

In: **KSC-BC-2020-05/R001/IA001**
The Specialist Prosecutor v. Mr. Salih Mustafa

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon
Filing Participant: Specialist Counsel for Salih Mustafa
Date: 21 September 2025
Language: English
Classification: Public/Redacted

Public Redacted Version of
Mustafa's Reply to Victims' Counsel's Response to Mustafa's appeals submissions

Registry:
Fidelma Donlon

Specialist Counsel
for Salih Mustafa:
Julius von Bóné

Counsel for Victims:
Anni Pues

I. INTRODUCTION

1. On 7 September 2025 Mustafa filed his submissions in appeal with regard to the decision on the payment of interest.¹ In it, Mustafa challenges the Decision on the payment of interest.² Victims' Counsel responded to Mustafa's Appeal submissions.³ The present document is Mustafa's reply to Victims' Counsel submissions and observations.

II. PROCEDURAL BACKGROUND

2. The procedural background as ben already outlined in Mustafa's Submission regarding the present Appeal. For the sake of clarity, only a very brief summary of the procedures leading up to the current appeal, will be provided.
3. On 6 April 2023, after convicting Salih Mustafa (Mr Mustafa) for war crimes,⁴ the Trial Panel I issued a Reparation Order against him, directing the payment of a total sum of 207,000 EUR to eight (8) victims as compensation for the harm inflicted by the crimes for which he was convicted (Reparation Order).⁵
4. On 14 December 2023, a Panel of the Court of Appeals Chamber confirmed all convictions which form the basis of the Reparation Order.⁶

¹ Mustafa's submissions in appeal with regard to the Decision on the Payment of Interest; KSC-BC-2020-05/R001/IA001/F00004, 7 September 2025.

² KSC-BC-2020-05/R001/F00032, 16 July 2025. Decision on the payment of interest by Salih Mustafa in relation to reparations.

³ Victims' Counsel's Response to Mustafa's appeals submissions. KSC-BC-2020-05/R001/IA001/F00005, 17 September 2025.

⁴ KSC-BC-2020-05, F00494, Trial Panel I, *Trial Judgment*, 16 December 2022, confidential, para. 831. A public redacted version was issued on 8 June 2023, F00494/RED3/COR.

⁵ 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 of the Reparation Order was issued on 14 April 2023, F00517/RED/COR.

⁶ KSC-CA-2023-02, F00038/RED, Court of Appeals Panel, *Public Redacted Version of Appeal Judgment*, 14 December 2023, public, para. 481.

5. On 16 July 2025 a Single Judge Panel issued a Decision on the Payment of Interest by Salih Mustafa in relation to Reparations.⁷
6. On 11 August 2025 the Single Judge Panel issued a Decision granting Salih Mustafa's Leave to Appeal Decision R001/F00032.⁸
7. [REDACTED].⁹
8. On 7th of September Mustafa filed its submissions in appeal with regard to the decision on the Payment of interest.¹⁰
9. On 17 September the Victims' Counsel Filed a Response to Mustafa's Appeal submissions.¹¹

III. SUBMISSIONS IN REPLY TO VICTIMS' COUNSEL RESPONSE

A VICTIMS' COUNSEL RESPONSE TO SUBMISSIONS REGARDING THE FIRST REFORMULATED QUESTION

10. Victims' Counsel contends, citing Article 3 (2) of the Law that there is a legal foundation for the payment of interest.¹² Victims' Counsel is wrong, as Article 3 (2) of the KSC Law states that Kosovo law only applies when: "...other provisions of Kosovo law as expressly incorporated

⁷ KSC-BC-2020-05/R001/F00032, 16 July 2025. Decision on the payment of interest by Salih Mustafa in relation to reparations.

⁸ Decision on Salih Mustafa's Application for Leave to Appeal Decision R001/F00032; KSC-BC-2020-05/R001/F00038; 11 August 2025.

⁹ [REDACTED].

¹⁰ Mustafa's submissions in appeal with regard to the Decision on the Payment of Interest KSC-BC-2020-05/R001/IA001/F00004, 7 September 2025.

¹¹ Victims' Counsel's Response to Mustafa's appeals submissions. KSC-BC-2020-05/R001/IA001/F00005, 17 September 2025, hereinafter "Response".

