

Reparation for Victims of International Crimes at the Kosovo Specialist Chambers

Introduction

On November 29, 2024, the Kosovo Specialist Chambers (Court) issued its second reparation order, in *Specialist Prosecutor v. Pjetër Shala* (Shala Reparation Order).¹ Shala was previously convicted of war crimes during the Kosovo conflict, including arbitrary detention, torture, and murder, as part of a joint criminal enterprise, and sentenced to eighteen (18) years' imprisonment.

The Shala Reparation Order mandates that Shala pays €208,000 in reparations to victims. It follows the principles established in the Court's first reparation order of April 6, 2023, where it mandated another former member of the Kosovo Liberation Army (KLA), Salih Mustafa, to pay €207,000 in individual compensation to eight victims (Mustafa Reparation Order).² As the Court's first reparation order, the Mustafa Reparation Order was formative for the legal standards governing reparations for victims of international crimes within its jurisdiction. Mustafa did not appeal the reparation order, rendering it enforceable.

This *Insight* will present the Court's approach to victims' reparations, particularly considering the Shala Reparation Order. Building upon the precedent set by the Mustafa Reparation Order, it will outline the Court's principles for awarding reparations, which draw heavily from International Criminal Court (ICC) jurisprudence. The two reparation orders present unique legal challenges as they are issued by the Court within a self-contained legal regime, while their enforcement is subject to general Kosovo law, which is not integrated into the self-contained legal regime which governs the Court.

Background of the Court

The Court, alongside the Specialist Prosecutor's Office, was established in 2015 to adjudicate international crimes committed in Kosovo between 1997 and 2000 during the armed conflict, and those committed shortly after.

While structured as a national court with seats in Kosovo and the Netherlands, it is staffed exclusively by international personnel appointed by the European Union Rule of Law Mission in Kosovo (EULEX). Its legal foundations are an exchange of letters between the President of the Republic of Kosovo and the EU High Representative, which was ratified by Kosovo as an international agreement,³ and subsequent amendments to Kosovo's Constitution authorizing the establishment of the Court.⁴

The Court applies the Law on Specialist Chambers and Specialist Prosecutor's Office (Law).⁵ Other Kosovo laws apply only if the Law expressly incorporates them. This legal framework establishes a self-contained legal regime, largely insulating the Court, which displays features of a hybrid court, from other Kosovo laws and Kosovo institutions.

The Court's Principles on Reparations

The Law empowers the Court, upon a guilty verdict, to order reparations. The Court's elaboration of reparation principles in the *Mustafa* case set a precedent for subsequent reparation orders. According to the Court, reparation orders must follow a determination of the harm suffered and the establishment of reparation principles.⁶ The Court stated that redress and reparations are an "imperative demand of justice," aiming to acknowledge and repair harm, centered on victims' interests, needs, and concerns.⁷ The process should be prompt⁸, avoiding protracted litigation, and awards must be proportional to harm and non-discriminatory, avoiding further victim stigmatization or community tensions.⁹

Natural persons who personally suffered harm directly resulting from a crime for which the accused was convicted are eligible for reparations.¹⁰ Harm encompasses physical, mental, or material effects, and can extend to indirect victims, such as immediate family members or those harmed while assisting direct victims.¹¹ The Court recognized that harm often includes long-term consequences like lost opportunities, termed "damage to a life plan," and can be transgenerational.¹² A causal link between the crime and harm is

required.¹³ For indirect victims, emotional suffering due to a direct victim's death or grave injury is presumed if a close relationship is established.¹⁴ Victims must prove their identity, the harm suffered, and the causal link,¹⁵ with the Court adopting a "balance of probabilities" standard of proof, less exacting than the trial standard.¹⁶ Certain harms may be presumed, and circumstantial evidence is permissible.¹⁷

Reparations can be individual or collective.¹⁸ While the Law explicitly mentions restitution and monetary compensation, the Court, drawing from ICC practice, expanded these to include rehabilitation (medical care, social assistance) and satisfaction (public apologies, truth disclosure, commemorations).¹⁹ The convicted person's liability must be proportional to the harm, irrespective of others' responsibility or the perpetrator's indigence.²⁰

Legal Basis for the Court's Reparations Principles

In applying the Law, the Court relied on ICC jurisprudence, specifically the *Lubanga* case,²¹ noting that the Law's provisions on reparations "mirror to some extent" those of the ICC.²² It also referenced the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the jurisprudence of regional human rights courts (such as the European Court of Human Rights and Fundamental Freedoms and the Inter-American Court of Human Rights), and human rights reports, to establish its reparation principles.²³

Enforcement of the Court's Reparation Orders

The Court's reparation orders' practical effectiveness is limited by enforcement constraints. Kosovo employs a private enforcement mechanism where private agents, not courts, enforce most court decisions.²⁴ While the Law authorizes the Court to issue reparation orders, the Kosovo Law on Enforcement Procedure is not incorporated into the Court's legal framework.

