



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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: 11 July 2023

Language: English

Classification: **Public**

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

with Annex 1 confidential

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 second decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification.

I. PROCEDURAL BACKGROUND

1. From 1 to 3 May 2023, the Panel heard the testimonies of witnesses TW4-10 and TW4-11 (second evidentiary block), who benefit from protective measures *vis-à-vis* the public.¹

2. On 15 May 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.²

3. On 30 May 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).³

4. On 9 June 2023, the Witness Protection and Support Office (WPSO) of the Registry submitted its proposals *via* e-mail (WPSO Proposals).⁴

¹ KSC-BC-2020-04, Transcript of Hearing, 1 May 2023, public, pp. 1021-1135; Transcript of Hearing, 2 May 2023, public, pp. 1136-1236; Transcript of Hearing, 3 May 2023, public, pp. 1237-1348.

² 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.

³ KSC-BC-2020-04, F00526, Specialist Prosecutor, *Prosecution submission of joint proposal pursuant to Order F00510*, 30 May 2023, public, with Annex 1, confidential.

⁴ KSC-BC-2020-04, CRSPD86, *Email from Trial Panel I to CMU Regarding WPSO proposed redactions to transcript of 1-3 May 2023*, 12 June 2023, confidential.

II. SUBMISSIONS

5. The Parties and Victims' Counsel propose to reclassify as public parts of the transcripts of the trial hearings held between 1 and 3 May 2023 in private session, subject to the application of redactions, where necessary, with the aim of protecting the witnesses' identities and confidential information.⁵ Additionally, the Parties and Victims' Counsel submit that a number of redactions previously authorised by the Panel over the course of the trial hearings of 2 and 3 May 2023 can be lifted.⁶ Finally, the Parties and Victims' Counsel propose minor redactions to the transcript of the trial hearing of 3 May 2023 held in open session.⁷

6. WPSO proposes the application of additional redactions to the parts of the transcripts of the trial hearings held in private session on 2 and 3 May 2023 that the Parties and Victims' Counsel seek to reclassify as public.⁸

III. APPLICABLE LAW

7. 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

8. 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

⁵ Annex 1 to Joint Proposal, pp. 2-9.

⁶ Annex 1 to Joint Proposal, pp. 5, 7.

⁷ Annex 1 to Joint Proposal, pp. 7, 9.

⁸ See WPSO Proposals.

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 1 and 3 May 2023 and, where applicable, hereby orders their reclassification, as set out below.

9. The Panel will, first, consider the Parties' and Victims' Counsels' proposals pertaining 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 3 May 2023. Second, the Panel will address the proposals related to the reclassification, as public, of parts of the transcripts of the trial hearings held in private session and the subsequent application of redactions therein. For ease of reference, the Panel will list the proposals that are granted in an annex appended to this decision.

A. TRANSCRIPTS OF THE HEARINGS HELD IN OPEN SESSION

1. Lifting of Existing Redactions

10. The Panel observes that the Parties and Victims' Counsel seek to make public certain information pertaining to the testimony of TW4-11 that was previously redacted by the Panel over the course of the trial hearings held in public session on 2 and 3 May 2023.⁹

11. As regards the Parties and Victims' Counsel proposal to lift an existing redaction in the transcript of the trial hearing of 2 May 2023, the Panel finds it to be 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,

⁹ Annex 1 to Joint Proposal, pp. 5, 7.

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' Counsel's request to make public the information in question.

12. However, the Panel rejects their requests to make public excerpts of the transcript of the trial hearing of 3 May 2023 that were previously redacted by the Panel, as they contain information that could lead to the identification of witnesses.

13. In addition to the Parties' and Victims' Counsels' proposals, the Panel further considers that one additional existing redaction, authorised during the trial hearing of 1 May 2023, can be lifted, in order to give full effect to the principle of publicity.

14. 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 relevant 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 languages.

2. Post-session Redactions

15. The Panel notes that the Parties and Victims' Counsel seek to apply new redactions, on two occasions, in the transcript of the trial hearing of 3 May 2023.¹⁰ In this regard, the Panel recalls that the open session parts of the transcripts, including the corresponding audio-video material, are already available to the

¹⁰ Annex 1 to Joint Proposal, pp. 7, 9.

public and that the application of new redactions amounts to post-session redactions.

16. The Panel 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. Accordingly, the Panel grants the Parties' and Victims' Counsel's request to apply the requested redaction on page 1272, line 6 of the transcript of the trial hearing of 3 May 2023. As regards the sought redaction on page 1263 of the same transcript, the Panel notes that the entire line 22 is already redacted in the public redacted version of the transcript and, thus, no further action is needed.

17. In addition to the submissions contained in the Joint Proposal, the Panel further finds that additional redactions are necessary in the transcript of the trial hearing of 3 May 2023, in order to ensure the protection of witnesses, victims and confidential information.

18. 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 the new redactions in the public redacted version of the transcript, 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 languages.

19. 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. 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

20. 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 1 and 3 May 2023 can be made public, subject to the application of redactions.¹¹ The Parties and Victims' Counsel are mainly concerned with redacting: (i) personal information of the witnesses; (ii) parts of the witnesses' testimonies that could further lead to their identification; and/or (iii) the identity of another protected witness or a person related to or associated with them.

21. Likewise, WPSO is concerned with redacting, in the transcripts of the trial hearings of 2 and 3 May 2023, the identities of protected witnesses and individuals related to or associated with them.

22. Similarly to what has been held in relation to open session transcripts, the Panel finds that the Parties', Victims' Counsels' and WPSO's 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 1 and 3 May 2023, subject to the application of the requested redactions and the Panel's directions, as set out in the annex to this decision. In the same vein, the Panel grants the WPSO's request to apply the sought redactions in the transcripts of the trial hearings of 2 and 3 May 2023.

23. 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 transcripts recording private sessions, in line with the instructions included in the

¹¹ Annex 1 to Joint Proposal, pp. 2-9.

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 languages.

C. AUDIO-VIDEO MATERIAL

24. 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.

25. 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. DISPOSITION

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

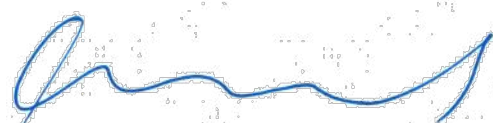
- a) **AUTHORISES** the lifting of existing redactions in the public redacted versions of the transcripts in accordance with paragraph 14, of this decision;
- b) **AUTHORISES** the application of new redactions in the public redacted versions of the transcripts in accordance with paragraph 18 of this decision;
- c) **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 paragraph 23 of this decision;
- d) **INSTRUCTS** the Registrar to apply redactions to the relevant trial hearing transcripts, in all languages, as set out in the annex to this decision;
- e) **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;
- f) **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; and
- g) **INSTRUCTS** CMU to liaise with the Panel should any issues arise in the implementation of this decision.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 11 July 2023

At The Hague, the Netherlands.