



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon
Filed by: Dr Fidelma Donlon
Date: 6 May 2021
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Public Redacted Version of

**‘Report on the Arrest and Transfer of the Accused to the Detention Facilities’,
filing F00018 dated 27 September 2020**

with a confidential and *ex parte* redacted version of F00018/A01

Specialist Prosecutor’s Office

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Counsel for the Accused

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1. The Registrar hereby reports to the Pre-Trial Judge on the arrest and transfer of Mr Salih Mustafa ('Mr Mustafa') to the Detention Facilities of the Specialist Chambers ('Detention Facilities') located in the Netherlands ('Host State'). This report is submitted pursuant to the strictly confidential and *ex parte* Decision on Request for Arrest and Transfer Order ('Decision')¹, together with annexed supporting material.²

I. ARREST

1. The arrest of Mr Mustafa was executed by SPO operational security officers, accompanied by an interpreter,³ and with logistical support from EULEX Kosovo.

2. Prior to the arrest, the SPO officers and the interpreter tested negative for the novel coronavirus ('COVID-19'). SPO security officers and the interpreter wore facemasks throughout the arrest and transfer.

3. At 8:28 on 24 September 2020, SPO officers, accompanied by an interpreter, intercepted Mr Mustafa on his way from the door of his house [REDACTED].

4. The SPO officers introduced themselves, confirmed Mr Mustafa's identity, and informed him in English, translated into Albanian by the interpreter, that a warrant had been issued for his arrest by the Specialist Chambers.

5. At 8:30, the SPO officers conducted a security search incident to arrest of Mr Mustafa's person and removed personal property, which they placed in three bags, sealed, and logged under numbers G128850, P03119892, G128851.⁴

6. [REDACTED]. [REDACTED].

7. At 8:44, the SPO officers transported Mr Mustafa by car from his home to the point of custodial transfer [REDACTED].⁵ Mr Mustafa was compliant with the SPO officers, [REDACTED].

¹ Decision on Request for Arrest Warrant and Transfer Order, KSC-BC-2020-05/F00009, 12 June 2020, strictly confidential and *ex parte*, paras 28, 29(g); *see also* Detention Rule 14.

² Annex 1, Arrest-Transfer File, *Specialist Prosecutor v. Salih Mustafa*, strictly confidential and *ex parte*.

³ *See infra*, para. 34.

⁴ Annex 1, Transfer of Custody (SPO-Registry).

⁵ Annex 1, Record of Custody (SPO).

8. At 9:30, [REDACTED], an SPO officer effected service of certified copies of the arrest warrant⁶ and transfer order⁷ on Mr Mustafa in both English and Albanian.⁸

9. At 9:46, [REDACTED], an SPO officer, in the presence of two other SPO officers, informed Mr Mustafa of his rights in English, which were translated into Albanian by the interpreter.⁹ The SPO officer informed Mr Mustafa, *inter alia*, that he has: the right to legal assistance of Specialist Counsel of his choice and to have Specialist Counsel assigned free of charge if he does not have sufficient means to pay for it; the right to notify or have notified a family member or another appropriate person of his choice about his arrest; and the right to remain silent and that any statement he makes shall be recorded and may be used in evidence. The SPO officer also provided Mr Mustafa with a hardcopy of Articles 21 and 41(4) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office. Mr Mustafa confirmed with his signature that he had been provided with information about his rights.¹⁰ Mr Mustafa was provided with a telephone to call [REDACTED].

10. [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

11. [REDACTED], was provided with a letter from the Head of the Defence Office regarding Mr Mustafa's arrest and transfer, as well as information on his right to counsel and information on contacting Mr Mustafa at the Detention Facilities.¹⁴

II. TRANSFER

12. The transfer of Mr Mustafa into the custody of the Specialist Chambers was executed by the Registry's mission security coordinator ('MSC'), accompanied by the

⁶ Arrest Warrant for Mr Salih Mustafa, KSC-BC-2020-05/F00009/A01, 12 June 2020, strictly confidential and *ex parte*.

⁷ Order for Transfer to Detention Facilities of the Specialist Chambers, KSC-BD-2020-05/F00009/A02, 12 June 2020, strictly confidential and *ex parte*.

⁸ Annex 1, Memorandum of Service (Arrest Warrant and Transfer Order).

⁹ Annex 1, Information About Rights.

¹⁰ Annex 1, Information About Rights.

¹¹ Annex 1, [REDACTED].

¹² Annex 1, Transfer of Custody (SPO-Registry).

¹³ Annex 1, Transfer of Custody (SPO-Registry).

¹⁴ Annex 1, Letter "to whom it may concern" from the Head of the Defence Office.

Registry's escort team.¹⁵ A transport log detailing the transfer process was prepared in real time by the MSC, which is annexed to this report in its original, handwritten form along with a transcription prepared and certified by the MSC.¹⁶

13. Prior to transfer, the MSC and escort team members tested negative for COVID-19.¹⁷ Throughout the transfer, the MSC and the escort team wore facemasks and gloves, and ensured that Mr Mustafa was also provided with a facemask and hand sanitiser gel.¹⁸ Restraints and tactile surfaces in the aircraft were also cleaned prior to transfer.¹⁹

14. At 11:33, the MSC confirmed Mr Mustafa's identify and signed for the transfer of custody of Mr Mustafa from SPO to the Specialist Chambers.²⁰ The MSC also signed for the transfer of three, sealed bags of personal property logged under numbers G128850, P03119892, G128851.²¹ The MSC then explained the transfer process to Mr Mustafa.

