



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
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Prosecution request for extension of time to file its Response Brief

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Rules 9(5)(a) and 179(2) of the Rules,¹ the Specialist Prosecutor's Office ('SPO') requests an extension of the deadline to 27 January 2025 to file its Response Brief ('Request'). Good cause exists for the Request, noting that – as a result of the extensions of deadline previously granted to the Defence – the Response Brief deadline would otherwise now fall in the middle of the judicial recess, on 27 December 2024,² when there would be limited staff availability.

II. SUBMISSIONS

2. A modest extension of time is justified due to the upcoming judicial recess and attendant staffing shortages. Following three extensions of time granted to the Defence for the preparation of the appeal,³ the Prosecution's Response Brief deadline has moved by 44 days and now falls in the middle of the judicial recess and directly following two official holidays.⁴ A modest extension is needed, in light of the reduced

¹ 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 are to the Rules, unless otherwise specified. Rule 9(5)(a) provides that '[t]he 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.' Rule 179(2) provides that '[t]he Respondent may file a Brief in Response setting out all arguments and authorities within thirty (30) days...of the Appeal Brief.'

² Christmas Day, 25 December 2024, falls 30 days following 25 November 2024, the date on which the Defence is now due to file their appeal brief. Rule 9(4) provides that the 'last day of the time limit prescribed under the Rules or set by a Panel, which falls on a weekend or a Specialist Chambers' official holiday, shall be considered to be the next working day.' Accordingly, under the current schedule, the SPO is due to file its Brief in Response on 27 December 2024, the next working day following the official holidays of Christmas Day and Boxing Day.

³ 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 Variation Decision'), paras 3, 10, 12; Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, KSC-CA-2024-03/F00015, 18 September 2024, Public ('Decision Ordering Defence to Refile Notice of Appeal'), para.16; Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, KSC-CA-2024-03/F00021, 30 October 2024, Public ('Decision'), KSC-CA-2024-03/F00021, paras 13, 16.

⁴ The original deadline for the Response Brief was 13 November 2024, being 30 days following the original deadline for the Defence appeal brief of 14 October 2024, based on the notification of the Trial

staffing during this period, to ensure that the SPO has sufficient time to prepare a clear, concise, and well-reasoned response to the Defence appeal brief.

3. As the Appeals Panel has previously recognised, in these⁵ and other proceedings,⁶ limited staff availability during recess may be a factor in granting extensions of time. This is in line with international jurisprudence,⁷ and also consistent with the rationale behind such a recess period.⁸

4. In the instant case, based on the grounds of appeal, the SPO will be required to conduct an extensive review of the trial record and procedural decisions, as well as individual items of evidence and the testimony of a multitude of Prosecution and

Judgment on 16 July 2024. *See* Trial Judgment and Sentence, KSC-BC-2020-04/F00847, 16 July 2024, Confidential; Rule 179(2). Following the Notice of Appeal Variation Decision, KSC-CA-2024-03/F00006, the Response Brief was due on 2 December 2024. Following the Decision Ordering Defence to Refile Notice of Appeal, KSC-CA-2024-03/F00015, the Response Brief deadline became 16 December 2024. Now, as a result of the Decision, KSC-CA-2024/03/F00021, the Response Brief deadline is 27 December 2024.

⁵ Notice of Appeal Variation Decision, KSC-CA-2024-03/F00006, paras 9-10.

⁶ *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 ('*Mustafa* Variation Decision'), para.6; *Specialist Prosecutor v. Thaçi et al.*, Decision on Selimi's and Krasniqi's Request for Variation of Time Limit, KSC-BC-2020-06/IA030/F00003, 22 December 2023, Public ('*Thaçi et al.* Variation Decision'), para.3.

