



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-CA-2024-03  
**Before:** Court of Appeals Panel  
Judge Michèle Picard  
Judge Kai Ambos  
Judge Nina Jørgensen  
**Registrar:** Dr Fidelma Donlon  
**Filing Participant:** Specialist Prosecutor's Office  
**Date:** 19 November 2024  
**Language:** English  
**Classification:** Public

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**Public redacted version of**

**'Prosecution Response to Defence urgent request for suspension or extension of  
time to file its Appeal Brief'**

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**Counsel for Pjetër Shala**

Jean-Louis Gilissen

**Counsel for Victims**

Simon Laws

## I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') acknowledges that the Disclosed Materials<sup>1</sup> should have been provided earlier to the Defence, and does not oppose an extension of its deadline to file the Appeal Brief until 2 December 2024.<sup>2</sup> The SPO opposes the suspension of the proceedings, which is unwarranted in light of the volume – and nature – of the Disclosed Materials, and because there is little – if any – prejudice to the Defence occasioned by the late disclosure.

2. The Defence request for an order to the SPO to review its evidence database is overbroad and unsubstantiated, relying primarily on previous litigation relating to the evidence of [REDACTED] witnesses. Considering related appeal grounds, the SPO, in good faith, conducted a further review of materials in its possession concerning [REDACTED]. The Disclosed Materials were identified as relevant further to this review, and promptly disclosed. As appropriate remedial steps have already been undertaken and any prejudice is limited, there is no need for any further order. The SPO has complied and will continue to comply with its disclosure obligations in this case.

## II. SUBMISSIONS

### A. ONLY A LIMITED TIME EXTENSION IS WARRANTED

3. The SPO does not oppose a reasonable extension of the Defence deadline to file their Appeal Brief until 2 December 2024. Any further extension or a suspension of the proceedings would be disproportionate, unwarranted, and contrary to the interests of justice.

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<sup>1</sup> Disclosure 1 ('Disclosed Materials').

<sup>2</sup> Defence Urgent Request for Suspension or Extension of Time to File its Appeal Brief, KSC-CA-2024-03/F00026, 18 November 2024, confidential ('Urgent Request'), para.16.

4. The appropriate remedy for the late disclosure of relevant materials needs to be assessed based on the specifics of each situation.<sup>3</sup> In instances when the defence sought an adjournment of the proceedings following a late disclosure, courts have primarily looked at the volume of the disclosed materials.<sup>4</sup> In the present case, the Disclosed Materials comprise the statements of two [REDACTED], W02538 and W02539, who [REDACTED]. In total, the interviews amount to 67 pages. Only approximately 20 pages of W02538's interview<sup>5</sup> and 15 pages of W02539's interview<sup>6</sup> concern this incident, with the rest of their evidence relating to different matters.

5. In addition to volume, courts have also considered the nature of the disclosed materials, and their significance to the case.<sup>7</sup> The information included in the Disclosed Materials is similar to, and largely cumulative of that of other witnesses already disclosed to the Defence, including [REDACTED]<sup>8</sup> and [REDACTED],<sup>9</sup> and admitted in evidence, including the evidence of [REDACTED]<sup>10</sup> and [REDACTED].<sup>11</sup> This is an additional factor that eliminates, or at least greatly reduces, any prejudice

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<sup>3</sup> ICTY, *Prosecutor v. Mladić*, IT-09-92-T, Decision on Urgent Defence Motion of 14 May 2012 and Reasons for Decision on Two Defence Requests for Adjournment of the Start of Trial of 3 May 2012, 24 May 2012, para.19.

<sup>4</sup> ICTY, Decision on the Accused's Twenty-Second, Twenty-Fourth, and Twenty-Sixth Disclosure Violation Motions, IT-95-5/18-T, 11 November 2010 ('*Karadžić* 11 November 2010 Decision'), paras 16, 40; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Accused's Motion for Fourth Suspension of Proceedings, 16 February 2011 ('*Karadžić* 16 February 2011 Decision'), paras 1-2, 10.

<sup>5</sup> See 077961-TR-ET Part 3 RED and 077961-TR-ET Part 4 RED.

<sup>6</sup> See 101192-TR-ET Part 2.

