



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 Rapporteur

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 3 September 2021

Language: English

Classification: Public

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

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Registry

Head of Victims' Participation Office

Silke Studzinsky

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel) hereby renders this third 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 referred to in paragraphs 20 and 22 of the Decision.¹ The Panel also ordered the Defence for Salih Mustafa (Mr Mustafa or Accused) and Victims’ Counsel to submit their observations, if any, within ten 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)”, including a number of questions to be addressed by any appointed expert(s) (Victims First Submission).⁴ The Defence did not submit any observations.

4. On 25 June 2021, the Panel issued the “Second decision on the appointment of expert(s)”, ordering the VPO to submit by Wednesday, 21 July 2021, a list of further relevant experts from outside of Kosovo who are available on short notice to prepare

¹ KSC-BC-2020-05, F00124, Trial Panel I, *Decision on the appointment of expert(s)*, 20 May 2021, public, para. 24(a). The filing was notified on 21 May 2021.

² Decision, para. 24(b).

³ KSC-BC-2020-05, F00132, Registrar, *Registry Submission Pursuant to the Decision on the Appointment of Expert(s)*, 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.

the report referred to in paragraphs 20 and 22 of the Decision.⁵ The Panel also ordered the Defence and Victims' Counsel to submit their observations, if any, on the VPO's submissions by Friday, 20 August 2021.⁶

5. On 21 July 2021, the Registrar submitted the "Registry Submission Pursuant to the Second Decision on the Appointment of Expert(s)" (Registry Submission), in which the VPO identified three further relevant experts for the Panel's consideration.⁷

6. On 19 August 2021, Victims' Counsel submitted the "Victims' Counsel Submission on the Second Decision on the appointment of expert(s)" (Victims Second Submission),⁸ including a list of questions for the consideration of the expert(s).⁹ The Defence did not submit any observations.

II. SUBMISSIONS

7. The VPO submits that the task of finding further relevant experts from outside of Kosovo who fulfil the necessary requirements has proven challenging, as only a very limited number of individuals and/or organisations located outside of Kosovo have recent and actual knowledge and experience concerning the Kosovo judicial system.¹⁰ Nevertheless, the VPO succeeded in identifying three further relevant experts for the Panel's consideration, who would be willing and available on short notice to prepare the requested report.¹¹

⁵ KSC-BC-2020-05, F00140/RED, Trial Panel I, *Public redacted version of Second decision on the appointment of expert(s)* (Second Decision), 25 June 2021, public, paras 9-10, 12(a).

⁶ Second Decision, para. 12(b).

⁷ KSC-BC-2020-05, F00157, Registrar, *Registry Submission Pursuant to the Second Decision on the Appointment of Expert(s)*, 21 July 2021, confidential, with Annexes 1-4, confidential and *ex parte*.

⁸ KSC-BC-2020-05, F00166, Victim's Counsel, *Victims' Counsel Submission on the Second Decision on the appointment of expert(s)*, 19 August 2021, public, with Annex 1, public.

⁹ Annex 1 to Victims Second Submission.

¹⁰ Registry Submission, para. 6; Annex 1 to Registry Submission.

¹¹ Registry Submission, para. 7; Annexes 2-4 to Registry Submission.

8. Victims' Counsel submits that any expert report(s) to be produced would have to tackle, *inter alia*, the following issues: (i) socio-legal questions (including questions of corruption, political interference, and dysfunctionality); (ii) access to justice; (iii) issues of anonymity, intimidation, and protection; (iv) questions on the operation of the civil law system (such as evidence, statutes of limitation, appeals, length of proceedings, and (international) legal representation); and (v) international enforcement of judicial decisions, considering that Kosovo lacks judicial cooperation agreements or diplomatic ties in numerous jurisdictions and relevant assets could still be held in such jurisdictions.¹² Considering the number and the complexity of the aforementioned issues, Victims' Counsel submits that reports by more than one expert may be required.¹³

9. With regard to the selection of experts, Victims' Counsel submits that, considering their stated background and experience, the experts referred to in Annexes 2 and 3 to the Registry Submission appear to be best placed to address some of the identified issues.¹⁴

10. Lastly, Victims' Counsel reiterates her previous submission that, considering the victims' fundamental rights to access to justice and to an effective remedy, it would be highly preferable for the Panel to decide on reparations within the present proceedings.¹⁵

¹² Victims Second Submission, paras 8-11; Annex 1 to Victims Second Submission.

¹³ Victims Second Submission, paras 7, 13, 17.

¹⁴ Victims Second Submission, paras 14-17.

¹⁵ Victims Second Submission, para. 18.

III. APPLICABLE LAW

11. The Panel notes Article 22 of Law No. 05/F-053 on Specialist Chambers and Specialist Prosecutor's Office and Rule 167 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers.

IV. ANALYSIS

12. Having considered the background and indicated areas of expertise of the six proposed experts so as ascertain that the experts to be appointed fulfil the requirements set out in the Decision, as well as the benefits of having a multidisciplinary team to ensure the production of a comprehensive report, the Panel appoints the following experts:

- Ms [REDACTED];
- Ms [REDACTED]; and
- Mr [REDACTED].

