



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Judge Gilbert Bitti, Single Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Registrar

Date: 24 January 2024

Language: English

Classification: Public

**Public redacted version of 'Registrar's Submissions on the Implementation of the
Reparation Order'**

Specialist Prosecutor's Office

Kimberly P. West

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Counsel for Victims

Dr Anni Pues

I. INTRODUCTION

1. Pursuant to Rule 23(1) of the Rules¹ and the Reparation Order against Mr Mustafa ('Reparation Order'),² the Registrar hereby provides information to the Single Judge on issues related to the implementation of the Reparation Order.

II. PROCEDURAL HISTORY

2. On 16 December 2022, Trial Panel I ('Panel') pronounced its judgment against Salih Mustafa ('Mr Mustafa'), convicting him for war crimes and sentencing him to 26 years of imprisonment, with credit for time served.³

3. On 6 April 2023, the Panel issued a Reparation Order against Mr Mustafa, together with a Decision ordering the production of records and documents for the purposes of the enforcement of the Reparation Order ('Decision on Production of Records').⁴

4. On 31 May 2023, the Registry submitted a report on Execution of Production Orders ('Report'), whereby it informed the President of the Specialist Chambers on the service and execution of the Production Orders.⁵ With the Report, the Registry filed responses from [REDACTED] and [REDACTED].

5. On 14 December 2023, the Court of Appeals Panel pronounced its judgment on Mr Mustafa's appeal, wherein it affirmed Mr Mustafa's convictions for arbitrary detention, torture and murder as war crimes and reduced the sentence to a single sentence of 22 years of imprisonment, with credit for time served.⁶ The Court of Appeals Panel noted in its judgment that the findings on Mr Mustafa's sentence do

¹ Rules of Procedure and Evidence Before the Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

² KSC-BC-2020-05, F00517, Trial Panel I, Reparation Order against Salih Mustafa with 4 Annexes strictly confidential and *ex parte*, 6 April 2023. A public redacted version was filed on the same day, F00517/RED.

³ KSC-BC-2020-05, F00494, Trial Panel I, Trial Judgment, 16 December 2022, confidential. A public redacted version was filed on 19 January 2023, F00494/RED, and a corrected public redacted version was filed on 24 January 2023, F00494/RED/COR.

⁴ [REDACTED]

⁵ [REDACTED]

⁶ F00038, Appeal Judgment, 14 December 2023. A public redacted version was issued on the same day.

not affect the Trial Panel's findings in the Reparation order as (i) Mustafa has not appealed the Reparation Order; and (ii) the Appeals Panel has confirmed all of the convictions which form the basis for the Reparation Order.⁷

6. On 17 January 2024, the President of the Specialist Chambers assigned a Single Judge, Judge Gilbert Bitti, to oversee the implementation by the Registrar of the Reparation Order as specified in paragraphs 255-257, 259, 269 and 283(f) of the Order, and receive reports from the Registrar on any action taken before the Crime Victim Compensation Program.⁸

7. On 19 January 2024, Victims' Counsel, Anni Pues, requested the Single Judge to set a time-limit of ten days for payment of the reparations.⁹

8. On 22 January 2024, Defence Counsel for Mr Mustafa, submitted a request for a temporary stay of setting the time-limit for payment of reparations.¹⁰

II. IMPLEMENTATION OF THE REPARATION ORDER

9. In the Reparation Order, the Panel ordered Mr Mustafa to pay an overall sum of €207,000 as compensation for the harm inflicted on the victims of the crimes for which he is convicted. The Panel determined that compensation for each of the victims on an individual basis constitutes the most appropriate type and modality of reparation and ordered varying amounts to be paid to each of the eight participating victims, ranging from €2,000 to €80,000.¹¹

10. As regards the execution of the Reparation Order, the Panel noted that its jurisdiction in this case will cease with the issuance of the Reparation Order. Therefore, the Panel invited the President of the Specialist Chambers to designate a judicial authority which will be in charge of monitoring and overseeing the implementation and execution of the Reparation Order. The Panel further noted that,

⁷ Appeal Judgment, para. 481.

⁸ KSC-CA-2023-02/R, Decision on Assigning a Single Judge, 17 January 2024, public.

⁹ KSC-CA-2023-02/R, Request to set a date for payment of reparations, 19 January 2024, public.

¹⁰ KSC-CA-2023-02/R, Mustafa Request for a Temporary Stay, 22 January 2024, public.

¹¹ Reparation Order, para. 247.

in the course of the implementation and execution of the Reparation Order, certain issues might arise that require resolution by a judicial body.¹² In addition, the Panel indicated that the Registry will perform any action needed to implement and execute the Reparation Order, as indicated in the Reparation Order or by the judicial authority.¹³

11. As regards funding, the Panel found that Mr Mustafa does not have, at this time, the means to fully comply with this Reparation Order and declared him partially indigent.¹⁴

12. The Panel took the view that, given Mr Mustafa's financial situation, other actors ought to step in to execute the Reparation Order. As one of the possibilities for obtaining compensation, the Panel ordered the Registrar in coordination with Victims' Counsel, to seek compensation from the Crime Victim Compensation Program, on behalf of the victims, in order to preserve their anonymity and to ensure their protection.¹⁵

III. LIABILITY OF THE CONVICTED PERSON

A. FINDINGS OF THE TRIAL PANEL

13. The Panel has found Mr Mustafa fully liable for the payment of compensation to the eight participating victims, but declared him partially indigent for the purpose of reparations.¹⁶

14. The Panel based its indigence assessment on [REDACTED].¹⁷

15. The Panel noted that, in the course of [REDACTED]. The Panel further noted that [REDACTED] and considered that part of these assets could potentially be used to execute the Reparation Order.¹⁸

¹² Reparation Order, paras 250 and 251.

