



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

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

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

**Registrar:** Dr Fidelma Donlon

**Date:** 8 October 2020

**Language:** English

**Classification:** **Public**

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**Decision on Working Language**

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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 20 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 8(3)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 14 February 2020, the Specialist Prosecutor's Office ("SPO") 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> together with, *inter alia*, an arrest warrant and transfer order.<sup>4</sup>
3. On 19 June 2020, the SPO submitted the Confirmed Indictment.<sup>5</sup>
4. On 24 September 2020, Salih Mustafa ("Mr Mustafa" or "Accused") was arrested<sup>6</sup> and transferred to the detention facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands.<sup>7</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*. A public redacted version with a public redacted annex was filed on 2 October 2020.

<sup>3</sup> KSC-BC-2020-05, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Salih Mustafa*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was filed on 5 October 2020.

<sup>4</sup> KSC-BC-2020-05, F00009/A01, Pre-Trial Judge, *Arrest Warrant for Mr Salih Mustafa*, 12 June 2020, strictly confidential and *ex parte*, strictly confidential and *ex parte*; F00009/A02, Pre-Trial Judge, *Order for Transfer to Detention Facilities of the Specialist Chambers*, strictly confidential and *ex parte*. Public redacted versions of the two documents were filed on 24 September 2020.

<sup>5</sup> KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Annex 2 to Submission of Confirmed Indictment*, 19 June 2020, confidential. A public redacted version was filed on 28 September 2020 (F00019/A01).

<sup>6</sup> KSC-BC-2020-05, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 24 September 2020, strictly confidential and *ex parte*.

5. On 28 September 2020, the Registrar conditionally assigned Julius von Bóné as Counsel for Mr Mustafa,<sup>8</sup> and Mr Mustafa appeared before the Pre-Trial Judge (“Initial Appearance”).<sup>9</sup>

6. On 28 September 2020, the Pre-Trial Judge requested the parties to provide their submissions as to the working language to be adopted in the present proceedings by 2 October 2020 (“Order for Submission”).<sup>10</sup>

7. On 2 October 2020, the SPO submitted that the working language for KSC-BC-2020-05 should be English.<sup>11</sup> At a status conference, held on 5 October 2020, the Defence also indicated that English should be the working language of the present proceedings.<sup>12</sup>

## II. APPLICABLE LAW

8. Pursuant to Article 20 of the Law, the official languages of the Specialist Chambers (“SC”) 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 of the rights of the accused.

9. Pursuant to Rule 8(3)(a) of the Rules, subject to Article 20 of the Law, as early in the proceedings as possible, the Panel, after hearing the Parties and, where applicable, Victims’ Counsel, shall decide which working language(s) shall be used in the proceedings.

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<sup>7</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>8</sup> KSC-BC-2020-05, F00020, Registrar, *Notification of the Conditional Assignment of Counsel*, 28 September 2020, public, with one annex, confidential.

<sup>9</sup> KSC-BC-2020-05, Transcript of Hearing, 28 September 2020.

<sup>10</sup> KSC-BC-2020-05, F00021, Pre-Trial Judge, *Order for Submissions on the Working Language of the Proceedings* (“Order for Submissions”), 28 September 2020, public, para. 12.

<sup>11</sup> KSC-BC-2020-05, F00025, Specialist Prosecutor, *Prosecution submissions on working language for KSC-BC-2020-05* (“SPO Submission on Working Language”), 2 October 2020, public, para. 7.

<sup>12</sup> KSC-BC-2020-05, Transcript of Hearing, 5 October 2020, page 27, lines 1-6.

### III. DISCUSSION

#### A. DETERMINATION OF WORKING LANGUAGE

10. Article 20 of the Law permits the Pre-Trial Judge to adopt a decision on working languages in any given “proceedings”. Neither the Law nor the Rules provide a definition of “proceedings”. The term has been defined as “a judicial cause pending before a Chamber”.<sup>13</sup> In light of the arrest, transfer, and Initial Appearance of Mr Mustafa, and in conformity with the rights of the accused under Article 21 of the Law, the Pre-Trial Judge considers it necessary to determine the working language in the present proceedings.

