



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 Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Party: Acting Specialist Prosecutor

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Language: English

Classification: Public

Prosecution response to Defence request for reconsideration of the 'Decision concerning Prior Statements Given by Pjetër Shala'

Specialist Prosecutor's Office

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Simon Laws

I. INTRODUCTION

1. The Request¹ should be rejected because it does not meet the standard for reconsideration set forth in Rule 79(1).² There are no exceptional circumstances³ warranting reconsideration of the Statements Decision,⁴ which was upheld by the Court of Appeals.⁵ The Request disregards relevant findings in the Appeal Decision, and also fails to demonstrate that reconsideration is necessary to avoid injustice.

II. SUBMISSIONS

2. While the Court of Appeals has identified a violation of the standards of human rights law in relation to the 2016 Belgian Interview,⁶ it explicitly stated that such violation was 'limited',⁷ and resulted in no indicia of unreliability of the interview, and found that its admission would not damage the integrity of the proceedings.⁸ Further, the Court of Appeals specifically upheld the finding of the Panel that the 2016 Belgian Interview was not inadmissible pursuant to Rule 138(2).⁹ In arguing that admission of the 2016 Belgian Interview would 'render the proceedings as a whole unfair',¹⁰ or that it would cause an injustice,¹¹ the Defence simply ignores these findings.

¹ Defence Request for Reconsideration of the "Decision Concerning Prior Statements Given by Pjetër Shala", KSC-BC-2020-04/F00515, 18 May 2023, public ('Request').

² Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-04/Rev3/2020, 20 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Rule 79(1). In this regard, see *Specialist Prosecutor v. Thaci et al.*, Decision on Applications for Reconsideration and Disqualification of a Judge from a Court of Appeals Panel, KSC-BC-2020-06/F00476, 17 September 2021, public ('Case 06 Reconsideration Decision'), para.12.

⁴ Public redacted version of Corrected version of Decision concerning prior statements given by Pjetër Shala, KSC-BC-2020-04/F00364/COR/RED, 6 December 2022, public ('Statements Decision').

⁵ Decision on Shala's Appeal Against Decision Concerning Prior Statements, KSC-BC-2020-04-IA006/F00007, 5 May 2023 ('Appeal Decision').

⁶ Federal Judicial Police Investigation Division 7, Interview with Pjetër SHALA, dated 15 January 2016, Ref: PV nr. 002157/2016, 074117-074129-ET Revised 1, 14 January 2016 ('2016 Belgian Interview').

⁷ Appeal Decision, KSC-BC-2020-04-IA006/F00007, para.79.

⁸ Appeal Decision, KSC-BC-2020-04-IA006/F00007, para.81.

⁹ Appeal Decision, KSC-BC-2020-04-IA006/F00007, para.109.

¹⁰ Request, KSC-BC-2020-04/F00515, para.8.

¹¹ Request, KSC-BC-2020-04/F00515, paras 4, 10.

3. Moreover, the Defence misleadingly represents the *Delalić* decision,¹² and the European Court of Human Rights ('ECtHR') jurisprudence relied upon by it is inapposite. In particular, as is apparent from the Defence's own submissions,¹³ the relevant assessment pursuant to ECtHR jurisprudence relates to the overall fairness of the proceedings as a whole, in the particular circumstances of the case, and the use to which the evidence is ultimately put. Neither of which can be assessed at this point in the trial.

4. In conclusion, the Defence is seeking reconsideration of the Statements Decision based on discrete, limited errors that are incapable of impacting the conclusions of the Trial Panel with respect to the 2016 Belgian Interview, as already affirmed by the Court of Appeals. Reconsideration may not be invoked as a second appellate route¹⁴ to 'redress imperfections in a decision or to circumvent the unfavourable consequences of a ruling'.¹⁵

5. On this basis, and in the interest of the 'certainty and finality' of judicial decisions in these proceedings,¹⁶ the Trial Panel should decline to reconsider its decision with respect to the admissibility of the 2016 Belgian Interview.

III. RELIEF REQUESTED

6. For the foregoing reasons, the SPO respectfully requests the Panel to reject the Request.

¹² Request, KSC-BC-2020-04/F00515, para.8 (the statement at para.55 of the *Delalić* decision related to interviews taken by the ICTY prosecution pursuant to the rules applicable to the ICTY, and was based on the specific provisions of the ICTY rules; it was not a general assertion regarding violation of the right to legal assistance, as presented by the Defence). Equally, para.35 indicated the applicability of Rule 95 of the ICTY rules to evidence obtained by means contrary to international human rights; the emphasis the Defence places ('unequivocally'; 'must be excluded'), is not found in the original.

¹³ Request, KSC-BC-2020-04/F00515, paras 7, 9.

¹⁴ ICTY, *Prosecutor v. Delić*, IT-04-83-PT, Decision on the Prosecution motion for reconsideration, 23 August 2006, p. 5; STL, *Prosecutor v. Ayyash*, STL-18-10/PT/TC, Decision on Defence Request for Reconsideration of the Decision to hold Trials in Absentia, Trial Chamber II, 21 October 2020, para.19.

¹⁵ Case 06 Reconsideration Decision, KSC-BC-2020-06/F00476, para.12; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/AC/RI76bis, Decision on Defence requests for reconsideration of the Appeals Chamber's decision of 16 February 2011, 18 July 2012 ('STL 18 July 2021 *Ayyash* Decision'), para.23.

¹⁶ STL 18 July 2021 *Ayyash* Decision, para.22.

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Tuesday, 30 May 2023

At The Hague, the Netherlands.