



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-05

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 12 June 2020

Language: English

Classification: Public

**Public Redacted Version of
Arrest Warrant for Mr Salih Mustafa**

Specialist Prosecutor

Jack Smith

To be served on

Mr Salih Mustafa

I, **JUDGE NICOLAS GUILLOU**, Pre-Trial Judge of the Kosovo Specialist Chambers, assigned by the President of the Specialist Chambers pursuant to Article 33(1)(a) of Law No. 05/L-53 on Specialist Chambers and Specialist Prosecutor's Office ("Law");

BEING SEISED of the strictly confidential and *ex parte* "Submission of Indictment for confirmation and related requests", dated 14 February 2020, "Submission of revised Indictment for confirmation and related requests", dated 18 March 2020, and "Submission of further revised Indictment for confirmation", dated 20 March 2020 of the Special Prosecutor's Office ("SPO");

HAVING CONFIRMED, in the "Decision on the Confirmation of the Indictment Against Salih Mustafa", dated 12 June 2020, the Further Revised Indictment ("Confirmed Indictment") and having found therein that there is a well-grounded suspicion that Mr Salih Mustafa ("Mr Mustafa") committed or participated in the commission of crimes within the jurisdiction of the Specialist Chambers;

PURSUANT TO Articles 35(3), 39(3), 41, 53, 54 and 55 of the Law and Rules 50, 53, 55, 86(6)(b) and 208(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules");

ISSUE AN ARREST WARRANT FOR

SALIH MUSTAFA, also known as "Cali" or "Commander Cali", born on **1 JANUARY 1972** in **PRISHTINË/PRIŠTINA**, Kosovo, currently a Kosovan national, **PERSONAL IDENTIFICATION NUMBER [REDACTED]**, last known residence **[REDACTED]**, **PRISHTINË/PRIŠTINA**, Kosovo.

A. CRIMES AND CONCISE STATEMENT OF FACTS

1. As set out in the Confirmed Indictment, there is a well-grounded suspicion that Mr Mustafa is criminally responsible for the war crimes of arbitrary detention (Count 1), cruel treatment (Count 2), torture (Count 3) and murder (Count 4) in violation of Article 14(1)(c) of the Law. In relation to these crimes, there is a well-grounded suspicion that Mr Mustafa is criminally responsible, pursuant to Article 16(1)(a) of the Law for:

- (i) physically committing the crimes under Counts 1-3;
- (ii) committing, as a member of a joint criminal enterprise ("JCE"), the crimes under Counts 1-4, and, alternatively for Count 4, committing, as a member of the aforementioned JCE, the crime of murder, by being aware that such a crime might be perpetrated in carrying out the common purpose of the JCE and by willingly taking that risk;
- (iii) ordering the crimes under Counts 1-3;
- (iv) instigating the crimes under Counts 1-3; and
- (v) further and alternatively, aiding and abetting the crimes under Counts 1-4.

2. Further and alternatively to the alleged responsibility pursuant to Article 16(1)(a) of the Law, there is a well-grounded suspicion that Mr Mustafa is criminally responsible for the crimes under Counts 1-4 as a superior, pursuant to Article 16(1)(c) of the Law.

3. As specified in the Confirmed Indictment, these crimes were committed against at least six (6) persons not taking active part in the hostilities at a detention compound located in Zllash/Zlaš, Kosovo ("Zllash Detention Compound"), between approximately 1 April 1999 and 19 April 1999. As specified in the Confirmed Indictment, the war crime of murder (Count 4), was committed at the Zllash Detention Compound involving one (1) detainee on a date between on or about 19 April 1999 and around the end of April 1999.

4. The crimes under Counts 1-4 were committed in the context of and were associated with an armed conflict in Kosovo between the Kosovo Liberation Army and forces of the Federal Republic of Yugoslavia ("FRY") and Republic of Serbia, including units of the Yugoslav Army, police and other units of the Ministry of Internal Affairs, and other groups fighting on behalf of the FRY and Serbia.

