



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

Date: 25 May 2022

Language: English

Classification: Public

Public Redacted Version of
'Prosecution request to present evidence in rebuttal', KSC-BC-2020-05/F00416,
dated 24 May 2022

Specialist Prosecutor's Office

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

I. INTRODUCTION

1. Pursuant to the Trial Panel's in-court Order,¹ Rules 127(2)(d) and 133 of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby requests that the Trial Panel grant leave to adduce certain limited additional evidence in rebuttal. The additional evidence to be adduced relates to matters of significance arising directly out of defence evidence, which could not reasonably have been anticipated. As such, presentation of this evidence is justified and is in the interests of justice.³

II. PROSECUTION EVIDENCE IN REBUTTAL

2. In its rebuttal, the SPO intends to adduce two additional sets of evidence:

a. Supplemental testimony of witness [REDACTED]

3. The SPO seeks leave to adduce additional testimonial evidence of witness [REDACTED]. This evidence concerns new information which arose during, and directly as a result of, the defence case. The information in question was promptly disclosed by the SPO to the Panel, the Defence and the Victims' Counsel, on 8 April 2022,⁴ and relates to the identification of one of the alleged co-perpetrators of the Accused by [REDACTED]. The SPO will also seek to introduce through this witness the relevant underlying messages by way of which the witness communicated this identification.⁵ This evidence goes directly to central allegations in the case, in particular the identity of alleged named JCE members, and is additionally relevant to rebutting Defence challenges to the reliability and veracity of [REDACTED]'s

¹ KSC-BC-2020-05, In Court-Oral Order, 19 May 2022, Transcript page 4405 line 17 to page 4406 line 12.

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

³ Rule 133.

⁴ SPO Notice of Rule 102(1)(b) disclosure and related request with confidential Annex 1, KSC-BC-2020-05/F00376, Public with confidential Annex ('Notice of Rule 102(1)(b)').

⁵ Annex 1 to Notice of Rule 102(1)(b).

evidence, and will further assist in assessing the credibility of Defence witness, WDSM-200.

b. Additional documentary evidence

4. Further, the SPO intends to tender several pieces of documentary evidence in the form of, *inter alia*, reports of international organisations (including of the OSCE, UNHCR, KMV, HRW), Kosovo media outlets (including of the Kosovapress, Radio Free Kosovo, Zeri newspaper), and international press agency (Associated Press). These reports demonstrate population movements within the territory of Kosovo in March and April 1999. In particular, contrary to the evidence presented during the testimony of certain Defence witnesses, these documents indicate that refugees began leaving Pristina shortly after the NATO bombing campaign commenced on 24 March 1999, and that the exodus continued at least until 6 April 1999. This information is of particular relevance to Defence witness evidence relating to the Accused's claim of alibi, noting that Defence witnesses invoked these population movements as precise signposts for the timing of their interactions with the Accused. The Prosecution intends to rebut the assertions of these witnesses through the evidence proposed.

III. PRESENTATION OF THE EVIDENCE IS IN THE INTERESTS OF JUSTICE

5. The need to adduce additional evidence, as proposed, could not have been anticipated by the Prosecution through the exercise of reasonable diligence. [REDACTED] initiated further contact with the SPO⁶ after the closing of the Prosecution case,⁷ and on the occasion of the testimony of WDSM-200. The same applies to the aforementioned documentary evidence, as the need to present it arose

⁶ [REDACTED].

⁷ The SPO closed its case on 4 February 2022 (Prosecution Notice of the Closing of its Case pursuant to Rule 129, 4 February 2022, KSC-BC-2020-05/F00308, Public.

only after witness W04849⁸ and several Defence witnesses⁹ had testified about specific population flows occurring at the time relevant to the Indictment.

6. The evidence proposed is, as described above, relevant and probative. Presentation of it is in the interests of justice and will assist in ascertaining the truth, considering the gravity of the charged offences.

IV. RELIEF REQUESTED

7. For the foregoing reasons, the Prosecution requests the Trial Panel to grant the request, allowing it to present limited evidence in rebuttal, as described in paragraphs 3 and 4 above.

Word count: 750



Jack Smith
Specialist Prosecutor

Tuesday, 25 May 2022

At The Hague, the Netherlands.

⁸ W04849 testified in court on 1-2 February 2022.

⁹ Brahim MEHMETAJ (WDSM-200) testified on 23-24 March 2022, Ahmet ADEMI (WDSM-300) testified on 28 March 2022, Jakup ISMAJLI (WDSM-400) testified on 29 March 2022, Hazir BOROVI (WDSM-500) testified on 30-31 March 2022, Gani SOPI (WDSM-600) testified on 4 April 2022, Bislim NRECI (WDSM-700) testified on 5 April 2022, Sheqir RRAHIMI (WDSM-1100) testified on 13 April 2022, Muhamet AJETI (WDSM-1500) testified on 22 April 2022, Teuta HADRI (WDSM-1600) testified on 11 May 2022, and Ibadete CANOLLI-KACIU (WDSM-1700) testified on 12 May 2022.