



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-CC-2020-11

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 6 October 2020

**Language:** English

**Classification:** Public

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**Prosecution request for leave to make submissions**

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**Specialist Prosecutor's Office**

Jack Smith

1. On 18 September 2020, the President of the Assembly of Kosovo conveyed a proposed amendment to the Constitution<sup>1</sup> ('Proposed Amendment') to the President of the Specialist Chambers, requesting its referral to the Specialist Chambers of the Constitutional Court ('SCCC').<sup>2</sup> On 22 September 2020, the Referral was assigned to this Panel of the SCCC ('Panel').<sup>3</sup> On 5 October 2020, the Panel, *inter alia*, notified the Referral to certain interested authorities and authorised them to make written submissions on the admissibility and merits of the Referral by 19 October 2020.<sup>4</sup>
2. Pursuant to Rule 15(2) or, in the alternative, Rule 16 of the Rules,<sup>5</sup> the SPO requests leave to make written submissions<sup>6</sup> on the admissibility and merits of the Referral, subject to the same requirements applicable to submissions by other interested authorities.<sup>7</sup>
3. The Referral concerns Article 162 of the Constitution, which regulates the 'organisation, functioning and jurisdiction of the Specialist Chambers and Specialist Prosecutor's Office'.<sup>8</sup> Specifically, the Proposed Amendment relates to the mandate of the Specialist Chambers and SPO<sup>9</sup> and in turn, the responsibilities of the SPO to investigate and prosecute persons responsible for crimes falling within the jurisdiction of the Specialist Chambers.<sup>10</sup> In discharging its mandate, the SPO is obliged to respect

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<sup>1</sup> Constitution of the Republic of Kosovo, as amended on 3 August 2015 ('Constitution').

<sup>2</sup> Letter of referral of proposed amendment to the Constitution of Kosovo, 18 September 2020, KSC-CC-2020-11/F00001 ('Referral'), with one Annex, KSC-CC-2020-11/F00001/A01.

<sup>3</sup> Decision Assigning a Constitutional Court Panel, 22 September 2020, KSC-CC-2020-11/F00002. *See also* Decision on the Working Language, 24 September 2020, KSC-CC-2020-11/F00003.

<sup>4</sup> Decision on Notification of the Referral and Request for Information, 5 October 2020, KSC-CC-2020-11/F00003 ('Notification Decision').

<sup>5</sup> Rules of Procedure for the Specialist Chamber of the Constitutional Court, KSC-BD-03/Rev3/2020 ('Rules').

<sup>6</sup> Rule 15(4) (providing that the Panel shall decided the referral on the basis of written submissions, unless a hearing is in the interests of the proper administration of justice). Should the Panel deem an oral hearing to be necessary, the SPO requests the opportunity to also make oral submissions.

<sup>7</sup> Notification Decision, KSC-CC-2020-11/F00003, p.6, paras 1, 3-4.

<sup>8</sup> Constitution, Article 162(1).

<sup>9</sup> Annex to Referral, KSC-CC-2020-11/F00001/A01, pp.5-6.

<sup>10</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Article 35(1).

the rights and freedoms set out in Chapter II of the Constitution.<sup>11</sup> As such, the SPO has a direct interest in, and is directly impacted by, the subject matter of the Referral.

4. For the foregoing reasons, SPO submissions concerning the admissibility and merits of the Referral would assist the Panel in the proper determination of the case.<sup>12</sup>

**Word count: 481**



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**Jack Smith**

**Specialist Prosecutor**

Tuesday, 6 October 2020  
At The Hague, the Netherlands.

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<sup>11</sup> Constitution, Article 162(2). *See also* Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, Rule 30.

<sup>12</sup> Albeit in different circumstances, the SPO has previously been invited to make submissions where referrals concern the conduct of the SPO. *See, for example*, Notice regarding Replying Submissions, 18 November 2019, KSC-CC-2019-07/F00006; Notice regarding Replying Submissions, 18 January 2019, KSC-CC-2019-05/F00003.