



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

Case number: KSC-CC-2022-16

Before: The Specialist Chamber of the Constitutional Court

Judge Vidar Stensland, Presiding

Judge Roumen Nenkov

Judge Romina Incutti

Registrar: Fidelma Donlon

Date: 6 July 2022

Language: English

File name: Referral by Pjetër Shala to the Constitutional Court Panel Concerning the Fundamental Rights Guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights

Classification: Public

**Decision on the Referral of Pjetër Shala to the Constitutional
Court Panel Concerning Fundamental Rights Guaranteed by Article 33 of the
Kosovo Constitution and Article 7 of the European Convention on Human Rights**

Applicants

Pjetër Shala

Specialist Prosecutor

Jack Smith

The Specialist Chamber of the Constitutional Court

Composed of

Vidar Stensland, Presiding Judge

Roumen Nenkov, Judge

Romina Incutti, Judge

Having deliberated remotely delivers the following Decision

I. PROCEDURE

1. On 14 April 2022, Mr Pjetër Shala (the “Applicant”) lodged with the Specialist Chamber of the Constitutional Court (the “Chamber”)¹ a referral 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”).² The Applicant was represented by Mr Jean-Louis Gilissen and Mr Hédi Aouini.

2. In his referral, the Applicant complained about violations of his fundamental rights in relation to the criminal proceedings against him, taking place before the Specialist Chambers (the “SC”). In particular, the Applicant submitted that his prosecution based on certain charges violated his fundamental rights under Article 33 of the Constitution and Article 7 of the European Convention on Human Rights (the “Convention”).³

¹ With regard to the assignment of the Constitutional Court Panel under Article 33(3) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), see KSC-CC-2022-16, F00002, Decision to assign judges to a Constitutional Court Panel, public, 19 April 2022.

² KSC-CC-2022-16, F00001, Referral to the Constitutional Court Panel concerning the violation of Mr Shala’s fundamental rights guaranteed by Article 33 of the Kosovo Constitution and Article 7 of the European Convention on Human Rights public, 14 April 2022 (“Referral”).

³ Referral, paras 1, 3, 10-15.

3. On 26 April 2022, the Chamber issued a decision wherein it, *inter alia*, indicated that it may in due course request additional submissions from the Applicant and the Specialist Prosecutor's Office (the "SPO").⁴ However, in the present circumstances, the Chamber decided that additional submissions were not necessary to adjudicate the Referral.

II. THE FACTS

A. INDICTMENT

4. On 12 June 2020, the pre-trial judge confirmed an indictment against the Applicant, charging him with war crimes allegedly committed between at least 17 May 1999 and 5 June 1999 in Kosovo and areas of northern Albania.⁵ The charges include arbitrary detention as a war crime, allegedly committed through the Applicant's participation in a joint criminal enterprise ("JCE"), in its basic and extended forms.⁶

1. Customary International Law

5. As regards customary international law ("CIL"), the pre-trial judge ruled that, pursuant to Article 3(2)(d) and (3), and Article 12 of the Law, the SC applied the CIL in force at the time the alleged crimes had been committed.⁷

2. Arbitrary detention

6. The pre-trial judge found that arbitrary detention is not explicitly set out in

⁴ KSC-CC-2020-16, F00003, Decision on the Working Language and Further Proceedings, 26 April 2022, public, p. 3.

⁵ KSC-BC-2020-04, F00007/RED, Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala, public, 12 June 2020 (the public redacted version was filed on 6 May 2021) ("Confirmation decision"), paras 93, 101, 106, 111, 140(a).

⁶ Confirmation decision, paras 85-93, 115-120, 121-124, 129.

⁷ Confirmation decision, para. 13.

Article 14(1)(c) of the Law as a war crime under CIL.⁸ However, the pre-trial judge determined that the SC's jurisdiction can extend to war crimes, which constitute a serious violation of Article 3 of the Convention Relative to the Treatment of Prisoners of War, Geneva (the "Geneva Convention") and are prohibited by CIL at the time of its commission, in conformity with Articles 3(2)(d) and 12 of the Law.⁹ The pre-trial judge affirmed that both the deprivation of liberty without a legal basis and detention in violation of basic safeguards violate the requirement of humane treatment of all persons placed *hors de combat* as enshrined in Article 3 of the Geneva Convention.¹⁰ The pre-trial judge was also satisfied that arbitrary detention was prohibited by CIL at the time of the commission of the crimes.¹¹

3. Joint Criminal Enterprise

7. The pre-trial judge found that there was a well-grounded suspicion that the Applicant, as a member of a JCE in its basic form and, in the alternative, its extended form,¹² had committed the alleged crimes within the meaning of Article 16(1)(a) of the Law.¹³

8. Following the pre-trial judge's confirmation of the charges against the Applicant, the SPO submitted the confirmed indictment on 19 June 2020.¹⁴

B. THE APPLICANT'S CHALLENGES TO THE SC'S JURISDICTION

9. On 12 July 2021, the Applicant filed a preliminary motion challenging the

⁸ Confirmation decision, para. 23.

⁹ Confirmation decision, para. 23.

¹⁰ Confirmation decision, paras 24-25.

¹¹ Confirmation decision, paras 26-27.

¹² Confirmation decision, paras 120, 122, 124.

¹³ Confirmation decision, para. 124.

¹⁴ KSC-BC-2020-04, F00010, Specialist Prosecutor, Submission of Confirmed Indictment, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the confirmed indictment were submitted on 31 March 2021, F00016/A01 and F00016/A02.

jurisdiction of the SC.¹⁵ In particular, the Applicant argued, *inter alia*, that the SC had no jurisdiction in respect of JCE and the crime of arbitrary detention in a non-international armed conflict (“NIAC”).¹⁶ On 18 October 2021, the pre-trial judge rejected the preliminary motion.¹⁷ On 8 November 2021, the Applicant appealed the pre-trial judge’s decision.¹⁸

1. Establishment of the SC

10. The Applicant submitted that the SC *de facto* is an extraordinary court and that, as a result, its establishment violates Article 103(7) of the Constitution.¹⁹ The Applicant argued in this respect, *inter alia*, that: (i) the SC was established to deal with a limited number of cases; and (ii) all judges, prosecutors and staff of the SC are international and their appointment deviates from the general appointment procedures set out in the Constitution and the domestic legal order.²⁰

11. The Applicant did not address his submissions in relation to the constitutionality of the SC on appeal. Instead, the Applicant sought clarification from the Court of Appeals panel as to the nature of the SC, which, the Applicant argued, would “inevitably reflect the SC’s role and application of the law.”²¹

2. Customary International Law

12. The Applicant submitted that unless the “duality test” was satisfied, the direct

¹⁵ KSC-BC-2020-04, F00054, Preliminary Motion of the Defence of Pjetër Shala to Challenge the Jurisdiction of the KSC, 12 July 2021, public (“Preliminary motion”).

