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**DRAFT Law No.\*\*/L-\*\***

**ON SPECIALIST CHAMBERS AND SPECIALIST PROSECUTOR'S OFFICE**

**Assembly of Republic of Kosovo,**

Based on Articles 65(1) and Amendment nr 24 of the Constitution of the Republic of Kosovo,

Adopts

**LAW ON SPECIALIST CHAMBERS AND SPECIALIST PROSECUTOR'S OFFICE**

**CHAPTER I - GENERAL PROVISIONS**

**Article 1 - The Scope and Purpose of the Law**

1. This Law establishes and regulates the organisation, functions and jurisdiction of the Specialist Chambers and the Specialist Prosecutor's Office.
2. Specialist Chambers within the Kosovo justice system and the Specialist Prosecutor's Office are necessary to fulfil the international obligations undertaken in Law No. 04/L-274, to guarantee the protection of the fundamental rights and freedoms enshrined in the Constitution of the Republic of Kosovo, and to ensure secure, independent, impartial, fair and efficient criminal proceedings in relation to allegations of grave trans-boundary and international crimes committed during and in the aftermath of the conflict in Kosovo, which relate to those reported in the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 ("The Council of Europe Assembly Report") and which have been the subject of criminal investigation by the Special Investigative Task Force ("SITF") of the Special Prosecution Office of the Republic of Kosovo ("SPRK").

**Article 2 – Compliance with Article 55 of the Constitution**

Any limitations on fundamental rights and freedoms are undertaken pursuant to Article 55 of the Constitution for the objective and reasonable purposes expressed in this Article, consistent with Chapter II of the Constitution and international standards of justice and due process. These purposes are in the vital interest of Kosovo as an open and democratic society and are in fulfilment of Kosovo's international obligations. Consistent with Article 55 of the Constitution, these limitations shall only be imposed to the extent necessary for the fulfilment of these vital purposes.

**CHAPTER II - BASIC PRINCIPLES**

**Article 3 – Foundational Principles**

1. Specialist Chambers shall be attached to each level of the court system in Kosovo: the Basic Court of Pristina, the Court of Appeals, the Supreme Court and the Constitutional Court. The Specialist Chamber of the Constitutional Court shall deal exclusively with any

constitutional referrals relating to the Specialist Chambers and Specialist Prosecutor's Office. The Specialist Chambers shall be independent in the exercise of their functions.

2. The Specialist Chambers shall adjudicate and function in accordance with,
  - a. the Constitution of the Republic of Kosovo,
  - b. this Law as the *lexspecialis*,
  - c. other provisions of Kosovo law as expressly incorporated and applied by this Law,
  - d. customary international law, as given superiority over domestic laws by Article 19(2) of the Constitution, and
  - e. international human rights law which sets criminal justice standards including the European Convention on Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, as given superiority over domestic laws by Article 22 of the Constitution.
3. In determining the customary international law at the time crimes were committed, Judges may be assisted by sources of international law, including subsidiary sources such as the jurisprudence from the international *ad hoc* tribunals, the International Criminal Court and other criminal courts.
4. Any other Kosovo law, regulation, piece of secondary regulation, other rule or custom and practice which has not been expressly incorporated into this Law shall not apply to the organisation, administration, functions or jurisdiction of the Specialist Chambers and Specialist Prosecutor's Office. This Law shall prevail over any and all contrary provisions of any other law or regulation.
5. The Specialist Chambers shall be supported by a Registry, which will also administer all necessary and auxiliary functions, including detention facilities as provided for by this Law.
6. 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, but may sit elsewhere on an exceptional basis if necessary in the interests of proper administration of justice. The Specialist Chambers may make special arrangements for testimony or appearances through alternative means at the Judges' discretion.
7. As provided for through an international agreement with the Host State, the Specialist Prosecutor's Office shall have a seat in the Host State, but may also have a seat in Kosovo. The Specialist Prosecutor's Office may perform its functions at the seat of the Specialist Prosecutor's choosing or elsewhere, as required to fulfil its mandate effectively.
8. For reasons of the proper administration of justice or security,

- a. the President of the Specialist Chambers, the Specialist Prosecutor, Specialist Counsel or Victims' Counsel may at their discretion invoke a change of venue to the Host State of a trial, any part of a trial or any particular stage or stages of the criminal process under this Law;
- b. the Specialist Prosecutor, Specialist Counsel, Victims' Counsel, or any other party or person with standing to do so under this Law may file or tender any court papers, filings, documents, motions, applications or other items at the Specialist Chambers' seat in the Host State;
- c. the Specialist Prosecutor or the Presiding Judge of the Specialist Chamber of the Constitutional Court may also at their discretion invoke a change in venue to the host state for the Specialist Chamber of the Constitutional Court so that it also sits, deliberates and receives filings and submissions at the Specialist Chambers' seat in the Host State;
- d. in the event of an invocation of a change in venue to the Host State the President of the Specialist Chambers shall issue an administrative decision relocating the proceedings, or any part or phase thereof, to the Host State and shall order all necessary steps to give effect to this decision.

