



In: **KSC-BC-2020-04**

The 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 Judge

Registrar: Fidelma Donlon

Date: 8 June 2023

Language: English

Classification: **Public**

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

with public Annex 1 and confidential Annex 2

Acting Specialist Prosecutor
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Counsel for the Accused
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Victims' Counsel
Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the Prosecution motion for judicial notice of facts of common knowledge and adjudicated facts.

I. PROCEDURAL BACKGROUND

1. On 30 September 2022, the Panel ordered the Parties to indicate whether they intended to request, jointly or separately, that the Panel take judicial notice of adjudicated facts under Rule 157(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules) and, if so, when such request(s) would be made and for how many facts.¹

2. On 10 October 2022, the Specialist Prosecutor's Office (SPO) notified the Panel of its intention to request judicial notice of no more than 150 adjudicated facts under Rule 157(2) of the Rules.²

3. On 10 October 2022, the Defence for Mr Pjetër Shala (Defence and Accused, respectively) submitted that it did not intend to make a request seeking judicial notice of adjudicated facts and that it expected the SPO to prove in court the entirety of its case.³

¹ KSC-BC-2020-04, F00289, Trial Panel I, *Decision setting the dates for trial preparation conferences and requesting submissions*, 30 September 2022, public, with strictly confidential and *ex parte* Annex 1, para. 9, item 7.

² KSC-BC-2020-04, F00303, Specialist Prosecutor, *Prosecution submissions in advance of the trial preparation conference*, 10 October 2022, confidential, with strictly confidential and *ex parte* Annexes 1-2 and confidential Annex 3, para. 35. A public redacted version was filed on 11 October 2022, F00303/RED2.

³ KSC-BC-2020-04, F00305, Defence, *Defence Submissions Pursuant to Order on Trial Preparation Conferences*, 10 October 2022, strictly confidential and *ex parte*, para. 20. A public redacted version was filed on the same day, F00305/RED.

4. On 24 February 2023, the Panel instructed the SPO to submit any request to take judicial notice of facts of common knowledge and adjudicated facts, under Rule 157(1) and (2) of the Rules, if it so wished, by 14 April 2023.⁴
5. On 14 April 2023, the SPO filed a motion for judicial notice of facts of common knowledge and adjudicated facts (SPO Request).⁵
6. On 28 April 2023, the Panel granted a Defence request for an extension of the time limit to file its response to the SPO Request, and ordered the Defence to file its response by 10 May 2023.⁶
7. On 11 May 2023, the Defence filed its response to the SPO Request (Defence Response).⁷ Victims' Counsel did not file a response.
8. On 16 May 2023, the SPO replied to the Defence Response (SPO Reply).⁸

II. SUBMISSIONS

9. The SPO requests the Panel to take judicial notice of 17 facts of common knowledge (Proposed Facts of Common Knowledge)⁹ and 61 adjudicated facts (Proposed Adjudicated Facts) relevant to the case, from final proceedings before Kosovo courts and the International Criminal Tribunal for the former Yugoslavia

⁴ KSC-BC-2020-04, F00434, Trial Panel I, *Decision on the conduct of the proceedings*, 24 February 2023, confidential, paras 72-73. A public redacted version was filed on the same day, F00434/RED.

⁵ KSC-BC-2020-04, F00484, Specialist Prosecutor, *Prosecution motion for judicial notice of facts of common knowledge and adjudicated facts*, 14 April 2023, public, with public Annex 1 and confidential Annexes 2- 3.

⁶ KSC-BC-2020-04, F00495, Trial Panel I, *Decision on Defence request for extension of time limit (F00494)*, 28 April 2023, public, para. 9(b).

⁷ KSC-BC-2020-04, F00507, Defence, *Defence Response to the "Prosecution Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts"*, 11 May 2023, public, with public Annex 1 and confidential Annex 2.

⁸ KSC-BC-2020-04, F00512, Specialist Prosecutor, *Prosecution Reply to KSC-BC-2000-04/F00507*, 16 May 2023, public.

⁹ SPO Request, paras 1, 29 and Annex 1.

