



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: 12 October 2022

Original language: English

Classification: **Public**

Decision on Defence Requests for Variation of Word Limit of Briefs in Reply

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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 the requests submitted by Mr Hysni Gucati (“Gucati”) and Mr Nasim Haradinaj (“Haradinaj”) (collectively, “Accused”) on 7 October 2022.²

1. In his request, Gucati requests an extension of the word limit applicable to his brief in reply against the Trial Judgment from 4,000 to 6,000 words.³ According to him, such an extension reflects the extension of the word limit granted by the Appeals Panel for the appeal briefs and the brief in response.⁴ Haradinaj in his brief in reply invites the Appeals Panel to exercise its discretion to allow, without separate application, an appropriate extension.⁵ On 7 October 2022, Gucati and Haradinaj filed their briefs in reply with a word count of 5,836 words and 4,878 words, respectively.⁶

2. The Panel notes that Article 50(2) of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers (“Practice Direction”)⁷ stipulates that a brief in reply against a judgment rendered under Article 6(2) of the Law, as in the present

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

² F00061, Application for the Extension of the Word Limit of Gucati Brief in Reply pursuant to Rule 179(3), 7 October 2022 (“Gucati Request”); F00062, Haradinaj Reply to SPO Brief in Response to Defence Appeal Brief, 7 October 2022 (confidential), para. 4 (“Haradinaj Request”) (collectively, “Requests”).

³ Gucati Request, paras 1, 3.

⁴ Gucati Request, para. 2, referring to F00033, Decision on Gucati’s Request for Variation of Word Limit to File Appeal Brief, 5 August 2022 (“Decision on Word Limit of Appeal Brief”), para. 13. See F00611/RED, Public Redacted Version of the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) (“Trial Judgment”).

⁵ Haradinaj Request.

⁶ F00060, Gucati Brief in Reply pursuant to Rule 179(3) with one Annex, 7 October 2022 (confidential) (“Gucati Brief in Reply”); F00062, Haradinaj Reply to SPO Brief in Response to Defence Appeal Brief, 7 October 2022 (confidential) (“Haradinaj Brief in Reply”) (collectively, “Briefs in Reply”). Although the Briefs in Reply were filed confidentially, the Panel issues this decision as public, since it does not reveal any of the confidential information included therein.

⁷ KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019.

case,⁸ shall not exceed 4,000 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. As to the timeliness of the Request, the Panel notes that the Gucati Request was filed on the same day shortly after the filing of his brief in reply and that the Haradinaj Request is included in his brief in reply and that neither of them makes any submissions to justify the late requests. While the Panel is mindful of the fact that some litigation of limited scope was still pending in the days leading to the deadline of the Briefs in Reply,⁹ the Specialist Prosecutor's Office ("SPO") filed its brief in response on 21 September 2022¹⁰ and the Accused were aware of the briefing schedule pursuant to Rule 179 of the Rules. Therefore, absent a decision by the Panel to the contrary, the Accused should and could have requested a variation of the word limit for filing their Briefs in Reply sufficiently in advance, as required by the Practice Direction. As such, the Panel considers the Requests untimely.

4. Nevertheless, considering the important stage of the appeal proceedings, the Panel will consider whether good cause exists that would exceptionally justify a variation of the word limit of the Briefs in Reply despite the untimeliness of the Requests.

⁸ See Trial Judgment, paras 10, 65, 1012, 1015.

⁹ See F00057/RED, Public Redacted Version of Decision on Defence Applications for a Formal Decision that the Specialist Prosecutor's Office Failed to Comply with Rule 179(5) of the Rules, 6 October 2022 (confidential version filed on 6 October 2022); F00049/CONF/RED, Confidential Redacted Version of Decision on Specialist Prosecutor's Office Request for Protective Measures, 26 September 2022 (confidential) (strictly confidential and *ex parte* version filed on 23 September 2022); F00044/CONF/RED, Confidential Redacted Version of Decision on Prosecution Notifications, 26 September 2022 (confidential) (confidential and *ex parte* version filed on 15 September 2022).

¹⁰ F00047, Prosecution Brief in Response to Defence Appeals with two public annexes, 21 September 2022 (confidential, reclassified as public on 30 September 2022).

