



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-CA-2024-03

Before: Court of Appeals Panel

Judge Michèle Picard

Judge Kai Ambos

Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 9 September 2024

Language: English

Classification: Confidential

Prosecution request for order to the Shala Defence to refile its Notice of Appeal

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Pjetër Shala

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

I. INTRODUCTION

1. Pursuant to Rule 177 of the Rules¹ and Article 46 of the Law,² the Court of Appeals Panel ('Panel') should reject the Defence Notice of Appeal,³ as it fails to comply with the requirements of Article 47(1) of the Practice Direction,⁴ and issue an order for the Defence to file an updated notice which fully complies with the Practice Direction ('Request').⁵

2. As explained below, in relation to several grounds of appeal, the Notice of Appeal fails to clearly specify the alleged error and/or the precise relief sought in respect of each ground. Further, the full scope of the Notice of Appeal is unclear given the apparent attempt to include multiple sub-grounds of appeal without indicating their relationship to each other or the overarching ground of appeal under which they fall.⁶

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

³ Defence Notice of Appeal, KSC-CA-2024-03/F00010, 2 September 2024, Confidential ('Notice of Appeal').

⁴ KSC Registry Practice Direction, 'Files and Filings before the Kosovo Specialist Chambers', KSC-BD-15, Public, 17 May 2019 ('Practice Direction'). Pursuant to Article 47(1), a notice of appeal submitted pursuant to Rules 176 and 186(3) of the Rules shall contain: the File number and the date of the contested judgment; the grounds of appeal, clearly specifying in respect of each ground: (1) the alleged error on a question of law invalidating the judgment, the alleged error of fact which has occasioned a miscarriage of justice and/or the alleged error in sentencing; (2) an identification of the challenged finding or ruling in the judgment, with specific reference to the relevant page and/or paragraph numbers; (3) an identification of any other ruling challenged, with specific reference to the date of its filing, page and paragraph numbers and/or transcript page; and (4) the precise relief sought; and the overall relief sought.

⁵ In this regard, the SPO notes that the Notice of Appeal also fails to comply with the Article 47(2) of the Practice Direction by exceeding the limit of 3,000 words. *See similarly* Decision on Haradinaj's Request for Variation of Word Limit to File Appeal Brief and SPO's Request for Order to Re-File Haradinaj's Notice of Appeal, KSC-CA-2022-01/F00021, 1 July 2022, Public, para.13 ('*Haradinaj* Decision on Notice of Appeal').

⁶ Notice of Appeal, KSC-CA-2024-03/F00010, Grounds 1, 4, 6-9, 12-14.

II. SUBMISSIONS

3. The purpose of a notice of appeal is to provide the opposite party with sufficient notice of the exact scope of the appeal from the time of the filing of the notice.⁷ The Notice of Appeal fails in this regard, placing the Specialist Prosecutor's Office ('SPO') at a disadvantage in preparing its response to the challenges to be set out in the Defence appeal brief.

4. Specifically, the Notice of Appeal fails to clearly specify the alleged error in respect of Grounds 1, 3, 5, 6, 8,⁸ 9, 13,⁹ and 14.¹⁰ Broad assertions that the Trial Panel 'erred' in some way do not relieve the Defence of its obligation to specify whether the alleged error is one of fact and/or law.¹¹

5. With the exception of Grounds 5, 11, and 14, the Notice of Appeal also fails to specify the precise relief sought in respect of each ground of appeal. The blanket request for the Appeals Panel to 'quash the convictions entered by the Trial Panel and/or remit the case for retrial and/or impose, if necessary, an appropriate sentence',¹² does not absolve the Defence of its obligation to specify the precise relief sought in relation to each of its grounds of appeal.¹³ Specifying the precise relief sought will enable the SPO and the Panel to appreciate whether the alleged error is capable of affecting the conviction/s on a particular count/s of the Indictment, and/or the sentence imposed.

6. Further, the full scope of the Notice of Appeal is unclear. Under several grounds,¹⁴ the Notice of Appeal appears to list numerous sub-grounds of appeal while

⁷ See ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Decision on Prosecution Motion to Strike Grounds 12 and 14 of Valentin Ćorić's Notice of Appeal, 11 December 2014 ('Prlić Decision'), p.3; ICTY, *In the Case Against Florence Hartmann*, IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009 ('Hartmann Decision'), para.12.

