



Registry Practice Direction

Code of Professional Conduct – for Counsel and Prosecutors Before the Kosovo Specialist Chambers

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CHAPTER I General Provisions

Article 1 Purpose and Scope

1. In accordance with Article 34(3) of the Law on Specialist Chambers and Specialist Prosecutor's Office, Law No. 05/L-053, ("Law") and Rule 23(3) of the Rules of Procedure and Evidence ("Rules"), this Code has been adopted by the Registrar upon approval of the President, following consultations with the Judges, the Specialist Prosecutor and the representatives of Specialist Counsel, in order to regulate professional conduct in judicial proceedings before the Specialist Chambers and any activity related thereto, as well as to ensure the integrity of the proceedings and the fair and proper administration of justice.
2. This Code shall, insofar as specified, apply to:
 - a. Counsel, and
 - b. Prosecutors.

Where Counsel is neither appointed nor assigned in accordance with the Directive on Counsel ("Directive"), the provisions of this Code shall only apply in the context of Counsel's activities related to the Specialist Chambers.
3. Notwithstanding any provision of this Code, Rule 61(1) of the Rules shall apply at all times to any person appearing before the Specialist Chambers.

Article 2 Definitions

1. Unless otherwise specified at paragraph (2), the terms employed herein shall have the meaning given to them by the Law, Rule 2 of the Rules and Section 2 of the Directive on Counsel. The singular shall include the plural, and *vice versa*.
2. In addition, the following definitions shall apply:

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| Appointed Counsel | Counsel appointed by the Registrar pursuant to Sections 12 and 13 of the Directive; |
| Appointed Official | Any official of the Specialist Chambers or Specialist Prosecutor's Office, appointed by the Appointing Authority in accordance with the Law; |
| Assigned Counsel | Counsel assigned by the Registrar pursuant to Sections 12, 14 and 17 of the Directive and in accordance with the Legal Aid Regulations; |
| Client | A suspect, an Accused, a witness, a member of a group to which Victims' Counsel is assigned pursuant to Rule 113 of the Rules, and any other person entitled to legal representation pursuant to the Law, the Rules or an order of the Panel, who has been appointed or assigned Counsel in accordance with the Directive; |

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| Complainant | A current or former Judge, staff member, intern, consultant, Party or participant in the proceedings before the Specialist Chambers, the Registrar or any other person, whose rights or interests have been substantially affected by an alleged misconduct in accordance with Article 33, and who submits a complaint in accordance with Article 37; |
| Counsel | Counsel as defined in Section 2 of the Directive, including Co - Counsel; |
| Prosecutors | The Prosecutors of the Specialist Prosecutor's Office appointed pursuant to Article 35(9) of the Law; |
| Registry | The organ of the Specialist Chambers as referred to in Article 34 of the Law; |
| Report | An account by the Commissioner of the results of an investigation of alleged misconduct, in accordance with Article 40; |
| Respondent | Counsel or Prosecutor, against whom a complaint has been submitted in accordance with Article 37; |
| Staff Rules | Specialist Chambers and Specialist Prosecutor's Office Staff Rules; |
| Team | The support staff of Appointed or Assigned Counsel referred to in Section 18 of the Directive, including Co-Counsel, legal assistants, investigators, consultants and any other person engaged by Appointed or Assigned Counsel and working under his or her oversight. |

Article 3 Interpretation and Application of the Code

1. This Code shall be interpreted and applied in a manner consistent with the Constitution, the Law and the Rules, whose provisions shall prevail in the event of any inconsistency with this Code.
2. Where a conflict arises between this Code and any other code of practice or ethics, which Counsel or Prosecutors are bound to honour, the provisions of this Code shall prevail in respect of their conduct before the Specialist Chambers. For the purpose of regulating the professional conduct of Prosecutors before the Specialist Chambers, this Code shall prevail over the 'Code of Conduct for Staff Members of the Kosovo Specialist Chambers and Specialist Prosecutor's Office, Pursuant to Staff Rule 5.'
3. Rule 9 of the Rules shall apply *mutatis mutandis* to the calculation and variation of time limits pursuant to this Code.

Article 4 Amendments

1. Upon approval of the President, the Registrar may amend this Code *proprio motu* or upon amendment proposal pursuant to Rule 23(3) of the Rules. Reasoned amendment proposals may be submitted to the Registrar by the President, in consultation with the Judges as appropriate, by the Independent Representative Body of Specialist Counsel as well as by the Specialist Prosecutor. The Registrar may also consult with the Specialist Prosecutor and the Independent Representative Body of Specialist Counsel, as appropriate, regarding any amendment proposal.
2. The Registrar shall keep a record of the amendment procedure, informing those who submitted amendment proposals of the outcome. The Registrar may, as appropriate, make public the amendment procedure or parts thereof.
3. No amendments shall be applied retroactively or in any matter under consideration to the prejudice of Counsel, their Client or Prosecutors.

Article 5 Authoritative Language and Entry into Force

1. The authoritative language of this Code is English.
2. This Code and any amendments shall enter into force on the day of publication.

