



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-04  
**The Prosecutor v. Pjetër Shala**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 20 July 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Specialist Prosecutor's Rule 102(2) and Related Requests**

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**Specialist Prosecutor**  
Jack Smith

**Counsel for Pjetër Shala**  
Jean-Louis Gilissen

**Counsel for Victims**  
Simon Laws

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 21(6), 23(1) and 39(11) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80, 81(1), 95(2)(h), 95(4)(b) and (c), 95(5) and 102(1)(b) and (2), and 108 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge,<sup>2</sup> the Specialist Prosecutor submitted the Confirmed Indictment.<sup>3</sup>
2. On 30 April 2021, the Pre-Trial Judge defined, *inter alia*, the calendar for disclosure, including the time limit for disclosing materials pursuant to Rule 102(1)(b) of the Rules, namely 30 July 2021.<sup>4</sup>
3. On 17 December 2021, the Specialist Prosecutor's Office ("SPO") filed its Pre-Trial Brief and related material, including a list of witnesses ("Witness List") and a list of exhibits ("Exhibit List").<sup>5</sup>

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<sup>1</sup> KSC-BC-2020-04, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

<sup>2</sup> KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and F00007/RED.

<sup>3</sup> KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the Confirmed Indictment were submitted on 31 March 2021, F00016/A01, confidential, and F00016/A02, public. A further lesser redacted, confidential version of the Confirmed Indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's decision on the Defence's motion challenging the form of the Confirmed Indictment, a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential, and 16 November 2021, F00107/A01, public.

<sup>4</sup> KSC-BC-2020-04, F00033, Pre-Trial Judge, *Framework Decision on Disclosure and Related Matters*, 30 April 2021, public, para. 45.

<sup>5</sup> KSC-BC-2020-04, F00135, Specialist Prosecutor, *Submission of Pre-Trial Brief, with Witness and Exhibit Lists*, 28 January 2022, public, with Annexes 1-3, strictly confidential and *ex parte*. Confidential redacted versions of the Pre-Trial Brief, Witness List, and Exhibit List were submitted on 31 January 2022, F00136. Confidential, lesser redacted versions of the Pre-Trial Brief and the Witness List were submitted on 8 February 2022, F00139.

4. On 7 and 10 June 2022, respectively, upon authorisation by the Pre-Trial Judge,<sup>6</sup> the SPO disclosed to the Defence the transcripts of its interviews with four additional witnesses<sup>7</sup> and filed an amended Witness List and Exhibit List.<sup>8</sup>
5. On 23 June 2022, after having obtained the necessary authorisation for variation of protective measures [REDACTED], the SPO submitted a request: (i) seeking leave to disclose to the Defence the transcripts of its interview with W04305 (“Witness”) and further material,<sup>9</sup> as well as to amend its Witness List and Exhibit List accordingly; and (ii) requesting in-court protective measures for the Witness (“Request”).<sup>10</sup>
6. On 4 July 2022, the Defence for Pjetër Shala (“Accused” and “Defence”) responded to the Request (“Response”).<sup>11</sup>
7. On 8 July 2022, the SPO disclosed four documents pursuant to Rule 103 of the Rules (“Rule 103 Material”).<sup>12</sup>
8. On 12 July 2022, the SPO replied to the Response (“Reply”).<sup>13</sup>

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<sup>6</sup> KSC-BC-2020-04, F00205, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Rule 102(2) Request* (“30 May 2022 Decision”), 30 May 2022, confidential, para. 22.

<sup>7</sup> Disclosure Package 61, 7 June 2022.

<sup>8</sup> KSC-BC-2020-04, F00216, Specialist Prosecutor, *Submission of Amended Witness and Exhibit Lists*, 10 June 2022, confidential, with Annexes 1-2, strictly confidential and *ex parte*. The two Annexes were made available to the Defence in confidential redacted form on 13 June 2022, F00216/A01/CONF/RED and F00216/A02/CONF/RED.

<sup>9</sup> See para. 10 below.

<sup>10</sup> KSC-BC-2020-04, F00225, Specialist Prosecutor, *Prosecution Request Pursuant to Rule 102(2), to Amend its Witness and Exhibit Lists, and for Protective Measures*, 23 June 2022, confidential, paras 1, 15 and 21.