(ICTY).¹⁰ The SPO argues that the proposed facts fulfil the respective requirements of Rules 157(1) and (2) of the Rules, and that 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.¹¹

10. The Defence opposes the SPO Request, arguing that the proposed facts do not meet the respective requirements of Rules 157(1) and (2) of the Rules.¹² The Defence further argues that the sheer number of facts proposed for judicial notice is excessive given the relatively small scale of the present case,¹³ and that taking judicial notice of the proposed facts would significantly impact the Accused's rights to be presumed innocent, to a fair trial, and to confront "his accusers" and witnesses against him.¹⁴

11. In reply, the SPO argues, among others, that the proposed number of facts is not excessive, and that the Defence fails to demonstrate that taking judicial notice thereof would compromise in any way the fairness and expeditiousness of the trial.¹⁵

III. APPLICABLE LAW

12. The Panel notes Article 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 9(5)(b), 116(1) and 157(1) and (2) of the Rules.

¹⁰ SPO Request, paras 1, 29 and Annex 2.

¹¹ SPO Request, paras 1, 5, 8 *et seq.*

¹² Defence Response, paras 3, 13.

¹³ Defence Response, para. 12.

¹⁴ Defence Response, para. 14.

¹⁵ SPO Reply, paras 2-3.

IV. ANALYSIS

A. PRELIMINARY MATTERS

13. At the outset, the Panel notes that the Defence Response was filed past the time limit.¹⁶ Seeing that the delay is minimal, the Panel decides *proprio motu* to consider it as validly made, pursuant to Rule 9(5)(b) of the Rules.

B. FACTS OF COMMON KNOWLEDGE

1. The Parties' submissions

14. According to the SPO, the Proposed Facts of Common Knowledge (facts 1-17) are uncontroversial and known geographical and historical facts. They are not subject to reasonable dispute and are so notorious or susceptible to determination by reference to authoritative sources, that evidence of their existence is unnecessary. According to the SPO, the aforementioned facts are relevant to the present case, do not contain legal characterisations or findings, and do not attest to the criminal responsibility of the Accused. Taking judicial notice of these facts will expedite the trial without prejudicing the rights of the Accused.¹⁷

15. The Defence objects to all Proposed Facts of Common Knowledge (facts 1-17), and submits that the SPO fails to demonstrate their relevance to the current proceedings.¹⁸ According to the Defence, requesting the Panel to take judicial notice of the aforementioned facts, without sufficient indication of relevance, would overburden the evidentiary record and must not be allowed, in particular since facts of common knowledge, once taken judicial notice of, serve as conclusive evidence.¹⁹

¹⁶ See paras 6-7 above.

¹⁷ SPO Request, para. 5.

¹⁸ Defence Response, paras 16-17 and accompanying references; see also Annex 1 to Defence Response.

¹⁹ Defence Response, para. 17.

In addition, the Defence avers that Proposed Facts of Common Knowledge 3-17 are not readily identifiable by reference to a reliable and authoritative source, as they source judgments whose content “does not contribute to any understanding as to whether the proposed facts were contested or based on agreed facts”.²⁰ This, according to the Defence, precludes the Panel from making a finding of facts so notorious and not subject to reasonable dispute that they should be taken judicial notice of.²¹

2. Determination

16. Rule 157(1) of the Rules stipulates that the Panel shall not require proof of facts of common knowledge but shall take judicial notice thereof. The Panel considers that facts of common knowledge are facts that are notorious, or not reasonably subject to dispute, in that they are commonly accepted, universally or widely known, or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources.²² Examples include general facts of history or geography,²³ as well as facts that are “generally known within a tribunal’s territorial jurisdiction”.²⁴

²⁰ Defence Response, para. 18; *see also* Annex 1 to Defence Response.

²¹ Defence Reponse, para. 18.

²² *See* ICTR, *Prosecutor v. Semanza*, ICTR-97-20-A, Appeals Chamber, [Judgment](#), 20 May 2005, para. 194 (*Semanza* Appeal Judgment); *Prosecutor v. Semanza*, ICTR-97-20-T, Trial Chamber, [Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54](#), 3 November 2000, paras 23-25 (*Semanza* Decision); ICTY, *Prosecutor v. Ratko Mladić*, IT-09-92-PT, Trial Chamber, [First Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts](#), 28 February 2012, para. 17 (*Ratko Mladić* First Decision); ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1249, Trial Chamber VII, [Decision on Prosecution Motion for Clarification of Rule 68\(3\) Direction in Conduct of Proceedings Decision](#), 15 September 2015, para. 5.

