

KOSOVO SPECIALIST CHAMBERS &
SPECIALIST PROSECUTOR'S OFFICE

The Kosovo Specialist Chambers in a Nutshell



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SPECIALIST PROSECUTOR'S OFFICE

The Kosovo Specialist Chambers and Specialist Prosecutor's Office were established pursuant to an international agreement ratified by the Kosovo Assembly, a Constitutional Amendment and the Law on Specialist Chambers and Specialist Prosecutor's Office.

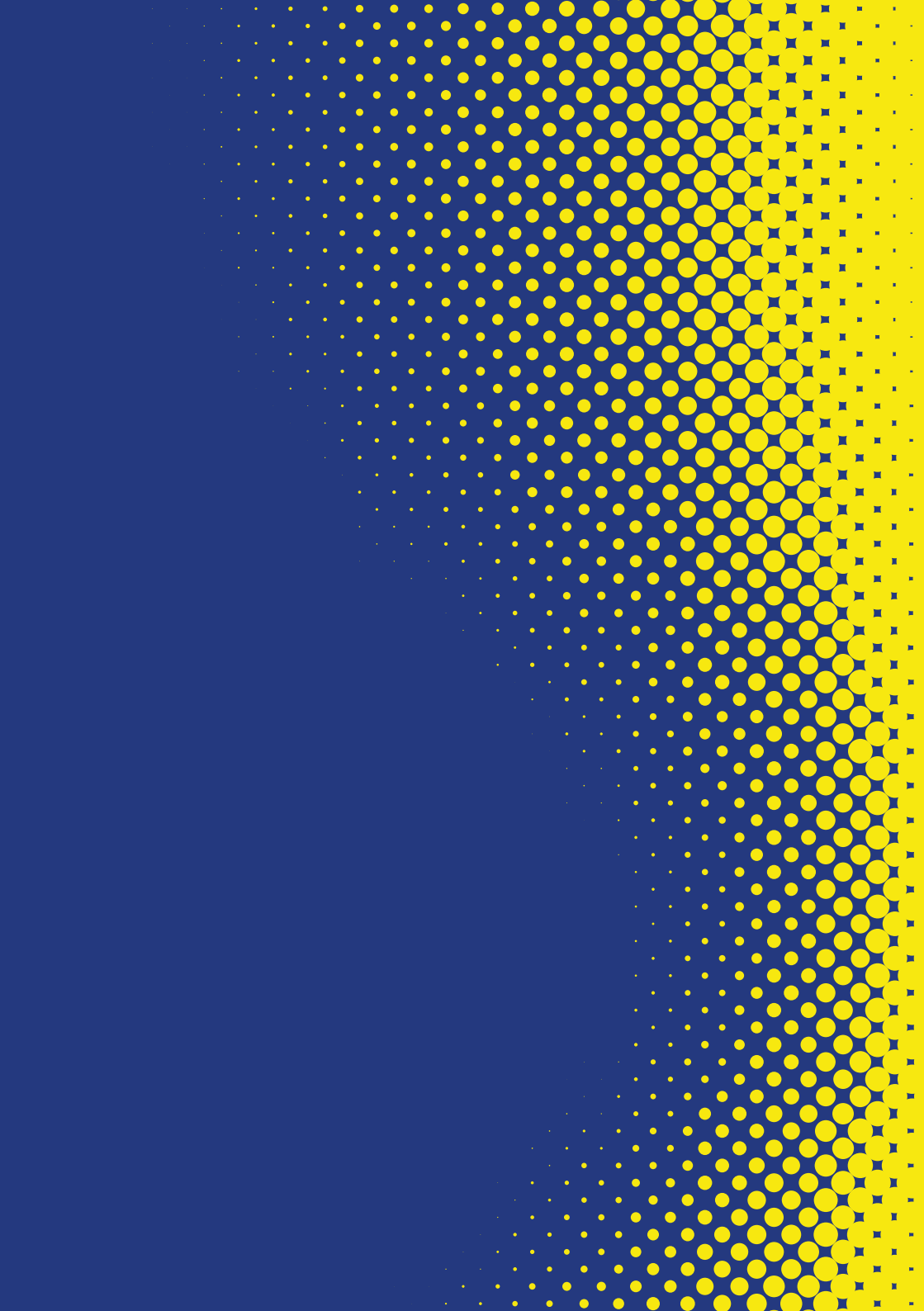
They are of temporary nature with a specific mandate and jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo law, which were commenced or committed in Kosovo between 1 January 1998 and 31 December 2000 by or against citizens of Kosovo or the former Federal Republic of Yugoslavia.

