



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Single Trial Judge
Judge Christopher Gosnell

Registrar: Fidelma Donlon

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Decision on Prosecution Motion for Judicial Notice of an Adjudicated Fact

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THE SINGLE TRIAL JUDGE, pursuant to Article 21(2)-(3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 157(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues this decision.¹

I. PROCEDURAL BACKGROUND

1. On 3 December 2025, the Specialist Prosecutor's Office ("SPO") filed a motion requesting the Single Trial Judge to take judicial notice of an adjudicated fact pursuant to Rule 157(2).²

2. On 15 December 2025, the Defence for Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi (collectively, the "Accused", and "Defence") jointly responded to the SPO Motion.³

3. On 19 December 2025, the SPO replied.⁴

II. SUBMISSIONS

4. The SPO requests that judicial notice be taken of the following fact adjudicated in prior Specialist Chambers' ("SC") proceedings ("Proposed Adjudicated Fact"):⁵

KSC ["Kosovo Specialist Chambers"] 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

¹ All references to "Article" and "Rule" shall be understood, unless otherwise indicated, as referring to the Law and Rules.

² KSC-BC-2023-12, F00600, Specialist Prosecutor, [Prosecution Motion for Judicial Notice of an Adjudicated Fact](#) ("SPO Motion"), 3 December 2025, public. The SPO had previously given notice of its intention to request, separately or upon joint agreement with the Defence, that the Single Trial Judge take judicial notice of a limited number of adjudicated facts under Rule 157(2), by the week of 8 December 2025. See F00559, Specialist Prosecutor, *Prosecution Submissions Pursuant to F00549*, 20 November 2025, confidential, para. 33; a public redacted version was filed on 26 November 2025, [F00559/RED](#).

³ KSC-BC-2023-12, F00622, Defence, [Joint Defence Response to "Prosecution Motion for Judicial Notice of an Adjudicated Fact" \(F00600\)](#) ("Joint Defence Response"), 15 December 2025, public.

⁴ KSC-BC-2023-12, F00636, Specialist Prosecutor, [Prosecution Reply to 'Joint Defence Response to "Prosecution Motion for Judicial Notice of an Adjudicated Fact" \(F00600\)'](#) ("SPO Reply"), 19 December 2025, public.

⁵ [SPO Motion](#), paras 1, 5, 7.

families, and more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA [“Kosovo Liberation Army”] members.⁶

5. The SPO submits that taking judicial notice of the Proposed Adjudicated Fact will promote judicial economy, is in the interests of justice, and respects the rights of the Accused to a fair, public and expeditious trial.⁷ It further argues that the Proposed Adjudicated Fact meets the requirements under Rule 157(2) and the criteria favouring its recognition as established in previous jurisprudence.⁸

6. The Defence opposes the SPO Motion,⁹ arguing that: (i) the SPO has failed to demonstrate the relevance of the Proposed Adjudicated Fact to the charges;¹⁰ (ii) imposing a burden on the Defence to rebut the Proposed Adjudicated Fact, which is highly prejudicial, would undermine the fairness of the proceedings;¹¹ and (iii) taking judicial notice of the Proposed Adjudicated Fact will not achieve judicial economy in the context of a two-week trial, and is contrary to the interests of justice, as the Defence is not privy to the underlying evidence relied upon by previous panels in reaching the relevant findings.¹²

7. The SPO replies that: (i) the Defence fails to meaningfully engage with the relevant legal criteria, and disputing the existence of the Proposed Adjudicated Fact is irrelevant;¹³ and (ii) the Proposed Adjudicated Fact is relevant to the case, as it speaks to the climate in which the Accused’s conduct took place.¹⁴

⁶ [SPO Motion](#), para. 5.

⁷ [SPO Motion](#), para. 2.

⁸ [SPO Motion](#), para. 6.

⁹ [Joint Defence Response](#), paras 3, 15.

¹⁰ [Joint Defence Response](#), paras 3, 6.

¹¹ [Joint Defence Response](#), paras 3, 5, 7-11.