#### **Article 4 - Legal Personality and Capacity**

1. The Specialist Chambers and the Specialist Prosecutor's Office shall have full legal and juridical personality.
2. The Specialist Chambers, the Registry and the Specialist Prosecutor's Office may enter into arrangements with States, international organisations and other entities for the purpose of fulfilling their mandate or in furtherance of their operations in accordance with this Law, in particular with regard to co-operation, judicial assistance and the service of sentence.
3. The President of the Specialist Chambers, the Registrar and Specialist Prosecutor, or their deputies in their absence, may represent their respective organs and entities in the exercise or undertaking of their functions and entering into necessary arrangements.
4. Before entering into any international treaty with a third state relating to judicial co-operation which would otherwise require ratification under Article 18 of the Constitution, the Specialist Chambers shall seek the agreement of the government of Kosovo.

#### **Article 5 - Executive Mandate and Operation**

In accordance with the international obligations of the Republic of Kosovo, all the necessary executive mandates, powers and authorities required to operate the Specialist Chambers, its organs and all associated functions under this Law shall be delegated as set out in Law No. 04/L-274.

### **CHAPTER III - JURISDICTION AND APPLICABLE LAW**

#### **Article 6 - Subject Matter Jurisdiction**

1. The Specialist Chambers shall have jurisdiction over crimes set out in Articles 12-16 which relate to the Council of Europe Assembly Report.
2. The Specialist Chambers shall also have jurisdiction over offences under Chapter XXXII, Articles 384-386, 388, 390-407, Chapter XXXIII, Articles 409-411, 415, 417, 419, 421, and Chapter XXXIV, Articles 423-424 of the Kosovo Criminal Code 2012, Law 04/L-082 where they relate to its official proceedings and officials.

#### **Article 7 - Temporal Jurisdiction**

The Specialist Chambers shall have jurisdiction over crimes within its subject matter jurisdiction which occurred between 1 January 1998 and 31 December 2000.

#### **Article 8 - Territorial Jurisdiction**

Consistent with the territorial jurisdiction of Kosovo courts under applicable criminal laws in force between 1 January 1998 and 31 December 2000, the Specialist Chambers shall have jurisdiction over crimes within its subject matter jurisdiction which were either commenced or committed in Kosovo.

#### **Article 9 - Personal Jurisdiction**

1. The Specialist Chambers shall have jurisdiction over natural persons pursuant to the provisions of this Law.
2. Consistent with the active and passive personality jurisdiction of the Kosovo courts under applicable criminal laws in force between 1 January 1998 and 31 December 2000, and in addition to its territorial jurisdiction set out in Article 8, the Specialist Chambers shall have jurisdiction over persons of Kosovo/FRY citizenship or over persons who committed crimes within its subject matter jurisdiction against persons of Kosovo/FRY citizenship wherever those crimes were committed.

#### **Article 10 - Concurrent Jurisdiction**

1. Within its jurisdiction, the Specialist Chambers shall have primacy over all other courts in Kosovo.
2. At any stage of an investigation or proceedings, the Specialist Chambers or the Specialist Prosecutor may order the transfer of proceedings within its jurisdiction from any other prosecutor or any other court in the territory of Kosovo to the Specialist Chambers and the Specialist Prosecutor. The State Prosecutor or Court shall refer to the Specialist Chambers any and all files pertaining to the requested case. The Specialist Chambers' order for transfer is final and binding.
3. The Law on Courts, Law No. 03/L-199, and the Law on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo, Law No. 03/L-053, do not apply to matters before, or matters subject to an order to be transferred to, the Specialist Chambers and Specialist Prosecutor's Office.

#### **Article 11 – Notification of Cases and Criminal Proceedings**

All Kosovo courts and prosecutors shall notify the Specialist Chambers and the Specialist Prosecutor's Office without delay should they be aware of a case or criminal proceedings within the jurisdiction of the Specialist Chambers.

#### **Article 12 - Applicable Law**

The Specialist Chambers shall apply customary international law and the substantive criminal law of Kosovo insofar as it is in compliance with customary international law, both as applicable at the time the crimes were committed, in accordance with Article 7(2) of the European Convention of Human Rights and Fundamental Freedoms and Article 15(2) of the International Covenant on Civil and Political Rights, as incorporated and protected by Articles 19(2), 22(2), 22(3) and 33(1) of the Constitution.

#### **Article 13 - Crimes Against Humanity under International Law**

1. For the purposes of this Law, under customary international law during the temporal jurisdiction of the Specialist Chambers, crimes against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a. murder;
- b. extermination;
- c. enslavement;
- d. deportation;
- e. imprisonment;
- f. torture;
- g. rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
- h. persecution on political, racial, ethnic or religious grounds;
- i. enforced disappearance of persons; and
- j. other inhumane acts.

