

Op-ed by KSC President Ekaterina Trendafilova to "Telegrafi" (a Kosovo-based outlet in Albanian) and "Kossev" (a Kosovo-based outlet in Serbian) on 25/26 August 2022.

(English version)

Appeal Proceedings at the Kosovo Specialist Chambers

The Kosovo Specialist Chambers (KSC) was established in 2015 following a ratification by the Kosovo Assembly of an agreement with the European Union, as well as an amendment to the Constitution of Kosovo. It currently has before it four cases, involving eight accused. One of the cases is now before a Court of Appeals Panel, another one has just finished the evidentiary phase of the trial proceedings, the third case will soon be transferred to a Trial Panel and the fourth is at the pre-trial phase.

The KSC has jurisdiction over crimes against humanity and war crimes 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 Yugoslavia. The KSC also has jurisdiction over offenses under Kosovo law, where they relate to its official proceedings and officials.

While the KSC mirrors the Kosovo judicial system – it has a basic court, a court of appeals, a supreme court and a constitutional court – it is an independent court that operates in accordance with its own legal framework. The Specialist Chambers is tasked to undertake its mandate in accordance with the highest international criminal justice standards. At the centre of these standards is the principle that judges must act independently and impartially.

Judicial independence and impartiality are integral parts of the Judges' profession and ensure that justice is dispensed in accordance with the rule of law. Before taking up their duties, the Judges of the KSC make a solemn declaration that they will exercise their functions independently, impartially and conscientiously. This oath is the guiding principle when it comes to all our duties at the KSC.

Independence and impartiality are not the only safeguards in place that ensure the rights of the parties and participants before the KSC. Another such safeguard is the right of accused and/or the Prosecution to appeal decisions of a Judge or Trial Panel before other independent judges. The appeals process provides an extra layer of review of the judgments rendered by lower courts. It gives an opportunity, if applicable, to correct any errors of fact or law in the judgments rendered by lower courts.

I will focus here on the types of review that can be sought before Court of Appeals Panels of the KSC.

There are two type of decisions that parties or participants can appeal to the Court of Appeals Panels. The first is a final judgment on the guilt or innocence issued by a Trial Panel. If an accused person is found guilty, he or she can appeal the trial judgment within 30 days of its pronouncement.

In May of this year, Trial Panel II pronounced the first trial judgment before the KSC. The Trial Panel found Mr Hysni Gucati and Mr Nasim Haradinaj guilty of intimidation during criminal proceedings and two other offences, while finding both accused not guilty of retaliation. Both Mr Gucati and Mr Haradinaj have decided to appeal the judgment. As President of the KSC, I assigned a panel of three judges to a Court of Appeals Panel to decide on the appeals against the trial judgment, which is now pending before this Panel. It is important to emphasise that as with any appeal process, the three judges on the Court of Appeals Panel are different judges than those of the Trial Panel.

During the appeals process, the lawyers for Mr Gucati and Mr Haradinaj will have the opportunity to present legal arguments in writing, as will the Specialist Prosecutor. The Court of Appeals Panel may also decide to hold hearings. Thereafter, the Court of Appeals Panel will deliberate and will have three options when it comes to its decision: it can affirm, reverse or revise in whole or in part the judgment of the Trial Panel.

In some cases, the judgment issued by the Court of Appeals Panel may be appealed to yet a higher court, the Supreme Court, composed of three different Judges. Such a second appeal is, however, limited to circumstances where the accused has been convicted to a lifelong sentence or where an acquittal by the Trial Panel has been reversed and a conviction has instead been entered by the Court of Appeal.

The second type of appeal involves the ability of the Defence and the Prosecution to appeal some of the decisions taken by the judges in the course of judicial proceedings. This type of appeal before a Court of Appeals Panel is known as an “interlocutory appeal”. For example, the decision by a judge to extend the detention of an accused during the pre-trial phase can be appealed directly before a Court of Appeals Panel.

Other decisions issued by the Pre-Trial Judge or Trial Panel cannot be appealed directly, or “as of right” as it is known. Instead, a party needs to ask for permission first from the relevant Panel and only once that has been granted, can the party appeal an issue to the Court of Appeals. For example, an accused will need to request permission from the Pre-Trial Judge to appeal a decision related to the admission of evidence or other procedural matters. If the Pre-Trial Judge or Trial Panel does not give the parties permission to appeal an issue, they can always raise this at the end of the case as part of their appeal against the trial judgment.

Over the course of 2021 and 2022, the Court of Appeals Panels have issued close to 65 decisions and orders on appeals filed by the Defence or the Prosecution.

The principle of judicial review is present at every step of the proceedings before the KSC. It ensures that the decisions of the judges taken independently and impartially can be reviewed so that the parties and the public can be sure that justice is done in accordance with international standards embedded in the KSC’s legal framework.