¹² [Joint Defence Response](#), paras 3, 5, 12-14.

¹³ [SPO Reply](#), paras 1-3.

¹⁴ [SPO Reply](#), paras 4-5.

III. APPLICABLE LAW

8. Article 21(2) and (3) provide that an accused shall be “entitled to a fair and public hearing” and “presumed innocent until proved guilty beyond reasonable doubt according to the provisions of [the] Law”.

9. Rule 157(2) permits a Panel to “in the interests of a fair and expeditious trial, take judicial notice of adjudicated facts from other proceedings of the Specialist Chambers [...] relating to matters at issue in the current proceedings, to the extent that they do not relate to the acts and conduct of the Accused as charged in the indictment”.

IV. DISCUSSION

A. CRITERIA FOR RECOGNISING A FACT AS ADJUDICATED

10. Rule 157(2) permits the recognition as presumptively proven a fact adjudicated in prior proceedings. The statutory conditions for doing so are that: (i) the proposed fact comes from other proceedings of the SC or from final proceedings before other Kosovo courts or from other jurisdictions;¹⁵ (ii) it relates to matters at issue in the current proceedings; and (iii) it does not relate to the acts and conduct of the Accused as charged in the Indictment.

11. The discretion whether to recognise an adjudicated fact depends, according to relevant jurisprudence, on a variety of factors, in addition to those set out in Rule 157(2), including whether: (i) the proposed fact is distinct, concrete and identifiable; (ii) the proposed fact, as formulated by the moving

¹⁵ See International Criminal Tribunal for the former Yugoslavia (“ICTY”), *Prosecutor v. Lukić et al.*, IT-98-32/1-T, Trial Chamber III, [Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts](#), 22 August 2008, public, para. 31 (“Findings of fact, in order to qualify as adjudicated facts [...], must therefore be the conclusive products of a trial – in which the evidence providing the foundation for those findings would have been thoroughly scrutinised and assessed, *inter alia*, as to relevance, credibility and probative value, and which evidence would have been weighed in an assessment of the guilt or innocence of an accused”).

Party, does not differ in any substantial way from the formulation of the original judgment; (iii) the proposed fact is not unclear or misleading in the context in which it is placed in the moving Party's motion; (iv) the proposed fact does not contain legal findings or characterisations; (v) the proposed fact is not based on an agreement between the Parties to the original proceedings; and (vi) the proposed fact is not subject to pending appeal or review.¹⁶ In any event, the recognition of the adjudicated fact must be consistent with the Accused's rights to a fair and expeditious trial.¹⁷

12. An adjudicated fact creates a well-founded but rebuttable presumption of its accuracy, which therefore does not have to be proven again at trial. As a rebuttable presumption, the opposing Party may present proof at trial challenging the accuracy of the fact and, on that basis, it may be ultimately rejected by the trier of fact.¹⁸

¹⁶ See KSC-BC-2020-04, F00538, Trial Panel I, [Decision on the Prosecution Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts](#) ("Case 04 Decision on Adjudicated Facts"), 8 June 2023, public, para. 24; KSC-BC-2020-05, F00191, Trial Panel I, [Decision on Judicial Notice of Adjudicated Facts](#) ("Case 05 Decision on Adjudicated Facts"), 7 September 2021, public, para. 10; KSC-BC-2020-06, F01534, Trial Panel II, [Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts](#) ("Case 06 First Decision on Adjudicated Facts"), 17 May 2023, public, para. 11; F01536, Trial Panel II, [Decision on Defence Motion for Judicial Notice of Adjudicated Facts](#) ("Case 06 Second Decision on Adjudicated Facts"), 18 May 2023, public, para. 14. See also ICTY, *Prosecutor v. Mladić*, IT-09-92-AR73.1, Appeals Chamber, [Decision on Ratko Mladić's Appeal Against the Trial Chamber's Decisions on the Prosecution Motion for Judicial Notice of Adjudicated Facts](#) ("Mladić Appeals Decision"), 12 November 2013, public, paras 25, 92, 94; *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, [Decision on Accused's Motion for Judicial Notice of Adjudicated Facts Related to Count One](#) ("Karadžić Decision"), 21 January 2014, public, para. 6.

