



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: 26 August 2021

Language: English

Classification: **Public**

Decision on the conduct of the proceedings

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

Table of Contents

I.	PROCEDURAL BACKGROUND	2
II.	APPLICABLE LAW	3
III.	DIRECTIONS.....	3
A.	Opening of the Case and Initial Information to the Accused	4
B.	Opening Statements	4
C.	Presentation of Evidence	5
1.	Order of Presentation of Evidence	5
2.	Length of the Presentation of Evidence.....	5
3.	Witness Order	7
D.	Witnesses	8
1.	Examination by Video-Conference and Examination of Witnesses away from the Trial Venue.....	8
2.	Order and Mode of Questioning of Witnesses.....	9
3.	Use of Material during the Questioning of a Witness.....	11
4.	Submission of Material through a Witness.....	13
5.	In-Court Protective and Special Measures.....	14
6.	Use of Private and/or Closed Session	14
7.	In-Court Redactions	15
8.	Self-Incrimination of Witnesses	16
IV.	DISPOSITION.....	17

TRIAL PANEL I (Panel) hereby renders this decision on the conduct of the proceedings.

I. PROCEDURAL BACKGROUND

1. On 20 May 2021, the Panel issued the “Decision setting the dates for trial preparation conferences and requesting submissions” (Decision), in which it decided to convene trial preparation conferences, both in public and in closed sessions, on 9, 10, and 11 June 2021, as necessary, and requested submissions from the Specialist Prosecutor’s Office (SPO), the Defence for Salih Mustafa (Defence), Victims’ Counsel, and the Registrar through the Witness Protection and Support Office (WPSO) on, *inter alia*, various matters pertaining to the conduct of the proceedings.¹
2. On 2 June 2021, the SPO,² the Defence,³ Victims’ Counsel,⁴ and WPSO⁵ filed their respective submissions on the items listed in the Decision.
3. On 9 and 10 June 2021, trial preparation conferences took place in the presence of the Parties, Victims’ Counsel, and units of the Registry, as the case may be.⁶
4. On 18 June 2021, the Panel set the commencement of trial on 15 September 2021.⁷

¹ KSC-BC-2020-05, F00123, Trial Panel I, *Decision setting the dates for trial preparation conferences and requesting submissions*, 20 May 2021, public, with Annexes 1-2, strictly confidential and *ex parte*.

² KSC-BC-2020-05, F00130, Specialist Prosecutor, *Prosecution Submissions pursuant to KSC-BC-2020-05/F00123*, 2 June 2021, public, with Annexes 1-2, strictly confidential and *ex parte*. A confidential redacted version of Annex 2 was filed on 20 August 2021, F00167/A01.

³ KSC-BC-2020-05, F00128, Defence, *Defence submission for Trial preparation*, 2 June 2021, public.

⁴ KSC-BC-2020-05, F00129, Victims’ Counsel, *Submission for Trial Preparation Conference*, 2 June 2021, public.

⁵ KSC-BC-2020-05, F00131, Registrar, *Registry Submissions for Trial Preparation Conferences*, 2 June 2021, public, with Annex 1, confidential, and Annex 2, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-05, Transcript of Hearing, 9 June 2021, public, pp. 205-251; Transcript of Hearing, 9 June 2021, confidential and *ex parte*, pp. 252-289; Transcript of Hearing, 10 June 2021, confidential and *ex parte*, pp. 290-300.

⁷ KSC-BC-2020-05, F00138, Trial Panel I, *Decision setting the date for the commencement of the trial and related matters* (Decision on trial commencement), 18 June 2021, public.

5. On 9 July 2021, the Panel issued the “Decision on witness familiarisation” (Decision on witness familiarisation).⁸
6. On 12 July 2021, the Panel issued the “Decision on victims’ procedural rights during trial” (Decision on victims’ rights).⁹
7. On 25 August 2021, the Panel issued the “Decision on the submission and the admissibility of evidence” (Decision on admissibility of evidence).¹⁰

II. APPLICABLE LAW

8. The Panel notes Article 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (Law) and Rules 116, 120, 124-127, 141, 143-146, and 151 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. DIRECTIONS

9. The following constitute the Panel’s initial directions on the conduct of the proceedings, having taken into consideration the oral and written submissions of the Parties and Victims’ Counsel. Generally, the Panel will not address issues already regulated in the Specialist Chambers (SC) legal framework, as well as relevant Practice Directions and Registry Instructions. Issues left unaddressed in the present or previous decisions and which require the Panel’s intervention will be dealt with in the course of the trial.