<sup>11</sup> KSC-BC-2020-04, F00229, Specialist Counsel, *Response to the “Prosecution Request Pursuant to Rule 102(2), to Amend its Witness and Exhibit Lists, and for Protective Measures”*, 4 July 2022, confidential.

<sup>12</sup> KSC-BC-2020-04, F00231, Specialist Prosecutor, *Prosecution Notice of Rule 103 Disclosure* (“Prosecution Notice”), 8 July 2022, confidential, paras 1-2, with further references. A public redacted version was filed on the same day, F00231/RED.

<sup>13</sup> KSC-BC-2020-04, F00232, Specialist Prosecutor, *Prosecution Reply to Defence Response to Prosecution Second Rule 102(2) Request*, 12 July 2022, confidential.

## II. SUBMISSIONS

9. The SPO maintains that the Request is being filed timely, well in advance of the transfer of the case to the Trial Panel.<sup>14</sup> It avers that the addition of W04305 became apparent after the recent interviews of [REDACTED].<sup>15</sup> The SPO recalls that it had informed earlier the Pre-Trial Judge of its intention to make a Rule 102(2) request and that it had taken diligently all necessary steps for and only recently (20 June 2022) obtained the necessary authorisation, [REDACTED], for making the Request.<sup>16</sup>

10. As regards the request for disclosure, the SPO seeks leave to disclose to the Defence: (i) the transcripts of the SPO's interview with W04305, conducted on [REDACTED]; (ii) [REDACTED]<sup>17</sup> [REDACTED]; (iii) [REDACTED]; and (iv) four associated exhibits.<sup>18</sup> If granted, the SPO also seeks leave to amend the Witness List and Exhibit List accordingly.<sup>19</sup> The SPO adds that the evidence in question is relevant to the case and contributes to the establishment of the truth.<sup>20</sup> It further adds that the number and scope of materials sought to be added is limited, the information is corroborative of allegations already known to the Defence, that it does not seek to amend or expand the charges, and that disclosing the materials and amending the Witness List and Exhibit List would therefore not cause undue prejudice to the Defence.<sup>21</sup>

11. As regards the request for in-court protective measures, the SPO submits that [REDACTED]. In light of this, the SPO requests the following protective measures: (i) identification of the Witness only by the assigned pseudonym throughout all public proceedings; (ii) redaction of the Witness's name and identifying information from the

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<sup>14</sup> Request, paras 8-9, 13.

<sup>15</sup> Request, paras 8-9.

<sup>16</sup> Request, paras 1-2, 7 and 9.

<sup>17</sup> [REDACTED]

<sup>18</sup> Request, paras 10-11.

<sup>19</sup> Request, paras 1 and 15.

<sup>20</sup> Request, paras 2, 8, 12 and 14.

<sup>21</sup> Request, paras 11 and 13.

public records; (iii) non-disclosure to the public of any records identifying the Witness; (iv) testimony with face and voice distortion; and (v) closed or private sessions for any in-court discussion or testimony identifying the Witness.<sup>22</sup> Lastly, the SPO submits that the Accused and the Defence would know the Witness's identity and would have access to his complete, undistorted evidence.<sup>23</sup>

12. The Defence opposes the Request on the grounds that the SPO has failed to give timely notice of its intention to rely on the Witness's evidence at trial<sup>24</sup> and has failed to show good cause for adding the Witness at such a late stage of the proceedings.<sup>25</sup> It maintains that late additions to the list of witnesses may only be authorised if in the interest of justice, taking into account the potential prejudice to the Defence.<sup>26</sup> The Defence avers, *inter alia*, that W04305's evidence is entirely unrelated to the alleged crimes as charged in the Indictment.<sup>27</sup> In addition, the Defence submits that the proposed last-minute additions to the Witness List and Exhibit List would be highly prejudicial to the Defence, as it does not have sufficient time to prepare its case.<sup>28</sup>

13. As regards in-court protective measures, the Defence refers to the Accused's right to a public trial and submits that any limitation of this right needs to remain strictly necessary in the relevant circumstances.<sup>29</sup>

14. The SPO replies that it filed its Request "in a timely manner, promptly upon the probative value of the items in question becoming apparent, as soon as relevant third-party protective measures variations had been obtained, and well in advance of the transfer of the case to the Trial Panel".<sup>30</sup> The SPO adds that W04305's evidence

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<sup>22</sup> Request, para. 17.

