



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-SC-2024-02

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

Registrar: Fidelma Donlon

Date: 25 January 2024

Language: English

Classification: Public

Decision on the Request for an Extension of Time

Specialist Prosecutor:

Kimberly P. West

Counsel for Salih Mustafa:

Venkateswari Alagenda

Counsel for Victims:

Anni Pues

THE PANEL OF THE SUPREME COURT CHAMBER of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”), noting Article 48(6) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 4(2) and 9(5)(a) of the Rules of Procedure and Evidence (“Rules”) hereby renders this decision on the “Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality” (“Request for an Extension of Time”).¹

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, Trial Panel I rendered the Trial Judgment, wherein it convicted Mr Salih Mustafa of arbitrary detention, torture and murder as war crimes and acquitted him of cruel treatment as a war crime.² The Trial Panel sentenced Mr Mustafa to 26 years of imprisonment.³

2. On 6 April 2023, Trial Panel I issued the “Corrected Version of Public Redacted Version of Reparation Order against Salih Mustafa with 4 Annexes Strictly Confidential and *Ex Parte*”, wherein it ordered Mr Mustafa to pay 207,000 Euro as compensation for the harm inflicted on the victims of the crimes for which he was convicted.⁴

3. On 14 December 2023, the Court of Appeals Panel issued the “Public Redacted Version of the Appeal Judgment”, wherein it affirmed Mr Mustafa’s convictions for arbitrary detention, torture and murder as war crimes, but granted Mr Mustafa’s appeal, in part, against his sentence.⁵ To that end, the Court of Appeals Panel reduced

¹ F00001, Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality, 15 January 2024.

² KSC-BC-2020-05/F00494, Trial Judgment, 16 December 2022 (confidential), para. 831. A corrected version was filed on 24 January 2023 and a public redacted version on 8 June 2023.

³ Trial Judgment, para. 831.

⁴ KSC-BC-2020-05/F00517/RED/COR, Corrected Version of Public Redacted Version of Reparation Order against Salih Mustafa with 4 Annexes Strictly Confidential and *Ex Parte*, 6 April 2023, para. 283.

⁵ KSC-CA-2023-02/F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023, para. 484.

Mr Mustafa's sentence to 22 years of imprisonment, with credit for time served.⁶

4. On 3 January 2024, the Registrar granted Mr Mustafa's request to have his Counsel, Mr Julius von Bóné replaced and appointed Ms Venkateswari Alagenda as his new Counsel.⁷

5. On 15 January 2024, Mr Mustafa filed the Request for an Extension of Time.⁸ Mr Mustafa requested that he be granted an extension of 180 days to file a request for protection of legality from 14 March 2024, the "deadline for Mr. Mustafa to file [a] request for protection of legality", or, in the alternative, a 90-day extension from the issuance of the Albanian translation of the Trial Judgment.⁹

6. On 17 January 2024, the Specialist Prosecutor's Office ("SPO") filed the "Prosecution response to 'Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality'" ("Response").¹⁰

7. On 23 January 2024, Mr Mustafa filed the "Mustafa Reply to 'Prosecution Response to 'Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality'" ("Reply").¹¹

8. On 25 January 2024, the Supreme Court Panel issued the "Decision on Prosecution Motion Regarding Conflict of Interest of Defence Counsel" ("Decision"), wherein it, *inter alia*, declared that the Registrar's decision to appoint Ms Alagenda as

⁶ Appeal Judgment, para. 484.

⁷ Request for an Extension of Time, para. 13.

⁸ Request for an Extension of Time.

⁹ Request for an Extension of Time, paras 17, 29.

¹⁰ F00002, Prosecution response to 'Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality', 17 January 2024.

¹¹ F00005, Mustafa Reply to "Prosecution Response to 'Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality'" 23 January 2024. The Supreme Court Panel notes that the Court Management Unit informed that the Reply was originally filed on 22 January 2024, which is within the deadline provided for by Rule 9(2) and 76 of the Rules, but that it directed Mr Mustafa to resubmit the Reply on 23 January 2024 before the correct Panel. Accordingly, the Supreme Court Panel considers the Reply to have been filed within the time line provided for in the Rules.

Mr Mustafa's Counsel has no legal effect and ordered the Registrar to appoint Duty Counsel to safeguard Mr Mustafa's rights until such time as the issue regarding his Counsel has been resolved.¹²

II. DISCUSSION

9. Mr Mustafa contends that there is good cause to be granted an extension of time to file a request for protection of legality, as there has been a material change in his circumstances since the issuance of the Appeal Judgment.¹³ Specifically, Mr Mustafa submits that he has new Counsel representing him and that Counsel will need time to familiarize herself with his case and assemble her team to assist her therewith.¹⁴

10. The SPO submits that it is not opposed to a "modest" extension of time for Mr Mustafa to file a request for protection of legality, but contends that Mr Mustafa has not shown good cause for the lengthy period of time sought.¹⁵

11. The Supreme Court Panel notes that it declared that the Registrar's decision appointing Ms Alagendra as Mr Mustafa's Counsel has no legal effect.¹⁶ Accordingly, Ms Alagendra currently has no standing to file any requests on behalf of Mr Mustafa, including the Request for an Extension of Time.

12. Even if Ms Alagendra had standing, the Supreme Court Panel notes that Rule 9(5)(a) of the Rules provides that a Panel may, upon showing of good cause, extend or reduce any time limit prescribed by *the Rules* or *set by the Panel*" (emphasis added). The Supreme Court Panel further notes that the three-month period within which to request protection of legality in relation to a final judgment is provided for in Article

¹² F00008, Decision on Prosecution Motion Regarding Conflict of Interest of Defence Counsel, 24 January 2024, para. 11.

¹³ Request for an Extension of Time, para. 18.

¹⁴ Request for an Extension of Time, paras 18-22. See also Request for an Extension of Time, paras 23-28; Reply, paras 2-5.

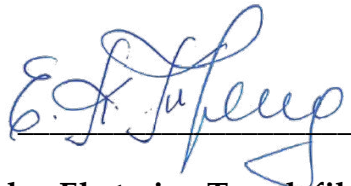
¹⁵ Response, para. 1. See also Response, paras 2-7.

¹⁶ Decision, para. 11.

48(6) of the Law. As a statutory time limit, which is designed to ensure legal certainty, it is absolute and in terms of hierarchy of sources, cannot be varied by the Rules.¹⁷ The Law does not provide a legal basis to vary this time limit. Accordingly, and unlike time lines for notices of appeal, motions, responses or replies, which are regulated in the Rules, the Supreme Court Panel cannot vary time lines explicitly provided for in the Law.¹⁸

III. DISPOSITION

For the foregoing reasons, the Panel hereby **DISMISSES** the Request for an Extension of Time.



Judge Ekaterina Trendafilova,
Presiding

Dated this Thursday, 25 January 2024
At The Hague,
The Netherlands

¹⁷ Cf. Rule 4(2) of the Rules.

¹⁸ Cf. ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 15 October 1998, para. 36 ("whilst the Rules can illustrate the meaning of the Statute under which they are made, they cannot vary the Statute").