

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: 14 October 2024

Filing Party: Counsel for Pjetër Shala

Original language: English

Classification: Public

Defence Motion for Variation of Time and Word Limits to File Appeal Brief

Specialist Prosecutor's Office

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Specialist Defence Counsel

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Leto Cariolou

I. INTRODUCTION

1. Pursuant to Rules 9(5)(a) and 179(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), the Defence for Mr Pjetër Shala (“Defence”) requests a one-month extension of the time limit for filing the brief supporting its appeal against the Trial Judgment entered in Mr Shala’s case.¹ In addition, pursuant to Article 36(1) of the Practice Direction on Files and Filing before the Kosovo Specialist Chambers,² the Defence requests an extension of the applicable word limit for its appeal brief of 15,000 words.

II. PROCEDURAL HISTORY

2. On 16 July 2024, Trial Panel I delivered its Trial Judgment, finding Mr Shala guilty of the war crimes of arbitrary detention, torture, and murder, and sentenced him to 18 years of imprisonment.³
3. On 24 July 2024, the Appeals Panel granted in part the Defence request for an extension of time to file its notice of appeal against the Trial Judgment.⁴
4. On 2 September 2024, the Defence filed its Notice of Appeal.⁵

¹ KSC-BC-2020-04, F00847, Trial Judgment and Sentence, 16 July 2024 (confidential) (“Trial Judgment”). A public redacted version was issued on 24 September 2024, F00847/RED, Public redacted version of Trial Judgment and Sentence.

² KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019.

³ Trial Judgment, paras. 1122-1125.

⁴ KSC-CA-2024-03, F00006, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 24 July 2024, paras 10, 11, 13; KSC-CA-2024-03, F00001, Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, 19 July 2024. *See also* KSC-CA-2024-03, F00008, Defence Request for a Further Limited Extension of the Time Limit for Filing the Notice of Appeal, 7 August 2024; KSC-CA-2024-03, F00009, Decision on Defence Further Request for Variation of Time Limit to File Notice of Appeal, 8 August 2024, para. 8. All further references to filings in this Motion concern Case No. KSC-CA-2024-03 unless otherwise indicated.

⁵ F00010, Defence Notice of Appeal, 2 September 2024 (confidential).

5. On 9 September 2024, the Prosecution requested the Appeals Panel to reject the Notice of Appeal and order the Defence to refile it.⁶
6. On 18 September 2024, the Appeals Panel granted the Prosecution request in part and ordered the Defence to file an amended notice of appeal.⁷ In addition, the Appeals Panel instructed the Defence to file its appeal brief by 14 November 2024.⁸
7. On 20 September 2024, the Presiding Judge of the Appeals Panel held a Pre-Appeal Conference. During the hearing, the Deputy Registrar informed the Appeals Panel that an unrevised translation of the Trial Judgment into Albanian had been prepared and was duly filed on 4 September and that the revised translation is expected by the last week of October 2024.⁹ The Registry also confirmed that, with the final version of the translation, it would also distribute a report illustrating the differences between the unrevised and final versions of the translated Trial Judgment.¹⁰
8. On 30 September 2024, the Defence filed its Revised Notice of Appeal.¹¹
9. On 4 October 2024, the Trial Panel ordered the Parties and Victims' Counsel, together with the Witness Protection and Support Office, to prepare a joint

⁶ F00013, Prosecution request for order to the Shala Defence to refile its Notice of Appeal, 9 September 2024 (confidential), paras 1, 8, 10. *See also* F00014, Defence Response to the Prosecution Request for an Order to Refile the Defence Notice of Appeal, 13 September 2024 (confidential).

⁷ F00015, Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, 18 September 2024, paras 15-16.

⁸ F00015, Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, 18 September 2024, para. 16.

⁹ T. 20 September 2024 p. 6.

¹⁰ T. 20 September 2024 p. 10.

¹¹ F00017, Revised Defence Notice of Appeal, 30 September 2024 (confidential) ("Revised Notice of Appeal").

filing by 21 October 2024 on additional redactions to filings KSC-BC-2020-04/F00819/RED2 and KSC-BC-2020-04/F000821/RED2.¹²

10. The Trial Panel's Reparation Order has not been issued to date.

III. SUBMISSIONS

11. This Request is presented in a timely manner as it is filed sufficiently in advance of the outstanding deadline for submission of the Defence Appeal Brief. Good cause exists for the Defence requests for variations in the applicable word and time limits, as will be shown below.

A. Variation of the Time Limit

12. First, the request for additional time to file the Appeal Brief is necessary given the date on which the official translation of the Trial Judgment is due in the last week of October 2024. As Mr Shala stated himself in the course of the Pre-Appeal Conference: "I have not got the judgment in my possession, and I do not how would we be able to appeal given that the reasoning is there. [...] given that the document has not been given to me *officially* to enable me to read it, to understand the reasoning as to why I have been convicted, so at this stage I do not know how I would be able to cooperate with my Defence lawyers for the appeal. [...] It has been given to me in English alone, so I am unable to be able to prepare."¹³ While Mr Shala has been given the unofficial translation in Albanian, he does not feel confident to proceed with presenting his appeal brief

¹² Email from CMU Filings to the Parties and Victims' Counsel, 7 October 2024, 15:28; KSC-BC-2020-04, F00819/RED2, Public Redacted Version of Defence Response to Victims' Counsel's Request for Reparations to Address the Physical, Mental, and Material Harm Suffered by Victims Participating in the Proceedings, 2 October 2024 (confidential); KSC-BC-2020-04, F00821/RED2, Public Redacted Version of Defence Final Trial Brief, 2 October 2024 (confidential).

