



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: 13 November 2024

Original language: English

Classification: Public

**Decision on Specialist Prosecutor's and Victims' Counsel's Requests for Extension
of Time to File Briefs in Response**

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 request filed by the Specialist Prosecutor’s Office on 6 November 2024 (respectively, “SPO Request” and “SPO”).² Mr Pjetër Shala responded to the SPO Request on 8 November 2024 (respectively, “Response to SPO” and “Shala” or “Accused” or “Defence”).³ The Court of Appeals Panel is further seised of a request filed by Counsel for Victims on 12 November 2024 (“Victims’ Counsel Request”) (collectively “Requests”).⁴

1. The SPO requests an extension of the deadline to 27 January 2025 to file its brief in response to Shala’s appeal brief against the Trial Judgment issued in case KSC-BC-2020-04.⁵ The SPO submits that there is good cause for granting this “modest” extension of time due to the upcoming judicial recess and attendant staffing shortages and the fact that the deadline to file its response brief now falls in the recess period.⁶ The SPO explains that multiple key staff members are scheduled to take leave during the recess and that this has been recognised in the jurisprudence as a factor in granting extensions of time.⁷ Stressing that the Defence received six weeks of additional time

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

² F00022, Prosecution request for extension of time to file its Response Brief, 6 November 2024 (“SPO Request”).

³ F00023, Defence Response to Prosecution Request for Extension of Time to File its Response Brief, 8 November 2024 (“Response to SPO”).

⁴ F00024, Victims’ Counsel’s Request for Extension of Time for Response Brief, 12 November 2024 (“Victims’ Counsel Request”).

⁵ SPO Request, paras 1, 11. See also SPO Request, para. 5. 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”).

⁶ SPO Request, paras 2, 4-5. See also SPO Request, para. 9.

⁷ SPO Request, paras 3-4. See also SPO Request, paras 6-7. The SPO points to jurisprudence where it was found that granting modest extensions of time to the Prosecution was warranted following extensions granted to the Defence and in the circumstances of limited availability over the judicial recess. See SPO Request, fn. 13 and jurisprudence cited therein. See also SPO Request, fn. 8 and jurisprudence cited therein. See below, fn. 25.

to work on their appeal,⁸ the SPO argues that the full 30-day period allotted by the Rules in a normal, non-recess context is the “absolute minimum” amount of time required to prepare a meaningful and focused response brief.⁹ Finally, the SPO claims that such an extension is necessary to avoid a situation in which it would suffer a significant disadvantage and that the complications it faces are not attributable to the SPO but result from repeated changes to the anticipated briefing schedule.¹⁰

2. Shala responds that he does not object to the SPO Request.¹¹

3. Counsel for Victims also requests an extension of the deadline to 27 January 2025 to file its brief in response to Shala’s appeal brief against the Trial Judgment.¹² Similarly to the SPO, Counsel for Victims points to the upcoming judicial recess and attendant staffing shortages.¹³ According to Counsel for Victims, considering that the Defence raised 14 grounds of appeal, some of which are in areas impacting the rights of participating victims, the requested “short” extension is both reasonable and proportionate.¹⁴

4. 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 2024.¹⁵ On 2 September 2024, the Accused filed his initial notice of appeal

⁸ SPO Request, para. 9, fn. 16. The SPO recalls that in the *Mustafa* case, the Appeals Panel granted an extension of ten days to the SPO and Victims’ Counsel for their response briefs in light of the three-week extension granted to the accused for his appeal. See SPO Request, para. 8.

⁹ SPO Request, para. 9. See also SPO Request, para. 4. The SPO contends that the requested extension allows the SPO two weeks from the conclusion of the recess to prepare its response brief. See SPO Request, para. 9.

¹⁰ SPO Request, para. 7. See also SPO Request, para. 2, fns 4, 10.

¹¹ Response to SPO, para. 5.

¹² Victims’ Counsel Request, paras 1, 10.

¹³ Victims’ Counsel Request, para. 7. Counsel for Victims also notes that the Defence does not object to the SPO Request. See Victims’ Counsel Request, para. 8.

¹⁴ Victims’ Counsel Request, para. 9.

¹⁵ 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,

against the Trial Judgment.¹⁶ On 30 September 2024, following instructions from the Appeals Panel and upon the initial request of the SPO, Shala filed an amended version of his notice of appeal (“Notice of Appeal”).¹⁷

5. The Panel further recalls that on 18 September 2024, Shala was granted an initial extension of ten days to file his appeal brief.¹⁸ On 30 October 2024, the Panel further extended the deadline to 25 November 2024 for Shala to file his appeal brief to provide Shala with sufficient time to finalise it following the distribution of the final version of the translation of the Trial Judgment in Albanian.¹⁹

6. The Appeals Panel notes that according to Rule 179(2) of the Rules, any brief in response should be filed within 30 days of the Appeal Brief, namely by 27 December 2024. However, the Panel recalls that pursuant to Rule 9(5)(a) of the Rules, it may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

7. Regarding the timeliness of the Requests, the Panel considers that they have been filed sufficiently in advance of the deadline under Rule 179(2) of the Rules. As to good cause, the Appeals Panel first recalls that time limits provided in the legal framework of the Specialist Chambers are in principle not suspended during recess

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.

¹⁶ F00010/RED3, Public Redacted Version of Defence Notice of Appeal, 11 October 2024 (confidential version filed on 2 September 2024).

