



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 November 2022

Original language: English

Classification: **Public**

**Public Redacted Version of Decision on Defence Requests for
Extension of Time to File Potential Motions Pursuant to Rule 181**

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” 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 requests filed by Mr Hysni Gucati (“Gucati”) and Mr Nasim Haradinaj (“Haradinaj”) (collectively, “Accused”) on 7 and 8 November 2022, respectively, requesting an extension of 14 days after the Panel has ruled upon the outstanding Defence Requests to Contact Witnesses, in order to file a potential motion pursuant to Rule 181 of the Rules.² The Specialist Prosecutor’s Office (“SPO”) responded on 8 November 2022 that the Requests should be rejected.³

1. Gucati submits that there is good cause to justify the delay in the submission of any motions pursuant to Rule 181 of the Rules, as he can only ascertain whether he will call additional evidence if he could conduct proper investigations by contacting witnesses relevant to the circumstances of the disclosure of two interviews of Witness W04730 dated [REDACTED] and [REDACTED] (“Rule 103 Material”).⁴ Haradinaj joins and adopts the submissions made in the Gucati Request and reasserts that the basis for the Requests is both the SPO’s intransigence refusing *inter partes* requests for assistance submitted by the Defence and the fact that the Requests to contact Witnesses remain outstanding.⁵

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

² 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) (“Gucati Request”), paras 1, 20; F00088, Haradinaj Application to Join Gucati Filing KSC-CA-2022-01/F00087, 8 November 2022 (confidential) (“Haradinaj Request”), para. 8 (collectively, “Requests”). See 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, 2 November 2022 (confidential) (collectively, “Requests to Contact Witnesses”).

³ F00089, Prosecution Response to Applications for Extension of Time to File Motions for Additional Evidence on Appeal, 8 November 2022 (confidential) (“Response”), paras 1, 4.

⁴ Gucati Request, paras 3, 15-19.

⁵ Haradinaj Request, paras 2, 4-8.

2. The SPO responds that the timing of the Requests is inexcusable, as the Rule 103 Material has already been disclosed since 26 September 2022 and the Defence has known since 26 October 2022 at the latest that the SPO would not facilitate the requested interviews.⁶ The SPO also submits that the prospect of hypothetically gathering further evidence cannot justify delaying an application to admit any additional evidence currently in the Defence's possession.⁷

3. The Panel notes that, pursuant to Rule 181(1) of the Rules, motions to present additional evidence before the Court of Appeals Panel shall be filed within 30 days of the brief in reply, unless a delay is justified on showing of good cause. The Accused filed their briefs in reply on 7 October 2022.⁸ However, pursuant to an order of the Appeals Panel,⁹ Haradinaj and Gucati re-filed, on 16 and 17 October 2022, respectively, their briefs in reply.¹⁰ Accordingly, the briefing on appeal was completed at that time¹¹ and, in these circumstances, any motions for additional evidence pursuant to Rule 181 of the Rules would normally be due 30 days thereafter.

4. The Panel recalls that Rule 9(5)(a) of the Rules allows for the variation of any time limit prescribed by the Rules, upon a showing of good cause or *proprio motu*. In this regard, the Panel notes that the SPO disclosed the Rule 103 Material on 26 September 2022.¹² Since then, a significant amount of litigation has taken place in

⁶ Response, para. 2.

⁷ Response, para. 3.

⁸ F00060, Gucati Brief in Reply pursuant to Rule 179(3) with one Annex, 7 October 2022 (confidential); F00062, Haradinaj Reply to SPO Brief in Response to Defence Appeal Brief, 7 October 2022 (confidential).

⁹ F00063, Decision on Defence Requests for Variation of Word Limit of Briefs in Reply, 12 October 2022.

¹⁰ F00065, Haradinaj Re-filed Reply to SPO Brief in Response to Defence Appeal Brief, 16 October 2022; F00067/RED, 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).

¹¹ See F00074, Order Scheduling an Appeal Hearing, 20 October 2022, para. 2; F00084, Order for the Preparation of the Appeal Hearing, 7 November 2022, para. 2.

¹² See 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), paras 25-29, 38(a)-(b); 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).

relation to remedies sought by the Defence on the basis of the timing of the disclosure of the Rule 103 Material, as well as to other disclosure issues, which concluded on 7 November 2022.¹³ The Defence also attempted to obtain the requested witnesses' contact details and other assistance to conduct interviews from the SPO on an *inter partes* basis, having received a final answer on 26 October 2022.¹⁴

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. As these requests were filed on 2 November 2022,¹⁵ the relevant briefing schedule is expected to be completed by 21 November 2022. Accordingly, the Panel finds reasonable to grant an extension of time until 14 days from the notification of the Panel's decision on the Defence Requests to Contact Witnesses, should these requests be granted.

6. The Panel finally recalls that, pursuant to Rule 9(6) of the Rules, motions for the variation of time limits may be disposed of without giving the Parties the opportunity to be heard. Given that no prejudice will be caused to the Accused, the Panel considers that it is in the interests of justice to dispose of the Requests immediately without waiting for the Accused to reply.

¹³ See 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); F00075, Decision on the Specialist Prosecutor's Office's Request Regarding Item 206, 21 October 2022 (confidential); F00082/RED, Public Redacted Version of Decision on Defence Applications for Reconsideration of "Decision on Defence Requests to Amend the Notices of Appeal Pursuant to Rule 176(3) of the Rules", 3 November 2022 (confidential version filed on 3 November 2022); F00083, Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations, 7 November 2022 (confidential).

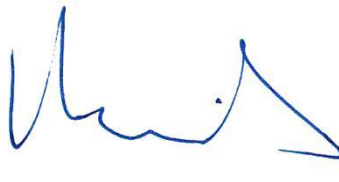
¹⁴ See Gucati Request, paras 8-10; Response, para. 2.

¹⁵ See Requests to Contact Witnesses.

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

GRANTS the Requests; and

AUTHORISES Gucati and Haradinaj to file any motions pursuant to Rule 181 of the Rules 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.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 9 November 2022

At The Hague, the Netherlands