



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-CA-2023-02
Specialist Prosecutor v. Salih Mustafa

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

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 31 March 2023

Language: English

Classification: Public

**Prosecution response to Defence urgent motion
to extend time limit to file Appeal Brief**

Specialist Prosecutor's Office

Alex Whiting

Counsel for the Accused

Julius von Bóné

Counsel for Victims

Anni Pues

1. The Specialist Prosecutor's Office ('SPO') takes no position on MUSTAFA's last-minute motion to extend the time limit to file his appeal brief¹ and defers to the Panel as to any appropriate extension. Nevertheless, the SPO submits the below observations on the Motion and opposes the requested word count extension. MUSTAFA fails to establish exceptional circumstances and the Motion was not filed sufficiently in advance, as required by Article 36(1) of the Practice Direction.²
2. The Motion was filed just two working days before the Appeal Brief is due, on 3 April 2023,³ as mandated by Rules 9 and 179(1).⁴ MUSTAFA had 60 days to determine whether he would be able to timely file his Appeal Brief, in view of the scope and ambit of the case, length and complexity of the Trial Judgment('Judgment'),⁵ and appeal grounds he intends to advance. This timeframe was arguably even longer, as the Appeals Panel had already granted an extension for filing the Notice of Appeal.⁶
3. MUSTAFA argues that the extension of time and word limit is warranted due to the size of the Judgment, the size and scope of its intended appeal, and the unavailability of its Albanian translation.⁷
4. The first two reasons have already been rejected by the Appeals Panel in its decision on MUSTAFA's request to extend the time limit for filing the Notice of Appeal. The Appeals Panel observed that the Trial Judgment, which convicted

¹ Defence urgent motion to extend time limit to file Appeal Brief, KSC-CA-2023-02/F00018, 30 March 2023 ('Motion').

² Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019 ('Practice Direction').

³ The Notice of Appeal (defined in fn.9 below) was notified to the parties on 2 February 2023. Pursuant to Rule 9(2), the time limit for filing the Appeal Brief (60 days) runs from the first working day after this notification, which is 3 February 2023.

⁴ 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 refer to the Rules, unless otherwise specified.

⁵ Trial Judgement, KSC-BC-2020-05/F00494, 16 December 2022, Confidential.

⁶ Decision on Defense Motion for Variation of Time Limit to File Notice of Appeal, KSC-CA-2023-02/F00004, 9 January 2023.

⁷ Motion, KSC-CA-2023-02/F00018, paras 4, 6-8

MUSTAFA for three counts in relation events that occurred in the course of April 1999 at one detention centre, is not extensive or otherwise complicated in a manner that would justify an extension of time.⁸ Moreover, MUSTAFA mistakenly indicates that he would need to develop arguments with regard to 59 appeal grounds, whereas the number of grounds and sub-grounds included in its Notice of appeal is in fact 51.⁹

5. While the Appellant generally has a right to receive the Judgment in a language he understands,¹⁰ the unavailability of the Albanian version of the Judgment does not automatically constitute good cause for an extension of time, as the preparation of the appeal brief falls upon Counsel and not the Appellant.¹¹ Furthermore, the Albanian-speaking co-counsel had ample time and opportunity to explain to the Appellant the content of the Judgment, its implications, and all legal and factual avenues for challenging it.¹² The Registry's current estimate foresees that the Albanian translation of the Trial Judgment is expected on 17 April 2023. In the event that any significant issues arise from the translation, MUSTAFA may at that stage seek leave to file further submissions.¹³

6. Finally, the request for an extension of the word limit by 10,000 words is wholly unsubstantiated and should be dismissed. The extension would constitute an expansion of a third of the original word limit.¹⁴ As discussed above, nothing about

⁸ Decision on Defense Motion for Variation of Time Limit to File Notice of Appeal, KSC-CA-2023-02/F00004, 9 January 2023 ('Variation Decision'), para.4.

⁹ Defence Notice of Appeal pursuant to Rule 176 (of Rules of Procedure and Evidence) against the Judgment of the Trial Panel I, KSC-CA-2023-02/F00006, 16 December 2022, Confidential ('Notice of Appeal').

¹⁰ See Variation Decision, KSC-CA-2023-02/F00004, para 3; cf. ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15 A2, Decision on the Defence request for extension of time limit for the filing of the notice of appeal and the appeal brief, 2 June 2011 ('Ongwen Decision'), para.8.

¹¹ See similarly *Ongwen* Decision, para.11.

¹² See ICC, *Prosecutor v. Gbagbo and Goudé*, ICC-02/11-01/15 A, Decision on Gbagbo's request for extension of time, translations and correction of transcripts, 26 November 2019 ('Gbagbo Decision'), para.25.

¹² Article 48(3) of the Practice Direction.

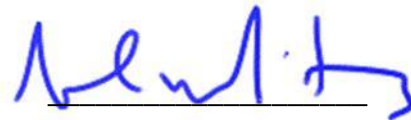
¹³ See *Gbagbo* Decision, para.25.

¹⁴ Article 48(3) of the Practice Direction.

this case gives rise to exceptional circumstances justifying the requested extension, as required by Article 36(1) of the Practice Direction. Moreover, instead of seeking the necessary authorisation 'sufficiently in advance', MUSTAFA has filed this Motion two working days shy of the deadline for the Appeal Brief, almost two months after the Notice of Appeal was filed.

7. Nevertheless, in the circumstances, the SPO defers to the Appeals Panel as to the appropriate extension. Should the relief be granted, the SPO requests a corresponding extension of the time and word limit for its response to the Defence's appellate brief.¹⁵

Word count: 846



Alex Whiting

Acting Specialist Prosecutor

Friday, 31 March 2023

At The Hague, the Netherlands.

¹⁵ Rule 179(2).