⁸ KSC-BC-2020-05, F00150, Trial Panel I, *Decision on witness familiarisation*, 9 July 2021, public.

⁹ KSC-BC-2020-05, F00152, Trial Panel I, *Decision on victims’ procedural rights during trial*, 12 July 2021, public.

¹⁰ KSC-BC-2020-05, F00169, Trial Panel I, *Decision on the submission and the admissibility of evidence*, 25 August 2021, public.

A. OPENING OF THE CASE AND INITIAL INFORMATION TO THE ACCUSED

10. Pursuant to Rule 124(1) of the Rules, the Presiding Judge shall open the trial and ask the Registrar to call the case. Thereafter, the trial shall proceed with the reading by the Specialist Prosecutor of the indictment as confirmed by the Pre-Trial Judge (Confirmed Indictment)¹¹ pursuant to Rule 124(2) of the Rules. In order to ensure the efficiency of the proceedings, and unless the Defence requests by Tuesday, 14 September 2021, that the Confirmed Indictment be read in its entirety, the Panel considers it sufficient for the SPO to read out to the Accused the charges as read out to him during the initial appearance.¹² The Accused will be subsequently asked whether he understands the Confirmed Indictment and will be given the opportunity to confirm his initial plea pursuant to Rule 124(3) of the Rules.

11. Pursuant to Rule 125 of the Rules, the Presiding Judge will then inform the Accused of his rights and obligations and the measures provided for under Rule 61(2) of the Rules.

B. OPENING STATEMENTS

12. The Panel recalls the initial directions concerning the opening statements of the SPO and Victims' Counsel and that further directions will be given for the opening statement of the Defence at a later stage.¹³

¹¹ KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Indictment*, 19 June 2020, confidential. A public redacted version of the Confirmed Indictment was filed on 28 September 2020, F00019/A01.

¹² KSC-BC-2020-05, Transcript of Hearing, 28 September 2020, public, p. 6, line 8, to p. 7, line 18.

¹³ Decision on trial commencement, paras 17-19.

C. PRESENTATION OF EVIDENCE

1. Order of Presentation of Evidence

13. In accordance with Rule 127(2) of the Rules and the Decision on victims' rights, evidence at trial shall be presented in the following sequence: (i) evidence by the Specialist Prosecutor; (ii) evidence by Victims' Counsel, if any, as ordered by the Panel;¹⁴ (iii) evidence by the Defence; (iv) evidence called by the Panel pursuant to Rule 132 of the Rules, if any; (v) with leave of the Panel, Specialist Prosecutor evidence in rebuttal; and (vi) with leave of the Panel, Defence evidence in rejoinder. The Panel further recalls that Victims' Counsel may also request the Panel, sufficiently in advance of the end of the Specialist Prosecutor's case, to authorise victims she represents to directly address the Panel not as witnesses, but in order to present their views and concerns as victims.¹⁵

14. The Panel may issue further directions at a later stage of the proceedings, in particular with regard to the presentation of evidence by Victims' Counsel, if any, as ordered by the Panel, as well as with regard to the presentation of evidence by the Defence.

2. Length of the Presentation of Evidence

15. The Panel notes that the SPO indicated that it intends to rely on 16 witnesses at trial, 15 of whom would testify live.¹⁶ Overall, the SPO estimates that it needs 87 hours to examine its witnesses.¹⁷

¹⁴ Decision on victims' rights, para. 30.

¹⁵ Decision on victims' rights, para. 37.

¹⁶ KSC-BC-2020-05, F00161/A02, Specialist Prosecutor, *Amended Witness List* (SPO witness list), 30 July 2021, confidential, pp. 2-3.

¹⁷ SPO witness list, p. 3.

16. The Panel considers that the 87-hour estimate provided by the SPO appears to be reasonable. Accordingly, in order to ensure the expeditiousness of the proceedings, the Panel sets 87 hours as the time available to the SPO to present its case. Moreover, the Panel expects the SPO to respect the time estimates indicated in the SPO witness list for its examination of each witness.¹⁸ Should the SPO require more time for the overall presentation of its case, it shall seek leave of the Panel sufficiently in advance.

