



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: 30 October 2024

Original language: English

Classification: **Public**

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

Specialist Prosecutor's Office:
Kimberly P. West

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 14 October 2024 by Mr Pjetër Shala (respectively, “Motion” and “Shala” or “Accused” or “Defence”).² The Specialist Prosecutor’s Office (“SPO”) responded on 25 October 2024 (“Response”).³ Shala replied on 29 October 2024 (“Reply”).⁴

1. Shala requests a one-month extension of the time limit for filing his appeal brief against the Trial Judgment issued in case KSC-BC-2020-04.⁵ He submits that such request is timely and that good cause exists for the requested variation for the following reasons: (i) the need to receive the official translated version of the Trial Judgment in Albanian sufficiently in advance before filing his appeal brief; (ii) the need to address the legally and factually complex issues to be raised in the appeal brief; (iii) the expected converging deadlines between the reparation proceedings before the Trial Panel and the proceedings before the Appeals Panel; (iv) the fact that the Trial Panel instructed the filing of joint submissions on additional redactions to Defence filings and that Shala anticipates lodging an appeal against the Trial Panel’s

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

² F00018, Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 14 October 2024 (“Motion”).

³ F00019, Prosecution response to ‘Defence Motion for Variation of Time and Word Limits to File Appeal Brief’, 25 October 2024 (“Response”).

⁴ F00020, Defence Reply to ‘Prosecution Response to Defence Motion for Variation of Time and Word Limits to File Appeal Brief’, 29 October 2024 (“Reply”). On 25 October 2024, the Presiding Judge of the Appeals Panel varied the time limit for Shala to file his reply, if any, to the Response, and ordered him to do so by 29 October 2024 at 12:00. See CRSPD8, Email from Court of Appeals Panel to the Parties and Participants re Order regarding time limit to file a reply, 25 October 2024 (confidential).

⁵ Motion, paras 1, 23; Reply, para. 9. See KSC-BC-2020-04, F00847/RED, Public redacted version of Trial Judgment and Sentence, 24 September 2024 (confidential version filed on 16 July 2024) (“Trial Judgment”).

decision in that respect; and (v) the need to accommodate family circumstances of counsel, including parental leave due to begin mid-November 2024.⁶

2. In addition, Shala requests an extension of the applicable word limit pursuant to the Practice Direction on Files and Filings before the Kosovo Specialist Chambers (“Practice Direction”)⁷ of 15,000 words for his appeal brief.⁸ He submits that good cause exists for such a variation due to the complexity of the appeal grounds, the extended length of the notice of appeal and the fact that there has been extensive litigation concerning certain grounds which needs to be analysed and discussed in the appeal brief.⁹

3. The SPO responds that it opposes Shala’s requests for variation of word and time limits.¹⁰ The SPO argues that Shala fails to show good cause justifying a further extension of the deadline, on the grounds that: (i) the Defence already received two extensions of time for the preparation of its appellate filings; (ii) the Defence received an unrevised version of the Albanian translation of the Trial Judgment more than two months before the appeal brief filing deadline and Shala’s preference to read only the final translation is not based on any insufficiency of the unrevised translation;¹¹ (iii) Shala fails to show that the size or scope of the Trial Judgment warrants a variation; (iv) his claims are speculative as no reparations order or decision on redactions have been issued yet; and (v) it is unclear how the anticipated parental leave of Defence counsel would negatively impact the Defence ability to meet the

⁶ Motion, paras 11-18; Reply, paras 2, 4-6.

⁷ KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019 (“Practice Direction”).

⁸ Motion, paras 1, 23; Reply, para. 9.

⁹ Motion, paras 19-21; Reply, para. 5. See also Reply, para. 7.

¹⁰ Response, paras 1, 11.

¹¹ The SPO adds that the Appeals Panel, when faced with a similar request for an extension of time, “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”. See Response, para. 4, referring to KSC-CA-2023-02, F00020, Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 3 April 2023 (“*Mustafa* Decision on Time and Word Limits”), para. 11.

current deadline or how an extension would be of any assistance.¹² The SPO further argues that there are no exceptional circumstances justifying an extension of 15,000 words, which amounts to a 50 % enlargement of the word limit.¹³ The SPO contends that Shala fails to explain how the Trial Judgment or the grounds of appeal are legally or factually complex.¹⁴

4. In his Reply, Shala takes issue with the SPO's objection to granting the Defence's request for a reasonable extension of the time and word limits "on mere grounds of expediency".¹⁵ He adds that the extensions of time he previously received were specifically provided for his original and revised notices of appeal, not for his appeal brief.¹⁶

5. The Appeals Panel recalls that on 24 July 2024, at Shala's request, the Panel extended the time limit for filing Shala's and the SPO's notices of appeal, if any, to 2 September 2024.¹⁷ On 2 September 2024, the Accused filed his initial notice of appeal against the Trial Judgment.¹⁸ On 30 September 2024, following instructions from the Appeals Panel, Shala filed an amended version of his notice of appeal ("Notice of Appeal").¹⁹

¹² Response, paras 2-7. See also Response, para. 1.

