

# The Kosovo Specialist Court and Transitional Justice.

Public perceptions on the KSC and the need for a comprehensive TJ approach

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## Colophon

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## PAX

PAX works with committed citizens and partners to protect civilians against acts of war, to end armed violence, and to build just peace. PAX operates independently of political interests.

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Integra's mission is to assist the development of Kosovo, especially in the context of human rights and integration by dealing with and promoting stories and experiences of the marginalized communities, thus contributing to the processes of democracy, building of trust and coexistence.

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# Abbreviations

AAK	Alliance for the Future of Kosovo
CIN	Court Information Network
DwP	Dealing with the Past
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
ICTY	International Criminal Tribunal for the former Yugoslavia
KLA	Kosovo Liberation Army
KSC	Kosovo Specialist Court (SC and SPO)
KFOR	Kosovo Force; NATO-led international security/peacekeeping force in Kosovo
LDK	Democratic League of Kosovo
NATO	North Atlantic Treaty Organization
PDK	Democratic Party of Kosovo
SC	Specialist Chambers
SPO	Specialist Prosecutor's Office
SPRK	Special Prosecution of the Republic of Kosovo
SITF	Special Investigation Task Force
TJ	Transitional Justice
US	United States (of America)
UNMIK	United Nations Interim Administration Mission in Kosovo

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# Executive Summary

The Kosovo Specialist Chambers and Specialist prosecutor's Office ('Kosovo Specialist Court'), set up in 2015, is the most recent mechanism to adjudicate war crimes and crimes against humanity related to the Kosovo War of 1998-1999. Most efforts to deal with the wartime past in Kosovo have focused on war crimes prosecution, without investing much in other transitional justice mechanisms to support society to move towards a more peaceful future. Previous international courts, and domestic courts in both Kosovo and Serbia, only managed to prosecute a relatively small number of serious crimes. As a result, they did not live up to expectations of many victims and did not do much to restore trust in justice processes amongst citizens. Worse, in both Kosovo and Serbia acquitted suspects or convicted perpetrators are regarded as heroes and many managed to stay or return to political power positions. On both sides, the political nationalist discourse is framed to a great extent by this wartime past which defines exclusive victim and perpetrator narratives.

The Kosovo Specialist Court was created in a response to serious allegations that the leadership of the former Kosovo Liberation Army (KLA), most of whom turned politicians after the war, had been involved in serious crimes against Serbs, other minorities and Albanian opponents. The KSC functions within the Kosovo judicial system but incorporates international humanitarian law and operates fully independent. The decision to establish this separate hybrid judicial entity has been subject of much criticism and was not just a legal or human rights consideration but also a political one: with Kosovo on the EU accession list, the EU had to support investigating these serious allegations, after the earlier EU-supported rule of law mechanisms in Kosovo had avoided going after the 'big fish'. The alleged crimes deserve to be criminally investigated and prosecuted so justice is served to the victims. However, the design of the KSC failed on an important aspect: it only looks into the crimes allegedly committed by one party to the conflict. Its limited mandate to only prosecute crimes related to the KLA is the main issue for the KSC to be accepted by a broad section of Kosovo society.

After relative quiet years since 2015, a new phase for the KSC started in 2020 when the first filings of indictments were announced. To test the public opinion in Kosovo of the KSC, PAX and Integra initiated a public perception survey in September 2020, and compare its findings with the 2017 perception survey which had found little public understanding of the KSC. The 2020 data show that there is still limited understanding in Kosovo of the KSC's mandate. Among K-Albanians trust in KSC to deliver justice is lowered, while among K-Serbs this increased slightly. This might be related to influence of the ethno-nationalist discourse around the KSC summoning in 2019 and 2020, with the majority of K-Albanians being of the opinion that KSC's mandate is unfair, while many K-Serbs and K-Others consider it fair. The differences in trust expressed, point to the likelihood that different ethnic groups will view the outcomes of KSC's trials differently.

The main argument of this report is that the predominant focus on war crimes trials to deal with the violent past in Kosovo has done little to deal with the past at a societal level to progress as a peaceful, inclusive and forward looking society. There has been a lack of investment in other important aspects, such as: truth-seeking and documentation, commemoration, reparations and compensation, as well as recognition and support for all the victims and survivors of the conflict regardless of their identity and status. All these transitional justice dimensions need to be addressed in and by themselves to help Kosovan society move towards a more peaceful future. With its partial mandate, the KSC will not contribute much to this end, except for potentially removing certain political leaders from the system. Whether the KSC can contribute positively in a broader sense, next to providing a measure of justice for victims, will depend on the way it is able to explain its mandate and the court proceedings in a context of polarized politics around it. In light of the current KSC proceedings, it is high time for the Kosovo government and its international supporters to invest in a comprehensive approach to dealing with the past. The final chapter of this report provides recommendations to diverse stakeholders, of which the most important ones are:

**THE KOSOVO SPECIALIST COURT** should intensify its outreach and public dialogue program in Kosovo, Serbia and other countries in the Western Balkans; re-consider establishing a permanent presence of the Specialist Chambers in Kosovo; ensure timely and effective indictments, trials and judgments in full compliance with the applicable laws; and avoid any suspicion of political influence or prejudice over KSC's decisions and proceedings.

**THE KOSOVO GOVERNMENT** should take responsibility for the KSC as part of Kosovo's legal system and cooperate fully to ensure justice is done to the victims; show sincere commitment to the European Commission's requirement to develop an overarching strategy for transitional justice as part of the EU accession process, by investing in a deliberative infrastructure for dealing with the past (I4DwP) in Kosovo which entails the primacy of victim- and survivor-centred approaches, greater gender equality and sensitivity, and de-ethnicization, depoliticization, and de-personalisation of DwP initiatives. It should also establish a parliamentary committee on dealing with the past with the function to monitor and report on government's progress.

**THE EU AND KEY INTERNATIONAL STAKEHOLDERS IN KOSOVO** should support a robust and comprehensive effort for DwP in Kosovo by investing political, bureaucratic and financial resources in promoting a national framework for dealing with the past, so Kosovo can live up to the European Commission's requirement; monitor Kosovo's and Serbia's progress in dealing with the past and inclusive transitional justice practices explicitly, as part of their EU accession process. Also, the EU-facilitated dialogue for normalization of relations between Serbia and Kosovo must address the pressing and outstanding issues for dealing with the past.

**CIVIL SOCIETY IN KOSOVO** should continue to work with the KSC outreach team to achieve transparent and correct communication and information dissemination to the broader Kosovan society; and work together in a coalition to advancing a citizen-centred and inclusive national strategy for transitional justice in Kosovo, through engagement with diverse victim communities, joint lobby towards the Government and international actors, as well as invest in outreach campaigns that combat nationalist and exclusionary narratives.

# 1. Introduction

In 2015, the Kosovo Specialist Chambers and Specialist Prosecutor's Office – together referred to as Kosovo Specialist Court – were established to adjudicate a specific set of alleged crimes committed by members of the Kosovo Liberation Army (KLA) during and immediately after the violent conflict in Kosovo of 1998-1999. The court functions under Kosovo law but is located in The Hague, the Netherlands, and is fully staffed by internationals. The Kosovo Specialist Court (KSC) has a controversial status in Kosovo: while many people in Kosovo are in favour of justice for war crimes and crimes against humanity, the specific mandate of the court to prosecute alleged crimes committed by perpetrators of one side to the Kosovo War is regarded as unfair and partial, especially by the Kosovo Albanian population. While the KSC's core objective is to provide justice in serious crime cases to the highest standards, its work has broader societal impact as well.

In 2017, PAX and Impunity Watch published a study assessing the potential impact of Kosovo Specialist Court.<sup>1</sup> It was based on a comprehensive analysis of the social and political context and the positions of key stakeholders for exploring the Specialist Court's potential societal impact and for devising mitigation strategies. It found that the work of the KSC could be severely undermined by limited public understanding and significant political contestation in Kosovo. A key message from that study was "While the Specialist Court aims to hold perpetrators of alleged crimes to account, the potential risks of this process can be mitigated only if Kosovan and international stakeholders undertake a whole-of-society approach to transitional justice and dealing with the past. [...] It is only through a comprehensive and renewed commitment by all local, wider regional and international stakeholders that the unwanted impacts of the Specialist Court can be mitigated and the institution's potential to promote positive societal change maximised" (p.9/10).

In parallel to that report, PAX, INTEGRA, Impunity Watch and Centre for Peace and Tolerance published a comprehensive public perception survey in 2017 to capture knowledge, opinions and expectations of citizens of the Kosovo Specialist Court.<sup>2</sup> At that time, the KSC had been established for almost two years and preparatory processes were ongoing. The survey found that public awareness of the KSC within Kosovo was low, misinformation widespread and few people believed the KSC could protect witnesses and provide justice for victims. Recommendations were made to diverse stakeholders, including for the KSC to start an effective, evidence-based and targeted outreach programme for the Kosovo public, tailored specifically to members of Kosovo's diverse communities, next to establishing a meaningful presence in Kosovan public life, to achieve visibility and two-way communication to improve understanding and countering misinformation. Because a war crimes court is only one – important, but limited – mechanism for dealing with the past, the

1 Visoka, Gëzim, 'Assessing the potential impact of the Kosovo Specialist Court', September 2017, PAX & Impunity Watch: <https://www.paxforpeace.nl/publications/all-publications/assessing-the-potential-impact-of-the-kosovo-specialist-court>

2 Warren MJ et al., 'Public perception of the Kosovo Specialist Court: Risks and Opportunities', September 2017, PAX, Impunity Watch, INTEGRA & CPT: <https://ngo-integra.org/publication/Public%20perception%20of%20the%20Kosovo%20Specialist%20Court.pdf>



Government of Kosovo was called upon to invest political, bureaucratic and financial resources in promoting a national framework for dealing with the legacies of the wartime past needed to deal more comprehensively with the past and in addressing broader concerns and needs of affected communities.

A new chapter of KSC's public functioning started when the first indictments were filed with the Pre-trial Chambers in April 2020, with the subsequent confirmations or (partial) dismissals expected ultimately by end-October 2020. Against this new phase, PAX and INTEGRA initiated another public perception survey, performed in September 2020, to shed a light on current perceptions and understanding about the KSC among the Kosovo public. Attention is also given to other developments in Kosovo related to transitional justice initiatives. Similar to the previous survey conducted in 2017, the broader political and social context of dealing with the past in Kosovo is examined. The overarching goal of this present study is to re-examine the role the KSC plays in the broader societal context and its implications for transitional justice and positive societal transformation in Kosovo.

### Transitional Justice

Transitional justice refers to a set of principles and mechanisms to deal with a past of large-scale violence and gross human rights abuses. It is a comprehensive term encompassing multiple paradigms. Transitional justice is usually divided in four overarching pillars: Right to Justice/ Accountability; Right to Know/ Truth-Seeking; Right to Reparation/ Socio-Economic Justice; and Guarantees of Non-Recurrence/ Institutional and Structural Reform.<sup>3</sup> The ultimate, longer term, goals of transitional justice processes include conflict transformation, prevention of recurrence and reconciliation. Often, transitional justice is narrowly understood to focus on retributive justice for serious crimes. While this is often a very important component of dealing with large-scale violence, it can only to a relatively small extent provide justice to victims and is certainly not enough to transform societies and achieving sustainable peace.

Notably, an international court like the KSC functions primarily in a judicial manner and cannot deal directly with broader societal implications beyond assuring justice is realized through due process and grave crimes are accounted for. The functioning of the criminal investigations and subsequent trial proceedings should happen according to the application of law, separate from politics or broader societal dynamics. However, the establishment of the KSC was – next to the juridical considerations – a political decision as well, and its operation and outcomes are prone to producing immediate and far-reaching impacts for Kosovo society.

<sup>3</sup> For an elaboration on the concept of Transitional Justice/ Dealing with the Past see the 'Essential' reports by Swisspeace; ,02/2016: <https://www.swisspeace.ch/publications/essentials/a-conceptual-framework-for-dealing-with-the-past> and 04/2017: <https://www.swisspeace.ch/publications/essentials/from-transitional-justice-to-dealing-with-the-past-the-role-of-norms-in-international-peace-mediation>

Over the past twenty-one years, other initiatives and mechanisms were developed to deal with the legacies of the war. Several civil society organisations engaged in documentation, war crime trials monitoring, supporting victims groups, sharing diverse war-time narratives, promoting victims' rights and peacebuilding. However, most of these have not been at a scale they affected the broader society. Unfortunately, the initiative for a regional truth commission (RECOM) stalled. The biggest institutional investment in Kosovo was the establishment of the 2012 Inter-Ministerial Working Group on Dealing with the Past and Reconciliation, which ended unsuccessfully four years later. Former President Thaçi launched the idea to establish a Truth and Reconciliation Commission (TRC) for Kosovo in 2017, while already being on the list of KSC suspects himself. The preparatory team for the establishment of the TRC progressed well, while facing mistrust because of its patron.<sup>4</sup> All these initiatives suffered "from a lack of coordination and harmonisation, politicisation and personalisation by political leaders, and most importantly did not manage to ensure adequate representation and inclusion of affected communities (victims and survivors of the conflict)".<sup>5</sup>

In this context, it can be inferred from the findings of this study that without a broader investment in transitional justice and dealing with the past in Kosovo, the KSC risks being perceived as the only mechanism for dealing with past abuses in Kosovo while overshadowing other important cases, legacies, and unresolved issues of the war that have an equally important role for Kosovo society.

## METHODOLOGY

The data presented in this report is based on desk-top research and a household survey among Kosovo citizens. The desk-top research analyses academic articles, media articles and public statements on or related to the KSC since 2015. The perception survey was performed in mid-September 2020 using the 'omnibus survey' by UBO Consultancy.<sup>6</sup> This is a periodic survey dedicated to the collection of information on diverse topics, of which the survey on perceptions of the KSC was a part, through a joint comprehensive survey. It is administered in Kosovo's 38 municipalities and includes a total of 1.065 Kosovo citizens over 18 years old, divided into three sub-samples: 815 interviews with K-Albanians, 150 interviews with K-Serbs, and 100 interviews with K-Others (non-Serb minorities). The last two groups are oversampled in order to allow for a more reliable analysis on ethnic level. The sample is weighted accordingly before the analysis is conducted in order to reflect Kosovo's ethnic structure. While this method provides reliable data on perceptions among citizens of Kosovo, perceptions of Kosovars living abroad were not part of the survey. Before the questionnaire was used, it was tested in the field to identify logical and substantive problems. The survey on perceptions of the Kosovo Specialist Court was an adjusted version of the 2017 one. Upon completion of the fieldwork, the data were exported to an SPSS dataset for cleaning, coding of answers and analysis.

## OUTLINE OF THE REPORT

First, the report gives the background to the origin of the KSC, discusses criticism over it and highlights recent developments. Then, the findings from the 2020 perception survey on the KSC are presented. Finally, conclusions are drawn and recommendations formulated to diverse stakeholders.

4 Integra and New Social Initiative (NSI), 'Public perception survey and public dialogue about future Truth and Reconciliation Commission (TRC) of Kosovo', 2020;

<https://kosovotrustbuilding.com/en/stories/362>

5 Visoka, Gëzim & Besart Lumi, 'Democratizing Transitional Justice: Towards a Deliberative Infrastructure for DwP in Kosovo', PAX, Integra & NSI (June 2020); <https://www.paxforpeace.nl/publications/all-publications/democratizing-transitional-justice-in-kosovo>

6 For more information: <http://www.uboconsulting.com/omnibus.html>

# 2. Origin, challenges and developments around the Kosovo Specialist Court

## 2.1 The Kosovo War and war crimes prosecution

The Kosovo war was the last violent episode of the disintegration of the former Yugoslavia. The war started on March 20<sup>th</sup> 1998 with the Serbian/Yugoslav army offensive in Kosovo<sup>7</sup> against the Kosovo Liberation Army (KLA). The war followed a much longer period in which tensions between the Albanians and Serbs in Kosovo had grown over structural discrimination of the Albanian population, especially since 1989. The KLA developed from loose, scattered guerrilla groups from the late 1980's into an armed movement by mid-1990's. The KLA did not follow the non-violent resistance of Ibrahim Rugova, the political leader of the Democratic League of Kosovo (LDK) and president of the parallel state of Kosovo at the time, against Serb domination and discrimination. The Kosovo War lasted to June 1999, when the Kumanovo Agreement ended hostilities.<sup>8</sup> This agreement was no peace agreement between the main opponents Serbia and the KLA, but a military agreement signed between NATO's International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, which

7 Under the Yugoslav federation (1942-1992) Kosovo had been an autonomous province, the Autonomous Province of Kosovo and Metohija, within the Yugoslav constituent republic of Serbia until 1989, when Milošević revoked its autonomous status as part of a larger plan to claim Kosovo a full part of Serbia.

