

Case No.: KSC-BC-2020-04
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: Dr Fidelma Donlon

Date: 27 October 2023

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Public Redacted Version of Defence Request to Amend the Exhibit List
with Confidential Annex I**

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I. INTRODUCTION

1. Pursuant to Rules 119(2)(b) and 119(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), the Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) hereby requests leave to amend its Exhibit List to include 29 documents, which fall into the following categories:

- i. translations of previously disclosed transcripts (ERN DPS00878-TR-ET and ERN DPS00879-TR-ET);
- ii. C.V. of Defence expert witness, [REDACTED] (ERN DPS01564-DPS01565);
- iii. documents obtained from the [REDACTED] (ERN DPS01572-DPS01575);
- iv. documents relating to W04733 (ERN DPS01576-DPS01580, ERN DPS01579-DPS01580-ET, ERN DPS01581-DPS01584, and ERN DPS01585);
- v. videos and transcripts relating to Milovan Drecun (ERN DPS01588, ERN DPS01588-TR, ERN DPS01588-TR-ET, ERN DPS01589, ERN DPS01599, ERN DPS01600, ERN DPS01601, ERN DPS01602, ERN DPS01603, and ERN DPS01603-ET);
- vi. videos and a partial transcript relating to Imer Imeri (ERN DPS01590, ERN DPS01591, ERN DPS01592, ERN DPS01593, ERN DPS01594, ERN DPS01595, ERN DPS01596, ERN DPS01597, ERN DPS01597-ET and ERN DPS01598);
- vii. a witness statement from the International Criminal Tribunal for the former Yugoslavia (“ICTY”) (ERN IT-04-84 P00376); and

viii. a medical certificate (ERN SITF00016019-00016023).

2. The documents listed above shall be collectively referred to in this request as the "Documents." The Documents are attached to this Request as Annex I, with the exception of the documents which are videos.

II. SUBMISSIONS

3. Rule 119(5) of the Rules states that the Trial Panel "may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to paragraph (2)". The Defence will address why its request to amend the Exhibit List is timely and with good cause below.

Translations of previously disclosed transcripts

4. ERN DPS00878-TR-ET and ERN DPS00879-TR-ET are English translations of the transcripts of videos ERN DPS00878 and ERN DPS00879, which are included in the Exhibit List. ERN DPS00878-TR-ET and ERN DPS00879-TR-ET were disclosed in Disclosure Package 155 on 15 September 2023.
5. The Defence submits that good cause exists to amend the Exhibit List to include the translations of the video transcripts, as it is in the interests of completeness and practicality to have English transcripts of the videos available for the parties. The request is also timely as the Defence has only recently received the translations from the Court Management Unit of the Registry on 14 September 2023.

C.V. of Defence expert witness [REDACTED]

6. ERN DPS01564-DPS01565 is the C.V. of Defence economic expert witness, [REDACTED], which was disclosed in Disclosure Package 162 on 22 September 2023.

7. There is good cause to amend the Exhibit List to add this document, as it was ordered by the Panel on 20 September 2023.¹ The request is also timely. On 20 September 2023, the Panel ordered the Defence to provide [REDACTED]'s C.V. by 22 September 2023.² On 22 September 2023, the Defence disclosed the document in Disclosure Package 162. On 22 September 2023, the Defence informed the Panel and the parties in its Defence Notice Regarding Expert Witness in the Calculation of Income Loss that it had disclosed ERN DPS01564-DPS01565.³ The Defence now moves to amend the Exhibit List to include this document.

Documents obtained from the [REDACTED]

8. ERN DPS01572-DPS01575 are the business history records of central Prosecution witness TW4-01 recorded by [REDACTED]. ERN DPS01572-DPS01575 contains the business records of TW4-01's [REDACTED], including its address, activities and registration date. This document was disclosed on 24 October 2023 in Disclosure Package 175.
9. The Defence submits that there is good cause to add this document to the Exhibit List as it relates to the [REDACTED] allegedly sustained by TW4-01 in the report prepared by [REDACTED].⁴ ERN DPS01572-DPS01575 is thus relevant for the assessment of the report and the [REDACTED] in this case.
10. The Defence further submits that the request to amend the Exhibit List to add this document is timely. The document was disclosed on 24 October 2023, having recently been identified as relevant to the [REDACTED] in this case,

¹ T. 20 September 2023, pp. 2459, 2460.

² T. 20 September 2023, pp. 2459, 2460.

³ KSC-BC-2020-04, [REDACTED], para. 3. All further references to filings in this Request concern Case No. KSC-BC-2020-04 unless otherwise indicated.

