

In:

KSC-CA-2024-03

The Specialist Prosecutor v. Pjetër Shala

Before:

A Panel of the Court of Appeals Chamber

Judge Michèle Picard

Judge Kai Ambos

Judge Nina Jørgensen

Registrar:

Fidelma Donlon

Date:

13 September 2024

Filing Party:

Specialist Counsel for Pjetër Shala

Original language:

English

Classification:

Confidential

Defence Response to the Prosecution Request for an Order to
Refile the Defence Notice of Appeal

Specialist Prosecutor’s Office

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Hédi Aouini

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I. INTRODUCTION

1. Pursuant to the Panel of the Court of Appeals Chamber ("Panel")'s order,¹ the Defence for Mr Pjetër Shala ("Defence") hereby files its response to the "Prosecution request for order to the Shala Defence to refile its Notice of Appeal" ("Request").²

II. PROCEDURAL HISTORY

2. On 16 July 2024, Trial Panel I issued the "Trial Judgment and Sentence", convicting Mr Shala of the war crimes of arbitrary detention, torture, and murder and sentencing him to 18 years of imprisonment.³
3. On 19 July 2024, the Defence requested an extension of time to file its Notice of Appeal.⁴
4. On 24 July 2024, the Panel granted the Request in part and ordered that the Defence file its Notice of Appeal by 2 September 2024.⁵
5. On 2 September 2024, the Defence filed its Notice of Appeal.⁶

¹ Email from the Court Management Unit of the Registry to the Parties and Victims' Counsel, 10 September 2024, 16:08.

² KSC-CA-2024-03, F00013, Prosecution request for order to the Shala Defence to refile its Notice of Appeal, 9 September 2024 (confidential). All further references to filings in this Response concern Case No. KSC-CA-2024-03 unless otherwise indicated.

³ KSC-BC-2020-04, F00847, Trial Judgment and Sentence with One Confidential Annex, 16 July 2024 (confidential), paras 1121-1125.

⁴ F00001, Application for Variation of the Time Limit for Filing the Defence Notice of Appeal with confidential Annex 1, 19 July 2024.

⁵ F00006, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 24 July 2024, paras 10, 13. *See also* F00008, Defence Request for a Further Limited Extension of the Time Limit for Filing the Notice of Appeal, 7 August 2024; F00009, Decision on Defence Further Request for Variation of Time Limit to File Notice of Appeal, 8 August 2024, paras 6, 8.

⁶ F00010, Defence Notice of Appeal, 2 September 2024 (confidential) ("Notice of Appeal").

6. On 3 September 2024, the President of the Specialist Chambers assigned the Panel to decide on Mr Shala's appeal against the Trial Judgment.⁷
7. On 9 September 2024, the Prosecution filed the Request, requesting the Panel to reject the Notice of Appeal and order the Defence to file an "updated" notice.⁸

III. APPLICABLE LAW

8. Pursuant to Article 47(1) of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers ("Practice Direction"), a notice of appeal shall contain only the grounds of appeal, clearly specifying in respect of each ground the following, as well as the overall relief sought:

- (i) 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;
- (ii) an identification of the challenged finding or ruling in the judgment, with specific reference to the relevant page and/or paragraph numbers;
- (iii) 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
- (iv) the precise relief sought.⁹

IV. SUBMISSIONS

⁷ F00011, Decision Assigning a Court of Appeals Panel, 3 September 2024, para. 7.

⁸ Request, para. 1.

⁹ See also KSC-CA-2022-01, F00021, 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, 1 July 2022, para. 10.

9. The position of the Defence is that the Notice of Appeal filed on 2 September 2024 was validly filed and complies with Article 47(1) of the Practice Direction.
10. The purpose of the Notice of Appeal is to give adequate notice to the other parties, the Prosecution and Victims' Counsel, of the Defence case. This had been done. The errors of fact, law, and mixed errors that the Defence intends to demonstrate with its forthcoming submissions on appeal have been sufficiently presented. The same applies to the errors in sentencing that have also been sufficiently presented.
11. The Defence has given adequate notice at the present preliminary stage of the appeal proceedings of all grounds of appeal it intends to develop in its appeal brief and at the appeal hearing.¹⁰ Furthermore, as required by Article 47(1) of the Practice Direction, the Defence has identified the rulings and findings in the Impugned Judgment that it will seek to challenge.¹¹ The Defence has also explicitly specified the relief sought, namely, for the 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
12. The Prosecution is very well aware that it will receive further particulars and the fully developed grounds of appeal in the Defence Appeal Brief. It will receive full particulars of the Defence appeal in due time. The Defence has 60 days, pursuant to Rule 179(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), to file its Appeal Brief and this time

¹⁰ Request, para. 4 *referring to* Grounds 1, 3, 5, 6, 8, 9, 13, and 14.

¹¹ See Notice of Appeal, fns 3-51.

¹² In addition, the Defence has indicated that that each time it refers to an error of law, it refers to an error that invalidates the findings referred to in the specified sections of the Impugned Judgment and relevant conviction, and each time it refers to an error of fact it refers to an error of fact that has occasioned a miscarriage of justice; see Notice of Appeal, fn. 2.

is envisaged in the Rules for good reason: to protect Mr Shala's right to have adequate time to present his case.¹³

13. Should the Prosecution consider that the arguments presented already and out of courtesy under each ground of appeal in the Defence Notice of Appeal are not related to each other or to the ground of appeal that they support, the Prosecution will have ample time and every opportunity to develop its submissions in its response to the Defence Appeal Brief.
14. The purpose of the Notice of appeal is served. The Defence has given sufficient notice and indication of what it will argue on appeal. The formal requirements set out in the Practice Direction have been complied with. The Prosecution deliberately misinterprets the Practice Direction in suggesting that the Defence is under an obligation to provide a notice of appeal that should be approved by the Prosecution. The Prosecution's position and Request constitute abuse of process. The Prosecution has failed to demonstrate that the Panel must exercise its discretion and grant its Request. The right of Mr Shala to have sufficient time to prepare its case and present an effective defence warrants that the Panel reject the Request and allow the Defence sufficient time to prepare and present its case in its appeal brief.
15. Finally, the request submitted with the Notice of Appeal for a limited extension of the word limit is absolutely necessary to provide sufficient notice of the Defence case. Denial of the Defence request would only serve to give even less information on what it intends to present in its appeal brief.

V. CLASSIFICATION

¹³ KSC-CA-2022-01, F00021, 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, 1 July 2022, para. 10, *referring to 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, para. 14.*

16. Pursuant to Rule 82(4) of the Rules, this Response is filed as confidential as it is related to the confidential Request. Pursuant to 82(3) of the Rules and in light of the Prosecution's submission that it does not object to the reclassification of the Request as public,¹⁴ the Defence requests the Response to be reclassified as public as it does not contain any confidential information.

VI. RELIEF REQUESTED

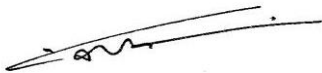
For all the above reasons, the interests of justice and the right of Mr Shala to present an effective defence require the Panel to dismiss the Prosecution request.

Word count: 1320

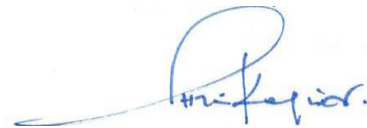
Respectfully submitted,



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¹⁴ Request, para. 9.

Friday, 13 September 2024

The Hague, the Netherlands