8 For a detailed description on the Kosovo War and crimes committed by Serbian and Yugoslav government forces, the Kosovo Liberation Army and NATO, see: Human Rights Watch, 'Under Orders: War Crimes in Kosovo', 2001: <https://www.hrw.org/reports/2001/kosovo/>

ended NATO bombings on Serbia and paved the way for a UN administration in Kosovo. The war had resulted in more than 80 percent of the entire population of Kosovo, and 90 percent of Kosovar Albanians, being displaced from their homes; more than 863.000 ethnic Albanians had fled Kosovo.<sup>9</sup> Serbian forces committed multiple massacres, all over Kosovo, and the destruction of civilian property by Yugoslav government and Serb troops was widespread. During the war, the KLA also committed serious abuses including murder, abductions and expulsion of Serb civilians or Albanians considered to be collaborators of the Yugoslav state. More than 220,000 Serbs had fled Kosovo during and just after the war.<sup>10</sup> In total, 13,535 persons were killed or went missing between March 1998 and end-2000; among them 10,812 Albanians, 2,197 Serbs and 526 members of other ethnic communities (Roma, Ashkali, Egyptians, Bosniaks, etc.), most of whom civilians.<sup>11</sup> In the direct aftermath of the war, other serious human rights violations were committed, especially retaliatory crimes by the KLA towards (perceived) collaborators or political opponents. In the direct aftermath of the war, between 10th June and 31st December 1999, 1,306 persons were killed; 715 Serbs, 318 Albanians, and 273 members of other ethnic communities.<sup>12</sup> Already in 1999, some information about kidnappings and alleged KLA-run detention camps in northern Albania transpired.<sup>13</sup>

After the end of the Kosovo War, Kosovo became a de-facto protectorate under the United Nations Interim Administration Mission in Kosovo (UNMIK), with a mandate of temporary governance, humanitarian assistance, reconstruction and state building. In 2002, after the LDK won the elections, Ibrahim Rugova was elected President. For most of the post-1999 period, the tensions between the different Kosovo-Albanian factions were transformed into intra-ethnic political conflict among rival political factions. Next to the LDK, the main ones were those which developed from the KLA; the Democratic Party of Kosovo (PDK), for a long period led by Hashim Thaçi; the Alliance for the Future of Kosovo (AAK), led by Ramush Haradinaj, and the Social Democratic Initiative (NISMA), formed by Fatmir Limaj and Jakup Krasniqi.<sup>14</sup> In 2008, under President Fatmir Sejdiu and Prime Minister Hashim Thaçi, Kosovo declared its independence from Serbia, which was recognized by 113 out of 193 UN member states.<sup>15</sup>

The International Criminal Tribunal for the former Yugoslavia (ICTY) had been established in 1993 to prosecute serious crimes committed during the Yugoslav Wars (1991-1999) and was operational until 2017.<sup>16</sup> Between 2007 and 2014 the ICTY also prosecuted serious crimes committed in Kosovo; with two cases against Yugoslav/Serbian forces and politicians (eight individuals; five sentenced)

9 HRW (2001)

10 Ibid.

11 Humanitarian Law Centre (HLC), The Kosovo Memory Book, Pristina, 2011; <http://www.kosovomemorybook.org>

12 Ibid.

13 See: OSCE Kosovo Verification Mission, Human Rights in Kosovo: As Seen, As Told. Volume I, October 1998 - June 1999; <https://www.osce.org/odihr/17772>, and Human Rights in Kosovo: As Seen, As Told. Volume II, 14 June - 31 October 1999, (5 November 1999); <https://www.osce.org/kosovo/17781>; Human Rights Watch (2001); Balkan Insight: <https://balkaninsight.com/2009/04/16/unlocking-the-dark-secrets-of-the-kla-s-camps/> and Balkan Insight, 'Kosovo Organ-Trafficking: How the Claims were Exposed', September 4, 2015: <https://balkaninsight.com/2015/09/04/kosovo-organ-trafficking-how-the-claims-were-exposed-09-04-2015-1/>

14 Covey, J., Dziedzic, M. & Hawley, L. (Eds.), The Quest for Viable Peace: International intervention and Strategies for Conflict Transformation, USIP, 2005: <https://www.usip.org/publications/2005/05/quest-viable-peace#:~:text=As%20the%20editors%20of%20this,means%20for%20continued%20violent%20conflict>

15 The exact number of countries or UN member states that recognize Kosovo's independence in 2020 is disputed (claims vary between 100-116 countries) as some have revoked that decision, though the legal status of such decisions is unclear; <https://www.polgeonow.com/2020/09/which-countries-recognize-kosovo-independence.html>

16 Since 2017 ongoing ICTY cases were taken over by the International Residual Mechanism for Criminal Tribunals

and two cases against high-ranking KLA commanders (six individuals; one sentenced).<sup>17</sup> As with all war crimes and other serious crimes cases the investigations and trials took many years to complete. The ICTY proceedings established a wealth of facts about the Yugoslav wars, sentenced high ranking perpetrators, provided a level of justice to several groups of victims and is widely recognized for its role in advancing international justice. Yet, even in the eyes of legal experts directly involved, the ICTY “has, contrary to what had been hoped for, not changed existing, often denialist, narratives regarding the 1990’s conflict, the violence and the crimes in the region”.<sup>18</sup>

The allegations about the KLA-run detention camps had also been investigated by the ICTY, as revealed by Carla del Ponte, a former ICTY head prosecutor (1999-2007), in her memoirs. In it, she claimed that the ICTY investigations had resulted in serious grounds to believe that KLA individuals had committed serious crimes against Serbs, other minorities and Albanians, including the trafficking of human organs.<sup>19</sup> Though the ICTY had faced numerous challenges during the investigations and eventually did not have enough evidence to prosecute, according to Del Ponte. While she was criticized for revealing this information, it provided the basis for the Committee on Legal Affairs and Human Rights of the Council of Europe to commission closer investigations into the allegations and the human rights violations described in her book.

Dick Marty, rapporteur for the Council of Europe’s Parliamentary Assembly Committee on Legal Affairs, was tasked to take up this non-criminal investigation during 2009 and 2010. Also in 2009, the journalist who wrote about the alleged KLA detention camps in 1999, released a podcast on the topic including eye witness accounts.<sup>20</sup> Marty’s research eventually resulted in the Council of Europe report ‘Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo’ (the “Marty Report”) which was adopted by the Council on 7 January 2011.<sup>21</sup> The report found that earlier reports on the crimes had not been properly investigated or documented and that “the international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice.”<sup>22</sup> In Kosovo, the report was massively refused by the political elites who were implicated. Then-Prime Minister Thaçi named it “scandalous slander” aimed at preventing Kosovo to become a fully recognized independent country and EU member state.<sup>23</sup> The Marty Report recommended for EULEX to continue the criminal investigations into the substantiated allegations, with the full support of EU and member states. Subsequently, a Special Investigative Task Force (SITF) was installed in 2011 by the EU, with support of the United States, “to investigate and, if warranted, prosecute individuals” for the violent abuses alleged in the Marty Report.

17 See United Nations International Criminal Tribunal for the former Yugoslavia: <https://www.icty.org/en/cases/key-figures-cases>

18 Judge Christine van den Wyngaert, who served as a judge at the ICTY and ICC and is appointed to the Roster of judges at the Kosovo Specialist Chambers quoted in: Centre for International Criminal Justice/ Vrije Universiteit, ‘International Criminal Justice at the Crossroads: Reflecting upon the Past, Discussing the Present, and Imagining the Future’, Conference Notes, May 2019: <https://cicj.org/events/conferences/international-criminal-justice-at-the-crossroads/>

19 For these claims, see for example: <https://www.rferl.org/a/1109621.html>. The book of Carla del Ponte & Chuck Sudetic, *La caccia: Io e i criminali di guerra* was published in April 2008. English version: *Madame Prosecutor: Confrontations With Humanity’s Worst Criminals and the Culture of Impunity*, Other Press, 2009.

20 BBC Radio 4, ‘Crossing Continents: Kosovo, Horrors of KLA prison camps revealed’, 10 April 2009; <http://news.bbc.co.uk/2/hi/europe/7990984.stm>

21 Council of Europe, Committee on Legal Affairs and Human Rights, *Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo*, Report Doc. 12462, 12 December 2010; <http://www.assembly.coe.int/committeedocs/2010/ajdoc462010prov.pdf>

22 Marty Report (2010)

23 EU Observer, ‘Kosovo PM interview: organ trafficking report is ‘monstrous’ slander’, 10 January 2011; <https://euobserver.com/foreign/31613>



Since 2000, and next to the ICTY trials, also domestic investigations into war crimes have been pursued in Kosovo.<sup>24</sup> First under the UNMIK administration, which used a hybrid model of a UN-mandated courts system in Kosovo with a war crimes jurisdiction, until Kosovo's independence in 2008. From that time, courts of the Republic of Kosovo took over war crimes prosecution, supplemented with a judicial body mandated by the EU to prosecute war crimes; the EU Rule of Law Mission in Kosovo (EULEX). The EULEX judges and prosecutors functioned within Kosovo's prosecution and court system, but operated independently in selecting cases. While UNMIK had identified almost 1,200 possible war crimes<sup>25</sup>, for only ten cases (23 individuals) indictments were filed between 2000 and 2008. EULEX took over this heavy case load of almost 1200 war crimes cases. By 2014, it had closed 500 cases due to lack of evidence, while 600 cases were pending and 51 new war crimes cases were initiated.<sup>26</sup> From 2009 to 2018, EULEX managed to file indictments in only 22 cases (52 individuals).<sup>27</sup> At least a third of these involved alleged perpetrators of Serb ethnicity. But as one EULEX Head of Mission pointed out "the majority of war crimes suspects for crimes committed against Kosovar Albanians during the war are Kosovo Serb, or Serbian nationals. But they are no longer in Kosovo. The judiciary of Kosovo (including EULEX) can conduct investigations against alleged perpetrators, but has only jurisdiction in Kosovo. (...) nobody can be tried in absentia."<sup>28</sup>

Other war crimes cases involved ex-KLA fighters indicted for crimes alleged in the Marty Report, like the convictions of members of the KLA 'Drenica group' for crimes against civilians at a detention centre in northern Kosovo.<sup>29</sup> From 2012, the EULEX mission scaled down gradually and by 2014 had transferred much of its competences on war crimes to the Kosovo courts and prosecutors. In the following four years, local prosecutors filed three war crimes cases.<sup>30</sup>

SITF conducted its investigations in cooperation with EULEX from September 2011 into 2014. By mid-2014 it announced that enough evidence had been gathered to file indictments against senior KLA officials who "bear responsibility for campaign of persecution that was directed against ethnic Serbs, Roma and other minority population of Kosovo and toward fellow Kosovo Albanians whom they labelled as collaborators of Serbs or more commonly to have simply been political opponents of the KLA leadership".<sup>31</sup> On the alleged KLA involvement in human organs trafficking no conclusive evidence had been secured. With these compelling findings, the next step was to find or set up an institutional body that could prosecute these alleged crimes. The ICTY had previously dropped further investigations into the alleged KLA crimes and the ICTY statute prescribed that crimes against humanity could only be investigated if they happened during armed conflict, which made it

24 As well as in Serbia, for details on Serbia's domestic war crimes trials see: Humanitarian Law Centre. 'War crimes trials in Serbia': <http://www.hlc-rcd.org/?cat=292&lang=de>

25 Muharremi, Robert, "The Kosovo Specialist Chambers from a Political Realism Perspective", *International Journal of Transitional Justice*, (2019:13): 290–309

26 Article by Bernd Borchardt, EULEX Head of Mission 2013/2014, 'EULEX and War Crimes', undated; <https://www.eulex-kosovo.eu/en/news/000427.php>

27 Humanitarian Law Centre (HLC) Kosovo, An Overview of War Crime Trials in Kosovo in the Period 1999-2018, Pristina, October 2018

28 Bernd Borchardt; footnote 23

29 See Balkan Insight; 'Ex-KLA Fighter Detained Over Crimes in Albania', October 8, 2015; <https://balkaninsight.com/2015/10/08/kosovo-detains-ex-kla-fighter-for-war-crimes-10-08-2015/>; and: 'Kosovo 'Drenica Group' Guerrillas' Convictions Confirmed', 4 September 2017; <https://balkaninsight.com/2017/09/04/kosovo-drenica-group-supreme-court-verdict-09-04-2017/>

30 HLC Kosovo (October 2018)

31 Balkan Investigative Network (BIRN), Kosovo Specialist Chambers: From Investigations to Indictments, 2017. E-book: <https://balkaninsight.com/2017/11/01/birn-publishes-kosovo-war-crimes-court-e-book-10-30-2017/>

hard for the tribunal to prosecute crimes against humanity committed after June 1999.<sup>32</sup> Moreover, the ICTY was already winding down its operations by 2014. EULEX had not shown substantive progress with war crimes prosecutions and was scaling down. EULEX's limited progress was also a result of "their need to avoid disrupting political stability."<sup>33</sup> Domestic courts did not have the needed capacity and likely would have to confront huge political interference. A concern with domestic trials has also been witness protection; investigations by ICTY, UNMIK, EULEX and SITF had all experienced witness intimidation.<sup>34</sup> As such, it was concluded that a new prosecution and court body had to be developed.

In 2014, the EU and US officially requested Kosovo to accept the establishment of a hybrid international court to investigate the allegations made in the Marty Report and confirmed by SITF. The design of the court modalities was done by the EU External Action Service (EEAS), and diplomatic exchange between EU officials and Kosovo institutions followed.<sup>35</sup> The Assembly of Kosovo ratified this exchange of letters on the establishment of the special court as an international agreement, thus committing Kosovo to it.<sup>36</sup> It was passed by 89 to 22 parliamentary votes although then- Prime Minister Hashim Thaçi called it "the biggest injustice and insult which could be done to Kosovo and its people."<sup>37</sup> The same year, the special court was also incorporated by the European Commission as an obligation under Kosovo's Enlargement Strategy, thus making its establishment an accession criterion for Kosovo. Such conditionality had also been applied around the set-up of the ICTY to ensure cooperation from former Yugoslav states.<sup>38</sup> With EU accession being a top priority for the Republic of Kosovo, there was a high level of confidence Kosovo would comply. In December 2014, the Council of the EU referred to this commitment and called on Kosovo to establish the Special Court.<sup>39</sup>

For the new court to function under Kosovo law, a constitutional amendment was needed allowing for the law on the Specialist Chambers and Specialist Prosecutor's Office to be adopted by the Assembly of Kosovo. In Kosovo, this did not come to pass easily, with heated debates in parliament for months and street protests against the legislation that would put KLA fighters on trial.<sup>40</sup> The vote was scheduled and cancelled several times in the Kosovo Assembly. The first actual vote in July 2015 did not raise enough votes. Though pressure was put on the Kosovo government through

32 However, Holvoet argues that this limitation of ICTY's statute was not insurmountable, but that the option of ICTY further investigating the alleged crimes was not seriously considered. "Moreover, also from the perspective of judicial economy, it

appears that the ICTY would have been a well-equipped institution to prosecute post-war KLA crimes"; Holvoet, M., 'The Continuing Relevance of the Hybrid or Internationalized Justice Model: The Case of the Kosovo Specialist Chambers', *Criminal Law Forum* (2017) 28:35–73; p. 45.

33 Calpin, S. & G.D. Crossley 'EULEX: Anti-corruption and the Limits of a Quantitative Assessment', *FOL Movement* (2016); <http://levizjafol.org/folnew/wp-content/uploads/2016/02/EULEX-EN.pdf>

34 Karadaku, Linda, 'Kosovo promises the co-operate with war crimes investigation', *Southeast European Times*, 6 August 2014, retrieved from: <https://atlanticinitiative.org/kosovo-promises-to-cooperate-with-war-crimes-investigation/>

35 Korenica, F., Zhubi, A. & Doli, D., 'The EU-engineered hybrid and international specialist court in Kosovo: How 'special' is it?' *European Constitutional Law Review*, 12 (2016): 474–498

36 'Law on ratification of the international agreement ("The Exchange of Letters")', 23 Apr 2014; [https://www.scp-ks.org/sites/default/files/public/04-l-274\\_a.pdf](https://www.scp-ks.org/sites/default/files/public/04-l-274_a.pdf)

37 BIRN e-book (2017), p.171 (article April 24, 2014)

38 Remarks by ICTY Chief Prosecutor Serge Brammertz, 'The International Tribunal and Beyond: Pursuing Justice for Atrocities in the Western Balkans', at the joint briefing of the Tom Lantos Human Rights Commission and the Commission on Security and Cooperation in Europe, 12 December 2017.

39 Korenica et al (2016)

40 Balkan Insight, 'Kosovo's New War Court: How Will it Work?', 6 August 2015; <https://balkaninsight.com/2015/08/06/how-will-special-kosovo-court-work-08-05-2015/>

repeated warnings that the UN Security Council would form the court if Kosovo failed to do so itself.<sup>41</sup> In August 2015, the Kosovo Parliament voted in favour of the constitutional amendment and enacting the Law on Specialist Chambers. The EU Office, EU embassies and the US Embassy in Pristina welcomed this achievement as it would “strengthen the principle of the rule of law in Kosovo” and “[b]y dealing with its past and ensuring justice for the victims, Kosovo can achieve reconciliation and build a better future.”<sup>42</sup>

The Kosovo Specialist Chambers and Specialist Prosecutor’s Office (KSC) have “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 Federal Republic of Yugoslavia.”<sup>43</sup> This means it investigates and can prosecute individuals alleged to have committed crimes in Kosovo or who commenced crimes from Kosovo (committed on another territory) during 1998-2000, against citizens from Kosovo or the Federal Republic of Yugoslavia.<sup>44</sup> No person will be tried before the Specialist Chambers for acts that have already been tried by the ICTY or a court of Kosovo.<sup>45</sup> Nowhere does the KSC mandate state that it only investigates or prosecutes former KLA members. However, the SPO being the continuation of the SITF with the mandate to investigate individuals for the crimes alleged in the Marty Report, that only covered crimes allegedly committed by KLA members, it is highly unlikely other perpetrators could be prosecuted by the KSC. On many occasions, the prosecutors have stressed that not the KLA itself is the target, but individuals who committed serious crimes; “I am not after organisations, I am not after ethnicities, I am looking at individual responsibility for what was done” then-KSC prosecutor David Schwendiman argued in 2016.<sup>46</sup>

The fact that the mandate includes the period up to end-2000 while the war ended in June 1999, confirms the inclusion of post-war crimes, but is quite unique for war crimes tribunals as for this period the KSC is to handle both war crimes and general politically-motivated crimes, broadening the jurisdiction compared to that of other international war crimes tribunals.<sup>47</sup> While the Specialist Chambers and Prosecutor’s Office are of temporary nature, their termination is conditioned on an official notification from the EU. Originally, the KSC operations were foreseen for five years but the EU has the power to have the proceedings of the KSC to extend beyond this period. While members of the Kosovo Assembly have tried several times to argue 2020 to be the final year for KSC, reality already proved differently.