¹⁶ Preliminary motion, paras 3, 4, 21, 47.

¹⁷ KSC-BC-2020-04, F00088, Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 18 October 2021, public (“Pre-trial judge’s decision on jurisdiction”).

¹⁸ KSC-BC-2020-04/IA002, F00003, Defence Appeal against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, 9 November 2021, public (“Appeal”).

¹⁹ Preliminary motion, para. 7, endorsing KSC-BC-2020-06, F00224, Preliminary Motion of the Defence of Kadri Veseli to Challenge Jurisdiction on the basis of violations of the Constitution, 15 March 2021, public.

²⁰ Preliminary motion, paras 7-11.

²¹ Appeal, para. 8.

application of CIL without statutory enactment was contrary to Articles 210 and 181 of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (the “SFRY Constitution”), which was applicable during the material time and required criminal offences to be set out in domestic statutes as held by the Supreme Court of Kosovo.²²

13. Only in his appeal did the Applicant submit that Article 7 of the Convention required the SC, where there is a difference in the potentially applicable regimes (the SFRY Constitution or the Constitution), to compare the two and to apply the most favourable to the Applicant.²³

14. The Applicant also submitted that applying domestic legislation penalising acts committed before the legislation was passed violates the principle of legality and non-retroactivity, as set out in Article 33 of the Constitution and Article 7 of the Convention.²⁴ Specifically, the Applicant argued that Articles 3 and 12 of the Law are not compatible with the principle of non-retroactivity guaranteed by Article 7 of the Convention and Article 33 of the Constitution.²⁵

15. The Applicant contended that the only exception to the principle of non-retroactivity of prosecutions on the basis of international law accepted by the European Court of Human Rights (the “ECtHR”) concerns a situation where there has been “flagrantly unlawful” conduct, the criminal nature of which is “evidently” accessible and foreseeable to the accused.²⁶

16. Additionally, the Applicant submitted that the inconsistency and lack of clarity as to the applicable law violated the requirements of the “quality of the law”; the accessibility, foreseeability and precision requirements of Article 33 of the

²² Appeal, para. 10; Preliminary motion, paras 16, 18, referring to Kosovo, Supreme Court (UNMIK), *case against Veselin Bešović*, AP-KZ 80/2004, Judgment, 7 September 2004 (“*Bešović* judgment”), pp 18-19.

²³ Appeal, paras 9, 11-12.

²⁴ Appeal, paras 4(ii), 12, 14-19; Preliminary motion, paras 4, 13-15, 17.

²⁵ Appeal, paras 12, 14-15; Preliminary motion, paras 4, 13-14.

²⁶ Appeal, paras 16, 18.

Constitution interpreted in accordance with Article 7(1) of the Convention.²⁷

2. Joint Criminal Enterprise

17. As regards the mode of liability of JCE, the Applicant first claimed that there is no legal basis for this mode of liability in the Law, especially since Article 16(1)(a) of the Law does not include JCE as a form of liability.²⁸ The Applicant argued that JCE liability was not foreseeable and accessible to him in 1998 as required by Article 7 of the Convention and equivalent provisions of the Constitution.²⁹ Finally, the Applicant contended that JCE in its basic and extended form did not form part of CIL at that time³⁰ and argued that the pre-trial judge erred in finding that JCE in its extended form is compatible with the principle of individual culpability.³¹

3. Arbitrary Detention

18. According to the Applicant, arbitrary detention as a war crime in a NIAC was not “correctly charged” under Article 14(1)(c) of the Law.³² Specifically, the Applicant submitted that the clear wording of Article 14(1)(c) of the Law and the principle of legal certainty prohibit interpreting this provision as conferring jurisdiction to the SC over arbitrary detention in a NIAC.³³ Moreover, the Applicant contended that arbitrary detention was not criminalised in the domestic law of Kosovo or in CIL at the material time.³⁴

19. Finally, the Applicant submitted that, with the uncertainties surrounding the notion of arbitrariness of detention and in the absence of any domestic or international rule prohibiting arbitrary deprivation in a NIAC at the relevant time, the Applicant

²⁷ Appeal, paras 4(i), 7-9, 12; Preliminary motion, paras 5, 12, 44-45, 60.

²⁸ Appeal, para. 20; Preliminary motion, paras 21, 29-32.

²⁹ Appeal, paras 20, 22; Preliminary motion, paras 44-45.

³⁰ Appeal, para. 21; Preliminary motion, paras 4, 21, 33-43.

³¹ Appeal, para. 22; Preliminary motion, para. 24.

³² Appeal, para. 23, *see also* Preliminary motion, paras 3-4, 47.

³³ Appeal, para. 23; Preliminary motion, para. 51.

³⁴ Appeal, para. 23; Preliminary motion, paras 47, 49-50, 52-59.

could not have foreseen that he could be charged with this crime.³⁵

C. DISMISSAL OF THE APPLICANT'S CHALLENGES

20. On 11 February 2022, a Court of Appeals panel denied the Applicant's challenges to the SC's jurisdiction.³⁶

1. Customary International Law

21. In relation to the SC's legal character, the Court of Appeals panel held that "it is not the categorisation of the Specialist Chambers as a particular type of court that determines the applicable law, but the Law itself."³⁷ Turning to the applicability of CIL, the panel recalled that CIL applies in Kosovo via the incorporation of "legally binding norms of international law" into Kosovo's legal framework in Article 19(2) of the Constitution and that there is no legal basis requiring a corresponding provision under domestic law applicable at the time of the alleged crimes.³⁸

22. Specifically, the panel held that the SFRY Constitution does not limit the SC's jurisdiction, as the SC is only bound to uphold the Constitution currently in force.³⁹ Therefore, the panel recalled that the judgments of the Kosovo Supreme Court, which were cited by the Applicant in support of his argument that CIL is inapplicable to events alleged to have occurred in 1999, are irrelevant, as they concern a different constitutional framework.⁴⁰

³⁵ Appeal, para. 23; Preliminary motion, paras 47, 60.

