



Defence is an essential aspect of fair trials. The Kosovo Specialist Chambers (KSC) guarantees fair trial, due process and the highest standards of human rights protections for persons before it. The right to an effective defence will be protected by a lawyer eligible to practice before the Kosovo Specialist Chambers.

#### RIGHTS OF SUSPECTS AND ACCUSED

Among the most important rights, suspects and accused at the KSC have the **right to Counsel**, who has to be admitted to the List of Specialist Counsel.

Suspects and accused are also entitled to have Counsel assigned to them if they do not have sufficient means to pay for their defence and are found to be indigent.

#### REPRESENTATION

At the KSC, representation of a suspect or accused by Counsel is mandatory:

- At hearings on detention on remand and while a suspect or accused is in detention on remand;
- From the filing of an indictment if the charges relate to a crime punishable by imprisonment of at least ten years;

*Note:* There is a **difference** between Counsel for the Defence / Defence Counsel on the one hand and the Defence Office on the other.

**Counsel** are independent lawyers who represent and defend suspects or accused in criminal proceedings before the KSC.

- In all cases when an accused seeks to enter into an agreement to plead guilty to a crime punishable by imprisonment of one year or more.

#### ELIGIBILITY TO PRACTICE

Suspects and accused have the right to choose Counsel from the List of Specialist Counsel. Therefore, any **lawyer** who intends to act as Counsel before the KSC **has to be admitted to the List of Counsel**. The Defence Office within the KSC Registry administers this List of Counsel.

Lawyers who want to be admitted to the List of Counsel are required to **send a request for admission to the Defence Office** ([defenceoffice@scp-ks.org](mailto:defenceoffice@scp-ks.org)).

The Defence Office checks admission requests against the requirements of the Directive on Counsel. *(for a brief explanation of the procedure for admission, see the back page of this factsheet)*

The **Defence Office** is a Unit of the Registry, which supports the KSC's judicial proceedings by e.g. administering a List of Counsel and a system of legal aid. The Defence Office does not provide legal advice to individual suspects or accused.

#### CONTACT

## LEGAL AID

The KSC legal aid system exemplifies best practices in legal aid standards, guaranteeing compliance with fair trial principles whilst transparently ensuring the sound financial management of the legal aid scheme.

Any suspect or accused person before the KSC who demonstrates that they cannot afford to pay for their defence, in part or in full, will be provided with legal assistance to pay for any counsel of their choosing who is professionally qualified to be on the KSC List of Counsel.

When a person requests legal aid, they must also provide a full Declaration of Means form.

The Defence Office will conduct a careful assessment of the financial means of the person requesting legal aid, to establish if they can partially or fully pay for their own

defence. If they cannot pay, the Registrar will grant legal aid. If an applicant does not cooperate or provides false information, the request for legal aid will be denied.

The legal aid fee is paid directly to counsel to cover remuneration of counsel and the other members of the legal team. The legal aid regulations set appropriate maximum rates calculated according to the complexity level of the case and the stage of proceedings. Additionally, costs that may arise for conducting investigations and/or translations will be paid upon presentation of invoices, up to a maximum amount set out in the regulations.

The Legal Aid Regulations applicable before the KSC as well as detailed information on how to apply for legal aid are available on the KSC website in all three languages of the Court: <https://www.scp-ks.org/en/counsel/legal-aid>

## LIST OF COUNSEL

On 6 November 2017, the Registrar adopted the Directive on Counsel, after approval by the President upon consultation with the Judges of the Kosovo Specialist Chambers.

The Directive regulates the eligibility for inclusion in a List of Counsel, ongoing obligations of Counsel admitted to the List, as well as the modalities for withdrawal and removal from the List. The Defence Office establishes and administers a List of Counsel who are eligible to represent suspects or accused before the Specialist Chambers ("List of Specialist Counsel").

Only those Counsel who are admitted to a List are eligible to represent suspects and accused before the Specialist Chambers.

The requirements for admission to a List of Counsel are:

- Established competence and experience in domestic criminal and/or international criminal law and procedure;
- At least ten (10) years, and for purposes of acting as Co-Counsel at least seven (7) years, of proven relevant experience whether as a lawyer for defence or victims, as a prosecutor, a judge or in a comparable capacity in criminal proceedings;

- For the duration of the admission to a List of Counsel, the applicant continues to be a member of a domestic bar association or similar institution, or a judge or a prosecutor subject to an oversight authority;
- Written and oral proficiency in one of the official languages of the Specialist Chambers (Albanian, Serbian, English);
- The applicant has not been found guilty in criminal proceedings or otherwise disciplined in relevant disciplinary proceedings against him or her in a national or international forum;
- The applicant has not engaged in conduct, which is dishonest or otherwise discreditable to Counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the Specialist Chambers or the administration of justice, or otherwise bring the Specialist Chambers into disrepute.

Where criminal, disciplinary or other proceedings, investigations or inquiries are pending against an applicant, the decision on admission shall be deferred until the outcome thereof becomes final.

## HOW TO APPLY