



Kosovo Specialist Chambers &
Specialist Prosecutor's Office

FIRST REPORT



KOSOVO SPECIALIST CHAMBERS &
SPECIALIST PROSECUTOR'S OFFICE

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**KOSOVO
SPECIALIST
CHAMBERS**



Foreword

It is a privilege to present the first report of the Kosovo Specialist Chambers – a new institution with the statutory mandate to conduct independent, impartial, efficient and fair criminal proceedings in a safe and secure environment.

The immense efforts and collaboration required to establish and make functional a criminal court that has the capacity to manage complex cases of violations of international humanitarian and human rights law are often not recollected or recorded. By providing this report, we intend to recount and highlight some of the critical milestones achieved during the dynamic process from April 2016 to July 2017 that led to the Kosovo Specialist Chambers becoming judicially operational. Developments from July 2017 to February 2018 are also reported.

Bearing in mind our commitment to ensure the effective administration and management of future trials, many valuable lessons learned from other courts dealing with international crimes were applied during the establishment of the Kosovo Specialist Chambers and the drafting of the Rules of Procedure and Evidence. We hope that the experience of and lessons learned during the building of the Kosovo Specialist Chambers, which include elements unprecedented in international or internationalised courts, will in turn contribute to future mechanisms of accountability and justice.

We are committed to ensuring that the work of the Kosovo Specialist Chambers is transparently reported to as wide an audience as possible.

This, we hope, is achieved in part by the first report of the Kosovo Specialist Chambers that will be followed, in the future, by annual reports.

Creating the Kosovo Specialist Chambers from the ground up has presented formidable challenges. Thanks to the dedicated work of staff as well as the commitment and expertise of Kosovo Specialist Chambers Judges, those challenges were overcome. The entry into force of the Rules of Procedure and Evidence in July 2017, within five months of the appointment of the Judges, demonstrates their professionalism, knowledge and commitment to create the legal tools for efficient, secure and fair proceedings before the Kosovo Specialist Chambers. We thus express our sincere gratitude to the Judges and all personnel.

We sincerely thank the European Union Member States for financially supporting the Kosovo Specialist Chambers and the Specialist Prosecutor's Office. The generous contribution from the Kingdom of Norway for the renovation of the future premises of the institutions is also greatly appreciated. Likewise, the contribution from the Swiss Confederation for the support of our outreach activities is hugely valued. We also express our gratitude to the States that have seconded personnel.

We are most grateful to the Kingdom of the Netherlands for hosting the relocated judicial proceedings and to various Government Ministries for their assistance with setting up and managing security and practical arrangements for the functioning of the institutions in the Netherlands.

We further thank States and members of the diplomatic community for their ongoing engagement and cooperation with the Kosovo Specialist Chambers and the Specialist Prosecutor's Office.

Our gratitude goes to the European Union Special Representative for Kosovo, Nataliya Apostolova, the Head of the European Union Rule of Law Mission in Kosovo (EULEX), Alexandra Papadopoulou and their staff for their continuous support. We also thank colleagues in the European Union External Action Service, the European Commission Service for Foreign Policy Instruments and the Civilian Planning and Conduct Capability for their cooperation on administrative matters related to the functioning of the Kosovo Specialist Chambers.

The cooperative relationship developed with international and internationalised courts in The Hague and their openness to share with us their experience in organisational and administrative matters is highly appreciated.

Judge Ekaterina Trendafilova
President of the Kosovo Specialist Chambers

The Hague, March 2018

Many challenges lie ahead for the Kosovo Specialist Chambers. We are attentive to our responsibility towards the population in Kosovo and we value its keen interest in our work. With the support of the relevant institutions of Kosovo, and of those referred above, we are confident in the successful discharge of our duties and the fulfilment of our mandate.

We are also dedicated to a well-calibrated and wide-ranging outreach programme in order to increase knowledge and awareness about the work of the Kosovo Specialist Chambers, foster dialogue with affected persons and communities in Kosovo and the region, and establish this institution as a reliable source of information about its own proceedings. Through frequent consultations with organisations, information sessions with journalists, programmes for students, town-hall meetings, roundtable discussions and regular updates through newsletters, we intend to disseminate timely information and promote dialogue on the performance of the Kosovo Specialist Chambers.

Finally, we are determined to ensure that the Kosovo Specialist Chambers will be seen as a beacon of independence, impartiality and fairness, not tainted by any influence, interference or political agenda, and a sterling safeguard not only of the fundamental rights of the accused, but also the security and safety of victims and witnesses.

Dr Fidelma Donlon
Registrar of the Kosovo Specialist Chambers

Background

In **June 2008**, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe appointed a special rapporteur to investigate allegations of serious crimes committed by certain Kosovo Liberation Army (KLA) members during and in the aftermath of the 1998-1999 conflict.

In **January 2011**, the Parliamentary Assembly of the Council of Europe, through Resolution 1782 (2011), adopted the report prepared by the special rapporteur (Council of Europe Report), which alleged that numerous crimes were committed against Serbs, Kosovo Albanians suspected of being collaborators and other individuals.

Further to the Council of Europe Report, in **May 2011**, EU Member States considered the matter in the framework of the Political and Security Committee, a body dealing with the EU Common Foreign and Security Policy. Thereupon, the Special Investigative Task Force (SITF) was established and mandated to conduct an independent investigation into allegations of unlawful detention, deportation, inhumane acts, torture and killings, as well as any other crimes related to the Council of Europe Report. Based in Brussels, the SITF commenced its operations in **September 2011**.

Whilst this investigation was ongoing, in an Exchange of Letters between the President of Kosovo and the High Representative of the Union for Foreign Affairs and Security Policy in **April 2014**, an international agreement was

reached for the establishment and operation of separate judicial chambers for the prosecution of crimes arising from SITF investigations.

The **Exchange of Letters** provides that these judicial chambers would be established within the Kosovo court system, but would be governed by their own statute and rules of procedure and evidence, while being staffed and managed by international staff only. The Exchange of Letters also states that the separate judicial chambers would have a seat in a third state and that sensitive proceedings, including hearing of witnesses, would take place outside Kosovo. The Exchange of Letters was ratified in April 2014 by the Kosovo Assembly with a two-thirds majority and incorporated into domestic law.

In **July 2014**, the SITF Chief Prosecutor issued a statement, concluding that the SITF “will be in a position to file an indictment against certain senior officials of the former Kosovo Liberation Army”.

In **November 2014**, further to the EU Council Decision (CFSP) 2014/685 of September 2014, the so-called Court Planning Team was formed. Based in Brussels, it was mandated to explore options for the setting up of the judicial institution.

In **March 2015**, the President of the Kosovo Assembly referred to the Kosovo Constitutional Court a constitutional amendment proposed by the Kosovo government to implement the

Exchange of Letters. According to the Constitution, the Kosovo Constitutional Court had to assess whether the referred amendment proposal diminished any of the rights and freedoms guaranteed by Chapter II of the Constitution. In **April 2015**, the Kosovo Constitutional Court held that the amendment proposal was in conformity with the Kosovo Constitution and held that “[t]he structure, scope of jurisdiction and functioning of the Specialist Chambers will be regulated by further laws in compliance with the Constitution”.

This amendment was implemented through Article 162 of the Kosovo Constitution, adopted by the Kosovo Assembly in **August 2015**. At the same time, the **Law** on the establishment of both institutions was also adopted, which serves as the foundational instrument for the Kosovo Specialist Chambers (KSC) and the Specialist Prosecutor’s Office (SPO).

In **January 2016**, Kosovo and the Netherlands signed an interim Host State Agreement, enabling preparatory activities for the establishment and functioning of the KSC on the territory of the Netherlands.

In **April 2016**, Dr Fidelma Donlon was appointed Registrar of the Specialist Chambers, marking the commencement of the work of the KSC Registry in The Hague. At the same time, the Court Planning Team was relocated from Brussels to The Hague. With significant expertise in their field and the work of judicial administration, a team of 17 personnel set about the rapid development and growth of the Registry to enable it to manage both its administrative and judicial support mandate.

In **June 2016**, the EU Council adopted Decision (CFSP) 2016/947, reiterating the EU’s continued support for the relocated proceedings. The EU Council directed the European

Commission to “sign a grant agreement with a registrar acting on behalf of a registry in charge of the administration of the relocated judicial proceedings”. This decision allowed for direct administration of the relocated judicial institutions by the Registrar and, thus, paved the way for the independent administration of the KSC.

In **September 2016**, David Schwendiman was appointed as Specialist Prosecutor. In **December 2016**, Judge Ekaterina Trendafilova was appointed as President of the Specialist Chambers, and she took office in January 2017.

On **1 January 2017**, the Host State Agreement between Kosovo and the Netherlands entered into force, allowing the KSC to conduct criminal proceedings on its territory. Subsequently, in **February 2017**, nineteen Judges were appointed to the Roster of International Judges of the Specialist Chambers. In **March 2017**, during the first Plenary, the Specialist Chambers Judges adopted the Rules of Procedure and Evidence.

After a constitutional review by the Specialist Chamber of the Constitutional Court, the Rules of Procedure and Evidence entered into force in **July 2017**, rendering the Specialist Chambers fully judicially operational.

In **November 2017**, the Registrar adopted the Directive on Counsel regulating, among others, the eligibility of lawyers to represent suspects, accused and victims before the Kosovo Specialist Chambers. At the same time, the application for admission to the List of Counsel was opened.

MILESTONES



JANUARY 2011

The Council of Europe (CoE) Parliamentary Assembly approves a Report on “inhuman treatment of people and illicit trafficking in human organs in Kosovo”.

APRIL 2014

The Kosovo President and the High Representative of the EU for Foreign Affairs and Security Policy exchange letters on the issue of “separate judicial chambers”.

NOVEMBER 2014

The Court Planning Team is formed.

2011

2012

2013

2014

2015

SEPTEMBER 2011

The Special Investigative Task Force (SITF), established by the EU to conduct criminal investigations into the allegations of the CoE Report, commences its work.



AUGUST 2015

The Kosovo Assembly adopts Article 162 of the Kosovo Constitution and the Law on Specialist Chambers and Specialist Prosecutor's Office.

OF THE KSC

JANUARY 2016

Kosovo and the Netherlands sign the Interim Host State Agreement, in preparation of the location of the future judicial institution in the Netherlands.

JUNE 2016

The EU Council adopts a decision on the annual budget of the KSC, providing for its direct administration by the Registrar.



DECEMBER 2016

Judge Ekaterina Trendafilova is appointed President of the Kosovo Specialist Chambers.



FEBRUARY 2017

19 Judges are appointed to the Roster of International Judges.

2016

APRIL 2016

Dr Fidelma Donlon is appointed Registrar of the KSC, marking the commencement of the work of the judicial institution in The Hague.



JANUARY 2017

The Host State Agreement enters into force, providing legal basis for the KSC to conduct proceedings in the Netherlands.

MARCH 2017

Judges adopt the Rules of Procedure and Evidence, subject to review by the Specialist Chamber of the Constitutional Court.

2017

JULY 2017

Following the constitutional review conducted by the Specialist Chamber of the Constitutional Court, the Rules of Procedure and Evidence enter into force and the Kosovo Specialist Chambers become judicially operational.

KSC AT

- The Kosovo Specialist Chambers and the Specialist Prosecutor's Office are two **independent** institutions established by a **constitutional amendment** and a **Law on Specialist Chambers and Specialist Prosecutor's Office (Law)** adopted by the Kosovo Assembly in August 2015.



