



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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 7 May 2021

Language: English

Classification: Public

Decision Transmitting the Case File to Trial Panel I

Trial Panel I

Judge Roland Dekkers

Judge Mappie Veldt-Foglia

Judge Gilbert Bitti

Judge Vladimir Mikula (reserve)

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

THE PRE-TRIAL JUDGE,¹ pursuant to Rule 98(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby issues this decision.

I. PROCEDURAL BACKGROUND

1. On 12 June 2020, the Pre-Trial Judge confirmed an indictment against Salih Mustafa (“Mr Mustafa”).²

1. On 24 September 2020, Mr Mustafa was arrested pursuant to a decision³ and an arrest warrant issued by the Pre-Trial Judge.⁴

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 Friday, 7 May 2021, subject to the resolution of any outstanding matters.⁵

3. On 5 May 2021, the Pre-Trial Judge notified the President of the Specialist Chambers (“President”) that a complete case file in accordance with Rule 98 of the Rules would be ready for transmission on Friday, 7 May 2021.⁶

4. On 5 May 2021, the President assigned Judges Roland Dekkers, Mappie Veldt-Foglia, Gilbert Bitti, and Vladimir Mikula (reserve) to Trial Panel I.⁷

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, F00009/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, public.

⁴ KSC-BC-2020-05, F00009/A01/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Mr Salih Mustafa*, 12 June 2020, public.

⁵ KSC-BC-2020-05, Transcript, 5 March 2021, public, p. 203, lines 4-6.

⁶ KSC-BC-2020-05, F00112, Pre-Trial Judge, *Notification Pursuant to Rule 98(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers*, 5 May 2021, public.

⁷ KSC-BC-2020-05, F00114, President, *Decision Assigning Trial Panel I*, 5 May 2021, public.

5. On 7 May 2021, pursuant to Sections 12(2) and 15 of the Directive on Counsel and Regulation 31 of the Legal Aid Regulations, the Registrar assigned⁸ Anni Pues to represent the five victims participating in the proceedings.⁹

II. APPLICABLE LAW

6. Pursuant to Rule 98(1) of the Rules, after receiving the SPO and the Defence respective Pre-Trial Briefs, lists of witnesses and lists of exhibits, as stipulated in Rule 95(4) and (5) of the Rules, the Pre-Trial Judge shall transmit to the Trial Panel a complete case file consisting of:

- (a) The indictment as confirmed;
- (b) All filings and material submitted through the electronic court management system;
- (c) Any evidentiary material received not subject to paragraph (1)(b);
- (d) Any other correspondence with respect to the case not filed with the Court Management Unit;
- (e) A Handover Document summarising:
 - (i). the arguments of the Parties and, where applicable, Victims' Counsel on the facts and the applicable law;
 - (ii). the points of agreement;
 - (iii). a list of the orders and decisions rendered by the Pre-Trial Judge;

⁸ KSC-BC-2020-05, F00117, Registrar, *Notification of Assignment of Victims' Counsel to Group 1 of Victims Participating in the Proceedings*, 7 May 2021, public, with one annex, confidential and *ex parte*.

⁹ KSC-BC-2020-05, F00105/RED, Pre-Trial Judge, *Public Redacted Version of Second Decision on Victims' Participation*, 30 April 2021, public.

- (iv). the evidentiary material produced by each Party;
 - (v). suggestions as to the number and relevance of the witnesses to be called;
 - (vi). the questions of fact and law that are in dispute;
 - (vii). the state of advancement of the disclosure process;
 - (viii). all meetings with the Parties; and
 - (ix). any other matter that remained unresolved;
- (f) Any application and decision concerning disclosure; and
- (g) Any other material relevant to the case.

7. Pursuant to Rule 98(2) of the Rules, the transmission of the case file shall be completed by means of electronic access.


III. DISCUSSION

8. The Pre-Trial Judge finds that all necessary procedural steps have been taken in order to consider case file KSC-BC-2020-05 complete and, therefore, ready to be transmitted to Trial Panel I, in accordance with Rule 98 of the Rules.

9. In particular, the Pre-Trial Judge has prepared a Handover Document, containing the information prescribed by Rule 98(1)(e) of the Rules, for the benefit of the Trial Panel and the Parties. The Pre-Trial Judge specifies that, due to the non-public information contained in the Handover Document, it cannot be made public at this stage. The Handover Document is annexed to this decision.

IV. DISPOSITION

10. For the above-mentioned reasons, the Pre-Trial Judge hereby **TRANSMITS** case file KSC-BC-2020-05 to Trial Panel I, including the Handover Document annexed to the present decision.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 7 May 2021

At The Hague, the Netherlands.