



In: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: Trial Panel I
Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Party: Acting Specialist Prosecutor

Date: 14 April 2023

Language: English

Classification: Public

**Prosecution motion for judicial notice of facts of common knowledge and
adjudicated facts**

with public Annex 1 and confidential Annexes 2 and 3

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 21(4)(d) of the Law,¹ Rule 157 of the Rules,² and the Decision,³ the Specialist Prosecutor's Office ('SPO') hereby requests the Trial Panel ('Panel') to take judicial notice of facts of common knowledge and of facts that have been adjudicated in trials before the International Criminal Tribunal for the former Yugoslavia ('ICTY') and Kosovo courts, that are relevant to this case. The facts of common knowledge and the adjudicated facts of which the SPO is seeking judicial notice are listed in Annexes 1 and 2, respectively, to this motion.⁴ Taking judicial notice of the proposed facts will promote judicial economy, is in the interests of justice and respects the rights of the Accused to a fair, public and expeditious trial. The proposed facts fulfil the requirements of Rule 157 in that they are relevant, clear and unambiguous, as illustrated below.

II. SUBMISSIONS

A. FACTS OF COMMON KNOWLEDGE

2. Facts of common knowledge under Rule 157(1) are facts that are commonly accepted or universally known, and are not reasonably subject to dispute. Typical

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise specified, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ Decision on the date for the commencement of the trial, evidence presentation and related matters, KSC-BC-2020-04/F00405, 26 January 2023, para.18(d) ('Decision'). In its Trial Preparation Conference Submissions, the SPO had indicated its intention to request the Panel to take judicial notice of a number of facts under Rule 157(2). *See* Public Redacted Version of Prosecution submissions in advance of the trial preparation conference, KSC-BC-2020-04/F00303/RED2, 11 October 2022, para.35. The Defence indicated that it does not intend to request the Panel to take judicial notice of adjudicated facts, and that it expects the SPO to prove the entirety of its case. *See* Public Redacted Version of the Defence Submissions Pursuant to Order on Trial Preparation Conferences, KSC-BC-2020-04/F00305/RED, 10 October 2022, para.20.

⁴ Confidential Annex 3 contains unredacted version of the relevant judgments issued by Kosovo courts.

examples are general facts of history or geography, and the laws of nature,⁵ as well as those facts that are ‘generally known within a tribunal’s territorial jurisdiction’.⁶

3. To be judicially noticed, facts of common knowledge have to satisfy the following criteria: (i) they are relevant to the case at hand; (ii) they are not subject to reasonable dispute; (iii) they are sufficiently well-defined; (iv) they do not include findings or characterisations that are essentially of legal nature; and (v) they do not attest to the criminal responsibility of the accused.⁷

4. Once a Panel has determined that a fact is of common knowledge, it must take judicial notice of it.⁸ Facts of common knowledge are established conclusively, and cannot be challenged during trial.⁹

5. The facts contained in Annex 1 are uncontroversial and known geographical and historical facts. They are relevant to the present case, in that they provide contextual and background information to the events and charges in Case 04, including their occurrence in Albania after the beginning of the NATO bombing

⁵ ICTY, Trial Chamber I, *Prosecutor v. Mladić*, IT-09-92-PT, First Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 February 2012 (*Mladić First Decision*), para.17; SCSL, Trial Chamber II, *Prosecutor v. Taylor*, SCSL-03-01-T-370, Decision on the Prosecution Motion for Judicial Notice, 7 December 2007 (*Taylor Trial Chamber Decision*), para.12; ICTR, Appeals Chamber, *Prosecutor v. Semanza*, ICTR-97-20-A, Judgment, 20 May 2005 (*Semanza Appeals Judgment*), para.194; ICTR, Trial Chamber, *Prosecutor v. Semanza*, ICTR-97-20-T, Decision on the Prosecutor’s Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, 3 November 2000 (*Semanza Decision*), para.23; ICTR, *Prosecutor v. Karemera et al.*, ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 (*Karemera Appeals Decision*), paras 22, 30; ICTY, Trial Chamber II, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 26 September 2006 (*Popović Facts of Common Knowledge Decision*), para.13.