CHAPTER II General Obligations of Counsel and Prosecutors

Section 1 General Provisions

Article 6 Basic Professional Standards

1. Counsel and Prosecutors shall, within their respective roles in proceedings:
 - a. exercise their duties honourably and independently;
 - b. respect professional secrecy and confidentiality;
 - c. act with diligence, dignity and integrity in relation to the performance of their duties, and with respect towards anyone with a standing in the proceedings;
 - d. act within and in compliance with the legal framework and any decision or order of a Panel;
 - e. act in a manner compatible with fair trial principles and human rights standards;
 - f. take all reasonable steps to ensure that their actions are not prejudicial to, and do not bring proceedings before the Specialist Chambers into disrepute;
 - g. maintain the highest standards of professional conduct in the preparation and presentation of a case;
 - h. take all reasonable steps to fulfil their obligations with the necessary knowledge and professional competency with respect to the law and procedure applicable before the Specialist Chambers;
 - i. take all reasonable steps to ensure their continuing professional development, including keeping informed of relevant legal and jurisprudential developments; and

- j. commit the necessary amount of time and resources to the timely and effective fulfilment of their responsibilities.
- 2. Counsel and Prosecutors shall not act in their respective roles in proceedings where they are likely to appear as a witness, except when the testimony relates to:
 - a. an uncontested issue; or
 - b. the nature and value of legal services rendered in the case.

Article 7 Discriminatory Conduct

Counsel and Prosecutors shall not engage in discriminatory conduct based on race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or other status.

Article 8 Abuse of Power, Coercion and Harassment

- 1. Counsel and Prosecutors shall not engage directly or indirectly, towards their Client, if any, members of their Team, staff members or Appointed Officials of the Specialist Chambers and Specialist Prosecutor's Office, interns, consultants, or any person who facilitates or participates in the proceedings, in:
 - a. abuse of power and authority; or
 - b. coercion, intimidation, the exercise of any other undue influence or any form of harassment.
- 2. For the purpose of this Code, 'harassment' is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person, including, *inter alia*, through words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. In addition, 'harassment' may include:
 - a. treating someone less favourably because he or she has rejected, or submitted to, any conduct under Article 7 or Article 9; and
 - b. using the rejection of or submission to any conduct under Article 7 or Article 9, as:
 - (1) a term or condition of an individual's employment;
 - (2) a basis for employment decisions affecting that person, recruitment or promotion; or
 - (3) a basis for interfering with an individual's work performance.

Article 9 Sexual Harassment

- 1. Counsel and Prosecutors shall not engage in sexual harassment directly or indirectly, in respect of their Client, if any, members of their Team, staff members or Appointed Officials of the Kosovo Specialist Chambers and Specialist Prosecutor's Office, interns, consultants, or any person who facilitates or participates in the proceedings.
- 2. For the purpose of this Code, 'sexual harassment' is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.

Section 2 Candour Towards the Specialist Chambers

Article 10 Conduct During Judicial Proceedings

Counsel and Prosecutors shall:

- a. act with due deference to Panels;
- b. act in a timely and efficient manner, including responding without undue delay to any decision or order of a Panel and responding in a timely manner to motions of other parties;
- c. not knowingly make incorrect statements of material facts or law to the Specialist Chambers; and
- d. not knowingly mislead a Panel.

They shall take all reasonable steps necessary to correct an erroneous statement of material fact or law immediately after becoming aware of its erroneous nature.

Article 11 Communication with the Judges and Panels

Unless permitted by the Rules, this Code, or authorised by the Panel seized of the matter, Counsel and Prosecutors shall not:

- a. make contact with a Panel, or a Judge of that Panel in relation to the merits of a particular case, except as appropriate within the context of the proceedings; or
- b. transmit evidence, notes or documents to a Panel or a Judge of that Panel, except through the Registry or in an emergency while at the same time transmitted to the Registry.

Article 12 Confidentiality

1. Counsel and Prosecutors shall respect, and take all necessary care to protect the confidentiality of information in accordance with the Law, the Rules, the Directive, this Code, any other applicable provisions as well as any decision or order of a Panel.
2. Counsel and Prosecutors shall not reveal any information classified as confidential or strictly confidential pursuant to Rule 82 of the Rules, including the identity of protected victims and witnesses or any confidential information that may reveal their identity and whereabouts, unless he or she has been specifically authorised to do so by a Panel.
3. The obligations specified in paragraphs (1) and (2) shall subsist beyond the termination of Counsel's duties.
4. Counsel and Prosecutors may reveal information protected in accordance with paragraphs (1) and (2) to members of their Team or those supervised by them, solely to enable the performance of their duties. Counsel and Prosecutors revealing confidential information pursuant to this paragraph shall ensure that the persons receiving such information are informed of, and bound by, the applicable confidentiality regimes.

Article 13 Communications to Social Media, Press and Public

Counsel and Prosecutors shall not knowingly:

- a. make statements on social media, to the press or the public, which are false or defamatory, or disclose confidential information, including about persons involved in the proceedings; or

- b. publish, or assist in publishing any material relating to proceedings before the Specialist Chambers:
 - i. which is false or defamatory, or discloses any confidential information, including about persons involved in proceedings;
 - ii. which prejudices or has the tendency to prejudice any proceedings; or
 - iii. which brings or has the tendency to bring proceedings into disrepute.

