



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 19 October 2023

Language: English

Classification: Public

Decision on Second Defence Motion for Judicial Notice of Adjudicated Facts

Specialist Prosecutor
Kimberly P. West

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Gregory Kehoe

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Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 3(2)(d) and (3), 12, 21 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 95(5), 104(1)(b), 138, 157(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 4 and 5 September 2023, W04018 testified in these proceedings.¹
2. On 8 September 2023, the Defence for Mr Thaçi (“Thaçi Defence”), the Defence for Mr Selimi (“Selimi Defence”) and the Defence for Mr Krasniqi (“Krasniqi Defence”) (“collectively “Defence”) filed a motion for judicial notice of adjudicated facts (“Motion”).²
3. On 21 September 2023, the SPO responded to the Motion (“Response”).³
4. On 26 September 2023, the Defence replied to the Response (“Reply”).⁴

II. SUBMISSIONS

5. The Defence requests the Panel to take judicial notice of the adjudicated fact included in Annex A to the Motion (“Proposed Fact”).⁵ The Proposed Fact consists of the following, which is extracted from a Verdict of the District Court of Pristina in the case against Rrustem Dema *et al.*:

The defense has submitted two lists, purporting to identify members of the Local Police. [...] As argued by the Prosecutor, if the KLA had information or was in possession of lists at that time and used them as the basis to suspect that the detainees were Local Police, or were engaged in activities

¹ Transcript of Hearing, 4-5 September 2023.

² F01780, Specialist Counsel, *Second Defence Motion for Judicial Notice of Adjudicated Facts*, 8 September 2023, confidential, with Annex A, confidential.

³ F01805, Specialist Prosecutor, *Prosecution Response to ‘Second Defence Motion for Judicial Notice of Adjudicated Facts’*, 21 September 2023, confidential.

⁴ F01819, Specialist Counsel, *Reply to Prosecution Response to Second Defence Motion for Judicial Notice of Adjudicated Facts*, 26 September 2023.

⁵ Motion, paras 1, 21, referring to Annex A to the Motion.

hostile to the KLA, they would surely have confronted the detainees with these allegations. Again as argued by the Prosecutor, [...] who conducted interviews with the detainees while they in Ivaja, testified that he had no information as to why the detainees were kept there. In any event no claim was made that these lists were used by the KLA as a basis for the detentions. Thus even if these lists are accurate and reliable they fail to establish that they formed the basis upon which the detainees were arrested and held in captivity.⁶

6. The Defence submits that the Proposed Fact complies with the requirements set out in Rule 157, as it: (i) was finally adjudicated before a Kosovo court; (ii) relates to matters at issue in the current proceedings; and (iii) does not relate to the acts and conduct of any of the Accused as charged in the Indictment.⁷ The Defence also submits that the Proposed Fact is suitable for judicial notice as it: (i) is distinct, concrete and identifiable; (ii) does not differ from the formulation of the original judgment; (iii) is not unclear or misleading in the context in which it is placed; (iv) does not contain legal findings or characterisations; (v) is not based on an agreement between the parties to the original proceedings; and (vi) is not subject to pending appeal or review.⁸

7. The SPO responds that the Motion should be dismissed as the Proposed Fact does not meet the requirements for judicial notice since it is not relevant or probative and its notice would undermine judicial economy.⁹

8. The Defence replies that the Motion should be granted as: (i) the arguments raised by the SPO in relation to the formulation of the Proposed Fact do not prevent the Panel from exercising its discretion to take judicial notice of it; and (ii) the Proposed Fact is appropriate for judicial notice, probative and relevant.¹⁰

⁶ Annex A to the Motion.

⁷ Motion, para. 9.

⁸ Motion, paras 10, 20.

⁹ Response, paras 1, 8.

¹⁰ Reply, paras 1, 12.

III. APPLICABLE LAW

9. The applicable law regarding the taking of judicial notice of adjudicated facts pursuant to Rule 157(2) has been laid out extensively in previous decisions issued by the Panel.¹¹

IV. DISCUSSION

10. The Defence contends that the Proposed Fact relates to an issue that was addressed in some length during the examination of W04018, and is relevant to the witness's evidence as a whole.¹² In particular, the Defence submits that the Proposed Fact concerns the District Court's finding regarding lists of individuals including W04018 and others who are alleged victims in both the present proceedings and in the *Dema et al.* case, and whom the lists purport to identify as members of the Local Police for the Serbian authorities ("Lists").¹³

11. At the outset, the Panel notes that: (i) the Defence discussed the Proposed Fact with W04018 and thereafter sought its admission via Rule 138;¹⁴ and (ii) the Panel denied admission under Rule 138.¹⁵ The Panel will now entertain the Defence's request for the Panel to take judicial notice of the Proposed Fact under Rule 157(2).

