



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-05**

The Prosecutor v. Salih Mustafa

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 21 January 2022

Language: English

Classification: **Public**

**Decision on the Specialist Prosecutor's notice of disclosure pursuant to
Rule 102(4) of the Rules**

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel) hereby renders this decision on the Specialist Prosecutor's notice of disclosure pursuant to Rule 102(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

I. PROCEDURAL BACKGROUND

1. On 15 February 2021, the Specialist Prosecutor's Office (SPO) submitted its Pre-Trial Brief, list of witnesses (List of Witnesses), and list of exhibits (List of Exhibits) pursuant to Rule 95(4) of the Rules.¹
2. On 7 May 2021, the Pre-Trial Judge transmitted the case file to the Panel, pursuant to Rule 98 of the Rules.²
3. On 16 July 2021, upon request of the SPO,³ the Panel issued its "Decision on the Specialist Prosecutor's request to amend its exhibit and witness lists and related matters", authorising, *inter alia*, the SPO to amend its List of Exhibits and List of Witnesses.⁴

¹ KSC-BC-2020-05, F00082, Specialist Prosecutor, *Submission of Pre-Trial Brief, with Witness and Exhibit Lists*, 15 February 2021, public, with Annexes 1-3, strictly confidential and *ex parte*. Confidential redacted versions of the SPO List of Witnesses and the SPO List of Exhibits were filed on 17 February 2021, F00085/A02 and F00085/A03. A corrected version of the Pre-Trial Brief was filed on 23 February 2021, in strictly confidential and *ex parte* (F00088/A01) and confidential redacted (F00088/A02) version.

² KSC-BC-2020-05, F00119, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 7 May 2021, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

³ KSC-BC-2020-05, F00145, Specialist Prosecutor, *Prosecution Request to Amend its Exhibit List and Witness List (Request)*, 30 June 2021, confidential, with confidential Annexes 1 and 3 and strictly confidential and *ex parte* Annex 2. A public redacted version of the Request was filed on 1 July 2021, F00145/RED.

⁴ KSC-BC-2020-05, F00156, Trial Panel I, *Decision on the Specialist Prosecutor's request to amend its exhibit and witness lists and related matters*, 16 July 2021, confidential, para. 26 (a) – (b). A public redacted version was filed on the same day.

4. On 7 December 2021, the SPO filed a further request for the amendment of its List of Exhibits (Request).⁵

5. The Defence did not respond to the Request.

II. SUBMISSIONS

6. The SPO requests the Panel's leave to add, to its List of Exhibits, a document containing a list of people who have been detained in April 1999 in the Llap Operational Zone, followed by a number of related handwritten notes (Document).⁶

7. The SPO submits that the Document comprises several pages which were provided by the International Criminal Tribunal for the Former Yugoslavia to the Special Investigative Task Force, the precursor of the SPO.⁷

8. The SPO avers that the content of the Document corroborates the evidence heard to date by the Panel and that it does not contain any exculpatory information.⁸

9. The SPO further submits that the typed English translation of the Document was discovered only on 29 November 2021 while running a search for new material relevant to the present case, and that previous evidence reviews by SPO staff had not detected the original version of the Document.⁹

⁵ KSC-BC-2020-05, F00279, Specialist Prosecutor, *Prosecution notice of disclosure pursuant to Rule 102(4)*, 7 December 2021, public, with Annex 1, confidential.

⁶ Request, paras 2-3, 5; Annex 1 to the Request.

⁷ Request, para. 2.

⁸ Request, para. 2.

⁹ Request, para. 4.

III. APPLICABLE LAW

10. The Panel notes Article 21(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 102(1)(b)(iii) and (4), 112 and 118(2) of the Rules.

IV. ANALYSIS

11. With regard to the timing of the Request, the Panel notes that the Document was discovered only on 29 November 2021, as a result of a search for new material relevant to the present case, and that the SPO filed the Request promptly after such discovery. Lastly, the Panel notes that the Defence did not oppose the timeliness of the Request. Accordingly, the Panel finds that the Request was submitted in a timely manner and the SPO provided appropriate reasons for late disclosure of the Document.

12. The Panel notes that the Document lists a number of people allegedly arrested and detained in April 1999, which coincides with the temporal framework of the crimes contained in the confirmed indictment against Salih Mustafa (the Accused). In addition, the Panel notes that the Document refers to personal details of the detainees (name, last name, father's name, place and date of birth, and date of arrest). The Document may therefore be of general assistance to the Parties, Victims' Counsel and Panel in the assessment of the evidence before it as well as the evidence to be received in the future.

13. The Panel further notes that the Defence did not object to the Request and that it had the possibility to cross-examine the SPO witnesses who have testified on the above-mentioned arrest and detention of persons in April 1999. Therefore, the Panel finds that no prejudice to the Defence arises from the addition of the Document to the List of Exhibits.

14. Having regard to the above, the Panel finds that the SPO has shown good cause for the requested amendment of its List of Exhibits, which does not adversely affect the Accused's right to a fair trial.

V. DISPOSITION

15. For the above-mentioned reasons, the Panel hereby:

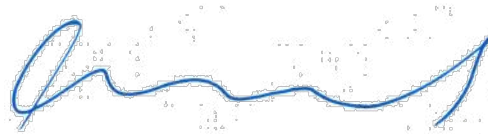
- a. **AUTHORISES** the SPO to add the items listed in Annex 1 to the Request to its List of Exhibits; and
- b. **ORDERS** the SPO to file an updated List of Exhibits by no later than Tuesday, 1 February 2022.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 21 January 2022
At The Hague, the Netherlands.