

1 Monday, 28 September 2020

2 [Initial Appearance]

3 [Open session]

4 [The accused entered court]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon and welcome everyone inside and
7 outside the courtroom.

8 Before we start, and pursuant to my decision setting the date
9 for this Initial Appearance, I would like to ask the court
10 photographer to take a couple of pictures for one and a half minutes.

11 Please proceed.

12 Thank you very much. You may now leave the courtroom.

13 Madam Court Officer, can you please call the case.

14 THE COURT OFFICER: Thank you, Your Honour. This is
15 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

16 JUDGE GUILLOU: Thank you very much, Madam Court Officer.

17 Before asking those present in the courtroom to introduce
18 themselves, I would like to remind everyone of a few rules that must
19 be observed at all times in order to make courtroom proceedings
20 smooth.

21 So please make sure you activate your microphone before speaking
22 and you switch it off after you finish. Talk slowly and clearly, as
23 we have interpretation from and into Albanian and Serbian. Wait five
24 seconds before responding to me or to a party or participant in order
25 to allow the interpreters to finish the interpretation.

1 What is said in this hearing is transcribed in realtime and will
2 be reflected in a transcript available to the parties and to the
3 public after this hearing.

4 I would also like to remind the parties that certain information
5 in this case is subject to protective measures and confidentiality
6 orders. This includes confidential information that has been
7 redacted from the Confirmed Indictment as to the identity of certain
8 individuals, dates, locations, and other information.

9 Confidential information shall not be disclosed in open session.
10 If any party or participant wishes, we must go into private session
11 and refer to any confidential information in this private or closed
12 session. And for that, you must please, before, indicate the
13 reasons.

14 Now, I would kindly ask the parties and participants to
15 introduce themselves, starting with the Specialist Prosecutor's
16 Office.

17 MR. WHITING: Good afternoon, Your Honour.

18 For the Prosecution, we are the Specialist Prosecutor,
19 Mr. Jack Smith; Ms. Silvia D'ascoli, Associate Prosecutor;
20 Ms. Line Pedersen, Case and Evidence Manager; Ms. Aniko Boldog, Case
21 and Evidence Assistant; and I am Alex Whiting, Deputy Prosecutor.

22 JUDGE GUILLOU: Thank you very much, Mr. Prosecutor.

23 Now I turn to the Defence, please.

24 MR. VON BONE: Good afternoon. My name is Julius von Bone. I
25 am counsel for Mr. Salih Mustafa, and that's what I am. I'm a member

1 of the bar of Rotterdam in the Netherlands.

2 JUDGE GUILLOU: Thank you very much, counsel. And I add that
3 your client, Mr. Mustafa, is also present in the courtroom, for the
4 record.

5 Now I turn to Madam Registrar, please.

6 THE REGISTRAR: Good afternoon, Your Honour. Fidelma Donlon,
7 Registrar.

8 JUDGE GUILLOU: Thank you very much, Madam Registrar.

9 And for the record, I am Nicolas Guillou, Pre-Trial Judge for
10 this case.

11 The accused is appearing today for the first time before the
12 Specialist Chambers following the indictment confirmed against him.

13 Mr. Mustafa, will you please rise. Can you tell us your full
14 name.

15 THE ACCUSED: [Interpretation] Good afternoon to all. I am Salih
16 Mustafa. I am born on 1st of January, 1972, in Prishtina.

17 JUDGE GUILLOU: What is your citizenship and what is your
18 current profession?

19 THE ACCUSED: [Interpretation] My mother tongue is Albanian. I'm
20 a citizen of Republic of Kosovo.

21 JUDGE GUILLOU: And what is your profession?

22 THE ACCUSED: [Interpretation] As per education, I've graduated
23 in economics. I am an adviser in the Ministry of Defence of the
24 Republic of Kosovo.

25 JUDGE GUILLOU: Thank you very much. You can be seated.

1 Now let me move to the procedural history of the case.

2 On 12 June 2020, in my capacity as Pre-Trial Judge, I confirmed
3 the indictment submitted by the Specialist Prosecutor against the
4 accused, charging him with the war crimes of: Count 1, arbitrary
5 detention; Count 2, cruel treatment; Count 3, torture; and Count 4,
6 murder.

7 The accused was arrested in Kosovo on 24 September 2020, at
8 which point he was served with the Confirmed Indictment.

9 He was transferred to the detention facilities of the Kosovo
10 Specialist Chambers in The Hague the same day.

11 Mr. Mustafa, before we proceed any further, I have to make sure
12 that you can follow the proceedings in a language that you understand
13 and speak. Can you confirm that you understand and speak Albanian?

