



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-BC-2023-10**
The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: **Pre-Trial Judge**
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 5 August 2024

Language: English

Classification: **Public**

Registrar's Submissions on Translations

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. On 28 July 2024, Counsel for Haxhi Shala ('Mr Shala') submitted a request for an order on translations in Albanian, requesting *inter alia* the Pre-trial Judge to order the Registrar: "i) to arrange that all filings that have thus far been made in Cases 10 and 11 that have not been translated into Albanian be translated into Albanian as soon as possible; ii) to submit a plan within two weeks of the order for the translation of all filings in Cases 10 and 11 and thereafter monthly updates on the progress made; and (iii) within 48 hours of notification of each future filing either submit an Albanian translation or, in the case of a filing of exceptional length, to submit a motion requesting an additional period of time for translation".¹

2. On 31 July 2024, Counsel for Ismet Bahtijari ('Mr Bahtijari') responded to the above request, supporting the submissions in their entirety, and indicating it would be "helpful for the Registry to set out a list of what has been translated and what has not and to update this list as the case progresses so that all teams, including the SPO, can be appraised of how translation is being effected".² Counsel for Mr Bahtijari noted that "there are limited funds for interpretation for each defendant each month much of which is/will be taken up in client meetings and should not be used to translate documents that ought to be translated by the Registry".³

3. Pursuant to Rule 23(2)(a) of the Rules,⁴ the Registrar hereby provides the Pre-Trial Judge with information concerning translations.

¹ KSC-BC-2023-10, F00413, Request for Order on Translation into Albanian, 29 July 2024, public, para. 28(ii).

² F00417, Bahtijari response to Shala request for translations, 31 July 2024, public, paras 1 – 2.

³ Id., para. 4.

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3, 2 June 2020 ('Rules').

II. SUBMISSIONS

4. Pursuant to Article 20 of the Law,⁵ the official languages of the Specialist Chambers ('SC') and Specialist Prosecutor's Office ('SPO') are Albanian, Serbian and English, and in any given proceedings, a Panel may decide the working languages for those proceedings, as appropriate and with full respect for the rights of the Accused.

5. Taking into account the submissions of the Parties, the Pre-Trial Judge has determined that the working language of these proceedings is English.⁶

6. The language and/or translation of evidence and other necessary documentation for the benefit of the Accused is governed by Articles 21(4)(a) and 39(5) of the Law and Rules 86(8), 87(1), 92(2)(b) and 102(1) of the Rules.

7. Pursuant to Article 21(4)(a) of the Law, the Accused are entitled to be informed promptly and in detail in a language which they understand of the nature and cause of the charge(s) against them. Additionally, in accordance with Article 39(5) of the Law, the Pre-Trial Judge shall ensure that "the material supporting the indictment has been or is being provided" to the Accused in a language the Accused understand.⁷

8. Pursuant to Rule 86(8) and 87(1) of the Rules, if necessary, the indictment shall be translated into a language the Accused understand and speak, and the Registrar shall serve upon the Accused a certified copy of the indictment, together with any translation. Additionally, in accordance with Rule 92(2)(b) of the Rules, the Pre-Trial Judge shall read or have the indictment read to the Accused in a language the Accused understand and speak, and be satisfied that the Accused understand the indictment.

9. Pursuant to Rule 102(1) of the Rules, the statements of all witnesses whom the Specialist Prosecutor intends to call to testify at trial shall be made available in a language the Accused understand and speak.

⁵ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), 3 August 2015.

⁶ F00033, Decision on Working Language, 12 October 2023, public; Transcript, 9 October 2023, public, p. 12, l. 25 to p.13, l. 6, and p. 28 lines 3 – 7. *See also* KSC-BC-2023-11, F00019, Decision on Working Language, 14 December 2023, public; Transcript, 13 December 2023, public, p.12, lines 8 - 20. *See also* art. 20 of the Law; Rule 8(1) and (3)(a) of the Rules.

⁷ *See also* Rule 38(4) of the Rules ("The indictment shall be filed with the Specialist Chambers together with supporting material.").

10. It is the responsibility of the Registry to make the necessary arrangements for translation into and from the working language of the proceedings and a language used by the Accused, as provided in the Rules or ordered by the Panel.⁸ The SPO makes the necessary arrangements for the translation of witness statements disclosed by the SPO pursuant to Rule 102(1) of the Rules.