#### **Article 14– War Crimes under International Law**

1. For the purposes of this Law, under customary international law during the temporal jurisdiction of the Specialist Chambers, war crimes means:

a. Grave breaches of the Geneva Conventions of 12 August 1949, including any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;



- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement; and
- (viii) Taking of hostages.

b. Other serious violations of the laws and customs applicable in international armed conflict, recognised as such in customary international law, including, but not limited to, any of the following acts:

- i. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- ii. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- iii. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- iv. Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- v. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- vi. Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- vii. Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- viii. The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- ix. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

- x. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- xi. Killing or wounding treacherously individuals belonging to the hostile nation or army;
- xii. Declaring that no quarter will be given;
- xiii. Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- xiv. Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- xv. Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- xvi. Pillaging a town or place, even when taken by assault;
- xvii. Employing poison or poisoned weapons;
- xviii. Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- xix. Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- xx. Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that the use of such weapons, projectiles and material and methods of warfare is recognised as criminal under customary international law;
- xxi. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- xxii. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- xxiii. Utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- xxiv. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- xxv. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

- xxvi. Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- c. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, including any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
- i. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - ii. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - iii. Taking of hostages;
  - iv. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable.
- d. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, recognised as such in customary international law, including, but not limited to, any of the following acts:
- i. intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - ii. intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - iii. intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - iv. intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - v. pillaging a town or place, even when taken by assault;
  - vi. committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
  - vii. conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - viii. ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

- ix. killing or wounding treacherously a combatant adversary;
- x. declaring that no quarter will be given;
- xi. subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her or her interest, and which cause death to or seriously endanger the health of such person or persons;
- xii. destroying or seizing the property of an adversary unless such destruction or seizure is absolutely required by the necessities of the conflict;
- xiii. employing poison or poisoned weapons;
- xiv. employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and
- xv. employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

2. Articles 14 (1)(c) and (d) apply to armed conflicts not of an international character and do not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. They apply to armed conflicts that take place in the territory of a state when there is protracted armed conflict between the organs of authority and organised armed groups or between such groups.

#### **Article 15 - Other Crimes under Kosovo Law**

1. Subject to Article 12, in accordance with UNMIK Regulation 1999/24 as amended by UNMIK regulation 2000/59, the substantive criminal laws in force under Kosovo law during the temporal jurisdiction of the Specialist Chambers were:

- a. the Criminal Code of the Socialist Federal Republic of Yugoslavia (1976); and
- b. the Criminal Law of the Socialist Autonomous Province of Kosovo (1977); or
- c. any more lenient substantive criminal law in force between 1989 and July 1999/27 October 2000.

2. Chapter XXXII, Articles 384-386, 388, 390-407, Chapter XXXIII, Articles 409-411, 415, 417, 419, 421, and Chapter XXXIV, Articles 423-424 of the Kosovo Criminal Code 2012, Law 04/L-082 shall apply to the official proceedings and officials of the Specialist Chambers, the Registry and Specialist Prosecutor's Office. The Specialist Chambers shall have jurisdiction over these offences only where they relate to its official proceedings and officials.

#### **Article 16 - Individual Criminal Responsibility**

1. For crimes in Articles 13-14,

- a. a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of such a crime shall be individually responsible for the crime.
  - b. The official position of any accused person, including as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
  - c. The fact that any of the acts or omissions were committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
  - d. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Specialist Chambers determines that justice so requires.
2. For crimes under Article 15 (1), the laws of Kosovo pertaining to individual criminal responsibility which were in force at the time of the crime shall apply.
3. For crimes under Article 15 (2), the individual criminal responsibility provisions contained in the Kosovo Criminal Code 2012, Law No. 04/L-082, Articles 8-10, 17, 21-24, 27-40, shall apply.

#### **Article 17 - *Non-bis-in-idem***

In accordance with Article 34 of the Constitution of the Republic of Kosovo,

- a. no person shall be tried before another court of Kosovo for acts for which he or she has already been tried by the Specialist Chambers;
- b. no person shall be tried before the Specialist Chambers for acts which he or she has been tried by a court of Kosovo;
- c. no person shall be tried before the Specialist Chambers for acts which he or she has already been tried by the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“ICTY”).

#### **Article 18 - Amnesty**

The jurisdiction of the Specialist Chambers shall not be subject to any amnesty granted under Article 65(15) of the Constitution. Any amnesty granted to any person for an international crime, a crime that resulted in grievous bodily injury or death, or a crime under Article 15(2), if falling within the jurisdiction of the Specialist Chambers, shall not be a bar to prosecution or punishment.

