



## Research Article

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### Aspects of the creation and judicial activity of the Specialized Chambers of Kosovo and the Role of the Republic of Albania

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#### Abstract

Since the end of the Kosovo conflict in 1999, various international and national courts have investigated serious war crimes and crimes against humanity in the region. In 2015, the Kosovo Specialized Chambers (SCK) and the Specialized Prosecutor's Office (SPO) were established to investigate specific allegations of war crimes, particularly those linked to members of the Kosovo Liberation Army (KLA) during and after the conflict. Although the Court is legally part of Kosovo's system, it faces strong opposition within the latter, due to its location outside the country and its exclusion of Kosovo nationals from its staff. The trials of key KLA figures, many of whom have held major political roles in the country, have sparked significant debate both in Kosovo and internationally.

This manuscript will examine the legal foundation, structure, and scope of the SCK and SPO, and how they compare to other international courts. It will also review the indictments and ongoing trials of former KLA members. Additionally, the article will explore Albania's diplomatic efforts, particularly its campaign to challenge allegations of organ trafficking mentioned in a 2011 Council of Europe report, which played a key role in the creation of the Court. By looking at the Court's activities, the article will offer insights into its impact on Kosovo's international standing.

**Keywords:** Specialized Chambers of Kosovo, legal analysis, Kosovo Liberation Army, EU integration.

#### 1. Introduction

Since the end of the conflict in Kosovo in 1999, many of the international and national courts or tribunals have served as the main legal forums for the investigation of the most serious war crimes and crimes against humanity in the territory of Kosovo. The establishment of the Kosovo Specialized Chambers and the Specialized Prosecutor's Office in 2015 is seen as the latest effort in the wake of these trials but including a specific set of alleged war crimes alleged to have been committed by some members of the Kosovo Liberation Army (KLA) during and immediately after the violent conflict

in the country. The judicial activity of the Specialized Chambers of Kosovo (SCK) and the Specialized Prosecutor's Office (SPO) have been in the center of attention of the Albanian and international political discourse, especially during the last two years, mainly due to the indictments issued and the subjects currently under trial by this international court. The Special Court of Kosovo is legally considered part of the internal judicial system of Kosovo, but *de facto* it enjoys very little legitimacy perceived by the public of Kosovo. Its seat is located outside the territory of Kosovo, almost all the essential judicial and technical staff of this court does not include any national of Kosovo (or Albania). Also, the mandate of the court focuses exclusively on the trial of the charges brought against some of the former members of the KLA, holders of the most prominent careers in policymaking in the history of the Republic of Kosovo.

It is also worth noting that the discourse on the Court has a special importance for the Republic of Albania. A widely discussed aspect is the inclusion in a Report of the Parliamentary Assembly of the Council of Europe (2011) of an area in the northern part of Albania, which is claimed to have been used by the KLA members to commit one of the most serious crimes against humanity, that of organ trafficking. Since 2022, the Republic of Albania has been engaged internationally in an active diplomatic campaign that aims to present the claims presented in the Report of the Parliamentary Assembly of the Council of Europe, titled "*Inhumane treatment of persons and illegal trafficking of human organs in Kosovo*" (D. Marty, 2011) on organ trafficking, which became the main reason for the creation of the Court, as not based on facts and evidence. In August 2022, the Government of Albania officially submitted to the Council of Europe the request to overturn this Report, with the assertion that its existence, and therefore the Court itself, risk unfairly harming the legitimacy of the efforts for Kosovo's independence as a democratic and independent state (Nela, 2024).