⁶ *Semanza Decision*, ICTR-97-20-T, para.24; SCSL, *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73-398, Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, 16 May 2005 (*Fofana Decision*), para.21.

⁷ *Taylor Trial Chamber Decision*, SCSL-03-01-T-370, para.13; *Karemera Appeals Decision*, ICTR-98-44-AR73(C), para.29; *Popović Facts of Common Knowledge Decision*, IT-05-88-T, para.11.

⁸ *Karemera Appeals Decision*, ICTR-98-44-AR73(C), paras 22-23, 29, 41; *Semanza Appeals Judgment*, ICTR-97-20-A, para.194; *Semanza Decision*, ICTR-97-20-T, para.24; *Popović Facts of Common Knowledge Decision*, IT-05-88-T, para.12.

⁹ *Karemera Appeals Decision*, ICTR-98-44-AR73(C), para.42; *Taylor Trial Chamber Decision*, SCSL-03-01-T-370, para.14.

campaign.¹⁰ These facts are not subject to reasonable dispute and they are so notorious, or susceptible to determination by reference to authoritative sources, that evidence of their existence is unnecessary.¹¹ They do not contain legal characterisations or findings, and do not attest to the criminal responsibility of the Accused. Facts of a similar nature to those proposed by the SPO in this case have been accepted by other tribunals as facts of common knowledge.¹² Taking judicial notice of these facts will expedite the trial without prejudicing the rights of the Accused.

B. ADJUDICATED FACTS

6. Rule 157(2) provides the Trial Panel with discretionary power, upon request by a party or *proprio motu*, to take judicial notice of adjudicated facts from other Specialist Chambers ('SC') proceedings or from final proceedings before Kosovo courts or other jurisdictions, with a view to promoting judicial economy.¹³ Adjudicated facts of which judicial notice can be taken are findings of fact made in the context of proceedings between other parties on the basis of the evidence those parties chose to introduce.¹⁴ By taking judicial notice of adjudicated facts, the Panel establishes a presumption of

¹⁰ Public Redacted Version of Corrected Indictment, KSC-BC-2020-04/F00107/A01, 16 November 2021 ('Case 04 Indictment'), paras 5-6; Annex 1 to Submission of Pre-Trial Brief, with witness and exhibit lists, KSC-BC-2020-04/F00135/A01, 28 January 2022, confidential ('Case 04 PTB'), paras 6, 23.

¹¹ Facts of common knowledge have been judicially noticed by reference to authoritative sources including judgements in proceedings before other jurisdictions: *see e.g.* ICTY, Trial Chamber I, *Prosecutor v. Mladić*, IT-09-92-PT, Prosecution Motion for Judicial Notice of Adjudicated Facts, 9 December 2011, Annex A, facts 496 and 497 (relying on the *Krajišnik* Trial Judgment); *Mladić* First Decision, IT-09-92-PT, para.17 (accepting the proposed facts as facts of common knowledge).

¹² *See e.g.* *Mladić* First Decision, IT-09-92-PT, para.17 (finding that proposed facts nos.496-497 and 522, referring to the geographical location of towns and municipalities within Bosnia and Herzegovina, were facts of common knowledge); *Taylor* Trial Chamber Decision, SCSL-03-01-T-370, para.17 (finding it appropriate to take judicial notice of facts 1-3, concerning, *inter alia*, the location of Freetown, the Western area and a number of districts within the country of Sierra Leone, and the existence of an armed conflict in Sierra Leone from about March 1991 until about 18 January 2002).

¹³ Rule 157(2) ('in the interests of a fair and expeditious trial'); *Specialist Prosecutor v. Mustafa*, Decision on judicial notice of adjudicated facts, KSC-BC-2020-05/F00191, 7 September 2021 ('*Mustafa* Judicial Notice Decision'), para.9; ICTY, Trial Chamber III, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts, 14 June 2010 ('*Karadžić* Decision on Fifth Motion for Judicial Notice'), para.12; *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para.39.

