



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: 5 August 2022

Original language: English

Classification: **Public**

**Decision on Gucati's Request for Variation of Word Limit to File
Appeal Brief**

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 a request filed on 1 August 2022 by Mr Hysni Gucati (“Gucati”).²

1. Gucati 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”)³ for filing an appeal brief against the Trial Judgment to 30,000 words or such other extended word limit which would enable him to file a focused appeal brief that engages with all factual and legal issues arising.⁴ Gucati argues that good cause exists considering the fact that his notice of appeal contains 20 grounds and the overall complexity and length of the Trial Judgment.⁵ According to him, “it is simply not feasible” to set out all arguments and authorities in support of the grounds of appeal and to comply with all requirements of the Rules and the Practice Direction within the present word limit.⁶ Gucati further argues that his request is made sufficiently in advance of the applicable deadline.⁷

2. On 15 June 2022, at the request of Mr Nasim Haradinaj (“Haradinaj”), the Panel authorised an extension of 800 words for the notices of appeal of Gucati and Haradinaj

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

² F00032, Gucati Application for Extension of the Word Limit for the Appeal Brief, 1 August 2022 (“Request”).

³ KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019.

⁴ Request, paras 13, 20, 22-23. See also Request, para. 10. See KSC-BC-2020-07, F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) (“Trial Judgment”).

⁵ Request, paras 15, 17. See also Request, paras 6, 14.

⁶ Request, paras 7-8, 19-20. See also Request, para. 16.

⁷ Request, para. 21. See also Request, para. 11.

(collectively, “Accused”).⁸ On 17 June 2022, the Accused filed their notices of appeal of the Trial Judgment.⁹

3. On 1 July 2022, the Appeals Panel denied Haradinaj’s request for an extension of the word limit prescribed for the filing of his appeal brief against the Trial Judgment.¹⁰ The Panel further granted the SPO’s request that Haradinaj’s notice of appeal be rejected for failing to comply with the requirements prescribed in the Practice Direction,¹¹ and ordered both Accused to re-file their notices of appeal in compliance with the instructions provided by the Panel.¹²

4. On 5 July 2022, the Panel denied Gucati’s request for an extension of the word limit to re-file his notice of appeal.¹³ On 10 and 11 July 2022, Haradinaj and Gucati re-filed their respective notices of appeal.¹⁴

⁸ 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 Notice of Appeal”), para. 8. See also F00006, Haradinaj Defence Application for an Extension of Word Limit for the Notice of Appeal of Trial Judgement, 14 June 2022.

⁹ 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 and distributed on 20 June 2022); F00008, Haradinaj Defence Notice of Appeal of Trial Judgement, 17 June 2022 (distributed on 20 June 2022). See also F00005, Decision on Haradinaj’s Request for Clarification on Appeal Timescale, 25 May 2022, paras 6, 8.

¹⁰ F00021, 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, 1 July 2022 (“Decision to Re-File Notices of Appeal”), paras 7, 14. See also F00013, Haradinaj Defence Application to Extend Word Limit for Appeal Brief, 23 June 2022 (“Haradinaj Request for Word Limit Extension”).

¹¹ F00014, Prosecution request for order to Haradinaj Defence to refile its Notice of Appeal and related matters, 27 June 2022.

¹² Decision to Re-File Notices of Appeal, paras 11-14.

¹³ F00023, Decision on Gucati’s Request for Variation of Word Limit to Re-File Notice of Appeal, 5 July 2022 (“Decision on Gucati’s Request for Variation of Word Limit to Re-File Notice of Appeal”), para. 8. See also F00022, Gucati Application for Extension of the Word Limit for the Re-Filed Notice of Appeal, 3 July 2022.

¹⁴ F00029, Haradinaj Defence Re-Filed Notice of Appeal of Trial Judgement, 10 July 2022; F00030/RED, Public Redacted Version of Re-Filed 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”), 11 July 2022 (confidential version filed on 11 July 2022) (“Gucati Re-Filed Notice of Appeal”).

5. 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,¹⁵ 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.

6. Regarding the timeliness of the Request, the Panel recalls that in accordance with Rules 9(2) and 179(1) of the Rules, the appeal briefs are due on Friday, 19 August 2022.¹⁶ The Panel further notes that Gucati re-filed his notice of appeal of the Trial Judgment on 11 July 2022.¹⁷ Although the Request is made about three weeks after the re-filed version of the Accused's notices of appeal, it is also approximately three weeks before the deadline for filing their appeal briefs. In these circumstances, the Panel considers the Request timely.

