



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

In: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Party: Acting Specialist Prosecutor

Date: 28 November 2022

Language: English

Classification: Confidential

**Prosecution response to Registry Submissions Pursuant to Trial Panel I's Order
with strictly confidential and *ex parte* Annex 1**

Acting Specialist Prosecutor
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Jean-Louis Gilissen

Registry
Chief Detention Officer

Counsel for Victims
Simon Laws

1. Pursuant to the Order,¹ and Rule 76 of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby responds to the Registry Report.³
2. The SPO notes the Registry's submissions that active monitoring of the Accused's non-privileged communications, including telephone conversations, video and in-person visits, and correspondence, is feasible, and can be implemented at short notice.⁴ For the reasons given previously,⁵ such measures are necessary and proportionate, striking an appropriate balance between, on the one hand, the Accused's right to private and family life, and on the other hand, the need to avoid interference with witnesses and the integrity of the proceedings.⁶
3. With regard to telephone conversations, the SPO considers it necessary and proportionate for all non-privileged calls to be monitored. Only through the active monitoring of all calls is it possible to effectively limit the risk of interference and obstruction by the Accused.⁷ The system and schedule for active monitoring proposed by the Registry⁸ is effective, necessary and proportionate, in line with previous practice.⁹
4. With regard to visits, the SPO considers the suspension of private visits a necessary measure, consistent with the Registry's recommendations,¹⁰ and previous

¹ Decision on Defence Request for Variation of Time Limit (F00349), KSC-BC-2020-04/F00351, 15 November 2022, confidential, paras 7, 10(b) ('Order').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Registry Submissions Pursuant to Trial Panel I's Order (F00344) with one confidential and *ex parte* Annex, KSC-BC-2020-04/F00357, 24 November 2022, confidential ('Registry Report').

⁴ Registry Report, KSC-BC-2020-04/F00357, para.10.

⁵ Prosecution request for restrictions on the Accused's communications, KSC-BC-2020-04/F00336, 4 November 2022, Confidential ('Request'), paras 11-12.

⁶ ECtHR, Fourth Section, *Horych v. Poland*, 13621/08, Judgment, 17 April 2012, paras 122-124; ICC, Appeals Chamber, ICC-01/04-02/06-1817-Red, Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, para.101.

⁷ The risk of the Accused obstructing the progress of proceedings was found to continue to exist in the last review of detention: *see* Decision on Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00282, 21 September 2022, confidential, para.26.

⁸ Registry Report, KSC-BC-2020-04/F00357, para.17.

⁹ *See* Annex 1.

¹⁰ Registry Report, KSC-BC-2020-04/F00357, para.26.

practice.¹¹ Allowing visits to take place outside of the sight and hearing of Detention Officers¹² would in fact undermine the effectiveness of all other measures proposed by the Registry.¹³

5. For the reasons set out above and in the Request, the Accused's non-privileged communications should be restricted in accordance with the measures outlined in the Registry Report. The SPO also reiterates its request that the Panel specifically order the Accused not to share any confidential materials or information with anyone outside his defence team.¹⁴

6. This filing is confidential and Annex 1 is strictly confidential and *ex parte* pursuant to Rule 82(4).

Word count: 484



Alex Whiting
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Monday, 28 November 2022

At The Hague, the Netherlands.

¹¹ See Annex 1.

¹² Practice Direction on Visits and Communications, art.24.

¹³ Registry Report, KSC-BC-2020-04/F00357, para.25.

¹⁴ Request, KSC-BC-2020-04/F00336, para.1.