



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-CC-2024-26

Before: **The Specialist Chamber of the Constitutional Court**
Judge Vidar Stensland, Presiding
Judge Roumen Nenkov
Judge Romina Incutti

Registrar: Fidelma Donlon

Date: 25 September 2024

Language: English

Classification: Public

Decision on Joint Request for an Extension of Time

Specialist Prosecutor
Kimberly P. West

Counsel for Victims
Anni Pues

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, Trial Panel I rendered the “Trial Judgment”, wherein it convicted Mr Salih Mustafa of arbitrary detention, torture and murder as war crimes, and acquitted him of the war crime of cruel treatment.¹ The Trial Panel sentenced Mr Mustafa to 26 years of imprisonment.²

2. On 14 December 2023, the Court of Appeals Panel issued the “Appeal Judgment”, wherein it affirmed Mr Mustafa’s convictions for arbitrary detention, torture and murder as war crimes, but granted Mr Mustafa’s appeal, in part, against his sentence.³ To that end, the Court of Appeals Panel reduced Mr Mustafa’s sentence to 22 years of imprisonment, with credit for time served.⁴

3. On 29 July 2024, the Supreme Court Panel granted Mr Mustafa’s request for protection of legality, in part, and remanded the Appeal Judgment to the Court of Appeals Panel only insofar as it related to a new determination on Mr Mustafa’s 22-year sentence (“Supreme Court Panel Decision”).⁵

4. On 10 September 2024, in view of the Supreme Court Panel’s Decision, the Court of Appeals Panel reduced Mr Mustafa’s sentence to 15 years of imprisonment (“Court of Appeals Panel Decision”).⁶

5. On 20 September 2024, the Specialist Prosecutor’s Office (“SPO) and Victims’ Counsel in the case against Mr Mustafa jointly filed a request for an extension of time to make referrals in accordance with Article 49 of the Law No. 05/L-053 on Specialist

¹ KSC-BC-2020-05, F00494, Trial Judgment, 16 December 2022, confidential (“Trial Judgment”), para. 831. A corrected version was issued on 24 January 2023, F00494/COR and a public redacted version on 8 June 2023, F00494/RED3/COR.

² Trial Judgment, para. 831.

³ KSC-CA-2023-02, F00038, Appeal Judgment, 14 December 2023, confidential (“Appeal Judgment”), para. 484. A public redacted version was issued on the same day, F00038/RED.

⁴ Appeal Judgment, para. 484.

⁵ KSC-SC-2024-02, F00018, Decision on Salih Mustafa’s Request for Protection of Legality, 29 July 2024, public.

⁶ KSC-CA-2023-02, F00045, Decision on New Determination of Salih Mustafa’s Sentence, 10 September 2024, public.

Chambers and Specialist Prosecutor's Office ("Law") in relation to the decision issued by the Supreme Court Panel in relation to Mr Mustafa's sentence of imprisonment ("Joint Request").⁷

6. On 23 September 2024, the President of the Specialist Chambers, pursuant to Article 33(3) of the Law, assigned the above Panel to rule on the Joint Request and any related matter.⁸

II. SUBMISSIONS

7. The SPO and Victims' Counsel contend that different deadlines are applicable to them for the filing of a referral before the Specialist Chamber of the Constitutional Court ("SCCC") in relation to the Supreme Court Panel Decision and the ensuing Court of Appeals Panel Decision, resulting in a reduction of Mr Mustafa's sentence of imprisonment to 15 years.⁹ The SPO and Victims' Counsel submit that, should the briefing schedule be synchronized for both, it would facilitate fair and expeditious proceedings and assist effective case management.¹⁰ The SPO and Victims' Counsel argue that this constitutes good cause for extending the deadline for the filing of their referrals.¹¹ Accordingly, the SPO and Victims' Counsel request, in accordance with Rule 6(4) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court ("SCCC Rules"), that the SCCC extend the deadlines for the filing of their respective referrals until 11 November 2024.¹²

III. DELIBERATIONS

8. The SCCC recalls at the outset that Article 49 of the Law allows, *inter alia*, referrals to be made before it by any person authorised to do so under Article 113 of

⁷ KSC-CC-2024-26, F00001, Joint Request for Extension of Time, 20 September 2024, public.

⁸ KSC-CC-2024-26, F00002, Decision to Assign Judges to a Constitutional Court Panel, 23 September 2024, public.

⁹ Joint Request, paras 1-3.

¹⁰ Joint Request, para. 3. See also Joint Request, para. 4.

¹¹ Joint Request, para. 1.

¹² Joint Request, para. 1.

the Constitution of the Republic of Kosovo, which relates to or directly impacts the work, decisions, orders or judgments of the Specialist Chambers or by individuals who allege a violation of their individual rights and freedoms by the Specialist Chambers or the SPO. The SCCC further recalls that referrals shall set out individual information as well as a statement of the alleged violation(s) of the individual rights and freedoms guaranteed by Chapter II of the Constitution.¹³

9. Without prejudice to any finding by the SCCC in relation to the standing of either the SPO or Victims' Counsel to file a referral in relation to the Supreme Court Decision or the Court of Appeals Panel Decision, or the admissibility of any such referral, the SCCC notes that it is clear from the wording of Article 49 of the Law that any time lines applicable to the filing of referrals by those authorised to do so are inherently specific or individual in nature, including in relation to any potential arguments that may be raised. The SCCC therefore does not consider it necessary or in the interests of the efficiency of proceedings to "synchronize" briefing schedules in this respect. Accordingly, the SCCC is not satisfied that the SPO and Victims' Counsel have shown good cause that would justify extending the time limits provided for in Rule 6 of the SCCC Rules.

FOR THESE REASONS,

The Specialist Chamber of the Constitutional Court *REJECTS* the Joint Request in its entirety.

¹³ See Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers, 17 May 2019, Article 58.



Judge Vidar Stensland
Presiding Judge

Done in English on Wednesday, 25 September 2024
At The Hague, the Netherlands