



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 3 June 2022

Language: English

Classification: **Public**

Public redacted version of

**Decision under Rules 132 and 149 of the Rules of Procedure and Evidence Before
the Kosovo Specialist Chambers on evidence called by the Panel**

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 under Rules 132 and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules) on evidence called by the Panel.

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 [REDACTED] and to prepare a medical report accordingly.²

2. On 28 April 2022, Victims' Counsel informed the Panel that it was not possible to conduct the examination of Victim 10/05 any time soon [REDACTED] and, accordingly, withdrew her request in relation to him.³

3. On 20 May 2022, the Panel issued two orders for the production of evidence [REDACTED] and instructed the Specialist Prosecutor's Office (SPO) to serve and execute the orders (Orders for the Production of Evidence).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, paras 23-26, 31(a). A public redacted version was filed on the same day, F00297/RED. No responses were filed by the Specialist Prosecutor or the Defence for Salih Mustafa.

² KSC-BC-2020-05, Transcript of Hearing, 21 March 2022, public, p. 2532, line 11 to p. 2534, line 4; *see further* Transcript of Hearing, 9 March 2022, public, p. 2519, line 18 to p. 2521, line 24.

³ 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, paras 7-9, 11(b). A public redacted version was filed on 21 May 2022, F00398/RED.

⁴ KSC-BC-2020-05, F00412, Trial Panel I, *Order for the production of evidence* [REDACTED], 20 May 2022, strictly confidential and *ex parte*; F00413, Trial Panel I, *Order for the production of evidence* [REDACTED], 20 May 2022, strictly confidential and *ex parte*. Confidential redacted versions will be issued in due course.

4. On 24 May 2022, Victims' Counsel submitted the medical reports prepared by iMMO in relation to Victims 08/05 and 09/05 (iMMO Expert Reports).⁵ The Panel has received no notice from the Parties within the time limit provided for in Rule 149(2) of the Rules, challenging either the qualifications of the iMMO expert witnesses or their reports, or indicating that they wished to examine the iMMO expert witnesses.
5. On 2 June 2022, the SPO reported on the execution of the Orders for the Production of Evidence.⁶

II. APPLICABLE LAW

6. The Panel notes Article 40(6)(e) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 9(5)(a), 132 and 149 of the Rules.
7. The Panel recalls its previous ruling that, following the submission of the expert reports, the procedure laid down in Rule 149(2)-(5) of the Rules shall apply.⁷ Rule 149(3) of the Rules provides that, "[i]f the opposing Party accepts the expert witness report or parts thereof, the latter may be admitted into evidence by the Panel without calling the expert witness to testify in person".

⁵ KSC-BC-2020-05, F00417, Victims' Counsel, *Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, public, with Annexes 1 and 2, strictly confidential.

⁶ KSC-BC-2020-05, F00427, Specialist Prosecutor, *Prosecution report pursuant to Order KSC-BC-2020-05/F00412*, strictly confidential and *ex parte*, with Annexes 1-4, strictly confidential and *ex parte*; F00428, Specialist Prosecutor, *Prosecution report pursuant to Order KSC-BC-2020-05/F00413*, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁷ KSC-BC-2020-05, Transcript of Hearing, 9 March 2022, public, p. 2521, lines 16-18.

III. ANALYSIS

A. IMMO EXPERT REPORTS

8. The Panel notes that Victims 08/05 and 09/05 have dual status as victims and witnesses in the present case [REDACTED] and have testified before the Panel regarding [REDACTED].⁸ The iMMO Expert Reports provide a forensic medical (physical and psychological) assessment of the extent to which the medical symptoms displayed by Victims 08/05 and 09/05 correspond to their account of the events.⁹ The experts have gathered information about the victims' physical and mental health [REDACTED] and conducted a physical, psychiatric and psychodiagnostic examination to further investigate the alleged symptoms by looking for objective evidence.¹⁰ The Panel considers, in light of the above, that the iMMO Expert Reports are necessary for the determination of the truth in the present case and decides to call them into evidence under Rule 132 of the Rules.

9. The Panel notes that the Parties have not filed any notice under Rule 149(2) of the Rules within the time-limit provided in that rule, challenging the qualifications of the experts or their reports, and have not expressed a wish to cross-examine the experts. Accordingly, pursuant to Rule 149(3) of the Rules, the Panel may admit the iMMO Expert Reports into evidence without calling the experts to testify. Pursuant to the Panel's "Decision on the submission and the admissibility of evidence", the Panel dispenses with rendering a discrete ruling on admissibility and considers the iMMO

⁸ [REDACTED].

