



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

**The 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 Judge

**Registrar:** Fidelma Donlon

**Date:** 12 June 2023

**Language:** English

**Classification:** **Public**

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**Decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification**

**with Annex 1 confidential**

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**To be notified to:**

**Acting Specialist Prosecutor**  
Alex Whiting

**Counsel for the Accused**  
Jean-Louis Gilissen

**Registry**  
Fidelma Donlon

**Victims' Counsel**  
Simon Laws

**TRIAL PANEL I** (Panel) hereby renders this decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification.

## I. PROCEDURAL BACKGROUND

1. On 27 March 2023, the presentation of evidence commenced in the present case and, between 27 and 30 March 2023, the Panel heard the testimonies of witnesses TW4-08, TW4-06, TW4-07 and TW4-09, who benefit from protective measures *vis-à-vis* the public.<sup>1</sup>

2. On 4 April 2023, the Panel ordered the Parties and Victims' Counsel to undertake a revision of the transcripts of the aforementioned trial hearings and to provide submissions, in a consolidated filing, on whether existing redactions could be lifted and/or transcripts reclassified as public.<sup>2</sup>

3. On 14 April 2023, the Parties and Victims' Counsel submitted a joint proposal on the lifting of redactions and/or reclassification of transcripts of the trial hearings mentioned above (Joint Proposal).<sup>3</sup>

## II. SUBMISSIONS

4. The Parties and Victims' Counsel propose to reclassify as public parts of the transcripts of the trial hearings held between 27 and 30 March 2023 in private session, subject to the application of redactions, where necessary, with the aim of

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<sup>1</sup> KSC-BC-2020-04, Transcript of Hearing, 27 March 2023, pp. 608-731; Transcript of Hearing, 28 March 2023, pp. 732-831; Transcript of Hearing, 29 March 2023, pp. 832-955; Transcript of Hearing, 30 March 2023, pp. 956-1020.

<sup>2</sup> KSC-BC-2020-04, F00476, Trial Panel I, *Order for submissions on the lifting of redactions and/or the reclassification of transcripts of trial hearings*, 4 April 2023, public.

<sup>3</sup> KSC-BC-2020-04, F00483, Specialist Prosecutor, *Prosecution submission of joint proposal pursuant to Order F00476*, 14 April 2023, public, with Annex 1, confidential.

protecting the witnesses' identities and confidential information.<sup>4</sup> Additionally, the Parties and Victims' Counsel submit that a number of redactions previously authorised by the Panel over the course of the aforementioned trial hearings can be lifted.<sup>5</sup> Finally, the Parties and Victims' Counsel propose minor redactions to the transcript of the trial hearing of 29 March 2023 held in open session.<sup>6</sup>

### III. APPLICABLE LAW

5. The Panel notes Articles 21(2), 23, 40(2), (4) and (6)(f) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 80, 84(1) and 120 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

### IV. ANALYSIS

6. The Panel recalls that, pursuant to Article 21(2) of the Law, and subject to any protective measures ordered under Article 23 of the Law for the protection of witnesses and victims, the Accused has the right to a public hearing in the determination of the charges against him. With a view to respecting the principle of publicity while upholding the protective measures in place, the Panel has exercised its duty under Rule 84(1) of the Rules to review the classification of the transcripts of the trial hearings held between 27 and 30 March 2023 and, where applicable, hereby orders their reclassification, as set out below.

7. At the outset, the Panel notes that the Parties and Victims' Counsel have reached a comprehensive agreement with regard to the proposed (lifting of) redactions and the reclassification as public of parts of the transcripts of trial

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<sup>4</sup> Annex 1 to Joint Proposal, pp. 2-10.

<sup>5</sup> Annex 1 to Joint Proposal, pp. 2-3, 5-6, 8.

<sup>6</sup> Annex 1 to Joint Proposal, p. 7.

hearings held in private session. The Panel will, first, consider the proposals related to the transcripts of the trial hearings held in open session, namely the lifting of redactions previously authorised by the Panel (existing redactions) and the application of new redactions to the transcript of the trial hearing of 29 March 2023. Second, the Panel will address the Parties' and Victims' Counsels' proposals to reclassify as public parts of the transcripts of the trial hearings held in private session and the subsequent application of redactions therein.

#### A. TRANSCRIPTS OF THE HEARINGS HELD IN OPEN SESSION

##### 1. Lifting of Existing Redactions

8. The Panel observes that the Parties and Victims' Counsel primarily seek to make public the names of certain locations, maintaining that this will not result in the identification of the witnesses.<sup>7</sup> The Parties and Victims' Counsel also request to make public, in part, an excerpt from the transcript of the trial hearing of 28 March 2023 that was previously redacted by the Panel.<sup>8</sup>

9. The Panel finds that the Joint Proposal, insofar as it concerns the lifting of existing redactions, is consistent with the approach of the Panel in protecting witnesses and victims under Article 23 of the Law. Notably, the Panel considers that it strikes an appropriate balance between the different rights and interests at stake, namely, the principle of publicity under Article 40(4) of the Law, the rights of the accused to a public hearing under Article 21(2) of the Law, and the protection of witnesses and victims under Article 23 of the Law. Accordingly, the Panel grants the Parties' and Victims' Counsels' requests to make public the names of certain locations.

