



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2023-12  
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,  
Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi

**Before:** Single Trial Judge  
Judge Christopher Gosnell

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 3 December 2025

**Language:** English

**Classification:** Public

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**Prosecution motion for judicial notice of an adjudicated fact**

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## I. INTRODUCTION

1. As foreshadowed in Filing F00559,<sup>1</sup> and pursuant to Rule 157(2) of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby requests that the Single Trial Judge ('STJ') take judicial notice of one fact that has been adjudicated in other Kosovo Specialist Chambers ('KSC') proceedings (the 'Adjudicated Fact').

2. Taking judicial notice of the Adjudicated Fact will promote judicial economy, it is in the interests of justice, and this request ultimately respects the rights of the Accused to a fair, public, and expeditious trial. Further, the Adjudicated Fact fulfils the requirements for taking judicial notice under Rule 157(2).

## II. SUBMISSIONS

3. Rule 157(2) provides the STJ with the discretion to take judicial notice of adjudicated facts from other KSC proceedings, either *proprio motu* or upon request.<sup>3</sup> This procedure aims at achieving judicial economy by avoiding the presentation of evidence in relation to facts that have been previously established on the basis of the evidence presented.<sup>4</sup> Taking judicial notice of adjudicated facts establishes a rebuttable presumption of their accuracy.<sup>5</sup>

4. For the STJ to take judicial notice of an adjudicated fact, the proposed fact: (i) must relate to a matter at issue in the current proceedings; (ii) cannot relate to the acts and conduct of the accused as charged in the indictment; (iii) must be distinct, concrete, and identifiable; (iv) cannot differ, as formulated by the moving party, in

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<sup>1</sup> Prosecution submissions pursuant to F00549, KSC-BC-2023-12/F00559, 20 November 2025 ('Filing F00559'), para.33.

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('KSC'), KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule(s)' are to the Rules, unless otherwise indicated.

<sup>3</sup> See Rule 157(2). See also *Specialist Prosecutor v. Shala*, Decision on the Prosecution motion for judicial notice of facts of common knowledge and adjudicated facts, KSC-BC-2020-04/F00538, 8 June 2023 ('Case 4 Decision'), para.23.

<sup>4</sup> Case 4 Decision, KSC-BC-2020-04/F00538, para.23.

<sup>5</sup> Case 4 Decision, KSC-BC-2020-04/F00538, para.24.

any substantial way from the formulation of the original judgment; (v) cannot be unclear or misleading in the context in which it is placed in the moving party's motion; (vi) cannot contain legal findings or characterisations; (vii) cannot arise from an agreement between the parties to the original proceedings; and (viii) cannot be subject to pending appeals or reviews.<sup>6</sup>

5. With the above standard in mind, the SPO requests that the STJ take judicial notice of the Adjudicated Fact as follows:

KSC proceedings have been conducted against the backdrop of a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the KSC, their families, and more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members.<sup>7</sup>

6. The Adjudicated Fact satisfies all of the required criteria. As to the matter at issue in the current proceedings, the backdrop of a pervasive climate of fear and intimidation experienced by (potential) witnesses of the KSC in the context of cases involving former KLA members is clearly relevant to this case, which arises from a concerted effort to obstruct KSC-BC-2020-06 and interfere with witness testimony.<sup>8</sup> Nonetheless, the Adjudicated Fact does not speak directly to the acts and conduct of the Accused as charged in the Indictment, but rather to the climatic backdrop to the conduct of the Accused. Additionally, the Adjudicated Fact: is distinct, concrete, and identifiable; does not differ materially from the previous KSC findings cited; is framed clearly in the context of this motion; is not a legal characterisation; did not result from

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<sup>6</sup> Case 4 Decision, KSC-BC-2020-04/F00538, para.24.

<sup>7</sup> See: *Specialist Prosecutor v. Shala*, Public redacted version of Trial Judgment and Sentence, KSC-BC-2020-04/F00847/RED, 24 September 2024, para.97; *Specialist Prosecutor v. Mustafa*, Further redacted version of Corrected version of Public redacted version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 24 January 2023, para.50. See also: *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para.577; *Specialist Prosecutor v. Januzi and Bahtjari*, Reasons for the Decision on the Plea Agreements, KSC-BC-2023-10/F00693, 27 February 2025, para.20.

<sup>8</sup> See Annex 1 to Public redacted version of 'Corrected Version of "Prosecution submission of pre-trial brief"', KSC-BC-2032-12/F00489/A01, 7 October 2025, para.21.

an agreement from the parties in prior proceedings; and is not subject to appeal or review.

III. RELIEF REQUESTED

7. For the reasons set out above, the SPO requests the STJ to take judicial notice of the Adjudicated Fact.

**Word count: 720**



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**Kimberly P. West**

**Specialist Prosecutor**

Wednesday, 3 December 2025

At The Hague, the Netherlands