

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

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Public redacted version of Victims' Counsel submissions on the application of redactions to filings F00444-CORRED, F00456-CORRED, F00475-RED and F00503-A01, pursuant to the Trial Panel's order dated 14 March 2023 (F00512)

Specialist Prosecutor's Office

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I. INTRODUCTION AND PROCEDURAL HISTORY

1. On 27 January 2023, Victims' Counsel submitted public redacted versions of filings F00440-A01 (resubmitted as F00503-A01), F00444-COR, F00456-COR and F00475.
2. By Order of 14 March 2023¹, the Panel instructed Victims' Counsel to further clarify, by 20 March 2023, the specific reasons underpinning the redactions applied in the aforementioned filings, and if necessary, to resubmit lesser redacted versions of those filings (hereinafter "Order"). The Panel has requested these clarifications be made with reference to five categories of information: (i) victims' codes; (ii) witnesses' codes; (iii) harm suffered by direct and indirect victims; (iv) assessment of the economic loss; and (v) the compensation award requested for each victim.
3. Victims' Counsel has submitted lesser redacted filings and, additionally, hereby provides clarification in response to the aforementioned Order.

II. APPLICABLE LAW

4. Articles 21(2), 22(3) and (8), 23(1), 40(2) and (4), and 44(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), and Rules 76, 80, 82 and 84(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. SUBMISSIONS

5. Lesser redacted versions of the filings have been filed to ensure the greatest possible degree of publicity without jeopardizing the victims' rights and needs to protection and privacy.

¹ [KSC-BC-2020-05/F00512](#), (TP) *Order for submissions on application of redactions in filings F00444-CORRED, F000456-CORRED, F00475-RED and F00503-A01 (public) dated 14 March 2023.*


6. Regarding the use of victims' codes, for example in filing F00444-CORRED, redactions of the codes of the direct victims (e.g. in paragraphs 5 and 30 of that filing) had to be maintained. Victims' Counsel seeks to protect the information that [REDACTED].
7. Regarding the use of witnesses' codes Victims' Counsel notes that similar considerations apply as those indicated above. Victims' Counsel is of the view that it would make victims more easily identifiable, if victim pseudonyms and witness codes are directly linked. For the Victim Impact Statement (F00456-COR), this leads to extensive redactions, as otherwise the impact as summarized in the statement can be directly linked to the witness testimony and code of the witnesses.
8. All redactions pertaining to the individual experiences of the victims and their lives (at the time the crimes were perpetrated, in subsequent years and today) remain redacted as this information can by its nature lead to identification of the victims concerned. However, where the impact seemed of a more general nature or does, in Victims' Counsel's view, not bear of providing identifiable information, this is reflected in the lesser redacted versions of the filings in question.
9. Redactions regarding the description of the harm suffered by the victims are necessary to minimise the risk of identification, e.g. through distinct injuries. For close observers of the trial and those living within the community of the victims this type of information can lead to the identification of the victims. That being said, more generalised information, such as the display of symptoms of post-traumatic stress in the form of nightmares or flashbacks, as far as rather general in nature, is not redacted.
10. Regarding the assessment of economic loss, e.g., in filing F00503/A01, redactions are necessary to ensure that the direct victims' employment status and retirement age are kept confidential as potentially identifying

information. Therefore, most of the redactions in filing F00503/A01 have been retained since information on possible wage increases, pension contributions, and calculations of loss are suggestive of type of profession and employment status. The point at which victims reach(ed) retirement age also provides identifiable information as to their current age, hence these redactions also need to be maintained.

11. Regarding information related to the specific amounts requested, e.g. in F00444-CORRED and F00503/A01, these should remain confidential. Victims are entitled to appropriate measures for their protection, safety, dignity and privacy. The following reasons underpin the redactions applied:
 - a. Given that the claim for material damages is necessarily dependent on the victims' age and their professional lives, information about the scope of material damages sought necessarily provides information about the victims' personal circumstances. Information about the scope of immaterial damages similarly provides indicators about the scope of harm suffered. For close observers of the trial and those living within the community of the victims this information provides identifying information. As such, in the interest of protecting the privacy of the victims, this information is redacted.
 - b. Information on the requested scope of reparations can also lead to [REDACTED], in which victims continue to live. The remaining redactions aim to protect the privacy of victims. In order to enable a dignified life, it is important that victims are protected from information being made public that would most likely [REDACTED]. It is an established fact that the situation in Kosovo is very tense as it is; the risk is high that [REDACTED]. Victims' Counsel seeks to minimize the risk for participating victims in the exercise of their fundamental right to be compensated for damages.
 - c. Additionally, and although raised within a criminal trial, the reparations request equals a civil law claim, hence, the Law's reference to civil litigation

in article 22(9). Consideration has to be given to balancing the interests of transparency and publicity with the need to safeguard the victims' rights to privacy, dignity and protection. Article 21(2) of the Law demands publicity of proceedings in 'the determination of the charges against [...] the accused'. The compensation awards requested are information that does not fall within article 21(2), as the information is not an integral part of the criminal judgement against the Accused. The publicity of criminal trials is necessary to protect any accused from arbitrary and unfair treatment and punishment. However, those considerations are less relevant with regard to the civil law component of the proceedings in which reparations claims are adjudicated. Therefore, the abovementioned reasons for the protection and privacy of victims have considerable weight and justify the confidentiality of this information.

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20 March 2023

At The Hague, the Netherlands