

**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:** 6 December 2023

**Filing Party:** Specialist Defence Counsel

**Original Language:** English

**Classification:** Public

**THE SPECIALIST PROSECUTOR**

**v.**

**PJETËR SHALA**

---

**Public Redacted Version of Defence Memorandum Regarding the Handling of  
Confidential Information with Confidential Annex 1**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws KC

Maria Radziejowska

**Specialist Defence Counsel**

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

## I. INTRODUCTION

1. Pursuant to the instructions of the Trial Panel,<sup>1</sup> the Defence for Mr Pjetër Shala (“Defence”) hereby files this memorandum regarding its treatment of confidential information when engaging with its expert on the assessment of damages.

## II. PROCEDURAL HISTORY

2. On 30 November 2023, the Panel instructed the Defence to submit a memorandum by 6 December 2023, on the following matters: [REDACTED].<sup>2</sup>

## III. APPLICABLE LAW

3. Pursuant to the Panel’s Decision on the Framework for the Handling of Confidential Information, the following directions are relevant to the current memorandum:
  - a. The general obligation not to disclose any confidential documents or information;
  - b. The undertaking to minimise the risk of exposing confidential documents or information to the greatest extent possible;
  - c. The obligation to only reveal confidential documents/information to a third party where such disclosure is directly and specifically necessary for the preparation and presentation of their case, and to reveal only those portions of a confidential document which is directly and specifically necessary; and
  - d. The duty to explain to the third party the confidential nature of the document/information and warn the third party that the document or

---

<sup>1</sup> Email from the Court Management Unit of the Registry, 30 November 2023, at 12:03 pm.

<sup>2</sup> Email from the Court Management Unit of the Registry, 30 November 2023, at 12:03 pm.

information shall not be reproduced or disclosed to anyone else in whole or in part, and to specifically seek authorisation from the Panel to allow the third party to retain a copy of any confidential documents shown to them.<sup>3</sup>

#### IV. SUBMISSIONS

4. The Defence submits that in accordance with the Panel's instructions it undertook all possible steps to minimise the risk of exposing confidential information to the greatest extent possible. Confidential information was only revealed to the expert instructed by the Defence to the extent that it was directly and specifically necessary for the preparation and presentation of [REDACTED] report.
5. The Defence duly explained the confidential nature and importance of maintaining the confidentiality of the confidential information revealed to [REDACTED] and the fact that such information should not be reproduced or disclosed to anyone else in whole or in part. The Defence also informed [REDACTED] that [REDACTED] must not retain a copy of any confidential document shown to [REDACTED]. The Defence [REDACTED] there is no need for [REDACTED] to retain any copy of confidential information or document shown to [REDACTED] for the purposes of preparing [REDACTED] report.
6. On 14 September 2023, the Defence emailed [REDACTED] a confidentiality undertaking.<sup>4</sup> This confidentiality undertaking sets out in detail the requirement to protect confidential information. It provides as follows:

---

<sup>3</sup> KSC-BC-2020-04, F00537, A01, Annex 1 to Decision on the Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant, June 8 2023, Section I, paras a, b, c, d.

<sup>4</sup> Email from the Defence to [REDACTED], 14 September 2023, at 4:29 pm.

“[REDACTED], mandated by the Specialist counsel for the performance of economic analysis, advice and expertise under the agreement and terms of reference agreed with Specialist Counsel Jean-Louis Gillissen Acting as Specialist Counsel to Mr Pjeter Shala.

I, [REDACTED], solemnly declare that I will respect professional secrecy and confidentiality. I will ensure that anybody engaged in the performance of tasks related to this mandate also respect professional secrecy and confidentiality.

I understand that when Counsel has revealed to me protected information pursuant to Article 12(1) and (2) of the Code of Professional Conduct (“Code”), it shall be solely to enable the performance of my duties, in accordance with Article 12(4).

