

**In:** KSC-CA-2023-02/R  
**Specialist Prosecutor v. Salih Mustafa**

**Before:** **Single Judge**  
Judge Gilbert Bitti

**Registrar:** Dr. Fidelma Donlon

**Filing Participant:** Defence Counsel for Salih Mustafa

**Date:** 22 January 2024

**Language:** English

**Classification:** Public

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**Mustafa Request for a Temporary Stay**

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**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Salih Mustafa**

Venkateswari Alagenda

## I. INTRODUCTION

1. Due to the very recent appointment of an entirely new defence team, combined with the fact that in the present proceedings there is currently running a period within which a party may request protection of legality, the Defence for Salih Mustafa (“Defence”) respectfully requests the Single Judge to stay temporarily the setting of a time-limit within which Mr. Mustafa is required to pay reparations to victims in accordance with the Reparation Order.<sup>1</sup>

## II. SUBMISSIONS

2. On 17 January 2024, the President assigned the Single Judge to oversee the implementation by the Registrar of the Reparation Order.<sup>2</sup> The relevant procedural background to the assignment is set out in the Decision and is not repeated herein.<sup>3</sup>

3. Of relevance to the present request is that paragraphs 283(e) and (f) of the Reparation Order provide as follows:

e) SETS the reparations award for which Mr Mustafa is liable at €207,000;

f) ORDERS Mr. Mustafa to pay, within a time-limit to be determined by the judicial authority in charge of monitoring and overseeing the implementation and execution of this Reparation Order, as compensation for the harm inflicted:

- €30,000 to V08/05;

- €80,000 to V09/05;

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<sup>1</sup> KSC-BC-2020-05, F00517, Trial Panel I, *Reparation Order Against Salih Mustafa* (“Reparations Order”), 6 April 2023, confidential, with Annexes 1-4, strictly confidential and *ex parte*.

<sup>2</sup> KSC-CA-2023-02, R001-F00001, President of the Specialist Chambers, *Decision Assigning a Single Judge* (“Decision”), 17 January 2024, public.

<sup>3</sup> Decision, paras. 1-3.

- €60,000 to V10/05;
- €10,000 to V05/05, V06/05, and V12/05;
- €5,000 to V11/05; and
- €2,000 to V13/05

4. The Defence submits that, for the reasons set out below, the Single Judge should stay temporarily the setting of a time-limit within which Mr. Mustafa is required to pay reparations to victims in accordance with the Reparation Order.

5. *First*, the Reparation Order is dependent on Mr. Mustafa's conviction. Article 22 (8) of the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") states that, "[i]n the event that a Trial Panel or Court of Appeals Panel of the Specialist Chambers adjudges an accused guilty of a crime, it may make an order directly against that accused specifying appropriate reparation to, or in respect of, Victims collectively or individually".<sup>4</sup> Therefore, unless and until Mr. Mustafa's conviction, including its scope, is final, any payment of reparations is premature.

6. Mr. Mustafa's conviction cannot be considered final until he has exhausted all remedies available to him in terms of the Law. At present, Mr. Mustafa and his newly appointed defence team are assessing whether to file a request for protection of legality under Article 48 (6) of the Law. Article 48 (6) of the Law and Rule 193 (3) of the Rules provide that any such request must be filed with the President within ninety (90) days of the final decision or judgment against which protection of legality is

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<sup>4</sup> See also KSC-BC-2020-05, F00310, Trial Panel I, *Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information*, 4 February 2022, confidential, para. 50 (b) in which the Panel ruled that in case of a conviction, it will not refer victims to civil litigation in Kosovo courts pursuant to Article 22(9) of the Law and Rule 167 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), but will issue a reparation order pursuant to Articles 22 (8) and 44(6) of the Law.

sought. As the Appeal Judgment<sup>5</sup> was issued on 14 December 2023, the aforementioned ninety (90) day time period is running and the current deadline for Mr. Mustafa to file any request for protection of legality is 14 March 2024.

7. *Second*, due to the recent appointment of a new Specialist Counsel and the ongoing appointment of an entirely new defence team, the Defence has requested an extension of the time limit to file any request for protection of legality.<sup>6</sup> This request is pending before the President.

8. Finally, the Defence observes that, if a temporary stay is not granted which aligns the payment of reparations with the outcome of any request for protection of legality, then, if Mr. Mustafa's conviction is altered in any way, it is reasonable to assume that the amount of the reparations award, for which Mr. Mustafa is liable, may also change. If the amount is reduced or cancelled, but sums have been paid to the victims, then several problems arise. In the first place, there do not appear to be any provisions in the Court's legal instruments which deal with this situation, including setting out how and when repayments to Mr. Mustafa would be made. Nor is provision made to enforce any repayment order or to safeguard the ability of Mr. Mustafa to recover sums where a victim is no longer able to meet any repayment due to a lack of assets or capacity. Separate to any prejudice to Mr. Mustafa, it is reasonable to assume that the process of having to deal with such an eventuality would cause further distress to the victims. Accordingly, a stay in the present procedural circumstances of this case is necessary.

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<sup>5</sup> As defined at footnote 5 of the Decision.

<sup>6</sup> KSC-SC-2024-02, F00001, Mustafa Defence, *Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality*, 15 January 2024, public.

### III. CONCLUSION

9. For the reasons set out above, the Defence respectfully requests the Single Judge to stay temporarily the setting of a time-limit within which Mr. Mustafa is required to pay any sums to victims in accordance with the Reparation Order until the later of:

- a) seven days following the expiry of any deadline, as determined by the Supreme Court Panel, for the filing of any request for protection of legality provided no such request has been filed by the Defence; or
- b) seven days following the final determination by the Supreme Court Panel of any request for protection of legality filed by the Defence.

**Word count: 992**



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**Venkateswari Alagenda**

Monday, 22 January 2024

The Hague, the Netherlands.