### **CHAPTER IV - RULES OF PROCEDURE AND EVIDENCE**

### **Article 19 - Rules of Procedure and Evidence**

1. The Rules of Procedure and Evidence for the conduct of proceedings before the Specialist Chambers shall be adopted by the Specialist Chambers Judges sitting in Plenary as soon as possible following their appointment and placement on the Roster of International Judges. The Judges of the Specialist Chamber of the Constitutional Court shall not participate in the adoption.
2. The Rules of Procedure and Evidence shall reflect the highest standards of international human rights law including the ECHR and ICCPR with a view to ensuring a fair and expeditious trial taking into account the nature, location and specificities of the proceedings to be heard by the Specialist Chambers. In determining its Rules of Procedure and Evidence the Specialist Chambers shall be guided by the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123.
3. The Rules of Procedure and Evidence shall be consistent with this Law, in particular with Articles 21-23 which protect the rights of the accused, victims and witnesses. Special measures shall be included for the involvement of minors, vulnerable witnesses and victims of sexual and gender-based violence.
4. The Rules of Procedure and Evidence may be amended by the Judges in Plenary, having consulted with the Specialist Prosecutor and the Registrar, who shall represent the interests of the Defence and Victims. The Registrar may consult with the independent representative body of Specialist Counsel for this purpose.
5. Following adoption or amendment, the adopted Rules or amendment to the Rules shall be referred to the Specialist Chamber of the Constitutional Court, which shall have thirty (30) days to review the Rules or amendments to ensure compliance with Chapter II, including Article 55, of the Constitution. In the event that the Specialist Chamber of the Constitutional Court determines an inconsistency with the Constitution, that determination shall be sent to the Judges in Plenary for action on the affected provision or provisions. The Judges of the Specialist Chamber of the Constitutional Court shall not participate in that action.
6. The Specialist Chambers shall have the power to adopt internal rules, policies and practice directions that are necessary for its proper functioning, the security or fairness of proceedings or to give effect to the provisions of this Law.

### **Article 20 - Official and Working languages**

The official languages of the Specialist Chambers and Specialist Prosecutor's Office shall be Albanian, Serbian and English. Upon taking office, the President of the Specialist Chambers, the Registrar and the Specialist Prosecutor shall each determine the official use of language for the exercise of their mandate. In any given proceedings, a Pre-Trial Judge or a Panel may decide the working languages for those proceedings, as appropriate and with full respect of the rights of the accused.

### **Article 21 - Rights of the Accused**

1. All persons shall be equal before the Specialist Chambers.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 23 of this Law and any measures ordered by the Specialist Chambers for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proved guilty beyond reasonable doubt according to the provisions of this Law.
4. In the determination of any charge against the accused pursuant to this Law, the accused shall be entitled to the following minimum guarantees, in full equality:
  - a. to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
  - b. to be informed promptly of his or her rights according to the law;
  - c. to have adequate time and facilities for the preparation of his or her defence and to communicate with Specialist Counsel of his or her own choosing;
  - d. to be tried within a reasonable time;
  - e. to be tried in his or her presence, and to defend himself or herself through Specialist Counsel of his own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have Specialist Counsel assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
  - f. to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
  - g. to have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Specialist Chamber; and
  - h. not to be compelled to testify against himself or herself or to admit guilt.
5. The accused cannot represent him/herself without legal representation (mandatory representation) in the following circumstances:
  - a. at hearings on detention on remand and throughout the time when he or she is in detention on remand;
  - b. from the filing of an indictment, if the indictment has been brought against him or her for a crime punishable by imprisonment of at least ten (10) years; and
  - c. in all cases when an accused seeks to enter into an agreement to plead guilty to a crime punishable by imprisonment of one (1) year or more.
6. All material and relevant evidence or facts in possession of the Specialist Prosecutor's Office which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.

## **Article 22 - Rights of Victims**

1. A Victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers. Participation by a Victim by the Specialist Chambers shall not be a bar to providing testimony as a witness before the Specialist Chambers.

2. If a victim does not apply to participate in proceedings before the Specialist Chambers, or has not been accepted as a participant or determined to be a Victim under this Law, this shall not limit his or her rights under other laws or through other reparation mechanisms in Kosovo.
3. A Victim's personal interest and rights in the criminal proceedings before the Specialist Chambers are notification, acknowledgement and reparation. The Specialist Chambers' Rules of Procedure and Evidence shall include provisions relating to the reasonable reparation to Victims from an accused who has pled or been adjudged guilty of a crime(s) which has directly resulted in harm to the Victims. They shall also determine the content and procedure for submission and acceptance of any application to participate in the proceedings and declaration of damage.
4. During trial proceedings, any participating Victims shall form one group unless a Trial Panel orders that they should be divided into more than one group, including, if appropriate, one group for victims of sexual and gender based violence.
5. Victim groups shall be assisted and represented by a Victims' Counsel provided through the Registry's Victims Participation Office. No other victim representation, including self-representation, is permitted. The Victims Participation Office may also provide victims with advice and other services associated with the work of the Specialist Chambers, as appropriate.
6. The Specialist Chambers may permit representations by Victims' Counsel on behalf of Victims during the pre-trial and trial proceedings as provided for in the Rules of Procedure and Evidence, when the Victims' personal interests are impacted and only when it is not prejudicial to or inconsistent with the rights of the accused.
7. In its judgement, a Trial Panel may, either upon request or on its own motion in exceptional circumstances, include a decision on the scope and extent of any damage, loss and injury to, or in respect of, Victims and will state the principles on which it is acting. Alternatively, if such a decision would unduly prolong the criminal proceedings, a Trial Panel may limit its decision to the identity of Victims of any crimes established in its judgement.
8. In the event that a Trial Panel or Court of Appeals Panel of the Specialist Chambers adjudges an accused guilty of a crime, it may make an order directly against that accused specifying appropriate reparation to, or in respect of, Victims collectively or individually.
9. Where appropriate, the Specialist Chambers may refer the Victims to civil litigation in the other courts of Kosovo.
10. In the event that a Trial Panel or Court of Appeals Panel of the Specialist Chamber adjudges an accused guilty of a crime, on application of Victims' Counsel, the Registrar may transmit to the competent authorities of any State, or directly to Victims, a certified copy of the judgement adjudging the accused guilty of a crime and its decision on Victims and, if included, the damage caused to the Victims.
11. Before making a decision under this Article, a Trial Panel may invite and shall take account of representations on behalf of the accused, Victims, other interested persons or interested States.



