

Civil Society Meeting

21 September 2022

Ladies and gentlemen, we are very pleased to be here today to speak about the Specialist Chambers. While we had hoped to speak to you in person in Gjilan/Gnjilane, the decision was made to hold this event online in the interests of public safety. I am not here to address anything related to politics. I am here to provide information about the court only.

When talking about the KSC, it is always important to understand its history, mandate and jurisdiction. I will therefore briefly touch on the court's background, even though this may already be familiar to some of you, and I will then give a brief overview of where the KSC stands now with its proceedings. Following my presentation, I will be happy to answer any questions you may have.

The KSC was established following growing allegations that serious crimes in the context of the Kosovo conflict (1998-2000) had not been investigated and their perpetrators were not prosecuted. Moreover, there were concerns that in addressing these crimes, an environment conducive to the proper administration of justice should be established by way of dedicated separate judicial chambers to conduct such criminal proceedings. Addressing these concerns, the then High Representative of the European Union for Foreign Affairs and Security Policy and the then President of Kosovo reached an agreement by way of an Exchange of Letters on 14 April 2014 for the delegation of authority under the Constitution of Kosovo for an establishment of separate and independent judicial chambers, to be relocated to a third State, in order to adjudicate the crimes arising from the Special Investigative Task Force's investigations.

It was also agreed that these separate judicial chambers would mirror each level of the court system in Kosovo. However, the chambers would operate according to their own statute, would enact their own rules of procedure and evidence. The chambers would be staffed exclusively with international staff members, would have only international Judges on a roster, and any sentence imposed would be served outside of Kosovo.

The creation of such unique and self-contained chambers was premised on the need to ensure that the proceedings take place independently and impartially, free of any political interference and would thus protect the safety and security, life and well-being of potential witnesses and victims. This Exchange of Letters, was ratified as an international agreement by the Assembly of Kosovo through a law passed on 23 April 2014.

In order to implement this international agreement, in March 2015, the President of the Kosovo Assembly referred to the Kosovo Constitutional Court a proposed constitutional amendment as required under the Constitution of Kosovo.

In April 2015, Kosovo's Constitutional Court determined that the proposed amendment did not diminish or affect the rights and freedoms guaranteed by the Kosovo Constitution and held that the amendment was in conformity therewith and was necessary for Kosovo to comply with its international obligations.

The proposed amendment was ultimately implemented through the addition of Article 162 to the Kosovo Constitution, which was adopted by the Kosovo Assembly on 3 August 2015. Article 162 makes clear that the "organisation, functioning and jurisdiction of the [future] Specialist Chambers and Specialist Prosecutor's Office shall be regulated by this Article and by a specific law". Indeed, on that same day, the Kosovo Assembly adopted the Law on Kosovo Specialist Chambers and Specialist Prosecutor's Office, thereby formally establishing the Court.

The Court's mandate is to ensure secure, independent, impartial, fair and efficient criminal proceeding and has jurisdiction over allegations of grave transboundary and international crimes committed during and in the aftermath of the conflict in Kosovo from 1 January 1998 to 31 December 2000, which were committed by or against persons of Kosovo or Federal Republic of Yugoslavia citizenship. The Court is concerned only with criminal responsibility of individuals and not of organisations, groups or ethnicities.

As the Specialist Chambers of the Constitutional Court made clear in its judgment dated 26 November 2020, and as provided for in the Law on Specialist Chambers and Specialist Prosecutor's Office, the mandates of the KSC and the SPO will continue until the European Union notifies Kosovo of the completion thereof.

The Specialist Chambers is funded entirely by the European Union and to a variant extent five Contributing States (the United States, Norway, Switzerland, Canada and Turkey).

The Specialist Chambers currently have before it four cases against eight accused. The Specialist Chambers reached a major milestone with the issuance of the first trial judgment on 18 May 2022, in one of these cases. The two accused, who were convicted on most counts, have recently filed their notices of appeal against this judgment. A Court of Appeals Panel consisting of three Judges has been assigned to deal with the appeal against the trial judgment.

In a second case, involving a single accused, the closing arguments took place last week. The case is handled by Trial Panel I consisting of three Judges and one

reserve Judge. The third case was transferred to a Trial Panel today and the fourth case is still at the pre-trial phase.

Since September 2020, the Pre-Trial Judge, the two Trial Panels, various Court of Appeals Panels, the Constitutional Court Panel, the Supreme Court Panel and myself as President have issued over to 1200 decisions and orders, of which close to 200 orally. Over 150 court hearings took place during this period. As these facts demonstrate, the Specialist Chambers have been incredibly busy and have proceeded in an exceptionally efficient and expeditious manner, assisted by a highly committed team. I will now provide some details regarding the different cases.

I will start with the case of the SP against Mr Gucati and Mr Haradinaj, who were 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.

As mentioned before, the KSC reached a momentous milestone on 18 May 2022, with the delivery by the Trial Panel of the first judgment rendered at the KSC. Mr Gucati and Mr Haradinaj were found guilty of three of the four counts, for obstructing official persons in performing official duties, intimidation during criminal proceedings and violating the secrecy of proceedings. Both Accused were sentenced to four and a half years of imprisonment, with credit for time already served, and a fine of 100 EUR each. Mr Gucati and Mr Haradinaj were acquitted with respect to the charge of retaliation.

The trial was expeditiously conducted by the Trial Panel. Proceedings took place over the course of 32 days between 7 October 2021 and 3 February 2022. During this time a combined 14 witnesses were called, 18 witness statements were admitted and a total of 237 exhibits were tendered. The judgment was rendered in a very efficient manner, within only two months following the closing arguments in this case.

