

In: KSC-CA-2022-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Court of Appeal Panel

Judge Michele Picard, Presiding Judge

Judge Kai Ambos

Judge Nina Jorgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Nasim Haradinaj

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**Amended Publicly Redacted Version of Reply to Prosecution Response to
Haradinaj Request for Order to the SPO to Release Video Recordings with
Confidential Annex**

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I. INTRODUCTION

1. On 28 November 2022, the Court of Appeals Panel refused authorisation for the Appellant to interview two witnesses, [REDACTED] and [REDACTED].¹
2. On 01 and 02 December 2022, the Court of Appeals Panel heard the appeals of both Hysni Gucati and Nasim Haradinaj.
3. On 10 December 2022, the Haradinaj Defence made two urgent requests for further information from the SPO.²
4. On 13 December 2022, the Specialist Prosecutor's Office ("SPO") responded to the requests made by the Haradinaj Defence.³

II. BACKGROUND

5. On 13 March 2021, the Haradinaj Defence set out a list of 39 requests for disclosure, via *inter partes* communications, including, but not limited to, CCTV or video footage that related to the deliveries of the three batches by persons unknown.
6. On 23 March 2021, the SPO responded confirming that it was not in possession of any such material and that the only CCTV material in its possession was the footage

¹ KSC-CA-2022-01/F00094, Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing, Court of Appeals Panel, 28 November 2022, Confidential at paragraphs 20 and 22

² KSC-CA-2022-01/F00098, Haradinaj Request for Order to the SPO to Release Video Recordings

³ KSC-CA-2022-01/F00099, Prosecution Response to Haradinaj Request to Release Video Recordings

seized from the premises of the Kosovo Liberation Army War Veterans Association (“KLA WVA”).

7. On 9 November 2021, the SPO conducted an interview with [REDACTED]⁴ and on 16 November 2021 a redacted version of the transcript of interview was disclosed to the defence.⁵
8. On 15 September 2022, the Court of Appeals Panel issued a decision ordering the SPO to disclose to the Defence under Rule 103 of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers (“Rules”), two interviews of [REDACTED] dated [REDACTED] and [REDACTED].⁶
9. On 21 September 2022, the SPO filed its brief in reply.⁷
10. On 18, 25, and 26 October 2022 the Appellant and/or the Gucati Defence wrote to the SPO to further request their assistance with Defence inquiries relating to Witness Interviews.
11. The SPO refused to cooperate on each and every occasion.
12. On 2 November 2022, the Gucati Defence made an Application to the Court of Appeals Panel for an Order for Disclosure of Witness Contact Details and for a declaration that Rule 102(3) applied equally to appeal proceedings.⁸ The Gucati

⁴ See Confidential Annex A and Annex B (TR-ENG), Interview with [REDACTED] of 11 November 2022.

⁵ Disclosure 61 of 16 November 2021.

⁶ F00044/CONF/RED, Confidential Redacted version of Decision on Prosecution Notifications, 26 September 2022.

⁷ F00047, Confidential Prosecution Brief in Response to Defence Appeals with two public annexes.

⁸ KSC-CA-2022-01/F00081

Defence and the Appellant further applied for an extension of time to file motions pursuant to Rule 181.⁹

13. On 9 November 2022, the Appeals Panel issued its 'Decision on Defence Requests for Extension of Time to file Potential Motions Pursuant to Rule 181',¹⁰ authorising that any motions pursuant to Rule 181 of the Rules are to be filed "*no later than 14 days from the notification of the Panel's decision on the Requests to Contact witnesses, should the Panel decide to grant them*".¹¹
14. On 11 November 2022, the Haradinaj Defence conducted an interview with [REDACTED] in respect of his interview with the SPO on 9 November 2021.¹²
15. On 27 November 2022, the Haradinaj Defence made a further request to the SPO concerning the two matters of disclosure currently under consideration.
16. On 29 November 2022, the SPO responded that it had satisfied its disclosure obligations including any continuing Rule 103 obligations.
17. On 28 November 2022, the Court of Appeals Panel refused authorisation for the Appellant to interview two witnesses, [REDACTED] and [REDACTED].¹³

⁹ KSC-CA-2022-01/F00087 and KSC-CA-2022-01/F00088

¹⁰ KSC-CA-2022-01/F00090

¹¹ *Ibid* at paragraph 7

¹² See Confidential Annex A and Annex B (TR-ENG), Interview with [REDACTED] of 11 November 2022.

¹³ KSC-CA-2022-01/F00094, Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing, Court of Appeals Panel, 28 November 2022, Confidential at paragraphs 20 and 22

18. On 01 and 02 December 2022, the Court of Appeals Panel heard the appeals of both Hysni Gucati and Nasim Haradinaj. Due to Specialist Counsel being unable to address the Panel in closed session as a result of testing positive for COVID-19, an oral submission was made at the conclusion of the appeal hearing that a further request for disclosure would be forthcoming.
19. On 5 December 2022, a further request was made to the SPO
20. On 7 December 2022, the SPO provided a final response.
21. On 10 December 2022, the Haradinaj Defence filed its *Request for Order to the SPO to Release Video Recordings*.¹⁴

III. Submissions

22. On 13 December 2022, the SPO responded to the request of the Haradinaj defence for further disclosure. In this response, the SPO describes the Haradinaj defence's investigative efforts (concerning the videos) as "*late to the point of being wasteful*."¹⁵ However, it must be noted that the only reason such investigative efforts are taking place so late is because the relevant information (concerning the videos being shown to [REDACTED] in his SPO interview) only became available to the Haradinaj Defence at this late stage in the proceedings – contrary to the incorrect assertions made by the SPO in their response that the Haradinaj Defence "*did not bother to follow-*

¹⁴ KSC-CA-2022-01/F00098, Haradinaj Request to Release Video Recordings

¹⁵ KSC-CA-2022-01/F00099, Prosecution Response to Haradinaj Request to Release Video Recordings, para. 8

up and investigate this witness's allegations following disclosure at trial."¹⁶ It simply would have been impossible to follow up at trial, when the Haradinaj Defence were not aware of the existence of such videos at that time.

23. It must also be emphasised that issues with disclosure have been a central issue throughout the proceedings. It has been consistently argued throughout the proceedings that the SPO has provided no cooperation in assisting the defence and complying with its disclosure obligations under the Rules. As noted in the original application, any criticism of the defence for delay in making this application must take into account factors such as the defence being previously unaware of the existence of video footage relating to the delivery of the three batches.
24. The Haradinaj Defence has now well-founded reasons to believe that such video footage was indeed shown to the witness and that these videos were in the SPO's possession. It was therefore incumbent upon us to request the disclosure of such video footage – first from the SPO directly and then, via an Order from the Appeals Panel.
25. It should be noted that a further interview with the witness took place on 15 December 2022 and has been attached to this Reply as an Annex. In this interview, the witness maintains his position – that he was shown the video footage – and went into substantial detail as to how the video footage was put to him in his SPO interview, what he was shown and what questions were put to him. Given his insistence that he was indeed shown such video footage, the Haradinaj Defence

¹⁶ Ibid.

submits that the only way to clarify whether [REDACTED] was shown the video footage, is for the video recording of his SPO interview to be disclosed upon the defence.

26. These videos go directly to the issue of entrapment in this case. Ultimately, the primary duty of the Haradinaj Defence is to represent our client's interests and we therefore have a professional duty to bring such matters before the Appeals Panel, even at this late stage.

IV. Classification

27. This filing is classified as confidential because it relates to information in other filings that are classified as confidential.

Word Count: [1,118] words



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