

**In:** KSC-CA-2024-03  
**The Specialist Prosecutor v. Pjetër Shala**

**Before:** A Panel of the Court of Appeals Chamber  
Judge Michèle Picard  
Judge Kai Ambos  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 18 November 2024

**Filing Party:** Counsel for Pjetër Shala

**Original language:** English

**Classification:** Public

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**Public Redacted Version of Defence Urgent Request for Suspension or  
Extension of Time to File its Appeal Brief**

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**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

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**Specialist Defence Counsel**

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

## I. INTRODUCTION

1. Pursuant to Rule 9(5)(a) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), the Defence for Mr Pjetër Shala (“Defence”) requests the Court of Appeals Panel to suspend, or, in the alternative, extend the deadline to file its Appeal Brief by at least 5 working days and therefore by at least 2 December 2024.<sup>1</sup> In addition, the Defence requests the Appeals Panel to order the Prosecution to review its evidence database and disclose without any delay all additional material relevant to the Defence case.

## II. PROCEDURAL HISTORY

2. On 30 October 2024, following a request by the Defence, the Panel extended the deadline for the Defence to file its appeal brief to 25 November 2024.<sup>2</sup>
3. On Friday, 15 November 2024, the Prosecution disclosed Disclosure Package 1 under Rule 102(3) of the Rules. The disclosure package, which includes 21 items, contains the transcripts of the interviews of witnesses W02538 and W02539 and corresponding translations.<sup>3</sup>
4. On the same date, the Defence informed the Panel that the late disclosure significantly hindered the ability of the Defence to finalise its Appeal Brief and that it would file an urgent request for suspension of the proceedings at the

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<sup>1</sup> See Email from the Defence to the Court Management Unit of the Registry, the Prosecution, and Victims’ Counsel, 15 November 2024, 20:00.

<sup>2</sup> KSC-CA-2024-03, F00021, Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 30 October 2024, paras. 13, 16; KSC-CA-2024-03, F00018, Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 14 October 2024. See also KSC-CA-2024-03, F00015, Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, 18 September 2024, para. 16.

<sup>3</sup> Email from the Prosecution to the Court Management Unit of the Registry, the Defence, and Victims’ Counsel, 15 November 2024, 17:57.

start of the following week.<sup>4</sup> In addition, the Defence informed the Panel that it would request a full audit of the evidentiary material in the Prosecution's possession.<sup>5</sup>

### III. SUBMISSIONS

5. The Defence requests the Panel to suspend, or, in the alternative, extend the deadline to file its Appeal Brief by at least five working days so that the brief is due on midnight of 2 December 2024 or any date thereafter.
6. Good cause exists for the suspension or extension of the deadline.
7. The late disclosure of substantial material by the Prosecution, which comes only a week prior to the current deadline for the Defence Appeal Brief, contains transcripts of interviews of the Prosecution with witnesses W02538 and W02539. The witnesses are [REDACTED].<sup>6</sup> The interview records pertain to their experience participating in the [REDACTED].<sup>7</sup>
8. As the Defence has repeatedly submitted in relation to the evidence of other witnesses who are also [REDACTED] who participated in the so-called [REDACTED], including W03881, W02540, and W02560,<sup>8</sup> the evidence of W02538 and W02539 is relevant to the case. It is important for understanding the event and for undermining the credibility of central Prosecution witnesses.

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<sup>4</sup> Email from the Defence to the Court Management Unit of the Registry, the Prosecution, and Victims' Counsel, 15 November 2024, 20:00.

<sup>5</sup> Email from the Defence to the Court Management Unit of the Registry, the Prosecution, and Victims' Counsel, 15 November 2024, 20:00.

<sup>6</sup> ERN 077961-TR-ET Part 1, p. 2; ERN 101192-TR-ET Part 2, p. 1.

<sup>7</sup> See ERN 077961-TR-ET Part 1, pp. 2-11; ERN 101192-TR-ET Part 2, pp. 1-15.

<sup>8</sup> KSC-BC-2020-04, F00821, Defence Final Trial Brief with Annex 1, 25 March 2024 (confidential) ("Defence Final Trial Brief"), paras. 48-51; 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), paras. 20-23; KSC-BC-2020-04, F00823, Request for Leave to Appeal and/or Reconsideration of the "Decision on the Defence Request for Leave to Reopen its Case", 26 March 2024 (confidential).

Prosecution witnesses including TW4-01, W01448, and TW4-05 either testified or provided evidence regarding the alleged [REDACTED].<sup>9</sup> The evidence of W02538 and W02539 could have been used by the Defence during the trial proceedings, including informing its cross-examination of TW4-01 and challenging his testimony and its direct examination of Defence witness W03881, as well as by the Trial Panel to evaluate the credibility of relevant Prosecution and Defence witnesses.

