

Case No.:

KSC-BC-2020-04

Specialist Prosecutor v. Pjetër Shala

Before:

Trial Panel I

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar:

Dr Fidelma Donlon

Date:

12 March 2024

Filing Party:

Specialist Defence Counsel

Original Language:

English

Classification:

Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

Public Redacted Version of Reply to the Prosecution and Victims’ Counsel

Response to the Motion Requesting Leave to Reopen its Case to Present

Exculpatory Evidence Disclosed in Breach of the Prosecution’s Disclosure

Obligations

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I. INTRODUCTION

1. Pursuant to Rule 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), the Defence for Mr Pjetër Shala (“Defence”) hereby files this reply to the Responses to the Defence Motion Requesting Leave to Reopen its Case to Present Exculpatory Evidence Recently Disclosed in Breach of the Prosecution’s Disclosure Obligations.¹

II. SUBMISSIONS

2. On 8 March 2023 and following the filing of the Defence Motion, the Prosecution disclosed additional material related to [REDACTED] from W02560 [REDACTED], a soldier from the [REDACTED] armed forces who participated in the raid on the [REDACTED] building under W02540 [REDACTED]’s command. The latest disclosure demonstrates the evident flaws in the Prosecution evidence review and disclosure management and the continuing violations of the Prosecution’s disclosure obligations, with obvious results on the ability of the Defence to prepare and present its case.²
3. While the Prosecution argues that it “cannot, and is not expected to, anticipate every line of Defence and matters that the Defence may ultimately consider material to its preparation”,³ the Defence has repeatedly indicated to the Prosecution *inter partes* the relevance to its case of evidence related to [REDACTED], given the elaborate and highly exaggerated account given on

¹ KSC-BC-2020-04, F00808, Prosecution response to motion to reopen the Defence case, 8 March 2024 (confidential) (“Prosecution Response”); KSC-BC-2020-04, F00807, Victims’ Counsel’s Response to Defence Motion Requesting Leave to Reopen its Case to Present Exculpatory Evidence Recently Disclosed in Breach of the Prosecution’s Disclosure Obligations, 8 March 2024 (confidential); KSC-BC-2020-04, F00803, Defence Motion Requesting Leave to Reopen its Case to Present Exculpatory Evidence Recently Disclosed in Breach of the Prosecution’s Disclosure Obligations, 29 February 2024 (confidential) (“Defence Motion”).

² See also Defence Motion, paras. 20, 21, 23.

³ Prosecution Response, para. 17.

this matter by the central Prosecution witness, Witness TW4-01.⁴ Already on 24 November 2023, the Defence indicated its concerns about the late disclosure of previously undisclosed video footage of [REDACTED] and its *prime facie* relevance to its case. [REDACTED].⁵

4. While the Prosecution indicates that it does not oppose the admission of the written statement of W02540, at the same time it requests the Panel to deny the Defence Motion.⁶ The inherent inconsistency in the Prosecution's position highlights why its submissions must be rejected. Procedurally, the admission of new material on the trial record presupposes the re-opening of the evidentiary proceedings. As a result of the re-opening, the deadlines for submission of the Final Briefs and Impact Statement will need to be adjusted.
5. The Prosecution submits that the Panel's decision "should be guided by the probative value of W02540's Evidence, considered in conjunction with the advanced stage of the trial, any delay likely to be caused by a re-opening of the case, and the suitability of an adjournment in the overall context of the trial".⁷ While the Defence regrets the late disclosure and the fact that it is forced to seek the remedy of re-opening its case to call an additional witness at the present stage, it repeats its submissions on the relevance of the proposed evidence for assessing the credibility of the most important Prosecution witness. The Defence is not to be blamed for the fact that it is forced to seek this remedy at the present and advanced stage of the trial. Had the Defence been notified of the existence of this material earlier, it would have been able to request the

⁴ For instance, the Defence requested the disclosure of [REDACTED] (ERN SITF00189121-00189140 RED2) in an email to the Prosecution on 4 October 2022 at 14:07; the Defence requested the disclosure of associated exhibits of the Prosecution interview with W04399 in an email to the Prosecution on 6 October 2022 at 13:51; and the Defence requested the contact details of W03881, W02549, and W02517 [REDACTED] in an email to the Prosecution on 16 November 2022 at 11:59.

⁵ Email from the Defence to Trial Panel I on 24 November 2023 at 14:34.

⁶ Prosecution Response, para. 23.

⁷ Prosecution Response, para. 2.

Panel to hear his evidence earlier. It would have also been in a better and more informed position when identifying the best evidence to be presented to highlight the lack of Witness TW4-01's credibility generally and specifically regarding the description of his release from [REDACTED]. The fact that the latter event falls outside the Indictment period, has no bearing on the fact that the proposed evidence seriously undermines the credibility of the account given of this incident by the most important Prosecution witness in this case. Had the Prosecution disclosed the newly disclosed material earlier, the Defence would have also been able to properly explore the discrepancies between the account of W02540 and TW4-01.

6. Denying the motion, would permit the Prosecution to disclose exculpatory material following the close of the evidentiary proceedings, preventing as such the proper use of such material for further investigations and proper preparation and presentation of the Defence case. The Panel cannot ignore the serious prejudice caused by the Prosecution's conduct. The resulting breach of the fair trial rights of the Accused cannot be accepted.

III. CLASSIFICATION

7. Pursuant to Rule 82(3) of the Rules, this Reply is filed as confidential as it contains confidential information and relates to confidential fillings. The Defence will file a public redacted version of the Reply in due course.

IV. RELIEF REQUESTED

8. The Defence maintains its request that the Panel grant the Motion; acknowledge the serious breach of the Prosecution's disclosure obligations; allow the Defence to reopen its case to call W02540, [REDACTED], to testify live; and, in any event adjust the deadline for filing the Final Trial Briefs and Impact Statement accordingly so that it reflects the additions that need to be

made in the final presentation of its case by the admission of the additional witness's evidence in written or oral form.

9. In addition, the Defence requests the Panel to order the Prosecution to proceed and thoroughly review its evidentiary databases, disclose without any further delay any additional exculpatory material in its possession and confirm that, to date, it has properly fulfilled its disclosure obligations.

Word count: 1067

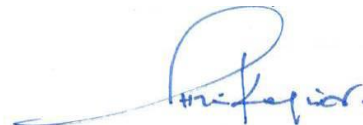
Respectfully submitted,



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Tuesday, 12 March 2024

The Hague, the Netherlands