¹⁷ F00017/COR/RED, Public Redacted Version of Corrected Version of the Revised Defence Notice of Appeal, 31 October 2024 (uncorrected confidential version filed on 30 September 2024, corrected confidential version filed on 30 October 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. See also F00013, Prosecution request for order to the Shala Defence to refile its Notice of Appeal, 9 September 2024 (confidential, reclassified as public on 25 September 2024).

¹⁸ 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.

¹⁹ F00021, Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 30 October 2024, paras 13, 16.

periods and continue running during such periods.²⁰ The Panel also recalls that holiday commitments do not usually constitute good cause for granting an extension of time.²¹ Parties and participants are therefore not entitled as such to extensions that would amount to the total duration of the recess.²²

8. The Panel recalls that while a judicial recess does not itself constitute good cause for extending time limits, limited staff availability during recess may be a factor in granting extensions of time.²³ In addition, the Panel observes that in the present case the holiday period impacts the number of working days available to the SPO and to Victims' Counsel until the deadline to file their respective responses.²⁴ Therefore, in the particular circumstances of the present case and on an exceptional basis, the Panel is of the view that a proportionate extension of time would assist them to prepare meaningful and focused submissions in response to Shala's appeal brief.

9. In this regard, the Panel does not consider that the one-month extension requested can be described as "modest" as suggested by the SPO,²⁵ nor as "short" as

²⁰ See Rule 123(3) of the Rules. See also e.g. 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 ("*Brđanin* Decision"), p. 3 (where the ICTY Appeals Chamber recalled that filing deadlines continue to run during the recess).

²¹ See e.g. ICTY, *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File his Appeal Brief, 24 November 2011, p. 1. See also e.g. ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Decision on Tarčulovski's Urgent Motion for Extension of Time to File his Reply Brief, 16 April 2009, p. 2; ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Decision on Clarification of Time Limits and on Appellant Barayagwiza's Extremely Urgent Motion for Extension of Time to File his Notice of Appeal and his Appellant's Brief, 6 September 2005, p. 5.

²² See SPO Request, para. 9.

²³ KSC-CA-2023-02, F00004, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 9 January 2023, para. 6 and the jurisprudence cited therein. See also KSC-BC-2020-06, IA030/F00003, Decision on Selimi's and Krasniqi's Request for Variation of Time Limit, 22 December 2023, para. 3.

²⁴ The winter judicial recess runs from Monday, 23 December 2024 to Friday, 10 January 2025. See also e.g. KSC-BC-2023-10, IA001, F00004, Decision on Specialist Prosecutor's Office's Request for Extension of Time, 28 December 2023, para. 3.

²⁵ The Panel observes that in the decisions cited by the SPO in support of its contention that the requested extension is "modest", while the ICTY Appeals Chamber considered that limited availability during the recess constituted good cause, (i) the extensions granted to the prosecution were either shorter; (ii) the Defence was already granted a significantly higher amount of additional time; or (iii) the ICTY Appeals Chamber also took into account the fact that the prosecution was facing overlapping appeal schedules. See *Brđanin* Decision, pp. 2-4 (the prosecution was granted a four week extension

suggested by Counsel for Victims.²⁶ In fact, the Panel finds that it is disproportionate in this instance as this would double the time frame provided in the Rules and amounts to granting the SPO and Victims' Counsel more additional time for its response than the additional time Shala was granted for his appeal brief.²⁷ The Panel further notes that the SPO and Counsel for Victims were put on notice of the Defence's intention to request a further extension of time for its appeal brief and the eventuality that the briefing schedule could be further modified as early as 16 September 2024.²⁸

10. Therefore, also mindful of the three-week extension granted to Shala to file his appeal brief²⁹ – in addition to the 60 days provided for in Rule 179(1) of the Rules – the Panel finds that an extension of 21 days, namely until 17 January 2025 – in addition to the 30 days provided for in Rule 179(2) of the Rules – is justified in the specific circumstances of this case to accommodate in particular any limitation on resources during the winter judicial recess. The Panel considers that doing so will not unreasonably impact the overall expeditiousness of the proceedings.³⁰

while the accused had already benefited from a two month extension to file his appeal brief and the prosecution was also facing overlapping drafting periods in another case on appeal); 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, paras 6, 12 (the prosecution was granted a ten-day extension and had to complete briefs in other appeals); ICTY, *Prosecutor v. Krstić*, IT-98-33-A, Decision on Prosecution Motion for Extension of Time, 24 December 2001, p. 1 (the prosecution was granted a one week extension of time while the briefing schedule was modified as a result of the tardiness of the accused's application). See also SPO Request, fn. 13.

²⁶ Victims' Counsel Request, para. 9.

²⁷ The Panel finds that Shala was granted 24 additional days to prepare his appeal brief, not 42 days as the SPO contends. See SPO Request, para. 9, fn. 16.

²⁸ See CRSPD4, Email from Shala Defence Team to CMU on Message to the Panel regarding F00012_ issues to raise during Pre-Appeal Conference, 16 September 2024 (confidential) (wherein the Defence notes that it intends to submit a request for, *inter alia*, an extension of the time limit for filing its appeal brief). See also Transcript, 20 September 2024, pp. 6-7. Contra SPO Request, fn. 10.

²⁹ See above, fn. 27.

³⁰ See also Response to SPO, para. 5.

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

GRANTS the Requests in part; and

AUTHORISES the SPO and Counsel for Victims to file their briefs in response to Shala's appeal brief by 17 January 2025.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 13 November 2024

At The Hague, the Netherlands