



Republic of Kosovo

Government

Ministry of Justice

Office of the Minister of Justice

Pristina, 14 March 2022

To: Mrs. Mappie Veldt-Foglia, Presiding Judge, Kosovo Specialist Chambers

Copy to:

- **Mr. Albin Kurti, Prime Minister of the Republic of Kosovo**
- **Mrs. Fidelma Donlon, Registrar, Kosovo Specialist Chambers**

Subject: Response to your document KSC-BC-2020-05

Dear Mrs. Veldt-Foglia,

After having considered your request for information on the possibility of compensation for crime victims pursuant to a Reparation Order by the Trial Panel and maintaining anonymity, we hereby inform you as follows:

1. Compensation Fund

Regarding the issue of the Compensation Fund for Crime Victims, Article 19, paragraph 1 (1.26) of the Code No. 04/L-123 of the Criminal Procedure¹, provides that:

“1.26. Victim Compensation Fund – a fund to which forfeited bail and other authorized assets under law is deposited. Payments from the victim compensation fund shall be used to compensate crime victims as authorized under law”,

Article 62, paragraph 1 (1.5) of the Criminal Procedure Code, specifically provides that:

“if a court cannot order restitution from the defendant or defendants due to their inability to pay, in the absence of jurisdiction of the court, or death, the injured party has the right to request from the court to refer the order for compensation to the coordinator of the victim compensation fund”.

¹ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861>

2. Compensable criminal offences

In this regard, Article 6 of the Law No. 05/L-036 on Crime Victim Compensation² (hereinafter referred to as “Law”), defines the categories of compensable violent crimes, listed in paragraph 1 of Article 6 as follows:

- “1.1. murder;*
- 1.2. trafficking in persons;*
- 1.3. rape;*
- 1.4. sexual abuse of children;*
- 1.5. criminal offences which fall within the definition of domestic violence under the Law on Protection Against Domestic Violence”.*

Although the mandatory compensable crimes are listed above, paragraph 1 of Article 6, *inter alia*, provides that:

“2. ...the Committee³ may review and decide on other applications received by individuals who claim to have been victims of other violent crimes, which due to their nature and the consequence caused may justify the compensation according to this Law, in particular if the victim is a vulnerable victim”.

This suggests that the list of criminal offences is not exhaustive and the Committee is given the power to review and decide on applications for compensation received by other persons who claim to be victims of other violent crimes and who provide reasons for such claims.

3. Conditions for compensation

Paragraph 3 of the same Article provides that:

“3. In order to have access to compensation, victims of crimes foreseen under this article must meet the formal and material conditions.”

Article 7 of the Law provides that the formal conditions for the right to compensation are fulfilled if the applicant:

- “1.1. is a citizen or permanent resident of the Republic of Kosovo;*
- 1.2. is a citizen of any country with which the Republic of Kosovo has reciprocity; or*
- 1.3. is a citizen of a Member State of the European Union.*

On the other hand, the material conditions (Article 8) to be eligible for the right to compensation in national and national cross border situations, are met if the crime:

“1.1. is punishable with a minimum of one year of imprisonment;

² <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10936>

³ Crime Victim Compensation Committee, as foreseen in Article 23 of the Law.

- 1.2. *was committed within the territory of the Republic of Kosovo;*
- 1.3. *was detected and reported to the competent authority and dealt with as a criminal offence;*
- 1.4. *was not committed negligently;*
- 1.5. *resulted in the death of the victim, serious bodily injury, serious impairment of health or serious disturbance to mental health of the victim;*
- 1.6. *the victim incurred damage recognized by this law as a consequence of the crime, and;*
- 1.7. *the crime victim is unable to obtain compensation through health insurance or other resources.*

In addition, if the outcome of a criminal offence in relation to which compensation can be claimed under this Law is the death of a victim, the victim's dependants shall enjoy the rights provided for in the Law; paragraph 2 of Article 7/as printed/ of the Law confers this right on the dependants of a crime victim.