15. [REDACTED].²² The five documents he had in his possession were held by the MSC during [REDACTED] boarding process and returned to Mr Mustafa during in-flight custody.²³

16. At 12:22, the airplane departed [REDACTED]. While in transit, Mr Mustafa was served refreshment.²⁴

17. At 12:30, the Registrar informed the Embassy of the Republic of Kosovo in The Hague that Mr Mustafa was being transferred to the Detention Facilities in the Host Stater pursuant to the arrest warrant and transfer order.²⁵

¹⁵ See *infra*, para. 34.

¹⁶ Annex 1, Detainee Transport Log.

¹⁷ Annex 1, Detainee COVID Checklist (Transfer).

¹⁸ Annex 1, Detainee COVID Checklist (Transfer).

¹⁹ Annex 1, Detainee COVID Checklist (Transfer).

²⁰ Annex 1, Transfer of Custody (SPO-Registry).

²¹ Annex 1, Transfer of Custody (SPO-Registry).

²² Annex 1, Detainee Transport Log; Annex 1, photographs (at point of transfer).

²³ Annex 1, Detainee Transport Log.

²⁴ Annex 1, Detainee Transport Log.

²⁵ Note Verbale, Ref. NV2020/0027, 24 September 2020.

18. During transit, at 13:43, the MSC served on Mr Mustafa certified copies of the redacted, confirmed Indictment in both English and Albanian.²⁶ Mr Mustafa was given an envelope in which to place the certified copies of the Indictment and the five documents he had in his possession and was left to read them.

19. At 15:09, the airplane landed [REDACTED].

20. At 15:26, the MSC transferred Mr Mustafa [REDACTED] into the custody of the Transport and Support Service of the Netherlands ('DV&O'), along with the five documents he had in his possession and the certified copies of the indictment that had been served on him during transit.²⁷

21. The three, sealed bags of personal property logged under numbers G128850, P03119892, G128851 were retained by the MSC and delivered directly to the Chief Detention Officer of the Detention Management Unit ('DMU') of the Registry at 19:20.²⁸

22. At 16:20, DV&O transferred Mr Mustafa into the custody of the Chief Detention Officer, who received Mr Mustafa into the Detention Facilities.²⁹ DV&O reported to the MSC that no incidents occurred during transport.

23. The Chief Detention Officer promptly notified the Registrar, who immediately informed the Pre-Trial Judge³⁰ and the Head of the Defence Office in accordance with Detention Rule 10, as well as the President and the Ombudsperson. The Registrar also informed the International Committee of the Red Cross.³¹

24. Upon arrival at the Detention Facilities in the Host State, Mr Mustafa was processed in accordance with the Rules of Detention.³²

²⁶ Annex 1, Memorandum of Service (Indictment).

²⁷ Annex 1, Detainee Transport Log; Annex 1, Request for Transport from Airport and Transfer of Detained Person.

²⁸ Annex 1, Transfer of Custody (SPO-Registry).

²⁹ Annex 1, Request for Transport from Airport and Transfer of Detained Person.

³⁰ See Notification of Reception in the Detention Facilities of the Specialist Chambers, KSC-BC-2020-05/F00014, 24 September 2020.

³¹ See Agreement between the Kosovo Specialist Chambers and the International Committee of the Red Cross on Visits to Persons Deprived of Liberty Pursuant to the Jurisdiction of the Kosovo Specialist Chambers, 28 January 2019, para. 12(2).

³² KSC-BC-2020-05/F00014/A01.

25. [REDACTED].³³

26. The Chief Detention Officer conducted an arrival interview with Mr Mustafa, with the assistance of an interpreter. During the arrival interview, Mr Mustafa was provided with the information and documentation referenced in Detention Rule 12.3. The Chief Detention Officer confirmed that Mr Mustafa had received certified copies of the arrest warrant, transfer order, and Indictment in English and Albanian.

27. During the arrival interview, Mr Mustafa was provided with contact information for his consular office, [REDACTED]. Mr Mustafa was also given the opportunity to call a family member.

28. From 19:45 until 20:25, the Head of the Defence Office spoke to Mr Mustafa by video-conference, along with the assistance of an interpreter. The Head of the Defence Office provided Mr Mustafa with information and documentation concerning the availability of legal assistance pursuant to Detention Rule 12.2 and confirmed that the Administrative Office of DMU had provided Mr Mustafa with all relevant documents concerning legal aid, as well as a letter explaining his right to counsel, in both English and Albanian.³⁴

29. The Head of the Defence Office also informed Mr Mustafa that Duty Counsel had been appointed to him by the Registrar, should he wish to consult Duty Counsel at that time. [REDACTED]. [REDACTED].

30. [REDACTED].

31. [REDACTED].

III. CLASSIFICATION

32. This report is submitted as strictly confidential and *ex parte* consistent with the classification of KSC-BC-2020-05/F00009, along with one strictly confidential and *ex parte* Annex.

³³ Annex 1, [REDACTED].

³⁴ Annex 1, Letter to Mr Salih Mustafa from the Head of the Defence Office, KSC/REG/DEF/0122, 24 September 2020.

33. The Registrar does not object to the reclassification of the core filing as public, subject to any objections by the SPO; however, it would likely be necessary to redact from any public version of the filing certain [REDACTED] data [REDACTED].

34. The Annex should not be reclassified until the names and initials of SPO officers and Registry staff members are redacted [REDACTED]. Should the Pre-trial Judge consider reclassifying the Annex, the Registrar requests the opportunity to submit a public, redacted version of the Annex to the Pre-Trial Judge or to submit comments on a proposed redacted version of the Annex to the Pre-Trial Judge.

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Dr Fidelma Donlon

Registrar

Thursday, 6 May 2021

At The Hague, the Netherlands