⁷ While a judicial recess does not, of itself, constitute good cause for extending time limits, staffing limitations and other factors resulting from the recess may constitute good cause. Notice of Appeal Variation Decision, KSC-CA-2024-03/F00006, para.9 (citing *Mustafa* Variation Decision, KSC-CA-2023-02/F00004, para.6; *Thaçi et al.* Variation Decision, KSC-BC-2020-06/IA030/F00003, para.3). *See also* IRMCT, *Prosecutor v. Stanišić and Simatović*, MICT-15-96-A, Decision on Prosecution Motion for Extension of Time for the Filing of Respondent's Briefs, 29 October 2021 ('*Stanišić and Simatović* Extension Decision'), p.2; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-A, Decision on Appellants' Requests for Extension of Time and Word Limits, 9 October 2014), p.3; ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Decision on Milan Lukić's Motion Seeking Extension of Time to File Appeal Brief and Motion for Stay of Proceedings, 30 October 2009 ('*Lukić and Lukić* Extension Decision'), para.12.

⁸ ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08, Transcript, 3 December 2010, pp.31-32 (noting that the judicial recess is to ensure that chambers, parties and participants are able to rest). *See also* ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/15, Decision on the Prosecutor's request for time extension for the notice of appeal and the appeal brief, 19 July 2019, paras 4, 8 (in which the Appeals Chamber acknowledge the Prosecution's submission that planned annual leave during the judicial recess for staff to spend time with their families in their home countries, is a factor constituting good cause for a modest extension of time).

Defence witnesses, to facilitate the substantive response drafting process.⁹ Unlike other filings, which may be prepared significantly in advance of repeating deadlines, or which require less preparation, the full 30-day period allotted by the Rules would be the minimum required to prepare meaningful and focused submissions in response to the fourteen grounds (and further sub-grounds) of appeal raised. Moreover, the final days of such a timeline are often especially critical and intensive, comprising essential reviews, consolidation, editing, cite-checking, cross-referencing, formatting, and preparation of the list of authorities, amongst other tasks. With the 30-day timeline ending in the official holiday and recess period, concrete difficulties in meeting the deadline would arise given that multiple key staff members are scheduled to take leave during the recess,¹⁰ and the SPO would effectively be deprived of the requisite time needed for preparation of the Response Brief.

5. As such, with the winter judicial recess scheduled to last from 21 December 2024 to 12 January 2025, the SPO requests a modest extension to 27 January 2025 for filing of the Response Brief.

6. As recognised by other chambers, at this stage of the proceedings, in particular against the backdrop of an intervening winter recess, it is necessary to weigh carefully the parties' rights to adequate time to prepare their cases and the interest in ensuring

⁹ See e.g. Corrected Version of Revised Defence Notice of Appeal, KSC-CA-2024-03/F00017/COR, 30 September 2024, Public, Ground 2, alleging that the Trial Panel failed to notify the Defence whether Mr Shala's statements were admitted into evidence, Ground 6, alleging errors in relation to the Trial Panel's assessment of SPO witnesses, Ground 9, alleging disclosure violations by the SPO, and Ground 10, regarding the refusal of the Trial Panel to hear the evidence of Defence witness W02540 and the Trial Panel's assessment of Defence witnesses.

¹⁰ Leave is planned around judicial recess periods in order to minimise impact on proceedings and, in this case, had taken into account the anticipated briefing schedules based on the prior Notice of Appeal Variation Decision, KSC-CA-2024-03/F00006 and Decision Ordering Defence to Refile Notice of Appeal, KSC-CA-2024-03/F00015.

expeditious proceedings.¹¹ As further explained herein, the Request strikes the appropriate balance between these requirements.

7. An extension is required to avoid a situation in which the SPO suffers a significant disadvantage in producing its Response Brief due to the timing of the deadline. Preserving the ability of a party to properly prepare its case is particularly important, where, as here, the complications faced by the SPO, including planning difficulties during the recess, are not attributable to the SPO, but rather follow from the change to the briefing schedule on the Defence's motion.¹² Fairness requires that attendant complications with staffing be considered in determining an adjustment to the briefing schedule. The ICTY Appeals Chamber, for example, found that where adjustments to the briefing schedule were requested following extensions granted to the defence, including in the circumstances of limited availability over the judicial recess, granting a modest extension to the prosecution was reasonable in the circumstances.¹³

