

## Several Features the Special Court for Kosovo and Challenges That May Face During the Proving the Process of Concrete Criminal Cases

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### Abstract

The Special Court for Kosovo is a hybrid court of “*sui generis*” nature which essentially consists of several elements of local and international character. This court is characterized by a considerable number of specifications which make it a court of a special type, compared to national courts and international criminal courts recorded by human society memories until nowadays. Such characteristics refer to the establishment and activities of this court, international double trial, selective trials, subject matter, personal and time jurisdiction. On the other hand, it is expectable that the work of this court shall be accompanied by numerous problems linked to proving of the alleged crimes for adjudication of which was established. These troubles mainly are expected to come to expression concerning issues related to the testimony of witnesses, victims of crime and material evidence.

**Key words:** Court; Special; Jurisdiction; Procedure; Evidence

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### INTRODUCTION

The Special Court for Kosovo is established with a mandate to adjudicate crimes specified in Articles 12-

16 of the Law on Specialized Chambers and Specialized Prosecutor’s Office, which have to deal with the Report of Parliamentary Assembly of Council of Europe, crimes against humanity under international law, war crimes under international law, other crimes under Kosovo law, and criminal offences foreseen in chapter XXXII Articles 384-386 of the criminal Code of the Republic of Kosovo. Also this court in judicial trials could apply also the Criminal Law of the Socialist Federal Republic of Yugoslavia (1978), Criminal Law of the Socialist Autonomous Province of Kosovo (1977) and any other lenient substantive law that was applicable since 1989 until July 1999, respectively October 27, 2000. The Special Court for Kosovo shall have his headquarter in Hague (Netherlands) and a subsidiary based in Prishtina (Kosovo). It will consist exclusively by international judges and prosecutors.

The Special Court for Kosovo is the court of a special type. It is a hybrid court, consisting of local and international elements. As such the Special Court for Kosovo has several characteristics which make it a court of “*sui generis*” type. These specifics refer to establishment and activities issue, selective trials, subject matter, personal and time jurisdiction, diversity of acts in which shall be based on exercising its activity etc..

In proving process of the alleged crimes which shall be proceeded for trial, the Special Court for Kosovo is expected to face numerous problems and difficulties. In these terms, it could face false statements, victims which shall have extreme difficulties in order to identify the real perpetrators of crimes (perpetrators of crimes could have been masked, long time that has elapsed since the commission of criminal offences etc.) or to decipher them, and may also face many non-credible material evidence (false evidence fabricated by the Serbian authorities,) etc..

## 1. MEANING AND ELEMENTS OF THE SPECIAL COURT FOR KOSOVO

The Special Court for Kosovo has been established by the Law No. No. 05/L-053.<sup>1</sup> This is a hybrid court that encompasses elements of local and international character, but the dominance of the latter. The Special Court for Kosovo has been established with the intention to fulfill Kosovo international obligations foreseen by the Law No. 04/L-274 to guarantee the protection of fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo, as well as to guarantee secure, independent, impartial, fair and effective criminal proceedings concerning allegations for cross-border and international severe crimes committed during the period of time January 1, 1998 - December 31, 2000, the crimes related to those addressed in the Report of the Parliamentary Assembly of Council of Europe DOK 12462 dated January 7, 2011, and which have been the subject of a criminal investigation conducted by the Special Investigative Task Force of the Special Prosecutor of the Republic of Kosovo.

The Special Court through Specialized Prosecutor's Office and its Specialized Chambers has all authorizations related to criminal prosecutions, trials and execution of imposed judgments concerning crimes for which was established (Hajdari, 2016). As it results, this court has the authority to adjudicate cross-border and international crimes, including corruption criminal offences and organized crimes related to politics, some of the criminal offences against administration of justice and against public order foreseen by the Criminal Code of the Republic of Kosovo and other acts.<sup>2</sup>

For the operationalization of the Special Court work, Kosovo and the Kingdom of the Netherlands have concluded a special agreement. This is referred to as the Interim Agreement on Organization of the Kosovo Special Court Institution and its relocation to the Netherlands.<sup>3</sup> This agreement was signed by the former Minister of Foreign Affairs of Kosovo Hashim Thaçi and the Kingdom of the Netherlands Ambassador in Kosovo Gerrie Willems and it is decreed by the Decree of the former President of Kosovo Atifete Jahjaga No. DMN-003-2016. This agreement (as well as the respective law) foresees that the Special Court shall have its headquarters except in Kosovo also in the Kingdom of the Netherlands.

