



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-CC-2024-27

Before: **The Specialist Chamber of the Constitutional Court**

Judge Vidar Stensland, Presiding

Judge Roumen Nenkov

Judge Romina Incutti

Registrar: Fidelma Donlon

Date: 17 October 2024

Language: English

File name: Referral by Salih Mustafa to the Constitutional Court Panel Concerning the alleged violation of his fundamental rights guaranteed by Articles 22, 31 and 33 of the Kosovo Constitution and Articles 6 and 7 of the European Convention on Human Rights

Classification: Public

Decision on the Working Language and Further Proceedings

Applicant

Salih Mustafa

Specialist Prosecutor

Kimberly P. West

Victims' Counsel

Anni Pues

I. PROCEDURAL BACKGROUND

1. On 27 September 2024, Mr Salih Mustafa (“Applicant”) lodged with the Specialist Chamber of the Constitutional Court a referral (“SCCC” and “Referral”, respectively),¹ under Articles 22, 31 and 33 of the Constitution of Kosovo, Article 49(3) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and 20 of the Rules of Procedure for the Specialist Chamber of the Constitutional Court (“Rules”). The Applicant is represented by Mr Julius von Bóné.
2. On 3 October 2024, the President of the Specialist Chambers, pursuant to Article 33(3) of the Law, assigned the above Panel to rule on the Referral.²
3. On 3 October 2024, the Specialist Prosecutor’s Office (“SPO) requested that it be allowed to make submissions (“SPO Request”), as the “Referral arises out of the indictment, trial, and appeal proceedings in the *Specialist Prosecutor v. Salih Mustafa* case, and concerns matters addressed in *inter partes* litigation throughout those proceedings”.³ The SPO contends that it therefore “has a direct interest in, and is directly impacted by, the subject matter of the Referral”.⁴ The SPO requests that if it is granted leave to respond to the Referral, it be allowed to do so by 8 November 2024, given “the scope, importance, and complexity of the issues raised in the Referral”.⁵
4. On 6 October 2024, the Applicant opposed the SPO Request, submitting that Article 35(2)(i) of the Law does not independently grant the SPO authority to make any kind of referral (“Applicant’s Submission”).⁶ Moreover, the Applicant contends

¹ F00001, 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 F00002, Decision to assign Judges to a Constitutional Court Panel, 3 October 2024.

³ F00003, Prosecution request for authorisation to respond to referral KSC-CC-2024-27/F00001, 3 October 2024, para. 2.

⁴ SPO Request, para. 2.

⁵ SPO Request, para. 3.

⁶ F00004, Mustafa’s response to SPO’s request for authorization to respond to filing number KSC-CC-2024-27/F00003 (Mustafa’s referral), 6 October 2024, para. 14.

that the Referral concerns his individual rights and freedoms as guaranteed by the Constitution of the Republic of Kosovo and is therefore not about the work of the office of the SPO.⁷

5. On 10 October 2024, the Victims' Counsel requested that it be granted leave to respond to the Referral and seeks to ensure that the victims' right to notification is safeguarded ("Victims' Counsel's Request").⁸ According to the Victims' Counsel, the victims have a right to notification which extends to all stages of the proceedings.⁹ The Victims' Counsel further argues that the Applicant "directly attacks the scope of victim participation" and therefore goes "directly to the heart of how victims can act to safeguard their rights as guaranteed in [A]rticle 22 of the Law in the proceedings".¹⁰

6. On 14 October 2024, Mr Mustafa filed his opposition to the Victims' Counsel's Request ("Mustafa Reply to Victims' Counsel"), submitting, *inter alia*, that the Referral concerns his own individual rights and "is not meant to be as an additional or separate avenue for victims, or any other party, to make comments on Mustafa's Referral".¹¹

II. THE PANEL'S ASSESSMENT

7. Under Article 20 of the Law and Rule 5 of the Rules, the Panel shall decide the working languages for its proceedings. As the Applicant has made the Referral in English, the working language of the present proceedings shall be English with official translation or interpretation provided by the Registry into the official languages of the Specialist Chambers.

8. Turning to the requests to make submissions, the Panel wishes to emphasise that

⁷ Applicant's Submission, para. 15. See also Applicant's Submission, paras 16-20, 23-24.

⁸ F000005, Victims' Counsel's request for leave to make submission to Mustafa's Constitutional Court referral, 10 October 2024, para 3.

⁹ Victims' Counsel's Request, paras 4-5.

¹⁰ Victims' Counsel's Request, para. 6. See also Victims' Counsel's Request, paras 7-8.

¹¹ F00006, Mustafa's response to Victims' Counsel's request for leave to make submission to Mustafa's Constitutional Court referral, 14 October 2024, para. 19.

proceedings before the SCCC are not adversarial in nature and only concern alleged violations of an individual's human rights. To that end, there are no "parties" to the proceedings as such and there is no inherent right to make submissions or respond to a referral by an Applicant. In other words, the Panel will only request submissions from the SPO or others if it considers this necessary in the context of the particular referral.

9. The Panel has considered the SPO Request and finds it appropriate, on an exceptional basis, in the present circumstances to receive submissions from the SPO on the Referral pursuant to Rule 15(2) of the Rules and submissions by the Applicant in response thereto.

10. The Panel has further considered the Victims' Counsel's Request and, without prejudice to any findings on Ground 1 of the Referral, finds it appropriate, on an exceptional basis, to receive submissions pursuant to Rule 15(2) of the Rules on the scope of victims' participation only.

FOR THESE REASONS,

The Constitutional Court Panel

1. *Decides* that the working language of the present proceedings shall be English with official translation or interpretation provided by the Registry into the official languages of the Specialist Chambers, namely, Albanian, Serbian and English;
2. *Grants* the SPO Request;
3. *Grants* the Victims' Counsel's Request;
4. *Decides* that the SPO may file written submissions in response, which shall not exceed 20 pages, to the Referral by 8 November 2024;

5. *Decides* that Victims' Counsel may file written submissions only insofar as it relates to the rights of victims to participate and that these submissions, if any, shall not exceed 10 pages; and
6. *Decides* that the Applicant may file a reply to the SPO's and Victims' Counsel's submissions, if any, which shall not exceed 25 pages, by 29 November 2024.



Judge Vidar Stensland
Presiding Judge

Done in English on Thursday, 17 October 2024
At The Hague, the Netherlands