Section 3 Evidence and Communications During Investigations and Prosecutions

Article 14 Evidentiary Material

1. Counsel and Prosecutors shall at all times preserve the integrity of evidentiary material. If Counsel, where appropriate, and Prosecutors, whilst collecting evidence, reasonably believe that the evidence found may otherwise be destroyed or tampered with, they shall request the Panel to ensure the protection of the evidence in accordance with the Rules.
2. Counsel and Prosecutors shall diligently comply with their respective disclosure obligations in accordance with the Law and the Rules.
3. Counsel and Prosecutors shall not submit evidence for the truth of its content, which they:
 - a. know to be false; or
 - b. reasonably believe was obtained through recourse to unlawful methods, unless they notify the Panel thereof.
4. Counsel and Prosecutors shall not knowingly permit the giving of false evidence and rely upon it.
5. In respect of any violation of the obligations in this Article, any disciplinary procedure may only be commenced upon communication by the Panel pursuant to Rule 63(2) of the Rules.

Article 15 Communications with Unrepresented Persons

1. Insofar as required by and in the interests of their respective roles, Counsel and Prosecutors may communicate and meet with an unrepresented person with the necessary care, as specified below.
2. When Counsel or Prosecutors make contact with unrepresented persons, they shall:
 - a. as applicable, inform them of their right to assistance by a Counsel and, if they do not have the means to remunerate Counsel, their right to request assignment of Counsel under the Directive; and
 - b. without infringing upon Counsel-Client privilege or other rules of confidentiality, inform them of the interests Counsel or the Prosecutors, as applicable, represent and the purpose of the communication.
3. When during a communication or a meeting with an unrepresented person, Counsel and Prosecutors become aware of a possible conflict of interest, they shall immediately cease communication and contact with that person.

Article 16 Communications with Persons Represented by Counsel

Counsel and Prosecutors shall not communicate with a Counsel's Client except through or with the permission of that Counsel, upon authorisation by the Panel, or when such communication is initiated by the Client.

Article 17 Communications with Witnesses, Victims and Others

1. Counsel and Prosecutors shall not intimidate or harass witnesses or victims, or subject them to pressure in a manner that is not reasonably justified by the effective performance of Counsel or Prosecutor's responsibilities. They shall have particular consideration for victims of physical, psychological or sexual violence, minors, the elderly and disabled.
2. In respect of witnesses, victims and others who communicate with the Specialist Chambers or Specialist Prosecutor's Office, Counsel and Prosecutors shall not engage in any relationship which might affect the integrity of the Specialist Chambers or the Specialist Prosecutor's Office.

CHAPTER III Obligations of Counsel

Section 1 Representation

Article 18 Prospective Clients and Referral Fees

1. Counsel shall not contact a prospective Client, his or her relatives or acquaintances directly or indirectly in an attempt to solicit work, unless such persons have made known to Counsel a desire to be contacted.
2. Counsel shall not give false, misleading or deceptive information about his or her proposed legal services to a prospective Client or his or her relatives or acquaintances.
3. Counsel shall not demand or accept from another Counsel or from any other person a fee, commission or any other benefit for referring or recommending that Counsel to a Client. Counsel shall not pay any person a fee, commission or any other compensation as a consideration for referring a Client to a Counsel.
4. Where Counsel already represents a Client before the Specialist Chambers, he or she shall consult that Client before providing any advice or assistance to another defendant before the Specialist Chambers or engaging in discussions with a prospective Client.

Article 19 Refusal of Representation

1. Counsel may refuse to represent a prospective Client without stating reasons. He or she shall refuse representing a prospective Client when:
 - a. there is a conflict of interest pursuant to Article 28;
 - b. he or she is, by reason of this Code, prevented from representation;
 - c. he or she has had sexual relations with the prospective Client, if such sexual relations may reasonably be expected to result in violations of this Code; or
 - d. he or she is unable to deal with the matter diligently, including where he or she is unable to commit the necessary amount of time to the representation of a prospective Client.

2. Counsel shall without delay notify the prospective Client of his or her refusal to accept the representation.

Article 20 Estimation of Costs or Fees by Appointed Counsel

1. Before submission of a request for appointment pursuant to Sections 12(1)(a) and 13 of the Directive, Counsel shall explain the fees and costs possibly arising to a prospective Client by providing:
 - a. the basis for calculating the fees and any other costs; and
 - b. the payment arrangements.
2. If the prospective Client agrees with the estimation of fees, Counsel shall conclude a written representation agreement with that Client, which shall include the fees and the Client's right to receive detailed invoices of the representation fees and any other costs.
3. Appointed Counsel shall not:
 - a. make fees contingent on the outcome of the case; or
 - b. accept compensation for representing a Client from a source other than the Client, unless:
 - (1) the Client provides written consent; and
 - (2) there is no interference with Counsel's independence, professional judgement or the Counsel-Client relationship.

Article 21 Beginning of Representation

Counsel's representation of a Client before the Specialist Chambers starts with his or her appointment or assignment, including as Duty Counsel, by the Registrar in accordance with the Directive and the Legal Aid Regulations, where applicable.

Article 22 Obligations of Counsel Related to Representation

1. Counsel shall not:
 - a. commingle a Client's funds or assets with his or her own or with the funds or assets of Counsel's employer, associates or law firm;
 - b. retain funds or assets received on behalf of a Client other than funds representing the legitimate payment of a fee or costs for services; or
 - c. borrow funds or assets from a Client.
2. Counsel shall insure his or her professional civil liability to a reasonable extent taking into account the nature and extent of risks involved.
3. Counsel shall account in good faith for the time spent working on a case and maintain and preserve detailed records thereof.
4. Counsel shall perform at all times his or her representation in an efficient manner and in the best interests of the Client.
5. Counsel shall advise the Client about Counsel's ethical obligations under this Chapter at the beginning of the representation and whenever required during the representation.

