated in fewer paragraphs.¹⁸

¹³ See Article 48(3) of the Practice Direction. See also Haradinaj's Request, para. 6(d), 6(j).

¹⁴ See Haradinaj's Request, para. 4.

¹⁵ See Decision on Variation of Word Limit for Notices of Appeal, para. 6.

¹⁶ 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. 23.

¹⁷ See e.g. Haradinaj's Notice of Appeal, Grounds 1-5.

¹⁸ See e.g. ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15 A, Decision on Defence request for a page limit extension for its appeal brief and order setting time limit for responses to the Prosecutor request for extension of time to file her response to the appeal brief, 8 June 2021, para. 15: "many of the grounds raised by the Defence appear to be connected and [...] the additional pages requested by the Defence would not contribute to the clarity or focus of its arguments".

6. Similarly, although the grounds of appeal in Haradinaj's Notice of Appeal concern important issues, this does not in and of itself prevent an appellant from presenting sound submissions within the set word limit.¹⁹

7. In light of the above, the Panel finds that Haradinaj has not demonstrated that his request for 18,000 additional words is warranted or necessary in the present circumstances. Haradinaj's Request is therefore denied.

II. SPO'S REQUEST

8. The SPO requests, *inter alia*, that Haradinaj's Notice of Appeal be rejected by the Panel and that the Defence for Haradinaj be ordered to file, forthwith, an updated notice which fully complies with the requirements of Article 47(1) of the Practice Direction.²⁰ The SPO submits that: (i) Haradinaj's Notice of Appeal, in many instances, fails to clearly specify the alleged error and/or fails to sufficiently identify the challenged finding or ruling;²¹ and (ii) the scope of Haradinaj's Notice of Appeal is unclear as Haradinaj includes, by cross-reference, all grounds set out in Gucati's Notice of Appeal, but only "to the extent that it does not contradict the position taken" in Haradinaj's Notice of Appeal.²²

9. The Panel notes that motions and other requests filed before a panel are usually disposed of only after the matters have been fully briefed unless no prejudice will be caused to the Parties. However, the Panel has discretion to address failures to comply with the formal requirements in notices of appeal *proprio motu*.²³ Moreover, it is the Panel's view that the SPO's Request was filed because of Haradinaj's own failure to

¹⁹ Hartmann Decision, para. 24.

²⁰ SPO's Request, paras 1, 3, 18-19.

²¹ SPO's Request, paras 1, 3, 13-16, 18.

²² SPO's Request, para. 2, referring to Haradinaj's Notice of Appeal, para. 4. See also SPO's Request, paras 1-3, 17.

²³ See e.g. ICTR, *Prosecutor v. Renzaho*, ICTR-97-31-A, Order on Tharcisse Renzaho's Notice of Appeal, 14 October 2009, paras 1, 5 (where the Pre-Appeal Judge acted *proprio motu* and ordered the accused to clarify the substance of one of his grounds of appeal).

comply with formal requirements on appeal. The Defence for Haradinaj has further been reminded several times of the importance of respecting formal requirements on appeal.²⁴ In light of this and the upcoming deadline for the filing of the appellate briefs, the Panel considers that it would be in the interests of justice to decide on the SPO's Request immediately.

10. The Panel reminds the Parties that pursuant to Article 47(1) of the Practice Direction, the substance of a notice of appeal shall contain only the grounds of appeal, clearly specifying in respect of each ground: (i) the alleged error on a question of law invalidating the judgment, the alleged error of fact which has occasioned a miscarriage of justice and/or the alleged error in sentencing; (ii) an identification of the challenged finding or ruling in the judgment or of any other ruling challenged; and (iii) the precise relief sought.²⁵ The scope of a notice of appeal is, therefore, limited to outlining the alleged errors and it does not need to detail the arguments that the parties intend to use in support of the grounds of appeal, as this will be done in the appeal briefs.²⁶ In fact, where notices of appeal are long and complex it may become difficult for the Panel and the Parties to identify the grounds of appeal and separate them from what might be argumentation.²⁷ The purpose of filing notices of appeal is to focus the respondent party on the arguments that will be developed in the appeal brief²⁸ and,

²⁴ See KSC-BC-2020-07, IA004/F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021 ("Appeal Decision on Preliminary Motions"), paras 14-15; KSC-BC-2020-07, IA002/F00005, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, 9 February 2021, paras 28-29.

²⁵ Decision on Word Limit for Notice of Appeal, para. 5.

²⁶ Decision on Word Limit for Notice of Appeal, para. 5. See also *Hartmann* Decision, para. 14; ICTY, *Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A, Decision on the Prosecution's Motion to Order Veselin Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in his Appeal Brief, 25 August 2008 ("*Mrkšić and Šljivančanin* Decision"), para. 8 and jurisprudence cited therein; ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-992-Red, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention", 19 July 2017, para. 19; ECCC, *Prosecutor v. Nuon and Khieu*, 002/19-09-2007/ECCC/SC, Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, para. 8.