- The **mandate** of the Kosovo Specialist Chambers is
 - “to ensure secure, independent, impartial, fair and efficient criminal proceedings in

relation to allegations of grave trans-boundary and international crimes committed during and in the aftermath of the conflict in Kosovo, which relate to those reported in the Council of Europe Parliamentary Assembly Report (...) and which have been the subject of criminal investigation by the Special Investigative Task Force” (Article 1 of the Law).

- The KSC are a **temporary** judicial institution
 - they will only be in existence for the time necessary to deal with charges presented by the Specialist Prosecutor and until Kosovo is notified by the EU Council that investigations and proceedings have concluded.
- The Kosovo Specialist Chambers are established **within the Kosovo justice system**
 - having **the same court levels** as the Kosovo judicial system (basic, appeal, supreme, constitutional);
 - having one **seat outside Kosovo**;

A GLANCE

- being staffed by judges and personnel who are citizens of **EU Member States or Third Contributing States**;
- applying **international customary law** and **substantive criminal law** as provided in the Law; and
- applying **their own rules of procedure and evidence**.
- The KSC deal with **individual criminal responsibility only** – the Specialist Chambers will not put groups or organisations on trial.
- The KSC **jurisdiction** covers:
 - crimes against humanity, war crimes and other crimes under the applicable criminal law at the time the crimes were committed;
 - that occurred between 1 January 1998 and 31 December 2000;
 - either commenced or committed in Kosovo, or committed by or against persons of Kosovo/FRY citizenship;
 - certain crimes against the administration of justice when they relate to its official proceedings and/or officials.
- The KSC allow **victims' participation** in proceedings.
- The KSC and SPO are funded by EU Member States and Third Contributing States, and are independent in the fulfilment of their mandate and work.

“The Specialist Chambers will not prosecute any ethnic group. They will not prosecute any organisation. The Specialist Chambers will only prosecute and hold accountable individual persons.”

President Trendafilova (BIRN, 2017)

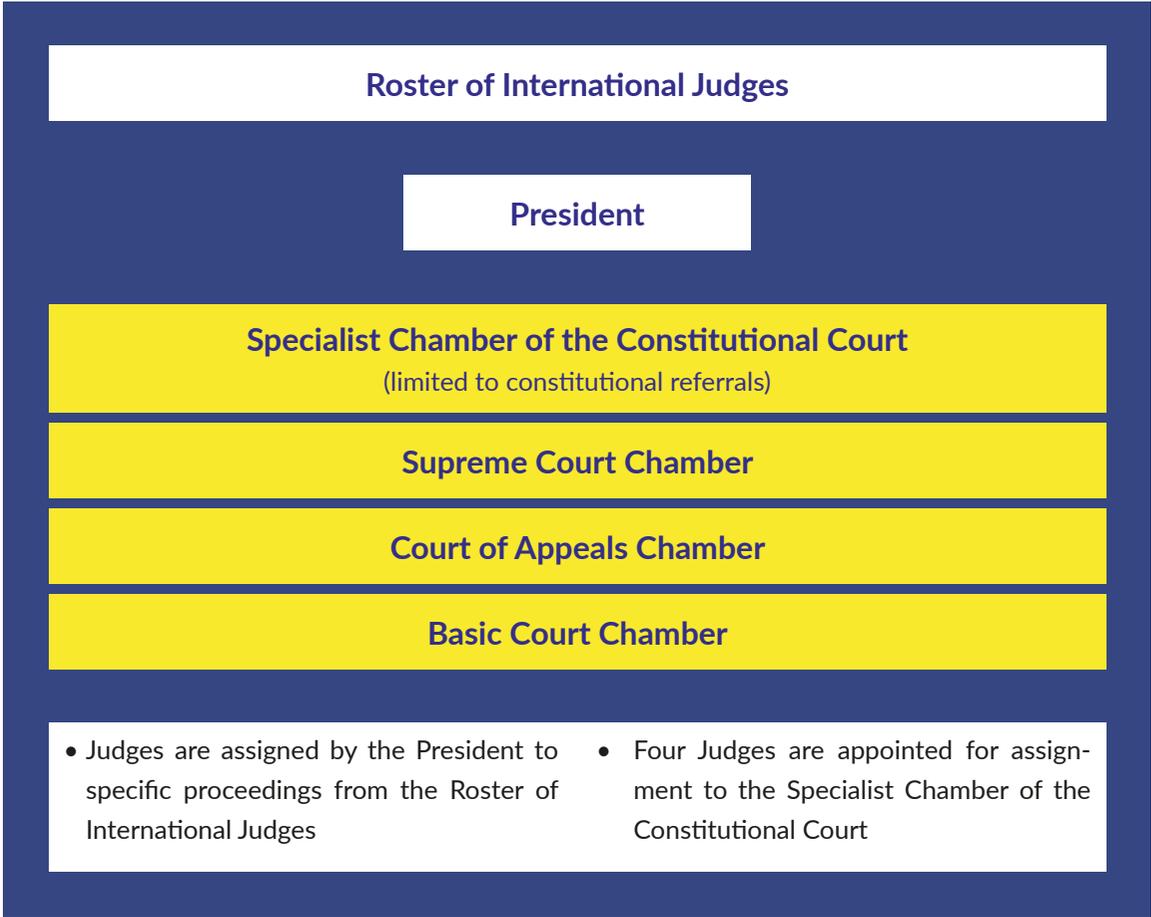
Chambers



1 Structure and Composition of Chambers

The Kosovo Specialist Chambers have two organs: the Chambers and the Registry. Chambers comprises the President, the Vice-President and the other Judges on the Roster of International Judges. Chambers is established within and follows the structure of the justice system of Kosovo.

According to Article 24 of the Law on the Specialist Chambers and the Specialist Prosecutor's Office (Law), Chambers includes a Basic Court Chamber, a Court of Appeals Chamber, a Supreme Court Chamber and a Constitutional Court Chamber.



Structure of Chambers

Within this structure there are, as necessary, individual Judges performing functions of a Pre-Trial Judge, Trial Panels (composed of three Judges and one reserve Judge), all belonging to the Basic Court, Court of Appeals Panels, Supreme Court Panels and Constitutional Court Panels, each composed of three Judges, as well as individual Judges performing other functions required by the Law.

The President is responsible for the judicial administration of the Kosovo Specialist Chambers and is the only Judge who serves on a full-time basis. Judicial administration entails: coordinating the functioning of Chambers; adopting practice directions and other internal regulations; consulting and coordinating with the Registrar and the Specialist Prosecutor, when necessary, on the administration of judicial activity; setting

court recess periods; and other tasks provided by the Law or the Rules of Procedure and Evidence. The President also assigns Judges as Pre-Trial Judges or to the Trial, Court of Appeals, Supreme Court and Constitutional Court Panels. She represents the Chambers as an organ and, together with the Registrar, the Kosovo Specialist Chambers as an institution.

According to Article 26 of the Law, Judges are only present at the seat of the Specialist Chambers as necessary at the request of the President to exercise functions requiring their presence.

The President and the Judges are assisted by legal officers and administrative staff of the Chambers' Legal Support Unit.

2 Appointment of Judges

In July 2016, a Call for Nomination of President and Judges of the Specialist Chambers was published and circulated by the European External Action Service to EU Member States and Third Contributing States.

In accordance with Article 28 of the Law, an independent selection panel (Selection Panel) was formed to assess the judicial candidates and select them for appointment as judges for the Roster of International Judges (Roster), as well as for making recommendations for the appointment of the President and Vice-President of the Specialist Chambers.

The Selection Panel consisted of three members: two international judges with substantial international criminal justice experience and one senior international appointee. The composition of the Selection Panel ensured the independent assessment of the qualifications of each candidate.

EU Member States and Third Contributing States submitted their support to the Selection Panel for one or more candidates they found suitable.

The ensuing selection process entailed a thorough assessment of the knowledge, expertise and experience of eligible candidates, who were individually interviewed.

Acting upon the recommendation of the Selection Panel, on 14 December 2016, the Head of the EU Rule of Law Mission in Kosovo (Appointing Authority) appointed **Ekaterina Trendafilova** as Judge and President of the Specialist Chambers. Judge Trendafilova took office on 12 January 2017.

Further nineteen Judges, including the Vice-President Keith Raynor, were appointed to the Roster on 7 February 2017. As with the President, the Judges were appointed by the Appointing Authority. None of the Judges are seconded by EU Member States or Third Contributing States.

The appointed Judges have various professional backgrounds. Some have served with international or internationalised criminal courts or tribunals or with the European Court of Human Rights. Other Judges look back on distinguished domestic careers, be it as judges, defence counsel or prosecutors. There are also Judges with outstanding academic careers in the legal field. All of them are renowned for their profound knowledge and unique expertise in criminal law, humanitarian and human rights law. One Judge was specifically selected for his expertise in international administrative law to be considered for assignment as a Staff Appeals Judge of the Specialist Chambers, who deals with appeals of staff against administrative and disciplinary decisions (see page 25).

The appointed Judges are nationals of fourteen countries. This again shows that their selection was merit- rather than nationality-based. The gender ratio of the twenty Judges (five women, including the President, and fifteen men) corresponds to the EU Member States' and Third Contributing States' submissions of support. As regards age ratio, seven Judges are 40 to 50 years old, another seven are 51 to 60, five are 61 to 70 years old and one Judge is above 70.



President Ekaterina Trendafilova



Judge Ekaterina Trendafilova
President (Bulgaria)



Judge Keith Raynor
Vice-President (UK)

Judges of the Specialist Chamber of the Constitutional Court



Judge Vidar Stensland
(Norway)



Judge Roland Dekkers
(Netherlands)



Judge Ann Power-Forde
(Ireland)



Judge Antonio Balsamo
Reserve Judge (Italy)

International Judges of the Kosovo Specialist Chambers



Judge Charles L. Smith, III
(USA)



Judge Christine Van den Wyngaert
(Belgium)



Judge Michèle Picard
(France)



Judge Thomas Laker
(Germany)



Judge Emilio Gatti
(Italy)



Judge Michael Bohlander
(Germany)



Judge Kai Ambos
(Germany)



Judge Kenneth Roberts
(Canada)



Judge Mappie Veldt-Foglia
(Netherlands)



Judge Christoph Barthe
(Germany)



Judge Vladimir Mikula
(Czech Republic)



Judge Guénaél Mettraux
(Switzerland)



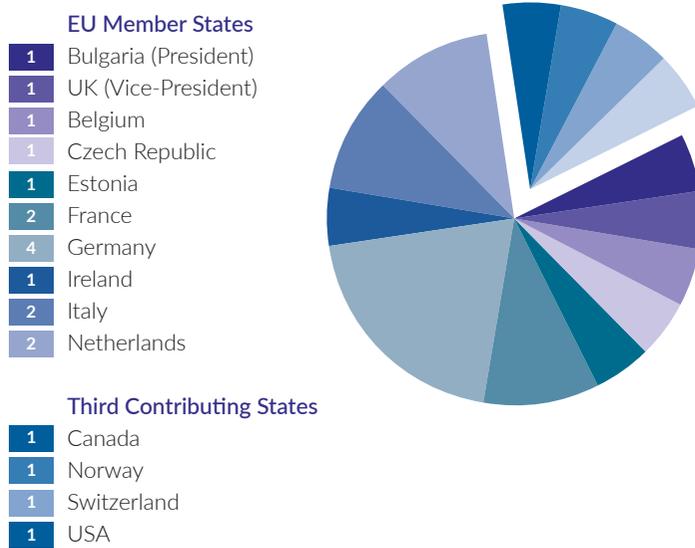
Judge Nicolas Guillou
(France)



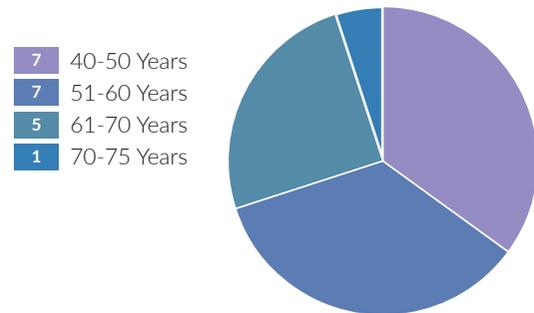
Judge Andres Parmas
(Estonia)

In the selection of Judges for the Kosovo Specialist Chambers, the knowledge, expertise and experience of the candidates as legal practitioners – be it as judges, prosecutors or defence lawyers – was thoroughly tested. The purpose of this strict selection process was the appointment of the most qualified professionals regardless of their political affiliations or citizenship.