Article 23 Duration and Termination of Representation

1. Counsel shall advise and represent a Client for the duration specified in the appointment or assignment, as applicable, or until the representation is otherwise terminated in accordance with Section 16 of the Directive.
2. In accordance with Section 16(2)(b) of the Directive, Counsel:
 - a. may seek termination, in particular if:
 - (1) the Client has used or attempted to use Counsel's services to perpetrate a crime or fraud, or persists in a course of action involving Counsel's services that Counsel reasonably believes is repugnant, imprudent, criminal, fraudulent or misleading; or
 - (2) the Client fails to fulfil an obligation to Counsel regarding Counsel's services and has been given reasonable warning that Counsel will seek termination unless the obligation is fulfilled; or
 - b. shall seek termination, if:
 - (1) any obligation specified in this Code requires such termination;
 - (2) his or her physical or mental condition is materially impairing his or her ability to represent his or her Client;
 - (3) his or her continued representation would necessarily involve a serious violation of his or her obligations under this Code; or
 - (4) where Counsel is appointed, his or her Client discharges him, subject to review by the Panel or a Judge assigned for that purpose in accordance with Section 16(1) of the Directive.

Section 2 Counsel-Client Relationship**Article 24 During the Representation**

1. Counsel, in the performance of his or her responsibilities, shall:
 - a. represent the Client in an efficient and effective manner with the purpose of avoiding unnecessary expense or delay of proceedings;
 - b. act in and safeguard the Client's best interests;
 - c. conclude all matters undertaken for the Client within the scope of their legal representation, subject to Article 23(1);
 - d. in his or her relations with the Client, take into account the Client's personal circumstances and specific needs, in particular when representing vulnerable persons;
 - e. keep the Client informed about the status of a matter before the Specialist Chambers in which the Client is an interested party and promptly comply with all reasonable requests for information, subject to confidentiality obligations; and
 - f. when communicating with the Client, take all reasonable steps to ensure the confidentiality of such communication.
2. Counsel shall consult with the Client regarding the objectives of the representation and the means by which those objectives are to be pursued. He or she shall provide the Client with all explanations and information reasonably needed to make informed decisions regarding his or her representation. He or she shall abide by the Client's decisions concerning the objectives of the

representation and the means by which those objectives are pursued, insofar as they are consistent with Counsel's duties under the Law, the Rules, the Directive, this Code or any decision or order of a Panel.

3. Counsel shall not advise or assist a Client to engage in conduct which Counsel knows is criminal or fraudulent, in breach of the Law, the Rules, the Directive, this Code or any decision or order of a Panel. Counsel may discuss the legal consequences of any proposed course of conduct with a Client and may advise or assist a Client in good faith to determine the validity, scope or meaning of the applicable legal provisions.
4. Notwithstanding Article 26(1), where Counsel reasonably believes that a Client's ability to make adequately considered decisions concerning representation is impaired because of mental disability, his or her status as a minor or for any other reason, Counsel shall inform the Registrar or, if applicable, any relevant Panel thereof, and shall take such steps as are necessary to ensure the continuation of the representation and the best interests of that Client.

Article 25 Upon Termination of Representation

1. The duties of Counsel continue until termination, except for those which subsist pursuant to this Code, the Directive or the Legal Aid Regulations.
2. Upon termination, Counsel shall convey as promptly as possible to the former Client and replacement Counsel any correspondence that Counsel has received or continues to receive relating to the representation, without prejudice to the duties which subsist after the end of the representation.
3. In the event of early termination of the representation pursuant to Section 16 of the Directive:
 - a. the duties of Counsel in accordance with this Code shall continue until Counsel can be replaced or for any overlapping period pursuant to Section 16(4) of the Directive;
 - b. Counsel being replaced shall take all reasonable steps to protect the Client's interests and shall prepare a document to accompany the transferred case file, describing in appropriate detail:
 - (1) a summary of the relevant legal and factual issues of the case;
 - (2) the case theory and any relevant strategic issues;
 - (3) the Client's instructions on the objectives and means by which the objectives are to be pursued, in accordance with Article 24;
 - (4) an overview of the structure of the case file; and
 - (5) ongoing work and deadlines.
4. After a five-year period and after notifying the Client, if possible, Counsel may securely destroy those files that fall under Counsel-Client privilege, and shall return other court documents to the Registrar or, if an Agreed Arrangement is in place, to the appropriate residual mechanism.

Article 26 Counsel-Client Privilege

1. Whether or not Counsel continues to represent a Client, Counsel shall preserve the confidentiality of the Client's affairs and shall not reveal to any other person, other than to Counsel's Team who need such information for the performance of their duties, information which has been entrusted to them in confidence or use such information to the Client's detriment or to their own or another person's advantage.

