

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: Dr Fidelma Donlon

Filed by: Dr Anni Pues, Victims' Counsel

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**Victims' Counsel submissions on an expert for the calculation of material
damages**

Specialist Prosecutor's Office

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Victims' Counsel

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I. INTRODUCTION

1. Victims' Counsel hereby offers further submissions on the subject of damages incurred by the victims as a result of the facts alleged in the indictment. She proposes an expert on the calculation of material (pecuniary) damages as ordered by the Trial Panel (hereafter: Panel) in its Oral Order of 23 March 2022.

II. PROCEDURAL HISTORY

2. On 4 February 2022, the Panel rendered its 'Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information'. In paragraph 40 of that decision, the Panel held that in case of a conviction, it will issue a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law. In paragraph 50(c), it offered Victims' Counsel the opportunity to supplement her earlier submissions,¹ with any further proposed (expert) witnesses and relevant non-oral material pertaining to reparations she wishes to present, if any, including, as applicable, the information set out in paragraphs 34-35 of the Decision on Victims' Rights of 12 July 2021.²
3. During the court hearing on 21 March 2022, Victims' Counsel indicated that she would in due course file a submission on compensation, more particularly how it should – in her view – be calculated or estimated in case of a

¹ Namely KSC-BC-2020-05, F00297/RED, Public Redacted Version of *Victims' Counsel request pursuant to the Second decision on the conduct of the proceedings dated 21 January 2022*, 24 January 2022.

² KSC-BC-2020-05-F00152, Trial Panel, *Decision on victim's procedural rights during trial*, 12 July 2021, public, ("Decision on Victims' Rights"), para 34-35. Submissions ordered were: [para 34] list of proposed (expert) witnesses to be called by the Panel, and specification of the extent to which the testimonies of expertise of the proposed witnesses relate to the personal interests and rights of the victims, i.e., the establishment of the truth and/or reparations; and [para 35] indication of whether Victims' Counsel wishes the Panel to order the submission of relevant non-oral evidence relating to the victims' personal interests and rights and a list of such proposed material, indicating whether it relates to the establishment of the truth and/or reparations and necessary redactions (if applicable).

conviction.³ With regard to the material damages, Victims' Counsel indicated that she intended to request that Panel appoints an expert to calculate the extent of those material damages.⁴

4. Taking note of the submissions made by Victims' Counsel on the subject, the Panel issued an Oral Order on 23 March 2022 in which it requested Victims' Counsel to propose, by 22 April 2022, one or more experts in order to assist it in assessing the financial compensation for the material damage allegedly suffered by the direct victims.

III. APPLICABLE LAW

5. In accordance with Article 22(8) of the Law on Specialist Chambers and Specialist Prosecutor's Office, in the event that a Trial Panel or Court of Appeals Panel of the Specialist Chambers adjudges an accused guilty of a crime, it may make an order directly against that accused specifying appropriate reparation to, or in respect of, victims collectively or individually.
6. According to Article 44(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office, the Specialist Chambers may, in addition to imprisonment, "order only the convicted person to make restitution or pay compensation to a Victim or to Victims collectively, or may order the forfeiture of property, proceeds and any assets used for or deriving from the commission of the crime and their return to their rightful owner or sale and share between Victims under Article 22."
7. Rule 168 provides that in the event a Reparations Order is made against a convicted person,⁵ the Panel "may appoint experts to assist it in determining the scope of any damages to, or in respect of victims and to suggest options

³ KSC-BC-2020-05 Transcript of court hearing of 21 March 2022, p. 2544, line 2 and following.

⁴ KSC-BC-2020-05 Transcript of court hearing of 21 March 2022, p. 2544, line 8 and following.

⁵ Pursuant to Article 22(8) of the Law.

concerning appropriate individual or collective reparations from the convicted person". It also states that the Panel "may invite Victims' Counsel and the convicted person to make observations on expert reports".

IV. SUBMISSIONS

8. As ordered, Victims' Counsel has conducted research internationally in identifying a suitable expert and consulted her own network in order to propose a suitable expert capable of calculating the material damages of the direct victims. Victims' Counsel emphasises that such an expert requires a highly specific expertise. As different jurisdictions have diverse approaches as to how to determine material damages, not many experts could be identified as suitable.
9. She hereby proposes that the Panel appoints Mr. Stefan Lerz from the *Nederlands Rekencentrum Letselschade* (hereafter: NRL); the name of this center is best translated as the 'Dutch Center for the Calculation of Damages as a result of Personal Injury')
10. The NRL is an independent expertise center with extensive experience in calculating pecuniary damages suffered as a result of personal injury or death.
11. Over the years it has conducted work in a diverse range of cases, including nearly all the (national) courts in the Netherlands, hundreds of law firms, dozens of (non-governmental) organizations, and insurance companies.⁶ Though the NRL is itself located in the Netherlands, its expertise is not limited to the Dutch context. It has e.g. calculated the loss of income of individuals that incurred their injuries in various countries, including in or after situations of armed conflict. The NRL draws upon a wide network of its own, in order to establish the base figures for its calculations.

⁶ As indicated on the center's website, <https://www.nrl.nl>.

12. Dr. Stefan Lerz of the NRL is an expert in the calculation of income losses of injured parties, and has worked in the field professionally for over 20 years. He has informed Victims' Counsel that he has the expertise to calculate the material damages among others in the form of income loss, suffered by the direct victims in this case, drawing also on the sources and network available to him through the NRL.

V. RELIEF REQUESTED

13. Victims' Counsel requests that the Trial Panel:
- Appoints Dr. Stefan Lerz of the NRL as expert to calculate the material damages suffered by the direct victims.

Word count: 1038



Anni Pues

Victims' Counsel

21 April 2022

At The Hague, the Netherlands