



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:** 25 October 2024  
**Language:** English  
**Classification:** Public

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**Prosecution response to 'Defence Motion for Variation of Time and Word Limits  
to File Appeal Brief'**

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**Specialist Prosecutor's Office**  
Kimberly P. West

**Counsel for Pjetër Shala**  
Jean-Louis Gilissen

**Counsel for Victims**  
Simon Laws

## I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') opposes the request for extensions of time and words<sup>1</sup> as the Defence has failed to meet the requirements for each. Specifically, no good cause has been shown<sup>2</sup> justifying a further variation of the time limit prescribed by the Rules.<sup>3</sup> There are no exceptional circumstances justifying an extension to the word limit.<sup>4</sup>

## II. SUBMISSIONS

### A. NO EXTENSION OF THE DEADLINE IS WARRANTED

2. At the outset, the SPO notes that the Defence has previously received two extensions of time for the preparation of its appellate filings.<sup>5</sup> Taken together, these extensions, provided in respect of the deadline for filing the Notice of Appeal,<sup>6</sup> have afforded the Defence thirty-one (31) additional days to prepare the Notice of Appeal, which by definition tracks the appeal brief.<sup>7</sup> The further thirty (30) day extension now sought by the Defence is unreasonable.<sup>8</sup>

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<sup>1</sup> Defence Motion for Variation of Time and Word Limits to File Appeal Brief, KSC-CA-2024-03/F00018, 14 October 2024 ('Motion'), Public.

<sup>2</sup> Rule 9(5)(a) provides that '[t]he Panel may, *proprio motu* or upon showing of good cause: (a) extend or reduce any time limit prescribed by the Rules or set by the Panel.' 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.

<sup>3</sup> Rule 179(1) provides that the 'Appellant shall file an Appeal Brief...within sixty (60) days...of the notice of appeal.'

<sup>4</sup> Article 36(1) of the KSC Practice Direction on Files and Filings provides that '[i]n exceptional circumstances, a Participant may seek authorisation from the Panel sufficiently in advance to exceed the word limits prescribed in this Practice Direction and provide an explanation of the good cause that necessitates exceeding the word limit.' Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019 ('Practice Direction'), Public, Article 36(1).

<sup>5</sup> Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, KSC-CA-2024-03/F00006, 24 July 2024, Public ('Notice of Appeal Time Limit Decision'), para.10; Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, KSC-CA-2024-03/F00015, 18 September 2024, Confidential, para.16.

<sup>6</sup> Revised Defence Notice of Appeal, KSC-CA-2024-03/F00017, 30 September 2024, Confidential ('Notice of Appeal').

<sup>7</sup> As explained herein, while none of the reasons offered by the Defence meet the standard for further time extension, no request for a further extension should be entertained without this context.

<sup>8</sup> Motion, KSC-CA-2024-03/F00018, paras 1, 23.

3. During the appellate phase, counsel bears the primary burden of preparing submissions as counsel has the expertise to advise an accused as to the potential existence of errors of law and fact.<sup>9</sup> Where the trial judgment is available in a language spoken by counsel, it is in the interests of justice for counsel to proceed to prepare the appeal in consultation with the accused.<sup>10</sup> This is so, even in cases where there is no unrevised translation made available to an accused.<sup>11</sup> As recognised by the Panel, the practice of providing an unrevised Albanian translation of the trial judgment and a version from the Registry showing any differences between the unrevised and final versions, encourages efficiency both before and after the receipt of a final translation, and further supports the finalisation of the appeal brief within the time provided.<sup>12</sup> In the instant case, the Defence has the benefit of (i) having received the Trial Judgment<sup>13</sup> in English, a language understood by counsel,<sup>14</sup> and (ii) having received an unrevised

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<sup>9</sup> ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004 ('Brđanin Decision'), p.3; ICTY, *Prosecutor v. Limaj et al.*, IT-03-66, Decision on Extension of Time, 16 February 2006, para.12; ICTR, *Kalimanzira v. Prosecutor*, ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of His Reply Brief, 6 April 2010, para.5.

