



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** **KSC-CA-2024-03**

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

**Registrar:** Fidelma Donlon

**Date:** 21 November 2024

**Original language:** English

**Classification:** **Confidential**

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**Decision on Defence's 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 Pjetër Shala:**  
Jean-Louis Gilissen

**Counsel for Victims:**  
Simon Laws

**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”), is seised of a motion filed on 18 November 2024 by Mr Pjetër Shala (respectively, “Motion” and “Shala” or “Accused” or “Defence”).<sup>2</sup> The Specialist Prosecutor’s Office (“SPO”) responded on 19 November 2024 (“Response”).<sup>3</sup> Shala did not file any reply.

1. Shala requests the Court of Appeals Panel to suspend, or, in the alternative, extend the deadline to file his appeal brief against the Trial Judgment issued in case KSC-BC-2020-04 (“Appeal Brief”) to at least 2 December 2024 in light of the late disclosure of allegedly “substantial material” by the SPO.<sup>4</sup> Shala submits that the requested additional time would enable the Defence to analyse the evidence recently disclosed and to “take instructions from Mr Shala regarding how to proceed” and “present” the Appeal Brief.<sup>5</sup>

2. Shala underlines that the SPO disclosed “Disclosure Package 1” under Rule 102(3) of the Rules and that it includes 21 items containing the transcripts of the interviews of witnesses W02538 and W02539 and corresponding translations

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<sup>1</sup> F00011, Decision Assigning a Court of Appeals Panel, 3 September 2024 (confidential, reclassified as public on 4 September 2024).

<sup>2</sup> F00026, Defence Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 18 November 2024 (confidential) (“Motion”).

<sup>3</sup> F00027, Prosecution Response to Defence urgent request for suspension or extension of time to file its Appeal Brief, 19 November 2024 (confidential) (“Response”).

<sup>4</sup> Motion, paras 1, 7, 14, 16. See KSC-BC-2020-04, F00847/RED, Public redacted version of Trial Judgment and Sentence, 24 September 2024 (confidential version filed on 16 July 2024) (“Trial Judgment”).

<sup>5</sup> Motion, para. 14.

("SPO Material").<sup>6</sup> Shala further underlines that the SPO Material was disclosed on 15 November 2024, only one week prior to the deadline for filing his Appeal Brief.<sup>7</sup>

3. In support of his argument that good cause exists for the suspension or extension of the deadline to file the Appeal Brief, Shala submits that: (i) the evidence provided by witnesses W02538 and W02539 is relevant to the case in that it could have undermined the credibility of central SPO witnesses including TW4-01, W01448, and TW4-05, assisted the Defence in the examination of Defence witness W03881 and overall informed the Trial Panel;<sup>8</sup> (ii) the evidence provided by witnesses W02538 and W02539 directly impacts multiple appeal grounds of the Appeal Brief including the submissions related to the SPO's repeated violation of its disclosure obligations and the Trial Panel's refusal to hear potential Defence witness W02540;<sup>9</sup> (iii) the SPO has been in possession of the SPO Material since at least 2019 and 2020, making the delayed disclosure entirely unjustified and causing prejudice to the Defence;<sup>10</sup> and (iv) the late disclosure of the SPO Material obstructs the Defence's ability to comply with the deadline as set, prevents it from having sufficient time to prepare its case on appeal and further impacts its ability to obtain instructions from the Accused on this matter.<sup>11</sup>

4. In addition, Shala argues that the disclosure of the SPO Material constitutes another of the numerous failures of the SPO to comply with its disclosure obligations.<sup>12</sup> Shala requests that the Panel acknowledge this failure and order the SPO

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<sup>6</sup> Motion, para. 3.

<sup>7</sup> Motion, para. 7.

<sup>8</sup> Motion, paras 6, 8, 10.

<sup>9</sup> Motion, para. 9.

<sup>10</sup> Motion, para. 10.

<sup>11</sup> Motion, para. 11.

<sup>12</sup> Motion, para. 12. Shala further underlines that the SPO has on many occasions disclosed exculpatory material under Rule 102(3) of the Rules instead of Rule 103 of the Rules, therefore undermining the integrity of the disclosure process. See Motion, para. 12.

to fully review its evidence database in order to disclose, without delay, any additional material relevant to the Defence's case.<sup>13</sup>

5. In its Response, the SPO acknowledges that the SPO Material should have been provided earlier to the Defence and does not oppose an extension of the deadline to 2 December 2024 for the filing of the Appeal Brief.<sup>14</sup> However, the SPO submits that the Defence's request for a suspension of the proceeding would be disproportionate and unwarranted given that the material disclosed is not voluminous and is of limited relevance, and therefore, the prejudice suffered by the Defence, if any, is limited.<sup>15</sup> To this end, the SPO argues that the information included in the SPO Material covers events that are outside the temporal and geographical scope of the indictment in this case and is similar to and largely cumulative with the evidence of other witnesses already disclosed to the Defence.<sup>16</sup>