2. Notwithstanding paragraph (1), Counsel may reveal to a third party information which has been entrusted to him or her confidentially when:
 - a. the Client has been fully consulted and knowingly consents;
 - b. the Client has voluntarily disclosed the content of the communication to a third party, and the third party gives evidence of such disclosure;
 - c. it is essential to establish a claim on behalf of Counsel in accordance with Article 24(4) that a Client's ability to make adequately considered decisions concerning representation is impaired because of mental disability, his or her status as a minor or for any other reason;
 - d. it is essential to establish a claim or defence on behalf of Counsel in a controversy between Counsel and the Client; to establish a defence to a criminal or disciplinary charge or other claim formally instituted against Counsel based upon conduct in which the Client was involved; or to respond to allegations in any proceeding concerning Counsel's representation of the Client;
 - e. it is essential to comply with an order by a Judge or Panel; or
 - f. it is essential to prevent an act which Counsel reasonably believes:
 - (1) is, or may be, criminal within the territory in which it may occur or under the Law or the Rules; or
 - (2) may result in death or substantial bodily harm to any person unless the information is disclosed.

Article 27 Professional confidentiality

Any professional correspondence between two or more Counsel shall be confidential, subject to exceptions clearly stated at the outset or agreed thereafter.

Article 28 Conflict of Interest

1. Counsel owes a duty of loyalty to his or her Client. Counsel also has a duty to the Specialist Chambers to act with independence in the interests of justice and shall put those interests before his or her own interests or those of any other person, organisation or State.
2. Counsel shall exercise all reasonable care to ensure that no conflict of interests arises.
3. Counsel shall not advise, represent or act on behalf of a Client in a matter before the Specialist Chambers if:
 - a. he or she is advising, representing or acting on behalf of another Client in the same case before the Specialist Chambers;
 - b. Counsel or his or her firm had advised, represented or acted on behalf of a former Client and the interests of the prospective or new Client are materially adverse to the interests of the former Client;
 - c. he or she participated personally and substantially in the matter as an Appointed Official, a staff member or in any other capacity with the Specialist Chambers, the Specialist Prosecutor's Office or the SITF; or
 - d. his or her professional judgment on behalf of the Client will or may reasonably be expected to be adversely affected by Counsel's responsibility to, or interests in, a third party, or by financial, business, property or personal interests.

4. Where a potential conflict of interest arises pursuant to paragraph (3), at any stage of proceedings, Counsel shall either:
 - a. proceed pursuant to Article 23(2) and Section 16 of the Directive, or
 - b. in cases of:
 - (1) paragraph (3)(b), obtain the consent of potentially affected Clients to represent the prospective or new Client and assess whether such consent is likely to irreversibly prejudice the fair and proper administration of justice, including the Client's right to a fair trial. Counsel shall make a written record of the consent as well as his or her assessment. When in doubt as to the assessment, Counsel shall seek advice from the Independent Representative Body of Specialist Counsel. If this advice contradicts Counsel's assessment, Counsel shall notify the Panel or a Judge assigned for that purpose, who shall determine, after consultation with the parties, whether or not there is a real possibility shown that a conflict between the former, present or prospective assignment, as applicable, exists;
 - (2) paragraph (3)(c) and (d), immediately notify the Panel or a Judge assigned for that purpose, who shall determine, after consultation with the parties, whether or not there is a real possibility shown that a conflict between the former and present assignment exists.
5. In choosing members of his or her team pursuant to Section 18(1) of the Directive, Counsel shall apply paragraph (3) *mutatis mutandis*.
6. Paragraph 3(a) shall not apply to Victims' Counsel assigned to a group of victims. Victims' Counsel shall advise the Clients at the outset of the nature of the representation and any potential conflicting interests within the group. Victims' Counsel shall represent the interests of all Clients and not provide preferential treatment to any Client among those represented. Victims' Counsel may seek advice from the Head of the Victims Participation Office, if there are reasons to believe that a conflict of interest exists among his or her Clients, which relates to their participation in proceedings before the Specialist Chambers.

Article 29 Sexual Relations with Client

Counsel shall not:

- a. require or demand sexual relations with a Client; or
- b. have sexual relations with a Client, if such sexual relations may reasonably be expected to result in violations of this Code.

CHAPTER IV Obligations of Prosecutors

Article 30 General Obligations

1. In making submissions before a Panel, Prosecutors shall always speak in their capacity as representatives of the Specialist Prosecutor.
2. Prosecutors shall, in the investigation and prosecution of crimes within the jurisdiction of the Specialist Chambers:
 - a. fully respect the presumption of innocence when making public comments or speaking to the media about the merits of particular cases;

- b. fully respect and ensure the suspect's and accused's fair trial rights;
- c. work effectively and consistently with the need to conduct expeditious proceedings; and
- d. respond without undue delay to any decision or order of a Panel and respond in a timely manner to motions of other parties.

Article 31 Independence and Impartiality

In accordance with Article 24(2) and 35(1) of the Law and Article 6, Prosecutors shall ensure the independence of the Specialist Prosecutor's Office by:

- a. exercising their functions:
 - (1) free of any improper influence, inducements, threats or interference; and
 - (2) without seeking or receiving instructions from external sources;
- b. instructing staff members or consultants of the Specialist Prosecutor's Office as to the measures required to ensure such independence;
- c. refraining from any activity which is incompatible with their functions or the mandate of the Specialist Prosecutor's Office or which is likely to negatively affect confidence in its independence and integrity; and
- d. reporting to the Specialist Prosecutor without undue delay any attempt by any source to induce them to violate their obligation of independence, and taking measures to ensure that their staff members report any such attempts to them.

