



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**

The Prosecutor v. Pjetër Shala

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 11 January 2023

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Public redacted version of

Decision on the Specialist Prosecutor's request for restrictions on the Accused's communications

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Registry

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Chief Detention Officer

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TRIAL PANEL I (Panel) hereby renders this decision on the Specialist Prosecutor's request for restrictions on the Accused's communications.

I. PROCEDURAL BACKGROUND

1. On 4 November 2022, the Specialist Prosecutor's Office (SPO) requested the Panel to order restrictions on Pjetër Shala's (Accused) non-privileged communications before the commencement of the trial (SPO Request).¹ The SPO requested, in particular, that: (i) the Accused's communications – by telephone, other electronic means, correspondence or in-person – with persons outside of the Specialist Chambers' Detention Facilities, be actively monitored; (ii) such communications be limited to individuals pre-approved by the Panel; and (iii) the Accused be ordered not to share any confidential material or any other identifying information with anyone outside of his Defence team.²

2. On 24 November 2022, following an order from the Panel,³ the Registry made submissions on the feasibility of the measures requested by the SPO and other issues (Registry Submissions).⁴

3. On 28 November 2022, the SPO responded to the Registry Submissions.⁵

¹ KSC-BC-2020-04, F00336, Specialist Prosecutor, *Prosecution request for restrictions of the Accused's communications*, 4 November 2022, confidential.

² SPO Request, paras 1, 12, 14.

³ KSC-BC-2020-04, F00344, Trial Panel I, *Order for submissions on the "Prosecution request for restrictions of the Accused's communications"* (KSC-BC-2020-04/F00336), 10 November 2022, confidential.

⁴ KSC-BC-2020-04, F00357, Registry, *Registry Submissions Pursuant to Trial Panel I's Order (F00344)*, 24 November 2022, confidential, with Annex 1, confidential and *ex parte*.

⁵ KSC-BC-2020-04, F00359, Specialist Prosecutor, *Prosecution response to Registry Submissions Pursuant to Trial Panel I's Order*, 28 November 2022, confidential, with Annex 1, strictly confidential and *ex parte*.

4. On 2 December 2022, following an extension of the time limit,⁶ the Defence for Pjetër Shala (Defence) responded to the SPO Request and the Registry Submissions (Defence Response), seeking a rejection of the SPO Request.⁷

5. On 7 December 2022, the SPO replied to the Defence Response.⁸

II. SUBMISSIONS

A. SPO

6. The SPO submits that restricting the Accused's communications with the outside world is necessary to avoid undue interference with witnesses and victims and to ensure their protection and the integrity of the proceedings.⁹ The SPO advances that there is a risk that the Accused may interfere with witnesses and victims and obstruct the progress of the proceedings, as shown by the fact that he made threatening statements, as recently as 2016 and 2019 [REDACTED].¹⁰ The risk is heightened, according to the SPO, by the transmission of the case file to the Panel, the filing of the updated witness and exhibit lists, and the disclosure to the Accused of the identities and material of three delayed disclosure witnesses.¹¹ The SPO stresses that, while maintaining the Accused's most important social contacts, the active monitoring of his communications with pre-approved individuals is the only measure that can

⁶ KSC-BC-2020-04, F00351, Trial Panel I, *Decision on Defence Request for Variation of Time Limit (F00349)*, 15 November 2022, confidential.

⁷ KSC-BC-2020-04, F00363, Defence, *Defence Response to Prosecution Request for Restrictions of the Accused's Communications*, 2 December 2022, confidential, with Annex 1, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-04, F00366, Specialist Prosecutor, *Prosecution reply to Defence Response to Prosecution Request for Restrictions of the Accused's Communications*, 7 December 2022, confidential, with Annex 1, strictly confidential and *ex parte*.

⁹ SPO Request, paras 7, 11.

¹⁰ SPO Request, para. 8; SPO Reply, para. 4.

¹¹ SPO Request, para. 9; SPO Reply, paras 3-4.

effectively limit the risk of interference and obstruction.¹² Lastly, it adds that the proposed restrictions are proportionate to mitigate the risk set out above.¹³

B. REGISTRY

7. The Registry submits that it has the resources needed to implement the measures sought by the SPO, if ordered by the Panel.¹⁴

C. DEFENCE

8. The Defence opposes the SPO Request. It submits that it is unfounded, unjustified and disproportionate and requests the Panel to reject it.¹⁵ The Defence argues that the SPO has failed to identify an objectively justifiable risk and to substantiate the necessity of the requested measures.¹⁶ It adds that the proposed restrictions are disproportionate and not strictly required to pursue the alleged legitimate aim.¹⁷

9. In the alternative, the Defence requests that the least restrictive measures be applied, in particular, that: (i) Accused's communications with his family members are not actively monitored; and (ii) certain individuals identified by the Defence are included on the Accused's list of pre-approved contacts.¹⁸

¹² SPO Response to Registry Submissions, para. 3; SPO Reply, paras 5-6.

¹³ SPO Request, para. 11; SPO Reply, paras 5-6.

¹⁴ Registry Submissions, paras 10, 36; *see also* paras 16, 23-24, 28-29, 31 and Annex 1.

¹⁵ Defence Response, paras 3, 23, 45.

¹⁶ Defence Response, paras 25-29.

¹⁷ Defence Response, paras 30-43.

¹⁸ Defence Response, paras 3, 40-42.

III. APPLICABLE LAW

10. The Panel notes Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 22(2) of the Constitution of the Republic of Kosovo, Articles 3(2), 23(1), and 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 56(6), 80, 116(1) and (4)(d) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers.

