



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 5 October 2023

Language: English

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Public redacted version of

**Decision on the Defence request under Rule 121(3) of the Rules
to summons witnesses W04405, W04441, W04280 and W04440**

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Ward Ferdinandusse

Counsel for the Accused
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Registry
Registrar
Head of the Witness Protection and
Support Office

Victims' Counsel
Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the Defence request under Rule 121(3) of the Rules to summons witnesses W04405, W04441, W04280 and W04440.

I. PROCEDURAL BACKGROUND

1. On 30 August 2023, the Defence for Pjetër Shala (Defence and Accused, respectively) filed its (updated) list of witnesses, presenting witnesses W04405, W04441, W04280 and W04440 as witnesses for the Defence.¹
2. On 11 September 2023, the Defence requested the Panel to summons witnesses W04405, W04441, W04280 and W04440 to testify live before the Panel (Request).²
3. On 13 September 2023, the Panel ordered the Specialist Prosecutor's Office (SPO) to provide, on an *ex parte* basis, the contact details and addresses of W04405, W04441, W04280 and W04440, by 19 September 2023, for the purpose of facilitating any summonses, should the Panel decide to grant the Request.³
4. On 19 September 2023, the SPO provided the contact details and addresses as ordered.⁴

¹ KSC-BC-2020-04, F00629, Defence, *Defence Submission of Revised Confidential Annex I to the Updated List of Witnesses and Revised Witness Summaries*, 30 August 2023, public, with Annex I, confidential, containing the updated list of witnesses.

² KSC-BC-2020-04, F00646, Defence, *Defence Request Under Rule 121(3) to Summons Witnesses W04405, W04441, W04280, and W04440*, 11 September 2023, confidential.

³ KSC-BC-2020-04, F00650, Trial Panel I, *Order for additional information and shortening time limits*, 13 September 2023, confidential, para. 9. See further Transcript of Hearing, 24 August 2023, public, p. 2406, line 15 to p. 2414, line 25, whereby the Defence explained that it could not obtain the contact details and addresses of the abovementioned witnesses, but that the SPO was in possession of them. The SPO confirmed that it could share this information with the Panel on an *ex parte* basis.

⁴ KSC-BC-2020-04, F00662, Specialist Prosecutor, *Prosecution notification pursuant to F00650* (SPO Notification of Contact Details), 19 September 2023, confidential, with Annex 1, strictly confidential and *ex parte*.

5. The SPO and Victims' Counsel did not respond to the Request.
6. On 29 September 2023, the Panel issued the "Decision on the Defence request under Rule 121(3) of the Rules to summons witness [REDACTED]" (First Rule 121(3) Decision), where the Panel set out the legal test applicable when assessing requests to summons witnesses.⁵

II. SUBMISSIONS

7. The Defence requests the Panel to summons witnesses W04405, W04441, W04280 and W04440 to testify live.⁶
8. The Defence submits that the anticipated testimonies of all four witnesses are relevant as: (i) W04405 can provide evidence regarding [REDACTED], the credibility of SPO witness TW4-01, and the alleged crime site;⁷ (ii) W04440 and W04441 are expected to provide evidence on the credibility of SPO witness W04733, the fact that they were not aware of any KLA detention centres, and [REDACTED];⁸ and (iii) W04280 is expected to provide information, among others, on [REDACTED], the functioning and layout of the Kukës Metal Factory, the fact that he did not witness any mistreatment there, and on the credibility of TW4-01.⁹
9. The Defence submits that summonses are necessary to obtain the testimonies of all four witnesses as they either refused any contact with the Defence or, having been contacted, they declined to testify. The Defence has exhausted all avenues to obtain the voluntary cooperation of the witnesses and secure their attendance.¹⁰

⁵ KSC-BC-2020-04, F00674, Trial Panel I, *Decision on the Defence request under Rule 121(3) of the Rules to summons witness [REDACTED]*, 29 September 2023, confidential, paras 10-15.

⁶ Request, paras 1, 8, 29.

⁷ Request, paras 12-13.

⁸ Request, paras 16-17, 25-26.

⁹ Request, paras 20-22.

¹⁰ Request, paras 14, 18, 23, 27.

III. APPLICABLE LAW

10. The Panel notes Articles 21(4)(d) and (f), 23(3), 40(2) and (6)(c), and 42 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 27, 48(2), 49, 121 and 122 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

IV. ANALYSIS

A. LEGAL TEST

11. The Panel recalls and incorporates by reference the legal test set out in its First Rule 121(3) Decision, where the Panel held that any request to summons a witness must satisfy the following requirements:

- (i) it must be specific in identifying the witness and the address where they may be found for the purpose of serving them with the summons;
- (ii) the expected testimony of the witness must be relevant to the case and the crimes charged; and
- (iii) a summons must be necessary, as a compulsory measure, to obtain the witness's testimony.¹¹

B. DETERMINATION

12. The Panel finds, for the reasons that follow, that the Request satisfies the legal test for the issuance of summonses for all four aforementioned witnesses.

¹¹ First Rule 121(3) Decision, paras 10-15.

