



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 28 April 2021

Language: English

Classification: Public

Registrar's Submissions on Translations and Access to Documents

Specialist Prosecutor

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Counsel for Hysni Gucati

Jonathan Elystan Rees

Counsel for Nasim Haradinaj

Toby Cadman

I. INTRODUCTION

1. On 22 April 2021, the Pre-Trial Judge issued an Order¹ setting the date for the fourth status conference and directing the Registrar to file written submissions providing up-to-date information on: i) whether and to what extent there are outstanding requests for translation of documents or evidence into a language the Accused understand that are required by law to be translated; and ii) whether a timeline can be provided for any outstanding requests for translation. The Pre-Trial Judge also ordered the Parties, if they so wish, to file written submissions on, *inter alia*, whether issues concerning the sharing of documents with the Accused at the detention unit ('Detention Facilities') have been resolved.²

2. Pursuant to the Order, the Registrar hereby provides the Pre-Trial Judge with information concerning translations, including: firstly, information on documents required by law to be translated, together with a timeline; and secondly, information on specific requests for the translation of documents not required by law to be translated, together with a timeline. Pursuant to Rules 23(2)(a) of the Rules,³ the Registrar also submits representations to the Pre-Trial Judge on the measures taken by the Registry to facilitate the sharing of documents between Counsel and the Accused at the Detention Facilities, while mitigating health and safety risks of the novel coronavirus ('COVID-19').

II. SUBMISSIONS

A. INFORMATION ON TRANSLATIONS

3. Pursuant to Article 20 of the Law,⁴ the official languages of the Specialist Chambers ('SC') and Specialist Prosecutor's Office ('SPO') are Albanian, Serbian and

¹ See KSC-BC-2020-07, F00187, Order Setting the Date for the Fourth Status Conference ('Order'), 22 April 2021, public, paras 12(4), 15(b).

² *Ibid.*, paras 12(2), 15(c).

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('Rules'), KSC-BD-03/Rev3/2020, 2 June 2020; *see also* Status Conference of 30 March 2021 (Open Session), Transcript, p. 206, line 11 – p. 207, line 4.

⁴ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), 3 August 2015.

English, and in any given proceedings, a Panel may decide the working languages for those proceedings, as appropriate and with full respect for the rights of the Accused.

4. Taking into account the submissions of the Parties,⁵ the Pre-Trial Judge has determined that the working language of these proceedings is English.⁶

5. The language and/or translation of evidence and other necessary documentation for the benefit of the Accused is governed by Articles 21(4)(a) and 39(5) of the Law and Rules 86(8), 87(1), 92(2)(b) and 102(1) of the Rules.⁷

6. Pursuant to Article 21(4)(a) of the Law, the Accused are entitled to be informed promptly and in detail in a language which they understand of the nature and cause of the charge(s) against them. Additionally, in accordance with Article 39(5) of the Law, the Pre-Trial Judge shall ensure that “the material supporting the indictment has been or is being provided” to the Accused in a language the Accused understand.⁸

7. Pursuant to Rule 86(8) and 87(1) of the Rules, if necessary, the indictment shall be translated into a language the Accused understand and speak, and the Registrar shall serve upon the Accused a certified copy of the indictment, together with any translation. Additionally, in accordance with Rule 92(2)(b) of the Rules, the Pre-Trial Judge shall read or have the indictment read to the Accused in a language the Accused understand and speak, and be satisfied that the Accused understand the indictment.

8. Pursuant to Rule 102(1) of the Rules, the statements of all witnesses whom the Specialist Prosecutor intends to call to testify at trial shall be made available in a language the Accused understand and speak.

⁵ F00041, Submissions on the Working Language of the Proceeding, 30 September 2020; F00043, Prosecution Submissions on the Working Language of the Proceeding, 7 October 2020; F00044, Submissions on the Working Language of the Proceeding, 9 October 2020.

⁶ F00060, Decision on Working Language, 29 October 2020; *see also* Article 20 of the Law; Rule 8(1) and (3)(a) of the Rules.

⁷ *See* F00035, Order for Submissions on the Working Language of the Proceedings, 30 September 2020, para. 9, fn. 7.

⁸ *See also* Rule 38(4) of the Rules (“The indictment shall be filed with the Specialist Chambers together with supporting material.”).