17. The aforementioned is without prejudice to the Panel concluding that estimates for certain witnesses need to be revised, in accordance with the Panel's obligation under Article 40(2) of the Law to ensure that the trial is fair and expeditious and that the proceedings are conducted with full respect for the rights of the Accused. This could be the case if, for example, a witness's anticipated testimony is irrelevant or repetitive.

18. Considering that the Defence does not bear the burden of proof, the Panel further considers it appropriate to allocate to the Defence for the cross-examination of each SPO witness 50 per cent of the time effectively used by the SPO for its examination of said witness. Should the Defence require more time for the questioning of a witness, it shall seek leave of the Panel as soon as possible.

19. Furthermore, the Panel notes that the questioning of witnesses with regard to the establishment of the constitutive elements of the crimes and the modes of liability charged is first and foremost the responsibility of the SPO, whilst it is first and foremost the responsibility of Victims' Counsel to elicit from witnesses any information relevant for the reparations proceedings.¹⁹ Accordingly, Victims' Counsel shall be allocated, for her examination of each SPO witness, 25 per cent of the time effectively used by the SPO for its examination of said witness. Should Victims'

¹⁸ SPO witness list, pp. 2-3.

¹⁹ See Decision on victims' rights, para. 40.

Counsel require more time for the questioning of a witness, she shall seek leave of the Panel as soon as possible.

3. Witness Order

20. The Panel notes the proposed witness order of SPO witnesses for the months of September and October 2021.²⁰ The Panel further informs the Parties and Victims' Counsel that hearings will take place on the following days during the months of September and October 2021, considering that the sole available courtroom is to be shared with other Panels:²¹

- 20-24 September 2021;²²
- 27-28 September 2021;
- 4-6 October 2021; and
- 12-14 October 2021.²³

21. Accordingly, the Panel orders the SPO to file, as soon as possible and no later than Friday, 3 September 2021, the order of testimony of its witnesses for the month of October 2021, taking into account the aforementioned sitting schedule as well as the Panel's directions concerning the time allocated to Victims' Counsel and the Defence for their respective questioning of SPO witnesses.

22. The SPO shall also file by Monday, 13 September 2021, the order of testimony of its witnesses for the months of November and December 2021. To facilitate the SPO's

²⁰ KSC-BC-2020-05, F00154/A01, Specialist Prosecutor, *Prosecution submission concerning the order of witness testimonies, mode of appearance and length of examination*, 15 July 2021, confidential.

²¹ This is in addition to the Panel sitting on 15 and 16 (as a reserve day) September 2021 for the procedures prescribed under Rules 124 and 125 of the Rules, followed by the opening statements of the SPO and Victims' Counsel.

²² On 23 September 2021 the Panel will only be sitting as of 11:30.

²³ A regular court day is divided into three sessions of one and a half hours with breaks between the sessions (09:30-11:00; 11:30-13:00; 14:30-16:00). A fourth session (16:30-18:00) may be organised, in exceptional circumstances, once a week.

scheduling of witnesses for the aforementioned months, the Panel will inform the Parties and Victims' Counsel at the earliest opportunity, via the Court Management Unit (CMU), of the sitting schedule for the remainder of 2021. Should the order of witnesses expected to testify change due to unforeseen circumstances, the SPO shall immediately inform the Panel, the Defence, and Victims' Counsel accordingly.²⁴

23. Furthermore, the Parties and Victims' Counsel, as applicable, must always be prepared to continue with the case, even if less time than estimated is required for a particular witness. Specifically, if several witnesses are scheduled to testify in a given week and the examination of one of them has been concluded, the Panel expects to immediately commence with the next witness scheduled in the same week, unless otherwise indicated.

D. WITNESSES

1. Examination by Video-Conference and Examination of Witnesses away from the Trial Venue

24. The Panel considers that in-person testimony and testimony by video-conference pursuant to Rule 144 of the Rules are equal options to give live testimony under the SC legal framework. The Parties and Victims' Counsel are directed to file any requests for testimony to be conducted under Rule 144 of the Rules at the earliest opportunity, and no later than 30 days before the witness's expected testimony, so as to allow for the necessary practical arrangements to be made.²⁵

²⁴ The deadlines set in this decision are without prejudice to the calling entities' obligation to provide a complete Witness Information Form for each witness to WPSO as soon as practicable and, in any event, no later than 35 days prior to the witness's expected testimony (Decision on witness familiarisation, para. 12).