41 Prishtina Insight, July 2015 <https://prishtinainsight.com/mps-to-vote-again-on-special-court/> and; former SITF prosecutor Williamson confirmed that especially Russia wanted a UN court, and that if the EU and US would not further investigate, a UN court was likely to pass in the Security Council: RTK Live, ‘Williamson: if Kosovo wouldn’t form Special Court, UN would do it’, 16 November 2020; <https://www.rtklive.com/en/news-single.php?ID=18171>

42 Joint statement ‘Statement of EU Embassies/Offices, EUSR/EU Office and US Embassy in Kosovo on the adoption of constitutional amendment and law on the establishment of the Specialist Chambers’, 3 August 2015; <https://xk.usembassy.gov/joint-statement/>

43 See <https://www.scp-ks.org/en>

44 “The Special Court’s jurisdiction extends to crimes committed both by and against individuals holding Kosovo/Federative Republic of Yugoslavia citizenship during the period under investigation. The only limit on its jurisdiction is the exclusion of any crimes perpetrated by individuals not proved to hold Kosovo/Federative Republic of Yugoslavia citizenship against individuals not proved to hold Kosovo/Federative Republic of Yugoslavia citizenship” in: Korenica et al. (2016); p. 492.

45 See: Law No. 05/L-053 on Specialist Chambers and specialist Prosecutor’s Office; [https://www.scp-ks.org/sites/default/files/public/05-L-053\\_a.pdf](https://www.scp-ks.org/sites/default/files/public/05-L-053_a.pdf)

46 Balkan Insight, ‘Schwendiman: New Kosovo War Court ‘Not Anti-Albanian’, 15 November 2016; <https://balkaninsight.com/2016/11/15/schwendiman-new-kosovo-war-court-not-anti-albanian-11-14-2016/>

47 Korenica et al. (2016), p.490

In February 2016, an agreement was signed with The Netherlands to host the KSC.<sup>48</sup> The law establishing the KSC, actually envisaged that the seat of the Specialist Chambers would be both in Kosovo and a host state: 'The Specialist Chambers shall have a seat in Kosovo. As provided for through an international agreement with the Host State, the Specialist Chambers shall also have a seat in the Host State outside Kosovo'. The SPO was foreseen to 'have a seat in the Host State, but may also have a seat in Kosovo'.<sup>49</sup> With the SPO being a continuation of the SITF, with the same staff, having its seat confirmed in The Hague, and a Registrar appointed in April 2016, the KSC could be set up. It took up to mid-2017 for all mechanisms and procedures to be in place.

For a while not much seemed to happen, at least not publicly. Many observers wondered why it took the Specialist Prosecutor so long to issue indictments. A former EULEX judge pointed out that for almost three years "alleged perpetrators of heinous crimes have been allowed to go about their lives with impunity. But more importantly, and I can't emphasise this point enough, the victims and their families have been forced to twist in the wind of uncertainty far too long, waiting for justice to be served."<sup>50</sup> Finally, by mid-2018, the first – publicly known – summoning of witnesses and suspects commenced.<sup>51</sup> Among those called as a suspect was Ramush Haradinaj, in July 2019; a former KLA commander, leader of the Alliance for the Future of Kosovo (AAK) party and at the time of summoning the Prime Minister of Kosovo. Haradinaj immediately resigned as he did not want to appear before the KSC as Prime Minister. He had been prosecuted by the ICTY over war-crimes and crimes against humanity charges but was acquitted. Between late-2018 and end-2019, over 100 former KLA fighters had been summoned by the KSC.<sup>52</sup> Though, even with the summoning, the time it has taken for indictments to be announced, made Kosovo people grow more suspicious and dismissive of the KSC.<sup>53</sup>

### Functions of the Kosovo Specialist Chambers + Specialist Prosecutor's Office in brief

**Specialist Chambers (SC):** the specialist chambers are not a separate international criminal tribunal but a group of four Specialist Chambers within and attached to each level of the Kosovo court system: a Basic Court Chamber (the 'trial court'), a Court of Appeals Chamber, a Supreme Court Chamber and a Constitutional Court Chamber. All are based in The Hague. The SC functions

48 Agreement to be found here: <https://www.scp-ks.org/en/documents/host-state-agreement-between-netherlands-and-kosovo>

49 Article 3.6 and 3.7, Law No.05/L-053

50 Pineles, D. "Ghost Court" Delays Justice for Kosovo War Victims", BIRN, 21 March 2018; <https://balkaninsight.com/2018/03/21/ghost-court-delays-justice-for-kosovo-war-victims-03-19-2018/> (accessed 11 July 2020).

51 <https://kossev.info/former-member-of-the-kla-remzi-shala-arrested-after-months-on-the-run/>

52 Balkan Insight, 'Prosecutors Call Kosovo MP for Interview in The Hague', 11 November 2019; <https://balkaninsight.com/2019/11/11/prosecutors-call-kosovo-mp-for-interview-in-the-hague/>

53 Haxhijaj, Serbeze, 'Kosovo Bemused by Long Wait for Hague War Court Trials', Balkan Insight, 4 December 2019; <https://balkaninsight.com/2019/12/04/kosovo-bemused-at-long-wait-for-hague-war-court-trials/> and: Haxhijaj, Serbeze, 'In Kosovo, Distrust of Hague War Crimes Court Simmers', 12 May 2020; Balkan Insight, <https://balkaninsight.com/2020/05/12/in-kosovo-distrust-of-hague-war-crimes-court-simmers/>

according to relevant Kosovo laws as well as customary international law and international human rights law (see below). The Specialist Chambers have primacy over all other courts in Kosovo.<sup>54</sup> The Registry is also part of the SC and comprises various administrative support units, incl: legal, court management, language services, public information and communication, human resources. Further, the under responsibility of the Registry fall: Witness Protection and Support Office, Victims' Participation Office, Defence Office, Detention Management Unit, and Ombudsperson. There is no outside (judicial) authority holding oversight over decisions made by KSC.<sup>55</sup>

**Specialist Prosecutor's Office (SPO):** this is the relocated prosecution office created to investigate and, if warranted, prosecute individuals for crimes alleged in the January 2011 Marty Report. The SPO is a continuation of the Special Investigative Task Force (SITF) and inherited its staff and mandate. The SPO is an independent office, separate from the SC. The SPO is also part of the judicial system of Kosovo, but a temporary institution with the specific mandate and jurisdiction "over certain crimes against humanity, war crimes and other crimes under Kosovo law which allegedly occurred between 1 January 1998 and 31 December 2000." Staff of the SPO, like prosecutors, investigators and analysts, are all citizens of either an EU member state or one of the five non-EU contributing countries: Canada, Norway, Switzerland, Turkey and the United States.<sup>56</sup>

The **type of crimes** that the Specialist Prosecutor can investigate under its mandate include:

- ◆ Crimes Against Humanity under International Law (Article 13)
- ◆ War Crimes under International Law (Article 14); breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict, recognised as such in customary international law.
- ◆ Other Crimes under Kosovo Law (Article 15); incl. crimes under the Criminal Code of the Socialist Federal Republic of Yugoslavia (1976); and the Criminal Law of the Socialist Autonomous Province of Kosovo (1977); or any more lenient substantive criminal law in force between 1989 and July 1999/27 October 2000.<sup>57</sup>

54 For the exact details of the laws governing the KSC see: <https://www.scp-ks.org/en> and for discussions: Heinze, Alexander; 'The Kosovo Specialist Chambers' Rules of Procedure and Evidence: A Diamond Made Under Pressure?', *Journal of International Criminal Justice* 15 (2017), 985-1009, or: Michael Karnavas' blog: 'Kosovo Specialist Chambers – Part 1: its Statute and Rules of Procedure and Evidence in a nutshell', <http://michaelgkarnavas.net/blog/2017/05/24/kosovo-specialist-chambers-part-1/>

55 Korenica et al (2019), p. 485.

56 See: <https://www.scp-ks.org/en/specialist-prosecutors-office/role-spo>

57 Law No. 05/L-053



## 2.2 Outreach by the KSC

One of the lessons of the ICTY was that an international court, located outside of the region where the crimes under investigation were committed, faces challenges over local understanding and legitimacy. Strong outreach towards the affected society therefore is required.<sup>58</sup> The Specialist Chambers started its outreach program in April 2016 when the Registrar was appointed, with civil society consultations to obtain their views on outreach needs.<sup>59</sup> While regular contact with Kosovan and Serbian civil society representatives was realised from the start, it was not enough to reach diverse local communities in Kosovo or Serbia. Civil society, lobbied for a much stronger investment in outreach activities to tackle misinformation and nationalist counter-narratives, while working to generate broad social acceptance of KSC's processes and outcomes.<sup>60</sup> The Swiss responded to this by providing a grant with which the level of the KSC's outreach activities increased through 2018-2019. A Court Information Network (CIN) of 15 NGOs from Kosovo and Serbia was set up in June 2018 to facilitate two-way communication for regular feedback on the outreach activities, discuss how to engage best with target groups and support the dissemination of key messages.<sup>61</sup> While such exchange has been happening on a regular basis and strategies were designed, the actual implementation is seen by many civil society representatives as too late, too slow and not enough: it has not been building its own visibility and connectedness to victims and witnesses or the broader population.<sup>62</sup> A permanent presence in Kosovo (and possibly Serbia) of the Specialist Chambers' outreach team and victim's participation unit could strengthen that.

Next to the information and exchange sessions with civil society organisations, the KSC outreach team visited several regions to meet with communities. The KSC reports it has carried out 75 community meetings from 2018 to February 2021, reaching over 1,700 participants directly, next to roundtables, media briefings and trainings with journalists from the region. During COVID-19, "at least two online outreach events with audiences in Kosovo per month" were held.<sup>63</sup> The ideas and plans for awareness raising campaigns to reach the broader Serbian and Kosovan populations were developed in 2018, but only broadcasted through Albanian and Serb language media since March 2020. Five informational videos have been shown "hundreds of times on television [and]... have been downloaded thousands of times from [KSC's] webpage."<sup>64</sup>

Some observers argue that compared to outreach programs of other international courts, the KSC has been doing relatively well.<sup>65</sup> However, the question is not how the KSC's outreach is judged by the international law community; ultimately, the success of KSC's outreach is to be determined by the affected communities in Kosovo, Serbia and in the diaspora. At the same time, there is a limit to what the KSC can do, as Hehir (2019) points out; "in practice, the impact of their public relations

58 Smith, Allison, 'Outreach and the Kosovo Specialist Chambers: A Civil Society Practitioner's Perspective', *International Criminal Law Review* 20 (2020); 125-153.

59 For more details see; <https://www.scp-ks.org/en/outreach>

60 See recommendations in Visoka (2017) and Warren et al (2017)

61 Participating NGOs: Humanitarian Law Center (HLC) Kosovo; HLC Serbia; European Center for Minority Issues (ECMI) Kosovo; Youth Initiative for Human Rights (YIHR) Kosovo; YIHR Serbia, Kosovo Women's Network (KWN); YUCOM; AKTIV; Advocacy Center for Democratic Culture (ACDC); Center for Research, Documentation and Publication (CRDP); Integra; Center for Peace and Tolerance (CPT); ForumZFD Serbia; ForumZFD Kosovo, Roma in Action, Committee for Human Rights in Serbia (CHRIS).

62 Personal conversations of author with civil society representatives in Kosovo, March 2020

63 Data provided by KSC Outreach team, March 2021

64 Ibid.

65 Smith (2020)

strategy on the general public is heavily dependent on the degree to which the Kosovo government itself supports the court and its public relations strategy.”<sup>66</sup> Such government support has definitely been lacking “due to the fact that many within the current government have intimate links to the KLA.”<sup>67</sup> Moreover, the overall political and social context in Kosovo plays a major role in shaping the wider impact of the KSC’s work in general, and its outreach activities in particular. The dominance of counter-narratives and relative smaller presence of the KSC in Kosovo media and on the ground contribute to the contested legitimacy of the KSC in Kosovo.

## 2.3 New phase: public indictments by the KSC

On 24th April 2020, the SPO announced that it had handed down its first indictments to the Pre-Trial Judge, without naming the suspects. The process for the Pre-Trial judge to either confirm or (partially) dismiss the indictments would take a maximum of six months, up to 24th October 2020 ultimately. But already by the end of June 2020, the SPO released an exceptional press statement, announcing that the filed indictments alleged that then-President Hashim Thaçi, PDK leader Kadri Veseli and the other charged suspects are criminally responsible for nearly 100 murders. This came one day before President Thaçi was supposed to attend a meeting in Washington with his Serbian counterpart Vucic. The announcement was quite remarkable as the Pre-Trial Judge had not yet decided on the indictment. The explanation of the Specialist Prosecutor was he had “deemed it necessary to issue this public notice of charges because of repeated efforts by Hashim Thaçi and Kadri Veseli to obstruct and undermine the work of the KSC. Mr. Thaçi and Mr. Veseli are believed to have carried out a secret campaign to overturn the law creating the Court and otherwise obstruct the work of the Court in an attempt to ensure that they do not face justice. By taking these actions, Mr. Thaçi and Mr. Veseli have put their personal interests ahead of the victims of their crimes, the rule of law, and all people of Kosovo.”<sup>68</sup> No reason was given for the timing of the announcement, nor were further details given on the “secret campaign”. It might have been related to the proposal President Thaçi made public in August 2020, to amend Kosovo’s constitution and give lawmakers in Kosovo a bigger role in determining the time frame for KSC’s mandate.<sup>69</sup> The SPO announcement made President Thaçi to cancel his visit to Washington, and he announced he would resign as President once the indictment was to be confirmed.<sup>70</sup> Two weeks later, Thaçi was summoned to The Hague for questioning.<sup>71</sup>

The wait for final decisions on the indictments by the Pre-Trial Judge turned out to be a calm before the storm. On September 7th, the KLA Veterans Association claimed to have received original files from the KSC containing the names of protected witnesses. They claimed to have received over 4,000 files by September 23rd. The KLA Veterans Association claimed it did not know who delivered the files to their office. However, they did make parts of the files public and shared many

<sup>66</sup> Hehir, Aidan, “Lessons Learned? The Kosovo Specialist Chambers’ Lack of Local Legitimacy and Its Implications”, *Human Rights Review*, 20 (2019): 267-287, p. 279

<sup>67</sup> Ibid.

<sup>68</sup> SPO Press Statement, 24th June 2020; <https://www.scp-ks.org/en/press-statement>

<sup>69</sup> Annex 1 to Letter of referral of proposed amendment to the Constitution of Kosovo; [https://repository.scp-ks.org/details.php?doc\\_id=091ec6e98034d5bd&doc\\_type=stl\\_filing\\_annex&lang=eng](https://repository.scp-ks.org/details.php?doc_id=091ec6e98034d5bd&doc_type=stl_filing_annex&lang=eng)

<sup>70</sup> Prishtina Insight, “Thaci: ‘If the indictment is confirmed, I will immediately resign’”, 29 June 2020, <https://prishtinainsight.com/thaci-if-the-indictment-is-confirmed-i-will-immediately-resign/>

<sup>71</sup> Prishtina Insight, “Thaci to be interviewed in the Hague on July 13”, 8 July 2020; <https://prishtinainsight.com/thaci-to-be-interviewed-in-the-hague-on-july-13/>

documents with media, which refrained from using the information publicly. It is unclear whether the association staged the delivery themselves, or that another party stole and leaked the files purposely to them. The KSC immediately sent investigators to the KLA Veterans Association but did not comment directly on further measures.<sup>72</sup> Reportedly, most of the documents the Veterans Association received involved correspondences between the SITF and Serbia's war crimes prosecutor's office, dating back to 2014, containing the names and locations of many witnesses from Kosovo, Serbia and Albania.<sup>73</sup> The SPO issued a press statement on 22nd September in which the Specialist Prosecutor stated the KLA War Veterans Association "has on a number of occasions engaged in activities which I believe are aimed at undermining the proper administration of justice" and that the SPO would "vigorously investigate and prosecute individuals who would disclose the identity of potential witnesses."<sup>74</sup> Three days later, the Chairman and Deputy Chairman of the KLA War Veterans' Association were arrested for "offences against the administration of justice, namely obstruction of official persons in performing official duties, intimidation of witnesses, retaliation and violation of secrecy of proceedings." While the media refrained from publishing the contents of the files they received from the Veterans Association, the file leakage meant a serious blow to the work of the KSC and impacted trust among victims and witnesses.<sup>75</sup> It needs to be established what exactly happened and how these confidential documents could have been taken or leaked from the KSC or associated entities.

