

In: KSC-BC-2020-06
The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: **Trial Panel II**
Judge Charles L. Smith, III, Presiding
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi
Specialist Counsel for Kadri Veseli
Specialist Counsel for Rexhep Selimi
Specialist Counsel for Jakup Krasniqi

Date: 1 March 2023

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Joint Defence Motion for Judicial Notice of Adjudicated Facts

with Public Annex A

Specialist Prosecutor's Office

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I- INTRODUCTION

1. Pursuant to Articles 21 and 40 of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 157 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), the Defence for Mr Thaçi, Mr Veseli, Mr Selimi, and Mr Krasniqi (collectively, "the Defence") respectfully requests the Trial Panel to take judicial notice of the adjudicated facts listed in Annex A ("Proposed Adjudicated Facts") to this motion.

2. During the Trial Preparation Conference of 18 January 2023, the Panel inquired whether the Parties intended to request judicial notice of adjudicated facts pursuant to Rule 157(2) of the Rules; the Defence confirmed its intention to file such a motion, jointly, prior to the commencement of the trial.¹ On the same day, the Panel ordered the SPO and the Defence to file motions requesting judicial notice of adjudicated facts pursuant to Rule 157(2) of the Rules by 1 March 2023 at 4.00 p.m.²

3. The Defence files this motion as ordered by the Panel, and reserves the right to file additional requests for judicial notice of adjudicated facts at a later stage of the proceedings.

II- SUBMISSIONS

4. Rule 157(2) of the Rules stipulates that, "Upon request by a Party or *proprio motu* [...] the Panel may, in the interests of a fair and expeditious trial, take judicial notice of adjudicated facts from other proceedings of the Specialist Chambers or from final proceedings before other Kosovo courts or from other jurisdictions relating to

¹ KSC-BC-2020-06, Transcript of 18 January 2023, page 12, line 25 to page 13, line 11.

² KSC-BC-2020-06, Transcript of 18 January 2023, page 121, lines 12-14.

matters at issue in the current proceedings, to the extent that they do not relate to the acts and conduct of the Accused as charged in the indictment.”

5. As stressed by the *Mustafa* Trial Panel, “Rule 157(2) of the Rules aims at achieving judicial economy (“in the interests of a fair and expeditious trial”) by conferring on the Trial Panel discretionary power to take judicial notice of adjudicated facts from other proceedings of the Specialist Chambers or from final proceedings before other Kosovo courts or from other jurisdictions relating to matters at issue, thus avoiding the presentation of evidence in relation to facts that have been previously established in these other proceedings on the basis of evidence presented.”³

6. The Proposed Adjudicated Facts comply with the requirements set out by Rule 157, as they (1) were adjudicated in final proceedings before other Kosovo courts or the ICTY; (2) relate to matters at issue in the current proceedings; and (3) do not relate to the acts and conduct of any of the Accused as charged in the Indictment.

7. The Proposed Adjudicated Facts are suitable for judicial notice as they: are “distinct, concrete, and identifiable”;⁴ do not differ in any substantial way from the formulation of the original judgement;⁵ are not unclear or misleading in the context in

³ KSC-BC-2020-05/F00191, para. 9.

⁴ KSC-BC-2020-05/F00191, para. 10, citing ICTY, *Prosecutor v. Perišić*, IT-04-81-PT, Trial Chamber I, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts Concerning Sarajevo, 26 June 2008, para. 18; *Prosecutor v. Prlić et al.*, IT04-74-PT, Trial Chamber II, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(b), 14 March 2006, para. 12; *Prosecutor v. Hadžihasanović & Kubura*, IT-01-47-T, Trial Chamber II, Decision on Judicial Notice of Adjudicated Facts Following the Motions Submitted by Counsel for the Accused Hadžihasanović and Kubura on 20 January 2005, 14 April 2005, p. 5; see also *Prosecutor v. Mičo Stanišić*, Case No. IT-04-79-PT, Decision on Judicial Notice, 14 December 2007, para. 37.

⁵ KSC-BC-2020-05/F00191, para. 10, citing ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, Decision on Accused’s Motion for Judicial Notice of Adjudicated Facts related to count one, 21 January 2014, para. 6; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006, para. 7; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, para. 16.

which they are placed;⁶ are not based on an agreement between the Parties to the original proceedings;⁷ and are not subject to pending appeals or reviews.⁸

8. Facts 1-36 relate to the historical background of the armed conflict, including the Serb oppression against Kosovo Albanians starting from 1989 until 1998; the composition and organisation of Serb forces; and the FRY and Serbian common criminal plan against the Kosovo Albanian civilian population.

9. Facts 37-105 are related to certain attacks on Kosovo Albanian civilians that occurred in geographical and temporal proximity to the events and charges in this case. All of these facts are relevant to the level of organization of the KLA throughout the Indictment period; provide important historical and contextual information on the allegations in this case; and are relevant to the defence of self-defence that Mr Taçi gave notice of on 20 February 2023.⁹

10. Facts 106-125 are also specifically relevant to the level of organisation and structure of the KLA during the indictment period, and are therefore relevant to the allegations in this case.¹⁰

⁶ ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006, para. 8.

⁷ ICTY, *Prosecutor v. Krajišnik*, IT-00-39-PT, Trial Chamber I, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92 bis, 28 February 2003, para. 14; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006, para. 11.

⁸ ICTY, *Prosecutor v. Mladić*, IT-09-92, Appeals Chamber, Decision on Ratko Mladić's Appeal Against the Trial Chamber's Decisions on the Prosecution Motion for Judicial Notice of Adjudicated Facts, 12 November 2013, paras 92, 94; *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006, para. 14.

⁹ KSC-BC-2020-06/F01306.

¹⁰ KSC-BC-2020-05/F00191, para. 13.

11. Facts 126-134 relate to the existence and temporal scope of the armed conflict between the KLA and forces of the former Federal Republic of Yugoslavia fighting jointly with Serbian force, and therefore to the contextual element of war crimes.

III- RELIEF REQUESTED

12. For the foregoing reasons, the Defence requests the Trial Panel to take judicial notice of the facts listed in Annex A to this motion¹¹ pursuant to Rule 157 of the Rules.

[Word count: 1193]

Respectfully submitted on 1 March 2023



Gregory W. Kehoe

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¹¹ At this stage, the Selimi Defence seeks to rely only upon those facts from final proceedings of the ICTY set out in Annex A. Where facts are based on a combination of facts from final proceedings of the ICTY and final proceedings before other Kosovo courts, only those parts based on the former are relied upon by the Selimi Defence. This applies to facts numbered 69, 74, 89, 90, 91 in Annex A. Given the substantive overlap between these facts and those submitted by other Defence teams the Selimi Defence files this motion jointly with the other teams subject to this caveat.



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