8. Similarly, the Appeals Panel in *Mustafa* held that it was in the interests of justice to grant the SPO and Counsel for Victims an extension of ten days in order to prepare meaningful and focused submissions in response to the *Mustafa* appeal brief.¹⁴ This extension was granted in light of the three-week extension granted to *Mustafa* for his

¹¹ *Stanišić and Simatović* Extension Decision, p.2. See also *Specialist Prosecutor v. Mustafa*, Decision on Specialist Prosecutor's Office and Victims' Counsel Requests for Extension of Time to File Briefs in Response, KSC-CA-2023-02/F00024, Public ('*Mustafa* Response Briefs Extension Decision'), para.5.

¹² Defence Motion for Variation of Time and Word Limits to File Appeal Brief, KSC-CA-2024-03/F00018, 14 October 2024, Public.

¹³ *Lukić and Lukić* Extension Decision, para.12; ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, 20 July 2005, p.4. See also ICTY, *Prosecutor v. Krstić*, Case No. IT-98-33-A, Decision on Prosecution Motion for Extension of Time, 24 December 2001, p.2.

¹⁴ *Mustafa* Response Briefs Extension Decision, KSC-CA-2023-02/F00024, para.5.

appeal,¹⁵ and in circumstances with no intervening judicial recess period affecting appeal or response brief deadlines.

9. In this case, the Defence have received six weeks of additional time to work on their appeal, comprising 39 additional days outside any recess period.¹⁶ Mindful that the 30 days allotted by the Rules (running in normal, non-recess periods) is the absolute minimum amount of time for completion of the Response Brief, the SPO's request is modest. The Request allows the SPO two weeks from the conclusion of the recess to prepare the Response Brief, which is the minimum period needed to accommodate the limitations on resources during the recess.¹⁷

10. There is no prejudice to the Defence, as the Request does not unduly delay or unreasonably impact the overall expeditiousness of the proceedings.¹⁸

¹⁵ *Mustafa* Response Briefs Extension Decision, KSC-CA-2023-02/F00024, para.5; *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, paras 11, 15 (granting Mustafa an extension from 3 April to 24 April 2023).

¹⁶ The total number of days of additional time granted to the Defence is 42 days. Notice of Appeal Variation Decision, KSC-CA-2024-03/F00006, extending the deadline for filing the Notice of Appeal from 15 August 2024 to 2 September 2024 (noting that 15-17 August 2024 fell within the summer judicial recess period), and thereby the deadline for filing the Appeal Brief from 14 October 2024 to 1 November 2024 (18 days); Decision Ordering Defence to Refile Notice of Appeal, KSC-CA-2024-03/F00015, ordering the Defence to file an amended Notice of Appeal, and extending the deadline for the filing of the Appeal Brief from 1 November 2024 to 14 November 2024 (13 days); Decision, KSC-CA-2024-03/F00021, granting a Defence motion for variation of time and extending the deadline for the filing of the Appeal Brief from 14 November 2024 to 25 November 2024 (11 days).

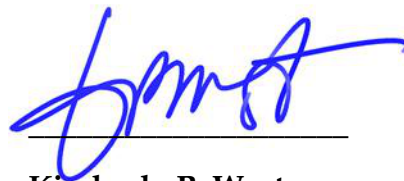
¹⁷ This Panel has previously recognised that following a recess, it is appropriate to provide 15 days to the Defence to prepare their notice of appeal. See Notice of Appeal Variation Decision, KSC-CA-2024-03/F00006, para.10.

¹⁸ If the Request is not granted, under the current briefing schedule, the Defence would also be required to draft their Reply Brief during the judicial recess in order to meet the filing deadline of 13 January 2025.

III. RELIEF REQUESTED

11. For the foregoing reasons, the SPO seeks an extension of the deadline to file its Response Brief to **Monday, 27 January 2025**.

Word count: 2018



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Wednesday, 6 November 2024

At The Hague, the Netherlands.