



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2023-11**
The Specialist Prosecutor v. Haxhi Shala

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

Registrar: Dr Fidelma Donlon

Date: 14 December 2023

Language: English

Classification: **Public**

Decision on Working Language

Specialist Prosecutor
Kimberly P. West

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 20 of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 8(3)(a) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 4 December 2023, the Pre-Trial Judge confirmed the indictment against Haxhi Shala ("Accused").² On the same day, the Pre-Trial Judge also issued an arrest warrant for the Accused, and ordered his transfer to the Detention Facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands.³

2. On 11 December 2023, the Accused was arrested in Kosovo.⁴ On the next day, the Accused was transferred to the Detention Facilities of the SC in The Hague, the Netherlands.⁵

3. On 12 December 2023, the Pre-Trial Judge rendered a decision to convene the initial appearance of the Accused on 13 December 2023, in which the Pre-Trial Judge, *inter alia*, ordered the Parties to provide, in the course of the initial appearance hearing, submissions as to the working language to be adopted in the present proceedings ("Decision on Initial Appearance").⁶

4. On 13 December 2023, the hearing on the initial appearance of the Accused took place ("Initial Appearance"), during which both the Specialist Prosecutor's Office

¹ KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

² KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, strictly confidential and *ex parte*.

³ KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order*, 4 December 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential.

⁴ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, strictly confidential and *ex parte*.

⁵ KSC-BC-2023-11, F00011, Registrar, *Notification of the Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁶ KSC-BC-2023-11, F00014, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters*, 12 December 2023, public, para. 16.

(“SPO”) and the Duty Counsel for the Accused submitted that English should be the working language of the present proceedings.⁷

II. APPLICABLE LAW

5. Pursuant to Article 20 of the Law, the official languages of the Specialist Chambers are Albanian, Serbian and English, and in any given proceedings, a Panel may decide the working languages for those proceedings, as appropriate and with full respect of the rights of the accused.

6. Pursuant to Rule 8(3)(a) of the Rules, subject to Article 20 of the Law, as early in the proceedings as possible, the Panel, after hearing the Parties and, where applicable, Victims’ Counsel, shall decide which working language(s) shall be used in the proceedings.

III. DISCUSSION

A. DETERMINATION OF WORKING LANGUAGE

7. Article 20 of the Law permits the Pre-Trial Judge to adopt a decision on working languages in any given “proceedings”. Neither the Law nor the Rules provide a definition of “proceedings”. The term has been defined as “a judicial cause pending before a Chamber”.⁸ Having regard to the Initial Appearance of the Accused, and in conformity with the rights of the accused under Article 21 of the Law, the Pre-Trial Judge considers it necessary to determine the working language in the present proceedings.

⁷ KSC-BC-2023-11, Transcript of Hearing (“Initial Appearance Transcript”), 13 December 2023, public, p. 12, lines 8-20.

⁸ See ICC, *Situation in the Democratic Republic of the Congo*, ICC-01/04-556, Appeals Chamber, [Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007](#), 19 December 2008, para. 45.

8. As observed in the Decision on Initial Appearance, determination of the working language is necessary in order to ensure the fair, efficient, and expeditious conduct of proceedings.⁹ In particular, it will facilitate the efficient preparation and organisation of a Party or participant's submissions. Further, it will increase the foreseeability and planning capacity of language servicing sections within the Registry and the SPO.¹⁰

9. The Pre-Trial Judge notes that the language of the proceedings to date has been English, as all filings by the SPO and the Registry, as well as all decisions and orders of the Pre-Trial Judge have been issued in English. During the Initial Appearance, the Parties have agreed to continue proceeding in this manner.¹¹

10. Accordingly, the Pre-Trial Judge determines that, for the purposes of proceedings in case KSC-BC-2023-11, the working language shall be English. Parties and participants shall therefore submit their filings in English. If annexes, supporting material or other evidence upon which the Parties or participants rely are, in whole or in part, in a language other than English, a translation into English must be provided. This ruling is without prejudice to the translation requirements under the Law and the Rules, as further stipulated in the framework disclosure decision, to be issued in due course.

B. PRACTICAL IMPLEMENTATION

11. For the purposes of the practical implementation of the above determination, the following directions are provided to the Parties and participants, as the case may be. The directions are organised in two scenarios where the need for translation arises:

- (1) *General rule*: directions prior to the submission of filings, including annexes, supporting material or evidence; and

⁹ Decision on Initial Appearance, para. 16.

¹⁰ See also KSC-BC-2020-04, F00025, Pre-Trial Judge, *Decision on Working Language*, 21 April 2021, public, para. 9.

¹¹ Initial Appearance Transcript, p. 12, lines 8-20.

- (2) *Exception*: directions after the submission of filings, including annexes, supporting material or evidence.

Lastly, the procedure for the resolution of any dispute over questions involving translation is indicated.

1. Directions for Scenario Prior to the Submission of a Filing

12. It is the obligation of the Parties and participants to abide by the following directions as a general rule *prior* to the submission of any filing, including annexes, supporting material or other evidence.

13. Filings must be submitted in English. Where text elements, either in the body of the document or in a footnote, are in a language other than English, a translation into English must be provided.

14. The same language requirement applies to any annexes, supporting material or other evidence submitted upon which the Party or participant relies. This applies to material produced by the Party or participant or collected from any other source. In the interest of retaining only relevant material in the record of the proceedings, there is no need to submit material in its entirety if the Party or participant only relies on parts thereof. Where a document is inseverable and the Party or participant only relies on discrete parts thereof, indication must be given as to the concrete section, page, paragraph or sentence relied upon and an English translation of the relevant section must be provided.

