



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-05/R001
The Specialist Prosecutor v. Salih Mustafa

Before: Single Judge Panel
Judge Gilbert Bitti

Registrar: Fidelma Donlon

Date: 25 March 2024

Language: English

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Public Redacted Version of

**Decision on Victims' Counsel's Request to Set a Date for the Payment of
Reparations and other Matters**

To be notified to

Registry
Fidelma Donlon

Specialist Prosecutor
Kimberly P. West

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THE SINGLE JUDGE¹ hereby renders this decision on Victims' Counsel's "Request to set a date for payment of reparations" and other matters.

I. PROCEDURAL BACKGROUND

1. On 4 December 2020, the Pre-Trial Judge issued, at the request of the Specialist Prosecutor's Office (SPO),² [REDACTED],³ ordering the SPO to report to him on any action taken pursuant to this order.⁴ The Pre-Trial Judge also noted that the issuance [REDACTED] against Salih Mustafa (Mr Mustafa) was necessary in order to ensure that, if he was finally convicted, any reparation awards ordered for the benefit of victims could be enforced.⁵

2. On 29 January 2021, the SPO submitted [REDACTED].⁶

3. On 2 March 2021, the SPO submitted [REDACTED].⁷

4. On 20 April 2021, the Registrar requested authorisation from the Pre-Trial Judge to: (i) notify Mr Mustafa that [REDACTED], *i. e.*, [REDACTED] and [REDACTED], and (ii) invite him to make observations [REDACTED].⁸

5. On 5 May 2021, the Pre-Trial Judge granted the Registrar's request for notification⁹ and the information [REDACTED] was made available to Mr Mustafa on

¹ KSC-BC-2020-05/R001, F00002, President of the Specialist Chambers, [Decision Assigning a Single Judge](#), 17 January 2024, public.

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

17 May 2021.¹⁰ No request was ever submitted to the Pre-Trial Judge or to any other panel seized of the case against Mr Mustafa before the Specialist Chambers (SC), to revoke or otherwise modify [REDACTED], either by Mr Mustafa, by a member of his family or by any other third party.

6. On 2 September 2022, the SPO submitted [REDACTED].¹¹

7. On 16 December 2022, Trial Panel I convicted Mr Mustafa for war crimes and indicated that it would subsequently issue a reparation order.¹²

8. On 6 April 2023, Trial Panel I issued a reparation order against Mr Mustafa (Reparation Order), ordering him to pay a total sum of 207,000 EUR to eight (8) victims of crimes he was convicted of as compensation for the harm inflicted. Trial Panel I also determined that the reparations shall be paid within a time-limit to be set by a judicial authority to be assigned to monitor and oversee the implementation and execution of the Reparation Order, to ensure an effective and prompt process for the benefit of the victims, and invited the President of the SC to designate such an authority. At the same time, Trial Panel I (i) annexed to the Reparation Order a Decision ordering the production of records and documents for the purposes of the enforcement of the Reparation Order and three orders addressed to different entities for the production of such records and documents (Production Orders); and (ii) ordered the Registrar to report on the execution of the Production Orders to the judicial authority to be assigned with the monitoring and overseeing of the implementation and execution of

¹⁰ KSC-BC-2020-05, CRSPD24, Email from Trial Panel I to the Court Management Unit (CMU), sent on 17 May 2021 at 10:14.

¹¹ [REDACTED].

¹² KSC-BC-2020-05, F00494, Trial Panel I, *Trial Judgment*, 16 December 2022, confidential, para. 831. A public redacted version was issued on 19 January 2023, F00494/RED, and a corrected public redacted version was issued on 24 January 2023, F00494/RED/COR.

the Reparation Order.¹³ The Reparation Order was not appealed either by Mr Mustafa or by Victims' Counsel.