Despite the controversies surrounding the origin of the creation and activity of the Court, the main aim of this article is first, to analyze the legal basis of the creation, the way of organization and the relevant features of the Specialized Chambers, to analyze the indictments and the continuity of the judicial processes so far against to the former members of the KLA under trial, as well as, secondly, to present some opinions of the author on the role that Albania can play in the subsequent activity of the SCK and the SPO. This manuscript will be based on three pillars of discussion, as follows:

- The origin of the establishment of the Specialized Chambers of Kosovo and the Office of the Specialized Prosecutor, the legal basis, the jurisdiction it covers, as well as the functioning of this court, compared to other international criminal courts;
- Indictments, progress, and timelines of judicial processes under review;
- Aspects of the role of the Republic of Albania in the Republic of Kosovo and the SCK relations, exchanges of the Republic of Albania with the SCK, as well as suggestions on the role of the Albanian Government regarding the existence of the Court in the future;

## 2. History of the establishment of the Specialized Chambers of Kosovo and the Specialized Prosecutor's Office

The tripartite report of the Parliamentary Assembly of the Council of Europe (CoE), drafted by the Swiss member of the Assembly, Mr. Dick Marty, was published on January 7, 2011, and was approved by the Parliamentary Assembly of the Council of Europe on January 23, 2011. It is essential to note that this report was the product of a previous Draft-Resolution (PACE, 2008), proposed by the members of the Russian parties present in the Assembly, as well as supported by Serbia and 14 other member states. In the initial draft resolution proposed by the Russian Federation, it was requested that the Parliamentary Assembly of Kosovo investigate the inhumane treatment and illegal trafficking of human organs in Kosovo, as described in the memoirs of Carla Del Ponte, former prosecutor of the International Criminal Tribunal of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY) since 1991. Citations in the draft resolution of Del Ponte's book (*C. Del Ponte, "The Hunt: Me and War Criminals", 2008*) claimed that Kosovo Liberation Army militants had taken more than 300 people from Kosovo Serb enclaves, who later had their vital organs removed. According to Del Ponte's allegations, the organs were then trafficked through Rinas airport in Tirana to foreign organ transplant clinics for a fee. She wrote about "*a large number of documents*" that proved the possible crimes of the Kosovo Liberation Army and that there were signals that the highest political leadership of Kosovo was involved in their commission.

In response to the draft resolution, the CoE Parliamentary Assembly commissioned Dick Marty to draft the said report, which purported to confirm the same accusations against the KLA as Del Ponte's book. His report made serious allegations of war crimes and identified the alleged perpetrators by name. Dick Marty never presented any of the evidence he claimed to have found during the drafting of the report and despite this, this document was adopted in its entirety and verbatim in the Council of Europe Resolution.

The CoE resolution itself mentions organ trafficking no less than eight times and requires the commitment of all relevant partners, such as the EU mission for the Rule of Law in Kosovo (EULEX), or the EU Special Investigative Task Force (SITF) and the public institutions of Kosovo, Albania, and Serbia, to do everything necessary to ensure that the perpetrators were held accountable. After the publication of Marty's report, in September 2011, EULEX authorized the creation of the EU Special Investigative Task Force (SITF), headed by Clint Williamson, the former US Ambassador for war crimes, to conduct an independent investigation, on the grounds of the claims raised in that document. The mandate of the Task Force made very clear the importance of the Marty report in the form adopted by the Parliamentary Assembly of the Council of Europe Resolution, specifying that it was established to investigate and, if necessary, prosecute natural persons for crimes assumed in the report (Report S/2014/773 of the Secretary General of the Security Council, 2014).

It is quite clear that the intervention of the EU played a decisive role in the establishment of the Chambers and the Office of the Specialized Prosecutor. The Council of the European Union asked the institutions of Kosovo as a precondition for the signing of the Stabilization and Association Agreement, the priority completion of the necessary steps for the establishment of a specialized court in the context of the investigation by the EULEX Special Investigative Task Force on allegations of war crimes and allegations of organized crime “, included in this report (Report S/2015/74 of the Secretary General of the Security Council, 2015).