<sup>7</sup> See e.g. *Karadžić* 11 November 2010 Decision, para.32; ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Accused's Forty-Ninth and Fiftieth Disclosure Violation Motions, 30 June 2011 ('*Karadžić* 30 June 2011 Decision'), para.47; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Joseph Nzirorera's 25th Notice of Violation of Rule 66 and Motion for Remedial and Punitive Measures, 24 March 2009, para.6.

<sup>8</sup> KSC-BC-2020-04, Disclosure 214.

<sup>9</sup> KSC-BC-2020-04, Disclosure 214.

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

that the late disclosure of W02538 and W02539's evidence has caused to the Defence.<sup>12</sup> Finally, the Disclosed Materials are also of limited relevance,<sup>13</sup> covering events which are outside the temporal and geographical scope of the Indictment in this case.<sup>14</sup>

B. NO FURTHER ORDER IS REQUIRED

6. The events that unfolded, and the crimes committed at the [REDACTED] and during the preceding days, although being the subject of charges in a separate case, are not charged here.

7. Given the geographic and temporal remoteness of the [REDACTED] events from the charges in this case, the SPO did not disclose its entire, related evidentiary holdings to the Defence. It was beyond the scope of its disclosure obligations to do so.<sup>15</sup> Rather, the SPO has reviewed this body of evidence in light of its ongoing obligations under Rules 102-103, disclosing evidence that was relevant to or potentially exculpatory in this case, including for purposes of assessing the events charged and/or witness accounts.<sup>16</sup>

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<sup>12</sup> *Karadžić* 30 June 2011 Decision, para.48 (citing ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Accused's Forty-Seventh Motion for Finding of Disclosure Violation and for Further Suspension of Proceedings, 10 May 2011, para.18).

<sup>13</sup> Decision on the Defence request for leave to reopen its case, KSC-BC-2020-04-F00813, 19 March 2024, para.21.

<sup>14</sup> The crimes charged in this case, for which Pjetër SHALA was convicted on 16 July 2024, were committed in the town of Kukës, Albania, between approximately 17 May and 5 June 1999, *see* Trial Judgment and Sentence with one confidential annex, KSC-BC-2020-04/F00847, 16 July 2024, para.1124; Annex 1 to Submission of Corrected Indictment, KSC-BC-2020-04/F00098/A01, paras 8, 31. *See also* [REDACTED], where the Trial Panel considered the evidence of [REDACTED], whose evidence is similar in nature to that contained in the Disclosed Material, to be of 'limited relevance', and 'not necessary for the determination of the truth'.

<sup>15</sup> Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-04/F00033, 30 April 2021, para.37 (cautioning that the disclosing Party shall disclose only evidence of true relevance that underpins factual allegations fulfilling the requisite legal requirements, as opposed to the greatest volume of evidence, so as to allow the receive Party to focus its preparation).

<sup>16</sup> In this regard, it is worth noting that the presence – [REDACTED] was uncontested by the Defence. During the cross-examination of [REDACTED], the Defence asked [REDACTED] to identify himself in a video [REDACTED]. [REDACTED] identified both himself and [REDACTED]. The

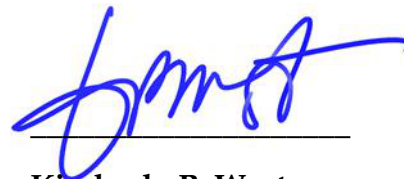
8. On 15 November 2024, the SPO disclosed the evidence of W02538 and W02539, following a comprehensive review of its evidentiary holdings related to the [REDACTED] in light of related appeal grounds.<sup>17</sup> In these circumstances and considering that any prejudice is limited, any further order is unnecessary and unwarranted.

### III. RELIEF REQUESTED

9. For the foregoing reasons, the SPO does not oppose a reasonable extension of the Defence deadline; however, a suspension of the proceedings is wholly unwarranted.

10. The SPO has already reviewed its evidentiary holdings in relation to the [REDACTED], and disclosed the relevant materials falling under Rules 102 to 103 with respect to this case. No further intervention by the Panel is warranted.

**Word count: 1283**



**Kimberly P. West**

**Specialist Prosecutor**

Tuesday, 19 November 2024

At The Hague, the Netherlands.

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Defence did not take issue with that identification, either during [REDACTED] testimony or in later submissions, *see* Transcript, KSC-BC-2020-04, [REDACTED].

<sup>17</sup> The evidence of these witnesses is similar in nature to that of [REDACTED], whose evidence the Trial Panel found to be relevant 'for understanding [REDACTED]', *see* [REDACTED].