

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

**The Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** Court of Appeals Panel

Judge Michèle Picard, Presiding Judge

Judge Kai Ambos

Judge Nina Jørgensen

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hysni Gucati

**Date:** 1 August 2022

**Language:** English

**Classification:** Public

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**Gucati Application for Extension of the Word Limit for the  
Appeal Brief**

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## I. INTRODUCTION

1. On 18 May 2022, the Trial Panel II gave judgment in the trial of KSC-BC-2020-07 (“Judgment”)<sup>1</sup>. The Judgment ran to 373 pages, together with 54 pages of Annexes.
2. On 15 June 2022, in light of the length and complexity of the Judgment compared to judgments in other cases concerning offenses against the administration of justice, the Court of Appeals Panel extended the word limit for any notice of appeal pursuant to Rule 176 of the Rules from 2,000 words (as prescribed in Article 47(2) of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019 (“Practice Direction”) to 2,800 words (an increase of 40%)<sup>2</sup>.
3. On 17 June 2022, the Notice of Appeal on behalf of Mr Gucati was distributed (“Gucati Notice of Appeal”)<sup>3</sup>.
4. On 11 July 2022, pursuant to the direction of the Court of Appeals Panel, the Notice of Appeal was re-filed (“Re-Filed Gucati Notice of Appeal”)<sup>4</sup>.
5. The Gucati Notice of Appeal and Re-Filed Gucati Notice of Appeal complied with the extended word limit of 2,800 words (albeit with difficulty).

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<sup>1</sup> *Trial Judgment*, KSC-BC-2020-07/F00611, Trial Panel II, 18 May 2022, Confidential

<sup>2</sup> *Decision on Haradinaj’s Request for Variation of Word Limit to File Notice of Appeal*, KSC-CA-2022-01/F00007, Panel of the Court of Appeals Chamber, 15 June 2022, Public at paragraph 6

<sup>3</sup> *Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611*, KSC-CA-2022-01/F00009, Gucati, 17 June 2022, Confidential

<sup>4</sup> *Re-Filed Gucati Notice of Appeal re Trial Judgment KSC-BC-202007/F00611*, KSC-BC-2022-01/F00030, Gucati 11 July 2022, Confidential

6. The Re-Filed Gucati Notice of Appeal identifies 20 grounds of appeal (46 sub-grounds).
7. Rule 179(1) of the Rules requires that that an Appeal Brief setting out all arguments and authorities in support of his grounds of appeal.
8. The prescribed word limit for the Appeal Brief according to Article 48(3) of the Practice Direction is 12,000 words and must contain, according to Article 48(1) of the Practice Direction, the following:
  - a. An introduction with a concise summary of the relevant procedural history, including the date of the contested judgment and of the notice of appeal and the overall relief sought;
  - b. The arguments in support of each ground of appeal, including, but not limited to:
    - i. Relevant legal arguments, giving precise references to relevant provisions of the Law, the Rules, relevant case-law and other legal authorities relied upon;
    - ii. Relevant factual arguments, including where applicable arguments pertaining to whether a fact has been proven to the required standard or not and whether the evaluation of the evidence is wholly erroneous or not, with precise reference to any relevant case-law, including paragraph number, exhibit or transcript page;

- iii. Arguments explaining how the alleged error on a question of law invalidates the judgment, how the alleged error of fact has occasioned a miscarriage of justice and/or how the alleged error in sentencing impacts the sentence; and
  - iv. The precise relief sought;
- c. The arguments in support of the overall relief sought;
- d. A conclusion, including the overall relief sought; and
- e. An annex containing the list of authorities referred to in the appeal brief and, where appropriate, copies of these authorities in accordance with Article 32 of the Practice Direction.
9. Article 36(1) of the Practice Direction provides that in exceptional circumstances, participants may seek, sufficiently in advance, an extension of the word limit upon showing good cause.
10. An extension of the word limit to enable a party to file a focused and complete brief that engages with all factual and legal issues arising amounts to good cause<sup>5</sup>.
11. A request for an extension of the word count two weeks prior to the deadline for filing has been held to be sufficiently in advance<sup>6</sup>.