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<sup>7</sup> Annex 1 to Joint Proposal, pp. 2-3, 5-6, 8.

<sup>8</sup> Annex 1 to Joint Proposal, p. 5. See also KSC-BC-2020-04, F00470, Trial Panel I, *In-court Redaction Orders*, 28 March 2023, p. 3.

10. However, the Panel rejects their request to partially make public the excerpt of the transcript of the trial hearing of 28 March 2023 that was previously redacted by the Panel, as it contains information that could lead to the identification of the witnesses.

11. In addition to the Parties' and Victims' Counsels' proposals and in order to ensure consistency,<sup>9</sup> the Panel further considers that, based on the totality of the submissions contained in the Joint Proposal, more information that was previously redacted by the Panel over the course of the trial hearing of 27 March 2023 can be made public, in order to give full effect to the principle of publicity.<sup>10</sup>

12. In light of the above, the Panel: (i) authorises the lifting of existing redactions, in accordance with the annex to this decision; and (ii) instructs the Registry to lift existing redactions in the public redacted versions of the transcripts, in line with the instructions included in the annex to this decision. The Panel's instructions shall equally apply to the transcripts in Albanian and Serbian.

## **2. Post-session Redactions**

13. The Panel notes that the Parties and Victims' Counsel seek to redact in the transcript of the trial hearing of 29 March 2023 the dates of the witnesses' interviews with the Specialist Prosecutor's Office (SPO).<sup>11</sup> In this regard, the Panel clarifies that the open session parts of the transcripts, including the corresponding

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<sup>9</sup> The Panel observes that the Parties and Victims' Counsel did not request to lift certain existing redactions, in whole or in part, that contain information that is already available to the public or that will become public following the issuance of the present decision, in accordance with their submissions in the Joint Proposal. *See* in particular paragraph 1 of the annex to this decision regarding the trial hearing of 27 March 2023. *See* further Final Remarks below.

<sup>10</sup> For ease of reference, the Panel lists all the redaction orders that shall be lifted in an annex appended to this decision. The Panel adopts the same approach for Section A.2 and Section B of the present decision.

<sup>11</sup> Annex 1 to Joint Proposal, p. 7.

audio-video material, are already available to the public and that the application of new redactions amounts to post-session redactions.

14. While the Panel is of the view that further redactions are necessary,<sup>12</sup> it nevertheless finds that the Parties' and Victims' Counsels' proposals *vis-à-vis* the post-session redactions are consistent with the approach of the Panel in protecting witnesses and victims under Article 23 of the Law and strike an appropriate balance between the different rights and interests at stake. Therefore, the Panel grants the Parties' and Victims' Counsel's request to apply the sought redactions in the transcript of the trial hearing of 29 March 2023.

15. In addition to the submissions contained in the Joint Proposal, the Panel further finds that additional redactions are necessary in order to ensure the protection of witnesses, victims and confidential information. These concern: (i) additional dates of witnesses' interviews with the SPO;<sup>13</sup> (ii) personal information of the witnesses; and (iii) part of the witnesses' testimony that could lead to their identification.

16. In light of the above, the Panel: (i) authorises the application of new redactions, in accordance with the annex to this decision; and (ii) instructs the Registry to apply redactions in the public redacted versions of the transcripts, in line with the instructions included in the annex to this decision. The authorised redactions shall equally apply to the transcripts in Albanian and Serbian.

17. When implementing this decision, the Registry's Court Management Unit (CMU) shall submit to the Presiding Judge of this Panel a single redaction order containing all applicable post-session redactions for her approval and signature.

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<sup>12</sup> See para. 15. See further the Final Remarks below.

<sup>13</sup> The Panel notes that additional dates of the witnesses' interviews with the SPO can be found in the public redacted versions of the trial hearings held between 28 and 30 March 2023. See paragraph 2 of the annex to this decision.

CMU is further instructed to liaise with the Panel should any issues arise in the implementation of this decision.

B. TRANSCRIPTS OF THE HEARINGS HELD IN PRIVATE SESSION

18. The Panel notes that the Parties and Victim's Counsel agree that a substantial part of the excerpts of the transcripts of trial hearings held in private session between 27 and 30 March 2023 can be made public, subject to the application of redactions.<sup>14</sup> The Parties and Victims' Counsel are mainly concerned with redacting: (i) personal information of the witnesses; (ii) part of the witnesses' testimony that could lead to their identification; and/or (iii) the identity of another protected witness or a person related to or associated with them.