11. In the Framework Decision on Disclosure of Evidence and Related Matters, the Pre-Trial Judge addressed the right of the Accused under Article 21(4)(a) of the Law, finding that

“this right does not equate to an unfettered and absolute right to receive all evidence, documents, and filings in the Accused’s language. Translating the entire case file, including evidence, would prejudice the right under Article 21(4)(d) of the Law to be tried within a reasonable time. Therefore, a balance must be achieved between these competing rights in order to make proceedings fair and expeditious at the same time.”⁹

12. In terms of the manner in which the Registry implements its responsibilities regarding translations, the Registry’s Language Services Unit (‘LSU’) provides translation services in accordance with the Registry Policy on Translation and Interpretation (‘Policy’).¹⁰ The Registry Instruction on Requesting Translation, Interpretation and Verification Services (‘Instruction’) implements the Policy and sets out the procedure for making translation and interpretation requests, as well as requests for verification of the accuracy of translation or interpretation.¹¹

⁸ Rule 8(4) of the Rules.

⁹ KSC-BC-2023-10, F00076, Framework Decision on Disclosure of Evidence and Related Matters, 24 October 2023, public, para. 79; *see also* KSC-BC-2023-11, F00023, Framework Decision on Disclosure of Evidence and Related Matters, 19 December 2023, public, para. 82. *See also* KSC-BC-2020-07, where similar arguments to those in F00413 were raised before the Pre-Trial Judge: Transcript, Status Conference, 30 April 2021, p. 257 l. 15 – p. 268, l. 6; Transcript, Status Conference, 14 July 2021, p. 357 l. 12 – p. 365, l. 2. *See also* Transcript, Trial Preparation Conference, 2 September 2021, p. 604, lines 9 – 17.

¹⁰ Registry Practice Direction, Policy on Translation and Interpretation, KSC-BD-13, 14 May 2019 (‘Policy’), public, sect. 5(1)(a)-(b).

¹¹ Registry Instruction on Requesting Translation, Interpretation and Verification Services, KSC-BD-14, 14 May 2019 (‘Instruction’), public.

13. The Court Management Unit ('CMU') of the Registry automatically requests the translation of all court filings into the three official languages of the SC.¹² In line with the Policy and the Instruction, parties and participants can ask CMU/LSU to prioritise the translation of certain filings. LSU then prioritises those requests in accordance with the Policy.¹³ To date, no requests for prioritisation of translations have been received from Counsel in these proceedings.

14. In the present case, all translations of documents required by Law to be translated by the Registry have been completed. In addition, as noted above, CMU automatically requests the translation of all court filings, and such translation is ongoing.

15. Finally, as regards Mr Bahtijari's submissions on the translation/interpretation funds available to Counsel under the legal aid system, the Registrar clarifies that pursuant to internal regulations on the implementation of the legal aid policy,¹⁴ the translation and interpretation allotments available to Counsel can include all interpretation costs and costs of translation of documents other than documents to be submitted as evidence, which should be translated by the LSU.¹⁵ Documents that the Law foresees shall be provided to the Accused into a language he/she understands (under Article 21(4)(a), (b) and (g), and Article 38(3) of the Law) are also excluded, unless explicitly agreed upon.¹⁶ These interpretation and translation services are provided by the KSC and the SPO, as outlined above.

16. The available allotments for translation and interpretation can be used for the purpose of assisting the Accused in understanding documents in the case file, if required. As noted by the Pre-Trial Judge in relation to evidence, "the free assistance of an interpreter together with Counsel's professional advice, as provided for in

¹² Policy, sect. 5(1)(a)-(b); Instruction, sect. 2(5).

¹³ Policy, sect. 7.

¹⁴ Guidelines on Administration and Monitoring of Legal Aid, KSC-BD-38-Rev1, 6 January 2023, , LIMITE.

¹⁵ Id., sect. 13(1).

¹⁶ Id., sect. 13(2).

Article 21(4)(c) and (g) of the Law, will assist the Accused in understanding the evidence in related filings that are not in Albanian.”¹⁷

III. CONCLUSION

17. In conclusion, the Registry has fulfilled and continues to fulfil its obligations as regards translations. The Registrar reiterates that Counsel can request that the translation of certain filings be prioritised, as provided in the Policy, and that funds for translation and interpretation services remain at Counsel’s disposal under the legal aid system.

Word count: 1485



Dr Fidelma Donlon
Registrar

Monday, 5 August 2024
At The Hague, the Netherlands

¹⁷ KSC-BC-2023-10, F00076, fn. 9 above, para. 81; *see also* KSC-BC-2023-11, F00023, fn. 9 above, para. 84.