

**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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Victims' Counsel

**Date:** 17 May 2023

**Language:** English

**Classification:** Public

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**Victims' Counsel's Request for variation of protective measures in order to  
disclose certain information to the material damages expert**

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**Specialist Prosecutor's Office**  
Alex Whiting

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

**Counsel for Victims**  
Simon Laws

## I. INTRODUCTION

1. Following the Trial Panel's Oral Order of 4 May 2023<sup>1</sup>, and pursuant to Article 23(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 81 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), Victims' Counsel:
  - a. Informs the Trial Panel that he intends to instruct an expert in material harm assessment to produce a report on the material damages suffered by the victims participating in these proceedings, i.e. V01/04, V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 (collectively "VPPs"), in consequence of the crimes charged against Pjetër Shala; and
  - b. Requests a limited variation of the protective measures in place for the VPPs in order to disclose relevant information to the expert for the purpose of producing the above mentioned report, and on condition of confidentiality.

## II. CLASSIFICATION

2. This filing contains no information that could allow for identification of the VPPs. Therefore, it is classified as public.

## III. PROCEDURAL HISTORY

3. On 15 December 2021, 11 August and 19 September 2022, the Pre-Trial Judge issued three decisions admitting a total of eight applicants as VPPs.<sup>2</sup> The Pre-

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<sup>1</sup> *The Specialist Prosecutor v. Pjetër Shala*, KSC-BC-2020-04, Transcript, T. 1356:11 – T. 1361:6 ("Oral Order").

<sup>2</sup> KSC-BC-2020-04/F00123/RED, Pre-Trial Judge, First Decision on Victims' Participation, 15 December 2021 ("First Decision on Victims' Participation"); KSC-BC-2020-04/F00249/RED, Second Decision on Victims' Participation, 11 August 2022 ("Second Decision on Victims' Participation"); KSC-BC-2020-04/F00279/RED, Third Decision on Victims' Participation, 19 September 2022 ("Third Decision on Victims' Participation").

Trial Judge also granted, *inter alia*, non-disclosure to the public of any records identifying the applicants.<sup>3</sup>

4. On 4 May 2023, the Trial Panel ordered Victims' Counsel to, *inter alia*, inform the Panel whether he intends to present expert evidence on material harm allegedly suffered by the direct or/and indirect victims, and to submit any expert reports no later than 30 June 2023.<sup>4</sup>

#### IV. SUBMISSIONS

5. Following discussions with Dr Stefan Lerz, an expert in assessment of material damages, Victims' Counsel intends to instruct him to produce a report on the material damages suffered by both direct and indirect VPPs. In order for Dr Lerz to be able to produce such a report, Victims' Counsel must provide him with the necessary information.
6. Accordingly, Victims' Counsel intends to disclose to Dr Lerz relevant information from:
  - a. the application forms;
  - b. statements provided by the VPPs in the course of the proceedings before the Specialist Chambers;
  - c. the expert report prepared by the *Instituut voor Mensenrechten en Medisch onderzoek* ("IMMO");
  - d. VPPs provided to Victims' Counsel.
7. Importantly, no documents from the case or personal information, such as the names or any potentially identifying location need to be disclosed to the expert. Victims' Counsel acknowledges, however, that even information of this kind (such as years of birth, family relations and the profession of one of the VPPs), could in theory, lead to, or at least assist in, the identification of at least some of

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<sup>3</sup> First Decision on Victims' Participation, paras 40, 50(d); Second Decision on Victims' Participation, paras 36, 43(f); Third Decision on Victims' Participation, paras 37, 43(d).

<sup>4</sup> Oral Order.

the VPPs. Therefore, acting out of abundance of caution, Victims' Counsel submits this request.

8. Victims' Counsel notes that the Trial Panel has in the recent past decided to disclose relevant material to the same expert in the *Salih Mustafa* case (Case 05), on condition of confidentiality.<sup>5</sup>
9. Should the Trial Panel consider granting this request, pursuant to Rule 81(5) of the Rules, Victims' Counsel confirms that the VPPs have given their consent to this variation of the existing protective measures.
10. Finally, Victims' Counsel undertakes to remind Dr Lerz of his obligation to keep confidential all information in relation to the VPPs and the content of his future report, and confirms that this request is strictly limited to a variation of the protective measures solely in relation to Dr Lerz.

## V. RELIEF REQUESTED

11. For these reasons, Victims' Counsel respectfully requests that, in order to facilitate an assessment of material harm suffered by the VPPs, the Trial Panel vary the protective measures in place for V01/04, V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 to permit the disclosure of the information described above at paragraph six in order for Dr Lerz to prepare his report.

**Word count: 742**



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17 May 2023

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<sup>5</sup> *The Specialist Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00425, Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings, 1 June 2022, para. 9.