

Interview of KSC President Trendafilova to "Klan Kosova" on 17 May 2021

(English version)

1. You are now in the second term as President of Kosovo Specialist Chambers. How do you estimate job in first five years and what are the objectives for the new term?

The Kosovo Specialist Chambers (KSC) has come a long way since I was appointed as President in December 2016. During my first four years in office, the court was focused on establishing itself and ensuring our preparedness for judicial proceedings. These four years were tremendously busy and productive in a variety of ways. Not only were 19 Judges appointed to the Roster of International Judges in 2017 following their nomination by an independent Selection Panel, but the Judges came together and expeditiously adopted the KSC's criminal procedural code, known as the Rules of Procedure and Evidence, within a month and one week of their appointment.

Over the course of my first term, the KSC built its strong legal foundations through the adoption of a wide range of documents that ensure expeditious, efficient, safe and secure judicial proceedings. For example, the Judges debated upon and adopted the Code of Judicial Ethics, providing for their accountability while in service at the KSC. We also adopted the Rules on Assignment of Specialist Chambers Judges, ensuring the equitable and transparent assignment of Judges to matters before the Specialist Chambers. Similarly, the KSC Registrar, upon consultation with me, adopted a variety of practice directions, guidelines and regulations, including with respect to: legal aid for indigent accused and suspects; detention of persons at the KSC detention facilities; professional conduct for counsel in proceedings before the KSC, to name a few. This comprehensive legal framework takes into account best practices and lessons learnt at other domestic, international and international(ized) courts and tribunals, which are meant to ensure that the proceedings before the KSC take place in the most efficient, effective and secure manner.

Another highlight during my first term as KSC President was the court's move to its new premises in June 2019. With this move, we now have a state of the art courtroom, which allows for the proceedings to take place safely and securely, with simultaneous translation in the court's three official languages: Albanian, Serbian and English. The public can follow the proceedings either from the public gallery or via video-streaming from our website. Similarly, there is a dedicated room for journalists, where they have desks at their disposal from which journalists can work and report on the proceedings as they occur.

Finally, I am glad to say that we witnessed the commencement of the judicial proceedings as my first term as KSC President was coming to an end. This is, of course, what the KSC was set up to do. Over the course of three months in the fall of 2020, the Specialist Prosecutor arrested seven accused in three different cases. One of those cases involve both war crimes and crimes against humanity, while the second one involves only war crimes. The third of those cases concerns alleged offences against the administration of justice. An eighth accused charged with war crimes was arrested shortly after the commencement of my second term as President, bringing the total of cases before the KSC to four. A Pre-Trial Judge has been assigned to these cases and the proceedings are currently ongoing. Moreover, we reached yet another milestone just this week, when the Pre-Trial Judge transmitted the complete case file in the case against Mr Salih Mustafa to a Trial Panel. Following the Pre-Trial Judge's notification in this respect, I assigned Trial Panel I and with that, the KSC will have its first case move to trial just seven months after the accused was arrested. It is thus evident that the Pre-Trial Judge has been working tirelessly with a very devoted team to ensure the expeditious preparation of these cases for trial.

I am excited for what my second term as KSC President has to bring. Along with the entire court, I will be focussed on fulfilling our mandate: ensuring secure, independent, impartial, fair and efficient criminal proceedings. The judicial proceedings are now well under way and we are all eager to demonstrate that we meet the high expectations placed on us. I am confident that the KSC will serve as a model for best practices to domestic and international criminal justice systems.

2. In a meeting with European diplomats, you were quoted saying that “there are attempts to undermine the work of the Kosovo Specialist Chambers” and then you warned of their increase. Who is pushing and has it grown the pressure as you said you expected?

As you may have seen in the media, there have been a number of instances where attempts were made or alleged to have been made to undermine the work of the KSC following the announcement of the start of proceedings.

For example, over the course of last year, the Specialist Prosecutor’s Office (SPO) brought charges against two individuals: Messrs Hysni Gucati and Nasim Haradinaj. They are alleged to have committed a number of offences against the administration of justice by disseminating information that could lead to the identification of witnesses and obstruction of the proceedings before the KSC and the SPO. Criminal proceedings against the two are currently ongoing.

Similarly, the Specialist Prosecutor, in opposing the interim release of the accused, has referred to attempts to “delegitimize” the court and “efforts to interfere with potential SPO witnesses”.

The KSC take challenges to our mandate very seriously and our legal framework provides the SPO with the ability to charge any individual who allegedly commits offences against the administration of justice.

3. In Kosovo, there has been a request from various actors for the relocation of the court. How do you see this demand and how likely is it to happen in the future?

In the 2014 Exchange of Letters signed by the then-President of Kosovo, Ms Atifete Jahjaga, and then-EU High Representative for Foreign Affairs and Security Policy, Baroness Catherine Ashton, it was agreed that the sensitive nature of the proceedings required that the Specialist Chambers be relocated outside of Kosovo.

The agreement to relocate the proceedings is binding and cannot be changed without the agreement of the parties involved. Moreover, the reasons for the relocation continue to exist: namely the sensitive nature of the proceedings and the need to ensure the safety and security of victims and witnesses. Importantly, we are not distracted by such requests for relocation. The KSC remains focused and fully committed to fulfilling its mandate independently, safely and in a professional manner.

