



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:** 1 June 2022

**Language:** English

**Classification:** Public

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**Decision appointing a financial expert and setting out further procedural steps  
with regard to reparation proceedings**

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**To be notified to:**

**Specialist Prosecutor**  
Jack Smith

**Counsel for the Accused**  
Julius von Bóné

**Registry**  
Fidelma Donlon

**Victims' Counsel**  
Anni Pues

**Others**  
Stefan Lerz

**TRIAL PANEL I** (Panel) hereby renders this decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings.

## I. PROCEDURAL BACKGROUND

1. On 21 April 2022, upon order of the Panel,<sup>1</sup> Victims' Counsel submitted the "Victims' Counsel submissions on an expert for the calculation of material damages" (Request).<sup>2</sup>
2. On 25 April 2022, upon order of the Panel,<sup>3</sup> Victims Counsel submitted the curriculum vitae of the proposed expert (Curriculum Vitae).<sup>4</sup>
3. On 23 May 2022, upon order of the Panel,<sup>5</sup> Victims' Counsel submitted the "Victims' Counsel further observations on reparations matters" (Further Observations).<sup>6</sup>
4. The Defence of Salih Mustafa (Defence) did not file any response.

## II. SUBMISSIONS

5. Victims' Counsel requests the Panel to appoint Mr Stefan Lerz (Mr Lerz) from the *Nederlands Rekencentrum Letselschade* (NRL) as expert to calculate the material damages suffered by the alleged direct victims in the present case.<sup>7</sup> Victims' Counsel submits that the NRL is an independent expertise centre with extensive experience in

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<sup>1</sup> KSC-BC-2020-05, Transcript of Hearing, 23 March 2022, public, p. 2601, line 20 to p. 2602, line 7.

<sup>2</sup> KSC-BC-2020, F00392, Victims' Counsel, *Victims' Counsel submissions on an expert for the calculation of material damages*, 21 April 2022, public.

<sup>3</sup> KSC-BC-2020, Transcript of Hearing, 22 April 2022, public, p. 3, lines 1-5.

<sup>4</sup> KSC-BC-2020, F00397, Victims' Counsel, *Victims' Counsel submission of the CV of the proposed expert, pursuant to the Trial Panel's Order of 22 April 2022*, 25 April 2022, public, with Annex 1, public.

<sup>5</sup> KSC-BC-2020-05, Transcript of Hearing, 12 May 2022, public, p. 4287, lines 2-22.

<sup>6</sup> KSC-BC-2020-05, F00415, Victims' Counsel, *Victims' Counsel further observations on reparation matters*, 23 May 2022, confidential.

<sup>7</sup> Request, para. 13.

calculating pecuniary damages suffered as a result of personal injury or death.<sup>8</sup> Victims' Counsel further submits that the NRL has worked in various countries, including in or after situations of armed conflict.<sup>9</sup> As to Mr Lerz, Victims' Counsel submits that he has worked as an expert in the field of calculation of income losses of injured parties for over 20 years.<sup>10</sup> Lastly, Victims' Counsel indicated that the expert can deliver the report within 3-4 weeks.<sup>11</sup>

### III. APPLICABLE LAW

6. The Panel notes Articles 22(1) and (3) and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rule 168 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

### IV. ANALYSIS

7. Having reviewed the expertise and credentials of the proposed expert, as adequately demonstrated by his Curriculum Vitae, the Panel decides to appoint Mr Lerz with the mandate to calculate the material damages and economic loss suffered by the alleged direct victims in the present case (Victims 08/05, 09/05 and 10/05) and to submit a report thereupon (Report). Mr Lerz shall submit the Report by Thursday, 23 June 2022, in English, with redactions to protect confidential information, if necessary. In this case the Panel and Victims' Counsel shall also receive an unredacted copy of the Report.

8. The Panel finds it appropriate to share with Mr Lerz certain legal parameters that may be pertinent for the elaboration of the Report. It recalls that the harm must have

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<sup>8</sup> Request, para. 10.

<sup>9</sup> Request, para. 11.

<sup>10</sup> Request, para. 12.

<sup>11</sup> Further Observations, paras 27-28.

been suffered personally by the victim, *i.e.* the victim's physical or psychological well-being or economic situation must be affected.<sup>12</sup> Consequently, a direct victim is a person who suffered harm from the acts of the perpetrator(s).<sup>13</sup> The Law identifies three types of harm (physical, mental and material)<sup>14</sup> of which only the material harm is relevant for the Report. Material harm has been defined as relating to any kind of property or pecuniary damage loss, such as destruction, damage or theft of personal property, loss of income or of means of subsistence, or other forms of economic loss.<sup>15</sup> The property or pecuniary damage or loss must have a significant impact on the victim's livelihood.<sup>16</sup> Lastly, as regards causality, the Panel has held that the harm is the direct result of the crime, where in the circumstances prevailing at the relevant place and time and taking in consideration the personal situation of the victim, the acts or omissions of the perpetrator(s) would most likely bring about that harm, as viewed by an objective observer.<sup>17</sup>

