



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:** 5 May 2023

**Original language:** English

**Classification:** **Public**

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

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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 requests filed by the Specialist Prosecutor’s Office and the Counsel for Victims (“SPO”, “SPO Request” and “Victims’ Counsel Request”, respectively) (collectively “Requests”).<sup>2</sup>

1. The SPO and Counsel for Victims request an extension of two weeks to file their briefs in response to the appeal brief filed by Mr Salih Mustafa (“Mustafa” and “Appeal Brief”, respectively) against the Trial Judgment issued in case KSC-BC-2020-05.<sup>3</sup> The SPO and Counsel for Victims submit that there is good cause for granting the reasonable and proportionate extension because (i) the Appeal Brief raises over 50 legal and/or factual grounds of appeal, some of which are complex or novel issues before the Panel; (ii) the “unstructured, unclear and unsubstantiated submissions” in the Appeal Brief pose further difficulty to the SPO to respond with focused, clear and substantiated submissions; and (iii) Mustafa has benefitted from more than five additional weeks to prepare the Appeal Brief.<sup>4</sup> The SPO and Counsel for Victims also

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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> F00022, Prosecution request for extension of time to file its Brief in Response, 1 May 2023; F00023, Victims’ Counsel request for extension of time limit to file her response to the Defence’s Appeals Brief, 4 May 2023.

<sup>3</sup> SPO Request, para. 1; Victims’ Counsel Request, para. 1. 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”); F00021/COR/RED, Public Redacted Version of Corrected Version of Defense Appeal Brief pursuant to Rule 179 (1) of Rules of Procedure and Evidence (“Rules”), 2 May 2023 (uncorrected confidential version filed on 24 April 2023, corrected confidential version filed on 2 May 2023).

<sup>4</sup> SPO Request, para. 2; Victims’ Counsel Request, paras 2-5. Counsel for Victims further submits that a significant number of the grounds of appeal in the Appeal Brief impact the participating victims’ rights and personal interests which will be detailed in her response brief. See Victims’ Counsel Request, paras 4-5.

submit that the Requests are timely, considering that the Appeal Brief was filed on 24 April 2023.<sup>5</sup>

2. The Appeals Panel recalls that on 9 January 2023, at the request of Mustafa, the Panel authorised an extension of the time limit for filing the notices of appeal of Mustafa and the SPO, if it so wished, to 3 February 2023.<sup>6</sup> On 2 February 2023, Mustafa filed his notice of appeal against the Trial Judgment.<sup>7</sup>

3. On 3 April 2023, the Panel extended the deadline to 24 April 2023 for Mustafa to file the Appeal Brief, to provide Mustafa with sufficient time to finalise it following the distribution of the final version of the translation of the Trial Judgment in Albanian which was expected on 17 April 2023.<sup>8</sup>

4. 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 24 May 2023.<sup>9</sup>

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<sup>5</sup> SPO Request, para. 1; Victims' Counsel Request, para. 2. Counsel for Victims also notes that a corrected version of the Appeal Brief, including "an additional confidential annex", was subsequently notified on 3 May 2023. The Panel notes that the newly added annex to the corrected version of the Appeal Brief only contains an explanatory note regarding the corrections made to the original filing, which are limited to correcting the numbering of paragraphs and a spelling error. See F00021/COR/A03, Annex 3 to Corrected Version of Defence Appeal Brief pursuant to Rule 179 (1) of the Rules of Procedure and Evidence ("Rules") (confidential), 2 May 2023.

<sup>6</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>7</sup> 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>8</sup> F00020, Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 3 April 2023 ("Decision on Variation of Time and Word Limits for Appeal Brief"), paras 10-11, 15. The original deadline for Mustafa to file the Appeal Brief was 3 April 2023 in accordance with Rules 9(2) and 179(1) of the Rules. See Decision on Variation of Time and Word Limits for Appeal Brief, para. 7. The Panel recalls that on 27 March 2023, the Registry informed Mustafa that the final version of the translation of the Trial Judgment in Albanian was not expected to be completed until 17 April 2023, instead of end of March 2023. See Decision on Variation of Time and Word Limits for Appeal Brief, paras 5, 8. The final version of the translation of the Trial Judgment was filed on 17 April 2023.

<sup>9</sup> The Panel recalls that Counsel for Victims may, without seeking leave from the Panel, make oral and written submissions on any point of law or fact, and file responses and replies to submissions made before the Panel, including appellate briefs. See F00011, Decision on Modalities of Victim Participation in Appellate Proceedings, 15 February 2023 ("Decision on Modalities of Victim Participation"), para. 13.

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.

5. 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 recalls that it was not persuaded that the Trial Judgment is extensive or otherwise complicated in order to justify granting extensions of time for Mustafa to file his appellate submissions.<sup>10</sup> Furthermore, the Panel recalls that any submissions made by Counsel for Victims in the present appellate proceedings must be limited to issues impacting the participating victims' personal interests and not be prejudicial to or inconsistent with the rights of the Accused.<sup>11</sup> Nevertheless, in light of the submissions by the SPO and Counsel for Victims,<sup>12</sup> the Panel is of the view that a limited extension of time would assist them to prepare meaningful and focused submissions in response to the Appeal Brief. Also mindful of the three-week extension granted to Mustafa to file the Appeal Brief – in addition to the 60 days provided for in Rule 179(1) of the Rules – the Panel finds that it is in the interests of justice to grant the SPO and Counsel for Victims an extension of ten days – in addition to the 30 days provided for in Rule 179(2) of the Rules – namely until 5 June 2023. The Panel considers that doing so will not unreasonably impact the overall expeditiousness of the proceedings and that it is in the interests of effective case management to maintain a synchronised briefing schedule on appeal.

6. 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 Parties the opportunity

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<sup>10</sup> See Decision on Variation of Time Limit for Notice of Appeal, para. 4; Decision on Variation of Time and Word Limits for Appeal Brief, para. 10.

<sup>11</sup> See Decision on Modalities of Victim Participation, paras 6, 13. The Panel recalls that, in such submissions, Counsel for Victims “must explicitly set out how the submissions are related to the participating victims' personal interests”. See Decision on Modalities of Victim Participation, para. 13.

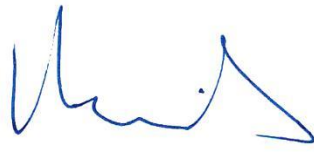
<sup>12</sup> See SPO Request, para. 2; Victims' Counsel Request, paras 3-5.

to be heard. Given that no prejudice will be caused to the Defence, the Panel considers that it is in the interests of justice to dispose of the Requests immediately.

7. 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 the Appeal Brief by Monday, 5 June 2023.



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**Judge Michèle Picard,  
Presiding Judge**

Dated this Friday, 5 May 2023

At The Hague, the Netherlands