### **Article 23 - Protection of Victims and Witnesses**

1. The Specialist Chambers' Rules of Procedure and Evidence shall provide for the protection of victims and witnesses including their safety, physical and psychological well-being, dignity and privacy. Such protective measures shall include, but shall not be limited to, those set out at Articles 221-226 of the Criminal Procedure Code of Kosovo, Law No. 04/L-123, Articles 5-13 of the Law on Witness Protection, Law No. 04/L-015, the conduct of *in camera* proceedings, presentation of evidence by electronic or other special means and the protection of identity.
2. Special provisions shall be included in the Rules of Procedure and Evidence to ensure the protection of vulnerable witnesses including victims of sexual and gender based violence and children. Such protections shall be implemented during proceedings in the case of victims of sexual and gender-based violence or a child witness or victim. A Judge or Panel may only dis-apply such protective measures for sexual and gender based violence victims or a child witness or victim after careful consideration of all circumstances, particularly those of the victim, and determination that such measures are not necessary. Victims' Counsel may make representations to a Pre-Trial Judge, a Panel or the Specialist Prosecutor on the appropriate protective measures for a witness testifying before the Specialist Chambers.
3. The Witness Protection and Support Office may make representations to a Pre-Trial Judge, a Panel, or the Specialist Prosecutor on appropriate protective measures, security arrangements, counselling and assistance for a witness before, during and after testimony before the Specialist Chambers.
4. The Specialist Chambers, the Registry and Specialist Prosecutor may seek assistance under Article 32 of the Law on Witness Protection, Law No. 04/L-015 or by any other modality provided for by law, arrangements concluded pursuant to Article 4, or international agreements.

## **CHAPTER V - ORGANISATION, STRUCTURE AND COMPETENCIES**

### **Article 24 - Organisation of the Specialist Chambers and Specialist Prosecutor's Office**

1. The Specialist Chambers shall consist of the following organs:
  - a. The Chambers, which shall include a Basic Court Chamber, a Court of Appeals Chamber, a Supreme Court Chamber and a Constitutional Court Chamber; and
  - b. The Registry, which shall include a Defence Office, a Victims Participation Office, a Witness Protection and Support Office, a Detention Management Unit, and an Ombudsperson's office within its structure.
2. The Specialist Prosecutor's Office, which takes over the mandate and personnel of the Special Investigative Task Force ("SITF"), shall be an independent office for the investigation and prosecution of crimes within the jurisdiction of the Specialist Chambers.

### **Article 25 - Composition of Chambers**

1. Subject to Article 33, the Chambers shall be composed as follows:
  - a. individual judges as necessary performing the functions of a pre-trial judge;
  - b. Trial Panels composed of three (3) judges and one (1) reserve judge;
  - c. Court of Appeal Panels composed of three (3) judges;
  - d. Supreme Court Panels composed of three (3) judges;
  - e. Constitutional Court Panels composed of three (3) judges; and
  - f. individual judges as necessary performing other functions required under this Law.
2. For proceedings in relation to Article 15(2) crimes which are not classified as serious crimes under Article 22 of the Kosovo Criminal Procedure Code, Law No. 04/L-123, the Trial Panel may consist of a single judge.
3. Rules on the Assignment of Specialist Chambers Judges from the Roster of International Judges shall be adopted by the Specialist Chambers Judges in Plenary as soon as possible after their appointment and their placement on the Roster.

#### **Article 26 - Roster of International Judges**

1. A roster of independent international judges shall be established in accordance with the procedure set out in Article 28 (“the Roster of International Judges”).
2. The Judges shall only be present at the seat of the Specialist Chambers as necessary at the request of the President of the Specialist Chambers to exercise functions requiring their presence. In so far as possible, and as decided by the President of the Specialist Chambers, the functions may be exercised remotely.
3. The Judges shall not receive remuneration or other benefits for being on the roster.
4. The Judges on the roster shall endeavour not to undertake any activity which could compromise the President of the Specialist Chambers’ ability to assign them to exercise functions as a Judge in the Specialist Chambers.
5. The Roster of International Judges shall include three constitutional judges for assignment to determine any referral to the Specialist Chamber of the Constitutional Court (“the Judges of the Specialist Chamber of the Constitutional Court”), and one reserve constitutional judge.

