

**In:** KSC-CC-2024-27  
The Specialist Prosecutor v. Mr. Salih Mustafa

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

**Registrar:** Fidelma Donlon  
**Filing Participant:** Specialist Counsel for Salih Mustafa  
**Date:** 6 October 2024  
**Language:** English  
**Classification:** Public

---

**Mustafa's Response to SPO's Request for authorization to respond  
to Filing number KSC-CC-2024-27/F00003 (Mustafa's Referral)**

---

**Specialist Prosecutor's Office:**  
Kimberly P. West

**Specialist Defence Counsel:**  
Julius von Bóné

## I INTRODUCTION

1. On 3 October 2024 the Specialist Prosecutors Office (SPO) filed a Request for Authorization to Respond to Mustafa's Referral.<sup>1</sup> ("Request")
2. In this document Mustafa responds to the Request of the SPO to avoid that by not responding to it, it would possibly appear or mean that Mustafa would have no objection to the Request, or would agree with the Request of the SPO. No such is the case.

## II PROCEDURAL BACKGROUND

3. On 27 of September 2024, Mustafa filed a Referral to the Specialist Chamber of the Constitutional Court.<sup>2</sup> ("SCCC").
4. On 3 October 2024 the Specialist Prosecutors Office (SPO) filed a Request for Authorization to Respond to Mustafa's Referral.<sup>3</sup>
5. The SPO's Request was based on Article 35 (2) (i) of the Law ("the Law") and Rule 15 (2) of the Rules ("the Rules").<sup>4</sup>

---

<sup>1</sup> KSC-CC-2024-27/ F00003; Prosecution Request for Authorization to Respond to KSC-CC-2024-27/F00001 ("Request").

<sup>2</sup> KSC-CC-2024-27/ F00001; Referral to the Constitutional Court Pannel concerning 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 ("Referral").

<sup>3</sup> KSC-CC-2024-27/ F00003; Prosecution Request for Authorization to Respond to KSC-CC-2024-27/F00001 ("Request").

<sup>4</sup> Law no.05/L053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ("Law") and Rules of Procedure for the Specialist Chamber of the Constitutional Court ("Rules")

6. Earlier on, on 20 September 2024 the SPO filed a Joint Request (“Joint Request”) for extension of time.<sup>5</sup> This Joint Request was made under Article 49 of the Law, following a Supreme Court Decision.<sup>6</sup> SPO requested an extension of time to file a referral to the SCCC.
7. In the Joint Request SPO specified that: *“the Supreme Court Decision was final in respect of certain findings concerning the criminal law applicable to sentencing”*.<sup>7</sup>
8. Furthermore, the Joint Request, specified that: *“the Request is without prejudice to the chambers consideration of the admissibility and merits of any application(s) or referral (s) ultimately made”*.<sup>8</sup>
9. The SCCC decided on the Joint Request in its Decision of 25 September 2024.<sup>9</sup>
10. In its Decision, the SCCC recalled that: *“the SPO and Victims’ Counsel contend that different deadlines to them for the filing of a referral before the SCCC in relation to the Supreme Court Pannel Decision and the ensuing Court of Appeals Decision, resulting in a reduction of Mr. Mustafa’s sentence of imprisonment to 15 years”*.<sup>10</sup>
11. In its Decision the SCCC considered: *“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*

---

<sup>5</sup> KSC-CC-2024-26/F00001, Joint request for extension of time (“Joint Request”)

<sup>6</sup> KSC-SC-2024-02/F00018, Decision on Salih Mustafa’s Request for Protection of Legality, 29 July 2024.

<sup>7</sup> KSC-CC-2024-26/F00001, Joint request for extension of time (“Joint Request”), paragraph 2; further referring to KSC-SC-2024-02/F00018, Decision on Salih Mustafa’s Request for Protection of Legality, 29 July 2024, paragraphs 99-108 and para. 111

<sup>8</sup> KSC-CC-2024-26/F00001, Joint request for extension of time (“Joint Request”), paragraph 3 referring to footnote 9.

<sup>9</sup> KSC-CC-2024-26/ F00003, Decision on Joint Request for Extension of Time.

<sup>10</sup> KSC-CC-2024-26/ F00003, Decision on Joint Request for Extension of Time, paragraph 7, referring to the Joint Request paragraphs 1-3.