³⁶ KSC-BC-2020-04, IA002, F00010, Decision on Pjetër Shala's Appeal Against Decision on Motion Challenging the Establishment and Jurisdiction of the Specialist Chambers, public, 11 February 2022 ("Appeals decision").

³⁷ Appeals decision, para. 19.

³⁸ Appeals decision, para. 18; referring to KSC-BC-2020-06, IA009, F00030, Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers", 23 December 2021, public ("*Thaçi et al. appeals decision*"), para. 24.

³⁹ Appeals decision, para. 20; referring to *Thaçi et al. appeals decision*, paras 25-26.

⁴⁰ Appeals decision, para. 20; *Thaçi et al. appeals decision*, para. 27; referring, *inter alia*, to Kosovo, Supreme Court, *Gashi et al.*, AP-KZ 139/2004, Judgment, 21 July 2005 ("*Gashi et al. judgment*"), p. 8; *Bešović* Judgment, pp. 18-19.

23. As regards the Applicant's claim that the pre-trial judge was obliged to assess which legal regime is more favourable to the Accused, the Court of Appeals panel held that: (i) the Applicant's submission was belated;⁴¹ (ii) the principle of *lex mitior* concerns a comparison between criminal laws;⁴² (iii) challenges to the applicable criminal law do not constitute jurisdictional challenges;⁴³ and (iv) CIL is binding on all states, so there was no obligation of the pre-trial judge to compare the principles of legality between the two constitutions.⁴⁴

24. Turning to the alleged interference with the principle of legality by applying CIL, the panel recalled that Article 12 of the Law does not raise an issue of retroactivity, since the subject-matter jurisdiction of the SC is delineated by the CIL, which applied at the time of the commission of the alleged crimes, prior to the promulgation of the Law.⁴⁵

25. As regards the question of whether the incorporation of an international norm prescribing an offence into domestic law is an important consideration in assessing the compatibility of criminal proceedings with Article 7 of the Convention, the panel held that Mr Shala misrepresented the case law he was citing,⁴⁶ and that the ECtHR confirmed in the same judgment that it is well-accepted that the term "law" in Article 7(1) of the Convention comprises both written and unwritten law.⁴⁷

26. Moreover, the panel rejected Mr Shala's submission that ECtHR case law allows

⁴¹ Appeals decision, para. 30.

⁴² Appeals decision, para. 30; referring to ICTY, *Prosecutor v. Nikolić*, IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005, para. 80; ECtHR, *Del Rio Prada v. Spain*, no. 42750/09, Judgment, 21 October 2013, para. 116; *Vasiliauskas v. Lithuania*, Judgment, 20 October 2015, para. 154; *Kokkinakis v. Greece*, no. 14307/88, Judgment, 25 May 1993, para. 52.

⁴³ Appeals decision, para. 30; *Thaçi et al. appeals decision*, paras 52-59.

⁴⁴ Appeals decision, para. 30; *Thaçi et al. appeals decision*, para. 25.

⁴⁵ Appeals decision, paras 24, 25; *Thaçi et al. appeals decision*, para. 38; referring to Articles 12, 13(1) and 14(1) of the Law.

⁴⁶ Appeals decision, para. 26; referring to ECtHR, *Korbely v. Hungary* [GC], no. 9174/02, Judgment, 19 September 2008, para. 75.

⁴⁷ Appeals decision, para. 26; ECtHR, *Korbely v. Hungary* [GC], no. 9174/02, cited above, para. 70.

prosecution on the basis of international law, without domestic incorporation at the relevant time, only in respect of “flagrantly unlawful” conduct, the criminal nature of which is “evidently” accessible and foreseeable to the accused.⁴⁸ Instead, the panel interpreted the ECtHR test as not necessarily requiring “flagrantly unlawful” conduct, but rather that the “flagrantly unlawful” nature of the accused’s conduct must have made its criminal nature foreseeable for the purposes of Article 7(1) of the Convention.⁴⁹

27. As regards the question of whether CIL enjoys superiority over domestic law, the Court of Appeals panel noted that the pre-trial judge did not specifically examine whether the recognition of the primacy of CIL in the Law complies with the Constitution of Kosovo.⁵⁰ However, the panel recalled its previous finding that CIL has primacy over domestic legislation in accordance with the Kosovo Constitution and especially not in contradiction to the wording of Article 19(2) of the Constitution as suggested by the Applicant.⁵¹ Attributing primacy to CIL would also not be incompatible with Article 16 of the Constitution, “which refers to the relationship between the Constitution, on the one hand, and laws and other legal acts, on the other hand”.⁵²

2. Joint Criminal Enterprise

28. The panel agreed with the pre-trial judge’s finding that Article 16(1) of the Law must be interpreted in accordance with CIL as applicable at the time of the alleged crimes, because: (i) CIL has primacy over domestic legislation at the Specialist Chambers; (ii) Articles 13-14 of the Law, with which the Accused is charged, specifically refer to CIL; and (iii) the terminology of Article 16(1) of the Law is virtually

⁴⁸ Appeals decision, para. 28.

⁴⁹ Appeals decision, para. 28, referring, *inter alia*, to ECtHR, *Streletz et al. v. Germany*, nos. 34044/96, 35532/97, 44801/98, Judgment, 22 March 2001, paras 77-78, 87-88.

⁵⁰ Appeals decision, para. 18.

⁵¹ Appeals decision, paras 18, 20-21, referring to *Thaçi et al. appeals decision*, paras 23-24.