Soon after this serious incident, the Specialist Prosecutor announced the first confirmed indictment against Salih Mustafa, a former KLA commander, on 28 September 2020. By end October, the indictment against President Thaçi was confirmed, which was made public on November 5th. The two confirmed cases include individual criminal responsibility for war crimes and crimes against humanity committed in 1998 and 1999, with an emphasis on crimes against persons suspected of being opposed to the KLA. Thaçi resigned the day of the announcement, "to defend the integrity of the state", and was brought to The Hague.<sup>76</sup> Having no other options, both Thaçi and former Parliament Speaker Kadri Veseli stated they were traveling voluntary to The Hague to "face unjust accusations" and "defend the clean war fought by the KLA". The resignation of Thaçi, the arrests and transfers happened calmly, as well of the two others arrested under the same indictment. For more details on the indictments, see the Box on pages 22/23.

72 Haxhijaj, S, 'Hague Prosecutors seize War Crimes Case Files from Kosovo Veterans', Balkan Insight, 8 September 2020; <https://balkaninsight.com/2020/09/08/hague-prosecutors-seize-war-crime-case-files-from-kosovo-veterans/>

73 Hajdari, Una, 'Welcome to Kosovo's judicial battleground', JUSTICEINFO.NET, 27 October 2020, <https://www.justiceinfo.net/en/tribunals/mixed-tribunals/45786-welcome-to-kosovo-judicial-battleground.html>

74 SPO Press Statement, 22 September 2020; <https://www.scp-ks.org/en/press-statement-0>

75 Haxhijaj, S, 'Hague Court Document Leak Scares Kosovo War Crimes Witnesses', Balkan Insight, 7 October 2020, <https://balkaninsight.com/2020/10/07/hague-court-document-leak-scares-kosovo-war-crimes-witnesses/>

76 BBC News, 'Kosovo leader Thaci in Hague detention over war crimes charges', 5 November 2020; <https://www.bbc.com/news/world-europe-54822789>

## KSC Confirmed Indictments<sup>77</sup>

Between 28 September and 14 December 2020 the first three indictments were announced: two related to the period of the Kosovo War and its direct aftermath, with the third related to obstruction of KSC's work.

### (1) Salih Mustafa:

During the period covered by the indictment (1 April 1999 - end of April 1999), Salih Mustafa was Commander of a BIA guerrilla unit du, which operated within the Llap Operational Zone of the KLA. The indictment charges Mustafa on the basis of individual criminal responsibility and superior criminal responsibility with crimes committed by certain KLA members against persons detained at the Zllash detention compound. The indictment against Mustafa was confirmed on 12 June 2020 and the final version was made public on 28 September 2020. The charges are the following: Four counts of war crimes: Arbitrary detention, Cruel treatment, Torture and Murder.

Mustafa pleaded not guilty to all counts of the indictment.

### (2) Thaçi, Veseli, Selimi and Krasniqi:

Functions of the accused during the period covered by the indictment [March 1998 - September 1999]:

Hashim Thaçi: Head of the Political and Information Directorates of the KLA. By the end of March 1999, Thaçi was Prime Minister of the Provisional Government of Kosovo (PGoK) and KLA Commander-in-Chief. At the moment of the indictment, Thaçi served as President of Kosovo but resigned just before his arrest.

Kadri Veseli: member of the KLA Political Directorate and Head of the KLA intelligence services. By late March 1999, he became chief of the Kosovo Intelligence Service and PGoK Minister of the Intelligence Service. At the moment of the indictment, Veseli served as leader of the Democratic Party of Kosovo (PDK).

Rexhep Selimi: Head of the KLA Operational Directorate. By at least August 1998, he was KLA Inspector General and by the end of March 1999, he became PGoK Minister of Public Order/Minister of Internal Affairs. At the moment of the indictment, Selimi was a Member of Parliament with Vetevendosje.

Jakup Krasniqi: member of the KLA Political Directorate and the official KLA spokesperson. Later in 1998, he was officially appointed as a KLA Deputy Commander. With the establishment of the PGoK, Krasniqi became the PGoK spokesperson.

<sup>77</sup> All information derived from <https://www.scp-ks.org/en/cases> where more details can be found.

The indictment against the four accused was confirmed on 26 October 2020 and made public on 5 November 2020. The indictment states that the crimes charged were committed from at least March 1998 through September 1999 and took place in fifteen locations across Kosovo as well as in Kukës and Cahan, in Northern Albania. They were allegedly committed by members of the KLA against hundreds of civilians and persons not taking part in hostilities. The indictment alleges that Thaçi, Veseli, Selimi and Krasniqi are individually criminally responsible, pursuant to various forms of criminal responsibility for crimes, which were committed in the context of a non-international armed conflict in Kosovo and were part of a widespread and systematic attack against persons suspected of being opposed to the KLA. Such opponents allegedly included persons who were or were perceived to have been: (a) collaborating or associating with FRY forces or officials or state institutions; or (b) otherwise not supporting the aims or means of the KLA and later the PGoK, including persons associated with the Democratic League of Kosovo (LDK) and persons of Serb, Roma, and other ethnicities.

The charges are the following:

- ◆ Six counts of crimes against humanity: Persecution, Imprisonment, Other inhumane acts, Torture, Murder, Enforced disappearance of persons.
- ◆ Four counts of war crimes: Illegal or arbitrary arrest and detention, Cruel treatment, Torture, Murder.

The initial appearances took place in November 2020 before the Pre-Trial Judge, and all four pleaded not guilty to all counts of the indictment.

### **(3) Hysni Gucati and Nasim Haradinaj:**

During the period covered by the indictment, Hysni Gucati was Chairman, and Nasim Haradinaj the Deputy Chairman, of the Kosovo Liberation Army War Veterans' Association. The indictment against them was confirmed on 11 December 2020 and made public on 14 December 2020. The indictment states that between at least 7 and 25 September 2020, on the occasion of three press conferences and other broadcasted events, as well as through further dissemination, including by social media statements, Gucati and Haradinaj revealed, without authorisation, information protected under the law of the Specialist Chambers, including the identifying details of certain (potential) witnesses. Gucati and Haradinaj also made disparaging accusations and remarks against (potential) witnesses and repeatedly expressed their intention to undermine the Specialist Chambers.

The charges are the following:

- ◆ Two counts of criminal offenses against public order: Obstructing official persons in performing official duties (two counts);
- ◆ Four counts of criminal offenses against the administration of justice and public administration: Intimidation during criminal proceedings, Retaliation, Violating secrecy of proceedings (two counts).



## 2.4 Criticism over the KSC

The Council of Europe research and the subsequent criminal investigation by SITF provided enough grounds for legal proceedings against the alleged perpetrators, former members of the KLA. In 2020, this was finally confirmed by public indictments. Not surprisingly, in Kosovo the KSC is a controversial court and the dominant feeling is that the KSC was established to prosecute only (Kosovo) Albanians, it is biased and as such has had little societal support.<sup>78</sup> The Kosovo political elite, of whom many once were members of the KLA, massively refused the report by Dick Marty and the subsequent SITF investigation.<sup>79</sup> Later, there have been several attempts to prevent the KSC from being established, to prevent its investigations and attempts to change legislation to stop the KSC from functioning. Members of parliament tried to revoke or change the law that allowed the Specialist Chambers to be established in late 2017 and early 2018. Every time, the Western allies of Kosovo warned it would jeopardize their relationship and support.<sup>80</sup> The latest attempt, in August 2020, was a proposal by then-President Thaçi to amend Kosovo's constitution and give lawmakers in Kosovo a bigger role in determining the time frame for KSC's mandate.<sup>81</sup> It was dismissed by the Specialist Chamber of the Constitutional Court, which is under the KSC.

Several KLA war veterans' associations form another very vocal group that opposes the KSC strongly. Their motivation is the same as that of the politicians; they see their fight against Serbia as a legitimate one, and the only way through which Kosovo could have become independent. A large part of the Kosovo Albanian citizenry thinks alike. The dominant narrative is that Serbian forces were the aggressors and perpetrators of massive crimes, while the KLA were freedom fighters and therefore heroes and as such, victimhood is exclusively Kosovo Albanian.<sup>82</sup> Generally, there is hardly any mentioning of crimes that might have been committed on KLA's side. In 2020, then-Prime Minister Kurti fired one of his advisers for commenting that individual KLA fighters committed crimes during the 1998-99 war, which sparked furious reactions among Kosovo Albanians.<sup>83</sup>

Among those summoned by the KSC were several prominent former KLA members and many of them have commented on it through social media or interviews. Their statements generally refer to the righteousness of their cause, the mistake of the KSC establishment and that they will "emerge victorious", portraying themselves as national martyrs.<sup>84</sup> In 2017, the KLA Veterans Association issued a petition to amend the Law on the Kosovo Specialist Chambers because they see it as discriminator" against Albanians and "mono-ethnic" and argue it should include prosecution of

78 Visoka (2017)

79 For example: Ochsenbein, Gaby, 'Report challenges Kosovo "founding myth"', Swissinfo, 24 January 2011; <https://www.swissinfo.ch/eng/report-challenges-kosovo--founding-myth-/29317316>

80 Balkan Insight, 'West Warns Kosovo Against Undermining War Court', 5 January 2018; <https://balkaninsight.com/2018/01/05/west-warns-kosovo-against-undermining-war-court-01-05-2018/>

81 'Annex 1 to Letter of referral of proposed amendment to the Constitution of Kosovo'; [https://repository.scp-ks.org/details.php?doc\\_id=091ec6e98034d5bd&doc\\_type=stl\\_filing\\_annex&lang=eng](https://repository.scp-ks.org/details.php?doc_id=091ec6e98034d5bd&doc_type=stl_filing_annex&lang=eng)

82 Visoka (2017)

83 Balkan Insight, 'In Kosovo Distrust of Hague War Crimes Court simmers', 12 May 2020; <https://balkaninsight.com/2020/05/12/in-kosovo-distrust-of-hague-war-crimes-court-simmers>

84 For example: Balkan Insight, 'Hague Prosecutors summon more Kosovo Ex-Guerillas', 13 November 2019 <https://balkaninsight.com/2019/11/13/hague-prosecutors-summon-more-kosovo-ex-guerillas/>

Serbs who committed crimes in Kosovo as well.<sup>85</sup> To them, no matter the exact mandate of the KSC, the KLA is being put on trial and they have to defend themselves and their cause while Serb perpetrators enjoy impunity.<sup>86</sup> At various moments, KLA veterans have staged public protests against the KSC.<sup>87</sup> While these were not massive, their message of the KSC being an anti-KLA court dominates public discourse. The most recent action against the KSC was the sharing of the “leaked court files” in September 2020 by (individuals from) the KLA Veterans Association with media, which clearly obstructs KSC’s work by scaring (potential) witnesses – over which the chair and deputy chair were arrested.

There is a broad consensus among Kosovo Albanians that crimes committed by Serbs during the Kosovo war go largely unpunished. Worse, an impression is being shaped that the crimes committed by KLA are equated with those committed by Serb military, intelligence and police forces in Kosovo by the fact there is a specialist war crimes court for Kosovo. In a recent issue of the *International Criminal Law Review* on the law and politics of the KSC, Holvoet (2020) argues this feeling of biased justice is understandable and “to an important degree justified.”<sup>88</sup> When Kadri Veseli and Hashim Thaçi were arrested and brought to The Hague, a huge campaign commenced in media, social media and through posters stating “Freedom has a name: KLA”, with the KLA emblem, resonating with a broad audience of K-Albanians. Against this context in which the sentiments around the KSC are being dominated by the KLA elite and more extreme movements, Kosovo-based CSOs have had limited space and opportunity to promote narratives that are based on dealing with the past principles, including about the importance of investigating war crimes and crimes against humanity against civilians and political opponents in Kosovo, and more broadly prioritizing more comprehensive engagement with transitional justice processes beyond punitive measures.

The establishment of the KSC has not only received criticism from within Kosovo, but has been questioned by several (former) prosecutors, diplomats and observers dealing with the region. Next to criticism on the selective mandate, it includes mainly questions on the evidence base of the Marty Report, the moral equation of crimes committed by the KLA with those of the Yugoslav and Serb forces or the suspicion of political influence over the mandate or its decisions taken.<sup>89</sup> Questions have also been raised on the role played by the international community itself (NATO) in

85 Balkan Insight, ‘Kosovo Veterans Campaign Against Special Court Law’, 12 December 2017 <https://balkaninsight.com/2017/12/12/kla-veterans-with-petition-against-kosovo-specialist-chambers-law-12-12-2017/>

86 ICTY did prosecute and convict Serbs over war crimes in Kosovo in two cases only, and the main responsible, Slobodan Milosevic died of a heart attack in prison while on trial in The Hague in 2006 which was a huge disappointment for victims of Serb aggression.

87 Balkan Insight, ‘Kosovo War Veterans protest Charges against President Thaci’, 9 July 2020; <https://balkaninsight.com/2020/07/09/kosovo-war-veterans-protest-charges-against-president-thaci/>

88 Holvoet, M., ‘Introducing the Special Issue: Critical Perspectives on the Law and Politics of the Kosovo Specialist Chambers and the Specialist Prosecutor’s Office’, *International Criminal Law Review* 20 (2020), 1-15; p.4.

89 For example; a former ICTY prosecutor at the trial of Slobodan Milosevic, Sir Geoffrey Nice, questioned the evidence of Marty’s research in an article ‘Who is K144?’, *London Review of Books*, Vol. 33 No. 3, 3 February 2011; <https://www.lrb.co.uk/the-paper/v33/n03/geoffrey-nice/who-is-k144> ; former EULEX judge argues creation of new court was a mistake as it delays justice to victims; <https://balkaninsight.com/2018/03/21/ghost-court-delays-justice-for-kosovo-war-victims-03-19-2018/> ; Daan Everts, former diplomat, former head OSCE mission in Albania and Kosovo, argues in an Op-ed of June 2020 that the KSC should take more effort in avoiding political influence and prejudice; <https://www.nrc.nl/nieuws/2020/07/09/machinaties-bij-kosovo-proces-bemoelijken-de-positie-van-de-eu-a4005434>; Eliot Engel Chairman of the US House Foreign Affairs Committee warning for the KSC to become an “ethnic court” at Hearing on the Balkans, 8 December 2020, <https://foreignaffairs.house.gov/2020/12/engel-remarks-at-hearing-on-the-balkans>; Former Head of OSCE Investigation, William Walker, December 2020; <https://exit.al/en/2020/12/21/us-diplomat-says-serbia-should-face-justice-for-war-crimes-in-kosovo/>

either having allowed serious crimes to happen under its watch or not willing to prosecute these crimes effectively (UNMIK, EULEX).<sup>90</sup>

Academics have as well voiced concerns or criticism since KSC's establishment. For example, Muharremi (2019) argues that the KSC was created as a national court, though internationally controlled, not only to prosecute perpetrators of war crimes, but also to protect the US and certain EU member states involved through NATO in Kosovo from possible legal exposure in connection with their involvement in Kosovo during the time when the alleged crimes were committed.<sup>91</sup> Karnavas (2020) delves a little deeper by arguing the KSC "seems to have been established because of EULEX's lack of political will to act in Kosovo. EULEX had the capacity (its donors had sufficiently deep pockets) but most likely not the inclination (given the political associations or positions of those suspected) to investigate and prosecute individuals associated with the KLA and/or influential politicians."<sup>92</sup> Only through the revelations by Del Ponte and the evidence gathered in the subsequent investigations, EULEX "might have been compelled to act." Dick Marty had already commented in his report that the international missions in Kosovo had prioritised stability over accountability. Karnavas suggests that the failure to deal with the post-conflict impunity gap possibly "was a result of a reluctance on the part of the international community to deal with transitional justice issues that risked undermining Kosovo's fragile political stability, intertwined with other extraneous security concerns of states and international actors (such as the US, the EU, and NATO) competing against other states (such as Russia) for their concerted political, economic, or strategic interests in Southeast Europe (the Balkans)."<sup>93</sup>

The KSC has suffered from the start from a lack of local legitimacy. The request for a special war crimes court, its design and set-up came from 'internationals'. In the process towards setting up the KSC, its designers seem to have been more interested in assuring its international legal legitimacy than its local legitimacy. Choosing its seat outside of Kosovo, and being staffed with internationals strengthens its independent functioning but proves challenging for KSC's social legitimacy and understanding.<sup>94</sup> Our perception research in 2017 showed that only about 5% of Kosovo's population considered themselves to be very informed about the KSC, while over 30% considered themselves not to be informed at all, and hardly anyone understanding the exact mandate of the court. Research by Hehir in 2018 found that local legitimacy of the KSC remained low and its operations being experienced as something happening far away. Hehir notes that there still was widespread suspicion about the KSC's purpose and many people regarded it to have been created by international actors "allegedly impelled by particular national interests and political motives".<sup>95</sup> As Holvoet (2020) notes, it is the "combination of the one-sidedness of the jurisdiction of the SPO and [K]SC with the sense of frustration among Kosovo Albanians concerning Serbian impunity and

90 See: OpEd on OBC Transeuropa by Andrea Lorenzo Capussela, 'The SITF report speaks less of Kosovo than of the international community', 31 July 2014; <https://www.balkanicaucaso.org/eng/Areas/Kosovo/The-SITF-report-speaks-less-of-Kosovo-than-of-the-international-community-154772>

91 Muharremi (2019, p. 304): "NATO's military intervention against Yugoslavia in 1999 was already subject to an internal investigation by the ICTY. [...] the establishment of the Special Court as a national court protects foreign officials from being investigated for any kind of involvement in the alleged crimes."

