



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 21 July 2023

Language: English

Classification: Confidential

Decision on Victims' Counsel's request to call expert witnesses to testify

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 to call expert witnesses to testify.

I. PROCEDURAL BACKGROUND

1. On 24 February 2023, the Panel issued the "Decision on victims' procedural rights during trial and related matters", where it held that: (i) for the purpose of establishing the truth, unlike the Parties, victims do not have an independent right to submit evidence, but may request the Panel to order the submission of relevant evidence or call witnesses to testify; and (ii) for the purposes of reparations, victims have the right to submit any observations and evidence relevant to support their claims for reparations.¹

2. On 4 May 2023, the Panel directed Victims' Counsel to submit, by 30 June 2023, the list of witnesses whom he proposes to call – including expert witnesses – for the establishment of the truth and/or for reparations, should the Panel enter a conviction.² The Panel also made clear that, for experts to be called for the purposes of reparations, their evidence shall be received and assessed, as a general rule, in writing.³

3. On 30 June 2023, Victims' Counsel requested leave from the Panel to present: (i) one report prepared by Karin Duhne-Prinsen and Chayèn Lozano Parra, two forensic medical experts from the *instituut voor Mensenrechten en Medisch Onderzoek* (iMMO) on the harm allegedly suffered by one of the victims participating in the proceedings (V01/04); and (ii) one report prepared by Stefan Lerz, expert in calculation of income loss, only on the material harm allegedly suffered by all victims

¹ KSC-BC-2020-04, F00433, [Decision on victims' procedural rights during trial and related matters](#), 24 February 2023, public, paras 21, 27.

² KSC-BC-2020-04, Transcript of Hearing, 4 May 2023, public, p. 1356, line 11 to p. 1357, line 13.

³ KSC-BC-2020-04, Transcript of Hearing, 4 May 2023, public, p. 1359, lines 3-12, referring to KSC-BC-2020-05, F00425, [Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings](#), 1 June 2022, public, para. 10.

participating in the proceedings (Victims' Counsel's Submissions).⁴ Victims' Counsel further requested the Panel to call the two iMMO experts to testify, if required, subject to any notice under Rule 149(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).⁵

4. On 10 July 2023, the Defence for Pjetër Shala (Defence and Accused, respectively) filed a notice under Rule 149(2) of the Rules, submitting that it does not intend to challenge the expertise of the proposed experts, but that it does not accept their reports or parts thereof and expresses its intention to cross-examine them (Defence Notice).⁶

5. On 12 July 2023, the Defence responded further to Victims' Counsel's Submissions, reiterating that it does not accept the content of the expert reports and wishes to cross-examine the expert witnesses.⁷ The Defence takes issue with the fact that Victims' Counsel does not intend to call Stefan Lerz to testify and submits that this interferes with the Accused's right to confront witnesses against him and to challenge the expert's findings by direct questioning.⁸

⁴ KSC-BC-2020-04, F00558, Victims' Counsel, *Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel*, 30 June 2023, confidential, with Annexes 1-6, confidential, paras 9, 58.

⁵ Victims' Counsel's Submissions, paras 2, 14, 58.

⁶ KSC-BC-2020-04, F00578, Defence, *Defence Notice on Evidence of Victims' Counsel's Expert Witnesses Pursuant to the Trial Panel's Order of 4 May 2023*, 10 July 2023, confidential, para. 3. A public redacted version was submitted on 13 July 2023, F00578/RED.

⁷ KSC-BC-2020-04, F00585, Defence, *Defence Response to the Victims' Counsel's Submissions pursuant to the Order of 4 May 2023 setting further procedural steps for the presentation of evidence by Victims' Counsel with six confidential annexes* (Defence Response), 12 July 2023, confidential, para. 9. A public redacted version was submitted on 14 July 2023, F00585/RED.

⁸ Defence Response, para. 9.

II. APPLICABLE LAW

6. The Panel notes Articles 22(3) and (5), and 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and Rules 149 and 168 of the Rules.

