



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 18 September 2024

Original language: English

Classification: Confidential

Decision on SPO Request for Order to Shala to Refile the Notice of Appeal

Specialist Prosecutor's Office:

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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 on 9 September 2024 by the Specialist Prosecutor’s Office (respectively, “Motion” and “SPO”).² Mr Pjetër Shala (“Shala” or “Accused” or “Defence”) responded on 13 September 2024.³ The SPO did not file a reply.

1. On 16 July 2024, the Trial Panel delivered its judgment (“Trial Judgment”), finding Shala guilty on three counts of the Indictment and not guilty on one count, and sentenced him to a single sentence of 18 years of imprisonment, with credit for the time served.⁴

¹ F00011, Decision Assigning a Court of Appeals Panel, 3 September 2024 (confidential, reclassified as public on 4 September 2024).

² F00013, Prosecution request for order to the Shala Defence to refile its Notice of Appeal, 9 September 2024 (confidential) (“Motion”). On 10 September 2024, the Panel varied, *proprio motu*, the time limits for the briefing schedule and ordered Shala to file his response, if any, by 13 September 2024 at 12:00 and the SPO to file its reply, if any, by 16 September 2024 at 16:00. See CRSPD3, [CA-2024-03] F00013 – Appeals Panel’s Order regarding briefing schedule, 10 September 2024 (confidential).

³ F00014, Defence Response to the Prosecution Request for an Order to Refile the Defence Notice of Appeal, 13 September 2024 (confidential) (“Response”).

⁴ KSC-BC-2020-04, F00847, Trial Judgment and Sentence, 16 July 2024 (confidential) (“Trial Judgment”), paras 1121-1125; KSC-BC-2020-04, F00107/A01, Public Redacted Version of Corrected Indictment, 16 November 2021; KSC-BC-2020-04, F00098/A01, Corrected Indictment, 1 November 2021 (confidential) (“Indictment”). The Trial Panel convicted Shala of arbitrary detention, torture and murder as war crimes, under Counts 1, 3 and 4 of the Indictment, and acquitted him of cruel treatment as a war crime under Count 2 of the Indictment. See Trial Judgment, para. 1124. See also KSC-BC-2020-04, F00843, Scheduling order for the pronouncement of the judgment, 9 July 2024.

2. On 24 July 2024, the Appeals Panel granted in part the Accused's request for an extension of time to file his notice of appeal against the Trial Judgment ("Notice of Appeal").⁵ On 2 September 2024, the Accused filed his Notice of Appeal.⁶

3. The SPO requests that the Panel reject the Notice of Appeal and order the Defence to refile it for failing to comply with the requirements of Article 47(1) of the Practice Direction on Files and Filings.⁷ In support of its request, the SPO submits that some of the grounds of appeal fail to clearly specify the alleged error,⁸ and/or the precise relief sought.⁹ The SPO further submits that the full scope of the Notice of Appeal is unclear.¹⁰

4. Shala responds that the Notice of Appeal complies with Article 47(1) of the Practice Direction,¹¹ and that the Motion should be rejected.¹² Shala does not provide submissions with respect to any specific grounds of his Notice of Appeal but submits that the errors that the Defence intends to demonstrate, as well as their nature and accompanying submissions, have been sufficiently presented.¹³ Shala is further of the view that he explicitly specified the relief sought.¹⁴ As for the scope of the Notice of Appeal, Shala argues that the SPO will receive further particulars and fully developed grounds in the Defence's appeal brief and that it will have the opportunity to

⁵ F00001, Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, 19 July 2024; F00006, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 24 July 2024. On 8 August 2024, the Appeals Panel denied an additional request from Shala to further vary the time limit to file his notice of appeal, and confirmed that the Parties had to file their notices of appeal, if any, by 2 September 2024. See F00009, Decision on Defence Further Request for Variation of Time Limit to File Notice of Appeal, 8 August 2024, para. 8. See also F00008, Defence Request for a Further Limited Extension of the Time Limit for Filing the Notice of Appeal, 7 August 2024.

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

⁷ Motion, paras 1, 8, 10. The SPO is referring to KSC-BD-15, Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers, 17 May 2019 ("Practice Direction").

⁸ Motion, paras 2, 4.

⁹ Motion, paras 2, 5.

¹⁰ Motion, paras 2, 6-7.

¹¹ Response, paras 9, 14.

¹² Response, p. 5.

¹³ Response, para. 10.

¹⁴ Response, para. 11.

challenge the Defence's arguments in its brief in response.¹⁵ Shala also argues that the SPO's request is an abuse of process.¹⁶

5. Pursuant to Article 47(1)(b) of the Practice Direction, a notice of appeal shall clearly specify 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".¹⁷ Article 47(1)(c) of the Practice Direction requires a notice of appeal to identify the overall relief sought.¹⁸

6. At the outset, the Panel agrees, as suggested by the Defence, that the SPO must be well aware that it will receive fully developed grounds in the Defence's appeal brief.¹⁹ However, the Panel finds that Shala's assertion that the Motion is an abuse of process on the basis that the SPO misinterprets the Practice Direction in allegedly suggesting that a Defence notice of appeal should be approved by the SPO is not substantiated and will not consider it further.²⁰ The Panel recalls that a notice of appeal does not need to detail the arguments that the parties intend to use in support of the grounds of appeal, as this will be done in the appeal briefs.²¹ This, however, does not

¹⁵ Response, paras 12-13.