²⁵ See also KSC-BD-23/COR, Registrar, *Registry Practice Direction on Video Links*, 5 August 2020, public. The Panel also recalls the obligations imposed upon the entity calling a witness as concerns the provision of updated Witness Appearance Lists to the WPSO on the first working day of every month and the information to be contained therein (Decision on witness familiarisation, para. 12).

25. The Parties and Victims' Counsel are given a certain degree of flexibility in deciding whether they wish for witnesses to appear in person or by video-conference. The deference given to the Parties and Victims' Counsel in this regard is always subject to countervailing considerations, including the logistical burdens on the Registry and the Panel's overarching obligation under Article 40(2) of the Law to ensure that the trial is fair and expeditious, with due regard for the protection of victims and witnesses. Furthermore, the requirements of Rule 144(2) of the Rules concerning the need to ensure that the venue chosen for the conduct of the testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness are of utmost importance in case of testimony conducted by video-conference. Consequently, the Panel reserves its right to reassess the mode of testimony chosen by the calling entity and to decide otherwise whenever it considers this necessary.

26. As regards the examination of witnesses away from the trial venue pursuant to Rule 145 of the Rules, the Parties and Victims' Counsel are directed to file any requests for testimony to be conducted under the aforementioned rule at the earliest opportunity, as soon as the witness's inability to appear becomes apparent, so as to allow for the necessary practical arrangements to be made.

2. Order and Mode of Questioning of Witnesses

27. In accordance with Rule 127(3) of the Rules and the Decision on victims' rights: (i) SPO witnesses shall first be examined by the SPO, followed by Victims' Counsel, and then cross-examined by the Defence; (ii) witnesses called by the Panel at the request of Victims' Counsel shall first be examined by Victims' Counsel, then by the SPO, and finally by the Defence; (iii) Defence witnesses shall first be examined by the Defence, then cross-examined by the SPO, and then examined by Victims' Counsel; and (iv) witnesses called by the Panel *proprio motu* shall first be questioned by the

Panel, then by the SPO, followed by Victims' Counsel, and finally by the Defence.²⁶ In accordance with Rule 127(3) of the Rules, the Panel may allow redirect examination as deemed necessary. Moreover, the Panel may at any stage put any question to a witness. Furthermore, before the questioning of a witness, the Presiding Judge may give him or her the possibility to present a free narration of the events he or she has been called to testify about. Such a possibility may also be given to a witness during or after questioning by a Party or Victims' Counsel, at the Presiding Judge's discretion.

28. The examination of witnesses is to be carried out in accordance with Rule 143 of the Rules. The Panel emphasises that questioning must always be conducted in the most efficient manner possible. In accordance with the Presiding Judge's powers under Rule 143(4) of the Rules, where questioning is deemed inefficient, it will be restricted, even if such questioning does not exceed the applicable time estimates. The necessity or propriety of any particular question will be dealt with on a case-by-case basis, noting the Panel's and the Presiding Judge's powers pursuant to Article 40(2) and (6) of the Law and Rule 143(4) of the Rules. Moreover, when resorting to Rule 154 of the Rules, the Panel expects the calling entity to streamline its questioning considerably in light of the fact that this provision allows for the formal submission of the witness's written statement(s) and transcript(s) in lieu of direct examination.

29. Furthermore, all questioning shall be conducted in a focused, precise, and succinct manner. The Parties and Victims' Counsel are strongly encouraged to avoid long and compound questions. They shall, in principle, examine witnesses by way of neutral questioning. Leading and closed questions may only be permissible when they are conducive to the expeditiousness of the proceedings and the determination of the truth, under the control of the Presiding Judge pursuant to Rule 143(4) of the Rules.

30. Any objections raised to a question must be limited to the purposes set out in Rule 143(4) of the Rules. Furthermore, considering the *proprio motu* powers of the

²⁶ Decision on victims' rights, para. 41.

Presiding Judge under the aforementioned rule, the Parties and Victims' Counsel shall raise objections only when absolutely necessary. Any objections must be raised with the Panel at the time a question is asked and be brief and specific, explaining how the objection relates to the purposes set out in Rule 143(4) of the Rules. The entity making an objection has the responsibility to: (i) request going into private or closed session before presenting it, if necessary; and (ii) indicate, before making any substantive submission on its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, so as to provide the Presiding Judge with an opportunity to decide if the matter is best dealt with in the absence of the witness. The Presiding Judge will decide on a case-by-case basis on any objections.