Article 32 Conflict of Interest

1. A Prosecutor shall not work on any matter in which he or she participated personally and substantially as Counsel or as a member of Counsel's Team, as an Appointed Official, a staff member or in any other capacity with the Specialist Chambers.
2. Where such a potential conflict of interest arises, the Prosecutor shall immediately notify the Panel or a Judge assigned for that purpose, who shall determine, after consultation with the parties, whether or not there is a real possibility shown that a conflict between the former and present assignment exists.
3. Paragraphs (1) and (2) shall apply *mutatis mutandis* to any staff member and consultant of the Specialist Prosecutor's Office not appointed as Prosecutor.

CHAPTER V Disciplinary Regime

Section 1 General Provisions

Article 33 Misconduct and Limitation Period

1. Counsel and Prosecutors commit misconduct if they knowingly:
 - a. violate or attempt to violate any substantial ethical or professional duty imposed by the Directive, this Code, or the Legal Aid Regulations;
 - b. order or knowingly assist or induce another person to do so, or do so through the acts of another person; or

- c. fail to comply with a disciplinary decision based on misconduct under this Code.
2. Disciplinary proceedings for misconduct falling under this Article may only be initiated within one (1) year of the alleged misconduct.

Article 34 Liability of Supervisory Counsel or Prosecutor

1. Counsel or Prosecutors with direct supervisory authority shall make reasonable efforts to ensure that directly supervised Co-Counsel or Prosecutors and other directly supervised persons adhere to the obligations under this Code.
2. Counsel or Prosecutors with direct supervisory authority shall be liable for the violation of this Code by directly supervised Co-Counsel or Prosecutors and other directly supervised persons, if Counsel or Prosecutors:
 - a. order or, with knowledge of the specific conduct, approve the conduct involved; or
 - b. knew or had reason to know of the conduct at a time when its consequences could have been avoided or mitigated but failed to take reasonable remedial action.
3. Counsel or Prosecutors with direct supervisory authority acting in accordance with a reasonable resolution of a debatable question of professional duty shall not be in violation of this Code.

Article 35 Liability of Supervised Co-Counsel or Prosecutor

1. Directly supervised Co-Counsel or Prosecutor shall be liable under this Code notwithstanding that they may have acted under the direction of supervising Counsel or Prosecutor.
2. Directly supervised Co-Counsel or Prosecutor acting in accordance with supervising Counsel's or Prosecutor's reasonable resolution of a debatable question of professional duty shall not be in violation of this Code.
3. Directly supervised Co-Counsel or Prosecutor shall refuse to comply with instructions from supervising Counsel or Prosecutor, which he or she reasonably believes would amount to a flagrant violation of this Code.

Article 36 Discipline of Prosecutors

For the purpose of any complaint against a Prosecutor for alleged misconduct in accordance with Article 33:

- a. Prosecutors shall be subject to the disciplinary procedure provided for in Rule 81 of the Staff Rules, as modified by the present Article. Unless specified otherwise at paragraph (b), Chapter V, Sections 2 to 3, shall not apply in this respect;
- b. The following provisions shall apply to disciplinary proceedings against Prosecutors:
 - (1) The definition of Complainant and Respondent, pursuant to Article 2(2);
 - (2) The procedure provided for in Article 37(1)-(3); and
 - (3) Article 43; and
- c. The members of the Disciplinary Advisory Board provided for in Rule 81(o)(1) and (2) of the Staff Rules shall be Prosecutors, selected by the Specialist Prosecutor.

Section 2 Disciplinary Procedure

Article 37 Filing of Complaint

1. Any complaint concerning conduct as defined under Article 33 may be filed by a Complainant to the Registrar or the Specialist Prosecutor, as appropriate, in writing or, if the Complainant is unable to do so, orally before the Registrar who shall record the complaint. The complaint shall:
 - a. identify the Complainant and the Respondent;
 - b. include the legal provisions on which it is based, where possible;
 - c. describe in sufficient detail the alleged misconduct of the Respondent; and
 - d. include any relevant evidence or reference thereto.
2. The Complainant shall have the opportunity to read the record or have it read to him or her, and shall sign it.
3. A complaint may only be filed within the time period referred to in Article 33(2).
4. The Registrar shall handle the complaints confidentially and transmit them without delay to a Commissioner, unless the complaint is anonymous.
5. A complaint filed by a Panel, including pursuant to Article 14(5), shall be transmitted without delay by the Registrar to the Disciplinary Board in accordance with Article 42.

Article 38 Rights of the Respondent

1. The Respondent shall be entitled to the following rights:
 - a. to have legal assistance of his or her choice, at his or her own expense;
 - b. to remain silent and decline to make any statement which might be used against him or her;
 - c. to receive all relevant evidence, information and correspondence in a language he or she understands;
 - d. to be given adequate time and facilities to prepare his or her defence; and
 - e. to submit evidence and to examine all evidence, including the right to question, personally or through his or her legal representative, any person called by the Disciplinary Board or the Disciplinary Appeals Board to testify before it.
2. The Respondent shall receive full disclosure of the information gathered by the Commissioner as well as his or her Report, subject to any protective measures granted by the Disciplinary Board upon request of the Commissioner.

Article 39 The Commissioner

The Commissioner shall be a Counsel with established competence in professional legal ethics selected and appointed by the Registrar for a specific complaint.