The Special Court for Kosovo is a specific court,

<sup>1</sup> This law is named—The Law on Specialized Chambers and Specialized Prosecutor's Office. It was promulgated by the Decree of the President of Kosovo DL-027/2015 dated August 20, 2015 and entered into force on September 5, 2015.

<sup>2</sup> See articles 13, 14 of the Law on Specialized Chambers and Specialized Prosecutor's Office.

<sup>3</sup> This agreement establishes favorable conditions for the stability and independence of the Special Court institution and it facilitates its efficient functioning in the Kingdom of the Netherlands.

which, as abovementioned consists of several local and international elements. Local elements of this court are: a) its establishment by the law approved by the Assembly of the Republic of Kosovo, b) the existence of its unique headquarters in Kosovo, and c) consent given by Kosovo authorities that this court to have its headquarters in the Netherlands. In meanwhile, international elements of this court are: a) its exclusively composition by international judges; b) its exclusively composition by international prosecutors; c) its exclusively composition by international investigators (police), d) the existence of its headquarters in another state, e) execution of imposed punishments in other countries and not in Kosovo (see Salihu, 2016, p.395)

## 2. SPECIFICS OF THE SPECIAL COURT FOR KOSOVO

The Special Court for Kosovo is characterized by a considerable number of specifications which make it a court of "sui generis" type, in comparison to other courts, whether those of international or national character. For some of these specifics shall be discussed in the following of this scientific paper.

### 2.1 Establishment and Activity

The Special Court for Kosovo, as abovementioned, has been established by a special law which was adopted by the Assembly of the Republic of Kosovo. This court has the authority to investigate, prosecute and adjudicate the criminal offences authorized only by international investigators, prosecutors and judges. As it results, no national court of any state (Ibid., pp.350 -362) and none international criminal court that was established so far it was not established by the law of any state, whereas its activity has carried out exclusively by international investigators, prosecutors and judges. If we take a closer look at the Hague International Criminal Tribunal for Crimes Committed in the Territory of the Former Yugoslavia, or the Permanent International Criminal Court.

Thus, the first was established by Resolution of the UN Security Council No. 827 dated February 22, 1993 and it has based the activity in its charter approved by the Security Council on May 22, 1993, whereas the latter was established in the United Nations Conference, held in Rome on July 17, 1998 and also has based activity in its charter which entered into force on April 11, 2002. (Ibid., pp.350-362)

Consequently, I consider that the issue of establishment and activity of the Special Court for Kosovo is based considerably in the pattern of exercising activities of international investigators, prosecutors and judges within Kosovo courts and prosecutions since 1999 onwards.

These investigators, prosecutors and judges initially have operated under the umbrella of UNMIK, and then under the authority of EULEX. The work of these two

Rule of Law missions in Kosovo has been accompanied by numerous challenges and problems (Hajdari, 2008). Furthermore these two international missions have proven to be inefficient in their work, for which the US analyst Daniel Server calls those incompetent and corrupted missions (Ibid., 2010). As a result of that, their activity is considered to be a failure. Regardless of this, I consider that establishing and functioning manner of the Special Court for Kosovo manifests many differences in comparison to national courts and international criminal courts, so literally it constitutes court of a special type. For instance, the Hague Criminal Tribunal for the former Yugoslavia. It was established by the UN Security Council with a special resolution and it has functioned under its statute and Rules of Procedure and evidences, which have been quite specific.

## 2.2 International Double Trial

The Special Court for Kosovo constitutes the second court having premises of international character established for adjudication of the alleged crimes related mostly to the period of the last war in Kosovo. In the beginning adjudication of war crimes and crimes against humanity committed in Kosovo during the period of armed conflict (years 1998-1999) was done by International Criminal Tribunal in The Hague for Crimes Committed in the Territory of the Former Yugoslavia, and now it shall be done even by the Special Court for Kosovo, that in fact it is a court by international specifications, even by basic elements of this nature. In the history of mankind it doesn't exist any example of another country for which were established two courts by international premises, with the mission of adjudicating the alleged crimes related to armed conflict or war. In fact, this is the first case since mankind was created through which the international community for the second time puts on the bench of accused military of a country.<sup>4</sup> Perhaps the motives of such an approach to the actors involved in the game may be beyond the law, so giving a full response to this aspect requires multidisciplinary analysis and more time. As a matter of fact, only soldiers and commanders of the KLA continue to face charges, even many times fabricated from Serbia, before national courts, the Serbian courts and these two courts of international character (Hajdari, 2016, p.149). Of course, this situation constitutes an acting manner that denigrates international justice. Finally, I consider that by establishing the Special Court for Kosovo has been created a precedent that could have reflections also in the future period filled with crisis and wars.

