



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:** 15 December 2022

**Language:** English

**Classification:** **Public**

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**Decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification**

**with Annex 1 confidential**

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**To be notified to:**

**Acting Specialist Prosecutor**  
Alex Whiting

**Counsel for the Accused**  
Julius von Bóné

**Registry**  
Fidelma Donlon

**Victims' Counsel**  
Anni Pues

**TRIAL PANEL I** (Panel) hereby renders this decision on the lifting of redactions or application of new redactions in trial hearing transcripts and their reclassification.

## I. PROCEDURAL BACKGROUND

1. On 20 October 2020 and 24 November 2020, respectively, the Pre-Trial Judge ordered protective measures for Specialist Prosecutor's Office (SPO) witnesses W01679, W03593, W04390, W04391, and W04600, on the one hand, and witnesses W04676, W04712, W04674, W04648, W03594, W04669, and W04603, on the other hand, including closed or private sessions for any in-court discussion or testimony identifying the witnesses.<sup>1</sup>
2. On 18 March 2022, the Panel ordered the Parties, the Registry, and Victims' Counsel (Applicants) to undertake a revision of the trial hearing transcripts 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.<sup>2</sup>
3. On 29 April 2022, the Applicants submitted their combined proposals for redaction and reclassification of the transcripts of the trial hearings from 9 June to 14 October 2021 (First Joint Submissions).<sup>3</sup>

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<sup>1</sup> KSC-BC-2020-05, F00041/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of First Decision on Specialist Prosecutor's Request for Protective Measures*, 20 October 2020, confidential, para. 39(c); F00053/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Second Decision on Specialist Prosecutor's Request for Protective Measures*, 24 November 2020, confidential, para. 51(f).

<sup>2</sup> KSC-BC-2020-05, F00348, Trial Panel I, *Order for submissions on the lifting of redactions in trial hearing transcripts or their reclassification*, 18 March 2022, public.

<sup>3</sup> KSC-BC-2020-05, F00401, Trial Panel I, *First Joint Submissions on the Lifting of Redactions in Trial Hearing Transcripts (9 June to 14 October 2021)*, 29 April 2022, public, with Annex 1, confidential.

4. On 26 May 2022, the Applicants submitted their combined proposals for the redaction and reclassification of the transcripts of the trial hearings from 2 to 18 November 2021 (Second Joint Submissions).<sup>4</sup>
5. On 24 June 2022, the Applicants submitted their combined proposals for the redaction and reclassification of the transcripts of the trial hearings from 22 November to 14 December 2021 (Third Joint Submissions).<sup>5</sup>
6. On 22 July 2022, the Applicants submitted their combined proposals for the redaction and the reclassification of the transcripts of the trial hearings from 18 January to 2 February 2022, and of 1 June 2022 (Fourth Joint Submissions).<sup>6</sup>
7. On 15 September 2022, the Presiding Judge declared the case closed at the end of the hearing on closing statements.<sup>7</sup>
8. On 6 December 2022, the Panel scheduled the pronouncement of the Trial Judgment for Friday, 16 December 2022.<sup>8</sup>

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<sup>4</sup> KSC-BC-2020-05, F00420, Trial Panel I, *Second Joint Submissions on the Lifting of Redactions in Trial Hearing Transcripts (2 to 18 November 2021)*, 26 May 2022, public, with Annex 1, confidential.

<sup>5</sup> KSC-BC-2020-05, F00442, Trial Panel I, *Third Joint Submissions on the Lifting of Redactions in Trial Hearing Transcripts (22 November to 14 December 2021)*, 24 June 2022, public, with Annex 1, confidential.

<sup>6</sup> KSC-BC-2020-05, F00460, Trial Panel I, *Fourth Joint Submissions on the Lifting of Redactions in Trial Hearing Transcripts (18 January to 2 February 2022)*, 22 July 2022, public, with Annex 1, confidential.

<sup>7</sup> Transcript of Hearing, 15 September 2022, p. 4859, line 15.

<sup>8</sup> KSC-BC-2020-05, F00491, Trial Panel I, *Scheduling order for the pronouncement of the judgment*, 6 December 2022, public.

