



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-CA-2022-01**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 25 May 2022

Original language: English

Classification: **Public**

Decision on Haradinaj's Request for Clarification on Appeal Timescale

Specialist Prosecutor's Office:
Jack Smith

Counsel for Hysni Gucati:
Jonathan Elystan Rees

Counsel for Nasim Haradinaj:
Toby Cadman

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of 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 on 23 May 2022 by Nasim Haradinaj (“Haradinaj” or “Accused”).²

1. Haradinaj requests, as a matter of urgency, clarification regarding whether the starting point of the deadline for filing notices of appeal pursuant to Rule 176(2) of the Rules is the pronouncement of the Trial Judgment or its translation into Albanian.³ In particular, he submits that, on 18 May 2022, he was provided with a certified copy of the Trial Judgment in English, a language of which he does not have sufficient understanding.⁴ This negates, according to Haradinaj, his ability to instruct counsel on appeal and negatively impacts the fairness of the proceedings.⁵

2. The Panel notes that, pursuant to Rule 176(2) of the Rules, a Party seeking to appeal a judgment of conviction shall file a notice of appeal setting forth the grounds of appeal within 30 days of the written trial or sentencing judgment.⁶ Further, pursuant to Rule 72(2) of the Rules, any panel seised with contempt proceedings, such as the present ones, may reduce time limits and take any other measures as deemed necessary to expedite the proceedings, with due regard to the accused’s right to a fair trial.⁷

¹ F00002, Decision Assigning a Court of Appeals Panel, 24 May 2022.

² F00001, Haradinaj Request for Clarification on Appeal Timescale, 23 May 2022 (“Request”).

³ Request, paras 1.3, 3.3, 3.8, 3.10. See F00611/RED, Public Redacted Version the Trial Judgment, 18 May 2022 (confidential version filed on 18 May 2022) (“Trial Judgment”).

⁴ Request, paras 3.2, 3.4-3.5.

⁵ Request, paras 3.1-3.2, 3.6-3.7, 3.9.

⁶ In this case, the Trial Panel included sentencing in its Trial Judgment. See Trial Judgment, paras 1014, 1017.

⁷ Compare Rule 90 (J) of the Rules of the International Residual Mechanism for Criminal Tribunals (“IRMCT Rules”), Rule 77 (J) of the Rules of the International Criminal Tribunal for the former Yugoslavia (“ICTY Rules”) and Rule 77(J) of the Rules of the International Criminal Tribunal for

3. Pursuant to Rule 9(3) of the Rules, time limits run from the first working day after a judgment is rendered. Moreover, Rule 8(5) of the Rules provides that time limits shall not run until a party or other participant required to take action has received from the Registrar the translation of a document into one of the working languages, where such document was filed in a language other than one of the working languages.⁸ In the present case, the Trial Judgment was issued in English, which has been determined as the working language of the proceedings.⁹ The Panel further observes that while under Rule 159(4) of the Rules a certified copy of the Trial Judgment and of the Judges' opinions, where applicable, shall be served on an accused as soon as possible in a language he or she understands and speaks, the receipt of this translation is not linked to the start of the relevant time limit under Rule 176(2) of the Rules. The Panel, therefore, considers that on the basis of the Rules, the time limit for filing notices of appeal commences on the first working day after a trial judgment is issued in the agreed working language.

4. With respect to the fairness of the proceedings, the Panel notes that, in line with consistent case law, the determination of potential grounds of appeal falls primarily within the purview of Defence Counsel.¹⁰ In the Panel's view, Counsel are already in

Rwanda ("ICTR Rules") (prescribing a 15-day deadline for filing notices of appeal from the judgment in contempt cases) *with* Rule 133 of the IRMCT Rules, Rule 108 of the ICTY Rules and Rule 108 of the ICTR Rules, respectively (prescribing a 30-day deadline for filing notices of appeal from the judgment in core crimes cases).

⁸ See also Rule 9(2) of the Rules: "Time limits run from the first working day after the notification of the relevant filing in the working language(s) determined by the Panel".

⁹ KSC-BC-2020-07, F00060, Decision on Working Language, 29 October 2020 ("Decision on Working Language"), paras 11, 29(a). See also Decision on Working Language, 25 May 2022, paras 4-5.