## 2.3 Adjudication of the Alleged Crimes With Suspected Persons Belonging Exclusively to the Party Which Developed a Defensive War

<sup>4</sup> Moreover many soldiers and officials of KLA faced also arrests by Policy of different countries based on arrests warrants issued by Serbia.

To the Special Court for Kosovo is granted the authority to adjudicate specified crimes in articles 13, 14, 15 of the Law on Specialized Chambers and Specialized Prosecutor's Office which are alleged to have been committed by persons that were members of military formations that developed a defensive war. From content of the respective law easily it could come to the conclusion that this court is not granted the mandate to adjudicate persons alleged to have committed crimes foreseen by this law, which were members of military formations that have developed aggressive war. "The law in question leaves without a criminal treatment of the members of army, police and Serbian paramilitary formations (aggressor military formations) for atrocities they have committed in Kosovo." There is no example in this world that another court, established by the international community, or under its pressure to have been granted such a mandate. Courts are established to adjudicate crimes and their perpetrators, despite of the military formations they belonged to, and regardless of the fact whether they have been on the side that has developed defensive or aggressive war. This approach is contrary to the requirements of numerous international acts which have in its focus the adjudication of aggressive wars, and this approach discourages defensive wars. Therefore, this component as well makes the Special Court for Kosovo a "sui generis" type.

## 2.4 Selective Judgment Based on Ethnic Criterion

By the Law on Specialized Chambers and Specialized Prosecutor's Office it looks like it has been installed in the so-called selective justice, based on ethnic criterion. This due to the fact the Special Court for Kosovo essentially shall deal with adjudication of the alleged crimes being its subject matter of jurisdiction exclusively for cases whereas defendants appear persons belonging to Albanian nationality. People of other nationalities must be untouched from this court. They, regardless of the crime committed, although adjudication of that crime is a competence of this court, they shall not be criminally prosecuted by the Special Court for Kosovo, because this is a reward given to them in advance. This impression is made from the content of article 1 paragraph 1 of the Law on Specialized Chambers and Specialized Prosecutor's Office under which the Special Court for Kosovo shall deal with adjudication of cross-border and international severe crimes committed during the conflict period in Kosovo and its aftermath, crimes which are linked to those reported in the Report of the Parliamentary Assembly of the Council of Europe DOK 12462 to dated January 7, 2012, in which exclusively is discussed about the alleged crimes committed by members of KLA who belong to ethnic Albanian nation. Such approach makes the activity of this court of discriminatory character that could cause consequences of this nature in the future in

this country, or even beyond. In addition to this approach the international community has done a disservice justice, because justice should never recognize national, racial or religious boundaries. Therefore, selective judgment does not serve neither justice nor stability, not even the fragile peace currently existing in the Balkan region. This approach only brings to memory the model of before the war Serbian judiciary that for political offences convicted only Albanians on fabricated and unsubstantiated charges.

## 2.5 Judgment Based on Diversity of Legal Acts

The Special Court for Kosovo shall conduct its activity on a relatively large number of domestic and international acts. Consequently this court in exercising its responsibilities shall be based on the Law on Specialized Chambers and Specialized Prosecutor's Office (as a special law), customary international law, the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Criminal Code of the Republic of Kosovo, the Criminal Law of the Socialist Federal Republic of Yugoslavia (1978), the Criminal law of the Socialist Autonomous Province of Kosovo (1977) and any more lenient substantive law that has been in force from 1989 until July 1999 respectively October 27, 2000. As it results, dictated by timing jurisdiction component the Special Court for Kosovo in exercising its authorizations shall consider clearly specified international respective acts, national laws currently in force, the laws of the former Yugoslav Federation and the former province Kosovo.

This element as well probably makes this court of "sui generis" type, based on the fact all other courts encompassing in itself elements of international nature, their activity mostly is based in the respective statutes. Regardless of motives which determine such solution, I consider this approach could challenge the Special Court for Kosovo activity in achieving the mission for which was established.