The Kosovo Specialist Chambers and the Specialist Prosecutor's Office have a seat in The Hague, the Netherlands. Their staff is international, as are the Judges, the President, the Registrar and the Specialist Prosecutor.

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Establishment

The Kosovo Specialist Chambers was established following allegations that certain serious crimes committed during and in the aftermath of the Kosovo conflict (1998-2000) had not been investigated and prosecuted.

The Parliamentary Assembly of the Council of Europe appointed a Special Rapporteur, Senator Dick Marty, to investigate these allegations. He submitted his report in December 2010, which was adopted by the Parliamentary Assembly of the Council of Europe on 7 January 2011, recommending investigations into these allegations within the mandate of the European Union Rule of Law Mission in Kosovo (EULEX).

In May of the same year, the European Union established the Special Investigative Task Force (SITF) under the mandate of EULEX to investigate the allegations in the report.

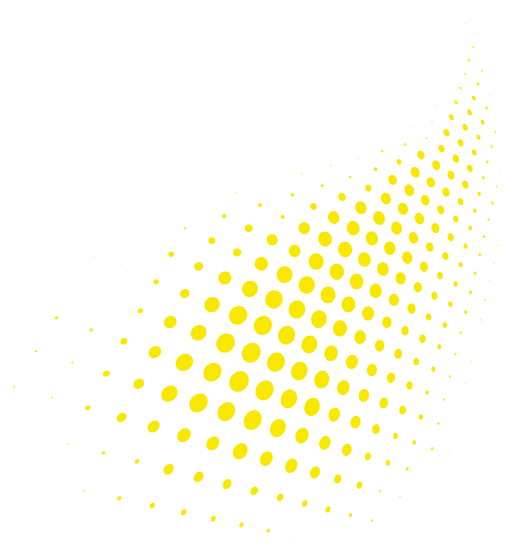
Consistent with the Constitution of Kosovo, the High Representative of the European Union for Foreign Affairs and Security Policy and the President of Kosovo signed an **international agreement** to establish separate and independent judicial chambers, or Specialist Chambers, to adjudicate the crimes arising from the SITF's investigations. The agreement was **ratified by the Assembly of Kosovo** in April 2014. Through this agreement, Kosovo delegated all necessary executive mandates, powers and authorities necessary for the operation of the Specialist Chambers. It was agreed that the Specialist Chambers would operate according to their **own statute**, would enact their **own rules of procedure and evidence**, and would have a **seat in a third State**. According to the agreement, the judges and staff would be international only. Moreover, any sentence imposed would be served outside of Kosovo.



The unique and self-contained Specialist Chambers would ensure that justice be delivered **independently** and **impartially, free of political interference** and with full commitment for the **safety and security, life and well-being of witnesses and victims.**

Pursuant to a constitutional amendment (Article 162), confirmed by the Kosovo Constitutional Court and approved by the Assembly of Kosovo in August 2015, the Assembly adopted the Law on Kosovo Specialist Chambers and Specialist Prosecutor's Office (Law). In January 2016 a host state agreement with the Netherlands was signed, which allowed for the Kosovo Specialist Chambers (KSC) and the Specialist Prosecutor's Office (SPO) to have their seat in The Hague, the Netherlands.