¹⁰ ICTY, *Prosecutor v. Lukić and Lukić*, IT-98-32/1-A, Decision on Milan Lukić's Urgent Motion for Enlargement of Time to File Notice of Appeal, 19 August 2009 ("*Lukić and Lukić* Decision"), para. 10; ICTY, *Prosecutor v. Strugar*, IT-01-42-A, Decision on Request for Extension of Time, 1 March 2005, p. 2; ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005, p. 2; ICTY, *Prosecutor v. Brđanin*, IT-99-36-A, Decision on Motion for Extension of Time, 4 October 2004, p. 2; ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Decision on Motion for Extension of Time, 15 August 2003 ("*Stakić* Decision"), p. 2; ICTR, *Prosecutor v. Karemera and Ngirumpatse*, ICTR-98-44-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 17 February 2012 ("*Karemera and Ngirumpatse* Decision"), para. 11; ICTR, *Prosecutor v. Ntawukulilyayo*, ICTR-05-82-A, Decision on Dominique Ntawukulilyayo's Motion for Extensions of Time for Filing Appeal Submissions, 24 August 2010, para. 7; ICTR, *Prosecutor v.*

a position to discuss the content of the Trial Judgment with the Accused and to advise him as to potential grounds of appeal. The Panel observes in this regard that in cases before international criminal courts where trial judgments were issued in a language which the accused did not understand, an extension of time for the filing of a notice of appeal was generally not warranted where the convicted person's counsel could work in the language in which the trial judgment was pronounced.¹¹

5. Moreover, the Panel recalls that pursuant to Rule 176(3) of the Rules, the Panel may, if good cause is shown, authorise a variation of the grounds of appeal. Consequently, the Parties will have the opportunity, if they so wish, to request a variation of their grounds of appeal after having read the Albanian translation of the Trial Judgment, provided that they show good cause under this Rule. In these circumstances, it would not be appropriate to delay the appellate proceedings - the

Munyakazi, ICTR-97-36A-A, Decision on Yussuf Munyakazi's Motion for an Extension of Time for the Filing of the Notice of Appeal, 22 July 2010 ("*Munyakazi* Decision"), para. 6; ICTR, *Prosecutor v. Karera*, ICTR-01-74-A, Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, 21 December 2007, p. 2. See also ECtHR, *Kamasinski v. Austria*, 9783/82, Judgment, 19 December 1989, para. 85 (wherein the European Court of Human Rights found no violation of Article 6(3)(e) of the European Convention on Human Rights on the basis that the applicant was able to sufficiently understand the judgment and its reasoning as a result of oral explanations given to him in order to lodge, with the assistance of his counsel, an appeal).

¹¹ See e.g. ICTY, *Prosecutor v. Krajišnik*, IT-00-39-A, Decision on "Urgent Motion for Extension of Time for Filing Notice of Appeal Pending Translation of the Judgement into the Language of the Convicted Person", 1 February 2007, p. 4; *Stakić* Decision, p. 2; *Karemera and Ngirumpatse* Decision, para. 11; ICTR, *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011, para. 5; *Munyakazi* Decision, para. 6. Along these lines, the German Supreme Court recently held in a fundamental decision that, as a rule ("*grundsätzlich*"), no right to a written translation of a trial judgment exists if a defendant had counsel, this counsel was present when the judgment was issued and the reasoning given by the presiding trial judge was simultaneously translated ("*Der Angeklagte hat grundsätzlich keinen Anspruch auf schriftliche Übersetzung eines nicht rechtskräftigen erstinstanzlichen Strafurteils, wenn er verteidigt ist, er und sein Verteidiger bei der Urteilsverkündung anwesend waren und dem Angeklagten die Urteilsgründe durch einen Dolmetscher mündlich übersetzt worden sind.*"). See Germany, Bundesgerichtshof (Supreme Court), Decision of 18 February 2020 – 3 StR 430/19, reprinted in (2020) 73 *Neue Juristische Wochenschrift* 2041, particularly paras 10 et seq.

beginning of which is marked by the filing of the notices of appeal - until the filing of the Trial Judgment in Albanian.¹²

6. In light of the above, while the Panel recognises the importance of the Accused's right to receive the Trial Judgment in a language he understands, it considers that the fairness of the proceedings at this stage will not be negatively impacted by the unavailability of such a translation. Thus, the Panel finds that the Parties shall file their notices of appeal, if any, within the time limit prescribed by Rule 176(2) of the Rules, namely by Friday, 17 June 2022.


7. Considering the importance of clarifying this matter as soon as possible in order to allow the Parties adequate time to file their notices of appeal, if any, and given that no prejudice will be caused to the other Parties, the Panel considers that it is in the interests of justice to dispose of the Request immediately without waiting for a response.¹³

¹² See *Lukić and Lukić* Decision, para. 10; ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009, p. 3.

¹³ See *mutatis mutandis* Rule 9(6) of the Rules.

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

ORDERS that notices of appeal setting forth the grounds of appeal against the Trial Judgment, if any, shall be filed by Friday, 17 June 2022.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 25 May 2022

At The Hague, the Netherlands