



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-CA-2023-02**

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 12 October 2023

Original language: English

Classification: **Public**

Order for the Preparation of the Appeal Hearing

Specialist Prosecutor's Office:

Ward Ferdinandusse

Counsel for Salih Mustafa:

Julius von Bóné

Counsel for Victims:

Anni Pues

THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“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 17 August 2023, the Appeals Panel scheduled a hearing on the appeal of Mr Salih Mustafa (“Mustafa”) against the Trial Judgment² for Thursday, 26 October 2023 at 13:30 and Friday, 27 October 2023 at 9:30 (“Appeal Hearing”).³

2. In view of the need to ensure that the time allotted for the Appeal Hearing is used as efficiently as possible, the Appeals Panel invites the Parties and Participants, as relevant,⁴ within the scope of their oral submissions, to address the following issues:

(i) In relation to Mustafa’s challenges⁵ to the causation standard for murder, as set out by the Trial Panel:⁶

a) Whether the “substantial cause” test is the correct causation standard for murder, taking into account *conditio sine qua non* / “but for” causation, with reference to international and national jurisprudence, including that of Kosovo.

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, F00494/RED3/COR, Further redacted version of Corrected version of Public redacted version of Trial Judgment, 8 June 2023 (confidential version filed on 16 December 2022) (“Trial Judgment”).

³ F00029, Order Scheduling an Appeal Hearing, 17 August 2023.

⁴ See F00011, Decision on Modalities of Victim Participation in Appellate Proceedings, 15 February 2023.

⁵ See, e.g. Appeal Brief, paras 354, 358-362; Reply Brief, para. 132.

⁶ Trial Judgment, paras 626, 686-687.

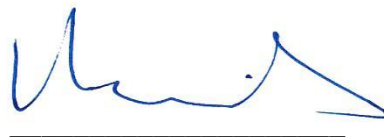
- b) The impact of new intervening events on the causation standard for murder with reference to international and national jurisprudence, including that of Kosovo.
- (ii) Would a lack of causation regarding the murder charge as a result of a new intervening event also affect other modes of liability charged?⁷ The Appeals Panel invites submissions on the law and the evidence on the trial record.
- (iii) In relation to paragraph 688 of the Trial Judgment: (i) what kind of intent is required for the charge of murder; (ii) how is the applicable intent to be defined; and (iii) in the circumstances of this case, what facts/circumstances have to be proven in order to satisfy the applicable intent?
- (iv) Mustafa's contention, at paragraph 444(d) of the Appeal Brief, that "[f]or the same type of crimes not a single sentence exists for this excessive amount of period of time in international tribunals". The Appeals Panel invites, in particular, jurisprudential analysis on this issue.
3. The Appeals Panel emphasises that oral submissions should be supported with references to the Trial Panel's findings and evidence on the record, where relevant, as well as any relevant jurisprudence.
4. The Panel reminds the Parties and Participants that they are expected to focus their oral arguments on the grounds of appeal raised in their briefs and that the Appeal Hearing is not an occasion for presenting new arguments on the merits of the case.
5. The Panel further stresses that the present order in no way expresses the Appeals Panel's views on the merits of the appeal in the current case, and does not

⁷ Trial Judgment, para. 25.

prevent the Panel from raising further questions prior to or during the Appeal Hearing.

6. For these reasons, the Court of Appeals Panel:

INVITES the Defence, SPO and Victims' Counsel, when relevant, to address during the Appeal Hearing the issues identified in paragraph 2 above.



**Judge Michèle Picard,
Presiding Judge**

Dated this Thursday, 12 October 2023

At The Hague, the Netherlands