



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

Before: Single Judge Panel
Judge Gilbert Bitti

Registrar: Fidelma Donlon

Date: 20 February 2024

Language: English

Classification: Public

Decision on the “Mustafa Request for a Temporary Stay” and other matters

To be notified to:

Victims’ Counsel
Anni Pues

Duty Counsel for Salih Mustafa
Laurens van Puyenbroeck

Specialist Prosecutor
Kimberly P. West

THE SINGLE JUDGE¹ hereby renders this decision on the “Mustafa Request for a Temporary Stay” and other matters.

I. PROCEDURAL BACKGROUND

1. On 6 April 2023, Trial Panel I issued a reparation order against Salih Mustafa (Reparation Order and Mr Mustafa, respectively), ordering Mr Mustafa to pay reparations to eight (8) victims of crimes he was convicted of, as compensation for the harm inflicted. The Panel determined that the reparations shall be paid within a time-limit to be set by a judicial authority to be assigned to monitor and oversee the implementation and execution of the Reparation Order, in order to ensure an effective and prompt process for the benefit of the victims, and invited the President of the Kosovo Specialist Chambers (KSC) to designate such an authority.² The Reparation Order was not appealed either by Mr Mustafa or by Victims’ Counsel.

2. On 14 December 2023, a Panel of the Court of Appeals Chamber confirmed all of the convictions which formed the basis of the Reparation Order.³

3. On 3 January 2024, the Registrar appointed Venkateswari Alagendra (Ms Alagendra) as Counsel for Mr Mustafa, replacing Julius von Bóné.⁴

4. On 17 January 2024, the President of the KSC assigned Judge Gilbert Bitti as Single Judge to oversee the implementation of the Reparation Order.⁵

¹ KSC-CA-2023-02/R, R001/F00001, President of the Specialist Chambers, [Decision Assigning a Single Judge](#), 17 January 2024, public.

² KSC-BC-2020-05, F00517, Trial Panel I, *Reparation Order against Salih Mustafa*, 6 April 2023, confidential, paras 250-252, 283, with Annexes 1-4, strictly confidential and *ex parte*. A corrected public redacted version was issued on 14 April 2023, [F00517/RED/COR](#).

³ KSC-CA-2023-02, F00038/RED, Panel of the Court of Appeals Chamber, [Public Redacted Version of Appeal Judgment](#), 14 December 2023, para. 481.

⁴ KSC-CA-2023-02, F00041, Registrar, *Notification of Approval of Counsel for Salih Mustafa*, 11 January 2024, public, para. 4, with Annex 1, confidential.

⁵ See footnote 1 above.

5. On 19 January 2024, Victims' Counsel requested the Single Judge to set a time-limit for Mr Mustafa to pay the reparations awarded to victims (Victims' Counsel Request).⁶
6. On 22 January 2024, the Defence for Mr Mustafa (Defence) requested the Single Judge to temporarily stay the setting of such a time-limit, subject to the expiry of the deadline for the filing of a request for protection of legality, or its final determination, before a Panel of the Supreme Court Chamber of the KSC (Defence Request).⁷ Victims' Counsel responded on 23 January 2024.⁸
7. On 25 January 2024, the Panel of the Supreme Court Chamber declared that the appointment of Ms Alagenda had no legal effect⁹ and that she had no standing to file any requests on behalf of Mr Mustafa,¹⁰ as she was also representing Jakup Krasniqi (Mr Krasniqi) in the case of *The Specialist Prosecutor v. Hashim Thaçi et al.* (KSC-BC-2020-06) before Trial Panel II¹¹ and had not sought a determination from Trial Panel II as to whether a conflict of interest existed.
8. On 29 January 2024, the Registrar informed the Single Judge of Laurens van Puyenbroeck's appointment as Duty Counsel for Mr Mustafa.¹²

⁶ KSC-CA-2023-02/R, R001/F00002, Victims' Counsel, *Request to set a date for payment of reparations*, 19 January 2024, confidential, para. 8.

⁷ KSC-CA-2023-02/R, R001/F00003, Defence, *Mustafa Request for a Temporary Stay*, 22 January 2024, public, paras 1, 4, 9.

⁸ KSC-CA-2023-02/R, R001/F00004, Victims' Counsel, *VC Response to Mustafa's Request for a Temporary Stay*, 23 January 2024, public.

⁹ KSC-SC-2024-02, F00008, Panel of the Supreme Court Chamber, [Decision on Prosecution Motion Regarding Conflict of Interest of Defence Counsel](#), 25 January 2024, public, paras 9, 11.

¹⁰ KSC-SC-2024-02, F00009, Panel of the Supreme Court Chamber, [Decision on the Request for an Extension of Time](#), 25 January 2024, public, para. 11.

¹¹ KSC-BC-2020-06, F00058, Registrar, *Notification of the Appointment of Counsel to Jakup Krasniqi*, 6 November 2020, public, with Annex 1, confidential.

¹² KSC-CA-2023-02/R, R001/F00006, Registrar, *Notification of Appointment of Duty Counsel to Salih Mustafa*, 29 January 2024, public, with Annex 1, confidential.

