



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:** 3 February 2022

**Language:** English

**Classification:** Public

---

**Public redacted version of**  
**Decision on items used with witnesses W04603, W04669, W04676, W04391,**  
**W04390, and W04674 during their in-court testimony**

---

**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 items used with witnesses W04603, W04669, W04676, W04391, W04390, and W04674 during their in-court testimony.

## I. PROCEDURAL BACKGROUND

1. On 25 August 2021, the Panel issued the “Decision on the submission and the admissibility of evidence”, in which it set out the principles governing the admission of non-oral evidence in the present case (Admissibility Decision).<sup>1</sup>
2. On 26 August 2021, the Panel issued the “Decision on the conduct of the proceedings” (Conduct of Proceedings Decision), ordering, *inter alia*, the Parties and/or Victims’ Counsel, as the case may be, to submit, at the latest on the last working day of each calendar month, an application for the admission of any material used during their respective questioning of the witnesses whose testimony was completed within that month and which has not already been submitted to the Panel.<sup>2</sup>
3. On 30 November 2021, the Specialist Prosecutor’s Office (SPO) filed a request for the admission of exhibits used during its examination of witnesses W04603, W04669, W04676, W04391, and W04390 (First Request).<sup>3</sup>
4. The Defence for Salih Mustafa (Defence and Accused, respectively) and Victims’ Counsel did not respond to the First Request.

---

<sup>1</sup> KSC-BC-2020-05, F00169, Trial Panel I, *Decision on the submission and the admissibility of evidence*, 25 August 2021, public.

<sup>2</sup> KSC-BC-2020-05, F00170, Trial Panel I, *Decision on the conduct of the proceedings*, 26 August 2021, public, para. 37.

<sup>3</sup> KSC-BC-2020-05, F00276, Specialist Prosecutor, *Prosecution Request for Admission of Exhibits from the Direct Examinations of W04603, W04669, W04676, W04391, and W04390*, 30 November 2021, public, with Annex 1, confidential.

5. On 20 December 2021, the SPO filed a request for the admission of items used during its examination of witness W04674 (Second Request).<sup>4</sup>

6. The Defence and Victims' Counsel did not respond to the Second Request.

## II. SUBMISSIONS

7. In the First Request, the SPO requests the admission of the items referred to in its Annex 1, including: (i) the portions of W04603's, W04669's, and W04676's prior statements that were referred to during their direct examinations; and (ii) material shown to W04669, W04676, W04391, and W04390 during their direct examinations.<sup>5</sup> It submits that the documents are relevant, authentic, have probative value, and their admission would cause no undue prejudice to the Accused.<sup>6</sup> The SPO further avers that, where specific documents and/or photographs, that are part of larger packets, were shown to the witnesses, some of these packets are tendered in their entirety, as admission of the packet in its entirety will provide the Panel with a more complete record and context, including information going to reliability and authenticity.<sup>7</sup>

8. In the Second Request, the SPO requests the admission of the items referred to in its Annex 1, including: (i) the portions of W04674's prior statements that were referred to during his direct examination, including the audio-visual recording thereof; and (ii) material shown to W04674 during his examination.<sup>8</sup> It submits that the documents are relevant, authentic, have probative value, and their admission would cause no undue prejudice to the Accused.<sup>9</sup> The SPO further avers that, where specific photographs and documents, that are part of larger packets or booklets, were shown

---

<sup>4</sup> KSC-BC-2020-05, F00288, Specialist Prosecutor, *Prosecution Request for Admission of Exhibits from the Direct Examination of W04674*, 20 December 2021, public, with Annex 1, confidential.

<sup>5</sup> First Request, paras 1, 4-6.

<sup>6</sup> First Request, para. 2.

<sup>7</sup> First Request, para. 5.

<sup>8</sup> Second Request, paras 1, 4-7.