9. On 31 May 2023, the Registrar submitted a report on the execution of the Production Orders (Registry 31 May 2023 Report).¹⁴

10. On 14 December 2023, a Panel of the Court of Appeals Chamber confirmed all convictions which form the basis of the Reparation Order.¹⁵

11. On 3 January 2024, the Registrar appointed Venkateswari Alagendra (Ms Alagendra) as Counsel for Mr Mustafa, replacing Julius von Bóné.¹⁶

12. On 17 January 2024, the President of the SC assigned Judge Gilbert Bitti as Single Judge to oversee the implementation of the Reparation Order.¹⁷

13. On 19 January 2024, Victims' Counsel requested the Single Judge to set a time-limit for Mr Mustafa to pay the reparations awarded to victims (Victims' Counsel Request or Request).¹⁸

14. On 22 January 2024, the Defence for Mr Mustafa (Defence) requested the Single Judge to temporarily stay the setting of such a time-limit until after the expiry of the deadline for the filing of a request for protection of legality, or its final determination,

¹³ KSC-BC-2020-05, F00517, Trial Panel I, *Reparation Order against Salih Mustafa*, 6 April 2023, confidential, paras 250-252, 283, with Annexes 1-4, strictly confidential and *ex parte*. A corrected public redacted version of the Reparation Order was issued on 14 April 2023, [F00517/RED/COR](#).

¹⁴ KSC-BC-2020-05/R001, F00001, Registrar, *Registry Report on the Execution of Production Orders*, with Annexes 1-3, strictly confidential and *ex parte*, 31 May 2023, strictly confidential and *ex parte*.

¹⁵ KSC-CA-2023-02, F00038/RED, Court of Appeals Panel, [Public Redacted Version of Appeal Judgment](#), 14 December 2023, para. 481.

¹⁶ KSC-CA-2023-02, F00041, Registrar, *Notification of Approval of Counsel for Salih Mustafa*, 11 January 2024, public, para. 4, with Annex 1, confidential.

¹⁷ See footnote 1 above.

¹⁸ KSC-BC-2020-05/R001, F00003, Victims' Counsel, *Request to set a date for payment of reparations*, 19 January 2024, confidential. A public redacted version was filed on 26 February 2024, F00003/RED.

before a Panel of the Supreme Court Chamber of the SC (Defence Request).¹⁹ Victims' Counsel responded on 23 January 2024.²⁰

15. On 24 January 2024, the Registrar presented submissions on the implementation of the Reparation Order (Registrar's Submissions).²¹

16. On 25 January 2024, the Panel of the Supreme Court Chamber declared that the appointment of Ms Alagenda had no legal effect²² and that she had no standing to file any requests on behalf of Mr Mustafa,²³ as she was also representing Jakup Krasniqi (Mr Krasniqi) in the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* (KSC-BC-2020-06) before Trial Panel II²⁴ and had not sought a determination from Trial Panel II as to whether a conflict of interest existed.

17. On 29 January 2024, the Registrar informed the Single Judge of Laurens van Puyenbroeck's (Mr Puyenbroeck) appointment as Duty Counsel for Mr Mustafa.²⁵

18. On 8 February 2024, Trial Panel II found that "a potential conflict of interest [would exist] if Ms Alagenda, in addition to her appointment as Counsel for Mr Krasniqi, were to also represent Mr Mustafa".²⁶

¹⁹ KSC-BC-2020-05/R001, F00004, Defence, *Mustafa Request for a Temporary Stay*, 22 January 2024, public, paras 1, 4, 9.

²⁰ KSC-BC-2020-05/R001, F00005, Victims' Counsel, *VC Response to Mustafa's Request for a Temporary Stay*, 23 January 2024, public.

²¹ KSC-BC-2020-05/R001, F00006, Registrar, *Registrar's Submissions on the Implementation of the Reparation Order*, 24 January 2024, strictly confidential and *ex parte*. A confidential redacted version was filed on 19 February 2024, F00006/CONF/RED.

²² KSC-SC-2024-02, F00008, Supreme Court Panel, [Decision on Prosecution Motion Regarding Conflict of Interest of Defence Counsel](#), 25 January 2024, public, paras 9, 11.

²³ KSC-SC-2024-02, F00009, Supreme Court Panel, [Decision on the Request for an Extension of Time](#), 25 January 2024, public, para. 11.

²⁴ KSC-BC-2020-06, F00058, Registrar, *Notification of the Appointment of Counsel to Jakup Krasniqi*, 6 November 2020, public, with Annex 1, confidential.

²⁵ KSC-BC-2020-05/R001, F00007, Registrar, *Notification of Appointment of Duty Counsel to Salih Mustafa*, 29 January 2024, public, with Annex 1, confidential.

²⁶ KSC-BC-2020-06, F02112, Trial Panel II, [Decision on Defence Counsel Request for Determination Pursuant to Article 28\(4\)\(b\)\(i\) of the Code of Professional Conduct for Counsel and Prosecutors \(Conflict of Interest\)](#), 8 February 2024, public, para. 36(a).