6. The SPO further indicates that it has complied and will continue to comply with its disclosure obligations in this case.<sup>17</sup> The SPO adds that it has already conducted a comprehensive review of its evidentiary holdings and disclosed any relevant material falling under Rules 102 and 103 of the Rules.<sup>18</sup>

7. At the outset, the Panel finds that the legal basis for the Defence's request for a suspension of the proceedings is unclear. Shala fails to provide any reference to the legal framework of the Specialist Chambers, any arguments in support of this specific request and does not specify the duration of the stay requested.<sup>19</sup> The Panel recalls that the suspension of the proceedings is a remedy that is provided for under Rule 110 of

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<sup>13</sup> Motion, paras 1, 13, 14, 16.

<sup>14</sup> Response, para. 1. See also Response, paras 3, 9.

<sup>15</sup> Response, paras 1, 3, 4-5. See also Response, paras 8-9.

<sup>16</sup> Response, para. 5. See also Response, paras 6-7.

<sup>17</sup> Response, para. 2.

<sup>18</sup> Response, para. 10. See also Response, paras 7-8.

<sup>19</sup> Motion, para. 4. See also Motion, para. 6 where, instead of referring to a suspension of the proceedings, the Defence rather refers to a suspension of the deadline [to file its Appeal Brief].

the Rules according to which a panel may decide on measures to be taken as a result of the non-compliance with disclosure obligations pursuant to the Rules, including a stay of proceedings.<sup>20</sup>

8. In the present instance, the Panel notes that the content of the SPO Material – transcripts of the interviews of witnesses W02538 and W02539 and corresponding translations – is not disputed by the Parties.<sup>21</sup> The Panel further notes that the interview of witness W02539 was recorded on 4 September 2019 and that of witness W02538 was recorded on 3 July 2020.<sup>22</sup> However, the SPO only disclosed these documents after the delivery of the Trial Judgment, on 15 November 2024. The Panel’s prior finding that Rule 102(3) of the Rules only applies during appeal proceedings if the SPO has failed to notify material under this rule during the trial, despite being in possession of such material,<sup>23</sup> is applicable in the present instance. Accordingly, and taking into consideration the SPO’s own admission that the material should have been provided earlier to the Defence,<sup>24</sup> the Panel finds that the SPO has failed to discharge its disclosure obligations in a timely manner as required by Rule 102(3) of the Rules.<sup>25</sup>

9. Notwithstanding the above, the Panel recalls that even where a panel is satisfied that the SPO has failed to discharge its disclosure obligations in a timely manner, the panel will examine whether the Defence was actually prejudiced by such

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<sup>20</sup> See e.g. KSC-CA-2022-01, F00083/RED, Public Redacted Version of Decision on Defence Motions for Alternate Relief Relating to Rule 103 Disclosure Violations, 31 January 2023 (confidential version filed on 7 November 2022) (“Decision on Defence Motions for Alternative Relief”), para. 19.

<sup>21</sup> Motion, para. 7; Response, paras 4, 8. The SPO however emphasises that the interviews amount to 67 pages but only approximately 20 pages of W02538’s interview and 15 pages of W02539’s interview concern an incident of limited relevance to the Defence. See Response, paras 4-5.

<sup>22</sup> See 101192-TR-ET, Part 1, p. 1; 077961-TR-ET, Part 1 RED, p. 1.

<sup>23</sup> KSC-CA-2022-01, F00105, Decision on Haradinaj Request to Order the SPO to Disclose Material under Rule 102(3) or Rule 103 of the Rules, 16 January 2023 (“Decision on Haradinaj Request for Disclosure”), para. 20.

<sup>24</sup> Response, para. 1.

<sup>25</sup> See Rule 102(3) of the Rules. The Panel notes that according to Rule 102(3) of the Rules, “[s]uch material and evidence shall be disclosed without delay”.

failure before considering whether a remedy is appropriate.<sup>26</sup> The onus is on the Defence to substantiate its claim of alleged prejudice from the disclosure violation.<sup>27</sup> In the present case, Shala argues that the late disclosure of the SPO Material caused “irreparable” prejudice to the Defence,<sup>28</sup> but fails to substantiate this claim beyond the generic assertion that the disclosure violation deprived him of the possibility to use the SPO Material. Accordingly, the Defence’s request for a suspension of the proceedings is not warranted.

10. The Panel now turns to consider the Defence’s alternative request of a further extension of time for the filing of the Appeal Brief. As a preliminary remark, the Panel recalls that Shala was already granted two subsequent extensions amounting to three weeks of additional time for the filing of the Appeal Brief, currently due by 25 November 2024.<sup>29</sup>

11. The Appeals Panel notes that, according to Rule 179(1) of the Rules, an appellant shall file an appeal brief within 60 days of the notice of appeal. However, the Panel may, *proprio motu* or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.<sup>30</sup>

12. Regarding the timeliness of the Motion, the Panel acknowledges that the Motion was filed promptly, on the next working day following the disclosure of the SPO Material. The Panel therefore considers that the Motion is timely.