Article 40 Procedure Before the Commissioner

1. Upon receipt of a complaint, the Commissioner shall either:
 - a. summarily dismiss the complaint within two (2) weeks of receipt and, where applicable, notify the Complainant of the dismissal and the reasons if:
 - (1) the complaint lacks any of the requirements laid down in Article 37(1)-(3);

- (2) the Commissioner considers the Complaint to be vexatious, misconceived, frivolous, lacking in substance or submitted out of time; or
 - (3) the Commissioner lacks jurisdiction;
 - b. terminate proceedings in case of successful mediation initiated by the Commissioner, the Complainant or the Respondent; or
 - c. initiate disciplinary proceedings by forwarding the complaint to the Respondent, start the investigation into the alleged misconduct and inform the Registrar to initiate the selection and appointment of the members of the Disciplinary Board pursuant to Article 41(1).
2. The Respondent may make written submissions within twenty-one (21) days of the date the Complaint was received by him or her. The Commissioner may extend the deadline, not exceeding two (2) months, upon showing good cause.
 3. The Commissioner shall promptly investigate the Respondent's alleged misconduct and shall transmit a Report on the results of the investigation to the Disciplinary Board within two (2) months of receipt of the Complaint or within one (1) month of receipt of submissions by the Respondent, if applicable. In the Report, the Commissioner shall establish the relevant facts, make findings as to violations of the applicable legal instruments and recommend further action, including dismissal of the case for lack of sufficient evidence or formulation of disciplinary charges.
 4. Exceptionally, where the alleged misconduct is of such a nature as to seriously prejudice the interests of justice, the Commissioner shall request the Registrar to proceed pursuant to Section 16(3) of the Directive.
 5. The Respondent shall immediately inform the Registrar of any disciplinary procedure initiated against him or her and/or of a sanction imposed upon him or her by another authority in relation to the complaint, including pursuant to Article 48. The Registrar shall transmit this information to the Commissioner, Disciplinary Board or Disciplinary Appal Board, as appropriate.

Article 41 Disciplinary Board

1. The Disciplinary Board shall be an independent panel composed of three members appointed for a specific complaint. The Registrar shall select two Counsel as members of the Disciplinary Board. The third member shall be selected by the national authority or bar association competent to regulate the activities of the Respondent. Where no such authority can be identified, or where it fails to respond within a reasonable time, the selection shall be made by the Registrar after consultation with the Respondent.
2. In the event that a member of the Disciplinary Board excuses himself or herself in writing to the Disciplinary Board due to an actual or potential conflict of interest or is unavailable for a substantial period and the Disciplinary Board considers that the fair and proper administration of justice requires continuation of the disciplinary proceedings, that member shall be replaced through the procedure as provided in paragraph (1).
3. All members of the Board shall have the same rights and votes. The Board shall decide by simple majority of vote.

Article 42 Procedure Before the Disciplinary Board

1. Within two (2) months of receipt of the Report of the Commissioner pursuant to Article 40(3), the Disciplinary Board shall:

- a. dismiss the case for lack of jurisdiction;
- b. dismiss the case, if, on the basis of the Report of the Commissioner, there are no reasonable grounds to conclude that the Respondent committed the alleged misconduct, if an amicable settlement has been reached or if the complaint was filed out of time;
- c. request the Commissioner to conduct further investigations; or
- d. confirm the disciplinary charges against the Respondent and decide whether to hold a hearing with or request written submissions from the Commissioner, the Respondent and any other person deemed necessary for the establishment of the truth.

The Disciplinary Board shall promptly inform in writing the Complainant, the Respondent and the Commissioner of any decision under this paragraph.

2. In its determination under paragraph (1), the Disciplinary Board is not bound by the findings in the Commissioner's Report.
3. Where the Disciplinary Board, on the basis of the evidence and submissions received, concludes that the Respondent has committed the alleged misconduct, it shall make such a finding and may impose the sanctions provided for in Article 43. Otherwise, the Disciplinary Board shall reject any charge.
4. If a disciplinary hearing is held, it shall be public unless the Disciplinary Board orders otherwise.
5. The decision of the Disciplinary Board under paragraph (3) shall be reasoned and may include separate or dissenting opinions.
6. The Disciplinary Board shall inform in writing the Complainant, the Respondent and the Commissioner of its decision under paragraph (3), which shall be made public, insofar as possible and without revealing the identity of the Complainant.
7. Upon conclusion of the disciplinary procedure, the Registrar shall inform the relevant national body of the Respondent of the decision of the Disciplinary Board, unless appealed pursuant to Article 46.
8. After the time limit for an appeal in accordance with Article 46 has lapsed, the decision of the Disciplinary Board shall be considered final.

Article 43 Sanctions

1. Upon making a finding of misconduct, the Disciplinary Board may impose one or more of the following sanctions:
 - a. admonishment;
 - b. public reprimand with an entry into Counsel's or Prosecutor's personal file kept by the relevant unit of the Specialist Chambers or of the Specialist Prosecutor's Office;
 - c. payment of a fine of up to €2,000;
 - d. restitution of fees by Counsel to the Registry or Client, as applicable, up to €15,000, without prejudice to reimbursement under the Legal Aid Regulations, where applicable;

- e. suspension of the right of Counsel to practise before the Specialist Chambers for a period not exceeding two (2) years by triggering the procedure laid down in Section 16 of the Directive;
 - f. permanent ban on practising as Counsel before the Specialist Chambers and, if applicable, removal from the List of Counsel by triggering the procedure laid down in Section 16 of the Directive; and
 - g. refer to the Registrar a finding of misconduct by a staff member for any appropriate procedure under the Staff Rules.
2. If sanctions are imposed on the Respondent, he or she shall bear the administrative fees of the disciplinary procedure, as defined by the Registrar, and the costs of his or her legal representation.
 3. If the charges or the complaint are rejected, the Complainant shall bear the administrative fees of the disciplinary procedure and the costs, if any, of the legal representation of the Respondent.
 4. If the proceedings are otherwise terminated, the Specialist Chambers shall bear all administrative fees of the procedure, except for fees associated with the right to legal assistance.