In the *Shala* case, the Court acknowledged its lack of legal authority to monitor and oversee the implementation of its reparation orders.²⁵ The Court reiterated that its jurisdiction would cease with the issuance of the Reparation Order and that it was not

empowered to monitor and oversee its implementation.²⁶ The Court noted that the Law did not specify the body responsible for monitoring and overseeing the implementation of the Court's reparation orders.²⁷ It stated that a judicial body is necessary for this function and invited the President of the Court to assign a judge to monitor and oversee the implementation.²⁸ The Registry is expected to perform any actions needed to implement and execute the order as directed by the judge.²⁹

The Perpetrator's Indigence and Kosovo's Crime Victim Compensation Program

The Court found Shala indigent for the purpose of reparations.³⁰ The Court reiterated that Shala remained liable for the full award and would have to reimburse any funds advanced by other institutions or states.³¹

However, the Court also confirmed that victims under the Court's jurisdiction may be awarded compensation from Kosovo's Crime Victim Compensation Program (Program) when the convicted person is unable to pay.³² This Program allows victims to apply for compensation from the Kosovo budget if the convicted person cannot pay.³³ The Court noted that while victims applying to the Program could remain anonymous to the public, their identity would be disclosed to those processing claims.³⁴ To preserve victims' anonymity and ensure their protection in light of the "pervasive climate of fear and intimidation in Kosovo,"³⁵ the Court ordered the Registrar, in coordination with victims' counsel, to seek compensation from the Program on behalf of the victims.³⁶ The Crime Victim Compensation Commission was requested to give due consideration to the claims based on information provided by the Registrar.³⁷ If compensation is granted, it is to be transferred to the Registrar for disbursement to the victims.³⁸

In the Mustafa Reparation Order the Court also found Mustafa partially indigent and considered Kosovo's Crime Victim Compensation Program.³⁹ Due to concerns about victim anonymity, it ordered the Registry to seek compensation directly on behalf of victims to protect their identities, with funds to be disbursed through the Registry.⁴⁰ However, this instruction was not consistent with Kosovo law, which requires personal applications or representation by a victims' counsel. The Kosovo Ministry of Justice affirmed that the Registry could not act for victims.⁴¹

Reparation Mechanisms for Kosovo

The Court is critical of Kosovo's current reparation mechanisms for victims under the Court's jurisdiction, especially as Kosovo finances defense costs for the accused and has war-related compensation laws. Existing compensation amounts allowed by the Crime Victim Compensation Program are low, and the Program covers a limited range of crimes, not fully encompassing war crimes and crimes against humanity. The Court suggested Kosovo enact laws to establish a new reparation mechanism, funded by Kosovo, or establish a trust fund administered by the Registry, inspired by the ICC's Trust Fund for Victims.⁴² However, a new trust fund would require new legislation and raises funding questions.⁴³

In the Shala Reparation Order, the Court recalled that the Kosovo Ministry of Justice had previously indicated that a new fund or program for victims would require distinct legislation.⁴⁴ The Court noted that Kosovo had financially supported the defense of suspects and accused before the Court, including financial support to families without proof of indigence, and even provides compensation in case of acquittal.⁴⁵ However, Kosovo has yet to take concrete steps to ensure reparations for victims if a convicted person cannot comply with a reparation order. The Court also highlighted that existing Kosovo legislation addressing war-related harm does not recognize harm suffered by all victims, specifically excluding those harmed by KLA members by referring exclusively to "enemy forces," thereby introducing discrimination among victims of the armed conflict.⁴⁶

The Court urged Kosovo to enact necessary legislation and establish a reparation mechanism to fully compensate victims of crimes under the Court's jurisdiction.⁴⁷ This would ensure equal treatment within Kosovo's legal system between victims and accused before the Court.⁴⁸ Such a mechanism should be independent, neutral, free from political considerations, and integrate an application process tailored to the challenges faced by the Court, including protection measures for victims.⁴⁹ Funding through Kosovo's budget was suggested to promote the Court's mandate.⁵⁰

The Court noted that if victims cannot enforce their right to reparations, this right would become meaningless.⁵¹ It reiterated its recommendation from the Mustafa Reparation Order for the establishment of a trust fund, initiated by the Court and administered by the

