



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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: Fidelma Donlon

Date: 25 April 2022

Language: English

Classification: **Public**

Order requesting the Ministry of Justice of Kosovo to provide further submissions

To be notified to:

Specialist Prosecutor

Jack Smith

Counsel for the Accused

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Registrar

Fidelma Donlon

Victims' Counsel

Anni Pues

TRIAL PANEL I (Panel) hereby renders this order requesting the Ministry of Justice of Kosovo (Ministry of Justice) to provide further submissions.

I. PROCEDURAL BACKGROUND

1. On 4 February 2022, the Panel issued the “Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting submissions” (Decision), in which the Panel, *inter alia*, ordered the Ministry of Justice to provide the Panel, by 16 March 2022, with its answers to a set of specific questions set out in the Decision.¹

2. On 16 March 2022, the Ministry of Justice provided its submissions (MoJ Submissions).²

3. On 25 March 2022, the Victims’ Counsel filed the “Victims’ Counsel Submission pursuant to the Response of the Ministry of Justice of Kosovo on compensation and Request to seek further clarification” (Victims’ Submissions).³

II. QUESTIONS PUT BY THE PANEL TO THE MINISTRY OF JUSTICE

4. The Panel recalls that, in the Decision, it ordered the Ministry of Justice to provide submissions on the following questions.

- Whether, in case of a conviction of the Mr Salih Mustafa (Accused) and the issuance of a Reparation Order by the Panel, should the Accused be unable to pay any reparations ordered by the Panel, victims of crimes under the

¹ KSC-BC-2020-05, F00310/RED, Trial Panel I, *Public Redacted Version of Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting submissions*, 4 February 2022, public.

² KSC-BC-2020-05, F00344, Ministry of Justice of Kosovo, *Response to your document KSC-BC-2020-05*, 14 March 2022, public.

³ KSC-BC-2020-05, F00365, Victims’ Counsel, *Victims’ Counsel Submission pursuant to the Response of the Ministry of Justice of Kosovo on compensation and Request to seek further clarification*, 25 March 2022, public.

jurisdiction of the Specialist Chambers (SC) could benefit from restitution from the Victim Compensation Fund referred to in Articles 19(1), section 1.26, and 62(1), section 1.5, of the Kosovo Criminal Procedure Code, or from any other relevant compensation programme, including the one established under Law No. 05/L-036 on Crime Victim Compensation (Question 1);

- Whether victims of crimes under the jurisdiction of the SC could benefit from restitution from the aforementioned Victim Compensation Fund or from any other relevant compensation programme whilst remaining anonymous following the issuance of a reparation order by the Panel (Question 2);
- Whether, in order to preserve the victims' anonymity, the Registrar, with the assistance of the Ministry of Justice, as necessary, could apply for restitution from the aforementioned Victim Compensation Fund or from any other relevant compensation programme on the victims' behalf, following the issuance of a reparation order by the Panel (Question 3); and
- Whether, in case victims of crimes under the jurisdiction of the SC could not benefit from restitution from any currently existing compensation programme, a fund could be established to this end, financed by the Kosovo budget or otherwise, to which the Registrar could apply for compensation on the victims' behalf, in order to preserve their anonymity. In this context, the Panel specifically notes that the financing of the defence of accused persons before the SC from the Kosovo budget has been made possible by means of Law No. 05-054 on Legal Protection and Financial Support for Potential Accused Persons in Trials Before the SC (Question 4).⁴

⁴ Decision, para. 47.

