



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 7 November 2022

Original language: English

Classification: **Public**

Order for the Preparation of the Appeal Hearing

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”, “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”) hereby issues this Order.

1. On 17 and 18 October 2022, respectively, Mr Hysni Gucati (“Gucati”) and Mr Nasim Haradinaj (“Haradinaj”) requested an appeal hearing to allow them to expand on matters in their notices of appeal and appeal briefs, given the comparative length and complexity of the Trial Judgment, and to address the consequences of alleged instances of late disclosure under Rules 102(3) and 103 of the Rules on their grounds of appeal.² The Specialist Prosecutor’s Office (“SPO”) did not respond.

2. On 20 October 2022, following the completion of the briefing regarding Gucati’s and Haradinaj’s appeals against the Trial Judgment, the Appeals Panel scheduled an appeal hearing for Thursday, 1 December 2022 and Friday, 2 December 2022, noting that a schedule will be issued in due course.³

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

² F00069, Gucati Request for Oral Hearing of the Appeal, 17 October 2022 (confidential) (“Gucati Request”), paras 1-19; F00072, Haradinaj Request for Oral Hearing of the Appeal and Joinder, 18 October 2022 (confidential) (“Haradinaj Request”), paras 1-9.

³ F00074, Order Scheduling an Appeal Hearing, 20 October 2022, paras 2-3, 5. See also, notably, 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”); 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); F00035/COR2, Further Corrected Version of Defence Appeal Brief on Behalf of Mr. Nasim Haradinaj, 2 September 2022 (confidential, reclassified as public on 2 September 2022) (uncorrected version filed on 19 August 2022, first corrected version filed on 30 August 2022); 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”), 19 August 2022 (distributed on 22 August 2022) (confidential version filed on 19 August 2022, distributed on 22 August 2022); F00047, Prosecution Brief in Response to Defence Appeals, 21 September 2022 (confidential, reclassified as public on 30 September 2022); F00065, Haradinaj Re-filed Reply to SPO Brief in Response to Defence

3. With respect to a Defence request for disclosure under Rule 102(3) of the Rules, the Appeals Panel found, on 21 October 2022, that a communication received by the SPO – identified as “Item 206” – is not subject to disclosure as the Defence failed to demonstrate any link between the material and the defences raised.⁴

4. Regarding Defence challenges under Rule 103 of the Rules, the Appeals Panel found, on 7 November 2022, that the SPO had not breached its disclosure obligations under Rule 103 of the Rules in relation to certain materials disclosed during the appeal proceedings.⁵

5. Consequently, the Panel considers that the Gucati Request and the Haradinaj Request must now be dismissed as moot, according to the two bases on which they both rest, since: (i) the Panel has already scheduled a hearing dealing with the Accused’s grounds of appeal; and (ii) the Panel has found that the material requested by the Defence was not subject to disclosure under Rule 102(3) of the Rules and that no disclosure violations took place under Rule 103 of the Rules, and thus there is no need for it to entertain submissions on the alleged effect thereof.

6. Moreover, the Panel hereby informs the Parties that, subject to adjustments as appropriate, the schedule for the appeal hearing shall be as follows. The Panel notes

Appeal Brief, 16 October 2022; F00067/RED, Public Redacted Version of Re-Filed Gucati Brief in Reply pursuant to Rule 179(3), 21 October 2022 (confidential version filed on 17 October 2022).

⁴ F00075, Decision on the Specialist Prosecutor’s Office’s Request Regarding Item 206, 21 October 2022 (confidential), paras 42-43, 45.

⁵ F00083, Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations, 7 November 2022 (confidential), paras 26-28. See also 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).

in this regard that the time allocated for submissions, responses and replies includes questions, if any, from the Panel that arise during the hearing.

Thursday, 1 December 2022

13:30-13:40 – Introductory statement by the Presiding Judge (10 minutes)

13:40-15:10 – Submissions of Gucati Defence (1 hour 30 minutes)

15:10-15:40 – *Break (30 minutes)*

15:40-17:10 – Submissions of Haradinaj Defence (1 hour 30 minutes)

Friday, 2 December 2022

9:30-11:30 – Response of SPO (2 hours)

11:30-12:00 – *Break (30 minutes)*

12:00-12:20 – Reply of Gucati Defence (20 minutes)

12:20-12:40 – Reply of Haradinaj Defence (20 minutes)

12:40-12:50 – Optional personal address by Gucati (10 minutes)

12:50-13:00 – Optional personal address by Haradinaj (10 minutes)

13:00-13:05 – Concluding statement by the Presiding Judge (5 minutes)

7. Finally, the Panel notes that the Gucati Request and the Haradinaj Request were filed confidentially pursuant to Rule 82(4) of the Rules.⁶ Considering that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential,⁷ the Panel orders Gucati and Haradinaj to file public redacted versions of the Gucati Request and the Haradinaj

⁶ Gucati Request, para. 20; Haradinaj Request, para. 10.

⁷ See e.g. F00064/RED, Public Redacted Version of Decision on Defence Requests to Amend the Notices of Appeal Pursuant to Rule 176(3) of the Rules, 13 October 2022 (confidential version filed on 13 October 2022), para. 8.

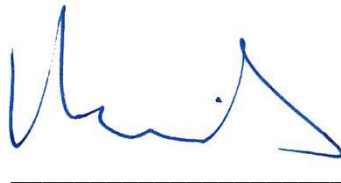
Request, respectively, within seven days of receiving notification of the present Decision.

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

DISMISSES the Gucati Request and the Haradinaj Request as moot;

ORDERS the Parties to comply with the hearing schedule, as set out in paragraph 6 above; and

ORDERS Gucati and Haradinaj, respectively, to file public redacted versions of the Gucati Request and the Haradinaj Request within seven days of receiving notification of the present Decision.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 7 November 2022

At The Hague, the Netherlands