Judges per EU Member State and per Third Contributing State



Judges by Age Group



3 Core Legal Instruments

The appointment of the President and the Judges set off the preparation for the adoption of three legal instruments essential for the functioning of the Kosovo Specialist Chambers: the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (the Rules of Procedure and Evidence); the Code of Judicial Ethics for Judges Appointed to the Roster of International Judges of the Kosovo Specialist Chambers (Code of Judicial Ethics); and the Rules on the Assignment of Specialist Chambers Judges from the Roster of International Judges (the Rules on Assignment). These instruments

comply with and supplement the Law. Within one month of the President taking office, three drafts of the above-mentioned documents were prepared and sent to the Judges, who, within two weeks, provided comprehensive comments and proposals. The updated drafts were then deliberated upon at the first Plenary, held between 14 and 17 March 2017.

During this first Plenary, the Rules on Assignment and the Code of Judicial Ethics were adopted by the Judges and entered into force.



First Plenary of KSC Judges –
March 2017



The Rules on Assignment

Date of adoption and entry into force:
14 March 2017

What they regulate: the basis upon which the President assigns Judges to panels in specific proceedings.

Rationale: the adoption of Rules on Assignment is required by Article 25 of the Law. In this regard, they are a novelty when it comes to the assignment of international judges to cases dealing with international crimes.

Content: the Rules on Assignment dictate that for each assignment to specific proceedings before the Kosovo Specialist Chambers, the President shall be guided by objective criteria such as experience, expertise, seniority, gender and geographical representation, as well as by the preferences of individual Judges and their availability at the time of the commencement of specific proceedings (Rule 4(2) of the Rules on Assignment). The President issues a public decision on the assignment of Judges to a Panel, setting out the criteria for the particular assignment. Judges are bound to keep the President informed about any engagements, activity or any other issue that may affect their future assignment to a Panel in specific proceedings.

Where to read: the Rules on Assignment are public and can be accessed on the website of the Kosovo Specialist Chambers.

The Code of Judicial Ethics

Date of adoption and entry into force:
14 March 2017

What it regulates: the professional standards for judicial conduct and the disciplinary regime applicable to Judges of the Kosovo Specialist Chambers.

Rationale: the Code of Judicial Ethics is based on Article 27 of the Law, which requires that Judges be persons of high moral character, impartiality and integrity.

Content: the Code of Judicial Ethics sets the highest professional standards of independence, impartiality, integrity and diligence for the Judges of the Specialist Chambers in carrying out their functions. Further provisions are included regarding obligations of confidentiality, courteous conduct during proceedings, respect for staff members and participants in the proceedings and in communication with the media. It also provides for disciplinary measures in cases of misconduct. The Code defines “serious misconduct” and “misconduct of a less serious nature” and sets out a detailed procedure for any such allegations as well as disciplinary measures to be imposed, including dismissal from the Roster.

Where to read: the Code of Judicial Ethics is public and can be accessed on the website of the Kosovo Specialist Chambers.

After the adoption of the Rules on Assignment and the Code of Judicial Ethics, the Plenary proceeded with its work on the Rules of Procedure and Evidence. In accordance with Article 19(1) of the Law, the four Judges of the Specialist Chamber of the Constitutional Court (SCCC) did not take part in the deliberation and adoption of this document. Instead, they retreated to discuss the Rules of Procedure for the SCCC, which, according to Article 49 of the Law, are adopted by the SCCC Judges only and included in the Rules of Procedure and Evidence.

In preparing the Rules of Procedure and Evidence, the Judges applied the Law with a view to complement it while ensuring consistency with the letter and the spirit of the Kosovo Constitution and the highest standards of international human rights law. They also sought guidance from the Kosovo Code of Criminal Procedure. Further, they were mindful of the procedural rules of earlier established *ad hoc* tribunals and of the International Criminal Court, and drew lessons from their practices. The drafting process was also attentive to the Kosovo legal culture so as to ensure that proceedings can be easily followed and understood by the population in Kosovo.

Following a three-day deliberation, the Rules of Procedure and Evidence were adopted by the Plenary on 17 March 2017.

Constitutional Review of the Rules of Procedure and Evidence

In accordance with the Law, the adopted Rules of Procedure and Evidence were subject to the comprehensive scrutiny of the Specialist Chamber of the Constitutional Court in order to decide on their compatibility with Chapter II of the Kosovo Constitution.

Chapter II of the Kosovo Constitution

Chapter II of the Constitution sets out the fundamental rights and freedoms protected and guaranteed by Kosovo. Among others, the principle of equality before the law, the right to life, the right to liberty and security, the rights of the accused, the right to a fair and impartial trial and the right to legal remedies are enshrined in this Chapter.

Article 31 consecrates the right to fair and impartial trial. Paragraph 2 of this Article states:

“Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”

Upon their adoption, the President referred the Rules of Procedure and Evidence to the SCCC, which then had thirty days under the Law to make its determination. Upon a meticulous review of the adopted Rules of Procedure and Evidence,

on 26 April 2017, the SCCC rendered its judgment in which it found that nine out of the 208 rules were inconsistent with Chapter II of the Kosovo Constitution, while it was unable to make a determination in respect of one provision.

Amongst others, the SCCC found a rule to be inconsistent with the Constitution because it provided for the possibility of holding hearings for a maximum period of five days in the absence (due to illness or personal reasons) of one of the three Judges sitting on a Panel. This provision was designed by the Plenary – and is applied elsewhere in international criminal proceedings – to respect the right of the accused to be tried without undue delay. The SCCC found, however, that allowing for a hearing before two instead of a full Panel of three Judges would not constitute a hearing “before a tribunal established by law”, as prescribed by the Constitution.

The SCCC also found that a set of provisions that regulated special investigative measures by the Specialist Prosecutor needed more specificity and safeguards to ensure the constitutionally guaranteed rights of individuals.

The SCCC further found unconstitutional a rule providing for the possibility of detaining a person who had been acquitted by a Trial Panel, while an appeal by the Prosecutor against the acquittal was pending. Although this approach is known to international criminal tribunals, it was found to be incompatible with the Constitution because it was not foreseen by the Law and did not fall under one of the permissible grounds for deprivation of liberty.



Presiding Judge of the SCCC Ann Power-Forde delivering judgment streamed on the KSC YouTube channel - 26 April 2017

“The Court concurs with the view of the ECtHR on Article 5(1) of the Convention and underscores the paramount importance of the right to liberty in a democratic society, its relationship with the rule of law and the principles of legal certainty and proportionality, and its overall purpose which is to ensure that no one should be deprived of his or her liberty in an ‘arbitrary fashion’.”

Specialist Chamber of the Constitutional Court, Judgment on the Referral of the Rules of Procedure and Evidence Adopted by the Plenary on 17 March 2017, 26 April 2017, para. 197

As prescribed by the Law, the rules found to be inconsistent with the Constitution were returned to the Judges in Plenary for action on the affected provisions. Consequently, the Judges held a second, remote Plenary in May 2017 to discuss the relevant rules and adopt a revised version thereof.

The revised rules were then referred to the SCCC for a fresh review. On 28 June 2017, the SCCC determined that none of the revised rules were inconsistent with Chapter II of the Constitution. Consequently, the SCCC determined that the full set of Rules of Procedure and Evidence complied with Chapter II of the Constitution.

Entry into Force of the Rules of Procedure and Evidence

Following the SCCC's comprehensive review and determination, the Rules of Procedure and Evidence entered into force on 5 July 2017. The drafting, discussion and adoption of the Rules of Procedure and Evidence and the two reviews by the SCCC, were completed in less than six months after the appointment of the Judges, who took heed of best judicial practices and incorporated innovative solutions for the efficient and expeditious conduct of proceedings before the Specialist Chambers.

With the entry into force of the Rules of Procedure and Evidence in July 2017, the Kosovo Specialist Chambers became **fully judicially operational**, able to receive filings of any relevant kind and conduct criminal proceedings.

The Rules of Procedure and Evidence

Date of adoption: 17 March 2017

Date of entry into force: 5 July 2017

What they regulate: the conduct of proceedings before all levels of the Kosovo Specialist Chambers.

Rationale: as only those provisions of the Kosovo Code of Criminal Procedure specifically indicated in the Law apply to the KSC, the Law requires the adoption of Rules of Procedure and Evidence to regulate the conduct of proceedings. The Rules of Procedure and Evidence ought to reflect the "highest standards of international human rights law including the ECHR and ICCPR with a view to ensuring a fair and expeditious trial taking into account the nature, location and specificities of the proceedings to be heard by the Specialist Chambers" (Article 19(2) of the Law).

Content: the Rules of Procedure and Evidence set out, among others, the procedure for reviewing and confirming indictments, disclosure, presentation, admission and assessment of evidence, deliberation and pronouncement of judgments, participation of victims and matters relating to cooperation with Kosovo authorities and Third States. The Rules also provide for a robust system for the protection of witnesses, victims and other persons at risk on account of their cooperation with the KSC or on account of witness testimony. The Rules of Procedure for the Specialist Chamber of the Constitutional Court are included in the Rules of Procedure and Evidence and they regulate the proceedings before that Chamber.

Where to read: the [Rules of Procedure and Evidence](#) are public and can be accessed on the website of the Kosovo Specialist Chambers.

4 Building the Procedural Framework

The entry into force of the Rules of Procedure and Evidence created the legal basis for the adoption of further instruments regulating the conduct of the proceedings and the overall operation of the Kosovo Specialist Chambers. A large number of procedural instruments regulating various, more technical aspects of the proceedings need to be in place for a smooth functioning of the Kosovo Specialist Chambers. These instruments include practice directions on filings and specific procedures to be undertaken during proceedings, guidelines regarding internal operations of various units, and other directives and regulations.

While some of these instruments have already been adopted, others are being discussed and drafted with a view to adopting them in the near future, including a Code of Professional Conduct, a Practice Direction on the Submission of Filings and a Practice Direction on a Rules Committee.

While many of these instruments were or are to be adopted by the Registrar, a significant number fall under the judicial administration responsibility of the President and have to be adopted by her.

For instance, the **Rules of Procedure for Staff Appeals** (adopted by the President on 11 September 2017) regulate the conduct of proceedings for appeals (of staff, former staff or persons making claims in the name of incapacitated or deceased staff) against decisions of the Registrar and disciplinary decisions (taken by the Registrar or the Specialist Prosecutor). The purpose of the Rules of Procedure for Staff Appeals is to ensure equal representation of the views of the appellant person, the Registrar or the Specialist Prosecutor, as applicable, as well as the expeditious resolution of any matter by the Staff Appeals Judge in conformity with due process requirements.