III. DISCUSSION

7. At the outset, the Panel notes that: (i) the report prepared by the iMMO experts on the harm allegedly suffered by Victim V01/04 goes both to the establishment of the truth and reparations;⁹ and (ii) the report prepared by Stefan Lerz on the material harm allegedly suffered by the participating victims goes to reparations only.¹⁰ As both reports relate, at least in part, to reparations, Victims' Counsel may present the reports as evidence and call any of the expert witnesses without further authorisation from the Panel.¹¹

8. Turning to the Defence's submissions, the Panel considers that a distinction must be made between the iMMO experts – who provide evidence both for the establishment of the truth and for reparations – and Stefan Lerz – who provides evidence solely for the purposes of reparations.

9. Having taken note of the Defence's submissions that it does not accept the iMMO report or parts thereof and wishes to cross-examine the experts,¹² the Panel finds that, as provided in Rule 149(3) and (4) of the Rules, it may not admit the iMMO report into evidence without calling the experts who authored the report to testify. Accordingly, Karin Duhne-Prinsen and Chayèn Lozano Parra shall be called to testify before the Panel, starting on **Monday, 21 August 2023**. The Defence may thereafter submit any

⁹ Annex 1 to Victims' Counsel's Submissions. *See also* Victims' Counsel's Submissions, para. 11.

¹⁰ Annex 4 to Victims' Counsel's Submissions.

¹¹ *See* para. 1 above, and *also* KSC-BC-2020-04, F00433, Trial Panel I, [Decision on victims' procedural rights during trial and related matters](#), 24 February 2023, public, para. 44.

¹² Defence Notice, para. 3; Defence Response, para. 8.

objections to the admissibility of their report, in writing, if it so wishes, by **Monday, 4 September 2023**.

10. As to Stefan Lerz, the Panel recalls its previous finding that reparations proceedings shall be conducted, as a general rule, predominantly in writing.¹³ This is based on Rule 168 of the Rules – which applies as *lex specialis* over Rule 149 of the Rules – and which provides that the Panel “may invite Victims’ Counsel and the convicted person to *make observations* on expert reports” (emphasis added).¹⁴ As Stefan Lerz is called by Victims’ Counsel as an expert witness for the purposes of reparations only, his evidence shall be received and assessed, in principle, in writing. Stefan Lerz shall therefore not be called to testify, at this point.

11. Should the Defence wish to put any questions to him or present objections to the admissibility of his report, it is directed to do so, in writing, by **Friday, 15 September 2023**. The Panel is not persuaded by the Defence’s submissions that not calling Stefan Lerz to testify in court interferes with the Accused’s right to question witnesses against him or challenge the expert’s report. The Defence will have the opportunity to put any questions it wishes and make any objections and/or observations in writing. The Defence shall file its questions before the Panel on the record. Victims’ Counsel shall be responsible for transmitting the questions to Stefan Lerz and to file on the record Stefan Lerz’s responses. The Defence may then submit further observations within two weeks of receiving those responses and thereafter the Panel may reassess eventually the need to call the expert to testify in court.

¹³ See footnote 3 above.

¹⁴ See also KSC-BC-2020-05, F00425, [Decision appointing a financial expert and setting out further procedural steps with regard to reparation proceedings](#), 1 June 2022, public, para. 10.

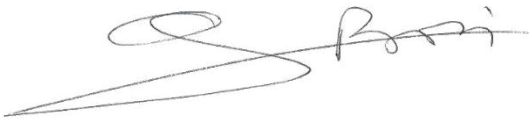
IV. DISPOSITION

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

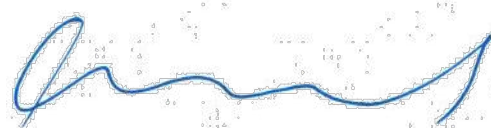
- a. **DECIDES** to hear the testimonies of the iMMO experts, Karin Duhne-Prinsen and Chayèn Lozano Parra, starting on **Monday, 21 August 2023**;
- b. **DECIDES** that the evidence of Stefan Lerz shall be received and assessed, in principle, in writing in accordance with paragraph 11; and
- c. **ORDERS** Victims' Counsel to file a public redacted version of filing F00558 (only the main filing, without its annexes), or request reclassification, by **Thursday, 17 August 2023**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 21 July 2023

At The Hague, the Netherlands.