¹⁶ Response, para. 14.

¹⁷ Article 47(1)(b) of the Practice Direction. 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.

¹⁸ Article 47(1)(c) of the Practice Direction.

¹⁹ Response, para. 12.

²⁰ See Response, para. 14.

²¹ See IRMCT, *Prosecutor v. Stanišić and Simatović*, MICT-15-96-A, Decision on Jovica Stanišić's Motion to Strike and/or Amend Prosecution Notice of Appeal and on a Request to Expedite, 1 October 2021, 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. 14; ICTY, *Prosecutor v. Mrkšić and Šljivančanin*, IT-95-13/1-A, Decision on the Prosecution's Motion to Order Veselin

relieve the Accused of his obligation to comply with the Practice Direction. The Practice Direction is designed to address detailed aspects of the conduct of the proceedings before the Specialist Chambers and to regulate the form and content of written submissions. If a notice lacks clarity and precision, it fails to fulfil the purpose of a notice of appeal.²²

7. Turning to the arguments raised in the Motion, the SPO argues that, in relation to Grounds 1, 3, 5, 6, 8, 9, 13 and 14, the Notice of Appeal fails to clearly specify the alleged error,²³ and that, with the exception of Grounds 5, 11 and 14, the Notice of Appeal fails to specify the precise relief sought in respect of each of the grounds.²⁴

8. The Panel observes that, as an introduction to the Notice of Appeal, Shala submits that each of the 14 grounds of appeal presented therein “either invalidates the Impugned Judgment or has resulted in a miscarriage of justice”.²⁵ In the last section of the Notice of Appeal on the overall relief sought, Shala further makes a general reference to “the errors of law, fact, and sentencing” affecting the Trial Judgment.²⁶

9. The Panel finds that these references are insufficient and instructs Shala to specify the nature of the alleged error in relation to Grounds 1, 3, 5 and 13 in order to fully comply with Article 47(1)(b)(1) of the Practice Direction which requires a party to clearly specify the type of error alleged with respect to each ground of appeal. The

Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in his Appeal Brief, 25 August 2008, para. 8 and jurisprudence cited therein; ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-992-Red, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled “Decision on Mr Gbagbo’s Detention”, 19 July 2017, para. 19; ECCC, *Prosecutor v. Nuon and Khieu*, 002/19-09-2007/ECCC/SC, Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, 29 August 2014, para. 8.

²² ICTR, *Niyitegeka v. Prosecutor*, ICTR-96-14-A, Decision on Prosecution Motion Concerning Defects in the Appellant’s Notice of Appeal, 26 September 2003, p. 3.

²³ Motion, paras 2, 4.

²⁴ Motion, paras 2, 5.

²⁵ Notice of Appeal, para. 1, fn. 2. See also Response, para. 11, fn. 12.

²⁶ Notice of Appeal, para. 42.

Panel further recalls that alternative/cumulative formulations for alleged errors of law and alleged errors of fact may only be used where there is a genuine issue of mixed law and fact, or where there is a real uncertainty.²⁷ However, contrary to the SPO's assertion, the Panel finds that Shala sufficiently specifies the nature of the error he alleges in relation to Grounds 6, 8, 9 and 14.²⁸

10. The Panel further agrees with the SPO that, with the exception of Grounds 5, 11 and 14, the Notice of Appeal fails to specify the precise relief sought in respect of each of the grounds of appeal. The Accused's general assertion that the Appeals Panel should "quash the convictions entered by the Trial Panel and/or remit the case for retrial and/or impose, if necessary, an appropriate sentence"²⁹ is too general and pertains to the requirement set forth in Article 47(1)(c) of the Practice Direction according to which a notice of appeal shall mention the overall relief sought. The "overall relief sought" is however different from the requirement set forth in Article 47(1)(b)(4) of the Practice Direction that the notice shall clearly specify in respect of each ground, "the precise relief sought".³⁰

11. The Panel therefore instructs the Accused to review the formulation of Grounds 1-4, 6-10, 12 and 13 in order to comply with Article 47(1)(b)(4) of the Practice Direction requiring that an appellant clearly specifies in respect of each ground the precise relief sought.

12. Turning to the scope of the Notice of Appeal, in relation to Grounds 1, 4, 6-9, 12-14, the SPO alleges that it is unclear as these grounds of appeal include multiple

²⁷ See e.g. *Hartmann* Decision, para. 13.

²⁸ Ground 8 alleges errors of law and of fact. See Notice of Appeal, paras 17-19. Ground 14 alleges errors of law and in sentencing. See Notice of Appeal, "Ground 14: Errors in Sentencing". See also Notice of Appeal, paras 38-40. Grounds 6 and 9 allege an abuse of discretion.

²⁹ Notice of Appeal, para. 42. See also Response, para. 11.

