



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 25 June 2021

Language: English

Classification: Public

**Public redacted version of
Second decision on the appointment of expert(s)**

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

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Registry

Head of Victims' Participation Office

Silke Studzinsky

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel) hereby renders this second decision on the appointment of expert(s).

I. PROCEDURAL BACKGROUND

1. On 20 May 2021, the Panel issued the “Decision on the appointment of expert(s)” (Decision), in which it ordered the Victims’ Participation Office (VPO) to submit by Friday, 4 June 2021, a list of three relevant experts who are available on short notice in order to prepare the report mentioned in paragraphs 20 and 22 of the Decision.¹ The Panel also ordered the Defence and Victims’ Counsel to submit their observations, within ten (10) days of the notification of the filing by the VPO.²
2. On 4 June 2021, the Registrar submitted the “Registry Submission Pursuant to the Decision on the Appointment of Expert(s)”, in which the VPO identified three experts who “sufficiently meet the requirements” set out in the Decision.³
3. On 14 June 2021, Victims’ Counsel submitted the “Victims’ Counsel Submission on the Decision on the appointment of expert(s)” (Victims’ Submissions).⁴
4. The Defence for Salih Mustafa (Accused) did not submit any observations.

¹ KSC-BC-2020-05, F00124, Trial Panel I, *Decision on the appointment of expert(s)*, 20 May 2021, public, para. 24(a).

² Decision, para. 24(b).

³ KSC-BC-2020-05, F00132, Registrar, *Registry Submission Pursuant to the Decision on the Appointment of Expert(s)* (Registry’s Submissions), 4 June 2021, public, with Annexes 1-3, confidential and *ex parte*.

⁴ KSC-BC-2020-05, F00134, Victim’s Counsel, *Victims’ Counsel Submission on the Decision on the appointment of expert(s)*, 14 June 2021, public.

II. SUBMISSIONS

5. The VPO submits that it contacted a number of lawyers, jurists, experts, and organisations in Kosovo.⁵ Following those consultations, it identified three potentially suitable candidates, available on short notice, for consideration by the Panel.⁶

6. Victims' Counsel submits that the Panel should reconsider the necessity to appoint experts to report on possible private law suits in Kosovo for the purpose of obtaining reparation for the harm suffered.⁷ She argues that no effective remedy has been provided for in 22 years to the participating victims.⁸ Hence, the Trial Panel is called upon to address these violations itself and, should the Accused be found guilty, issue a reparations order accordingly.⁹ Therefore, in the view of Victims' Counsel, the Panel should rather appoint expert(s) to assist in the preparation of reparations orders for victims in this case.¹⁰

7. Victims' Counsel further submits that none of the three proposed experts, while having vast and/or diverse professional experience, have the required, relevant, and specific expertise to prepare a report on the topics identified in the Decision.¹¹ Finally, according to Victims' Counsel, only one of the three proposed experts has "relevant practical experience" which could aid the production of an expert report whilst another one has some relevant expertise but only on a very small part of the private law questions that ought to be discussed.¹²

⁵ Registry's Submissions, para. 7.

⁶ Registry's Submissions, para. 8.

⁷ Victims' Submissions, paras 13-17, 37.

⁸ Victims' Submissions, para. 15.

⁹ Victims' Submissions, para. 16.

¹⁰ Victims' Submissions, para. 37.

¹¹ Victims' Submissions, paras 18-20.

¹² Victims' Submissions, paras 18-20.

III. ANALYSIS

8. The Panel observes that the VPO submitted for consideration three experts from Kosovo, with, as also pointed out in the Victims' Submissions, only partly relevant experience regarding the specific knowledge and experience identified by the Panel in its Decision, i.e., on the "functioning of the Kosovo judicial system as regards claims of compensation presented by victims in war crimes cases similar to the present case".¹³

9. Without prejudice to the possible appointment by the Panel of any of the proposed experts, the Panel considers it appropriate to order the VPO to identify, by Wednesday, 21 July 2021, further experts for its consideration. In particular, considering that the Panel already received three Kosovan profiles for assessment, the Panel considers it necessary for the VPO to also identify three relevant experts from outside of Kosovo who may fulfil the requirements set out in paragraph 22 of the Decision in order to produce the report described in paragraph 20 of the Decision. In this respect, the Panel considers it appropriate to order the VPO to contact, in addition to any other experts that the VPO may consider appropriate, [REDACTED] to enquire about [REDACTED] willingness and short notice availability to prepare the report referred to in paragraphs 20 and 22 of the Decision.

10. In addition, the Panel considers it appropriate to order the VPO to contact by the same date [REDACTED], and to enquire [REDACTED] willingness and short notice availability to prepare the report referred to in paragraphs 20 and 22 of the Decision. For this purpose, the VPO may transmit the present decision to [REDACTED]. Should [REDACTED] indicate [REDACTED] willingness but not be in a position to prepare

¹³ Decision, paras 20, 22.

the requested report on short notice, the VPO shall inform the Panel accordingly, indicating by when [REDACTED] would be in a position to prepare such a report.

11. The Defence and Victims' Counsel shall be invited to make observations on the list of experts submitted and to propose (further) questions that the expert(s), ultimately chosen by the Panel, should address in their report. Mindful of the upcoming summer judicial recess,¹⁴ any such observations shall be submitted by Friday, 20 August 2021. The Panel will then proceed with the appointment and instruction of the chosen expert(s). The Panel underlines that it has taken note of the extensive list of questions already proposed by Victims' Counsel.¹⁵

IV. DISPOSITION

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

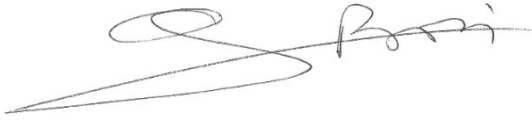
- a. **ORDERS** the VPO to submit by **Wednesday, 21 July 2021**: (i) a list of relevant experts, as specified in paragraph 9 above, who are available on short notice in order to prepare the report referred to in paragraphs 20 and 22 of the Decision; and (ii) a report on the willingness and availability of [REDACTED] to prepare the report mentioned in paragraphs 20 and 22 of the Decision, as specified in paragraph 10 above; and
- b. **ORDERS** the Defence and Victims' Counsel to submit their observations, if any, on the VPO's submissions by **Friday, 20 August 2021**.

¹⁴ The summer judicial recess runs from Monday, 26 July 2021, to Friday, 13 August 2021, *see* KSCPR-2020, President, *Judicial Recess Periods for 2021*, 10 November 2020, public.

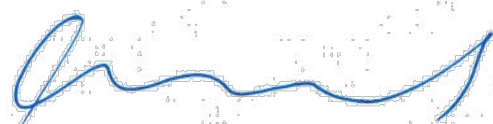
¹⁵ *See* Victims' Submissions, paras 24-26, 30-36.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 25 June 2021
At The Hague, the Netherlands.