III. SUBMISSIONS

5. The Panel notes that the Ministry of Justice does not directly answer the questions put by the Panel but presents an overview of the existing legislation; after that overview, the Ministry of Justice informs the Panel that: “I) The Victim Compensation Fund, as defined by the provisions of Criminal procedural Code, is the only fund for 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 the law; V) In order to benefit from the Compensation Fund, a victim must meet the above-mentioned legal criteria; and Vi) The Committee shall render a decision regarding an application within the time limit set by the law”.⁵ The Ministry of Justice concludes by stating that it is available to provide any additional clarifications.⁶

6. Victims’ Counsel submits that the Ministry of Justice has not provided a direct answer to any of the questions posed by the Panel; rather it has provided an overview of the existing law, whereby some answers to the questions posed by the Panel can be deduced from such overview.⁷ Victims’ Counsel raises several concerns with regard to the overview of the existing law submitted by the Ministry of Justice. In this regard, it remains unclear whether victims in this case will be eligible for compensation as this seems subject to the discretionary competence of the Government Committee for Crime Victim Compensation that will examine their application, leaving therefore the victims with a serious risk that their claim

⁵ MoJ Submissions, p. 5.

⁶ MoJ Submissions, p. 5.

⁷ Victims’ Submissions, paras 14-15.

will be denied.⁸ It appears that no legal aid is available for the purpose of filing the applications for compensation.⁹ Victims' Counsel also raises the issue of statute of limitations, the application of which is not clarified in the MoJ Submissions.¹⁰ With regard to Question 2, Victims' Counsel stresses that the MoJ Submissions do not discuss how victims could be able to maintain anonymity.¹¹ Moreover, Victims' Counsel points to the fact that in accordance with Article 10 of the Crime Victim Compensation Law, victims may first have to try to enforce any reparation order against the Accused, something which may affect their anonymity.¹² Finally, Victims' Counsel is of the view that the Ministry of Justice does not provide any explicit answer to Questions 3 and 4 put by the Panel.¹³ Accordingly, Victims' Counsel requests the Panel to remind the Ministry of Justice of its obligation to cooperate under the legal framework of the SC, and to reiterate its request to the Ministry of Justice so that full responses are provided to the questions posed by the Panel in the Decision.¹⁴

IV. APPLICABLE LAW

7. The Panel notes Articles 22(3), (7), 40(2), 44(6) and 53(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 49(1), 116(1), 167-168 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

⁸ Victims' Submissions, para. 20; this is especially true for crimes not listed in Article 6 of Law No. 05/L-036 on Crime Victim Compensation (Crime Victim Compensation Law), such as inhumane treatment and torture.

⁹ Victims' Submissions, para. 25.

¹⁰ Victims' Submissions, para. 26.

¹¹ Victims' Submissions, para. 21.

¹² Victim' Submission, para. 22.

¹³ Victims' Submissions, para. 23.

¹⁴ Victims' Submissions, para. 32.

V. ANALYSIS

8. Having carefully reviewed the MoJ Submissions, the Panel considers that the Ministry of Justice has only given an overview of the existing law. While the Panel considers the applicable legal framework to be a useful information, the Panel concurs overall with the Victims' Counsel's assessment, and finds that the Ministry of Justice failed to provide direct answers in response to any of the Panel's questions, as set out in the Decision.

9. As to Question 1, while the Ministry of Justice clarifies that the Victim Compensation Fund referred to in the Kosovo Criminal Procedure Code is the only fund available for the compensation of victims of certain crimes, the MoJ Submissions do not provide clear answers as to how the Government Committee on Crime Victim Compensation would take its decision especially with regard to crimes that are not listed in Article 6 of the Crime Victim Compensation Law. Furthermore, issues in relation to statute of limitations,¹⁵ especially in the present case where crimes were allegedly committed 23 years ago, are simply not dealt with in the MoJ Submissions. Moreover, the Ministry of Justice was asked whether, should the Accused be convicted but unable to pay the reparations ordered by the Panel, victims in this case could get the reparation order enforced through a fund, as opposed to presenting anew their reparation claims to such a fund. In this sense, in the view of the Panel the answers provided by the Ministry of Justice are simply irrelevant as the victims' claims would have already been adjudicated by the Panel and the only function of the available fund would be to execute the reparation order issued by the Panel.

¹⁵ Victims' Submissions, para. 26.