¹² Ibid para 5 and 6

and applied by this Law.” In other words: payment of interest over (yet unpaid) reparations can only be implemented if provisions of the Kosovo law are expressly incorporated in the KSC Law.¹³ Therefore, there is no statutory law for the Single Judge Panel to impose interest over the reparation awards as outlined in the Reparation Order. The Single Judge Panel went outside his competence and authority and he did not abide by the KSC Law.

11. Victims’ Counsel, in her submission, cites case law.¹⁴ The cited case law concern cases among States (not of individuals). The current case is not a dispute between States and therefore nothing can be derived from that. The reparations of the case at hand concern a civil claim from one civilian to another civilian, incorporated in a criminal procedure.

12. [REDACTED].¹⁵

[REDACTED].¹⁶

[REDACTED].¹⁷

13. Lastly, the claimed economically devaluation of the award, and to what extent, has neither been demonstrated by Victims’ Counsel in her request, nor by the Single Judge Panel in his Decision.

¹³ Article 3 (2) (c) on Specialist Chambers and Specialist Prosecutors Office, hereinafter the “Law”.

¹⁴ Response, para 7 to 12.

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED]

B. VICTIMS' COUNSEL RESPONSE TO SUBMISSIONS REGARDING THE SECOND REFORMULATED QUESTION

14. Mustafa will now address Victims' Counsel submissions with regard to interest rate.
15. Victims' Counsel cites, in her submission, case law.¹⁸ The cited case law concern cases among States and an individual whose rights were violated by the State. Such is not the case in the current proceedings and nothing can be derived from Victims' Counsel's cited case law.
16. Victims' Counsel, finds the *Soering* case in particular instructive for the current case. Victims' Counsel claims that in that case is shown *how the principle of proportionality operates*. Mustafa submits that this cited case and in particular paragraph 89 of that case is misplaced and completely out of context as that case was about the violation of an individual's rights by a State that is a contracting party to the European Convention of Human Rights. Mustafa submits that it has nothing to do with principle of proportionality and bears no relevance whatsoever for the payment of interest over awarded reparations.
17. Similarly, the cited *Diallo* case is irrelevant as it is yet again between States and furthermore that a pre-set date which was to take place in the future¹⁹ was set *before which* date the awarded sum was to be paid. No such is the case in the present matter. Likewise, in the cited *Aka* case it was on exceptional circumstances and in relation to expropriation of a piece of land by a State from an individual.²⁰

¹⁸ Response, para 13 to 20

¹⁹ ICJ in *Republic of Guinea v Democratic Republic of the Congo*, Compensation Owed by the Democratic Republic of the Congo to the Republic of Guinea [Judgment of 19 June 2012, para 56 (hereafter: *Diallo*); ICJ set a date of 31 August of 2012 by which Guinea was to be paid by the DRC, while the judgment itself was rendered on 19 June 2012.

²⁰ ECtHR, *AKA v. TURKEY*, (107/1997/891/1103), Judgment, 23 September 1998, paras. 49 (*abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated putting him in a position of uncertainty, especially when the monetary depreciation which occurs in certain States is taken into account.*) and 57 (*... Exceptional circumstances...*)

18. Victims' Counsel's other submissions (paragraphs 21 to 31) center around the rate of interest (8%) and citing the applicable articles on the Kosovo Law on Obligations. Mustafa reiterates that the law of Obligations is not applicable at all, as it is not expressly incorporated in the KSC Law and it is not in any way, shape or form incorporated in the Reparation Order. Mustafa maintains that the Single Judge Panel cannot amend the Reparation Order, nor can the Single Judge Panel go beyond the framework of the KSC Law, his competence and authority as laid down in the Reparation Order. The Single Judge Panel, in the view of Mustafa, nevertheless did so by making his decision on the payment of interest. That is why Mustafa appealed his decision.
19. As the cited articles of the Law on Obligations in Victims' Counsel submissions clearly indicate the interest rate has a punitive character. The plain text of each of the articles makes that clear. Mustafa reiterates that any further measure with a punitive character amount to violations of his rights under the law, Constitution and the European Convention of Human rights, as indicated in Mustafa's submissions in this appeal.
20. It would take Mustafa, [REDACTED]²¹. Mustafa is currently 53 years old, has been found fully indigent, and still needs to serve the remainder of his sentence. Adding another 8% of annual interest to the debt would prolong the debt indefinitely. As an 8% annual interest would [REDACTED], the entire issue of an extra 8% annual interest would result in [REDACTED]. Therefore, the entire issue of this 8% of interest rate would not in any manner serve the victims.

