

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

Before: **Single Judge**
Judge Gilbert Bitti

Registrar: Dr Fidelma Donlon

Filed by: Dr Anni Pues, Victims' Counsel

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VC Response to Mustafa's Request for a Temporary Stay

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I. INTRODUCTION

1. After VC filed a request to set a time-limit for the payment of reparations in this case, the Defence has now requested a temporary stay of these proceedings.¹ In this brief response, Victims' Counsel rejects such a stay.

II. SUBMISSIONS

2. The Defence argues that a *potential* request for the protection of legality that is currently under consideration would have the legal effect that 'Mustafa's conviction cannot be considered final until he has exhausted all remedies available to him in terms of the Law.'²
3. This submission is legally erroneous. Article 46(6) of the Law requires for such an extraordinary remedy a '*final judgment or final ruling*'³ with the effect of possibly re-opening the criminal proceedings. The finality of proceedings is a necessary criterion for this extra-ordinary remedy. Mustafa's conviction is final and is viewed to be final unless the Supreme Court takes the decision to re-open proceedings. The wording of article 48 is very clear.
4. Additionally, a further delay of enforcement of the reparations would inflict economic damage to the victims, who are entitled to the payments awarded, as the reparations order as well as the conviction are final. A time-limit would allow the imposition of statutory interest thereafter, which is the only way to protect a financial award from reducing in scope considering inflation and other circumstances.
5. It is not justified stay the enforcement proceedings only because of the possibility that the Defence may potentially file an extraordinary remedy. Applying this logic would lead to continued legal uncertainty without any

¹ KSC-CA-2023-02/R001/F00003 (Defence) *Mustafa Request for a Temporary Stay*, 22 January 2024.

² KSC-CA-2023-02/R001/F00003 *Mustafa Request for a Temporary Stay*, para 6.

³ Emphasis added.

clarity of the law. Now, the Defence may argue that it wishes to file for the protection of legality under article 48 (6) of the Law, thereafter they might argue that they wish to make a submission under article 48 (2) of the Law. This would lead to unreasonable results.

6. Considering the finality of the Appeals Judgment, any potential, albeit rather theoretical risk, of how any paid reparations could be returned to Mustafa. First of all, from the perspective of victims – and any reasonable observer of this trial – it is difficult to see, which arguments could be brought forward which would lead to a change in reparations award. Here, one needs to take into consideration that Mustafa did not appeal the reparations order.
7. Yet, most importantly, Kosovo Law has clear provisions for the very unlikely case that paid reparations would need to be returned. The Kosovo Law of Obligations regulates the payments of liabilities; chapter three addresses unjust acquisition and sets out the rules of return in any such case. This Law would provide a basis for Mustafa to – theoretically - request the return of unjustly acquired funds. So far, the victims had to carry the burden of uncertainty whether they would be paid what they are owed; considering the final conviction of Mustafa for murder, torture and arbitrary detention, having caused extensive harm to the victims in this case, it is justified that this burden of uncertainty (albeit so very theoretical for Mustafa) is now reversed.
8. The additional argument by the Defence that such a scenario would cause ‘further distress to the victims’⁴ is baseless. The victims are best able to determine what causes distress and is in their interest. Their interest is the swift enforcement of reparations, nothing less than what they are owed.

III. RELIEF REQUESTED

9. Victims Counsel requests that

⁴ KSC-CA-2023-02/R001/F00003 *Mustafa Request for a Temporary Stay*, para 8.

Mustafa's request to stay these proceedings is dismissed.

IV. CLASSIFICATION

10. This filing responds to a public filing and is therefore classified as such. Also, it does not contain any protected information.

Word count: 684



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At The Hague, the Netherlands