## II. SUBMISSIONS

9. The Applicants propose that the transcripts of the trial hearings of 9<sup>9</sup> and 10<sup>10</sup> June and 15 September<sup>11</sup> 2021 should retain their classification. The Applicants also submit that the transcript of the trial hearing of 1 February 2022<sup>12</sup> does not require the application of redactions.

10. Moreover, the Applicants appear to propose, in the tables and copies of the transcripts submitted as annexes to their submissions (Copies of Transcripts), to maintain the redactions previously authorised by the Panel over the course of the trial hearings, to lift certain of these redactions, or to apply new redactions to the parts of the transcripts of the hearings held in open session on the following trial days: 20, 21, 22, 23, 24, and 27 September 2021; 4, 5, 13, and 14 October 2021; 2, 3, 10, 11, 17, 18, 22, 23, and 24 November 2021; 25 January 2022 and 2 February 2022.<sup>13</sup> The Applicants notably submit that the proposed redactions to trial hearings transcripts of 2, 10, and 17 November 2021 in open session are justified because

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<sup>9</sup> Transcript of 9 June 2021, pp. 251-289. This concerns session from 14h32 to 15h42 which was held in closed session. The SPO and the Registry submit that said transcript should retain its classification “confidential *ex parte*” only available to the SPO and Registry. The session from 9h31 to 10h58 was held in open session and, according to the Applicants, the corresponding transcript (Transcript of 9 June 2021, pp. 205-251) does not require the application of redactions.

<sup>10</sup> Transcript of 10 June 2021, pp. 290-300. The SPO and the Registry propose that this transcript should retain its classification “confidential *ex parte*” only available to the SPO and Registry.

<sup>11</sup> Transcript of 15 September 2021, pp. 301-382. The Applicants propose that the parts held in open session do not require the application of redactions and that the parts held in private session (p. 375, lines 14 -25, p. 376, lines 1-22) should retain their classification.

<sup>12</sup> Transcript of 1 February 2022, pp. 2275-2373.

<sup>13</sup> The transcripts concerned are: Transcript of 20 September 2021, pp. 383-492; Transcript of 21 September 2021, pp. 493-566; Transcript of 22 September 2021, pp. 567-671; Transcript of 23 September 2021, pp. 672-743; Transcript of 24 September 2021, pp. 744-823; Transcript of 27 September 2021, pp. 824-850; Transcript of 4 October 2021, pp. 851-933; Transcript of 5 October 2021, pp. 934-1015; Transcript of 13 October 2021, pp. 1116-1225; Transcript of 14 October 2021, pp. 1226-1277; Transcript of 2 November 2021, pp. 1278-1354; Transcript of 3 November 2021, pp. 1355-1378; Transcript of 10 November 2021, pp. 1379-1499; Transcript of 11 November 2021, pp. 1500-1590; Transcript of 17 November 2021, pp. 1591-1678; Transcript of 18 November 2021, pp. 1679-1717; Transcript of 22 November 2021, pp. 1718-1790; Transcript of 23 November 2021, pp. 1791-1847; Transcript of 24 November 2021, pp. 1848-1916; Transcript of 25 January 2022, pp. 2184-2274; Transcript of 2 February 2022, pp. 2374-2458.

they are closely related to portions of testimony given in private session.<sup>14</sup> The Applicants also propose minor redactions to parts of the transcripts of the trial hearing of 25 January 2022, held in open session.<sup>15</sup>

11. Lastly, the Applicants propose the application of redactions to the parts of the transcripts of trial hearings held in private session, with the aim of protecting witnesses' identities and information, and the subsequent lifting of the private session classification.<sup>16</sup>

### III. APPLICABLE LAW

12. The Panel notes Articles 21(2), 23, 40(2) and (4) and 43(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 80, 84(1), 159(2) and 164(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

### IV. ANALYSIS

13. 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

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<sup>14</sup> Annex 1 to Second Joint Submissions, pp. 2-4.

<sup>15</sup> Annex 1 to Fourth Joint Submissions, p. 2.