Article 44 Withdrawal of Complaint

1. At any time during the proceedings, the Complainant may withdraw the complaint by written notice to the Commissioner. Any later complaint on the same subject matter by the same Complainant may only be submitted in case new facts are discovered which were not known by the Complainant at the time of the first complaint.
2. If a Complainant withdraws the complaint, the disciplinary procedure under Article 40 shall be considered closed except if, within one (1) month of the withdrawal:
 - a. the Commissioner, upon approval of the Registrar, decides *proprio motu* to continue or commence a procedure under Article 40; or
 - b. the Disciplinary Board, upon approval of the Registrar, or Disciplinary Appeals Board, upon approval of the Registrar and the President, decides to continue the disciplinary proceedings after hearing the Commissioner and the Respondent.

Article 45 Disciplinary Appeals Board

1. The Disciplinary Appeals Board shall be an independent panel composed of three members. Two Counsel with established competence in professional legal ethics shall be selected and appointed by the Registrar for a specific appeal. One Judge from the Roster of International Judges shall be assigned by the President for the purposes of such an appeal.
2. The assigned Judge shall act as Chairperson of the Disciplinary Appeals Board.
3. Article 41(2)-(3) shall apply *mutatis mutandis* to the Disciplinary Appeals Board.

Article 46 Procedure Before the Disciplinary Appeals Board

1. Appeals may only be filed with the Disciplinary Appeals Board on the grounds of a manifest error of fact or law.
2. Appeals may be filed within one (1) month of notification of the decision of the Disciplinary Board:
 - a. by the Respondent, where the Disciplinary Board has determined that one or more charges of misconduct have been proved; or
 - b. by the Commissioner.

3. Within two (2) working days of the receipt of the appeal, the Disciplinary Appeals Board shall transmit the appeal to the Commissioner, the Respondent or the Complainant, as applicable, who shall have twenty-one (21) days to respond.
4. The Disciplinary Appeals Board may dismiss an appeal for lack of jurisdiction, if it is defective in substance or if it is submitted out of time.
5. Article 38 and Article 43 shall apply *mutatis mutandis* to the procedure before the Disciplinary Appeals Board.
6. During its review, the Disciplinary Appeals Board shall not receive or consider any evidence that was not presented to the Disciplinary Board, unless it was not available at the time of proceedings before the Disciplinary Board and could not have been discovered with the exercise of due diligence. Where evidence is called and/or a hearing is held, the relevant provisions of the present Section shall apply *mutatis mutandis*.
7. The Disciplinary Appeals Board may affirm, modify or reverse the decision or sanctions on appeal. If the decision or sanction has been appealed by the Respondent only, they cannot be amended to his or her detriment. The decision of the Disciplinary Appeals Board shall be reasoned and may include separate or dissenting opinions.
8. The Disciplinary Appeals Board shall inform in writing the Complainant, the Respondent and the Commissioner of its decision, which shall be made public, insofar as possible, and without revealing the identity of the Complainant.
9. Upon conclusion of the disciplinary appeals procedure, the Registrar shall inform the relevant national body of the Respondent of the decision of the Disciplinary Appeals Board.

Article 47 Finality of the Decision

The decision of the Disciplinary Appeals Board shall be final.

Section 3 Closing Provisions

Article 48 Relationship with Other Disciplinary Regimes

1. The present Chapter is without prejudice to the disciplinary powers of any other authority that may apply to Counsel.
2. Where the Commissioner initiates disciplinary proceedings against Counsel in accordance with Article 40(1)(c), he or she shall inform Counsel's national authority without delay and request the national authority to inform the Commissioner within one (1) month whether it will initiate a disciplinary procedure. If the national authority intends to or has already initiated its disciplinary procedure in relation to the same acts and conduct set out in the complaint, the procedure before the Commissioner as well as the limitation period provided for in Article 33(2) shall be suspended pending the final decision of the national authority, unless:
 - a. the national authority does not respond to communications and consultations from the Commissioner within a reasonable time;
 - b. the national authority appears to be unable or unwilling to conclude the disciplinary procedure.
3. As soon as he or she receives the final decision of the national authority, the Commissioner shall inform the Disciplinary Board which shall declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code, in which case it may

instruct the Commissioner to resume the investigation and possible disciplinary proceedings under this Code.

4. No Counsel shall be subject to disciplinary proceedings and sanctions under this Code more than once for the same act(s) and/or omission(s).

Article 49 Records of Proceedings

1. Unless otherwise provided, all filings, decisions and orders in relation to these disciplinary proceedings shall be submitted confidentially in an official language of the Specialist Chambers.
2. The Registry shall maintain all records for the purpose of these disciplinary proceedings. They shall be confidential and shall form part of the archives of the Registry.

The Hague, Netherlands

1 March 2019

Dr Fidelma Donlon
Registrar