



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

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

Registrar: Dr Fidelma Donlon

Date: 26 January 2021

Language: English

Classification: **Public**

Order Setting the Date for the Fourth Status Conference

Specialist Prosecutor
Jack Smith

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

I. PROCEDURAL BACKGROUND

1. On 28 September 2020, the Accused Salih Mustafa ("Mr Mustafa") made his initial appearance.²

2. On 9 October 2020, the Pre-Trial Judge issued a framework decision on disclosure of evidence and related matters, setting out a disclosure process due to be completed by the Specialist Prosecutor's Office ("SPO") in January 2021 ("Framework Decision").³

3. On 5 and 28 October 2020, and 14 December 2020, three status conferences took place.⁴

II. APPLICABLE LAW

4. Pursuant to Rule 96(1) of the Rules, following the first status conference, the Pre-Trial Judge shall convene subsequent status conferences as deemed necessary in order to: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent

¹ KSC-BC-2020-05, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

² KSC-BC-2020-05, Transcript, 28 September 2020, public, p. 11, lines 24-25.

³ KSC-BC-2020-05, F00034, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 9 October 2020, public, para. 90(f)-(i).

⁴ KSC-BC-2020-05, Transcript, 5 October 2020, public, pp. 19-46; Transcript, 28 October 2020, public, p. 60, line 20 to p. 87; Transcript, 14 December 2020, public, pp. 88-122.

fashion; and (iii) review the status of the case and allow the Parties and, where applicable, Victims' Counsel the opportunity to raise issues in relation thereto.

5. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in the 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.

6. Pursuant to Rule 95(2) of the Rules, the Pre-Trial Judge shall, *inter alia*, set out a calendar and working plan for any pre-trial obligations of the Parties; set time limits for disclosure; take steps to identify and narrow down the list of issues subject to dispute between the Parties and those which are not; decide on motions for protective measures; and set a target date for the readiness of the case for trial.

7. Pursuant to Rule 95(4) of the Rules, the Pre-Trial Judge shall order the SPO to file, within a set time limit: (i) its pre-trial brief, including any admissions by the Defence and a statement of matters which are not in dispute; (ii) a list of witnesses it intends to call; and (iii) a list of exhibits it intends to present, including, where possible, any Defence objections to authenticity.

8. Pursuant to Rule 95(5) of the Rules, after submission of the items under Rule 95(4) of the Rules, the Pre-Trial Judge shall invite the Defence to file a pre-trial brief within a set time limit. Moreover, within a time limit set by the Pre-Trial Judge, the Defence shall notify the SPO of its intention to offer a defence of alibi or any other grounds excluding criminal responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

9. Pursuant to Rule 98(1) of the Rules, after receiving the Parties' Pre-Trial Briefs and related material in accordance with Rule 95(4) and (5) of the Rules, the Pre-Trial Judge shall transmit the complete case file to the Trial Panel.

10. Pursuant to Rule 96(2) of the Rules, with the Accused's written consent after receiving advice from Counsel, a status conference may be conducted: (i) in the Accused's presence, with Counsel participating via video-conference; (ii) in Defence Counsel's presence, with the Accused participating via video-conference; or (iii) in the Accused's absence, with Counsel present or participating via video-conference.

III. DISCUSSION

11. In accordance with Rule 96(1) of the Rules and to ensure expeditious preparation for trial, the Pre-Trial Judge convenes a fourth status conference for Monday, 1 February 2021, at 11:00 hours.

12. Considering the advanced stage of the case, in particular the completion by the SPO of the disclosure of incriminating evidence in accordance with the Framework Decision,⁵ the Pre-Trial Judge will ask specific updates from the Parties on the following issues, in the sequence set out below:

(1) Disclosure

- a. Whether the SPO has completed disclosure of evidentiary material, including exculpatory evidence, and, if not, which material remains to be disclosed, under what rule and when the SPO will disclose such material;
- b. Whether the SPO intends to add evidence under Rule 102(2) of the Rules;

(2) Investigations

- a. Whether the SPO has completed its outstanding investigations and, if not, when it will complete them;

⁵ To date, the SPO has completed disclosure under Rule 102(1)(a)-(b) and (3). KSC-BC-2020-05, Transcript, 28 October 2020, public, p. 76, lines 16-24; Transcript, 14 December 2020, public, pp. 90-91.

- b. Considering the nearly completed SPO disclosure process, whether the Defence has concluded its investigations and, if not, when it will conclude them;
- c. Whether, and if so when, the Defence intends to:
 - (i) give notice of an alibi or grounds for excluding responsibility, pursuant to Rule 95(5) of the Rules, and any associated disclosure, pursuant to Rule 104(1) and (2) of the Rules; and
 - (ii) make requests concerning unique investigative opportunities, pursuant to Rule 99(1) of the Rules.
- d. Whether the Defence intends to disclose evidence to the SPO and, if it so chooses, its estimated overall amount and type; and
- e. Whether the Defence intends to request protective measures prior to disclosure of evidence, and if so, what kind of protective measures and for how many witnesses.

(3) Points of agreement on matters of law and fact

- a. Whether the Parties have reached an agreement regarding the submission of points of agreement on law and/or facts, pursuant to Rules 95(3) and 156 of the Rules; and
- b. Whether and when the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute.

(4) Next procedural steps

- a. Whether, and if so when, the Defence envisages filing a pre-trial brief and related material under Rule 95(5) of the Rules; and
- b. The Parties' proposed date(s) for transmission of the case file to the Trial Panel, pursuant to Rule 98(1) of the Rules.

13. Finally, the Parties will be asked to share their views on the date of the next status conference in this case, if deemed necessary.

14. The Parties are also invited to file written submissions, if they so wish, by Friday, 29 January 2021, at 12:00 hours, on any issue or difficulty that could give rise to delays in the expeditious preparation of the present case for trial, or any other related matter not covered in the present order.

IV. DISPOSITION

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

- a. **DECIDES** to convene a status conference in the presence of the SPO and the Defence on **Monday, 1 February 2021, at 11:00 hours**; and
- b. **ORDERS** the SPO and the Defence to file written submissions, if they so wish, by **Friday, 29 January 2021, at 12:00 hours**, as set forth in paragraph 14.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Tuesday, 26 January 2021
At The Hague, the Netherlands.