

**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

**Date:** 27 January 2023

**Language:** English

**Classification:** **Confidential**

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**Victims' Counsel submissions on the reclassification of certain filings and/or  
submissions of public redacted versions of filings, pursuant to the Trial Panel's  
order dated 15 December 2022 (F00492)**

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**Specialist Prosecutor's Office**

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**Counsel for the Accused**

Julius von Bóné

**Victims' Counsel**

Anni Pues

## I. INTRODUCTION

1. By Order of 15 December 2022<sup>1</sup>, the Panel instructed the SPO, Defence, Victim's Counsel and the Registrar to indicate, by 31 January 2023, whether certain filings in Case 005 can be reclassified as public or to submit reasons for maintaining the classification thereof. Insofar as filings can indeed be reclassified, parties are ordered to submit public and/or confidential redacted version(s) thereof as the case may be, by 31 January 2023.
2. In paragraph 10 of the Order of 15 December 2022, Victims' Counsel was ordered to indicate whether certain filings can be reclassified as public and/or confidential. In paragraph 11, both the SPO and Victims' Counsel were ordered to indicate whether filing F00148 can be reclassified as public.
3. Victims' Counsel hereby makes her submissions in accordance with the aforementioned Order by the Panel.

## II. PROCEDURAL HISTORY

4. On 15 September 2022, following the presentation of the closing statements, Case 005 was declared closed. The Order of 15 December 2022 was given pursuant to the Panels' duty under Rule 84(1) of the Rules, to review the classification of certain filings in the case file, including its decisions.
5. The Panel does so in light of the principle of publicity of proceedings (Articles 21(2) and 40(4) of the Law), but bearing in mind the duty to protect witnesses, victims and confidential information (Article 23(1) of the Law and Rule 80(1) of the Rules).

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<sup>1</sup> [KSC-BC-2020-05/F00492](#), (TP) *Order for submissions on the reclassification of filings and/or submission of public and/or confidential redacted versions of filings (public)* dated 15 December 2022.

### III. APPLICABLE LAW

6. Articles 21(2), 23(1), 40(2) and (4) and 43(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), as well as Rules 80(1), 82(3), 84(1) and 159 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

### IV. SUBMISSIONS

7. Victims' Counsel hereby makes the submissions as instructed by the Panel. Insofar as filings require redactions in order to be reclassified as public, Victims' Counsel has prepared these and will submit them accordingly.

*Regarding the filings listed under paragraph 10*

1. **[F00183/COR, 1 September 2021](#), currently classified as confidential**

8. F00183<sup>2</sup> is Victims' Counsel's submissions in response to the Defence's request for the termination of imposed segregation and modification of other measures on Salih Mustafa (F00172) dated 27 August 2021.
9. Victims' Counsel has no objection to reclassification of this filing as 'public'.

2. **[F00325, 21 February 2021](#), currently classified as confidential**

10. F00325 is Victims' Counsel response to the Defence's Rule 130(1) to dismiss any or all charges of the indictment ('no-case-to-answer motion'), dated 15 February 2022 (F00320).<sup>3</sup>
11. Victims' Counsel will file a 'public redacted' version of this filing. Limited redactions are called for, given that the filing contains descriptions and

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<sup>2</sup> [KSC-BC-2020-05/F00183/COR](#)(VC), *Corrected version of Victims' Counsel Submission on the Order for submissions by the Registrar on the "Defence request for termination of imposed segregation and modification of other measures on Salih Mustafa" and varying the time limits* (confidential), dated 1 September 2021.

<sup>3</sup> [KSC-BC-2020-05/F00325](#) (VC), *Victims' Counsel response to the Rule 130(1) Motion filed by the Defence on 15 February 2022* (confidential) dated 21 February 2022.

citations of information provided by (dual status) witnesses, that could reveal their identity and thereby compromise their safety.

