



KSC RULES OF PROCEDURE AND EVIDENCE



The Rules of Procedure and Evidence (RPE) of the Kosovo Specialist Chambers (KSC) are a detailed set of provisions governing the conduct of proceedings before the KSC. While the Law on Specialist Chambers and Specialist Prosecutor's Office (the "Law") provides for the fundamental principles that guide the judicial work of the KSC (similar to a Criminal Code), the purpose of the RPE is to give specificity to these principles and, accordingly, to set out the precise procedures to follow at each stage of the proceedings before the KSC (similar to a Criminal Procedure Code).

Overall, the Rules of Procedure and Evidence aim at enhancing the fairness, expeditiousness, efficiency, integrity and security of the proceedings before the Specialist Chambers. They are consistent with the Constitution of Kosovo and the Law and reflect the highest standards of international human rights.

Below are selected highlights from the RPE.

STRUCTURE AND FUNCTIONING OF KSC

Judges of the Specialist Chambers are placed on a Roster and are assigned by the President to specific cases or to exercise other functions provided by the Law. The RPE set out the grounds for recusal or disqualification of Judges in case of conflict of interests or when their impartiality, independence or integrity is challenged. The President of the KSC is responsible for the judicial administration of the KSC. The President also presides over any Supreme Court Panel of which he or she is a member. The Registrar is responsible for the administration and servicing of the KSC. The Ombudsperson is tasked with the monitoring and protection of fundamental rights and freedoms of persons interacting with the KSC and the SPO. The Ombudsperson may not, however, intervene in legal proceedings, except in instances of unreasonable delays.

MEASURES TO ENSURE FAIRNESS, SECURITY AND EXPEDITIOUSNESS OF THE PROCEEDINGS

The KSC is required to deal with all cases fairly and expeditiously. In the RPE, the Judges have set deadlines for the delivery of judgments and are required to set out calendars and work plans in order to ensure

effectiveness and efficiency of the judicial process. Judges are specifically empowered to take measures to expedite proceedings of offences against the administration of justice (e.g. intimidation of witnesses, forging documents, false evidence and testimony etc.).

There are also provisions for protective measures for witnesses and victims participating in the proceedings. Some of the possible measures are testimony with pseudonym, voice or facial distortion and private or closed sessions. Special measures will be put in place for traumatised or vulnerable witnesses, elderly persons or those under the age of 18, such as the attendance of a psychologist, counsellor or immediate family member during the testimony.

ARREST AND DETENTION

A person deprived of his or her liberty pursuant to an order of the Specialist Prosecutor or the Judges must be informed of the grounds for detention and be brought before the Judges without undue delay. The person will also be afforded all fundamental guarantees under the Kosovo Constitution and human rights law, including access to a lawyer. The Rules provide for periodic reviews by the Judges of the appropriateness of the detention and for its extension. They also set a maximum period for detention at the investigation stage (one year).

A detained person has the right to appeal a decision on detention directly before the Court of Appeals Panel and ultimately before the Supreme Court Panel. The possibility for compensation for unlawful arrest or detention exists – a person may file such a request with the President within six months of the final decision establishing the unlawful arrest or detention. Once a suspect is transferred to the KSC, he or she must be brought without undue delay before a Judge for a review of the legality of the arrest or detention. The decision of the Judges must be rendered within 48 hours.

INDICTMENTS AND PRE-TRIAL PROCEEDINGS

Pre-trial proceedings commence with the filing of an indictment by the Specialist Prosecutor for a judicial review by a Pre-Trial Judge. Only when sufficient evidence is provided in support of the charges will the indictment be confirmed. In such a case, the accused is brought before the Pre-Trial Judge and he or she may plead not guilty or admit guilt. The case will proceed to the pre-trial stage where the accused pleads not guilty or to the sentencing stage where he or she admits guilt. If the indictment is not confirmed, the case is dismissed. The Pre-Trial Judge must also rule on any preliminary motions and ensure that the pre-trial proceedings are not unduly delayed and the case is prepared properly for trial.

TRIAL/APPELLATE/SUPREME COURT PROCEEDINGS

Each party is entitled to tender evidence relevant to the case. Unless otherwise directed by the Trial Panel, the evidence is presented in the following order: Specialist Prosecutor evidence, Defence evidence, evidence called by the Panel, Specialist Prosecutor rebuttal evidence and Defence evidence in rejoinder. After the closure of the Specialist Prosecutor's case, the Defence may file a motion to dismiss any or all of the charges against the accused. Subsequently, the Panel may already at this stage dismiss the indictment if there is no evidence capable of supporting any conviction beyond a reasonable doubt. The trial judgment shall generally be pronounced within 90 days from the closing of the case. Both parties may appeal the trial judgment. Victims' Counsel can file an appeal in relation to the status of victims or reparations. The Court of Appeals Panel may affirm, reverse or revise the trial judgment. It may also order a retrial. A convicted person may appeal the judgment of the Court of Appeals Panel, and then the case will proceed to the Supreme Court Panel. However,

the Supreme Court Panel shall only hear those appeals whereby the Court of Appeals Panel has reversed an acquittal and has instead entered a conviction against the accused or when life-long imprisonment has been imposed.

AMENDMENTS TO THE RPE

Judges, the Specialist Prosecutor, the independent representative body of Specialist Counsel (established to represent the interests of Counsel acting before the KSC) and the Registrar may propose amendments to the RPE. The proposed amendments are reviewed by a Rules Committee composed of the President and two other Judges designated by the President. The proposals are adopted by the Plenary of Judges by an absolute majority of the participating Judges.

SPECIALIST CHAMBER OF THE CONSTITUTIONAL COURT

Referrals to the Specialist Chamber of the Constitutional Court may be made by Judges, the Ombudsperson of the Specialist Chambers and the Kosovo Ombudsperson. Individuals, including the accused and victims, may also make referrals, but only after exhaustion of all remedies provided by law.

PARTICIPATION OF VICTIMS IN PROCEEDINGS

The RPE contain the procedure for the admission and participation in the proceedings of victims of crimes with which the accused are charged. In order to qualify as victim before the KSC, an applicant must provide sufficient evidence of the harm suffered as a direct result of any crime in the indictment. When deciding on the admission and the modalities of victims' participation, Judges must ensure that this does not affect the fairness and expeditiousness of the proceedings as a whole. Victim-participants shall exercise their rights during all stages of the proceedings as a group through an assigned Victims' Counsel. The Counsel shall have the right to make opening and closing statements and may be present during pre-trial and trial proceedings if the Panel deems it necessary for the protection of the personal interests and rights of the victims.

REPARATIONS

A Panel can either refer the case to civil litigation or order reparations against the convicted person. In the latter case, the Panel may appoint experts to assist it in determining the damages to the victims.

The Rules of Procedure and Evidence were adopted on 17 March 2017 and revised on 29 May 2017 by the Specialist Chambers Judges sitting in Plenary. Following the Specialist Chamber of the Constitutional Court's determination that the Rules comply with Chapter II of the Kosovo Constitution, they entered into force on 5 July 2017, marking the date from which the Specialist Chambers became fully judicially operational and able to receive filings.