#### **Article 27 - Qualifications of the Specialist Chambers Judges**

The Specialist Chambers Judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective states for appointment to the highest judicial offices. They shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source. The Specialist Chambers Judges shall have established competence in criminal law and procedure or relevant parts of international law and constitutional law as appropriate, with extensive judicial, prosecutorial or defence experience in international or domestic criminal proceedings. In the overall composition of Roster of International Judges for the Specialist Chambers, due account shall be taken of the established competence and court experience of the judges in criminal law and procedure, international law and constitutional law as appropriate. Judges shall be fluent in English.

#### **Article 28 - Appointment of the Judges**

1. An independent selection panel (“the Selection Panel”) shall be responsible for the assessment of judicial candidates and selection for appointment of judges for the Roster of International Judges, as well as for making recommendations for the appointment of the President and Vice-President of the Specialist Chambers.
2. The Selection Panel shall be composed of three international members, with at least two members being international judges with substantial international criminal experience. One of the international judges shall serve as the presiding member of the panel.
3. Following consideration of qualified candidates, then interview and assessment of those found most suitable, the Selection Panel shall finalise a list containing the names of those they recommend for the position of judge at the Specialist Chambers. The Selection Panel shall take its decisions by majority of the votes of its members. The Selection Panel shall forward this list to the Head of EU Common Security and Defence Policy Mission (“Appointing Authority”) as its recommendations for the appointment of Specialist Chambers judges on the Roster of International Judges.
4. Recommendations from an independent selection panel empanelled in advance of this Law coming into force by the Appointing Authority for this purpose and in compliance with these principles may also be accepted. The Appointing Authority shall appoint the persons on the Selection Panel’s List as Specialist Chambers’ Judges and place them on the Roster for the duration of the existence of the Specialist Chambers.

#### **Article 29 - Vacancies in the Roster**

The number of judges on the Roster of International Judges shall be kept at a level to ensure the efficient and effective operation of the Specialist Chambers. In the event that the number of judges on the Roster decreases below this level, vacancies shall be filled by the same method as that laid down in Articles 26-28 for the appointment of Specialist Chambers Judges and their placement on the Roster.

#### **Article 30 - Powers and Status of the Judges**

1. A Specialist Chambers Judge shall have the authority and responsibility to perform judicial functions under this Law for proceedings before the Specialist Chambers to which he or she may be assigned and according to the modalities established by this Law.
3. An absolute majority of Specialist Chambers Judges shall be required for acts under this Law which require the decision of the Judges of the Specialist Chambers.
4. If assigned from the Roster to hear a pre-trial, trial, court of appeal or supreme court phase of a case or to hear a constitutional referral in accordance with Article 33, the judge shall be assigned for a term of four years or until the completion of the phase of the proceedings to which he or she is assigned, if that phase completes earlier.
5. The President of the Specialist Chambers shall be appointed for a renewable term of four years.
6. With the exception of the President of the Specialist Chambers, the judges serving at the Specialist Chambers shall enjoy equivalent status and conditions of service during the time they are engaged on the business of the Specialist Chambers.

7. The terms and conditions of service of the judges for each day on which they exercise their functions for the Specialist Chambers shall comply with Article 30(5) and international standards for independence.

### **Article 31 - Independence of the Judges**

1. The Specialist Chambers Judges shall be independent in the performance of their functions. They shall sit on Specialist Chambers matters in their individual capacity.
2. Whether selected from the Roster or not, the Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.
3. If assigned pursuant Article 30(3), Judges shall not engage in any other occupation of a professional nature.
5. No judge can be dismissed unless, the other Judges, by absolute majority, find that he or she has ceased to fulfil the requirements of Articles 27 and 31. Where any such question concerns an individual judge, that judge shall not take part in the decision.

### **Article 32 - Appointment and Functions of the President and Vice-President of the Specialist Chambers**

1. Based on the recommendation of the Selection Panel, the Appointing Authority shall appoint a President of the Specialist Chambers from among the Specialist Chambers' Judges to serve on a full-time basis. The President of the Specialist Chambers shall preside over any Supreme Court Panel of which he or she is a member.
2. Should the President of the Specialist Chambers' post become vacant, a new President shall be elected by an absolute majority of Judges of the Specialist Chambers from among the Specialist Chambers' Judges.
3. The President of the Specialist Chambers shall be responsible for the judicial administration of the Specialist Chambers and other functions conferred upon him or her by this Law.
4. Based on the recommendation of the Selection Panel, the Appointing Authority shall also appoint a Vice-President of the Specialist Chambers from among the Specialist Chambers' Judges. The Vice-President shall be activated from the Roster and shall assume the duties of the President of the Specialist Chambers in the latter's absence or inability to act. The Vice-President of the Specialist Chambers shall also be responsible for other functions conferred upon him or her by this Law. Should the Vice-President's post become vacant a new Vice-President of the Specialist Chambers shall be elected by an absolute majority of Judges of the Specialist Chambers from among the Specialist Chambers' Judges.