19. On 14 February 2024, the Single Judge ordered the Registrar to file a confidential redacted version of the Registrar's Submissions and instructed Victims' Counsel and Duty Counsel (or appointed Defence Counsel) for Mr Mustafa to respond, if they so wished.²⁷

20. On 20 February 2024, the Single Judge dismissed *in limine* the Defence Request and, taking into consideration the change of Counsel and in order to safeguard the rights of Mr Mustafa, decided, *inter alia*, to extend *proprio motu* the time limit for the Defence to respond to Victims' Counsel's Request.²⁸ Appointed Counsel for Mr Mustafa did not submit any response.

21. On 21 February 2024, the Registrar informed the Single Judge of the termination of the appointment of Mr Puyenbroeck as Duty Counsel for Mr Mustafa and of the appointment of Julius von Bóné as Counsel for Mr Mustafa as of 20 February 2024.²⁹

22. On 28 February 2024, Victims' Counsel submitted her response to the Registrar's Submissions (Victims' Counsel Response or Response).³⁰ Appointed Counsel for Mr Mustafa did not submit any response.

23. On 21 March 2024, Victims' Counsel made submissions reiterating her request for an urgent decision and seeking prioritisation in the enforcement of reparations for an interim payment [REDACTED].³¹

²⁷ KSC-BC-2020-05/R001, CRSPD110, Email from Legal Officer to CMU, sent on 14 February 2024 at 10:49.

²⁸ KSC-BC-2020-05/R001, F00008, Single Judge, *Decision on the "Mustafa Request for a Temporary Stay" and other matters*, 20 February 2024, public, paras 12, 16(b).

²⁹ KSC-BC-2020-05/R001, F00009, Registrar, *Notification of Appointment of Counsel to Salih Mustafa and Termination of Services of Duty Counsel*, 21 February 2024, public, with Annexes 1-2, confidential, para. 12.

³⁰ KSC-BC-2020-05/R001/F00010, Victims' Counsel, *VC Response to the Registrar's Submissions on the Implementation of the Reparation Order*, 28 February 2024, confidential.

³¹ KSC-BC-2020-05/R001, F00011, *VC Submission regarding the urgency of a decision* (21 March 2024 Submissions), 21 March 2024, confidential.

II. APPLICABLE LAW

24. The Single Judge notes Articles 44(6) and 53 (1)(g) and (l) and (4) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), Rules 185, 198, 200, and 202 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules), Regulation 8 of the Legal Aid Regulations³² and its Annex A.³³

25. Article 53(4) of the Law states that "[W]hen the Specialist Chambers orders the forfeiture of property, proceeds or assets, they shall be delivered to the Specialist Chambers without delay, without prejudice to the rights of *bona fide* third parties, and in accordance with the Rules of Procedure and Evidence".

III. DISCUSSION

A. DUE DATE FOR PAYMENT

1. Submissions

26. In her Request, Victims' Counsel argues that the conviction of Mr Mustafa is final and that payment of reparations is due.³⁴ She underlines that the Single Judge is tasked, in accordance with paragraph 283(f) of the Reparation Order, to set a time-limit for such payment.³⁵ According to Victims' Counsel, setting a time-limit is important as: (i) the Reparation Order was issued more than nine months ago; (ii) the victims entitled to reparations are awaiting reparations for the harm done through payment; this is particularly urgent [REDACTED]; and (iii) it is necessary to set a deadline for payment of reparations for the purpose of calculating any statutory interest. Accordingly, Victims' Counsel requests the Single Judge to set an appropriate

³² KSC-BD-25-Rev1, Registry Practice Direction, Legal Aid Regulations, 22 February 2024.

³³ KSC-BD-25-Rev1, Annex A, Protocol on Indigence Assessment, 22 February 2024.

³⁴ Victims' Counsel Request, para. 4.

³⁵ Victims' Counsel Request, para. 5.

time-limit, but no more than ten (10) days from the filing of her Request, for Mr Mustafa to pay the reparations ordered.

