

In: KSC-SC-2024-02
The Specialist Prosecutor v. Mr. Salih Mustafa

Before: **A Panel of the Supreme Court Chamber**
Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Fidelma Donlon

Filing Participant: Defence of Salih Mustafa

Date: 3 May 2024

Language: English

Classification: Public

Reply to Victims' Counsel Response to Defence Request for Protection of Legality

Specialist Prosecutor's Office:

Kimberly P. West

Counsel for Salih Mustafa:

Julius von Bóné

Counsel for Victims:

Anni Pues

I. INTRODUCTION

1. The Defence (hereinafter “the Defence or Mustafa”) has on behalf of Mustafa filed a Request for Protection of Legality (Request).¹ The Request is based on Article 48 (6) to (8) of the Law and Rule 193 of the Rules of the Kosovo Specialist Chambers and Specialist Prosecutor’s Office (hereinafter the “Law” and “Rules”).
2. The Victims’ Counsel has responded to Mustafa’s Request for Protection of Legality (Response).² The relief that is being sought by the Victims’ Counsel is to dismiss the relief sought in the Request.
3. This document contains the reply of the Defence (Reply) to the submissions of the Victims’ Counsel.
4. The Request of Mr. Mustafa is in accordance with Article 48 (7) and (8) of the Law. Mr. Mustafa has identified with each ground the specific alleged violations of the criminal law contained in the Law and of the substantial violation of the procedures set out in the Law and the Rules. Each Ground in the Request has been substantiated by arguments supporting the alleged violation.
5. The Victims’ Counsel seeks dismissal of the Request of Mustafa.

II. PROCEDURAL BACKGROUND

6. An outline of procedural background of the case was provided in the Request for Protection of Legality.
7. The Request was filed on 14 March 2024.
8. The Victims’ Counsel responded on 12th of April 2024.

¹ The relief sought is listed in para 117 of the Request/KSC-SC-2024-02/F00011.

² Victims’ Counsel Response to the Request/KSC-SC-2024-02/F00013.

III. THE APPLICABLE LAW

9. The applicable law was thoroughly discussed in the Request.

IV. REPLY TO SUBMISSIONS OF THE VICTIMS' COUNSEL REGARDING THE REQUEST

10. The Victims' Counsel does not demonstrate in any manner in which way the Victims' rights are affected by the legal discussion that is raised by the Defence in its Request. The Victims' Counsel seeks under the guise of affected rights to voice comments over the Request of the Defence. None of the alleged affected rights or interest are demonstrated, substantiated or made concrete as to how these would be affected.

11. The Victims' Counsel has no standing in these proceedings, as none of the legal issues that are raised by the Defence concern any of the rights of the Victims are affected as such. The proceedings are not a podium for victims to make submissions if none of the Grounds of the Request enumerate anything regarding the position or rights of the victims.

12. The Grounds in the Request are simply based on the incorrect application of the Law or Rules. The challenged violations of either the Law or Rules are not about Victims.

13. The Victims interest and rights are enumerated and spelled out in Article 22 of the Law (notification, acknowledgment and reparation).³ None of these are the subject matter in the Request and none of these are challenged in any manner in the Request.

14. Therefore, the submissions of the Victims' Counsel are not addressed by the Defence as to their content and must be dismissed.

³ Article 22 of the Law no.05/l-053 on Specialist Chambers and Specialist Prosecutor's Office

V. CONCLUSION

15. The Defence maintains its position on each of the Grounds and the Conclusion as provided for in the Request for Protection of Legality.

Word count: 553



3 May 2024

At The Hague, the Netherlands

Julius von Bóné

Defence Counsel