In March 2017, during their first plenary, the Judges of the Specialist Chambers adopted the Rules of Procedure and Evidence before the KSC (Rules). The Rules entered into force in July 2017, following a constitutional review by the Specialist Chamber of the Constitutional Court. With the entry into force of the Rules, the KSC became judicially operational.





Mandate and Jurisdiction

The KSC was created as a temporary judicial institution and is concerned only with the criminal responsibility of individuals. It does not investigate or prosecute groups, organisations or ethnicities. Its mandate is “to ensure secure, independent, impartial, fair and efficient criminal proceeding in relation to allegations of grave trans-boundary and international crimes committed during and in the aftermath of the conflict in Kosovo, which relate to those reported in the Council of Europe Parliamentary Assembly Report [...] and which have been the subject of criminal investigation by the [SITF]”.

Subject Matter Jurisdiction



The jurisdiction of the KSC covers crimes against humanity and war crimes, that occurred between 1 January 1998 and 31 December 2000 and were either commenced or were committed in Kosovo by or against citizens of Kosovo or the Federal Republic of Yugoslavia. The KSC also has jurisdiction over certain offences against the administration of justice when they relate to its official proceedings and/or officials.

The KSC is funded by the European Union and to a variant extent by five Contributing States (the United States, Norway, Switzerland, Canada and Turkey). It will operate until such time as the Council of the European Union notifies the Government of Kosovo of the completion of its mandate.

**Specialist
Prosecutor's Office**

Investigation,
prosecution

Kosovo Specialist Chambers

court proceedings, judgement

Specialist Prosecutor

Chambers

Registry



Specialist Prosecutor



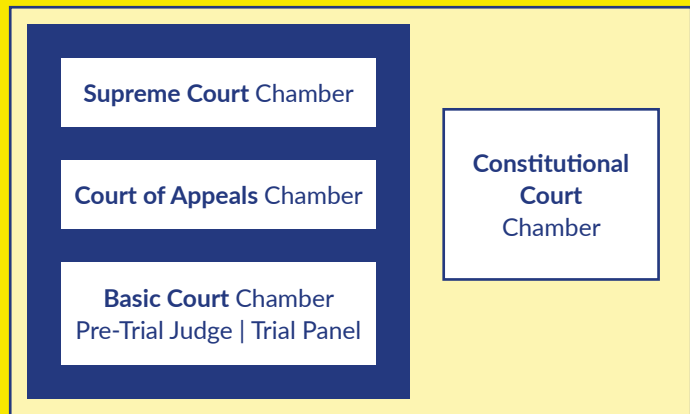
President



Registrar

Composition of Chambers

Mirrors
the
Kosovo
Judicial
System



Rules on Assignment

Roster of International Judges

Structure

The KSC and the SPO are two entirely distinct and independent institutions. The SPO is responsible for conducting investigations and prosecutions of persons who are allegedly responsible for the crimes and offences falling within the jurisdiction of the Specialist Chambers.

The Specialist Chambers are comprised of two organs, the Chambers and the Registry. The Registry manages all of the essential judicial support functions such as detention, court management, legal aid, victims' participation and interpretation and translations.

The Chambers encompasses the President, the Vice-President and the Judges on the Roster of International Judges. In the selection process, the Law requires that the Judges be persons of high moral character, impartiality and integrity. In addition, they must have the qualifications required in their respective States for appointment to the highest judicial offices. The Specialist Chambers mirror each level of the court system in Kosovo and therefore include a Basic Court Chamber, a Court of Appeals Chamber, a Supreme Court Chamber and a Constitutional Court Chamber.

BASIC COURT

The KSC's Basic Court Chamber conducts pre-trial proceedings and adjudicates cases brought by the Specialist Prosecutor in the first instance.