In July 2014, after conducting several investigative visits to the Republic of Kosovo, Williamson published a report of the task force’s findings and stated that the task force was able to indict several senior KLA officials (not identified by name), for the types of crimes described in Marty’s report. In addition to the discussed allegations of organ trafficking, the Special Investigative Task Force report also comprehensively examined the allegations of unlawful deprivation of liberty, deportation, inhumane acts, torture, and murder, as well as every other war crime included in the CoE report. The Special Task Force reported to the EU that there was sufficient evidence to file indictments, but to examine these claims it was necessary to create an institution suitable for proper judicial proceedings.

President Williamson recommended the creation of a special court for the review of indictments, instead of the existing judicial apparatus of EULEX in Kosovo itself. The international community in Kosovo agreed with this conclusion, seeing as better the criminal prosecution of ‘big fish’, such as Thaçi, Veseli and other prominent figures of the KLA who were never prosecuted by EULEX, in a neutral location outside of Kosovo, without political interference and safer for witnesses, by an entirely international staff.<sup>1</sup>

While, regarding the organ trafficking allegation, Williamson expressed at the time that a small number of individuals had been killed for the purpose of extracting and selling their organs and that “*this conclusion was consistent with what was said in the Marty Report, where specifically only a “small group of individuals had been victims of this crime”*”. It is important to note, however, that the Investigation Task Force report did not gather sufficient evidence to support this allegation.

Under continuous external pressure, finally in 2015, the Government of Kosovo reached an official agreement with the EU (Exchange of Letters between the President of Kosovo and the High Representative of the European Union for Foreign and Security Policy, 2014) on the modalities of the development of a trial related to these claims.<sup>2</sup> On August 3, 2015, the Assembly of the Republic of Kosovo approved the amendments to the Constitution<sup>3</sup>, to establish the Court and approved the Law on the Specialized Chambers of Kosovo and the Office of the Specialized Prosecutor. The court started exercising its activity in July 2017 and its seat is in The Hague, Netherlands (Miha, 2024).

After a three-year period of investigations by the Office of the Specialized Prosecutor, indictments were filed in 2020, charging Hashim Thaçi, the President of Kosovo at the time (who immediately resigned from his position), Kadri Veseli, who until a

year before his arrest held the position of Speaker of the Assembly, as well as other prominent figures of the KLA, with crimes against humanity and war crimes. Of note is the fact that none of the indictments refer at any time to the allegation of organ trafficking.

The decision to establish this judicial body has been the subject of many criticisms, either from a legal or human rights point of view, but also from a political point of view: the Republic of Kosovo is on the EU membership list, and for this reason the EU needed to support the investigation of the serious allegations alleged in the Marty report, as it was felt that the then EU-backed rule of law mechanisms in Kosovo had avoided going after the 'big fish' until that point.

Certainly, any allegation of alleged war crimes deserves to be investigated and prosecuted so that justice is served to the victims. However, the judicial activity of the SCK has failed in an important aspect: until now, all indictments brought by this Court are only against citizens of Kosovo, focusing only on crimes allegedly committed by one party to the conflict. The limited mandate of the SCK to prosecute only crimes related to the KLA is, in fact, the main antagonism with which the image of this Court is facing a large part of the population of the Republic of Kosovo.

### 3. The legal framework

Based on the discussion so far on the origin of the establishment of the Specialized Chambers of Kosovo, but also on the existence of similar institutions of international law, it can be argued that often, the common political will constitutes the main instrument for the establishment of international legal bodies. And yet, the legal personality of a court or tribunal of this nature originates either from treaties (*bilateral or multilateral*) between states, or between states and international legal entities, which have clearly expressed their consent to enter into this agreement, or under the authority of an international organization such as the United Nations (UN).

In the present case, it is debatable whether the Exchange of Letters between the President of the Republic of Kosovo and the High Representative of the EU (2014) constitutes or not in itself a treaty bound respectively between a sovereign state and an international organization, as it is in in this case the European Union, from which the legal personality of the Specialized Chambers originates. This author is of the opinion that the exchange of letters legally created the international obligation of the Republic of Kosovo to take fulfilling measures, but the amendment of the Constitution and the adoption of the Law on Specialized Chambers and the Office of the Specialized Prosecutor were the founding legislation for the establishment of its legal personality.