¹³ T. 20 September 2024 pp. 8, 9 (emphasis added).

before he receives the official and definitive translation of the Trial Judgment in a language he understands.

13. The availability of an official translation of the decision in the language understood by a convicted person should be taken into consideration when assessing whether there is good cause for allowing additional time to make full answer and presenting the defence case.¹⁴ Sufficient time is needed for Mr Shala to read and understand the official Albanian translation of the Trial Judgment so that he is able to meaningfully participate in the appellate proceedings by presenting his appeal brief in full confidence. This is important for him to feel confident about his instructions and it is important for counsel to proceed in the confidence that his instructions are well-informed.
14. Second, an extension of the time limit is needed to address the legally and factually complex issues to be raised in the appeal brief. The complexity of the issues that need to be developed in the brief in support of each ground of appeal that have been presented in the notice of appeal merits the extension of time requested.
15. Third, the delivery of the reparation order by the Trial Panel is expected in the next weeks and the Defence will be required to consider and present its appeal against the reparation order, which will invariably impact its workload and the preparation of its appeal brief.¹⁵ Due to the expected converging deadlines between the reparations proceedings before the Trial Panel and the proceedings before the Appeals Panel, the need to offset any prejudice caused to the Defence due to its involvement in concurrent proceedings constitutes good cause.

¹⁴ ICTR, ICTR-97-31-A, *The Prosecutor v. Tharcisse Renzhao*, Decision on Tharcisse Renzhao's Motion for Extension of Time for the Filing of Appellant's Brief, 21 October 2009, para. 4.

¹⁵ See T. 20 September 2024 pp. 16, 17.

16. Fourth, as instructed by the Trial Panel, the Defence is working with the Prosecution, Victims' Counsel, and WPSO to prepare a joint filing by 21 October 2024 on additional redactions to Defence filings including the Defence Final Trial Brief.¹⁶ The Defence is tasked with providing justification as to the necessity of the redactions or specifying opposing views in relation to each additional redaction request.¹⁷ The Defence will also make proposals on the lifting of redactions. In light of the already apparent divergent opinions as to the extent and nature of the redactions required, the Defence anticipates lodging an appeal against the Trial Panel's decision in this respect which is required by the need to ensure respect for Mr Shala's right to a public trial.
17. Finally, the additional time requested is needed to accommodate family circumstances of counsel, including parental leave which is expected to begin in mid-November when the Appeal Brief is currently due.
18. The afore-mentioned considerations and circumstances impact the capacity of the Defence to conform to the current deadline. It is the Defence's respectful submission that good cause exists for the requested variation of the time limit for filing the appeal brief.
- B. Variation of the Word Limit
19. As stated above, due to the complexity of the Trial Judgment, the Defence's arguments on appeal will be wide-ranging and expansive. The appeal grounds are complex and contain many aspects that require elaborate research in international, European and Kosovo law. In addition to errors concerning the crimes, the appeal grounds also include fair trial violations, such as the use of Mr Shala's statements, the uncertainty of the trial record, errors relating to the

¹⁶ Email from CMU Filings to the Parties and Victims' Counsel, 7 October 2024, 15:28.

¹⁷ Email from CMU Filings to the Parties and Victims' Counsel, 7 October 2024, 15:28.

KSC's jurisdiction, issues resulting from the defective Indictment which formed the basis of Mr Shala's trial, the Trial Panel's denial to hear the evidence of a potential Defence witness, to name but a few.¹⁸ The extended length of the original and Revised Notice of Appeal and the difficulty to comply even with the revised word limit imposed by the Panel clearly demonstrates the need for an extension of the word limit for the appeal brief. An extension of the word limit of 15,000 words is required to articulate the legal and factual reasons in support of each ground of appeal, to refer to the relevant parts of the Trial Judgment and other filings, and to explain in sufficient detail how the errors affect the Judgment to assist both the Panel as well as the Prosecution for the purposes of its response.

20. In addition, there has already been extensive litigation and previous decisions issued from the Appeals Panel and/or Constitutional Court Panel concerning certain of the appeal grounds to be presented and this procedural history and filings need to be analysed and discussed in the appeal brief. These issues include, for instance, the use of Mr Shala's statements, the challenges to the KSC's jurisdiction, the validity of the Indictment, the Case 08 proceedings, the admission of evidence by Prosecution witnesses, the judicial notice of adjudicated facts, the Trial Panel's decision on protective measures relating to a Prosecution witness, and the Trial Panel's dismissal of the request to reopen the Defence case.¹⁹
21. Based on the above, good cause exists for the variation of the applicable word limit for filing the Defence appeal brief.

IV. CLASSIFICATION

¹⁸ Revised Defence Notice of Appeal, paras. 2-7, 19-20.

¹⁹ Revised Defence Notice of Appeal, paras. 2, 4-6, 9, 15, 17, 19-20.

22. Pursuant to Rules 82(3) of the Rules, the Motion is filed as public as it does not contain any confidential information.

V. RELIEF REQUESTED

23. The Defence respectfully requests the Appeals Panel to extend the deadline for filing the Defence appeal brief to 16 December 2024 and grant an extension of the word limit of 15,000 words for the appeal brief.

Word count: 1926

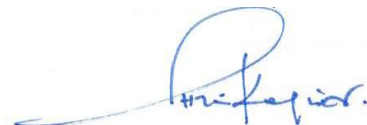
Respectfully submitted,



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Monday, 14 October 2024

The Hague, the Netherlands