## 2.6 Subject Matter Jurisdiction

By subject matter jurisdiction is implied the right and duty of court that in criminal proceedings to undertake concrete procedural actions and adjudicate criminal offences depending on their nature and importance (Hajdari, 2014, p.107). The basis for determination of this competence is a criminal offense, a criminal case which is subject to judgment (*ratione materiae*) (Sahiti, 2013, p.139). On these terms, in accordance with the article 6 of the Law on Specialized Chambers and Specialized Prosecutor's Office the Special Court for Kosovo has the authority on specified crimes in articles 12-16 which are linked to the Report of the Parliamentary Assembly of Council of Europe (crimes against humanity under international law, war crimes under international law, other crimes according to Kosovo law) and offences foreseen in chapter XXXII articles 384-386 of the Criminal Code of the Republic of

Kosovo, (failure to report the preparation of the offense and failure to report criminal offenses or perpetrators), article 388 (providing assistance to perpetrators after the commission of criminal offenses), and articles 390-407 (false report or charge, false statement under oath, false statements, false statements of cooperative witnesses, obstruction of evidence or official proceedings, intimidation during criminal proceedings, retaliation, tampering with evidence, falsification of documents, special cases of falsification of documents, violating secrecy of proceedings, contempt of court, failure to execute court decisions, legalization of false content, uprising of the persons deprived of liberty, escape of persons deprived of liberty, facilitating the escape of persons deprived of liberty and unlawful release of persons deprived of liberty, chapter XXXIII articles 409-411 (obstructing official persons in performing official duties, attacking official persons in performing official duties and call to resistance), article 415 (taking or destroying official stamps or official documents), article 417 (impersonating an official), article 419 (unlawful provision of legal assistance), and chapter XXXIV (official corruption and criminal offences against official duty) articles 423-424 when they have to deal with official proceedings and their officials. The Special Court for Kosovo, as abovementioned, has a mandate concerning crimes for adjudication of which is mandated to implement also the Criminal Law of the Socialist Federal Republic of Yugoslavia (1978), the Criminal Law of the Socialist Autonomous Province of Kosovo (1977) and any other lenient substantive that has been in force from 1989 to July 1999, respectively October 27, 2000.

As it results, criminal offences for which the Special Court for Kosovo has the authority to adjudicate are numerous and diverse. Of course, the biggest number and type belong to serious cross-border criminal offenses, crimes against humanity and international law and war crimes.

This court according to a part of public and professional opinion has the jurisdiction also for several corruption criminal offences and organized crime and their connection to politics, several criminal offences against administration of justice and criminal offences against public order foreseen by the Criminal Code of the Republic of Kosovo. (Salihu, 2016, p.403)

Although this constitutes an attractive opinion for the majority of Kosovo's population, however in my opinion the jurisdiction of this court in relation to corruption criminal offences, organized crime, criminal offences against administration of justice or against public order may arise as far as the same are linked to cross-border severe criminal offenses, crimes against humanity and war crimes which constitute the key object of this court adjudication. This means to the Special Court for Kosovo is not granted the mandate to adjudicate the so-called corruption of a high political profile. The Court shall not deal with the adjudication of the alleged corruption crimes

of ministers, mayors etc. which are linked to misuse of tenders from which they have realized unlawful personal benefits, as far as they are not linked to obstruction of justice concerning filed indictments on war crimes, crimes against humanity and cross-border severe criminal offences for adjudication of which was established the Special Court for Kosovo. Such cases are competence of national courts. Perhaps also diversity of crimes granted to its competence makes the Special Court for Kosovo a “*sui generis*” type, which in its activities may face challenges and problems even unsolvable.

## 2.7 Time Jurisdiction

Through this type of jurisdiction shall be determined time limits of the Special Court for Kosovo authority extent. Therefore, under article 7 of the Law on Specialized Chambers and Specialized Prosecutor’s Office to the Special Court for Kosovo has been granted the authority over criminal offences which establish its subject matter of jurisdiction committed between the period of time January 1, 1998 until December 31, 2000. As it results, time jurisdiction of this court has a three-year extension. This period includes a time extension before the war, period during the duration of war and a postwar period of time. This time jurisdiction is linked to the existence of commission of alleged criminal offences to which is authorized to adjudicate the Special Court for Kosovo.

