



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: 8 July 2022

Language: English

Classification: **Public**

**Decision on the Defence request for admission of documents used in
cross-examination in rebuttal**

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 decision on the Defence request for admission of documents used in cross-examination in rebuttal.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 27 May 2022, the Panel issued the “Decision on Prosecution request to present evidence in rebuttal”, granting *inter alia* the request of the Specialist Prosecutor’s Office (SPO) to call one witness in rebuttal. The Panel also ordered the Parties and Victims’ Counsel, should they wish to tender into evidence any exhibits used during the testimony of the witness, to do so by 3 June 2022.¹

2. On 3 June 2022, the Panel received one request from the SPO, seeking the admission into evidence of a document used during its examination of the witness called in rebuttal.² The Defence for Salih Mustafa (Defence) did not seek the admission of any items used by the prescribed time limit.

3. On 20 June 2022, the Panel ruled on the aforementioned SPO request and considered *proprio motu* the items (or portions thereof) used by the Defence during its cross-examination of the witness.³

4. On the same day, the Panel rendered the “Decision on the closing of the evidentiary proceedings and related matters”.⁴

¹ KSC-BC-2020-05, F00424, Trial Panel I, *Decision on Prosecution request to present evidence in rebuttal* (Decision on Rebuttal Evidence), 27 May 2022, confidential, paras 5, 12, 13, 15(a), (g). A public redacted version was issued the same day, F00424/RED.

² KSC-BC-2020-05, F00431, Specialist Prosecutor, *Prosecution Request for Admission of a Document used in Rebuttal Examination*, 3 June 2022, public, with Annex 1, confidential.

³ KSC-BC-2020-05, F00436/RED, Trial Panel I, *Public redacted version of Decision on items used with Witnesses WDSM 600 to 1100, 1300 to 1700 and [REDACTED] during their in-court testimonies, on the Specialist Prosecutor’s request for the admission of documentary evidence in rebuttal, and on the Defence request to present evidence in rejoinder* (20 June 2022 Decision), 20 June 2022, public, paras 17-18, 26(c), (f), (g), with one confidential annex

⁴ KSC-BC-2020-05, F00439, Trial Panel I, *Decision on the closing of the evidentiary proceedings and related matters* (Decision Closing the Evidentiary Proceedings), 20 June 2022, public.

5. On 23 June 2022, the Defence filed the “Defence Request for Admission of Documents used in Cross-Examination in Rebuttal” (Request), seeking the admission into evidence of four items (or portions thereof) used by the Defence during its cross-examination of the witness called in rebuttal.⁵ The Defence submits that the items are relevant, authentic, have probative value, and their admission would cause no undue prejudice to Salih Mustafa (Accused).⁶ It adds that the Request is made before the end of the month in which the witness has testified, pursuant to the “Decision on the Conduct of the Proceedings”,⁷ and that, in earlier requests, it understood that it was expected to react on issues related to the last two Defence witnesses and the expert evidence called by the Panel.⁸

II. APPLICABLE LAW

6. The Panel notes Rules 9(5) and 134 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers and Articles 6(1)(c), (d), (g), (h) and 10(b) of the Code of Professional Conduct for Counsel and Prosecutors before the Kosovo Specialist Chambers (Code of Conduct).

III. ANALYSIS

7. The Panel observes that the Defence was mistaken about the time limit applicable in the present situation. The Defence submits that it has made the Request pursuant to the deadline set by the Panel in the “Decision on the conduct of the proceedings”, namely the last working day of the calendar month in which the witness

⁵ KSC-BC-2020-05, F00441, Defence, *Defence Request for Admission of Documents used in Cross-Examination in Rebuttal*, 23 June 2022, confidential, paras 1, 4-5, 12, with Annex 1, confidential.

⁶ Request, para. 2.

⁷ See KSC-BC-2020-05, F00170, Trial Panel I, *Decision on the conduct of the proceedings* 26 August 2021, public, paras 36-38.

⁸ Request, paras 1, 7-9.

has testified.⁹ However, that deadline was superseded by the deadline set in the more recent and specific “Decision on Prosecution request to present evidence in rebuttal”, where the Panel explicitly ordered the Parties and Victims’ Counsel to tender into evidence any exhibits used during the testimony of that particular witness called in rebuttal by 3 June 2022.¹⁰

8. The Panel notes that the Defence Request came 20 days past that time limit and without showing of good cause. The Defence indicated that it understood that, in earlier requests, it was expected to react on issues related to the last two Defence witnesses and the expert evidence called by the Panel.¹¹ The Panel fails to see how and why this has prevented the Defence from submitting the Request within the set time limit.

9. In addition, the Panel stresses that the evidentiary proceedings in the present case were closed on 20 June 2022 and that the Parties and Victims’ Counsel could present evidence past this date only for the purpose of sentencing.¹²

10. The Panel further notes that, in any case, the items the Defence seeks to tender have already been adjudged by the Panel in previous decisions, either pursuant to a request from the SPO or *proprio motu*, and are available for the purpose of the Panel’s deliberations for the judgment on the guilt or innocence of the Accused.¹³ Accordingly, the Panel rejects the Request as both out of time and moot.

11. The Panel considers it appropriate to emphasise that, pursuant to Article 6(1)(c), (d), and (h) of the Code of Conduct, Defence Counsel practicing before the Specialist

⁹ Request, paras 1, 7; Conduct of Proceedings, para. 37.

¹⁰ Decision on Rebuttal Evidence, paras 13, 15(g).

¹¹ Request, para. 8.

¹² Decision Closing the Evidentiary Proceedings, paras 12, 16, 25(a), (b).

¹³ For items 1 and 2, see 20 June 2022 Decision, paras 17-19, 25, and its Annex 1, p. 7. For items 3 and 4, see KSC-BC-2020-05, F00285, Trial Panel I, *Decision on items used with witnesses W03593, W04600, W01679, and W03594 during their in-court testimony*, 17 December 2021, confidential, paras 13-14, 17, 20(a), (b), (e). A public redacted version was filed on the same day, F00285/RED.


Chambers shall uphold certain basic professional standards, which include acting with diligence, acting in compliance with any decision or order of a Panel, and taking all reasonable steps to fulfil their obligations with the necessary knowledge and professional competency. Further, pursuant to Article 10(b) of the Code of Conduct, Defence Counsel shall act in a timely and efficient manner.

12. In the present situation, the Defence has acted neither with diligence, nor professional competency, nor in a timely manner. It has failed to take notice of both the time limit set by the Panel and the fact that the items that it seeks to tender have already been adjudged. The Panel reminds Counsel for the Accused and his team to adhere to the professional standards set forth in the Code of Conduct.

IV. DISPOSITION

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

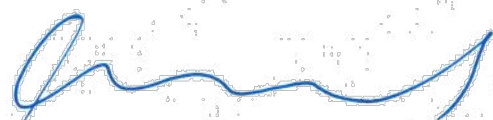
- a. **REJECTS** the Request; and
- b. **ORDERS** the Defence to file a public redacted version of the Request, without its annex, by **Friday, 15 July 2022**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 8 July 2022

At The Hague, the Netherlands.