



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: 17 December 2025

Language: English

Classification: Public

**Prosecution motion for judicial notice of facts of common knowledge with
confidential Annexes 1 and 2**

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I. INTRODUCTION

1. Pursuant to Order F00602,¹ Articles 21(4)(d) and 37(4) of the Law,² and Rule 157 of the Rules,³ the Specialist Prosecutor's Office ('SPO') hereby requests the Single Trial Judge ('STJ') to take judicial notice of a number of relevant facts of common knowledge ('Proposed Facts') pertaining to the procedural record of KSC-BC-2020-06 ('Case 6'). Taking judicial notice of the Proposed Facts – all of which meet the requirements of Rule 157 – promotes judicial economy, is in the interests of justice, and ultimately respects the rights of the Accused to a fair, public, and expeditious trial. It follows that the STJ should take notice of the Proposed Facts as annexed⁴ to this motion.

II. APPLICABLE LAW

2. Rule 157(1)⁵ – which is analogous to ICTY/ICTR Rule 94(A) and ICC Article 69(6)⁶ – allows a Panel to take judicial notice of facts that are not reasonably subject to dispute as they are commonly accepted, universally or widely known, clearly established, or *susceptible to determination by reference to readily obtainable and*

¹ Order Scheduling Commencement of Trial, KSC-BC-2023-12/F00602, 4 December 2025, para.26, ('Order F00602').

² Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article(s)' refer to articles of the Law, unless otherwise specified.

³ 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.

⁴ The Proposed Facts of which the SPO is seeking judicial notice are listed in Annex 1. Annex 2 encompasses two lists received from the KSC Registry - Court Management Unit ('CMU') providing information pertaining to entries 38 to 88 referenced in Annex 1 as reflected in Legal Workflow, including dates of disclosure, notified parties, and confidentiality designation, for each item.

⁵ Rule 157(1) is as follows: '[t]he Panel shall not require proof of facts of common knowledge but shall take judicial notice thereof'.

⁶ See ICTY/ICTR Rule 94(A): 'The Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof'. See also ICC Article 69(6): 'the Court shall not require proof of facts of common knowledge but may take judicial notice of them'.

authoritative sources.⁷ Taking judicial notice of facts of common knowledge facilitates expeditious proceedings in a manner not prejudicial to an Accused as it reduces the need to adjudicate matters not reasonably in dispute.⁸ To be judicially noticed, facts of common knowledge (i) must be relevant to the case; (ii) cannot be subject to reasonable dispute; (iii) must be sufficiently well-defined; (iv) cannot include findings or characterisations that are essentially of a legal nature; and (v) cannot attest to the criminal responsibility of the Accused.⁹ Once a Panel has determined that a fact is of common knowledge, it must take judicial notice of it.¹⁰

3. Prior examples of instances of judicially noticed facts of common knowledge include, *inter alia*: (i) transcripts of court records, including witness testimony;¹¹ (ii) the factual record of other courtroom proceedings before the same tribunal, including witness appearances;¹² (iii) the protection of witnesses and security concerns regarding potential intimidation or retaliation;¹³ (iv) geographical and historical

⁷ *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.16 (citations omitted); see also ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on the Prosecutor's Motion for Judicial Notice Pursuant to Rules 73, 89, and 94, ('Bagosora Decision'), 11 April 2003, para.44; ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13, Decision on Prosecution Motion for Clarification of Rule 68(3) Direction in Conduct of Proceedings Decision, 15 September 2015 ('Bemba Clarification Decision'), para.5.

⁸ *Bagosora Decision*, para.43 (noting that judicial notice is a 'mechanism that fosters judicial efficiency and consistency'); see also ICTR, *Rutaganda v. Prosecutor*, ICTR-96-3-A, Judgement, 26 May 2003, para.225 (noting that the purpose of judicial notice 'is to dispense with future proof of officially recorded facts that are indisputable').

⁹ See Case 4 Decision, KSC-BC-2020-04/F00538, para.17 (citations omitted).

¹⁰ Case 4 Decision, KSC-BC-2020-04/F00538, para.17 (citations omitted).