15. In respect of any filings, including annexes, and supporting material submitted by individuals, Kosovo authorities, Third States or international organisations, the following considerations apply:

- (1) A filing, including annexes, and supporting material lodged by an individual from or authorities of Kosovo may be submitted in English, Albanian or Serbian;

- (2) A filing, including annexes, and supporting material lodged by an individual from or authorities of Third States or from an international organisation may be submitted in English or in any other chosen or official language;
- (3) If a filing, including annexes, and supporting material is directed to the Panel, it shall be distributed by the Registry. It is within the responsibility of the Registry to provide for the English translation of any filing, including annexes, and material so submitted; and
- (4) If a filing, including annexes, and supporting material, by individuals, Kosovo authorities, Third States or international organisations is submitted by the SPO, it is within its responsibility to provide for the translation thereof prior to submitting it to the Panel.

16. In respect of any audio, video or online material, parties and participants, as applicable, may not rely upon such material without providing a transcription thereof. For any such material, the following details must be provided:

- (1) If applicable, the relevant online source as well as the date and time at which it was last accessed;
- (2) The exact time slot or text extracts, as the case may be, upon which the Party or participant, as applicable, relies;
- (3) A transcription of the relevant extract in its original language, whether in the main filing or in an annex thereto; and
- (4) If submitted by a Party or participant, an English translation of the transcribed extract.

17. In principle, translations prepared by qualified translators, either within the Language Services Unit ("LSU") or by the SPO language services, are preferred.

However, the Pre-Trial Judge is mindful that, in certain instances, such as urgency or unavailability of qualified translators, other translations may be accepted.

18. As provided for in Section 4(2) of the Registry Policy on Translation and Interpretation (KSC-BD-13) ("Policy"), translations provided by the LSU shall be labelled as "Draft", "Unrevised" or "Official".

19. Where a translation originates from the SPO and has been prepared by qualified translators or other similarly qualified staff, it shall be labelled as "SPO Translation". Where a translation is prepared by the Defence, Victims' Counsel or any other participant, it shall be labelled as "Defence Translation", "Victims Counsel Translation" or "[Name of Participant] Translation". Where a translation provided by the Parties or participant has been prepared by others, such as another judicial institution or external non-qualified translators, it shall not bear any of the aforementioned labels; rather, the labeling of the external source(s) may remain on the document or material concerned. The appropriate labelling of translations (or lack thereof) remains the responsibility of the Parties and participants. It is within the Pre-Trial Judge's discretion to subsequently request the verification by the LSU of any translation so provided.

20. Any translation requests to the LSU shall be made sufficiently in advance, and in line with the protocols in place, so as to allow for the proper translation and revision of the text elements concerned.

21. Whilst the SPO has its own language services, it is encouraged to coordinate and cooperate with the LSU in translation matters so as to expedite proceedings and maximise efficiency.

2. Directions for Scenario After the Submission of a Filing

22. If a filing, or parts thereof, is submitted in a language other than English, the Court Management Unit ("CMU") shall request a translation thereof through the electronic court management system Legal Workflow ("LWF"), in accordance with

Section 5(1)(b) of the Policy and Section 2(5) of the Registry Instruction on Requesting Translation, Interpretation and Verification Services (KSC-BD-14).

23. If an annex, any supporting material or other evidence contains text elements in a language other than English, the Party or participant, as applicable, shall precisely define the scope of translation, specifying, as the case may be, the relevant section, page, paragraph or sentence to be translated, in LWF, at the same time when submitting the relevant document for filing and in accordance with Sections 5(1)(b), 5(1)(d) and 5(3)(a) of the Policy.

24. Taking note of Section 5(2) of the Policy, the Pre-Trial Judge retains the right to request the LSU, through CMU, to translate any text elements that require an official translation into English in the following situations:

- (1) Where the Party or participant, as applicable, has provided only a non-labelled translation of the relevant text elements (see paragraph 19); or
- (2) When no translation has been requested for a text element provided in a language other than English, but which the Pre-Trial Judge deems relevant for the resolution of the request or matter.

25. The above ruling is without prejudice to the obligation of the Party or participant to provide, from the outset, an English translation of each filing, including annex, supporting material or other evidence¹² or, if this is not the case, to define the scope of the necessary translation with precision.¹³

26. Mirroring paragraph 16 above, the Parties and participants, as applicable, are reminded not to submit any audio, video or online material without corresponding transcription. Where these instructions are not abided by, the Pre-Trial Judge retains the right to either:

¹² See *supra* paras 12 and 13.

¹³ See *supra* para. 23.

- (1) Disregard the relevant reference in the filing, including annex(es), or supporting material or evidence; or
- (2) Request that the Party or participant, as applicable, file a corrigendum to the filing, including annex(es), or supporting material or evidence, including a transcription of the relevant reference and a translation thereof into English.

3. Dispute Settlement on Translation Matters

27. Any disagreement or controversy regarding the accuracy of translations shall be resolved by LSU.

IV. DISPOSITION

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

- a) **DETERMINES** that English shall be the working language for proceedings in case KSC-BC-2023-11;
- b) **ORDERS** any Party or participant, as the case may be, to submit any filing, annex or supporting material or other evidence submitted together with a filing in full compliance with the detailed instructions set out above; and
- c) **ORDERS** CMU to inform any Party or participant, as applicable, of the requirements set out above, should the filing, including annexes, or other material submitted, not be in conformity with the directions set forth in this decision.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 14 December 2023

At The Hague, the Netherlands.