92 Karnavas, M.G., 'The Kosovo Specialist Chambers' Rules of Procedure and Evidence: More of the Same Hybridity with Added Prosecutorial Transparency', *International Criminal Law Review* 20 (2020); 77-124; p.80

93 Karnavas (2020), p. 80

94 Cross, Mathew E., 'Equipping the Specialist Chambers of Kosovo to Try Transnational Crimes: Remarks on Independence and Cooperation', *Journal of International Criminal Justice* 14 (2016); 73-100.

95 Hehir (2019)

denialism” which creates a very sensitive and challenging context for the KSC to operate in.<sup>96</sup>

Thus, since the end of the Kosovo War, several institutions were charged with adjudicating war crimes that had happened on Kosovan territory. In these past twenty years, the results of those have been limited, and none of these efforts provided a satisfactory measure of justice to victims and failed to do much for truth or social healing.<sup>97</sup> Other transitional justice initiatives in Kosovo have been either too small in scope to contribute to broader societal change, too politicized or failed to produce any tangible outcome. The KSC was set-up in a context of widespread disappointment in war crimes trials and was forced on Kosovo by its international sponsors with a problematic mandate. Against this background, it has been huge task for the KSC to achieve local understanding and acceptance for its work. In the end, the KSC especially needs to show it is capable of establishing facts over crimes committed that will lead to convictions, providing a sound measure of justice to the victims. Only then its work might help opening up the conversation about the diverse experiences of Kosovo’s violent past.<sup>98</sup>

<sup>96</sup> Holvoet (2020)

<sup>97</sup> Visoka (2017)

<sup>98</sup> Ibid.

# 3. Findings

## 2020 Public Perception Survey on KSC

The public perception study was conducted mid-September 2020, just before the KSC issued its first indictments.<sup>99</sup> Those recent developments might have had an impact on public understanding and perceptions about the KSC in Kosovo, which are not reflected in the below data. This September 2020 survey was administered in Kosovo's 38 municipalities and included a total of 1,065 Kosovo citizens over 18 years old: 815 K-Albanians, 150 K-Serbs, and 100 K-Others (non-Serb minorities). The last two groups are oversampled in order to allow for a more reliable analysis on ethnic level. The sample is weighted accordingly before the analysis is conducted in order to reflect Kosovo's ethnic structure. The survey on perceptions of the Kosovo Specialist Court was an adjusted version of the 2017 one; the questionnaire can be found in Annex 1. All data tables mentioned below can be found in Annex 2.

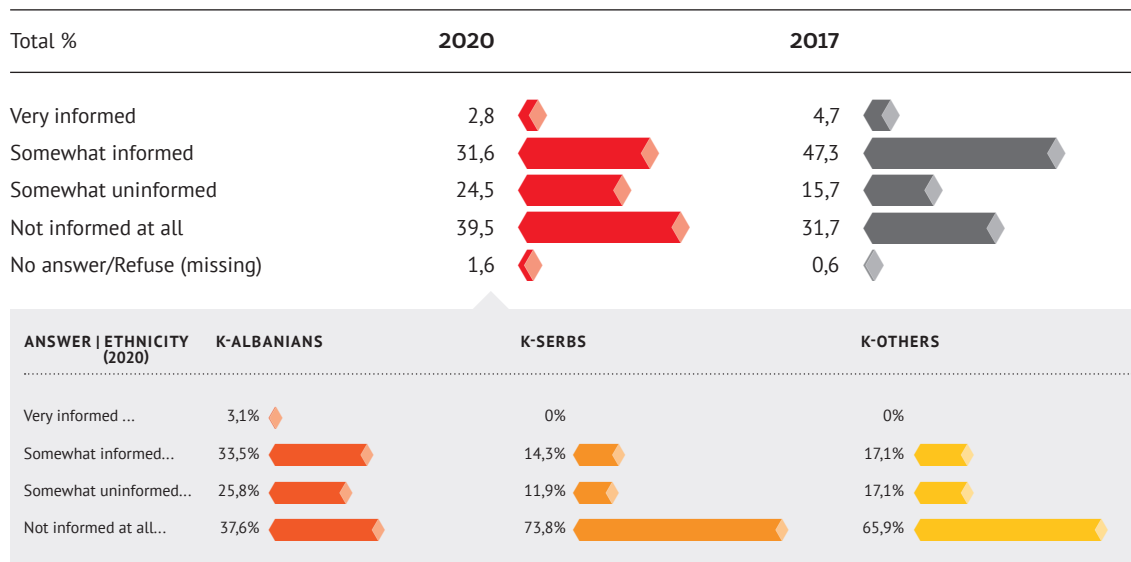
<sup>99</sup> The KSC itself also collects data on public knowledge of and attitude towards the KSC in Kosovo and Serbia through annual opinion polls. They were conducted in 2017 (in Serbia) and 2018 (in Serbia and Kosovo) and reported on by the KSC in their Outreach Programme report. Also in 2019 opinion polls were conducted (in Serbia and Kosovo) though results have not yet been shared publicly.



### 3.1 Public knowledge on the KSC remains low

Fig. 3.1

How informed do you consider yourself to be about the Kosovo Specialist Court?



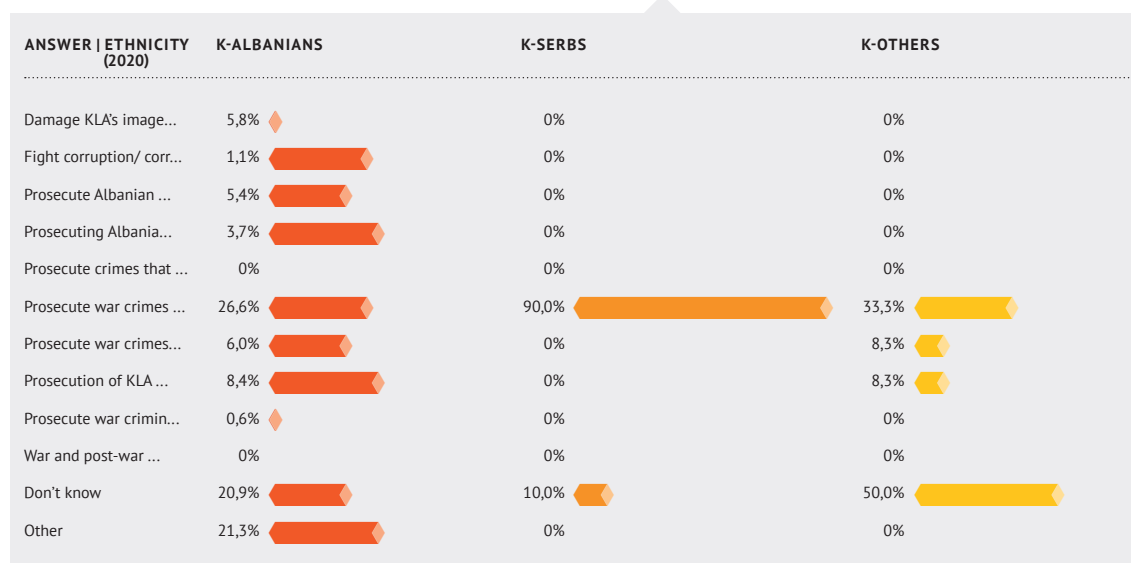
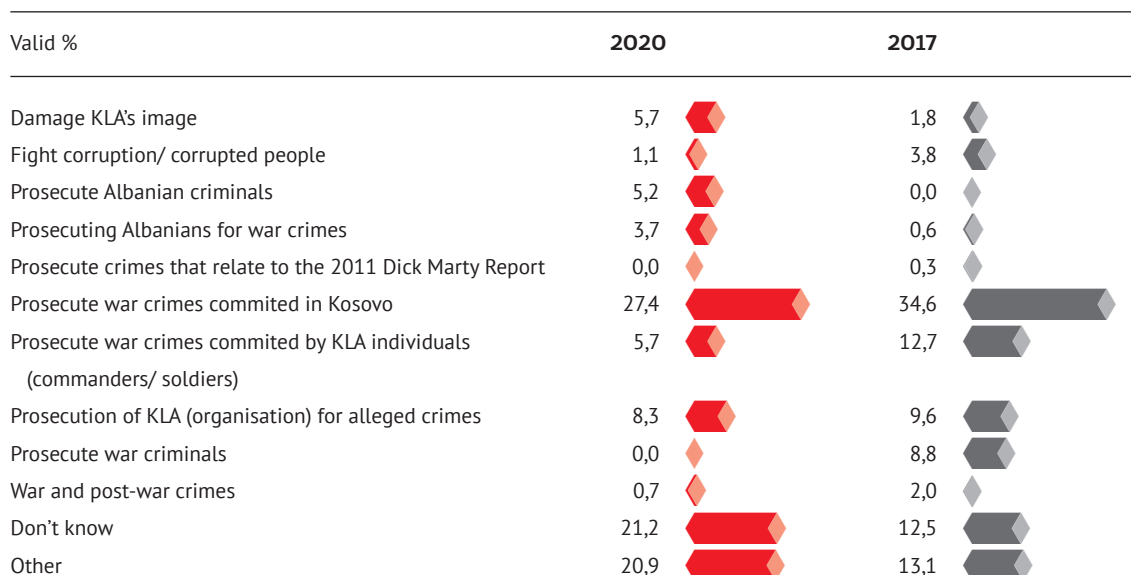
By September 2020, less people considered themselves to be informed about the KSC than three years ago; with 34,4% feeling “somewhat” or “very informed” against 52% in 2017, with only 2,9% respondents saying they are “very informed” (4,7% in 2017). 64% of the respondents feel “somewhat uninformed” or “not informed at all” in 2020, against 47,3% in 2017. This is a significant lower level of general public knowledge during a period in which KSC’s outreach increased. Possible explanations could be that citizens were mainly concerned with other developments, such as the continued political crisis, economic instability, and social wellbeing. It could also be related to the fact that KSC’s outreach might have been limited too much to specific groups which did not act as ‘multipliers’ of KSC’s messages.

When looking at ethnic background, K-Albanians are somewhat better informed than other groups, with 37,6% of K-Albanians indicating to be “not informed at all”, while this is the case for 73,8% of K-Serbs and for 65,9% of K-Others. These differences are likely the result of the different groups using different language sources for information. Men are better informed than women, with 43,7% of male respondents being “somewhat” or “very informed” against 25,7% of women [table 1.1; Annex 2].

There is no remarkable difference among age groups in terms of how informed they rate themselves to be; of all age groups around one-third (31,8% to 37,3%) are either “somewhat” or “very informed” [table 1.2].

**Fig. 3.2**

**In your understanding, what is the overall purpose of the Kosovo Specialist Court?**



This was an open question to allow people to share their own understanding of the KSC. From all respondents, 39,5% were not ready to answer this question (as such those are not included in Figure 3.2). From those who did answer this question; 21,2% stated they did not know the purpose of the KSC (compared to 12,5% in 2017). 27,4% of respondents think its purpose is to prosecute war crimes committed in Kosovo – regardless by whom (compared to 34,6% in 2017). 5,2% currently thinks the KSC will prosecute Albanian criminals and 3,7% thinks it will prosecute Albanians for war crimes (the figures for 2017 were 0% and 0,6% respectively). 8,3% understands the KSC to prosecute the KLA (organization) for alleged crimes (compared to 9,6% in 2017) and 5,7% thinks it is to prosecute KLA individuals (commanders or soldiers), compared to 12,7% in 2017. Another 5,7% answered they think it is there to damage KLA's image (compared to 1,8% in 2017). Again, no one knew the KSC will prosecute crimes contained in the 2011 Marty Report and the subsequent SITF investigation. These findings

show that there is still very little understanding among citizens of the actual mandate of the KSC. Even with increased outreach by the KSC, the information seems either not to reach the general public.

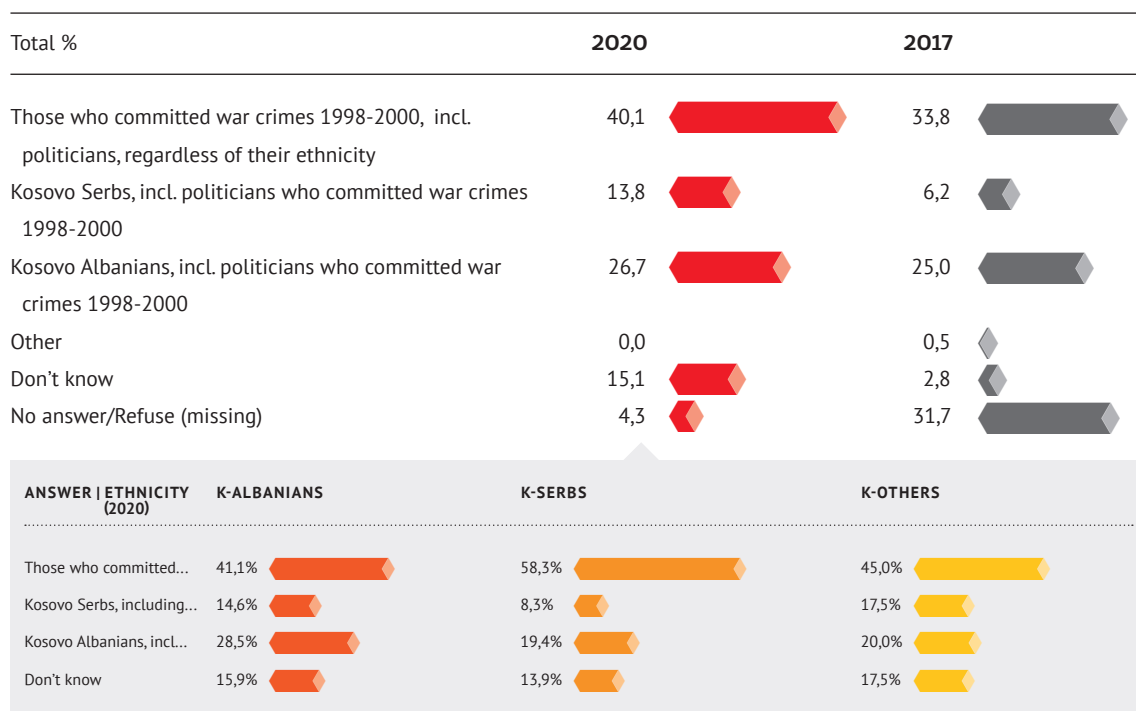
When looking at the disaggregated data by ethnicity, it's remarkable that the K-Serb and K-Other respondents answered they either did not know the purpose (respectively 10% and 50%) or thought it was to prosecute war crimes committed in Kosovo, not linking it to specific perpetrators (respectively 90% and 33%). This likely confirms the 2017 finding that they do not understand that not all crimes related to the war period are being prosecuted, but only those alleged in the "Marty" and SITF reports.

#### From what sources have you obtained information about the Kosovo Specialist Court so far?

Respondents could choose multiple answers from a list of possible sources of information on KSC. It shows that TV stations (37,3%), social media (19,1%) and online media portals (17,4%) have been used most frequently between 2015-2020 for information on KSC [table 2.1]. Statements by K-Albanian politicians as source of information was mentioned by 12,4% of K-Albanians, while comparatively more K-Serb respondents (54,6%) use statements by Serb politicians as sources of information [table 2.1]. When looking at age, a quarter (26,6%) of young people (18-24 yrs.) mention newspapers as source of information, while for the older age groups this is only 2,7%-7,5%. Not surprisingly, over half of young people between 18-34 years use social media as a source of information. For the older age groups social media is also a regular source of information, though it diminishes with age from 35,1% to 10,7% [table 2.2].

