



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:** 31 August 2023

**Language:** English

**Classification:** **Public**

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**Third 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 Deputy Specialist Prosecutor**  
Ward Ferdinandusse

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

**Registry**  
Fidelma Donlon

**Victims' Counsel**  
Simon Laws

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

## I. PROCEDURAL BACKGROUND

1. On 15 May 2023, the Panel ordered the Parties and Victims' Counsel to undertake, on a rolling basis, a revision of the transcripts following the completion of each evidentiary block, and to provide submissions, in a consolidated filing, on whether existing redactions could be lifted and/or transcripts reclassified as public, with a view to respecting the principle of publicity while upholding the protective measure for witnesses and victims.<sup>1</sup>

2. From 30 May 2023 to 6 June 2023, the Panel heard the testimony of TW4-01, who benefits from protective measures *vis-à-vis* the public.<sup>2</sup> Moreover, on 16 June, 26-27 June and 3-4 July 2023, the Panel heard the testimonies of expert witnesses Zbyněk Dolejší (W04887), Marek Gasior (W04826) and William Goodwin (W04875).<sup>3</sup>

3. On 12 June 2023, the Panel directed the Registry, most notably the Witness Protection and Support Office (WPSO), to liaise with the Parties and Victims' Counsel and add their proposals for the lifting of redactions and/or reclassification

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<sup>1</sup> 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, paras 5, 8.

<sup>2</sup> KSC-BC-2020-04, Transcript of Hearing, 30 May 2023, confidential, pp. 1365-1479; Transcript of Hearing, 31 May 2023, confidential, pp. 1480-1603; Transcript of Hearing, 2 June 2023, confidential, pp. 1604-1728; Transcript of Hearing, 5 June 2023, confidential, pp. 1729-1857; Transcript of Hearing, 6 June 2023, confidential, pp. 1858-1942.

<sup>3</sup> Transcript of Hearing, 16 June 2023, confidential, pp. 1943-2025; Transcript of Hearing, 26 June 2023, confidential, pp. 2026-2100; Transcript of Hearing, 27 June 2023, confidential, pp. 2101-2142; Transcript of Hearing, 3 July 2023, confidential, pp. 2157-2207; Transcript of Hearing, 4 July 2023, public, pp. 2208-2247.

of transcripts, if they so wish, to the joint submissions made by the Parties and Victims' Counsel.<sup>4</sup>

4. On 3 and 6 July 2023, the Parties, Victims' Counsel and WPSO submitted their joint proposals on the application of new redactions and/or reclassification of transcripts for the trial hearings that took place between 30 May and 16 June 2023 (First Joint Proposal)<sup>5</sup> and between 26 June and 4 July 2023 (Second Joint Proposal).<sup>6</sup>

## II. SUBMISSIONS

5. The Parties, Victims' Counsel and WPSO propose to reclassify as public parts of the transcripts of the trial hearings held in private session on 30-31 May, 2 and 6 June and 3 July 2023, subject to the application of redactions, where necessary, with the aim of protecting the witnesses' identities and related confidential information.<sup>7</sup> Additionally, the Parties, Victims' Counsel and WPSO propose one redaction to the transcript of the trial hearing of 3 July 2023 held in open session.<sup>8</sup> Finally, no proposals are submitted for the trial hearings that took place on 5, 16 and 26-27 June 2023 and on 4 July 2023.<sup>9</sup>

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<sup>4</sup> KSC-BC-2020-04, F00541, Trial Panel I, *Decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification*, 12 June 2023, public, para. 25, with Annex 1, confidential.

<sup>5</sup> KSC-BC-2020-04, F00561, Specialist Prosecutor, *Prosecution submission of joint proposal for the lifting of redactions for the period from 30 May to 6 June 2023*, 3 July 2023, public, with Annex 1, confidential. The Panel notes that, notwithstanding the title of the First Joint Proposal, submissions are made therein by the Parties, Victims' Counsel and WPSO in relation to the hearing of 16 June 2023.

<sup>6</sup> KSC-BC-2020-04, F00568, Specialist Prosecutor, *Prosecution submission of joint proposal for the reclassification of transcripts of testimony for the period from 26 June to 4 July 2023*, 6 July 2023, public, with Annex 1, confidential.

