



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-CA-2024-03**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 24 July 2024

Original language: English

Classification: **Public**

Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal

Specialist Prosecutor's Office:

Kimberly P. West

Counsel for Pjetër Shala:

Jean-Louis Gilissen

Counsel for Victims:

Simon Laws

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 a motion filed by Mr Pjetër Shala (“Shala” or “Accused”).² The Specialist Prosecutor’s Office (“SPO”) responded on 23 July 2024.³

1. The Accused requests an extension of the time limit for filing his notice of appeal against the Trial Judgment issued in case KSC-BC-2020-04 of 30 days after the Albanian translation of the Trial Judgment is communicated to the Defence or, in the alternative, until 30 September 2024.⁴ Shala submits that the extension sought does not impact the length and overall expeditiousness of the proceedings in an unreasonable manner.⁵ In his view, his request for variation is justified on the ground that he is entitled to receive the Trial Judgment in a language he understands sufficiently in advance of the deadline to file his notice of appeal, which is essential for the effective exercise of his rights.⁶ More specifically, Shala argues that his poor command of English prevents him from reviewing the Trial Judgment and giving informed instructions to Counsel.⁷ He further contends that since his appeal “will raise complex

¹ F00002, Decision Assigning a Court of Appeals Panel, 22 July 2024.

² F00001, Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, 19 July 2024 (“Motion”).

³ F00003, Prosecution response to ‘Application for Variation of the Time Limit for Filing the Defence Notice of Appeal’, 23 July 2024 (“Response”).

⁴ Motion, paras 1, 12, 15. See also Motion, paras 8-10. See KSC-BC-2020-04, F00847, Trial Judgment and Sentence, 16 July 2024 (confidential) (“Trial Judgment”). Shala indicates that the Registry informed the Defence that the Albanian translation of the Trial Judgment should be completed by October 2024 and that a preliminary translation should be available in early September 2024. See Motion, para. 11.

⁵ Motion, para. 11.

⁶ Motion, paras 4, 6-8. See also Motion, para. 11. Shala adds that following the pronouncement of the Trial Judgment, he declined on two occasions to accept the English version of the Trial Judgment and insisted that he receive proper notification of the judgment in a language that he understands, specifically, in Albanian. See Motion, fn. 8, referring to KSC-BC-2020-04, F00849, Notification Regarding Service of the Trial Judgment, 17 July 2024 (confidential) (“Registry Notification”), paras 2, 3.

⁷ Motion, paras 6-8.

matters”, he should be allowed sufficient time to review the lengthy Trial Judgment so that Counsel can prepare a meaningful notice of appeal.⁸ Should this request be rejected, Shala contends that the Defence will be forced to “outsource” the translation of the public redacted version of the Trial Judgment, and requests, in the alternative, a 45-day extension to file his notice of appeal.⁹ Finally, Shala requests the Appeals Panel to set a deadline for the Registry to communicate the Albanian version of the Trial Judgment to the Parties.¹⁰

2. The SPO responds that Shala fails to show good cause justifying the extension of time he requests, and argues that (i) he fails to show that the size or scope of the Trial Judgment warrants a variation; (ii) the fairness of the proceedings at this stage is not negatively impacted by the unavailability of an Albanian translation as Defence Counsel has the primary responsibility for the notice of appeal; and (iii) the variation is excessive and will cause undue delay to the proceedings.¹¹ The SPO adds that it does not oppose a modest extension of time, not exceeding 30 days from the date the notice of appeal would otherwise be due, in light of the fact that the Trial Judgment was issued in close proximity to the commencement of the judicial recess and that the entire recess falls within the 30 day period for the notice of appeal.¹²

3. The Panel notes that, pursuant to Rule 176(2) of the Rules, a Party seeking to appeal a judgment of conviction shall file a notice of appeal setting forth the grounds of appeal within 30 days of the written sentencing judgment.¹³ The Panel may, *proprio motu* or upon a showing of good cause, extend or reduce any time limit prescribed by

⁸ Motion, para. 5.

⁹ Motion, paras 9-10. Shala refers to preliminary enquiries made with independent translators. See Motion, para. 10; F00001/A01, Annex 1 to Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, 19 July 2024 (confidential).

¹⁰ Motion, para. 13.

¹¹ Response, paras 1, 3-5, 7-8.

¹² Response, paras 1, 6-8.

¹³ In this case, the Trial Panel included sentencing in its Trial Judgment. See Trial Judgment, para. 1124.

the Rules or set by the Panel.¹⁴ In the present case, the Trial Judgment was pronounced on 16 July 2024 and its confidential version written in English was made available to the Parties on the same day. As the working language of these proceedings is English, the time limit for filing notices of appeal commences on the first working day after a trial judgment has been issued in English.¹⁵ Any notices of appeal in this case are therefore due on 15 August 2024.¹⁶

4. Turning to Shala's arguments regarding the right to receive the Trial Judgment in Albanian prior to filing his notice of appeal, the Panel recalls that, in line with consistent case law, the determination and formulation of potential grounds of appeal falls primarily within the purview of Defence Counsel.¹⁷ In that regard, the Panel is of the view that Counsel are already in a position to discuss the content of the Trial Judgment with the Accused and to advise him as to potential grounds of appeal.¹⁸ The Panel recalls that in cases before international criminal courts where trial judgments were issued in a language which the accused did not understand, an extension of time for the filing of a notice of appeal was generally not warranted where the convicted person's counsel could work in the language in which the trial judgment was pronounced.¹⁹

5. Moreover, the Panel recalls that, pursuant to Rule 176(3) of the Rules, it may, if good cause is shown, authorise a variation of the grounds of appeal. Consequently,

¹⁴ Rule 9(5)(a) of the Rules.