The Constitution of the Republic of Kosovo provided for a mandate of at least five years for the Special Court at the time of its amendment, which can be extended indefinitely, until the Council of Europe decides on the termination of its functions.<sup>4</sup> The court's initial mandate ended in 2020 and its activity was automatically extended

<sup>4</sup> Article 162/13 of the Constitutional Amendment.

beyond that date. Law No. 05/L-053 of the Republic of Kosovo on the Specialized Chambers and the Office of the Specialized Prosecutor's Office provides full legal and legal personality for both main bodies of the Court.<sup>5</sup> Even though the law of the Specialized Chambers was drafted and approved by the responsible bodies of the Republic of Kosovo and the court is considered part of the internal Kosovo judicial system, the provisions of Law No. 05/L-053 testify to some essential elements that confirm the international and the *sui generis* nature of this court.<sup>6</sup>

In summary, the legal basis for the Specialized Chambers of Kosovo can be found in three different normative sources: constitutional, ordinary, and international.

#### 4. The Specialized Chambers of Kosovo as a *sui generis* international court

There are many similar models of international courts like the SCK. Here we can mention the International Criminal Court (ICC), the International Criminal Court for Rwanda (ICTR), the Special Court for Lebanon etc., most of whose headquarters are also located in The Hague. The Specialized Chambers of Kosovo represent a new form of the so-called "hybrid courts" because it consists exclusively of international judges and personnel and does not include Kosovo judges. In this aspect, the SCK differs from other well-known models of other "hybrid" courts, either in the form of domestic internationalized courts, or international tribunals which have a national component, which in most cases is the inclusion of local judges. Also, the Office of the Specialized Prosecutor is an independent body and does not receive instructions from any government or other source and does not share any information with the Kosovo authorities. The Specialized Prosecutor is appointed by the head of EULEX. The international legal organization most comparable to the ICTY, in terms of the elements of territorial and personal jurisdiction, the object and the mandate of its creation, is the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY, like the SCK, has had jurisdiction only over individuals and not over organizations, political parties, army units, administrative or legal entities.<sup>7</sup> Likewise, the law on the creation of Specialized Chambers does not state at any point that the mandate of the Court will extend only to the investigation or prosecution of Kosovo Albanians, or former members of the KLA.

Within their subject matter jurisdiction, the Specialized Chambers of Kosovo have priority over all other courts of the Republic of Kosovo. Similarly, the ICTY has

<sup>5</sup> See Articles 4/1, 5 and 12 of the Law, published in the Official Gazette of the Republic of Kosovo in [https://www.neë-perspektiva.com/ëp-content/uploads/2018/01/LIGJI\\_NR\\_05\\_L-053\\_P-R\\_DHOMAT\\_E\\_SPECIALIZUARA\\_DHE\\_ZYR-N\\_E\\_PROKURORIT\\_T-SPECIALIZUAR.pdf](https://www.neë-perspektiva.com/ëp-content/uploads/2018/01/LIGJI_NR_05_L-053_P-R_DHOMAT_E_SPECIALIZUARA_DHE_ZYR-N_E_PROKURORIT_T-SPECIALIZUAR.pdf). See also Law 04/L-274 'On the ratification of the international agreement between the Republic of Kosovo and the European Union on the Mission of the European Union for the Rule of Law in Kosovo', accessible at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9476>

<sup>6</sup> Articles 3/2 and 12 of the Law, *ibid*. Also on the official website of the SC, it is written that the Specialized Chambers operate on the basis of the relevant laws of Kosovo, customary international law and international human rights. Also see <https://www.scp-ks.org/sq/histori>

<sup>7</sup> See Article 6 of the ICTY Statute, as amended. Accessible at [https://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf)

had concurrent jurisdiction over serious violations of international humanitarian law committed in the former Yugoslavia, and at any stage of trial by courts at the national level, the ICTY could claim priority over investigations, or refer cases of to the competent national authorities in the former Yugoslavia.