Once an indictment is filed by the Specialist Prosecutor, the President assigns a Pre-Trial Judge. The first duty of this Judge is to review the indictment. The Judge's task is to decide whether the evidence included therein is sufficient to either confirm the indictment (as submitted by the Specialist Prosecutor) in whole or in part, or to decline to confirm. The Specialist Prosecutor may submit an amended indictment for approval/confirmation when supported by new evidence.

When an indictment is confirmed, victims who have suffered direct harm of a crime listed in that indictment may apply to participate in the proceedings.

An accused who has either been arrested or summonsed to the Specialist Chambers, appears before the Pre-Trial Judge for a so-called “initial appearance”. At this stage of the proceedings, the accused is invited to plead guilty or not guilty to the charges in the indictment.

The Pre-Trial Judge is responsible for the preparation of the case before it can proceed for trial before the Basic Court. This involves a variety of decisions: organising the case, setting out the process for disclosure of evidence, organising victims’ participation, rendering decisions on protective measures, reviewing the detention of the accused and deciding on any preliminary motions filed by the Defence and the Specialist Prosecutor.

Once all preparatory decisions are made and preliminary motions resolved, the Pre-Trial Judge notifies the President that the case is ready for trial. The President then assigns a trial panel, the Basic Court, to conduct the trial. A Trial Panel is generally composed of three Judges and one reserve Judge.

During trial proceedings, the Trial Panel hears witnesses and considers other evidence presented by the Specialist Prosecutor and the Defence. The proceedings are in principle public, unless the protection of witnesses, victims or confidential information require a private or closed session. Once the Specialist Prosecutor and the Defence have called their witnesses and presented all their evidence, the Judges deliberate among themselves whether the Specialist Prosecutor has proven his case against the accused beyond reasonable doubt. Once they have come to a decision, the Judges will render their judgment.

STRUCTURE



If an accused is found guilty of some or all the charges in the indictment, the Trial Panel may impose a maximum term of life-imprisonment, depending on the charge, and may order the convicted person to make restitution or to pay compensation to a victim or to victims collectively. The Trial Panel may further order that any property or assets that were used for or were obtained through the commission of the crimes of which the accused was convicted, be seized and returned to the rightful owner or the proceeds from the sale thereof be given to the victim(s).

COURT OF APPEALS CHAMBER

A Court of Appeals Panel hears interlocutory appeals filed during the pre-trial and trial proceedings by the accused and the Specialist Prosecutor. The Court of Appeals Panel may also be seised with appeals against the trial judgment. The Victim's Counsel may appeal the trial judgment insofar as it relates to the Trial Panel's decision on victim's participation or in respect of reparations.

The Court of Appeals Panel may affirm, reverse or revise the trial judgment and may take any other appropriate action. It may return all or part of the case back to the Trial Panel if the latter can more efficiently address the matter. The Panel renders its judgment in public.

SUPREME COURT CHAMBER

The Supreme Court Panel, over which the President presides, can hear appeals against the appeal judgment, but only in limited circumstances, i.e. (i) where the Court of Appeals Panel has reversed an acquittal and instead has entered a conviction; or (ii) when the Trial or Court of Appeals Panel has entered a sentence of life-imprisonment.