¹⁴ *Mladić* First Decision, IT-09-92-PT, para.23; *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para.40.

accuracy of the relevant facts, which do not have to be proven at trial. The other party may, however, present evidence to rebut this presumption.¹⁵

7. For the Panel to take judicial notice of adjudicated facts, the proposed facts have to fulfil the following criteria: (i) they relate to matters at issue in the current proceedings;¹⁶ (ii) they do not relate to the acts and conduct of the accused as charged in the confirmed indictment;¹⁷ (iii) they are distinct, concrete, and identifiable;¹⁸ (iv) as formulated by the moving party, they do not differ in any substantial way from the formulation of the original judgement;¹⁹ (v) they are not unclear or misleading in the context in which they are placed in the moving party's motion;²⁰ (vi) they are identified with adequate precision by the moving party;²¹ (vii) they do not contain legal findings

¹⁵ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.11; *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para.42.

¹⁶ Rule 157(2); *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(i); ICTY, Trial Chamber III, *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Accused's Motion for Judicial Notice of Adjudicated Facts Related to Count One, 21 January 2014 ('*Karadžić* Decision on Judicial Notice Related to Count one'), para.6(a); ICTY, *Prosecutor v. Mladić*, IT-09-92-AR73.1, 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 ('*Mladić* Appeals Decision'), para.25(i); ICTY, Trial Chamber II, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 26 September 2006 ('*Popović* Adjudicated Facts Decision'), para.5.

¹⁷ Rule 157(2); *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(i); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(h); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(viii); *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para.50; *Popović* Adjudicated Facts Decision, IT-05-88-T, para.12.

¹⁸ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(ii); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(b); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(ii); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.6.

¹⁹ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(iii); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(c); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(iii); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.7.

²⁰ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(iv); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(d); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(iv); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.8.

²¹ *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(e); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(v); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.9; ICTY, Appeals Chamber, *Prosecutor v. Kupreškić et al.*, IT-95-16-A, Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence pursuant to Rule 115 and for Judicial Notice to Be Taken pursuant to Rule 94(B), 8 May 2001 ('*Kupreškić et al.* Decision'), para.12.

or characterisations;²² (viii) they are not based on an agreement between the parties to the original proceedings;²³ and (ix) they are not subject to pending appeals or reviews.²⁴

8. As elaborated in further detail below, the facts contained in Annex 2 satisfy the above criteria, and ensure an appropriate balance between the purpose of taking judicial notice, namely to promote judicial economy, and the fundamental right of the accused to a fair trial.²⁵

1. The proposed facts relate to matters at issue in the current proceedings

9. Adjudicated facts are relevant to the proceedings when they relate 'to a material issue' in the case, the material issues of a case being found in the indictment.²⁶

10. Facts 1-9 (armed conflict), 10-21 (the 'VJ'), 22-29 (the 'MUP'), 30-33 (the 'LDK'), 34-50 (the 'KLA') all relate to material issues in the case, namely the existence of an armed conflict in Kosovo between forces of the Federal Republic of Yugoslavia and Serbia, including the VJ and the MUP, on the one hand, and the Kosovo Liberation Army, on the other, as alleged in the Case 04 Indictment.²⁷ Proposed facts referring to

²² *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(v); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(f); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(vi); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.10.

²³ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(vi); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(g); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(vii); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.11.

²⁴ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(vii); *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.6(i); *Mladić* Appeals Decision, IT-09-92-AR73.1, para.25(ix); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.14.

²⁵ See *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.9; ICTY, *Prosecutor v. Nikolić*, IT-02-60/1-A, Decision on Appellant's Motion for Judicial Notice, 1 April 2005 ('*Nikolić* Decision on Judicial Notice'), para.12; *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para.39.

²⁶ See *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, para.18; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.13, Decision on Jadranko Prlić's Consolidated Interlocutory Appeal against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence, 12 January 2009, para.17; *Semanza* Appeals Judgment, ICTR-97-20-A, para.189 ('[t]he Appeals Chamber affirms that Rule 94 of the Rules is not a mechanism that may be employed to circumvent the ordinary requirement of relevance and thereby clutter the record with matters that would not otherwise be admitted'); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.5.

