

**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:** 10 December 2024

**Filing Party:** Specialist Counsel for Pjetër Shala

**Original language:** English

**Classification:** Public

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**Public Redacted Version of Defence Request for Order to Prosecution to  
Disclose Rule 103 Material and  
Finding of Violation of Disclosure Obligations by the Prosecution**

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## I. INTRODUCTION

1. Pursuant to Rules 9(5)(a), 103, 110, and 112 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 order the Prosecution to disclose immediately all statements and testimonies in its possession relating to W04264.<sup>1</sup> In addition, the Defence requests the Panel to find that the Prosecution has failed to comply with its disclosure obligations and order the Prosecution to conduct a comprehensive review of its evidence database and disclose without any delay all additional material relevant to the Defence case.

## II. PROCEDURAL HISTORY

2. On 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 Prosecution's interviews of W02538 and W02539 and corresponding translations.<sup>2</sup>
3. 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 start of the following week.<sup>3</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>4</sup>

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<sup>1</sup> See Email from the Defence to the Prosecution, 9 December 2024, 17:22.

<sup>2</sup> Email from the Prosecution to the Court Management Unit of the Registry, the Defence, and Victims' Counsel, 15 November 2024, 17:57.

<sup>3</sup> Email from the Defence to the Court Management Unit of the Registry, the Prosecution, and Victims' Counsel, 15 November 2024, 20:00.

<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.

4. On 18 November 2024, the Defence requested the Panel to suspend, or, in the alternative, extend the deadline to file the Defence Appeal Brief to at least 2 December 2024, in light of the late disclosure of Disclosure Package 1.<sup>5</sup> The Defence also requested the Panel to order the Prosecution to review its evidence database and comply with its disclosure obligations without delay.<sup>6</sup>
5. On 19 November 2024, the Prosecution responded that it acknowledged that the material should have been provided earlier to the Defence and indicated that it had already conducted a comprehensive review of its evidentiary holdings and disclosed any relevant material falling under Rules 102 and 103 of the Rules.<sup>7</sup>
6. On 21 November 2024, the Panel denied the Defence Motion.<sup>8</sup> The Panel found that the Prosecution had failed to discharge its disclosure obligations in a timely manner but that the Defence request to order the Prosecution to thoroughly review and conduct exhaustive searches in its evidence database for disclosable material was not warranted.<sup>9</sup>
7. On 9 December 2024, the Prosecution disclosed Disclosure Package 2 under Rule 103 of the Rules. The disclosure package, which includes 20 items, contains the English and Albanian transcripts of the Prosecution's interview of

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<sup>5</sup> KSC-CA-2024-03, F00026, Defence Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 18 November 2024 (confidential) ("Motion"), paras 1, 14, 16. All further references to filings in this Request concern Case No. KSC-CA-2024-03 unless otherwise indicated.

<sup>6</sup> F00026, Defence Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 18 November 2024 (confidential), paras 1, 13, 16.

<sup>7</sup> F00027, Prosecution Response to Defence urgent request for suspension or extension of time to file its Appeal Brief, 19 November 2024 (confidential), paras 7-8, 10.

<sup>8</sup> F00028, Decision on Defence's Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 21 November 2024, para. 16.

<sup>9</sup> F00028, Decision on Defence's Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 21 November 2024, paras 8, 15.

W04264, [REDACTED], in [REDACTED], and two Prosecution witness [REDACTED] notes relating to [REDACTED] dated [REDACTED].

8. On the same date, the Defence requested, *inter partes*, the Prosecution to immediately disclose (i) the transcript of the [REDACTED] in [REDACTED]; (ii) his interview with the [REDACTED] in [REDACTED], SITF00010487-SITF00010508, as referred to in the Prosecution witness [REDACTED] note 1;<sup>10</sup> and (iii) all other statements and testimonies of W04264 in the Prosecution's possession, considering that Disclosure Package 2 was disclosed as exculpatory material under Rule 103 of the Rules and that in the Trial Judgment, [REDACTED] is named as a co-perpetrator in the alleged joint criminal enterprise of which Mr Shala is allegedly a member.<sup>11</sup>