¹³ Response, paras 1, 8, 11.

¹⁴ Response, paras 9-10, referring *inter alia* to *Mustafa* Decision on Time and Word Limits.

¹⁵ Reply, para. 7.

¹⁶ Reply, para. 3.

¹⁷ F00006, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 24 July 2024 ("Decision on Variation of Time to File Notice of Appeal"). See also F00001, Application for Variation of the Time Limit for Filing the Defence Notice of Appeal, 19 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.

¹⁸ F00010/RED3, Public Redacted Version of Defence Notice of Appeal, 11 October 2024 (confidential version filed on 2 September 2024).

¹⁹ F00017/RED, Public Redacted Version of the Revised Defence Notice of Appeal, 4 October 2024 (confidential version filed on 30 September 2024) ("Notice of Appeal"). See F00015, Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, 18 September 2024 (confidential, reclassified as public on 25 September 2024) ("Decision on Request to Refile Notice of Appeal"), para. 16.

6. The Panel further recalls that on 20 September 2024, the Presiding Judge of the Appeals Panel held a Pre-Appeal Conference, at which the Registry submitted that a draft translation of the Trial Judgment into Albanian had been filed on 4 September 2024 and confirmed that a final version thereof was expected by the end of October 2024.²⁰

7. The Appeals Panel first notes that, according to Rule 179(1) of the Rules, an appellant shall file an appeal brief within 60 days of the notice of appeal. However, the Panel may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.²¹ In addition, Article 36(1) of the Practice Direction states that participants in the proceedings may seek, sufficiently in advance, an extension of the word limit upon showing that good cause exists constituting exceptional circumstances.

8. Regarding the timeliness of the Motion, the Panel recalls that Shala's appeal brief is normally due on 14 November 2024, after Shala was already granted an initial extension of ten days to file his appeal brief.²² The Panel considers that the Motion has been filed sufficiently in advance of the deadline under Rule 179(1) of the Rules.

9. As to good cause for Shala's request for extension of time, the Panel first recalls that when considering Shala's request for an extension of the time limit to file his Notice of Appeal, it was not persuaded that the Trial Judgment is extensive or otherwise complicated in a manner that would justify such an extension.²³ The Panel also considers that needing additional time to "address" or "develo[p]" the issues in

²⁰ See Transcript, 20 September 2024, p. 6. See also F00007, Registrar's Update on Translation of Judgment, 2 August 2024, para. 1; F00012, Order Scheduling a Pre-Appeal Conference, 4 September 2024, para. 4.

²¹ Rule 9(5)(a) of the Rules.

²² See Decision on Request to Refile Notice of Appeal, para. 16 (p. 8). The initial deadline for Shala to file his appeal brief was 1 November 2024.

²³ See Decision on Variation of Time to File Notice of Appeal, para. 8.

support of all the grounds of appeal Shala chose to present in his Notice of Appeal is not a valid reason to grant an extension of the time limit.²⁴

10. Turning to Shala's arguments concerning the delivery of the upcoming reparation order by the Trial Panel and the Trial Panel's instructions for additional redactions to Defence filings, the Panel recalls that facing competing deadlines may in some circumstances constitute good cause for an extension of time.²⁵ However, the Panel finds that Shala is not currently facing any competing deadlines and that Shala fails to show how the preparation of his appeal brief is impacted by a filing which has not been issued yet. Any claim in this regard is therefore speculative at this stage. Likewise, the Panel is unconvinced that the preparation of the joint filing due on 21 October 2024 to which Shala refers²⁶ would require an unmanageable amount of work which would negatively impact the preparation of the appeal brief.²⁷ As to the appeal the Defence anticipates to lodge,²⁸ the Panel notes that none has been filed at the time of the present Decision and that in any event the Defence would first need to seek and be granted leave to appeal before the Trial Panel.

²⁴ See *Mustafa* Decision on Time and Word Limits, para. 10.

²⁵ See e.g. KSC-BC-2020-04, IA002, F00002, Decision on Shala's Request for Variation of Time Limit, 28 October 2021, para. 3; KSC-BC-2020-04, IA002, F00007, Decision on the Parties' Requests for Variation of Time Limits, 17 November 2021, para. 4; KSC-BC-2020-04, IA004, F00005, Decision on Specialist Prosecutor's Office's Request for Variation of Time Limit, 20 December 2021, paras 1, 3; ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2535, Decision on Request for Extension of Time Limit, 19 May 2020, para. 12; ICTY, *Prosecutor v. Tolimir*, IT-05-88/2-A, Decision on Tolimir's request for Extension of Time for Filing an Appellant's Brief, 17 June 2013, pp. 1-2; ICTR, *Karempera et al. v. Prosecutor*, ICTR-98-44-AR15bis.2, Decision on Joseph Nzirorera's Motion for Extension of Time to File Reply Brief, 5 August 2004, p. 2.