9. It is the responsibility of the Registry to make the necessary arrangements for translation into and from the working language of the proceedings and a language used by the Accused, as provided in the Rules or ordered by the Panel.⁹
10. The SPO makes the necessary arrangements for the translation of witness statements disclosed by the SPO pursuant to Rule 102(1) of the Rules.
11. As noted by the Pre-Trial Judge, translations prepared by qualified translators, either within the Language Services Unit ('LSU') of the Registry or by the SPO language services, are preferred.¹⁰
12. LSU provides translation services in accordance with the Registry Policy on Translation and Interpretation ('Policy').¹¹ The Registry Instruction on Requesting Translation, Interpretation and Verification Services ('Instruction') implements the Policy and sets out the procedure for making translation and interpretation requests, as well as requests for verification of the accuracy of translation or interpretation.¹²
13. The Court Management Unit ('CMU') of the Registry automatically requests the translation of all court filings into the three official languages of the SC.¹³ LSU then prioritises those requests in accordance with the Policy.¹⁴ Any conflicting priorities in translation requests are settled by consultations between the Head of the Judicial Division, the President or the relevant Panel(s) and the Registrar, as applicable.¹⁵

1. Documents or Evidence Required by Law to be Translated and Timeline

14. The indictment has been submitted by the SPO,¹⁶ together with supporting material and a detailed Rule 86(3)(b) outline demonstrating the relevance of the

⁹ Rule 8(4) of the Rules; *see also* F00060, para. 29.

¹⁰ *See* F00063, para. 18.

¹¹ Registry Practice Direction, Policy on Translation and Interpretation ('Policy'), KSC-BD-13, 14 May 2019, sect. 5(1)(a)-(b).

¹² Registry Instruction, Requesting Translation, Interpretation and Verification Services ('Instruction'), KSC-BD-14, 14 May 2019.

¹³ *See* Policy, sect. 5(1)(a)-(b); Instruction, sect. 2(5).

¹⁴ *See* Policy, sect. 7.

¹⁵ Policy, sect. 7(2).

¹⁶ *See* F00073, Submission of Confirmed Indictment, 14 December 2021, confidential, with Annex 1 (Indictment), confidential.

evidentiary material to each allegation.¹⁷ The indictment has been translated and served on the Accused in a language they understand and speak.

15. The supporting materials have been translated and submitted by the SPO as a separate package through Legal Workflow ('LW'),¹⁸ the court management system of the Registry.

16. The detailed Rule 86(3) outline (55 pages), has been translated by LSU and is pending revision. The Registry estimates that the revision of the Rule 86(3) outline can be completed by 17 May 2021. When the revision of the Rule 86(3) outline is completed, all documents the Registry is required by law to translate will be completed.

2. Outstanding Requests for Translation of Documents Not Required by Law to be Translated and Timeline

17. In addition to the above materials required by law to be translated, as noted above, CMU automatically requests the translation of all court filings.¹⁹

18. On 12 April 2021, Counsel for one of the Accused, Mr Nasim Haradinaj ('Mr Haradinaj'), inquired with CMU about the timeline for the translation of the SPO's Pre-Trial Brief (83 pages), including witness and exhibit lists (58 pages), and the Rule 109(c) chart (72 pages), which were submitted by the SPO on 9 April 2021.²⁰ CMU provided a tentative date for translation of this filing, together with its annexes, as the end of July 2021.

19. On 15 April 2021, Counsel made a further related inquiry with the Head of the Judicial Division. Following consultations between the Head of the Judicial Division and LSU on the reprioritisation of requests, the Registry estimates that the translation of the Pre-Trial Brief, including annexes, can be completed with revision by 15 June 2021. The receipt of any higher priority translation requests may affect this estimate.

¹⁷ See F00063, Submission of Indictment for Confirmation and Related Requests, 30 October 2020, confidential, para. 2, with Annex 2 (Rule 86(3)(b) Outline), confidential.

¹⁸ See F00063, para. 2, fn. 6.

¹⁹ Currently, there are 189 court filings in these proceedings.

²⁰ F00181, Submission of Pre-Trial-Brief, Witness and Exhibit Lists, and Rule 109(c) Chart, 9 April 2021.

B. ACCESS TO DOCUMENTS

20. The Registry has standard procedures in place for the import and export of case-related materials between Counsel and Detainees, including paper documents, as well as CDs and DVDs containing materials for preparing the defence.²¹ For example, in addition to the exchange of privileged correspondence by mail, Counsel may share paper documents with Detainees during in-person Counsel visits.²²

21. To protect the health and safety of Detainees and others and to prevent the spread of COVID-19 in the Detention Facilities, video visits with Counsel²³ are strongly encouraged; nevertheless, in-person visits with Counsel that are of vital necessity are permitted in the Detention Facilities, subject to certain conditions.²⁴

22. To share paper documents during in-person Counsel visits, Counsel provides the assigned Detention Officer with the documents to be shared at the start of the visit. Counsel and team members can also use the photocopying and printing facilities at the SC premises in order to print hardcopies of any case-related material required. This procedure for the exchange of hardcopy documents during in-person Counsel

²¹ Registry Practice Direction on Counsel Visits and Communications, KSC-BD-10-Rev1, 23 September 2020, arts 8, 11, 13 (concerning items exchanged during visits, correspondence, and access to and storage of defence materials); Annex A to DMU Instruction on House Rules of the Detention Facilities ('House Rules'), KSC-BD-29/Annex A, sect. 6.

