



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**

The Specialist Prosecutor v. Pjetër Shala

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: 25 May 2023

Language: English

Classification: **Public**

Decision on Victims' Counsel's request for variation of protective measures in order to disclose certain information to the material damages expert

Acting Specialist Prosecutor
Alex Whiting

Counsel for the Accused
Jean-Louis Gilissen

Victims' Counsel
Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on Victims' Counsel's request for variation of protective measures in order to disclose certain information to the material damages expert.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 15 December 2021, 11 August 2022 and 19 September 2022, the Pre-Trial Judge granted the applications of victims V01/04, V02/04, V03/04, V04/04, V05/04, V06/04, V07/04 and V08/04 to participate in these proceedings and ordered, among others, the protective measure of non-disclosure to the public of their identities and of any records identifying them.¹

2. On 17 May 2023, Victims' Counsel filed a request seeking a limited variation of the protective measures granted to the above-mentioned victims, with a view to instructing an expert in material harm assessment, Dr Stefan Lerz (Dr Lerz), to assess the material damages allegedly suffered by the victims and to produce a report (Request).² To this end, Victims' Counsel further specified that he intends to disclose to Dr Lerz relevant information from: (i) the victims' application forms; (ii) statements provided by the victims in the course of the proceedings before the Kosovo Specialist Chambers (KSC); (iii) the expert report prepared by the *Instituut voor Mensenrechten en Medisch Onderzoek* (iMMO); and (iv) the victims themselves,

¹ KSC-BC-2020-04, F00123, Pre-Trial Judge, *First Decision on Victims' Participation*, 15 December 2021, confidential, para. 50. A public redacted version was issued on the same day, F00123/RED; F00249, Pre-Trial Judge, *Second Decision on Victims' Participation*, 11 August 2022, confidential, para. 43. A public redacted version was issued on the same day, F00249/RED; F00279, Pre-Trial Judge, *Third Decision on Victims' Participation*, 19 September 2022, confidential, para. 43. A public redacted version was issued on the same day, F00279/RED.

² KSC-BC-2020-04, F00514, Victims' Counsel, *Victims' Counsel's Request for variation of protective measures in order to disclose certain information to the material damages expert*, 17 May 2023, public, paras 1, 5, 11.

as provided to Victims' Counsel.³ Victims' Counsel adds that the victims have given their consent to the variation of the existing protective measures.⁴

3. Neither the Specialist Prosecutor's Office, nor the Defence have filed a response.⁵

II. APPLICABLE LAW

4. The Panel notes Articles 23(1) and 40(2) and (6)(f) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 80, 114(1) and 116(4)(b) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers.

III. ANALYSIS

5. The Panel considers that disclosure to Dr Lerz of the victims' identifying information, as described by Victims' Counsel in his Request,⁶ does not pose a risk to the victims as the information would be released in the context of a professional assessment, undertaken by an independent expert, who has previously been engaged in cases before the KSC.⁷ In addition, the Panel notes that the victims have given their consent to the variation of the existing protective measures.⁸ Therefore, the Panel decides to vary said protective measures to permit the disclosure of the victims'

³ Request, para. 6.

⁴ Request, para. 9.

⁵ The Specialist Prosecutor's Office informed the Panel, *via* email, on 19 May 2023, at 16:35, that it did not intend to respond to the Request; *see also* KSC-BC-2020-04, Trial Panel I, *Order shortening time limits in relation to the Victims' Counsel's request for variation of protective measures (F00514)*, 19 May 2023, public.

⁶ Request, para. 7.

⁷ KSC-BC-2020-05, F00425, Trial Panel I, *Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings*, 1 June 2022, public.

⁸ Request, para. 9.

identifying information to Dr Lerz, in order for him to be able to produce the requested report.

6. Turning to the information to be disclosed to Dr Lerz, the Panel authorises Victims' Counsel to disclose, on condition of confidentiality, any relevant information, as necessary, emanating from: (i) the victims' application forms for participation in the proceedings and any supporting documentation; (ii) the transcripts of their testimonies before the KSC, where applicable; (iii) the (forthcoming) iMMO expert report; and (iv) the victims themselves, as provided to Victims' Counsel. As envisaged by Victims' Counsel in the Request,⁹ the documents as such shall not be shared with Dr Lerz, but only the relevant information emanating from them.

7. Finally, the Panel directs Victims' Counsel, in accordance with his undertaking,¹⁰ to inform Dr Lerz that all information related to the above-mentioned victims, including their status as victims in the present proceedings, is confidential and shall be treated accordingly.

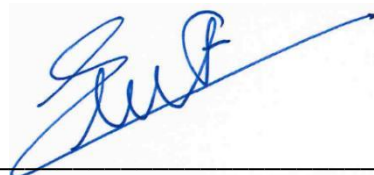
IV. DISPOSITION

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

- a. **GRANTS** the Request as specified in the present decision; and
- b. **DIRECTS** Victims' Counsel to inform Dr Lerz that all information disclosed in relation to the victims is confidential and shall be treated accordingly.

⁹ Request, para. 7.

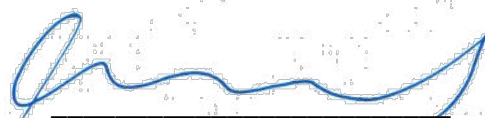
¹⁰ Request, para. 10.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 25 May 2023

At The Hague, the Netherlands.