

Op-ed by KSC President Ekaterina Trendafilova to "Kosovo online" (a Kosovo-based outlet in Serbian), and "Zeri" (a Kosovo-based outlet in Albanian), on 3 September 2021

(English version)

President Trendafilova: Trial proceedings at the Specialist Chambers

The Kosovo Specialist Chambers (KSC) has taken great strides in the fulfilment of its mandate in the last few months. Following the arrest and detention of eight accused spanning four different cases over the course of the past year, the KSC will now move into a new phase with the start of the trial proceedings in the case of the *Specialist Prosecutor v. Salih Mustafa* in less than a month. As President of the KSC, I am committed to ensuring that interested citizens in Kosovo and the region are able to follow the trials and understand the proceedings taking place in the courtroom.

The trial proceedings are different from the pre-trial proceedings that have been underway thus far in the four cases. Once the Pre-Trial Judge has prepared the case for trial and a number of preliminary issues have been dealt with, he will transmit the case to a Trial Panel composed of three Judges and one reserve Judge. The reserve Judge will be present throughout trial to ensure that he can immediately step in should one of the three other Judges become unavailable. This will avoid delays should one of the three Judges no longer be able to sit in the case. The reserve Judge will, however, not cast a vote or decide on any issues before the Trial Panel. The three Judges further will elect a Judge out of their midst who will preside over the trial (known as the Presiding Judge).

The Trial Panel will conduct the trial proceedings in accordance with the Law on Specialist Chambers and Specialist Prosecutor's Office and the Rules of Procedure and Evidence (Rules). In general terms this means that the Judges will listen to the parties' arguments, decide on disputes between the parties, carefully evaluate the evidence submitted by them and, at the end of the trial, decide whether the Specialist Prosecutor proved his case beyond a reasonable doubt. Throughout the proceedings, the Trial Panel will ensure that the proceedings are fair and expeditious, conducted in accordance with the KSC's legal framework, with full respect for the rights of the accused and with due regard for the protection of victims and witnesses.

At the beginning of the trial, the Presiding Judge will open the case and ensure that the accused understands the indictment. The accused will further be given the opportunity to make his or her initial plea of not guilty or guilty and the Presiding Judge will inform him or her of the most important rights applicable during the trial.

On a date set by the Trial Panel, the Specialist Prosecutor will then make an opening statement, wherein he will give an overview of the arguments and evidence with which the prosecution will try to prove the guilt of the accused. In order to ensure an efficient trial, the Trial Panel may limit the time for opening statements. For example, the Trial Panel in the *Salih Mustafa* case ordered that the Specialist Prosecutor may have no more than three hours for his opening statement.

Following the Specialist Prosecutor's opening statement, Victims' Counsel may make a statement on behalf of the victims participating in the proceedings, which will focus on the views and interests of the participating victims, including on issues such as reparations.

Counsel for the accused (otherwise known as "the Defence") may choose to make an opening statement at this point as well, or they may decide to make their opening statement at the start of their case.

When the opening statements have concluded, the Specialist Prosecutor will start with the presentation of his case by calling witnesses to testify and questioning (or "examining") them on

matters relevant to the indictment. Once the Specialist Prosecutor has questioned a witness, the Defence may “cross-examine” or pose counter-questions to that witness. The Specialist Prosecutor may tender other evidence as well, such as documents, pictures, videos, recordings and other tangible objects.

Victim’s Counsel may, if allowed by the Panel, ask questions relevant to the interests of participating victims. The Panel itself may, at all times during the proceedings, also pose questions to the witnesses.

There are a variety of protective measures which the Panel may order to protect the identity or whereabouts of a witness, including voice and face distortion, allowing the witness to give testimony via video-link and the use of pseudonyms, to name just a few of the possible measures.

The Trial Panel will assess the evidence and issue relevant orders, where necessary, with the aim of ensuring a fair and efficient trial. The Trial Panel will only admit evidence that is authentic, relevant, to the case, credible, reliable and of probative value, meaning that it has the potential to prove or disprove some element of the case presented by the Specialist Prosecutor or the Defence.

When the Specialist Prosecutor has no more witnesses to call and no more evidence he wishes to have admitted, he will close his case. The Defence may then file a motion for the dismissal of one or all charges in the indictment. In so doing, the Defence will essentially argue that it does not even have to counter the Specialist Prosecutor’s evidence, because the Defence considers that the Specialist Prosecutor failed to provide any evidence capable at all of supporting a conviction on one or more charges contained in the indictment.

If the Trial Panel agrees with the Defence, it will summarily dismiss one or more charges in the indictment. If the Trial Panel disagrees (or only dismisses some, but not all of the charges in the indictment), the Defence will proceed with the opening of its case. It may make an opening statement, if the Defence did not choose to do so earlier, wherein it will refute the Specialist Prosecutor’s case and explain why and on what basis it believes that the Specialist Prosecutor failed to prove beyond a reasonable doubt that their client is guilty. The Defence will thereafter proceed by calling and questioning its witnesses, who may be cross-examined by the Specialist Prosecutor and seek to have other types of evidence admitted as well.

When the Defence has closed its case, and where applicable after hearing from the Victims’ Counsel, the Trial Panel may also invite or itself introduce additional evidence, including expert evidence, as necessary for the determination of the truth.

The Trial Panel will thereafter invite the Specialist Prosecutor and the Defence to file their final written briefs within 30 days, in which they will summarize their respective cases on the basis of the evidence. On a date scheduled by the Trial Panel, the Specialist Prosecutor and the Defence Counsel will thereafter make their closing statements, during which they will highlight the most important aspects of their cases and answer questions from the Trial Panel, if any. The Victims’ Counsel may also be invited to file a statement on the impact of the alleged crimes on the participating victims. Once the closing statements have concluded, the Presiding Judge of the Trial Panel will declare the case closed.

The Trial Panel will thereafter begin its strictly confidential deliberations, during which it will decide on the innocence or guilt of the accused for each charge in the indictment. A guilty verdict on a charge in the indictment can only be reached if the majority of the Panel is satisfied that the accused’s guilt has been proven beyond a reasonable doubt. In order to ensure the expeditiousness of proceedings, the Rules provide that the Trial Panel pronounce its verdict within 90 days of the closing of the case, unless circumstances of the case require additional time. This additional time may not exceed 60 days,

unless absolutely necessary. The verdict will be public and in writing, with a reasoned explanation for the conclusions reached by the Trial Panel.

If an accused who is in detention is acquitted, then he or she will be immediately released. If the accused is found guilty, then the Trial Panel will move to the sentencing phase of the proceedings (if it has not already pronounced on the sentence of the accused). Under certain conditions, both parties have the opportunity to appeal the judgment before a Court of Appeals Panel.

The start of trials in relation to alleged crimes within the mandate of the Specialist Chambers is a significant milestone in the pursuit of justice. These alleged crimes will now be addressed through fair, impartial and independent judicial proceedings, based on rigorously applied international standards and the due process of law.