



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-CA-2023-02
Specialist Prosecutor v. Salih Mustafa

Before: The President of the Specialist Chambers
Judge Ekatarina Trendafilova

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 8 February 2024

Language: English

Classification: Public

**Prosecution request concerning access to the confidential Trial and Appeal
Judgments**

Specialist Prosecutor's Office

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1. Pursuant to Rule 82(1) and (5) of the Rules,¹ the Specialist Prosecutor's Office ('SPO') requests² authorisation for the *Thaçi et al.*³ Panel, Parties, and Victims' Counsel to access and use, on a confidential basis, the confidential versions of the Trial Judgment⁴ and Appeal Judgment⁵ in the *Mustafa* case.⁶ There is a specific, legitimate forensic purpose for the request, which, if granted, would not impact applicable protective measures, and indeed, may ultimately facilitate fair and expeditious proceedings in *Thaçi et al.*⁷

2. The *Thaçi et al.* Accused are charged with, *inter alia*, the same crimes that are the subject of the Judgments.⁸ Pursuant to Rule 157(2), the *Thaçi et al.* Parties are entitled to seek judicial notice of adjudicated facts from the Judgments. However, in the public redacted versions of the Judgements, there are redactions, including to relevant

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' are to the Rules, unless otherwise specified.

² This request is made before the President for, as appropriate, decision or assignment, as it is not apparent that it falls within the competence of the currently assigned Panels in this case. *See* Decision Assigning a Single Judge, KSC-CA-2023-02/R001/F0001, 17 January 2024 (assigning a Single Judge to oversee the implementation of the reparation order); Decision Assigning a Supreme Court Panel, KSC-SC-2024-02/F00003, 17 January 2024 (assigning a Supreme Court Panel to decide on a request for extension of time and any request for protection of legality, once filed, or related matters). *See also* Rule 84(2) (providing that the President may assign a Single Judge for the purpose of reclassification of the record, after the final judgment).

³ KSC-BC-2020-06.

⁴ Trial Judgment, KSC-BC-2020-05/F00494, 16 December 2022, Confidential ('Trial Judgment').

⁵ Appeal Judgment, KSC-CA-2023-02/F00038, 14 December 2023, Confidential ('Appeal Judgment'; collectively with the Trial Judgment, 'Judgments').

⁶ KSC-BC-2020-05; KSC-CA-2023-02.

⁷ Other Panels have considered requests for access under Rule 82(1) and (5), and considered whether adequate justification for access was provided, balancing all relevant interests. *See, for example*, Public Redacted Version of Decision on Request for Access to Confidential and *Ex Parte* Material, KSC-BC-20201-08/RAC001/F00005/RED, 13 April 2022, paras 8, 13, 16-17. *See also Specialist Prosecutor v. Januzi and Bahtijari*, Public Redacted Version of Decision on Sabit Januzi's Appeal Against Decision on Interim Release, KSC-BC-2023-10/IA001/F00007/RED, 5 February 2024, para.6.

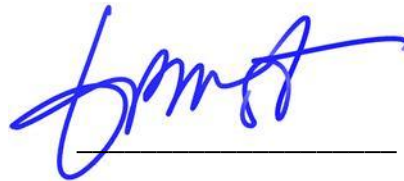
⁸ *Specialist Prosecutor v. Thaçi et al.*, Public Lesser Redacted Version of Amended Indictment, KSC-BC-2020-06/F01323/A01, 27 February 2023 ('Indictment'), paras 75, 109, 160; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of 'Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01415/A01, 3 April 2023, paras 444-457; *see also* paras 203, 438-443. The *Thaçi et al.* Accused are charged with committing (through their participation in a joint criminal enterprise), aiding and abetting, and superior responsibility for crimes at, *inter alia*, Zllash/Zlaš in April 1999. *See* Indictment, KSC-BC-2020-06/F01323/A01, paras 32-57.

judicial findings.⁹ In order to properly assess whether to make – and, as appropriate, litigate and decide – any requests for judicial notice of adjudicated facts arising from the Judgments, the *Thaçi et al.* Panel, Parties, and Victims' Counsel should be able to refer to and use the confidential versions of the Judgments.

3. Finally, granting this request would not have any impact on applicable protective measures, which shall continue to have effect in *Thaçi et al.*¹⁰ Any reference to or use of confidential portions of the Judgments would be on a confidential basis. Moreover, pursuant to, as appropriate, Rules 81(1)(b), 102, and 103, evidence cited and discussed in the Judgments has already been disclosed in *Thaçi et al.*

4. For the foregoing reasons, this request should be granted.

Word count: 657



Kimberly P. West

Specialist Prosecutor

Thursday, 8 February 2024

At The Hague, the Netherlands

⁹ See e.g. Further redacted version of Corrected version of Public redacted version of Trial Judgement, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, paras 390, 467, 473 (day of the event is redacted), 401, 494, 495, 586 (name of a detainee is redacted), 404 (name of the person who arrested/released the prisoner is redacted), 482 (an entire finding is redacted).

¹⁰ Rule 81(1)(a).