27. In her Response to the Registrar's Submissions, Victims' Counsel reiterates her request for a deadline for payment by Mr Mustafa to be set "as this will trigger the obligation to additionally pay statutory interests on the amounts owed". For the calculation of the interest rate, she refers to Article 382 of Law No. 04/L-077 on Obligational Relationships (Kosovo Law on Obligations), entitled "Penalty interest", which states:

1. A debtor that is in delay in performing a pecuniary obligation shall owe penalty interest in addition to the principal.
2. The interest rate for penalty shall amount to eight percent (8%) per annum, unless stipulated otherwise by a separate act of law.³⁶

2. Determination

28. *Due Date.* At the outset, the Single Judge notes that the Court of Appeals Panel has confirmed all of the convictions which form the basis of the Reparation Order. As no further ordinary remedies are available to Mr Mustafa, his conviction has now become final.³⁷ Therefore, the Single Judge concludes that the Reparation Order is now equally final, taking into consideration that Mr Mustafa did not appeal it.

29. The Single Judge further notes that, in accordance with Rule 185(1) of the Rules, a conviction imposed or a sentence pronounced by the Court of Appeals Panel shall be enforced immediately. The issuance of a reparation order is provided for in Article 44 of the Law, entitled "Punishments", and its paragraph 6 states that it is to be issued "in addition to imprisonment". Therefore, the Single Judge is of the view that a reparation order, in the same way as the conviction or the sentence imposed on

³⁶ Law N0. 04/L-077 on Obligational Relationships, 10 May 2012, Official Gazette of the Republic of Kosova, N° 16, 19 June 2012.

³⁷ KSC-BC-2020-06/PL0001, F00008, Supreme Court Panel, *Decision on Kadri Veseli's Request for Protection of Legality*, 15 August 2022, public, para. 18.

a convicted person, shall be enforced immediately once it has become final. Payment by the convicted person is due as of that moment.

30. *Voluntary Payment by Mr Mustafa.* As payment of reparations owed by Mr Mustafa to the victims is now due, the Registrar is to inform him as soon as possible of the modalities for any voluntary payment (including instructions for the transfer of funds or property) he may wish to make to meet his obligations towards victims as established in the Reparation Order. In this regard, the Registrar may inform Mr Mustafa that his willingness to make a voluntary payment will not affect the enforcement of the measures [REDACTED].³⁸ The funds obtained through those measures will be deducted from the total sum Mr Mustafa has to pay to comply with the Reparation Order.

31. The Registrar shall report to the Single Judge (i) when this information has been communicated to Mr Mustafa, and (ii) whether Mr Mustafa agreed to any payment or whether he declared his intention to do so.

32. As to the Victims' Counsel's argument that a deadline for payment shall be established as this will trigger "the obligation to additionally pay statutory interests on the amounts owed", the Single Judge is of the view that this is a distinct issue, which will be discussed below.

B. [REDACTED]

1. Submissions

a) Registrar's Submissions

33. The Registry underlines that it has served the Productions Orders and that according to the information received in April and May 2023, [REDACTED], and on

³⁸ See below paras 39-48.

the [REDACTED]. In addition, [REDACTED].³⁹ The Registry indicates its availability to assist in case the Single Judge would require updated information with regard to [REDACTED].⁴⁰

b) Victims' Counsel Response

34. Victims' Counsel underlines that [REDACTED] should form the basis for the payment of the reparations awarded to the victims, subject to any claims of *bona fide* third parties.⁴¹ She claims that [REDACTED] have clearly not been necessary [REDACTED]. In her view, [REDACTED] should be used in full in order to satisfy Mr Mustafa's obligations towards the victims.⁴² She further emphasises that considering the urgency of ensuring at least a *pro rata* payment of the reparations ordered as soon as possible, [REDACTED].⁴³ In this regard, [REDACTED] needs are the most pressing.⁴⁴ As to the modalities to ensure that any payments may [REDACTED], Victims' Counsel stands ready to cooperate with the Registry. Victims' Counsel indicates that she has obtained [REDACTED].⁴⁵

c) Further Information on [REDACTED]

35. [REDACTED]. [REDACTED].⁴⁶ [REDACTED]. [REDACTED]. [REDACTED].⁴⁷ [REDACTED]. [REDACTED].

36. In the Registry 31 May 2023 Report, the Registrar indicates [REDACTED]. She further reports that, as of April 2023, [REDACTED]. [REDACTED].⁴⁸

³⁹ Registrar's Submissions, para. 18.

⁴⁰ Registrar's Submissions, para. 21.

⁴¹ Victims' Counsel Response, para. 4.

⁴² Victims' Counsel Response, para. 5.

⁴³ Victims' Counsel Response, para. 8.