²³ ICTR, *Semanza*, Appeal Judgment, para. 194; *Semanza* Decision, para. 23; ICTY, *Ratko Mladić* First Decision, para. 17; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Chamber II, [Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94\(a\)](#), 26 September 2006, para. 13 (*Popović* Decision on Facts of Common Knowledge); SCSL, *Prosecutor v. Taylor*, SCSL-03-01-T-370, Trial Chamber II, [Decision on the Prosecution Motion for Judicial Notice](#), 7 December 2007, para. 12 (*Taylor* Decision).

²⁴ *Semanza* Decision, para. 24.

17. To be judicially noticed, proposed 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 any findings or characterisations of essentially legal nature; and (v) they do not attest to the criminal responsibility of the Accused.²⁵ Facts of common knowledge, once judicially noticed, are established conclusively and cannot be challenged at trial.²⁶

18. The Panel has carefully reviewed each of the Proposed Facts of Common Knowledge and assessed them against the aforementioned criteria. The Panel is satisfied that all of the Proposed Facts of Common Knowledge, as formulated by the SPO, satisfy the abovementioned criteria. In this regard, contrary to the Defence's argument, the Panel finds that the Proposed Facts of Common Knowledge are not subject to reasonable dispute. In addition to the sources provided by the SPO, the aforementioned facts are readily identifiable by reference to a number of publicly available sources, including, *inter alia*, United Nations Security Council Resolutions, reports and press releases of international organizations (including the ones mentioned in the Proposed Facts of Common Knowledge), and a number of academic publications. The Panel considers that by now, these historical events are uncontroversial and widely known at least within the Kosovo Specialist Chambers' territorial jurisdiction. Furthermore, all of the Proposed Facts of Common Knowledge are relevant to the present case as they provide historical context for the events and charges in the case. The Panel is also satisfied that they do not contain any legal characterisations, and do not pertain to the criminal responsibility of the Accused. The Panel considers that taking notice of the proposed facts will not impair the Accused's

²⁵ SCSL, *Prosecutor v. Norman et al.*, SCSL-04-14-AR73, Appeals Chamber, [Fofana - Decision on Appeal against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence"](#), 16 May 2005, para. 28 (*Norman Decision*); *Taylor Decision*, para. 13. See also *Popović Decision on Facts of Common Knowledge*, para. 19.

²⁶ *Norman Decision*, paras 30-32.

right to a fair trial, while it will avoid unnecessary litigation around well-established historical events.

19. For the abovementioned reasons, the Panel takes judicial notice of the Proposed Facts of Common Knowledge (facts 1-17), as they are listed in Annex 1 to the SPO Request, reproduced as Annex 1 to the present decision.

C. ADJUDICATED FACTS

1. Parties' submissions

20. The SPO argues that all Proposed Adjudicated Facts (facts 1-61): (i) are relevant to the present proceedings as they relate to the existence of an armed conflict in Kosovo during the (Confirmed) Indictment period,²⁷ the use of the Kukës Metal Factory by the Kosovo Liberation Army (KLA) (*Ushtria Çlirimtare e Kosovës*), the crimes committed therein, and the presence and conduct of members of the joint criminal enterprise (JCE) other than the Accused, as charged in the (Confirmed) Indictment;²⁸ (ii) do not relate to the acts and conduct of the Accused;²⁹ (iii) are distinct, concrete and identifiable, in particular when looked at in context, by reference to the temporal and geographical scope of the charges in the original judgments and in relation to surrounding Proposed Adjudicated Facts;³⁰ (iv) do not differ in any substantial way from the formulation of the original judgment, and any adaptations made by the SPO have not modified the substance of the fact as originally formulated;³¹ (v) are not unclear or misleading in the context in which they are placed in the SPO Request, and

²⁷ SPO Request, paras 9-10.

²⁸ SPO Request, para. 11.

²⁹ SPO Request, paras 13-15.

³⁰ SPO Request, paras 16-17.

