



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

Registry Practice Direction on Detainees

Counsel Visits and Communications

Adopted by:	The Registrar, Kosovo Specialist Chambers
Adoption date:	23 September 2020
Effective date:	23 September 2020
Supersedes:	KSC-BD-10
Reference:	KSC-BD-10-Rev1

Contents

CHAPTER I	GENERAL PROVISIONS	2
ARTICLE 1	PURPOSE AND SCOPE	2
ARTICLE 2	DEFINITIONS	3
ARTICLE 3	APPLICATION	3
ARTICLE 4	GENERAL PRINCIPLES	3
ARTICLE 5	DATA PROTECTION	4
ARTICLE 6	NOTIFICATION OF COUNSEL'S ASSIGNMENT OR APPOINTMENT AND APPROVAL OF COUNSEL'S TEAM	4
ARTICLE 7	EXPENSES	4
ARTICLE 8	ACCESS TO AND STORAGE OF DEFENCE MATERIALS	5
CHAPTER II	VISITS	5
ARTICLE 9	BASIC PROVISIONS	5
ARTICLE 10	SECURITY CONTROLS	5
ARTICLE 11	ITEMS EXCHANGED DURING VISITS	6
CHAPTER III	COMMUNICATIONS	6
ARTICLE 12	TELEPHONE CALLS	6
ARTICLE 13	CORRESPONDENCE	7
CHAPTER IV	RESTRICTIONS	7
ARTICLE 14	GENERAL RESTRICTIONS	7
ARTICLE 15	TEMPORARY RESTRICTIONS	7
ARTICLE 16	URGENT SECURITY MEASURES	8
ARTICLE 17	CHECKING CORRESPONDENCE FOR PROHIBITED ITEMS	8
ARTICLE 18	REVIEW	9
CHAPTER V	FINAL PROVISION	9
ARTICLE 19	AMENDMENTS	9

CHAPTER I GENERAL PROVISIONS**Article 1 Purpose and scope**

1. The Registrar has adopted this Practice Direction on Counsel Visits and Communications ('Practice Direction') pursuant to Detention Rule 63 in order to facilitate visits and communications between a Detainee and his or her Counsel while the Detainee is in the Detention Facilities.
2. This Practice Direction shall not apply to a Detainee's personal visits and communications with family members and other persons, which are governed by the Practice Direction on Visits and Communications adopted separately pursuant to Detention Rule 63.
3. This Practice Direction does not affect, and is subject to, any order or decision of the Competent Panel pursuant to Rule 56 of the Rules of Procedure and Evidence.

Article 2 Definitions

In addition to Detention Rule 2, the following definitions shall apply:

Administrative Office	The Administrative Office of the Detention Management Unit of the Registry;
Communication	Any telephone call or correspondence between a Detainee and Counsel while the Detainee is in the Detention Facilities;
Correspondence	Any incoming or outgoing mail, including parcels and enclosed items, between a Detainee and Counsel while the Detainee is in the Detention Facilities;
Co-Counsel	A person chosen to act as Co-Counsel, pursuant to Section 18 of the Directive on Counsel;
Counsel	The Counsel appointed or assigned by the Registrar to a Detainee in accordance with the Directive on Counsel;
Head of the Defence Office	The head of the unit of the Registry provided for in Article 34(7) of the Law and Rule 23(6) of the Rules of Procedure and Evidence;
Legal Aid Regulations	Regulations on the assignment of Counsel for the purposes of legal aid, adopted by the Registrar pursuant to Article 34(6) and (7) of the Law;
Visit	Any in-person contact between a Detainee and Counsel while the Detainee is in the Detention Facilities, with or without physical contact.

Article 3 Application

This Practice Direction shall be interpreted and applied in a manner consistent with the Law, the Rules of Procedure and Evidence, and the Rules of Detention.

Article 4 General principles

1. In accordance with a Detainee's right to adequate time and facilities for the preparation of his or her defence and to communicate with Counsel under Article 21 of the Law, a Detainee shall be provided with an adequate opportunity to be visited by and to communicate with Counsel freely,

confidentially, and without censorship. Detainees shall have reasonable access to facilities and equipment provided for this purpose.

2. Visits and communications between a Detainee and Counsel are privileged. The confidentiality of visits and communications between a Detainee and Counsel shall not be restricted unless, in exceptional circumstances, restrictions are necessary to achieve the legitimate aim of preventing an immediate threat to life or preventing the Counsel-client privilege from being abused to perpetrate a crime, and are proportionate to the aim pursued.