⁴⁴ Victims' Counsel Response, para. 6; 21 March 2024 Submissions, paras 4-10.

⁴⁵ Victims' Counsel Response, para. 9.

⁴⁶ [REDACTED]; [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

37. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁴⁹
[REDACTED].⁵⁰

38. In the Registry 31 May 2023 Report, the Registrar indicates that [REDACTED].
[REDACTED]. [REDACTED].⁵¹ Finally, the Registrar also indicates that
[REDACTED]. [REDACTED].⁵²

2. Determination

39. The Single Judge notes that the Reparation Order refers to [REDACTED] as a potential source of assets to be used for its partial execution on a *pro rata* basis for the benefit of the victims.⁵³ In that context, the Single Judge recalls that Trial Panel I underlined in the Reparation Order that, bearing in mind the rights of Mr Mustafa or those of *bona fide* third parties, the judicial authority assigned to oversee its execution will be in a position to decide whether to order payment from [REDACTED] and, for that purpose, to [REDACTED].⁵⁴

40. Taking into consideration the urgency of ensuring at least a partial enforcement of the Reparation Order, and aiming at expediting the process of its execution, the Single Judge does not find it necessary to receive another report with updated information [REDACTED], before issuing the present decision. Such updated information, if any, may be included in the report the Registrar will be instructed to present following the execution of the present decision.

41. The Single Judge notes, as already mentioned above,⁵⁵ that no request was ever submitted to [REDACTED], either by Mr Mustafa or by a member of his family. This clearly demonstrates that [REDACTED] were not necessary [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ Reparation Order, para. 255 and footnote 464.

⁵⁴ Reparation Order, para. 257.

⁵⁵ See para. 5 above.

Furthermore, the Single Judge notes that [REDACTED], while both the [REDACTED]. [REDACTED]. The [REDACTED] can therefore, subject to the rights of *bona fide* third parties, be used in full for the (partial) enforcement of the Reparation Order.

42. [REDACTED]. With regard to the [REDACTED], the issue of the rights of *bona fide* third parties does not appear to arise anymore. Therefore, the Single Judge (i) orders the [REDACTED] to submit updated information [REDACTED]; and (ii) decides that [REDACTED], for the (partial) enforcement of the Reparation Order. Consequently, the Single Judge decides to [REDACTED].

43. [REDACTED]. With regard to the [REDACTED], the Single Judge notes that neither the Pre-Trial Judge nor any other panel in charge of the present case was ever seized [REDACTED].⁵⁶ Be it as it may, the Single Judge is duty-bound, while ensuring the enforcement in full of the Reparation Order, to respect the rights of *bona fide* third parties in accordance with Article 53(4) of the Law. In this regard, the Single Judge notes that [REDACTED]. Furthermore, [REDACTED]. Therefore, the Single Judge (i) orders the [REDACTED] to submit updated information on [REDACTED]; and (ii) decides that [REDACTED],⁵⁷ [REDACTED], for the (partial) enforcement of the Reparation Order. Consequently, the Single Judge decides to partially [REDACTED].

44. *Third Party Notification.* The Registrar is ordered, when executing the present decision, to inform the [REDACTED] of the need [REDACTED] to apply to the Single Judge, within 15 days from the [REDACTED]. An application to that effect may be submitted by the [REDACTED], without the assistance of a lawyer. The Registrar is to include any information collected in this regard, including a copy of [REDACTED], in her report on the execution of the present decision.

45. *Modalities of Payment to Victims.* As to the modalities of payment to the victims, once the funds have been received by the Registrar, who is in charge of the

⁵⁶ See para. 37 above.

⁵⁷ [REDACTED].

implementation of the Reparation Order,⁵⁸ she shall consult with Victims' Counsel as to the most efficient manner to deliver the funds allocated to each victim, on a *pro rata* basis, in accordance with the Reparation Order. Taking into consideration [REDACTED]. In case it is easier and safer for payments to [REDACTED], while safeguarding their anonymity, the Registrar is authorised to [REDACTED].