However, the activity of the Specialized Chambers differs from that of the ICTY in some essential aspects of subject-matter and temporal jurisdiction, as follows:

- As far as subject matter jurisdiction (*ratione materiae*) is concerned, the Specialized Chambers of Kosovo are mandated to investigate and judge crimes against humanity, war crimes and other crimes provided for in the legislation of the Republic of Kosovo.<sup>8</sup> Whereas, the ICTY has had jurisdiction to prosecute and try individuals for four categories of offenses: grave violations of the Geneva Conventions of 1949, violations of customs, genocide, and crimes against humanity.
- Regarding the temporal jurisdiction (*ratione temporis*), the SCK has a limited mandate to investigate the criminal offenses alleged in the 2011 report of the Special Rapporteur of the Council of Europe, Dick Marty, during the period January 1, 1998 - December 31, 2000, committed by citizens of the Former Yugoslav Republic of Yugoslavia (FRY) and/or Kosovo, or committed against persons with Kosovar and/or FRY citizenship, wherever these criminal offenses were committed.<sup>9</sup> In accordance with its Statute, the ICTY has had jurisdiction over the territory of the former Yugoslavia since 1991.
- In contrast to the ICTY, which was founded as an *ad hoc* court by the United Nations and its statute was created according to the existing models of international criminal law, the SCK is guided by the legal statutes of the Republic of Kosovo and acts according to any degree of the Kosovo judicial system, specifically: the Basis Court of Pristina, the Court of Appeal, the Supreme Court and the Constitutional Court. The Specialized Chambers operate based on the relevant laws of Kosovo, as well as customary international law and international human rights.

## 5. The judicial activity of the Specialized Chambers of Kosovo

Currently, the Specialized Chambers of Kosovo are reviewing four cases, of which two are at the first instance trial stage, one at the Appeal and one at the Supreme Court, but this section of the submission is intended to focus only on the court case "*Hashim Thaçi et al.*", analyzing all its legal and temporal elements, from the confirmation of the indictment by the preliminary judge of the SCK, to the current status of the trial. Indictment: The first indictment against the four accused was confirmed on October 26, 2020 and made public on November 5, 2020.<sup>10</sup> In the confirmed indictment, it is alleged that Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi bear individual criminal responsibility based on forms of different types of criminal

<sup>8</sup> See Articles 6, 14 and 15 of the Law.

<sup>9</sup> Articles 8 and 9 of the Law, *ibid.*

<sup>10</sup> See Rule 88(2) of the Rules of Procedure and Evidence of the Specialized Chambers of Kosovo. Accessible at: <https://www.scp-ks.org/sites/default/files/public/content/documents/ksc-bd-03-rev2-sqi-rulesofprocedureandevidencc.pdf>

responsibility, for the crimes presented in the indictment, which were committed in the context of a non-international armed conflict in Kosovo and in the context of a widespread and systematic attack against persons suspected of being opponents of the KLA. After their arrest by the Specialized Prosecutor, Thaçi, Veseli, Selimi and Krasniqi were transferred to the detention facility of the Specialized Chambers of Kosovo in The Hague, on November 4 and 5, 2020.

The confirmed indictment states that between at least March 1998 and September 1999, war crimes, illegal or arbitrary arrest and detention, cruel treatment, torture and unlawful killing and crimes against humanity of imprisonment, other inhumane acts, torture, unlawful killing, forced disappearance of persons and persecution. The crimes presented in the indictment were committed in several places in Kosovo, as well as in the villages of Kukës and Cahan in Northern Albania and were committed by members of the Kosovo Liberation Army (“KLA”) against hundreds of civilians and persons who did not actively participate in the fighting.