²⁷ Case 04 Indictment, KSC-BC-2020-04/F00107/A01, paras 3-4. See also Case 04 PTB, KSC-BC-2020-04/F00135/A01, paras 19, 21-22, 24-26.

a time period outside the scope of the Indictment are not automatically irrelevant to the case at hand.²⁸ The proposed facts pre-dating the Indictment period in Case 04 are also relevant as they provide contextual information on the lead-up to the armed conflict, the structure and level of organisation of the VJ, the MUP, and the KLA,²⁹ and the role of specific individuals.³⁰ Facts about the LDK provide relevant context to and will enable a better understanding of evidence in this case.³¹

11. Facts 51-56 (Kukës), and 57-61 (presence and role of JCE members at the Kukës Metal Factory) all relate to matters at issue in the current proceedings, including the use of the Kukës Metal Factory by the KLA as a base for their military operations and as a detention facility, the crimes committed therein, and the presence and conduct of JCE members other than the Accused, as charged in the Indictment.³²

12. In order to facilitate the Panel's assessment of the relevance of the proposed facts to the matters at issue in the current proceedings, references to the corresponding paragraphs of the Case 04 Indictment and Pre-Trial Brief are included in the chart.³³

2. The proposed facts do not relate to the acts and conduct of the accused

13. Rule 157(2) excludes the possibility of taking judicial notice of facts concerning the acts and conduct of the accused as charged in the indictment.³⁴ As held by an ICTY Trial Chamber '[t]his exclusion focuses narrowly on the deeds, behaviour, and mental

²⁸ *Mladić* First Decision, IT-09-92-PT, para.34; ICTY, *Prosecutor v. D.Milošević*, IT-98-29/1-AR73.1, Decision on Interlocutory Appeals against Trial Chamber's Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, 26 June 2007 ('*D.Milošević* Interlocutory Appeals Decision'), para.14 (finding facts falling outside the time period charged in the indictment and relating to the acts and conduct of the accused's predecessor relevant to the case inasmuch as they concerned the shelling and sniping campaign against civilians which the accused inherited and furthered with his own conduct).

²⁹ See *similarly Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.13.

³⁰ See e.g. fact 57 on the role of JCE member Sabit GECL.

³¹ Trial Transcript, KSC-BC-2020-04, 27 March 2023, pp.633-634 (private session).

³² Case 04 Indictment, KSC-BC-2020-04/F00107/A01, paras 6, 10. See also Case 04 PTB, KSC-BC-2020-04/F00135/A01, paras 5-8, 71.

³³ Annex 2.

³⁴ See *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para.52; *D.Milošević* Interlocutory Appeals Decision, IT-98-29/1-AR73.1, para.16; *Mladić* Appeals Decision, IT-09-92-AR73.1, para.80.

state of the accused – that is, on the conduct of the accused fulfilling the physical and mental elements of the form of responsibility through which he or she is charged with responsibility.³⁵

14. None of the proposed facts in Annex 2 relate to the acts and conduct of the Accused as charged in the Indictment, including the proposed facts concerning Kukës. Proposed facts 51-56 concern general conditions for victims at Kukës and context concerning their treatment and the camp. They do not concern the deeds and behaviour of the Accused that make him responsible as a direct perpetrator, a JCE member, or an aider and abettor. In other words, proposed facts 51-56 do not concern the way in which the Accused personally contributed, through his actions and omissions, to the arbitrary detention, cruel treatment, torture, and murder that occurred at the Kukës Metal Factory.

15. Further, proposed facts 51-56 are relevant, clear and unambiguous; they have been established in the context of two Kosovo proceedings concerning crimes at, *inter alia*, the Kukës Metal Factory during the indictment period in this case, and confirmed on appeal.³⁶ The introduction of these well-established facts does not prejudice the Defence because it does not affect the SPO's burden. The SPO must still prove that the Accused took part in enforcing and continuing arbitrary detention, cruel treatment, torture, and murder, as charged in the Indictment.³⁷ To the contrary, judicially noticing these facts will promote judicial economy and ensure the expeditiousness of the trial, enabling the Panel to focus on the core of the SPO case, namely the criminal responsibility of the Accused for the crimes charged.