12. The Panel recalls that a number of factors are relevant to the Panel's exercise of discretion when deciding whether to take judicial notice of adjudicated facts, including that: (i) the proposed facts are distinct, concrete, and identifiable; and (ii) the proposed facts are not unclear or misleading in the context in which they

¹¹ F01534, Panel, *Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts* ("Decision on SPO Proposed Adjudicated Facts"), 17 May 2023, with Annex 1, confidential, and Annex 2, public, paras 10-13; F01536, Panel, *Decision on Defence Motion for Judicial Notice of Adjudicated Facts* ("First Decision on Defence Proposed Adjudicated Facts"), 18 May 2023, with Annex 1, public, paras 13-16.

¹² Motion, paras 12, 17-18.

¹³ Motion, para. 13.

¹⁴ Transcript of Hearing, 5 September 2023, pp. 7230-7233.

¹⁵ Transcript of hearing, 5 September 2023, p. 7269, lines 9-14.

are placed in the moving Party's motion.¹⁶

13. The Panel notes that the Proposed Fact contains references to: (i) the arguments put forward by the Prosecutor and the Defence in relation to the Lists in the *Dema et al.* case; (ii) the content of a witness testimony regarding the Lists; and (iii) the District Court's assessment of the evidentiary weight of the Lists, including the inferences that the District Court was prepared to draw from that evidence.¹⁷ The Panel is of the view that recitals and summaries of arguments and evidence as well as reasons underlying the assessment of the weight of the evidence by the District Court do not constitute distinct, concrete, and identifiable facts.¹⁸ The Panel further notes that the Proposed Fact does not provide sufficient context and clarity as to the nature of the "two lists" referred therein, nor did the Defence provide any clarifications as to whether either or both of the lists referenced in the Proposed Fact were discussed during W04018's testimony. The Panel is therefore not satisfied that the Proposed Fact is sufficiently distinct, concrete, identifiable and clear to warrant the taking of judicial notice pursuant to Rule 157(2). The Panel therefore exercises its discretion to decline to take judicial notice of the Proposed Fact.

¹⁶ Decision on SPO Proposed Adjudicated Facts, para. 11; First Decision on Defence Proposed Adjudicated Facts, para. 14, referring to ICTY, *Prosecutor v. Hadžihasanović and 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; *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, paras 7-11, 14; *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; *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; *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. 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.

¹⁷ Proposed Fact; Motion, paras 14-15; Response, paras 2-4.

¹⁸ See First Decision on Defence Proposed Adjudicated Facts, para. 50.

14. The Panel stresses that it will make its own findings in respect of the alleged existence and use of lists of ‘collaborators’. In this regard, the Panel notes that no Party has sought to tender the lists shown to W04018.¹⁹ The Panel will rule on their admissibility if and when offered for admission.

V. CLASSIFICATION

15. The Panel notes that the Motion, the Response and the Reply have been filed confidentially. The Panel also notes that the SPO does not object to the reclassification of the Response as public.²⁰ The Panel therefore: (i) directs the Registry to reclassify the Response as public; and (ii) orders the Defence to provide public redacted versions or request the reclassification of the Motion and the Reply by Friday, 27 October 2023.

VI. DISPOSITION

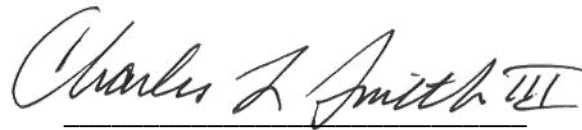
16. For the above-mentioned reasons, the Panel hereby:

- a) **REJECTS** the Motion;
- b) **DIRECTS** the Registry to reclassify the Response as public; and

¹⁹ SPOE00093211-SPOE00093212-ET; IT-05-87 6D00484.

²⁰ Response, para. 7.

- c) **ORDERS** the Defence to provide public redacted versions or request the reclassification of the Motion and the Reply by **Friday, 27 October 2023**.

A handwritten signature in black ink, reading "Charles L. Smith, III", written in a cursive style. The signature is positioned above a horizontal line.

Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 19 October 2023

At The Hague, the Netherlands.