<sup>10</sup> ICTY, *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-A, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001 ('Kordić & Čerkez Decision'), para.18; ICTY, *Prosecutor v. Blagojević & Jokić*, IT-02-60-A, Decision on Vidoje Blagojević's Motion for Extension of Time in which to File His Notice of Appeal and on Dragan Jokić's Motion for Extension of Time in which to File His Appeal Brief, 14 April 2005 ('Blagojević & Jokić Decision'), p.4; Brđanin Decision, pp.3-4 and footnote 3. See also Notice of Appeal Time Limit Decision, KSC-CA-2024-03/F00006, para.4; *Specialist Prosecutor v. Haradinaj & Gucati*, Decision on Haradinaj's Request for Clarification of Appeal Timescale, KSC-CA-2022-01/F00005, 25 May 2022, Public, para.4. The ICTY Appeals Chamber has also noted that it is in the interests of justice that an Accused have sufficient time to read the judgment and consult with counsel before filing his appellant's brief. See e.g. Blagojević & Jokić Decision, p.4 (noting that '[c]ounsel is likewise perfectly capable of commencing work on the appeal brief while the B/C/S translation of the Judgement is being prepared, but that before each appellant's appeal brief is finally submitted, it is also important that the appellant himself be able to read the judgement so that he can contribute meaningfully to his counsel's preparation'); ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Decision on Motion for Extension of Time, 30 October 2003, p.3. However, the unavailability of a trial judgment in the language of the Accused does not *per se* constitute good cause for a modification to the time limits for filing an appeal brief. See e.g. ICTY, *Prosecutor v. Boškoski & Tarčulovski*, IT-04-82-A, Decision on Johan Tarčulovski's Motion for Extension of Time to File Appeal Brief, 16 October 2008 ('Boškoski & Tarčulovski Decision'), pp.2-3.

<sup>11</sup> See e.g. Brđanin Decision, pp.3-4; Kordić & Čerkez Decision, para.18; Blagojević & Jokić Decision, p.2.

<sup>12</sup> *Specialist Prosecutor v. Mustafa*, Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, KSC-CA-2023-02/F00020, 3 April 2023, Public ('Mustafa Variation Decision'), para.11.

<sup>13</sup> Trial Judgment and Sentence, KSC-BC-2020-04/F00847, 16 July 2024, Confidential.

<sup>14</sup> Decision on Working Language, KSC-CA-2024-03/F00004, 24 July 2024, Public.

Albanian translation of the Trial Judgment more than two months before the appeal brief filing deadline. Further, by the end of this month, the Defence will have received, weeks in advance of the appeal brief filing deadline, a comparison version of the Trial Judgment showing any changes between the unrevised and final Albanian versions.

4. None of the reasons underpinning the Defence request constitute good cause justifying any extension of time. Mr Shala's preference to read only the final translation of the Trial Judgment and not the unrevised translation does not justify a variation of time limits. This choice by Mr Shala, as explained by counsel,<sup>15</sup> is not based on any insufficiency in the unrevised translation, which has been available to him since 4 September 2024.<sup>16</sup> Furthermore, the Defence has not shown that the time available to it to prepare the appeal brief following the anticipated delivery of the final translation is inadequate.<sup>17</sup> Faced with a similar request for an extension of time, this Panel found that the availability of the final Albanian translation of a trial judgment seven days in advance of the filing deadline for the appeal brief was sufficient.<sup>18</sup> The Defence provides no support for the argument that the absence of an official (meaning final) translation constitutes good cause for an extension of time. The authority cited by the Defence is inapposite – it concerns an extension request made for a notice of appeal on the basis of an ICTR rule which has no equivalent at the KSC and in a situation in which no unrevised translation was available.<sup>19</sup>

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<sup>15</sup> Motion, KSC-CA-2024-03/F00018, paras 12-13. The SPO notes the submissions of counsel in the Motion, but observes that Mr Shala's remarks during the Pre-Appeal Conference, including as excerpted in the Motion, suggest that Mr Shala has declined to accept the unrevised translation pending the delivery of the official translation. *See also* Notification Regarding Service of the Trial Judgment, KSC-BC-2020-04/F00849, 17 July 2024, Confidential.

<sup>16</sup> Transcript (Pre-Appeal Conference), 20 September 2024, p.6. Defence counsel confirmed that counsel and Mr Shala were in receipt of the unrevised translation and intended to proceed to work properly as soon as possible. *See* Transcript (Pre-Appeal Conference), 20 September 2024, p.14.

<sup>17</sup> The Defence will have at least 14 days following receipt of the final Albanian translation of the Trial Judgment before the deadline to file the appeal brief. This calculation is based on the receipt of the official translation of the Trial Judgment on 31 October 2024, at the latest, and the current deadline for filing of the Defence appeal brief of 14 November 2024.

<sup>18</sup> *Mustafa* Variation Decision, KSC-CA-2023-02/F00020, para.11.

<sup>19</sup> Motion, KSC-CA-2024-03/F00018, para.13 (citing ICTR, *Prosecutor v. Tharcisse Renzaho*, ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Notice of Appeal and

5. The Defence claim that additional time is needed due to legally and factually complex issues is entirely unsubstantiated.<sup>20</sup> Once again, the Defence has failed to show how the size or scope of the Trial Judgment or trial record warrants a variation.<sup>21</sup> In relation to a similar request, this Panel has previously found that a trial judgment concerning a conviction for three counts in relation to events that occurred in the course of one month at one detention centre, was not extensive or otherwise complicated in a manner that justified such an extension of time.<sup>22</sup>

6. The three remaining reasons provided as justification for an extension of time are speculative and/or insufficient to meet the requirement for good cause. No reparations order has been delivered and therefore there are no competing deadlines to consider.<sup>23</sup> Similarly, no decision on redactions to Defence filings has been issued, nor is there any information to suggest the timing of that decision.<sup>24</sup> There is no automatic right to appeal such decisions and, in any event, any future (request for leave to) appeal will depend on the content of that decision, which is unknown.