46. [REDACTED]. Lastly, with regard to [REDACTED], the Single Judge recalls that Mr Mustafa was ordered by Trial Panel I to pay an overall sum of 207,000 EUR as compensation for the harm inflicted on the victims of crimes for which he has been convicted. It is also recalled that this conviction, and the Reparation Order which is based on it, are now final. However, it is also most likely that [REDACTED] as a result of the present decision will not allow a full implementation of the Reparation Order. In this regard, the Single Judge recalls that Trial Panel I already noted in the Reparation Order that the means available to Mr Mustafa did not reveal that he would be in a position to fully comply with the Reparation Order.⁵⁹ Trial Panel I found him therefore partially indigent.⁶⁰ The Single Judge also recalls Trial Panel I's finding that this situation would not relieve Mr Mustafa from his liability and that, therefore, the judicial authority assigned with the implementation of the Reparation Order was "to continue [REDACTED] and to monitor Mr Mustafa's financial situation on an ongoing basis", in order to enforce the Reparation Order in full.⁶¹

47. The Single Judge underlines that there is no time-limit for the enforcement of the Reparation Order, and that consequently Mr Mustafa's liability with regard to the victims will only end when the Reparation Order will have been executed in full. To this effect, the Single Judge decides that [REDACTED], subject to [REDACTED] for all other purposes and until further order from the Single Judge. This will allow the

⁵⁸ Reparation Order, para. 283(i).

⁵⁹ Reparation Order, para. 255.

⁶⁰ Reparation Order, para. 258.

⁶¹ Reparation Order, para. 259.

Single Judge to continue monitoring [REDACTED], in order to decide [REDACTED] for the purpose of the Reparation Order's full enforcement.

48. In her report on the execution of the present decision, the Registrar is ordered to present further information in this regard, especially on whether Mr Mustafa's [REDACTED].⁶² For that purpose, the Single Judge orders the [REDACTED] to provide updated information [REDACTED].

C. INTEREST RATE ON REPARATIONS DUE

1. Submissions

49. In her Request and Response, Victims' Counsel acknowledges that setting the interest rate may be a hypothetical consideration at this juncture when it is still unknown if and to what extent the main debt will be satisfied. That being said, she underlines the importance of the payment of statutory interests on the amounts owed for reparations, as "debts resulting from reparations are economically important awards and to be treated on an equal footing to any other debt". She furthermore submits that in times of high inflation, it must be ensured that the awards are not economically devalued with the passing of time.⁶³

2. Determination

50. The Single Judge concurs with Victims' Counsel on the importance of potential interest rates on the amounts owed by Mr Mustafa. However, the Single Judge finds that this is obviously not an urgent matter as it is not clear whether and when the amount owed by Mr Mustafa will be fully paid.

51. Two distinct issues must be dealt with concerning an eventual interest rate: (i) what would be the amount of such an interest rate; and (ii) when interests would

⁶² See also para. 38 above.

⁶³ Victims' Counsel Request, para. 7(c); Victims' Counsel Response, paras 15-17.

start to accrue. With regard to the first issue, Victims' Counsel refers to Article 382 of the Kosovo Law on Obligations, where the interest rate is established at eight percent (8%) per annum, *unless stipulated otherwise by a separate act of law*. With regard to the second issue, Victims' Counsel does not refer to any applicable law or practice before the Kosovo courts as to when interests would start to accrue but simply requests a deadline to be set by the Single Judge for the payment by Mr Mustafa, "as this will trigger the obligation to additionally pay statutory interest on the amounts owed".⁶⁴

52. The Single Judge is of the view that the moment when interests start to accrue does not necessarily correspond to the moment when a payment is due. Although the Reparation Order is currently immediately enforceable, this does not necessarily mean that interests would immediately start to accrue in case it is not immediately enforced in full. Furthermore, the Single Judge does not find it appropriate to establish a deadline which would trigger the obligation to pay such interests, without receiving further information as to the applicable law and practice of Kosovo courts in cases of reparation awards for damages, based on a final criminal conviction. Therefore, the Registrar is ordered to: (i) request information from the Kosovo Ministry of Justice as to what the interest rate to be applied is; and (ii) when interests start to accrue in such cases before Kosovo courts. Accordingly, the Single Judge defers a decision on this issue.

