



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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:** 3 April 2023

**Original language:** English

**Classification:** **Public**

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**Decision on Defence Motion for Variation of Time and  
Word Limits to File Appeal Brief**

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**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 request filed on 30 March 2023 by Mr Salih Mustafa (“Mustafa” or “Accused”).<sup>2</sup> The Specialist Prosecutor’s Office (“SPO”) responded on 31 March 2023.<sup>3</sup>

1. Mustafa requests, as a matter of urgency, an extension of the time limit for filing his appeal brief against the Trial Judgment issued in case KSC-BC-2020-05 until “at the latest” 30 April 2023.<sup>4</sup> He submits that the extension sought does not “impair” the length of proceedings in an unreasonable manner and is justified because the Trial Judgment is extensive and he needs additional time to “properly elaborate” on all of the grounds of appeal set forth in his Notice of Appeal.<sup>5</sup> Mustafa further argues that he has not yet received the final translated version of the Trial Judgment in Albanian and so is working from a preliminary translation.<sup>6</sup> Mustafa submits that the Registry informed him on 27 March 2023 that he would receive the final translated version of

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

<sup>2</sup> F00018, Defense urgent motion to extend time limit to file Appeal Brief, 30 March 2023 (“Request”).

<sup>3</sup> F00019, Prosecution response to Defence urgent motion to extend time limit to file Appeal Brief, 31 March 2023 (“Response”). On 3 April 2023, in view of the imminence of the time limit for filing Mustafa’s appeal brief, the Appeals Panel informed the Parties and participants via email of the outcome of this Decision; see CRSPD5, Email regarding F00018 and F00019, 3 April 2023.

<sup>4</sup> Request, paras 4-8, 10-11, 13-15. See KSC-BC-2020-05, F00494/RED/COR, Corrected version of Public redacted version of Trial Judgment, 24 January 2023 (confidential version filed on 16 December 2022, uncorrected public redacted version filed on 19 January 2023) (“Trial Judgment”). In addition, Mustafa submits that should the Request be granted, equivalent extensions of time and word limits should also be granted for any briefs in response. See Request, paras 12, 17.

<sup>5</sup> Request, paras 4, 6, referring to F00006/RED2, Public Redacted Version of Defence Notice of Appeal pursuant to Rule 176 (of Rules of Procedure and Evidence) against the Judgment of the Trial Panel I of 16 December 2022, 13 February 2023 (confidential version filed on 2 February 2023) (“Notice of Appeal”).

<sup>6</sup> Request, para. 7.

the Trial Judgment on 17 April 2023, and therefore he requests “sufficient time” to make any potential changes to his appeal brief following this date.<sup>7</sup>

2. In addition, Mustafa requests an extension of the word limit, prescribed in Article 48 of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers (“Practice Direction”),<sup>8</sup> for filing an appeal brief against the Trial Judgment.<sup>9</sup> He requests an extension of 10,000 words, arguing that “the current number of words for the document would not suffice”.<sup>10</sup>

3. The SPO responds that it takes no position on Mustafa’s “last-minute motion” to extend the time limit to file his appeal brief, but it opposes the requested word limit extension.<sup>11</sup> It argues that Mustafa’s unsubstantiated request for an extension of 10,000 words does not provide any exceptional circumstances to justify it, as required by Article 36(1) of the Practice Direction, and moreover that the request was filed only two working days before the deadline for his appeal brief.<sup>12</sup>

4. The Appeals Panel recalls that on 9 January 2023, at Mustafa’s request, the Panel extended the time limit for filing Mustafa’s and the SPO’s notices of appeal, if

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<sup>7</sup> Request, para. 7.

<sup>8</sup> KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019 (“Practice Direction”).

<sup>9</sup> Request, paras 9, 16.

<sup>10</sup> Request, para. 9.

<sup>11</sup> Response, paras 1-2, 6. Despite not opposing the requested extension of the time limit, the SPO nevertheless submits that the Appeals Panel has already held that the length and complexity of the Trial Judgment did not warrant an extension of the time limit to file the Notice of Appeal, that the Albanian speaking co-counsel had ample opportunity to advise Mustafa on the Trial Judgment, and that should significant issues arise from the final translation, Mustafa may seek leave to file further submissions; see Response, paras 3-5.

<sup>12</sup> Response, paras 2, 6. The SPO further submits that should the Appeals Panel grant Mustafa’s requested relief, the SPO requests a corresponding extension of the time and word limit for its brief in response; see Response, para. 7.

any, to 3 February 2023.<sup>13</sup> On 2 February 2023, Mustafa filed his Notice of Appeal against the Trial Judgment.<sup>14</sup>

5. The Panel further recalls that on 16 February 2023, the Presiding Judge of the Appeals Panel held a Pre-Appeal Conference, at which the Registry submitted that a draft translation of the Trial Judgment into Albanian had been distributed the same day and that the Registry was working on preparing a final version thereof by the end of March 2023.<sup>15</sup>

6. Regarding the timeliness of Mustafa's requests for an extension of the time and word limits for filing his appeal brief, the Appeals Panel first recalls that, according to Rule 179(1) of the Rules, an appellant shall file an appeal brief within 60 days of the notice of appeal. However, the 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.<sup>16</sup> In addition, Article 36(1) of the Practice Direction states that participants in the proceedings may seek, sufficiently in advance, an extension of the word limit upon showing that good cause exists constituting exceptional circumstances.

