



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

In: KSC-SC-2024-02
Specialist Prosecutor v. Salih Mustafa

Before: The President of the Specialist Chambers
Judge Ekaterina Trendafilova

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 17 January 2024

Language: English

Classification: Public

**Prosecution response to 'Mustafa Urgent Motion for an Extension of Time to File a
Request for Protection of Legality'**

Specialist Prosecutor's Office
Kimberly P. West

Counsel for the Appellant
Venkateswari Alagenda

I. SUBMISSIONS

1. While the Specialist Prosecutor's Office ('SPO') does not oppose a modest extension of time to file any request for protection of legality, MUSTAFA fails to show good cause for the very lengthy period of additional time he seeks.¹ None of the factors identified justify such an extension. Moreover, contrary to the submissions made, all parties and participants, including the prosecution and victims in this case, have an interest in the proceedings advancing expeditiously to closure.

2. The only factor raised in the Request that is capable of justifying an extension of time at this stage is the appointment of new Counsel.² However, the time-line set out in the Request warrants – at most – a modest extension of the time limit by 30 days, given that Counsel currently acting for MUSTAFA was appointed on 3 January 2024, less than three weeks after the Appeal Judgment was issued.³ As MUSTAFA acknowledges,⁴ the pending assignment of staff members other than Counsel or Co-Counsel has been held to constitute a less persuasive reason for an extension of time, and is at most a factor to be taken into consideration for moderate extensions of time.⁵

3. Furthermore, the appointment of new Counsel at this stage of the proceeding is far less disruptive than prior to the completion of trial or appeal proceedings. The limited grounds for any request for protection of legality under Article 48(7) confine the requisite analysis primarily to the Appeal Judgment and arguments raised during the appeal proceeding,⁶ especially because arguments that reasonably could have

¹ Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality, KSC-SC-2024-02/F00001, 15 January 2024 ('Request').

² Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, KSC-CA-2023-02/F00004, 9 January 2023, para.5.

³ Request, KSC-SC-2024-02/F00001, paras 13, 18.

⁴ Request, KSC-SC-2024-02/F00001, para.26.

⁵ Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, KSC-CA-2023-02/F00004, 9 January 2023 ('Extension of Time Decision'), para.5 (and citations therein).

⁶ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' are to the Law, unless otherwise specified.

been raised before the first and second instance panels cannot be raised *de novo* before the Supreme Court Panel.⁷

4. MUSTAFA's argument that the unavailability of the Albanian translation of the Appeal Judgment constitutes good cause for an extension of time is premature and unsubstantiated.⁸ While MUSTAFA generally has a right to receive the Appeal Judgment in a language he understands,⁹ the unavailability of the Albanian version of the Appeal Judgment does not automatically constitute good cause for a lengthy suspension of the time limit, particularly at the early stage of a 90-day period. The well-established principle that 'the determination of potential grounds of appeal falls primarily within the purview of Defence Counsel' applies even more so to requests for protection of legality, given the exclusive focus on legal issues to which MUSTAFA cannot provide any meaningful input.¹⁰ Even during the first instance appeal, where many of the grounds of appeal concerned factual findings for which MUSTAFA could provide meaningful instructions, the Appeals Panel in this case granted only modest extensions of time for filing the notice of appeal and appeal briefs in circumstances where the Albanian translation of the Trial Judgment was unavailable, and set the time limit for filing the appeal brief to one week after the Albanian translation was projected to be received.¹¹ Chambers in other international courts and tribunals have similarly held that appellants cannot suspend their preparation of an appeal until the

⁷ *Prosecutor v. Gucati and Haradinaj*, Decision on Requests for Protection of Legality, KSC-SC-2023-01/F00021, 18 September 2023, para.10.

⁸ Request, KSC-SC-2024-02/F00001, para.27.

⁹ Rule 8(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'); *See similarly* Extension of Time Decision, KSC-CA-2023-02/F00004, para.3; *Prosecutor v. Gucati and Haradinaj*, Decision on Haradinaj's Request for Clarification on Appeal Timescale, KSC-CA-2022-01/F00005, 25 May 2022, para.6; 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 2021, para.8.

¹⁰ *Gucati and Haradinaj Appeal Timescale Decision*, KSC-CA-2022-01/F00005, para.4; *Extension of Time Decision*, KSC-CA-2023-02/F00004, para.3 (finding that the fairness of the proceedings was not negatively affected by the unavailability of the Albanian translation of the trial judgment prior to the filing of the notice of appeal).

¹¹ *Extension of Time Decision*, KSC-CA-2023-02/F00004, para.10 (setting the time limit for filing the appeal brief to one week after the Albanian translation of the Trial Judgment was projected. However, a draft translation was available to MUSTAFA).

translation of a judgment into the appellant's language, provided the judgment is issued in a language understood by the appellant's legal team.¹²

5. MUSTAFA's request for suspension of the time limit until receipt of the Albanian translation of the Appeal Judgment is also contrary to Rule 9(2), which states that time limits run from the notification of a relevant filing in the working language determined by the Panel.¹³ Likewise, Rule 8(5) explicitly suspends time limits until a relevant document is made available in one of the working languages, but stays silent on translations into a language understood by a suspect, accused or appellant. Undoubtedly, this omission is intended to avoid lengthy and unnecessary delays. The Appeal Judgment was issued in English, which has been determined as the working language of the proceeding.¹⁴ The Rules require Counsel to use her time productively by working with the English version of the Appeal Judgment. Any pertinent sections of the Judgment can be translated to MUSTAFA by competent language staff or other Albanian speaking members of his defence.¹⁵

6. Moreover, MUSTAFA fails to substantiate his Request with any concrete information about the projected completion of the translation. At least, he should have enquired with the Registry when the translation is expected to be available and included this information in the Request. Instead, the Request is substantiated with a speculative estimate based on a comparison to the translation of the Trial Judgment.¹⁶

¹² ICTY, *Prosecutor v. Kordić and Čerkez*, Decision on motions to extend time for filing Appellant's Briefs, 11 May 2001, paras 17-18; 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.11; *see also authorities cited in* Gucati and Haradinaj Appeal Timescale Decision, KSC-CA-2022-01/F00005, para.4

¹³ *See similarly:* Gucati and Haradinaj Appeal Timescale Decision, KSC-CA-2022-01/F00005, para.3.


¹⁴ Decision on Working Languages, KSC-CA-2023-02/F00003, 9 January 2023.

¹⁵ Gucati and Haradinaj Appeal Timescale Decision, KSC-CA-2022-01/F00005, para.4 ('Counsel are already in a position to discuss the content of the Trial Judgment with the Accused and to advise him as to potential rounds of appeal.')

¹⁶ Request, KSC-SC-2024-02/F00001, para.23.

7. Finally, MUSTAFA's submission that 'the interests of [...] participating victims are not directly engaged' ignores the victims' expressed desire for closure.¹⁷

Word count: 1151



Kimberly P. West

Specialist Prosecutor

Wednesday, 17 January 2024

At The Hague, the Netherlands.

¹⁷ Transcript, 27 October 2023, p.129, line 25 to p.130, line 2 ('It is in the victims' interest to reach closure without any undue delay. The importance of bringing this case to a close and the impact that closure will have on victims cannot be overemphasized.'), *see also* p.121, lines 13-15.