13. First, the Panel is satisfied that the witnesses have been clearly identified¹² and that the addresses provided by the SPO for the purpose of serving the witnesses with the summonses appear to be sufficiently precise and up-to-date.¹³

14. Second, the Panel further finds that the expected testimonies of W04405, W04441, W04280 and W04440 are relevant to the case, as the witnesses are expected to provide information that goes to the credibility of SPO witnesses W04733 and TW4-01. They are also expected to testify about their knowledge (or lack thereof) of cases of detention and/or mistreatment of detainees at the Kukës Metal Factory, and/or the layout of the Kukës Metal Factory [REDACTED].¹⁴

15. Third, the Panel is satisfied that the Defence has made reasonable and repeated attempts to obtain the voluntary co-operation of the witnesses and has been unsuccessful.¹⁵ Some of the witnesses (W04405 and W04280) have explicitly refused contact with the Defence.¹⁶ Summonses are therefore necessary to obtain their testimonies.

16. In light of the above, the Panel grants the Request and decides to summons W04405, W04441, W04280 and W04440. The summonses are attached as annexes to the present decision.

17. The Panel finds it appropriate, as requested by the Defence,¹⁷ to hear the testimonies of all four witnesses in person at the seat of the Specialist Chambers in The Hague. Accordingly, the Panel orders the Registry to make the necessary

¹² Request, paras 11, 15, 19, 24; *see also* KSC-BC-2020-04, F00629/A01, Defence, *Annex I to Defence Submission of Revised Confidential Annex I to the Updated List of Witnesses and Revised Witness Summaries*, 30 August 2023, confidential, p. 3.

¹³ Annex 1 to SPO Notification of Contact Details, p. 2.

¹⁴ *See* Request, paras 12-13, 16-17, 20-22, 25-26; KSC-BC-2020-04, F00628/A02, Defence, *Annex II to Defence Updated List of Witnesses and Revised Witness Summaries*, 29 August 2023, confidential, pp. 14-18.

¹⁵ *See* Request, paras 14, 18, 23, 27.

¹⁶ *See* Request, paras 14, 23.

¹⁷ *See* Request, para. 1.

arrangements for W04405, W04441, W04280 and W04440 to testify live before the Panel at the seat of the Specialist Chambers.

18. The Panel further directs the Registry to:

- (i) serve the summonses on W04405, W04441, W04280 and W04440 at the addresses indicated in their respective summonses; the Registry shall not leave the summonses at the said addresses if the witnesses are not present;
- (ii) verify the witnesses' identities upon serving the summonses;
- (iii) inform the witnesses that, pursuant to Article 42(7) and (8) of the Law and Rule 122 of the Rules, if they fail to appear without justification or if they leave the place where they should be examined without permission or a valid reason, they may be compelled to appear and may be fined up to two hundred and fifty (250) EUR for each time they fail to appear; if they appear but refuse to give testimony without legal justification, they may be again fined up to two hundred fifty (250) EUR; if having been fined they refuse to testify, they may then be imprisoned for up to one (1) month;
- (iv) inform the witnesses that failure to comply with the summonses may constitute an offence by virtue of Article 15(2) of the Law;
- (v) provide each witness with a copy of the Law and the Rules, in Albanian;
- (vi) verify with the witnesses their availability to testify, from the seat of the Specialist Chambers in The Hague, on the dates specified in the summonses, and inform the witnesses, after consultation with the Panel, of the exact dates on which they are expected to appear to testify;
- (vii) make representations to the Panel on appropriate protective measures for the witnesses, if necessary; and

(viii) keep the Panel informed on an ongoing basis and report back to the Panel as soon as possible and no later than 10 days following notification of the present decision.

19. The Registry is authorised to disclose the existence of the attached summonses for the purposes of their execution and to the extent necessary.

20. Lastly, while the Panel wishes to hear the witnesses live, failing that, it will consider the merits of the “Defence Request to Admit the Evidence of W04405, W04441, W04280 and W04440 Pursuant to Rule 153 of the Rules”,¹⁸ which remains pending before the Panel. The Panel will take a decision on said request at the appropriate time.

V. DISPOSITION

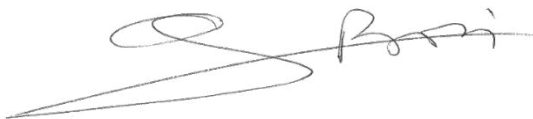
21. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** the Request;
- b. **DECIDES** to summons witnesses W04405, W04441, W04280 and W04440; and
- c. **ORDERS** the Registry to comply with the Panel’s directions in paragraphs 17 to 19 of the present decision.

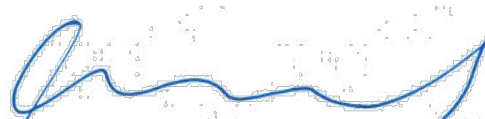
¹⁸ KSC-BC-2020-04, F00644, Defence, *Defence Request to Admit the Evidence of W04405, W04441, W04280 and W04440 Pursuant to Rule 153 of the Rules*, 11 September 2023, confidential.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 5 October 2023

At The Hague, the Netherlands.