

The (Pen-) Ultimate Guide to the Specialist Chambers (I)

Nature, organizations and power

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THE (PEN-) ULTIMATE GUIDE TO THE SPECIALIST CHAMBERS (I) – *Nature, Organizations and Power*

I. Introduction

Kosovo's Assembly passed an amendment on August 3, 2015 and adopted the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office as a response to Dick Marty's report in January 2011.

Media constantly refers that there could be several allegedly important politicians who could potentially be prosecuted by the Chambers. Thus, the report requests from all involved parties, including Albanian, Serbian, and Kosovar institutions, as well as EU Member States, cooperation with the relevant investigative authorities, to shed light on the truth and ensure that Justice is served and impunity does not endure. At that time, that authority was expected to be the European Union Rule of Law Mission in Kosovo (EULEX), who had taken over some substantial judicial functions while the appropriate national agencies and organizations were set up and brought to operation.

It is thus not surprising that the very first reaction came from EULEX, which established a Special Investigative Task Force (SITF), based in Brussels and composed of exclusively international staff, to investigate the accusations contained in Marty's report. Although the investigations would continue in the following years, no tangible results were achieved. Subsequently, the EU also started requesting Kosovar institutions to create some sort of special judicial body to facilitate the investigation and any resulting judicial processes, in a time were the negotiations of a Stabilization and Association Agreement were ongoing. In order to ensure a fair process, this court had to be established outside of Kosovo and composed entirely of foreign staff, in order to avoid any political pressure.

Thus, Kosovar institutions grudgingly started to pave the way of the creation of the Specialist Chambers. The first reference to such a 'specialist court' was made in the exchange of letters that granted mandate to EULEX in 2014.¹ However, amending the Constitution to provide the Chambers with a constitutional basis would be required. This proved to be as difficult as it was divisive. A first attempt to pass the amendment failed on June 26, 2015, and the constitutionality of a successful second attempt on August 3 was contested by the opposition. It would take several more months for the Constitutional Court to decide on the topic. In essence, the Court rejected the admissibility of the case, as the text of the amendment had been previously deemed to be in accordance with the relevant constitutional provisions and the alleged rights and freedoms guaranteed by the Constitution.

If amending the Constitution was difficult, enacting legislation was not easier. In fact, both processes were held in parallel. Eventually, after some failures and with the high pressure exerted by the EU and the US, the Assembly of Kosovo adopted the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office on August 3, 2015, in the same session that passed the constitutional amendment. Thus, all actions required to provide this new court with a legal basis were done simultaneously, a quite unusual phenomenon. Unsurprisingly, there was still further contestation. The Association of KLA War Veterans submitted a petition to the Assembly requesting the amendment of the Law, backed by approximately 15,000 persons. In response, in late 2017, 43 MPs of the ruling coalition asked for an extraordinary session of the Assembly to repeal the Law through accelerated procedures. Nevertheless, international pressure against this

¹ Ahtifete Jahjaga, *Letter from the President of the Republic of Kosovo to H.E. Baroness Catherine Ashton High Representative of the Union for Foreign Affairs and Security Policy regarding the presence of the European Union Rule of Law Mission in Kosovo*, 14 April 2014.

attempt was mounting and the Assembly failed to achieve the necessary quorum for such an extraordinary session.²

All these events lasted for close to 2 more years. By the end of 2017, the existence of the Specialist Chambers was ensured, yet the institution had gone through its own difficulties in the meantime. Due to the international component of this new jurisdiction, the existing structures of the Kosovar judicial power could not be used. A new structure had to be created from scratch; selection and hiring processes designed and then executed, while negotiations with The Netherlands were started in order to secure a seat for the Chambers. It would only be in March 2017 when the judges could meet in the so-called Plenary to adopt the Rules of Procedure and Evidence of the Court (Rules of Procedure), without which it could not start operating.

However, as per legal requirement, these Rules needed to be verified by the Specialist Chamber of the Constitutional Court, which is tasked with reviewing their compliance with Chapter II of the Constitution, and thus its alignment with the fundamental rights and freedoms guaranteed therein. Although this 'Constitutional Chamber' cleared most of the dispositions of the Rules in late April, it found a number of discrepancies that required further consideration by the Plenary, and a second draft was not adopted until the end of May. After a new review and greenlight, these Rules were deemed final and entered into force on July 5, 2017, just prior to the unexpected attack the Chambers suffered, and deflected, at the end of that year.