⁴ [REDACTED].

and to be included in the Defence's Second Request for the Admission of Non-Oral Evidence, which will be filed on 27 October 2023.

Documents relating to W04733

13. ERN DPS01576-DPS01580 (the English translation is ERN DPS01579-DPS01580-ET), ERN DPS01581-DPS01584 and ERN DPS01585 are documents related to a Defence request to obtain records and documents concerning the alleged [REDACTED] of W04733 on [REDACTED] from [REDACTED] and his alleged release from the KLA camps in Kukës, Albania on [REDACTED].⁵ ERN DPS01576-DPS01580, which includes documents from the [REDACTED], provides that from the checks carried out by the [REDACTED], there are no registered notifications of criminal offences, criminal complaints, or prosecution on behalf of W04733. ERN DPS01581-DPS01584, which is filing F00368/SCONF/RED/A03, is a request by the Panel pursuant to Articles 40(1) and (6) and 55(1) and (2) of the KSC Law and Rule 208(1) and (2) of the Rules for assistance and cooperation from [REDACTED] to obtain information and documents from the [REDACTED] regarding the alleged [REDACTED] and release of W04733. ERN DPS01585 is the [REDACTED] response to the [REDACTED] regarding the request for assistance and cooperation, which provides that no documents responsive to the request were found in the records held by [REDACTED].
14. The Defence submits that there is good cause to amend the Exhibit List to add these documents as they are relevant to the case. The information contained in ERN DPS01576-DPS01580 and ERN DPS01585 contradicts the evidence provided by W04733⁶ and TW4-08, who stated that the alleged incidents were

⁵ [REDACTED], paras. 1, 2, 13, 21. *See also* ERN DPS01581-DPS01584, pp. 2, 3.

⁶ ERN U003-2283-U003-2289 RED, p. 4; ERN 106978-107020, p. 14.

reported to the [REDACTED] and [REDACTED].⁷ ERN DPS01576-DPS01580 and ERN DPS01585 are thus relevant to the assessment of TW4-08's testimony and W04733's evidence and have probative value in relation to their credibility.

11. The Defence further submits that the request is timely. The documents were disclosed on 24 October 2023, having recently been identified as documents to be included in the Defence's Second Request for the Admission of Non-Oral Evidence, which will be filed on 27 October 2023.

Videos and transcripts relating to Milovan Drecun

12. ERN DPS01599, ERN DPS01600, ERN DPS01601, ERN DPS01602 and ERN DPS01603 (ERN DPS01603-ET is the English translation) are the videos and a partial transcript of a TV interview with the journalist Milovan Drecun on 28 September 2020. These documents were disclosed on 26 October 2023 in Disclosure Package 177.
13. The Defence submits that there is good cause to admit these documents as they are relevant to the case. This interview was mentioned by Defence witness, DW4-06, during his live testimony on 20 September 2023.⁸ Specifically, DW4-06 testified that Milovan Drecun stated that: i) he had contacts with the Specialist Prosecutor's Office ("SPO"); ii) the Prosecution did not know what to do and did not have a lead; iii) he instructed the Prosecution how to investigate and assisted it with how it could legally qualify the Kosovo Liberation Army ("KLA") as a joint criminal enterprise; and iv) the detention centres are a product of the Serbian propaganda.⁹ In the videos, Milovan Drecun stated that Serbians participated in establishing evidence against the

⁷ T. 27 March 2023 p. 668; [REDACTED], paras. 15(g), 16; ERN SITF00374396-00374411 RED2, p. 6 (TW4-08 stated that the day after the [REDACTED] incident, he made a report to [REDACTED] regarding the incident).

⁸ T. 20 September 2023 p. 2567.

⁹ T. 20 September 2023 p. 2567.

KLA, that he spoke with the SPO which asked him for evidence on the organization of the KLA, that he provided the SPO with the analysis by a “working group” on how “the terrorist KLA” was formed and its complete command structure, and that he received a special thank you from Mr Schwendiman from the SPO as he had helped them a lot. The content of the interview confirms TW4-06’s testimony that Milovan Drecun stated that Serbians participated in the mounting of evidence against the KLA.¹⁰ The videos and transcripts are relevant to the Defence’s argument that Serbians were involved in the fabrication of evidence against the KLA.