This case was complicated both procedurally and substantively. The Trial Panel had to apply the criminal law of Kosovo with very little jurisprudential guidance. Even though the case did not concern crimes against humanity or war crimes, it is an important case for the KSC. As the Trial Panel emphasised, this case concerned the proper administration of justice, the integrity and security of proceedings and the safety, well-being and freedom from fear of hundreds of persons who have come forward to fulfil their civic duty as witnesses before the KSC. The protection of witnesses from intimidation and harm lies at the very foundation of any system of criminal justice, be that domestic or international. The duty of protection was one of

the core reasons for the relocation of the KSC and this demonstrates the importance of this case.

As I mentioned, both Accused have appealed the trial judgment and it is currently before a Court of Appeals Panel. Given the general timelines in our Rules of Procedure and Evidence, it is anticipated that an appeals judgment may be rendered, depending on the circumstances of the case, by early 2023.

Next, I turn to the trial of Mr Salih Mustafa. Mr Mustafa, who allegedly was a commander of a unit that operated within the Llap Operational Zone of the Kosovo Liberation Army, is charged with four counts of war crimes.

During the trial proceedings, which took place over the course of 49 days since its commencement on 15 September 2021, 29 witnesses were heard. Eight victims were admitted to participate in this case and they are represented by a common Victims' Counsel. The Trial Panel officially closed the evidentiary phase of the proceedings on 20 June and closing arguments were heard last week.

In accordance with the KSC's Rules of Procedure and Evidence, the Trial Panel will have to render its trial judgment in this case within three months from the closing arguments, unless there are exceptional circumstances warranting otherwise. It is therefore possible that a second trial judgment may be rendered in 2022.

The third case is that involving Mr Pjetër Shala, who allegedly was a member of the KLA stationed in Kukës, Albania. Mr Shala was arrested in March 2021 in Belgium and is charged with four counts of war crimes.

The Pre-Trial Judge informed me last week Thursday that the case was ready for transmission to trial and I assigned a Trial Panel accordingly. So far, eight victims have been admitted to participate in the proceedings in this case.

As I mentioned earlier, we have one case at the pre-trial phase, which is handled by Pre-Trial Judge Guillou from France.

The case against Mr Hashim Thaçi, Mr Kadri Veseli, Mr Rexhep Selimi and Mr Jakub Krasniqi, who are all charged with four counts of war crimes and six counts of crimes against humanity. The Accused were arrested and transferred to The Hague at the beginning of November 2020 and pre-trial proceedings are ongoing.

A total of 32 victims have thus far been admitted to participate during the proceedings. It is hoped that this case may be transferred to a Trial Panel toward the end of this year.

As a result of the activity in the four cases, Court of Appeals Panels have also been assigned to deal with a variety of different matters over the past year. In assigning the Panels, I have drawn on the same four Judges in different compositions to ensure consistency and predictability of the KSC's jurisprudence. Aside from the appeal proceedings in the case against Mr Gucati and Mr Haradinaj, the Court of Appeals Panels have adjudicated matters related to the jurisdiction of the Specialist Chambers, the detention of accused, disclosure obligations, victims' participation and challenges to the form of the indictment.

Since September 2020, the Court of Appeals Panels have issued close to 85 decisions and orders.

On 15 August 2022 – first day after the summer recess for the KSC, the Supreme Court Panel issued its decision, finding that Mr Veseli had failed to demonstrate that there had been substantial violations of procedures in the Law and Rules of Procedure and Evidence in relation to decisions rendered by the Pre-Trial Judge and the Court of Appeals Panel continuing his detention. The Supreme Court Panel dismissed Mr Veseli's request in its entirety. This is the first time the Supreme Court Panel was seised of a request for protection of legality.

The Specialist Chamber of the Constitutional Court was also assigned this year to decide on five referrals made by Mr Jakub Krasniqi, Mr Kadri Veseli, Mr Hashim Thaçi and Mr Pjetër Shala concerning alleged violations of fundamental rights.

The Chamber issued important decisions on 13 June, 6 July and 15 August, on these referrals. The Chamber dismissed all five referrals as inadmissible on the basis that they are currently premature. In other words, the three individuals cannot, before the completion of the proceedings against them, claim to be victims of the alleged violations, since there has not yet been a determination of whether they are innocent or guilty of the charges against them.

I would like to take this opportunity to emphasize that only individuals can be charged with crimes that fall within the KSC's jurisdiction and not ethnic groups, organisations or any other entities.

The decision whom to charge with a crime 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. 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 in accordance with our legal framework. The KSC and SPO are separate institutions fully independent from each other.

As you can see, the court is strongly focused on its mandate. We have seen from the media that there is criticism directed at the court and that there are those who do not believe in its mandate.

As a court, we cannot engage in political discourse, nor can we engage in arguments about the work of the court. Instead, the KSC is focussed on ensuring that it carries out its mandate, given to it by the Parliament of Kosovo and as agreed between Kosovo and the EU in their Exchange of Letters in 2014, by ensuring that its proceedings are conducted in an independent, fair, safe, secure and impartial manner. The decisions and judgments of the KSC will speak for themselves, demonstrating that the KSC will have legitimately and credibly conducted its mandate.

In sum, I am very pleased to have been able to talk about the KSC, its mandate and its ongoing cases. I am happy to answer any questions you may have.