²⁷ Decision on Word Limit for Notice of Appeal, para. 5. See also *Hartmann* Decision, para. 14.

²⁸ Decision on Word Limit for Notice of Appeal, para. 5. See also *Mrkšić and Šljivančanin* Decision, para. 8.

as such, the Panel considers that filing lengthy notices of appeal might actually defeat this purpose.

11. The Panel will not, at this stage, assess the substance of the grounds of appeal put forward by Haradinaj. A mere inspection of his notice of appeal regarding its compliance with the formal requirements prescribed by the Practice Direction, however, shows that, in several instances, Haradinaj's Notice of Appeal fails to: (i) clearly specify the alleged error on a question of law invalidating the judgment, the alleged error of fact which has occasioned a miscarriage of justice and/or the alleged error in sentencing;²⁹ (ii) identify the challenged finding or ruling in the judgment or of any other ruling challenged;³⁰ and (iii) mention the precise relief sought.³¹ Accordingly, the Panel orders Haradinaj to amend and provide further specification in his notice of appeal in order to comply with the requirements of Article 47(1) of the Practice Direction. The Panel underlines, however, that the substance of the grounds of appeal must remain unmodified.

12. In addition, the Panel notes that both Gucati and Haradinaj adopt grounds of appeal set out in the notice of appeal of the other appellant. Haradinaj includes, by cross reference, several grounds set out in Gucati's Notice of Appeal "to the extent that it does not contradict the position taken" in Haradinaj's Notice of Appeal.³² In Ground 18 of his notice of appeal, Gucati "joins the grounds set out" in Haradinaj's Notice of Appeal and "specifically" incorporates Grounds 7, 23, 24 and 25 thereof.³³ This is unacceptable.³⁴ This is also the case because incorporating submissions made

²⁹ See e.g. Haradinaj's Notice of Appeal, Grounds 2, 21, 26-29.

³⁰ See e.g. Haradinaj's Notice of Appeal, Grounds 1-5, 10, 16, 22, 27-29.

³¹ As pointed out by the SPO, the general 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" is insufficient. See SPO's Request, para. 16, referring to Haradinaj's Notice of Appeal, para. 35.

³² Haradinaj's Notice of Appeal, para. 4.

³³ Gucati's Notice of Appeal, Ground 18.

³⁴ See e.g. Appeal Decision on Preliminary Motions, para. 65; KSC-BC-2020-06, IA004/F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021), para. 88; KSC-BC-2020-06,

elsewhere circumvents the applicable word limits for appellate submissions. Accordingly, the Panel orders Gucati and Haradinaj to amend their notices of appeal to remove grounds incorporating, in a blanket manner, submissions made elsewhere.

13. The Panel further recalls that following the Decision on Variation of Word Limit for Notices of Appeal issued on 15 June 2022, the Parties were authorized an extension of 800 words for the filing of their notices of appeal for a total of 2,800 words maximum.³⁵ The Panel notes that Gucati's Notice of Appeal respects this limit. However, Haradinaj's Notice of Appeal contains 3,055 words.³⁶ Accordingly, the Panel orders Haradinaj to shorten his notice of appeal to respect the word limit granted by the above-mentioned decision. Article 35 of the Practice Direction provides specific instructions regarding the calculation of word limits.

14. For these reasons, the Court of Appeals Panel:

DENIES Haradinaj's Request;

STRIKES in its entirety Haradinaj's Notice of Appeal;

ORDERS Haradinaj to re-file a notice of appeal of no more than 2,800 words, in compliance with the instructions provided in paragraphs 11-13 of the present Decision, no later than one week from the date of receipt of this Decision;

STRIKES Ground 18 of Gucati's Notice of Appeal;

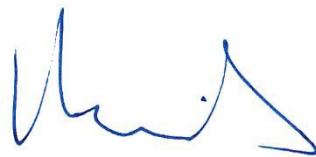
IA002/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on the same day).

³⁵ Decision on Variation of Word Limit for Notices of Appeal, paras 6, 8.

³⁶ The word count provided by Haradinaj (2,804 words) is erroneous. See Haradinaj's Notice of Appeal, page 18. The word count of Haradinaj's Notice of Appeal is 2,804 words without counting the footnotes, despite the explicit provision in Article 35(1) of the Practice Direction, but including the cover page and signatures which do not count towards the set word limits.

ORDERS Gucati, should he wish to maintain the content of his Ground 18, to re-file a notice of appeal in compliance with the instructions provided in paragraph 12 of the present Decision, no later than seven (7) days from the date of receipt of this Decision; and

DECLARES that the deadlines specified by Rule 179 of the Rules for the briefing schedule on appeal remain unchanged and that therefore the appeal briefs are due by Friday, 19 August 2022.



**Judge Michèle Picard,
Presiding Judge**

Dated this Friday, 1 July 2022

At The Hague, the Netherlands