



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**File number:** KSC-CC-2022-13

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

Judge Vidar Stensland, Presiding

Judge Roumen Nenkov

Judge Romina Incutti

**Registrar:** Fidelma Donlon

**Date:** 15 March 2022

**Language:** English

**File name:** Referral by Jakup Krasniqi to the Constitutional Court Panel  
Concerning the Legality of Charging Joint Criminal Enterprise

**Classification:** Public

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## Decision on Further Submissions

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### **Applicant**

Jakup Krasniqi

### **Specialist Prosecutor**

Jack Smith

## I. REFERRAL

1. On 28 February 2022, Mr Jakup Krasniqi (the “Applicant”) lodged with the Specialist Chamber of the Constitutional Court a referral, dated 28 February 2022 (the “Referral”),<sup>1</sup> under Article 113(7) of the Constitution of the Republic of Kosovo (the “Constitution”) and Article 49(3) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (the “Law”). The Applicant is represented by Ms Venkateswari Alagenda and Mr Aidan Ellis.

2. In the Referral, the Applicant raises a constitutional complaint in relation to the criminal proceedings against him, taking place before the Specialist Chambers.

3. In particular, the Applicant complains that, by charging him with the basic and extended forms of the joint criminal enterprise (the “JCE”), the Specialist Prosecutor’s Office (the “SPO”) has violated the Applicant’s fundamental right to no punishment without law guaranteed by Article 33(1) of the Constitution and Article 7(1) of the European Convention on Human Rights (the “Convention”).<sup>2</sup> In this regard, the Applicant submits that JCE, including its extended form, are not modes of individual criminal responsibility prescribed by Article 16(1)(a) of the Law. The Applicant further argues that, during the indictment period, the JCE extended form was not part of customary international law and was not accessible or foreseeable to him.<sup>3</sup>

4. In relation to his aforementioned constitutional complaint, the Applicant submits that, on 15 March 2021, he filed a preliminary motion, requesting the pre-trial judge to find that the Specialist Chambers have no jurisdiction over JCE.<sup>4</sup> On

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<sup>1</sup> KSC-CC-2022-13, F00001, Krasniqi Defence Referral to the Constitutional Court Panel on the Legality of Charging Joint Criminal Enterprise, public, 28 February 2022, with Annex 1, public.

<sup>2</sup> Referral, paras 1-2, 16, 76.

<sup>3</sup> Referral, paras 2, 76.

<sup>4</sup> Referral, para. 9, referring to KSC-BC-2020-06, F00220, Krasniqi Defence Preliminary Motion on Jurisdiction, public, 15 March 2021, with Annex 1, public.

22 July 2021, the pre-trial judge dismissed this motion.<sup>5</sup> On 27 August 2021, the Applicant appealed against the pre-trial judge's decision.<sup>6</sup> On 23 December 2021, the Court of Appeals panel denied the Applicant's appeal.<sup>7</sup> In this regard, the Applicant argues that no further appeals are available to him.<sup>8</sup> The Applicant cannot seek protection of legality from the Supreme Court since the criminal proceedings against him have not been completed.<sup>9</sup>

## II. FURTHER SUBMISSIONS

5. In relation to its examination of the Referral, the Chamber notes that, pursuant to Rule 15(2) of the Rules of Procedure for the Specialist Chamber of the Constitutional Court (the "Rules"), the Panel may request additional information or submissions, as deemed necessary, in relation to the Referral. Pursuant to Rule 15(3), any responding submissions directed by the Panel shall be filed within the time limits set by the Panel. Also, under Article 35(2)(i) of the Law, where the referral concerns pursuance of an indictment filed by the SPO, the SPO has the authority to respond to the referral.

6. In that light, the Chamber finds it appropriate to invite the SPO and the Applicant to file written submissions, should they wish so to do, in relation to the Referral. Pursuant to Rule 15(2) of the Rules, the Chamber deems it necessary that the written submissions address specific questions as set out in this decision. After the SPO files its written submissions, the Applicant may file his written submissions on the questions specified in this decision and/or comment on the SPO's written

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<sup>5</sup> Referral, para. 11, referring to KSC-BC-2020-06, F00412, Decision on Motions Challenging the Jurisdiction of the Specialist Chambers, public, 22 July 2021.

<sup>6</sup> Referral, para. 12, referring to KSC-BC-2020-06, IA009, F00013, Krasniqi Defence Appeal Against Decision on Motions Challenging the Jurisdiction of the Specialist Chambers, public, 27 August 2021, with Annex 1, public.

<sup>7</sup> Referral, para. 13, referring to KSC-BC-2020-06, IA009, F00030, Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers", public, 23 December 2021.

<sup>8</sup> Referral, para. 13.

<sup>9</sup> Referral, para. 17.

submissions. In this connection, the Chamber notes that it will disregard any unsolicited submissions.

7. The Chamber reiterates that this decision, including the specific questions put to the SPO and the Applicant, are without prejudice to its determination of the Referral, including to any findings it may make as regards its admissibility or merits.

FOR THESE REASONS,

The Constitutional Court Panel

1. *Invites* the SPO and the Applicant to file written submissions, should they wish so to do, in relation to the Referral, addressing the following questions:
  - a. Is the Referral admissible pursuant to Article 113(7) of the Constitution, Article 49(3) of the Law, and Rules 14 and 20 of the Rules?
  - b. May the Applicant, at the present stage of the criminal proceedings against him and absent conviction, claim to be a victim of the alleged violation of Article 33(1) of the Constitution and Article 7 of the Convention?
  - c. Given that the criminal proceedings against the Applicant are still ongoing, is it still open to the Applicant to raise his complaint, under Article 33(1) of the Constitution and Article 7 of the Convention, as regards the JCE basic and extended forms, before the trial panel, and, subsequently, as the case may be, before the Court of Appeals panel, under Article 46 of the Law, and the Supreme Court panel, under Article 47 or Article 48(6)-(8) of the Law? Are these remedies to be exhausted for the purposes of Article 113(7) of the Constitution and Article 49(3) of the Law?

- d. Does the Applicant's complaint about the charges against him based on the JCE basic and extended forms give rise to the appearance of a violation of Article 33(1) of the Constitution and Article 7 of the Convention?
2. *Directs* that, in case the SPO wishes to file written submissions on the above questions, it shall do so by **29 March 2022**; and in case the Applicant wishes to file written submissions on the above questions and/or comment on the SPO's written submissions, if any, he shall do so by **5 April 2022**;
3. *Directs* that the SPO's written submissions shall not exceed 20 pages; and the Applicant's written submissions shall not exceed 15 pages.



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

Done in English on Tuesday, 15 March 2022  
At The Hague, the Netherlands