⁵² Appeals decision, para. 18.

identical to the corresponding provisions of the *ad hoc* tribunals.⁵³

29. The panel further recalled that it is satisfied that the Law provides for JCE as a mode of liability and that the SC could rely on the jurisprudence of other courts, including the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, to address instances where the Law lacked statutory elaboration.⁵⁴

30. As to whether JCE was part of CIL at the time where the alleged crimes were committed, the Panel recalled its earlier finding that JCE, in both its basic and extended form, is a mode of liability under CIL, including at the time the alleged crimes were committed.⁵⁵ The panel found no error in the pre-trial judge's evaluation of case law in this respect.⁵⁶

31. The Court of Appeals panel affirmed the pre-trial judge's finding that the decisions of the Kosovo Court of Appeals, which the Applicant relied on to support his argument that JCE was inapplicable in Kosovo, were issued under a different legal framework.⁵⁷ Additionally, the panel pointed out that the Kosovo Supreme Court has found on several occasions that all forms of JCE liability were "firmly established" under CIL.⁵⁸

32. With regards to the foreseeability and accessibility of JCE, the panel recalled its finding that JCE, in its basic and extended form, was accessible and foreseeable to other accused at the material time.⁵⁹

⁵³ Appeals decision, para. 35; Pre-trial judge's decision on jurisdiction, para. 91.

⁵⁴ Appeals decision, para. 35. *Thaçi et al. appeals decision*, paras 136-138.

⁵⁵ Appeals decision, para. 37. *Thaçi et al. appeals decision*, paras 172, 196.

⁵⁶ Appeals decision, para. 37, see also *Thaçi et al. appeals decision*, paras 153, 169 (regarding the role of academic writings in determining CIL), 187, 190-193 (regarding the deviation of the Extraordinary Chambers in the Courts of Cambodia with respect to JCE III).

⁵⁷ Appeals decision, para. 38, referring to pre-trial judge's decision on jurisdiction, para. 90.

⁵⁸ Appeals decision, para. 38; *Thaçi et al. appeals decision*, paras 193, 223, referring to case law of the Kosovo Supreme Court.

⁵⁹ Appeals decision, para. 36, referring to *Thaçi et al. appeals decision*, paras 211-214, 218-224.

3. Arbitrary Detention

33. As regards the question of whether the SC has jurisdiction over arbitrary detention in a NIAC, the Court of Appeals panel upheld the pre-trial judge's finding that the wording of Article 14(1)(c) of the Law suggests that the list is non-exhaustive and that the SC's jurisdiction is not limited to those acts expressly enumerated under Article 14(1)(c) of the Law.⁶⁰ The panel further found that the non-exhaustive language of the provision does not violate the principle of legal certainty. The panel considered that for an act to be included in the Law, and thus within the jurisdiction of the SC, it must have existed under CIL during their temporal jurisdiction and must constitute a serious violation of Article 3 of the Geneva Convention.⁶¹

34. The Court of Appeals panel affirmed the pre-trial judge's finding that arbitrary detention amounts to a serious violation of Article 3 of the Geneva Convention.⁶² Moreover, the panel recalled that detention becomes arbitrary and constitutes a serious violation of Article 3 of the Geneva Convention when the principle of humane treatment is violated, irrespective of whether there is a legal basis to detain a person.⁶³ Finally, the panel upheld the pre-trial judge's findings that: (i) arbitrary detention during a NIAC was criminalised at the material time; and (ii) it was accessible and foreseeable to Mr Shala at the relevant time that involvement in acts of arbitrary detention might give rise to individual criminal responsibility.⁶⁴

⁶⁰ Appeals decision, para. 44; pre-trial judge's decision on jurisdiction, para. 99, see also *Thaçi et al. appeals decision*, para. 87.

⁶¹ Appeals decision, para. 44.

⁶² Appeals decision, para. 45; Pre-trial Judge's decision on jurisdiction, para. 100.

⁶³ Appeals decision, para. 45; *Thaçi et al. appeals decision*, paras 95-97.

⁶⁴ Appeals decision, para. 46; pre-trial judge's decision on jurisdiction, para. 102, see also *Thaçi et al. appeals decision*, paras 106-109, 111.

III. ALLEGED VIOLATIONS

35. The Applicant complained before the Chamber that neither the mode of liability of JCE nor the war crime of arbitrary detention were part of the domestic law that applied during the indictment period.⁶⁵ The Applicant submitted that he was charged with crimes under CIL in accordance with the Law and that such direct application of CIL breached his rights under Article 33 of the Constitution and Article 7 of the Convention.⁶⁶ Additionally, the Applicant argued that Article 7 of the Convention, read in conjunction with the principle of *in dubio pro reo*, requires the SC, where there is a difference in the various potentially applicable regimes (the SFRY Constitution or the Law) to apply the most favourable one.⁶⁷

36. The Applicant also averred that his prosecution based on arbitrary detention or under the mode of liability of JCE violates the principle of legality and non-retroactivity as set out in Article 33 of the Constitution and Article 7 of the Convention because: (i) the relevant provisions were retroactively applied to conduct that was not prohibited at the material time;⁶⁸ and (ii) arbitrary detention and JCE were not part of CIL in 1998.⁶⁹ The Applicant therefore requested that Articles 3 and 12 of the Law be declared incompatible with Article 33 of the Constitution insofar as they allow the introduction in the Kosovo legal order of offences derived from CIL that were not otherwise incorporated in the internal legal order at the material time.⁷⁰

37. Finally, the Applicant submitted that the same provisions call for criminal law to be clear, precise, accessible and foreseeable to an accused and that those requirements as to the “quality of the law” were not met due to the uncertainty as to

⁶⁵ Referral, paras 15, 48, 49-50, 62-66.

⁶⁶ Referral, paras 3, 16, 18.

⁶⁷ Referral, paras 43-44.

⁶⁸ Referral, paras 3, 10, 15, 18-19, 21, 49, 50, 61-65, 75.

⁶⁹ Referral, paras 51-62, 67-75.

⁷⁰ Referral, paras 41-42.

the legal characterization of the SC and the Law.⁷¹

IV. JURISDICTION

38. The Chamber recalls that the Applicant filed the Referral under Article 113(7) of the Constitution. The Chamber also observes that the Applicant raised several complaints in relation to the proceedings against him taking place before the SC. In particular, the Applicant claims that his prosecution based on certain charges violated his fundamental rights as guaranteed by the Constitution. The Referral therefore relates to the SC and the SPO, as required by Article 162(3) of the Constitution and Articles 3(1) and 49(2) of the Law. It follows that the Chamber has jurisdiction to rule on the Referral.