Another important document approved by the President and adopted by the Registrar on 6 November 2017 is the **Directive on Counsel**, which sets out the eligibility criteria, application and admission process of lawyers to the Lists of Specialist (Defence) and Victims' Counsel (see page 41).



5 External Relations

In her capacity of President of the Kosovo Specialist Chambers, Judge Ekaterina Trendafilova conducted extensive bilateral meetings with representatives of the diplomatic community in The Hague and Brussels in order to ensure the necessary support for and cooperation with the Kosovo Specialist Chambers. In June 2017, President Trendafilova updated the EU Political and Security Committee on developments and

key milestones that were achieved in the period since her appointment and emphasised that within less than five months since the Judges' appointment key legal instruments had been adopted to make the Specialist Chambers fully judicially operational. Representatives of EU Member States and Third Contributing States were again updated about key developments in December 2017.

Outreach Activities

Outreach is pivotal for the Kosovo Specialist Chambers in Kosovo and elsewhere. Mindful of the lessons learned regarding the region, the aim of the Kosovo Specialist Chambers is to be accessible and interact dynamically with the communities affected by the alleged crimes falling under its jurisdiction.

Since the KSC are increasingly apparent and discussed in the media, it is of vital importance for the institution to facilitate a greater understanding of its mandate and work, to establish trust into the judicial process and to demonstrate that it dispenses justice impartially and independently.

For this reason, a well-calibrated and wide-ranging outreach programme has been developed that involves frequent consultations with organisations, information sessions with journalists, programmes for students, town-hall meetings, roundtable discussions and regular updates through newsletters. The outreach programme is coordinated by the Public Information and Communications Unit (PICU) and its purpose is to disseminate timely information and promote dialogue on the work of the Kosovo Specialist Chambers (see page 37). By active engagement and communication with civil society organisations and other communities in Kosovo, the KSC intend to counteract some of the communication challenges associated with managing relocated proceedings.

Selected outreach events:

- Consultation meetings with civil society by the Head of the PICU – Pristina, April 2016
- Visit to Kosovo by the Registrar and Head of the PICU - July/October 2016
- Consultation meetings with civil society by the Head of the PICU – Pristina, January 2017
- Justice Transparency Forum – Pristina, April 2017
- Visit by a group of Kosovo NGOs to the KSC premises - The Hague, May 2017
- Consultation meetings with civil society – Pristina, October 2017
- Information session with civil society by the President and Registrar – Pristina, November 2017
- Presentation to journalists from the Balkans “Euro-Atlantic integration of the Western Balkans” by the Deputy Registrar and Head of the PICU – The Hague, December 2017
- Consultation meetings with civil society by the PICU, the Defence Office Coordinator and the Head of Victims’ Participation Office – Pristina, February 2018
- Meeting of the Defence Office Coordinator and the Head of the Victims’ Participation Office with members of the Kosovo Bar Association – Pristina, February 2018

Supported by a generous grant provided by the Swiss Government, over the next two years, the Kosovo Specialist Chambers will substantially strengthen activities and presence in Kosovo. The contribution will ensure the continuation of the work with national and regional stakeholders and facilitate dialogue with Kosovo citizens and civil society.



Registrar and Head of the PICU at the Transparency Justice Forum in Pristina – April 2017

Registrar at the Transparency Justice Forum

The Registrar and the Head of the Public Information and Communication Unit held an information session with members of Kosovo civil society and media on 27 April 2017.

As part of the ongoing efforts of the Organisation for Security and Co-Operation in Europe (OSCE) and the EU Rule of Law Mission in Kosovo (EULEX) to enhance transparency of the Kosovo judiciary, this event enabled participants to become further acquainted with the functioning, mandate and intended work of the KSC. A Q&A session regarding detailed aspects of the KSC's operations followed.



Deputy Registrar, Head of Victims' Participation Office and Defence Office Coordinator speaking to civil society in Pristina - October 2017

KSC consultation with Kosovo civil society organisations

On 11 October 2017, the Deputy Registrar, the Defence Office Coordinator, the Head of the Victims' Participation Office and the Head of the Public Information and Communication Unit met with various civil society organisations at the Documentation Centre in Pristina (managed by the Humanitarian Law Center). The meeting provided an important forum for continued dialogue between the KSC and different communities and stakeholders in Kosovo.

Since April 2016, the KSC have regularly held consultative meetings with nongovernmental organisations and other members of Kosovo's civil society.



President, Registrar and Specialist Prosecutor at the ICC Moot Court Competition - May 2017

President, Registrar and Specialist Prosecutor at Grotius Centre for International Legal Studies

On 17 May 2017, the President, the Registrar and the Specialist Prosecutor addressed the audience of about 300 students and legal practitioners at the Grotius Centre for International Legal Studies of Leiden School of Law. The event took place on the margins of the ICC Moot Court, held in The Hague. The event was moderated by Carsten Stahn, Professor of International Criminal Law at the Leiden Law School. The presentations by the President, the Registrar and the Specialist Prosecutor were followed by a Q&A session.

The President's first trip to Kosovo

Between 22 and 25 November 2017, the President undertook her first visit to Kosovo in her official capacity, joined by the Registrar. The two principals met Abelard Tahiri, the Kosovo Minister of Justice, Hilmi Jashari, the Ombudsperson of Kosovo, and Osman Havoli, the President of the Kosovo Bar Association.

They also held bilateral meetings with representatives of the United Nations Interim Administration Mission in Kosovo (UNMIK), the Organisation for Security and Co-Operation in Europe (OSCE) and the EU Rule of Law Mission in Kosovo (EULEX). Nataliya Apostolova, the EU Special Representative to Kosovo, significantly supported the visit by hosting, organising and moderating meetings with the representatives of EU Member States and Third Contributing States.

Central to this first visit to Kosovo was an information session for the civil society, which was covered live by media throughout Kosovo and was well attended and well received. The President and the Registrar made presentations on the structure and work of the Specialist Chambers and engaged in active dialogue with participants.

After highlighting some of the main priorities of the Kosovo Specialist Chambers, such as ensuring a robust witness protection system, meaningful participation of victims and effective representation of the accused, the President reassured the audience of the commitment of all Judges to provide models of best judicial practices and to establish the KSC as a solid, secure, reliable and just institution.

During her trip, the President repeatedly emphasised a number of fundamental messages to the population of Kosovo about: the difference between the Specialist Chambers and the Specialist Prosecutor's Office; the concept of individual criminal responsibility enshrined in the Law, as opposed to the alleged targeting of groups or organisations; and the obligation and determination of the Kosovo Specialist Chambers to conduct fair, independent, impartial, safe and expeditious proceedings.

Reaching out to students and practitioners

The KSC Visitors' Program developed in 2016 has provided students and other groups with the opportunity to visit the premises of the Kosovo Specialist Chambers. During such visits, representatives of the Kosovo Specialist Chambers as well as of the Specialist Prosecutors' Office speak

President and Registrar at the civil society event in Pristina - November 2017



about their work. On behalf of Chambers, the President, her Chef de Cabinet and legal officers regularly speak to students and other groups visiting the premises. On behalf of the Registry, the Registrar, the Deputy Registrar, the Legal Counsel or other staff address the guests.

During 2016 and 2017, approximately 400 students from fourteen different universities in Europe and the United States participated in the program. Visitors have the opportunity to ask questions and discuss relevant topics.

The President, the Registrar and other representatives of the Kosovo Specialist Chambers have also provided keynote lectures and presentations on the KSC at universities, thereby disseminating information on the work and mandate of the institution to the younger generation of lawyers.



KSC Visitors' Program (right)
President, Registrar, and Specialist Prosecutor lecturing at The Hague Campus of Leiden University on the occasion of the ICC Moot Court Competition - May 2017 (bottom)



Contact with the media

The President has actively engaged with Kosovo and international media. In May 2017, she gave her first press conference in The Hague and informed attending journalists of the milestones achieved. The President has also been interviewed by several media outlets.

Excerpts from Interviews of President Trendafilova

How is this court different and how will you, as a judge, make sure that it fulfils its mandate?

The Specialist Chambers are created by a constitutional amendment that was enacted by the Kosovo parliament with a two-thirds majority. [...]

Only international judges may adjudicate at the Specialist Chambers. This choice shows that the Kosovo parliament had the utmost regard for the independence and integrity



President Ekaterina Trendafilova speaking to Reuters journalists.

of this institution, future prosecutions before it and the safety of witnesses and victims (BIRN, 2017).

How do you respond to the criticism that the Specialist Chambers are biased because they only deal with one ethnic group, Kosovo Albanians?

The Specialist Chambers will not prosecute any ethnic group. They will not prosecute any organisation. The Specialist Chambers will only prosecute and hold accountable individual persons. The Law (on the Specialist Chambers and Specialist Prosecutor's Office) clearly provides for individual criminal responsibility, which means that persons may only be held accountable for crimes they committed as individuals, not as representatives of an ethnic group, of communities, or any other groups (BIRN, 2017).

How will you ensure court efficiency?

The Rules of Procedure and Evidence were adopted by the Specialist Chambers Judges with fairness and expeditiousness, impartiality and security in mind.

Tight deadlines have been set both for the conduct of various phases of proceedings and for the discharge of official duties, including rendering of decisions and judgments. [...] Moreover, the Rules impose an obligation on the Judges and the Parties to manage and organize efficiently the conduct of the proceedings. The Judges, myself including, are thus very keen on making the proceedings of the Specialist Chambers efficient and expeditious. That being said, efficiency and expeditiousness cannot go to the detriment of the fundamental rights of anyone having standing in the proceedings – suspects, accused, victims, and witnesses (Kosova Sot, 2017).

Does any person in Kosovo, such as politicians, have immunity from the court?

There is no immunity for anyone regardless of their position, and amnesty also cannot apply (Reuters, 2017).

Registry

The Registry, under the direction of the Registrar, performs a diverse range of administrative and judicial support functions. According to Article 34 of the Law, the Registry is responsible for the servicing of the Kosovo Specialist Chambers and all necessary and affiliated functions. This includes the provision of administrative support to the work of Chambers and the SPO in the field of budget, finance, procurement, human resources and security. The judicial support functions include

providing support and protection for witnesses, administration of the legal aid and victim participation systems, translation and interpretation services and court management. The Registrar is also responsible for managing the KSC's detention facilities and various external diplomatic functions, including negotiating cooperation agreements with States.

The Registrar, Dr Fidelma Donlon, was appointed in April 2016. Dr Donlon was previously Head of the Court Planning Team. Prior to the official establishment of the Registry in April 2016, the Court Planning Team had done considerable work, which paved the way for a start to the Registry's operations in the Host State and for the Specialist Chambers' progressive capacity building. The Deputy Registrar, Dr Guido Acquaviva, assists the Registrar in her functions.

From the outset of operations, the Registrar set and managed the strategic plan and timelines to build the logistical, administrative, legal and judicial capabilities of the KSC. Acting on behalf of the Registry and in charge of the administration of the relocated judicial proceedings, the Registrar signs the grant agreement(s) regulating the financing of the KSC and the SPO with the European Commission. She ensures that funds allocated by EU Member States and Third Contributing States are managed economically and efficiently to support the effective operations of the KSC and SPO.

In accordance with the Host State Agreement, the Registrar represents the relocated institutions (the KSC and SPO) in the Netherlands. In this capacity, she continuously engages with the Dutch Ministry of Foreign Affairs, the Ministry of



Registrar Dr Fidelma Donlon

Justice and Security, the Prison Service and the City of The Hague. The Registrar also maintains diplomatic dialogue with representatives of EU Member States, Third Contributing States and other members of the diplomatic community in The Hague to manage matters related to cooperation agreements with the Registry. She also engages with the EU Rule of Law Mission in Kosovo (EULEX), the EU Special Representative in Kosovo, members of the diplomatic community in Kosovo

as well as the Kosovo Ministry of Justice. The Registrar regularly visits Kosovo.