Article 5 Data protection

1. By reference to Detention Rule 64, all personal data collected pursuant to this Practice Direction, including any privileged information, shall be classified as strictly confidential.
2. Privileged information referred to in paragraph 1 shall be erased or destroyed within six (6) months of its collection, unless the information is retained and provided to the Competent Panel or unless otherwise ordered by the Competent Panel.

Article 6 Notification of Counsel's assignment or appointment and approval of Counsel's team

1. Promptly upon reception of a Detainee at the Detention Facilities under Detention Rule 10, the Head of the Defence Office shall inform the Detainee of the process for obtaining Counsel of his or her own choosing pursuant to the Directive on Counsel and, if applicable, the Legal Aid Regulations of the Specialist Chambers.
2. Visits and communications with the Head of the Defence Office shall not be privileged and shall be governed by the Practice Direction on Visits and Communications.
3. Upon assignment or appointment of Counsel, the Head of the Defence Office shall inform the Chief Detention Officer of the name and contact details of Counsel.
4. The Head of the Defence Office shall inform the Chief Detention Officer of all members of Counsel's team and their contact details, upon their approval pursuant to Section 18 of the Directive on Counsel. Only members of the team approved pursuant to Section 18 of the Directive on Counsel, including interpreters, may accompany Counsel when visiting a Detainee.
5. Co-Counsel is entitled, in the same way as Counsel, to privileged visits and communications as referred to in Chapters II to IV of this Practice Direction.

Article 7 Expenses

Any expenses for communications with Counsel and Co-Counsel shall be the responsibility of the Detainee. Where a Detainee is found to be indigent or partially indigent in line with the Legal Aid Regulations, the Registrar may determine that reasonable expenses for communications with Counsel and Co-Counsel shall be borne by the Specialist Chambers.

Article 8 Access to and storage of defence materials

1. Detainees shall have access to, and be allowed to keep in their possession, materials for the preparation of their defence as referred to in Detention Rule 26. A Detainee shall be provided with adequate space for the storage of such materials in the Detention Facilities.
2. With due regard to the ordinary and reasonable requirements of detention, and without prejudice to a Detainee's right to adequate time and facilities for the preparation of his or her defence, the Chief Detention Officer may place reasonable restrictions on a Detainee's access to the materials referred to in paragraph 1 based on the daily schedule of the Detention Facilities and the availability of staff, facilities, or equipment.

CHAPTER II VISITS

Article 9 Basic provisions

1. Counsel visits shall be conducted within the sight but not within the direct or indirect hearing of Detention Officers.
2. The Chief Detention Officer shall keep a log of all visitors, including the name of the Detainee, the name and address of the visitor, and the time and date of the visit.
3. Counsel visits shall be made by prior arrangement with the Chief Detention Officer as to time and duration. Counsel may contact the Administrative Office to schedule a visit.
4. Members of Counsel's team as referred to in Article 6.4 of this Practice Direction may accompany Counsel when visiting a Detainee.
5. Counsel shall provide prior notice of an accompanied visit under paragraph 4 of this Article to the Chief Detention Officer when scheduling a visit pursuant to paragraph 3 of this Article. Accompanied visits shall be treated as privileged to the same extent as other Counsel visits under this Practice Direction.

Article 10 Security controls

1. Upon notification pursuant to Article 6 of this Practice Direction, the Chief Detention Officer shall inform the Prison that Counsel has been approved for regular visits.
2. Counsel shall be required to present a valid proof of identity bearing a photograph that is acceptable to the Prison and the Detention Facilities.
3. To enter the Prison and the Detention Facilities, Counsel must comply with their security requirements and consent to be searched. Searches shall respect the Counsel-client privilege. Searches carried out in the Prison shall be conducted in accordance with national legislation. Searches carried out in the Detention Facilities shall be conducted in accordance with written instructions issued by the Chief Detention Officer on the security requirements to enter the Detention Facilities, and Counsel shall be given a copy of those instructions prior to providing his or her consent to be searched. Counsel may withdraw his or her consent to being searched at any time.

4. If Counsel withdraws his or her consent to any security controls, he or she shall be refused access to the Prison and the Detention Facilities.