³⁵ *Popović* Adjudicated Facts Decision, IT-05-88-T, para.13 (emphasis added). See also *D.Milošević* Interlocutory Appeals Decision, IT-98-29/1-AR73.1, para.16; *Mladić* Appeals Decision, IT-09-92-AR73.1, paras 82-87; *Karemera* Appeals Decision, ICTR-98-44-AR73(C), para. 52.

³⁶ See in relation to the case of *Sabit GECI et al.*: District Court of Mitrovica, P.nr. 45/2010, Judgment and verdict, 29 July 2011; Court of Appeals of Kosovo, PAKR 966/2012, Judgment, 11 September 2013; and Supreme Court of Kosovo, Pml. Kzz 1/2014, Judgment, 7 May 2014. See in relation to the case of *Xhemshit KRASNIQI*: Basic Court of Mitrovica, P.nr.184/15, Judgment and verdict, 8 August 2016; Court of Appeals of Kosovo, Case no.648/16, Judgment, 22 June 2017.

³⁷ Case 04 Indictment, KSC-BC-2020-04/F00107/A01, para.13.

3. The proposed facts are distinct, concrete, and identifiable

16. When assessing whether proposed facts are sufficiently concrete, distinct and identifiable, the facts must be examined in the context of the original judgment with 'specific reference to the place referred to in the judgment and to the indictment period of that case.'³⁸ The proposed facts should reflect the factual findings resulting from the assessment of the evidence introduced in the original proceedings, not discussions of evidence,³⁹ or subjective qualifications.⁴⁰

17. The facts included in Annex 2 satisfy these requirements. They all represent distinct findings of fact resulting from the relevant courts' assessment of the evidence tendered in the original trials. In keeping with the language of the findings, certain proposed facts do not explicitly include reference to precise names, dates, or geographical locations, however, in context, this information is identifiable and available by reference to, *inter alia*, the temporal and geographical scope of the relevant charges addressed in each judgment, as well as from surrounding Proposed Facts.

4. As formulated by the moving party, the proposed facts do not differ in any substantial way from the formulation of the original judgement

18. To satisfy this criterion, proposed facts should not contain a 'substantially different meaning than the adjudicated fact in the original judgment'.⁴¹ Facts altered in a substantial way by the moving party cannot be considered to have been truly adjudicated.⁴²

19. The proposed facts satisfy this factor in that most consist of the plain transposition of the language of the original judgments. Wherever adapting the language of the original judgment was necessary to make the proposed fact clear and

³⁸ *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, para.23; *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.12; *Popović* Adjudicated Facts Decision, IT-05-88-T, para.6.

³⁹ *Mladić* First Decision, IT-09-92-PT, para.24.

⁴⁰ *Mladić* First Decision, IT-09-92-PT, para.27.

⁴¹ *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, para.29.

⁴² *Popović* Adjudicated Facts Decision, IT-05-88-T, para.7.

intelligible, such adaptations have not modified the substance of the fact as originally formulated.

20. In some instances,⁴³ words that are not present in the part of the text from which the proposed fact is sourced are added to enable an understanding of the fact in the context of the other proposed facts. These additions do not alter the original meaning of the facts, or make them misleading when extrapolated from the original context, and only aim at making the facts clearer, in line with a holistic reading of the paragraph or the section to which they belong.⁴⁴ Explanatory footnotes are added to signal where these additions are made, and clarify the way in which the additional text is sourced.

5. The proposed facts are not unclear or misleading in the context in which they are placed in the moving party's motion

21. Judicial notice cannot be taken of facts that are unclear or misleading once extrapolated from the original judgment, and placed in the context of the moving party's motion.⁴⁵ In determining if a fact is unclear or misleading, the Panel must have regard to the surrounding proposed facts in the Motion.⁴⁶

22. The facts included in Annex 2 are clear and consistent with the original judgments and with each other, in the context in which they are placed in the Motion. Their meaning is not altered after they have been extrapolated from the original sources. To the extent that minor adaptations in the language were necessary, as described above,⁴⁷ explanatory footnotes and references to the original text have been added.