The alleged victims included persons who were suspected of being opponents of the KLA and later of the Provisional Government of Kosovo, specifically:

- members of the Serbian, Roma and Ashkali community;
- Catholic community;
- civilians alleged to be cooperating with Serbian authorities or alleged to be in contact with Serbs;
- Albanians who were members or supporters of the Democratic League of Kosovo or other parties considered to be against the KLA;
- Albanians who did not join or support the KLA; and (vi) employed or former employed individuals considered against the KLA.
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- Thaçi, Veseli, Selimi and Krasniqi are accused based on individual criminal responsibility (Article 16(1)(a) of the Law) and on the basis of superior criminal responsibility (Article 16(1)(c) of the Law) for committing:
- Crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance of persons according to Article 13 of the law), as well as
- War crimes (illegal or arbitrary arrest and detention, cruel treatment, torture, and murder, according to Article 14 of the law).

*Pre-trial phase:* Thaçi and Krasniqi’s first appearance hearings were held on November 9, 2020, before the Pre-trial Judge, Mr. Nikola Giju. During these hearings, they pleaded not guilty to all counts of the indictment. Meanwhile, the sessions of the first appearance of Veseli and Selimi were held on November 10 and 11, respectively. Both accused pleaded not guilty to all charges.

On July 22, 2021, the Pre-Trial Judge, through two decisions, partially granted the Defense’s motions and ordered the Office of the Specialized Prosecutor to correct and amend the indictment, inter alia, excluding the liability of the joint criminal enterprise III for crimes aimed at concrete (three appeals against this decision, submitted by Thaçi, Selimi and Krasniqi, were dismissed by the Court of Appeal on August 22,

2022). The SPO submitted the amended indictment on September 3, 2021. On December 17, 2021, the SPO submitted its preliminary file, describing it as “*strictly confidential*” and *ex parte*. On December 23, 2021, the Judge of the Preliminary Procedure approved the request of the SPO to change the indictment to include several new charges, specifically other detention centers in the municipality of Suhareka, new incidents of persecution and unlawful killing in the municipality of Gjilan, as well as new incidents of personal participation of the accused in the crimes for which he is accused. After *Thaçi* and *Veseli*’s appeals against this decision were rejected by the Court of Appeal Panel on March 22, 2022, the SPO submitted the publicly edited version of the amended indictment on April 29, 2022. On May 10, 2022, during their appearances, all four defendants again pleaded not guilty to the new charges in the amended indictment filed on April 29, 2022. On July 22, 2022, the Pre-Trial Judge granted, in part, the request of the *Thaçi* Defense alleging deficiencies in the last indictment and ordered the SPO to, by September 30, 2022, submit the further amended indictment, with additional information related to the charges. The additional information had to do with the names of the direct perpetrators of the crimes, the victims, and the respective locations in the specific paragraphs in the current indictment. On November 30, 2022, the Judge of the Preliminary Procedure, Mr. Nikola Giju, informed the President of the SCK that the case file will be ready to be handed over to the Trial Panel on December 15, 2022. On December 15, 2022, the judge of the preliminary procedure of passed the case file to Trial Panel II. The first Pretrial Conference was held on 18 January 2023, followed by the Preparatory Conference of the Specialized Prosecutor on 15 February. In total, 20 court sessions were held, so-called “preparatory conferences for the trial”, in which procedural aspects were discussed on the manner and duration of the presentation of the claims of the parties in the trial, evidence from the SPO, planning the start of the trial, etc. *Trial phase*: The trial of the case “*Thaçi et al.*” began on April 3, 2023, with the opening statements of the Specialized Prosecutor and the representative of the victims, followed by the defense teams on April 4 and 5, 2023. The judges at this stage were: Mr. Charles Smith III (presiding), Mr. Kristof Barte, Mr. Genël Metro and Mr. Fergal Gaynor (reserve judge).

## 6. Some aspects for discussion

Some legal elements surrounding the exercise of the activity of the SCK and SPO during the investigation and trial of the “*Thaçi et al.*” case, which need to be brought to public attention, are presented below.