### III. APPLICABLE LAW

9. Rule 103 of the Rules provides that:
- [s]ubject to Rule 107 and Rule 108, the Specialist Prosecutor shall immediately disclose to the Defence any information as soon as it is in his or her custody, control, or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the Specialist Prosecutor's evidence.
10. Rule 110 of the Rules provides that "[t]he Panel may decide, upon request by a Party or *proprio motu*, on measures to be taken as a result of the non-compliance with disclosure obligations pursuant to the Rules, including a stay of proceedings and the exclusion of evidence, except for exculpatory evidence".
11. Rule 112 of the Rules provides that:
- [i]f either Party discovers additional evidentiary material or information that should have been disclosed earlier pursuant to the Rules, that Party shall immediately disclose such evidence or information to the opposing Party and the Panel. The Specialist Prosecutor shall disclose to the Defence any

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<sup>10</sup> 123558-123568, para. 1.

<sup>11</sup> Email from the Defence to the Prosecution, 9 December 2024, 17:22. See KSC-BC-2020-04, F00847, Trial Judgment and Sentence with one confidential annex, 16 July 2024 (confidential) ("Trial Judgment"), paras [REDACTED].

exculpatory information referred in Rule 103 notwithstanding the closing of the case pursuant to Rule 136 and any subsequent appeal.

#### IV. SUBMISSIONS

12. The Defence requests the Panel to order the Prosecution to disclose immediately all statements and testimonies in its possession relating to [REDACTED], including (i) the transcript of his recent [REDACTED] and (ii) his interview with the [REDACTED] in [REDACTED], SITF00010487-SITF00010508, as referred to in the Prosecution witness [REDACTED] note 1.<sup>12</sup>
13. The late disclosure of the exculpatory material by the Prosecution, which came two weeks after the Defence had filed its Appeal Brief,<sup>13</sup> contains transcripts of the Prosecution interview with [REDACTED], in [REDACTED] and two Prosecution witness [REDACTED] notes relating to him dated [REDACTED].
14. The evidence of [REDACTED] is relevant to the Defence case. It is important information regarding the alleged JCE that Mr Shala is allegedly a member of and for undermining the credibility of Prosecution witnesses. In the Trial Judgment, the Trial Panel found [REDACTED] to be a KLA member involved with the detainees at the Kukës Metal Factory who was identified by name by Prosecution witnesses in their evidence.<sup>14</sup> In particular, the Trial Panel found that [REDACTED] provided evidence that [REDACTED], whom he described as [REDACTED], [REDACTED] him while he was detained at the KMF.<sup>15</sup> The Trial Panel held that [REDACTED] participated in the interrogation of

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<sup>12</sup> See Email from the Defence to the Prosecution, 9 December 2024, 17:22.

<sup>13</sup> F00029COR, Corrected Version of Defence Appeal Brief with confidential Annexes 1 and 2, 25 November 2024 (confidential) ("Appeal Brief").

<sup>14</sup> Trial Judgment, para. [REDACTED].

<sup>15</sup> Trial Judgment, paras [REDACTED].

detainees at the KMF and in establishing and maintaining the conditions of detention there.<sup>16</sup>

15. Moreover, the evidence of [REDACTED] is relevant to assessing Mr Shala's alleged presence and participation in alleged crimes at the KMF. The Trial Panel found that, "[REDACTED]", "[REDACTED]", and that [REDACTED]".<sup>17</sup>
16. The evidence of [REDACTED] could have been used by the Defence during the trial proceedings, including calling him as a Defence witness, preparing the cross-examination of Prosecution witnesses including [REDACTED], eliciting relevant evidence-in-chief of Defence witnesses who were present at the KMF during the Indictment Period, as well as by the Trial Panel to evaluate the credibility of relevant Prosecution and Defence witnesses.
17. The evidence of [REDACTED] also impacts the appeal case and multiple appeal grounds the Defence presented in its Appeal Brief, such as the Trial Panel's errors relating to [REDACTED]'s credibility, the Prosecution's disclosure violations, and factual and legal findings regarding the conviction for arbitrary detention.<sup>18</sup>
18. Based on the interview records, the Prosecution has been in possession of the evidentiary material since at least [REDACTED], making its disclosure, particularly as exculpatory material, 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 deprived the Defence of the possibility to

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<sup>16</sup> Trial Judgment, paras [REDACTED].

