

Interview of President Trendafilova to Serbian daily "Politika" on 6 December 2020

(English version)

1. After five years of preparations and investigations, the first indictments of the Specialist Prosecutor have been raised. Over the course of just a little over a month, seven suspects and accused have found themselves in the detention facilities. Can you say in what phase the preparations are for their trials?

Indeed, the Kosovo Specialist Chambers, or KSC, increased its activities significantly over the course of 2020. The two cases against five individuals for which the indictments have been confirmed by the Pre-Trial Judge are currently in what are known as the pre-trial proceedings. With respect to the two individuals who are suspected of having committed offences against the administration of justice, the indictments have not yet been confirmed.

After the confirmation of the indictment, the Pre-Trial Judge shall take all measures necessary to properly and expeditiously prepare the case for trial. For example, the Pre-Trial Judge will rule on any preliminary motions, including challenges to the indictment and the jurisdiction of the KSC. The Pre-Trial Judge may also issue orders or decisions concerning the preservation of evidence and the protection of victims and witnesses. The Specialist Prosecutor is under an obligation to provide to the Defence the material supporting the indictment, all statements of witnesses upon which he intends to rely at trial and other documents, which are material for the preparation of the Defence. This procedure is known as "disclosure".

In essence, the Pre-Trial Judge will ensure that the case will be trial-ready within a reasonable time so that it can be transferred to a panel of the Basic Court for trial. How long the pre-trial proceedings will last is difficult to say and depends on the nature, scope and circumstances of each case, as well as, to some extent, the parties' submissions in the course of the proceedings. However, the Judges of the KSC are mindful of the need to ensure that the proceedings take place in an efficient and expeditious manner.

2. In the last year you have been met with pressure from part of the Kosovo public and with disputes/challenges against the legitimacy of the Specialist Chambers and the Specialist Prosecutor. Were you prepared for that and how will you respond to such attacks in the future.

Attempts to undermine the legitimacy of the KSC are not new and will undoubtedly continue as long as this court exists. As KSC President, my focus and the focus of the entire institution is on fulfilling our mandate by conducting secure, fair, impartial and independent judicial proceedings. The KSC is not a political entity. Hence, we will not engage in any such political debates. Instead, we will do what the KSC is mandated to do: ensure that justice is done in accordance with our mandate, legal framework and relevant international standards.

3. Do you believe that the work of the Specialist Chambers can change the perception of [against] international judicial institutions which exists in Serbia?

I believe that the work undertaken by the KSC, its decisions orders and judgments, will speak for itself. In this respect, the KSC is committed to providing easy access to its public proceedings, to take seriously its

outreach efforts and to ensure that the public is provided with accurate information in a timely and transparent manner. In so doing, the public, including those in Serbia, will be able to decide for themselves whether the KSC has fulfilled its role in accordance with its mandate. Needless to say, the Judges of the KSC and I are very committed to ensuring that the proceedings are conducted in the most efficient, effective and safe manner, free from any interference or influence, and I am hopeful that the public will come to this conclusion as well.

4. In your last interview for "Politika", you said that no one influences the work of the Specialist Chambers and the prosecution. Do you still maintain that the decisions of the institutions which you represent are taken without political influence/interference?

I most certainly stand by my answer that the Specialist Chambers operates in a manner that is free from any influence or interference, whether political or otherwise. The KSC and its Judges are independent and do not take instructions from anyone and are guided only by the law.

All three Principals and the Judges have made a solemn declaration to exercise their functions independently and impartially. Any breach in this respect – not that I expect there to be one – can and will be addressed through the relevant disciplinary mechanisms. Indeed, we take very seriously our oath in this respect and as Judges are committed to safeguarding the integrity of the proceedings and maintaining our independence and impartiality.

5. In the public, the opinion remains, nevertheless, that international interests and directives, from the USA to start with, influence your work and that the indictments are part of a future compromise in relation to the recognition of Kosovo by Serbia. How would you respond to such opinions?

The KSC is a court of law. It is not a political institution. As mentioned above, the KSC does not take instructions from anyone. The KSC is a court established following an agreement ratified by the Assembly of Kosovo and it is focussed solely on delivering secure, fair, impartial and independent judicial proceedings. The KSC's mandate is to ensure accountability; to ensure that justice is being done in accordance with the highest standards, and following a thorough examination of the evidence presented before it. The question of Kosovo's recognition and its relationship with Serbia and the USA does not belong to the KSC's mandate. These are purely political matters that have nothing to do with our mandate as a court of law.