<sup>16</sup> Annex 1 to First Joint Submissions, pp. 2-3, Annex 1 to Second Joint Submissions, pp. 2-4, Annex 1 to Third Joint Submissions, p. 2, and Annex 1 to Fourth Joint Submissions, p. 2. This concerns: Transcript of 20 September 2021, pp. 383-492; Transcript of 22 September 2021, pp. 567-671; Transcript of 23 September 2021, pp. 672-743; Transcript of 24 September 2021, pp. 744-823; Transcript of 4 October 2021, pp. 851-933; Transcript of 5 October 2021, pp. 934-1015; Transcript of 12 October 2021, pp. 1016-1099; Transcript of 13 October 2021, pp. 1116-1225; Transcript of 14 October 2021, pp. 1226-1277; Transcript of 2 November 2021, pp. 1278-1354; Transcript of 3 November 2021, pp. 1355-1378; Transcript of 10 November 2021, pp. 1379-1499; Transcript of 11 November 2021, pp. 1500-1590; Transcript of 17 November 2021, pp. 1591-1678; Transcript of 22 November 2021, pp. 1718-1790; Transcript of 23 November 2021, pp. 1791-1847; Transcript of 24 November 2021, pp. 1848-1916; Transcript of 13 December 2021, pp. 1917-2004; Transcript of 14 December 2021, pp. 2005-2025; Transcript of 18 January 2022, pp. 2026-2125; Transcript of 19 January 2022, pp. 2126-2183; Transcript of 25 January 2022, pp. 2184-2274; Transcript of 2 February 2022, pp. 2374-2458; and Transcript of 1 June 2022, pp. 4429-4499.

Law, the Accused has the right to a public hearing in the determination of the charges against him.

14. The Panel also recalls that the judgment shall be pronounced in public, as stipulated by Article 43(2) of the Law and Rule 159(2) of the Rules. Therefore, to give effect to the principle of publicity, the Panel shall ensure that the judgment 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. In that context, the Panel will exercise its duty under Rule 84(1) of the Rules to review the classification of records of proceedings and, where applicable, order their reclassification before rendering its judgment.

15. At the outset, the Panel notes that the Applicants have reached a comprehensive agreement with regard to the proposed redactions and lifting of the private session classification regarding the abovementioned trial hearings. The Panel will, first, consider the proposals related to the transcripts of the hearings held in open session and, second, the proposals related to the transcripts of hearings held in private session.

#### A. TRANSCRIPTS OF THE HEARINGS HELD IN OPEN SESSION

16. As preliminary observations, the Panel notes that the Applicants did not *systematically* indicate in the tables containing their submissions that they wish to maintain redactions previously authorised by the Panel over the course of the trial hearings (existing redactions) or to redact new information, or to lift existing redactions.<sup>17</sup> Yet, the Copies of the Transcripts of trial hearings held in open

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<sup>17</sup> The text “All of the parts in open session can be made Public” can be read in the comment column of the tables, without indication as to whether existing redactions are to be maintained or lifted or whether new redactions are proposed (*See* Annex 1 to First Joint Submissions, pp. 2-3, Annex 1 to Second Joint

session all contain excerpts marked to be redacted. The Panel will therefore examine the redactions as proposed in the tables and the Copies of Transcripts.

17. When marking the text of the Copies of Transcripts, no distinction is made between existing redactions or new excerpts that are proposed to be redacted (new redactions), even though the Applicants marked to a large extent the text corresponding to existing redactions.

18. Neither did the Applicants expressly stipulate in their submissions whether they wished to lift certain existing redactions. For the sake of clarity, in such a case, the Panel will consider it as a proposal to lift the existing redaction.

19. As to the question of whether to authorise new redactions, the Panel recalls that the open session parts of the transcripts above-mentioned (including some of the corresponding audio-video material) are already available to the public and that the application of new redactions would amount, in fact, to post-session redactions.

20. The Panel finds nevertheless that, overall, the Applicants' proposals are consistent with the approach of the Panel in protecting witnesses and victims under Article 23 of the Law. Notably, the Panel considers that they strike an appropriate balance between the different rights and interests at stake, namely, the principle of publicity under Article 40(4) of the Law, the rights of the Accused to a public hearing under Article 21(2) of the Law, and the protection of witnesses and victims under Article 23 of the Law.

