



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:** 30 September 2020

**Language:** English

**Classification:** **Public**

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**Corrected Version of**  
**Order Setting the Date for a Status Conference**

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**Specialist Prosecutor**  
Jack Smith

**Duty Counsel for the Accused**  
Julius von Bóné

**Registry**  
Head of Witness Protection and Support  
Office

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

## I. PROCEDURAL BACKGROUND

1. On 12 June 2020, the Pre-Trial Judge issued the "Decision on the Confirmation of the Indictment Against Salih Mustafa" ("Confirmation Decision"),<sup>2</sup> the "Arrest Warrant for Mr Salih Mustafa"<sup>3</sup> and the "Order for Transfer to Detention Facilities of the Specialist Chambers".<sup>4</sup>
2. On 19 June 2020, the Specialist Prosecutor's Office ("SPO") submitted the Confirmed Indictment.<sup>5</sup>
3. 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, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Salih Mustafa*, 12 June 2020, strictly confidential and *ex parte*.

<sup>3</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>4</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>5</sup> KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Annex 2 to Submission of Confirmed Indictment*, 19 June 2020, confidential. A further redacted public 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).

<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*.

<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 Annex 1, strictly confidential and *ex parte*.

4. On 28 September 2020, the Pre-Trial Judge issued the “Order for Submissions on the Redaction System”.<sup>8</sup>

5. On the same day, the initial appearance of Mr Mustafa took place.<sup>9</sup> During the hearing, the Accused stated that he understands and speaks Albanian.<sup>10</sup> Moreover, the Defence expressed a preference to hold the status conference at the beginning of the week 5-9 October 2020.<sup>11</sup>

## II. APPLICABLE LAW

6. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused in order to, *inter alia*: (i) organise exchanges between the Parties and, where applicable, Victims’ Counsel so as to ensure expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

7. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the Accused shall be made available to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied. Pursuant to Rule 102(3), the SPO shall provide detailed notice to the Defence of any material and evidence in its possession.

8. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 106, 107, and 108 of the Rules, the SPO shall make available to the Defence and, where applicable, Victims’ Counsel, as soon as possible and at least within 30 days of the initial

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<sup>8</sup> KSC-BC-2020-05, F00022, Pre-Trial Judge, *Order for Submissions on the Redactions System*, 28 September 2020, public.

<sup>9</sup> KSC-BC-2020-05, T. 28 September 2020, public.

<sup>10</sup> KSC-BC-2020-05, T. 28 September 2020, public, p. 4, line 14.

<sup>11</sup> KSC-BC-2020-05, T. 28 September 2020, public, p. 17, lines 5-7.

appearance, the supporting material to the Confirmed Indictment as well as any statement obtained from the Accused.

9. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the Accused understands and speaks; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

10. Pursuant to Rule 102(2) and (4) of the Rules, any statement of additional SPO witnesses, which have not been disclosed up to the 30-day time limit prior to the opening of the Specialist Prosecutor's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence, in a language the Accused understands and speaks, as soon as possible and shall be accompanied by reasons for the late disclosure. Such disclosure shall be finalised during the pre-trial stage.

11. Pursuant to Rule 102(3) of the Rules, the SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and allow inspection of other tangible objects in the custody or control of the SPO, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused.

12. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence any information as soon as it is in its custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the SPO's evidence.

13. 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.

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

15. Pursuant to Rule 108(1) of the Rules, the SPO may apply to the Panel to withhold information in whole or in part where the disclosure of such information may, *inter alia*, prejudice ongoing or future investigations. The same applies *mutatis mutandis* to the Defence.

16. Pursuant to Rule 107(2) of the Rules, the SPO shall apply to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information, of which it has custody or control, has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

### III. DISCUSSION

17. With the initial appearance of Mr Mustafa, the process of disclosure of evidence and material by the SPO to the Defence is expected to start promptly, in accordance with the above-mentioned legal framework and in a manner and timeframe to be regulated by the Pre-Trial Judge. To this effect, as prescribed by Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference in the presence of the SPO and the Defence, in order to receive submissions regarding the items listed in the annex to this order and any other relevant topic not covered by the annexed list of items, as deemed necessary by the Parties. In addition, representatives of the Witness

Protection and Support Office (“WPSO”) are also invited to attend the status conference, considering the WPSO’s role in providing protection to witnesses, pursuant to Articles 23(1) and 34(8) of the Law.

18. Furthermore, the Parties are invited to make written submissions on any of the items listed in the annex to this order or other topics they deem necessary, if they so wish. Where information cannot be shared with either Party for confidentiality and protection purposes, submissions may be made in writing *ex parte* or in private/closed session in the presence of the Party concerned only. The information provided by the Parties, either orally or in writing will assist the Pre-Trial Judge when formulating the framework decision on disclosure and related time limits.

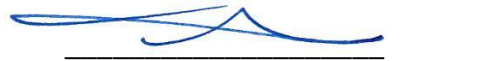
19. It is recalled that, while Mr Mustafa and his Counsel have the right to be present in person, pursuant to Rule 96(2) of the Rules, considering the technical nature of the topics to be discussed, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused’s absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after having received advice from his Counsel, in accordance with Rule 96(2) of the Rules.

20. Lastly, the Pre-Trial Judge invites the SPO to make strictly confidential and *ex parte* submissions, if any, on the proposed redactions to be applied by the Pre-Trial Judge to the Confirmation Decision, in order to make it available to the Defence and the public.

## IV. DISPOSITION

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

- a. **DECIDES** to convene a status conference in the presence of the SPO, the Defence, and the WPSO on **Monday, 5 October 2020, at 15:00 hours**;
- b. **REQUESTS** the SPO and the Defence to provide submissions, if they so wish, on any of the items listed in the agenda for the status conference annexed to the present order or other topics they deem necessary, by **Monday, 5 October 2020, at 12:00 hours**;
- c. **REQUESTS** the SPO to provide, by **Friday, 2 October 2020**, separate strictly confidential and *ex parte* written submissions, if any, as to the proposed redactions to be applied to the Confirmation Decision, in order to make it available to the Defence and the public.



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

Dated this Wednesday, 30 September 2020  
At The Hague, the Netherlands.

## Explanatory Note

On the cover page the name of a KSC staff member was removed.