After going down this path, the Chambers finally became functional and started their operations, albeit at the time of writing these lines no indictment has yet been launched against any individual. That could be a consequence of the cases under the purview of the Chambers being decades old, especially since they were not properly investigated at the time they were committed. This adds an extra complication. However, it would have been reasonable to expect that the evidence collected by the Council of Europe, which set this whole process in motion, also served to actually launch criminal cases.

Anyhow, obtaining an understanding of the Chambers is now more important than ever, before the institution makes its way to the headlines. This analysis is the first of two that will cover the nature, organization, composition, powers and internal processes of the Chambers. This first part will focus on the nature, competences and structure of the Chambers, emphasizing their particularities, which differentiate them from domestic and international courts. Thus, Section II (Preliminary remarks) delves into these particularities, analyzing the nature, seat, and source of funding of the Chambers. Section III (Specialist Chambers) covers the jurisdiction, composition, and governance of the institution. Section IV (Registry) focuses on the permanent administration of the Chambers headed by the Registrar, its powers and responsibilities. Section V (Specialist Prosecutor) provides an insight on the prosecutorial side of the organization, and the last section summarizes the main points of the analysis.

II. Preliminary Remarks

1. The nature of the Chambers

The Chambers are only loosely related to the Kosovar judiciary. Based on the Constitution, the judicial system is comprised of three instances, having the Supreme Court as its highest judicial authority. A Constitutional Court, which is not part of the judiciary, serves as the supreme

² Gazeta Express, "Kosovo Assembly fails to repeal Specialist Chambers Law due to lack of quorum", *Gazeta Express*, 23 December 20117, <https://www.gazetaexpress.com/en/news/kosovo-assembly-fails-to-repeal-specialist-chambers-law-due-to-lack-of-quorum-173403/>

interpreter of the Constitution. The Chambers mirror this structure. In fact, formally they form part of this hierarchy of courts, even though practice differs significantly. For example, the Kosovo Judicial Council, the highest regulatory authority of the judiciary, has no authority over the Specialist Chambers. Furthermore, the Specialist Chamber of the Constitutional Court is located in Kosovo but is entirely independent from the Constitutional Court itself.

This design stems from a deep concern regarding the fairness and expediency of the process. Marty's report was very critical with the lack of proper investigation during the previous two decades from both domestic and international authorities. According to his report, neither UNMIK nor EULEX managed to address the alleged crimes despite both having full access and competence to do so. Nevertheless, in order to minimize any possibility of failure of the process and with hope to shed light to Marty's report, the European Union requested that the Chambers be established accordingly with what can at first sight be considered as a hybrid court.

The concept of 'hybrid court' developed in the first decade of the century, when a number of post-conflict countries resorted to mix judicial institutions, in which national and international judges delivered justice using both international law and domestic regulations, in an attempt to overcome the difficulties of such environments. One of the sternest proponents of that idea, Laura Dickinson, considered them better suited than far removed international courts to regulate conflicts in which rule of law had all but collapsed recently.

These hybrid courts were considered superior in terms of legitimacy, capacity building, and penetration of international law within the domestic legal culture. The general assumption is that hybrid courts could be accepted more easily by the local populations since they would be seated in the territory of the country in question and domestic lawyers, judges, and prosecutors would play an important role in their functioning. At the same time, the presence of international colleagues would facilitate both a minimum level of competence in their work and a transfer of knowledge to the local counterparts, who would eventually be ready to take over the entire responsibility of running the justice system. Not only that, but by having such foreign trained experts fulfilling judicial roles, hybrid courts would also ease the adoption of internationally recognised procedures and guarantees in local law and practice. Thus, Dickinson referred to the 'promise' of this new model.³ Kosovo, in fact, is not new to this concept. On the contrary, the so-called Regulation 64 Panels of UNMIK times constitute one of the models upon which the model is constructed. These were mix panels in which two international judges would deliver justice with a local colleague upon the request of any party or the prosecution. A similar arrangement survived after the declaration of independence, with EULEX judges, until it was gradually phased out.

The Specialist Chambers, however, are hybrid not because its seat or its staffing policies. In fact, with a seat in The Hague and a purely international staff, they resemble more an international court than anything else. However, their legal regime is akin to that of a purely domestic court. The legal basis of the Chambers is not an international agreement or a UNSC Resolution, but Article 162 of the Constitution of Kosovo, as developed by the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office. The former mandates the existence of the institution, while the latter defines its structure, competences, and composition, and even confers the Chambers legal personality on article 4.

