



**Republic of Kosovo**  
**Government**  
**Ministry of Justice**  
**Office of the Minister**

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**Pristina, 12 May 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,

Please find below the answers to your questions:

- 1. 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 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).**

Victims of crime, including victims under the jurisdiction of the Specialist Chambers (who may file applications on behalf of themselves or through their authorised representative – Victims' Counsel or privately retained Counsel) may be awarded compensation or restitution from Kosovo's Victim Compensation Fund (the sole programme established for this purpose) only after having first

applied for restitution from the Accused and where it has been established that the Accused is unable to pay the full, or part of, the restitution awarded.

If the Court (Panel) cannot order payment of compensation by the defendant because of circumstances provided for in the Law, the injured party has the right to ask the Court (Panel) to forward such compensation order to the coordinator of the Victim Compensation Fund.

The criminal offences for which victims can be awarded compensation or restitution, the procedures for awarding compensation or restitution, and the applicable (formal and material) conditions and criteria for compensation are set out in the relevant legislation in force on the compensation of crime victims.

**2. 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).**

Anonymity is an integral part of the legal framework on the protection of human rights and freedoms and as such it is enshrined in and implemented through the relevant provisions of the Kosovo Criminal Procedure Code.

Even though there are no mandatory provisions in relation to such cases, we consider and assess that following the issuance of a compensation order and if deemed reasonable for the avoidance of any circumstances that may arise and that could potentially affect a crime victim's dignity, crime victims applying for compensation or restitution under the jurisdiction of the Specialist Chambers can remain anonymous, but only with regard to persons other than those in charge of processing and executing such compensation claims (the Committee and the relevant Unit).

In this regard, we would like to inform you that anonymity applies in all other cases, except in the handling and processing of claims by the competent persons.

In any case, pursuant to the applicable legislation in force, the documents enclosed in the application for compensation are confidential and treated as such, and the consent of the applicant must be obtained for the processing of personal data, as necessary.

**3. 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).**

The relevant applicable legislation clearly provides that following the issuance of a compensation order by the Court (Panel), the crime victim may request the assistance of a victims' counsel or of a non-governmental organisation providing free legal assistance or may choose to privately retain a lawyer.

By way of explanation, the term "authorised representative" means the natural or legal person whom the party has authorised (has given power of attorney) to exercise the rights and obligations of acting for and on behalf of the party.

It is at the discretion of the victim of crime to put their trust in the natural or legal person representing them in such procedures and it is the obligation of the authorised representative to maintain the anonymity of the victim and confidentiality of the information, particularly in cases of a sensitive nature.

In the present case, in order to avoid any conflict of interest, the Registrar cannot be authorised by the crime victim to submit a claim for compensation or restitution from the Victim Compensation Fund on their behalf.

- 4. 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).**

Currently, no such legal regulation exists; however, the possibility of establishing a special fund and special rules for the purposes of applying this procedure is always subject to legal authorisation pursuant to an existing law.

That is to say, if such will exists, the legislative body may establish special funds and apply special rules for the purpose of enforcing claims for compensation from that special fund, by establishing a legal framework thereon.

On their part, executive bodies may establish such funds only on the basis of a special law, as in the case of the financing of the defence of accused persons before the Specialist Chambers, which

is provided for under Law No. 05/L-054 on Legal Protection and Financial Support for Potential Accused Persons in Trials Before the Specialist Chambers.

However, at this stage, the relevant programme established for this purpose is the Compensation Fund, which adopts the definition of *victim* provided in the Criminal Procedure Code and, therefore, crime victims under the jurisdiction of the Specialist Chambers are also included under that definition.

The relevant mechanism for examining applications for compensation is the Government's Crime Victim Compensation Committee which has no discretion to reject an application for compensation if the latter fulfils the relevant legal requirements.

On the other hand, where legal requirements are met, the Committee may also examine applications for compensation in relation to other categories of criminal offences (above and beyond the ones defined as compensable) submitted by persons claiming to be victims of other violent crimes.

As far as time limits are concerned, in accordance with the legislation in force, the deadline for submitting a claim for compensation from the Fund is within 6 (six) months from the entry into force of the final court judgment.

The Ministry of Justice remains committed to address any specific questions in relation to the compensation of crime victims under the jurisdiction of the Specialist Chambers in line with SC requests.

Thank You!

Respectfully,

Albulena Haxhiu  
Minister of Justice  
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