¹¹ *Bemba Clarification Decision*, para.6 (noting that judicial notice would be 'limited to taking judicial notice of the dates and contents of the relevant witnesses' Main Case testimony, and not the truth or falsity of the testimony itself'); see also ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13, Decision on Prosecution Request for Judicial Notice, 9 November 2015 ('Bemba Prosecution Judicial Notice Decision') paras 1, 4-5.

¹² *Bemba Prosecution Judicial Notice Decision*, paras 1, 4-5.

¹³ Compare ICC, *Prosecutor v. Bemba et al.*, ICC-10/05-01/13, Defence Request for Judicial Notice, 17 March 2016 ('Bemba Defence Request'), para.9 with ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13, Decision on 'Defence Request for Judicial Notice, 13 April 2016, ('Bemba Defence Judicial Notice Decision'), p.6.

facts;¹⁴ and (v) facts ‘generally known within a tribunal’s jurisdiction’.¹⁵

III. SUBMISSIONS

4. Pursuant to Rule 157(1), the SPO requests the STJ to take judicial notice of the Proposed Facts and, where applicable, associated underlying materials contained in Annex 1 comprised of the following three categories: (i) proposed procedural facts from Case 6 relevant to this case (‘Case 6 Procedural Facts’);¹⁶ (ii) procedural filings from Case 6 containing facts and rulings (including as to the applicable protection framework) relevant to this case (‘Case 6 Procedural Filings’);¹⁷ and (iii) other KSC court records from Case 6 as disclosed or made available at specific moments in time through Legal Workflow to the Case 6 Defence Thaçi Defence relevant to this case (‘Case 6 Record and Disclosure Filings’).¹⁸ While for the first category the SPO has framed proposed facts reflecting basic procedural developments, for the Case 6 Procedural Filings and Case 6 Record and Disclosure Filings the SPO is requesting that notice be taken of the full records, as the most efficient and fair manner of reflecting their contents.¹⁹ Importantly, as explained further below, in respect of the testimonial records in the Case 6 Record and Disclosure Filings – and in contrast to the first two categories – the SPO is seeking notice only of the fact of such records, and their contents, and not offering them for the truth of their contents.

5. The Proposed Facts²⁰ establish matters not reasonably in dispute, including: (i) when and to whom witness-related information was disclosed in Case 6; (ii) what

¹⁴ Case 4 Decision, KSC-BC-2020-04/F00538, paras 14, 16 (underscoring that facts of common knowledge also include facts ‘generally known within a tribunal’s jurisdiction’).

¹⁵ ICTR, *Prosecutor v. Semanza*, ICTR-97-20-T, Decision on the Prosecutor’s Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, 3 November 2000 (‘*Semanza* Decision’), paras 24, 30, 46.

¹⁶ See Annex 1, items 1-13.

¹⁷ See Annex 1, items 14-37.

¹⁸ See Annex 1, items 38-91.

¹⁹ *Bemba* Clarification Decision, para.6.

²⁰ The SPO notes that seven items referenced in Annex 1 were recently included in the SPO’s request to amend its exhibit list currently pending with the STJ. See Prosecution request for Rule 102(1)(b)

protective measures, if any, applied to specific witnesses in Case 6; (iii) the scheduling of witness' testimonies, including their order of appearance and any changes therein; and (iv) the contents of witness related materials as disclosed in Case 6 without relying on the underlying material's truthfulness.

6. The Proposed Facts satisfy Rule 157(1)'s criteria and are relevant, provide essential contextual and background information concerning this case as it relates to Case 6, are authentic and indisputable. Particularly in obstruction cases such as the present case, judicial notice of matters of common knowledge ensures expedited proceedings by noting matters related to connected proceedings that are not reasonably in dispute. As articulated further below, the STJ should take notice of the Proposed Facts to ensure expedited proceedings in a manner not prejudicial to the rights of the Accused. Otherwise, additional (unnecessary) testimony will be required to establish the indisputable and clearly authenticated Proposed Facts.