<sup>23</sup> Request, para. 18. The Pre-Trial Judge notes that the SPO already informed the Defence of the Witness's identity, see Request, para. 10.

<sup>24</sup> Response, paras 3, 14-16 and 36.

<sup>25</sup> Response, paras 3, 17-21 and 36.

<sup>26</sup> Response, paras 10-12.

<sup>27</sup> Response, para. 18.

<sup>28</sup> Response, paras 3, 22-34 and 36.

<sup>29</sup> Response, para. 4 and reference therein.

<sup>30</sup> Reply, para. 2.

provides additional elements to assess evidence already part of the case.<sup>31</sup> Hence, according to the SPO, the Defence's contention that the SPO is attempting to amend its case is incorrect.<sup>32</sup> Lastly, the SPO repeats that the addition would not prejudice the Defence.<sup>33</sup>

### III. APPLICABLE LAW

15. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the accused shall be made available to him or her before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

16. Pursuant to Rule 95(4)(b) and (c) of the Rules, the Pre-Trial Judge shall order the Specialist Prosecutor to file, within a set time limit, the list of witnesses the Specialist Prosecutor intends to call and the list of proposed exhibits the Specialist Prosecutor intends to present.

17. Pursuant to Rule 95(5) of the Rules, the Pre-Trial Judge shall invite the Defence to file, within a set time limit, a Pre-Trial Brief, including a list of potential witnesses it intends to call.

18. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the accused understands and speaks; (ii) all other witness statements,

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<sup>31</sup> Reply, para. 3.

<sup>32</sup> Reply, para. 3.

<sup>33</sup> Reply, para. 5.

expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

19. Pursuant to Rule 102(2) of the Rules, any statements of additional SPO witnesses, which have not been disclosed within the time limit set by the Panel, and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible and shall be accompanied by reasons for the late disclosure.

20. Pursuant to Article 23(1) of the Law and Rules 80(1) and 108(1)(b) of the Rules, the Pre-Trial Judge may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

#### IV. DISCUSSION

##### A. DISCLOSURE AND AMENDMENT OF THE WITNESS LIST AND EXHIBIT LIST

21. At the outset, the Pre-Trial Judge recalls that, pursuant to Rule 118 of the Rules he may, upon the SPO's timely notice and a showing of good cause, permit the amendment of the list of witnesses and exhibits filed pursuant to Rule 95(4)(b) of the Rules.<sup>34</sup>

22. As regards the timeliness of the Request, the Pre-Trial Judge observes that the SPO: (i) interviewed W04305 on [REDACTED];<sup>35</sup> (ii) interviewed [REDACTED]<sup>36</sup> and included them and the related material in the Witness List and Exhibit List on

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<sup>34</sup> See also 30 May 2022 Decision, para. 15 and reference therein. See also KSC-BC-2020-06, IA019/F00006, Court of Appeals Panel, *Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures"*, 21 July 2022, public, para. 21.

<sup>35</sup> Request, para. 10.

<sup>36</sup> Request, para. 4.



10 June 2022,<sup>37</sup> upon authorisation by the Pre-Trial Judge,<sup>38</sup> (iii) avers that the necessity of adding W04305 to the Witness List became apparent only after interviewing [REDACTED];<sup>39</sup> (iv) informed the Pre-Trial Judge on 11 April 2022 ([REDACTED]), that as a result of recently completed investigations, it would be requesting leave to disclose the evidence of one additional witness, once it obtains the necessary variation of applicable protective measures from a third-party entity;<sup>40</sup> (v) shared said information with the Defence at the time; (vi) filed the respective request [REDACTED] on 26 April 2022 (*i.e.* about two weeks after informing the Pre-Trial Judge) and received the [REDACTED] authorisation on 20 June 2022;<sup>41</sup> and (vii) filed its Request to the Pre-Trial Judge three days later (23 June 2022).

23. The Pre-Trial Judge finds that, although the SPO interviewed W04305 already in [REDACTED], and although more than one month lies between [REDACTED], once it has received the [REDACTED] authorization, the SPO acted promptly in filing the Request to the Pre-Trial Judge. In addition, the present case is still at the pre-trial stage and the Defence is yet to submit its Pre-Trial Brief. In these circumstances, the Pre-Trial Judge finds that the Request has been made in a timely manner.