3. **F00334 (main filing only), 1 March 2022, currently classified as confidential**

12. F00334 concerns Victims' Counsel's submissions in response to certain Orders identified by the Panel in its Third Decision on the Conduct of Proceedings of 9 February 2022 (F00318) and the Decision on the application of Article 22(9) of the Law (...) of 4 February 2022 (F00310).<sup>4</sup>
13. Victims' Counsel has no objection to reclassification of this *main* filing as 'public'.<sup>5</sup>

4. **F00346, 18 March 2022, currently classified as strictly confidential**

14. F00346 is Victims' Counsel's request for clarification and reconsideration of the Panel's Oral Order of 9 March 2022 regarding the appointment of the Dutch Forensic Institute (*Nederlands Forensisch Instituut; NFI*) as medical expert for Victims 08-05, 09-05 and 10-05 and further submissions.<sup>6</sup>
15. Victims' Counsel will file a 'public redacted' version of this filing. The reason that certain details in the filing require redaction, is to protect the identity of parties who have been consulted by Victims' Counsel and whose interests would be harmed if it were to become public that they consulted in this case. In that respect, Victims' Counsel notes the continuing hostility towards those who contribute to the work of the KSC (particularly the case against the

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<sup>4</sup> [KSC-BC-2020-05/F00334](#) (VC), *Victims' Counsel submissions pursuant to the Third decision on the conduct of the proceedings* (confidential), dated 1 March 2022.

<sup>5</sup> The Panel only requested submissions regarding the main filing. For the sake of completeness, Victims' Counsel notes that the two annexes to this filing, currently classified as strictly confidential *ex parte* only, are to remain as such given the nature of the information provided therein.

<sup>6</sup> [KSC-BC-2020-05/F00346](#) (VC), *Victims' Counsel request for clarification and reconsideration regarding the Oral Order of 9 March 2022 to appoint a medical expert to examine Victims 08-05, 09-05 and 10-05 and submissions* (strictly confidential), dated 18 March 2022.

Accused), as noted by the Panel in the Trial Judgment.<sup>7</sup> Furthermore, the filing also contains information that could reveal the location of participating victims and thereby compromise their safety.

5. **F00349 (main filing only), 18 March 2022, currently classified as confidential**

16. F00349 is the main filing by which a 'strictly confidential' version of Annex 1 of F00334 was filed. (The annex in question had been previously filed on 1 March 2022 as 'strictly confidential, *ex parte* only'.<sup>8</sup>)
17. Victims' Counsel has no objection to reclassification of the *main* filing as 'public'.<sup>9</sup>

6. **F00391, 20 April 2022, currently classified as confidential**

18. F00391 is a filing regarding the request filed by the Defence on 19 April 2022 to terminate the segregation measures in place for the Accused.<sup>10</sup>
19. Victims' Counsel will file a 'public redacted' version of this filing. Redactions are necessary there where the filing contains information that may reveal the whereabouts of participating victims, thereby compromising their safety.

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<sup>7</sup> [KSC-BC-2020-05/F00494/RED/COR/1](#) (TP) *Corrected version of Public Redacted Version of Trial Judgment*, dated 16 December 2022 (corrected version filed 24 January 2023). Chapter IV(E)(1), 'Climate of Witness Intimidation in Kosovo', par. 50-57: "[57] [...] The evidence set out above shows that there is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members."

<sup>8</sup> [KSC-BC-2020-05/F00349](#) (VC), *Victims' Counsel's Submission of a strictly confidential, redacted version of Annex 1 to Filing 334 (F334\_01) pursuant to the Trial Panel's Oral Order of 9 March 2022* (confidential), dated 18 March 2022.

<sup>9</sup> The Panel only requested submissions regarding the main filing. For the sake of completeness, Victims' Counsel notes that the two annexes to this filing should retain their (re)classified status given the nature of the information provided therein.

<sup>10</sup> [KSC-BC-2020-05/F00391](#) (VC), *Victims' Counsel Submission on the Defence Request to lift Segregation Measures* (confidential), dated 20 April 2022.

7. [F00415, 24 May 2022](#), currently classified as confidential

20. F00415 is Victims' Counsel's further observations on reparations matters.<sup>11</sup>
21. Victims' Counsel will file a 'public redacted' version of this filing. Where the medical condition/situation of individual victims is discussed, this information will be redacted out of respect for their privacy. Additionally, redactions are made that might otherwise reveal information that could lead to the identification of the participating victims. Needless to say, such information compromises not only their privacy but also their safety.

