

1 Thursday, 19 May 2022

2 [Open session]

3 [The accused appeared via videolink]

4 --- Upon commencing at 9.30 a.m.

5 PRESIDING JUDGE VELDT-FOGLIA: Good morning.

6 Madam Court Officer, could you please call the case.

7 THE COURT OFFICER: Good morning, Your Honours. This is case
8 KSC-BC-2020-05, The Specialist Prosecutor versus Salih Mustafa.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.
10 First of all, I will call the appearances.

11 Mr. Prosecutor, you have the floor.

12 MR. MICHALCZUK: Good morning, Your Honours. Good morning,
13 everybody. The Prosecution team is represented today by
14 Silvia D'Ascoli, the Associate Prosecutor; Julie Mann, the Case
15 Manager; and myself, Cezary Michalczuk, the Prosecutor.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 Victims' Counsel, you have the floor.

18 MS. PUES: Good morning, Your Honours. Good morning, everybody.
19 The participating victims are today represented by myself, Anni Pues,
20 as Victims' Counsel. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

22 And, Defence Counsel, you have the floor.

23 MR. VON BONE: Good morning, Your Honour. The Defence is
24 represented by myself, Julius von Bone; Betim Shala is my co-counsel;
25 Fatmir Pelaj is investigator/interpreter; and Mr. Avdi Mehmeti is our

1 investigator.

2 And joining us via remote is Mr. Mustafa.

3 PRESIDING JUDGE VELDT-FOGLIA: Yes. Thank you.

4 Mr. Mustafa, can you hear me?

5 THE ACCUSED: [Interpretation] [via videolink] Yes, Your Honour.

6 PRESIDING JUDGE VELDT-FOGLIA: Okay. For the record, you are
7 appearing in front of Trial Panel I.

8 The Panel recalls that Mr. Mustafa had expressed the intention
9 to make an unsworn statement pursuant to Rule 142(1) of the Rules.
10 As recently as on 12 April 2022, Mr. Mustafa, through his
11 Defence Counsel, had also confirmed his willingness to answer to the
12 Panel's questions, if any, subject, of course, to his right to remain
13 silent.

14 Mr. Mustafa, the reason why the Panel intended to put questions
15 to you was, *inter alia*, to try to clarify what happened back then in
16 April 1999, and what your role, if any, was within the framework of
17 the confirmed indictment. And the questions the Panel would have put
18 to you should have been seen in that light.

19 By filing 410, which was regrettably made less than 24 hours
20 before today's hearing, the Defence informed that Mr. Mustafa has
21 reconsidered his position and will not give an unsworn statement, nor
22 will he answer any questions by the Panel.

23 Accordingly, the unsworn statement, pursuant to Rule 142 of the
24 Rules, and related procedures, will no longer take place.

25 Defence Counsel, is there anything you would like to say in this

1 regard?

2 MR. VON BONE: Your Honour, one thing that I would like to say
3 is that if we would have known the position of reconsideration
4 before, we would have done it earlier. But it is how it is and how
5 it went. So that is what I want to say about that issue.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence Counsel.

7 Nonetheless, we are having a hearing today because the Panel has
8 some oral orders to issue.

9 The first oral order requires a private session. And
10 Madam Court Officer, could you bring us, please, into private
11 session.

12 [Private session]

13 [Private session text removed]

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1 [Private session text removed]

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12 [Open session]

13 THE COURT OFFICER: Your Honours, we're back in open session.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 The second oral order is as follows.

16 Defence Counsel, the Panel assumes that you no longer have any
17 evidence to present and, therefore, that the closure of the Defence
18 case is scheduled to take place on 26 May?

19 MR. VON BONE: We estimate, indeed, that would be the case.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay.

21 MR. VON BONE: There is a slight issue that we are thinking
22 about, but I think that it will be the 26th, Your Honour.

23 PRESIDING JUDGE VELDT-FOGLIA: Could you say something more
24 about that slight issue? Because we are really coming to an end, so
25 at least we are trying to do a lot of planning. So I heard some

1 doubts.

2 MR. VON BONE: [Microphone not activated] A 99 per cent chance
3 that it is the 26th that we will close the case. It's just ...

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. Defence Counsel, I would
5 request -- we have set the date as we have set it, but if you know
6 any earlier that there is a request, please don't wait till that
7 date.

8 MR. VON BONE: I will certainly not do so. I will do that
9 even -- if it would occur, probably tomorrow or so. But we assume it
10 will be 26th. So ...

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

12 Now my remark had nothing to do with the closing of the case but
13 if there would be anything you would like to present to the Panel or
14 make a request in that regard, that I intend to say that please do
15 that asap.

16 Very well.

17 Then I direct myself to the SPO, because the oral order is
18 directed to the SPO.

19 The Panel further notes that Rule 127(2) of the Rules provides,
20 unless otherwise directed by the Panel, that after the evidence of
21 the Defence and the evidence of the Panel, if any, the SPO may, with
22 the leave of the Panel, present evidence in rebuttal, followed by
23 evidence in rejoinder by the Defence, also subject to the Panel's
24 leave.

25 Considering that the Panel is still deliberating as to whether

1 to introduce evidence in accordance with Rule 132 of the Rules, the
2 Panel requests at this stage the SPO to file its request to present
3 evidence in rebuttal, if any, by Tuesday, 24 May, with responses, if
4 any, by the Defence and Victims' Counsel by Thursday, 26 May. And if
5 there would be a request, and if leave is granted, and after hearing
6 such evidence, if any, the Defence will be requested to file a
7 similar request for its evidence in rejoinder, if any.

8 Should the SPO wish to present additional evidence in rebuttal
9 following any evidence to be presented by the Panel, pursuant to
10 Rule 132 of the Rule, it shall indicate as soon as possible after the
11 Panel has introduced its evidence. Yes?

12 And this concludes the second oral order.

13 As for the scheduling of our court hearings, tomorrow morning we
14 will not have a hearing, of course, I would say. Next week, no
15 hearings will take place. And the sitting schedule for the month of
16 June will be communicated through CMU. However, parties and
17 Victims' Counsel are requested to keep themselves available for the
18 1st, 2nd, and 8th June as possible dates for hearings.

19 What was -- what was supposed to be a complete hearing day is
20 now already almost finalising. But before we do that, I would like
21 to ask the parties and the Victims' Counsel if there's anything to
22 raise.

23 Mr. Prosecutor.

24 MR. MICHALCZUK: Your Honours, nothing else to raise. Thank
25 you.

1 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

2 And Victims' Counsel.

3 MS. PUES: No, Your Honours. Nothing. Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay.

5 Defence Counsel.

6 MR. VON BONE: No, Your Honour, we have nothing else to raise.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

8 And on a non-hearing note, but good to see you in court again.

9 MR. VON BONE: [Microphone not activated].

10 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I thank the
11 parties and the Victims' Counsel for their attendance today. I also
12 wish to thank the interpreters, and the audiovisual booth and
13 security and stenographer for their assistance this morning.

14 The hearing is adjourned.

15 --- Whereupon the hearing adjourned at 9.43 a.m.

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