In addition, any ruling emanating from the Chambers will be based on a blend of international and Kosovar law. The Law foresees the applicability of a number of documents as sources of law,

³ Laura Dickinson, "The Promise of Hybrid Courts", *The American Journal of International Law*, Vol. 97, No. 2 (April 2003), April 2003, 295-310,

https://www.jstor.org/stable/3100105?seq=1#page_scan_tab_contents

including the Geneva Convention and the European Convention of Human Rights. Furthermore, it also refers to the current Criminal Code, certain dispositions in force at the time of the crimes, including UNMIK Regulations, and even the Criminal Code of Yugoslavia of 1976.

Entrusted with addressing post-war crimes, both the EU and the US consider the Chambers as an important step to Kosovo's Euro-Atlantic path. All in all, the Chambers are established to determine the truth about post-war crimes, something that the ICTY, EULEX and Kosovar authorities have failed to do in the last decades. Some of the explanations to this phenomenon include the death of a number of witnesses, with many others no longer recalling the details, or the alleged destruction of evidences and the alleged intimidation of witnesses to change their statement. Unsurprisingly, it is not expected that the Specialist Chambers will manage to make any difference.

The evident contradiction, existing doubts about their capacity, a certain cynicism regarding the impunity of the powerful within the Kosovar society, the time elapsed, and past failures to prosecute these crimes, all contribute to distance the population from the Chambers. Despite that, there also is a perceived ethnic basis of the Chamber's work.

Thus, the Specialist Chambers in fact fail to reap the benefits of hybridness. They are widely perceived as an imposition made by external actors and political factors more than an honest attempt of making justice. They are exclusively composed of international staff in a removed seat, which essentially precludes any knowledge transfer or spill over to the Kosovar judiciary. Their practice and procedure remains mostly isolated from other corpuses of Kosovar law, to the point that the Chambers are neither expected to rely on existing jurisprudence nor other Courts to look on them for guidance; thus, excluding any effect whatsoever on the adoption of international legal standards in judicial practice.

In this nebulous spectrum of hybridness, the Specialist Chambers are far closer to the purely international than to the domestic court, and thus they share most of the problems Dickinson identified in that category in 2003. Its design responds to a search for effectiveness, and thus the Specialists Chambers can only vindicate themselves by being effective. If they are able to deliver justice, they may attain performance legitimacy in the long run. After all, it is not like the Kosovar society ignores the failures of the past, it is just dubious regarding this new initiative.

2. Seat(s)

In response to the concerns about due process and rule of law, the new article 162 of the Constitution foresaw that the Chambers would have its seat in Kosovo, and then a second seat abroad. This disposition was reproduced in Article 3, paragraph 6 of the Law, which reproduces the content of the Constitution, introducing the term Host State. The entire legal framework, from the constitutional amendment onwards, always envisaged that the main seat of the Chambers would be the nominally second seat abroad.

As tradition follows, the first choice to host an internationalized court dealing with war crimes or crimes against humanity would be The Hague, and therefore it was necessary to enter negotiations with The Netherlands in order to establish a judicial seat in its territory.

An interim agreement between the Kingdom of the Netherlands and the Republic of Kosovo was brokered by the respective governments, and signed by President Thaçi and ambassador Willems on January 26, 2016. The main purpose behind this agreement was the facilitation of all activities conducive to establish the Chambers, and thus was more limited in scope.

On February 15, 2016, the same representatives signed a final agreement that annulled the interim one. In this case, it included a more comprehensive regime for the relocation of the Chambers. Not only article 3 of the agreement restated the establishment of that second seat, it also conferred the Chambers the immunities, privileges and facilities required for a court to

function, include the right to establish detention centers and keep people in detention, as well as an obligation assumed by the Netherlands of transporting detained people to and from such facilities as required by the Chambers.

However, the agreement in article 44, paragraph 2 specifically states that no prison sentence will be served in the Netherlands. It has not been clarified yet whether any new agreement between the Chambers and a third state will be concluded to that end, or if eventual condemned persons would serve their sentence in Kosovo.

3. Funding

Since the Chambers are, to some extent, a requirement made by the European Union, building upon the experience of EULEX, their budget does not come from the budget of Kosovo, but is allocated by the Council. In fact, the legal act through which the budget is allocated is the Joint Action 2008/124/CFSP, which established EULEX in the first place.