V. ADMISSIBILITY

A. CONSTITUTIONAL RIGHTS AT ISSUE

39. At the outset, the Chamber observes that the Applicant complained that his prosecution is based on certain charges that violate his fundamental rights as guaranteed by the Constitution. Specifically, the Applicant complained that arbitrary detention as a war crime and JCE as a mode of individual criminal responsibility: (i) were based on an inapplicable source of law, namely CIL, without any domestic statutory enactment; (ii) were not provided for in the Law; and (iii) did not constitute crimes under CIL during the indictment period (see paragraphs 35-37 above).

40. The Chamber observes that the Applicant's complaints primarily raise an issue under Article 33 of the Constitution. Insofar as the Applicant also relied on Article 7 of the Convention, the Chamber recalls that, by virtue of Article 22(2) and (3) of the

⁷¹ Referral, paras 20-21, 24-25.

Constitution, those guarantees apply at the constitutional level.⁷² The Kosovo Constitutional Court has reiterated that the rights and freedoms guaranteed by international instruments in Article 22 of the Constitution “have the status of norms of constitutional rank and are an integral part of the Constitution, in the same way as all other provisions contained in the Constitution”.⁷³

41. In that light, the Chamber, being the master of characterisation to be given in law to the facts of the case before it,⁷⁴ finds that the Referral is to be considered under Article 33(1) of the Constitution and Article 7 of the Convention.

42. However, before the Chamber can examine the Referral on the merits, it must first ascertain whether it is admissible.⁷⁵ The Chamber thus turns to the assessment of certain admissibility requirements provided for in the Constitution, the Law and the Rules of Procedure for the Specialist Chamber of the Constitutional Court (the “Rules”), which arise in the present proceedings.

B. WHETHER THE APPLICANT’S COMPLAINTS ARE PREMATURE

43. The Chamber recalls that, pursuant to Article 113(7) of the Constitution and Article 49(3) of the Law, individuals are authorised to refer to the Chamber “alleged violations [...] of their individual rights and freedoms guaranteed by the Constitution

⁷² See KSC-CC-2022-14, F00009, Decision on the referral of Jakup Krasniqi concerning the legality of charging joint criminal enterprise and the referral of Kadri Veseli concerning decision of the appeals panel on challenges to the jurisdiction of the Specialist Chambers, public, 13 June 2022 (“*Decision on referral of Krasniqi and Veseli*”), para. 34. See also KSC-CC-2020-08, F00020/RED, Public redacted version of decision on the referral of [REDACTED] further to a decision of the Single Judge, public, 20 April 2020 (“*Decision concerning a decision of the single judge*”), para. 61; KSC-CC-2019-07, F00013, Decision on the referral of Driton Lajci concerning interview procedure by the Specialist Prosecutor’s Office, public, 13 January 2020 (“*Decision on the referral of Driton Lajci*”), para. 14.

⁷³ Kosovo, Constitutional Court, *Constitutional review of judgments [A.A.U.ZH. no. 20/2019 of 30 October 2019; and A.A.U.ZH. no. 21/2019, of 5 November 2019] of the Supreme Court of the Republic of Kosovo*, KI 207/19, Judgment, 10 December 2020 (5 January 2021), para. 111.

⁷⁴ *Decision on referral of Krasniqi and Veseli*, para. 35; *Decision on the referral of Driton Lajci*, para. 15.

⁷⁵ See *Decision on referral of Krasniqi and Veseli*, para. 36, see also *Decision concerning a decision of the single judge*, para. 37.

[...]”. Rule 14(f) of the Rules provides that a referral shall be inadmissible if nothing in the referral gives rise to the appearance of a violation of a constitutional right.

44. As noted above, the Applicant alleged that certain charges against him breached Articles 16 and 33 of the Constitution and Article 7 of the Convention. At the same time, the criminal proceedings against the Applicant are pending and the charges at issue are yet to be decided. Hence, the first question that arises is whether the Applicant’s complaints, at this stage of the criminal proceedings, are premature, and more specifically, whether the Applicant may claim to be a victim of the alleged violations.⁷⁶

1. Whether the Applicant may Claim to be a Victim

(a) The Submissions

45. The Applicant implied that he already became a victim of the alleged violations upon being charged, although he did not explicitly address this topic in his referral.⁷⁷

(b) The Chamber’s Assessment

46. The Chamber first recalls that the Applicant complained that he had been “charged” in breach of Article 33 of the Constitution and Article 7 of the Convention. Hence, a question arises whether the Constitution contains a guarantee not to be “charged” with a criminal offence on account of a conduct that did not constitute a criminal offence under the law at the time it was committed.

⁷⁶ See *Decision on referral of Krasniqi and Veseli*, para. 38.

⁷⁷ Referral, paras 1, 10, 19, 61 (“The prosecution of Mr Shala for crimes allegedly committed through a JCE violates his right not to be *charged* for an act which did not constitute a criminal offence at the time it was committed.”) (emphasis added), 75 (“The Defence requests the SCCC to declare that the *charge* of arbitrary detention in a NIAC violates Mr Shala’s rights under Article 33 of the Constitution and Article 7 of the ECHR and should be struck out from the Indictment.”) (emphasis added).

47. In this respect, the Chamber has previously noted in its *Decision on referral of Krasniqi and Veseli* the difference between Article 33(1) of the Constitution in the English and Albanian language, stating in its relevant part, that “[n]o one shall be charged” (emphasis added, translated from Albanian) and Article 33(1) of the Constitution in Serbian, which reads that “[n]o one shall be found guilty [...]” (emphasis added; translated from Serbian).⁷⁸ The Chamber recalls that pursuant to Article 5(1) of the Constitution, both Albanian and Serbian are the official languages in Kosovo.⁷⁹ Accordingly, both the Albanian and Serbian texts of Article 33(1) of the Constitution are equally authoritative.