The Registry comprises the Immediate Office of the Registrar, the Public Information and Communication Unit, the Audit Office and two divisions – the Judicial Services Division and the Division of Administration. The independent Office of the Ombudsperson also sits within the Registry for administrative purposes.

1 Immediate Office of the Registrar (IOR)



The IOR supports the work of the Registrar and Deputy Registrar, including the provision of legal advice on the Kosovo Specialist Chambers' mandate and administrative procedures, as well as communicating with the Host State, the European External Action Service, diplomatic missions and other organisations. The IOR is also responsible for regulating and overseeing the information governance regulations of the Specialist Chambers.

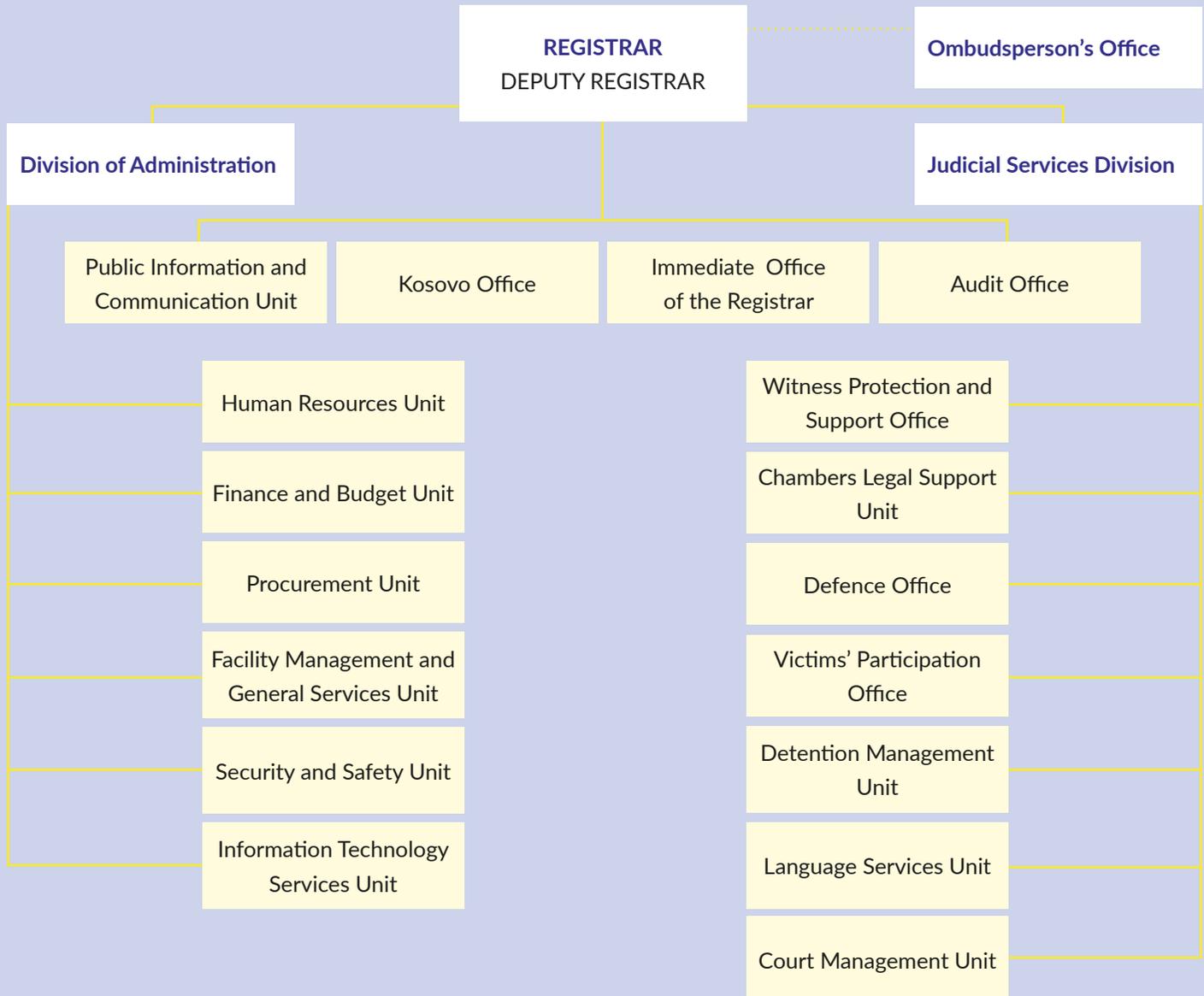
Since the establishment of the Registry, a significant number of **rules and regulations** required for the effective administration and support of proceedings were adopted as a result of the work of the IOR.

The **Legal Counsel** within the IOR provides independent legal advice on the application of the Host State Agreement, the Staff Rules, the Code of Conduct for Staff Members, privileges

and immunities, cooperation with States, the Registry's administrative governance regulations and other topics.

The IOR also supports the Registrar's management of **external relations and cooperation** with representatives of EU Member States, Third Contributing States and other members of the diplomatic community in Kosovo and in The Hague. The IOR also assists the Registrar in managing relations with the European External Action Service and the European Commission on administrative matters related to the management of the Grant Agreement.

STRUCTURE OF THE REGISTRY



The Registrar has adopted:

- The **Staff Rules**;
- The **Code of Conduct** for staff members (Annex to the Staff Rules);
- The **Directive on Counsel**;
- **25** Administrative Directives, **14** Operational Instructions and **7** Information Circulars in the areas of human resources management, security, information security, assets, information technology, finance and procurement.

In line with the Registry's prioritisation of secure information management, the **Information Governance Unit** (InfoGov) within the IOR advises on the management of digital, physical and audio-visual records and archives, as well as compliance with data protection standards. InfoGov has generated policies, guidelines and procedures for organisation-wide recordkeeping that ensure the KSC are meeting information security requirements. InfoGov monitors the application of the policies, guidelines and procedures across all units.

InfoGov has also developed a web-based intranet and set-up the Kosovo Specialist Chambers library. Library services include interlibrary loans supplied by the Peace Palace Library in The Hague.

Information Security

- InfoGov coordinates all aspects of the information security programme to preserve the confidentiality, integrity and availability of all records.
- Access to data is strictly on a 'need-to-know' basis.
- All records are classified and protected to a degree that corresponds to their levels of sensitivity and likely prejudice arising from their unauthorised disclosure.

2 Public Information and Communication Unit (PICU)

The Public Information and Communication Unit manages external communications and the outreach programme of the Kosovo Specialist Chambers, in accordance with the KSC communication strategy. The aim is to increase knowledge and awareness about the work and mandate of the KSC and ensure an ongoing dialogue with local actors in Kosovo and the region.

The PICU strengthens direct communication with Kosovo society through an information network involving civil society, youth, legal professionals, media and others. Through active engagement with communities in Kosovo and internationally,



the PICU aims to counteract some of the communication challenges associated with managing relocated proceedings.

To achieve the widest possible reach, the PICU coordinates KSC media relations, answers media queries on a daily basis, and organises press conferences, background briefs and opinion polls.

The PICU provides all relevant information about KSC's mandate and proceedings through a tri-lingual website, factsheets and the KSC

YouTube channel. Furthermore, it manages the Hague-based Visitors Programme for students and interested audiences. During the reporting period, the PICU specifically focused on maximising outreach in Kosovo with affected communities, civil society and media and facilitated the media relations and outreach events held by the President and Registrar.



Head of the PICU speaking at the Kosovo Women's Network meeting in Pristina - 2018

3 Audit Office



The Internal Auditor contributes to institutional governance and accountability by conducting internal audits and reporting to the Registrar. The Auditor adheres to international professional standards on internal auditing and the EU Financial Regulations and advises on measures to improve

governance. Audits of finance, procurement and human resources management are conducted on a regular basis in the Registry and the SPO.

4 Office of the Ombudsperson



The Office of the Ombudsperson is an important feature of the Kosovo Specialist Chambers. It has the mandate independently to monitor, defend and protect the fundamental human rights and freedoms of persons interacting with the KSC and SPO. In short, the function of the Ombudsperson is to evaluate the KSC and SPO's compliance with international human rights standards.

As part of its function, the Office of the Ombudsperson is required to establish a robust complaints procedure where individuals may assert violations of their fundamental constitutional rights by the KSC or SPO. Once a complaint is received, the Ombudsperson will evaluate the complaint and, where appropriate, conduct inquiries into any alleged violations and subsequently issue a final report with recommendations

to the President or the Specialist Prosecutor. As part of its monitoring function, the Ombudsperson may also provide ongoing advice to the KSC and SPO with the aim of ensuring strict compliance with the highest human rights standards. The Ombudsperson may not intervene in legal proceedings before the Specialist Chambers except in instances of unreasonable delays. It is important to emphasise that the Ombudsperson will at all times remain independent and impartial.

In 2017, Legal Counsel for the Office of the Ombudsperson began developing the capacity to evaluate complaints, monitor compliance and conduct outreach, in preparation for the appointment of the Ombudsperson in 2018.

5 Judicial Services Division

The Judicial Services Division is comprised of the Court Management Unit, the Language Services Unit, the Defence Office, the Victims' Participation Office, the Witness Protection and Support Office and the Detention Management Unit.

5.1 Court Management Unit (CMU)

On behalf of the Registrar, the CMU is the custodian of all judicial records, responsible for all filings and for maintaining the integrity of physical evidence. The CMU services court hearings, ensuring that the courtroom has the necessary equipment and staffing, manages and stores all case records, and provides advice to both the Registrar and Chambers on procedural matters. The CMU requests translation services for proceedings, and receives and distributes all documents and evidence to the parties and participants.

Legal Workflow

The KSC have built tools electronically to receive, maintain and distribute case records. The CMU procured an electronic court management system, which it configured to the needs of the KSC, while being guided by best practices developed in the records management of complex trials. This Legal Workflow system is capable of servicing all aspects of KSC proceedings and allows Judges, parties and other participants to view, analyse, disclose and present all evidence within one integrated system.

The CMU procured an electronic court management system (Legal Workflow) for receiving and distributing filings, which it then configured and successfully launched. Interim instructions on filings were also drafted and adopted.

All courtroom proceedings are video- and audio-recorded by the CMU. Two hearings before the Specialist Chamber of the Constitutional Court (SCCC) took place in 2017, with transcripts and audio-visual records prepared in the three official languages of the KSC: Albanian, Serbian and English.

5.2 Language Services Unit (LSU)

Language services in the three official languages of the KSC are provided by the LSU. The Unit's services enforce the KSC's firm commitment to public relations and outreach activities in the region, as well as the principles of transparency and accessibility.

The LSU comprises among others translators, revisers, court interpreters, language and terminology assistants. Together, they provide language services for meetings and court hearings in full compliance with the highest international standards. The LSU has also provided expert input on the highly specific technical requirements for courtroom interpretation facilities, formulated important internal policies and guidelines, and procured technology that will automate the process of translation requests and delivery.

The LSU has produced thousands of pages of translation, including translating legal documents such as the Rules of Procedure and Evidence, the Rules of Procedure and the judgments of the SCCC, other filings as well as the Directive on Counsel and support work for the SPO. Finally, an important part of the LSU's work is producing translations for the KSC website, ensuring it is user-friendly in all three official languages.