D. INDIGENCE ASSESSMENT

1. Submissions

a) Registrar's Submissions

53. The Registrar indicates her availability to conduct an indigence assessment with regard to Mr Mustafa. She reports that such an assessment would take into

⁶⁴ Victims' Counsel Response, para. 15.

consideration [REDACTED] and would apply the system established in the Legal Aid Regulations, including its Annex A, which contain provisions on indigence assessment for a suspect or an accused requesting legal aid. She further submits that the assessment would be based on the documentation provided by Mr Mustafa and an inquiry into his means, taking into consideration his family situation, including the living expenses of any spouse and dependent children, as well as any liabilities, such as loans.⁶⁵

b) Victims' Counsel Response

54. Victims' Counsel maintains that any indigence assessment should not take into consideration [REDACTED], were not necessary [REDACTED].⁶⁶

55. In this regard, Victims' Counsel requests that she be allowed to challenge and question any claims made by Mr Mustafa or his dependents regarding their needs, and to raise questions with regard to [REDACTED].⁶⁷

56. Concerning the basis of any indigence assessment, Victims' Counsel argues that the system established in the Legal Aid Regulations would require some adjustment. In this regard, Victims' Counsel refers to Section 2(3) of the Protocol on Indigence Assessment which provides that: "[M]eans that are temporarily not disposable or not readily disposable shall be considered as non-disposable means for the purpose of this assessment". Victim's Counsel argues that for the purpose of assessing indigence in the context of reparation obligations, temporarily non-disposable means should be considered as disposable, and distributed to victims until reparations are paid in full.⁶⁸

2. Determination

⁶⁵ Registrar's Submissions, paras 21-24.

⁶⁶ Victims' Counsel Response, para. 5.

⁶⁷ Victims' Counsel Response, para. 11.

⁶⁸ Victims' Counsel Response, paras 12-13.

57. The Single Judge concurs with Victims' Counsel that Mr Mustafa's indigence assessment should not take into consideration [REDACTED] as they were not necessary [REDACTED].⁶⁹ The Single Judge recalls that Mr Mustafa is not relieved from his obligation to pay in full reparations to the victims of this case, despite the partial enforcement of the Reparation Order [REDACTED]. In order to ensure full compliance, for which there is no time-limit, it is necessary to assess what are the current and future means available to Mr Mustafa, taking into consideration his dependents' needs as well as any liabilities, including loans. This assessment will have to be performed once it is known which amount of the Reparation Order [REDACTED] by Mr Mustafa *after* the implementation of the present decision. In her report on the execution of the present decision, the Registrar will have to indicate [REDACTED].

58. With regard to the basis of the indigence assessment of Mr Mustafa, while it is appropriate for the Registrar to take the Legal Aid Regulations and its Protocol on Indigence Assessment as a starting point, the Single Judge concurs with Victims' Counsel that Section 2(3) of the Protocol on Indigence Assessment should not apply. In the view of the Single Judge, this is owed to the fact that the absence of a time-limit for the enforcement of the Reparation Order will have to be taken into consideration by the Registrar in her assessment. Furthermore, the Single Judge instructs the Registrar to: (i) ascertain whether Mr Mustafa [REDACTED]; and (ii) [REDACTED]. Depending on the current and future available means of Mr Mustafa, and taking into consideration his family's needs, the Registrar is also to assess whether those means would allow Mr Mustafa to pay in full the reparations ordered within a reasonable time.

59. [REDACTED]. [REDACTED].⁷⁰

⁶⁹ See para. 41 above.

⁷⁰ [REDACTED].

60. [REDACTED]. [REDACTED].

61. The Registrar's indigence assessment shall be submitted within two months of the issuance of the present decision. Victims' Counsel and Mr Mustafa will have ten days to submit their observations in response, if they so wish. The Single Judge will thereafter take a decision on Mr Mustafa's indigence.

E. APPLICATION TO THE KOSOVO CRIME VICTIM COMPENSATION PROGRAM

1. Submissions

a) Registrar's Submissions

62. The Registrar indicates that Kosovo Law No. 08/L-109 on Crime Victim Compensation establishes a three-year deadline from receipt of the final judgment for the submission of compensation applications to the Crime Victim Compensation Program.⁷¹ Furthermore, she submits that applications can only be made when it can be shown that compensation has been requested from the convicted person but not obtained in full or in part.⁷² The Registrar therefore concludes that, before submitting any application to the Crime Victim Compensation Program, it needs to be determined whether and to what extent Mr Mustafa is in a position to compensate the victims.⁷³

b) Victims' Counsel Response

63. Victims' Counsel underlines that for the "purpose of submitting applications to the Crime Victim Compensation Program it will be useful that the Single Judge

⁷¹ Article 29(2.1) of Law No. 08/L-109 on Crime Victim Compensation (Kosovo Law on Compensation), 14 October 2022, Official Gazette of the Republic of Kosovo, N^o. 33, 2 November 2022.