13. As to good cause for Shala’s request for an extension of time, the Panel is not persuaded by Shala’s arguments that the late disclosure of the SPO Material hinders

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<sup>26</sup> See e.g. Decision on Defence Motions for Alternative Relief, para. 20.

<sup>27</sup> See e.g. IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Judgement, 20 March 2019, para. 88.

<sup>28</sup> Motion, para. 10. See also Motion, para. 14.

<sup>29</sup> See F00015, Decision on SPO Request for Order to Shala to Refile the Notice of Appeal, 18 September 2024 (confidential, reclassified as public on 25 September 2024), para. 16, p. 8; F00021, Decision on Defence Motion for Variation of Time and Word Limits to File Appeal Brief, 30 October 2024, para. 16.

<sup>30</sup> Rule 9(5)(a) of the Rules.

his ability to finalise the filing of his Appeal Brief within the current deadline.<sup>31</sup> The purpose of an appeal brief is to challenge findings made by a trial panel in the context of trial proceedings<sup>32</sup> and with regard to the evidentiary material available at that point of time. The Appeal Brief is not the proper vehicle to address the materiality to the Defence case of documents disclosed *after* the delivery of the Trial Judgment as these documents could not have been taken into account by the Trial Panel. The Appeals Panel further recalls that the record on appeal is generally the trial case file<sup>33</sup> and that the SPO Material is not, at this stage of the proceedings, part of the trial record.

14. Turning to the Defence's arguments concerning the need to consult with their client in order to receive his instructions on "how to proceed",<sup>34</sup> the Panel considers that the Defence will be able to do so after the filing of the Appeal Brief. In that regard, the Panel observes that in its attempt to demonstrate that good cause exists for the extension of the deadline for the filing of the Appeal Brief, the Defence is in fact alleging that, had the SPO Material been available to them at trial, it would have impacted the Trial Panel's findings.<sup>35</sup> If this accurately reflects the Defence's position toward the SPO Material, the Panel notes that Rule 181 of the Rules provides for the possibility of the admission of evidence during appellate proceedings that was not available at trial.

15. Finally, turning to Shala's request that the Panel orders the SPO to review its evidence database and comply with its disclosure obligations without delay,<sup>36</sup> the Panel stresses the importance of the disclosure process in ensuring the fairness of the

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<sup>31</sup> Motion, para. 11.

<sup>32</sup> See e.g. Rule 176 of the Rules (Notice of Appeal); Rule 179 of the Rules (Appellate Briefs); KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019, Article 47.

<sup>33</sup> See Rule 175 of the Rules (Record on Appeal).

<sup>34</sup> Motion, para. 14.

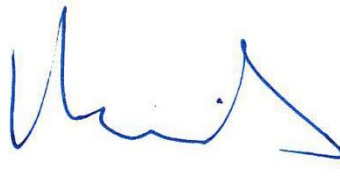
<sup>35</sup> Motion, paras 8-9.

<sup>36</sup> Motion, paras 1, 12-13. See also Motion, para. 14.

proceedings and that the rights of the Defence are respected.<sup>37</sup> However, the Panel notes that the SPO indicated that it has already conducted a comprehensive review of the evidence in its possession and that it complies with its disclosure obligations.<sup>38</sup> The Panel recalls in this regard that there is a presumption of good faith on the Prosecution's part when discharging its disclosure obligations.<sup>39</sup> In the present circumstances, assuming that the SPO's representation is made in good faith, the Panel considers that Shala's request that the Panel orders the SPO to "thoroughly review" and to "conduct exhaustive searches" in its evidence database for disclosable material, is not warranted.

16. For these reasons, the Court of Appeals Panel:

**DENIES** the Motion.



**Judge Michèle Picard,  
Presiding Judge**

Dated this Thursday, 21 November 2024

At The Hague, the Netherlands

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<sup>37</sup> KSC-CA-2022-01, F00044/RED, Public Redacted Version of Decision on Prosecution Notifications, 31 January 2023 (confidential and *ex parte* version filed on 15 September 2022), para. 20.

<sup>38</sup> Response, paras 2, 10. See also Response, paras 7-8.

<sup>39</sup> See e.g. Decision on Haradinaj Request for Disclosure, para. 25; KSC-CA-2022-01, F00094/RED, Public Redacted Version of Decision on Defence Requests to Interview Witnesses, to Order an Updated Rule 102(3) Notice and to Adjourn the Appeal Hearing, 31 January 2023 (confidential version filed on 28 November 2022), para. 28.