¹⁷ [Case 04 Decision on Adjudicated Facts](#), para. 23; [Case 05 Decision on Adjudicated Facts](#), para. 9; [Case 06 First Decision on Adjudicated Facts](#), para. 12; [Case 06 Second Decision on Adjudicated Facts](#), para. 15.

¹⁸ [Case 04 Decision on Adjudicated Facts](#), para. 24; [Case 05 Decision on Adjudicated Facts](#), paras 11, 14; [Case 06 First Decision on Adjudicated Facts](#), paras 13, 26; [Case 06 Second Decision on Adjudicated Facts](#), para. 16. See also, ICTY, *Prosecutor v. Milošević*, IT-02-54-AR73.5, Appeals Chamber, [Decision on the Prosecution's Interlocutory Appeal against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts](#), 28 October 2003, public, p. 3; *Prosecutor v. Perišić*, IT-04-81-PT, Trial Chamber I, [Decision on Prosecution's Motion for Judicial Notice of Facts Relevant to the Srebrenica Crime Base](#), 22 September 2008, public, para. 21; [Karadžić Decision](#), para. 5; *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, [Judgement](#), 30 January 2015, public, para. 620.

B. EVALUATION OF THE PROPOSED ADJUDICATED FACT

13. The Single Trial Judge finds that the statutory preconditions for the recognition of the Proposed Adjudicated Fact are satisfied.

14. First, the Proposed Adjudicated Fact was established in previous SC proceedings. In particular, the Trial Panel in case KSC-BC-2020-07 (“Case 07”) adopted a finding very similar to the Proposed Adjudicated Fact, concerning “the existence of a prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex-KLA members”.¹⁹ This finding was made for various purposes and using diverse analogous formulations throughout the Case 07 Trial Judgment,²⁰ and was based on evidence of a witness protection expert and witness protection practitioner, drawing on a wide range of experience.²¹ Furthermore, contrary to the Defence’s assertion,²² most of the testimony on which this finding was based was heard in public session hearings before the Trial Panel in Case 07.²³ The Court of Appeals’ Panel, which upheld reliance on this fact on appeal, specifically commented that “the Trial Panel considered extensive evidence in reaching this finding in the Trial Judgment.”²⁴

15. Similar factual findings, closer in wording to the Proposed Adjudicated Fact, are found in the Trial Judgments in cases KSC-BC-2020-04 (“Case 04”) and KSC-BC-2020-05 (“Case 05”), based on the testimony of several witnesses

¹⁹ KSC-BC-2020-07, F00611/RED, Trial Panel II, [Public Redacted Version of the Trial Judgment](#) (“Case 07 Trial Judgment”), 18 May 2022, public, para. 577.

²⁰ [Case 07 Trial Judgment](#), paras 576-581, 611-620, 640-642, 646, 979, 1004.

²¹ [Case 07 Trial Judgment](#), paras 52-58, 64, 577-579.

²² [Joint Defence Response](#), para. 14.

²³ See e.g. KSC-BC-2020-07, W04842 (Miro Jukić), Transcript, 4 November 2021, pp 1885-1886; DW1253 (Robert Reid), Transcript, 24 January 2022, pp 3305-3313; DW1253 (Robert Reid), Transcript, 28 January 2022, pp 3359-3361.