Consequently, article 16, covering the financial arrangements of the Mission, has been invariably amended at each renewal of mandate, and since 2016 it includes specific provisions regarding the percentage allocated “to cover the support to the relocated judicial proceedings within a Member State” (in other words, the Specialist Chambers), as well as the mode and manner of financing them.

In total, the EU has allocated €156,664,000 since April 1, 2016 to the work of the Chambers, which represents 45% of the budget allocation for EULEX in the entire period. In fact, that portion has remained stable through the years. The current fiscal period covers the period from June 2018 to 2020, and for these 2 years alone, more than €86 million have been allocated to the Chambers.⁴

This amount is transferred to the organization through a grant agreement signed between the Commission and the Registrar in representation of the Chambers. This stresses once again the hybrid nature of the court, as it is being paid by a foreign actor instead of the state in which it is expected to exert jurisdiction.

III. The Specialist Chambers

Although the term Specialist Chambers refers to the entire organization and its supporting structures, this section focuses exclusively on the judicial arrangements, which remain the core of an institution whose ultimate goal is to make justice.

1. Jurisdiction

The jurisdiction of the Chambers stems from Chapter III of the Law, which regulates it alongside with the applicable Law. In total, the Law dedicates 4 articles to delimitate said jurisdiction, and a concurrent clause to establish the primacy of jurisdiction of the Chambers over other courts. These dispositions establish a special court whose purview is limited to a very specific range of crimes and offenses.

a) *Ratione materiae*

Regarding the substance matter of the case, article 6 of the Law determines the Chambers’ jurisdiction over crimes related to Marty’s report that are considered extremely grave by either

⁴ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (Consolidated version online), *Official Journal of the European Union*, OJ L 42, 16 February 2008,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02008E0124-20180608>

international or domestic Law. Regarding the former, this competence extends to crimes against humanity, with an implicit mention to Article 7 of the Rome Statute, whose text is literally reproduced, as well as war crimes as determined by the Geneva Conventions. Both categories are thus extensively defined in Articles 13 and 14, respectively.

As for the later, domestic law, the Chambers have jurisdiction over certain criminal offences regulated in the Criminal Code in force that constitute crimes against the Administration of Justice and Public Administration, against public order, and official corruption and crimes against official duty. In addition, Article 15 extends applicability to those relevant criminal laws that were in force during the temporal jurisdiction of the Chambers, as set by the relevant UNMIK regulations. These laws are the Criminal Code of Yugoslavia (1976) and the Criminal Law of the Socialist Autonomous Province of Kosovo (1977), as well as any other more lenient, non-discriminatory laws in force between the suppression of Kosovo's autonomy and the end of the war.

b) Ratione temporis

As it was to be expected, congruent with the content of Marty's report, the Chamber is competent for crimes committed between January 1, 1998 and December 31, 2000 ex article 7. That roughly corresponds to the period covering the war and the immediate aftermath, when, according to the report, UNMIK and KFOR had yet to establish full control over the territory.

c) Ratione loci

Regulated by article 8, the competence of the Chambers extends to crimes committed or commenced in the territory of Kosovo, as determined by the applicable laws in force during the time. This specific wording is no coincidental, as it extends the jurisdiction of the Specialist Chambers to continuing crimes committed partially in the territory of Albania or another bordering state, which in fact account for most of the alleged crimes described in Marty's report.

d) Ratione personae

Article 9 of the Law closes the question of jurisdiction by extending it over all natural persons fulfilling the mentioned criteria. It also covers citizens of Kosovo or the Federal Republic of Yugoslavia that committed crimes against either of both groups, irrespective of the location of such crime.

2. Institutional position in Kosovo

A short section of the Law, composed of just 3 articles, regulate the position of the Chambers and its staff vis-à-vis Kosovar public institutions, civil servants, and even courts. Chapter VIII, aptly titled 'Interaction with Kosovo Courts and Entities', describes the duties of Kosovar authorities, both judicial and governmental, regarding cooperation with the Chambers.

The staff of the Chambers is granted, under article 52, the same immunities and diplomatic status received by the international staff of EULEX according to Kosovar legislation. It entails diplomatic immunity to different degrees, according to the specific position of the person, and in any case the inviolability of any and all premises and properties they may have, in order to avoid the exertion of any kind of pressure.