14 THE ACCUSED: [Interpretation] Yes, Your Honour.

15 JUDGE GUILLOU: Thank you, Mr. Mustafa.

16 By this I am satisfied that you can follow the proceedings in
17 Albanian, a language that you understand and speak, in accordance
18 with Rule 92 of the Rules of Procedure and Evidence.

19 If at any moment in the course of the proceedings, whether it's
20 today or at another hearing, you are not receiving interpretation,
21 please draw my attention to it immediately so it can be fixed.

22 Now let me explain the specific purpose of this initial
23 appearance for the benefit of the accused but also those joining us
24 in the public gallery and those following the proceedings online.

25 Today's hearing is not a trial. No evidence will be presented

1 or debated, and the guilt or innocence of the accused will not be
2 debated nor discussed.

3 The purpose of this Initial Appearance is regulated by Article
4 39 of the Law and Rule 92 of the Rules, and according to these
5 provisions, as Pre-Trial Judge, I shall:

6 Have the charges of the Confirmed Indictment read to the accused
7 in a language he understands and speaks;

8 Confirm that the accused understands the indictment;

9 Satisfy myself that the rights of the accused, in particular his
10 right to counsel, are respected;

11 Inform the accused that, within 30 days of today's hearing, he
12 will be called upon to admit guilt or plead not guilty on each charge
13 set out in the indictment, but if the accused wishes to do so, he may
14 immediately admit guilt or plead not guilty;

15 And finally, I shall also set other dates, as appropriate, in
16 performing my functions as Pre-Trial Judge.

17 I expect the parties to adhere to these matters which I will
18 address in turn. Should either party wish to discuss any other
19 matter not expressly foreseen in the context of the Initial
20 Appearance, they are invited to do so in writing by making a filing
21 before me.

22 First, may I ask you, Mr. Mustafa, to confirm that you have
23 received the Confirmed Indictment, dated 19 June 2020, in a language
24 that you understand and speak?

25 THE ACCUSED: [Interpretation] Yes, I have received it and I do

1 understand it.

2 JUDGE GUILLOU: Thank you very much, Mr. Mustafa.

3 I will now ask Madam Court Officer to read out the charges in
4 the Confirmed Indictment as foreseen in Article 39 of the Law and
5 Rule 92.

6 Please proceed, Madam Court Officer.

7 THE COURT OFFICER: Thank you, Your Honour.

8 In the Confirmed Indictment, the Specialist Prosecutor charges
9 Mr. Salih Mustafa with:

10 Count 1: The war crime of arbitrary detention, under Article
11 14(1)(c) of the Law, committed in a detention compound located in
12 Zllash, Kosovo, against at least six individuals between
13 approximately 1 April 1999 and 19 April 1999;

14 Count 2: The war crime of cruel treatment, under Article
15 14(1)(c)(i) of the Law, committed in a detention compound located in
16 Zllash, Kosovo, against at least six individuals between
17 approximately 1 April 1999 and 19 April 1999;

18 Count 3: The war crime of torture, under Article 14(1)(c)(i),
19 committed in a detention compound located in Zllash, Kosovo, against
20 at least six individuals between approximately 1 April 1999 and 19
21 April 1999;

22 And Count 4: The war crime of murder, under Article 14(1)(c)(i)
23 of the Law, committed in a detention compound located in Zllash,
24 Kosovo, against one individual between approximately 19 April 1999
25 and around the end of April 1999.

1 In relation to these crimes, there is a well-grounded suspicion
2 that Mr. Mustafa is criminally responsible pursuant to Article
3 16(1) (a) of the Law for:

4 Physically committing the crimes under Counts 1 to 3;

5 Committing, as a member of a joint criminal enterprise, the
6 crimes under Counts 1 to 4; and alternatively for Count 4,
7 committing, as a member of the aforementioned joint criminal
8 enterprise, the crime of murder by being aware that such a crime
9 might be perpetrated in carrying out the common purpose of the joint
10 criminal enterprise and by willingly taking that risk;

11 Ordering the crimes under Counts 1 to 3;

12 Instigating the crimes under Counts 1 to 3; and

13 Further and alternatively, aiding and abetting the crimes under
14 Counts 1 to 4.

15 Further and alternatively to the alleged responsibility pursuant
16 to Article 16(1) (a) of the Law, there is a well-grounded suspicion
17 that Mr. Mustafa is criminally responsible for the crimes under
18 Counts 1 to 4 as a superior pursuant to Article 16(1) (c) of the Law.

