



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: 28 March 2022

Language: English

Classification: **Public**

**Decision on Victims' Counsel's request for authorisation to share information
with medical experts**

To be notified to:

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Julius von Bóné

Registry
Head of Witnesses Protection and
Support Office

Victims' Counsel
Anni Pues

TRIAL PANEL I (Panel) hereby renders this decision on Victims' Counsel's request for authorisation to share information with medical experts.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 21 March 2022, the Panel appointed the Instituut voor Mensenrechten en Medisch onderzoek (iMMO) to assess the psychiatric condition and to medically assess the physical and psychological damage and injuries suffered by Victims 08/05, 09/05, and 10/05, as a result of the alleged torture, cruel treatment, and arbitrary detention to which they were subjected, and to prepare a report accordingly, by 13 May 2022.¹

2. On 23 March 2022, the Panel received the "Victims' Counsel's request for authorisation to share information with medical experts" (Request),² in which Victims' Counsel requested the Panel's authorisation to share, with the appointed medical experts, all statements made by Victims 08/05, 09/05 and 10/05 throughout the investigation, as well as the transcripts of their statements before this Panel made in public or private sessions.³

3. On 24 March 2022, the Panel shortened the time limits for responses established in Rule 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules) and ordered the Specialist Prosecutor's Office (SPO) and the Defence to respond to the Request, if they so wished, by Friday 25 March 2022.⁴

4. The SPO and the Defence did not file any response.

¹ KSC-BC-2020-05, Transcript of Hearing, 21 March 2022, public, p. 2533, line 12 to p. 2534, line 4.

² KSC-BC-2020-05, F00362, Victims' Counsel, *Victims' Counsel's request for authorisation to share information with medical experts*, 23 March 2022, public.

³ Request, para. 4.

⁴ Email sent from the Panel to the Parties and Victims' Counsel through the Court Management Unit dated 24 March 2022, at 16:11.

II. APPLICABLE LAW

5. The Panel notes Articles 23(1) and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rule 81 of the Rules.

III. ANALYSIS

6. The Panel recalls that Victims 08/05, 09/05 and 10/05 benefit from protective measures in the present proceedings, on the basis that disclosure of their identity and any identifying information to the public poses an objectively justifiable risk to these victims.⁵

7. Against this background, the Panel considers that the Request is essentially a motion for variation of protective measures under Rule 81 of the Rules.

8. Pursuant to Rule 81(5) of the Rules, the Panel shall ensure through the Witness Protection and Support Office that the protected person has given consent to the variation of protective measures. The Panel considers that such consent may be sought also through the legal representative of the person(s) concerned, in the present case Victims' Counsel, in conformity with Rule 114(1) of the Rules.

9. The Panel notes, however, that Victims 08/05, 09/05 and 10/05's consent to the variation of the protective measures has not been formally submitted by Victims' Counsel, nor did she indicate whether any or all victims have waived, in whole or in part, their protective measures in accordance with Rule 81(6) of the Rules. In this regard, the Panel reminds Victims' Counsel to adhere to the procedures set out in Rule 81 of the Rules for any future request of this kind.

10. Turning to the content of the Request, the Panel considers that there is no risk for Victims 08/05, 09/05 and 10/05, as the release of the information sought by Victims'

⁵ KSC-BC-2020-05, F00105, Pre-Trial Judge, *Second Decision on Victims' Participation*, 30 April 2021, confidential, para. 54(e)-(f). A public redacted version was filed on the same day, F00105/RED; F00126, Trial Panel I, *Third decision on victims' participation*, 21 May 2021, confidential, para. 42(d)-(e). A public redacted version was filed on the same day, F00126/RED.

Counsel would take place in the context of a professional medical assessment undertaken by an independent and well-established institute, which shall operate on the basis of the confidentiality between doctor and patient and the do-no-harm principle.⁶

11. Having considered the above, and subject to prior notification, through a filing, that Victims' Counsel received the informed consent of Victims 08/05, 09/05 and 10/05 to the variation of the protective measures, the Panel authorizes Victims' Counsel to share with the appointed medical experts: (a) all statements made by Victims 08/05, 09/05 and 10/05 and disclosed in Case KSC-BC-2020-05; and (b) the transcripts of their statements before the Panel, made both in public and private/closed sessions.

12. Furthermore, the Panel reminds Victims' Counsel to inform the appointed medical experts that the information concerned is confidential and shall be treated accordingly.

⁶ United Nations Office of the High Commissioner for Human Rights, [Istanbul Protocol: Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment](#), 9 August 1999, paras 57, 65.


IV. DISPOSITION

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

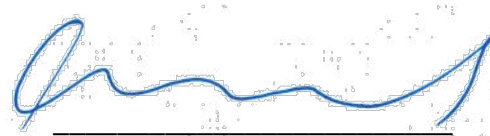
- a. **GRANTS** the Request as specified in paragraphs 11-12 of the present decision; and
- b. **DIRECTS** Victims' Counsel to inform the appointed medical experts that the information disclosed remains confidential and shall be treated accordingly.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 28 March 2022

At The Hague, the Netherlands.