

**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

**Date:** 27 November 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of Haradinaj Application to Adjourn the Oral Appeal  
Hearing**

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**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for Nasim Haradinaj**

Toby Cadman

Carl Buckley

Almudena Bernabeu

John Cubbon

**Counsel for Hysni Gucati**

Jonathan Elystan Rees KC

Huw Bowden

Eleanor Stephenson

## I. INTRODUCTION

1. On 20 October 2022 the Court of Appeals Panel ordered that an Oral Appeal Hearing be listed,<sup>1</sup> the same ordered to be listed on 1 and 2 December 2022.
2. The Defence for Mr. Nasim Haradinaj (“Appellant”) now applies to adjourn that appeal hearing on the basis that an important issue affecting the progress of the Appeal remain under consideration by the Appeals Panel.

## II. BACKGROUND

3. On 19 August 2022, the Appellants filed their appeal briefs.<sup>2</sup>
4. On 15 September 2022, the Court of Appeals Panel issued a decision ordering the Specialist Prosecutor’s Office (“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].<sup>3</sup>

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<sup>1</sup> KSC-CA-2022-01/F00074

<sup>2</sup> F00035/COR2 – The Further Corrected Version of Defence Appeal Brief filed on 2 September 2022.

<sup>3</sup> F00044/CONF/RED, Confidential Redacted version of Decision on Prosecution Notifications, 26 September 2022.

5. On 21 September 2022, the SPO filed its brief in reply.<sup>4</sup>
6. 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.
7. The SPO refused to cooperate on each and every occasion.
8. 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.<sup>5</sup> The Gucati Defence and the Appellant further applied for an extension of time to file motions pursuant to Rule 181.<sup>6</sup>
9. On 9 November the Appeals Panel issued its 'Decision on Defence Requests for Extension of Time to file Potential Motions Pursuant to Rule 181',<sup>7</sup> 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"*.<sup>8</sup>

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<sup>4</sup> F00047, Confidential Prosecution Brief in Response to Defence Appeals with two public annexes.

<sup>5</sup> KSC-CA-2022-01/F00081

<sup>6</sup> KSC-CA-2022-01/F00087 and KSC-CA-2022-01/F00088

<sup>7</sup> KSC-CA-2022-01/F00090

<sup>8</sup> *Ibid* at paragraph 7

10. That decision further noted at paragraph 5:

*“The Panel considers that a motion to present additional evidence under Rule 181 of the Rules, to the extent that it would be the result of any potential interviews with the witnesses for which the Defence seeks contact details, would necessarily depend on the Panel’s decision in relation to the Requests to Contact Witnesses.”*

### **III. Submissions**

11. The Appellant highlights that there are two outstanding motions at this time albeit relating to the same issue, namely the provision of witness contact details and a declaration that Rule 102(3) applies to appeal proceedings.
12. It is respectfully submitted that given the nature of those issues and the fact that no decisions and/or Orders have been made in respect of witness contact details, the currently listed Appeal hearing is to be inevitably impacted. It is further noted that the Panel has not ruled on the application for a declaration that Rule 102(3) applies to appeal proceedings.<sup>9</sup>

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<sup>9</sup> KSC-CA-2022-01/F00081

13. Per the aforesaid Order, should the Appeals Panel grant the requests currently under consideration, the Defence Team(s) will have 14 days to make any application to present further evidence. Inevitably, that period will take matters beyond the currently listed appeal hearing, and therefore it would appear clear that the Appeal hearing cannot remain as listed whilst issues of such importance concerning the potential admission of further evidence remain outstanding.
  
14. The above submission is premised on a number of points:
  - a. That the Panel has not ruled on the application for a declaration that Rule 102(3) applies to appeal proceedings;
  
  - b. That if the motion seeking disclosure of contact details is granted, 14 days has been afforded to make any submissions in respect of further evidence to be adduced, this deadline going beyond the currently listed appeal;
  
  - c. That the evidence that witness(s) may provide, has the very real potential to impact both written submissions previously made, and oral submissions that will be made at any appeal hearing; and
  
  - d. That evidence has the very real potential to impact the Appeal Panel's deliberations.

15. Accordingly, to hear oral submissions on appeal prior to the aforesaid being resolved, would respectfully appear to be premature and highly prejudicial.
16. The Rules of Evidence and Procedure are silent in respect of 'Adjournments' on Appeal, and therefore guidance is taken from Rule 123(1):

*"The Presiding Judge may order an adjournment of the proceedings of no longer than twenty-one (21) days in order to allow for specific evidence to be collected for witnesses to appear or for the preparation of the Specialist Prosecutor or the Defence, or for any other reason justifying the adjournment" (emphasis added).*

17. It is submitted that the Appellant has raised a reason that would justify the adjournment, in sum, the fact that motions and decisions remain outstanding that could have a significant impact on the Appeal Hearing.

#### IV. CONCLUDING REMARKS

18. The Appellant is conscious of using Court time expeditiously and efficiently and therefore make this application in an effort to avoid wasting two days of Court time.

19. Further, the Appellant would submit that in the interests of fairness to both Appellants, the Appeals Panel ought to be in possession of all relevant material and/or evidence prior to hearing final submissions on Appeal, and prior to rendering any decision upon the same.
20. Accordingly, it is submitted that the currently listed Oral Appeal Hearing ought to be adjourned.

Word Count: [880] words



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**Toby Cadman**  
**Specialist Counsel for Nasim Haradinaj**



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**Almudena Bernabeu**  
**Specialist Co-Counsel**



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**Carl Buckley**  
**Specialist Co-Counsel**