19. Similarly to what has been held in relation to open session transcripts, the Panel finds that the Parties' and Victims' Counsels' proposals with regard to the private session transcripts strike an appropriate balance between the different rights and interests at stake. Accordingly, the Panel grants the Parties' and Victims' Counsels' requests to reclassify as public parts of the transcripts of the trial hearings held between 27 and 30 March 2023, subject to the Panel's directions as set out in the annex to this decision.

20. In addition to the Parties' and Victims' Counsels' proposals, and on the basis of their submissions as a whole, the Panel considers that additional excerpts of the transcripts can be reclassified as public, subject to the application of redactions, in order to ensure the protection of witnesses, victims and confidential information.

21. In light of the above, the Panel authorises the reclassification as public of parts of the transcripts of trial hearings held in private session and the subsequent application of redactions therein, in accordance with the annex to this decision. Accordingly, the Panel instructs the Registry to reclassify as public parts of the

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<sup>14</sup> Annex 1 to Joint Proposal, pp. 2-10.

transcripts recording private sessions, in line with the instructions included in the annex to this decision, and subject to the application of redactions contained therein. The abovementioned reclassification of transcripts and the application of redactions shall equally apply to the transcripts in Albanian and Serbian.

#### C. AUDIO-VIDEO MATERIAL

22. The Panel recalls that hearings are broadcasted in the three official languages of the Kosovo Specialist Chambers, i.e. English, Albanian, and Serbian, which requires the Language Services Unit to provide simultaneous interpretation. The Panel is mindful however that the interpretation, even if simultaneous, is in practice implemented with a slight delay, which corresponds to the time necessary for the interpreters to process and reformulate information from one official language into the other two official languages. The Panel is also mindful that, for technical reasons, redactions to the audio-video material cannot mirror with the same level of precision the redactions authorised and applied to transcripts.

23. Accordingly, the Panel authorises the Registry to implement the corresponding redactions to the audio-video material of the relevant trial hearing transcripts as technically possible, ensuring that the information redacted in the transcripts is also redacted in the audio-video material.

#### V. FINAL REMARKS

24. The Panel has observed that the Parties and Victims' Counsel have not always been consistent in their proposals for the lifting or application of redactions across transcripts. The Panel directs the Parties and Victims' Counsel, when making submissions, to conduct a diligent review of the transcripts in order to give full effect to the principle of publicity as well as the protective measures in



place, and to ensure that their proposals are consistent within and across transcripts.<sup>15</sup>

25. Lastly, the Panel welcomes submissions from the Registry, most notably the Witness Protection and Support Office (WPSO), on the lifting of redactions, the application of additional redactions, or the reclassification of transcripts, and directs the Registry/WPSO to liaise with the Parties and Victims' Counsel and add their proposals, if they so wish, to the joint submissions made by the Parties and Victims' Counsel.<sup>16</sup>

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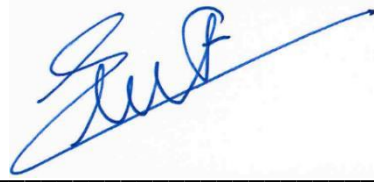
<sup>15</sup> See also KSC-BC-2020-04, F00510, Trial Panel I, *Second order for submissions on the lifting of redactions and/or reclassification of transcripts of trial hearings*, 15 May 2023, public, para. 6; F00476, Trial Panel I, *Order for submissions on the lifting of redactions and/or the reclassification of transcripts of trial hearings*, 4 April 2023, public, para. 5; F00434/RED, Trial Panel I, *Public redacted version of Decision on the Conduct of the Proceedings*, 24 February 2023, public, para. 80.

<sup>16</sup> This applies to the third evidentiary block, as well as future evidentiary blocks.


## VI. DISPOSITION

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

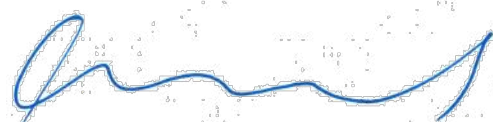
- a) **AUTHORISES** the redactions in accordance with paragraphs 12, 16 and 21 of this decision;
- b) **INSTRUCTS** the Registrar to apply redactions to the relevant trial hearing transcripts, in all languages, as set out in the annex to this decision;
- c) **INSTRUCTS** the Registrar to reclassify as public parts of the trial hearing transcripts, in all languages, subject to the authorised redactions, as set out in the annex to this decision;
- d) **INSTRUCTS** the Registrar to implement, as technically possible, the redactions in the corresponding audio-video material of the relevant trial hearing transcripts, in all languages;
- e) **INSTRUCTS** CMU to liaise with the Panel should any issues arise in the implementation of this decision; and
- f) **DIRECTS** the Registry to add their proposals for (the lifting of) redactions and/or reclassification of transcripts to the joint submissions of the Parties and Victims' Counsel.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Monday, 12 June 2023

At The Hague, the Netherlands.