Consequently, also the addressing manner of time jurisdiction makes the Special Court for Kosovo a “*sui generis*” type. This due to the fact to this court has been granted also time jurisdiction also for a period of time before the war for freedom of country, as well as for the post-war period, a thing that does not happen with any other type of international courts, or established under international pressure, but dominated by international elements. This component leaves many gaps for expression of different opinions concerning the mission of this court. Regardless of this, although I consider that this court shall not be able to subdue the value of KLA war and NATO and our allies however in certain segments can be compromised, even unfairly.<sup>5</sup>

## 2.8 Territorial Jurisdiction

Through this type of jurisdiction shall be determined spatial limits within which is extended the Special Court for Kosovo authority. According to article 8 of the Law on Specialized Chambers and Specialized Prosecutor’s Office to the Special Court for Kosovo has been granted the mandate to adjudicate criminal offences included within its subject matter jurisdiction which have commenced or have been committed in Kosovo. So for a crime that

<sup>5</sup> In such situation as it is made the impression for the appearance of any penance of the West concerning military undertaken steps to intervene in Kosovo and to stop the murderous machinery of Serbia over Kosovo Albanian people.

falls under the subject matter jurisdiction of the Special Court for Kosovo to be able to be tried by this court it is necessary to have been commenced or committed in Kosovo. Such crime it could have been commenced in Kosovo and have been committed in Kosovo or abroad, or to have been commenced abroad and have been committed in Kosovo. Therefore, territorial competence of this court refers to Kosovo territory. This means that this court shall not adjudicate crimes which are under its mandate as far as the same have been commenced and committed abroad, but which have attacked Kosovo values, such as destruction of cultural values.<sup>6</sup>

Also this type of jurisdiction constitutes a specific of this court compared to other international criminal courts in general. This specific has to deal with the fact that this court shall not deal with adjudication of crimes committed during the war in Presheva Valley, even though several of committing crimes in that territory may be related to Kosovo citizens.

## 2.9 Personal Jurisdiction

Through this type of jurisdiction shall be determined by the category of persons which become the subject of the Special Court authority. According to article 9 of the Law on Specialized Chambers and the Office of Specialized Prosecutor this court has a competence to adjudicate only natural persons. This means that this court has no mandate to adjudicate legal persons for example KLA as a collective organization. In these cases personal jurisdiction of the Special Court for Kosovo is extended to persons holding Kosovo citizenship and over persons which they have committed crimes within their subject matter jurisdiction against persons holding Kosovo citizenship wherever those crimes have been committed. This addressing manner implies that the Special Court for Kosovo shall deal also with adjudication of for instance of any Republic of Albania citizen as far as he could have participated in a commission of any crime that is a competence of this court against a member of Serbian nationality. This is meant in cross-border crimes linked to the Parliamentary Assembly of the Council of Europe Report. Therefore, it is perhaps illusory to expect that the Special Court for Kosovo to deal with adjudication of any Serb of Serbia which has committed crimes that fall under the jurisdiction of this court against any Kosovo Albanian. The selective element of trials based on Parliamentary Assembly of the Council of Europe Report which is related to cross-border crimes by including only Kosovo – Albania border, and not borders of also other countries which borders Kosovo makes this a specific court in terms of letting aside Serbia cross-border crimes in comparison to any other court by international premises.

<sup>6</sup> Serbia before and after the war has robbed from Kosovo many art and cultural values, their eventual destruction shall not be the subject of proceedings or adjudication by the Special Court.

### 3. THE PROVING PROCESS BEFORE THE SPECIAL COURT AND ITS CHALLENGES

The proving process is difficult, complicated as well as responsible. Development of this process requires the utmost professional commitment of all actors involved. Therefore, the proving process should enable the examination of all data referring to a concrete criminal case by analyzing different evidences. Regardless of the fact who proposes evidences in criminal proceedings, each of them must pass through several stages before being taken as a basis for court decision (Hajdari, 2014, p.218).

Consequently, proving process in criminal proceedings may be challenged by different point of views.<sup>7</sup> Of course that also the proving process before the Special Court for Kosovo shall face its challenges. These challenges though may be of different nature, within this article shall be elaborated mostly those linked to witnesses, material evidences and victims.