7. The Panel notes that in accordance with Rules 9(2) and 179(1) of the Rules, Mustafa's appeal brief is due on 3 April 2023. The Panel recalls that, in the Decision on Variation of Time Limit for Notice of Appeal, it noted that with the extension of time granted by the Panel to Mustafa to file his notice of appeal on 3 February 2023, "the appeal briefs would be due normally on 6 April 2023".<sup>17</sup> However, as Mustafa's

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<sup>13</sup> F00004, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 9 January 2023 ("Decision on Variation of Time Limit for Notice of Appeal"), paras 7-8, 11. See also F00001, Defense urgent motion to extend time limit to file Notice of Appeal, 3 January 2023.

<sup>14</sup> Notice of Appeal.

<sup>15</sup> Transcript, 16 February 2023, p. 6, wherein the Registry noted further that it would "distribute with the final version a version showing any differences between the draft distributed today and the final version for ease of readers". See also F00008, Order Scheduling a Pre-Appeal Conference, 9 February 2023, para. 11.

<sup>16</sup> Rule 9(5)(a) of the Rules.

<sup>17</sup> Decision on Variation of Time Limit for Notice of Appeal, para. 9.

Notice of Appeal was filed and distributed on 2 February 2023 – one day earlier – his appeal brief is due on 3 April 2023.

8. The Panel notes that on 27 March 2023, the Registry informed Mustafa that the final version of the translation of the Trial Judgment into Albanian was not expected to be completed until 17 April 2023.<sup>18</sup> However, although the Request is only based in part on this reason, Mustafa should have filed the Request immediately, for example on 28 March 2023. The Panel therefore considers that the Request is certainly not timely in this regard.

9. Nevertheless, the Panel will consider whether Mustafa demonstrates good cause for his requests for variations in the time and word limits for filing his appeal brief.

10. The Panel first recalls that when considering Mustafa's request for an extension of the time limit to file his Notice of Appeal, it was not persuaded that the Trial Judgment is extensive or otherwise complicated in a manner that would justify such an extension.<sup>19</sup> The Panel also considers that needing additional time to "properly elaborate" on all of the grounds of appeal that Mustafa chose to present in his Notice of Appeal is not a valid reason to grant an extension of the time limit. However, the Panel considers that the delay in the Registry providing a final version of the translation of the Trial Judgment until 17 April 2023 provides good cause for a limited variation of the time limit for the submission of the appeal brief.

11. In the Panel's view, extending the deadline for filing Mustafa's appeal brief to 24 April 2023 would provide sufficient time following the distribution of the final version of the translated Trial Judgment, keeping in mind that a draft translation has been available to him since mid-February 2023. The Panel also notes that the Registry submitted that, with the final version of the translation, it would also distribute a

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<sup>18</sup> See Request, para. 7.

<sup>19</sup> See Decision on Variation of Time Limit for Notice of Appeal, para. 4.

version showing any differences between the draft and final versions of the translated Trial Judgment.<sup>20</sup> The Panel considers that this will assist Mustafa in finalising his appeal brief more efficiently within the time provided.

12. As to good cause for the requested extension of the word limit of the appeal brief, the Panel recalls that, under Article 48(3) of the Practice Direction, Mustafa can file an appeal brief of up to 30,000 words. The Panel further recalls that the quality and effectiveness of appellate submissions do not depend on their length, but rather on their clarity and cogency, and that the number of grounds and sub-grounds of appeal do not inevitably impede an appellant's ability to present salient and cogent appeal briefs within the prescribed word limit and, as such, they do not in and of themselves, constitute exceptional circumstances.<sup>21</sup>

13. In the Request, Mustafa does not provide any convincing reasons for seeking 10,000 additional words for his appeal brief, and the Panel considers that such an extension is not warranted based on the complexity of the Trial Judgment or on the number of grounds of appeal he presented in the Notice of Appeal. The Panel therefore denies this aspect of the Request.

14. With respect to the requested corresponding extensions of the time limits for filing any briefs in response, the Panel is not persuaded at this stage of the necessity of granting any such extensions. Therefore, the Panel notes that, pursuant to Rule 9(2) of the Rules, the respective time limits set out in Rule 179(2) and (3) of the Rules for the filing of a brief in response and brief in reply run from the next working day after the notification of Mustafa's appeal brief and from the notification of the relevant brief in response, respectively.

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<sup>20</sup> See Transcript, 16 February 2023, p. 6.

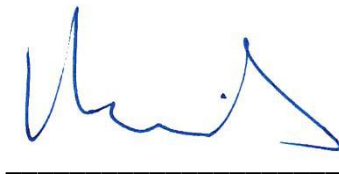
<sup>21</sup> See e.g. KSC-CA-2022-01, F00033, Decision on Gucati's Request for Variation of Word Limit to File Appeal Brief, 5 August 2022, para. 7; KSC-CA-2022-01, F00021, Decision on Haradinaj's Request for Variation of Word Limit to File Appeal Brief and SPO's Request for Order to Re-File Haradinaj's Notice of Appeal, 1 July 2022, paras 4-5.

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

**GRANTS** the Request in part;

**AUTHORISES** Mustafa to file his appeal brief by 24 April 2023; and

**DENIES** the remainder of the Request.



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**Judge Michèle Picard,  
Presiding Judge**

Dated this Monday, 3 April 2023

At The Hague, the Netherlands