It is worth mentioning that a victim has the legal obligation to request compensation from the defendant and such obligation is by Article 10 (paragraph 1 and 2) of the Law, which provides that:

"1. Before applying for compensation under this Law, the applicant is obliged, except in cases referred to in Article 9⁴ of the present Law, to request initially compensation from the defendant in accordance with the Criminal Procedure Code.

2. In cases when the defendant provides only partial restitution to the victim, the victim is entitled to file a request for additional compensation from the crime victim compensation program".

4. Types of compensation

Article 12 of the Law provides that the following damages may be compensated:

- "1.1. serious physical injuries or impairment of health;*
- 1.2. serious disturbance to mental health;*
- 1.3. loss of capacity to work and loss of maintenance;*
- 1.4. medical and hospitalization expenses;*
- 1.5. funeral expenses;*
- 1.6. damages for destroyed medical devices;*
- 1.7. procedural expenses for filling an application for compensation"*

5. Application for compensation

An application for compensation shall be submitted to the Ministry of Justice pursuant to Article 29 of the Law which provides that:

1. *The application for compensation shall be submitted to the Ministry of Justice.*

⁴ This article regulates the immediate access to victim compensation.

2. *The crime victim may request assistance from a victims' counsel or other non-governmental organizations providing free legal assistance to the victims in completing the request for compensation.*
3. *In case a private attorney is hired for the purpose of filling and submitting the application for compensation, the Committee shall not reimburse the applicant for the attorney's fee.*
4. *The Committee, in compliance with the provisions of the Criminal Procedure Code, may review also the claims for compensation referred by the Court.*

6. Deadlines for submitting an application for compensation

The deadlines for submitting an application for compensation are set in Article 31 of the Law, which provides that:

"1. The application permitted under Article 9 of this Law shall be submitted no later than six (6) months from the date the last criminal offence, which caused the claim for compensation, was reported.

2. The applications permitted under paragraph 2 of Article 10, and subparagraphs 1.2-1.5 of Article 11 of this Law, must be submitted within six (6) months of receipt of the final decision.

3. For the applications permitted under paragraph 1.1 of Article 11, the six (6) month time limit shall commence from the expiry of the timeframe according to that Article .

4. Exclusively, if the victim due to the bodily injuries, or any other justified reasons which do not allow him/her to file an application, fails to submit the application by the deadline invoked in the paragraphs 2 and 3 of this article, he/she shall submit the application by no later than three (3) months from the day when the reasons for which he/she was unable to submit the application cease to exist.

5. If the crime victim is under eighteen (18) years, the time limits from paragraph 4 of this article shall commence on the day when the victim turns eighteen (18) years".

7. Determination of applications for compensation by the Committee

With regard to determination of applications for compensation by the Committee, paragraph 4 of Article 34 of the Law provides that:

"4. The Committee shall render a decision within ninety (90) days of the receipt of a complete application.

Therefore, in light of the above, we hereby inform you that:

- I. The Victim Compensation Fund, as defined by the provisions of Criminal Procedure Code, is the only fund for the compensation of crime victims;
- II. The Government Committee for Crime Victim Compensation is the relevant legal mechanism that reviews and decides on applications for compensation of crime victims;
- III. An application for compensation shall be submitted to the Ministry of Justice by the victim himself/herself, his/her authorized representative or may be referred by the Court;
- IV. A completed application must be submitted within the time limit set by law;
- V. In order to benefit from the Compensation Fund, a victim must meet the above-mentioned legal criteria;
- VI. The Committee shall render a decision regarding an application within the time limit set by law.

Finally, the Ministry of Justice will be available to provide any additional clarifications regarding this issue, in accordance with the legislation in force in the Republic of Kosovo.

Thank You.

Respectfully,

Albulena Haxhiu
Minister of Justice
/seal and signature/