



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-CA-2023-02

Before: **Presiding Judge of a Panel of the Court of Appeals Chamber**
Judge Michèle Picard

Registrar: Fidelma Donlon

Date: 9 February 2023

Original language: English

Classification: **Public**

Order Scheduling a Pre-Appeal Conference

Specialist Prosecutor's Office:
Alex Whiting

Counsel for Salih Mustafa:
Julius von Bóné

Counsel for Victims:
Anni Pues

THE PRESIDING JUDGE OF A PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Presiding Judge”, “Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively)¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 172 of the Rules of Procedure and Evidence (“Rules”) hereby issues this Order.

1. On 24 September 2020, Mr Salih Mustafa (“Mustafa” or “Accused”) was arrested and transferred to the Specialist Chambers’ Detention Facilities.²
2. On 16 December 2022, the Trial Panel delivered its judgment (“Trial Judgment”), finding the Accused guilty on three counts of the Indictment and not guilty on one count, and sentenced him to a single sentence of 26 years of imprisonment, with credit for the time served.³
3. On 9 January 2023, the Appeals Panel granted the Accused’s request for an extension of time to file his notice of appeal against the Trial Judgment by 3 February 2023.⁴

¹ F00007, Decision Assigning a Court of Appeals Panel, 7 February 2023 (confidential, reclassified as public on 7 February 2023).

² KSC-BC-2020-05, F00013, Notification of Arrest Pursuant to Rule 55(4), 24 September 2020 (strictly confidential and *ex parte*, reclassified as public on 16 November 2020); KSC-BC-2020-05, F00014, Notification of Reception in the Detention Facilities of the Specialist Chambers, 24 September 2020 (strictly confidential and *ex parte*, reclassified as public on 16 November 2020).

³ KSC-BC-2020-05, F00011/RED/A01, Public Redacted Version of “Indictment”, dated 19 June 2020, 2 October 2020 (strictly confidential and *ex parte* version filed on 19 June 2020) (“Indictment”); KSC-BC-2020-05, F00494/RED/COR, Corrected version of Public redacted version of Trial Judgment, 24 January 2023 (confidential version filed on 16 December 2022, uncorrected public redacted version filed on 19 January 2023), para. 831. The Trial Panel convicted Mustafa of arbitrary detention, torture and murder as war crimes, under Counts 1, 3 and 4 of the Indictment, and acquitted him of cruel treatment as a war crime under Count 2 of the Indictment. See Trial Judgment, para. 831. See also KSC-BC-2020-05, F00491, Scheduling order for the pronouncement of the judgment, 6 December 2022.

⁴ F00001, Defense urgent motion to extend time limit to file Notice of Appeal, 3 January 2023; F00004, Decision on Defence Motion for Variation of Time Limit to File Notice of Appeal, 9 January 2023.

4. On 2 February 2023, the Accused filed his notice of appeal against the Trial Judgment (“Notice of Appeal”).⁵

5. As a preliminary matter, the Presiding Judge notes that the Trial Panel issued a public redacted version of the Trial Judgment, however, the Accused has not yet filed a public redacted version of the Notice of Appeal. The Presiding Judge recalls that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed before the Panel as soon as possible, rather than waiting for an order from the Panel.⁶ As such, the Presiding Judge orders the Accused to file a public redacted version of the Notice of Appeal by **Monday, 13 February 2023 at 12:00.**

6. Moreover, Rule 178 of the Rules provides that:

Within twenty-one (21) days of a notice of appeal, and when deemed necessary thereafter, the Presiding Judge, or the Judge Rapporteur, if designated, shall convene a conference to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the person’s mental and physical condition.

7. Accordingly, the Presiding Judge hereby schedules a Pre-Appeal Conference to be held on **Thursday, 16 February 2023 at 10:00.**

8. During the hearing, the Presiding Judge will invite submissions from the Parties, Counsel for Victims and/or the Registry, as the case may be, on:

- (i) The Accused’s detention pending appeal, including his mental and physical condition, in accordance with Rule 178 of the Rules;

⁵ F00006, Defence Notice of Appeal pursuant to Rule 176 (of Rules of Procedure and Evidence) against the Judgment of the Trial Panel I of 16 December 2022, 2 February 2023 (confidential).

⁶ See e.g. KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

- (ii) The progress made on the translation of the Trial Judgment into Albanian, and its expected finalisation; and
- (iii) Any other issue that the Presiding Judge may wish to raise.

9. The Presiding Judge instructs the Parties and Counsel for Victims to inform her and the other Parties and Counsel for Victims via email, by **Monday, 13 February 2023 at 12:00**, of any other issues that they would like to raise during the Pre-Appeal Conference.

10. In accordance with Rules 96(2) and 173(3) of the Rules, the Presiding Judge instructs the Defence to indicate via email to the Court Management Unit, by **Monday, 13 February 2023 at 12:00**, whether the Accused wishes to participate in the Pre-Appeal Conference, and/or whether the Accused and/or Counsel wish to appear via video-conference. If the Accused does not wish to participate in the Pre-Appeal Conference, the Defence should submit the pertinent waivers, in the same manner and by the same date and time.

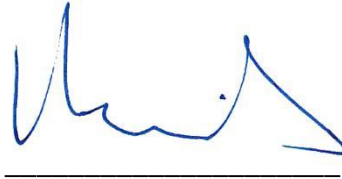
11. For these reasons, the Presiding Judge of the Court of Appeals Panel:

SCHEDULES a Pre-Appeal Conference for **Thursday, 16 February 2023 at 10:00**;

INSTRUCTS the Defence to indicate, by **Monday, 13 February 2023 at 12:00**, and in the manner set out above at paragraph 10, whether the Accused wishes to participate in the Pre-Appeal Conference and, if necessary, submit the pertinent waivers;

INSTRUCTS the Parties and Counsel for Victims to notify the Presiding Judge and the other Parties and Counsel for Victims via email, by **Monday, 13 February 2023 at 12:00**, of any other issues that they would like to raise during the Pre-Appeal Conference; and

ORDERS the Defence to file a public redacted version of the Notice of Appeal
by **Monday, 13 February 2023 at 12:00.**



**Judge Michèle Picard,
Presiding Judge**

Dated this Thursday, 9 February 2023

At The Hague, the Netherlands