



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor, Counsel for the Accused

Date: 30 June 2021

Language: English

Classification: Public

**Joint Prosecution and Defence Proposal for the adoption of a Witness Preparation
Protocol
with public Annex**

Specialist Prosecutor's Office

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1. On 2 June 2021, the Specialist Prosecutor's Office ('SPO') and Counsel for the Accused ('Defence') filed separate written submissions on witness familiarisation and preparation for the upcoming trial.¹
2. At the trial preparation conference of 9 June 2021, the SPO and the Defence agreed to work together with a view of submitting a joint proposal to the Trial Panel ('Panel') on the adoption of a protocol for witness familiarisation, including an agreed procedure to provide witnesses with an opportunity to review their prior statements before testimony.²
3. On 23 June 2021, the SPO and the Defence met to discuss a joint proposal, which is filed as an Annex to this application ('Protocol').³ The parties agreed that the review of prior statements is best done in the context of a witness preparation session conducted between the witness and the calling party. The Protocol proposes a comprehensive procedure for witness preparation outlining, *inter alia*, the boundaries of permissible conduct between the calling party and its witnesses prior to a witness's testimony; record keeping obligations; and disclosure obligations in relation to new information that may surface during a witness preparation session.
4. The SPO and the Defence acknowledge that the Rules⁴ do not specifically regulate witness preparation, and that the adoption of the proposed Protocol is thus left to the discretion of the Panel.⁵ The SPO and the Defence submit, however, that the

¹ Prosecution Submissions pursuant to KSC-BC-2020-05/F00123 with strictly confidential and *ex parte* Annexes 1-2, 2 June 2021, KSC-BC-2020-05/F00130 ('SPO Submissions'), paras 15-22; Defence submissions for trial preparation, KSC-BC-2020-05/F00128, 2 June 2021, paras 19-27.

² Trial Preparation Conference, KSC-BC-2020-05, 9 June 2021, pp.225-228.

³ The Protocol is based on the Witness preparation protocol (ICC-01/04-02/06-652-AnxA), annexed to *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-652, Decision on witness preparation, 16 June 2015, as amended by *Prosecutor v. AL Hassan AG Abdoul Aziz AG Mohamed Ag Mahmoud*, ICC-01/12-01/18-666, Decision on witness preparation and familiarisation, 17 March 2020, with Annex: Witness preparation protocol, ICC-01/12-01/18-666-Anx.

⁴ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

⁵ For a review of the practice of witness preparation in international criminal jurisprudence, see SPO Submissions, KSC-BC-2020-05/F00130, paras 15-22.

steps outlined in the Protocol will ensure relevant, accurate and focused testimony, will enhance the efficiency of witnesses' examinations, and contribute to smooth trial hearings and a reasonable duration of the proceedings. The procedure outlined in the Protocol will also, together with the Witness Familiarisation proposed by the Registry/WPSO, contribute to the witnesses' psychological well-being.

A. RELIEF REQUESTED

5. Based on the foregoing, the SPO and the Defence request the Panel to adopt the Witness Preparation Protocol contained in the Annex to this application.

Word count: 545



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Wednesday, 30 June 2021

At The Hague, the Netherlands.