⁴³ See, for example, facts 52 and 61.

⁴⁴ *Mustafa* Judicial Notice Decision, KSC-BC-2020-05/F00191, para.10(iii); *Popović* Adjudicated Facts Decision, IT-05-88-T, para.7; *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, paras 29, 31.

⁴⁵ *Popović* Adjudicated Facts Decision, IT-05-88-T, para.8; *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, paras 40-43.

⁴⁶ See *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, para.40; *Popović* Adjudicated Facts Decision, IT-05-88-T, para.8.

⁴⁷ See *above* paras 19-20.

6. The proposed facts are identified with adequate precision

23. A motion for judicial notice of adjudicated facts must 'specifically point out the paragraph(s) or parts of the judgment of which [the moving party] wishes judicial notice to be taken.'⁴⁸

24. The proposed facts are identified with sufficient precision in Annex 2 through the indication of the paragraph or page number of the relevant judgment from which they are sourced.⁴⁹

7. The proposed facts do not contain legal findings or characterisations

25. The proposed facts do not contain findings or conclusions which are of an essentially legal nature.⁵⁰ While the term 'armed group',⁵¹ has a 'legal aspect' in the broad sense of the term, the way it is used in the original judgment does not render it legal in nature.⁵²

8. The proposed facts are not based on an agreement between the parties to the original proceedings

26. None of the proposed facts are based on an agreement between the parties; rather, they reflect factual findings made by competent judicial bodies during trials, with opposing parties able to confront witnesses and documentary evidence concerning the underlying facts.

⁴⁸ *Kupreškić et al.* Decision, IT-95-16-A, para.12.

⁴⁹ *Nikolić* Decision on Judicial Notice, IT-02-60/1-A, para.55.

⁵⁰ *Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, para.46; *Karadžić* Decision on Judicial Notice Related to Count one, IT-95-5/18-T, para.8.

⁵¹ *See*, fact 52.

⁵² *See Karadžić* Decision on Fifth Motion for Judicial Notice, IT-95-5/18-T, para.47; *Mladić* First Decision, IT-09-92-PT, para.37.

9. The proposed facts are not subject to pending appeals or reviews

27. Finally, all proposed facts are final determinations made by the relevant courts and tribunals, and are not subject to any pending appeals or reviews.⁵³

III. CLASSIFICATION

28. This filing and Annex 1 are public, while Annexes 2 and 3 are classified as confidential as they contain confidential information and information redacted from public versions of the relevant judgments. Public redacted versions will be filed.

IV. RELIEF REQUESTED

29. For the reasons set out above, the SPO requests the Panel to take judicial notice of the facts contained in Annexes 1 and 2 attached to this Motion.

Word Count: 4,004



Alex Whiting

Acting Specialist Prosecutor

Friday, 14 April 2023

At The Hague, the Netherlands.

⁵³ See e.g. fact 59 concerning Sabit GECI's role in Kukës, which was established by the District Court of Mitrovica (see *Sabit Geci et al.*, District Court of Mitrovica, P.nr. 45/2010, Judgment and verdict, 29 July 2011, paras 191, 221) and upheld on appeal (see *Sabit Geci et al.*, Court of Appeals of Kosovo, PAKR 966/2012, Judgment, 11 September 2013, para.73). See also *Milutinović et al.* Trial Judgment, 26 February 2009, and *Šainović et al.* Appeals Judgment, 23 January 2014; *Dorđević* Trial Judgment, 23 February 2011 and *Dorđević* Appeals Judgment, 27 January 2014; *Xhemshit Krasniqi*, Basic Court of Mitrovica, P.nr.184/15, Judgment and verdict, 8 August 2016 and *Xhemshit Krasniqi* Court of Appeals of Kosovo, Case no.648/16, Judgment, 22 June 2017.