**Fig. 3.3**

**The Kosovo Specialist Court has "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 Federal Republic of Yugoslavia." Who do you believe are the people likely to be subjects of prosecution by the Kosovo Specialist Court?**

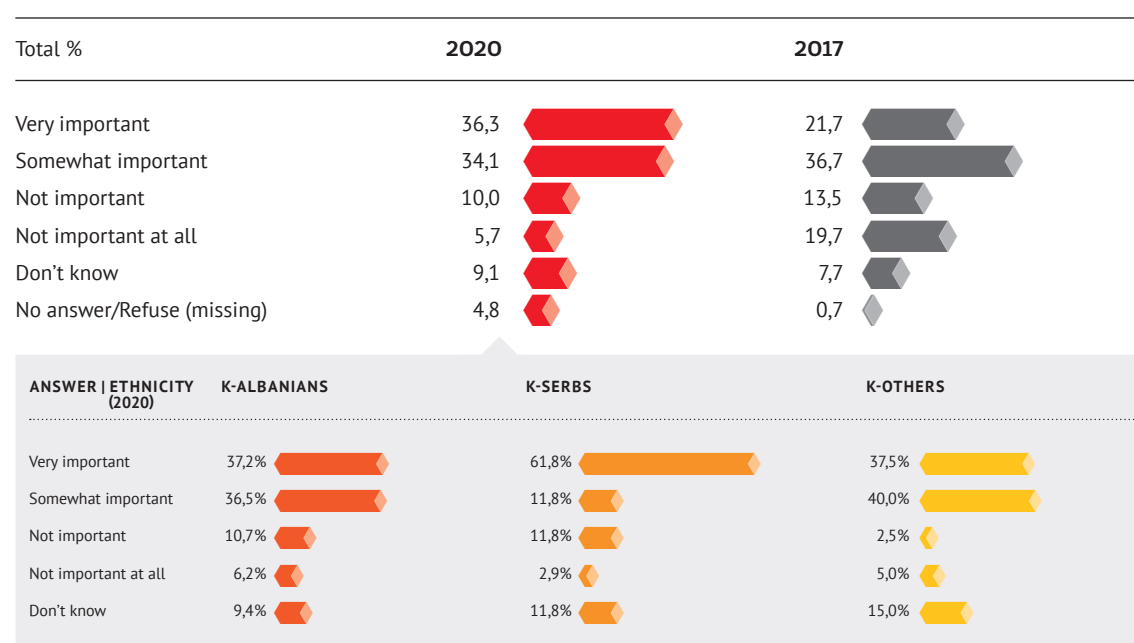


With this official description, the majority of respondents (40,1%) thought the KSC will prosecute “those who committed war crimes in the period 1998-2000, including politicians, regardless of their ethnicity” (against 33,8% in 2017). Looking at ethnic background, 41,1% of K-Albanians, 58,3% of K-Serbs and 45,0% of K-Others thought this was the case. Just over a quarter (26,7%) of all respondents thought it will prosecute “Kosovo Albanians, including politicians who committed war crimes in the period 1998-2000” (quite similar to 25% in 2017), and 13,8% thought it was set up to prosecute “Kosovo Serbs, including politicians who committed war crimes in the period 1998-2000” (against 6,2% in 2017). Thus, the official description of the KSC’s mandate is not clear enough as the majority of respondents think the KSC will prosecute all alleged perpetrators of war crimes committed during the Kosovo War.

## 3.2 Public supports prosecution of serious crimes but KSC unfair

**Fig. 3.4**

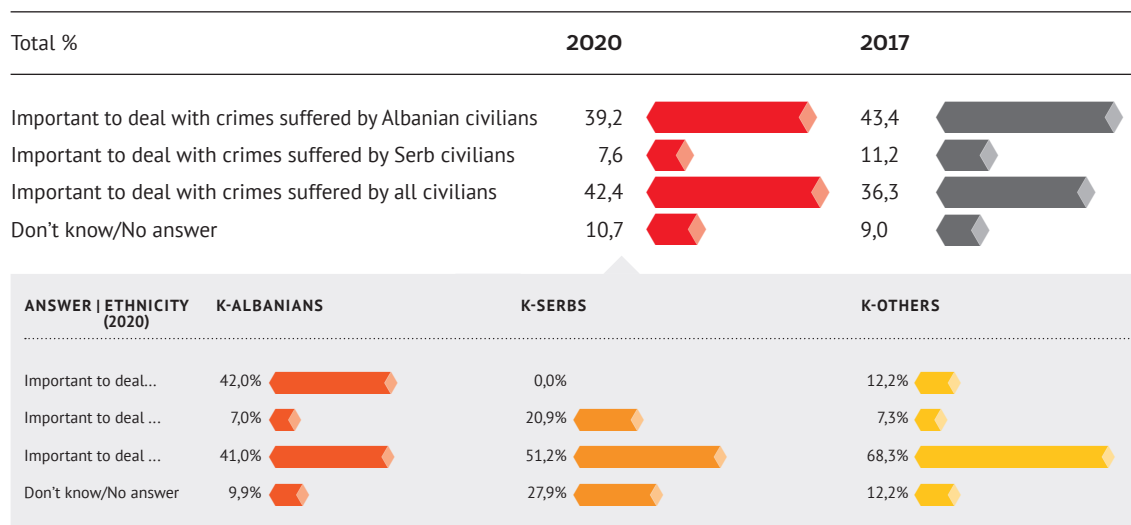
**How important is the prosecution of serious crimes committed in Kosovo in the period 1998-2000?**



36,3% of respondents indicated they think it is “very important” that serious crimes committed in Kosovo between 1998-2000 are prosecuted, which is higher than the 21,7% in 2017. In total, 70,4% of respondents think is “somewhat” to “very important” with 15,7% considering it “not important” or “not important at all”; in 2017 this was respectively 58,4% and 33,2%. Thus, in 2020, a higher number of respondents indicate they want serious crimes committed during and after the Kosovo War to be prosecuted. When looking at ethnicity, there is some difference between the percentages of respondents thinking prosecution of serious crimes is “very important” or “somewhat important”, with 61,8% of K-Serbs who think it is “very important” compared to 31,2% of K-Albanians and 37,5% of K-Others. However, a clear majority of all ethnic groups think it is “somewhat” to “very important”; 73,7% of K-Albanians, 73,6% of K-Serbs and 77,5% of K-Others.

**Fig. 3.5**

**In your opinion, what kinds of crimes committed during and in the aftermath of the 1998-99 war should be dealt with?**



From all respondents, 42,4% are of the opinion that it is “important to deal with crimes suffered by all civilians” (slight increase to 36,3% in 2017), while 39,2% thinks it is “important to deal with crimes suffered by Albanian civilians” (against 43,4% in 2017) and 7,6% finds it “important to deal with crimes suffered by Serb civilians” (against 11,2% in 2017). Because these latter two answers did not state it was important to deal with crimes suffered by only a certain ethnic group, we interpret these answers to mean that respondents find it especially important to look into crimes suffered by a particular ethnic group. It should be noted though, that there was no option that included K-Others as a separate civilian victim category.

Taking into account ethnic background of respondents, 41,0% of K-Albanians, 51,2% of K-Serbs and 68,3% of K-Others think it is “important to deal with crimes suffered by all civilians”. Further, 42,0% of K-Albanians thinks it is especially important “to deal with crimes suffered by Albanian civilians”, while 20,9% of K-Serbs think it is especially “important to deal with crimes suffered by Serb civilians”. Another 27,9% of K-Serbs did not know or did not answer the question. This data shows the K-Albanian respondents to be equally divided over the importance of prosecuting crimes against “all civilians” or crimes against “especially K-Albanian civilians”. An explanation could be that because the KSC focusses on K-Albanian perpetrators, they might feel K-Albanian victims are not done justice. A recent report on citizens perspectives on transitional justice in Kosovo found as well that people generally want serious crimes to be prosecuted, but tend to prioritize the crimes of which their own ethnic group suffered most.<sup>100</sup>

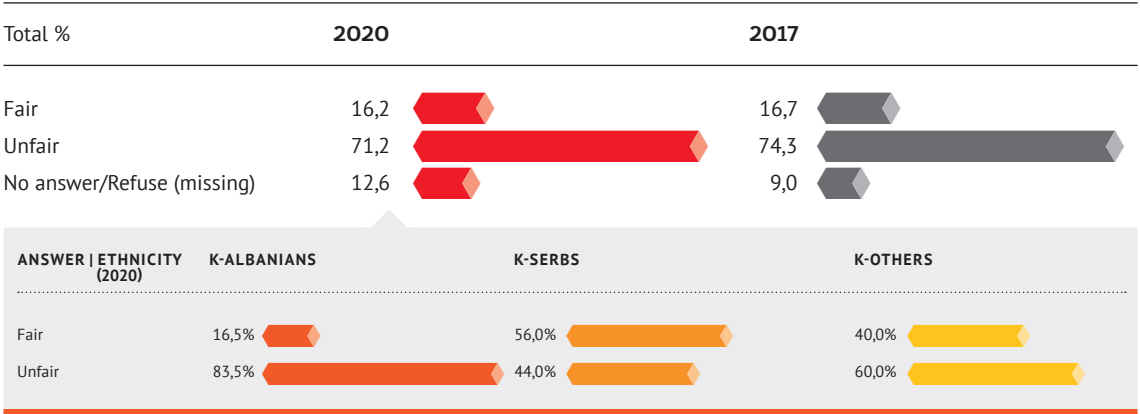
With regard to age groups there is only one remarkable difference; from the 65+ age group 31% thinks it is “important to deal with crimes suffered by all civilians”, 46,9% thinks it is “important deal with crimes suffered by Albanian civilians” and 8,8% finds it “important to deal with crimes suffered

<sup>100</sup> Visoka, Gëzim & Lumi, Besart, 'Citizens Perspective on a Future Strategy for Transitional Justice in Kosovo', January 2021; <https://www.paxforpeace.nl/publications/all-publications/citizens-perspective-on-a-future-strategy-for-transitional-justice-in-kosovo>

by Serb civilians”, indicating a slight tendency to favour one’s own ethnic group, more than among the other age groups [table 3].

**Fig. 3.6**

**The Kosovo Specialist Court will only prosecute serious crimes committed or commenced in Kosovo in the period 1998-2000 described in the 2011 investigation (the Council of Europe “Marty Report”), which mainly covers alleged crimes associated with the Kosovo Liberation Army. How do you see this arrangement?**



From all respondents, 71,2% think it is unfair that the KSC will only prosecute serious crimes committed in Kosovo in the period 1998-2000 described in the Marty Report, which mainly covers alleged crimes associated with the Kosovo Liberation Army (this was 74,3% in 2017). Only 16,2% thinks it is fair (similar to 16,7% in 2017). Not surprisingly, when looking at ethnic backgrounds of respondents, stark differences in opinion show; 56,0% of K-Serbs and 40,0% K-Others find it fair the KSC mainly prosecutes crimes associated with the KLA, while only 16,4% of K-Albanians are of the same opinion. In 2017, these percentages were respectively 45,5%, 26,7% and 15,0%. This can be explained by the fact that in general, each ethnic group considers themselves to be the main victim of the Kosovo War or its aftermath, while regarding the others as belonging to the perpetrators.<sup>101</sup> More women (21,4%) than men (15,8%) find the mandate of KSC a fair arrangement [table 4].

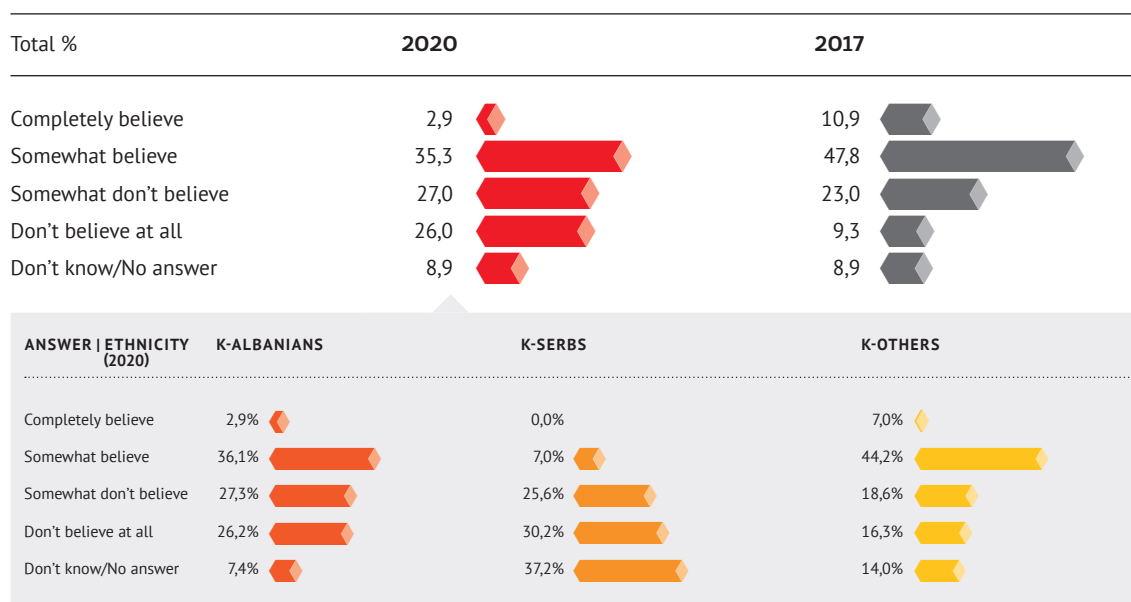
101 Ibid.



### 3.3 Trust in KSC to realize justice remains low

Fig. 3.7

How much do you have trust in the Kosovo Specialist Court to bring justice for the victims of serious crimes committed in the period 1998-2000?

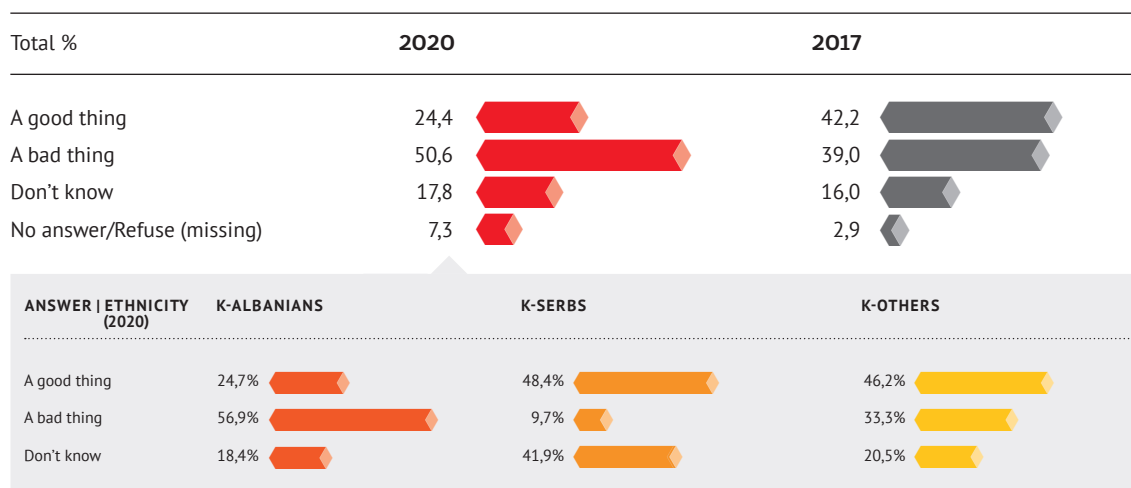


More respondents (53%) “somewhat do not believe” or “do not believe at all” the KSC will bring justice to victims of serious crimes committed in the period 1998-2000 than those (38,2%) who “somewhat” or “completely believe” the KSC will do so. This is remarkable as in 2017 this was the other way around with 58,7% believing then the KSC would bring justice to victims, and 32,3% who had their doubts.<sup>102</sup> Overall, K-Serb respondents seem to have the strongest doubts whether KSC can bring justice for victims with 55,8% doubting this (“somewhat” and “not at all”) and only 7,0% “somewhat believing” this, with over a third of them not having answered this question. However, the trust among K-Serbs actually increased a little as in 2017 69% doubted that KSC would bring justice. At the same time, trust among K-Albanian respondents diminished, with 39,0% either ‘somewhat’ or ‘completely believe’ KSC can bring justice, against 60% in 2017. Among K-Others, the trust is a little lower, with 51,2% of them either ‘somewhat’ or ‘completely believing’ KSC can bring justice to victims of serious crimes committed in the period 1998-2000, against 58,4% in 2017. That overall trust in KSC to deliver justice to the victims diminished might be explained by the fact overall trust in justice mechanisms is low in Kosovo and the long wait for indictments by KSC made people more doubtful and dismissive. The main observed change here is that trust among K-Albanians in KSC’s ability to bring justice went down clearly, while among K-Serbs it increased slightly. This might be related to the finding that the majority of K-Albanians see KSC’s mandate as unfair, while over half of K-Serbs regard the mandate to be fair.

102 Note; data from raw data survey for ‘Public Perception of the Kosovo Specialist Court: Risks and Opportunities’, 2017; in that report, only data split according to ethnic backgrounds is presented.