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<sup>5</sup> *Decision on Prosecution Request for Extension of Word Limit*, KSC-BC-2020-05/F00450, Trial Panel I, 8 July 2022, Public at paragraph 5

<sup>6</sup> *Decision on Prosecution Request for Extension of Word Limit*, KSC-BC-2020-05/F00450, Trial Panel I, 8 July 2022, Public at paragraph 5

12. The Appeal Brief is due on Friday, 19 August 2022<sup>7</sup>.

13. The Appellant hereby applies for an extension to the word limit for the Appeal Brief *up to* 30,000 words.

## II. SUBMISSIONS

14. The Court of Appeals Panel has previously acknowledged that the present circumstances are exceptional, justifying modification to the word limits set out in the Practice Direction<sup>8</sup>.

15. The length and complexity of the Judgment compared to judgments in other cases concerning offenses against the administration of justice is exceptional and provides good cause to vary the word limit for the Appeal Brief in the present matter.

16. Whilst the Appellant (i) acknowledges that the quality and effectiveness of appellate submissions do not depend on their length, but rather on their clarity and cogency, and (ii) fully intends to file an Appeal Brief which is focused and concise, the Appellant cannot comply with Rule 179(1) of the Rules and Articles 48(1) of the Practice Direction within the present word limit of 12,000 words.

17. The Re-Filed Gucati Notice of Appeal contains 20 grounds of appeal (divided into 46 sub-grounds).

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<sup>7</sup> *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*, KSC-CA-2022-01/F00021, Panel of the Court of Appeals Chamber, 1 July 2022, Public at paragraph 3

<sup>8</sup> *Decision on Haradinaj's Request for Variation of Word Limit to File Notice of Appeal*, KSC-CA-2022-01/F00007, Panel of the Court of Appeals Chamber, 15 June 2022, Public at paragraph 6

18. There has been no criticism of either the Gucati Notice of Appeal nor the Gucati Re-Filed Notice of Appeal on the basis that the grounds of appeal are overly broad, or contain general assertions that fail to identify specific findings in the Judgment or other ruling that is being challenged<sup>9</sup>. Nor has any requirement or suggestion been made as to the consolidation of any specific grounds contained therein.
19. The present word limit requires less than 600 words per ground of appeal (less than 260 words per sub-ground). It is simply not feasible to set out all arguments and authorities in support of the grounds of appeal, together with a summary of the procedural history and arguments and a conclusion in relation to relief within the present word limit in the circumstances of this case.
20. Accordingly, the word limit should be extended to allow the Appellant to fully comply with Rule 179(1) of the Rules and Article 48(1) of the Practice Direction. The extension sought would enable the Appellant to file a focused and complete Appeal Brief that engages with all factual and legal issues arising<sup>10</sup>.
21. This request is made 18 days before the due date and is made sufficiently in advance<sup>11</sup>.
22. Accordingly, the Court of Appeals Panel is requested to extend the word limit for the Appeal Brief.

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<sup>9</sup> Contrast with *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*, KSC-CA-2022-01/F00021, Panel of the Court of Appeals Chamber, 1 July 2022, Public at paragraph 5

<sup>10</sup> *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*, KSC-CA-2022-01/F00021, Panel of the Court of Appeals Chamber, 1 July 2022, Public at paragraph 5

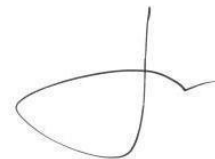
<sup>11</sup> *Decision on Prosecution Request for Extension of Word Limit*, KSC-BC-2020-05/F00450, Trial Panel I, 8 July 2022, Public at paragraph 5

23. Acknowledging the arbitrariness of *any* word limit imposed, the Appellant requests that the Court of Appeals Panel extends the word limit up to 30,000 words (the usual word limit for an Appeal Brief under Article 48(3) of the Practice Direction), or alternatively such other extended word limit which enables the Appellant to file a focused and complete Appeal Brief that engages with all factual and legal issues arising in the Re-Filed Gucati Grounds of Appeal (as required by Rule 179(1) of the Rules and Article 48(1) of the Practice Direction).

### III. CLASSIFICATION

24. This filing is public.

Word count: 1339 words



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1 August 2022

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