⁹ KSC-BC-2020-05, F00417/A01, Victims' Counsel, *Annex 1 to Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, strictly confidential, p. 2; F00417/A02, *Annex 2 to Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, strictly confidential, p. 2.

¹⁰ KSC-BC-2020-05, F00417/A01, Victims' Counsel, *Annex 1 to Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, strictly confidential, pp. 8, 11-17; F00417/A02, *Annex 2 to Victims' Counsel's Submission of medical reports pertaining to Victims 08/05 and 09/05*, 24 May 2022, strictly confidential, pp. 8, 11-17.

Expert Reports to be available to the Panel for the purpose of its deliberations for the judgment on the guilt or innocence of the Accused.¹¹

B. MATERIAL CONCERNING [REDACTED] AND [REDACTED]

10. In its Orders for the Production of Evidence, the Panel ordered [REDACTED],¹² and [REDACTED], both referred to during the witnesses' respective testimonies.¹³ These orders were rendered without prejudice to the Panel's determination as to whether or not to ultimately call such evidence under Rule 132 of the Rules. [REDACTED].¹⁴

11. Having assessed the material, the Panel has decided not to call either [REDACTED] or [REDACTED] into evidence. This is without prejudice to any request from the Parties to tender into evidence (parts of) the material.

12. Lastly, the Panel orders the SPO to file any request to present additional evidence in rebuttal following the evidence called by the Panel, if it so wishes, by **Tuesday, 7 June 2022**. The Panel considers it appropriate to shorten the deadline for responses to such request, pursuant to Rule 9(5)(a) of the Rules, to **Thursday, 9 June 2022**. In addition, the Panel orders the Defence to file its request to present evidence in rejoinder, including in relation to the iMMO Expert Reports, if any, by **Thursday, 9 June 2022**, and shortens the deadline for responses to such request, pursuant to Rule 9(5)(a) of the Rules, to **Monday, 13 June 2022**.

¹¹ KSC-BC-2020-05, F00169, Trial Panel I, *Decision on the submission and the admissibility of evidence*, 25 August 2021, public, paras 21, 24.

¹² KSC-BC-2020-05, F00413, Trial Panel I, *Order for the production of evidence* [REDACTED], 20 May 2022, strictly confidential and *ex parte*, para. 4.

¹³ KSC-BC-2020-05, F00412, Trial Panel I, *Order for the production of evidence* [REDACTED], 20 May 2022, strictly confidential and *ex parte*, para. 4.

¹⁴ [REDACTED]; KSC-BC-2020-05, F00427, Specialist Prosecutor, *Prosecution report pursuant to Order KSC-BC-2020-05/F00412*, strictly confidential and *ex parte*, with Annexes 1-4, strictly confidential and *ex parte*; F00428, Specialist Prosecutor, *Prosecution report pursuant to Order KSC-BC-2020-05/F00413*, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

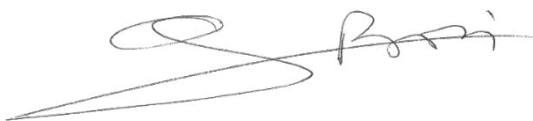
IV. DISPOSITION

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

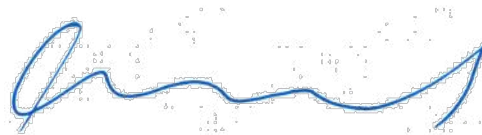
- a. **DECIDES** to call the iMMO Expert Reports (F00417/A01 and F00417/A02) into evidence;
- b. **ORDERS** the Registrar to assign exhibit numbers to the iMMO Expert Reports and to classify them as confidential;
- c. **ORDERS** the SPO to file confidential redacted versions of filings F00427 and F00428, without their annexes, or request reclassification, by **Wednesday, 8 June 2022**;
- d. **ORDERS** the SPO to file any request to present additional evidence in rebuttal following the evidence called by the Panel, if it so wishes, by **Tuesday, 7 June 2022**, with responses to be filed by **Thursday, 9 June 2022**; and
- e. **ORDERS** the Defence to file its request to present evidence in rejoinder, including in relation to the iMMO Expert Reports, if any, by **Thursday, 9 June 2022**, with responses to be filed by **Monday, 13 June 2022**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 3 June 2022

At The Hague, the Netherlands.