19 Thank you, Your Honour.

20 JUDGE GUILLOU: Thank you, Madam Court Officer.

21 Mr. Mustafa, I wish to remind you that this is not the time to
22 contest the charges but simply to acknowledge your understanding of
23 the charges. You will have ample opportunity to challenge the
24 charges, with the assistance of your counsel.

25 Mr. Mustafa, can you please rise. Did you understand the

1 charges contained in the Confirmed Indictment as read out by Madam
2 Court Officer?

3 THE ACCUSED: [Interpretation] Yes, I understood them.

4 JUDGE GUILLOU: Thank you, Mr. Mustafa. You may be seated.

5 Now let me inform you of your rights before this Court. The Law
6 on the Specialist Chambers and the Rules of Procedure and Evidence
7 guarantee you a number of rights. I will read out the most important
8 ones.

9 First, you shall be presumed innocent until proven guilty beyond
10 reasonable doubt.

11 In the determination of the charges against you, you are
12 entitled to a fair and public hearing subject to any measures ordered
13 for the protection of victims and witnesses.

14 You have the right to be informed promptly and in detail in a
15 language which you understand of the nature and cause of the charges
16 against you.

17 You have the right to have adequate time and facilities for the
18 preparation of your defence, and to communicate with the counsel of
19 your own choosing.

20 You have the right to be tried within a reasonable time.

21 You have the right to be tried in your presence and to defend
22 yourself through your counsel.

23 You have the right to have counsel assigned to you, and without
24 payment, if you do not have sufficient means to pay for it.

25 You have the right to examine, or have examined, the witnesses

1 against you, and to obtain the attendance and examination of
2 witnesses on your behalf.

3 You have the right to have the free assistance of an
4 interpreter, if you cannot understand or speak the language used in
5 the Court.

6 You have the right not to be compelled to testify against
7 yourself, or to admit guilt.

8 You have the right to remain silent, and no adverse inference
9 shall be drawn from your silence.

10 You also have the right to make unsworn statements relevant to
11 the case, and you may appear as a witness under oath.

12 You have the right to lodge preliminary motions to challenge the
13 jurisdiction of the Specialist Chambers, to allege defects in the
14 form of the indictment, and to seek the severance of the indictment.

15 You have the right to receive, within 30 days of today's
16 hearing, the supporting material to the indictment submitted for
17 confirmation.

18 You have the right to receive all statements of witnesses whom
19 the Specialist Prosecutor intends to call to testify at trial in the
20 language that you understand and speak; namely, Albanian.

21 You have the right to receive immediately any information which
22 may reasonably suggest your innocence or mitigate your guilt or
23 affect the credibility or reliability of the Specialist Prosecutor's
24 evidence as soon as the information is in his custody, control, or
25 actual knowledge.

1 You have the right that all material and relevant evidence or
2 facts in possession of the Specialist Prosecutor be made available to
3 you before the beginning of and during the proceedings; this right is
4 only subject to restrictions which are strictly necessary and when
5 any counterbalancing protections are applied.

6 You have the right not to be detained for an unreasonable period
7 of time prior to the opening of the case, to request a review of
8 decision of your detention, and to appeal such decisions directly
9 before the Court of Appeal.

10 You have the right to appeal directly before the Court of Appeal
11 a decision on preliminary motions challenging the jurisdiction of the
12 Specialist Chambers.

13 You have the right to seek leave to appeal other decisions.

14 Mr. Mustafa, you heard the most important rights that you enjoy
15 in accordance with the applicable legal framework of the Specialist
16 Chambers. Do you understand these rights?

17 THE ACCUSED: [Interpretation] Yes, I understand, Your Honour.

18 JUDGE GUILLOU: Thank you very much, Mr. Mustafa.

19 I wish to inform you that, according to Article 21(5) of the
20 Law, you may not represent yourself because you are currently in
21 detention. Therefore, representation by Specialist Counsel is
22 mandatory.

23 It is my duty, as Pre-Trial Judge, to ensure that your right to
24 counsel is respected. To this end, I have noted the Registrar's
25 filing informing me of the conditional assignment of counsel.

1 I take, from the Registrar's report and from your counsel's
2 submissions today, that you are represented not only for the purpose
3 of this Initial Appearance but for the entire duration of the
4 proceedings, in accordance with Section 14 on the Directive on
5 Counsel.