9. With a view to preparing the Report, the Panel further considers it appropriate for Mr Lerz to have access, on condition of confidentiality, to the medical reports from the *Instituut voor Mensenrechten en Medisch onderzoek* (iMMO) pertaining to victims 08/05 and 09/05<sup>18</sup> as well as to the entire transcript of the testimony of victim 10/05 in unredacted form.<sup>19</sup> To this effect, the Panel orders the Registry and Victims' Counsel to facilitate such access by Mr Lerz

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<sup>12</sup> KSC-BC-2020-05, F00126/RED, Trial Panel, *Public redacted version of Third Decision on victims' participation* (Third Victims' Decision), 21 May 2022, public, para. 18; F00105/RED, Pre-Trial Judge, *Public Redacted Version of Second Decision on Victims' Participation* (Second Victims' Decision), public, para. 32.

<sup>13</sup> Third Victims' Decision, para. 18; Second Victims' Decision, para. 32.

<sup>14</sup> Article 22 (1) of the Law; Third Victims' Decision, para. 19; Second Victims' Decision, para. 33.

<sup>15</sup> Third Victims' Decision, para. 22; Second Victims' Decision, para. 36.

<sup>16</sup> Third Victims' Decision, para. 22; Second Victims' Decision, para. 36.

<sup>17</sup> Third Victims' Decision, para. 23; Second Victims' Decision, para. 37.

<sup>18</sup> KSC-BC-2020-05, F00417, Victims' Counsel, *Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, public, with two strictly confidential Annexes 1-2.

<sup>19</sup> KSC-BC-2020-05, Transcript of Hearing, 20 September 2021, confidential; Transcript of Hearing, 21 September 2021, confidential; Transcript of Hearing, 22 September 2021, confidential; Transcript of Hearing, 23 September 2021, confidential, pp. 672-702.

10. The Panel underlines that, contrary to criminal proceedings (regarding the guilt or innocence of the Accused), reparation proceedings should be predominantly in writing. As the Panel appoints Mr Lerz solely within the framework of the reparation proceedings in the present case, the Panel considers that Rule 168 of the Rules applies as *lex specialis* compared to Rule 149 of the Rules.<sup>20</sup> Rule 168 of the Rules stipulates that the Panel may invite Victims' Counsel and the Defence to make observations on expert reports. Thus, the Rules express a preference to receive and assess expert evidence in the context of reparation proceedings in writing.

11. Therefore, upon submission of the Report, Victims' Counsel shall have seven (7) days to make observations on the Report itself as well as to formulate her request(s) in terms of reparations for the mental harm allegedly suffered by each of the indirect victims and for the physical, mental and/or material harm allegedly suffered by each of the direct victims she represents.<sup>21</sup> The Defence may, if it so wishes, respond to such observations as well as the request(s) formulated by Victims' Counsel within seven (7) days therefrom. The Panel clarifies that the Specialist Prosecutor's Office is not considered to be a party or a participant to the reparation proceedings, and accordingly is not requested to file observations on these matters.

12. Finally, the Panel stresses that the appointment of Mr Lerz is without prejudice to the final determination by the Panel as to the guilt or innocence of the Accused, and to any reparation order that may stem therefrom.

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<sup>20</sup> Rule 149 of the Rules governs expert evidence in the context of criminal proceedings and foresees the possibility for the expert(s) to testify and be cross-examined.

<sup>21</sup> See KSC-BC-2020-05, F00415, Victims' Counsel, *Victims' Counsel further observations on reparation matters*, 23 May 2022, confidential, para. 30.

## V. DISPOSITION

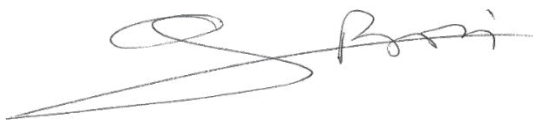
13. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** the Request;
- b. **APPOINTS** Mr Stefan Lerz as expert with the mandate specified in paragraph 7 above;
- c. **ORDERS** Mr Stefan Lerz to prepare and submit a report in English in accordance with his mandate by **Thursday, 23 June 2022**;
- d. **ORDERS** Victims' Counsel and the Registry to facilitate access by Mr Stefan Lerz to the material mentioned in paragraph 9 above;
- e. **ORDERS** Victims' Counsel to provide observations and formulate requests in accordance with paragraph 11 above; and
- f. **ORDERS** the Defence, if it so wishes, to provide observations in accordance with paragraph 11 above.



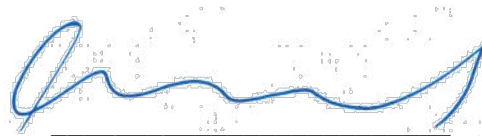
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**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



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**Judge Gilbert Bitti**



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**Judge Roland Dekkers**

Dated this Wednesday, 1 June 2022

At The Hague, the Netherlands.