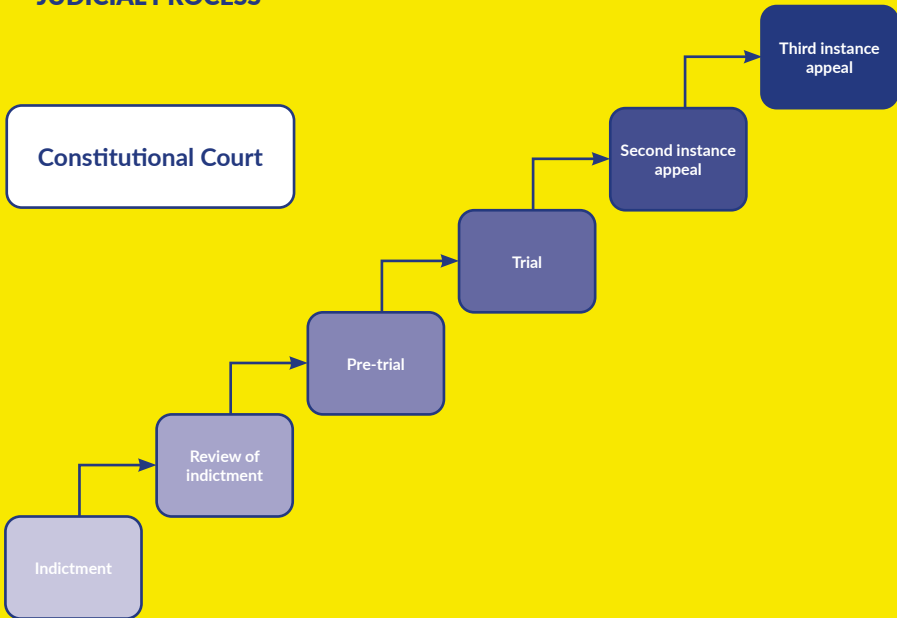
The Supreme Court Panel can also be seised when a party requests the reopening of criminal proceedings.

Finally, the Supreme Court Panel can hear requests concerning the protection of legality. Such a request must allege either that there has been (i) a violation of the criminal law contained within the Law or (ii) a substantial violation of the procedures set out in the Law and the Rules. These requests can be made while proceedings are ongoing, or after the final judgment.

While judicial proceedings are ongoing, an accused can file a request for the protection of legality against decisions ordering or extending their detention during the proceedings.

After the final judgment, a party may request the protection of legality. This request needs to be made within three months of the final judgment or ruling.

JUDICIAL PROCESS



SPECIALIST CHAMBER OF THE CONSTITUTIONAL COURT

The Specialist Chamber of the Constitutional Court (SCCC) is the final authority for the interpretation of the Constitution of Kosovo for matters falling under the mandate of the KSC and the SPO.

There are a number of ways in which the SCCC may be seised of such matters. Specifically, any individual, including accused and victims, may make a referral to the SCCC where they allege that either the Specialist Chambers or the Specialist Prosecutor have violated their fundamental human rights as guaranteed by the Constitution of Kosovo. Such a referral can only be made, however, once all other remedies available have been exhausted.

In addition, the Pre-Trial Judge or any other panel of the Specialist Chambers may refer questions of constitutional compatibility to the SCCC, as may the Ombudsperson.

How does it work?



Rights of the accused

The legal framework of the KSC sets out the fundamental rights of the accused. These rights not only protect the suspect or the accused. Importantly, they secure the integrity of the proceedings by ensuring that justice is delivered **transparently** and fairly, and that all parties to the proceedings are treated equally and are given ample opportunity to put forth or challenge evidence, as may be required. The **presumption of innocence** is a universally acknowledged principle to which the KSC strongly abides. It dictates that suspects and accused shall be presumed innocent until proven guilty beyond reasonable doubt. They are under no obligation to prove their innocence. Instead, the presumption of innocence imposes upon the Specialist Prosecutor the burden to prove the charges in the indictment beyond a reasonable doubt. This is a high standard, which will be satisfied only if the evidence presented by the Specialist Prosecutor can clearly show that the only reasonable conclusion is that the accused committed the crime(s) charged.

The Specialist Prosecutor is obliged to make available to the Defence the evidence he intends to rely on to prove the case against the accused. The Specialist Prosecutor is also obliged to make available the evidence in his possession that would suggest the innocence of the accused. These so-called “disclosure” proceedings happen within strict timelines and are meant to enable the Defence to contest the charges against the accused with the full knowledge of the evidence on which the case of the SPO is built. This obligation of the SPO ensures the fairness of the proceedings.