**Fig. 3.8**

**Is the Kosovo Specialist Court (indictments, trials and possible convictions) a good or a bad thing for Kosovo?**

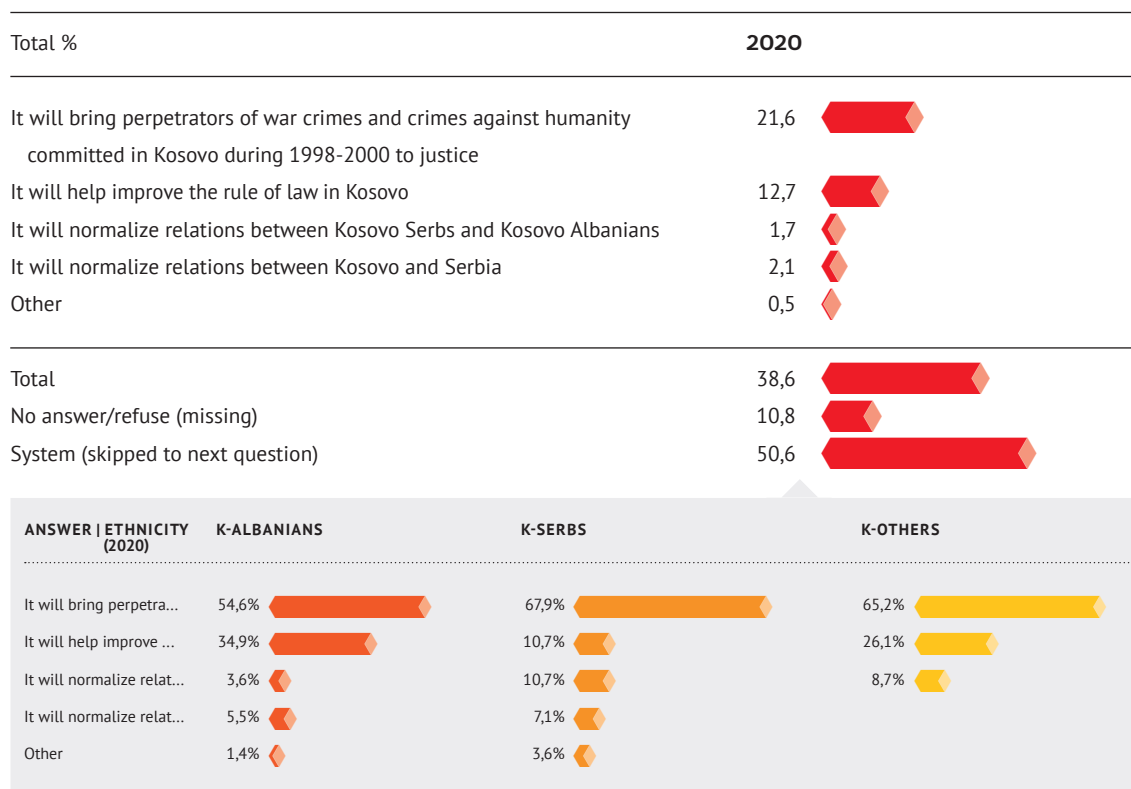


Currently, more people (50,6%) think the KSC is a bad thing for Kosovo than a good thing (24,4%), while in 2017 this was the other way around with 39,0% against 42,2% respectively. When looking at age, it is remarkable to note that 60,2% of the youngest respondents (18-24 yrs.) think KSC is a bad thing for Kosovo, with only 19,9% of them thinking it is a good thing [table 5].

Many K-Serbs (41,9%) don't know whether KSC is a good or a bad thing, while 48,4% of K-Serbs expect KSC to be a good thing and another 9,7% of K-Serbs thinking it is a bad thing. Also 46,2% of K-Others think KSC is a good thing, while a third of them thinks it is a bad thing. For K-Albanians the figures are the other way around with 24,7% who think it is a good thing and 56,9% who see KSC as a bad thing for Kosovo. This corresponds with the figures for 'fairness' of KSC's mandate, that is regarded by a majority of K-Albanians as unfair.

**Fig. 3.9**

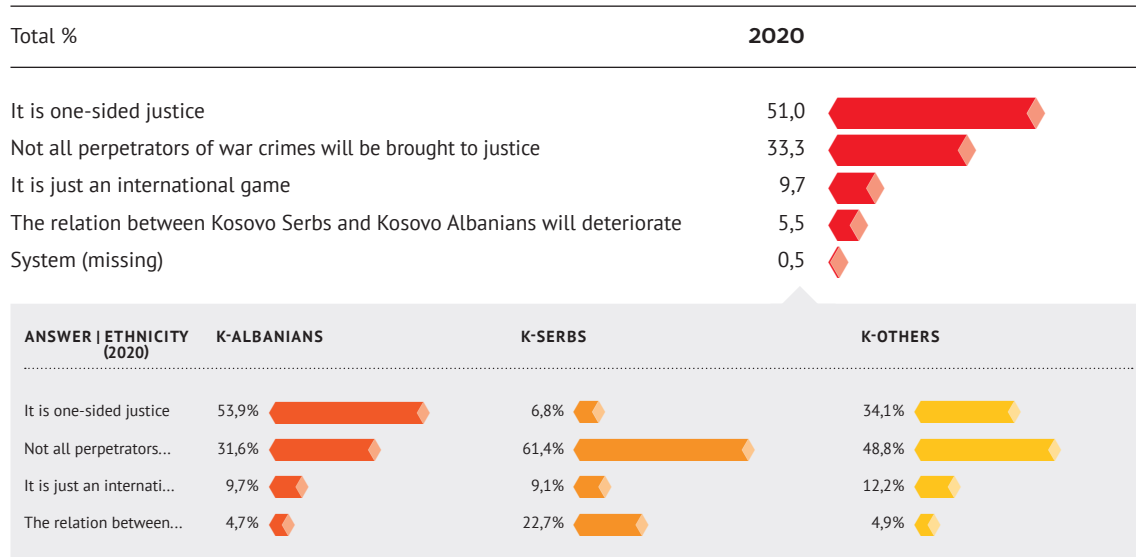
**What is the main reason you think the Kosovo Specialist Court is a GOOD thing for Kosovo?**



Only 38,6% of respondents answered this question (as those who think KSC is bad thing were not asked this question). The main reasons given why they thought KSC is a good thing for Kosovo are that 'it will bring perpetrators of war crimes and crimes against humanity committed in Kosovo during 1998-2000 to justice' (21,6%) and that 'It will help improve the rule of law in Kosovo' (12,7%). Very little respondents thought 'It will normalize relations between Kosovo and Serbia' (2,1%) or that 'it will normalize relations between Kosovo Serbs and Kosovo Albanians' (1,7%). There was some difference in answers when looking at ethnic background; of those who think KSC is a good thing, 65,2% of K-Others and 67,9% of K-Serbs believe 'it will bring perpetrators of war crimes and crimes against humanity committed in Kosovo during 1998-2000 to justice', with 54,6% of K-Albanians answering this. Another 34,9% of K-Albanians who think KSC is a good thing, believe 'it will help improve the rule of law in Kosovo', while 26,1% of K-Others and 10,7% K-Serbs gave this as the main reason for thinking KSC is a good thing for Kosovo. Also, 10,7% of K-Serbs and 8,7% of K-Others who think KSC is a good thing, think so because 'It will normalize relations between Kosovo Serbs and Kosovo Albanians', while only 3,6% of K-Albanians who think KSC is a good thing gave this a the main reason.

**Fig. 3.10**

**What is the main reason why you think the Kosovo Specialist Court is a BAD thing for Kosovo?**

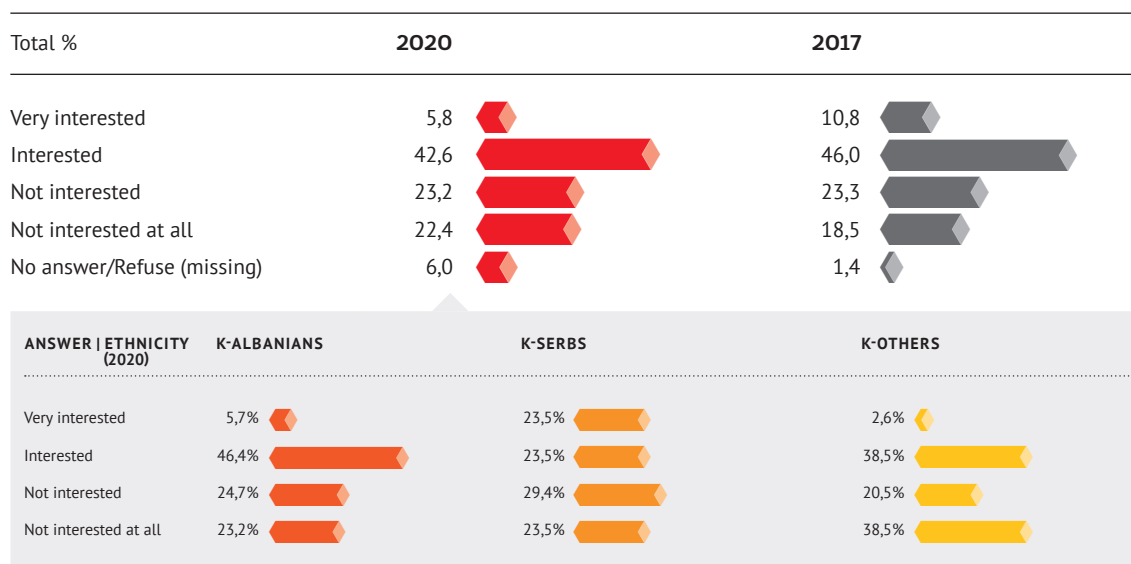


This question was posed to all respondents. The main reasons given are that ‘it is one-sided justice’ (51,0%) and that ‘not all perpetrators of war crimes will be brought to justice’ (33,3%). A much smaller percentage of 9,7% thinks ‘it is just an international game’, and 5,5% thinks ‘the relation between Kosovo Serbs and Kosovo Albanians will deteriorate’. When breaking down the data along ethnic background, substantially more K-Albanians (53,9%) think KSC is a bad thing because ‘it is one-sided justice’ than K-Others (31,1%) or K-Serbs (6,8%). At the same time, more K-Serbs (61,4%) see the KSC as a bad thing because ‘not all perpetrators of war crimes will be brought to justice’ than K-Others (48,8%) or K-Albanians (31,6%). Also, the 2017 perception survey found that K-Serbs are very sceptical about KSC’s ability to prosecute enough cases as other international and national courts did not manage either.<sup>103</sup> Further, 22,7% of K-Serbs see KSC as a bad thing because they think ‘the relation between Kosovo Serbs and Kosovo Albanians will deteriorate’, while only 4,9% of K-Others and 4,8% of K-Albanians see that as a main reason for regarding KSC as a bad thing for Kosovo. This difference in expected negative impact on inter-ethnic relations might be an expression of fear over this on the side of K-Serbs who are a minority and in the dominant political narrative are blamed as a group. To the majority of K-Albanians the possible deterioration of relations with K-Serbs is seemingly of less concern.

<sup>103</sup> Warren et al. (2017), p. 15-16.

**Fig. 3.11**

**How interested are you in the process of the work of the Kosovo Specialist Court?**



Slightly more respondents are “(very) interested” with 48,4% answering this, than 45,6% indicating to be “not interested (at all)”. However, in 2017 the interest was a little higher with 56,8% “(very) interested” and 41,8% “not interested (at all)”. K-Albanians (52,1%) are slightly more interested than K-Serbs (47,1%) or K-Others (41,0%). More men (56,9%) than women (45,7%) are “(very) interested” [table 6].

**What do you consider to be the most reliable source of information with regards to the processes/trials that will take place at the Kosovo Specialist Court?**

Respondents could give multiple answers to this question. Overall, many respondents consider media to be a reliable source of information (scoring 51,5%). There was no split out to specific media outlets in the survey and as such no clear estimation can be made on the reliability of the media used by the respondents. Though overall, media in Kosovo is divided along ethnic lines and “access to information is often limited to one ethnic or political group, with the majority of media reporting predominantly on issues concerning their own nationality.”<sup>104</sup> In 2017, media was mentioned much less, scoring only 25,9% [table 7.1]. Since, trust in other sources of information diminished slightly; trust in statements of officials of the KSC went from 13,1% in 2017 to 8,4% in 2020; trust in the website of the KSC went from 9,9% to 6,3%; independent investigative journalist reports went from 14,7% to 5,8%; statements of international representatives went down from 9,8% to 3,4%. At the same time, also overall trust in statements of politicians remained relatively

104 Kosovo ranks nr. 70 out of 180 on the 2020 World Press Freedom Index of Reporters Without Borders; <https://rsf.org/en/kosovo> ; In Freedom House's "Nations in Transit 2020" rating Kosovo scores a 3.25 on a 7-point scale for media freedom; <https://freedomhouse.org/country/kosovo> . As recent as December 2020, Radio Kosova, a public broadcaster, refused to broadcast the story of a Serb woman in a series of ten stories on 'Living with the memories of the Missing', as it considered the episode included "lynching language against Albanians"; KOHA Ditore, 'Radio Kosova stops broadcasting audio plays after story of Serb woman', 12 January 2021; <https://www.koha.net/kulture/253900/radio-kosova-nderpret-audio-dramat-pas-rrefimit-te-gruas-serbe/?fbclid=IwAR1w1xqytr6TogmaXcFHDW01Nqh2fcE1gvoPABAW1o9B1GxQEmZF6LOwc14>

low. Not surprisingly, the trust in statements by K-Albanian politicians comes from K-Albanian and K-Others respondents (11,4% and 13,5% respectively) and not from K-Serbs, while statements of Serbian politicians are trusted by 31,2% of K-Serb respondents who answered the question (22,9% of K-Serbs did not) but hardly by K-Albanians or K-Others [table 7.2]. Further, while K-Albanians (79,6%) and K-Others (75,4%) show strong trust in media as a reliable source of information, for K-Serbs this is somewhat lower with 51,0%. Trust in KSC as a source of information remains relatively low, with 14,5% (K-Others), 22,6% (K-Albanians) and 23,9% (K-Serbs).

In sum, this short perception survey shows that overall knowledge and sentiment in Kosovo around KSC has not changed much since 2017. There is still very little understanding among citizens of the actual mandate and purpose of the KSC; only about a third of all respondents know it has something to do with war crimes or serious crimes reportedly related somehow to the KLA. Generally, citizens want serious crimes against all citizens to be prosecuted, though there is as well a substantial preference to have crimes committed against specific victim groups – related to one's own ethnic group - to be prosecuted. It seems the increased outreach of KSC did not manage to change the overall public discourse around KSC, partially as a result of the dominance of a strong counter-discourse among the political elite and media in Kosovo. Moreover, the findings point to a lowered trust in KSC to deliver justice among K-Albanians, while among K-Serbs this increased slightly. This might be a result of stronger influence of the ethno-nationalist discourse around the summoning in 2019 and 2020, with the majority of K-Albanians being of the opinion that KSC's mandate is unfair, while many K-Serbs and K-Others consider it fair. At the same time, the differences in trust expressed, point to the likelihood that different ethnic groups will view the outcomes of KSC's work differently. Whether that could be an actual problem, will depend on the way KSC is able to explain the court proceedings in a context of polarized politics around it.



# 4. Conclusions and recommendations

The Kosovo Specialist Court's origin was not only a judicial consideration but also a political one. From that background, a mandate was given to the KSC which has been controversial from its early stages as it deals primarily, or solely, with alleged crimes associated with one party to the Kosovo War of 1998/99. Looking at it from a purely international law or human rights perspective, the serious war crimes and crimes against humanity alleged to in the SITF criminal investigation report need to be prosecuted. This is undebatable as victims of these crimes deserve justice is done. As such, for the KSC to be set up as a hybrid court, combining Kosovo domestic law and international humanitarian law, and being internationally staffed is understandable. However, the fact that the focus of the KSC is on one party to the conflict makes its work controversial and prone to feed into the dominant ethno-political victim-perpetrator discourses in Kosovo - and Serbia. If those continue to be dominant, any convicted perpetrator is likely to be regarded a 'liberation hero' by many K-Albanians. In Serbia, future convictions by the KSC will confirm their narrative that the KLA was a criminal enterprise and as such Kosovo should never have been granted to declare its independence.

From a transitional justice point of view, the one-sided focus of the KSC's mandate is a denial of what is known about well-defined inclusive trajectories of retributive justice as component of transitional justice processes. Also, the fact that the KSC has no permanent local presence in Kosovo – while this was foreseen at the start - does not help its local visibility, relationships and thus its legitimacy. Currently, the KSC and the War Crimes Department of the Special Prosecution of the Republic of Kosovo (SPRK) are the only national-level mechanisms that address the wartime past; both purely retributive justice mechanisms with (geographically) limited mandates. Ironically, the KSC might prove to be effective in another dimension of transitional justice: institutional reform, by possibly taking corrupt leaders out of the political system. The only other serious and continued effort to deal with the wartime past is establishing the truth around the 1644 persons who are still missing.

The predominant focus on war crimes trials has affected attention for and investment in other important aspects of dealing with the past in Kosovo, such as: truth-seeking and documentation, commemoration, reparations and compensation, as well as recognition and support for all the victims and survivors of the conflict regardless of their identity and status. All these TJ dimensions need to be addressed in and by themselves to help Kosovan society move towards a more inclusive and peaceful society. In light of the current proceedings by the KSC, it is high time for the Kosovo government and its international supporters to invest in a comprehensive approach to dealing with the past.

Several of the recommendations made in 2017 are still relevant today.

#### THE KOSOVO SPECIALIST COURT SHOULD:

- ◆ Intensify the outreach and public dialogue program in Kosovo, Serbia and other countries in the Western Balkans, to:
- ◆ clearly explain the origin and mandate of the KSC, including clarifying its limitations
  - explain the distinction between the roles of the Specialist Chambers and Specialist Prosecutor's Office
  - respond publicly in a timely manner to developments around the work of the KSC.
- ◆ Re-consider establishing a permanent presence of the Specialist Chambers in Kosovo, to increase visibility and create more direct relationships with victim communities
- ◆ Ensure timely and effective indictments, trials and judgments in full compliance with the applicable laws.
- ◆ Avoid any suspicion of political influence or prejudice over KSC's decisions and proceedings.
- ◆ Develop an exit strategy, ensuring that when the KSC winds down its operations, public information and dialogue activities around the proceedings and outcomes are handed over to the Kosovo government and integrally made available to Kosovan civil society, the local legal community, and local media, with adequate funding and capacity.