24. As regards a showing of good cause by the SPO for the requested disclosure and amendments to the Witness List and Exhibit List, the Pre-Trial Judge heeds to the SPO's claim that the evidence provides context, including for the assessment of [REDACTED], and is corroborative of facts and allegations already known to the Defence.<sup>42</sup> The Defence's argument that the SPO fails to show relevance, since W04305's evidence concerns [REDACTED],<sup>43</sup> fails to persuade as evidence does not

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<sup>37</sup> See footnote 8 above.

<sup>38</sup> 30 May 2022 Decision, paras 21 and 22(b).

<sup>39</sup> Request, para. 8.

<sup>40</sup> KSC-BC-2020-04, F00181, Specialist Prosecutor, *Prosecution Submissions for Seventh Status Conference* ("Prosecution Submission"), 11 April 2022, public, paras 15-16, with Annex 1, strictly confidential and *ex parte*.

<sup>41</sup> Request, para. 7, and footnote 2.

<sup>42</sup> Request, paras 12-14; Reply, para. 3.

<sup>43</sup> Response, para. 18.



necessarily have to pertain directly to the factual allegations underpinning the charges. Rather, relevance may be accepted if evidence going to facts outside the scope of the charges are capable of proving factual allegations described in the charges.<sup>44</sup> This is what the SPO claims in relation to the evidence concerned. The Pre-Trial Judge finds that the material is *prima facie* relevant and of sufficient importance as it relates to evidence part of the record and provides information in relation to [REDACTED]. In this context, the Pre-Trial Judge underscores that he is not called upon to weigh the evidence, resolve inconsistencies, or assess the credibility of the Witness.<sup>45</sup> Rather, the weight to be attached to the evidence, if any, must be determined by the Trial Panel. Accordingly, the Defence's arguments must be rejected.

25. As regards the Defence's argument that the SPO failed to provide reasons as to why it interviewed [REDACTED] at such a late stage,<sup>46</sup> the Pre-Trial Judge observes that this has already been addressed in the 30 May 2022 Decision<sup>47</sup> and will therefore not be addressed again.

26. As regards the Defence's submission that the evidence is controversial or lacks probative value and, for this reason, is highly prejudicial to the Defence,<sup>48</sup> the Pre-Trial Judge notes, as set forth above, that for the present purposes, the evidence is not weighed or discussed. The Pre-Trial Judge will therefore not address this Defence argument any further.

27. The Defence also alleges prejudice in that it faces difficulties to prepare its case and comply with its obligations within the procedural calendar set for the remainder of the pre-trial proceedings, if further evidence is added at this stage.<sup>49</sup> The Pre-Trial

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<sup>44</sup> See, for example, ICC, *Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18-703-Red, Trial Chamber V, Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial, 29 October 2020, para. 51; *Prosecutor v. Ongwen*, ICC-02/04-01/15-1762-Red, Trial Chamber IX, Judgment, 4 February 2021, paras 529, 2610, 2628 and 2640.

<sup>45</sup> See Response, paras 27-32.

<sup>46</sup> Response, para. 19.

<sup>47</sup> 30 May 2022 Decision, paras 16-18.

<sup>48</sup> See Response, paras 27-32.

<sup>49</sup> Response, paras 22-26.

Judge notes that the material to be disclosed to the Defence relating to W04305 is limited in number and scope.<sup>50</sup> Further, the information provided by the Witness does not amend or expand the charges, but merely serves to corroborate the information provided by [REDACTED],<sup>51</sup> which was disclosed to the Defence already on 7 June 2022.<sup>52</sup> Moreover, the Defence knows the identity of the Witness and, upon disclosure, will have access to his complete, undistorted evidence and will be able to prepare for trial, taking this added information into account.