21. In light of the above, concerning the transcripts of hearings held in open session on 20, 21, 22, 23, 24, and 27 September 2021, 4, 5, 13, and 14 October 2021, 2, 3, 10, 11, 17, 18, 22, 23, and 24 November 2021, 25 January and 2 February 2022,<sup>18</sup> the Panel

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Submissions, pp. 2-4, Annex 1 to Third Joint Submissions, p. 2, Annex 1 to Fourth Joint Submissions, p. 2, and *compare it with* the copy of transcripts included in these annexes).

<sup>18</sup> The transcripts concerned are: Transcript of 20 September 2021, pp. 383-492; Transcript of 21 September 2021, pp. 493-566; Transcript of 22 September 2021, pp. 567-671; Transcript of

authorises, on the one hand, the lifting of all existing redactions contained in the public redacted version of the transcripts and, on the other hand, the application of redactions as proposed by the Applicants in the Copies of Transcripts, unless instructed otherwise in the annex to this decision. Accordingly, it instructs the Registry to lift all existing redactions and to apply in the open session parts of the relevant transcripts, the redactions as set out in the Copies of Transcripts, subject to the instructions included in the annex to this decision. The Panel specifies that the redactions as authorised shall equally apply to the transcripts in Albanian and Serbian. Lastly, when implementing this decision, Court Management Unit (CMU) shall submit to the Presiding Judge of this Panel a single redaction order containing all applicable post-session redactions for her approval and signature. CMU is further instructed to liaise with the Panel should any issue arise in the implementation of this decision.

#### B. TRANSCRIPTS OF THE HEARINGS HELD IN PRIVATE SESSION

22. The Panel notes that the Applicants agree that a substantial part of the excerpts of the transcripts of hearings held in private session can be made public.<sup>19</sup>

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23 September 2021, pp. 672-743; Transcript of 24 September 2021, pp. 744-823; Transcript of 27 September 2021, pp. 824-850; Transcript of 4 October 2021, pp. 851-933; Transcript of 5 October 2021, pp. 934-1015; Transcript of 13 October 2021, pp. 1116-1225; Transcript of 14 October 2021, pp. 1226-1277; Transcript of 2 November 2021, pp. 1278-1354; Transcript of 3 November 2021, pp. 1355-1378; Transcript of 10 November 2021, pp. 1379-1499; Transcript of 11 November 2021, pp. 1500-1590; Transcript of 17 November 2021, pp. 1591-1678; Transcript of 18 November 2021, pp. 1679-1717; Transcript of 22 November 2021, pp. 1718-1790; Transcript of 23 November 2021, pp. 1791-1847; Transcript of 24 November 2021, pp. 1848-1916; Transcript of 25 January 2022, pp. 2184-2274; Transcript of 2 February 2022, pp. 2374-2458. The existing redactions in the open session parts of the Transcript of 15 September 2021 (*see* p. 367, lines 16-18), which was not included in Annex 1 to the First Submission, are therefore maintained.

<sup>19</sup> The relevant transcripts are: Transcript of 20 September 2021, pp. 383-492; Transcript of 22 September 2021, pp. 567-671; Transcript of 23 September 2021, pp. 672-743; Transcript of 24 September 2021, pp. 744-823; Transcript of 4 October 2021, pp. 851-933; Transcript of 5 October 2021, pp. 934-1015; Transcript of 12 October 2021, pp. 1016-1099; Transcript of 13 October 2021, pp. 1116-1225; Transcript of 14 October 2021, pp. 1226-1277; Transcript of 2 November 2021, pp. 1278-1354; Transcript of 3 November 2021, pp. 1355-1378; Transcript of 10 November 2021, pp. 1379-1499; Transcript of 11 November 2021, pp. 1500-1590; Transcript of 17 November 2021, pp. 1591-1678; Transcript of



The Panel notes that the Applicants are mainly concerned with redacting: (i) personal data of the testifying witnesses; (ii) part of the witnesses' story that could lead to their identification; and/or (iii) the identity of another protected witness or a person related to or associated with them. Similarly to what has been held in relation to open session transcripts, the Panel finds that the proposed redactions strike an appropriate balance between the different rights and interests at stake.

23. In light of the above, the Panel authorises the redactions as proposed by the Applicants in the Copies of Transcripts, unless instructed otherwise in the annex to this decision, which notably lists additional excerpts that shall remain confidential and redacted. Accordingly, it instructs the Registry to redact the information as set out in the transcripts included in the Copies of Transcripts, subject to the instructions included in the annex to this decision. The Panel specifies that the redactions as authorised shall equally apply to the transcripts in Albanian and Serbian.

