



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

File number: KSC-CA-2023-02

Before: The President of the Specialist Chambers
Judge Ekaterina Trendafilova

Registrar: Fidelma Donlon

Date: 12 February 2024

Language: English

Classification: Public

Decision Referring a Request to Trial Panel II

Judges of Trial Panel II:

Judge Charles Smith III

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor (reserve)

Specialist Prosecutor:

Kimberly P. West

Duty Counsel for Salih Mustafa:

Laurens van Puyenbroek

Counsel for Victims:

Anni Pues

THE PRESIDENT of the Specialist Chambers (“President”), noting Rule 81(1)(a), (2)(b) and (4) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”) herewith refers the “Prosecution request concerning access to the confidential Trial and Appeal Judgments”¹ (“Request”) to Trial Panel II for adjudication.

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, Trial Panel I rendered the Trial Judgment, wherein it convicted Mr Salih Mustafa of arbitrary detention, torture and murder as war crimes and acquitted him of cruel treatment as a war crime.² The Trial Panel sentenced Mr Mustafa to 26 years of imprisonment.³

2. On 6 April 2023, Trial Panel I issued the “Corrected Version of Public Redacted Version of Reparation Order against Salih Mustafa with 4 Annexes Strictly Confidential and *Ex Parte*”, wherein it ordered Mr Mustafa to pay 207,000 Euro as compensation for the harm inflicted on the victims of the crimes for which he was convicted.⁴

3. On 14 December 2023, the Court of Appeals Panel issued the “Public Redacted Version of the Appeal Judgment”, wherein it affirmed Mr Mustafa’s convictions for arbitrary detention, torture and murder as war crimes, but granted Mr Mustafa’s appeal, in part, against his sentence.⁵ To that end, the Court of Appeals Panel reduced Mr Mustafa’s sentence to 22 years of imprisonment, with credit for time served.⁶

¹ F00042, Prosecution request concerning access to the confidential Trial and Appeal Judgments, 8 February 2024.

² KSC-BC-2020-05/F00494, Trial Judgment, 16 December 2022 (confidential), para. 831. A corrected version was filed on 24 January 2023 and a public redacted version on 8 June 2023.

³ Trial Judgment, para. 831.

⁴ KSC-BC-2020-05/F00517/RED/COR, Corrected Version of Public Redacted Version of Reparation Order against Salih Mustafa with 4 Annexes Strictly Confidential and *Ex Parte*, 6 April 2023, para. 283.

4. On 8 February 2024, the Specialist Prosecutor's Office ("SPO") filed the Request, wherein it seeks "authorisation to access and use, on a confidential basis, the confidential versions of the Trial Judgment and the Appeal Judgment in the *Mustafa* case"⁷ to "facilitate fair and expeditious proceedings" in the *Thaci et al.* case,⁸ by, *inter alia*, deciding whether to seek judicial notice of adjudicated facts from said Judgments as provided for by Rule 157(2) of the Rules.⁹

II. DISCUSSION

5. Pursuant to Rule 81(1)(a) of the Rules, once protective measures have been ordered by a Panel in respect of a witness, victim participating in the proceedings, or other person at risk on account of testimony given by witnesses, such measures shall continue to have effect *mutatis mutandis* in any other subsequent proceedings before the Specialist Chambers or another jurisdiction unless and until they are varied in accordance with the procedure set out in this Rule.

6. According to Rule 81(2)(a) of the Rules, a request for variation of protective measures should be addressed to the Panel, which initially ordered the protective measures. Since there is no Panel seised of the case, Rule 81(2)(b) of the Rules requires that the party shall apply to the Panel seised of the subsequent proceedings. In the present circumstances, the Request should be addressed to Trial Panel II seised with the *Thaçi et al.* case, in regard of which case the Prosecution seeks access to the confidential versions of the Trial and Appeal Judgments in the *Mustafa* case.¹⁰

7. As set forth in Rule 81(4) of the Rules, Trial Panel II shall consult with any Judge who ordered protective measures and who remains on the Roster of International

⁵ KSC-CA-2023-02/F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023, para. 484.

⁶ Appeal Judgment, para. 484.

⁷ Request, para. 1.

⁸ Request, para. 1.

⁹ Request, para. 2.

¹⁰ Request, paras 1-4.

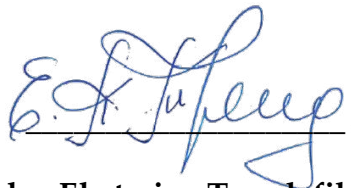
Judges before determining an application under this Rule.

II. CONCLUSION

8. In view of the above, the President hereby

REFERS the Request to Trial Panel II; and

ORDERS the Court Management Unit to file the Request before Trial Panel II.

A handwritten signature in blue ink, appearing to read 'E. Trendafilova', written over a horizontal line.

**Judge Ekaterina Trendafilova,
President of the Specialist Chambers**

Dated this Monday, 12 February 2024
At The Hague,
The Netherlands