



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:** 18 September 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of**  
**Decision on the Registrar's Request for Order to Mr Mustafa to Cooperate**

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**To be notified to:**

**Victims' Counsel**  
Anni Pues

**Registry**  
Fidelma Donlon

**Specialist Prosecutor's Office**  
Kimberly P. West

**Counsel for Salih Mustafa**  
Julius von Bóné

**THE SINGLE JUDGE**<sup>1</sup> hereby renders this decision on the Registrar's Request for Order to Mr Mustafa to Cooperate.

## I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 6 April 2023, Trial Panel I issued a reparation order against Salih Mustafa (Reparation Order and Mr Mustafa, respectively), ordering Mr Mustafa to pay reparations to eight (8) victims (Victims) of crimes he was convicted of, as compensation for the harm inflicted.<sup>2</sup> The Reparation Order was not appealed either by Mr Mustafa or by Victims' Counsel.

2. On 14 December 2023, a Panel of the Court of Appeals Chamber confirmed all of the convictions which formed the basis of the Reparation Order.<sup>3</sup>

3. 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 on Payment of Reparations), in which he, *inter alia*, instructed the Registrar to conduct an indigence assessment of Mr Mustafa, taking the Legal Aid Regulations<sup>4</sup> and related Protocol on Indigence Assessment<sup>5</sup> as a starting point.<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-05/R001, F00002, President, [Decision Assigning a Single Judge](#), 17 January 2024, public.

<sup>2</sup> 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 was issued on 14 April 2023, [F00517/RED/COR](#).

<sup>3</sup> KSC-CA-2023-02, F00038/RED, Court of Appeals Panel, [Public Redacted Version of Appeal Judgment](#), 14 December 2023, para. 481.

<sup>4</sup> KSC-BD-25-Rev1, Registry, [Registry Practice Direction: Legal Aid Regulations](#), 22 February 2024, public.

<sup>5</sup> KSC-BD-25-Rev1, Registry, [Annex A to Legal Aid Regulations: Protocol on Indigence Assessment](#), 22 February 2024, public.

<sup>6</sup> KSC-BC-2020-05/R001, F00012, Single Judge, *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*, para. 58, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version was issued on 22 July 2024, [F00012/RED](#).

4. On 10 May 2024, the Registrar filed the “Request for Order to Mr Mustafa to Cooperate for the Purposes of the Indigence Assessment” (Registrar’s Request).<sup>7</sup> In it, the Registrar informs the Single Judge that, in accordance with the Protocol on Indigence Assessment, the indigence assessment is based on information provided by the convicted person in a Declaration of Means Form. The Registrar reports that she had unsuccessfully sought Mr Mustafa’s cooperation in completing the Declaration of Means Form and therefore requests the Single Judge to order Mr Mustafa to do so. She argues that without the completed Declaration of Means Form, she cannot complete the indigence assessment, “the assessment of Mr Mustafa’s indigence is a considerably more complex process” and that she cannot meet the deadline previously set out by the Single Judge.<sup>8</sup>

5. On 29 May 2024, the Registrar submitted the “Report on Execution of the Decision and Orders related to Reparations” (Registrar’s First Report), informing the Single Judge that the funds received [REDACTED] would be [REDACTED].<sup>9</sup>

6. On 19 July 2024, the Registrar filed the “Additional Registrar’s Report on Execution of the Decision and Orders related to Reparations (F00012)” (Registrar’s Second Report), [REDACTED].<sup>10</sup>

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<sup>7</sup> KSC-BC-2020-05/R001, F00014, Registrar, *Registrar’s Request for Order to Mr Mustafa to Cooperate for the Purposes of the Indigence Assessment*, 10 May 2024, confidential and *ex parte*, with Annexes 1-2, confidential and *ex parte*.

<sup>8</sup> Registrar’s Request, paras 10-12.

<sup>9</sup> KSC-BC-2020-05/R001, F00016, Registrar, *Registrar’s Report on Execution of the Decision and Orders related to Reparations (F00012)*, 29 May 2024, confidential and *ex parte*, paras 22-24, with Annexes 1-4, strictly confidential and *ex parte*, Annexes 5 and 7, confidential and *ex parte*, and Annex 6, confidential. Confidential redacted versions of the main filing were filed on 3 June 2024, F00016/CONF/RED and F00016/CONF/RED2, respectively.

<sup>10</sup> KSC-BC-2020-05/R001, F00017, Registrar, *Additional Registrar’s Report on Execution of the Decision and Orders related to Reparations (F00012)*, 19 July 2024, confidential and *ex parte*, para. 4, with Annex 1, strictly confidential and *ex parte*.