³⁰ Compare Article 47(1)(c) of the Practice Direction with Article 47(1)(b)(4) of the Practice Direction. See also *Hartmann* Decision, para. 13 (where the ICTY Appeals Chamber considered that the appellant met this requirement by stating that "each of the alleged errors of the Trial Chamber, if granted by the Appeals Chamber, would lead to a reversal of her conviction").

sub-grounds unrelated to each other and to the overarching ground of appeal under which they fall.³¹ While the SPO argues that several grounds of appeal are unclear, it only develops its assertion in relation to Ground 8.³²

13. The Panel considers that it is not unusual to present on appeal arguments related to alleged violations of fair trial rights including allegations that the lower level panel reversed the burden of proof.³³ The Panel is of the view that submissions of this nature are permitted. The Panel however recalls that its ability to assess a party's arguments depends on the latter presenting its case clearly, logically and exhaustively.³⁴ Arguments presented in a fragmented manner, without demonstrating any error of law or fact run the risk of summary dismissal.³⁵ Furthermore, the Panel recalls that a notice of appeal must "focus the mind of the Respondent, right from the day the notice of appeal is filed, on the arguments which will be developed subsequently in the Appeal brief".³⁶

14. In the present case, the Appeals Panel finds that Ground 8 does indeed lack clarity. Notably, paragraphs 17 and 20 of the Notice of Appeal contain very general submissions that do not seem to be related to each other, some of which overlap with submissions contained in other grounds. Accordingly, the Panel finds that Ground 8 does not provide sufficient notification to the SPO of the scope of the appeal,³⁷ and instructs Shala to clarify the substance of this ground of appeal, should he wish to maintain it.

³¹ Motion, paras 2, 6. See also Motion, para. 6, fn. 14.

³² Motion, para. 7.

³³ See e.g. KSC-CA-2022-01, F00114, Appeal Judgment, 2 February 2023 ("*Gucati and Haradinaj* Appeal Judgment"), paras 44-58.

³⁴ KSC-CA-2023-02, F00038, *Specialist Prosecutor v. Salih Mustafa*, Appeal Judgment, 14 December 2023, para. 29; *Gucati and Haradinaj* Appeal Judgment, para. 29.

³⁵ *Gucati and Haradinaj* Appeal Judgment, para. 45.

³⁶ ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Judgement, 19 May 2010, para. 246.

³⁷ See *Hartmann* Decision, para. 12: "The Appeals Chamber recalls that the purpose of an appellant setting forth grounds of appeal is to provide notification to the respondent of the scope of the appeal from the time of the filing of the Notice of Appeal".

15. Finally, the Panel notes that the Notice of Appeal contains 3,689 words and fails to comply with Article 47(2) of the Practice Direction according to which a “notice of appeal pursuant to Rules 176 and 186(3) of the Rules shall not exceed 3,000 words”.³⁸ Shala was aware of this requirement since he requested, in footnote 1 of the Notice of Appeal, a “limited extension of the applicable word limit of 690 words” in order to “present a meaningful notice of appeal”.³⁹ The Panel recalls however that Article 36(1) of the Practice Direction states that participants to proceedings may seek, *sufficiently in advance*, an extension of the word limit upon showing that *good cause exists* constituting exceptional circumstances.⁴⁰ In the present instance, the Panel finds that Shala fails to comply with this provision regarding both the timeliness and the justification of the request. The Panel also considers that contrary to Shala’s assertion, this constitutes quite a significant amount over the limit of 3,000 words. In these circumstances, the Panel considers that such a variation of the word limit is not warranted and denies it. Nevertheless, on an exceptional basis, the Panel finds it appropriate to grant a more limited extension of 200 words in order to allow Shala to comply with the instructions provided in the present Decision. Accordingly, the Panel instructs Shala to file an amended version of his Notice of Appeal, not exceeding 3,200 words.

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

GRANTS the Motion in part;

ORDERS Shala to file an amended notice of appeal of no more than 3,200 words, in compliance with the instructions provided in paragraphs 9, 10,

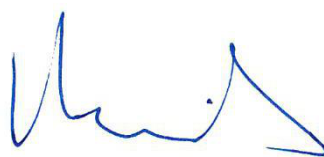
³⁸ The Panel notes that the SPO submits that the Notice of Appeal also fails to comply with Article 47(2) of the Practice Direction by exceeding the limit of 3,000 words in support of its request that the Panel order the Defence to file an updated notice, but does not elaborate on this argument further. See Motion, fn. 5.

³⁹ Notice of Appeal, para. 1, fn. 1. See also Response, para. 15, where Shala submits that the extension of words he requested “is absolutely necessary to provide sufficient notice of the Defence case”.

⁴⁰ Emphasis added.

11, 14 and 15 of the present Decision, no later than ten days from the date of receipt of this Decision; and

CLARIFIES that the briefing schedule to file the appeal brief as specified in Rule 179(1) of the Rules is impacted as a result of the present Decision and that Shala's appeal brief shall be filed ten days after the initial deadline to do so, namely by 14 November 2024.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 18 September 2024

At The Hague, the Netherlands