

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: 30 November 2023

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Public Redacted Version of Defence Submissions Regarding the Confidentiality
of the Identity of the Defence Expert on Reparations**

Specialist Prosecutor's Office:

Kimberly P. West

Specialist Defence Counsel

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

Counsel for Victims

Simon Laws KC

Maria Radziejowska

I. INTRODUCTION

1. Pursuant to the Oral Order of the Trial Panel on 29 November 2023,¹ the Defence hereby presents its submissions on the need to ensure the confidentiality and protection of the Defence expert on reparations, [REDACTED], and requests the Panel to reclassify Victims' Counsel's Questions for [REDACTED] as confidential pursuant to Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules").
2. The Defence further requests that the Panel grant [REDACTED] protective measures pursuant to Rule 80 of the Rules, namely, the redaction of [REDACTED] identity from public court records.

II. PROCEDURAL BACKGROUND

3. On 13 November 2023, the Defence filed the [REDACTED] Report, and requested to call [REDACTED] as a witness.² The original filing was classified as confidential, and Defence redacted [REDACTED]'s name from the public redacted version of the document.³
4. On 27 November 2023, Victims' Counsel filed its Questions for [REDACTED] with Confidential Annex I ("Victims' Counsel's Questions"), with public classification.⁴ [REDACTED] is named in this filing in its title and on seven other distinct occasions.⁵

¹ T. 29 November 2023, p. 3874, lines 3, 22.

² KSC-BC-2020-04, F00716, Defence Submission of an Expert Report for the Purposes of the Reparations Proceedings with Confidential Annex 1, 13 November 2023 (confidential). All further references to filings in these submissions concern Case No. KSC-BC-2020-04 unless otherwise indicated.

³ T. 29 November 2023, p. 3872, line 10 – p. 3875, line 4.

⁴ F00728, Victims' Counsel's Questions for Defence Expert with Confidential Annex I, 27 November 2023 ("Victims' Counsel's Questions").

⁵ Victims' Counsel's Questions, paras. 1, 4, 6-8.

5. On 29 November 2023, the Panel raised this issue *proprio motu* and directed the Defence to file brief submissions regarding the reasons for the redaction of [REDACTED]'s name.⁶

III. APPLICABLE LAW

6. Rule 80 of the Rules allows the Panel, on request by a Party, order appropriate measures for the protection, safety, physical and psychological well-being, dignity, and privacy of witnesses participating in the proceedings, provided that the measures are consistent with the rights of the Accused.
7. Rule 82(4) of the Rules mandates that any response, reply, or other filing related to an original filing *shall* bear the same classification, unless otherwise ordered by the Panel.⁷
8. Rules 82(5) of the Rules allows for the Panel to reclassify a filing upon request.

IV. SUBMISSIONS

9. First, the Defence submits that the Victims' Counsel's filing of the Victims' Counsel's Questions as public, when the original filing it related to was confidential, in the absence of an order from the Panel, is a *prima facie* breach of Rules 82(4) of the Rules, which, on its own, justifies reclassification.
10. Next, the Defence strongly disputes the Victims' Counsel's suggestion that it is Prosecution witnesses alone who are subject to threats or difficulties in attending these proceedings.⁸ The idea that witnesses called by the Defence enjoy some special privilege, which protects them from harassment or intimidation, is a dramatically false image of the reality in [REDACTED].

⁶ F00716RED, Defence Submission of an Expert Report for the Purposes of the Reparations Proceedings with Confidential Annex 1, 13 November 2023.

⁷ Emphasis added.

⁸ T. 29 November 2023, p. 3873, lines 16-23.

Indeed, over the past week, the Specialist Prosecutor dedicated a meaningful part of its cross-examination to the possibility that a witness *called by the Defence* was afraid to testify, going so far as to assure the witness that “no harm [would] come to [him]” for his testimony.⁹

11. The Defence notes that, to ensure attendance of its witnesses during these proceedings, it has been required to request witness summons on multiple occasions, in comparison to the Prosecution, which has enjoyed cooperative witnesses in terms of their attendance. The Defence also notes the difficulties it has faced due to the fear of reprisals for even *speaking* with the Defence, articulated by certain potential witnesses during the preparation of the Defence case. Further, the Defence notes that it has lost witnesses under dubious circumstances: for example, a mere two days after a then-cooperative witness indicated his willingness to appear in these proceedings, he broke all contact with the Defence under seemingly suspicious circumstances. The Defence thus submits that it is manifestly incorrect, as well as unfair to *all* witnesses, for Victims’ Counsel to suggest that a witness’ vulnerability is dependent on the Party which calls them.
12. [REDACTED] has, in fact, articulated concerns regarding being publicly named in this trial. Though, to date, [REDACTED] has not been subject to threats and does not have immediate concerns of reprisals, [REDACTED] has stated that it is safer for [REDACTED] to remain anonymous, given that other witnesses have been threatened or intimidated, how [REDACTED] is, and that it would

⁹ T. 29 November 2023, p. 3846, line 19. See further T. 28 November 2023, p. 3813 line 23 – p. 3815, line 15.

take very little effort for aggrieved individuals to determine, for example, where [REDACTED] works and lives.¹⁰

13. Insofar as victims are entitled to information,¹¹ the Defence submits that such information is limited to that which allows them to make informed decisions regarding their participation in proceedings, and *not* the identity of any particular witness. Indeed, victims are not entitled to information “where disclosure of that information could affect the proper handling of a case or harm a given case or person”,¹² and though Victims’ Counsel has the right to access confidential information, they are obliged to keep their clients informed “in a manner which does not reveal confidential information”.¹³ As noted above, [REDACTED] holds concerns regarding [REDACTED] safety should [REDACTED] identity be revealed to the public, and as such, the Defence respectfully submits it is appropriate to redact [REDACTED] identity from the public record.

V. CLASSIFICATION

14. Pursuant to Rule 82(3) and 82(4) of the Rules, these submissions are filed as confidential as they relate to filings that at the current stage remain confidential. The Defence will file a public redacted version of the submissions in due course.

VI. RELIEF REQUESTED

¹⁰ [REDACTED] provided [REDACTED] views during a phone call with Ms Dženeta Petraviča, Case Manager for the Defence Team for Mr Shala, on 29 November 2023.

¹¹ As articulated, for example, in Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (“Directive 2012/29/EU”), para. 26.

¹² Directive 2012/29/EU, para. 28.

¹³ Rule 114(3) of the Rules.

15. The Defence respectfully requests the Panel reclassify Victims' Counsel's Questions as confidential pursuant to Rule 82(5) of the Rules, and further, to grant [REDACTED] protective measures pursuant to Rule 80 of the Rules.

Word count: 1115

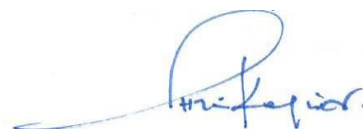
Respectfully submitted,



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Thursday, 30 November 2023

The Hague, the Netherlands