¹³ Reparation Order, para. 252.

¹⁴ Reparation Order, para. 255.

¹⁵ Reparation Order, paras 259-266.

¹⁶ Reparation Order, para. 258.

¹⁷ Reparation Order, para. 255.

¹⁸ *Ibid.*

16. For the purpose of determining the [REDACTED], the Panel issued the Decision on Production of Records.¹⁹ In the Decision, the Panel considered it necessary to request [REDACTED] (i) [REDACTED]([REDACTED]) and/or the [REDACTED]; and (ii) [REDACTED].²⁰ The Panel ordered the Registrar to take the necessary steps to implement the said decision, together with the related Production Orders.²¹

17. The Registrar has submitted a [REDACTED].²²

B. REGISTRY'S SUBMISSIONS

18. The Registrar notes that the Reparation Order is clear as to its execution; compensation should first be sought from Mr Mustafa. In this regard, several steps have already been taken following the Panel's Decision on Production of Records. The Registry has [REDACTED] the Production Orders and, [REDACTED]²³ was [REDACTED] and on the [REDACTED]²⁴ [REDACTED]. In addition, [REDACTED] and [REDACTED]²⁵ [REDACTED].

19. In the Reparation Order, the Panel indicated that, on the basis of the information received, and bearing in mind the rights of Mr Mustafa or those of *bona fide* third parties, the judicial authority assigned in this matter will be in a position to decide whether to order the payment from [REDACTED] of a sum on a *pro rata* basis to the victims, and, in that context, whether to [REDACTED].²⁶

20. Given that [REDACTED] the [REDACTED].

21. The Registry is available to assist should the Single Judge require updated Production Orders and, based on these circumstances, the completion of an indigence assessment.

¹⁹ Reparation Order, paras 256 and 283(h).

²⁰ Decision, [REDACTED].

²¹ Reparation Order, para. 256.

²² See [REDACTED]

²³ [REDACTED]

²⁴ [REDACTED]

²⁵ [REDACTED]

²⁶ Reparation Order, para. 257.

22. To conduct the indigence assessment, the Registry would apply the system established in the Legal Aid Regulations ('LAR').²⁷ The LAR contain provisions on indigence assessment for a suspect or an accused requesting legal aid, including a formula for the calculation of indigence in the Protocol on Indigence Assessment ('Annex A of the LAR').²⁸

23. Pursuant to the formula in Annex A of the LAR,²⁹ the assessment is based on the documentation provided by the suspect or accused person and an inquiry into their means. The inquiry assessing disposable means takes into consideration, *inter alia*, their family situation, including the living expenses of any spouse and dependent children, as well as any liabilities, such as loans.

24. Should the Single Judge require an indigence assessment, the Registry can provide the required support.

IV. APPLICATIONS TO THE CRIME VICTIM COMPENSATION PROGRAM

25. In the Reparation Order, the Panel indicated that a completed application form to the Crime Victim Compensation Program must be submitted within six months from the entry into force of the final court judgment.³⁰

26. The Panel also instructed the Registrar to report to the judicial authority on any action taken before the Crime Victim Compensation Program, mindful of the deadline for applications, and no later than two months after this Reparation Order may be implemented.³¹

27. To avoid any ambiguity, the Registrar wishes to address the issue of deadlines related to the submission of applications to the Crime Victim Compensation Program, as indicated in the Reparation Order.

²⁷ KSC-BD-25, Legal Aid Regulations, 3 September 2020.

²⁸ Annex A to LAR.

²⁹ Regulation 8 of LAR.

³⁰ Reparation Order, para. 261.

³¹ Reparation Order, para. 296.

28. Specifically, the Registrar notes that the six-month deadline, as indicated in the Reparation Order, was in line with the deadline provided in Law No. 05/L-036, which established the Crime Victim Compensation Program.³² However, this legislation was abrogated and replaced by Law No. 08/L-109, pursuant to which the deadline to submit applications was amended to *three years* from receipt of the final judgment.³³

29. Thus, the applications to the Crime Victim Compensation Program shall be submitted on behalf of the victims by the Registrar, in cooperation with Victims' Counsel, within this three-year deadline, as soon as all relevant information is received and all requirements are met.

30. Regarding the requirements, the Registrar notes that, pursuant to Article 9 of Law No. 08/L-109, applications to the Crime Victim Compensation Program can only be submitted when it can be shown that obtaining compensation (fully or in part) from the convicted person has not been possible. Therefore, before submitting the applications, it needs to be determined whether and to what extent Mr Mustafa is in a position to compensate the eight victims.

V. REQUESTED RELIEF

31. In the event that the Single Judge would require the Registry's support, the Registrar respectfully seeks the decision of the Single Judge regarding:

- a. production orders; and
- b. carrying out an indigence assessment.


VI. CLASSIFICATION

32. Pursuant to Rule 82(4) of the Rules, this submission is filed as strictly confidential and *ex parte*.

Word count: 2072

³² Law No. 05/L-36 on Crime Victim Compensation of 30 June 2015, Article 31.

³³ Law No. 08/L-109 on Crime Victim Compensation of 2 November 2022, Article 29.

A handwritten signature in cursive script, reading "Fidelma Donlon", written in black ink on a white background. The signature is positioned above a thin horizontal line.

Dr Fidelma Donlon
Registrar

Wednesday, 24 January 2024
At The Hague, the Netherlands.