<sup>9</sup> Second Request, para. 2.

to the witness, the complete packets or booklets are tendered in their entirety, as admission of the packet or booklet in its entirety will provide the Panel with a more complete record and context, including information going to reliability and authenticity.<sup>10</sup>

### III. APPLICABLE LAW

9. The Panel notes Articles 21(4) and 40(2), (5), and 6(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 24(1) and 137-138 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers.

### IV. ANALYSIS

10. At the outset, the Panel notes that one of the items tendered into evidence by means of the Second Request<sup>11</sup> has already been tendered by the SPO in a previous request<sup>12</sup> and has been admitted into evidence by the Panel.<sup>13</sup> The portion of the Second Request pertaining to this item is therefore moot.

11. As regards the remaining items tendered by means of the First Request and the Second Request, the Panel does not consider it necessary to exercise its discretion with a view to excluding any of them. Accordingly, in accordance with the Admissibility Decision and the Conduct of Proceedings Decision, the Panel dispenses with rendering a discrete item-by-item ruling and considers all these items available to the

---

<sup>10</sup> Second Request, para. 6.

<sup>11</sup> Annex 1 to Second Request, item 5.

<sup>12</sup> KSC-BC-2020-05, F00201, Specialist Prosecutor, *Prosecution Application for Admission of Material through the Bar Table*, 13 September 2021, confidential, with Annex 1, confidential. A public redacted version of the main filing was submitted on 15 September 2021, F00201/RED.

<sup>13</sup> See KSC-BC-2020-05, F00281/RED, Trial Panel I, *Public redacted version of Decision on the admission of evidence collected prior to the establishment of the Specialist Chambers and other material*, 13 December 2021, public, paras 19, 26(e)-(f).

Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused,<sup>14</sup> with the following caveats.

12. As far as the prior statements of W04603, W04669, W04676, and W04674 are concerned,<sup>15</sup> the Panel recalls that, in accordance with the principle of orality, only those portions discussed with the witnesses during their in-court testimony will be considered.<sup>16</sup> Furthermore, in accordance with paragraph 37 of the Admissibility Decision, the same applies to the corresponding portions of any audio-visual recordings of such prior statements tendered by the SPO.<sup>17</sup>

13. As far as the requests for admission of lengthy material are concerned, the Panel recalls that, as a general rule, such material shall be submitted for admission in its entirety, in order to allow the Panel to assess the correct meaning and broader context of the portion(s) relied upon by the Party, as the case may be.<sup>18</sup> Accordingly, with respect to items 3-5<sup>19</sup> and 7 listed in Annex 1 to the First Request and item 4 listed in Annex 1 to the Second Request, the Panel will consider these items in their entirety. With respect to item 8 listed in Annex 1 to the First Request, the Panel will only consider pages 1-3 thereof, which are also the pages tendered into evidence by the SPO.

14. In addition to the aforementioned items and/or portions thereof tendered by the SPO, the Panel will also *proprio motu* consider: (i) the portions of W04603's SPO interview<sup>20</sup> used by the Panel during its questioning of W04603, as reflected in the transcript and recorded by the Registry's Court Management Unit (CMU) for

---

<sup>14</sup> Admissibility Decision, para. 21; Conduct of Proceedings Decision, para. 37.

<sup>15</sup> Annex 1 to First Request, items 1-2, 6; Annex 1 to Second Request, items 1-2.

<sup>16</sup> See also KSC-BC-2020-05, Transcript of Hearing, 4 October 2021, public, p. 852, line 14 to p. 854, line 21.

<sup>17</sup> Annex 1 to Second Request, item 3.

<sup>18</sup> Admissibility Decision, para. 38; Conduct of Proceedings Decision, para. 38.

<sup>19</sup> The Panel notes that item 5 listed in Annex 1 to the First Request and item 6 listed in Annex 1 to the Second Request are the same item.