48. As for the question of how the difference in the wording in the Albanian and Serbian text should be resolved, the Chamber refers to its findings in the *Decision on referral of Krasniqi and Veseli*, according to which Article 33(1) of the Constitution interpreted in light of Article 7 of the Convention only contains a guarantee not to be found guilty on account of a conduct that did not constitute a criminal offence under the law at the time it was committed and does not likewise refer to the accused being “charged”.⁸⁰

49. The Chamber notes that the Applicant has not been “found guilty” of the criminal offences at issue. Under these circumstances, the Applicant may not, at this stage of the criminal proceedings, claim to be a victim of the alleged violations of

⁷⁸ *Decision on referral of Krasniqi and Veseli*, para. 42. The text in English as published in the Official Gazette of Kosovo on 9 April 2008, at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, accessed 30 May 2022. In Albanian: “Askush nuk mund të akuzohet ose të dënohet [...]” The text in Albanian as published in the Official Gazette of Kosovo on 9 April 2008, at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, accessed 30 May 2022. In Serbian: “Niko se ne može proglasiti krivim ili kazniti [...]” The text in Serbian as published in the Official Gazette of Kosovo on 9 April 2008, at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>, accessed 30 May 2022.

⁷⁹ *Decision on referral of Krasniqi and Veseli*, para. 44, see also Article 5(4) of the Law No. 02/L-37 on the Use of Languages, 1 March 2007, which provides that all laws adopted by the Assembly of Kosovo shall be issued and published in the official languages, and that the official language versions are equally authoritative, at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440>, accessed 30 May 2022.

⁸⁰ *Decision on referral of Krasniqi and Veseli*, paras 49-53.

Article 33 of the Constitution or Article 7 of the Convention.⁸¹

2. Conclusion

50. The Chamber therefore finds that, at this stage of the proceedings, the Applicant's referral is premature and, as such, does not give rise to the appearance of the violations of the Applicant's rights under Article 33(1) of the Constitution and Article 7 of the Convention. Consequently, the Referral must be declared inadmissible pursuant to Article 113(7) of the Constitution, Article 49(3) of the Law and Rule 14(f) of the Rules.⁸²

51. While the Chamber finds that the Referral must be dismissed for the aforementioned reasons, it recalls that, pursuant to Article 113(7) of the Constitution, Article 49(3) of the Law, and Rule 20(1)(a) of the Rules, an individual may make a referral to the Chamber after exhaustion of all effective remedies provided for by law against the alleged violation. In this connection, the Chamber notes that according to Article 47 of the Law, a Supreme Court panel of the SC shall, in certain specifically enumerated instances, hear appeals against a judgment of a Court of Appeals panel and that Article 48(6), (7) of the Law provides that, in case of a final judgment, a protection of legality request may be filed to a Supreme Court panel of the SC with regard to, *inter alia*, violations of the criminal law.

52. It therefore emerges that this is one of the remedies that would need to be considered for the purposes of the requirement of exhaustion with respect to the alleged violations of Article 33(1) of the Constitution and Article 7 of the Convention.⁸³

⁸¹ *Decision on referral of Krasniqi and Veseli*, para. 53.

⁸² *Decision on referral of Krasniqi and Veseli*, para. 55.

⁸³ See Kosovo, Constitutional Court, *Constitutional review of Judgment PML No. 242/2017 of the Supreme Court of Kosovo*, of 30 April 2018, KI 01/19, Resolution on inadmissibility, 2 September 2020 (1 October 2020), paras 31-41, 82-85, 91-93; *Constitutional review of Judgment PML No. 247/2017 of the Supreme Court of 6 February 2018*, KI 95/18, Resolution on inadmissibility, 27 May 2019 (19 August 2019), paras 3, 12-17, 22; *Constitutional review of judgment Pml no. 63/2018 of the Supreme Court of the Republic of Kosovo of 4 June 2018*, KI 155/18, Resolution on inadmissibility, 25 September 2019 (21 October 2019), paras 4, 20-25, 29,

Given, however, that the Referral is premature, the Chamber considers that it does not need to rule on the requirement of exhaustion at this point in time.

53. At the same time, the Chamber observes that the Applicant's referral raises an important question concerning the SC's legal framework. In particular, the Applicant submitted that, as a matter of general principle, the direct application of CIL with respect to the charge of arbitrary detention and JCE as a mode of liability was contrary to the Constitution and that primacy attributed to CIL was unconstitutional. Given the fundamental nature of these issues in the functioning of the SC, the Chamber deems it appropriate to address them and to recall its previous findings on some of these issues.⁸⁴ At the same time, and as the Chamber has set out previously, given that the criminal proceedings against the Applicant are pending and the Referral is therefore premature, the Chamber must be cautious so as not to encroach, at this stage, upon the role of the other panels of the SC in determining the issues of law and fact relevant to the criminal case before them.⁸⁵

C. WHETHER THERE IS AN APPEARANCE OF A VIOLATION ON ACCOUNT OF DIRECT APPLICATION OF CIL AND ON ACCOUNT OF GRANTING PRIMACY TO CIL BY THE SC

1. Scope of Assessment

54. As it follows from the Chamber's earlier practice, it is for the competent panels of the SC to decide over facts and evidence, as well as to interpret and apply the legal provisions relevant to the case before them.⁸⁶ The Chamber may only assess their

36-39, 45-52. See also Kosovo, Constitutional Court, *Constitutional review of Judgment Pml no. 141/2018 of the Supreme Court of the Republic of Kosovo of 2 July 2018 and decision P no. 571/13 of the Basic Court in Prishtina of 2 February 2018*, KI 158/18, Resolution on inadmissibility, 12 April 2019 (23 April 2019), paras 40-41.

⁸⁴ *Decision on referral of Krasniqi and Veseli*, paras 64-81.

⁸⁵ *Decision on referral of Krasniqi and Veseli*, para. 58.

⁸⁶ *Decision on referral of Krasniqi and Veseli*, para. 59. See Kosovo, Constitutional Court, *Constitutional review of 16 decisions of the Supreme Court of Kosovo rendered between 26 March and 12 April 2018*, KI 96/18 et al., Resolution on inadmissibility, 19 February 2019 (27 February 2019), para. 51; *Constitutional review of Judgment PML. No. 225/2017 of the Supreme Court of 18 December 2017*, KI 37/18, Resolution on

findings insofar as the fundamental rights and freedoms guaranteed by the Constitution are concerned.⁸⁷

55. In that light, the Chamber finds it possible, at this stage of the proceedings, to reflect only on a more general question of whether the direct application by the SC of CIL as regards war crimes, including related modes of liability, and CIL's influence on the Constitution give rise to the appearance of a violation of the Constitution, pursuant to Rule 14(f) of the Rules.