11. As noted in the Order for Submissions, determination of the working language is necessary to ensure the fair, efficient, and expeditious conduct of proceedings.<sup>14</sup> In particular, it will facilitate the efficient preparation and organisation of a party’s or participant’s submissions. Further, it will increase the foreseeability and planning capacity of language servicing sections within the Registry and the SPO.<sup>15</sup>

12. The Pre-Trial Judge notes that the language of the proceedings to date has been English, as all filings by the SPO and the Defence, as well as all decisions and orders of the Pre-Trial Judge have been issued in English. Furthermore, the parties have agreed to continue proceeding in this manner.<sup>16</sup>

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<sup>13</sup> See ICC, *Situation in the Democratic Republic of the Congo*, ICC-01/04-556, Appeals Chamber, [Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007](#), 19 December 2008, para. 45.

<sup>14</sup> Order for Submissions, para. 8.

<sup>15</sup> Order for Submissions, para. 10.

<sup>16</sup> SPO Submission on Working Language, para. 7; Transcript of Hearing, 5 October 2020, page 27, lines 1-6.

13. Accordingly, the Single Judge determines that, for the purposes of proceedings under KSC-BC-2020-05, the working language shall be English. Parties and participants shall therefore submit their filings in English. If annexes, supporting material or other evidence upon which the parties or participants rely are, in whole or in part, in a language other than English, a translation into English must be provided. This ruling is without prejudice to the translation requirement stipulated in the framework disclosure decision.

#### B. PRACTICAL IMPLEMENTATION

14. For the purposes of the practical implementation of the above determination, the following directions are provided to the parties and participants, as the case may be. The directions are organised in two scenarios where the need for translation arises:

- (1) *General rule*: directions prior to the submission of filings, including annexes, supporting material or evidence; and
- (2) *Exception*: directions after the submission of filings, including annexes, supporting material or evidence.

Lastly, the procedure for the resolution of any dispute over questions involving translation is indicated.

#### **1. Directions for Scenario Prior to the Submission of a Filing**

15. It is the obligation of the parties and participants to abide by the following directions as a general rule *prior* to the submission of any filing, including annexes, supporting material or other evidence.

16. Filings must be submitted in English. Where text elements, either in the body of the document or in a footnote, are in a language other than English, a translation into English must be provided.

17. The same language requirement applies to any annexes, supporting material or other evidence submitted upon which the party or participant relies. This applies to material produced by the party or participant or collected from any other source. In the interest of retaining only relevant material in the record of the proceedings, there is no need to submit material in its entirety if the party or participant only relies on parts thereof. Where a document is inseverable and the party or participant only relies on discrete parts thereof, indication must be given as to the concrete section, page, paragraph or sentence relied upon and an English translation of the relevant section must be provided.

18. In respect of any filings, including annexes, and supporting material submitted by individuals, Kosovo authorities, Third States or international organisations, the following considerations apply:

- (1) A filing, including annexes, and supporting material lodged by an individual from or authorities of Kosovo may be submitted in English, Albanian or Serbian;
- (2) A filing, including annexes, and supporting material lodged by an individual from or authorities of Third States or from an international organisation may be submitted in English or in any other chosen or official language;
- (3) If a filing, including annexes, and supporting material is directed to the Panel, it shall be distributed by the Registry. It is within the responsibility of the Registry to provide for the English translation of any filing, including annexes, and material so submitted.
- (4) If a filing, including annexes, and supporting material, by individuals, Kosovo authorities, Third States or international organisations is submitted by the SPO, it is within its responsibility

to provide for the translation thereof prior to submitting it to the Panel.

19. In respect of any audio, video or online material, parties and participants, as applicable, may not rely upon such material without providing a transcription thereof. For any such material, the following details must be provided:

- (1) If applicable, the relevant online source as well as the date and time at which it was last accessed;
- (2) The exact time slot or text extracts, as the case may be, upon which the party or participant, as applicable, relies;
- (3) A transcription of the relevant extract in its original language, whether in the main filing or in an annex thereto; and
- (4) If submitted by a party or participant, an English translation of the transcribed extract.

