



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: 06 May 2022

Language: English

Classification: Public

Public redacted version of
Decision on extension of time limit for submission of medical reports and
requesting further observations

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel) hereby renders this decision on extension of time limit for submission of medical reports and requesting further observations.

I. PROCEDURAL BACKGROUND

1. On 21 March 2022, upon Victims' Counsel's request,¹ 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 medical report accordingly, by 13 May 2022.²

2. On 31 March 2022, Victims' Counsel submitted the "Victims' Counsel report pursuant to the Oral Order of 21 March 2022", in which she informed the Panel, *inter alia*, that iMMO scheduled the examinations of Victims 08/05 and 09/05 for April 2022 and that it was not be feasible to carry out an in-person examination of Victim 10/05 [REDACTED].³

3. On 11 April 2022, the Panel ordered Victims' Counsel to inform the Panel on how she envisages to proceed, should it not be possible for iMMO to examine all three victims in time for the report due on 13 May 2022.⁴

¹ KSC-BC-2020-05, F00297, Victims' Counsel, *Victims' Counsel request pursuant to the Second decision on the conduct of the proceedings dated 21 January 2022*, 24 January 2022, confidential, para. 31(a). A public redacted version was filed on the same day, F00297/RED.

² KSC-BC-2020-05, Transcript of Hearing, 21 March 2022, public, p. 2533, line 12 to p. 2534, line 4.

³ [REDACTED].

⁴ KSC-BC-2020-05, Transcript of Hearing, 11 April 2022, confidential, p. 3405, lines 3 – 9.

4. On 28 April 2022, Victims' Counsel submitted the "Victims' Counsel second report pursuant to the Oral Order of 21 March 2022 and response to the Oral Order of 11 April 2022" (Request).⁵

II. SUBMISSIONS

5. Victims' Counsel submits that the examinations of Victims 08/05 and 09/05 were conducted on 6 and 20 April 2022 respectively and that the medical reports will be finalised by 13 and 10 May 2022 respectively.⁶ Victims' Counsel further indicates that, before the medical reports can be submitted to the Panel, a number of additional steps are still required, namely: (i) the medical reports will need to be translated from Dutch into English and, due to the expected length of such reports, the translation services will require four full working days; (ii) Victims' Counsel is required to hold meetings with both victims to inform them of the content of their respective medical reports and provide them with the opportunity for fact-checking; and (iii) Victims' Counsel will subsequently report back to iMMO in order for the medical reports to be finalised for submission.⁷ In light of the foregoing, Victims' Counsel requests the Panel, on behalf of iMMO, to extend the time limit set by the Panel for the delivery of the medical reports of Victims 08/05 and 09/05 by 12 days.⁸

6. Victim's Counsel further submits that [REDACTED] and that the iMMO Director and experts agree that [REDACTED].⁹ She adds that, for the foreseeable future, [REDACTED]. For this reason, she withdraws her request for the medical examination of Victim 10/05.¹⁰

⁵ KSC-BC-2020-05, F00398, Victims' Counsel, *Victims' Counsel second report pursuant to the Oral Order of 21 March 2022 and response to the Oral Order of 11 April 2022, 28 April 2022*, confidential.

⁶ Request, paras 2–3.

⁷ Request, para. 4.

⁸ Request, para. 11(a).

⁹ Request, paras 7–8.

¹⁰ Request, paras 9, 11(b).

III. APPLICABLE LAW

7. The Panel notes Articles 22(3) and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rule 9(5) and (6) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

IV. ANALYSIS

A. REQUEST FOR EXTENSION OF TIME LIMIT

8. Considering that the requested extension will cause no delay in the proceedings, and noting that either Party will have the possibility to make submissions on the reports, if they so wish, the Panel notes that no prejudice is caused in ruling on the Request prior to receiving their responses to the Request, in accordance with Rule 9(6) of the Rules.

9. The Panel considered the reasons put forward by Victims' Counsel, on behalf of iMMO, in her request for an extension of the time limit to submit the medical reports, in particular the further necessary steps before the medical reports can be submitted to the Panel, including their translation into English. Noting the relatively limited additional time requested (12 days) to finalise the reports for submission, the Panel finds that good cause has been demonstrated, warranting the requested extension of time limit.

B. REQUEST TO WITHDRAW THE ORDER TO EXAMINE VICTIM 10/05

10. The Panel notes the Victims' Counsel's submissions relating to Victim 10/05. [REDACTED]. As such, the Panel withdraws the order to assess the psychiatric condition and to medically assess the physical and psychological damage and injuries suffered by Victim 10/05.

11. The Panel nevertheless considers that such a practical impediment should not preclude Victim 10/05 from enjoying the rights as recognized under Article 22(3) of the Law. It therefore requests Victims' Counsel to submit further observations on how she envisages to assess the psychiatric condition and to medically assess the physical and psychological damage and injuries allegedly suffered by Victim 10/05 under the current circumstances.

12. The Panel further requests Victims' Counsel to submit further observations on how she intends to proceed in order to assess the financial compensation for the damage allegedly suffered by indirect victims. On this point, the Panel recalls that it is incumbent on Victims' Counsel to present any evidence, including expert evidence, concerning the victims' reparations claims.¹¹ Such assessment is without prejudice to the final determination of the Panel as to the guilt of the accused and to any reparation order that may stem therefrom.

¹¹ KSC-BC-2020-05, F00152, Trial Panel I, *Decision on victims' procedural rights during trial*, 12 July 2021, public, para. 36.

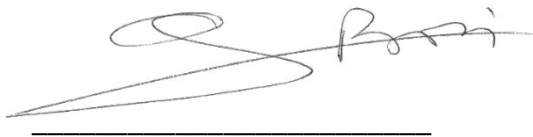
V. DISPOSITION

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

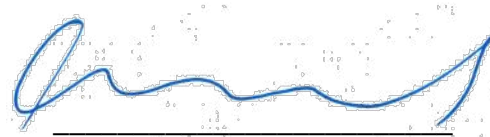
- a. **GRANTS** Victims' Counsel's Request as specified in paragraphs 9 and 10 of the present decision;
- b. **ORDERS** Victims' Counsel to submit further observations as specified in paragraphs 11-12 of the present decision by **Monday, 23 May 2022**; and
- c. **ORDERS** Victims' Counsel to file a public redacted version of Filing F00398 by **Monday, 23 May 2022**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 06 May 2022
At The Hague, the Netherlands.