Institutionally, articles 53 and 54 request all authorities to heed any request of the Chambers, including the identification of people, their questioning, the examination of places, the transfer of documents, the arrest or surrender of persons, as well as the seizure of assets, without delay and prior review. In fact, article 53(2) grants executive force to any order issued by the Chambers, while paragraphs 3 to 5 reiterate this situation with specific provisions for arrest warrants, property forfeiture, and transmission.

In addition, Article 53 makes explicit the supremacy of the Chambers in the judicial hierarchy. According to this disposition, both the Chambers and the Prosecutor can order the transfer of cases from any level of the Kosovar judicial system, and the domestic judge or

prosecutor is obliged to promptly comply. These orders are final, and even reach extraordinary remedies usually falling under the jurisdiction of the Supreme Court. In addition, a general duty to inform the Chambers of any investigation or proceeding that might fall within their scope. Conversely, other courts and the prosecution may address, in written, motivated requests to the President of the Chambers to seek for their assistance. However, no obligation of prompt assistance is mandated in this case. Thus, the duty of cooperation established by Law is definitely non-symmetrical.

3. Composition

As discussed above, the Chambers will be independent from the court system in Kosovo, even though they mirror its structure. Also, a separated chamber of the Constitutional Court will address any constitutional matter related to the Chambers' activity. In addition to the judicial layout, the Chambers will have a Registry responsible for the daily administration.

These structures, however, differ in their staffing policy. While the functions of the Registry will necessarily require a permanent structure filled with a number of professionals, judges are to be called from an international roster whenever their services are required, and as such will not be permanently based in The Hague.

a) Chambers

The basic layout of the Chambers is set in article 24 paragraph 1, which refers to a 3 instance structure for the Chambers by specifying that there will be a Chamber attached to the Basic Court, the Court of Appeals, and the Supreme Court. However, due to the hybrid nature of the Specialist Chambers, these are not going to be permanent. On the contrary, Article 25 foresees that judges will be assigned on a need basis to each stage of the judicial process. Thus, whenever an investigation is opened and pre-trial proceedings start, an individual judge will be assigned as pre-trial judge, who will decide over any procedural question at that stage. Then, when the trial procedure starts, a Trial Panel composed by 3 judges and a reserve will be constituted. In cases where crimes being tried are not classified as serious under article 22 of the Criminal Code, the panels can be composed of a single judge. As for the panels of the Appeal Court and Supreme Court, which deal with the various appellate procedures as a second and third instance, respectively, they will be composed of 3 judges with no reserve foreseen.

In addition, for any constitutional matters arising from the Chamber's activity, a panel of the Constitutional Court Chamber will be established to address them, composed of 3 judges as well.

b) Judges

As already introduced, to form all these panels, the Chambers rely not on a permanent corps of judges but on an international roster. Its creation, form of access, and selection and allocation procedures are established in articles 26 to 28 of the Law. Then, these questions are developed in some Rules on the Assignment of Specialist Chambers Judges from the Roster of International Judges (Rules on Assignment). Additional related issues, such as disciplinary measures and the role of the President of the Chambers in the process, are covered by some dispositions of the Rules of Procedure.

This roster, according to article 26, shall contain the name of all accredited judges that can act within the framework of the Specialist Chambers. This includes, at the very least, 4 constitutional judges, the bare minimum to form a panel to hear from any referral to the Constitutional Court plus a reserve.

Article 28 of the Law regulates the process of appointment of these international judges. It calls for the establishment of an independent selection panel that will assess any candidacy to the roster, in order to make a reasoned recommendation. This panel shall be composed of 3

international staff, of which at least 2 must be judges. The appointing authority, which happens to be the Head of EULEX, shall then formalize the election based on their recommendation. In order to be appointed as a judge, Article 27 determines that the candidates shall fulfill all the criteria required in their respective states and be fluent in English. They shall have extensive experience in domestic criminal law and procedure, or international and constitutional law as required.

The judges on the roster are forbidden to receive any remuneration or benefit. In fact, article 26 goes as far as paving the way to exercising any function deriving from such status remotely, whenever possible. This will happen at the request of the President of the Chambers, who is in charge of assigning cases to the judges in accordance with the Rules on Assignment. The judges of the Chamber are expected to be independent when performing their functions, not engaging in any activity that may interfere with such independence or give the impression of interfering. Furthermore, an assigned judge is barred from engaging in other occupations, so as to guarantee both his or her independence and availability. On the other hand, only the Plenary can, by absolute majority, dismiss a judge, as set in article 31 of the Law.