³¹ SPO Request, paras 18-20.

adaptations made by the SPO have been accompanied by explanatory footnotes and references to the original text;³² (vi) are identified with adequate precision;³³ (vii) do not contain legal findings or characterisations;³⁴ (viii) are not based on an agreement between the parties to the original proceedings;³⁵ and (ix) are not subject to pending appeals or reviews.³⁶

21. The Defence responds that the Proposed Adjudicated Facts (facts 1-61): (i) lack the required relevance to an issue in the present proceedings – referring specifically to the Proposed Adjudicated Facts 1-33 as set out in Annex 2 to the SPO Request in this regard;³⁷ (ii) are not distinct, concrete and identifiable – noting specifically that Proposed Adjudicated Facts 1, 2, 4, 8, 10-34, 37, 45, 47, 53-55 and 59-61 as set out in Annex 2 of the SPO Request, are “unduly broad, vague, tendentious, detailed, repetitive of other evidence or conclusory”;³⁸ (iii) are vague, inaccurate, or misleading when taken out of the context of the original judgements – noting Proposed Adjudicated Facts 52, 53 and 55 in this regard;³⁹ (iv) are related to the alleged acts and conduct of the Accused – highlighting Proposed Adjudicated Facts 34-61 in this regard;⁴⁰ (v) go to issues that are central to the present case –highlighting Proposed Adjudicated Facts 36, 41, and 51-61 in this regard;⁴¹ (vi) use formulation that is materially different from that of the original judgements – specifically highlighting Proposed Adjudicated Fact 52 in this regard;⁴² (vii) relate to matters that are subject to

³² SPO Request, paras 21-22.

³³ SPO Request, paras 23-24.

³⁴ SPO Request, para. 25.

³⁵ SPO Request, para. 26.

³⁶ SPO Request, para. 27.

³⁷ Defence Response, paras 3 and 24.

³⁸ Defence Response, paras 25 and 29-30.

³⁹ Defence Response, paras 27-28 and 31.

⁴⁰ Defence Response, paras 3, 20-22 and 33.

⁴¹ Defence Response paras 23, and 32-34.

⁴² Defence Response, paras 3 and 31.

dispute between the Parties – specifically highlighting Proposed Adjudicated Facts 36, 41, and 51-61 in this regard;⁴³ and (viii) stem from findings reached in judicial proceedings where the interests of the Accused were not represented, rendering their introduction in the present proceedings unfair.⁴⁴ The Defence requests the Panel to dismiss all of the Proposed Adjudicated Facts.⁴⁵

22. In its Reply, the SPO takes issue with the Defence’s “broadly worded standard” of what constitutes “acts and conduct” of the Accused.⁴⁶ It further replies, in relation to the Defence’s argument that a number of Proposed Adjudicated Facts are “central” to the present case, that the Panel is not prohibited as such from taking judicial notice of facts that go to the core of a case.⁴⁷ In relation to Proposed Adjudicated Facts 51-61 specifically, the SPO argues that these are “crime base” facts and do not go to the acts and conduct of alleged JCE members fulfilling the common purpose.⁴⁸ In relation to the Defence’s argument that many of the proposed facts are unduly broad or vague, the SPO replies that: (i) this needs to be determined by looking at the judgment and the indictment in the original case, as well as surrounding proposed facts; and that (ii) in any event, the Panel retains its discretion to correct the facts’ ambiguity by adding dates or replacing words.⁴⁹

⁴³ Defence Response, paras 32-34.

⁴⁴ Defence Response, paras 3 and 35.

⁴⁵ Defence Response, para. 37.

⁴⁶ SPO Reply, paras 4-8.

⁴⁷ SPO Reply, paras 10-11.

⁴⁸ SPO Reply, para. 10.

⁴⁹ SPO Reply, para. 12.

2. Determination

23. At the outset, the Panel notes that 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 the evidence presented.⁵⁰ At the same time, in so doing, the Panel must ensure respect for the Accused’s right to a fair and expeditious trial, as required by Rule 157(2) of the Rules.⁵¹

24. In the exercise of its discretion, the Panel has considered, *inter alia*, whether each individual fact satisfies the following criteria: (i) the proposed facts do not relate to the acts and conduct of the Accused as charged in the Confirmed Indictment, and relate to matters at issue in the current proceedings, as stipulated in Rule 157(2) of the Rules; (ii) the proposed facts are distinct, concrete, and identifiable;⁵² (iii) the proposed facts, as formulated by the moving Party, do not differ in any substantial way from the

⁵⁰ KSC-BC-2020-05, F00191, Trial Panel I, *Decision on judicial notice of adjudicated facts (Mustafa Decision)*, 7 September 2021, public, para. 9. Similarly, 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](#) (Karadžić Decision), 21 January 2014, para. 4; ICTR, *Prosecutor v. Bagosora et al.*, ICTR-98-41-A, Appeals Chamber, [Decision on Anatole Nsengiyumva’s Motion for Judicial Notice](#), 29 October 2010, para. 10.

