



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-CA-2023-02

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

**Registrar:** Fidelma Donlon

**Date:** 9 January 2023

**Original language:** English

**Classification:** Public

---

**Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal**

---

**Specialist Prosecutor's Office:**

Alex Whiting

**Counsel for Salih Mustafa:**

Julius von Bóné

**Counsel for Victims:**

Anni Pues

**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)<sup>1</sup> 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 by Mr Salih Mustafa (“Mustafa” or “Accused”).<sup>2</sup>

1. The Accused requests, as a matter of urgency, an extension of the time limit for filing his notice of appeal against the Trial Judgment issued in case KSC-BC-2020-05 until 10 February 2023.<sup>3</sup> He submits that the extension sought does not impair the length of proceedings in an unreasonable manner and is justified because *inter alia*: (i) the Trial Judgment was rendered one day before the judicial recess and is an extensive document requiring thorough analysis; (ii) he has not received the Trial Judgment in the Albanian language which is indispensable for him to make any contribution; and (iii) some applications for new team members of the defence team are pending.<sup>4</sup> Mustafa also requests that his appeal brief be subsequently filed on 11 April 2023 on the basis that 10 April 2023, when it would normally be due if the extension of the time limit is granted, is the second Easter holiday in the Netherlands.<sup>5</sup>

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.<sup>6</sup> The Panel may, *proprio motu* or upon showing of good cause, extend or reduce any time limit

---

<sup>1</sup> F00002/COR, Corrected Version of Decision Assigning a Court of Appeals Panel, 3 January 2023.

<sup>2</sup> F00001, Defense urgent motion to extend time limit to file Notice of Appeal, 3 January 2023 (“Motion”).

<sup>3</sup> Motion, paras 8, 11-12. See KSC-BC-2020-05, Trial Judgment, 16 December 2022 (confidential) (“Trial Judgment”). Mustafa accepts that, if granted, the extended time limit shall apply to all parties. See Motion, paras 10(a), 14. The Panel notes that Mustafa repeated the numbering of paragraph 10 twice in his Motion and, therefore, it will refer to the two paragraphs as 10(a) and 10(b), respectively.

<sup>4</sup> Motion, paras 3-6, 10(b).

<sup>5</sup> Motion, paras 9, 13.

<sup>6</sup> In this case, the Trial Panel included sentencing in its Trial Judgment. See Trial Judgment, para. 831.

prescribed by the Rules or set by the Panel. In the present case, the Trial Judgment was pronounced on 16 December 2022 and its confidential version written in English was made available to the Parties on the same day. Accordingly, the time limit for filing notices of appeal commences on the first working day after a trial judgment has been issued in English, a language which has been determined to be the working language of these proceedings.<sup>7</sup> Any notices of appeal in this case are therefore due on 17 January 2023.<sup>8</sup>

3. The Panel notes that while it 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, considering, *inter alia*, that the determination of potential grounds of appeal falls primarily within the purview of Defence Counsel and 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 at a later stage.<sup>9</sup>

4. Further, the Panel observes that the Trial Panel convicted the Accused for three counts in relation to one detention center and to events allegedly having occurred in the course of April 1999.<sup>10</sup> While the Panel acknowledges that any appeal proceedings in this case would be the first before the Specialist Chambers in a core crimes case and may, therefore, set important precedents,<sup>11</sup> it is not persuaded that the Trial Judgment is extensive or otherwise complicated in a manner that would justify an extension of time.

---

<sup>7</sup> KSC-CA-2022-01, F00005, Decision on Haradinaj's Request for Clarification on Appeal Timescale, 25 May 2022 ("*Haradinaj* Decision on Appeal Timescale"), para. 3. See KSC-BC-2020-05, F00032, Decision on Working Language, 8 October 2020; KSC-BC-2020-05, F00123, Decision setting the dates for trial preparation conferences and requesting submissions, 20 May 2021, para. 7. See also F00003, Decision on Working Language, 9 January 2023.

