



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-SC-2024-02

Before: A Panel of the Supreme Court Chamber
Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Fidelma Donlon

Date: 25 January 2024

Language: English

Classification: Public

**Decision on Prosecution Motion Regarding
Conflict of Interest of Defence Counsel**

Specialist Prosecutor:
Kimberly P. West

Counsel for Salih Mustafa:
Venkateswari Alagenda

Counsel for Victims:
Anni Pues

THE PANEL OF THE SUPREME COURT CHAMBER of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”), noting Article 28(3)(b) and (4)(a)(1) of the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers (“Code of Conduct”) hereby renders this decision on the “Prosecution Challenge to Appointment of Counsel” (“Motion”).¹

I. PROCEDURAL BACKGROUND

1. On 14 December 2023, the Court of Appeals Panel issued the “Public Redacted Version of the Appeal Judgment”, wherein it affirmed Mr Mustafa’s convictions for arbitrary detention, torture and murder as war crimes, but granted Mr Mustafa’s appeal, in part, against his sentence.² To that end, the Court of Appeals Panel reduced Mr Mustafa’s sentence to 22 years of imprisonment, with credit for time served.³

2. On 3 January 2024, the Registrar granted Mr Mustafa’s request to have his Counsel, Mr Julius von Bóné replaced and appointed Ms Venkateswari Alagendra as his new Counsel.⁴

3. On 15 January 2024, Mr Mustafa filed a request for an extension of time to request protection of legality in relation to the final judgment in his case (“Request for an Extension of Time”).⁵

4. On 18 January 2024, the Registrar filed the “Information Additional to Notification of Approval of Counsel for Salih Mustafa with Two Confidential and *Ex Parte*

¹ F00006, Prosecution Challenge to Appointment of Counsel, 23 January 2024.

² KSC-CA-2023-02/F00038/RED, Public Redacted Version of Appeal Judgment, 14 December 2023, para. 484.

³ Appeal Judgment, para. 484.

⁴ F00001, Mustafa Urgent Motion for an Extension of Time to File a Request for Protection of Legality, 15 January 2024, para. 13.

⁵ Request for an Extension of Time.

Annexes" ("Notification").⁶

5. On 23 January 2024, the Specialist Prosecutor's Office ("SPO") filed the Motion.

II. DISCUSSION

6. The SPO submits that a conflict of interest arises as a result of the appointment of Ms Venkateswari Alagendra to represent Mr Salih Mustafa, given that she already represents Mr Jakup Krasniqi in a substantially related matter before the Specialist Chambers.⁷ The SPO asserts that the Panel has the "inherent authority to safeguard the fairness and integrity of the proceedings" and requests that the Supreme Court Panel order the Registrar to terminate Ms Alagendra's representation of Mr Mustafa.⁸

7. At the outset, the Supreme Court Panel notes that it is proceeding with the issuance of the decision without having awaited a response from Ms Alagendra. As set forth below, any response from Ms Alagendra regarding her views on the existence of a conflict of interest related to her representation of both Mr Krasniqi and Mr Mustafa would be irrelevant to the Supreme Court Panel's consideration as it is a matter for Trial Panel II's consideration as explained below. Moreover, the Supreme Court Panel is required to proceed as a matter of urgency in order to best safeguard the integrity of the proceedings before this Panel and, importantly, Mr Mustafa's rights.

8. The Supreme Court Panel notes that Ms Alagendra's representation of Mr Mustafa falls within the scenario set forth in Article 28(3)(b) of the Code of Conduct, namely where Counsel is representing a client in a substantially related matter before the Specialist Chambers by virtue of her representation of Mr Krasniqi. In such circumstances, Article 28(4)(b)(1) of the Code of Conduct requires Counsel to: (i) "obtain the informed consent of each potentially affected Client; and (ii) "notify the

⁶ F00004, Information Additional to Notification of Approval of Counsel for Salih Mustafa with Two Confidential and *Ex Parte* Annexes, 18 January 2024.

⁷ Motion, para. 1. See also Motion, paras 2-7.

⁸ Motion, para. 1. See also Motion, para. 8.

relevant Panel(s), which shall determine a conflict of interest exists”.

9. The Supreme Court Panel notes that Ms Alagendra obtained the informed consent of both Mr Krasniqi and Mr Mustafa.⁹ However, Mr Alagendra did not notify the relevant Panel, namely Trial Panel II in which Mr Krasniqi is an accused and whom she represents, to determine whether a conflict of interest exists, before she was appointed to represent Mr Mustafa.¹⁰ In the absence of a determination by Trial Panel II that no conflict of interest exist, Ms Alagendra should not have been appointed by the Registrar to represent Mr Mustafa. Accordingly, the Registrar’s decision appointing Ms Alagendra has no legal effect and Ms Alagendra will have to notify Trial Panel II as set forth in Article 28(4)(b)(1) of the Code of Conduct if she intends to represent Mr Mustafa.

10. The Supreme Court Panel is mindful that Mr Mustafa intends to request protection of legality in relation to the final judgment against him in accordance with Article 48(6) of the Law. In order to safeguard the integrity of the proceedings and Mr Mustafa’s rights in this respect, the Supreme Court Panel is of the view that the Registrar should appoint Duty Counsel as a matter of urgency to represent Mr Mustafa until the appointment of his Counsel has been resolved.

III. DISPOSITION

11. For the foregoing reasons, the Panel hereby

DECLARES that the Registrar’s decision in relation to the appointment of Ms Alagendra has no legal effect;

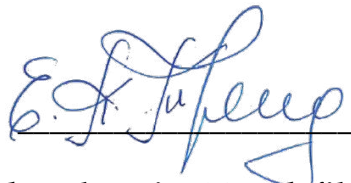
ORDERS the Registrar, as a matter of urgency, to appoint Duty Counsel to

⁹ See the Annexes to the Notification.

¹⁰ See, e.g., the Notification, the Request for an Extension of Time and the Motion, wherein no reference is made to any views sought or obtained by Ms Alagendra from Trial Panel II before having been appointed by the Registrar as Counsel for Mr Mustafa. See also Communication between Chef de Cabinet/Senior Legal Officer and Senior Legal Officer of the Basic Court, 24 January 2024.

represent Mr Mustafa until the appointment of Counsel has been resolved; and

ORDERS the Court Management Unit to take all necessary steps to give effect to this decision insofar as it relates to Ms Alagenda's access to Mr Mustafa's case file.

A handwritten signature in blue ink, appearing to read 'E. Trendafilova', written over a horizontal line.

**Judge Ekaterina Trendafilova,
Presiding**

Dated this Thursday, 25 January 2024
At The Hague,
The Netherlands