



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: 18 March 2022

Language: English

Classification: **Public**

**Order for submissions on the lifting of redactions in trial hearing transcripts or
their reclassification**

To be notified to:

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Julius von Bóné

Registrar
Fidelma Donlon

Victims' Counsel
Anni Pues

TRIAL PANEL I (Panel) hereby renders this order for submissions on the lifting of redactions in trial hearing transcripts or their reclassification.

I. PROCEDURAL BACKGROUND

1. On 9 March 2022, at the conclusion of the Defence Preparation Conference and the Victims' Status Conference,¹ the Panel set, *inter alia*, 21 March 2022 and 22-23 March 2022, as the dates to begin with the presentation of the evidence as requested by Victims' Counsel and, thereafter, with the presentation of the evidence by the Defence for Salih Mustafa, including the Defence opening statement.²

II. APPLICABLE LAW

2. The Panel notes Articles 21(2), 23, 40(2), and 43(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 80, 84(1) and 159(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. ANALYSIS

3. The Panel recalls that, pursuant to Article 21(2) of the Law, and subject to any protective measures for witnesses and victims ordered under Article 23 of the Law, the accused has the right to a public hearing in the determination of the charges against him. In addition, the Panel recalls that the judgment shall be pronounced in public, as stipulated by Article 43(2) of the Law and Rule 159(2) of

¹ KSC-BC-2020-05, F00318, Trial Panel I, *Third decision on the conduct of the proceedings*, 9 February 2022, public, para. 16(c).

² KSC-BC-2020-05, Transcript of Hearing, 9 March 2022, public, p. 2520, lines 2-7; p. 2522, lines 2-11; p. 2524, line 23 to p. 2525, line 9.

the Rules. Therefore, the Panel would like to ensure that the judgement to be issued under Article 43 of the Law is available to the public only with strictly necessary redactions, for the purposes of the protection of witnesses and victims, in accordance with Article 23 of the Law.

4. With a view to organising the proceedings in an efficient manner, while respecting the principle of publicity and upholding the protective measures for witnesses and victims as necessary, the Panel considers it appropriate to order the Parties, the Registry (as the case may be), and Victims' Counsel to undertake a revision of the transcripts,³ including but not limited to the portions containing the testimonies of the Specialist Prosecutor's Office (SPO) witnesses, and to provide submissions, in a consolidated filing, on whether existing redactions can be lifted and/or transcripts can be reclassified as public, according to a staggered calendar, as follows:

- Transcript of Hearing, 9 June 2021, p. 205 to Transcript of Hearing, 14 October 2021, p. 1277, by **Friday, 29 April 2022**;
- Transcript of Hearing, 2 November 2021, p. 1278 to Transcript of Hearing, 18 November 2021, p. 1717, by **Friday, 27 May 2022**;
- Transcript of Hearing, 22 November 2021, p. 1718 to Transcript of Hearing, 14 December 2021, p. 2025, by **Friday, 24 June 2022**; and
- Transcript of Hearing, 18 January 2022, p. 2026 to Transcript of Hearing, 2 February 2022, p. 2458, by **Friday, 22 July 2022**.

5. The SPO, the Defence and Victims' Counsel shall liaise among each other in order to submit joint proposals for the lifting of redactions in the abovementioned transcripts, or to propose the reclassification of any such transcripts. The Registry

³ In Legal Workflow, the transcripts are organised per hearing day. The English transcript has continuous page numbers. See Article 67 of the *Practice Directions on Files and Filings before the Kosovo Specialist Chambers*, KSC-BC-15 (17 May 2019).

is invited to include its observations on lifting redactions/reclassification of the transcripts in the joint filing(s), if certain portions of the transcript at issue concern the role and functions of the Registry. Should the Parties, the Registry and/or Victims' Counsel disagree on discrete redacted portions of any such transcripts, they shall specify it in the joint filing(s) to the Panel, together with reasons for their diverging positions. The Panel will ultimately decide on the lifting of redactions and/or the reclassification of the transcripts pursuant to Rules 80(1) and 84(1) of the Rules.

IV. DISPOSITION

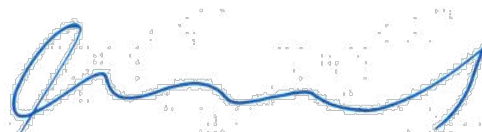
6. For the above-mentioned reasons, the Panel hereby **ORDERS** the Parties, the Registry, and Victims' Counsel to undertake a revision of the transcripts, as specified in the present order, and in accordance with the calendar set out in its paragraph 4.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 18 March 2022

At The Hague, the Netherlands.