<sup>17</sup> Trial Judgment, para. [REDACTED].

<sup>18</sup> Appeal Brief, paras [REDACTED], 170-171, 213-236.

use the evidence of [REDACTED], to consider him as a potential Defence witness, to challenge the evidence and credibility of Prosecution witnesses and investigate the information recently disclosed to advance the Defence case. The Defence has been irreparably prejudiced from the disclosure violation.

19. The unjustifiably late disclosure, even assuming that it was not specifically timed to prejudice the Defence's presentation of its Appeal Brief, undermines the fairness of the proceedings. The disclosure took place two weeks after the submission of the Defence Appeal Brief on 25 November 2024, despite the fact that the Prosecution had in its possession the relevant material from their interview with him in [REDACTED].
20. What is more is that the unjustifiably late disclosure of exculpatory material is far from isolated; in fact it is a pattern of how the Prosecution has operated in this case by consciously denying the Defence of important material to use for the preparation of its case. As submitted in the Defence Motion dated 18 November 2024 and the Defence Appeal Brief, the Prosecution has continuously failed to comply with its disclosure obligations in this case.<sup>19</sup> The disclosure of the material constitutes another of the numerous failures of the Prosecution to comply with its disclosure obligations, despite its submission on 19 November 2024 that it had already conducted a comprehensive review of its evidentiary holdings and disclosed any relevant material falling under Rules 102 and 103 of the Rules.<sup>20</sup> The Appeals Panel has to recognise that the Prosecution is not acting in good faith.
21. Only two weeks ago, the Panel found that the Prosecution had failed to discharge its disclosure obligations in a timely manner in relation to Disclosure

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<sup>19</sup> Motion, para. 12; Appeal Brief, paras 170-171.

<sup>20</sup> F00027, Prosecution Response to Defence urgent request for suspension or extension of time to file its Appeal Brief, 19 November 2024 (confidential), paras 7-8, 10.

Package 1.<sup>21</sup> The Panel stated that the disclosure process is important in ensuring the fairness of the proceedings and that the rights of the Defence are respected.<sup>22</sup>

22. According to Rule 110 of the Rules, a panel may decide on measures to be taken as a result of the non-compliance with disclosure obligations pursuant to the Rules. A remedy is appropriate for the prejudice caused to the Defence by such failure and the Prosecution's repeated disclosure violations. The Defence requests that the Panel acknowledge this failure by finding that the Prosecution has failed to discharge its disclosure obligations in a timely manner as required by Rule 103 of the Rules and, in light of yet another disclosure violation, order the Prosecution to thoroughly review its evidence database for disclosable material. The violation should be taken into consideration when the Appeals Panel considers the appeal and the Defence submissions that the trial of Mr Shala has been unfair. This is warranted in the interests of justice to remedy the serious prejudice the Defence has suffered.

## V. CLASSIFICATION

23. 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.

## VI. RELIEF REQUESTED

24. The Defence respectfully requests the Panel to find that the Prosecution has failed to comply with its disclosure obligations and order the Prosecution to

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<sup>21</sup> F00028, Decision on Defence's Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 21 November 2024, para. 8.

<sup>22</sup> F00028, Decision on Defence's Urgent Request for Suspension or Extension of Time to File its Appeal Brief, 21 November 2024, para. 15.



conduct a comprehensive review of the evidence in its possession and disclose without any delay all additional material relevant to the Defence case.

**Word count: 2173**

Respectfully submitted,



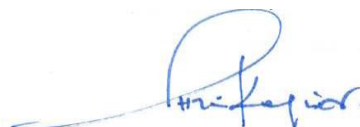
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Tuesday, 10 December 2024

The Hague, the Netherlands