



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-05  
**The Specialist Prosecutor v. Salih Mustafa**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 28 September 2020

**Language:** English

**Classification:** Public

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**Order for Submissions on the Redaction System**

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**Specialist Prosecutor**  
Jack Smith

**Counsel for the Accused**  
Julius von Bóné

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 23(1) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80 and 108(1) and (5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

## I. PROCEDURAL BACKGROUND

1. On 14 February 2020, the Specialist Prosecutor submitted for confirmation a strictly confidential and *ex parte* indictment together with evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.<sup>2</sup>
2. On 12 June 2020, the Pre-Trial Judge issued the "Decision on the Confirmation of the Indictment Against Salih Mustafa" ("Confirmation Decision"),<sup>3</sup> the "Arrest Warrant for Mr Salih Mustafa"<sup>4</sup> and the "Order for Transfer to Detention Facilities of the Specialist Chambers"<sup>5</sup>.
3. On 19 June 2020, the Specialist Prosecutor submitted the Confirmed Indictment.<sup>6</sup>
4. On 24 September 2020, Salih Mustafa ("Mr Mustafa" or "Accused") was arrested<sup>7</sup> and transferred to the detention facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands.<sup>8</sup>

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<sup>1</sup> KSC-BC-2020-05, F00001, President, Decision Assigning a Pre-Trial Judge, 14 February 2020, public.

<sup>2</sup> KSC-BC-2020-05, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 14 February 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>3</sup> KSC-BC-2020-05, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Salih Mustafa* ("Confirmation Decision"), 12 June 2020, strictly confidential and *ex parte*.

<sup>4</sup> KSC-BC-2020-05, F00009/A01/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Mr Salih Mustafa*, 12 June 2020, public.

<sup>5</sup> KSC-BC-2020-05, F00009/A02/RED, Pre-Trial Judge, *Public redacted version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 12 June 2020, public.

<sup>6</sup> KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Annex 2 to Submission of Confirmed Indictment*, 19 June 2020, public. A further redacted version of the Confirmed Indictment was filed on 28 September 2020 (KSC-BC-2020-05, F00019/A01, Specialist Prosecutor, *Annex 1 to Submission of further redacted version of Confirmed Indictment*, 28 September 2020, public).

5. On 28 September 2020, the Registrar conditionally assigned Julius von Bóné as Counsel for Mr Mustafa.<sup>9</sup>

## II. APPLICABLE LAW

6. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, a Panel may order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings as well as other persons at risk on account of testimony given by witnesses.

7. Pursuant to Rule 80(4)(a)(i) and (d) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the public and/or the Accused, where necessary, of the identity and/or whereabouts of a witness, victim participating in the proceedings or of a person related to or associated with them.

8. Pursuant to Rule 108(1) of the Rules, the Specialist Prosecutor may apply confidentially and *ex parte* to the Panel to withhold information in whole or in part that may, *inter alia*, prejudice ongoing or future investigations. The same applies *mutatis mutandis* to the Defence.

## III. DISCUSSION

9. In light of the arrest and transfer of Mr Mustafa, the process of disclosure of evidence by the Specialist Prosecutor to the Accused is expected to start promptly, in

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<sup>7</sup> KSC-BC-2020-05, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 24 September 2020, strictly confidential and *ex parte*.

<sup>8</sup> KSC-BC-2020-05, F00014, Registrar, *Notification of Reception in the Detention Facilities of the Specialist Chambers*, 24 September 2020, strictly confidential and *ex parte*, with one annex, strictly confidential and *ex parte*, para. 2.

<sup>9</sup> KSC-BC-2020-05, F00020, Registrar, *Notification of the Conditional Assignment of Counsel*, 28 September 2020, public, with one annex, confidential.

accordance with the Rules. Therefore, it is necessary to request observations from the parties regarding the redaction of information and evidence. These observations will inform the Pre-Trial Judge when adopting a redaction system that will ensure efficiency of the disclosure process by striking a balance between the duty to protect certain interests while upholding the rights of the Accused under Article 21 of the Law.

#### IV. DISPOSITION

10. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **REQUESTS** the Specialist Prosecutor's Office to provide its observations in accordance with paragraph 9 of the present order by **Thursday, 1 October 2020**; and
- b. **REQUESTS** the Defence to provide its observations in accordance with paragraph 9 of the present order by **Monday 5 October 2020**.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Monday, 28 September 2020  
At The Hague, the Netherlands.