Registrar, to benefit victims.⁵² While non-earmarked voluntary donations can be received by the Court for reparations, this does not relieve the perpetrators of their obligation to compensate the victims or Kosovo from its obligation to establish a reparation mechanism.⁵³

Final Observations

The Court's reparation principles and application of ICC practices are a positive development for Kosovo law, potentially fostering uniform standards. However, its relationship with the local legal system, particularly concerning enforcement, is a subject of ongoing discussion. The self-contained Court regime's insulation from general Kosovo law presents legal challenges, particularly in unregulated areas like enforcement of reparation orders. Reparation enforcement is subject to Kosovo law unless the Law can be amended to provide for specific procedures. Consistency of the Court's self-contained legal regime with the broader Kosovo legal system is necessary for the effective realization of reparation awards, and this will require a meaningful and constructive dialogue between the Court, EU, and Kosovo authorities.

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¹ Specialist Prosecutor v. Pjëtr Shala, Reparation Order, KSC-BC-2020-04 (KSC Nov. 29, 2024).

² Specialist Prosecutor v. Salih Mustafa, Reparation Order, KSC-BC-2020-05 (KSC Apr. 6, 2023). On December 16, 2022, the Court delivered its inaugural judgment, convicting Salih Mustafa, of war crimes and imposed a 26-year prison sentence. This sentence was subsequently modified through appellate reviews, ultimately being reduced to 15 years. On April 17, 2025, the Specialist Chamber of the Kosovo Constitutional Court confirmed the judgment.

³ Law No. 04/L-274 on the Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo (Apr. 23, 2014).

⁴ Amendment of the Constitution of the Republic of Kosovo (Aug. 3, 2015).

⁵ Law No.05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office (Aug. 3, 2015).

⁶ Specialist Prosecutor v. Salih Mustafa, ¶ 62.

⁷ *Id.* ¶ 66.

⁸ *Id.* ¶ 74.

⁹ *Id.* ¶ 77.

¹⁰ *Id.* ¶ 83.

¹¹ *Id.* ¶¶ 90-92.

¹² *Id.* ¶¶ 91-92.

¹³ *Id.* ¶ 95.

¹⁴ *Id.* ¶ 98.

¹⁵ *Id.* ¶ 99.

¹⁶ *Id.* ¶ 102.

¹⁷ *Id.* ¶ 103.

¹⁸ *Id.* ¶ 104.

¹⁹ *Id.* ¶ 111.

²⁰ *Id.* ¶ 114.

²¹ International Criminal Court, Decision establishing the principles and procedures to be applied to reparations of 7 August 2012 (ICC-01/04-01/06-2904).

²² Specialist Prosecutor v. Salih Mustafa, ¶ 63.

²³ *Id.* ¶ 64.

²⁴ Law No. 04/L-139 on Enforcement Procedure dated December 20, 2012, as amended, art. 3.

²⁵ Specialist Prosecutor v. Pjeter Shala, ¶ 208.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Specialist Prosecutor v. Pjeter Shala, ¶ 210.

²⁹ *Id.* ¶ 211.

³⁰ *Id.* ¶ 213.

³¹ *Id.* ¶ 214.

³² *Id.* ¶ 235.

³³ Law No. 08/L-109 on Crime Victim Compensation, art. 10 (Oct. 14, 2022).

³⁴ Specialist Prosecutor v. Pjeter Shala, ¶ 217.

³⁵ *Id.* ¶ 219.

³⁶ *Id.* ¶ 221.

³⁷ *Id.* ¶ 222.

³⁸ *Id.* ¶ 223.

³⁹ Specialist Prosecutor v. Salih Mustafa, ¶¶ 258 and 261.

⁴⁰ *Id.* ¶ 266.

⁴¹ *Id.* ¶ 262 and Letter of the Ministry of Justice (May 12, 2022), <https://repository.scp-ks.org/LW/Published/Filing/0b1ec6e980bb175d/Response%20to%20your%20document%20KSC-BC-2020-05.pdf>.

⁴² Specialist Prosecutor v. Salih Mustafa, ¶ 275.

⁴³ *Id.* ¶ 277.

⁴⁴ Specialist Prosecutor v. Pjeter Shala, ¶ 226.

⁴⁵ *Id.* ¶ 230.

⁴⁶ *Id.* ¶¶ 187 and 189.

⁴⁷ *Id.* ¶ 230.

⁴⁸ *Id.*

⁴⁹ *Id.* ¶ 231.

⁵⁰ *Id.* ¶ 232.

⁵¹ *Id.* ¶ 235.

⁵² *Id.* ¶ 236.

⁵³ *Id.* ¶ 237.