5.3 Defence Office (DO)

A robust defence is essential to a fair trial. The Defence Office ensures the rights of suspects and accused by establishing and maintaining a list of highly qualified, experienced and competent defence counsel who meet the standards of integrity and honesty required for fair proceedings. In addition, the DO administers a legal aid system to ensure highly qualified representation of indigent or partially indigent suspects and accused before the KSC and provides administrative support to all defence counsel.

Significantly, as part of the Registry, the Defence Office performs a neutral function in the interests of justice and is not involved in the factual litigation of any cases. The mandate of the Defence Office is to ensure fairness for all suspects and accused before the KSC by guaranteeing that the highest international human rights standards are met as the DO carries out its functions.

During the reporting period, in close coordination with the Victims' Participation Office and Legal Counsel in the IOR, the Defence Office worked on drafting the **Directive on Counsel**, which the Registrar adopted on 6 November 2017

upon approval of the President after consultation with the Judges.

Upon the adoption of the Directive, the KSC issued an open-ended call for applications. Within the first two months of the call, more than 70 Counsel applied for admission to the List, and the Defence Office continues to receive and evaluate new applications. In addition, the DO has conducted outreach events in Kosovo to encourage applications by eligible counsel. The Defence Office Coordinator met with representatives from the Kosovo Bar Association, representatives of the Association of Defence Counsel of the International Criminal Tribunals (ADC-ICT), as well as attendees of the 'International Meeting of the Defence' in Nuremberg, Germany.

Directive on Counsel

The Directive regulates the eligibility and application procedure for inclusion in a List of Counsel, ongoing obligations of defence counsel admitted to the List, as well as the modalities for withdrawal and removal from the List.

The Directive applies to both privately retained and legal aid counsel. Only those counsel who are eligible to be admitted to the List can represent suspects and accused before the Kosovo Specialist Chambers.

The Defence Office has also focused its efforts on establishing a legal aid system that meets fair trial standards and the requirements of sound financial management. Together with the Victims' Participation Office and the IOR, the DO has been working on a Code of Professional Conduct for Counsel.

5.4 Victims' Participation Office (VPO)

The Law provides for victims' participation in criminal proceedings before the Kosovo Specialist Chambers. The VPO is responsible for administering the system of participation and providing assistance to victims participating in proceedings. The early establishment and work of the VPO is designed to ensure the effective participation of victims in future trials. Victims will participate in groups designated by a Panel in each particular case and exercise their rights through assigned Victims' Counsel. The VPO manages the system of victims' participation, including the List of Victims' Counsel entitled to appear before the KSC and payment for legal representation.

The VPO has worked on the development of internal governance regulations in close cooperation with other Registry units.

It has also prepared guidance and outreach materials for potential victims. Outreach to affected communities in Kosovo has been a primary focus for the VPO, but it has also focused on activities involving the legal community. The aim of these meetings is to raise awareness and explain the application process and its requirements.



Head of VPO speaking to civil society in Mitrovica - 2018

Who is a victim in proceedings before the KSC?

“A natural person who has suffered physical, material, or mental harm as a direct result of a crime alleged in an indictment confirmed by the Pre-Trial Judge”. (*Rule 2 of the Rules of Procedure and Evidence*)

Once an indictment is confirmed, a victim may apply and receive the procedural status of victim participating in proceedings before the Kosovo Specialist Chambers.

Victims' Counsel

Victims' Counsel must demonstrate five years of relevant experience in criminal proceedings involving victims, including vulnerable victims, within the 7 to 10 years of relevant experience in criminal proceedings required for all counsel. This will guarantee that victims are represented by qualified counsel who will be in a position to tackle the challenges of group representation.

5.5 Witness Protection and Support Office (WPSO)

On behalf of the Registrar, the WPSO is responsible for ensuring the safety and wellbeing of witnesses, victims participating in the proceedings and, where appropriate, others at risk on account of testimony given by witnesses.

WPSO ensures the safety and wellbeing of witnesses, victims participating in the proceedings and other persons deemed to be at risk on account of testimony given by witnesses.

In relation to any person falling under its purview, the WPSO will employ a comprehensive assessment process to ensure that any potential risks are managed and that the measures recommended are the best available.

In its implementation of protection programs, the WPSO will manage support and security arrangements for all witnesses and others, including measures ordered by KSC Panels. The WPSO may also recommend the adoption of in-court protective measures.

Additionally, the WPSO will be responsible for assessing if witnesses need medical and psychological support and/or counselling before, during and after proceedings. The WPSO will offer individually-tailored support and assistance to wit-

nesses who are traumatised, vulnerable, or may have particular family, gender, cultural, medical, or special needs, including witnesses who may have been victims of sexual and gender-based violence.

Maximising the support afforded to witnesses, the WPSO is prepared to manage all the logistics and operational arrangements for witnesses and others to attend and testify. For example, it has developed the in-house capacity to prepare travel and accommodation arrangements, witness escorts and arrangements for witness support persons.

5.6 Detention Management Unit (DMU)

The DMU is responsible for the management and administration of the KSC detention facilities. Its mandate is to ensure that those detained under Kosovo Specialist Chambers' authority are held in accordance with international standards, good practices in detention and the applicable law. Additionally, the role of the DMU is to advise the Registrar on matters pertaining to detention, to respond to requests for information with speed and accuracy, and to maintain the ability of those in custody to participate in the proceedings.

The management team of the DMU, composed of KSC staff members, will select prison staff from the Dutch Prison Services for the operation of the Detention Unit, which will hold suspects, accused and others detained under the authority of the KSC. The DMU will work closely with the Dutch Prison Services to ensure that those held in the Detention Unit are held in accordance with agreed protocols, and DMU staff will pro-

vide management, administration and language translation facilities to the Detention Unit.

During the reporting period, the DMU, together with the IOR, focused on drafting the Rules of Detention and other internal guidelines in compliance with both the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and the European

Prison Rules. Notably, the Rules of Procedure and Evidence require that detention facilities be inspected and monitored by the International Committee of the Red Cross and also allow the Ombudsperson to inspect the detention facilities at any time and without notice.

6 Division of Administration

The Division of Administration provides all administrative and technical support services. The Division comprises six units: Human Resources, Information Technology Services, Facilities Management and General Services, Security and Safety, Finance and Budget as well as Procurement. The Head of Division reports to the Registrar and supervises the day-to-day operations of the units. Throughout the reporting period, the Division tackled the challenges usually involved in building an institution and is delivering all support services to ensure full operational capacity.

6.1 Human Resources Unit (HRU)

The HRU provides human resources support, advice and services to all personnel of the KSC and the SPO. The unit manages the recruitment process, the administration of salaries and benefits, staff welfare and training, as well as the performance evaluation process. A central task of the HRU is the promotion of a supportive work environment. This includes raising awareness

and training on stress management and the provision of counselling services, as required.

Following the adoption of the Staff Rules and the Code of Conduct by the Registrar, in coordination with the IOR, the HRU developed and implemented a wide range of administrative directives, including procedures on staff selection, performance appraisal, internships and leave management that are required for the effective management of the KSC. As a principle enshrined in all regulations, staff selection procedures are fair, transparent and non-discriminatory whilst maintaining confidentiality and personal data protection.

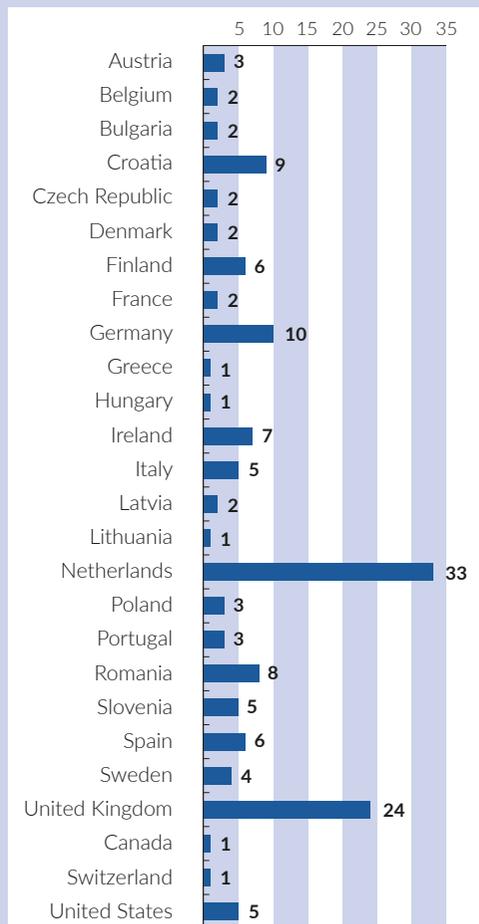
The recruitment and selection of new staff members for the KSC and SPO has been a priority during the reporting period. Five Calls for Contributions (CfC's) advertising vacancies in both institutions were publicised. The effective management of CfC's resulted in the growth of both institutions and an increase in staff from 53 in 2016 to 148 in 2017. Additionally, through

two CfC's dedicated to internships, the HRU has also facilitated the placement of 27 interns. Staff are recruited to meet operational needs, taking into account the need for gender balance and regional distribution.

The secondment of qualified personnel from EU Member States as well as from Third Contributing States is actively encouraged. During the reporting period, the number of seconded staff ranged from 9 to 14 and on 31 December 2017

totalled 11 seconded staff members from four different EU Member States (Germany, Ireland, the Netherlands and the United Kingdom) and two Third Contributing States (Switzerland and the USA). Four additional secondments are expected in the first half of 2018 from three additional EU Member States (Bulgaria, Hungary and Malta). The KSC and SPO remain fully engaged at the diplomatic level to encourage States to second qualified personnel for vacancies advertised.

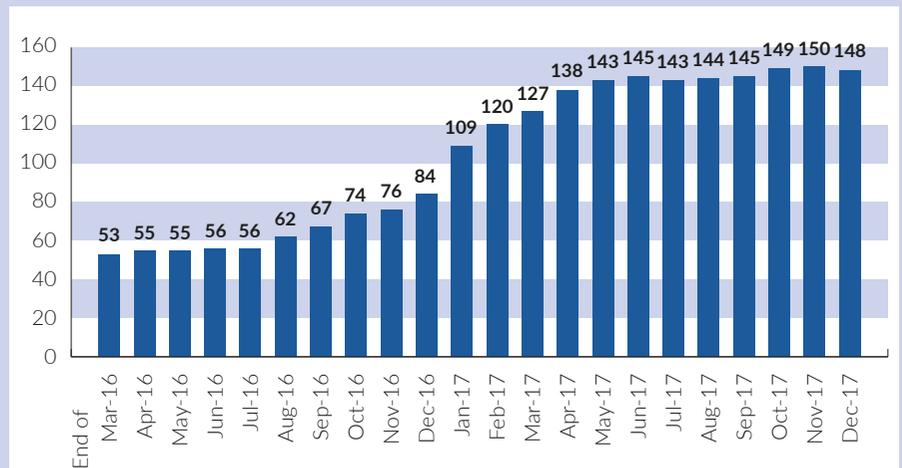
National Balance of Staff of the KSC and SPO



Staff Gender Balance of the KSC and SPO



Total Staff Members of the KSC and SPO



6.2 Information Technology Services Unit (ITSU)

The ITSU provides secure information technology (IT) and audio/visual services to support the work of the Kosovo Specialist Chambers. The unit has built the core IT infrastructure and software systems of the KSC from the ground up.

The major objectives achieved include the launch of the Kosovo Specialist Chambers website and intranet, as well as the installation of the “VBlock” system, on which all KSC applications run. This system removed the need for a large number of servers and network devices to be individually configured, maintained and monitored.

ITSU have rolled out a secure and advanced IT environment that is both scalable and resilient to support all processes of the Kosovo Specialist Chambers, including its judicial proceedings.

