

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

Before: A Panel of the Supreme Court Chamber
Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Franssen

Registrar: Dr. Fidelma Donlon

Filing Participant: Defence Counsel for Salih Mustafa

Date: 22 January 2024

Language: English

Classification: Public

Mustafa Reply to “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 Salih Mustafa
Venkateswari Alagenda

I. INTRODUCTION

1. Two “new issues” are raised in the response of the Specialist Prosecutor’s Office (“SPO”)¹ to the request of the Defence for Salih Mustafa (“Defence”) for an extension of time to file any request for protection of legality² which merit the following reply.³

II. REPLY

2. The period of time proposed by the SPO for the extension is a new issue which merits a reply. The SPO’s submission that “at most – a modest extension of the time limit by 30 days” is warranted fails to properly and fairly acknowledge the task which requires to be undertaken by an entirely new defence team.⁴ The SPO’s proposed 30-day extension would not allow any extension of time for the new defence team to read into the case. Rather, it would simply cover the time that has been lost in the winter recess and in the appointment process. In effect, the SPO’s proposed extension seeks simply to put this entirely new defence team in the same position as a team which had been appointed throughout the proceedings – that is, to be afforded the existing 90-day period and no more. Such a proposal is clearly unfair and unreasonable.

3. While the SPO urges that the grounds for any request for protection of legality are limited by the terms of Article 48 (7) of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), that does not mean, contrary to the SPO’s submission, that the work required to formulate those grounds is limited simply to an analysis of the Appeal Judgment and arguments raised during the appeal

¹ KSC-SC-2024-02, F00002, Specialist Prosecutor, *Prosecution response to ‘Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality’* (“Response”), 17 January 2024, public.

² KSC-SC-2024-02, F00001, Mustafa Defence, *Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality* (“Request”), 15 January 2024, public.

³ Rule 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) limits any replies to ‘new issues arising from the response’.

⁴ Response, para. 2.

proceedings.⁵ Clearly, a wider and more thorough knowledge of the case file is required; the Defence cannot work only or primarily on the Appeal Judgment without understanding the Trial Judgment and the evidence which underlies both Judgments. However, even the process of gaining access to the confidential case materials is an ongoing task which is not yet complete. Newly appointed Co-Counsel was only granted access to Legal Work Flow on 19 January 2024. In any event, a request for protection of legality may also be premised on Article 48 (8) of the Law, which requires the Defence to analyse violations of rights available under the Law and protected by the Constitution or the European Convention on Human Rights.⁶ This broadens the work required.

4. Further, in addition to gaining access to and analysing these materials, time is required to take instructions on the Appeal Judgment from Mr Mustafa. Again, the SPO's arguments on the work which is required for an entirely new defence team to properly prepare any grounds for a request for protection of legality fail to fairly recognise the reality of the task.

5. As regards information about the projected completion of the Albanian translation of the Appeal Judgment, the Language Services Unit has advised that it is aiming to have the translation ready by the end of March 2024.⁷ Once received, the Defence will need further time for Mr Mustafa to consider the Judgment in a language he fully understands and, thereafter, to instruct the team.

⁵ Response, para. 3.

⁶ See, KSC-SC-2023-01, F00021, Panel of the Supreme Court Chamber, *Decision on Requests for Protection of Legality*, 18 September 2023, public, para. 18.

⁷ Response, para. 6.

III. CONCLUSION

6. For the reasons set out in the Request, the Defence respectfully requests the President to:

- a) find that good cause exists pursuant to Rule 9(5)(a) of the Rules for a variation of the time limit to file any request for protection of legality; and
- b) grant an extension of time to file any request for protection of legality of:
 - a. 180 days from 14 March 2024, which would mean that the filing deadline would be amended to Tuesday, 10 September 2024; or, in the alternative,
 - b. 90 days from the issuance of the Albanian translation of the Appeal Judgment.

Word count: 724



Venkateswari Alagenda

Monday, 22 January 2024

The Hague, the Netherlands.