



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-07**
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Single Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 29 October 2020

Language: English

Classification: **Public**

Decision on Working Language

Specialist Prosecutor
Jack Smith

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THE SINGLE JUDGE,¹ 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 22 September 2020, the Specialist Prosecutor's Office ("SPO") submitted a request for the issuance of arrest warrants and corresponding transfer orders against Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") (collectively "Suspects").²
2. On 24 September 2020, the Single Judge issued arrest warrants against the Suspects, as well as orders for their transfer to the Specialist Chambers' detention facilities in The Hague, the Netherlands ("SC Detention Facilities").³
3. On 25 September 2020, Mr Gucati and Mr Haradinaj were arrested in Kosovo,⁴ and were then transferred to the SC Detention Facilities on 25 and 26 September 2020, respectively.⁵

¹ KSC-BC-2020-07, F00003, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2020-07, F00009, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders*, 22 September 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*. A public redacted version and a confidential redacted version of this request were filed on 1 October 2020.

³ KSC-BC-2020-07, F00012/A01/RED, Single Judge, *Public Redacted Version of Arrest Warrant for Hysni Gucati*, 24 September 2020, public; KSC-BC-2020-07, F00012/A03/COR/RED, Single Judge, *Public Redacted Version of the Corrected Version of Arrest Warrant for Nasim Haradinaj*, 24 September 2020, public; KSC-BC-2020-07, F00012/A02/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public; KSC-BC-2020-07, F00012/A04/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public.

⁴ KSC-BC-2020-07, F00015, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public; KSC-BC-2020-07, F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public.

⁵ KSC-BC-2020-07, F00018, Registrar, *Notification of the Reception of Hysni Gucati in the Detention Facilities of the Specialist Chambers*, 25 September 2020, public, with Annex 1, confidential; KSC-BC-2020-07, KSC-BC-2020-07

4. On 29 September 2020 and 1 October 2020, Mr Haradinaj and Mr Gucati made their respective first appearances (collectively “First Appearances”).⁶

5. On 30 September 2020, the Single Judge ordered the parties to file written submissions on the working language for these proceedings by 7 October 2020 (“Order for Submissions”).⁷ On 4 October and 7 October 2020 respectively, Counsel for Mr Gucati⁸ and the SPO⁹ submitted that English should be the working language. On 9 October 2020, Counsel for Mr Haradinaj agreed with the other parties’ submissions.¹⁰

II. APPLICABLE LAW

6. 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.

7. 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,

F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, public, with Annex 1, confidential.

⁶ KSC-BC-2020-07, Transcript, 29 September 2020, public; KSC-BC-2020-07, Transcript, 1 October 2020, public.

⁷ KSC-BC-2020-07, F00035, Single Judge, *Order for Submissions on the Working Language of the Proceedings*, 30 September 2020, public, para. 10.

⁸ KSC-BC-2020-07, F00041, Gucati Defence, *Submissions on the Working Language of the Proceedings* (“Gucati Defence Submissions on Working Language”), 4 October 2020, public, paras 1-3.

⁹ KSC-BC-2020-07, F00043, Specialist Prosecutor, *Prosecution Submissions on Working Language for KSC-BC-2020-07* (“SPO Submissions on Working Language”), 7 October 2020, public, paras 2-6.

¹⁰ KSC-BC-2020-07, F00044, Haradinaj Defence, *Submissions on the Working Language of the Proceedings* (“Haradinaj Defence Submissions on Working Language”), 9 October 2020, public, paras 1-2. Counsel for Mr Haradinaj filed these submissions two days after the time limit set by the Single Judge. Counsel made no request showing good cause for the Single Judge to extend the time limit pursuant to Rule 9(5)(a) of the Rules, nor a request showing good cause for the Single Judge to accept as valid the submissions filed after the expiration of the time limit, pursuant to Rule 9(5)(b) of the Rules. Nevertheless, in this instance, the Single Judge *proprio motu* recognises the Haradinaj Defence submissions of 9 October 2020 as validly filed, pursuant to Rule 9(5)(b) of the Rules.

Victims' Counsel, shall decide which working language(s) shall be used in the proceedings.

III. DISCUSSION

A. DETERMINATION OF WORKING LANGUAGE

8. Article 20 of the Law permits the Single Judge to adopt a decision on working languages in any given "proceedings". As noted by the Pre-Trial Judge in KSC-BC-2020-05, while neither the Law nor the Rules define "proceedings", the term has been defined as "a judicial cause pending before a Chamber".¹¹ In light of the Suspects' arrest, transfer, and First Appearances, the Single Judge considers it necessary to determine the working language in the present proceedings.

9. As noted in the Order for Submissions, determination of the working language is necessary to ensure the fair, efficient, and expeditious conduct of proceedings. 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.¹²

10. The Single Judge notes that the language of the proceedings to date has been English, as all filings by the SPO, the Defence, the Registry, as well as all decisions and orders of the Single Judge have been issued in English. Furthermore, the parties have agreed to continue proceeding in this manner.¹³

¹¹ KSC-BC-2020-05, F00032, Pre-Trial Judge, *Decision on Working Language* ("Mustafa Working Language Decision"), 8 October 2020, para. 10, citing 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.

¹² Order for Submissions, para. 7; *Mustafa Working Language Decision*, para. 11.

¹³ Gucati Defence Submissions on Working Language, paras 1-3; SPO Submissions on Working Language, paras 2-6; Haradinaj Defence Submissions, paras 1-2.

11. Accordingly, the Single Judge determines that, for the purposes of proceedings under KSC-BC-2020-07, 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 requirements under the Law and the Rules.

B. PRACTICAL IMPLEMENTATION

12. 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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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".

20. 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 Single Judge's discretion to subsequently request the verification by the LSU of any translation so provided.

21. 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.

22. 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

23. 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).

24. 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.

25. Taking note of Section 5(2) of the Policy, the Single 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 20); or
- (2) When no translation has been requested for a text element provided in a language other than English, but which the Single Judge deems relevant for the resolution of the request or matter.

26. 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 annexes, supporting material or other evidence¹⁴ or, if this is not the case, to define the scope of the necessary translation with precision.¹⁵

27. Mirroring paragraph 17 above, the parties and participants, as applicable, are reminded not to submit any audio, video or online material without corresponding transcription. Where these instructions are not abided by, the Single Judge retains the right to either:

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

3. Dispute Settlement on Translation Matters

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

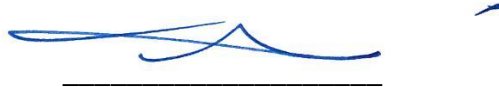
¹⁴ See *supra*, paras 13 and 14.

¹⁵ See *supra*, para. 24.

IV. DISPOSITION

29. For the above-mentioned reasons, the Single Judge hereby:

- a) Determines that English shall be the working language for proceedings in KSC-BC-2020-07;
- 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.



Judge Nicolas Guillou
Single Judge

Dated this Thursday, 29 October 2020
At The Hague, the Netherlands.