### **Article 33 - Assignment of the Judges and Composition of Panels**

1. The President of the Specialist Chambers shall assign judges from the Roster in accordance with the Rules on Assignment of Specialist Chambers Judges adopted under Article 25(3) as follows:
  - a. Upon the filing of an indictment pursuant to Article 38(4), a Judge to perform the functions of the Pre-Trial judge as laid down in Article 39. A Pre-Trial judge's assignment shall elapse 30 days after the Trial Panel is constituted, unless the Pre-

Trial Judge is involved in proceedings that are expected to last longer than 30 days, in which case, his or her assignment shall elapse when those proceedings are completed.

- b. A Trial Panel, including a reserve judge, or a single trial judge for cases under Article 25(2) (a single judge panel), as soon as any preliminary motions, including challenges to the form of the indictment and jurisdiction, have been decided and the case is ready for trial, but no later than 30 days before the date set for the start of trial, or when a matter has been remitted to a Trial Panel for retrial. The assignments of Trial Panel judge(s) shall elapse on the day a Court of Appeals Panel is constituted to hear an appeal against its judgement or the time period for appeal expires without an appeal being filed, unless the Trial Panel is concurrently involved in other proceedings, in which case the judges' assignments shall elapse when those proceedings are completed.
  - c. A Court of Appeals Panel, as soon as a motion for an interlocutory appeal in relation to a decision of a Pre-Trial Judge or a Trial Panel by right under Article 45(1) is filed, leave to appeal is granted for an interlocutory appeal under Article 45(2) or a notice of appeal in relation to a judgement of a Trial Panel is filed in accordance with Article 46. The assignments of Court of Appeals Panel judges shall elapse on the day after the Court of Appeal Panel renders its judgement, unless the Court of Appeals Panel is concurrently involved in other proceedings, in which case the judges' assignments shall elapse when those proceedings are completed.
  - d. A Supreme Court Panel, as soon as a notice of appeal from a second instance judgement by a Court of Appeals Panel or request for extra-ordinary legal remedies is filed in accordance with Articles 47 and 48 respectively. The assignment of the Supreme Court Panel judges shall elapse on the day after the Supreme Court Panel renders its judgement, unless the Supreme Court Panel is concurrently involved in other proceedings, in which case the judges' assignments shall elapse when these proceedings are completed.
2. Notwithstanding paragraph 1, the President of the Specialist Chambers may also assign a single judge from the Roster in accordance with the Rules on Assignment of Judges adopted under Article 25(3) to deal with a matter which, in the view of the President of the Specialist Chambers, requires the assignment of a judge other than the Pre-Trial Judge (a single judge panel). Assignments pursuant to this paragraph shall be temporary in nature and shall cease as soon as the matter triggering them has been disposed of.
  3. Upon a referral to the Specialist Chamber of the Constitutional Court, the President of the Specialist Chambers shall assign the three Judges of the Specialist Chamber of the Constitutional Court as a Constitutional Court Panel. Should one of these judges not be available for assignment, the President of the Specialist Chambers shall assign the reserve constitutional judge. The assignment of the Constitutional Court Panel judges shall elapse the day after the Constitutional Court Panel renders its judgement/opinion, unless the Constitutional Court Panel is concurrently involved in other proceedings, in which case the judges' assignments shall elapse when these proceedings are completed.

4. Having been assigned as Pre-Trial Judge or to a panel for a matter, a judge may not sit on another panel at a different phase of the same matter.
5. In the event of a violation of Article 15(2) of this Law while a judge is sitting on a matter, that judge is excluded from any resulting criminal proceedings arising from that violation. The Judge shall continue to sit in his original capacity in the original criminal proceedings.
6. The President of the Specialist Chambers shall be the Presiding Judge on any Supreme Court Panel upon which he or she sits. Where the President of the Specialist Chambers is disqualified from hearing a matter or has other valid reasons to not sit on a Supreme Court Panel in a given case, the President of the Specialist Chambers shall assign another judge in accordance with the Rules on Assignment of Specialist Chamber Judges adopted under Article 25(2) to replace him or her on that Panel. In that case, the judges on the Supreme Court Panel shall elect a Presiding Judge from amongst their number.
7. When a Trial Panel or Court of Appeals Panel is assigned, the judges on that Panel shall elect a Presiding Judge from amongst their number.
8. The Law on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo, Law No. 03/L-053, the Law on Courts, Law No. 03/L-199 and any associated guidelines shall not apply to cases before the Specialist Chambers. The Law on the Constitutional Court, Law No. 03/L-121 and the Rules of Procedure of the Constitutional Court of the Republic of Kosovo shall not apply to constitutional referrals before the Specialist Chamber of the Constitutional Court.

