



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 9 February 2022

Language: English

Classification: **Public**

Third decision on the conduct of the proceedings

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 third decision on the conduct of the proceedings.

I. PROCEDURAL BACKGROUND

1. On 21 January 2022, the Panel issued the “Second decision on the conduct of the proceedings” (Decision), 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 Decision, within given time limits.¹

2. On 4 February 2022, the Defence for Salih Mustafa (Mr Mustafa or Accused) 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. Also on 4 February 2022, the Panel issued the “Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information” (Article 22(9) Decision),³ in which the Panel, *inter alia*, ordered and/or requested the Victims’ Counsel to file written submissions within given time limits.⁴

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, 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*, 4 February 2022, confidential. A public redacted version was issued on the same day (F00310/RED).

⁴ Article 22(9) Decision, para. 50(c)-(d).

4. On the same day, the Defence also submitted the “Defence Rule 119 (1) Notice to present a Defence case” (Rule 119(1) Notice).⁵
5. On 8 February 2022, the Panel issued the “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” (Order).⁶ In the Order, the Panel requested the Parties and Victims’ Counsel to provide their observations as to whether the dates of the Preparation Conference and the deadlines for related written submissions shall be maintained.⁷
6. On 9 February 2022, the Panel received the observations of the Specialist Prosecutor’s Office (SPO),⁸ the Defence,⁹ and Victims’ Counsel.¹⁰

II. APPLICABLE LAW

7. The Panel notes Articles 21(4)(d) and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (Law) and Rules 9(5)(a), 116(5), 119 and 130 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

⁵ KSC-BC-2020-05, F00312, Defence, *Defence Rule 119 (1) Notice to present a Defence case*, 4 February 2022, public.

⁶ KSC-BC-2020-05, F00314, Trial Panel I, *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*, 8 February 2022, public.

⁷ Order, paras 6-7.

⁸ KSC-BC-2020-05, F00316, Specialist Prosecutor, *Prosecution submissions on the conduct of the proceedings following the Defence’s Rule 130(1) notice* (SPO Submissions), 9 February 2022, public.

⁹ KSC-BC-2020-05, F00317, Defence, *Defence submission following the Panel’s order for submissions on the conduct of proceedings following the Defence’s Rule 130(1) Notice* (Defence Submissions), 9 February 2022, public.

¹⁰ KSC-BC-2020-05, F00315, Victims’ Counsel, *Victims’ Counsel submissions on the Defence preparation conference and the Victims’ status conference scheduled on 17 and 18 February 2022 and related written submissions* (Victims’ Counsel’s Submissions), 9 February 2022, public.

III. SUBMISSIONS

8. The SPO submits that proceedings should continue in accordance with the timelines set out in the Decision.¹¹ The SPO contends that this will cause no prejudice to the Accused and will best ensure the expeditiousness of the proceedings, considering that the Defence made no request for suspension of said timelines and that this is without prejudice to any determination by the Panel on the forthcoming Rule 130 motion.¹²

9. The Victims' Counsel submits that she stands ready to participate in the Preparation Conference and to file the related written submissions, and that the Preparation Conference should be held if the Parties and Victims' Counsel are in a position to make meaningful submissions on its agenda.¹³ Victims' Counsel contends that, should the Defence fail to file the submissions requested by the Panel in the Decision, the Preparation Conference should be postponed.¹⁴

10. The Defence submits that the dates for the Preparation Conference and related deadlines for written submissions should not be maintained, on the basis that a decision by the Panel to dismiss some of the charges would have implications on the type and extent of the lists of witnesses and exhibits to be filed by the Defence.¹⁵ In addition, the Defence contends that holding the Preparation Conference before rendering a decision on the Rule 130 motion would prejudice the integrity of the proceedings and the Accused's right to have the motion disposed of impartially, as it would deny the precedence that a Rule 130 motion shall take over holding the Preparation Conference and the related deadlines for

¹¹ SPO Submissions, para. 2.

¹² SPO Submissions, paras 2-3.