#### 3.1 Challenges Related to Witnesses

Testimony is an important evidence that occurs in almost all criminal cases to which is conducted a criminal proceeding. As such it serves to verify the circumstances of commission of a criminal offence, for detection of its motive and verification of guilt of the defendant (Funk, 2006, p.66). In other words, testimony is a statement of a natural person concerning its sensory perceptions on important facts in the past given in a procedural form before a competent body (Sahiti & Murati, 2013, p.265). In its testimony, a witness expresses its perceptions regarding important facts in resolution of a criminal case. Otherwise, a witness concerning a concrete criminal offence should not present its conclusions neither to express its opinion but only should testify what he has observed with his senses (Hajdari, 2014, p.415).

Despite of a great role a testimony has as an evidence in criminal proceedings it is unquestionable the fact that the criminal procedure bodies practice, not rarely face incomplete testimony or false testimony. Therefore, also the Special Court for Kosovo could come to a situation to face with testimonies of this nature, with false, psychologically unstable or corrupted witnesses. This is quite possible even more by bearing in mind the fact that this court could be served also by testimony of witnesses given before the International Criminal Tribunal for the former Yugoslavia, testimonies given before Kosovo courts, including testimonies given at pre-trial procedure and during the application of special investigative

opportunity, as well as evidences collected from another country. Consequently, there is a problem when it comes to cases of collected evidences by the Serbian authorities, especially by considering the fact that this state conducted mounted judicial processes, evidence and testimonies of which are very compromising to levels of modern justice. Therefore, I consider that this court must very vigilant in relation to such evidences because they may compromise its work very much.

There is a problem also concerning transferred abroad witnesses, which might be inspired to give false or half-truths statements in order to avoid their return to Kosovo, where they lack perspective. This situation is estimated to be expectable due to the fact that in Kosovo unemployment is high and the level of economic development is very low. During examination of witnesses it should be kept in mind that they testified for cases which may have occurred almost 20 years ago, and the possibility to distort the truth, because of forgetfulness it may challenge the justice. Since testimonies of witnesses given are linked to alleged crimes which mostly have been committed during the war it's understandable that such evidences should be evaluated also in the context of circumstances in which they might have perceived occurrences.

Problem in itself probably presents also the use of testimonies of witnesses given in previous criminal proceedings, whether in his International Tribunal for the former Yugoslavia, or in national courts, and those foreign. In this context, the question arises how much is functional in criminal proceedings of this court to be used testimonies of witnesses which did not serve at all to the resolution of raised court cases before. In what situations may be used such testimonies, when concerning their accuracy there were doubts in criminal proceedings conducted before.

#### 3.2 Challenges Related to Material Evidences

In resolution of a criminal case of a multiple importance belongs also to material evidences (Gruda, 2000, p.133). Material evidences serving for this purpose may be numerous and diverse. They mostly shall be obtained in the crime scene, but their securing can be done also from other places and manners (Sahiti, Murati, & Elshani, 2014, p.658).

It is more than clear that material evidences shall have an evident and irreplaceable role also in the proving activity of the Special Court for Kosovo. This issue is determined in article 37, paragraph 3, point c, of the Law on Specialized Chambers and Specialized Prosecutor's Office. According to this legal provision the original documents, certified copies, certified electronic copies and certified and unchanged copies in comparison to their originals, as well as forensic evidences collected by Kosovo State Prosecution, Kosovo Police authorities, the International Criminal Tribunal for the former Yugoslavia, EULEX Special Investigative Task Force. A part of the proving in criminal proceedings that shall be conducted

<sup>7</sup> The performance of proving process concerning facts, duly, passes through three stages: evidence collection, examination and verification of evidence and evaluation of evidence. See: Sahiti, E. (1999). *Argumentation in criminal proceedings* (pp.204-2150. Prishtina.

before the Special Court for Kosovo, in accordance with paragraph 5 of the Law on Specialized Chambers and Specialized Prosecutor's Office could be also material evidences provided by any other state.

Bearing in mind this fact, based on previous bitter experiences with political trials, criminal proceedings conducted against Albanians concerning occurrences of the last war, and Serbian justice bodies' activity to compromise the KLA war through fabricated evidences, based on which is considered to be filed Dick Marty charges on organ trafficking shall be a duty of the Special Court for Kosovo to be very careful concerning material evidences that could come through different paths from Serbia. Therefore, material evidences coming from Serbia should undergo thorough an assessment and verification. This due to the fact that Serbia has done and it is still doing a great propagandistic war for concretization this court work, and it is expectable that Serbia shall supply the court by materials of all kinds with the intention that its work to result successful, in terms of achieving to punish some of the key figures of the KLA.