Article 11 Items exchanged during visits

1. Counsel may provide materials to a Detainee during a visit for the preparation of his or her defence, including paper documents and CD-ROMS or DVDs containing privileged communications, work-product, case-related documents, and other materials referred to in Detention Rule 26 and Article 8.1 of this Practice Direction. Counsel may also receive case-related documents from a Detainee during a visit.
2. Materials for the preparation of the defence that are exchanged with a Detainee during a visit shall be treated as correspondence, in accordance with Article 13 and Article 17 of this Practice Direction.
3. Pursuant to Article 14.1 of this Practice Direction, and without prejudice to a Detainee's right to adequate time and facilities for the preparation of his or her defence, the Registrar or the Chief Detention Officer may place general restrictions on items brought to visits or on the direct exchange of materials during visits.

CHAPTER III COMMUNICATIONS

Article 12 Telephone calls

1. Detainees shall have access to privileged and non-privileged telephone lines.
2. Detainees may make outgoing telephone calls to Counsel on the privileged line. The Chief Detention Officer may permit Detainees to receive incoming calls from Counsel only in exceptional circumstances.
3. The Chief Detention Officer shall verify and pre-authorise the contact numbers for Counsel to avoid abuse of the privileged telephone line.
4. The Chief Detention Officer may impose reasonable restrictions on the timing, quantity, and duration of telephone calls based on the daily schedule of the Detention Facilities and the availability of telephone facilities. The Chief Detention Officer may permit a Detainee to make calls at other times in exceptional circumstances.
5. The Chief Detention Officer shall keep a log of all telephone calls sent or received, including the name of the Detainee, the telephone number, the date and time of the call, and any other information the Chief Detention Officer deems relevant. Logs of telephone calls shall be kept for a period not exceeding eight (8) months from their creation in accordance with the Specialist Chambers' retention schedules referred to Detention Rule 64. This period may be extended by instruction of the Registrar.
6. The Practice Direction on Visits and Communications shall govern access to non-privileged telephone lines.

Article 13 Correspondence

1. A Detainee's confidential correspondence with Counsel shall not be read. Correspondence shall be delivered or posted promptly unless the correspondence contains a prohibited item pursuant to Detention Rule 25 and Article 17 of this Practice Direction.
2. The Chief Detention Officer shall keep a log of all correspondence sent or received by a Detainee, including the addressee, the sender (if known), the date of postmark or receipt, and any other information the Chief Detention Officer deems relevant.
3. With due regard to paragraph 1, all correspondence shall be subjected to the security controls of the Detention Facilities and, where applicable, the Prison, including the use of X-ray machines and other screening devices in accordance with Detention Rule 25.
4. Outgoing correspondence addressed to Counsel shall only be sent to the address provided by Counsel to the Head of the Defence Office pursuant to Article 6; otherwise, it shall be returned unopened to the Detainee.

CHAPTER IV RESTRICTIONS

Article 14 General restrictions

1. The Rules of Detention, this Practice Direction, and any practice direction or instruction adopted or issued pursuant to Detention Rule 4 prescribe restrictions of general applicability to all Detainees that are necessary in the high security environment of the Detention Facilities or that are necessary to protect the health of Detainees and others.
2. With due regard to the ordinary and reasonable requirements of detention, the Chief Detention Officer may place reasonable restrictions on visits and communications with Counsel based on the daily schedule of the Detention Facilities and the availability of staff and facilities or equipment.

Article 15 Temporary restrictions

1. The Registrar may temporarily impose necessary and proportionate restrictions on the confidentiality of visits and communications described in Chapters II and III between a Detainee and Counsel and any member of Counsel's team on an exceptional basis and only in the circumstances described in Article 4.2 of this Practice Direction. Prior to imposing any temporary restrictions, the Registrar shall notify the Competent Panel, the Detainee, and Counsel of the decision, as set forth in this Article.
2. In particular, pursuant to Article 4.2 of this Practice Direction, the Registrar may decide to, *inter alia*, temporarily record, listen to, summarise, or transcribe:
 - a. a Detainee's visits with Counsel for a period not exceeding seven (7) consecutive calendar days, which shall be renewable for an additional period of up to seven (7) consecutive calendar days if it is considered necessary and proportionate to continue the temporary restriction; and
 - b. telephone conversations to or by a specific Detainee with Counsel for a period not exceeding fourteen (14) consecutive calendar days, which shall be renewable for an additional period of