As said, the President of the Chambers is tasked to assign judges from the roster to specific panels and individual functions whenever a process so requires, with the exception of the Constitutional judges, whose regime is separated from the rest of the organization. Such an assignment, according to article 30 of the Law, will have a fixed term of 4 years or until the procedural phase (pre-trial, trial, appeal), for which the judge was assigned, has been completed.

The Plenary, fulfilling the legal requirement put forward by article 25(3) of the Law, adopted the Rules on Assignment in March 2017. These establish a minimum set of principles and guidelines for the assignment, even if they still leave a substantial leeway to the President. In particular, these Rules reiterate the open nature of the process, which should follow in any case objective criteria, i.e. the expertise, experience, and even preference of the particular judge. Any previous activity that may cast doubt should be also taken into consideration. The rules, however, fall short from establishing a more formalized selection process and only call for the publicity of the decision.

4. Governance

The Law on the Chambers creates two main figures to regulate the governance and administration of the Chambers, the President of the Specialist Chambers and the Plenary. The latter is essentially an assembly composed of all judges. While the role of the President is made explicit and defined in the Law, that of the Plenary is only concretized in the Rules of Procedure.

In this regard, the Plenary, as regulated by Rule 10, in addition to adopting and amending the Rules on Assignment and the Code of Judicial Ethics, has the competence of electing the President and the Vice-President of the Specialist Chambers by an absolute majority. It shall convene at least once per year and its sessions are presided over by the President. Although public minutes and any decisions shall be published, its deliberations remain secret.

As for the President, he or she serves a renewable term of 4 years, as set by article 30(4). The first President was appointed by the Head of EULEX from the list of selected judges, although any successor, or reappointment, shall be selected by the Plenary. According to Article 32 of the Law, the President shall be responsible for the judicial administration of the Chambers. His or her competences are systematized in Rule 13, and include the overall coordination of the Chambers, the assignment of judges to the panels, and the representation and international relations of the Chambers. The President will also preside over any Supreme Court Panel in which he or she is taking part.

In addition to the President, the Law foresees the existence of a Vice-President, who will have the same authorizations as the President in case of its absence or inability to act, as well as any other functions vested upon him by law. The Vice-President is elected according to the same procedure as the President.

IV. The Registry

The Registry is the backbone of the Chambers, its permanent structure and management. Established in Article 34 of the Law and regulated in Chapter II, Section III of the Rules, it is the independent body responsible for the administration and servicing of the Chambers. It is composed of all the staff that may be necessary to perform its duties, led by a Registrar and autonomous to develop its internal rules.

Same as the President and the Vice-President of the Chambers, the Registrar is appointed by the Plenary and shall be a person qualified and highly competent in the administration of courts. Once appointed, the Registrar will serve the Chambers in a four-year term and will be eligible for reappointment.

The Registrar shall be composed of the Victim's Participation Office, a Defence Office, a Witness Protection and Support Office, an Ombudsperson Office, and a Data Protection Office. In addition, the Registry may rely on court officers and on the assistance of Kosovo Police, to carry out its daily tasks. Each one of these offices has its own role on assisting the Chambers to fulfill its mission.

1. Functions and competences

The main catalogue of the functions of the Registry lies within Rules 23 and 24, which describe in some detail its scope and the means it can employ within it, developing the legal dispositions of article 34 and other mentions.

These include wide discretionary powers for the Registrar, whose sole limitation is a duty of coordination with the President of the Chambers, with whom he or she may consult at any given time. Thus, the Registrar can raise issues with the President and any panel on any question arising from the exercise of its powers, and even make recommendations. In addition, it can address the Plenary inasmuch its functions affect judicial processes.

The tasks of the Registrar can be roughly divided in four groups: administration and servicing, archiving, inter-institutional representation, and detention management. Regarding the first, the Registry receives, cycles, and distributes the case file to the judges and the parties, according to an internal Practice Direction it shall adopt. It also fulfills a wide range of actions through its Offices, including the management of victims' participation in the processes and the certification and supervision of attorneys. In fact, within this wide competence, it is also tasked with drafting a number of regulations that have a direct effect on the judicial process. In particular, these are the Directive on Counsel and a Code of Professional Conduct with the approval of the President.