I hereby agree that I will take all necessary care to protect the confidentiality of information in accordance with the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), the Rules of Procedure and Evidence (“Rules”); the Directive on Counsel (“directive”), the Code, any other applicable provisions as well as any decision or order of a Panel.

I will not reveal any information classified as confidential or strictly confidential pursuant to Rule 82 of the Rules, including the identity of protected victims and witnesses or any confidential information that may reveal their identity and whereabouts.

When communicating with the Counsel or authorised members of the Defence team for Mr Shala, I will take all reasonable steps to ensure the confidentiality of such communication.

At the end of my service, I shall return to Counsel all confidential and strictly confidential documents.

I have read and fully understand this Confidentiality Undertaking, the Directive on Counsel and the Code of Professional Conduct and I am fully aware of the confidentiality provisions, including the consequences for breach of confidentiality.”

7. The next day, on 15 September 2023,<sup>5</sup> [REDACTED] returned the signed confidentiality undertaking to the Defence via email. The undertaking is attached to the present memorandum as Annex 1. On the same day, the Defence emailed [REDACTED] the report of Dr Lerz.<sup>6</sup> The file was password protected and the password was provided with [REDACTED].
8. On 15 September 2023, via email, [REDACTED] requested additional information regarding victim V01/04 and victims V02/04 and V08/04.<sup>7</sup>
9. On 22 September 2023, the Defence shared password protected files with [REDACTED] via email which contained the relevant information on victim V01/04 and on victims V02/04 to V02/08 as requested by [REDACTED].<sup>8</sup> While the identity of the persons in question were redacted from the documents shared, the Defence reminded [REDACTED] that the documents attached to the email contained confidential information on witnesses and their family members [REDACTED]. Pursuant to the confidentiality undertaking, the Defence reminded [REDACTED] that [REDACTED] must ensure that the information remains confidential and that a breach of this confidentiality may result in contempt proceedings before the KSC. Passwords of the files were shared with [REDACTED].
10. On 28 September 2023, the Defence shared with [REDACTED] via email a redacted version of [REDACTED].<sup>9</sup> The file was password protected and the password was provided to [REDACTED] via Whatsapp on the same day.

---

<sup>5</sup> Email from [REDACTED] to the Defence, 15 September 2023, at 8:01 am.

<sup>6</sup> Email from the Defence to [REDACTED], 15 September 2023, at 9:56 am; ERN DPS01621-DPS01723, pp. DPS01691-DPS01721.

<sup>7</sup> Email from [REDACTED] to the Defence, 15 September 2023, at 2:29 pm.

<sup>8</sup> Email from the Defence to [REDACTED], 22 September 2023, at 12:18 pm; ERN DPS01621-DPS01723, pp. DPS01678-DPS01690.

<sup>9</sup> Email from the Defence to [REDACTED], 28 September 2023, at 4:10 pm; ERN DPS01572-DPS01575 (see Expert report of [REDACTED], ERN DPS01621-DPS001723, pp. DPS01722-DPS01723).

11. As noted above, the information was shared with [REDACTED] through encrypted electronic correspondence [REDACTED].<sup>10</sup>

V. CLASSIFICATION

12. Pursuant to Rule 82(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, this memorandum is filed as confidential as it contains confidential information. The Defence will file a public redacted version of the memorandum in due course.


**Word count: 1328**

Respectfully submitted,



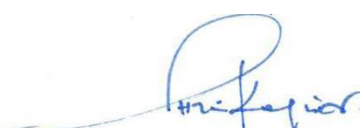
---

**Jean-Louis Gilissen**  
**Specialist Defence Counsel**



---

**Hédi Aouini**  
**Defence Co-Counsel**



---

**Leto Cariolou**  
**Defence Co-Counsel**

Wednesday, 6 December 2023

---

<sup>10</sup> The Defence notes that one of the emails indicated that the information would be shared via Signal, however, the Case Manager for the Defence Team has clarified this was an error in drafting the email.

The Hague, the Netherlands