4. In the past you said that the Special Court will not be an ethnic court. From what we have seen so far, all the invitations and all the arrested are Albanians. How do you explain this?

This question is often raised and reflects a misunderstanding of the nature of this institution. I take this opportunity to explain the following: the Law on Specialist Chambers and Specialist Prosecutor’s Office clearly stipulates that only individuals and not ethnic groups, organisations or any other entities can be charged with the crimes that fall within the KSC’s jurisdiction. Specifically, these are crimes against humanity, war crimes and other crimes under Kosovo law, which were commenced or committed in Kosovo between 1 January 1998 and 31 December 2000 by or against citizens of Kosovo or the former Federal Republic of Kosovo. Indeed, the Law unambiguously reflects that the KSC is not established to commence proceedings against a particular ethnic group.

In regard of the concrete cases before the Specialist Chambers, it should be recalled that the decision whom to charge lies exclusively with the Specialist Prosecutor, who acts independently and is the sole driving force in this respect. The Specialist Prosecutor makes such decisions based on the investigations of his Office and the availability of evidence. Thus, it is not for me or for anyone else to comment on the Specialist Prosecutor's choice of whom to indict. However, it is for us, the Judges of the KSC, to ensure that the proceedings against indicted individuals take place fairly and efficiently with due regard for the rights afforded to them and to take the decision on their guilt or innocence.

Finally, I would like to point out that the victims identified in the current indictments are from a variety of backgrounds or ethnicities. In other words, the diverse background of the victims further demonstrates that the KSC is not an "ethnic court".

5. In the second half of 2020, some documents were circulated in Kosovo that were said to be files of the Special Court, for what then the leaders of the KLA (UÇK) Veterans Organization were arrested. Do you think that the leak of these documents has harmed the witnesses and who is responsible for their public appearance?

I cannot speak about the dissemination of information from the SPO or the effect this has had on witnesses. However, the Specialist Prosecutor did emphasize in a recent interview that his office has been in close contact with all witnesses to respond to their concerns.

What I can say is that witness support and protection is of the highest priority to the KSC and the SPO. There is a specialized unit, which ensures the well-being, safety and security of witnesses before, during and after trial. Judges can order a variety of protective measures in and outside the courtroom including using pseudonyms, testifying via video link or with voice and face distortion, so that the identity of the witness is kept confidential and their location remains unknown.

Finally, and as demonstrated by the recent case against Messrs Gucati and Haradinaj, the Law on Specialist Chambers and Specialist Prosecutor's Office provides that those who allegedly commit offences against the administration of justice, including by intimidating witnesses or disclosing their identity, can be prosecuted before the KSC.

6. From the work being done after the first arrests last year, in your point of view when the trials of the accused are expected to begin?

We currently have four cases before the KSC, three of which are in the pre-trial phase of the criminal proceedings and our first case, which has recently been transmitted to a Trial Panel. This first case involves proceedings against Mr Salih Mustafa, who is charged with four counts of war crimes. On 5 May 2021, the Pre-Trial Judge notified me that he would be in a position to transmit the complete case file to a trial panel and on the same day, I assigned Trial Panel I to commence the trial in this case as soon as it receives the full case file.

The second case is against Messrs Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakub Krasniqi, who are charged with six counts of crimes against humanity and four counts of war crimes. The Pre-Trial Judge has not yet indicated when this case will proceed to trial. This is a larger case and the timing will depend on a variety of factors, including the arguments presented by the parties during the pre-trial phase.

The third case involves Mr Pjëter Shala, who is charged with four counts of war crimes. Mr Shala was arrested in March 2021 and the case has thus just entered the pre-trial phase of the proceedings. Accordingly, the Pre-Trial Judge has not yet indicated when the case will be ready for trial.

Finally, there is the case against Messrs Hysni Gucati and Nasim Haradinaj, who are charged with two counts of criminal offences against the public order and four counts of criminal offences against the administration of justice and public administration. The Pre-Trial Judge tentatively indicated that this case could proceed to trial by 30 June 2021.

Until such time as the cases are ready for trial, the proceedings will be in what is known as the pre-trial phase. During this time, the Pre-Trial Judge has confirmed the indictments in all four cases and will rule on any preliminary motions, including challenges to the jurisdiction of the KSC and to the indictments. The Pre-Trial Judge may further take any necessary decisions to ensure that the cases are prepared properly and expeditiously for trial.

7. What is the level of cooperation with Kosovo institutions - the Ministry of Justice, the Kosovo Police and other justice bodies regarding the function of KSC?

I should note at the outset that the Law on Specialist Chambers and Specialist Prosecutor provides that, subject to the rights of the accused, all authorities in Kosovo shall cooperate with the KSC and the SPO and shall comply with any request for assistance or any order or decision issued by the KSC or the SPO.

While I cannot comment on specific operational matters, it is my understanding that the cooperation provided by the Kosovo police in the arrests of a number of the accused has been outstanding and highly professional.