28. That being said, the Pre-Trial Judge recalls that, according to the procedural calendar, the Defence is expected to indicate any objections to the admissibility of evidentiary material by no later than 22 July 2022<sup>53</sup> and to file its Pre-Trial Brief by no later than 15 August 2022.<sup>54</sup> Finally, the Pre-Trial Judge recalls that the tentative date to transmit the case to trial was set to be 31 August 2022.<sup>55</sup>

29. In these circumstances, the Pre-Trial Judge considers that the additions to the Witness List and Exhibit List at this stage of the proceedings must be counterbalanced so that the Defence has sufficient time to properly prepare its case and fulfil its obligations under the procedural calendar. Given the addition of one witness to the Witness List, and the limited number and scope of the material to be added to the Exhibit List, the Pre-Trial Judge is of the view that the Defence must be accorded proportionate additional time to prepare before transmitting the case to trial.

30. The above consideration is further compounded by the fact that the SPO only recently disclosed to the Defence Rule 103 material (8 July 2022) that was in its possession since 14 January 2021.<sup>56</sup> According to the SPO, this failure was due to, *inter alia*, staff turnover which resulted in the documents concerned not being processed at

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<sup>50</sup> See para. 10 above.

<sup>51</sup> Request, paras 8, 12-14; Reply, para. 3.

<sup>52</sup> Disclosure Package 61, 7 June 2022.

<sup>53</sup> KSC-BC-2020-04, Transcript of Hearing, 14 April 2022, public, p. 299 lines 7-10.

<sup>54</sup> KSC-BC-2020-04, Transcript of Hearing, 14 April 2022, public, p. 299 lines 20-21.

<sup>55</sup> KSC-BC-2020-04, Transcript of Hearing, 14 April 2022, public, p. 300 lines 8-9.

<sup>56</sup> Prosecution Notice, footnote 4.

the time.<sup>57</sup> While human errors may occur, the Pre-Trial Judge nevertheless considers that the delay in disclosing the material concerned is significant, especially as it concerns exculpatory evidence that is critical for the trial preparation of the Defence. Therefore, this instance of belated disclosure is also part of the reason why the procedural calendar must be amended. In this context, the Pre-Trial Judge reminds the SPO to abide by its obligation to disclose Rule 103 evidence “as soon as it is in [its] custody, control or actual knowledge” and encourages the SPO to put in place control mechanisms within the Office that will ensure that evidence is processed and disclosed in a timely manner.

31. The Pre-Trial Judge therefore: authorises the SPO to disclose to the Defence the material specified in paragraph 10 above, and to amend its Witness List and Exhibit List accordingly. In the view of the Pre-Trial Judge, considering the present circumstances, it is appropriate to extend by three weeks the Defence’s deadlines for indicating any objections to the admissibility of evidentiary material and for filing its Pre-Trial Brief, respectively. Consequently, the Pre-Trial Judge postpones by three weeks the tentative date for transmitting the case to trial (21 September 2022).

## B. PROTECTIVE MEASURES

32. The SPO requests that W04305 be granted in-court protective measures, as rehearsed in paragraph 11 above.<sup>58</sup> The SPO submits that W04305 is [REDACTED].<sup>59</sup> The Defence recalls the Accused’s right to a public trial and underlines that any limitation of this right needs to remain “strictly necessary” in the relevant circumstances.<sup>60</sup>

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<sup>57</sup> Prosecution Notice, para. 2.

<sup>58</sup> Request, paras 17-18.

<sup>59</sup> [REDACTED]

<sup>60</sup> Response, para. 4.

33. The Pre-Trial Judge recalls that publicity of proceedings is a fundamental right of the Accused under Article 21(2) of the Law and a necessary component of fair trial. At the same time, this right is not absolute, but subject to exceptions, including for the protection of victims and witnesses, as stipulated by Articles 21(2) and 23 of the Law.<sup>61</sup> Accordingly, when considering in-court protective measures, it is the responsibility of the Pre-Trial Judge to achieve a balance between the different interests at stake, including the obligation to uphold the rights of the Accused under Article 21 of the Law.

*1. Existence of an Objectively Justifiable Risk*

34. The Pre-Trial Judge considers that W04305 [REDACTED].<sup>62</sup> [REDACTED].<sup>63</sup>

35. The Pre-Trial Judge further considers that, [REDACTED].<sup>64</sup>

36. The individual circumstances of the Witness must further be considered against the general climate of witness interference and intimidation prevailing in Kosovo.<sup>65</sup>

37. In light of the above, the Pre-Trial Judge finds that disclosure to the public of the identity of W04305 poses an objectively justifiable risk to the Witness.

