



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

In: KSC-CA-2022-01
Specialist 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 Prosecutor

Date: 5 October 2022

Language: English

Classification: Confidential

**Consolidated Prosecution response to Defence requests concerning the Response
Brief and amendment of Notices of Appeal**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Appeals Panel should reject the Defence requests to find that the Response Brief¹ does not comply with Rule 179(5) of the Rules,² order the SPO to re-file its Response Brief, and authorise the Defence to file its reply within fifteen days of such re-filing ('First Requests').³ The SPO has acted transparently and complied with its obligations. There is no reason why the Defence should be afforded more time to file any replies to the Response Brief.

2. The Appeals Panel should also reject the requests to amend the GUCATI Notice⁴ and HARADINAJ Notice⁵ ('Second Requests').⁶ The proposed amendments are illogical, alleging Trial Panel errors when the basis for such assertions is material disclosed or notified after the Judgment was issued. Such disclosure or notification alone does not amount to good cause to authorise the requested amendments.

¹ Prosecution Brief in Response to Defence Appeals, KSC-CA-2022-01/F00047, 21 September 2022.

² 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.

³ Gucati Application for a Formal Decision that the Prosecution has Failed to File a Brief in Response which complies with Rule 179, KSC-CA-2022-01/F00052, 30 September 2022 (notified 3 October 2022), Confidential ('GUCATI First Request'); Haradinaj Application for a Ruling on the Prosecution Failure to Comply with Rule 179, KSC-CA-2022-01/F00054, 3 October 2022 (notified 4 October 2022), Confidential (together with the 'GUCATI First Request', the 'First Requests').

⁴ Public Redacted Version of Re-Filed Gucati Notice of Appeal re Trial Judgment KSC-BC-2020-07/F00611 ("Judgment"), KSC-CA-2022-01/F00030/RED, 11 July 2022.

⁵ Haradinaj Defence Re-Filed Notice of Appeal of Trial Judgement, KSC-CA-2022-01/F00029, 8 July 2022.

⁶ Gucati Application to Amend the Notice of Appeal pursuant to Rule 176(3) of the Rules, KSC-CA-2022-01/F00053, 30 September 2022 (notified 3 October 2022), Confidential; Haradinaj Application to Amend the Notice of Appeal pursuant to Rule 176(3), KSC-CA-2022-01/F00055, 4 October 2022 (notified 5 October 2022), Confidential.

II. SUBMISSIONS

A. *No reason to delay the filing of the Defence briefs in reply*

3. The fact that the SPO noted, in its Response Brief, that, subject to pending litigation, it had disclosed all material in its custody or control falling under its disclosure obligations⁷ does not mean the brief in any way failed to comply with the Rules. Rather, it indicates full compliance with the Rules since, at the time the Response Brief was filed, everything that the SPO was authorised and able to disclose had been disclosed. Were the Defence interpretation of Rule 179(5) correct, the SPO would have to delay filing of its appeals response because of the mere prospect that further disclosure may be ordered by the Appeals Panel. Such a course is clearly antithetical to the expeditious conduct of appellate proceedings.

4. The SPO seized the Appeals Panel about the now disclosed or notified items as soon as it identified them, in advance of the filing of the Response Brief and as part of its efforts to ensure compliance, *inter alia*, with Rules 112 and 179(5).

5. The SPO adhered to the 15 September 2022 Decision in which the Appeals Panel, while ordering the SPO to disclose the items related to W04730, authorised the SPO to file a request for protective measures in relation to this individual by 21 September 2022.⁸ The SPO filed such a request even earlier, on 19 September 2022,⁹ and, in accordance with the schedule set in the Appeals Panel's 23 September 2022 authorisation of protective measures,¹⁰ disclosed the relevant items on 26 September 2022.

⁷ Response Brief, para.192.

⁸ Confidential Redacted Version of Decision on Prosecution Notifications, KSC-CA-2022-01/F00044/CONF/RED, 15 September 2022 ('15 September 2022 Decision'), para.38(b).

⁹ Confidential Redacted Version of Request for Protective Measures, KSC-CA-2022-01/F00045/CONF/RED, 23 September 2022 (originally filed on 19 September 2022).

¹⁰ Confidential Redacted Version of Decision on Specialist Prosecutor's Office Request for Protective Measures, KSC-CA-2022-01/F00049/CONF/RED, 23 September 2022.

6. Nothing in the First Requests indicates any impediment on the part of the Defence teams to file replies to the Response Brief. Rather, the Defence submissions appear to be a thinly veiled attempt to gain more time than is afforded to them by the Rules for such filing.

B. The Defence fails to establish good cause to amend their notices of appeal

7. The fact that items were disclosed or notified after the Judgment was issued cannot amount to an error on the part of the Trial Panel. Accordingly, GUCATI's proposed Ground 19C and HARADINAJ's proposed Ground 4A are illogical.

8. Regardless, such disclosure or notification alone does not amount to good cause to authorise the requested variation and the Defence fails to provide any further argument capable of amounting to good cause in this regard. The variation requested is contested by the SPO, would cause undue delay, and – given the speculative nature and circumstances of the additional information disclosed – cannot be said to have substantial importance to the success of the appeal.¹¹ Indeed this additional information could not have been a decisive factor in reaching a decision at trial.

III. CLASSIFICATION

9. This filing is submitted as confidential pursuant to Rule 82(4). The SPO would not object to its reclassification to public.

IV. RELIEF SOUGHT

10. The Appeals Panel should reject the First Requests and the Second Requests.

¹¹ ICTR, *Prosecutor v. Bagosora et al.*, Decision on Anatole Nsengiyumva's Motion for Leave to Amend his Notice of Appeal, ICTR-98-41-A, 28 January 2010, para.11; ICTY, *Prosecutor v. Lukić and Lukić*, Decision on Milan Lukić's Motion to Amend his Notice of Appeal, IT-98-32/1-A, 16 December 2009, para.10.

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At The Hague, the Netherlands.