A. THE CASE 6 PROCEDURAL FACTS AND PROCEDURAL FILINGS ARE APPROPRIATE FOR JUDICIAL NOTICE

7. The SPO seeks judicial notice pursuant to Rule 157(1) of 13 Case 6 Procedural Facts and 24 Case 6 Procedural Filings as outlined in Annex 1.²¹ Notice of the Case 6 Procedural Facts and Case 6 Procedural Filings will ensure expeditious proceedings by taking notice of Case 6 procedural matters not reasonably in dispute that provide necessary context to the present case.

8. Notice of the Case 6 Procedural Facts is sought to establish basic procedural dates and related matters from Case 6 as relevant to the present case, including, *inter*

disclosure & amendment of the exhibit list, KSC-BC-2023-12/F00614, Confidential, ('Request F00614'), 10 December 2025, paras 6-8. Should the STJ take judicial notice of the Proposed Facts, the SPO submits that its pending request for relief outlined in Request F00614 pertaining to these seven items is moot.

²¹ See Annex 1, items 1-37.

alia, the confirmation of the Case 6 indictment,²² the start of Case 6 proceedings,²³ and the termination of the SPO's case-in-chief.²⁴ While each proposed Case 6 Procedural Fact references a Case 6 filing or transcript, notice is only sought of the Proposed Fact, and not the entirety of the underlying record.²⁵

9. By contrast, the Case 6 Procedural Filings comprise entire filings notice of which is sought to establish other Case 6 procedural facts relevant to the present case and which cannot efficiently be reformulated into separate discrete facts without losing relevant context. Notice of their underlying contents is required to understand Case 6 procedural matters relevant to this case, including, *inter alia*, the timing and contents of disclosure of witness lists in Case 6;²⁶ the requesting and issuance of protective measures in Case 6 for specific witnesses relevant to this case;²⁷ the adoption and regulation of frameworks concerning the handling of confidential information and conduct of proceedings in Case 6 and the underlying contents of such frameworks;²⁸ and the granting of certain detention condition modifications by the Case 6 Trial Panel as is relevant to the present case.²⁹

10. All of the Case 6 Procedural Facts and Case 6 Procedural Filings pertain to Case 6 filings or records as disclosed and made available through the KSC's court record database, Legal Workflow. They are well-defined, do not include findings of a legal nature,³⁰ and do not attest to the criminal responsibility of the Accused. Their notice is sought for the narrow purpose of establishing indisputable procedural matters from

²² See Annex 1, entry 1.

²³ See Annex 1, entries 6, 8.

²⁴ See Annex 1, entry 13.

²⁵ The SPO does not, however, oppose notice of the entire underlying record.

²⁶ See e.g. Annex 1, entries 19-20, 23-24, 26-29.

²⁷ See e.g. Annex 1, entries 14-18.

²⁸ See e.g. Annex 1, entries 21, 22, 25.

²⁹ See e.g. Annex 1, entries 33-34.

³⁰ Although included in this category are some Case 6 decisions containing legal reasoning, their notice is sought not for their legal contents but for establishing relevant factual and procedural matters, including when and which protective measures applied to certain witnesses.

Case 6 as are relevant to this case.³¹ None of the Case 6 Procedural Facts are reasonably in dispute, as they are sourced from the KSC's court records database Legal Workflow,³² and their notice is sought for the limited purpose of recognising indisputable procedural milestones as it relates to procedural facts relevant to this case.

11. Judicial notice of the Case 6 Procedural Facts and Case 6 Procedural Filings will ensure streamlined proceedings in a manner that is not only without prejudice to the Accused, but that also supports the Accused's right to expeditious proceedings by removing the need to present testimonial evidence to establish facts that are clearly authentic and not reasonably in dispute. It follows that the STJ should take notice of the Case 6 Procedural Facts and Case 6 Procedural Filings.