*2. Necessity of the Requested Measures*

38. The Pre-Trial Judge considers that, having particular regard to the [REDACTED],<sup>66</sup> the Witness's cooperation with the SPO and the SC is likely to antagonise certain individuals or communities in Kosovo, which may include persons close to the Accused. The Pre-Trial Judge further considers that [REDACTED].

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<sup>61</sup> Similarly, ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-612-Red, Trial Chamber IX, [Decision on the 'Prosecution Application for In-Court Protective and Special Measures'](#), 29 November 2016, para. 5; *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-1306, Trial Chamber VII, [Decision on Prosecution Request for In-Court Protective Measures](#), 28 September 2015, para. 3.

<sup>62</sup> [REDACTED]

<sup>63</sup> [REDACTED]

<sup>64</sup> [REDACTED]

<sup>65</sup> See, for example, KSC-BC-2020-04, F00045/RED, *Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release*, 15 June 2021, public, para. 26 *in fine*.

<sup>66</sup> See para. 32 above.

39. The Pre-Trial Judge further notes that the requested in-court protective measures are necessary to [REDACTED].<sup>67</sup>

40. In the Pre-Trial Judge's view, the fact that [REDACTED],<sup>68</sup> also constitutes a factor militating in favour of adopting protective measures in order to prevent acts of intimidation in the present proceedings.

41. In light of the above, the Pre-Trial Judge finds that the requested in-court protective measures are necessary, as there are no less restrictive measures that could overcome or reduce the risk for the Witness.

### *3. Proportionality of the Requested Measures*

42. The Pre-Trial Judge notes that the identity of the Witness would only be withheld from the public and that no protective measures vis-à-vis the Defence are requested. The Accused and his Defence team know the identity of the Witness and will have access to his complete, undistorted evidence and testimony.<sup>69</sup> Moreover, determinations made at this stage with respect to in-court protective measures are without prejudice to any future rulings by the relevant Trial Panel in this regard.

43. In light of the above, the Pre-Trial Judge finds that the requested in-court protective measures are proportionate.

### *4. Conclusion*

44. In light of all of the above, the Pre-Trial Judge grants the SPO's request for in-court protective measures for W04305 as specified in paragraph 11 above.

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<sup>67</sup> Request, para. 17; *see also* para. 11 above.

<sup>68</sup> [REDACTED]

<sup>69</sup> Request, para. 18.

## V. CLASSIFICATION

45. The Pre-Trial Judge notes that, while the SPO announces to file a public redacted version of its Request,<sup>70</sup> it has not yet done so. Mindful of the publicity of the proceedings, including the related case record, the Pre-Trial Judge therefore: orders the Parties to submit public redacted versions of their respective filings, or indicate whether their filings can be reclassified as public, by no later than Wednesday, 27 July 2022.

## VI. DISPOSITION

46. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- (a) **GRANTS** the Request;
- (b) **AUTHORISES** the SPO to: (i) disclose to the Defence the material related to W04305 as specified in paragraph 10 above; and (ii) to amend its Witness List and Exhibit List accordingly;
- (c) **ORDERS** the SPO to disclose the above-mentioned material to the Defence and to file its amended Witness List and Exhibit List by no later than **Friday, 29 July 2022**;
- (d) **EXTENDS** the deadline for the Defence to indicate any objections to the admissibility of evidentiary material to **Friday, 12 August 2022**;
- (e) **EXTENDS** the deadline for the Defence to submit its Pre-Trial Brief to **Monday, 5 September 2022**;
- (f) **SETS** the new tentative date to transmit the case to trial to **Wednesday, 21 September 2022**;

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<sup>70</sup> Request, para. 20.

(g) **ORDERS** the following in-court protective measures for W04305:

- (i) identification of the Witness only by the assigned pseudonym throughout all public proceedings;
- (ii) redaction of the Witness's name and identifying information from the SC's public records;
- (iii) non-disclosure to the public of any records identifying the Witness;
- (iv) testimony with face and voice distortion; and
- (v) closed or private sessions for any in-court discussion or testimony identifying the Witness; and

(h) **ORDERS** the SPO and the Defence to submit public redacted versions of their respective filings or to indicate whether their filings can be reclassified as public by no later than **Wednesday, 27 July 2022**.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Wednesday, 20 July 2022

At The Hague, the Netherlands.