



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: 9 January 2023

Original language: English

Classification: **Public**

**Decision on Gucati Application for Reclassification or
Public Redacted Versions of Court of Appeals Panel Decisions**

Specialist Prosecutor's Office:
Alex Whiting

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”), is seised of an application filed by Mr Hysni Gucati (“Application” and “Gucati”, respectively) seeking the reclassification, or issuance of public redacted versions, of five confidential Appeals Panel decisions (collectively, the “Five Decisions”).² The Specialist Prosecutor’s Office (“SPO”) did not respond.

1. Gucati submits that the Five Decisions should be reclassified as public, or that public redacted versions of these decisions should be issued.³ He also states that the Appeals Panel has ordered the Defence to file public redacted versions of some filings, but not others.⁴

2. The Appeals Panel recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed before the Panel.⁵ Moreover, the Panel recalls that the obligation for

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

² F00097, Defence Application for Reclassification/Public Redacted Versions of Court of Appeal Panel Decisions, 29 November 2022 (distributed on 2 December 2022) (“Application”), paras 1-14, 26, referring to 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); F00075, Decision on Specialist Prosecutor’s Office’s Request Regarding Item 206, 21 October 2022 (confidential); F00083, Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations, 7 November 2022 (confidential); F00090, Decision on Defence Requests for Extension of Time to File Potential Motions Pursuant to Rule 181, 9 November 2022 (confidential); F00094, Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing, 28 November 2022 (confidential).

³ Application, paras 15-20, 22-23.

⁴ Application, para. 21.

⁵ KSC-BC-2020-06, IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) (“Veseli Appeal Decision”), para. 8. See also e.g. KSC-BC-2020-07, IA006/F00006, Decision on Nasim Haradinaj’s Appeal Against Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, 7 January 2022, para. 10.

filings to be public as far as possible necessarily implies that filings must be made public (for example, through redaction) as soon as possible.⁶ Not only does this uphold the principle of publicity of proceedings, but also has practical advantages, such as aiding the Panel in assessing which pieces of information within, for example, a confidential filing should be redacted from its decision and which could be made public.⁷ Therefore, while the Panel has in many cases explicitly ordered parties to file public redacted versions of their submissions where the Parties had not yet done so, as Gucati notes, it has also reminded parties to file public redacted versions of their filings as soon as possible, rather than waiting for an order from the Panel before doing so.⁸

3. In this regard, the Panel notes that neither the Defence nor the SPO have filed public redacted versions of any of the submissions underlying the Five Decisions, nor sought their reclassification as public.⁹ While none of the Five Decisions explicitly

⁶ Veseli Appeal Decision, para. 9.

⁷ Veseli Appeal Decision, para. 9.

⁸ Veseli Appeal Decision, para. 9.

⁹ See F00028/CONF/RED, Confidential Redacted Version of Notification on W04730 telephone contact, 23 September 2022 (confidential) (confidential and *ex parte* version filed on 7 July 2022); F00038/CONF/RED, Confidential redacted version of Notification on communication received by the SPO, 23 September 2022 (confidential) (confidential and *ex parte* version filed on 7 September 2022); F00046/CONF/RED, Confidential Redacted Version of Prosecution notice of additional item 206 and challenge to disclosure, 19 September 2022 (confidential) (strictly confidential and *ex parte* version filed on 19 September 2022); F00050, Gucati Response to Prosecution Notice of Additional Item 206 and Challenge to Disclosure, 29 September 2022 (confidential); F00051, Haradinaj Defence Response to 'Prosecution notice of additional item 206 and challenge to disclosure', 29 September 2022 (confidential); F00068, Gucati Motion for Alternate Relief relating to Disclosure Violations, namely, An Order Overturning the Convictions, with the Imposition of a Stay or Order for Re-Trial, 17 October 2022 (confidential); F00073, Haradinaj Motion for Relief for Violations of Rule 103, 18 October 2022 (confidential); F00076, Prosecution Consolidated Response to Defence Rule 103 Requests and Related Reconsideration Requests, 27 October 2022 (confidential); F00078, Gucati Reply to Prosecution Consolidated Response to Defence Rule 103 Requests and Related Reconsideration Requests, 1 November 2022 (confidential); F00079, Defence Request for an Order for Disclosure of Witness Contact Details, 2 November 2022 (confidential); F00080, Defence Reply to SPO Consolidated Response to Defence Rule 103 Requests and Related Reconsideration Requests, 2 November 2022 (confidential); F00081, Gucati Request for (i) a Declaration that Rule 102(3) applies to Appeal Proceedings; and (ii) an Order for Disclosure of Witness Contact Details, 2 November 2022 (confidential); F00087, Application for an Extension of Time to File any Motion to Present Additional Evidence before the Court of Appeals Panel Pursuant to Rule 181, 7 November 2022 (confidential); F00088, Haradinaj Application to join Gucati Filing KSC-CA-2022-01/F00087, 8 November 2022 (confidential); F00089, Prosecution Response

ordered the Parties to file public redacted versions of their submissions, as Gucati alludes to, the Parties were able to do so at any time. This would assist the Appeals Panel in preparing public redacted versions of the Five Decisions.

4. The Appeals Panel consequently orders the Parties to file public redacted versions of their submissions underlying the Five Decisions, as enumerated in footnote 9, or make submissions on why public redacted versions of certain filings cannot (yet) be filed, within seven days of being notified of this Decision. Thereafter, the Appeals Panel will issue in due course, to the extent possible, public redacted versions of the Five Decisions.

5. Finally, the Panel orders the Parties to file public redacted versions of two additional filings,¹⁰ or make submissions on why public redacted versions of either of these filings cannot (yet) be filed, within seven days of being notified of this Decision. Thereafter, the Appeals Panel will issue in due course, to the extent possible, public redacted versions of the decisions resulting from these filings.¹¹

to Applications for Extension of Time to File Motions for Additional Evidence on Appeal, 8 November 2022 (confidential); F00091/CONF/RED, Confidential redacted version of Prosecution Consolidated Response to Defence Disclosure Requests, 11 November 2022 (confidential) (strictly confidential and *ex parte* version filed on 11 November 2022); F00093, Haradinaj Application to Adjourn the Oral Appeal Hearing, 27 November 2022 (confidential).

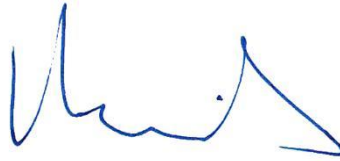
¹⁰ F00045/CONF/RED, Confidential Redacted Version of Request for Protective Measures, 23 September 2022 (confidential) (strictly confidential and *ex parte* version filed on 19 September 2022); F00095, Urgent Request for Full Disclosure as to Knowledge of the Court of Appeals Panel as to Defence Investigations, 29 November 2022 (confidential).

¹¹ 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); F00096, Decision on Gucati Request for Full Disclosure of the Knowledge of the Court of Appeals Panel Regarding Defence Investigations, 30 November 2022 (confidential).

I. DISPOSITION

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

ORDERS the Parties to file public redacted versions of filings F00028, F00038, F00045, F00046, F00050, F00051, F00068, F00073, F00076, F00078, F00079, F00080, F00081, F00087, F00088, F00089, F00091, F00093 and F00095, as detailed in footnotes 9 and 10, or make submissions on why public redacted versions of certain filings cannot (yet) be filed, within seven days of being notified of this Decision.



**Judge Michèle Picard,
Presiding Judge**

Dated this Monday, 9 January 2023

At The Hague, the Netherlands