⁷² Article 9(2)-(4) of Kosovo Law on Compensation.

⁷³ Registrar's Submissions, paras 28-30.

reiterate findings of partial indigence regarding those parts of the reparations awards that cannot be satisfied in the near future through [REDACTED]’.⁷⁴

2. Determination

64. The Single Judge recalls that Trial Panel I concluded in the Reparation Order that Mr Mustafa, at the time, could not fully execute it. He also recalls that Trial Panel I ordered the Registrar, in coordination with Victims’ Counsel, to seek compensation from the Crime Victim Compensation Program in Kosovo on behalf of victims in order to preserve their anonymity and ensure their protection.⁷⁵

65. Taking into consideration the time elapsed since the issuance of the Reparation Order and the conditions established in Article 9 of the Kosovo Law on Compensation, the Single Judge cannot but agree with the Registrar and Victims’ Counsel that, before any application to the Crime Victim Compensation Program in Kosovo is submitted, it must first be established whether and to what extent Mr Mustafa is in a position to pay the reparations ordered within a reasonable time. Therefore, the Single Judge finds that, before proceeding with any application, the Registrar shall report on the implementation of the present decision, and submit her assessment on Mr Mustafa’s indigence, as ordered above. Victims’ Counsel and the Defence may include observations in particular on the timing of on any application to the Crime Victim Compensation Program in Kosovo when submitting their responses, if they so wish, to the Registrar’s assessment on indigence. The Single Judge will thereafter decide on the issue of an application to the Kosovo Crime Victim Compensation Program.

⁷⁴ Victims’ Counsel Response, para. 14.

⁷⁵ Reparation Order, paras 258 and 266.

IV. DISPOSITION

66. For the above-mentioned reasons, the Single Judge hereby:

- a. **DECIDES** that the Reparation Order shall be enforced immediately;
- b. **ORDERS** [REDACTED];
- c. **DECIDES** that [REDACTED];
- d. **ORDERS** [REDACTED];
- e. **ORDERS** [REDACTED], and **DECIDES** that [REDACTED];
- f. **ORDERS** [REDACTED];
- g. **DECIDES** that [REDACTED], for the purpose of the enforcement of the Reparation Order;
- h. **ORDERS** [REDACTED];
- i. **ORDERS** for the sole purpose of the [REDACTED], and **DECIDES** that [REDACTED];
- j. **ORDERS** the [REDACTED] to provide, within thirty (30) days of the date of service of the annexed order, records and documents containing the following updated information on: [REDACTED];
- k. **INSTRUCTS** the Registrar to serve the annexed orders on the respective recipients and **AUTHORISES** the Registrar to disclose, as appropriate and necessary, those orders for the purposes of their execution;
- l. **ORDERS** (i) the Registrar to submit a comprehensive report on the execution of the present decision, and of the annexed orders by [REDACTED], including information as mentioned in paragraphs 31, 40, 44, 48 and 57 of the present decision, within fourteen (14) days of execution thereof; if the aforementioned entities [REDACTED], then the report shall be submitted within thirty (30) days from the date of

- service; (ii) the Registrar to submit a confidential (redacted) version of her report and to notify Victims' Counsel and Mr Mustafa; and (iii) Victims' Counsel and Mr Mustafa to submit, if they so wish, within ten (10) days of notification of the Registrar's report, any observations in response;
- m. **ORDERS** (i) the Registrar to submit, in a separate report, within two months of the issuance of the present decision, her assessment on Mr Mustafa's indigence taking into consideration paragraphs 57-58 of the present decision, and (ii) Victims' Counsel and Mr Mustafa to submit, if they so wish, any observations in response, including on the timing of any application to the Victim Compensation Program in Kosovo as provided in paragraph 65 of the present decision, within ten (10) days of notification of that assessment;
- n. [REDACTED];
- o. **DECIDES** to defer his decision as to the interest rate due on the reparations and **INSTRUCTS** the Registrar to request observations on this issue from the Kosovo Ministry of Justice in accordance with paragraph 52 of the present decision; and
- p. **ORDERS** the Registrar to submit a public redacted version of her filing F00006 by **Friday, 29 March 2024** and Victims' Counsel to submit a public redacted version of her filings F00010 and F00011, by **Friday, 5 April 2024**, or to request on the record their reclassification as public.



Judge Gilbert Bitti
Single Judge

Dated this Monday, 25 March 2024

At The Hague, the Netherlands.