9. Furthermore, the evidence of W02538 and W02539 directly impacts multiple appeal grounds the Defence is developing in its Appeal Brief. In its Notice of Appeal, the Defence indicated that it would make submissions regarding the Trial Panel's errors relating to the Prosecution's repeated disclosure violations and the Trial Panel's refusal to hear the evidence of potential Defence witness W02540 and then making adverse findings on issues to which the witness could have testified on.<sup>10</sup>
10. Based on the interview records, the Prosecution has been in possession of the evidentiary material since at least 2019 and 2020, making its disclosure entirely unjustified. The evidence could have been identified and presented, with reasonable diligence, much earlier in the proceedings and at the latest at trial. The Prosecution has breached its disclosure obligations. The evidence ought to have been disclosed much earlier to enable the Defence to investigate and prepare its case prior to or at least during the trial. The Prosecution has

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<sup>9</sup> T. 30 May 2023 p. 1476; T. 31 May 2023 pp. 1539, 1540; T. 2 June 2023 p. 1697; SITF00013852-00013869 RED6, p. 12; SITF00013736-SITF00013800 RED5, p. 29; SITF00016140-00016220 RED3, p. 9; SITF00372498-00372510 RED4, p. 5; Defence Final Trial Brief, paras. 48-50. *See also* KSC-BC-2020-04, F00847, Trial Judgment and Sentence with one confidential annex, 16 July 2024 (confidential) ("Trial Judgment"), paras. 235-239, 395-401.

<sup>10</sup> KSC-CA-2024-03, F00017, Corrected Version of Revised Defence Notice of Appeal, 30 September 2024 (confidential), paras. 19-20. *See also* Trial Judgment, paras. 98-119, 395-401; KSC-BC-2020-04, F00813, Decision on the Defence request for leave to reopen its case, 19 March 2024 (confidential); KSC-BC-2020-04, F00830, Decision on the Defence request for leave to appeal and/or reconsideration of the "Decision on the Defence request for leave to reopen its case", 11 April 2024.

deprived the Defence of the possibility to use the evidence of W02538 and W02539, let alone considering them as potential Defence witnesses, to challenge the evidence and credibility of Prosecution witnesses and investigate the information recently disclosed to advance the Defence case. Irreparable prejudice has been caused.

11. In addition, the late disclosure was disclosed at a time when all members of the Defence team are fully immersed in finalizing Mr Shala's appeal brief and at a time when the team is facing – as previously explained – serious personal difficulties. The unjustifiably late disclosure, even assuming that it was not specifically timed to prejudice the Defence efforts to present Mr Shala's brief, has the inevitable result that it obstructs the Defence's ability to comply with the deadline as set and prevents it from having sufficient time to prepare its case. As such, it undermines the fairness of the proceedings. The fact that the disclosure took place at around 6 pm on a Friday, a week before the deadline of the Defence Appeal Brief is due, also impairs the capacity of the Defence team. In addition to the brief, the team has to thoroughly analyse the content of the documents and assess their impact on the case. The timing of the disclosure also impairs the Defence ability to provide Mr Shala with the recently disclosed material and seek and obtain immediate instructions from him, thereby compromising his right to effective legal representation.
12. Furthermore, this late disclosure constitutes yet another failure of the Prosecution to comply with its disclosure obligations, which has been repeatedly raised by the Defence, including in relation to the evidence of other [REDACTED] W02540 and W02560.<sup>11</sup> The Prosecution has on many occasions

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<sup>11</sup> Defence Final Trial Brief, paras. 294-301; 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); KSC-BC-2020-04, F00823, Request for Leave to

disclosed such exculpatory material under Rule 102(3) of the Rules instead of Rule 103 of the Rules, further undermining the integrity of the disclosure process.<sup>12</sup>

13. In light of the Prosecution's continuous violation of its disclosure obligations, the Defence requests the Panel to order the Prosecution to thoroughly review and conduct exhaustive searches in its evidence database and disclose immediately and without further delay any additional material relevant to the Defence case.
14. Based on the above, the Defence requests that the Panel to acknowledge the Prosecution's violation of its disclosure obligations and suspend, or in the alternative, extend the deadline of the time to file its Appeal Brief to at least 2 December 2024 which will allow the Defence to analyse the recently disclosed evidence and take instructions from Mr Shala regarding how to proceed and be in a position to present its Appeal Brief. Good cause exists for the variation requested, which is required in the interests of justice to remedy the serious prejudice the Defence has suffered as a result of the late disclosure.

#### IV. CLASSIFICATION

15. Pursuant to Rules 82(3) of the Rules, the Request is filed as confidential as it contains confidential information. The Defence will file a public redacted version of the Request in due course.

#### V. RELIEF REQUESTED

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Appeal and/or Reconsideration of the "Decision on the Defence Request for Leave to Reopen its Case", 26 March 2024 (confidential).

<sup>12</sup> See Defence Final Trial Brief, para. 300.

16. The Defence respectfully requests the Appeals Panel to suspend, or, in the alternative, extend the deadline to file its Appeal Brief to at least 2 December 2024.<sup>13</sup> In addition, the Defence requests the Panel to order the Prosecution to review its evidence database and disclose without any delay any additional material relevant to the Defence case.

**Word count: 1687**

Respectfully submitted,



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**Jean-Louis Gilissen**

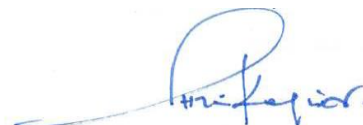
**Specialist Defence Counsel**



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**Hédi Aouini**

**Defence Co-Counsel**



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**Leto Cariolou**

**Defence Co-Counsel**

Monday, 18 November 2024

The Hague, the Netherlands

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<sup>13</sup> See Email from the Defence to the Court Management Unit of the Registry, the Prosecution, and Victims' Counsel, 15 November 2024, 20:00.