Another seminal right provided to the accused is to be represented by legal counsel of their choice. This allows for the meaningful participation of the accused during the proceedings, for example in examining witnesses, challenging the evidence against the accused and appealing rulings by the Judges. Where a suspect or an accused cannot afford counsel, the KSC will remunerate counsel in accordance with its comprehensive **legal aid system**.

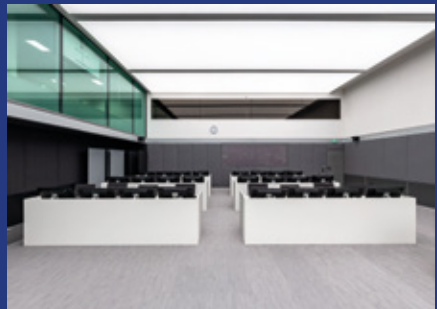
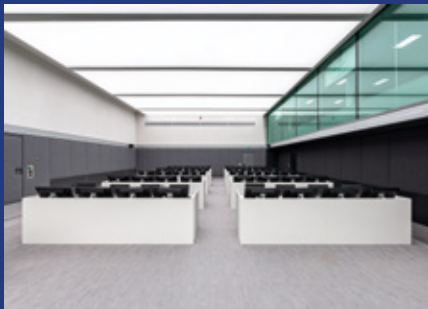
Accused persons shall be given adequate time and facilities to prepare their defence. Importantly, they must be informed promptly and in detail of the nature and cause of the charges against them in a language they understand.

Indeed, accused persons can only refute the charges and the evidence against them, examine witnesses and mount a defence, if they know and understand what they are accused of and on what grounds.

Accused persons also have the right to follow the proceedings in a language that they understand. In this regard, it should be noted that the official languages of the KSC are Albanian, Serbian and English. If an accused does not speak any of these languages, an interpreter shall be provided to assist in this respect.

Another important right of the accused is the right to be tried within a reasonable time. What constitutes a reasonable time will depend on the nature and circumstances of each case. Criminal proceedings are challenging for all those involved. Ensuring a timely resolution benefits not only victims and witnesses, who are anxious to see justice done, but also the accused as well as their families, who live in uncertainty as to their future until such time as a judgment is pronounced.

Finally, accused cannot be forced to testify against themselves or admit guilt and any such testimony cannot be held against them.



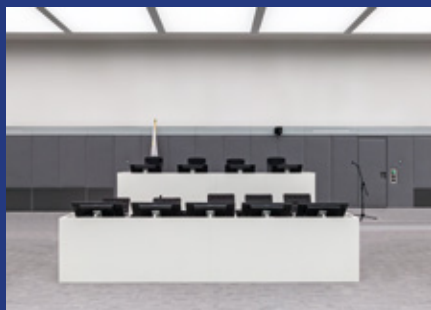
The two sides of the courtroom

Accordingly, accused cannot be held liable or punished if they refuse to answer any questions which may incriminate them, or if they decide not to plead guilty. It is for the Specialist Prosecutor to prove his case against the accused beyond reasonable doubt.

The above fundamental rights, which are enshrined in the Law and the Rules, are neither new nor unique to the KSC. They reflect international standards and are afforded to accused at both the national and international levels.

The emphasis on these fundamental rights does not compromise other equally important aspects of the proceedings, including the pivotal task of ensuring the safety and security of witnesses and victims appearing before the KSC. The KSC takes very seriously their protection, ensuring that proceedings are conducted in a safe and secure manner.

In safeguarding the rights of the accused and equally the safety and security of victims and witnesses, the KSC ensures the integrity, fairness and transparency of its proceedings as well as ensuring that justice is done while fulfilling its mandate.



