



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 4 May 2021

Language: English

Classification: Public

Order for Submissions on the Reclassification of Filings

Specialist Prosecutor
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Registry
Victims' Participation Office

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(2) and 39(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 82(5) 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 confirmed an indictment against Salih Mustafa.² On 19 June 2020, the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed.³
2. On 5 March 2021, the Pre-Trial Judge informed the Parties that the transmission of the case file to the Trial Panel is anticipated to take place on or around 7 May 2021, subject to the resolution of any outstanding matters.⁴

II. APPLICABLE LAW

3. Pursuant to Articles 21(2) and 39(6) of the Law, hearings shall be public, unless the competent Judge decides otherwise in accordance with the Rules.
4. Pursuant to Rule 82(5) of the Rules, where the basis for classification no longer exists, whoever submitted the original filing shall apply to the Panel for

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

² 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, F00008/RED.

³ KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Indictment*, 19 June 2020, confidential. A public redacted version of the Confirmed Indictment was filed on 28 September 2020: KSC-BC-2020-05, F00019/A01, Specialist Prosecutor, *Public Redacted Version of Indictment*, 19 June 2020, public.

⁴ KSC-BC-2020-07, Transcript, 5 March 2021, confidential, p. 203, lines 4-6.

reclassification. A Panel may also reclassify a filing upon request by any other participant or *proprio motu*.

III. DISCUSSION

5. Considering that the pre-trial proceedings in the present case are nearing completion, and in preparation of the transmission of the case file to the Trial Panel, it is necessary to review the classification of certain filings in the case file, in order to adhere to the principle of publicity of proceedings, which extends beyond hearings in the courtroom to also cover filings and any other submission in the case file.

6. Consequently, the Pre-Trial Judge has the responsibility to ensure that any given filing in the case file bears the appropriate classification and may, accordingly, reclassify any filing *proprio motu* or upon request, should the basis for the current classification no longer exist.

7. The Pre-Trial Judge intends to reclassify as public the following SPO filings:

- F00012, 24 September 2020, currently classified as strictly confidential and *ex parte*; and
- F00019 (main filing only), 28 September 2020, currently classified as confidential.

8. Should the Specialist Prosecutor wish to retain the current classification of one or all the above mentioned filings, he shall: (i) specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed; and (ii) submit (a) public redacted version(s) thereof.

9. It is also appropriate, at this stage, to request the Specialist Prosecutor to file:

- confidential and public redacted versions of filings: (i) F00026, 2 October 2020; and (ii) F00027 (main filing only), 2 October 2020; and
- a public redacted version of filing F00086/A01, 22 February 2021.

10. The Pre-Trial Judge further intends to reclassify as public the following Defence filing:

- F00101 (main filing only), 15 April 2021, currently classified as confidential.

11. Should the Defence wish to retain the current classification of the above mentioned filing, it shall: (i) specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and when such classification may be changed; and (ii) submit a public redacted version thereof.

12. It is also appropriate, at this stage, to request the Defence, in consultation with the Specialist Prosecutor, to file a public redacted version of filing F00108/A01, 30 April 2021.

13. The Pre-Trial Judge further intends to reclassify the following Registrar's filings, as follows:

- as confidential, F00018 (main filing), 27 September 2020, currently classified as strictly confidential and *ex parte*; and
- as public, F00054 (main filing only), 24 November 2020, currently classified as strictly confidential and *ex parte*.

14. Should the Registrar wish to retain the current classification of one or all the above mentioned filings, she shall: (i) specify the reasons for maintaining the current classification, in accordance with Rule 82(3) of the Rules, and indicate whether and

when such classification may be changed; and (ii) submit confidential and/or public redacted version(s) thereof, as applicable.

15. It is also appropriate, at this stage, to request the Registrar to file:

- a public redacted version of F00018 (main filing only), 27 September 2020;
- a confidential redacted version of F00018/A01, 27 September 2020;
- confidential and public redacted versions of F00028, 2 October 2020; and
- a public redacted version of F00109 (main filing only), 30 April 2021.

IV. DISPOSITION

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

- a. **ORDERS** the SPO to submit, **by 6 May 2021, at 16:00 hours**, its reasons for maintaining the classification of filings, and to submit public and confidential redacted versions of filings as further specified in paragraphs 8 and 9 of the present order;
- b. **ORDERS** the Defence to submit, **by 6 May 2021, at 16:00 hours**, its reasons for maintaining the classification of the filing, and to submit public redacted versions of filings as further specified in paragraphs 11 and 12 of the present order; and
- c. **ORDERS** the Registrar to submit, **by 6 May 2021, at 16:00 hours**, her reasons for maintaining the classification of filings, and to submit public and confidential redacted versions of filings as further specified in paragraphs 14 and 15 of the present order.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 4 May 2021

At The Hague, the Netherlands.