14. ERN DPS01588, ERN DPS01588-TR, ERN DPS01588-TR-ET and ERN DPS01589 are the videos and transcript of Milovan Drecun speaking before the National Assembly of Serbia on 26 October 2022. These documents were disclosed on 24 October 2023 in Disclosure Package 175.
15. The Defence submits that there is good cause to add these documents to the Exhibit List as they are relevant to this case. The videos corroborate the testimony of DW4-06, that Milovan Drecun assisted the SPO in its investigations, instructed the SPO with how it should conduct its investigations and provided the SPO all of his relevant files. These documents are thus relevant to the Defence’s argument that Serbians were involved in the fabrication of evidence against the KLA, which was then used by the Prosecution.
16. The Defence further submits that the request is timely. The documents were recently disclosed, having been identified as documents to be included in the Defence’s Second Request for the Admission of Non-Oral Evidence, which will be filed on 27 October 2023.

¹⁰ T. 20 September 2023 p. 2567.

Videos and a partial transcript relating to Imer Imeri

17. ERN DPS01590, ERN DPS01591, ERN DPS01592, ERN DPS01593, ERN DPS01594, ERN DPS01595, ERN DPS01596, ERN DPS01597, ERN DPS01597-ET and ERN DPS01598 are the videos and partial transcript of the interview with Imer Imeri on the TV show “Debat Plus” on 10 April 2023. These documents were disclosed on 24 October 2023 in Disclosure Package 175.
18. The Defence submits that there is good cause to amend the Exhibit List to add these documents as they are relevant to the case. Specifically, the videos show that the mistreatment of Imer Imeri by Sabit Geci in 1999 is public information and that he was never detained in Kukës. Importantly, during the interview, Imer Imeri states that he did not see the Accused and thus cannot speak about him. In their testimony, TW4-06, TW4-07, TW4-08, and TW4-09 stated that [REDACTED], W04733, was detained with Imer Imeri, who was in fact not detained in Kukës.¹¹ This contradicts the testimonies of TW4-06, TW4-07, TW4-08 and TW4-09 and thus challenges their credibility.¹²
19. The Defence further submits that the request to amend the Exhibit List to add these documents is timely. The documents were disclosed on 24 October 2023, having recently been identified as documents to be included in the Defence’s Second Request for the Admission of Non-Oral Evidence, which will be filed on 27 October 2023.

Witness statement from the ICTY

20. ERN IT-04-84 P00376 is an ICTY witness statement of [REDACTED], a [REDACTED], dated [REDACTED].

¹¹ T. 27 March 2023 p. 671; T. 28 March 2023 p. 824; T. 29 March 2023 p. 909; T. 30 March 2023 p. 982.

¹² T. 27 March 2023, p. 671; T. 28 March 2023, p. 824; T. 29 March 2023, p. 909; and T. 30 March 2023, p. 982.

21. The Defence submits that there is good cause to add this document to the Exhibit List as it is relevant. In the statement, [REDACTED] stated that he interviewed Witness 6 on [REDACTED] and showed him a photo from a photo board containing eight photos of different people. The person in the photo is listed as the Accused, but the person is not actually the Accused. Witness 6 recognised the person in the photo as Pjeter Ujku, “The Wolf”, from the village of Vagov but could not recall his last name. This document is relevant to the Defence’s argument that at the time of the war, there were many people called Ujku. This document shows that there was another person with the same first name as the Accused and whose nickname was Ujku, “The Wolf”.
22. The Defence further submits that the request to amend the Exhibit List to add this document is timely. The document was recently identified as a document to be included in the Defence’s Second Request for the Admission of Non-Oral Evidence, which will be filed on 27 October 2023.

Medical certificate

23. ERN SITF00016019-00016023 is a certificate from the [REDACTED].
24. The Defence submits that good cause exists to amend the Exhibit List to add this document as it is relevant to the case. Specifically, the certificate shows that Sabit Geci was hospitalised between [REDACTED] to [REDACTED], which contradicts TW4-01’s testimony that Sabit Geci was present in Kukës at the shooting of [REDACTED].¹³ It is relevant to the assessment of TW4-01’s testimony and has probative value in relation to his credibility.
25. The Defence further submits that the request to amend the Exhibit List to add this document is timely. The document was recently identified as a document

¹³ T. 31 May 2023, p. 1534.

to be included in the Defence's Second Request for the Admission of Non-Oral Evidence, which will be filed on 27 October 2023.

III. CLASSIFICATION

26. Pursuant to Rules 82(3) and 82(4) of the Rules, the Request and Annex I are filed as confidential as both documents contain confidential information. The Defence will submit a public redacted version of the Request in due course.

IV. RELIEF REQUESTED

27. The Defence respectfully requests the Panel to grant its request to amend the Exhibit List to add the Documents.

Word count: 2410

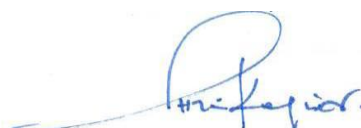
Respectfully submitted,



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Friday, 27 October 2023

The Hague, the Netherlands