B. CASE 6 RECORD AND DISCLOSURE FILINGS ARE APPROPRIATE FOR JUDICIAL NOTICE

12. In addition to the Case 6 Procedural Facts and Case 6 Procedural Filings, the SPO seeks judicial notice of 54 Case 6 Record and Disclosure Filings, all of which are suitable for notice under 157(1) as they are relevant, authentic, narrowly tailored, do not include findings of a legal nature, do not attest to the criminal responsibility of the Accused, and cannot reasonably be in dispute. Their notice will ensure expedited proceedings by removing the need to present additional evidence, including testimonial evidence, pertaining to matters not reasonably in dispute.

13. The Case 6 Record and Disclosure Filings are predominately³³ comprised of KSC records as disclosed or made available through Legal Workflow, the accuracy

³¹ The SPO notes that each item's relevance in Annex 1 is further underscored by specific references to the SPO's Pre-Trial Brief.

³² See generally Annex 2.

³³ Entries 89-91 of Annex 1 are the only three items not made available through Legal Workflow ('LWF'); instead, they are records provided by the KSC Registry. Entries 89 and 90 are records reflecting LWF data of Case 6 transcripts and SPO disclosed items (Entries 38-88), including the date each record was made available to the Case 6 Defence, including THAÇI, whereas entry 91 comprises a Registry Practice Direction made available by CMU to the Defence Office, SPO, and all other relevant KSC units.

and authenticity of which cannot be reasonably questioned. They fall into the following categories of KSC records: (i) SPO witness material disclosure, including prior witness testimony, contact notes, and preparation notes;³⁴ (ii) transcripts of Case 6 proceedings, including witness testimony;³⁵ (iii) stills of disclosed audio-visual materials;³⁶ (iv) specific documentary items as disclosed by the SPO via Legal Workflow;³⁷ and (v) two records listing Case 6 notification and disclosure history of items listed under this category in Annex 1 obtained from the KSC Registry for items disclosed to or made available to the Case 6 Defence, as well as one not-publicly available KSC Registry practice direction.³⁸ As with the prior categories, the relevance of each item is further addressed in Annex 1.³⁹

14. While the Case 6 Record and Disclosure Filings include witness statements or testimony relevant to Case 6, the SPO underscores that it does not seek judicial notice of – and does not in any manner intend to rely upon – the truth or falsity of any particular fact contained in any such records. Rather, the request is simply for the STJ to take notice of the procedural record as reflected in these items or as further supported by the KSC Registry records provided in Annex 2, including for example the dates of testimonies, and statements attributed to certain witnesses, and the dates by which these items were made available to the Case 6 Defence, including THACI. For this category, whether or not the underlying information is true or false is not at issue in this case, and is not relevant for any decision to be made by the STJ.

15. A comparable situation in the *Bemba* Obstruction Case⁴⁰ before the ICC exemplifies the appropriate nature of the relief sought by the SPO. Similar to the

³⁴ See e.g. Annex 1, entries 71-79, 81-88.

³⁵ See e.g. Annex 1, entries 38-51.

³⁶ Annex 1, entries 60-65.

³⁷ See e.g. Annex 1, entries 66, 70.

³⁸ See Annex 1, entries 89-91; see also Annex 2 (providing the contents of entries 89 and 90).

³⁹ The SPO notes that each entry contains a corresponding citation to the SPO's Pre-Trial Brief, and similarly indicates which Case 12 witness the entry relates to.

⁴⁰ ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13 ('*Bemba* Obstruction Case').

present proceedings, in the *Bemba* Obstruction Case the trial chamber took judicial notice of facts of common knowledge pertaining to the main *Bemba* case,⁴¹ including the contents and authenticity of ICC witness testimony and related court records, witness appearance related facts, and protection and security related facts.⁴² In taking judicial notice, the ICC trial chamber emphasised that the facts were ‘capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned’ as they originated from the ICC’s court records database while further underscoring the limited scope for which the facts were noticed, or notice of ‘the dates and contents . . . and not the truth or falsity’ of the underlying content itself.⁴³

16. Similar to the *Bemba* Obstruction Case, the SPO is seeking judicial notice of the Case 6 Record and Disclosure Filings for the limited purpose of establishing the course and contents of the relevant procedural record in Case 6. Because all of the Case 6 Record and Disclosure Filings are (i) KSC court records originating either from Legal Workflow or the Registry, (ii) relate to facts not reasonably in dispute, including when and to whom material was made available and its contents, and (iii) are all ‘capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned’,⁴⁴ the STJ should take notice of the Case 6 Record and Disclosure Filings.⁴⁵

⁴¹ ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08.