IV. DISCUSSION

11. The Panel evaluates the SPO Request against Article 8 of the ECHR, which protects the right to private and family life, home and correspondence and covers all forms of private communication, including telephone conversations.¹⁹ The Panel stresses that, it is an essential part of a detainee's right to respect for private and family life to maintain contact with his/her close family and that he/she is assisted – as far as possible – to create and sustain ties with persons outside of the detention facilities.²⁰

12. Pursuant to Article 8(2) of the ECHR, this right may only be interfered with if: (a) it is “in accordance with the law”; (b) it pursues one or more of the following legitimate aims: national security, public safety, economic well-being, the prevention of disorder or crime, the protection of health and morals, or the protection of the rights and freedoms of others; and (c) it is “necessary in a democratic society”. The requirement that any restrictions be “in accordance with the law” means that the measures should have some basis in the applicable law, which should be accessible to

¹⁹ European Court of Human Rights (ECtHR), *Dragojević v. Croatia*, no. 68955/11, [Judgment](#), 15 January 2015, para. 78; *Malone v. the United Kingdom*, no. 8691/79, [Judgment](#), 2 August 1984, para. 64; *Klass and Others v. Germany*, no. 5029/71, [Judgment](#), 6 September 1978, para. 41.

²⁰ ECtHR, *Onoufriou v. Cyprus*, no. 24407/04, [Judgment](#), 7 January 2010, para. 91; *see also Messina v. Italy* (No. 2), no. 25498/94, [Judgment](#), 28 September 2000, para. 61; *Horych v. Poland*, no. 13621/08, [Judgment](#), 17 April 2012, para. 122; *Piechowicz v. Poland*, no. 20071/07, [Judgment](#), 17 April 2012, para. 212, with regard to contact with close family.

the person concerned and foreseeable as to its effects. As to the requirement of necessity, this implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim(s) pursued.²¹

13. Before entering the analysis against Article 8(2) of the ECHR, the Panel finds it necessary to address the adequacy of the justification provided in the SPO Request. In the view of the Panel, the SPO essentially recapitulated factual allegations that were advanced to justify the Accused's detention during the pre-trial phase. Besides being closer to the start of trial, it is not clear to the Panel which (new) circumstances warrant the imposition of restrictions on the Accused's communications, who remains in detention. Moreover, the disclosure of the identities of the last three protected witnesses took place [REDACTED] before the SPO Request was filed.²² Had there been serious concerns that the Accused would divulge the identities of protected witnesses, this risk could have been explained in more detail to the Panel. The Panel recalls that limiting the Accused's Article 8 ECHR rights as requested by the SPO entails restricting the (number of) persons he can communicate with, limiting (inevitably) the time and opportunities he has to communicate with his family and friends, actively listening to all of his communications, and suspending all of his private visits. A request to limit those rights is expected to provide information capable to persuade the Panel to order such restrictive measures.

14. In addition, while the Panel acknowledges that the risk remains that the Accused may obstruct the progress of the Specialist Chambers' proceedings and commit further crimes, including against witnesses in the present case,²³ the Panel is not

²¹ ECtHR, *Piechowicz v. Poland*, no. 20071/07, [Judgment](#), 17 April 2012, para. 212; *Onoufriou v. Cyprus*, no. 24407/04, [Judgment](#), 7 January 2010, paras 92-93; *Silver and Others v. the United Kingdom*, no. 5947/72 and 6 others, [Judgment](#), 25 March 1983, para. 84; *Khoroshenko v. Russia* [GC], no. 41418/04, [Judgment](#), 30 June 2015, paras 110, 118; *Kučera v. Slovakia*, no. 48666/99, [Judgment](#), 17 July 2007, para. 127.

²² [REDACTED].

²³ KSC-BC-2020-04, F00365, Trial Panel I, *Decision on the Eighth Review of Detention of Pjetër Shala*, 6 December 2022, confidential, paras 24-27. A public redacted version was filed on 21 December 2022, F00365/RED.

persuaded that the requested measures would be proportionate to the aforementioned aims. In particular, the Panel is of the view that the SPO has failed to explain what other measures it considered but rejected.²⁴ In the Panel's estimation, other less restrictive measures are available and could mitigate the existing risks. Such measures include, for example: [REDACTED];²⁵ [REDACTED], as well as other measures or a combination thereof.

15. For these reasons, the Panel rejects the SPO Request. This is without prejudice to any future request, provided, *inter alia*, that such a request is justified and the requested measures are proportionate.

16. Finally, the Panel reminds the Accused of his obligation to refrain from disclosing to anyone outside his Defence team any identifying information of victims and witnesses or any other confidential information contained in the case file KSC-BC-2020-04 or any other proceedings before the Specialist Chambers. Should the Accused violate this obligation, this may constitute a criminal offence under the jurisdiction of the Specialist Chambers by virtue of Article 15(2) of the Law and the Panel may restrict or suspend the Accused's contacts with the outside world or modify his conditions of detention.

²⁴ SPO Reply, para. 5 ("There are no less restrictive measures available to effectively ensure the protection of the witnesses and the integrity of the proceedings at hand").

²⁵ [REDACTED].

V. DISPOSITION

17. For the above-mentioned reasons, the Panel hereby:

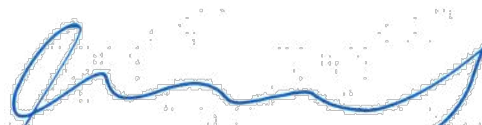
- a. **REJECTS** the SPO Request; and
- b. **ORDERS** the SPO and the Defence to either file public redacted versions of their related filings (F00336, F00359, and F00366 for the SPO; and F00349 and F00363 for the Defence), excluding their annexes, or indicate to the Panel that the filings may be reclassified without redactions, by **Wednesday, 18 January 2023**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 11 January 2023

At The Hague, the Netherlands.