

In: KSC-CA-2022-01

The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: A Panel of the Court of Appeals Chamber

Judge Michéle Picard

Judge Kai Ambos

Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hysni Gucati

Date: 19 January 2023

Language: English

Classification: Public

**Public Redacted Version of Application for an Extension of Time to File any
Motion to Present Additional Evidence before the Court of Appeals Panel
Pursuant to Rule 181**

Specialist Prosecutor

Jack Smith

Valeria Bolici

Matthew Halling

James Pace

Counsel for Hysni Gucati

Jonathan Elystan Rees KC

Huw Bowden

Eleanor Stephenson

Counsel for Nasim Haradinaj

Toby Cadman

Carl Buckley

Almudena Bernabeu

I. INTRODUCTION

1. The Appellant hereby applies for an extension of time to file any motion to present additional evidence (the “Motion”) before the Court of Appeals Panel (the “COA Panel”) under Rule 181 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (the “Rules”).
2. On the current timetable, the Defence is required to file the Motion (if any) by tomorrow - Tuesday 8 November 2022.
3. There is good cause to justify the delay in the submission of the Motion.

II. BACKGROUND

4. On 19 August 2022, the Appellants filed their appeal briefs.¹
5. 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 two interviews of Witness W04730 dated 1 October 2020 and 22 April 2022 (the “Witness Interviews”).²

¹ 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) (“Gucati Appeal Brief”); 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 version filed on 31 August 2022, reclassified as public on 2 September 2022) (“Haradinaj Appeal Brief”) (collectively, “Appeal Briefs”).

² 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) (“Decision on SPO Notifications”), paras 25-29, 38(a)-(b).

6. On 7 October 2022, the Appellant filed his brief in reply.³
7. On 12 October 2022 the Appellant was ordered to re-file his brief in reply, and it was filed on 17 October 2022.⁴
8. On 16 October 2022 the Appellant wrote to the SPO to request contact details for [REDACTED] and arrange an interview between the Defence and W04730 (the SPO having confirmed on 14 October 2022 that the SPO was in contact with [REDACTED]).
9. On 18, 25 and 26 October 2022 the Defence on behalf of Mr Haradinaj and/or the Defence for Mr Gucati wrote to the SPO to further request their assistance with Defence inquiries relating to the Witness Interviews.⁵
10. The SPO refused to cooperate on every occasion.
11. On 2 and 3 November 2022 the Defence teams for Mr Haradinaj and Mr Gucati respectively made Applications to the COA Panel for an Order for disclosure of Witness Contact Details (the “Applications for Contact Details”).⁶
12. The Applications for Contact Details are outstanding.

III. APPLICABLE LAW

13. Rule 181(1) states that a party may apply by motion to present additional evidence before the Court of Appeals Panel.

³ F00060, Gucati Brief in Reply pursuant to Rule 179(3) with one Annex, 7 October 2022 (confidential)

⁴ Public Redacted Version of Re-Filed Gucati Brief in Reply pursuant to Rule 179(3) with one Annex, 21 October 2022 (confidential version filed on 17 October 2022).

⁵ F00079, Defence Request for an Order for Disclosure of Witness Contact Details, 2 November 2022, Confidential

⁶ F00079, Defence Request for an Order for Disclosure of Witness Contact Details, 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

14. Rule 181(1) also states that such motions shall be filed within thirty (30) days of the Brief in Reply, unless a delay is justified on showing of good cause.

IV. SUBMISSIONS

15. Since the disclosure of the Witness Interviews, the Defence has endeavoured to find out as much as it can about the circumstances set out in the Witness Interviews. The Defence cannot ascertain whether it will call additional evidence unless it is able to conduct proper investigations.

16. Currently the Applications for Contact Details are outstanding and therefore it would be premature for the Defence to file any Motion before a Decision is made on those Applications. Should the Applications be successful this would be of enormous assistance to the Defence.

17. The Applications for Contact Details were made on 2 and 3 November 2022 following attempts to obtain contact details and assistance with interviews from the SPO on an *inter partes* basis. Had the SPO cooperated no Applications would have been necessary.

18. The Defence has been prevented from conducting effective investigations into the Rule 103 material belatedly disclosed. The Defence is unable to conduct effective investigations without further assistance from the SPO due to (i) the significant number of redactions in the transcripts of the Witness Interviews, and (ii) the fact that the COA Panel has granted witness anonymity to W04730 which prevents the defence from identifying him/her and making contact even in the event that he/she could be identified.

V. CONCLUSION

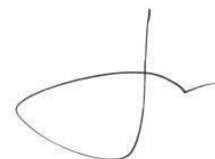
19. The Defence's request for an extension of time to file any Rule 181 application is justified by the fact that it has been prevented from conducting effective investigations into the Rule 103 material, "the Witness Interviews", due to the belated disclosure of the exculpatory material after the Trial Judgment and an unreasonable refusal by the SPO to assist with contact details and/or arranging interviews in a manner compatible with the protective measures granted.

20. Accordingly, the Defence request an extension of time to file any Rule 181 application of 14 days after the COA Panel has ruled upon the Applications for Contact Details.

VI. CLASSIFICATION

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

Word count: 929 words



JONATHAN ELYSTAN REES KC

Specialist Counsel for Mr Gucati

HUW BOWDEN

Specialist Co-Counsel for Mr Gucati

ELEANOR STEPHENSON

Specialist Co-Counsel for Mr Gucati

19 January 2023

The Hague, Netherlands

Caernarfon, UK