



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:** Specialist Prosecutor

**Date:** 2 March 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**'Prosecution reply to filing F00316'**

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**Specialist Prosecutor**  
Jack Smith

**Counsel for Pjetër Shala**  
Jean-Louis Gilissen

**Counsel for Victims**  
Simon Laws

1. Pursuant to Trial Panel I's Fifth Oral 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> to Victims' Counsel Submissions.<sup>4</sup>
2. Contrary to the Defence submissions,<sup>5</sup> the first two prongs of the legal test for the application of protective measures<sup>6</sup> continue to be met, thus justifying the continuation of the protective measures currently in force for the victims participating in the proceedings ('VPPs').<sup>7</sup> In particular, the disclosure of their identities poses an objectively justifiable risk to the VPPs when considered in the context of the persistent climate of witness intimidation in Kosovo,<sup>8</sup> and the objective risk that the Accused will obstruct the proceedings and/or commit further crimes, [REDACTED].<sup>9</sup> Further, the protective measure are necessary to protect individuals who are particularly vulnerable in light of the trauma they suffered,<sup>10</sup> and have expressed their preference for the continuation of such measures.<sup>11</sup>
3. The SPO notes that, in this case and consistent with relevant protective measures, the identities of dual status victim-witnesses – namely, VPPs that the SPO

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<sup>1</sup> Transcript (Trial Preparation Conference), 19 October 2022, confidential, p.14 [draft].

<sup>2</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-04/Rev3/2020, 2 June 2020 ('Rules').

<sup>3</sup> Defence Response to Victims' Counsel Submissions on the Need for the Continued Application of the Protective Measures Ordered for Victims Participating in the Proceedings, KSC-BC-2020-04/F00316, 17 October 2022, confidential ('Response').

<sup>4</sup> Victims' Counsel Submissions on the Need for the Continued Application of the Protective Measures Ordered for Victims Participating in the Proceedings, KSC-BC-2020-04/F00294, 5 October 2022, public ('Victims' Counsel Submissions').

<sup>5</sup> Response, KSC-BC-2020-04/F00316, para.6.

<sup>6</sup> Framework Decision on Victims' Applications, KSC-BC-2020-04/F00064, 1 September 2021, public, para.54 ('Framework Decision on Victims' Applications').

<sup>7</sup> Third Decision on Victims' Participation, KSC-BC-2020-04/F00279, 19 September 2022, confidential ('Third Decision on Victims' Participation'), paras 37 and 43(d).

<sup>8</sup> Decision on Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00282, 21 September 2022, confidential, para.26 ('Decision on Seventh Review of Detention'). *See also*, *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, public, paras 577-579 ('Gucati and Haradinaj Trial Judgment').

<sup>9</sup> Third Decision on Victims' Participation, KSC-BC-2020-04/F00279, para.35. *See also*, Decision on Seventh Review of Detention, KSC-BC-2020-04/F00282, paras 26, 28.

<sup>10</sup> Third Decision on Victims' Participation, KSC-BC-2020-04/F00279, para.35.

<sup>11</sup> Victims' Counsel Submissions, KSC-BC-2020-04/F00294, para.9.

intends to call – are known to the SPO, but not the Defence. Accordingly, (i) in the circumstances of this case, (ii) after careful consideration of applicable protective measures and the victims' security concerns and personal circumstances, and (iii) after consultation with Victims' Counsel as to the practical implications of the continuation of protective measures for the dual status victim-witnesses, the SPO has no objection to the disclosure of their identities to the Defence and the Accused thirty days before the commencement of the trial in the present case. This does not impact on the necessary and proportional protective measures granted to any other current or future VPPs who do not have dual status, or the non-disclosure of the identities of all VPPs to the public, which is not opposed by the Defence.<sup>12</sup>

4. For the reasons set out above, the Trial Panel should order the continuation of the protective measure currently in force for the VPPs until further order, with the exception of those who have dual status, whose identities should be disclosed to the Defence and the Accused thirty days before the commencement of the trial.

5. This filing is confidential pursuant to Rule 82(4).

**Word count: 573**



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**Alex Whiting**

**Acting Specialist Prosecutor**

Thursday, 2 March 2023

At The Hague, the Netherlands.

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<sup>12</sup> Response, KSC-BC-2020-04/F00316, para.4.