²⁶ See KSC-BC-2020-04, F00856, Joint Submission of the Proposal for Public Redacted Versions of the Defence Final Trial Brief and the Defence Response to Victims' Counsel's Request for Reparations, 21 October 2024. See also KSC-BC-2020-04, CRSPD176, [Case 04] Order regarding additional redactions to F00819/RED2 and F00821/RED2, 7 October 2024 (confidential); Motion, para. 16.

²⁷ See also e.g. ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-2138, Decision on Mr Arido's request for extension of time limits for his potential notice of appeal and document in support of the appeal against sentence, 12 April 2017, para. 9.

²⁸ See Motion, para. 16.

11. As to counsel's family circumstances,²⁹ the Panel, while sympathetic to counsel's situation, notes that Shala will still have two counsel and a support team to assist in the preparation of the appeal brief in counsel's absence. In addition, Shala does not demonstrate or even argue that the preparation of the appeal brief would fall within the sole responsibility of this counsel. The Panel further observes that the parental leave in question, expected to begin mid-November, does not seem to overlap with the actual preparation time for the appeal brief – which is normally also due by mid-November 2024. While the Panel recalls that staffing issues or limited staff availability may be a factor in granting extensions of time,³⁰ the Panel is not of the view that the present circumstances, without more elaboration, are sufficient to warrant good cause for an extension.

12. Nevertheless, the Panel considers that the fact that the final version of the translation of the Trial Judgment in Albanian is expected two weeks prior to the deadline to file the appeal brief provides good cause for a limited variation of the time limit for the submission of the appeal brief.³¹

13. The Panel considers that the one-month extension requested by Shala, namely until 16 December 2024, is disproportionate in this instance. In the Panel's view, further extending the deadline for filing Shala's appeal brief to 25 November 2024 would provide sufficient time following the distribution of the final version of the translated Trial Judgment in Albanian, keeping in mind that a draft translation has been available to him since early September 2024 and that Shala was already granted

²⁹ See Motion, para. 17.

³⁰ See e.g. KSC-CA-2023-02, F00004, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 9 January 2023, paras 5-6 and jurisprudence cited therein; ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Decision on Vidoje Blagojević's Motion for Extension of Time in which to File his Appeal Brief, 5 October 2005, p. 3.

³¹ The Panel observes that while the Appeals Panel deemed in the *Mustafa* case that an extension of seven days would provide sufficient time for Mr Salih Mustafa to file his appeal brief following the distribution of the final Albanian translation of the trial judgment, the Appeals Panel's discretionary decision to grant such an extension was based on the submissions made and the specific circumstances of that case. See Response, para. 4; *Mustafa* Decision on Time and Word Limits, para. 11.

an initial extension of ten days to file his appeal brief.³² The Panel also notes that the Registry submitted that, with the final version of the translation, it would also distribute a version showing any differences between the draft and final versions of the translated Trial Judgment.³³ The Panel considers that this will assist Shala in finalising his appeal brief more efficiently within the time provided.

14. Turning to whether there is good cause for the requested extension of the word limit of the appeal brief, the Panel recalls that, under Article 48(3) of the Practice Direction, Shala can file an appeal brief of up to 30,000 words. The Panel further recalls that the quality and effectiveness of appellate submissions do not depend on their length, but rather on their clarity and cogency, and that the number of grounds and sub-grounds of appeal do not inevitably impede an appellant's ability to present salient and cogent appeal briefs within the prescribed word limit and, as such, they do not in and of themselves, constitute exceptional circumstances.³⁴

15. In light of the above, the Panel finds that the 15,000 additional words Shala requests for his appeal brief are neither necessary nor warranted based on the complexity of the Trial Judgment, the elaborate research allegedly required, the number of grounds of appeal he presented in the Notice of Appeal or the alleged extensive procedural history to analyse. Nevertheless, the Panel finds that a limited extension of 2,000 words is justified in the present circumstances to allow the Defence to make their points fully and to ensure clarity and cogency. The Panel hereby varies the word limit of Shala's appeal brief accordingly.

³² See Decision on Request to Refile Notice of Appeal, para. 16 (p. 8). See also Transcript, 20 September 2024, p. 6.

³³ See Transcript, 20 September 2024, p. 10. See also Motion, para. 7.

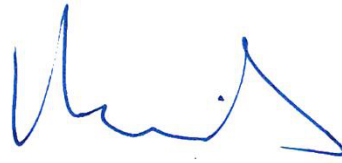
³⁴ See e.g. *Mustafa* Decision on Time and Word Limits, para. 12; KSC-CA-2022-01, F00033, Decision on Gucati's Request for Variation of Word Limit to File Appeal Brief, 5 August 2022, para. 7.

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

GRANTS the Motion **in part**;

AUTHORISES Shala to file an appeal brief of no more than 32,000 words by 25 November 2024; and

DENIES the remainder of the Motion.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 30 October 2024

At The Hague, the Netherlands