



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-CC-2024-27

Before: **The President of the Specialist Chambers**
Judge Ekaterina Trendafilova

Date: 3 October 2024

Registrar: Fidelma Donlon

Language: English

Classification: Public

Decision to Assign Judges to a Constitutional Court Panel

Judges of the Constitutional Court Panel:

Judge Vidar Stensland

Judge Roumen Nenkov

Judge Romina Incutti

Specialist Prosecutor's Office: **Counsel for Salih Mustafa:**
Kimberly P. West Julius van Bóné

THE PRESIDENT of the Specialist Chambers (“President”), noting Article 33(3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 3 and 4(2) of the Rules on the Assignment of Specialist Chambers Judges from the Roster of International Judges (“Rules on Assignment”), herewith assigns a Constitutional Court Panel to rule on the “The Specialist Prosecutor v. Salih Mustafa Referral to the Constitutional Court Panel concerning the violations of Mr. Salih Mustafa’s Fundamental Rights Guaranteed under Articles 22, 31 and 33 of the Constitution of the Republic of Kosovo and Articles 6 and 7 of the European Convention on Human Rights with Public Annexes 1 to 7” (“Referral”).¹

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, Trial Panel I rendered the “Trial Judgment”, wherein it, *inter alia*, convicted Mr Salih Mustafa of the war crimes of arbitrary detention, torture and murder and acquitted him of the war crime of cruel treatment.² The Trial Panel sentenced Mr Mustafa to 26 years of imprisonment.³

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, in relation to his sentence.⁴ To that end, the Court of Appeals Panel reduced Mr Mustafa’s sentence to 22 years of imprisonment, with credit for time served.⁵

¹ F00001, The Specialist Prosecutor v. Salih Mustafa Referral to the Constitutional Court Panel concerning the violations of Mr. Salih Mustafa’s Fundamental Rights Guaranteed under Articles 22, 31 and 33 of the Constitution of the Republic of Kosovo and Articles 6 and 7 of the European Convention on Human Rights with Public Annexes 1 to 7, 27 September 2024.

² KSC-BC-2020-05/F00494, Trial Judgment, 16 December 2022 (confidential), para. 831. A corrected version was filed on 24 January 2023 and a public redacted version on 8 June 2023.

³ Trial Judgment, para. 831.

⁴ KSC-CA-2023-02/F00038, Appeal Judgment, 14 December 2023 (confidential), para. 484. A public redacted version of the Appeal Judgment was issued on the same day (KSC-CA-2023-02/F00038/RED).

⁵ Appeal Judgment, para. 484.

3. On 14 March 2024, Mr Mustafa filed the “Defence Request for Protection of Legality with Confidential Annex 1 and 2 pursuant to Article 48(6) to (8) of the Law and Rule 193 of the Rules”.⁶

4. On 29 July 2024, the Supreme Court Panel issued the “Decision on Salih Mustafa’s Request for Protection of Legality”, wherein it, *inter alia*, annulled the Appeal Judgment insofar as it relates to Mr Mustafa’s sentence and returned it for a new determination of his sentence pursuant to Rule 194(1)(b) of the Rules.⁷

5. On 10 September 2024, the Court of Appeals Panel issued the “Decision on New Determination of Salih Mustafa’s Sentence”, reducing Mr Mustafa’s sentence to 15 years of imprisonment, with credit for time served.⁸

6. On 27 September 2024, Mr Mustafa filed the Referral.

II. ASSIGNMENT

7. Pursuant to Article 33(3) of the Law, upon a referral to the Specialist Chamber of the Constitutional Court (“SCCC”), the President shall assign the three Judges of the SCCC. Should one of these Judges not be available for assignment, the President shall assign the reserve constitutional Judge.

8. The President notes that one of the three Judges of the SCCC is not available for assignment. Accordingly, the President shall assign the reserve constitutional Judge, in accordance with Article 33(3) of the Law and Rules 3 and 4(2) of the Rules on Assignment.

⁶ KSC-SC-2024-02/F00011, Defence Request for Protection of Legality with Confidential Annex 1 and 2 pursuant to Article 48 (6) to (8) of the Law and Rule 193 of the Rules, 14 March 2024.

⁷ KSC-SC-2024-02/F000018, Decision on Salih Mustafa’s Request for Protection of Legality, 29 July 2024, para. 112.

⁸ KSC-CA-2023-02/F00045, Decision on New Determination of Salih Mustafa’s Sentence, 10 September 2024, para. 28.

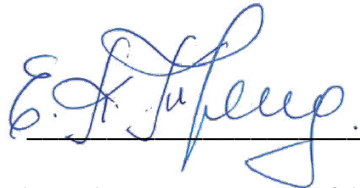
FOR THESE REASONS, THE PRESIDENT HEREBY ASSIGNS

Judge Vidar Stensland

Judge Roumen Nenkov

Judge Romina Incutti

to the Constitutional Court Panel to rule on the Referral.

A handwritten signature in blue ink, appearing to read 'E. Trendafilova', is written over a horizontal line.

Judge Ekaterina Trendafilova

President of the Specialist Chambers

Dated this Thursday, 3 October 2024
At The Hague, the Netherlands