9. On 8 February 2024, Trial Panel II found that “a potential conflict of interest [would exist] if Ms Alagendra, in addition to her appointment as Counsel for Mr Krasniqi, were to also represent Mr Mustafa”.¹³

II. APPLICABLE LAW

10. The Single Judge notes Rules 9(5)(a), 24 and 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules) and Article 21(2) of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers (Practice Direction on Files and Filings).¹⁴

III. ANALYSIS

A. DEFENCE REQUEST

11. Noting the determination of the Panel of the Supreme Court Chamber that the appointment of Ms Alagendra had no legal effect and that she had no standing to file any requests on behalf of Mr Mustafa,¹⁵ the Single Judge dismisses the Defence Request *in limine*, for the same reasons, and will not consider it further.

B. BRIEFING SCHEDULE ON THE VICTIMS’ COUNSEL REQUEST

12. The Single Judge notes that the Defence has not filed a response to the Victims’ Counsel Request. Mindful of the above and the change of Counsel,¹⁶ and in order to safeguard the rights of Mr Mustafa, the Single Judge decides to extend *proprio motu*

¹³ KSC-BC-2020-06, F02112, Trial Panel II, [Decision on Defence Counsel Request for Determination Pursuant to Article 28\(4\)\(b\)\(i\) of the Code of Professional Conduct for Counsel and Prosecutors \(Conflict of Interest\)](#), 8 February 2024, public, para. 36(a).

¹⁴ KSC-BD-15, Registrar, *Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers*, 17 May 2019, public.

¹⁵ See para. 7 above.

¹⁶ See para. 8 above.

the time limit for the Defence to respond to the Victims' Counsel Request, pursuant to Rule 9(5)(a) of the Rules. The Defence shall respond, if it so wishes, within ten (10) days of the notification of the present decision. Victims' Counsel may reply, if she so wishes, in accordance with Rule 76 of the Rules.

C. CASE RECORD AND TRANSFER OF FILINGS

13. The Single Judge notes that all filings related to the present proceedings have been registered in the case record KSC-CA-2023-02 or KSC-CA-2023-02/R, pertaining to the Court of Appeals Chamber. However, the Single Judge recalls that: (a) the present proceedings concern the implementation and execution of the Reparation Order, which was issued by Trial Panel I and was filed in the case record KSC-BC-2020-05, pertaining to the Basic Court Chamber; and (b) the Reparation Order has not been appealed and the Panel of the Court of Appeals Chamber confirmed all of the convictions which formed the basis of the Reparation Order.¹⁷ The Single Judge considers that, in order to accurately reflect the context and evolution of the present proceedings, it is more appropriate to register all filings related to these proceedings in the case record KSC-BC-2020-05, marked with the secondary abbreviation "R", as provided in Article 21(2) of the Practice Direction on Files and Filings. Accordingly, the Single Judge decides that the present proceedings on the implementation and execution of the Reparation Order shall continue under the case record KSC-BC-2020-05/R.

14. In light of the above, the Single Judge orders the Registrar to transfer the following filings from the case record KSC-CA-2023-02 or KSC-CA-2023-02/R into the case record KSC-BC-2020-05/R, in the order as set out below:

¹⁷ KSC-CA-2023-02, F00038/RED, Panel of the Court of Appeals Chamber, [Public Redacted Version of Appeal Judgment](#), 14 December 2023, para. 481.

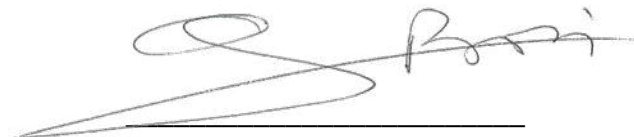
- KSC-CA-2023-02, F00025, 31 May 2023, with its annexes;
- KSC-CA-2023-02/R, R001/F00001, 17 January 2024;
- KSC-CA-2023-02/R, R001/F00002, 19 January 2024;
- KSC-CA-2023-02/R, R001/F00003, 22 January 2024;
- KSC-CA-2023-02/R, R001/F00004, 23 January 2024;
- KSC-CA-2023-02/R, R001/F00005, 24 January 2024, including its confidential redacted version;
- KSC-CA-2023-02/R, R001/F00006, 29 January 2024, with its annex; and
- the present decision.

15. Upon notification of the present decision, case record KSC-CA-2023-02/R will be discontinued. All filings recorded therein shall retain their level of classification. All new records (filings, transcripts, evidence, correspondence etc.) shall be submitted in the case record KSC-BC-2020-05/R.

IV. DISPOSITION

16. For the above-mentioned reasons, the Single Judge hereby:
- a. **DISMISSES** the Defence Request *in limine*.
 - b. **ORDERS** the Defence to respond to the Victims' Counsel Request, if it so wishes, **within ten (10) days** of the notification of the present decision and **ORDERS** Victims' Counsel to reply, if she so wishes, **within five (5) days** of the response, if any;
 - c. **ORDERS** the Registrar, the Parties and the Specialist Prosecutor's Office to comply with the Single Judge's directions in paragraphs 13-15 of the present decision; and

- d. **ORDERS** Victims' Counsel to file a public redacted version of the Victims' Counsel Request (filing F00002), or seek reclassification, by **Friday, 23 February 2024.**

A handwritten signature in black ink, appearing to read 'Bitti', is written over a horizontal line.

Judge Gilbert Bitti
Single Judge

Dated this Tuesday, 20 February 2024

At The Hague, the Netherlands.