20. In principle, translations prepared by qualified translators, either within the Language Services Unit ("LSU") or by the SPO language services, are preferred. However, the Pre-Trial Judge is mindful that, in certain instances, such as urgency or unavailability of qualified translators, other translations may be accepted.

21. As provided for in Section 4(2) of the Registry Policy on Translation and Interpretation (KSC-BD-13) ("Policy"), translations provided by the LSU shall be labelled as "Draft", "Unrevised" or "Official".

22. Where a translation originates from the SPO and has been prepared by qualified translators or other similarly qualified staff, it shall be labelled as "SPO Translation". Where a translation is prepared by the Defence, Victims' Counsel or any other participant, it shall be labelled as "Defence Translation", "Victims Counsel Translation" or "[Name of Participant] Translation". Where a translation provided by the parties or participant has been prepared by others, such as another judicial institution or external non-qualified translators, it shall not bear any of the

aforementioned labels; rather, the labeling of the external source(s) may remain on the document or material concerned. The appropriate labelling of translations (or lack thereof) remains the responsibility of the parties and participants. It is within the Pre-Trial Judge's discretion to subsequently request the verification by the LSU of any translation so provided.

23. Any translation requests to the LSU shall be made sufficiently in advance, and in line with the protocols in place, so as to allow for the proper translation and revision of the text elements concerned.

24. Whilst the SPO has its own language services, it is encouraged to coordinate and cooperate with the LSU in translation matters so as to expedite proceedings and maximise efficiency.

## **2. Directions for Scenario After the Submission of a Filing**

25. If a filing, or parts thereof, is submitted in a language other than English, the Court Management Unit ("CMU") shall request a translation thereof through the electronic court management system Legal Workflow ("LWF"), in accordance with Section 5(1)(b) of the Policy and Section 2(5) of the Registry Instruction on Requesting Translation, Interpretation and Verification Services (KSC-BD-14).

26. If an annex, any supporting material or other evidence contains text elements in a language other than English, the party or participant, as applicable, shall precisely define the scope of translation, specifying, as the case may be, the relevant section, page, paragraph or sentence to be translated, in LWF, at the same time when submitting the relevant document for filing and in accordance with Sections 5(1)(b), 5(1)(d) and 5(3)(a) of the Policy.

27. Taking note of Section 5(2) of the Policy, the Pre-Trial Judge retains the right to request the LSU, through CMU, to translate any text elements that require an official translation into English in the following situations:



- (1) Where the party or participant, as applicable, has provided only a non-labelled translation of the relevant text elements (see paragraph 22); or
- (2) When no translation has been requested for a text element provided in a language other than English, but which the Pre-Trial Judge deems relevant for the resolution of the request or matter.

28. The above ruling is without prejudice to the obligation of the party or participant to provide, from the outset, an English translation of each filing, including annex, supporting material or other evidence<sup>17</sup> or, if this is not the case, to define the scope of the necessary translation with precision.<sup>18</sup>

29. Mirroring paragraph 19 above, the parties and participant, as applicable, are reminded not to submit any audio, video or online material without corresponding transcription. Where these instructions are not abided by, the Pre-Trial Judge retains the right to either:

- (1) Disregard the relevant reference in the filing, including annex, or supporting material or evidence; or
- (2) Request that the party or participant, as applicable, file a corrigendum to the filing, including annex, or supporting material or evidence, including a transcription of the relevant reference and a translation thereof into English.

### **3. Dispute Settlement on Translation Matters**

30. Any disagreement or controversy regarding the accuracy of translations shall be resolved by LSU.

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<sup>17</sup> See *supra*, paras 15 and 16.

<sup>18</sup> See *supra*, para. 26.

## IV. DISPOSITION

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

- a) Determines that English shall be the working language for proceedings in KSC-BC-2020-05;
- b) Orders any party or participant, as the case may be, to submit any filing, annex or supporting material or other evidence submitted together with a filing in full compliance with the detailed instructions set out above; and
- c) Orders CMU to inform any party or participant, as applicable, of the requirements set out above, should the filing, including annexes, or other material submitted, not be in conformity with directions set forth in this decision.



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

Dated this Thursday, 8 October 2020  
At The Hague, the Netherlands.