The principle of confidentiality versus the right to information: One of the principles already accepted in protecting the integrity of judicial processes in international criminal tribunals is that of maintaining confidentiality. This tool serves to protect the witnesses and the identity of the victims, as well as not to undermine the independence of the mission of these courts. And yet, it is important to respect the balance between

this principle and, on the other hand, the implementation of a transparent and legal process, where the procedural rights of the defendants are respected. In the specific case with the SCK, the four accused in the case “*Thaçi et al.*” were detained before they had enough time to familiarize themselves with the unredacted version of the indictment brought against them, which has been amended by the SPO two more times since its confirmation in 2020. Secondly, following this, their defense teams encountered obstacles to have access to the official documents of the SPO, to prepare and present the defense of the representatives.

The spokesmen of the SCK and the SPO have given several reasons for not making public the full versions of the documents, clarifying that for the purpose of preserving the privacy of the parties, in a certain case, some court hearings may go into session private even though trial procedures are in principle public. Such measures are ordered by judges, usually for security reasons and to protect witnesses or victims.

However, it is important to note that, in the light of preserving the principle of publicity of the trial, confidential files are regularly reviewed and whenever the reason justifying their classification as “confidential” no longer exists, they are reclassified as public or redacted versions. public.

Thirdly, even though the pre-trial stage of the trial of this case has lasted for almost three years, the SPO has not yet announced to the accused parties, an estimate on the duration of the trial, or to provide information on the facts at its disposal. Pursuant to Article 21(6) of the Law on the SCK, all material and relevant evidence or facts available to the SPS, which are for or against the accused, must be made available to the accused before the commencement and during the proceedings, except for only those restrictions which are strictly necessary and when any necessary protection against the accused is applied. Also, based on rule 102(3) of the Regulation on Procedure and Evidence before the Specialized Chambers of Kosovo, the SPO must provide the defense with a detailed notification of any material and evidence it possesses.<sup>11</sup>

Regarding all the above-mentioned elements, it is essential to emphasize that the respect of the fundamental procedural rights of trial by any international criminal organization, such as the ICC, serves to strengthen the legitimacy of that organization, as well as the confidence of the public in the SPO’s activity.

### **7. The potential role of Albania**

First, it is worth mentioning that article 55, point 1 of the Law, as well as rule 208 of the Regulation on the functioning of the SCK, foresee the existing modalities of cooperation between the Republic of Albania and the SCK. Specifically, in compliance with these provisions, the Ministry of Justice of the Republic of Slovenia or other responsible Albanian authorities cooperate with the Specialized Chambers and the Specialized Prosecutor’s Office and without delay respect any request for assistance or for the development of criminal investigations and prosecutions persons who are accused of committing crimes within the subject jurisdiction of the Specialized Chambers, as well as for the fulfillment of other responsibilities of the SCK. It turns out that during the period of the Court’s activity, this cooperation was successful.

<sup>11</sup> See Rule 86 and Rule 95 of the Regulation.

Whereas, from the point of view of the political contribution of the Albanian state in the discourse related to the proceedings of the former members of the KLA by the Court, the Assembly of Albania on July 21, 2022, approved a resolution proposed by the government, condemning the report of Marty- t and describing his claims as baseless. Through the resolution, the Parliamentary Assembly of the Council of Europe was asked to draw up a follow-up report to that of Marty and to review the claims raised in that report. On August 12 of this year, Albania officially submitted the request for revision of the Council of Europe Resolution of 2011 to the Parliamentary Assembly of the Council of Europe.

But could Dick Marty's resolution really be undone by Assembly of the CoE? Albania followed some concrete legal procedures to set in motion the Parliamentary Assembly of the Council of Europe. The first step was the submission of a motion for a Resolution, a request which was considered by the Parliamentary Assembly, after verifying that it was following its procedures. According to this rule, a motion for recommendation or resolution must be signed by at least 20 representatives, belonging to the five national delegations, or must be approved with the necessary quorum by one of the council's committees. On April 3, 2023, the Albanian government announced that it had collected the necessary signatures, and the request was presented as a document of the Assembly and placed on the agenda of the plenary debate. As expected, on April 23, 2023, the Parliamentary Assembly of the Council of Europe decided not to support the Albanian government's request to overturn Marty's report.