*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".<sup>11</sup> The SCCC rejected the Joint Request in its entirety.*

### III. SUBMISSIONS

12. First and foremost, the SPO can make referrals under Article 49 (2)<sup>12</sup> of the Law and allegedly under Article 35 (2) (i)<sup>13</sup> of the Law.
13. Article 49 of the Law concerns Constitutional Court petitions. Article 49 (2) specifies that referrals under Article 113 of the Constitution can be made which relate to or directly impacts (...) the work of the Specialist Prosecutors Office.<sup>14</sup>
14. Article 35 (2) refers to the authority and responsibility of the Specialist Prosecutor to perform the functions of his/her office. These include, under subparagraph (i) filing and pursuing indictments through all stages before the Specialist Chambers. This Article does not as such or independently grant the SPO to make any kind of referral.
15. Mustafa's Referral, however, is based on Article 49 (3) of the Law. It concerns his individual rights and freedoms guaranteed by the Constitution. His Referral is neither in any manner about the indictment, nor is it about the work of the office of the Specialist Prosecutor.

---

<sup>11</sup> Ibid, paragraph 9

<sup>12</sup> The distinction as to who, and on which bases, a referral can be made, is further clarified in the Rules of Procedure for the Specialist Chamber of the Constitutional Court. As the SPO cannot file a referral under Article 49 (3) of the Law, the applicable Rule of Procedure is Rule 17 which specifically refers to referrals made under Article 49 (2) of the Law. For applicants that make a referral under Article 49 (3) of the Law, the Rule 20 applies.

<sup>13</sup> Article 35 (2) (i) is not included in Rule 17, as far as any referral is concerned.

<sup>14</sup> Article 49 (2) of the KSC Law

16. In the current Request the SPO bases itself on Article 35 (2) (i) of the Law and specifies that: *“it has a direct interest in and is directly impacted by the subject matter of Mustafa’s Referral”*.
- <sup>15</sup> This blunt statement is entirely uncorroborated. Mustafa submits that in no manner the SPO demonstrates why, how, or in what manner the SPO, as an office, is impacted in its’ work by a Referral that is done by the Applicant concerning his constitutional rights and which is inherently specific or individual in nature.
17. Moreover, as the SPO contends, that: *“it has a direct interest in and is directly impacted by”* Mustafa’s Referral, is a wording that derives from Article 49 (2) of the Law. Mustafa underlines once again that Article 49 (2) is about the work of the SPO. Mustafa is unable to see how the work of the office of the Specialist Prosecutor can be impacted by a decision that concerns his individual rights. Neither did the SPO demonstrate any of this.
18. The above-mentioned criterion cannot in any manner be derived from Article 35 (2) (i) of the Law, as it concerns only matters regarding the indictment. It’s object and purpose is an entirely different one than that of Article 49 (2) of the Law.
19. The SPO seems to confuse or to intertwine the content of the two articles mentioned above. Even though the SPO states that Mustafa’s Referral *“arises out of the indictment and that (...) consequently the SPO has a direct interest in and is directly impacted by subject matter of Mustafa’s Referral”*, Mustafa cannot agree with this. The SPO does not demonstrate why it “consequently” has a direct interest or why it is directly impacted (on its work) by the subject matter.

---

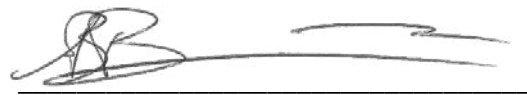
<sup>15</sup> SPO Request, paragraph 2

20. Mustafa's Referral is based on a different Article (i.e. 49 (3)) of the Law and the object and purpose of that article is entirely different than the one upon which the SPO bases its Request.
21. Given the procedural background as indicated above, Mustafa submits that the SPO did not file any referral at all to the SCCC within the time limit prescribed for in the Law. Irrespective of whether the SPO would have standing to file such a referral, the SPO did not file any further referral after the Decision on Joint Request, even though the time limit for filing such referral had not yet expired.
22. Therefore, the SPO has forfeited its right under Article 49 (2) of the Law and its alleged right under Article 45 (2) (i) of the Law in this case.
23. With its current Request, the SPO is just trying to use another avenue to make submissions regarding a Decision with which they apparently seem to disagree. As stated above the SPO did not file any referral anymore. It would be unfair to Mustafa to grant the SPO's Request, as failure to comply with time limits prescribed in the Law could be circumvented in this manner. Granting the Request of the SPO would, in the view of Mustafa, interfere with the integrity of the proceedings, and would violate Mustafa's constitutional rights of equal protections of rights in proceedings (Article 31 (1) of the Constitution). Mustafa must be able to rely on the fact that no other party made any referral.
24. Lastly, the SPO neither presented nor substantiated any of its alleged interests in Mustafa's referral as regard to both Article 49 and 35 (2) (i) of the Law. It just limited itself to a blunt statement. By doing so the Request should be, on that basis alone, summarily dismissed.

#### IV CONCLUSION

25. For the reasons given above, Mustafa submits that the SPO's Request should be Rejected.

**Word count: 1605**

A handwritten signature in dark ink, appearing to be 'Julius von Bóné', written over a horizontal line.

**Julius von Bóné**  
**Specialist Defence Counsel**

**6 October 2024**

**At The Hague, the Netherlands**