<sup>8</sup> See Rule 9(2) and (3) of the Rules.

<sup>9</sup> See *Haradinaj* Decision on Appeal Timescale, paras 4-5.

<sup>10</sup> Trial Judgment, para. 831.

<sup>11</sup> See similarly KSC-BC-2020-06, IA005/F00003, Decision on Counsel's Motion for Clarification and Variation of Time Limit, 31 May 2021, p. 3.

5. As for Mustafa's submission that some applications for new team members of the Defence team are pending,<sup>12</sup> the Panel considers it regrettable that the Defence does not specify the role these new members would have in the team. The Panel observes in this regard that international criminal tribunals have been inclined to accept the new appointment of Counsel or Co-Counsel as circumstances justifying the extension of time and less so when the new appointments concerned other members of a legal team.<sup>13</sup> Nevertheless, the pending assignment of staff members to an accused's defence team has been taken into consideration for moderate extensions of time.<sup>14</sup>

6. Moreover, the Panel notes that the Trial Judgment was issued on the last working day before the winter judicial recess and that most of the 30-day time limit for filing notices of appeal falls within the recess. 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.<sup>15</sup>

7. In view of the above, the Panel considers that good cause exists for a limited variation of the time limit for the notice of appeal. The Panel observes that Mustafa requests an extension of 24 days, in other words almost doubling the time frame

---

<sup>12</sup> See Motion, para. 6.

<sup>13</sup> Compare e.g. ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Decision on Johan Tarčulovski's Second Motion for Extension of Time to File Appeal Brief, 22 October 2008, p. 3; ICTY, *Prosecutor v. Nikolić*, IT-02-60/1-A, Decision on Second Defence Motion for Variation of Time-Limits, 13 April 2004, p. 2 with ICTY, *Prosecutor v. Blagojević and Jokić*, IT-02-60-A, Decision on Dragan Jokić's Supplement Motion for Extension of Time to File Appeal Brief, 31 August 2005, para. 8.

<sup>14</sup> See e.g. ICTR, *Nahimana et al. v. Prosecutor*, ICTR-99-52-A, Decision on "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", 17 May 2005, p. 2.

<sup>15</sup> See 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, p. 2 and jurisprudence cited therein. See also 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 (providing that deadlines are to be respected regardless of holidays in which family gatherings take place).

provided in the Rules. In the Panel's view, extending the deadline for filing the notice of appeal by 17 days to 3 February 2023 would be sufficient.

8. The Panel also finds that it is in the interests of justice to grant the same variation of the time limit to the Specialist Prosecutor's Office ("SPO"), if it wishes to file a notice of appeal, considering that doing so will not unreasonably impact the overall expeditiousness of the proceedings in this case and that it is in the interests of effective case management to maintain a synchronised briefing schedule on appeal.

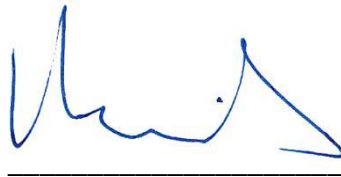
9. Furthermore, the Panel notes that considering the extension of time granted with this decision, the appeal briefs would be due normally on 6 April 2023. Accordingly, the Panel does not need to address the Accused's request for filing his appeal brief on 11 April 2023.

10. Finally, the Panel recalls that, pursuant to Rule 9(6) of the Rules, a motion for variation of time limits may be disposed of without giving the opposing Party or Victims' Counsel the opportunity to be heard. In light of the imminence of the time limit for filing notices of appeal, in order to allow any party wishing to file a notice of appeal adequate time to prepare it, and given that no prejudice will be caused to the SPO, the Panel considers that it is in the interests of justice to dispose of the Motion immediately.

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

**GRANTS** the Motion in part; and

**AUTHORISES** the Defence and the SPO to file their notices of appeal, if any,  
by 3 February 2023.



---

**Judge Michèle Picard,  
Presiding Judge**

Dated this Monday, 9 January 2023

At The Hague, the Netherlands