



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**File number:** KSC-CC-2020-11

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

**Registrar:** Fidelma Donlon

**Date:** 7 October 2020

**Language:** English

**File name:** Referral on proposed amendments to the Constitution of Kosovo

**Classification:** Public

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## Decision on SPO Request for Leave to Make Submissions

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**President of the Assembly of Kosovo**  
Vjosa Osmani - Sadriu

**Specialist Prosecutor**  
Jack Smith

## I. BACKGROUND TO THE PROCEEDINGS

1. The Panel refers to the background of the present proceedings as stated in its decision of 5 October 2020.<sup>1</sup> Further, the Panel recalls that, on 24 August 2020, the President of Kosovo proposed an amendment to Article 162 of the Constitution of the Republic of Kosovo (the “Constitution”), which governs the Specialist Chambers and Specialist Prosecutor’s Office (the “Proposed Amendment”).<sup>2</sup>

## II. REFERRAL

2. On 18 September 2020, the President of the Assembly of Kosovo conveyed the Proposed Amendment to the President of the Specialist Chambers pursuant to Articles 144(3) and 162(3) of the Constitution (the “Referral”).<sup>3</sup>

3. In particular, the President of the Assembly of Kosovo requested the President of the Specialist Chambers to assign the Referral to the Specialist Chamber of the Constitutional Court for a review as to whether the Proposed Amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution.

4. On 22 September 2020, the President of the Specialist Chambers assigned the above Panel to decide on the Referral.<sup>4</sup>

## III. NOTIFICATION AND REQUEST FOR INFORMATION

5. On 5 October 2020, the Panel decided to notify certain authorities of the Referral with a possibility for them to file written submissions, should they wish so to do, on

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<sup>1</sup> KSC-CC-2020-11, F00004, Decision on notification of the Referral and request for information, public, 5 October 2020 (the “Decision on notification”), paras 1-8.

<sup>2</sup> KSC-CC-2020-11, F00001, A01 Proposal for Amendments to the Constitution (filed on the record on 21 September 2020).

<sup>3</sup> KSC-CC-2020-11, F00001, Letter from the President of the Assembly of Kosovo, public, 18 September 2020, with annex A01 (filed on the record on 21 September 2020).

<sup>4</sup> KSC-CC-2020-11, F00002, Decision assigning a Constitutional Court Panel, public, 22 September 2020.

the admissibility and/or merits of the Referral. The Panel also requested the President of Kosovo to submit certain information to the Panel.<sup>5</sup>

#### IV. REQUEST FOR LEAVE TO MAKE SUBMISSIONS

##### A. SPO REQUEST

6. On 6 October 2020, the Specialist Prosecutor's Office (the "SPO") requested leave to make submissions on the admissibility and merits of the Referral. The SPO indicated that it is directly interested in and affected by the Referral of the Proposed Amendment. In particular, the Proposed Amendment relates to the mandate of the SPO as it concerns Article 162 of the Constitution, which governs the Specialist Chambers and Specialist Prosecutor's Office. Further, the SPO has an obligation to respect the rights and freedoms set out in Chapter II of the Constitution.<sup>6</sup>

##### B. THE PANEL'S ASSESSMENT

7. At the outset, the Panel recalls that, pursuant to Rule 15(2) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court, the Panel may request additional information or submissions, as deemed necessary, in relation to the Referral.

8. In assessing whether to allow the SPO to make submissions, the Panel notes the reasons stated by the SPO in its request (see paragraph 6 above).

9. Further, the Panel recalls that, on 14 April 2015,<sup>7</sup> the Constitutional Court of Kosovo assessed the Amendment adding a new Article 162 on the Specialist Chambers and the Specialist Prosecutor's Office to the Constitution, which the

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<sup>5</sup> Decision on notification.

<sup>6</sup> KSC-CC-2020-11, F00005, Prosecution request for leave to make submissions, public, 6 October 2020.

<sup>7</sup> Kosovo, Constitutional Court, *Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic of Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318*, KO 26/15, Judgment, 14 April 2015 (15 April 2015), paras 9-10.

Proposed Amendment concerns. In that judgment, the Constitutional Court of Kosovo noted that the introduction of the Amendment derived from the Exchange of Letters between Kosovo and the European Union of 14 April 2014.<sup>8</sup>

10. In this respect, the Panel notes that the Exchange of Letters referred to establishment of a “specialist court” and a “specialist prosecutor’s office” in connection with the Special Investigative Task Force (the “SITF”).<sup>9</sup> As regards the SITF in particular, Article 24(2) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (the “Law”) provides that the SPO takes over the mandate of the SITF. Further, Article 35(10) of the Law provides that, in order to ensure continuity of the investigation, the SITF shall be transferred into the SPO.

11. In that light, the Panel finds that there are sufficient reasons to allow the SPO to make written submissions on the admissibility and merits of the Referral.

FOR THESE REASONS, THE CONSTITUTIONAL COURT PANEL

1. *Allows* the SPO to file written submissions on the admissibility and merits of the Referral.
2. *Directs* that the written submissions may be filed no later than 19 October 2020 and that the written submissions should not exceed 10 pages.



**Judge Vidar Stensland**  
**Presiding Judge**

Done in English on Wednesday, 7 October 2020  
At The Hague, the Netherlands

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<sup>8</sup> Ibid., para. 37; Decision on notification, paras 1-3, 6.

<sup>9</sup> Decision on notification, paras 1-2.