13. The appointed experts shall provide a report clarifying for the Panel whether the national courts in Kosovo offer a realistic avenue for the victims of the alleged crimes charged in this case to claim reparations and, if reparations would be granted by those courts, to have such judgments enforced.¹⁶ The Panel underlines that the Specialist Prosecutor alleges in this case that Mr Mustafa, together with other members of the Kosovo Liberation Army (KLA), committed war crimes against persons who they detained and accused of having collaborated with the Serbian authorities, and/or not supporting the KLA.¹⁷ The Panel would be interested in knowing whether: (i) victims in similar cases, if any, effectively received compensation after proceedings before

¹⁶ Decision, paras 2, 20.

¹⁷ KSC-BC-2020-05, F00011/A02, Specialist Prosecutor, *Indictment (Confirmed Indictment)*, 19 June 2020, confidential, paras 29, 34-35. A public redacted version of the Confirmed Indictment was filed on 28 September 2020, F00019/A01.

national courts in Kosovo; and (ii) such victims have ever benefitted from restitution from the Victim Compensation Fund referred to in Articles 19(1), section 1.26, and 62(1), section 1.5, of the Kosovo Criminal Procedure Code (KCPC) or from any other relevant compensation programme, including the one established under Law No. 05/L-036 on Crime Victim Compensation.

14. In this context, the appointed experts shall, to the extent possible, answer the questions referred to in: (i) paragraphs 24-26 and 30-36 of the Victims First Submission; and (ii) Annex 1 to the Victims Second Submission.

15. In addition, in the event that the Panel would decide not to refer the victims to civil litigation in Kosovo, but the Accused, if convicted, would be unable to pay any reparations ordered by the Panel, the appointed experts shall, to the extent possible, answer the following questions:

- Whether, under the relevant legal framework, victims of crimes under the jurisdiction of the Specialist Chambers could benefit from restitution from the Victim Compensation Fund referred to in Articles 19(1), section 1.26, and 62(1), section 1.5, of the KCPC, or from any other relevant compensation programme, including the one established under Law No. 05/L-036 on Crime Victim Compensation;
- Whether victims of crimes under the jurisdiction of the Specialist Chambers could benefit from restitution from the aforementioned Victim Compensation Fund or from any other relevant compensation programme whilst remaining anonymous; and
- Whether, in order to preserve the victims' anonymity, the Registrar could apply for restitution from the aforementioned Victim Compensation Fund or from any other relevant compensation programme on the victims' behalf.

16. In drafting their report, the appointed experts may communicate with the Specialist Prosecutor's Office, the Defence, Victims' Counsel, and the VPO and seek their views. The experts should endeavour to submit a joint report. This report may contain sections on some of the questions identified by the Panel that are authored only by one or by some of the experts. Furthermore, also noting that some of the questions included in the Victims First Submission and the Victims Second Submission are overlapping, the experts may organize and group the questions to be addressed how they best see fit.

17. The appointed experts should submit their report to the Panel by Monday, 22 November 2021. The report should be notified to the Defence, Victims' Counsel, and the VPO. Should the experts consider that any part(s) of the report are to remain confidential, a public redacted version of the report is to be filed on the same day. The Defence and Victims' Counsel may make submissions on the report within two weeks of its notification.

18. The Registry shall provide the appointed experts with all the reasonable logistical and security assistance required to facilitate the efficient drafting of their report, including facilitating communication among the experts. Should the experts request access to any filings or evidence disclosed in the present case, the Registry shall facilitate such access, in the version available to the Defence.

V. DISPOSITION

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

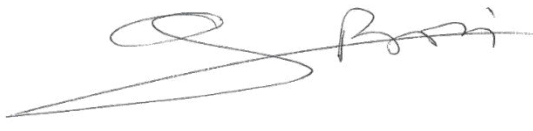
- a. **APPOINTS** the persons referred to in paragraph 12 of the present decision as experts in the present case;
- b. **INSTRUCTS** the Registry to transmit the present decision, the Victims First Submission, and the Victims Second Submission (including its annex)

to the appointed experts as well as to provide them with all the reasonable logistical and security assistance required;

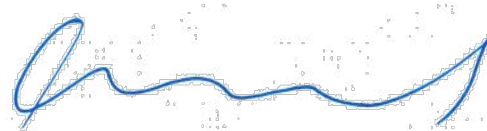
- c. **INSTRUCTS** the appointed experts to submit their report on the topics referred to in paragraphs 13 to 15 of the present decision by **Monday, 22 November 2021**, and the Defence and Victims' Counsel to make submissions on the report, if they so wish, **within two weeks of the notification of the report**; and
- d. **ORDERS** the Registrar to file a public redacted version of the Registry Submission (main filing only, excluding annexes), **within one week of the issuance of the present decision**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 3 September 2021
At The Hague, the Netherlands.