6 Mr. Mustafa, can you confirm that Mr. Julius von Bone has been
7 assigned for the entire duration of these proceedings?

8 THE ACCUSED: [Interpretation] Yes, I confirm, Your Honour.

9 JUDGE GUILLOU: Thank you, Mr. Mustafa.

10 It follows that the accused is presently represented by counsel.

11 I will now turn to the possibility for the accused to enter a
12 plea, if any, in accordance with Rule 92.

13 Mr. Mustafa, within 30 days from today, you will be called upon
14 to admit guilt or plead not guilty on each charge in the Confirmed
15 Indictment. If you wish to do so, you may choose to immediately
16 admit guilt or immediately plead not guilty.

17 I would therefore like to ask you if you have had the
18 opportunity to discuss the charges in the Confirmed Indictment with
19 your counsel, and if you are prepared to enter a plea at this time.
20 I invite you to stand up and let me know your answer.

21 THE ACCUSED: [No interpretation].

22 JUDGE GUILLOU: Sorry, I think the microphone was not on so I
23 will ask you to repeat, if possible.

24 THE ACCUSED: [Interpretation] Your Honour, I said that I won't
25 enter a plea today. I will consult my lawyer before I do.

1 JUDGE GUILLOU: Thank you very much. You may be seated.

2 THE ACCUSED: Thank you.

3 JUDGE GUILLOU: Considering that Mr. Mustafa has not entered a
4 plea at this time, I would like to ask the parties to provide their
5 preliminary views, if any, on the scheduling of a further hearing to
6 enter a plea, starting with the Defence and then with the
7 Prosecutor's Office.

8 Mr. von Bone.

9 MR. VON BONE: Your Honour, thank you very much. There is only
10 a couple of practicalities that I would like to mention at this time.

11 It would be very helpful if Mr. Mustafa can be supplied with a
12 hard copy of the basic legal documents of the Kosovo Specialist
13 Chambers in his own language.

14 And the fact, Your Honour, as you have mentioned already, the
15 Defence, at this point, does not exclude that it may file motions
16 charging the legality or the jurisdiction of the Court. And the fact
17 that we are standing here today, it is obviously not a matter that,
18 therefore, the Defence accepts the establishment of the Court as
19 such. But once again, we will do so in due course through the
20 motions.

21 As far as the time limits is concerned, I leave it up to you,
22 Your Honour, in order to see what is best fitting for all the
23 parties. Obviously, I will make myself available, my client will
24 make himself available, and we will make sure that we will attend at
25 that time. Just I truly hope and I trust that the prosecution and

1 documentation that will be served to my client will be in his own
2 language, as it will be, in the practical terms, working with my
3 client, much easier if that is done appropriately.

4 So at this moment, it is limited to the hard copy of the basic
5 legal texts. However, I assume that when the Prosecution will
6 disclose the evidence against my client that, obviously, that will be
7 done also in the language that he understands, which is Albanian.

8 These are my preliminary remarks, Your Honour. I do not have
9 anything in particular at this moment. Let me briefly consult.

10 [Defence counsel and accused confer]

11 MR. VON BONE: From this side at this moment, Your Honour, thank
12 you very much for your attention, and Mr. Prosecutor as well.

13 JUDGE GUILLOU: Thank you very much, counsel.

14 Before I give the floor to Mr. Prosecutor, I would just like to
15 indicate that it is clearly a priority that Mr. Mustafa will be given
16 a hard copy of the legal documents in a language that he reasonably
17 understands. And I will ask Madam Registrar to make sure that this
18 will be distributed as soon as possible.

19 Mr. Prosecutor, you have the floor.

20 MR. WHITING: Thank you, Your Honour.

21 With respect to the disclosure materials that were referenced by
22 the Court and also by Defence counsel, we will begin providing those
23 materials, according to the Rules as required, as soon as Defence
24 counsel is connected to Legal Workflow, which I believe will happen
25 today or no later than by tomorrow. And we are prepared to start

1 those disclosures and comply with all the obligations of the Rules
2 immediately.

3 With respect to the setting of the next appearance within 30
4 days, we will appear as ordered by the Court.

5 Thank you, Your Honour.

6 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

7 For the hearing to enter a plea, it will be scheduled in due
8 course.

9 At this point I would like to ask the parties whether they have
10 other issues that they would like to raise. And I would like to
11 remind them that should any submission require the disclosure of
12 confidential information, that they should notice me before so that
13 appropriate measures can be taken.