⁴² See *Bemba* Clarification Decision, ICC-01/05-01/13, para.6; *Bemba* Defence Judicial Notice Decision, paras 3-5; see also *Bemba* Prosecution Judicial Notice Decision, para.6.

⁴³ *Bemba* Clarification Decision, para.6; see also Prosecution Judicial Notice Decision, para.7 (‘The Prosecution is not, for example, requesting the Chamber to take judicial notice of the fact that ‘Witness D-2 understood what the oath means’, but merely that ‘Witness D-2 **said during the hearing of 12 June 2013** that he understood what the oath means’. The first fact is of a kind falling outside the scope of the Request. But the second fact, plainly evident from the ICC’s official court records, is of the kind covered by the Request. The Chamber does not consider that any undue prejudice is caused to taking judicial notice of facts of this second kind – as stated in the 15 September 2015 Decision, the accuracy of such facts cannot reasonably be questioned.’).

⁴⁴ See *Bemba* Clarification Decision, para.6 (underscoring the appropriateness of admitting ‘transcripts relating to the testimony of Main Case defence witnesses’ pursuant to ICC Article 69(6) limited to ‘the dates and contents of the relevant witnesses’ [sic] Main Case testimony, and not the truth or falsity of the testimony itself’).

⁴⁵ In the alternative, the SPO submits that the Case 6 Record and Disclosure Filings listed (items 38 to 91, Annex 1), as well as the Case 6 Procedural Facts (items 1 to 13, Annex 1) and Case 6 Procedural

C. JUDICIAL NOTICE OF THE PROPOSED FACTS ENSURES JUDICIAL ECONOMY

17. The utility of taking judicial notice of the Proposed Facts is further underscored when considering the significant – and wholly unnecessary – testimonial evidence that would be required to establish the Proposed Facts should the STJ deny the requested relief. If testimonial evidence were required to tender these records, witness testimony from, *inter alia*, one or more custodians of records would be required to introduce many of the Proposed Facts. The Case 6 witnesses themselves whose statements or related materials are submitted as Case 6 Record and Disclosure Filings would be unable to answer the questions required to establish the provenance, authenticity and disclosure of these records. Witness testimony from an individual knowledgeable of other Case 6 procedural facts would similarly be required, and would likely require lengthy in-court testimony to establish objective Case 6 procedural matters which are a matter of factual record and not reasonably in dispute.

18. It follows that taking notice of the Proposed Facts would remove the need to proffer additional witness testimony that would further lengthen proceedings unnecessarily, and would thus ensure expeditious, judicious and fair proceedings, particularly when considering that the Defence may dispute any proposed fact outlined in this Request.

IV. CONFIDENTIALITY

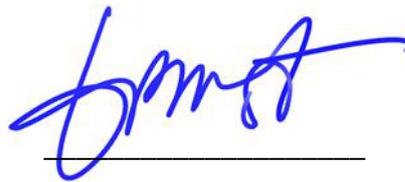
19. This filing is classified as public, whereas Annexes 1 and 2 are classified as confidential due to the sensitive information contained therein.

Filings (items 14 to 37, Annex 1) all qualify for admission under Rule 138(1) through the bar table, as these items are relevant, authentic, have probative value, and their probative value is not outweighed by any prejudicial effect, and requests such relief in the alternative. *See* Rule 138(1), *see also Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Prosecution Request for Admission of Items Through the Bar Table, KSC-BC-2020-07/F00334, 29 September 2021 ('Case 7 Bar Table Decision'), paras 10-11.

V. RELIEF REQUESTED

20. For the reasons set out above, the SPO requests the STJ to take judicial notice of the Proposed Facts contained in Annex 1 to this motion.

Word count: 3,358



Kimberly P. West

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Wednesday, 17 December 2025

At The Hague, the Netherlands