Judges' bench in the courtroom



Witness stand in the courtroom

**Who can
apply as a
victim before
the KSC?**



1. A Person



**2. Who suffered physical,
material or mental harm**



**3. As a direct result of a crime
alleged in a public indictment**

Victim's participation

The legal framework of the KSC provides for victim's participation during the proceedings. A victim is a person who believes that they have personally suffered physical, material or mental harm as a direct result of a crime alleged in an indictment confirmed by a Pre-Trial Judge. After an indictment is confirmed, a victim may apply to be admitted as participant in the proceedings. In order to qualify as a participating victim before the KSC, an applicant must provide evidence of the harm suffered as a direct result of any crime in the indictment. The decision is taken by the competent panel.

Victims admitted to participate in the proceedings form one or more groups as decided by the panel. The Registrar assigns Counsel to represent a group of victims, taking into consideration the views, interests and preferences of victims. The Registry manages a system of payment for Counsel.

Counsel are obliged to keep victims informed throughout the proceedings, seek their views and concerns in relation to the proceedings with a view to bring them to the attention of the Judges. In representing a group of victims, Counsel may: (i) be present at hearings and make oral or written submissions and question witnesses whenever the competent Panel considers that the personal interests and rights of victims so require; (ii) have access to the material required to represent the group of victims, as determined by the Panel; (iii) make opening and closing statements at trial; and (iv) request the Panel of Judges to order the submission of evidence and to hear witnesses on the impact of the alleged crimes on the victims participating in the proceedings, if such aspects were not adequately addressed during the case.

At the end of the trial proceedings, the Panel of Judges may issue a decision on the damage, loss and injury to victims that may form the basis for a finding on reparations.

Ombudsperson

The Ombudsperson, though placed within the Registry, acts independently to monitor, defend and protect the fundamental rights and freedoms of persons interacting with the KSC and the SPO.

The Ombudsperson has exclusive responsibility in relation to the KSC and SPO. The Ombudsperson may not intervene in cases or other legal proceedings before the KSC, except in cases of unreasonable delays. The Ombudsperson may enter and inspect detention facilities. The Ombudsperson may further receive complaints from persons interacting with the KSC and the SPO alleging human rights violations. To this end, the Ombudsperson may conduct inquiries into complaints, and propose and facilitate mediation and reconciliation, where appropriate.

The Ombudsperson may also make referrals to the Specialist Chamber of the Constitutional Court. Finally, the Ombudsperson may make recommendations to the KSC President and to the Specialist Prosecutor on matters falling within their functions.

Ongoing cases

There are six cases before the KSC at the moment. Two cases involve war crimes, one case involves both war crimes and crimes against humanity and the other cases are about offences against the administration of justice.

Please visit the KSC website at <https://www.scp-ks.org/en/cases> for up to date information about the proceedings.



Short glossary of legal terms

SUSPECT

A person whom the Specialist Prosecutor has grounds to believe committed or participated in the commission of a crime within the jurisdiction of the KSC.

ACCUSED

Individuals charged with crimes in the confirmed indictment.

VICTIM

A person who has suffered harm as a direct result of a crime charged in the confirmed indictment.

WITNESS

A person called by either party or by a Panel to testify at trial.

PARTY

The Specialist Prosecutor or the Defence.

COUNSEL

A lawyer who is qualified to act on behalf of a suspect, accused or victim. A lawyer acting on behalf of an accused or a suspect is called Specialist Counsel and on behalf of victims is called Victims' Counsel.

CRIMES AGAINST HUMANITY

A crime that is knowingly committed as part of a widespread or systematic attack against a civilian population.

WAR CRIMES

Grave breaches or serious violations of the 1949 Geneva Conventions or customary international law committed during an armed conflict against protected persons or objects.

OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

Offences that may amount to obstruction of the proceedings before the KSC.

JURISDICTION

The legal authority of the KSC to hear and determine cases brought by the Specialist Prosecutor.

LAW

The Law on Specialist Chambers and Specialist Prosecutor's Office, adopted on 3 August 2015.

STATUS CONFERENCE

A hearing during which the status of the proceedings is discussed with the parties.