7. Finally, the SPO is not in receipt of full information about the family circumstances of Defence counsel. However, on the information provided – that the anticipated parental leave of one counsel begins in mid-November<sup>25</sup> – it is entirely unclear how this would negatively impact the Defence team being able to meet the

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Brief in Reply, 22 September 2009 (*'Renzaho Decision'*)). Further, counsel ignores that in that decision, the ICTR Appeals Chamber stated that once a trial judgment is provided in the language of the Accused, the rule at issue (ICTR Rule 116(B)) would not support any argument of good cause shown for an extension of time to file briefs on appeal if counsel is able to work in the language that the trial judgment was filed in. *See Renzaho Decision*, para.4, footnote 13.

<sup>20</sup> Motion, KSC-CA-2024-03/F00018, para.14.

<sup>21</sup> Notice of Appeal Time Limit Decision, KSC-BC-2024-03/F00006, para.8. *See also* Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, KSC-CA-2024-03/F00001, 19 July 2024, Public, para.5.

<sup>22</sup> *Specialist Prosecutor v. Mustafa*, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, KSC-CA-2023-02/F00004, 9 January 2023, Public, para.4. *See also Mustafa Variation Decision*, KSC-CA-2023-02/F00020, para.9.

<sup>23</sup> *Contra* Motion, KSC-CA-2024-03/F00018, para.15.

<sup>24</sup> *Contra* Motion, KSC-CA-2024-03/F00018, para.16.

<sup>25</sup> Motion, KSC-CA-2024-03/F00018, para.17.

current deadline of 14 November 2024, nor how an extension into the period when counsel is on leave would be of any assistance.<sup>26</sup>

B. NO EXTENSION OF THE WORD LIMIT IS JUSTIFIED

8. Article 48(3) of the Practice Direction specifies that an Appeal Brief may not exceed 30,000 words. The Defence fails to substantiate why the Panel should grant a request for an extension of 15,000 words – a 50 percent enlargement of the word limit.<sup>27</sup> No exceptional circumstances are explained, and in fact, none exist, which could satisfy the standard in Article 36(1) of the Practice Direction.

9. The Defence does not adequately explain how either the Trial Judgment or the grounds of appeal are legally or factually complex.<sup>28</sup> In fact, as the Defence acknowledges,<sup>29</sup> several grounds of appeal concern alleged errors that have been previously litigated before the Appeals Panel and, in some cases, the Constitutional Court,<sup>30</sup> thereby reducing the likelihood of any novel argument requiring expansive drafting. Merely asserting that the issues on appeal are complex, without specifying the nature of the complexities, does not meet the threshold for exceptional circumstances justifying such a significant enlargement of the word limit for the appeal brief.<sup>31</sup>

10. In *Mustafa*, where the Defence outlined 51 grounds of appeal, the Panel recalled that ‘the quality and effectiveness of appellate submissions do not depend on their length, but rather on their clarity and cogency’.<sup>32</sup> The Panel denied the Defence request for an extension of 10,000 words, finding such an extension unwarranted ‘based on

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<sup>26</sup> See also *Brđanin* Decision, p.4.

<sup>27</sup> Motion, KSC-CA-2024-03/F00018, para.19.

<sup>28</sup> See *above* para.5.

<sup>29</sup> Motion, KSC-CA-2024-03/F00018, para.20.

<sup>30</sup> See e.g. Notice of Appeal, KSC-CA-2024-03/F00017, Grounds 1, 3-4, 7 (para.15), 8 (para.17).

<sup>31</sup> See ICTY, *In the Case Against Florence Hartmann*, IT-02-54R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009 (‘*Hartmann* Decision’), para.23.

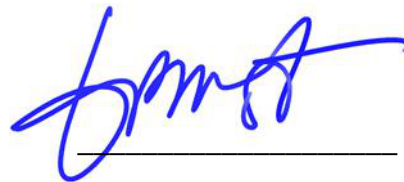
<sup>32</sup> *Mustafa* Variation Decision, KSC-BC-2023-02/F00020, para.12. See also *Boškoski & Tarčulovski* Decision, pp.3-4; *Hartmann* Decision, para.24.

the complexity of the Trial Judgment or on the number of grounds of appeal.<sup>33</sup> This reasoning applies equally to the present case.

### III. RELIEF REQUESTED

11. For the foregoing reasons, the Panel should deny the Defence requests for variation of time and word limits to file its appeal brief.

**Word count: 2212**



**Kimberly P. West**

**Specialist Prosecutor**

Friday, 25 October 2024

At The Hague, the Netherlands.

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<sup>33</sup> *Mustafa* Variation Decision, KSC-BC-2023-02/F00020, para.13.