Finally, the question is, documents which have had not the power to prove the alleged crimes before other courts for instance in the Hague Tribunal for the former Yugoslavia and in the Kosovo courts how can they be taken as sustainable for the Special Court for Kosovo. In these terms, I consider that legislator should set clear limits to the possibility of their use, which did not do it.

### 3.3 Challenges Related to Victims

The meaning of victim before the Special Court for Kosovo may have any natural person which personally suffered any damage, including physical, mental or material damages from any crime within jurisdiction of Specialized Chambers and the Specialized Prosecutor's Office. Victims before this court are expected to have an important role in resolution of concrete criminal cases and to them are accorded also the right to seek for compensation of damage.

Since it has been more than 16 years, observing this in terms of time jurisdiction extension of the Special Court for Kosovo is expectable that statements of victims may be accompanied by various deficiencies. These deficiencies may result from the phenomenon of forgetfulness, which is inevitable in situations of expiration of a long time, but it could be as a result of the fact that the alleged crimes for which this court is competent it might have been committed in very complex circumstances, including the use of different masks etc.. Therefore, it is expectable that the proving process through victims of crime may be accompanied by challenges of different nature. Of course, it should be kept in mind that a considerable number of alleged victims of crime have died, or they had suffered trauma, which resulted in appearance of various mental diseases. But, it cannot be excluded also cases of creating artificial victims by Serbian authorities in order to testify

for each of the filed indictments. Therefore, is necessary that the Special Court for Kosovo to take into account only credible victims, but based on its work specifics it shall be difficult, perhaps impossible to be completely and always cautious concerning these issues.

## CONCLUSION

Modest results of this scientific paper led me to these conclusions:

(a) The Special Court for Kosovo has been established to adjudicate crimes specified in articles 12-16 which have to deal with the Parliamentary Assembly of Council of Europe Report, crimes against humanity under international law, war crimes under international law, other crimes under Kosovo law and criminal offences foreseen in chapter XXXII articles 384-386 of the Criminal Code of the Republic of Kosovo. This court, in adjudication of crimes for which is authorized, has the mandate to implement also the Criminal Law of the Socialist Federal Republic of Yugoslavia (1978), Criminal Law of the Socialist Autonomous Province of Kosovo (1977) and any other lenient law that was applicable since 1989 until July 1999, respectively October 27, 2000. The Special Court for Kosovo shall have his headquarter in Hague (Netherlands) and a subsidiary based in Pristina (Kosovo). It will consist exclusively by international judges and prosecutors.

(b) The Special Court for Kosovo is a hybrid court, which essentially represents a specific type of criminal court which consists of several elements of local and international nature. Local elements of this court are: i) its establishment by the law approved by the Assembly of the Republic of Kosovo, ii) the existence of a unique headquarters in Kosovo, and iii) given consent by Kosovo authorities that this court to have its headquarters in the Netherlands. In meanwhile, international elements of this court are: i) its exclusively composition by international judges; ii) its exclusively composition by international prosecutors; iii) its exclusively composition by international by investigators (police), iv) the existence of its headquarters in another state, v) execution of imposed punishments in other countries and not in Kosovo.

(c) The Special Court for Kosovo has some specifics which make it a special type court. These specific refer to establishment and activity issue (has been established by law in Kosovo, whereas it consists only of international police officers, prosecutors and judges), selective judgment (shall deal with adjudication of KLA members only that were soldiers of a defensive army and which belong to Albanian nationality), subject matter jurisdiction (criminal offences from cross-border conflicts, war crimes, crimes against humanity, several crimes related to the administration of justice, including corruption and organized crime etc.), time jurisdiction (competence of

this court is extended before, during and after the war, personal jurisdiction, the diversity of acts in which shall be based in exercising its activity (international conventions, the Law on Specialized Chambers and Specialized Prosecutor's Office Criminal Code of the Republic of Kosovo, the legislation of the former Yugoslavia that was not discriminatory etc.).

(d) The Special Court for Kosovo in its activity shall face numerous challenges and problems related to complex procedures of proving the alleged crimes for adjudication of which to this court has been granted a subject matter jurisdiction. The main challenges and problems shall deal with witnesses (non-credible witnesses), victims (the impossibility of identifying perpetrators) and material evidences (non-credible evidences such as evidences used in previous processes or which through different channels shall be sent by Serbian authorities.

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