²⁴ KSC-CA-2022-01, F00114, Court of Appeals’ Panel, [Appeal Judgment](#), 2 February 2023, public, para. 424.

describing their own experiences with witness intimidation.²⁵ The findings in these two judgments corroborate, on the basis of more personalised direct experiences of witnesses, the fact as adjudicated in Case 07. Reliance is not placed, however, on the Panel's similar finding in the "Reasons for the Decision on the Plea Agreements" in case KSC-BC-2023-10, which is based on an agreement concerning the fact as between the Parties in those proceedings.²⁶

16. Second, the Proposed Adjudicated Fact is contextually relevant to the current proceedings. The Single Trial Judge is not persuaded by the Defence's argument that the Proposed Adjudicated Fact is not relevant to the present proceedings, as it does provide a meaningful background for the conduct charged. Conversely, the fact is not so determinative or "proximate and central to the criminal responsibility" of the Accused as to be prejudicial.²⁷ Indeed, facts much more directly relevant to the potential guilt of an accused have been recognised before the ICTY and ICTR.²⁸

17. Third, the fact does not concern the specific acts and conduct of the Accused as charged in the Indictment.

18. The Single Trial Judge also considers that the applicable criteria favour recognition of the Proposed Adjudicated Fact. The fact, as formulated, is concrete, distinct, and identifiable, and is not unclear or misleading. However, the fact as specifically articulated in the Case 07 Trial Judgment is more precise

²⁵ See KSC-BC-2020-04, F00847/RED, Trial Panel I, [Public Redacted Version of Trial Judgment and Sentence](#) ("Case 04 Trial Judgment"), 16 July 2024, public, paras 96-97; KSC-BC-2020-05, F00494/RED3/COR, Trial Panel I, [Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment](#) ("Case 05 Trial Judgment"), 16 December 2022, public, paras 50-57.

²⁶ KSC-BC-2023-10, F00693/RED, Trial Panel I, [Public Redacted Version of Reasons for the Decision on the Plea Agreements](#), 27 February 2025, public, para. 20 ("the Accused's admissions [...] confirm outright the existence of a persisting climate of witness intimidation in Kosovo against witnesses or potential witnesses of the SC"). See [Case 04 Decision on Adjudicated Facts](#), para. 24 ("the proposed facts are not based on an agreement between the Parties to the original proceedings").

²⁷ See International Criminal Tribunal for Rwanda ("ICTR"), *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Trial Chamber III, [Decision on Appeals Chamber Remand of Judicial Notice](#), 11 December 2006, public, para. 40.

²⁸ See e.g. [Mladić Appeals Decision](#), para. 81.

and based on testimony reflecting a wider range of experience.²⁹ Accordingly, the Single Trial Judge exercises his discretion to *proprio motu* reformulate the Proposed Adjudicated Fact to align it more closely with the wording as adopted in Case 07 and “remove any possible ambiguity in relation to the originally made findings”.³⁰ The Proposed Adjudicated Fact, whether in its Case 07 version or in the version reflected in Cases 04 and 05, also does not contain legal findings or characterisations that could be interpreted as directly applicable to the legal issues to be resolved in this case. Finally, the versions of the fact as determined in Cases 04, 05 and 07 were not adjudicated on the basis of plea agreements between the Parties.³¹

19. In light of the above, the Single Trial Judge considers that the Proposed Adjudicated Fact meets the requirement for recognition as an adjudicated fact and that doing so in the form as adopted in paragraph 577 of the Trial Judgment in Case 07 is appropriate in this case. The acceptance of the fact as adjudicated in no way precludes the Defence’s latitude to show that this contextual fact is irrelevant to the acts of the Accused or, indeed, from rebutting the adjudicated fact as a whole, if deemed appropriate.

²⁹ [Case 07 Trial Judgment](#), para. 577. Cf. [Case 04 Trial Judgment](#), para. 97; [Case 05 Trial Judgment](#), para. 57.

³⁰ See similarly [Case 04 Decision on Adjudicated Facts](#), para. 26. See below para. 20(b).

³¹ See above paras 14-15.

V. DISPOSITION

20. For the above reasons, the Single Trial Judge hereby:

- a. **GRANTS** the SPO Motion, in part;
- b. **TAKES JUDICIAL NOTICE** of the following adjudicated fact:

There is a prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex-KLA members.



Judge Christopher Gosnell
Single Trial Judge

Dated this Thursday, 29 January 2026

At The Hague, the Netherlands.