¹³ Victims' Counsel's Submissions, paras 2-3.

¹⁴ Victims' Counsel's Submissions, para. 4.

¹⁵ Defence Submissions, paras 9, 11-13.

written submissions.¹⁶ The Defence further submits that any delay caused by deciding in the first place on the Rule 130 motion would not impact on the expeditiousness of the proceedings.¹⁷ In light of the above, the Defence submits that the Preparation Conference should be suspended, together with the related deadlines, until a decision by the Panel is rendered on the Rule 130 motion.¹⁸

IV. ANALYSIS

11. Having taken note of the observations of the Parties and Victims' Counsel, and with a view to ensuring that proceedings remain fair and expeditious, the Panel considers it appropriate to vacate the deadlines set out in paragraph 21(f)-(i) of the Decision, including the scheduling of the Preparation Conference scheduled on 17-18 February 2022, as well as the deadlines in paragraph 50(c) and (d) of the Article 22(9) Decision.

12. As a result, the Panel sets out a new calendar for the next procedural steps, as follows. The Panel considers it appropriate to shorten, pursuant to Rule 9(5)(a) of the Rules, the time limit for the Defence to submit its Rule 130 motion, which shall be filed by Tuesday, 15 February 2022, at 16:00 hours. The Panel also considers it appropriate to shorten the time limits for written responses, if any, by the SPO and Victims' Counsel, which shall be filed by Monday, 21 February 2022, at 16:00 hours. Thereafter, the Panel intends to render a decision on the Rule 130 motion between 23 and 25 February 2022.

13. Should the Rule 130 motion be dismissed, in whole or in part, the Defence shall file the material referred to in paragraph 21(f) of the Decision by Tuesday,

¹⁶ Defence Submissions, paras 16, 24.

¹⁷ Defence Submissions, para. 25.

¹⁸ Defence Submissions, paras 21-23.

1 March 2022. Likewise, the Victims' Counsel shall file the material referred to in paragraph 21(g) of the Decision and paragraph 50(c) of the Article 22(9) Decision, by Tuesday, 1 March 2022. The Defence, if it so wishes, may respond to the Victims' Counsel's submissions referred to in paragraph 50(c) of the Article 22(9) Decision, by Monday, 7 March 2022, at noon.

14. Subject to the outcome of the Rule 130 motion, the Panel further decides to postpone the Preparation Conference, in the presence of the SPO, the Defence, Victims' Counsel and a representative of the Registry, to Tuesday, 8 March 2022, at 09:30 hours, with Wednesday, 9 March 2022 as reserve day, starting at 09:30 hours. The agenda for the Preparation Conference shall be the one specified in Sections III.C and III.D of the Decision.

15. The SPO, the Defence, Victims' Counsel, and the Registry shall file written submissions on the issues specified in paragraph 20 of the Decision by Monday, 7 March 2022, at noon.

V. DISPOSITION

16. For the above-mentioned reasons, the Panel hereby:

- a. **VACATES** the deadlines set out in paragraph 21(f)-(i) of the Decision, including the scheduling of the Preparation Conference on 17-18 February 2022, as well the deadlines in paragraph 50(c) and (d) of the Article 22(9) Decision;
- b. **DECIDES** to shorten the time limits for the submission of the Rule 130 motion by the Defence and for responses, if any, by the SPO and Victims' Counsel, as specified in paragraph 12 of the present decision; and

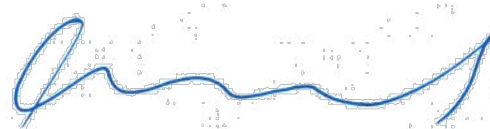
- c. **DECIDES**, subject to the Panel's determination on the forthcoming Rule 130 motion, to establish a new calendar for the next procedural steps, as specified in paragraphs 13-15 of the present decision, including the Preparation Conference, to be held on **Tuesday, 8 March 2022**, at 09:30 hours, with **Wednesday, 9 March 2022** as reserve day, starting at 09:30 hours.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 9 February 2022

At The Hague, the Netherlands.