#### THE KOSOVO GOVERNMENT SHOULD:

- ◆ Take responsibility for the KSC as part of Kosovo's legal system and cooperate fully to ensure justice is done to the victims, including ensuring protection of witnesses and victims;
- ◆ Separate current politics from the wartime the past, through adopting an ethical approach to dealing with the past
- ◆ Show sincere commitment to the European Commission's requirement to develop an overarching strategy for transitional justice as part of the EU accession process, through:
- ◆ Invest in developing a deliberative infrastructure for dealing with the past (I4DwP) in Kosovo<sup>105</sup>, consisting of the following elements:
  - A strategic vision and citizen-informed national understanding on the principles and ethics for dealing with the past and pursuing transitional justice in Kosovo. This should entail 1) the primacy of victim- and survivor-centred approaches, 2) greater gender equality and sensitivity, and 3) de-ethnicization, depoliticization, and de-personalisation of DwP initiatives
  - An integrated knowledge base and repository of existing sector-specific strategies, initiatives, and mechanisms for transitional justice and DwP in Kosovo

<sup>105</sup> For details on this infrastructure for dealing with the past (I4DwP) see Visoka & Lumi (2020), p. 32-41.

- A national strategy on transitional justice that integrates the four broadly defined pillars of transitional justice; war crimes trials, truth seeking, reparations, and guarantees of non-recurrence through institutional reforms. This strategy should be informed by the needs and interests of citizens and developed from a deliberative, inclusive and bottom-up process
- An integrated institutional infrastructure for dealing with the past which functions as an umbrella institutional infrastructure responsible for supporting existing and future initiatives for dealing with the past in Kosovo.
- ◆ Invest right away in boosting the capacity and independence of the judiciary in Kosovo to deal with war crimes, crimes against humanity and other serious crimes. As part of this, victim and witness protection should be strengthened.

#### THE EU AND KEY INTERNATIONAL STAKEHOLDERS IN KOSOVO SHOULD:

- ◆ Support a robust and comprehensive effort for DwP in Kosovo by investing political, bureaucratic and financial resources in promoting a national framework for dealing with the wartime past, so Kosovo can live up to the European Commission's requirement
- ◆ The EU-facilitated dialogue for normalization of relations between Serbia and Kosovo must address the pressing and outstanding issues for dealing with the past, and an eventual agreement should take into account the needs and perspectives of all affected communities.
- ◆ Monitor Kosovo's and Serbia's progress in dealing with the past and inclusive transitional justice practices explicitly, as part of their EU accession process.
- ◆ Redouble efforts to ensure that mutual legal assistance between Kosovo and Serbia on war crime investigation works;
- ◆ Continue their support for realizing the independence of the judiciary in Kosovo and boost the capacities of the local institutions in Kosovo and Serbia to deal with war crimes.
- ◆ Further strengthen financial support to foster local and cross-border transitional justice projects, as well as prioritise transitional justice in other EU-funded civil society projects.
- ◆ Recognise and reward the work of Kosovo institutions that support the KSC, for example by furthering prospects for visa-liberalisation, advancing Kosovo's European integration process, and supporting Kosovo's diplomatic efforts to secure relevant recognitions and obtain membership of international and regional organisations;

#### CIVIL SOCIETY IN KOSOVO SHOULD:

- ◆ Continue to work with the KSC outreach team to achieve transparent and correct communication and information dissemination to the broader Kosovan society to mitigate potential undesired effects
- ◆ Work together in a coalition to advancing a citizen-centred and inclusive national strategy for transitional justice in Kosovo, through engagement with diverse victim communities, joint lobby towards the Government and international actors
- ◆ Invest in capacity building and effective and sustainable outreach campaigns that combat nationalist and exclusionary narratives.

# ANNEX 1

## Public Perception Survey 2020

The purpose of this questionnaire is to ask Kosovo citizens about their knowledge and perceptions of the Kosovo Specialist Chambers and Specialist Prosecutor's Office, hereinafter referred to as the Kosovo Specialist Court.

### I. CITIZENS' KNOWLEDGE ON THE PURPOSE OF THE KOSOVO SPECIALIST COURT

First, we want to ask you some questions about purpose of the Kosovo Specialist Court and sources of information

1. How informed do you consider yourself to be about the Kosovo Specialist Court?

- a) Very informed
- b) Somewhat informed
- c) Somewhat uninformed
- d) Not informed at all [Skip to question 4]
- e) No answer/Refuse

2. In your understanding, what is the overall purpose of the Kosovo Specialist Court?

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3. From what sources have you obtained information about the Kosovo Specialist Court so far?  
[Select all that apply]

- 1. National newspapers
- 2. Online media portals
- 3. Social media (Facebook, Twitter, etc.)
- 4. TV stations
- 5. Radio stations
- 6. Civil Society Organizations (CSOs) / Non-Governmental Organizations (NGOs)
- 7. Independent investigative journalist reports
- 8. Directly from the Kosovo Specialist Chambers Outreach Team
- 9. Website of the Specialist Court and/or statements of officials of the Specialist Court (Chief Prosecutor, President or Registrar of the Specialist Chambers)
- 10. Statements of Kosovo Albanian politicians
- 11. Statements of Serbian politicians
- 12. Statements of international representatives (eg. EU and embassies)
- 13. EULEX

- 14. Word of mouth
  - 15. Other
  - 16. No answer/refuse
4. The Kosovo Specialist Court has “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 Federal Republic of Yugoslavia.” Who do you believe are the people likely to be subjects of prosecution by the Kosovo Specialist Court?
- a) Those who committed war crimes in the period 1998-2000, including politicians, regardless of their ethnicity
  - b) Kosovo Serbs, including politicians who committed war crimes in the period 1998-2000
  - c) Kosovo Albanians, including politicians who committed war crimes in the period 1998-2000
  - d) Don't know
  - e) Other
  - f) No answer/Refuse

## II. CITIZENS' ATTITUDES AND EXPECTATIONS TOWARDS THE ESTABLISHMENT AND FUNCTIONING OF THE KOSOVO SPECIALIST COURT

These next questions are about your attitudes and expectations towards the Kosovo Specialist Court. Please remember that everything you say is strictly confidential and will help us a lot in understanding people's perceptions of the Kosovo Specialist Court.

5. How important is the prosecution of serious crimes committed in Kosovo in the period 1998-2000?
- a) Very important
  - b) Somewhat important
  - c) Not important
  - d) Not important at all
  - e) Don't know
  - f) No answer/Refuse
6. In your opinion, what kinds of crimes committed during and in the aftermath the 1998-99 war should be dealt with?
- a) Important to deal with crimes suffered by Albanian civilians
  - b) Important to deal with crimes suffered by Serb civilians
  - c) Important to deal with crimes suffered by all civilians
  - d) Don't know/No answer

7. The Kosovo Specialist Court will only prosecute serious crimes committed in Kosovo in the period 1998-2000 described in the 2011 investigation (the Council of Europe “Marty Report”), which mainly covers alleged crimes associated with the Kosovo Liberation Army. How do you see this arrangement?
- a) Fair
  - b) Unfair
  - c) No answer/Refuse
8. How much do you have trust the Kosovo Specialist Court to bring justice for the victims of serious crimes committed in the period 1998-2000?
- a) Very likely
  - b) Somewhat likely
  - c) Somewhat unlikely
  - d) Very unlikely
  - e) Don't know/No answer
9. Is the Kosovo Specialist Court (indictments, trials and possible convictions) a good or a bad thing for Kosovo?
- a) A good thing [skip to question 10]
  - b) A bad thing [skip to question 11]
  - c) Don't know
  - d) No answer/Refuse
10. What is the main reason you think the Kosovo Specialist Court is a GOOD thing for Kosovo?
- a) It will bring perpetrators of war crimes and crimes against humanity committed in Kosovo during 1998-2000 to justice
  - b) It will help improve the rule of law in Kosovo
  - c) It will normalize relations between Kosovo Serbs and Kosovo Albanians
  - d) It will normalize relations between Kosovo and Serbia
  - e) Other
  - f) No answer/refuse.
11. What is the main reason why you think the Kosovo Specialist Court is a BAD thing for Kosovo?
- a) It is one-sided justice
  - b) Not all perpetrators of war crimes and crimes against humanity committed in Kosovo during 1998-2000 will be brought to justice
  - c) It is just an international game
  - d) The relation between Kosovo Serbs and Kosovo Albanians will deteriorate
  - e) Other
  - f) No answer/refuse.



### III. SOURCES AND QUALITY OF INFORMATION ON THE KOSOVO SPECIALIST COURT

This section will ask questions regarding sources and quality of information provided to the public on the Specialist Court.

12. How interested are you in the process of the work of the Kosovo Specialist Court?
- a) Very interested
  - b) Interested
  - c) Not interested
  - d) Not interested at all
  - e) No answer/Refuse
13. What do you consider to be the most reliable source of information with regards to the processes/trials that will take place in the Kosovo Specialist Court? [Select all that apply]
- 1. Website of the Specialist Court
  - 2. Statements of officials of the Specialist Court (Chief Prosecutor, President or Registrar of the Specialist Chambers)
  - 3. Court proceedings and testimonies of victims
  - 4. Media
  - 5. NGOs
  - 6. Independent investigative journalist reports
  - 7. Statements of Kosovo Albanian politicians
  - 8. Statements of Serbian politicians
  - 9. Statements of international representatives including EU and embassies
  - 10. EULEX
  - 11. Other
  - 12. No answer/refuse

# ANNEX 2

## Data Tables Public Perception Survey

How informed do you consider yourself to be about the Kosovo Specialist Court?

**Table 1.1**

GENDER (2020)	MALE	FEMALE	TOTAL
Very informed	3,7%	1,9%	2,9%
Somewhat informed	40,0%	23,8%	32,1%
Somewhat uninformed	24,9%	25,1%	25,0%
Not informed at all	31,4%	49,1%	40,1%
Total	100,0%	100,0%	100,0%

**Table 1.2**

AGE (2020)	18-24	25-34	35-44	45-54	55-64	65+	TOTAL
Very informed	5,4%	3,1%	0,5%	2,4%	4,5%	1,8%	2,9%
Somewhat informed	31,9%	29,5%	36,4%	31,9%	32,1%	30,0%	32,1%
Somewhat uninformed	25,9%	31,5%	25,0%	20,5%	18,8%	20,9%	24,9%
Not informed at all	36,8%	35,8%	38,2%	45,2%	44,6%	47,3%	40,1%
Total	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

From what sources have you obtained information about the Kosovo Specialist Court so far?

**Table 2.1**

ETHNICITY (2020)	TOTAL % (2020)	K-ALBANIANS	K-SERBS	K-OTHERS
National newspapers	4,5%	9,0%	57,1%	6,2%
Online media portals	17,4%	37,6%	54,4%	27,7%
Social media (Facebook, Twitter, etc.)	19,1%	41,3%	40,2%	45,6%
TV stations	37,3%	80,9%	84,1%	73,6%
Radio stations	3,7%	8,1%	0,0%	8,0%

Civil Society Organizations (CSOs) / Non-Governmental Organizations (NGOs)	1,2%	2,7%	0,0%	2,9%
Independent investigative journalist reports	2,0%	4,3%	5,8%	2,9%
Directly from the Kosovo Specialist Chambers Outreach Team.	1,4%	2,9%	0,0%	5,3%
Website of the Specialist Court and/or statements of officials of the Specialist Court Statements of	1,4%	3,2%	0,0%	0,0%
Kosovo Albanian politicians	5,8%	12,4%	0,0%	27,9%
Statements of Serbian politicians	0,6%	0,2%	54,6%	3,4%
Statements of international representatives (eg. EU and embassies)	1,2%	2,6%	10,2%	0,0%
EULEX	0,2%	0,4%	2,5%	0,0%
Word of mouth	4,1%	8,0%	54,7%	5,3%
Other	0,2%	0,4%	0,0%	0,0%
No answer/refuse	0,1%	0,2%	0,0%	0,0%
Total	100,0%			

**Table 2.2**

AGE (2020)	18-24	25-34	35-44	45-54	55-64	65+
National newspapers	26,6%	7,5%	6,7%	4,9%	4,4%	2,7%
Online media portals	54,4%	53,4%	39,5%	20,1%	16,3%	5,4%
Social media (Facebook, Twitter, etc.)	58,0%	58,5%	35,1%	31,1%	22,3%	10,7%
TV stations	69,0%	80,7%	80,7%	87,8%	85,5%	89,3%
Radio stations	17,1%	6,2%	7,2%	7,1%	2,4%	2,7%
Civil Society Organizations (CSOs) / Non-Governmental Organizations (NGOs)	6,2%	4,7%	1,0%	0,0%	0,0%	0,0%
Independent investigative journalist reports	2,7%	5,5%	5,6%	1,2%	5,4%	5,4%
Directly from the Kosovo Specialist Chambers Outreach Team.	2,1%	4,7%	2,1%	3,5%	3,6%	0,0%
Website of the Specialist Court and/ or statements of officials of the Specialist Court	4,4%	3,7%	4,1%	1,2%	0,0%	2,7%
Statements of Kosovo Albanian politicians	9,2%	17,2%	15,1%	9,4%	9,7%	8,0%
Statements of Serbian politicians	0,2%	1,2%	1,6%	1,4%	3,5%	0,0%
Statements of international representatives	0,9%	3,3%	1,3%	4,7%	4,0%	2,7%
EULEX	0,0%	1,7%	0,0%	0,0%	0,0%	0,0%
Word of mouth	4,1%	11,0%	8,2%	9,4%	8,5%	13,4%
Other	0,9%	0,0%	0,0%	1,2%	0,0%	0,0%
No answer/refuse	0,0%	0,7%	0,0%	0,0%	0,0%	0,0%

In your opinion, what kinds of crimes committed during and in the aftermath of the 1998-99 war should be dealt with?

**Table 3**

AGE (2020)	18-24	25-34	35-44	45-54	55-64	65+	TOTAL
Important to deal with crimes suffered by Albanian civilians	42,9%	37,3%	34,2%	36,9%	43,4%	46,9%	39,2%
Important to deal with crimes suffered by Serb civilians	6,9%	5,4%	8,1%	9,5%	9,7%	8,8%	7,7%
Important to deal with crimes suffered by all civilians	39,2%	46,5%	45,5%	45,8%	38,1%	31,0%	42,3%
Don't know/No answer	11,1%	10,8%	12,2%	7,7%	8,8%	13,3%	10,7%
Total	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

The Kosovo Specialist Court will only prosecute serious crimes committed in Kosovo in the period 1998-2000 described in the 2011 investigation (the Council of Europe “Marty Report”), which mainly covers alleged crimes associated with the Kosovo Liberation Army. How do you see this arrangement?

**Table 4**

GENDER (2020)	MALE	FEMALE	TOTAL
Fair	15,8%	21,4%	18,5%
Unfair	84,2%	78,6%	81,5%
Total	100,0%	100,0%	100,0%

Is the Kosovo Specialist Court (indictments, trials and possible convictions) a good or a bad thing for Kosovo?

**Table 5**

AGE (2020)	18-24	25-34	35-44	45-54	55-64	65+	TOTAL
A good thing	19,9%	23,7%	29,0%	29,4%	27,5%	31,7%	26,3%
A bad thing	60,2%	53,5%	49,8%	55,0%	57,8%	51,5%	54,4%
Don't know	19,9%	22,8%	21,3%	15,6%	14,7%	16,8%	19,3%
Total	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

How interested are you in the process of the work of the Kosovo Specialist Court?

**Table 6**

GENDER (2020)	MALE	FEMALE	TOTAL
Very interested	8,4%	3,8%	6,2%
Interested	48,5%	42,0%	45,4%
Not interested	22,4%	27,1%	24,7%
Not interested at all	20,7%	27,1%	23,8%
Total	100,0%	100,0%	100,0%

What do you consider to be the most reliable source of information with regards to the processes/trials that will take place in the Kosovo Specialist Court?

**Table 7.1**

	2020	2017
Website of the Specialist Court	6,3%	9,9%
Statements of officials of the Specialist Court	8,4%	13,1%
Court proceedings and testimonies of victims	5,0%	12,8%
Media	51,5%	25,9%
NGOs	5,0%	4,7%
Independent investigative journalist reports	5,8%	14,7%
Statements of Kosovo Albanian politicians	7,3%	4,6%
Statements of Serbian politicians	2,3%	1,3%
Statements of international representatives including EU and embassies	3,4%	9,8%
EULEX	0,9%	1,1%
Other	0,9%	,0%
No answer/refuse	3,1%	2,2%
Total	100,0%	100,0%

**Table 7.2**

ETHNICITY (2020)	K-ALBANIANS	K-SERBS	K-OTHERS
Website of the Specialist Court	9,4%	16,5%	4,1%
Statements of officials of the Specialist Court	13,2%	7,4%	10,4%
Court proceedings and testimonies of victims	7,7%	8,3%	5,8%
Media	79,6%	51,0%	75,4%
NGOs	7,6%	3,4%	10,7%
Independent investigative journalist reports	9,4%	4,7%	2,0%
Statements of Kosovo Albanian politicians	11,4%	0,0%	13,5%
Statements of Serbian politicians	2,2%	31,2%	3,2%
Statements of international representatives including EU and embassies	4,9%	9,9%	7,6%
EULEX	1,2%	3,9%	1,9%
Other	1,4%	0,0%	1,0%
No answer/refuse	3,9%	22,9%	6,3%











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