24. The Panel further considers, as suggested by the Applicants, that the parts of the transcripts of trial hearings held in closed or private session on 9 and 10 June 2021, and 15 September 2021, must retain their classification, given the subject of these hearings and the information discussed therein. The Panel notes that, in their submissions, the Applicants did not include the transcript of a closed session held on 12 October 2021.<sup>20</sup> The Panel finds, however, for the aforesaid reasons, that this transcript must also retain its classification.

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22 November 2021, pp. 1718-1790; Transcript of 23 November 2021, pp. 1791-1847; Transcript of 24 November 2021, pp. 1848-1916; Transcript of 13 December 2021, pp. 1917-2004; Transcript of 14 December 2021, pp. 2005-2025; Transcript of 18 January 2022, pp. 2026-2125; Transcript of 19 January 2022, pp. 2126-2183; Transcript of 25 January 2022, pp. 2184-2274; Transcript of 2 February 2022, pp. 2374-2458; and Transcript of 1 June 2022, pp. 4429-4499.

<sup>20</sup> Transcript of 12 October 2021, pp. 1100-1115.

25. Accordingly, the Panel instructs the Registry to lift the private session classification of the relevant trial hearing transcripts,<sup>21</sup> except for the closed or private sessions held on 9 and 10 June 2021, 15 September 2021, and 12 October 2021, as mentioned in paragraph 24 of this decision, and subject to the authorised redactions as set out in paragraph 23 of this decision.

#### C. AUDIO-VIDEO MATERIAL

26. The Panel recalls that hearings are broadcasted in the three official languages of the Kosovo Specialist Chambers, i.e. English, Albanian, and Serbian, which requires the Language Services Unit to provide simultaneous interpretation. The Panel notes however that the simultaneous interpretation, although occurring at the same time, is in reality implemented with a slight delay, which corresponds to the time necessary for the interpreters to process and reformulate information from one official language into the other two official languages.

27. Mindful of the aforementioned, the Panel instructs the Registry to implement the redactions to the corresponding audio-video material of the relevant trial hearing transcripts, only to the extent technically possible.

#### D. VERIFICATION OF INTERPRETATION NOTE

28. The Panel observes that in Annex 1 to Third Joint Submissions, concerning page 1811 and line 4 of Transcript of 23 November 2021, the following note is included: “a verification of the interpretation may be appropriate for the dates (1978, 1979)”.<sup>22</sup> The Applicants are instructed, if they deemed it necessary, to submit the aforementioned request for verification.

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<sup>21</sup> For a list of the concerned transcripts, *see* footnote 18.

<sup>22</sup> Annex 1 to Third Joint Submissions, p. 2. The same note is repeated in Annex 1 to the Fourth Joint Submissions.

## V. DISPOSITION

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

- a) **AUTHORISES** the redactions in accordance with paragraphs 21 and 23 of this decision;
- b) **INSTRUCTS** the Registrar to apply to the relevant trial hearing transcripts, in all languages, the redactions in accordance with paragraphs 21 and 23 of this decision;
- c) **INSTRUCTS** the Registrar to lift the private session classification of the relevant trial hearing transcripts, in all languages, except for the parts of the transcripts held in closed or private session on 9 and 10 June, 15 September, and 12 October 2021, and subject to the authorised redactions, as set out in paragraphs 23-25 of this decision;
- d) **INSTRUCTS** the Registrar to implement, only to the extent technically possible, the redactions in the corresponding audio-video material of the relevant trial hearing transcripts, in all languages;
- e) **INSTRUCTS** the Applicants to submit, if they deem it necessary, a request for verification as set out in paragraph 28 of this decision; and

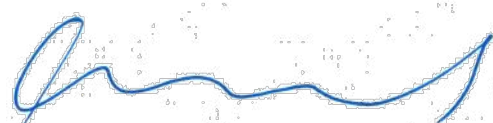
- f) **INSTRUCTS** CMU to liaise with the Panel should any issue arise in the implementation of this decision.



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



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Thursday, 15 December 2022

At The Hague, the Netherlands.