

(English version):

Rights of Suspects and Accused before the Kosovo Specialist Chambers

Over the course of the past year, the Kosovo Specialist Chambers (KSC) has embarked on the most important phase yet since its establishment, starting with the initiation of proceedings by the Specialist Prosecutor in February and culminating in the arrests and transfers to its detention facility in The Hague, the Netherlands of five accused charged with war crimes and crimes against humanity and two suspects for offences against the administration of justice.

I recall in this respect that the KSC is a court established following an agreement between Kosovo and the European Union and in fulfilment of the obligations of Kosovo stemming therefrom. It has jurisdiction over crimes against humanity and war crimes committed or commenced in Kosovo between January 1998 and December 2000, where either the victim or the perpetrator was a citizen of Kosovo or the then-Federal Republic of Yugoslavia. The KSC also has jurisdiction over offences against the administration of justice.

It is important to emphasize that the KSC is only concerned with individual criminal responsibility. As reflected in the Law on the Specialist Chambers and Specialist Prosecutor's Office (Law), as adopted by the Assembly of Kosovo, the KSC holds accountable only individuals found guilty of the crimes charged in an indictment; not ethnic groups, organizations or communities.

With the recent arrests and transfers, the KSC has now assumed responsibility over seven individuals and is obliged to ensure that their rights as provided for in the Law and the Rules of Procedure and Evidence (Rules) are respected during the course of the criminal proceedings against them, while at the same time ensuring the safety and security of the witnesses and victims who may appear before the KSC.

The obligation of the KSC to ensure the rights of the suspects and accused commences from the moment an individual is summonsed to appear for questioning, an arrest warrant or a decision to this effect is issued for an individual, or an indictment is confirmed. This obligation extends throughout the whole of the proceedings and ceases to exist if an indictment is not confirmed, the accused is acquitted on all charges contained in the indictment or the person is convicted and has served the sentence imposed upon him or her after being found guilty. The full set of fundamental rights not only protects the accused and suspects. Importantly, they secure the integrity of the proceedings by ensuring that justice is delivered transparently and fairly, that all parties to the proceedings are treated equally and are given ample opportunity to put forth or challenge evidence, as may be required.

The presumption of innocence is a universally acknowledged principle to which the KSC strongly abides. It dictates that suspects and accused shall be presumed innocent until proven guilty beyond reasonable doubt. It means that they are under no obligation to prove their innocence. Instead, the right to the presumption of innocence imposes upon the Specialist Prosecutor the burden to prove beyond a reasonable doubt the charges in the indictment. This is a high standard, which will be satisfied only when the evidence presented by the Specialist Prosecutor leads to the only logical conclusion that the accused committed the crimes charged.

In a similar vein, the Specialist Prosecutor is under an obligation to make available to the Defence the evidence it intends to rely on to prove the case against the accused as well as the evidence in his or her possession that would suggest the innocence of the accused. The Specialist Prosecutor has to provide this evidence to the Defence in accordance with strict timelines through a process that is known as “disclosure”. If the evidence upon which the Specialist Prosecutor intends to rely were not made available to the Defence, it would be unable to contest the charges against the accused, and any proceedings in this respect would not be fair or transparent.

In order to ensure that suspects and accused meaningfully participate during the course of the proceedings by, for example, examining and challenging the evidence against them or by appealing procedural or substantive rulings by the Judges, they have the right to be represented by counsel of their choosing. Where a suspect or an accused cannot afford counsel, the KSC will remunerate counsel in accordance with its comprehensive legal aid system.

The accused shall be given adequate time and facilities to prepare their defence. They have to be informed promptly and in detail of the nature and cause of the charges against them in a language that the accused understand. Indeed, the accused cannot refute the charges and investigate the evidence against them, examine witnesses or mount a defence if they do not know or do not understand what they are accused of.

Suspects or accused also have the right to follow the proceedings in a language they understand. In this regard it should be noted that the official working languages of the KSC are Albanian, Serbian and English and proceedings are translated into one of these three working languages at all times. If a suspect or an accused does not speak any of these languages, an interpreter shall be provided to assist in this respect.

The right to be informed of the charges against them and the right to have the proceedings take place in a language suspects and accused understand lie at the heart of the right to a fair trial.

Another important right afforded to accused is the right to be tried within a reasonable time. What constitutes a reasonable time will depend on the nature and circumstances of each case. Criminal proceedings are challenging for all involved and ensuring a timely resolution benefits not only the victims and witnesses, who are anxious to see justice done, but also the accused, who live in uncertainty as to their future until such time as a judgment is pronounced.

Finally, suspects and accused cannot be forced to testify against themselves or admit guilt and any such choice cannot be held against them. Thus, they cannot be held liable or be fearful of punishment if they refuse to answer any questions, which may incriminate them, or decide not to plead guilty. It is for the Specialist Prosecutor to prove his case against the accused beyond reasonable doubt. As emphasized above, persons brought to account are presumed to be innocent until proven guilty beyond reasonable doubt by the Specialist Prosecutor.

The above fundamental rights, which are enshrined in the Law and the Rules, are neither new nor unique to the KSC. They are reflective of international standards and afforded to accused at both the international and the national level. The emphasis on these fundamental rights are not meant to compromise other equally important aspects of the proceedings, including the pivotal task of ensuring the safety and security of witnesses and victims appearing before the KSC. Rather, the KSC takes very seriously the rights of suspects and accused and will safeguard them, while simultaneously ensuring that proceedings are conducted in a safe and secure manner. In so doing, the KSC will ensure the integrity, fairness and transparency of its proceedings. It will ensure that justice is done in accordance with its mandate.