



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

Date: 7 March 2022

Language: English

Classification: Public

Public Redacted Version of

**'Prosecution Submissions pursuant to the Second and Third Decisions on the
Conduct of the Proceedings',**

KSC-BC-2020-05/F00338, dated 7 March 2022

Specialist Prosecutor's Office

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

A. INTRODUCTION

1. Pursuant to the Trial Panel ('Panel')'s Second and Third Decisions on the conduct of the proceedings,¹ the Specialist Prosecutor's Office ('SPO') hereby files its submissions on matters related to the Defence case and Rule 159(6) of the Rules.²

B. SUBMISSIONS

i. Defence Case

2. At the outset, and without prejudice to further submissions that the SPO may make during the Defence Preparation Conference, the SPO notes that the total time estimated by the Defence for the presentation of its case [REDACTED], and may thus be significantly reduced in order to ensure a more efficient presentation of the evidence.

3. For example, witnesses like [REDACTED] are purported to testify about events dating back to the 1980's and/or early 1998. A more direct focus on the events relevant to the charges in the Indictment may help reduce the estimated number of hours of witness testimony.

4. Further, a number of witnesses, including [REDACTED], who are estimated to testify in direct examination [REDACTED], appear to provide evidence that is marginal at best to the central issues in the case. Finally, the direct examination estimates for even those witnesses who purport to provide relevant, albeit narrow, evidence are extremely long. For example, [REDACTED]. [REDACTED].

5. Further, the SPO notes that:

- a. [REDACTED],³ without proper notification of the nature of the witness's evidence, and without following the procedure set out by Rule 149. The SPO

¹ Second decision on the conduct of the proceedings, KSC-BC-2020-05/F00296, Public, 21 January 2022 ('Second Decision'), paras 17-20; Third decision on the conduct of the proceedings, KSC-BC-2020-05/F00318, Public, 9 February 2022 ('Third Decision'), paras 15, 16(c).

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ Defence Rule 119(2)(a) and (b) filing to present a Defence case, KSC-BC-2020-05/F00333, Public, 28 February 2022, Confidential Annex 1, p.2 Rule 95 Information.

therefore opposes this witness being permitted to testify as an “expert.”

b. The Rule 95 summary for [REDACTED].⁴ However, this witness was not notified pursuant to Rule 104(1) and was not included in [REDACTED].⁵ His statement was only disclosed on [REDACTED].⁶

6. With regard to the Defence’s Rule 119(2)(b) filing, the SPO confirms that it met with the Defence team in order to discuss any preliminary objections regarding the authenticity of the Defence exhibits to be presented. The SPO conveyed to the Defence team that it was not in a position to assess the authenticity of all of the proposed exhibits, lacking any information – in the Defence list of exhibits and/or in Legal Work Flow (‘LWF’) – regarding the provenance of the documents.⁷ In that regard, the SPO has invited the Defence to provide more complete information by filling the Originator field in LWF.

7. The SPO is in the process of verifying that it indeed received disclosure of all of the items notified by the Defence in its Rule 119(2) (a) and (b) filing.⁸ Further, the SPO notes that the descriptions provided in Annex 2 do not always correspond to those provided in the field “title” in LWF, and that the ERNs of some documents as uploaded in LWF do not correspond to the ERNs listed in Annex 2 to the Defence Rule 119(2)(a) and (b) filing.⁹

8. The SPO does not have at this stage further submissions on the issues listed in Sections III.C and III.D of the Second Decision. Any additional information resulting from further Defence filings or submissions will be addressed, as relevant, during the

⁴ Defence Rule 119(2)(a) and (b) filing to present a Defence case, KSC-BC-2020-05/F00333, Public, 28 February 2022, Confidential Annex 1, p.6, para.11.

⁵ Cf [REDACTED].

⁶ Defence disclosure package 118 in LWF.

⁷ See, differently, Defence Rule 119(2)(a) and (b) filing to present a Defence case, KSC-BC-2020-05/F00333, Public, 28 February 2022, para.3, where the Defence said that there have been no objections regarding authenticity.

⁸ Defence Rule 119(2)(a) and (b) filing to present a Defence case, KSC-BC-2020-05/F00333, Public, 28 February 2022, Confidential Annexes 1 and 2. At a preliminary check, it appears that a limited number of items (or their translations) have not been disclosed yet.

⁹ See Confidential Annex 2, Defence Rule 119(2)(a) and (b) filing to present a Defence case, KSC-BC-2020-05/F00333, 28 February 2022.

Defence Preparation Conference.

ii. Rule 159(6)¹⁰

9. In the event the Accused is found guilty of one or more crimes charged, for the time being the SPO is of the view that – if the parties are allowed to address matters related to sentencing in their final written briefs and oral submissions – the Panel should determine the appropriate sentence together with the pronouncement of the Trial Judgement. In fact, considering the circumstances of this case, the SPO does not see the need for a separate sentencing procedure pursuant to Rule 162 and 164.

C. CONFIDENTIALITY

10. Pursuant to Rule 82(4), this filing is confidential in line with the classification of Annexes 1 and 2 of the Defence Rule 119(2)(a) and (b) filing, to which this filing refers. A public redacted version will be filed.

Word count: 889



Jack Smith
Specialist Prosecutor

Monday, 7 March 2022

At The Hague, the Netherlands.

¹⁰ Rule 159(6): “If the Panel finds the Accused guilty of one or more crime(s), it shall determine the appropriate sentence to be imposed on the Accused with the pronouncement of the Trial Judgement, unless, having heard the Parties, the Panel decides to proceed in accordance with Rule 162 and Rule 164”.