3. Use of Material during the Questioning of a Witness

31. As a general rule, the Parties and Victims' Counsel may only use material which has been disclosed and notified in Legal Workflow during their questioning of a witness. Otherwise, leave of the Panel must be sought by means of an oral or written request indicating why the material to be used was not previously disclosed. The entity intending to use any such previously undisclosed material shall ensure that electronic, searchable copies of such material have been made available to the Panel, the CMU, the SPO, the Defence, and/or Victims' Counsel, as applicable, as soon as possible and in any case prior to their use.

32. When referring to any material during a witness's testimony, the questioning entity shall clearly identify such material by reference to the relevant ERN number, page, and/or paragraph number, as the case may be.

33. As regards the use of speech in audio-visual material during the hearing, the entity intending to use such material shall indicate the ERN number of the

corresponding English language transcript.²⁷ The court interpreters shall be sufficiently informed of which part of the transcript corresponds to which part of the audio-visual material being played. In such situations, the interpreters will read out only the relevant part of the provided English transcript into the record and are not required to directly interpret the audio-visual material. Should the Parties or Victims' Counsel disagree with the accuracy of the transcription read out in court, they may request corrections in accordance with the procedure established in the Registry Instruction on Requesting Translation, Interpretation and Verification Services.²⁸

34. At least five days before the commencement of a witness's testimony, the calling entity shall provide the Panel, the CMU, and the non-calling entities with a list, via email, of any material to be used during its examination of that witness. This list shall also indicate: (i) any passages intended to be used within any document(s) longer than two pages; (ii) whether the calling entity intends to submit the document(s) into evidence; and (iii) the ERN number under which the document(s) can be found in Legal Workflow. This list is solely for notice purposes, and does not constitute the formal submission of any document. Any objections to the use of such material shall be notified within three days, via email, to the Panel and all other entities.

35. At least 24 hours before the commencement of a witness's testimony, the non-calling entities shall provide to the Panel, the CMU, and the other entities, via email, a list of documents they intend to use during their respective questioning of the witness, if any. Any objections to the use of such material shall be notified, via email, to the Panel and all other entities before the end of the examination by the calling entity.

²⁷ KSC-BC-2020-05, F00032, Pre-Trial Judge, *Decision on Working Language*, 8 October 2021, public, paras 17, 19.

²⁸ KSC-BD-14/COR, Registrar, *Registry Instruction on Requesting Translation, Interpretation and Verification Services*, 30 May 2019, public.

4. Submission of Material through a Witness

36. Further to the Decision on admissibility of evidence, the Panel adopts the following procedure for the submission, through a witness, of material into evidence.

37. At the latest on the last working day of each calendar month, the Parties and/or Victims' Counsel, as the case may be, shall submit an application for the admission of any material used during their respective questioning of the witnesses whose testimony was completed within that month and which has not already been submitted to the Panel. Within five days of receipt of the application: (i) the other Party/Parties may respond and present their objections, if any;²⁹ and (ii) Victims' Counsel may submit her observations in this regard, if any, in accordance with the Decision on victims' rights.³⁰ Subsequently, the Panel will proceed pursuant to Rule 138(1) of the Rules, subject to the exclusionary rules set out in the SC legal framework.³¹ As a result, the Panel will, unless it excludes said material, consider all material included in the application as admitted, without rendering a discrete item-by-item ruling, as foreseen in Rule 138(1) of the Rules. This means that the material is available to the Panel for consideration in its judgment. The Panel recalls in this respect the directions provided for in its Decision on admissibility of evidence.³²

38. Lastly, the determinations set forth in paragraphs 37-38 of the Decision on admissibility of evidence concerning the admission of audio-visual material and associated translation(s)/transcript(s), the admission of redacted material, and the admission of lengthy material equally apply to material submitted through a witness.

²⁹ See Rules 9(5), 76, and 138(1), second sentence, of the Rules.

³⁰ See Rule 76 of the Rules; Decision on victims' rights, para. 42.

³¹ See Decision on admissibility of evidence, paras 25-26.

³² See Decision on admissibility of evidence, paras 19, 45.

5. In-Court Protective and Special Measures

39. The Panel recalls that 12 SPO witnesses have been granted in-court protective measures in the present case.³³ Any additional SPO requests for in-court protective measures shall be made no later than 30 days in advance of the witness's expected testimony. Any responses and replies thereto shall follow the time limits set out in Rule 76 of the Rules.

40. The Panel will set deadlines for the filing of any protective measures requests by the Defence and Victims' Counsel for their respective witnesses, as applicable, in due course.