## II. APPLICABLE LAW

7. The Single Judge notes Articles 22(8), 34(1), 44(6), 53(1) and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 23(1) and (8), 65(1) and 82(5) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

## III. ANALYSIS

8. The Single Judge observes that Mr Mustafa has not filled out the Declaration of Means Form.<sup>11</sup> The Single Judge finds that, in the above circumstances, the Registrar's Request is justified as the information contained in the Declaration of Means Form is needed for the effective implementation of the Reparation Order. Therefore, the Single Judge orders Mr Mustafa to fill out the Declaration of Means Form without delay, at the latest by **Monday, 7 October 2024**. The Single Judge warns Mr Mustafa, pursuant to Rule 65(1) of the Rules, that he may be sanctioned in case he refuses to comply with the present order. For any practical matters regarding the Declaration of Means Form, Mr Mustafa shall liaise with the Registrar, either personally, if he so wishes, or through his Counsel.

9. Secondly, the Single Judge finds that, for the purpose of assessing indigence in the context of reparation obligations, the Registrar can take into consideration but is not bound by the information and documentation provided by the convicted person. While the Single Judge expects Mr Mustafa to fill out the Declaration of Means Form, the Registrar must independently gather relevant information and documentation for the purposes of undertaking Mr Mustafa's indigence assessment, requesting eventually [REDACTED]. The Single Judge is attentive to the Registrar's submissions that this would be a more complex process in the absence of any documentation

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<sup>11</sup> Registrar's Request, para. 10.

provided by Mr Mustafa. At the same time, the Single Judge recalls that the Legal Aid Regulations, including their Annex A, are intended primarily to regulate legal aid for suspects and accused persons requiring the person's input. In the context of reparations, the Single Judge finds that it is more appropriate to conceive of the indigence assessment process as one requiring both the convicted person's input *and* the Registrar's independent inquiry into the convicted person's means. In conducting such an inquiry, the Registrar may request [REDACTED].<sup>12</sup> This is because the focus and imperative of the indigence assessment is to objectively identify whether any assets or means are indeed available so that the Reparation Order can be executed in full.

10. In light of the above, and without prejudice to the order to Mr Mustafa to fill in and provide all information in the Declaration of Means Form, the Single Judge finds it appropriate to order the Registrar to proceed with initiating an independent inquiry into Mr Mustafa's assets right away. [REDACTED]. Moreover, the Single Judge varies the deadline for the Registrar to submit a report on Mr Mustafa's indigence assessment to **Friday, 20 December 2024**.

#### IV. CLASSIFICATION OF FILINGS

11. The Single Judge notes that the Registrar has no objection to the reclassification filing F00017 so that it is made available to Victims' Counsel.<sup>13</sup> The Single Judge concurs with the Registrar that F00017 (main filing only) should be notified to Victims' Counsel. The Single Judge further instructs the Registrar to submit a confidential redacted version of the Annex, to be notified to Victims' Counsel, applying appropriate redactions pertaining to [REDACTED].

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<sup>12</sup> Decision on Payment of Reparations, paras 60 and 66(n).

<sup>13</sup> See Registrar's Second Report, para. 5.

12. With regard to filing F00014, the Single Judge notes that it has only been notified to Mr Mustafa. The Single Judge is, however, of the view that there is no reason for the main filing (excluding its two Annexes) not to be notified to the SPO and Victims' Counsel, with appropriate redactions in paragraphs 8 and 10 of this filing.

## V. DISPOSITION

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

- a. **GRANTS** the Registrar's Request and **ORDERS** Mr Mustafa to fill out the Declaration of Means Form without delay, at the latest by **Monday, 7 October 2024**;
- b. **WARNS** Mr Mustafa, pursuant to Rule 65(1) of the Rules, that he may be sanctioned in case he refuses to comply with the present order;
- c. **ORDERS** the Registrar to initiate right away an independent inquiry into Mr Mustafa's assets, in accordance with the terms of paragraphs 9 and 10 above;
- d. **ORDERS** the Registrar, pursuant to Rule 82(5) of the Rules, to notify filing F00017 to Victims' Counsel (main filing only), and submit a confidential redacted version of its Annex, to be notified to Victims' Counsel, applying appropriate redactions pertaining to [REDACTED];
- e. **ORDERS** the Registrar to submit a confidential redacted version of filing F00014 (main filing only), in accordance with the terms of paragraph 12 above, and to notify it to the SPO and Victims' Counsel; and

- f. **VARIES** the deadline for the Registrar to submit her report on Mr Mustafa's indigence assessment to **Friday, 20 December 2024**.

A handwritten signature in black ink, appearing to read 'Bitti', is written over a horizontal line.

**Judge Gilbert Bitti**  
**Single Judge**

Dated this Wednesday, 18 September 2024

At The Hague, the Netherlands.