⁵¹ *Mustafa Decision*, para. 9.

⁵² *Mustafa Decision*, para. 10. Similarly, 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.*, IT-04-74-PT, Trial Chamber II, [Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94\(b\)](#), 14 March 2006, para. 12 (Prlić Decision); *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 (Hadžihasanović Decision).

formulation of the original judgement;⁵³ (iv) the proposed facts are not unclear or misleading in the context in which they are placed in the moving Party's motion;⁵⁴ (v) the proposed facts do not contain legal findings or characterisations;⁵⁵ (vi) the proposed facts are not based on an agreement between the Parties to the original proceedings;⁵⁶ and (vii) the proposed facts are not subject to pending appeals or reviews.⁵⁷ By taking judicial notice of adjudicated facts, the Panel establishes a well-founded presumption for the accuracy of these facts, which therefore do not have to be proven again at trial.⁵⁸ Since it is a rebuttable presumption, the other Party may present at trial proof which challenges the accuracy of these facts.⁵⁹

25. After having reviewed each of the proposed facts individually, against the criteria set out above, and having considered the Parties' arguments and submissions, the Panel makes the following findings.

⁵³ *Mustafa* Decision, para. 10. Similarly, ICTY, *Karadžić Decision*, 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 (*Popović Decision on Adjudicated Facts*); *Prosecutor v. Blagojević & 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 (*Blagojević Decision*).

⁵⁴ *Mustafa* Decision, para. 10. Similarly, ICTY, *Popović Decision on Adjudicated Facts*, para. 8.

⁵⁵ *Mustafa* Decision, para. 10. Similarly, ICTY, *Popović Decision on Adjudicated Facts*, para. 10; *Prlić Decision*, para. 12; *Hadžihasanović Decision*, p. 5; *Blagojević Decision*, para. 16.

⁵⁶ *Mustafa* Decision, para. 10. Similarly, 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; *Popović Decision on Adjudicated Facts*, para. 11.

⁵⁷ *Mustafa* Decision, para. 10. Similarly, ICTY, *The Prosecutor v. Ratko 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; *Popović Decision on Adjudicated Facts*, para. 14.

⁵⁸ *Mustafa* Decision, para. 11. Similarly, ICTY, *Prosecutor v. S. Milošević*, IT-02-54-AR73.5, Appeals Chamber, [Decision on the Prosecution's Interlocutory Appeal against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts](#), 28 October 2003, p. 3; *Karadžić Decision*, para. 5; SCSL, *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, SCSL-04-15-T, Trial Chamber I, [Decision on Sesay Defence Application for Judicial Notice to be taken of Adjudicated Facts under Rule 94\(b\)](#), 23 June 2008, para. 18.

⁵⁹ *Mustafa* Decision, paras 11, 14.

26. First, the Panel is satisfied that each of the following Proposed Adjudicated Facts 1-31, 33-51, 55-56, 59 and 60 – in the way they are currently formulated in the SPO Request – meets the aforementioned requirements. Regarding the Proposed Adjudicated Facts 32 and 53, the Panel has exercised its discretion to *proprio motu* reformulate them, by either adding or removing particular phrases, so as to bring the wording as close as possible to the original findings, and remove any possible ambiguity in relation to the originally made findings.⁶⁰ The Panel refers to Annex 2 of the present decision, where the Proposed Adjudicated Facts 32 and 53 are set out as reformulated by the Panel in Annex 2 to the present decision.

27. The Panel considers that the aforementioned Proposed Adjudicated Facts (*i.e.* facts 1-51, 53, 55-56, 59-60), as presented by the SPO or reformulated by the Panel, are relevant to the present case, as they either: (a) relate to the existence of an armed conflict between the KLA and forces of the former Federal Republic of Yugoslavia fighting jointly with Serbian forces, including units of the Army of the Federal Republic of Yugoslavia (*Vojska Jugoslavije* 'VJ') and of the Ministry of the Interior of Serbia (*Ministarstvo Unutrasnjih Poslova* 'MUP');⁶¹ (b) provide contextual information for the allegations in this case;⁶² (c) concern the alleged crime site and provide relevant information regarding certain crimes committed therein;⁶³ or (d) relate to the role within the KLA of alleged JCE members other than the Accused.⁶⁴ The Panel is satisfied, contrary to the Defence's submissions, that the aforementioned facts do not relate to the acts and conduct of the Accused. The Panel further finds that taking judicial notice of the aforementioned Proposed Adjudicated Facts serves the interests

⁶⁰ For ease of reference, the Panel's *proprio motu* reformulations are indicated in red font in Annex 2 to the present decision.