41. With regard to special measures under Rule 80(4)(c) of the Rules, the Panel shall determine the need for any such measures following receipt of WPSO's vulnerability assessment, in accordance with the Decision on witness familiarisation.³⁴

6. Use of Private and/or Closed Session

42. Insofar as possible, witness testimony shall be given in public.³⁵ To this end, to the extent possible, the Parties and Victims' Counsel are directed to group identifying questions together to avoid repeated recourse to private and/or closed session. Requests for private and/or closed session shall be made in a neutral and objective way, if possible, referring to the topics that will be covered. It is the responsibility of the questioning entity to request moving back to public session when the reasons necessitating a private or closed session are no longer present. The aforementioned is

³³ KSC-BC-2020-05, F00041/CONF/RED, *Confidential Redacted Version of First Decision on Specialist Prosecutor's Request for Protective Measures*, 20 October 2020, confidential, para. 39; F00053/CONF/RED, *Confidential Redacted Version of Second Decision on Specialist Prosecutor's Request for Protective Measures*, 24 November 2020, confidential, para. 51.

³⁴ Decision on witness familiarisation, para. 17.

³⁵ Article 21(2) of the Law.

without prejudice to the Panel's assessment during a witness's testimony as to whether private or closed sessions are necessary.

7. In-Court Redactions

43. Requests by the Parties and/or Victims' Counsel made during a hearing to redact part of what was inadvertently said in public session should generally be made via email, so as not to attract undue attention to any confidential information. The email shall be sent to the Panel's email address, copying the Court Officer and representatives of all other entities present in the courtroom.³⁶ The request must clearly identify the word(s) to be redacted and the timestamp(s), page(s), and line number(s) of the real-time transcript. Such requests must be made as soon as possible, and no later than 15 minutes after the information was revealed. The entities present in the courtroom shall have five minutes to object, if they so wish. Subsequently, the Presiding Judge will rule on the request.

44. Should the Parties or Victims' Counsel consider it necessary, they may also request the Panel to go into private session and make an oral request for the issuance of a redaction order.

45. The Parties' and Victims' Counsel's agreement on any redaction is not binding on the Panel and the aforementioned procedures are without prejudice to the Panel's *proprio motu* power to decide on the need for any redactions. Moreover, due to the impracticability of making a detailed assessment during or shortly after a hearing, any applied in-court redactions are also without prejudice to a subsequent revised assessment by the Presiding Judge.

³⁶ The Parties and Victims' Counsel shall consult *inter partes* and inform each other which member(s) of their respective teams shall be copied on such email communication.

8. Self-Incrimination of Witnesses

46. The Parties and Victims' Counsel, as applicable, shall, where foreseeable, give notice about potential requests for assurances pursuant to Rule 151(3) of the Rules. Noting that the trial will commence on Wednesday, 15 September 2021, the Panels sets the deadline for any such requests pertaining to SPO witnesses to Friday, 3 September 2021.

47. The Registry shall make all necessary arrangements for the provision of independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony.³⁷ Unless otherwise ordered by the Panel, Victims' Counsel shall provide such advice for dual status witnesses-victims.³⁸ This is without prejudice to the Panel's assessment of whether assurances pursuant to Rule 151(3) of the Rules will be granted.

48. The counsel advising the witness who may be at risk of self-incrimination shall seize the Panel of any application for assurances under Rule 151(3) of the Rules, if required. The Parties and Victims' Counsel, as applicable, shall be notified of such an application and the SPO shall, within five days, provide its views *ex parte* pursuant to Rule 151(3) of the Rules so as to allow the Panel to rule on the matter before the commencement of the witness's testimony. The advising counsel shall be responsible for informing the witness, *inter alia*, of the provisions of Article 15(2) of the Law and Rule 65 of the Rules.

³⁷ See also Rule 151(4) and (6) of the Rules.

³⁸ See also Decision on witness familiarisation, para. 34.

IV. DISPOSITION

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

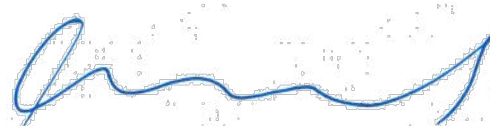
- a. **ADOPTS** the above directions concerning the conduct of the proceedings; and
- b. **INSTRUCTS** the Parties and Victims' Counsel to comply with the deadlines set out above.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 26 August 2021
At The Hague, the Netherlands.