As for archiving, Rule 24 charges the registrar with maintaining "full and accurate" records of proceedings, managing the storage and custody of evidence and materials for the duration of the legally prescribed period of conservation, establishing and maintaining a judicial database and recording the minutes of the Plenary. As a consequence, it is also the authority that deals with access to public documents and information.

The third field of action, inter-institutional relations, stems from a systematic reading of the Law and the Rules, as it is not mentioned specifically anywhere. For instance, Rule 27 empowers the Registrar to enter into any agreement necessary to facilitate witness protection. Similarly, Rule 87 makes the Registrar responsible for requesting assistance of Kosovar authorities to service

indictment, and even to activate mutual assistance agreements of which either Kosovo or the Chambers specifically are part. Furthermore, both the Agreement with The Netherlands and the Council Joint Action specifically refer to the Registrar as the contact point of the Chambers. All in all, the regulation consecrates a central role for the Registry in the relations of the Chambers with other institutions, both national and international.

Finally, detention facilities also fall within the purview of the Registrar, who is tasked to manage and administer them with whatever judicial oversight may be necessary on each specific case. In order to do that, he or she is empowered to adopt Rules of Detention, Complaints and Disciplinary Procedures, which should be aligned with relevant international standards and allow for the monitorization of the facilities and procedures by relevant international actors in the field.

In short, the Registry manages the entire infrastructure that the Chambers require to function, from communications to detention and relations with the public. In order to fulfill all these roles, the Registry is structured in a number of departments or offices.

2. Structure

a) Victim's Participation Office

The Victim's Participation Office is responsible for the system of Victim Participation, including the list of Victim's Counsel as well as the system of payment for the victim's representation. In addition, this office will provide assistance on the criminal procedures to all the victims included in the proceedings before the Chambers.

b) Defence Office

In order to be present as a Defense Counselor before the Chambers, all the interested candidates have to apply and fulfill the required criteria. The Defence Office is tasked with verifying the applicants and administer the public list. In addition, this office will create and administer the system of legal aid for representation of indigent accused before the Chambers.

c) Witness Protection and Support Office

Considering the past experiences and the crucial importance of the witnesses on the proceedings before the Chambers, the Registry has a Witness Protection and Support Office to ensure any necessary protective measures and security arrangements for the witnesses' well-being. In addition, this office serves for counseling and assisting the witnesses and all others at risk on account to the testimony they will provide before the Chambers.

d) Ombudsperson's Office

As specified by Law, the Registry shall have an independent office for the Ombudsperson to monitor, defend, and protect the fundamental rights and freedoms of everyone interacting with the Chambers. The Ombudsperson shall be elected by the Plenary and fulfill the criteria of high moral values and must be highly competent in the area of human rights and freedoms. It shall be appointed for a four-year term and have the competence to intervene in the proceedings in instances of unreasonable delays or when invited as *amicus curiae*. In addition, it is also entitled to make referral to the Constitutional Court.

After the completion of any inquiry, the Ombudsperson shall issue a final report, which shall be delivered to all parties involved and the President of the Chambers. These reports shall be published and, when convenient, made available to the public, with any necessary redaction.

e) Data Protection Officer

Considering the importance of data protection, the Registry has an officer monitoring every proceeding and ensuring that the EU standards on personal data protection are being implemented and respected.

V. The Specialist Prosecutor's Office

As tradition follows, the Specialist Prosecutor's Office (SPO) is an independent institution responsible for the investigation and prosecution of persons suspected of having committed crimes falling within the jurisdiction of the Chambers. Due to the sensitive nature of the work it does, it is also the most secretive organization of the Chambers. The responsibilities of its prosecutors include the entire process, from initiating an investigation against a suspect to defend its case against him or her before the Chambers. Organically, not only it functions independently from the Chambers but also from the Prosecution authorities in Kosovo.

1. Nature

The Specialist Prosecutor and his or her Office are tasked with investigating and prosecuting individuals they suspect may have committed the exceptionally grave crimes covered by the Chambers, and as such is a critical piece of the expected judicial process. In fact, the SPO is formally the successor of SITF, the first investigative initiative taken after Marty's report, as explicitly mentioned on Article 24(2) of the Law. This institutional continuity goes as far as appointing the then lead prosecutor of the task force as the first Specialist Prosecutor and transferring all staff from the former to the latter, in order to ensure a transition that is more formal than real.

