



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Judge Gilbert Bitti, Single Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Registrar

Date: 10 May 2024

Language: English

Classification: Public

Public Redacted Version of “Registrar’s Request for Order to Mr Mustafa to Cooperate for the Purposes of the Indigence Assessment, with two confidential and *ex parte* Annexes” (R001, F00014)

Specialist Prosecutor’s Office

Kimberly P. West

Counsel for Salih Mustafa

Julius von Bóné

Victims’ Counsel

Anni Pues

I. INTRODUCTION

1. Pursuant to Articles 22, 34 and 44(6) of the Law,¹ and Rule 23(2), (8) of the Rules,² the Registrar requests the Single Judge to issue an order for obtaining additional information and documentation required for the indigence assessment of Mr Salih Mustafa ('Mr Mustafa').

II. PROCEDURAL HISTORY

2. On 6 April 2023, the Trial Panel issued a Reparation Order against Mr Mustafa ('Reparation Order').³

3. On 17 January 2024, the President of the Specialist Chambers assigned a Single Judge, to oversee the implementation by the Registrar of the Reparation Order.⁴

4. On 19 January 2024, Victims' Counsel, Ms Anni Pues, requested the Single Judge to set a time-limit of ten days for payment of the reparations.⁵

5. On 24 January 2024, the Registrar presented submissions on the implementation of the Reparation Order ('Registrar's Submissions').⁶

6. On 25 March 2024, the Single Judge issued the Decision on Victims' Counsel's Request to Set a Date for the Payment of Reparations and other Matters ('Decision').⁷

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'), public.

³ F00517, Reparation Order against Salih Mustafa With 4 Annexes strictly confidential and *ex parte*, 6 April 2023, confidential (*see also* F00517/RED).

⁴ KSC-BC-2020-05, R001, Decision on Assigning a Single Judge, 17 January 2024, public.

⁵ R001, F00003, Request to set a date for payment of reparations, 19 January 2024, public.

⁶ R001, F00006, Registrar's Submissions on the Implementation of the Reparation Order, 24 January 2024, strictly confidential and *ex parte* (*see also* F00006/CONF/RED, 19 February 2024).

⁷ R001, F00012, Decision on Victims' Counsel's Request to Set a Date for the Payment of Reparations and other Matters, 25 March 2024, confidential and *ex parte*.

II. SUBMISSIONS

7. In the Decision, the Single Judge instructed the Registrar to conduct an indigence assessment of Mr Mustafa, taking the Legal Aid Regulations ('LAR') and its Protocol on Indigence Assessment as a starting point.⁸

8. In particular, the Single Judge instructed the Registrar to: (i) ascertain whether Mr Mustafa [REDACTED]; (ii) whether [REDACTED]; and (iii) depending on the current and future available means of Mr Mustafa, and taking into consideration his family's needs, assess whether those means would allow Mr Mustafa to pay the reparations ordered in full, within a reasonable time.⁹ The Registrar was ordered to submit a report on Mr Mustafa's indigence within two months of the issuance of the Decision (i.e. by 27 May 2024).¹⁰

9. In accordance with the Protocol on Indigence Assessment of the LAR,¹¹ an investigation into means is triggered by a Legal Aid Request, submitted by a suspect or accused, and the assessment is based on information provided by that person in a Declaration of Means Form. The purpose of this form is to obtain all relevant information on incomes, assets, debts and expenses of the suspect or accused, their spouse, and members of their household or any other financially associated person, which form the basis for the assessment and any additional enquiries with relevant authorities.

10. To obtain the required information and complete the indigence assessment, the Registry transmitted a Declaration of Means Form to Mr Mustafa, with a copy provided to his Counsel, on 15 April 2024, and requested his cooperation.¹² Specifically, Mr Mustafa was asked to submit, by 22 April 2024, the Declaration of Means Form completed in full. In the absence of a response, the Registry enquired

⁸ Id., para. 58.

⁹ Id.

¹⁰ Decision, para. 66(m).

¹¹ KSC-BD-25, Legal Aid Regulations, Regulation 8, and Annex A, Protocol on Indigence Assessment.

¹² See Annex 1, KSC/REG/IOR/6924, 15 April 2024, confidential and *ex parte*.

with Specialist Counsel on 29 April 2024 about the status of the pending request. On 2 May 2024, Mr Mustafa's Counsel responded, stating that: [REDACTED].¹³

11. The Registrar reiterates that, in the present case, the Single Judge instructed her to conduct an indigence assessment of a convicted person, who had been ordered to pay compensation to victims via a Reparation Order. There is thus a clear obligation imposed on Mr Mustafa as regards reparations and the order issued by the Single Judge, including the obligation to provide the necessary information for an indigence assessment. The Registrar has unsuccessfully sought Mr Mustafa's cooperation in completing the Declaration of Means Form. Without the required information, Mr Mustafa's means cannot be fully assessed.

12. Finally, the Registrar notes that, without a completed Declaration of Means Form, the assessment of Mr Mustafa's indigence is a considerably more complex process. In view of that, the Registrar notes that the initial deadline for the indigence assessment cannot be met.¹⁴ Once the completed Declaration of Means Form is provided, the Registrar can advise as to when the assessment of means can be completed.

III. REQUESTED RELIEF

13. For the foregoing reasons, the Registrar requests that the Single Judge orders Mr Mustafa to complete the Declaration of Means Form and provide the information required.

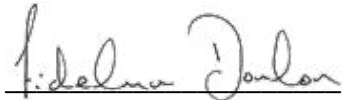
¹³ See Annex 2, E-mail correspondence, confidential and *ex parte*.

¹⁴ See Decision, para. 66(m).

IV. CLASSIFICATION

14. Pursuant to Rule 82(4) of the Rules, this submission is filed as confidential and *ex parte*.

Word count: 941

A handwritten signature in dark ink, appearing to read 'Fidelma Donlon', is written over a horizontal line.

Dr Fidelma Donlon
Registrar

Friday, 10 May 2024
At The Hague, the Netherlands.