<sup>7</sup> Annex 1 to First Joint Proposal, pp. 2-10; Annex 1 to Second Joint Proposal, pp. 2-3.

<sup>8</sup> Annex 1 to Second Joint Proposal, p. 2.

<sup>9</sup> First Joint Proposal, para. 2; Second Joint Proposal, para. 2.

### III. APPLICABLE LAW

6. 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

7. 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 30 May and 4 July 2023 and, where applicable, hereby orders their reclassification, as set out below.

8. The Panel will, first, consider the Parties', Victims' Counsel's and WPSO's proposals pertaining to the transcripts of the trial hearings held in open session, which are in fact limited to the application of one new redaction to the transcript of the trial hearing of 3 July 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

9. The Panel notes that the Parties, Victims' Counsel and WPSO seek to apply one new redaction in the transcript of the trial hearing of 3 July 2023.<sup>10</sup> 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 public and that the application of new redactions amounts to post-session redactions.

10. The Panel finds this proposal to be consistent with the approach of the Panel in protecting witnesses and victims under Article 23 of the Law and 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 right 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', Victims' Counsel's and WPSO's request to apply the requested redaction to the transcript of the trial hearing of 3 July 2023.

11. In addition to the aforementioned redaction, the Panel finds that additional redactions are necessary in the transcripts of the trial hearings of 27 June and 3 July 2023, in order to ensure the protection of witnesses, victims and confidential information which could lead to their identification.

12. In light of the above, the Panel: (i) authorises the application of post-session 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.

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<sup>10</sup> Annex 1 to Second Joint Proposal, p. 2.

13. 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

14. The Panel notes that the Parties, Victim's Counsel and WPSO agree that certain excerpts of the transcripts of trial hearings held in private session on 30-31 May, 2 and 6 June and 3 July 2023 can be made public, subject to the application of redactions.<sup>11</sup> The Parties, Victims' Counsel and WPSO 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 other protected witnesses or persons related to or associated with them.

15. The Panel finds that the Parties', Victims' Counsel's and WPSO's proposals are justified and strike an appropriate balance between the different rights and interests at stake. Accordingly, the Panel grants the Parties', Victims' Counsel's and WPSO's requests to reclassify as public parts of the transcripts of the trial hearings held on 30-31 May, 2 and 6 June and 3 July 2023, subject to the application of the requested redactions. Nevertheless, the Panel finds it necessary to apply additional redactions in the excerpts of the transcripts that the Parties, Victims' Counsel and WPSO seek to reclassify as public, in order to ensure the protection of witnesses, victims and related confidential information.

16. In light of the above, the Panel authorises the reclassification as public of parts of the transcripts of the aforementioned trial hearings held in private session

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<sup>11</sup> Annex 1 to First Joint Proposal, pp. 2-10; Annex 1 to Second Joint Proposal, pp. 2-3.

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 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

17. The Panel incorporates by reference its previous instructions to the Registry regarding the implementation of redactions to the audio-video material of the relevant trial hearing transcripts.<sup>12</sup>

#### V. DISPOSITION

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

- a) **AUTHORISES** the application of new, post-session redactions in the public redacted versions of the transcripts in accordance with paragraph 12 of this decision;
- b) **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 16 of 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;

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<sup>12</sup> KSC-BC-2020-04, F00579, Trial Panel I, *Second decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification*, 11 July 2023, public, paras 24-25, with Annex 1, confidential.

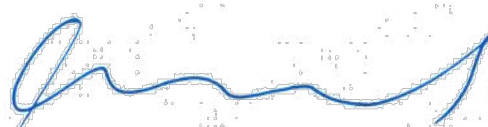
- d) **INSTRUCTS** the Registrar to apply redactions to the relevant trial hearing transcripts, in all languages, as set out in the annex to this decision;
- e) **INSTRUCTS** the Registrar to implement, as technically possible, the redactions in the corresponding audio-video material of the relevant trial hearing transcripts, in all languages; and
- f) **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 Thursday, 31 August 2023

At The Hague, the Netherlands.