14 Mr. von Bone.

15 MR. VON BONE: Yes. I assume, Your Honour, that will include a
16 more precise indictment in the sense that my client has only a
17 redacted version of that. I do not know at this point whether these
18 are -- whether this is redacted because of protective measures
19 concerning whoever might be in the redacted version. However, when
20 that is available, then obviously we would like to have one as such.

21 And further, obviously, it's for my client quite new to suddenly
22 be in a completely different country with a lot of people who he
23 doesn't know at all. He has been taken, arrested, transferred here,
24 served with some documents, and obviously we will need then to have
25 some time in order to adjust and see what is fit for the challenging

1 of these -- of the indictment as a whole.

2 It is, obviously, that this Court is a quite unique format, as
3 we see it in the international specter. It is a national court,
4 actually, that applies an international standard with international
5 rules and regulations. And if there would be any discrepancy between
6 those international rules and regulations and the national
7 regulations which would might -- or might safeguard his interest
8 better, then I believe it is in the interest always to make sure and
9 ensure that the accused will get the benefit of those.

10 I thank you very much with my observations. I have no further
11 things to add, and I keep it to this. I thank you for your
12 attention, Your Honour.

13 JUDGE GUILLOU: Thank you very much, counsel.

14 Now I turn to the Prosecution.

15 MR. WHITING: Thank you, Your Honour. Nothing further from the
16 Prosecution.

17 JUDGE GUILLOU: Thank you very much.

18 Mr. Mustafa, I will now ask you if you have any issues or
19 comments in relation to -- that you would like to raise in relation
20 to your arrest, transfer, or detention.

21 THE ACCUSED: [Interpretation] Well, there is nothing in
22 particular I have to highlight.

23 JUDGE GUILLOU: Thank you very much, Mr. Mustafa.

24 Finally, I inform you that I have already issued some decisions
25 with a view to organising the pre-trial proceedings efficiently.

1 These include a decision ordering the Specialist Prosecutor and the
2 Registrar to reclassify their filings or prepare redacted versions,
3 as the case may be, so that the Defence has access to them as soon as
4 possible;

5 A decision requesting observations from the parties on the
6 redaction regime to be adopted in this case;

7 And a decision requesting observations from the parties on the
8 working language to be used in the present case.

9 I also inform you that I will schedule a Status Conference
10 pursuant to Rule 96 to be held shortly after the present Initial
11 Appearance. The purpose will be to review the status of the case and
12 to organise exchanges between the parties to ensure expeditious
13 preparation for trial.

14 Mr. Mustafa, I wish to remind you that you have the right to
15 attend this Status Conference with your counsel. However, with your
16 written consent and after receiving advice from your counsel,
17 pursuant to Rule 96(2), the Status Conference may be attended: By
18 you in person, with your counsel participating via video-conference
19 link; by your counsel, with you participating via video-conference
20 link; and it may also take place in your absence, with your counsel
21 present or participating via video-conference link.

22 I will now like to ask the parties on their views on a suitable
23 date for the Status Conference to be held, if possible, at the end of
24 this week or, at the latest, earlier next week.

25 I will turn to the Prosecution first.

1 MR. WHITING: Your Honour, either date is fine with us. End of
2 this week or beginning of next week is fine.

3 JUDGE GUILLOU: Thank you very much.

4 Mr. von Bone.

5 MR. VON BONE: I do not have my agenda, Your Honour. However, I
6 believe that if it will be in the beginning of next week, it would be
7 best to do that. So thank you very much.

8 JUDGE GUILLOU: Thank you very much.

9 So I intend to schedule the Status Conference very quickly,
10 probably on Monday, and you will receive a Scheduling Order that will
11 include the agenda in due course.

12 After the Status Conference, I will issue a decision on the
13 Specialist Prosecutor's disclosure obligations in accordance with
14 Rule 102.

15 I invite the parties to make submissions before this Friday on
16 this topic and on any matter that they would like to raise during the
17 first Status Conference.

18 Mr. Mustafa, as you will remain in detention, I would also like
19 to inform you that you may challenge your detention on remand in
20 accordance with Rule 57, and this will be dealt with in written
21 rulings.

22 This concludes today's hearing. I thank the parties and the
23 Registry for their attendance. I also wish to thank the
24 interpreters, stenographers, audio-visual technicians, security
25 personnel for their assistance.

1 The hearing is adjourned. Thank you.

2 --- Whereupon the hearing adjourned at 3.35 p.m.

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