Robust network security tools have been fully integrated and tested, and the ITSU also rolled out applications for translations, transcriptions and remote access solutions to facilitate secure, remote work by Judges and other personnel. In coordination with the CMU, Legal Workflow, the KSC’s electronic court management tool, has also been implemented.

The ITSU, in coordination with the Host State, has participated in the design and implementation of the future IT infrastructure and the audio-visual capabilities of the KSC courtroom. The temporary

premises have been supplied with audio-visual equipment, which enabled the successful management of the first inauguration of the Judges, the first plenary sessions, VIP visits and press events.

6.3 Facilities Management and General Services Unit (FMGSU)

The FMGSU enabled the transition of staff from Brussels to the temporary premises and delivered the current working environment for staff members.

The FMGSU manages building maintenance, office space allocation, mail and pouch services, cleaning and waste management, travel and transportation and logistics. It also manages protocol for diplomatic briefings and VIP visits as well as the coordination of events.

The unit coordinates across the KSC and SPO to ensure that all functional specifications for the new premises are provided to the Host State so that safe and secure proceedings will take place in the new premises.

FMGSU has established functional office space for the KSC and SPO, facilitating the growth of both institutions. It is responsible for managing the temporary premises and assisting all new staff with protocol matters in the Host State.

6.4 Security and Safety Unit (SSU)

The SSU provides a broad spectrum of security services for all operations and activities of the Kosovo Specialist Chambers.

SSU has created a foundation of security awareness throughout the KSC to reduce vulnerabilities. It has adopted the European External Action Service interactive security training programs (BASE and SAFE) to enhance staff awareness and optimise individual decision making to reduce personal, operational and reputational risk.

The primary objective of the SSU has been to design, deliver and sustain an effective security culture among all staff and to mitigate security risks to staff, operations and assets.

The unit works closely with the authorities of the Host State and continually monitors the KSC's threat profile to ensure an appropriate security response. The SSU has set up an effective framework to manage risks associated with missions and other operations related to judicial proceedings.

6.5 Finance and Budget Unit (FBU)

The FBU supports the Registrar in the financial management and implementation of the Grant Agreement according to EU and internal financial rules and regulations. Under the direction of the Registrar, the FBU is responsible for coordinating the planning and preparation of the annual budget. It is also responsible for making payments and recording expenditures, strengthening internal financial controls and providing on-site assistance and training.

EU Member States approved a budget of €29,100,000 for the period from 15 June 2016 to 14 June 2017 in Council Decision (CFSP) 2016/947; and a budget of €41,314,000 for the period from 15 June 2017 to 14 June 2018 in Council Decision (CFSP) 2017/973.

In addition to the funds granted by the EU, the KSC have received funds from the Norwegian government totalling NOK 80,000,000 to support the relocation of proceedings to the new premises in The Hague. In December 2017, the Swiss government confirmed funding of €181,200 for KSC outreach activities in 2018 and 2019.

FBU assists the Registrar by ensuring the proper use and sound financial management of funds allocated to the KSC. The financial accounts are regularly subject to expenditure verifications by an external audit firm. Since establishment, expenditure verifications have not identified any findings.

The FBU continues to support a lean and self-standing administration by putting into place an array of systems, rules and procedures that ensure the sound financial management of funds. Independent expenditure verifications of the financial accounts are performed regularly by an external audit firm in accordance with the Grant Agreement, and no factual findings have been identified. At the end of each reporting period, the closed accounts and expenditure verification reports are submitted to the Service for Foreign Policy Instrument (FPI) of the European Commission.

6.6 Procurement Unit (PU)

The Procurement Unit is responsible for all procurement and contracting of supplies, services and works. Contracts are awarded based on principles of transparency, proportionality, equal treatment and non-discrimination.

In addition to managing the procurement needs for the KSC's start-up and current operations, the Procurement Unit ensures KSC compliance with EU regulations (EU PRAG) for its procurement actions. In close collaboration with the IOR's Legal Counsel and the European Commission, the PU has also developed a customised procedure for acquisition of counsel suitable to the Kosovo Specialist Chambers' specific judicial requirements. Additionally, the Procurement Unit performs contract administration and monitoring, as well as market investigations.

During the reporting period, 173 procurement procedures have been initiated, and 90 different service and supply contracts have been concluded, ranging in value from € 2,500 to € 1 million.

**SPECIALIST
PROSECUTOR'S
OFFICE**



Foreword

In 2011, with the unanimous support of the Political and Security Committee of the European Council and the backing of the United States, the Special Investigative Task Force (SITF) was established in Brussels as a unit within the European Union Mission in Kosovo to investigate allegations made in the Parliamentary Assembly of the Council of Europe's Report, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*, of 7 January 2011.

Learning from the experiences of other prosecutorial and judicial authorities operating in Kosovo, the SITF put in place practices to safeguard the confidentiality of its data and operations, as well as the privacy of persons involved in the investigation. Moreover, it placed great emphasis on witness security and preserving the integrity of its investigations. And these practices have been carried through to the Specialist Prosecutor's Office (SPO). Moving forward, we shall be explaining as much as we can – in line with our legal, professional and ethical obligations – about what we are doing and how we are doing it.

For justice to be done, it must also be seen to be done. In addition to collecting evidence, engaging victims and victims groups, and interviewing witnesses, the SITF, from its inception, urged the EU to support the creation of a court outside Kosovo to hold secure, independent, impartial, fair and efficient criminal proceedings to address issues resulting from its investigations. This was necessary to give confidence to victims, witnesses and those who may be put in peril by cooper-

ating with the investigation, as well as to ensure that the institution would be free from influence or interference, independent and credible.

In this way, we firmly believed that we would then be in a position to fulfil our obligations under the European Convention on Human Rights: to adequately safeguard those who are victims, witnesses, and other persons at risk on account of information provided to or cooperation with the SITF. Throughout, this has been of paramount importance to the SITF and the SPO. Rule 30 of the Rules of Procedure and Evidence now makes this an obligation of the Specialist Prosecutor.

The other cornerstone of success remains the full engagement of states and organisations, and individuals who assist in the investigation and, when required, testify in any future trial proceedings. Continued assistance from authorities in Belgrade and Pristina, as well as from the European Union and the wider international community is essential to the investigation: from releasing contemporaneous documents, granting access to former officials, conducting investigations outside Kosovo and providing options for witness security.

Since its establishment on 1 September 2016, the SPO has been given the means, legal framework and administrative and logistical support to enable it to operate. The task of the Specialist Prosecutor now is to diligently, with integrity and dignity, carry out an effective and expeditious investigation, and bring any indictment to trial promptly.

The period under investigation encompasses a period of intensive involvement of the international community in Kosovo covering efforts both to end the conflict, that caused enormous suffering among all communities, and to stabilise the post-conflict situation. The mandate of the SPO is limited to those criminal offences in relation to allegations of grave trans-boundary and international crimes committed during and in the aftermath of the conflict in Kosovo that are the responsibility of individuals and not of the groups or forces they may have belonged to or represented.

The coming year will be extremely important for the SPO, as our investigation moves forward. Since the SITF began its work in 2011 with two binders of material, we have acquired some 70,000 documents, comprising nearly 700,000 pages. Our work in recent months has been focused on evaluating this evidence to make sure we are ready for any eventual judicial proceedings, in accordance with the Rules of Procedure and Evidence, and, together with the results of ongoing investigations, to put the Specialist Prosecutor in a position to make the decision whether to indict or not. The decision as to whether and whom to charge, and what for, is in the Specialist Prosecutor's discretion, which will be exercised with extreme care and after a deliberate and thorough process. The Specialist Prosecutor will be guided by the law and facts, nothing more.

The Prosecutor will examine promptly, comprehensively and impartially the events within the mandate and pursue the investigation to uncover the truth behind them.

We are committed to achieving a legitimate outcome that is accepted both internationally and in the communities affected by the conflict and to hold accountable those individuals responsible for criminal acts within the mandate for their actions, without fear or favour.

Kwai Hong Ip
Acting Specialist Prosecutor
April 2018

Evolution of the Specialist Prosecutor's Office

The Specialist Prosecutor's Office (SPO) was established on 1 September 2016 in The Hague as an internationalised, relocated Kosovo institution, inheriting the staff and mandate of the Special Investigative Task Force (SITF). In the intervening period, the SPO has continued the investigation started by the SITF with a view to making appropriate decisions regarding charges in relation to certain crimes committed during and in the aftermath of the armed conflict in Kosovo.

The SPO draws its mandate from the Law on the Specialist Chambers and the Specialist Prosecutor's Office adopted by the Kosovo Assembly in August 2015 by which both the SPO and the Specialist Chambers were created. This legislation grants the SPO authority to investigate and prosecute crimes committed in relation to conduct identified in the Council of Europe's January 2011 Report *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*. This is commonly referred to as the "Marty Report" after Dick Marty, the former Swiss prosecutor, senator and member of the Parliamentary Assembly of the Council of Europe, who headed the investigation that prepared it.

The SPO is investigating grave trans-boundary and international crimes, that is, primarily, war crimes and crimes against humanity as defined by customary international law and set out in the Law on the Specialist Chambers and the Specialist

Council of Europe Report

In the wake of the publication of former ICTY Chief Prosecutor Carla Del Ponte's memoir, *Madame Prosecutor*, the Parliamentary Assembly of the Council of Europe appointed Swiss Senator Dick Marty to investigate the allegations contained in it. Senator Marty had earlier led a Council of Europe investigation into alleged unlawful CIA prisons in Europe, publishing two reports of his findings in June 2006 and June 2007.

Senator Marty compiled a report into the Del Ponte allegations, entitled *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*, which was endorsed by the Council of Europe in January 2011. In the report, which is commonly referred to as the "Marty Report", Marty determined that there were credible indications of many of the allegations in Del Ponte's book, including in relation to organ harvesting. The Marty Report also named as responsible Kosovo Liberation Army commanders, many of whom had subsequently risen to senior positions in Kosovo.



Senator Dick Marty (© Council of Europe)

Prosecutor's Office. The crimes that fall within the jurisdiction of the SPO are those committed or commenced in Kosovo in the three-year period between 1 January 1998 and 31 December 2000. The staff – which includes prosecutors, investigators, analysts, security professionals, witness-protection specialists and support staff – are all internationals. Since the transition to the SPO, the 35-member SITF staff has steadily increased to close to 60, including more than 20 nationalities.

The SPO has the authority, *inter alia*, to request the presence of and to question suspects, victims and witnesses, collect and examine information and evidence, and take decisions on the initiation, and the continuation or termination of criminal proceedings. It seeks to hold individuals accountable for the crimes covered by its mandate.

Assistance from authorities in Belgrade and Pristina, as well as from the European Union and the wider international community, is essential to the investigation. The SPO has sought and continues to seek assistance from any person and any institution, domestic or international, to advance the investigation and to ensure that it is done objectively, professionally, impartially, thoroughly and well. Irrespective of attempts to revoke or amend the Law on the Specialist Chambers and Specialist Prosecutor's Office, the SPO remains focused on discharging its responsibilities.

David Schwendiman, a former US Federal Prosecutor and one-time Deputy Chief Prosecutor and Head of the Special Department for War Crimes in Bosnia and Herzegovina, was appointed the first Specialist Prosecutor on 1 September

2016, when the SITF transitioned into the SPO. He had been Lead Prosecutor of the SITF from May 2015.

Mr Schwendiman travelled to both Belgrade and Pristina in November 2016. In the course of this visit, he met with the then Prime Minister of Serbia, Aleksandar Vucic, and the then Prime Minister of Kosovo, Isa Mustafa, among other officials.