¹⁵ KSC-CA-2023-02, F00004, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 9 January 2023 ("*Mustafa* Decision on Extension of Time"), para. 2; KSC-CA-2022-01, F00005, Decision on Haradinaj's Request for Clarification on Appeal Timescale, 25 May 2022 ("*Haradinaj* Decision on Appeal Timescale"), para. 3. See KSC-BC-2020-04, F00025, Decision on Working Language, 21 April 2021; KSC-BC-2020-04, F00289, Decision setting the dates for trial preparation conferences and requesting submissions, 30 September 2022, para. 7. See also F00004, Decision on Working Language, 24 July 2024.

¹⁶ See Rule 9(2) and (3) of the Rules.

¹⁷ See *Haradinaj* Decision on Appeal Timescale, para. 4 and jurisprudence cited therein. See also *Mustafa* Decision on Extension of Time, para. 3.

¹⁸ See *Haradinaj* Decision on Appeal Timescale, para. 4.

¹⁹ See *Haradinaj* Decision on Appeal Timescale, para. 4 and jurisprudence cited therein.

the Parties will have the opportunity, if they so wish, to request a variation of their grounds of appeal after having read the Albanian translation of the Trial Judgment, provided that they show good cause under this Rule.²⁰

6. In light of the above, and while the Panel recognises the importance of the Accused's right to receive the Trial Judgment in a language he understands,²¹ the Panel considers that the fairness of the proceedings at this stage will not be negatively impacted by the unavailability of the Albanian translation of the Trial Judgment.²²

7. As to Shala's request that the Appeals Panel set a deadline for the Registry to communicate the Albanian version of the Trial Judgment to the Parties, the Panel takes note of the Registry's commitment to serve a certified copy of the Albanian translation on Shala "as soon as it is available".²³ Consequently, the Appeals Panel does not find it necessary at this early stage of the appellate proceedings to impose any deadline on the Registry. The Panel nevertheless instructs the Registry to report on the translation of the Trial Judgment into Albanian to the Appeals Panel within 10 days of the filing of the present Decision and to provide the expected dates when the preliminary unrevised translation and the finalised official translation of the Trial Judgment will be available. The Panel also notes that any progress on this matter will be further discussed at the pre-appeal conference.²⁴

8. Turning to the Defence's arguments relating to the length and alleged complexity of the Trial Judgment, the Panel observes that the Trial Panel convicted the Accused for three counts in relation to one detention centre based on its findings

²⁰ See *Haradinaj* Decision on Appeal Timescale, para. 5; *Mustafa* Decision on Extension of Time, para. 3.

²¹ See Motion, para. 6.

²² See *Haradinaj* Decision on Appeal Timescale, para. 6. See also *Mustafa* Decision on Extension of Time, para. 3.

²³ See Registry Notification, para. 4.

²⁴ Rule 178 of the Rules provides that the Presiding Judge shall convene a pre-appeal conference within 21 days of a notice of appeal.

as to events having occurred in the course of May-June 1999.²⁵ The Panel is not persuaded by the brief arguments put forward by the Accused in this regard that the Trial Judgment is extensive or otherwise complicated in a manner that would justify an extension of time.

9. That being said, the Panel notes, *proprio motu*, that most of the 30-day time limit for filing notices of appeal falls within the summer judicial recess.²⁶ While a judicial recess does not itself constitute good cause for extending time limits, limited staff availability during recess may be a factor in granting extensions of time.²⁷

10. In light of this, the Panel considers that good cause exists for a limited variation of the time limit for the notice of appeal. The Panel observes that Shala requests an extension of 30 days after receiving the Albanian translation of the Trial Judgment, or, in the alternative, an extension of 45 days. The Panel considers that the requested extension, which would in the latter case almost triple the time frame provided in the Rules,²⁸ is disproportionate in this instance. In the Panel's view, extending the deadline for filing the notice of appeal to 2 September 2024 would be sufficient to accommodate any limitation on resources during the summer judicial recess.

11. The Panel also finds that it is in the interests of justice to grant the same variation of the time limit to the Specialist Prosecutor's Office ("SPO"), if it wishes to file a notice of appeal, considering that doing so will not unreasonably impact the overall expeditiousness of the proceedings in this case and that it is in the interests of effective case management to maintain a synchronised briefing schedule on appeal.

²⁵ Trial Judgment, para. 1124.

²⁶ See Response, para. 6.

²⁷ *Mustafa* Decision on Extension of Time, para. 6 and jurisprudence cited therein. See also e.g. KSC-BC-2020-06, IA030/F00003, Decision on Selimi's and Krasniqi's Request for Variation of Time Limit, 22 December 2023, para. 3.

²⁸ The Panel notes Shala's indication that the Registry informed the Defence that the Albanian translation of the Trial Judgment should be completed by October 2024. His requested extension of 30 days after receiving the Albanian translation would therefore amount to an even larger extension of the time frame provided by the Rules. See Motion, para. 11.

12. Finally, the Panel notes that considering the extension of time granted with this decision, the appeal briefs would normally be due on 1 November 2024.

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

GRANTS the Motion in part; and

AUTHORISES the Defence and the SPO to file their notices of appeal, if any, by 2 September 2024;

INSTRUCTS the Registry to report on the progress made on the translation of the Trial Judgment into Albanian, and its expected finalisation to the Appeals Panel within 10 days of the filing of the present Decision; and

DISMISSES the remainder of the Motion.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 24 July 2024

At The Hague, the Netherlands