In addition to the progress of lobbying through the usual diplomatic channels of the Republic of Albania, a suggestion by the author on the legal involvement of Albania in the trial of the ongoing case "*Thaci et al.*" next, would be the presentation of submissions in the capacity of "*amicus curiae*". This instrument is quite well-known in international law and has been used by other states that may have an interest in resolving a dispute in courts such as the ICC, ICJ, etc. In the capacity of "*amicus curiae*", Albania would be considered as an intervening entity, not in the capacity of a party to the trial, offering legal submissions to acquaint the court with an alternative or additional perspective regarding the dispute.

The regulation for the SCK also foresees this possibility, where specifically its rule 67, point 1 cites that: "*At any stage of the process, a panel may invite or allow the authorities of Kosovo, a third party state, organization, or person, to submit submissions in the capacity of amicus curiae in relation to any matter that the panel deems appropriate and that may assist in making the appropriate decision on the court case.*"

In this author's opinion, this would guarantee the active involvement of the Republic of Albania in the trial, and at the same time it would serve as one more guarantee for the examination of the case with objectivity by the instances of the SCK.

## 8. Conclusions

While it is indisputable that the establishment and mandate of the ICTY is a noble step towards addressing the culture of impunity for war crimes, it should be noted that the Court's current initiatives to try these claims have revealed the challenges

of transitional justice. in Kosovo. Specifically, the creation of the SCK as an internationalized domestic court, or in other words, a hybrid court, but without any national elements of Kosovo, seriously harms its chances of success, both in terms of its ability to prosecuting and collecting evidence against the defendants, as well as its ability to gain respect and legitimacy in the Republic of Kosovo.

The way to achieve justice for crimes and to help Kosovo cope with its traumatic history is not to continue with the problematic methods used in the past, of imposing justice by external actors (as in the case of the creation of the ICTY). The Kosovar people must be allowed to play a role in the judicial process and, democratically, give their voice on how and what kind of justice is offered to them. Instead of an internationally operated court located outside the territory where the Kosovo War took place, the international community could opt for more effective alternatives to guarantee the provision of justice in the country, such as the continuation of the operation of the EULEX courts, incorporated modifications in their mandate to address important issues, such as witness protection or mechanisms against possible political interference. By doing so, they would have maintained the true hybrid nature of its composition and structure, while ensuring international oversight, as well as keeping the courts located within the territory of Kosovo, thus maintaining a connection geographically with the local Kosovar population and allowing locals and victims to participate in the criminal proceedings. Although such an approach may have been deemed as inappropriate for the international community, from the point of view of lack of accountability, it would probably have served more to promote peace and stability in the long run, both within Kosovo and between Kosovo and Serbia.

By rejecting this option and establishing a completely new and international court outside the territory of Kosovo, the EU has balanced international political objectives with the needs of the Kosovar population to obtain justice, but perhaps with a preference in maintain the former. However, it is important for the international community to consider the potential for comprehensive and transitional justice within Kosovo, as well as the future of the hybrid model of criminal prosecution.

Secondly, it would be appropriate for the Albanian authorities and the Kosovo administration to initiate a serious and independent investigation to uncover the full truth about the allegations listed in Marty's 2011 report, with the aim of uncovering verifying all the existing facts and differentiating the truth from baseless allusions.

Finally, it would be essential for the SCK to extend its mandate to include crimes committed by Serbs in the conflict as well, a move that would increase public confidence in the court's work and help both sides face with the past. Meanwhile, international partners should use their leverage to encourage Serbia to prosecute high-ranking war criminals in Serbia. Ultimately, the reconciliation between the two countries requires that both sides recognize their responsibility and follow the path towards membership in the European Union.

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