⁸ Notice of Appeal, KSC-CA-2024-03/F00010, para.20.

⁹ Notice of Appeal, KSC-CA-2024-03/F00010, para.34.

¹⁰ Notice of Appeal, KSC-CA-2024-03/F00010, paras 36-37, 41.

¹¹ Haradinaj Decision on Notice of Appeal, KSC-CA-2022-01/F00021, para.11.

¹² Notice of Appeal, KSC-CA-2024-03/F00010, para.42.

¹³ Haradinaj Decision on Notice of Appeal, KSC-CA-2022-01/F00021, para. 11, fn.31.

¹⁴ Notice of Appeal, KSC-CA-2024-03/F00010, Grounds 1, 4, 6-9, 12-14.

failing to indicate how they relate to each other, or the overarching ground of appeal under which they purportedly fall.

7. For example, under Ground 8, the Notice of Appeal alleges, *inter alia*, that the Trial Panel breached the *in dubio pro reo* principle, drew certain inferences over others, applied a double standard in the assessment of evidence, and failed to acknowledge the impact of the passage of time on Mr Shala's ability to defend himself.¹⁵ It goes on to take issue with the manner in which the Trial Panel took notice of and relied upon adjudicated facts,¹⁶ before concluding with a laundry list of alleged procedural failures on the part of both the SPO and the Trial Panel.¹⁷ How these discrete alleged errors, either individually or collectively, placed an 'unattainable burden of proof on the Defence' as suggested by the heading of Ground 8 is entirely ambiguous. Such a disorderly approach results in a ground of the appeal that is, at best, ill-defined and obscures the overall scope of the appeal.

8. This Panel 'has discretion to address failures to comply with the formal requirements in notices of appeal *proprio motu*'.¹⁸ In line with applicable jurisprudence,¹⁹ the Panel has previously exercised this discretion and ordered parties to re-file notices of appeal where they failed to comply with the requirements thereof, finding that such re-filing would be in the interests of justice.²⁰ The Panel should follow suit on this occasion to ensure the necessary clarity is available to all at this stage of the proceedings.

¹⁵ Notice of Appeal, KSC-CA-2024-03/F00010, para.17.

¹⁶ Notice of Appeal, KSC-CA-2024-03/F00010, para.18.

¹⁷ Notice of Appeal, KSC-CA-2024-03/F00010, para.20.

¹⁸ *Haradinaj* Decision on Notice of Appeal, KSC-CA-2022-01/F00021, para.9. In this regard, the Notice of Appeal, KSC-CA-2024-03/F00010, is 689 words above the word limit prescribed by Article 47(2) of the Practice Direction.

¹⁹ See *Prlić* Decision, pp.2-3; *Hartmann* Decision, paras 12-14, 27(b); ICTR, *Prosecutor v. Renzaho*, ICTR-97-31-A, Order on Tharcisse Renzaho's Notice of Appeal, 14 October 2009, paras 3-5.

²⁰ *Haradinaj* Decision on Notice of Appeal, KSC-CA-2022-01/F00021, paras 9, 11-12, 14.

III. CLASSIFICATION

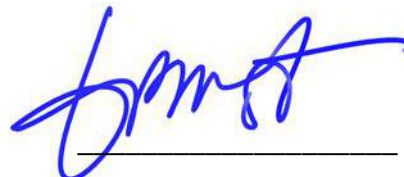
9. This filing is confidential in accordance with Rule 82(4). The SPO does not object to the reclassification of the Request as public.

IV. RELIEF REQUESTED

10. For the foregoing reasons, the Panel should grant the Request.

11. Unless the Panel requires further submissions on the issues addressed in this filing, there are no other issues the SPO would currently seek to raise during the Pre-Appeal Conference scheduled for 20 September 2024.²¹

Word count: 1210



Kimberly P. West

Specialist Prosecutor

Monday, 9 September 2024

At The Hague, the Netherlands.

²¹ See Order Scheduling a Pre-Appeal Conference, KSC-CA-2024-03/F00012, 4 September 2024, Public, paras 7, 9.