

**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:** 21 February 2025

**Filing Party:** Counsel for Pjetër Shala

**Original language:** English

**Classification:** Public

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**Public Redacted Version of Defence Reply to ‘Prosecution Response to Defence  
Motion to Present Additional Evidence Pursuant to Rule 181’**

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**Specialist Defence Counsel**

Jean-Louis Gilissen

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1. Pursuant to Rule 181(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), the Defence for Mr Pjetër Shala (“Defence”) hereby files its Reply to the Prosecution Response to Defence Motion to Present Additional Evidence Pursuant to Rule 181.<sup>1</sup>

## I. SUBMISSIONS

2. The Prosecution claims that the Proposed Evidence does not meet the requirements of Rule 181 as it could have been discovered by the Defence with the exercise of due diligence, noting that W04264’s SPO interview has been listed in every Rule 102(3) notice since the very first filing on 3 September 2021.<sup>2</sup> What the Prosecution fails to note, however, is the entirely inadequate description of the interview in all of its Rule 102(3) notices. In its 3 September 2021 Rule 102(3) notice, the English transcript of the interview is described as “[t]ranscript of SPO interview of W04264, dated [REDACTED]”.<sup>3</sup> It is evident that the relevance and potential importance to the Defence case of what W04264 could give evidence about was in no way evident or discoverable with (even the most creative) exercise of due diligence.
3. It is important in this respect to note that W04264 was not specifically referred to in the Indictment, the Prosecution’s Pre-Trial Brief or the Prosecution’s Final Brief. The potential significance of his evidence was substantially increased by the role and importance attributed to him in the Trial Judgment. The Trial Panel considered that “[REDACTED]”.<sup>4</sup> Hence, the Panel considered him

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<sup>1</sup> KSC-CA-2024-03, F00044, Prosecution Response to Defence Motion to Present Additional Evidence Pursuant to Rule 181 with Confidential Annexes 1 and 2, 6 February 2025 (confidential)(“Response”).

<sup>2</sup> Response, paras. 22, 26.

<sup>3</sup> KSC-BC-2020-04, F00069, ANNEX 1 to Prosecution Rule 102(3) notice, 3 September 2021 (confidential), p.7, no. 142.

<sup>4</sup> KSC-BC-2020-04, F00847, Trial Judgment and Sentence, 16 July 2024 (confidential), para. [REDACTED].

[REDACTED] aimed at the arbitrary detention, mistreatment, and torture of detainees at the KMF.

4. The Defence has in fact made several attempts to be provided with better particulars as to the clearly insufficient information purposely conveyed in the Prosecution's Rule 102(3) notices.<sup>5</sup> Even in the most recent and amended Rule 102(3) notice, the description of the relevant interview is entirely unsatisfactory. The SPO interview is described as "[t]ranscript of SPO interview with W04264, Part [1-9] revised, dated [REDACTED], relating to the witness' testimony on the legal system and his role in the KLA between 1998 and 1999 in [REDACTED]."<sup>6</sup>
5. The Prosecution charged Mr Shala with committing crimes at Kukës, which is located, as noted by the Prosecution in its Final Trial Brief, in the Pashtrik Operational Zone.<sup>7</sup> If anything, the description of W04264's SPO interview is largely misleading and certainly cannot be relied upon to suggest that the information given to the Defence allowed or made possible foreseeing the relevance of the witness's potential evidence. Had the Prosecution acted with due diligence and respect for its disclosure obligations, W04264's reference to his intervention to secure the release of FARK soldiers held at the border with Albania would have featured in the summary of his evidence provided to the Defence in the Prosecution's Rule 102(3) notice.<sup>8</sup> The Prosecution's failure to give notice of this aspect of the witness's evidence is another violation of its disclosure obligations; a violation, which the Defence respectfully invites the Appeals Panel to acknowledge. It can certainly not form the basis of any

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<sup>5</sup> Emails from Defence to the SPO on 29 September 2021 at 11:23, 1 October 2021 at 12:50, 7 October 2021 at 12:16, and 15 October 2021 at 10:12.

<sup>6</sup> KSC-BC-2020-04, F00319, ANNEX 1 to Prosecution amended Rule 102(3) notice, 19 October 2022 (confidential), pp. 21-22, nos. 227-244.

<sup>7</sup> KSC-BC-2020-04, F00818, Prosecution Final Trial Brief, 25 March 2024 (confidential), para. 311.

<sup>8</sup> KSC-CA-2024-03, F00033, Defence Motion to Present Additional Evidence Pursuant to Rule 181, 6 January 2025 (confidential)("Motion"), para. 16.

reproach to the Defence for failure to guess what was included in the transcript of this witness's interview with the Prosecution.

6. The repeated violation of the Prosecution's disclosure obligations with regard to its Rule 102(3) notice has in fact substantially hindered the ability of the Defence to investigate and advance its case.<sup>9</sup>
7. As to the contested credibility of W04733,<sup>10</sup> the Defence notes that its multifold challenge to W04733's evidence pointed to various substantial shortcomings of his evidence; his allegations concerning W04264 and his alleged role at Kukës was only one point amongst many others relied upon to show that W04733 could not reasonably be considered a reliable witness. As previously submitted, W04733 has falsely implicated many persons as supposedly being present at the Kukës Metal Factory.<sup>11</sup> The Defence has made extensive submissions on this matter and called Bardhyl Mahmuti, Time Kadrijaj and Safete Hadergjonaj as defence witnesses who denied being present at Kukës during the Indictment Period.<sup>12</sup>
8. Acceptance of the Prosecution's reproaches about the alleged lack of due diligence on the part of the Defence would set a dangerous precedent and essentially give the Appeals Chamber's blessings to an inadequate prosecutorial practice in so far as the Rule 102(3) notice is concerned that violates the rights of the Defence.

## II. CLASSIFICATION

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<sup>9</sup> KSC-BC-2020-04, F00821, Defence Final Trial Brief, 25 March 2024 (confidential), para. 298.

<sup>10</sup> Response, para. 18.

<sup>11</sup> KSC-BC-2020-04, F00821, Defence Final Trial Brief, 25 March 2024 (confidential), para. 240.

<sup>12</sup> T. 20 September 2023 p. 2514; T. 23 November 2023 p. 3556; T. 22 November 2023 p. 3484.

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

### III. RELIEF REQUESTED

10. The Defence respectfully requests the Appeals Panel to grant leave for the Defence to call W04264, [REDACTED], as a Defence witness; have the Proposed Evidence identified in paragraph 9 of the Motion admitted as additional evidence on appeal, and be permitted to present additional written and oral submissions on the Proposed Evidence and its impact on the case in due course.

**Word count: 1020**

Respectfully submitted,



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**Jean-Louis Gilissen**

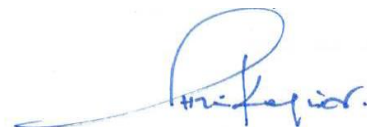
**Specialist Defence Counsel**



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**Hédi Aouini**

**Defence Co-Counsel**



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**Leto Cariolou**

**Defence Co-Counsel**

Friday, 21 February 2025

The Hague, the Netherlands