<sup>20</sup> [REDACTED], Parts 2-3, RED1 (including the corresponding Albanian version [REDACTED], Parts 2-3, Revised, RED1).

administrative purposes;<sup>21</sup> (ii) the portions of W04669's SPO interview<sup>22</sup> used by the Panel during its questioning of W04669, as reflected in the transcript and recorded by CMU for administrative purposes; (iii) item [REDACTED] used by the Panel during its questioning of W04603 and W04669; (iv) the portions of W04676's SPO interview<sup>23</sup> used by the Defence and the Panel during their respective questioning of W04676, as reflected in the transcript and recorded by CMU for administrative purposes; (v) the portions of W04391's SPO interviews<sup>24</sup> used by Victims' Counsel and the Panel during their respective questioning of W04391, as reflected in the transcript and recorded by CMU for administrative purposes; (vi) the portions of [REDACTED] used by the Defence during its questioning of W04391, as reflected in the transcript and recorded by CMU for administrative purposes, as well as page 1 of the same document, for context; (vii) the portions of W04390's SPO interview<sup>25</sup> used by Victims' Counsel, the Defence, and the Panel during their respective questioning of W04390, as reflected in the transcript and recorded by CMU for administrative purposes; (viii) item [REDACTED] RED1 used by the Panel during its questioning of W04390; (ix) the portions of W04674's SPO interview<sup>26</sup> used by the Panel during its questioning of W04674, as reflected in the transcript and recorded by CMU for administrative purposes; and (x) the portions of the audio-video recordings of

---

<sup>21</sup> KSC-BC-2020-05, Transcript of Hearing, 2 November 2021, public, p. 1281, lines 10-23.

<sup>22</sup> [REDACTED], Parts 1-4, RED 1 (including the corresponding Albanian version [REDACTED], Parts 1-4, RED 1).

<sup>23</sup> [REDACTED], Parts 1-4, RED1 (including the corresponding Albanian version [REDACTED], Parts 1-4, RED1).

<sup>24</sup> [REDACTED], Parts 1-2, Revised, RED3 (including the corresponding Albanian version [REDACTED], Parts 1-2, Revised, RED3); and [REDACTED], Parts 1-2, RED3 (including the corresponding Albanian version [REDACTED], Parts 1-2, RED3).

<sup>25</sup> [REDACTED], Part 1, Revised, RED3 (including the corresponding Albanian version [REDACTED], Part 1, Revised, RED3).

<sup>26</sup> [REDACTED], Parts 1-2, RED1 (including the corresponding Albanian version [REDACTED], Parts 1-2, RED1, and corresponding audio-video recording [REDACTED], Part 1, Partial 1, Part 1, Partial 2, and Part 2, Partial).

witnesses W04603<sup>27</sup> and W04669<sup>28</sup> respective SPO interviews, where available, corresponding to the portions of their prior statements considered as part of the evidentiary record by means of the present decision.<sup>29</sup>

15. Lastly, in accordance with paragraph 37 of the Admissibility Decision, any subsequent unredacted or lesser redacted versions of the items addressed in the present decision will automatically be considered by the Panel for the purpose of its deliberations and judgment, subject to any objections of the Parties and Victims' Counsel.<sup>30</sup> For the purpose of maintaining an accurate record of the proceedings, should any unredacted or lesser redacted versions of these items be disclosed in the future, the disclosing Party shall immediately inform the other Party, Victims' Counsel, the Panel, and CMU thereof. This will allow CMU to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the version considered part of the evidence for the purpose of the Panel's deliberations and judgment pursuant to the present decision. Should the opposing Party or Victims' Counsel have any objections in relation to any such subsequent unredacted or lesser redacted versions, they shall inform the Panel thereof within five days of the notification of their disclosure.

## V. DISPOSITION

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

- a. **GRANTS** the First Request;
- b. **PARTLY GRANTS** the Second Request;

---

<sup>27</sup> [REDACTED], Parts 2-3.

<sup>28</sup> [REDACTED], Part 1, Partial; [REDACTED], Parts 2-3.

<sup>29</sup> See Admissibility Decision, para. 37.

<sup>30</sup> See also Conduct of Proceedings Decision, para. 38.