5. The Panel acknowledges the fact that an extension of 800 words was granted to the 2,000–word limit for filing notices of appeal¹¹ and a comparable extension of 6,000 words to the 12,000–word limit for filing the appeal briefs and the brief in response, taking into consideration, *inter alia*, the length and complexity of the Trial Judgment when compared to judgments in other cases concerning offenses against the administration of justice.¹² The Panel also observes that in the past, it has granted variations of the word limit for replies when analogous variations had been granted for the appeals and/or the responses thereto.¹³

6. The Panel notes, however, that the Accused do not substantiate that in this particular case exceptional circumstances exist to justify the oversized filings. The Panel also notes that a reply generally addresses a limited range of matters¹⁴ and that, in this case, the Briefs in Reply largely repeat arguments previously raised in the appeal briefs.¹⁵ The Panel recalls in this regard that the quality and effectiveness of appellate submissions do not depend on their length, but rather on their clarity and

¹¹ F00007, Decision on Haradinaj’s Request for Variation of Word Limit to File Notice of Appeal, 15 June 2022 (“Decision on Word Limit of Notice of Appeal”), paras 6, 8.

¹² Decision on Word Limit of Appeal Brief, paras 9, 11, 13.

¹³ See e.g. KSC-BC-2020-06, IA009/F00024, Decision on Selimi’s Request for Variation of Word Limit, 14 October 2021 (“Decision on Selimi’s Request”), para. 6; KSC-BC-2020-06, IA009/F00017, Decision on Request for Variation of Word Limits, 24 September 2021, para. 5; KSC-BC-2020-06, IA009/F00009, Decision on Requests for Variation of Word Limits, 19 August 2021, para. 7.

¹⁴ See Decision on Selimi’s Request, para. 5.

¹⁵ Compare Gucati Brief in Reply, paras 87-88, 89-91, 93-98, 108-113 with F00036/RED, Public Redacted Version of Gucati Appeal Brief pursuant to Rule 179(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), 22 August 2022 (confidential version filed on 19 August 2022), paras 206-207, 279-281, 288, 292-294, 338-339, 352, 360-362, 368-369, 381-388; Compare Haradinaj Brief in Reply, paras 14, 23-24, 29, 64-65 with F00035/COR2, Further Corrected Version of Defence Appeal Brief on Behalf of Mr. Nasim Haradinaj, 2 September 2022 (uncorrected confidential version filed on 19 August 2022, corrected confidential version filed on 31 August 2022, reclassified as public on 2 September 2022), paras 48-54, 91-96, 98, 103, 196-208, 209-232 (especially 210-216). See also ICTY, *Prosecutor v. Nikola Šainović et al.*, IT-05-87-A, Decision on Sreten Lukić’s Motions for Admission of Additional Evidence on Appeal and for Extension of Word Limit, Nebojša Pavković’s Motions to Join and to Call Dick Marty as a Witness Before the Appeals Chamber, and Prosecution’s Motion to Strike, 12 May 2011 (“*Šainović et al.* Decision”), para. 15.

cogency and that, therefore, excessively lengthy appellate submissions do not necessarily serve the cause of an efficient administration of justice.¹⁶

7. Consequently, the Appeals Panel finds that the Requests do not demonstrate good cause constituting exceptional circumstances for a variation of the word limit. In these circumstances, the Appeals Panel considers that it is appropriate to strike the Briefs in Reply in their entirety as not validly filed¹⁷ and to provide the Accused with the opportunity to re-file briefs in reply within the prescribed word limit of no more than 4,000 words.

8. Moreover, the Panel 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 importance of ensuring expeditious proceedings on appeal¹⁸ and given that no prejudice will be caused to the SPO, the Panel considers that it is in the interests of justice to dispose of the Request immediately.

9. Finally, the Panel observes that this is one of a series of failures by the Defence for both Accused to abide by the formal requirements on appeal.¹⁹ Such repeated failures have a negative impact on the smooth and efficient functioning of the

¹⁶ See e.g. Decision on Word Limit of Notice of Appeal, para. 4.

¹⁷ See *Šainović et al.* Decision, para. 15.

¹⁸ See Rule 72(3) of the Rules.

¹⁹ See 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, paras 9, 11-13; KSC-BC-2020-07, IA004/F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021, 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.

Specialist Chambers.²⁰ The Panel therefore reminds the Defence of their obligations to abide by the Practice Direction when submitting their filings before the Panel.²¹

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

DENIES the Requests;

STRIKES the Briefs in Reply;

ORDERS Gucati and Haradinaj to re-file briefs in reply of no more than 4,000 words within five days from notification of the present Decision; and

REMINDS the Defence for Gucati and Haradinaj to strictly abide by the Practice Direction and any other formal requirements applicable on appeal.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 12 October 2022

At The Hague, the Netherlands

²⁰ See ICTY, *Prosecutor v. Šešelj*, IT-03-67-R77.2-A, Decision on Vojislav Šešelj's Request to Submit an Oversized Reply Brief, 9 April 2010 ("Šešelj Decision"), p. 2 (with respect to the repeated filing of oversized submissions without prior authorisation).

²¹ See Šešelj Decision, p. 3 (holding that an appeals chamber reserves the right to disregard arguments set out in the excess portion of any oversized submission without allowing the accused the opportunity to re-file or otherwise comment on submissions).