Thus, Article 35 gives a clear mandate to the Specialist Prosecutor, investigate and prosecute. It also outlines the role of the person holding that title and the outreach of the Office. The Prosecutor must be "a person of high moral character and possess the highest level of competence and experience" in the profession. That person will serve a renewable term of 4 years, being appointed by the Head of EULEX after screening all available candidates. In this case, as befits the separation between judiciary and prosecution, the Plenary has no saying on the selection procedure. Much like the judges, any active prosecutor is expected to avoid parallel activities and is barred from requesting or accepting directions or instructions by any national, foreign or international authority.

2. Functions

In order to fulfill its mandate, both the Prosecutor and other members of the Office, have the status of authorities under Kosovar legislation. They are thus entitled to undertake any and all action to further the investigation; this includes requesting the presence of suspects, victims and witnesses for questioning, as well as seeking their detention and summoning when required.

It also extends to the execution of on-site investigations and the collection of evidence. For this, the SPO must apply the procedural safeguards introduced in the Rules of Procedure, and it is entitled to request cooperation both from any other Kosovar authority and third states.

At a later stage, the SPO is the organ in charge of requesting the arrest of a suspect from the competent panel, as well as ordering the temporary detention for a period of 48 hours before a judge has the chance of deciding. It also has the monopoly on initiating and filling indictments resulting from the investigation, in accordance with the established procedure and defending its case in front of the trial panel and at any appeal stage. These procedures and the role of the Prosecutor therein will be presented in the second analysis.

3. Composition

The Special Prosecutor's Office shall be seated in the Host State, The Netherlands, where the Chambers are, and still exercise its power and function in Kosovo and any other state with which an agreement is reached. It is composed of the Special Prosecutor, other Prosecutors, police officers, and other qualified staff as necessary. The Police within the SPO has the authority and responsibility to exercise the same powers as Kosovo Police under Kosovar legislation in accordance with the Law on the Chambers.

VI. Conclusions

As stated in the analyses above, the Specialist Chambers were established immediately after the constitutional amendment and the Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office as Kosovo's response to Dick Marty's report. This report referred to the alleged crimes committed after the aftermath of the war in Kosovo defining the Chambers' jurisdiction on addressing them. The Specialist Chambers were thus born to shed light over these events, marking the final step on the international reaction to such alleged crimes. Precisely because of the necessary constitutional and legal steps undertaken, the establishment of the Chambers was considered a difficult process.

Due to the serious necessity that the international community manages this process, the Chambers are not a domestic court. In fact, they are separated in all but name from the Kosovar judiciary. Even their seat will be out of the country, in The Hague. But neither are they an international court, although they share most of the features of those. They are what has been defined as a hybrid court, one which blends international and national elements, although in this case the international elements clearly are prevalent.

They are, however, structured along the judicial design of Kosovo, with panels representing the Basic Courts, the Court of Appeal, and the Supreme Court. Even the Constitutional Court has been mirrored in order to deal with any perceived breach of the substantive rights granted by the Constitution. However, unlike those other courts, they will only hear of very specific cases amounting to war crimes and crimes against humanity committed in Kosovo in the very aftermath of the conflict, coinciding with the findings of the report.

These panels are to be manned by international judges assigned from a roster on an ad hoc basis. The ensemble of these judges composes the Plenary, the main decisory organ of the Chambers, alongside with a President elected from them. These two bodies are supported by a permanent Registry tasked with running the daily administration of the Chambers. This Registry showcases the specificity of the Chambers as a parallel structure to the Kosovar Administration of Justice, as it is tasked with all the functions usually covered by it. That includes Victim Participation, Defense, Witness Protection, and an Ombudsperson Offices, as well as Data Protection, disregarding other institutional setups on those matters.

The institutional design of the Chambers is finalized with a Specialist Prosecutor Office that fulfills both the investigative role of the police and the prosecutorial one of the State Prosecutor in Kosovo. Thus, this organization has been granted powers comparable to both of them to order and conduct any investigation, indict any person that is found to be involved in the crimes subject to the Chamber's jurisdiction, and present the case in front of the panels. The specificities of the investigative, prosecutorial, and judicial processes therein are covered in the second part of the analysis.⁵

⁵ Francisco Jose García Martínez and Rreze Hoxha, *The (Pen-)Ultimate Guide to the Specialist Chambers (II): Law and Process*, Pristina: Group for Legal and Political Studies, December 2018

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POLICY ANALYSIS

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political Studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy relevant choices and recommendations to the key stakeholders and parties of interest.



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