

In: KSC-BC-2020-05/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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**Public Redacted Version of VC Response to the Registrar's Submissions on the
Implementation of the Reparation Order**

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I. INTRODUCTION AND PROCEDURAL HISTORY

1. In this submission, Victims' Counsel responds to the Registrar's Submissions on the Implementation of the Reparations Order, dated 24 January 2024, in its confidential redacted version on 19 February 2024.¹ Victims' Counsel wishes to highlight that the substantial redactions applied in the confidential redacted version of the report limit the extent of comments that can meaningfully be made. Having said that, Victims' Counsel understands that [REDACTED]. In the following, Victims' Counsel will comment on three distinct aspects of relevance in this context: 1.) reparations payments [REDACTED]; 2.) assessments as to [REDACTED]; 3.) the Crime Victim Compensation program application.
2. Preceding the Registry Report, Victims' Counsel requested the Single Judge to set a time-limit of ten days for payment of the reparations.² In the final section of this submission, VC will briefly touch on this and raise the issue of statutory interest for overdue payments.

II. SUBMISSIONS

3. Victims' Counsel wishes to convey that the victims participating in these proceedings welcome the steps taken by the Trial Panel as well as the Registry as reiterated in the report in the quest to enforce reparations.

Reparations payments [REDACTED]

¹ KSC-BC-2020-05/R001/F00006/RED/, Public redacted version of 'Registrar's Submissions on the Implementation of the Reparation Order', 24 January 2024.

² KSC-BC-2020-05/R001/F00003, Request to set a date for payment of reparations, 19 January 2024.

4. [REDACTED] *pro rata* – as already envisaged in the Reparations Order.³ It will be necessary to establish if and to what extent any claims of *bona fide* third parties may exist.
5. However, no retroactive indigence assessment is necessary [REDACTED] in full in order to satisfy the obligations.
6. The *pro rata* payments ought to take account of the continued vulnerability [REDACTED].
7. [REDACTED] ought to be treated equally. For their individual situations, [REDACTED].
8. Considering the urgency of ensuring at least a *pro rata* reparations payment as soon as possible, a partial lifting of the Freezing Order with the aim of satisfying the reparations awards *pro rata* would be welcome by victims.
9. Victims' Counsel stands ready to cooperate with the Registry as to the modalities of [REDACTED] safeguarding their anonymity. For that purpose, Victims' Counsel has obtained [REDACTED].

Assessment of [REDACTED]

10. Mustafa [REDACTED]. While any considerations of [REDACTED].
11. An indigence assessment may have to consider the needs of dependants and spouse. Having said that, if such claims are made by Mustafa, Victims' Counsel would request that hearing be conducted. This would allow to critically question and challenge any such claims and raise questions regarding [REDACTED].
12. The Registry offers to conduct an indigence assessment based on the system established in the Legal Aid Regulations.⁴ In principle, this is a good approach,

³ KSC-BC-2020-05/F00517, Reparations Order, 6 April 2023, para 257 (also footnote 466).

⁴ KSC-BC-2020-05/R001/F00006 /RED, Registrar's Submissions, para 22

although the principles relevant to the indigence assessment require some adjustment. Section 2 (3) of Annex A, the Protocol on Indigence Assessment, sets out that '[m]eans that are temporarily not disposable or not readily disposable shall be considered as non-disposable means for the purpose of this assessment.' Considering fair trial requirements, this provision is justified in the context of legal aid. However, for the purpose of assessing indigence in the context of reparations obligations temporarily non-disposable means ought to be considered as disposable, not relieving Mustafa's duty of payment. As debtor, he can be expected to ensure that such means are made disposable for the benefit of the victims as creditors.

13. Such [REDACTED] until the reparations amount in full as well as any statutory interest has been paid.

The Crime Victims Compensation Program application

14. For the purpose of submitting applications to the Crime Victims Compensation Program it will be useful that the Single Judge reiterate findings of partial indigence regarding those parts of the reparations awards that cannot be satisfied [REDACTED].

Setting of a deadline for payment and statutory interest

15. Victims Counsel reiterates her request to set a deadline of payment for Mustafa, as this will trigger the obligation to additionally pay statutory interest on the amounts owed.
16. This may seem as a hypothetical consideration at this juncture, when it is still unclear if and to what extent the main debt will be satisfied. Yet, it is important

to highlight that debts resulting from reparations are economically important awards and to be treated on an equal footing to any other debt.

17. Statutory interest for overdue debt at 8% a year can be calculated based on such a deadline. Article 382 on the Kosovo Law of Obligations states that the 'debtor who is late in fulfilling the obligation in money debits, in addition to the main debt, also (owes) the interest. 2. The amount of late interest is eight percent (8%) per year...'. Such interest is of importance to ensure that specifically in times of high inflation, the awards are not economically devalued with the passing of time.

III. RELIEF REQUESTED

18. Victims Counsel requests that
 - a) [REDACTED] for the implementation of the reparations order *pro rata*
 - b) that *pro rata* payment take account of specific vulnerabilities;
 - c) any indigence assessment shall not consider dependants claims retroactively nor consider temporarily non-disposable means;
 - d) to conduct a hearing in case of claims raised by spouse and dependants throughout the indigence assessment;
 - e) a time limit for the payment in full is set regardless of any partial indigence.

IV. CLASSIFICATION

19. This filing responds to a confidential filing and is therefore classified as such. Also, it contains information that would allow identification of protected persons.

Word count: 1231

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

Anni Pues
Victims' Counsel

28 February 2024

At The Hague, the Netherlands