B. NECESSITY OF THE ARREST

5. Mr Mustafa's arrest is necessary in accordance with Article 41(6)(b) of the Law. There are articulable grounds to believe that he: (i) is a flight risk, as he is aware of publicly reported convictions of former senior Llap Operational Zone commanders, is aware of the charges against him, as contained in the Confirmed Indictment, and the potential penalties, is part of the Kosovo security and intelligence apparatus with resultant access to information and resources, and has the ability to travel freely; (ii) may obstruct proceedings by interfering with witnesses, victims or accomplices; and (iii) considering his past conduct, may commit further crimes as he has publicly bragged about the execution of Serbs thereby demonstrating a risk that he may resort to physical violence or threats of physical violence against victims and witnesses.

C. EXECUTION OF ARREST WARRANT

6. Given that, according to the information currently available, Mr Mustafa resides in the Kosovo, the Pre-Trial Judge orders the SPO to execute and serve the arrest warrant. Pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law. It may therefore be considered a "competent authority" under Rule 49(1) of the Rules capable of executing and serving the present arrest warrant. The Pre-Trial Judge recalls that, pursuant to Articles 53(3) and 54(1) of the Law, the Specialist Chambers have primacy over all other courts in Kosovo and that the present arrest warrant has the same force

and effect as a warrant of arrest issued by any other Kosovo court. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo, including governmental officials, shall cooperate with the SPO and the Specialist Chambers and shall comply without delay with any order or decision.

7. If information is available that Mr Mustafa is present on the territory of a Third State, the Registrar shall transmit the arrest warrant to the competent authorities of that Third State requesting that it be executed and served in the presence of representatives of the SPO, in conformity with Article 55 of the Law. Moreover, the Third State is requested to promptly notify the Registrar of the date, time, location, and any other relevant details regarding Mr Mustafa's arrest and transfer to the Specialist Chambers, in accordance with Article 55 of the Law. Should any technical or logistical difficulties or impediments arise in the execution of this arrest warrant, the competent authorities of the Third State, are invited to raise such issues with the representatives of the SPO and/or the Registry, as the case may be.

D. TRANSFER AND DETENTION FACILITY

8. Pursuant to Articles 3(8)(a) and (d), and 41(5) and (7) of the Law and Rule 55(4) of the Rules, upon arrest, Mr Mustafa shall be transferred to the detention facilities in the Netherlands ("Host State"), overseen by the Specialist Chambers and managed by the Registry. The Registrar shall execute the order for transfer and make the necessary arrangements for the prompt transfer of Mr Mustafa.

E. MR MUSTAFA'S RIGHTS

9. Upon arrest, Mr Mustafa is entitled to the rights under Articles 21 and 41(4) of the Law, which must be read out to him upon arrest by the SPO or upon transfer to the custody of the Specialist Chambers, as the case may be.

10. Mr Mustafa shall be brought without delay before the Pre-Trial Judge pursuant to Article 41(5) of the Law.

11. Mr Mustafa has the right to challenge, pursuant to Article 41(2) and (5) of the Law, the lawfulness of his arrest, the transfer order and the conditions of detention before the Pre-Trial Judge, and he has the right to appeal before the Specialist Chamber of the Court of Appeal.

F. OTHER REQUESTS AND ORDERS

12. The arrest warrant, currently classified strictly and *ex parte* may be communicated, or its existence be revealed, to the accused, Mr Mustafa, and other competent authorities of Kosovo or Third States, including the Host State, as necessary for the execution of the arrest warrant.

13. Considering the classification of the present arrest warrant, the Pre-Trial Judge requests the competent authorities of Kosovo or any Third State, as the case may be, to refrain from disclosing the existence and contents of this arrest warrant, except to those persons whose involvement is strictly necessary for its execution and service upon Mr Mustafa.

14. Should any entity, any official of the Kosovo Government, or any other person in Kosovo obstruct the execution of the present arrest warrant, this may constitute an offence pursuant to Article 15(2) of the Law.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 12 June 2020
At The Hague, the Netherlands.