8. [F00440/A01, 23 June 2022](#), currently classified as confidential

22. Annex 1 of F00440<sup>12</sup> is the report pertaining to economic loss by financial expert Dr. Stefan Lerz pursuant to the Panel's decision of 1 June 2022 (F00425). The report is entitled 'Calculation of material damage and economic loss in three cases' and was submitted confidentially given that the information in the report directly concerns the economic situation of the direct victims. This is protected information, that may also lead to the identification of the victims and should therefore remain confidential.
23. Victims' Counsel will file a 'public redacted' version of the expert report. The redactions are necessary to ensure that any and all protected information concerning the direct victims remains protected.

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<sup>11</sup> [KSC-BC-2020-05/F00415](#) (VC), *Victims' Counsel further observations on reparations matters* (confidential), dated 23 May 2022.

<sup>12</sup> [KSC-BC-2020-05/F00440](#) (VC), *Victims' Counsel's Submission of report pertaining to economic loss* (public) dated 23 June 2022, [KSC-BC-2020-05/F00440/A01](#) (VC) ANNEX 1 to: *Victims' Counsel's Submission of report pertaining to economic loss* (confidential) being the

9. [F00444/COR, 30 June 2022](#), currently classified as strictly confidential
24. F00444 is the corrected version of Victims' Counsel's specified and consolidated reparations request.<sup>13</sup>
25. Victims' Counsel notes that, as discussed in Chapter VI of the filing, it contains "ample references to confidential material such as trial transcripts, testimony heard in private session, confidential expert reports, individual medical information as well as information that would allow identification of the victims participating in the proceedings." As such, the filing was classified as 'strictly confidential'. That being said, Victims' Counsel understands the need for and benefit of publicity in legal proceedings. Therefore, a 'public redacted' version of this filing will be filed. Given the sensitive and protected nature of much of the information in question however, the public version requires a significant number of redactions.
10. [F00456/COR, 16 January 2023](#), currently classified as strictly confidential
26. F00456 is the Victim Impact Statement, which was originally filed on 20 July 2022. A corrected version of the Victim Impact Statement was filed on 26 January 2023.<sup>14</sup>
27. For the reasons given with regard to F00444, this filing was classified as 'strictly confidential'. As with that filing, Victims' Counsel will file a 'public redacted' version (of the corrected version of the filing), as she understands the need for and benefit of publicity in legal proceedings. Given the nature of the information in the Victim Impact Statement however, it too will be significantly redacted.

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<sup>13</sup> [KSC-BC-2020-05/F00444/COR](#) (VC), *Corrected Version of Victims' Counsel specified and consolidated reparations request* (strictly confidential), dated 30 June 2022. The corrected version filed 4 July 2022.

<sup>14</sup> The original version of the filing is [KSC-BC-2020-05/F00456](#) (VC), *Victims' Counsel statement on the impact of the crimes on the participating victims* (strictly confidential) dated 20 July 2022. The corrected version ([KSC-BC-2020-05/F00456/COR](#)) was filed on 26 January 2023.

11. [F00475, 13 September 2022](#), currently classified as confidential

28. F00475 are Victims' Counsel's responses to questions by the Panel concerning the determination of sentencing and reparations, ordered on 31 August 2022.<sup>15</sup>
29. Victims' Counsel will file a 'public redacted' version of this filing. For the similar reasons as those outlined in paragraphs 9-11 above, a public redacted version will require redactions.

*Regarding the filing listed under paragraph 11*

1. [F00148, 7 July 2021](#), currently classified as confidential

30. F00148<sup>16</sup> is a joint report by the SPO and Victims' Counsel on the progress of discussions concerning contact with dual status victims-witnesses.
31. Victims' Counsel has no objection to this filing being reclassified as 'public'.

V. CLASSIFICATION

32. Pursuant to Rule 82(4) of the Rules, this filing has been classified as confidential as it relates to other filings bearing that classification. Victims' Counsel has no objection to the present filing being reclassified as 'public' when the aforementioned redactions and reclassifications have been made.

**Word count: 1.940**



**Anni Pues**  
**Victims' Counsel**

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<sup>15</sup> [KSC-BC-2020-05/F00475](#) (VC), *Victims' Counsel response to decision dated 31 August 2022* (confidential) dated 13 September 2022.

<sup>16</sup> [KSC-BC-2020-05/F00148](#) (SPO and VC), *Joint Prosecution and Victims' Counsel report on the progress of discussions concerning dual status victims-witnesses* (confidential) dated 07 July 2021.



27 January 2023

At The Hague, the Netherlands