²² House Rules, sect. 6; *see also* Registry Instruction on General Restrictions on Visits Due to COVID-19, KSC-BD-35, 23 September 2020, sect. 5.

²³ Detainees are given the opportunity to have a minimum of one video visit per day with Counsel. *See* Registry Instruction on Video Visits, KSC-BD-34, 23 September 2020, sect. 8.

²⁴ *See* F00022, Submission of the Registrar Pursuant to Rule 23(2) on COVID-19 Risk Mitigation Measures, 28 September 2020, confidential, paras 20-22. A glass window currently separates Counsel and Detainees during in-person Counsel visits, and Counsel and Detainees communicate through an audio connection. On 7 and 8 April 2021, Registry staff reviewed the arrangements and tested the audio connection in place for in-person Counsel visits and confirmed that the audio connection is functioning well and as intended. On 8 April 2021, some minor enhancements were made to improve the acoustics in the Detainee and Counsel visiting rooms. Physical separation during in-person Counsel visits has been implemented based on independent medical advice to protect the health of Detainees and those with whom they interact. The risk-mitigation measures in place in the Detention Facilities are under constant review, in consultation with the Medical Officer, to determine whether they remain necessary and proportionate. *See* Detention Management Unit Instruction on Security Requirements to Enter the Detention Facilities, KSC-BD-32, 23 September 2020, sect. 11; *see also* F00022, para. 17. The Medical Officer has advised that the current preventative measures, including complete separation during in-person Counsel visits, must remain in place at this time.

visits has been communicated to Counsel and has been successfully used without issue by a number of Defence teams in cases pending before the SC.

23. In addition to the visiting procedures described above, the Registry has taken a number of proactive steps to develop and implement a Secure Electronic Data Sharing System ('SEDS') for the electronic exchange of case-related materials. On 5 March 2021, the Registry launched SEDS, which is regulated in the Registry Instruction on Secure Electronic Data Sharing Between Counsel and Detainees.²⁵

24. SEDS provides Counsel and Detainees with additional means of exchanging materials for the preparation of the defence through a bespoke file sharing location on the SC network. Counsel and Detainees copy case-related materials from their computers to the file-sharing location. The system is user-friendly and can be used by both Counsel and Detainees as a matter of course without outside support or technical intervention. Once SEDS is activated,²⁶ Counsel and Detainees can readily share case-related documents securely and efficiently, regardless of whether Counsel is on premises or using a remote computer.

25. All Counsel and Detainees were informed of SEDS at its launch on 5 March 2021.

26. On 12 March 2021, Counsel for Mr Hysni Gucati ('Mr Gucati') returned the completed Agreement, and SEDS was activated. To date, Counsel for Mr Gucati has not raised any issues with the functioning of SEDS.

27. On 29 March 2021, Counsel for Mr Haradinaj returned the Agreement, and SEDS was activated. At the request of the Pre-Trial Judge,²⁷ the Registry engaged with Counsel for Mr Haradinaj to ensure that SEDS is functioning effectively and to clarify the procedures for the exchange of documents described in these Submissions. On 7 April 2021, following the resolution of a technical issue raised by Counsel, Counsel for Mr Haradinaj informed the Registry that SEDS was functioning.

²⁵ Registry Instruction on Secure Electronic Data Sharing Between Counsel and Detainees ('Instruction on SEDS'), KSC-BD-39, 4 March 2021.

²⁶ SEDS is activated after Counsel and his or her client submit the completed Agreement on the Use of Computers and Digital Media ('Agreement'). See Instruction on SEDS, sect. 3.

²⁷ See Status Conference of 30 March 2021 (Open Session), Transcript, p. 206, line 11 – p. 207, line 4.

28. The Registrar has consulted with the Detention Management Unit, which has confirmed that the Detainee and Counsel visiting rooms in the Detention Facilities are in use and that no complaints regarding those facilities or the exchange of case-related materials between Counsel and the Accused have been registered.

III. CLASSIFICATION

29. This filing is submitted as public in accordance with Rule 82(4) of the Rules.

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Dr Fidelma Donlon
Registrar

Wednesday, 28 April 2021
At The Hague, the Netherlands