56. The Chamber recalls that its assessment is without prejudice to any future determination of the complaints, if any, which the Applicant might raise before the Chamber as regards an alleged violation of Article 33 of the Constitution and Article 7 of the Convention in relation to the determination of his liability specifically, if, indeed, there would be such a determination.⁸⁸

2. The Submissions

57. The Applicant submitted that the direct application of CIL was contrary to Articles 210 and 181 of the SFRY Constitution, which, as the Kosovo Supreme Court held, applied during the material time and made CIL inapplicable to events alleged to have occurred in 1999.⁸⁹ Unless "the duality test" was satisfied, CIL would therefore not be directly applicable in Kosovo according to the Applicant.⁹⁰

58. Additionally, the Applicant complained that the pre-trial judge and the Court of Appeals panel violated his right insofar as criminal law must not be construed to his detriment as guaranteed in Article 7 of the Convention and by the principle of *in dubio*

inadmissibility, 30 May 2018 (11 June 2018), para. 39; *Constitutional review of decision PA-II-KZ-II-7/15 of the Supreme Court of Kosovo of 26 November 2015*, KI 15/16, Resolution on inadmissibility, 16 March 2016 (5 April 2016), para. 40.

⁸⁷ *Decision on referral of Krasniqi and Veseli*, para. 59; *Decision concerning a decision of the single judge*, para. 36.

⁸⁸ *Decision on referral of Krasniqi and Veseli*, para. 61.

⁸⁹ *Referral*, para. 17; *Gashi et al.* judgment, pp 6, 12; *Bešović* judgment, pp 18-19.

⁹⁰ *Referral*, paras 16-17.

pro reo. Specifically, the Applicant contended that the pre-trial judge and the Court of Appeals chamber, despite the existence of conflicting case law by the Kosovo Supreme Court raising doubt as to the applicable law, did not compare the two potentially applicable regimes (the SFRY Constitution and the Kosovo Constitution) and did not apply the most favourable to the Applicant.⁹¹ To that end, the Applicant requested that Articles 3 and 12 of the Law be declared incompatible with Article 33 of the Constitution insofar as they allow the introduction in the Kosovo legal order of offences derived from CIL that were not otherwise incorporated in the internal legal order at the material time.⁹²

59. Furthermore, the Applicant submitted that the application of CIL violates Article 33 of the Constitution and Article 7 of the Convention and the principles of legality and non-retroactivity set out therein.⁹³ The Applicant argued that, in any case, the incorporation of CIL into the legal system did not meet the standards of accessibility, foreseeability and precision required by Article 33 of the Constitution and Article 7(1) of the Convention.⁹⁴ Specifically, the Applicant claimed that the pre-trial judge's and the Court of Appeals panel's perceived shortcoming to determine the legal nature of the SC left the Applicant with uncertainties as to the law applied by the SC, how the Law is to be interpreted, as well as the role of the case law of international criminal tribunals for the purpose of adjudication by SC panels.⁹⁵

60. Lastly, the Applicant submitted that the findings of the pre-trial judge and the Court of Appeals panel violate Article 16 of the Constitution, which guarantees the primacy of the Kosovo Constitution in the internal legal order.⁹⁶ According to the Applicant, the lack of clarity as to whether CIL or the Constitution take precedence

⁹¹ Referral, paras 43-44.

⁹² Referral, paras 41-42.

⁹³ Referral, paras 18-19, 41-42.

⁹⁴ Referral, paras 20-24.

⁹⁵ Referral, para. 25.

⁹⁶ Referral, paras 22-24.

would also contribute to the missing “quality” of the applicable law in violation of Article 33(1) of the Constitution and Article 7 of the Convention.⁹⁷

3. The Chamber’s Assessment

(a) Whether CIL can be directly applied and primacy of the Kosovo Constitution

61. At the outset, the Chamber recalls its previous finding in the *Decision on referral of Krasniqi and Veseli* that Article 19 of the Constitution is not limited to the issue of applicability of ratified international agreements, but concerns also other sources of international law.⁹⁸ The Chamber further observed that Article 19(2) of the Constitution refers to “legally binding norms of international law” and it follows that these norms of international law are derived from a source of international law other than international treaties.⁹⁹ For the purposes of the present review, one such source, undoubtedly, is CIL.¹⁰⁰ It follows that legally binding norms of international law in Article 19(2) include CIL.

62. The Chamber recalls that Article 19(2) of the Constitution states that legally binding norms of international law, like ratified international agreements, “have superiority over the laws of the Republic of Kosovo”. In this respect, the Chamber notes that the legislation of Kosovo applies directly. Hence, in order to ensure that, in such application of the domestic legislation, the respective legally binding norm of international law takes precedence, as envisaged by Article 19(2), there should be a possibility to apply such a norm directly.¹⁰¹

63. As the Chamber previously found, it need not determine whether, under Article 19 of the Constitution, any norm of CIL applies directly in the internal legal system of

⁹⁷ Referral, para. 24.

⁹⁸ *Decision on referral of Krasniqi and Veseli*, para. 68.

⁹⁹ *Decision on referral of Krasniqi and Veseli*, para. 68.

¹⁰⁰ See Article 38 of the Statute of the International Court of Justice, which reflects the formally recognised sources of international law.

¹⁰¹ See *Decision on referral of Krasniqi and Veseli*, para. 69.

Kosovo.¹⁰² The question before the Chamber is more limited, as it concerns the norms of CIL relevant to the offences at issue, in particular as regards war crimes and crimes against humanity, including related modes of liability. In its *Decision on referral of Krasniqi and Veseli*, the Chamber found that these crimes and modes of liability are directly applicable in proceedings before the SC according to Article 3(2)(a), (d) of the Law, which in turn expressly refers to Article 19(2) of the Constitution, unless they are incompatible with the Constitution, particularly Article 33 of the Constitution.¹⁰³ The same applies in the instant circumstances.

