

In: KSC-CC-2024-27
Before: Constitutional Court Panel
Judge Vidar Stensland
Judge Roumen Nenkov
Judge Romina Incutti
Registrar: Dr Fidelma Donlon
Filed by: Dr Anni Pues, Victims' Counsel
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**Victims' Counsel's request for leave to make submission to Mustafa's
Constitutional Court Referral**

Specialist Prosecutor's Office

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Counsel for Salih Mustafa

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Victims' Counsel

Dr Anni Pues

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. On 27 September 2024, Mr Mustafa ('Applicant') filed the Referral¹ to the Constitutional Court Panel concerning the violations of Mr Salih Mustafa's fundamental rights. On 3 October, the President of the Specialist Chambers assigned a Constitutional Court Panel to rule on this referral.² On 3 October 2024, the Prosecutor filed its request for authorisation to respond to the referral.³

2. The Applicant objected to this request with filing from 6 October.⁴ Victims' Counsel did not receive notification of any of these filings.

3. Victims' Counsel seeks to ensure that the victims' right to notification⁵ is safeguarded and that the Panel grants Victims' Counsel leave to respond to the referral.

II. SUBMISSIONS

4. Regarding the right to notification that follows from article 22(3) of the Law⁶, it is submitted that this right must include all stages of the proceedings. The right to notification is not limited to a specific procedural stage such as the trial and appeals stage only. Furthermore, the right to notification is critical at all stages of the proceedings. Otherwise victims may find themselves in the position that they believe that the judicial proceedings have been concluded through the final judgment to then be confronted at a later stage with decisions that might call into question the

¹ 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, KSC-CC-2024-27/F00001, 27 September 2024 ('Referral').

² Decision to Assign Judges to a Constitutional Court Panel, KSC-CC-2024-27/F00002, 3 October 2024.

³ Prosecution request for authorisation to respond to referral KSC-CC-2024-27/F00001, KSC-CC-2024-27/F00003, 3 October 2024.

⁴ Mustafa's Response to SPO's Request for authorization to respond to Filing number KSC-CC-2024-27/F00003, KSC-CC-2024-27/F00004, 6 October 2024.

⁵ Article 22 (3) of the Law.

⁶ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

acknowledgment of the harm they experienced and the reparations possibly ordered in their case.

5. According to article 23 (1) of the Law, the court has an obligation to safeguard victims' wellbeing at all stages of the proceedings. With the final judgment in the case, victims hope to achieve closure, develop the sense that justice has been done, and that the person responsible for the murder of a family member, the person directly involved in torturing a victim, has received their punishment. To be taken completely by surprise at a later stage that such final decision might have been overturned, bears the danger of severely undermining the psychological wellbeing of the victims. If the right to notification did not extend to all stages of the proceedings, including extraordinary legal remedies and constitutional complaints, it would hollow out the *telos* of article 22 (3) of the Law and victim participation.

6. On the request for leave to make submissions, Victims' Counsel highlights that the referral directly attacks the scope of victim participation. This issue goes directly to the heart of how victims' can act to safeguard their rights as guaranteed in article 22 of the Law in the proceedings.

7. According to Rule 15 (2) of the RPECCC, the Constitutional Court Panel 'may ...hear additional submissions, as deemed necessary, in relation to the referral'. The discretionary scope provided in this rule enables the Constitutional Court Panel to grant the requested leave.

8. Given the unprecedented nature of the referral, specifically with a view to questions around victim participation, it seems appropriate to hear victims on this issue.

9. Victims hold individual rights under the Law and are protected by the Constitution. This is recognised though the provision of article 49 (3) of the Law, which affords victims a direct right to launch constitutional complaints. The fairness

issues raised by the Defence ultimately boil down to questions on balancing the rights of the accused with those of victims to participate and make submissions. For that reason, it is justified that the Constitutional Court Panel hears the victims' views on this matter.

10. Should leave be granted, Victims' Counsel agrees with the Prosecution's submission that the scope, importance, and complexity of the issues raised in the referral, the time limit for filing submissions should provide for sufficient time. Victims' Counsel endorses the Prosecution's request to set a deadline for filing submission for 8 November 2024.

III. RELIEF REQUESTED

11. Victims Counsel requests that

- a) Victims' Counsel remains informed of the proceedings in this case pending before the Constitutional Court Panel through inclusion in the distribution list;
- b) Leave is granted for Victims' Counsel to make submissions on the referral
- c) That the deadline for filing such submissions is set earliest to 8 November 2024.

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Anni Pues
Victims' Counsel

Wednesday, 9 October 2024

At The Hague, the Netherlands