The SPO has been carefully evaluating evidence gathered since the SITF began its work in 2011, including some 70,000 documents, comprising nearly 700,000 pages of material, during the past year. The Specialist Prosecutor has been working towards a prosecution decision, but will only bring charges when he is satisfied that: the evidence is admissible in the Specialist Court; that the evidence will be available to present in court when the time comes; the evidence will be sufficient to prove beyond reasonable doubt each element of each crime as to each person charged; that the case will likely survive a properly informed, intelligent and vigorous defence; and that the case will result in convictions that will withstand appeal.

First Specialist Prosecutor

David Schwendiman became Specialist Prosecutor on 1 September 2016, when the Special Investigative Task Force (SITF) transitioned into the Specialist Prosecutor's Office (SPO), having been Lead Prosecutor of the SITF from May 2015. His time as Specialist Prosecutor came to an end on 31 March 2018 when his appointment as a US Senior Foreign Service Officer expired.

Mr Schwendiman is a former US Federal Prosecutor and one-time Deputy Chief Prosecutor and Head of the Special Department for War Crimes in Bosnia and Herzegovina. Before joining the SITF, he worked in Kabul, Afghanistan, as Assistant Special Inspector General/Director of Forward Planning for the US Special Inspector General for Afghanistan Reconstruction and, before that, as US Department of Justice Attaché at the US Embassy.

Between 2006 and 2009, Mr Schwendiman served as an international prosecutor in the Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina where he investigated and prosecuted war crimes and crimes against humanity committed in Bosnia and Herzegovina during the 1992-95 Bosnian War.

Between November 2007 and the end of 2009, he was Deputy Chief Prosecutor and Head of the Special Department for War Crimes.

Mr Schwendiman represented the US Attorney General in connection with security planning, preparation and execution for three Olympic Games – Sydney 2000, Salt Lake City 2002 and Athens 2004. He also completed multiple assignments for the US Department of Justice in Bahrain, Bangladesh, Thailand and Vietnam.



David Schwendiman

Mr Schwendiman began his career as a prosecutor at the Utah Attorney General's Office in 1976. He returned to the Utah Attorney General's Office in 1984, after serving seven years as a judge advocate in the US Navy, where he attained the rank of Lieutenant Commander. He joined the US Department of Justice as an Assistant US Attorney in the District of Utah in 1986, holding various positions, including Senior Litigation Counsel, First Assistant US Attorney and Interim US Attorney in the District of Utah, before retiring from the US Department of Justice in 2014.

Mr Schwendiman graduated from the University of Utah College of Law, now the S.J. Quinney College of Law, in 1976, and has been an Adjunct Professor of Law there since 1994.

The SPO is an independent institution. Its independence is guaranteed by the Law creating it, as well as by the constitutional amendment that made the Law possible. Kosovo Law demands that the SPO act independently from the Kosovo Specialist Chambers and all other prosecutors in Kosovo. The Law instructs the Specialist Prosecutor and SPO staff not to seek or receive instructions from any government or other source.

The Parliamentary Assembly of the Council of Europe appointed Senator Marty to investigate the allegations contained in the memoir of former International Criminal Tribunal for the former Yugoslavia (ICTY) Chief Prosecutor Carla Del Ponte, *Madame Prosecutor*, which was published in April 2008.

Madam Del Ponte was not able to take her investigation at the ICTY further both because she lacked jurisdiction and the ICTY had already adopted a completion strategy.

Madam Del Ponte's investigation was, in part, inspired by the reporting of Michael Montgomery, a US journalist who uncovered evidence of atrocities in the wake NATO's 1999 air campaign. Mr Montgomery prepared a memorandum setting out details of his findings that he gave to the UN Interim Administration Mission in Kosovo, which was the administrative authority at the time.

Prosecution decision

Under Rule 86 of the Rules of Procedure and Evidence, which were promulgated by the Specialist Chambers in July 2017, the Specialist Prosecutor must be satisfied that "there is well-grounded suspicion that a suspect committed or participated in the commission of a crime within the jurisdiction of the Specialist Chambers" before an indictment can be filed.

In addition and based on best professional practice, David Schwendiman drew up further policy guidance for SPO prosecutors, determining that he would only bring charges when he was satisfied that the five following conditions were satisfied:

- that the evidence that supports the charge is admissible in the Specialist Court;
- that the evidence will be available to present in court when the time comes;
- that the evidence will be sufficient to prove beyond reasonable doubt each element of each crime as to each person charged;
- that the case will likely survive a properly informed, intelligent and vigorous defence; and
- that the case will result in convictions that will withstand appeal.



David Schwendiman

In the wake of publication of the Marty Report, the European Union formed the SITF to investigate the allegations contained in it. The SITF was based in Brussels and initially headed by former US Ambassador-at-Large for War Crimes Issues Clint Williamson. Mr Schwendiman succeeded Ambassador Williamson as the Lead Prosecutor of the SITF in May 2015.

A means for continuing the investigation and prosecuting any charges that derived from it was established by the Law on the Specialist Chambers and the Specialist Prosecutor's Office that was adopted by the Kosovo Assembly in August 2015. The legislation allows for the relocation of proceedings outside Kosovo and an international staff. An interim host-state

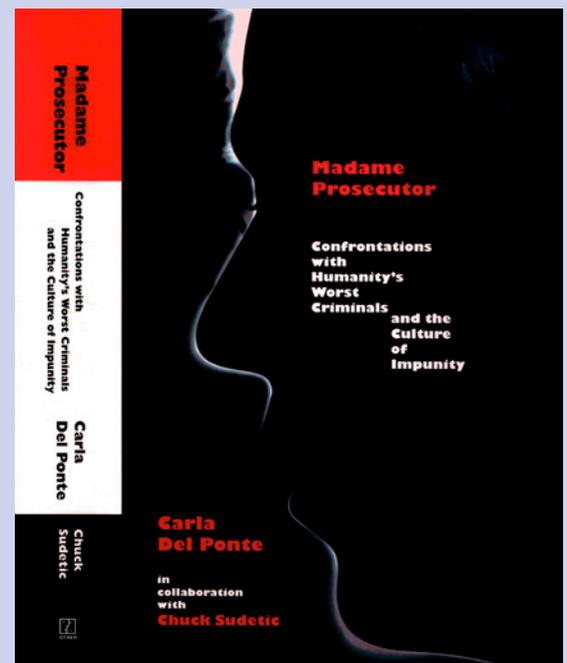
Madame Prosecutor

In her memoir, *Madame Prosecutor*, which was originally published in Italian as *La caccia: io e i criminali di guerra* (The Hunt: Me and War Criminals) in April 2008, Carla Del Ponte, the former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia, devoted chapter 11 to her investigations in relation to Kosovo. In this chapter, Madam Del Ponte wrote of serious allegations, including in relation to organ harvesting, that she believed required investigation.

Madam Del Ponte's investigation was, in part, inspired by the reporting of Michael Montgomery, a US journalist who uncovered evidence of atrocities in the wake of NATO's 1999 air campaign. Mr Montgomery prepared a memorandum setting out details of his findings that he gave to the UN Interim Administration Mission in Kosovo. Mr Montgomery also accompanied Madam Del Ponte when she visited sites of alleged crimes in Albania in 2004.

In the wake of publication of Madam Del Ponte's book, the Parliamentary Assembly of the Council

of Europe appointed Swiss Senator Dick Marty to investigate the allegations. The results of Senator Marty's investigation were published in the Parliamentary Assembly of the Council of Europe's January 2011 Report *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*, now commonly referred to as the "Marty Report".



Madame Prosecutor, Carla Del Ponte's memoir

Montgomery memorandum

Michael Montgomery, a US journalist who reported from the Balkans for *The Daily Telegraph* between 1988 and 1995, returned to Kosovo after NATO's air campaign and the withdrawal of Yugoslav forces. He went to investigate and co-produce a radio documentary, entitled *Massacre at Cuska*, which documented the killings of Albanian villagers by Serbian forces.

In the course of his investigation, Mr Montgomery uncovered allegations of atrocities that he wrote up in a memorandum and gave to the United Nations Interim Administration Mission in Kosovo (UNMIK), which was the administrative authority

at the time. In 2004, Mr Montgomery accompanied a team of investigators from UNMIK and the International Criminal Tribunal for the former Yugoslavia as they looked into the allegations.



Michael Montgomery working in Kosovo
(© Stephen Smith)

agreement was signed with the Netherlands in January 2016 whereby the Specialist Chambers and SPO would be located in The Hague.

The SPO seeks to achieve outcomes that are legitimate and are perceived as legitimate by those affected by them, in Kosovo, the region and the wider world. Only in this fashion can the stigma of the events dealt with in the Marty Report be removed as an impediment to Kosovo's full integration into the international community.

Mr Schwendiman ceased being Specialist Prosecutor on 31 March 2018 when his appointment as a US Senior Foreign Service

Officer expired. He has been succeeded by Deputy Specialist Prosecutor Kwai Hong Ip on an interim basis.

In addition to serving as Deputy Specialist Prosecutor, Mr Ip was both Deputy Lead Prosecutor of the SITF and the Acting Lead Prosecutor of the SITF between Ambassador Williamson's departure in July 2014 and Mr Schwendiman's arrival in May 2015.

Special Investigative Task Force

From September 2011 when it began its work until it was absorbed into the Specialist Prosecutor's Office (SPO) in September 2016, the Specialist Investigative Task Force (SITF) managed the criminal investigation into what was reported in the January 2011 Parliamentary Assembly of the Council of Europe Report, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*.

The SITF was based in Brussels, funded by the European Union and, between September 2011 and July 2014, headed by former US Ambassador-at-Large for War Crimes Issues, Clint Williamson. Kwai Hong Ip was Acting Lead Prosecutor of the

SITF between August 2014 and April 2015. David Schwendiman became Lead Prosecutor in May 2015 and continued to head the SITF until it transitioned into the SPO.



Ambassador Clint Williamson

In a valedictory talk as Specialist Prosecutor at the Grotius Centre of Leiden University in The Hague, Mr Schwendiman discussed the origins of the SPO, the challenges he had faced as Specialist Prosecutor and the challenges that the organisation will face in the years to come.

The European Union has set in train a process to appoint a successor to Mr Schwendiman, who may be from any EU Member State or the five Contributing States: Canada, Norway, Switzerland, Turkey and the United States.

Schwendiman's valedictory talk

In a valedictory talk as Specialist Prosecutor at the Grotius Centre of Leiden University in The Hague, David Schwendiman discussed the origins of the Specialist Prosecutor's Office (SPO), the challenges he had faced as Specialist Prosecutor and the challenges that the organisation will face in the years to come.

Mr Schwendiman's presentation, entitled "Reflections on My Time as Specialist Prosecutor and the Challenges Ahead", was held in a packed hall of Leiden University in front of an audience including legal practitioners, journalists, diplomats and students.

Mr Schwendiman spoke of the complexity of gathering documentation, locating witnesses and finding other material that may have evidentiary value, arguing that this required patience and perseverance as well as diplomacy.

The Specialist Prosecutor also addressed the issue of accountability, saying that: "The business of the prosecutor is accountability; individual accountability for crimes proven beyond a reasonable doubt by evidence acquired through

means accepted as fair and reliable not only according to international standards but also in the domestic systems involved."

And he emphasised that: "Accountability must be for individual acts not group liability for any of the conduct covered by the Special Law."

The full text of Mr Schwendiman's valedictory talk can be found on the SPO web site.



David Schwendiman at the Grotius Centre

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