7. 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 cogency¹⁸ and that 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.¹⁹

8. The Panel notes that, following the Panel's finding that the practice followed by both Gucati and Haradinaj, who adopted grounds of appeal set out in the notice of appeal of the other appellant, is unacceptable,²⁰ Gucati decided to include in his

¹⁵ See Trial Judgment, paras 10, 65, 1012, 1015.

¹⁶ See Decision to Re-File Notices of Appeal, para. 3.

¹⁷ See above, para. 4, fn. 14.

¹⁸ See Decision on Variation of Word Limit for Notice of Appeal, para. 4. See also Decision to Re-File Notices of Appeal, para. 4; Decision on Gucati's Request for Variation of Word Limit to Re-File Notice of Appeal, para. 5.

¹⁹ Decision to Re-File Notices of Appeal, para. 5.

²⁰ Decision to Re-File Notices of Appeal, para. 12.

re-filed notice of appeal some of the grounds of appeal set out in the notice of appeal of his co-accused.²¹ The Panel observes in this regard that the grounds of appeal and the arguments in the appellant's brief must generally be set out and numbered in the same order as in his or her notice of appeal²² and, as such, Gucati is bound by the structure of his notice of appeal.²³

9. The Panel is further mindful of Gucati's submissions that complying with the extended word limit of 2,800 words for his re-filed notice of appeal was done "with difficulty"²⁴ and that "it is simply not feasible" to set out all arguments and authorities in support of the grounds of appeal and to comply with all requirements of the Rules and the Practice Direction within the present word limit.²⁵ The Panel has also previously acknowledged the length and complexity of the Trial Judgment when compared to judgments in other cases concerning offenses against the administration of justice.²⁶

10. The Panel observes that the extension of the word limit up to 30,000 words as requested by Gucati corresponds to the word limit applicable to appeal briefs for core crimes cases, which is more than two times what would normally apply to appeal briefs against judgements issued under Article 6(2) of the Law.²⁷ The Panel finds that such an extension is neither warranted nor necessary in the present circumstances.

²¹ See Gucati Re-Filed Notice of Appeal, Ground 3(B), Ground 5, para. 6, Ground 7, Ground 10(A). See Decision to Re-File Notices of Appeal, para. 12.

²² See 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, para. 8.

²³ The Panel further notes Gucati's estimate that less than 600 words per ground of appeal and less than 260 words per sub-ground are possible within the normally applicable word limit. See Request, para. 19.

²⁴ Request, para. 5.

²⁵ Request, paras 8, 19.

²⁶ See Decision on Variation of Word Limit for Notice of Appeal, para. 6; Decision to Re-File Notices of Appeal, para. 5; Decision on Gucati's Request for Variation of Word Limit to Re-File Notice of Appeal, para. 5.

²⁷ See Article 48(3) of the Practice Direction.

11. Nevertheless, the Panel recalls that it granted an extension of 800 words for the filing of the notices of appeal to the 2,000 word limit prescribed in Article 47(2) of the Practice Direction for any notice of appeal filed in relation to a judgment rendered under Article 6(2) of the Law.²⁸ The Panel is of the view that a comparable extension for the filing of the appeal brief is justified on an exceptional basis in the present circumstances and would enable Gucati to file a focused and complete appeal brief. The Panel is further mindful of the importance of balancing the need for clarity and cogency with the need for complete submissions that are adequately referenced. The Panel hereby varies the word limit of Gucati's appeal brief to a maximum of 18,000 words. The Panel further considers that it is in the interests of justice to grant comparable variations to the other Parties. Accordingly, the Panel varies the word limit of Haradinaj's appeal brief to a maximum of 18,000 words and the word limit of the SPO's brief in response to a maximum of 18,000 words as well.²⁹

12. The Panel finally recalls that, pursuant to Article 36(2) of the Practice Direction, motions for the variation of word limits may be disposed of without giving the Parties the opportunity to be heard. In light of the upcoming deadline for filing of the appeal briefs and given that no prejudice will be caused to any of the Parties, the Panel considers that it is in the interests of justice to dispose of the Request immediately.

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

GRANTS the Request in part;

AUTHORISES Gucati and Haradinaj to file their appeal briefs, not exceeding 18,000 words each; and

²⁸ Decision on Variation of Word Limit for Notice of Appeal, paras 6, 8. See Request, para. 2.

²⁹ The Panel recalls that in a previous decision, it dismissed the Haradinaj Request for Word Limit Extension. See Decision to Re-File Notices of Appeal, paras 7, 14. The circumstances of the prior decision were, however, distinguishable from the present circumstances, as that decision was based on an assessment of the notice of appeal initially filed and not the re-filed notice of appeal.

AUTHORISES the SPO to file its brief in response not exceeding 18,000 words.



**Judge Michèle Picard,
Presiding Judge**

Dated this Friday, 5 August 2022

At The Hague, the Netherlands