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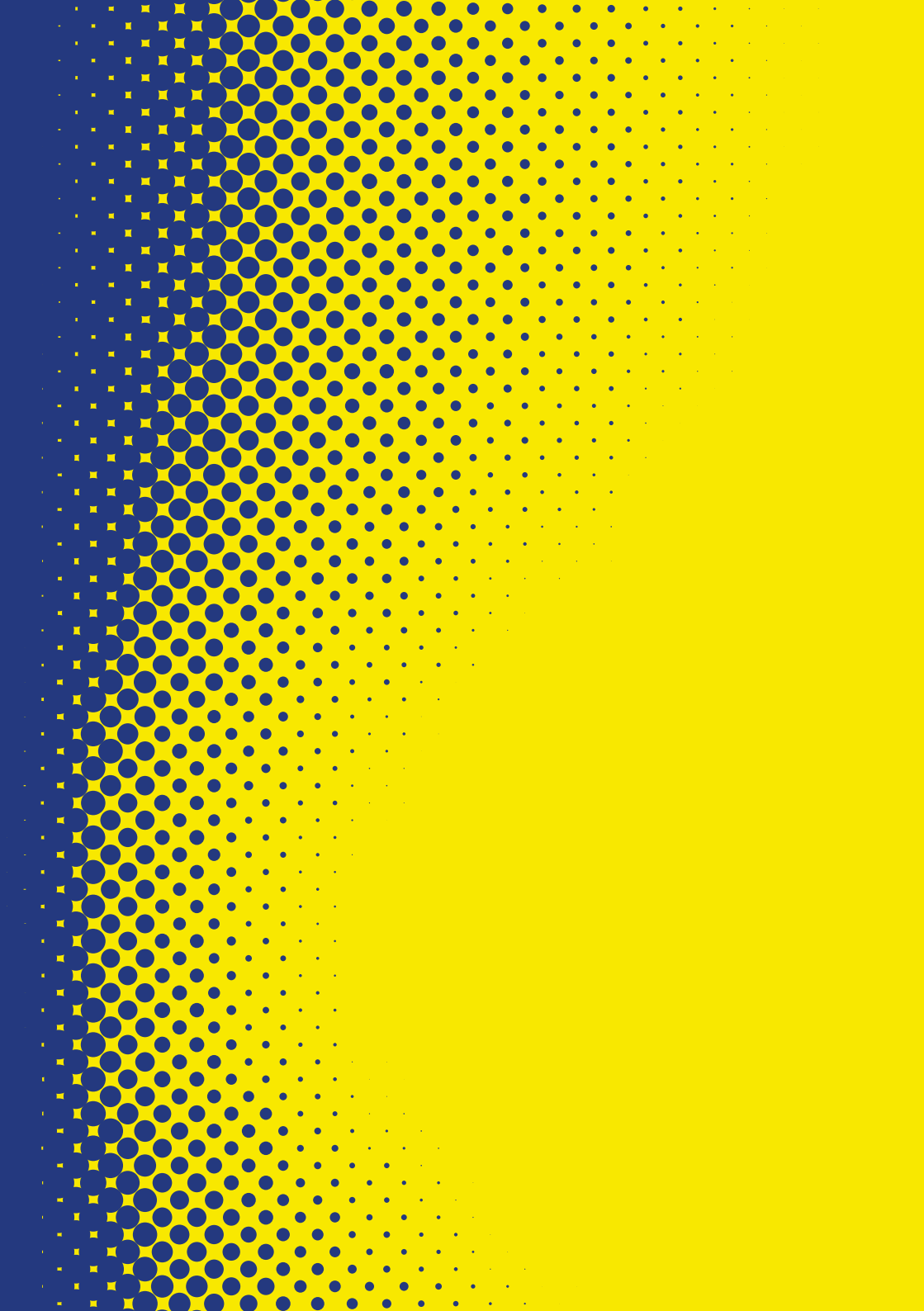
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