

In: KSC-BC-2020-04
The Prosecutor v. Pjetër Shala

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Victims' Counsel

Date: 8 November 2022

Language: English

Classification: Public

Victims' Counsel Submissions on Reparation Proceedings

Specialist Prosecutor
Jack Smith

Counsel for Pjetër Shala
Jean-Louis Gilissen

Counsel for Victims
Simon Laws

I. INTRODUCTION

1. Pursuant to Article 22(6-11) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law"), Rule 114(4)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), and the oral order issued by Trial Panel I,¹ Victims' Counsel makes these written submissions on reparation proceedings.
2. Noting the low number of victims participating in the proceedings ("VPPs") in the case against Pjetër Shala (eight), Victims' Counsel submits that reparation proceedings in this case can be conducted in parallel with the criminal proceedings in a manner that would not be prejudicial to the fair trial rights of the Accused.
3. Considering expert reports,² submissions of counsel representing victims participating in the case against Salih Mustafa,³ and the Panel's *Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information*,⁴ it is submitted that in case of a conviction, the Panel should not refer VPPs to civil litigation in Kosovo pursuant to Article 22(9) of the law and Rule 167 of the Rules.

¹ *The Specialist Prosecutor v. Pjetër Shala*, KSC-BC-2020-04, Transcript of 19 October 2022, Public Redacted, T.408:8-18.

² *The Specialist Prosecutor v. Salih Mustafa*, KSC-BC-2020-05/F00287/A02, Annex 2 to Transmission of the Expert Reports, Public Redacted Version of the Report submitted by REDACTED, 17 December 2021; KSC-BC-2020-05/F00287/A04, Annex 4 to Transmission of the Expert Reports, Public Redacted Version of the Report submitted by REDACTED, 17 December 2021; KSC-BC-2020-05/F00287/A06, Annex 6 to Transmission of the Expert Reports, Public Redacted Version of the Report submitted by REDACTED, 17 December 2021.

³ KSC-BC-2020-05/F00134, Victims' Counsel Submission on the Decision on the appointment of expert(s), 14 June 2021, paras 11-17; KSC-BC-2020-05/F00298/RED, Public Redacted Version of Victims' Counsel Observations on the Expert Reports regarding a Referral of Reparations Proceedings to National Courts in Kosovo, 24 January 2022.

⁴ KSC-BC-2020-05/F00310/RED, Public redacted version of Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information, 4 February 2022 ("Public redacted version of Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information").

4. Finally, Victims' Counsel requests that independent from any possible reparations order pursuant to Article 22(8), the Trial Panel includes in its judgement a decision on the scope and extent of any damage, loss and injury to, or in respect of, Victims participating in this case, pursuant to Article 22(7), first sentence of the Law.

II. CLASSIFICATION

5. This filing is public as it does not contain or refer to information or material that is confidential. Neither does it respond or reply to a confidential filing.

III. PROCEDURAL HISTORY

6. On 15 December 2021, the Pre-Trial Judge admitted one applicant to participate in the proceedings as a VPP.⁵
7. On 11 August 2022, the Pre-Trial Judge issued the Second Decision on Victims' Participation and admitted another applicant to participate in the proceedings as a VPP.⁶
8. On 19 September 2022, the Pre-Trial Judge issued the Third Decision on Victims' Participation and admitted six applicants to participate in the proceedings as VPPs.⁷
9. On 21 September 2022, the Pre-Trial Judge transmitted the case file to the Trial Panel.⁸
10. On 19 October 2022, Trial Panel I orderd Victims' Counsel and the Defence to file written submissions, if they so wish, on: (i) whether reparation proceedings shall be conducted in parallel with the criminal proceedings, and (ii) whether, in case

⁵ KSC-BC-2020-04/F00123/RED, Public Redacted Verison of First Decision on Victims' Participation, 15 December 2022 ("First Decision"), para. 50(a).

⁶ KSC-BC-2020-04/F00249/RED, Public Redacted Version of Second Decision on Victims' Participation, 11 August 2022 ("Second Decision"), para. 43(b).

⁷ KSC-BC-2020-04/F00279/RED, Public Redacted Version of Third Decision on Victims' Participation, 19 September 2022 ("Third Decision"), para. 43(a).

⁸ KSC-BC-2020-04/F00284, Decision Transmitting the Case File to Trial Panel I, 21 September 2022.

of a conviction, the Panel should refer victims to civil litigation in Kosovo, pursuant to Article 22(9) of the Law and Rule 167, or issue a Reparation Order pursuant to Article 22(8) and 44(6) of the Law.⁹

IV. SUBMISSIONS

a. Whether reparation proceedings should be conducted in parallel with the criminal proceedings

11. At the outset, Victims' Counsel notes the Panel's recognition of victims' rights to access to justice, to an effective remedy and to reparations.¹⁰
12. In that context, Victims' Counsel notes the Panel's interpretation of the relevant provisions of the Law and the Rules pertaining to reparations proceedings in the *Decision on the appointment of expert(s)* issued in the *Salih Mustafa* case¹¹, and in particular their finding that, under the legal framework of the KSC:

[T]he only possible conclusion in the view of the Panel is [...] that a Reparation Order must be issued with the Trial Judgment (in case of a conviction) or, at the latest, in case the Accused is found guilty but the sentence is not pronounced together with the Trial Judgment, with the Sentencing Judgment.¹²

13. Furthermore, Victims' Counsel also notes the Panel's Decision on victims' procedural rights during trial in the *Salih Mustafa* case, which recognises that during the trial proceedings Victims' Counsel is entitled to request the presentation of evidence relevant for reparations.¹³ Importantly, witness evidence pertaining to the impact of the alleged crimes, as well as the type and extent of harm suffered by victims of these crimes, will be elicited in the course of this trial from the dual status witnesses-victims.

⁹ KSC-BC-2020-04, Transcript of 19 October 2022, Public Redacted, T.408:8-19.

¹⁰ KSC-BC-2020-05/F00124, Decision on the appointment of expert(s), 20 May 2021 ("Decision on the appointment of expert(s)"), para. 8; Public redacted version of Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information, paras 26-31.

¹¹ Decision on the appointment of expert(s), paras 10-15.

¹² Ibid., para. 14.

¹³ KSC-BC-2020-05/F00152, Decision on victims' procedural rights during trial, 21 July 2021, paras 12, 33-36, 40.

14. In light of the above, Victims' Counsel submits that, given the specific context of the case against Pjetër Shala, in particular, the number of VPPs (eight), and the fact that seven of them are indirect victims and members of the same family, reparations proceedings in this case can be conducted in parallel with the criminal proceedings and that this would not be prejudicial to the fair trial rights of the Accused.
15. Finally, Victims' Counsel notes Article 22(7) of the Law which indicates that the Panel can decide on "the scope and extent of any damage, loss and injury to, or in respect of, Victims" even if it does not convict the Accused and does not issue a reparations order against the Accused pursuant to article 22(8) of the Law.
16. Should the Panel conduct reparations proceedings in parallel to the criminal trial, it may well be in a position to issue a decision pursuant to Article 22(7) of the Law with regard to each of the VPPs. Victims' Counsel submits that in the event of an acquittal of the Accused, such a decision would be of significant value to the VPPs as it would recognise the harm they have suffered. Moreover, it would assist the VPPs in seeking redress by other means.

b. In case of conviction, the Panel should not refer victims to civil litigation in Kosovo but should issue a Reparation Order pursuant to Article 22(8) and Article 44(6) of the Law

17. In the *Salih Mustafa* case, on 4 February 2022, Trial Panel I found that "the national courts in Kosovo do not provide a realistic avenue for victims to claim reparations"¹⁴ and concluded:

[I]t would not be appropriate to refer victims to civil litigation in Kosovo courts pursuant to Article 22(9) of the Law and Rule 167 of the Rules. Rather, in case of a conviction, the Panel will issue a Reparation Order pursuant to Articles 22(8) and 44(6) of the Law.¹⁵

¹⁴ Public redacted version of Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information, para. 39.

¹⁵ *Ibid.*, para. 40.

18. The Trial Panel based its finding, in part, on the analysis and assessment of three expert reports submitted in the *Salih Mustafa* case on this subject. The fact that the laws of Kosovo do not provide for the possibility to pursue civil claims while retaining anonymity and that victims do not have the possibility to benefit from protective measures in civil cases were decisive factors in the Panel's finding.¹⁶
19. The Panel also noted other potential shortcomings of the Kosovo legal system raised by the experts:
- “(i) the likely existence of a certain level of corruption and interference within the Kosovo legal system and the lack of efficient accountability structures for the judiciary; (ii) the length of civil proceedings; (iii) potential problems concerning the execution of awards issued by Kosovo courts against assets located in the territory of a country which lacks judicial cooperation agreements or diplomatic ties with Kosovo; (iv) the fact that existing funds for the provision of legal aid may not have sufficient resources to ensure that legal aid is continuously provided; and (v) the uncertainty with regard to the application of statutes of limitations, if any, to civil claims advanced by victims of war crimes.”¹⁷
20. Victims' Counsel submits that there is no basis for believing that any of the key factors relied upon by the Panel in their February 2022 Decision have changed.

V. CONCLUSION

21. In light of the above, Victims' Counsel respectfully submits that:
- a. reparation proceedings in the case against Pjetër Shala should be conducted in parallel with the criminal proceedings;
 - b. in case the Panel convicts Pjetër Shala, it should not refer VPPs to civil litigation in Kosovo; and
 - c. regardless of any possible Reparation Order under Article 22(8) of the Law, the Panel should include in its judgement a decision on the scope and extent of any damage, loss and injury.

Word count: 1653

¹⁶ Ibid., paras 37-39.

¹⁷ Ibid., para. 35.



Simon Laws KC
Counsel for Victims
8 November 2022
The Hague, the Netherlands



Maria Radziejowska
Co-Counsel for Victims
8 November 2022
Warsaw, Poland