²¹ [REDACTED].

21. As there are no further issues to address with regard to the Response of Victims' Counsel's submissions to the second reformulated question, Mustafa maintains his position as established in his submissions to the Appeals Panel.

C VICTIMS' COUNSEL RESPONSE TO SUBMISSIONS WITH REGARD TO THE POINT OF TIME WHEN INTEREST IS DUE

22. Victims' Counsel once again resorts to the Kosovo Law on Obligations. That law is not applicable and therefore irrelevant. The Single Judge Panel established as for the timing when the interest would start to accrue: *"that the established interest rate starts to accrue as of the date on which the Impugned Decision was notified to Mr. Mustafa."*²²

23. [REDACTED].

24. Obviously, as Mustafa's position is that the entire penalty interest rate is an unlawful and imposed another punitive measure upon him, it obviously includes the date as from which the penalty interest would start to accrue. The Single Judge Panel, by setting the timing as he did, went outside the boundaries of his competence and authority. As the Reparation Order itself is silent on any interest, the Single Judge Panel cannot impose interest, the rate of interest and timing which the interest would accrue. Even though the Single Judge Panel as well as the Trial Panel 1 at the time when the reparations order was issued, had both found that Mustafa was indigent, the single judge panel erred in his timing as he connected the indigence of Mustafa with alleged non-compliance of Mustafa.

²² Para. 28 of the Decision on the payment of Interest by Salih Mustafa in Relation to Reparations, KSCBC- 2020-05/R001/F00032, 16 July 2025

25. In case Mustafa would not be fully indigent then we would have had an entirely different situation. In that case the Single Judge Panel might have considered to notify Mustafa for a future date before which he should comply with any order concerning that issue. At present the Single Judge Panel imposed a timeline without fully and properly considering the (difficult) financial situation of Mustafa to pay the victims. The Single Judge Panel has erroneously connected Mustafa's indigence to a form of a deliberate non-compliance for which Mustafa is punished with a punitive measure.

D VICTIMS' COUNSEL RESPONSE TO SUBMISSIONS WITH REGARD TO MODALITIES OF THE CALCULATIONS OF THE ESTABLISHED INTEREST RATES.

26. Indeed, victims receive reparation payments on a pro rata bases and hence all of them will at the same time receive a specific percentage of their award no matter how small or large.

27. [REDACTED].²³ [REDACTED].²⁴

28. [REDACTED]),²⁵ [REDACTED].

29. [REDACTED].

E VICTIMS' COUNSEL RESPONSE TO SUBMISSIONS WITH REGARD TO AN ALTERNATIVE PATH

30. Mustafa is cognizant of the fact that the alternative path as suggested falls most probably outside boundaries of the current appeals proceedings. However, it is merely a suggestion in order to possibly streamline any efforts in order to fully compensate victims. And it is a path that Victims' Counsel apparently never pursued or even thought of. It is unclear to Mustafa whether the Appeal Panel could initiate that *proprio motu*.

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ Paragraph 29, Decision on the payment of Interest by Salih Mustafa in Relation to Reparations, KSCBC- 2020-05/R001/F00032, 16 July 2025

31. In this alternative path the convicted person will still have the obligation to pay. The convicted person only needs to pay a different entity: instead of the victims, he would have to repay it to the State of Kosovo. The State is even in a better position to collect the money that the convicted person owes. In any event, the victims have a certainty that their awarded claim will be paid at an earlier point in time.
32. If there is no further interest from the side of Victims' Counsel for such an alternative path, than there is no need to pursue this avenue further in this appeal proceedings. Mustafa observes that a State is always capable of meeting the payment requirement and a State is never indigent. Apparently, Victims' Counsel does not wish to pursue Mustafa's suggested alternative avenue.

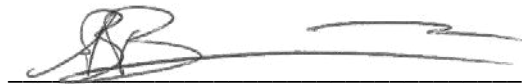
For the foregoing reasons, Mustafa maintains to his previous submissions and requests the Panel of the Court of Appeals to:

1. Grant Mustafa's Appeal in whole or in part

Word count: 2923

21 September 2025

At The Hague, the Netherlands



Julius von Bóné

Specialist Defence Counsel