⁶¹ Proposed Adjudicated Facts 1-29 and 34-50.

⁶² Proposed Adjudicated Facts 30-33.

⁶³ Proposed Adjudicated Facts 51, 53, and 55-56.

⁶⁴ Proposed Adjudicated Facts 59-60.

of justice and of a fair and expeditious trial. The Panel reiterates in this regard that taking judicial notice of adjudicated facts only establishes a rebuttable presumption of accuracy of such facts.⁶⁵ This does not eliminate the burden that rests upon the SPO to prove its case beyond a reasonable doubt. For the abovementioned reasons, the Panel takes judicial notice of facts 1-51, 53, 55-56 and 59-60, as formulated in Annex 2 to the present decision.

28. As to the remaining Proposed Adjudicated Facts (*i.e.* facts 52, 54, 57, 58 and 61), the Panel declines to take judicial notice of them for the following reasons.

29. First, with regard to Proposed Adjudicated Facts 52 and 54, the Panel finds that the formulation proposed by the SPO departs substantially from the formulation used in the original judgements. More specifically, with regard to Proposed Adjudicated Fact 52, the Panel was not aided by the explanations provided by the SPO in footnotes 2 and 3 of Annex 2 to the SPO Request. With regard to Proposed Adjudicated Fact 54, the Panel finds that the reformulation proposed by the SPO departs so substantially from the original findings made, that the Panel does not consider them to have been truly adjudicated.⁶⁶ Overall, the Panel considers that it will not be aided in its fact-finding function by Proposed Adjudicated Facts 52 and 54 and therefore declines to take judicial notice of them.

30. Second, with regard to Proposed Adjudicated Fact 57, the Panel finds that, as formulated, the proposed fact lacks sufficient context and clarity for the purposes of the present proceedings. Accordingly, the Panel declines to take judicial notice thereof.

⁶⁵ See similarly, KSC-BC-2020-06, F01534, Trial Panel II, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts*, public, with confidential Annex 1, para. 26.

⁶⁶ See in this regard *Popović* Decision on Adjudicated Facts, paras 7-8 and accompanying references in footnote 25.

31. Third, with regard to Proposed Adjudicated Fact 58, the Panel considers that, as currently formulated, this proposed fact has not been clearly adjudicated in the original judgment, especially with regard to the proposed time frame. Accordingly, the Panel declines to take judicial notice thereof.

32. Finally, with regard to Proposed Adjudicated Fact 61, the Panel notes that the term “torture” evidently carries a legal qualification. Additionally, the proposed fact is insufficiently specific with respect to the time frame of the events. Finally, in the exercise of its discretion, the Panel declines to take judicial notice of this proposed fact, which goes to the conduct (as opposed to the role) of other alleged members of the JCE, as charged in the Confirmed Indictment.

V. DISPOSITION

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

- a. **GRANTS** the SPO Request, in part;
- b. **TAKES** judicial notice of Proposed Facts of Common Knowledge 1–17, as set out in Annex 1 to the present decision;
- c. **TAKES** judicial notice of Proposed Adjudicated Facts 1-51, 53, 55-56, and 59-60, as formulated in Annex 2 to the present decision;
- d. **DECLINES** to take judicial notice of Proposed Adjudicated Facts 52, 54, 57-58, and 61;
- e. **ORDERS** the SPO to file a public redacted version of Annex 2 to the SPO Request by **Friday, 16 June 2023**; and

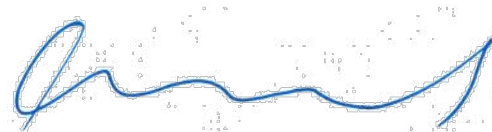
- f. **ORDERS** the Defence to file a public redacted version of Annex 2 to the Defence Response by **Friday, 23 June 2023**, taking into account the redactions applied by the SPO.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 8 June 2023

At The Hague, the Netherlands.