

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Defence

Date: 5 October 2020

Language: English

Classification: Public

Defence observations for the

for the Status conference to be held on 5 October 2020

Specialist Prosecutor's Office

Mr. Jack Smith

Counsel for the Accused

Mr. Julius von Bóné

I. The status conference agenda

1. The defence has taken note of content of the Order setting the date for a status conference and its Annex I, to be held on 5 October 2020. In particular, the defence has noted the material that is to be disclosed by the Specialist Prosecutor's Office (SPO), and the time limits for such disclosures.
2. The defence has indeed obtained a number of documents in several disclosures, and would like to make some comments about those preferably in closed session.
3. The defence does, at this stage, not provide a notice of alibi or any grounds excluding criminal responsibility, but wishes to reserve that for a later moment in the proceedings.

II. Indication of defence investigations

4. At this point, it is hard to give any indication about the time frame that will require the investigations that will be undertaken by the defence. For sure, the investigation will be conducted, and the defence will give notification as soon as there is a feasible estimate that can be given. At this stage, that is too soon to estimate, in particular because it is hard to foresee how the COVID-19 circumstances are and how they develop, in the regions of investigation.

III. The SPO's Observations on a redaction regime

5. In general, the defence has no particular observations regarding the proposals from the SPO for a redaction regime. As the regime will apply *mutatis mutandis* for the defence, the defence believes the proposed redaction regime can be implemented
6. There is however a thing that both parties should be mindful of.
7. Parties must be aware that it can happen that both the SPO and Defence might approach the same witness, be it a material witness or an expert witness or a source revealing information regarding an issue, event, incident or whatever. In such case, even if it is a protected witness, a course of conduct might be useful.

8. This might occur for both the SPO and the Defence. The defence believes that as this might occur when the investigations of both sides are ongoing, but even if they have concluded this might occur.

9. It is the firm belief of the defence that not a single party can have, or claim, a monopoly position regarding witnesses, experts, or any other person that might be relevant for either of the parties. It should also apply for sources that reveal certain documentary information or reports.

10. If this would have any implications for the redaction regime, i.e. that the same pseudonym would be used, than the defence can agree to that. Or any other way is fine too. It does not happen often, but in the course of the investigations (of both sides) it is theoretically possible, and therefore be mindful about it and better to discuss at this point rather than in a later stage of the proceedings.

11. In any event, if this would occur, the interest of the witness, experts and/or members of their respective families, are paramount and have to be properly protected, so that each of these can be reassured.

12. The defence has no further observations.

Word count: 602



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5 October 2020

At The Hague, the Netherlands