- up to fourteen (14) consecutive calendar days if it is considered necessary and proportionate to continue the temporary restriction.
3. When there is a decision by the Registrar imposing temporary restrictions, the following shall apply at least twenty-four (24) hours before the restrictions take effect:
 - a. the Detainee and Counsel shall be informed of the decision in writing and in a language the Detainee understands;
 - b. the Detainee and Counsel shall be informed of the reason for the decision, unless the reason cannot be disclosed without prejudicing the legitimate aim pursued;
 - c. the Registrar shall inform the Competent Panel of the temporary restrictions and the reasons therefor; and
 - d. the Detainee shall be informed of his or her right to complain against the decision.
 4. Any temporary restrictions shall be imposed for a duration that is no longer than required to achieve the legitimate aim pursued and shall be recorded in the Detainee's Personal Record.
 5. This Article is without prejudice to the authority of the Chief Detention Officer to:
 - a. take urgent security measures pursuant to Article 16 of this Practice Direction;
 - b. withhold correspondence to check for prohibited items pursuant to Article 17 of this Practice Direction; and
 - c. address prohibited items in accordance with Detention Rule 25.

Article 16 Urgent security measures

1. The aim of urgent security measures is to ensure safety, security, and good order in the Detention Facilities, prevent disorder or crime, protect health, and protect the safety, security, rights, or freedoms of others.
2. In cases of urgency, where the Chief Detention Officer assesses that the immediate imposition of restrictions is necessary to achieve one of the legitimate aims in paragraph 1, the Chief Detention Officer may:
 - a. immediately terminate or interrupt any Counsel visit or telephone conversation;
 - b. relocate Counsel, any member of Counsel's team, or a Detainee to separate locations in the Detention Facilities, if and to the extent necessary to ensure the safety of those persons; and
 - c. temporarily stop, or limit the duration of, a Detainee's visits and communications with Counsel for as long as necessary and, in any event, no longer than (3) consecutive calendar days.
3. The Chief Detention Officer shall promptly inform the Registrar of any urgent security measure taken pursuant to this Article and the reasons therefor.
4. Where, due to urgency, immediate action is required, a Detention Officer may take measures in accordance with paragraph 1 of this Article and promptly inform the Chief Detention Officer thereafter. Paragraph 2 of this Article shall apply *mutatis mutandis*.

Article 17 Checking correspondence for prohibited items

1. Exceptionally and with due regard to Article 13.1 of this Practice Direction, where the Chief Detention Officer has a reasonable suspicion that correspondence with Counsel contains a prohibited item pursuant to Detention Rule 25, the Chief Detention Officer shall withhold the

correspondence to check for prohibited items and note the withholding in the log pursuant to Article 13.2 of this Practice Direction.

2. When withholding incoming correspondence:
 - a. the Chief Detention Officer shall promptly notify the Detainee and Counsel and forward the unopened correspondence to the Registrar; and
 - b. the Registrar shall ask Counsel to open the item in the Registrar's presence for the limited purpose of determining whether the correspondence contains a prohibited item.
3. When withholding outgoing correspondence:
 - a. the Chief Detention Officer shall promptly notify the Detainee and the Registrar; and
 - b. the Chief Detention Officer shall open the item in the presence of the Detainee for the limited purpose of determining whether the correspondence contains a prohibited item.
4. Any prohibited item discovered shall be confiscated or destroyed pursuant to Detention Rule 25.

Article 18 Review

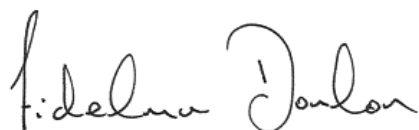
1. A Detainee whose visits and communications with Counsel have been restricted pursuant to this Practice Direction may submit a formal complaint or request for review to the appropriate authority, as detailed in the Practice Direction on Complaints.
2. Where a Detainee's direct complaint to the Registrar concerns the Registrar's decision to impose temporary restrictions pursuant to this Practice Direction, in deviation from the Practice Direction on Complaints, the Registrar shall decide on the direct complaint within seven (7) days of receipt of the Detainee's written complaint.

CHAPTER V FINAL PROVISION

Article 19 Amendments

1. An amendment to this Practice Direction shall enter into force on the date of its signature.
2. An amendment to this Practice Direction shall not apply retroactively.

The Hague, Netherlands
23 September 2020



Dr Fidelma Donlon
Registrar