



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-05**

The Prosecutor v. Salih Mustafa

Before: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 8 February 2022

Language: English

Classification: **Public**

**Order for submissions on the conduct of the proceedings following the Defence's
Rule 130(1) notice of its intention to file a motion to dismiss any or all of the
charges in the Indictment**

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel) hereby renders this order for submissions on the conduct of the proceedings following the Defence's Rule 130(1) notice of its intention to file a motion to dismiss any or all of the charges in the Indictment.

I. PROCEDURAL BACKGROUND

1. On 21 January 2022, the Panel issued the "Second decision on the conduct of the proceedings", in which it decided, *inter alia*, to convene a Defence Preparation Conference jointly with a Victims' status conference on Thursday, 17 February 2022, with Friday, 18 February 2022 as reserve day (Preparation Conference), and to request the Parties, Victims' Counsel and Registry to make written submissions as specified in the aforementioned decision within given time limits.¹
2. On 4 February 2022, the Defence for Salih Mustafa (Defence) submitted the "Defence Rule 130 (1) Notice to the Panel of Defence's intention to file a motion to dismiss any or all charges of the Indictment" (Rule 130(1) Notice).²
3. On the same day, the Defence also submitted the "Defence Rule 119 (1) Notice to present a Defence case" (Rule 119(1) Notice).³

¹ KSC-BC-2020-05, F00296, Trial Panel I, *Second decision on the conduct of the proceedings*, 21 January 2022, public, para. 21(f)-(i). The first decision on the conduct of the proceedings was issued on 26 August 2021, *see* F00170, Trial Panel I, *Decision on the conduct of the proceedings*, 26 August 2021, public.

² KSC-BC-2020-05, F00309, Defence, *Defence Rule 130 (1) Notice to the Panel of Defence's intention to file a motion to dismiss any or all charges of the Indictment*, 4 February 2022, public.

³ KSC-BC-2020-05, F00312, Defence, *Defence Rule 119 (1) Notice to present a Defence case*, 4 February 2022, public.

II. APPLICABLE LAW

4. The Panel notes Article 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 119 and 130 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. ANALYSIS

5. The Defence has indicated in its Rule 119(1) Notice that, subject to its Rule 130(1) Notice, it intends to present a case and to file its list of witnesses and exhibits as ordered by the Panel in the Second decision on the conduct of the proceedings, by Friday, 11 February 2022.⁴ The Defence did not request a suspension of the briefing schedule or the postponement of the Preparation Conference.

6. In this context, for clarity, the Panel wishes to have the views of the Parties and Victims' Counsel as to whether the dates of the 17-18 February 2022 Preparation Conference and the deadlines for related written submissions shall be maintained with a view to ensuring the expeditiousness of the proceedings in accordance with Article 40(2) of the Law. The Panel clarifies that, should the Parties and Victims' Counsel agree to proceed, the deadlines for the written submissions will remain in effect.⁵ Further, it underscores that the *sole* purpose of the Preparation Conference will be to receive observations on the issues listed in Sections III.C and III.D of the Second decision on the conduct of the proceedings.⁶

⁴ Rule 119(1) Notice, paras 1-3.

⁵ In this regard, the deadline for the Registry's submission as per the Second decision on the conduct of the proceedings, para. 21(i), will also remain in effect (16 February 2022).

⁶ This includes submissions by Victims' Counsel on proposed evidence for the purpose of reparations, see KSC-BC-2020-05, F00310, Trial Panel I, *Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information*, confidential. A public redacted version was filed the same day, F00310/RED.

Taking into consideration that, as underlined by the Defence,⁷ its Rule 130(1) Notice shall take precedence over its Rule 119(1) Notice, no decision on the points under Rule 119(3) and (4) of the Rules will be taken by the Panel, if any, before deciding on the Defence's forthcoming motion pursuant to Rule 130 of the Rules.

IV. DISPOSITION

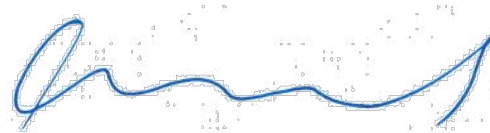
7. For the above-mentioned reasons, the Panel hereby **ORDERS** the Parties and Victims' Counsel to file submissions as specified in paragraph 6 above by **Wednesday, 9 February 2022, at 16:00 hours.**



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 8 February 2022

At The Hague, the Netherlands.

⁷ Rule 119(1) Notice, para. 3.