6. The KSC has been emphasizing the priority of witness protection and yet, many people seem to voice concerns. Can you elaborate on how you intend to ensure that witnesses are safe?

Indeed, the safety and security of both victims and witnesses appearing before the KSC is of paramount importance to us. To this end, the KSC has a specialized unit that is tasked with the protection and support of victims and witnesses before, during and after the trial. In order to protect them, the operations of this unit are kept strictly confidential.

However, what I can say is that during the different stages of the proceedings including the trial, Judges can order a variety of protective measures for witnesses, such as redaction of their names, assigning pseudonyms, using voice or face distortion and ordering that testimony be given in closed or private sessions. A wide range of measures to ensure the safety, security, well-being and dignity of witnesses both

inside and outside the courtroom can be ordered by the Judges in this respect. The legal framework also provides that if someone violates any of these protective measures or discloses confidential information leading to the identification of witnesses, they can be charged with offences against the administration of justice, which carry sanctions of up to 10 years of imprisonment.

Indeed, as we have seen, the Specialist Prosecutor suspects two individuals of having done just that: allegedly disseminating confidential information that could lead to the identification of witnesses. These two individuals were arrested and transferred to the KSC detention facility in The Hague and may now face criminal charges if an indictment against them is confirmed.

7. In the publicly available versions of the indictment the names of the victims and witnesses are protected. Will they be revealed later in the proceedings at the moment when they [witnesses] give their testimony? How will the testimony of witnesses before the Specialist Chambers look?

As mentioned before, there are indeed a variety of protective measures that can be ordered to ensure the safety and security of witnesses appearing before the KSC. Whether or not their names will eventually be made public is for the relevant panel to decide and will depend on the needs and security of each witness.

A Panel may order that protective measures be put in place at its own initiative, but the parties as well as Victims' Counsel, the witnesses themselves or the Registry may also request that the Panel order that such measures be put in place. Protective measures are usually ordered before the witness testifies, to allow time for their implementation. However, there may be instances where such measures are ordered by a panel during the testimony of a witness to protect certain information.

8. Have the families of people, whose murders are covered by the indictments, been informed that those crimes have been resolved and that they will be part of the trial, given that a redacted version of the indictment is available to the public and the names of the victims are not known?

Anyone who believes that they have personally suffered harm, including physical, mental or material harm, as a direct result of any of the crimes listed in an indictment may apply to become a participating victim. The Pre-Trial Judge or a Panel of the Basic Court will decide whether the person who applied can become a participating victim before the KSC.

9. You have sent out a public call for victims of [crimes] contained in the raised indictment to contact the Chambers. Can you explain the procedure and, if possible, tell us if there has been a response [from potential participating victims]?

Victims before the KSC have the right to notification, acknowledgement and reparation. A person who wishes to become a participating victim and has met the relevant criteria to be considered a victim has to fill out an application form, which can be found on the KSC's website in Albanian, Serbian or English. The application form can be submitted either through a secure feature on the website, by email or by post.

Participating victims in proceedings before the KSC will form one or more groups. Each of these groups participates through a lawyer known as the Victims' Counsel. The Victims' Counsel may be present at hearings and will keep the victims informed throughout the proceedings.

10. Has the corona pandemic affected your work on the proceedings which are before the court in The Hague and will they affect the ability of the victims and witnesses to be present in the courtroom and the ability of the public to be in the public gallery?

The short answer to that question is no: while the pandemic has indeed presented a lot challenges, we have been able to overcome these and have increase our activities and conducted them in accordance with the Host State's regulations.

I should note that the safety and wellbeing of anyone interacting with the KSC or the SPO – be they Judges, staff members, Counsel, visitors, accused or suspects – has been our primary concern during these unprecedented times. Accordingly, the KSC and the SPO have put in place a wide range of measures following the recommendations and decisions of the responsible public health authorities to ensure that the operations and proceedings can continue while minimizing the risk to anyone's health.

For example, the number of available spaces in our public gallery and media centre have been temporarily reduced in order to allow for social distancing and everyone in the building is required to wear a mask in the public areas. Similarly, we allow for the possibility of those who cannot travel due to the pandemic to attend the hearings via video-link, such as was the case for certain Defence Counsel in the recent hearings.

The safety measures taken have thus allowed us to continue to operate with minimal to no disruption.