10. Regarding Question 2, the Panel recalls that the participating victims in the present case benefit from protective measures *vis-à-vis* the public,¹⁶ and for this reason it is essential for the Panel to know whether victims could benefit from the Victim Compensation Fund while remaining anonymous. However, on this crucial point, the Ministry of Justice does not provide any clear answer. Although, the Ministry of Justice clarifies that a claim may be submitted by the victims' authorized representative or referred by the Court,¹⁷ it remains unclear whether those victims could in any case remain anonymous. Furthermore, the Panel stresses that it does not envisage, in order to preserve victims' anonymity, to ask them to first request compensation from the Accused in accordance with the Kosovo Criminal Procedure Code, contrary to what is suggested in the MoJ Submissions by reference to Article 10 of the Crime Victim Compensation Law.

11. As to Question 3 and Question 4, the Panel finds that the Ministry of Justice did not provide any meaningful answer to the procedural avenue set out by the Panel and its feasibility in terms of enforcement. With regard to Question 3, the Ministry of Justice must indicate whether the Registrar, upon instructions by the Panel, could be considered as an "authorized representative" of the victims in this case, while the victims would remain anonymous. Furthermore, the question put by the Panel was about the enforcement of its reparation order, not about the presentation of a claim for compensation. With regard to Question 4, the Panel would like to know whether the Ministry of Justice envisages the establishment of a fund, in order to cover the payment of a reparation order issued by the Panel, in case the Accused would be convicted but unable to pay the reparations ordered or whether it envisages to expand the scope of application of another available fund

¹⁶ KSC-BC-2020-05, F00075, Trial Panel I, *First Decision on Victims' Participation*, 10 February 2021, public, para. 21(b); F00105/RED, Trial Panel I, *Public Redacted Version of Second Decision on Victims' Participation*, 30 April 2021, public, para. 54(e)-(f); F00126/RED, Trial Panel I, *Public Redacted Version of Third Decision on Victims' Participation*, 21 May 2021, public, para. 42(d)-(e).

¹⁷ MoJ Submissions, p. 5, number III.

to that effect, such as the one established by Law No. 05-054 on legal Protection and Financial Support for Potential Accused Persons in Trials before the SC. The Ministry of Justice does not provide any answer in this respect. This is however particularly important taking into consideration the limitations of the current legislation, as explained by the Ministry of Justice. The Panel considers that a substantive submission by the Ministry of Justice on the latter two questions is equally essential for any future determination by the Panel.

12. The Panel notes the submission of the Ministry of Justice that it “will be available to provide any additional clarifications [...]”,¹⁸ and recalls the duty of all entities and persons in Kosovo, including the Ministry of Justice, to cooperate with the SC, in accordance with Article 53(1) of the Law. Accordingly, with a view to taking an informed decision on the matter, the Panel considers it necessary to resubmit, in their entirety, Question 1 to Question 4 set out in the Decision, and to order the Ministry of Justice to provide its substantive submissions, taking into consideration paragraphs 9 to 11 above, including reference to the applicable legislation, where necessary, by Friday, 10 June 2022.

13. Pursuant to Rule 49(1) of the Rules, transmission of the present order to the Ministry of Justice of Kosovo shall be effected through the Registrar.

VI. DISPOSITION

14. For the above-mentioned reasons, the Panel hereby:

- a. **GRANTS** Victims’ Counsel request for further clarification;
- b. **ORDERS** the Ministry of Justice of Kosovo, pursuant to Article 53(1) of the Law, to file substantive submissions on Question 1 to Question 4 as set out

¹⁸ MoJ Submissions, p. 5.

in the Decision, taking into consideration paragraphs 9 to 11 above, by **Friday, 10 June 2022**; and

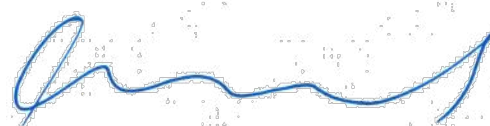
- c. **ORDERS** the Registrar to transmit the present order to the Ministry of Justice of Kosovo.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 25 April 2022

At The Hague, the Netherlands.