- c. **ORDERS** the Registrar to assign exhibit numbers to: (i) items 1-8 listed in Annex 1 to the First Request; (ii) items 1-4 listed in Annex 1 to the Second Request; and (iii) items [REDACTED], Part 3, RED1 (including the corresponding Albanian version [REDACTED], Part 3, Revised, RED1, as well as the audio-video-recording [REDACTED], Parts 2-3), [REDACTED], Parts 1 and 4, RED 1 (including the corresponding Albanian version [REDACTED], Parts 1 and 4, RED 1, as well as the audio video-recording [REDACTED], Part 1, Partial, and [REDACTED], Parts 2-3), [REDACTED], [REDACTED], Parts 1 and 3-4, RED1 (including the corresponding Albanian version [REDACTED], Parts 1 and 3-4, RED1), [REDACTED], Parts 1-2, Revised, RED3 (including the corresponding Albanian version [REDACTED], Parts 1-2, Revised, RED3); [REDACTED], Parts 1-2, RED3 (including the corresponding Albanian version [REDACTED], Parts 1-2, RED3), [REDACTED], [REDACTED], Part 1, Revised, RED3 (including the corresponding Albanian version [REDACTED], Part 1, Revised, RED3), [REDACTED], [REDACTED], Part 1, RED1 (including the corresponding Albanian version [REDACTED], Part 1, RED1, and corresponding audio-video recording [REDACTED], Part 1, Partial 1, Part 1, Partial 2);
- d. **ORDERS** the Registrar to classify as confidential: (i) items 1-8 listed in Annex 1 to the First Request; (ii) items 1-4 listed in Annex 1 to the Second Request; and (iii) items [REDACTED], Part 3, RED1 (including the corresponding Albanian version [REDACTED], Part 3, Revised, RED1, as well as the audio-video-recording [REDACTED], Parts 2-3), [REDACTED], Parts 1 and 4, RED 1 (including the corresponding Albanian version [REDACTED], Parts 1 and 4, RED 1, as well as the audio video-recording [REDACTED], Part 1, Partial, and [REDACTED], Parts 2-3), [REDACTED], [REDACTED], Parts 1 and 3-4, RED1 (including the corresponding Albanian version [REDACTED], Parts 1 and 3-4, RED1), [REDACTED], Parts 1-2, Revised, RED3



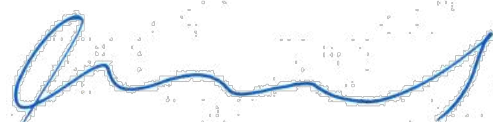
- (including the corresponding Albanian version [REDACTED], Parts 1-2, Revised, RED3); [REDACTED], Parts 1-2, RED3 (including the corresponding Albanian version [REDACTED], Parts 1-2, RED3), [REDACTED], [REDACTED], Part 1, Revised, RED3 (including the corresponding Albanian version [REDACTED], Part 1, Revised, RED3), [REDACTED], [REDACTED], Part 1, RED1 (including the corresponding Albanian version [REDACTED], Part 1, RED1, and corresponding audio-video recording [REDACTED], Part 1, Partial 1, Part 1, Partial 2);
- e. **ORDERS** the Registrar to reflect, in the field “General comments” on Legal Workflow, as applicable, the portions of each aforementioned item used with each respective witness by the Parties, Victims’ Counsel, and/or the Panel, as the case may be;
- f. **ORDERS** the disclosing Party to immediately inform the other Party, Victims’ Counsel, the Panel, and CMU should any subsequent unredacted or lesser redacted versions of the aforementioned items be disclosed and **ORDERS** the Registrar to link in Legal Workflow any such subsequent unredacted or lesser redacted versions with the respective exhibit number(s) assigned pursuant to this decision; and
- g. **ORDERS** the non-disclosing Party and Victims’ Counsel to file any objections to any such subsequent unredacted or lesser redacted versions within five days of notification of their disclosure.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Thursday, 3 February 2022

At The Hague, the Netherlands.