



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:** 18 January 2023

**Language:** English

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**Public Redacted Version of**  
**'Prosecution reply to Defence Response to Prosecution Request for Restrictions of**  
**the Accused's Communications with Strictly Confidential and Ex Parte Annex 1',**  
**dated 7 December 2022**

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**Acting Specialist Prosecutor**  
Alex Whiting

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**Registry**  
Chief Detention Officer

**Counsel for Victims**  
Simon Laws

1. Pursuant to the Order,<sup>1</sup> and Rule 76 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby replies to the Defence Response.<sup>3</sup>
2. The Defence acknowledges that the possibility to restrict a detainee's ability to communicate with people outside of a detention facility for security concerns (of appreciable nature) has been recognised by the ECtHR.<sup>4</sup> In its Response, however, the Defence opposes the SPO Request<sup>5</sup> in the case at hand. If any restrictions beyond the measures currently in force are to be imposed, the Defence requests that the least restrictive measures be applied. For the reasons set out previously and below, the least restrictive measures are those proposed by the SPO.
3. Contrary to the Defence submission, specific circumstances exist necessitating further restrictions on the Accused's outside world communications at this stage of the proceeding.<sup>6</sup> The trial against the Accused is about to start, providing him with increased insight into the case against him and the identities of incriminating witnesses. Notably, the SPO just recently disclosed the identities of delayed disclosure witnesses TW4-02, TW4-04 and TW4-11.<sup>7</sup>
4. With the trial being the crucial moment to present the incriminating (including witness) evidence against the Accused, its start inevitably heightens the risk of undue interference with witnesses and victims and obstruction of proceedings before the Specialist Chambers. Considering further [REDACTED],<sup>8</sup> the acknowledged climate

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<sup>1</sup> Decision on Defence Request for Variation of Time Limit (F00349), KSC-BC-2020-04/F00351, 15 November 2022, confidential, paras 8, 10(d) ('Order').

<sup>2</sup> 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.

<sup>3</sup> Defence Response to Prosecution Request for Restrictions of the Accused's Communications with Strictly Confidential and *Ex Parte* Annex 1, KSC-BC-2020-04/F00363, 2 December 2022, confidential ('Defence Response' or 'Response').

<sup>4</sup> Defence Response, KSC-BC-2020-04/F00363, para.19.

<sup>5</sup> Prosecution request for restrictions of the Accused's communications, KSC-BC-2020-04/F00336, 4 November 2022, confidential ('SPO Request').

<sup>6</sup> SPO Request, KSC-BC-2020-04/F00336, paras 8, 9.

<sup>7</sup> Disclosure Packages 91 (Rule 102(1)(b)) and 92 ((Rule 102(3))), disclosed on 23 November 2022; Disclosure Packages 93 (Rule 102(1)(a)) and 94 (Rule 103), disclosed on 24 November 2022.

<sup>8</sup> See SPO Request, KSC-BC-2020-04/F00336, para.8.

of witness intimidation and interference in Kosovo and the possibilities this creates for the Accused, the SPO submits that the raised security concerns are indeed of appreciable nature and justify the requested restrictions.

5. Besides having a legal basis and a legitimate aim, the measures requested by the SPO are necessary and proportionate. The SPO carefully assessed and balanced the various measures available and requested the least restrictive measures possible that still cover the necessary safety concerns. There are no less restrictive measures available to effectively ensure the protection of the witnesses and the integrity of the proceedings at hand. Also, given the change of circumstances and the accordingly heightened security concerns as elaborated above in paragraph 3, the alleged fact that the Accused has so far not attempted to interfere with the proceedings, as claimed by the Defence, and the previous contact/ monitoring history are not a reliable predictor of the Accused's behaviour in the future.<sup>9</sup>

6. The requested measures allow the Accused to maintain his most important social contacts, including those with his family, both by telephone and in person. Active monitoring of these contacts, however, remain necessary, as the Accused could carry out witness interference through his family members. Besides that, as indicated by the Defence, the Accused's contacts concentrated anyways 'only to his family, close friends and acquaintances'.<sup>10</sup> Thus, a pre-approved contact list – which is necessary to manage security risks – will have a limited impact on the Accused's actual contacts.

7. This filing is classified as confidential pursuant to Rule 82(4), as it refers to content of confidential filings.

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<sup>9</sup> Defence Response, KSC-BC-2020-04/F00363, paras 35, 42.

<sup>10</sup> Defence Response, KSC-BC-2020-04/F00363, para.35.

**Word count: 628**



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**Alex Whiting**

**Acting Specialist Prosecutor**

Wednesday, 18 January 2023

At The Hague, the Netherlands.