

In: KSC-BC-2020-05/R001
The Prosecutor v. Salih Mustafa

Before: Singel Judge
Judge Gilbert Bitti

Registrar: Fidelma Donlon

Filed by: Anni Pues, Victims' Counsel

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**VC Submission on Mustafa's Application for Leave to Appeal through
Certification from Decision KSC-BC-2020-05/R001/F00032**

Registry

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I. INTRODUCTION

With this submission, Victims' Counsel provides observations on Mustafa's request for leave to appeal the Decision on the Payment of Interest. It is argued that this decision is not appealable and that Mustafa also fails to demonstrate any relevant legal issue that would justify certification for leave to appeal.

II. PROCEDURAL HISTORY

1. On 16 July 2025, the Single Judge issued the Decision on the Payment of Interest by Salih Mustafa in Relation to Reparations.¹ This decision follows a request by Victims' Counsel from 19 January 2024 to set a date for payment in which *inter alia* reference was made to the need for interest to be applied to the reparations owed.² On 25 March 2024, the Single Judge issued the Decision on Victims' Counsel's request finding that the Reparation Order was immediately enforceable; in this decision, the Single Judge also addressed the issue of the interest rate on reparations.³ Mustafa did not make any submissions on these matters and, additionally, failed to comply with the indigence assessment the Registry conducted. On 23 July 2025 Mustafa applied for leave to appeal the Single Judge's Decision on the Payment of Interest.⁴

¹ , KSC-BC-2020-05/R001/F00032, *Decision on the Payment of Interest by Salih Mustafa in Relation to Reparations*, 16 July 2025.

² KSC-BC-2020-05/R001, F00003, *Victims' Counsel, Request to Set a Date for Payment of Reparations*, 19 January 2024, confidential, para. 7(c). A public redacted version was filed on 26 February 2024, F00003/RED.

³ KSC-BC-2020-05/R001, F00012, Single Judge, *Decision on Victims' Counsel's Request to Set a Date for the Payment of Reparations and Other Matters*, 25 March 2024, confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*. A confidential redacted version and a confidential redacted and *ex parte* version were filed on the same day, F00012/CONF/RED and F00012/CONF/RED2. A public redacted version was filed on 22 July 2024, F00012/RED.

⁴ KSC-BC-2020-05/R001/F00033, *Mustafa's Application for Leave to Appeal through Certification from Decision KSC-BC-2020-05/R001/F00032*, 23 July 2025 ('Mustafa's Application').

III. SUBMISSIONS

2. The law does not provide for appeals proceedings against the decision by the Single Judge as part of the enforcement procedures of the reparations order. Neither article 45 nor article 46 of the Law provide for such an appeal for which Mustafa seeks leave.
3. Mustafa claims that the fairness of proceedings would justify leave to appeal with reference to article 45 (2) of the Law.⁵ This provision, however, deals with interlocutory appeals only related to the criminal law proceedings conducted against the accused. The wording of article 45 is unambiguous in its reference to 'the accused', 'the Pre-Trial Judge' and the 'Trial Panel' and issues related to the 'fair and expeditious conduct of the proceedings or the outcome of the trial'. The criminal law proceedings are closed and the judgement against Mustafa is final. For that reason, there is no scope for an interlocutory appeal based on article 45.
4. Even if there was any scope for an appeal at all, Mustafa fails to identify a relevant issue. The KSC case law is consistent in its finding that such an issue must be 'an identifiable topic or subject, the resolution of which is essential for determination of the matters arising in the judicial cause under examination, and not merely a question over which there is disagreement or conflicting opinion. An appealable issue requires the applicant to articulate clearly discrete issues for resolution by the Court of Appeals Panel that emanate from the ruling concerned and do not amount to abstract questions or hypothetical concerns. It is generally insufficient to argue that the entirety of the Panel's reasoning is erroneous.'⁶

⁵ Mustafa's Application, para 12.

⁶ *Prosecutor v Shala*, Decision on Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala, 24 January 2023, KSC-BC-2020-04/F00401, para 15 with further references to other case law.

5. Mustafa points to the principle of legality basically arguing that no applicable source of law exists that would justify the interest applied. However, it is simply wrong to suggest that the principle of legality could be implicated here. This principle provides for protection against punishment in criminal proceedings that is not clearly prescribed by law. Article 7 of the ECHR, for example, explicitly refers to being held guilty for a criminal offence and to a heavier penalty. Equally, article 33 (2) of the Constitution of Kosovo refers to punishment for criminal acts. The reparations proceedings are not a penalty or punishment but compensation for damages and harm caused by Mustafa. Although the reparations proceedings were formally conducted within the criminal trial, the reparations order or the subsequent decision on interest applicable to the reparations do not constitute criminal law punishment. The reparations are rather a civil or private law claim governed by different rules, e.g. with a view to the burden of proof. For that reason, Mustafa is wrong to allege that the principle of legality is of relevance here and fails to identify any issue of law that would justify leave to appeal.
6. In as far as Mustafa also refers to article 3, he does so in a wholesale manner that fails to clearly articulate the issue at hand. He does not engage with the range of sources set out in article 3 (2) of the Law such as international human rights law. In the latter, the concept of 'just satisfaction' is a cornerstone including payment of interest on compensation owed.⁷ A detailed explanation of the concept is not warranted at this point; it merely serves to illustrate that Mustafa fails to identify a clear legal issue.

IV. RELIEF REQUESTED

7. Victims Counsel requests that:

⁷ See only article 41 ECHR.

Mustafa's application is rejected.

Word count: 998

A handwritten signature in black ink, appearing to be 'Anni Poes', written in a cursive style.

Anni Poes
Victims' Counsel

04 August 2025

At The Hague, the Netherlands