64. The Chamber agrees with the Court of Appeals panel that Articles 145(2) and 162(2) of the Constitution make it clear that the Constitution supersedes any previously applicable constitution and that the SC are only bound to uphold the Constitution currently in force as per Article 3(2) of the Law.¹⁰⁴ This conclusion is underlined by Article 16(1) and (3) of the Constitution, which provides that laws and other legal acts “shall be in accordance with *this* Constitution” and that every person and entity in Kosovo is “subject to the provisions of the Constitution.”

65. The Chamber therefore notes that the Applicant’s argument elevating the *lex mitior* principle to a constitutional norm, *i.e.* that in case of two potentially applicable constitutional regimes (the SFRY Constitution and the Kosovo Constitution) the most favourable regime to the Applicant has to be applied, is misconceived. This argument cannot succeed in light of Articles 16(1), (3) and 145 of the Constitution. Only one constitutional regime may be applied by the SC, which is the Constitution of Kosovo.

¹⁰² The Chamber notes the practice of Kosovo courts in another area than that before the Chamber in the instant case. In particular, Kosovo courts in a case concerning a request for a person’s extradition considered whether Kosovo had succeeded to a treaty put forward as the basis for the extradition. In this specific context, the Supreme Court of Kosovo found that some norms in the area of succession of states to international treaties reflected CIL and, hence, referred to them. In that case, the Supreme Court of Kosovo also stated that “supremacy of international law and agreements in Kosovo is envisaged by Article 19 Paragraph 2 of the Constitution [...]”. See Kosovo, Supreme Court, Pn-Kr-386/2010, Ruling, 7 September 2010, pp 4, 6.

¹⁰³ *Decision on referral of Krasniqi and Veseli*, paras 70-72, 78.

¹⁰⁴ *Thaçi et al. appeals decision*, para. 26.

66. Moreover, the Chamber notes that the principle of legality prohibits the retroactive application of new criminal offences and penalties, which were not in force at the time the alleged punishable act was committed. However, this principle does not prohibit a new constitutional order from directly applying international law, which was in force at the time of the alleged criminal act. What matters is whether the criminal offences were defined under national or international (criminal) law. This is reflected in Article 33(1) of the Constitution, which made an express exception for the crimes of genocide, crimes against humanity and war crimes. The Chamber considers that this conclusion is furthermore supported by the case law of the ECtHR, which has consistently held that it is entirely legitimate for authorities governed by the rule of law to undertake criminal proceedings against persons following a change of the constitutional order.¹⁰⁵

67. Therefore, the Applicant cannot claim the appearance of a violation of Article 33(1) of the Constitution and Article 7(1) of the Convention when it comes to the applicability of the Kosovo Constitution before the SC, rather than the SFRY Constitution.

(b) Whether the Direct Application of CIL is Compatible with Article 33 of the Constitution

68. The Chamber recalls its finding in the *Decision on referral of Krasniqi and Veseli* that a provision of CIL can be part of “international law” in Article 33(1) of the Constitution, if the offence was, at the material time, defined with sufficient accessibility and foreseeability by CIL.¹⁰⁶ The Chamber noted that the ECtHR has held that the foreseeability aspect entails an element of judicial interpretation, as there will always be a need for elucidation of doubtful points.¹⁰⁷ As the Chamber found, Article 7

¹⁰⁵ Cf. ECtHR, *Kononov v. Latvia*, no. 36376/04, 2008, para. 114(f); *K.-H.W. v. Germany* [GC], no. 37201/97, 2001, para. 84.

¹⁰⁶ *Decision on referral of Krasniqi and Veseli*, paras 75-77.

¹⁰⁷ *Decision on referral of Krasniqi and Veseli*, para. 77.

of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen.¹⁰⁸

69. It follows that the direct application by the SC of war crimes and crimes against humanity, including modes of liability, under CIL to establish an individual's guilt is compatible with the Constitution (as explained above under (a)), provided that such application is in accordance with Article 33(1) of the Constitution and Article 7 of the Convention, as interpreted by the ECtHR in its case law.¹⁰⁹

70. The Chamber notes that the question of whether JCE and arbitrary detention are indeed provided for in CIL and whether they were accessible and foreseeable at the material time, is not for the Chamber to decide at this stage, but for the other panels of the SC to determine, in accordance with their respective competence.¹¹⁰

71. Furthermore, the Chamber notes that the Kosovo Constitutional Court has confirmed the nature of the SC as a specialised court within the legal system of Kosovo and therefore this does not lead to any uncertainty undermining the "quality" of the applicable law.¹¹¹

72. As a result of the above findings that there is no appearance of a violation of fundamental rights at this time, the Chamber further dismisses as inadmissible the Applicant's request to declare Articles 3 and 12 of the Law incompatible with Articles 19 and 33 of the Constitution.

¹⁰⁸ *Decision on referral of Krasniqi and Veseli*, para. 77.

¹⁰⁹ See *Decision on referral of Krasniqi and Veseli*, para. 78.

¹¹⁰ *Decision on referral of Krasniqi and Veseli*, para. 80.

¹¹¹ 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 43, 58-59, 65-66, 68, 71-72.

4. Conclusion

73. In view of the foregoing, the Chamber finds that the Referral reveals no appearance of a violation under Article 33(1) of the Constitution and Article 7 of the Convention when it comes to the SC's direct applicability of war crimes under CIL, including related forms of individual criminal responsibility. It follows that this part of the Applicant's Referral must, at this stage of the proceedings, be declared inadmissible pursuant to Rule 14(f) of the Rules.

VI. REQUEST REGARDING A HEARING

74. In his Referral, the Applicant requested the Chamber to schedule an oral hearing.¹¹²

75. The Chamber recalls that, pursuant to Rule 15(4) of the Rules, after the expiry of the time limits for the filing of the written submissions, the Chamber shall decide on a referral on the basis of the written submissions, unless a hearing is in the interests of the proper administration of justice. In the present circumstances, the Chamber considers that it can decide on the Referral without a hearing required.

76. In view of the foregoing, the Applicant's request for an oral hearing must be dismissed.

¹¹² Referral, para. 76.

FOR THESE REASONS,

The Specialist Chamber of the Constitutional Court, unanimously,

1. *Declares* the Referral of Mr Pjetër Shala inadmissible; and
2. *Dismisses* the Referral in its entirety.



Vidar Stensland
Presiding Judge

Done in English on Wednesday, 6 July 2022

At The Hague, the Netherlands