#### **Article 34 - The Registry**

1. The Registry shall be responsible for the administration and servicing of the Specialist Chambers and all necessary and affiliated functions.
2. The Registry shall consist of a Registrar and other staff as may be required.
3. The Registrar shall be responsible for the administration of the Specialist Chambers and may issue any necessary internal rules and instruction for that purpose. He or she shall be independent in the performance of his or her functions.
4. The Registrar shall be appointed by the Appointing Authority after consideration of suitably qualified applicants. The Registrar shall be of high moral character and highly competent in the administration of courts.
5. The Registrar shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be at a comparable level as those of the President of the Specialist Chambers and the Specialist Prosecutor.
6. The Registry shall include within it a Victims' Participation Office, which shall administer the system of Victim Participation permitted under Article 22 and the Rules of Procedure and Evidence, a list of Victims' Counsel, as well as a system of payment for victim representation, and provide assistance and advice in relation to the criminal proceedings to victims who are participating in the proceedings before the Specialist Chambers.
7. The Registry shall include within it a Defence Office, which will administer, on behalf of the Registrar, a list of Defence Counsel eligible to practice before the Specialist Chambers ("Specialist Counsel"), as well as a system of legal aid for representation of indigent or

partially indigent accused before the Specialist Chambers. The Law on the Bar, Law No. 04/L-193, and the Law on Free Legal Aid, Law No. 04/L-017, and any associated provisions, rules, guidelines or tariffs shall not apply to the Specialist Chambers.

8. The Registry shall include within it a Witness Protection and Support Office, which shall implement, on behalf of the Registrar, in consultation where appropriate with Specialist Prosecutor's Office, Specialist Counsel or Victims' Counsel, court ordered or otherwise necessary protective measures and security arrangements, counselling and other appropriate assistance for witnesses and others who are at risk on account of testimony given by witnesses.
9. The Registry shall include within it an Ombudsperson's Office, which shall perform the function of the Ombudsperson of the Specialist Chambers with exclusive responsibility for the Specialist Chambers and the Specialist Prosecutor's Office under Amendment nr 24 of the Constitution. The Law on the Ombudsman, Law No.03/L-195, shall not apply to the work of the Specialist Chambers and the Specialist Prosecutor's Office. The Ombudsperson shall be appointed by the Appointing Authority after consideration of suitably qualified applicants. The Ombudsperson shall be of high moral character, highly competent in the area of human rights and freedoms. The role and function of the Ombudsperson of the Specialist Chambers shall be provided for in the Rules of Procedure and Evidence. The Ombudsperson of the Specialist Chambers may make recommendations to the President of the Specialist Chambers or Specialist Prosecutor's Office under Article 135(3) of the Constitution and may make referrals to the Constitutional Court in accordance with Articles 113(2) and 135(4) of the Constitution and Article 49 of this Law.
10. The Registry shall include officers of the court and may also rely on the assistance of police in Kosovo, to carry out orders or serve documents on behalf of the Specialist Chambers. The Specialist Chambers officers of the court shall have the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law in accordance with the modalities established by this Law.
11. The Registry shall include a Data Protection Officer who shall monitor compliance with Article 35(4) of the Constitution. The Data Protection Officer shall also be guided by EU standards on personal data protection.
12. The Registrar shall also be responsible for managing and administering the detention function and facilities for the Specialist Chambers in line with international standards and this Law. The Specialist Chambers correction/detention officers shall have the authority and responsibility to exercise powers given to Kosovo Correctional Officers under Kosovo law and, in accordance with the modalities established by this Law.

### **Article 35 - The Specialist Prosecutor**

1. The Specialist Prosecutor shall be responsible for the investigation and prosecution of persons responsible for the crimes falling within the jurisdiction of the Specialist Chambers and shall be independent in the performance of his or her functions.
2. The Specialist Prosecutor and other Prosecutors in the Specialist Prosecutor's Office shall have the authority and responsibility to perform the functions of his or her office, including

the authority to conduct criminal investigations and to take responsibility for new or pending criminal investigations or proceedings within the subject matter jurisdiction of the Specialist Chambers and in accordance to the modalities established by this Law. These authorities and responsibilities include:

- a. requesting the presence of and questioning suspects, victims and witnesses, and if necessary summoning these persons;
  - b. collecting and examining information and evidence;
  - c. conducting on-site investigations;
  - d. seeking the co-operation of any State or inter-governmental, international or national organisation in accordance with its respective competence and/or mandate, and entering into any arrangements or agreements as may be necessary in that regard;
  - e. without prejudice to the rights of the accused under Article 21(6), agreeing not to disclose at any stage of the proceedings information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents;
  - f. taking necessary measures, or requesting that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence;
  - g. taking decisions on the initiation, continuation or termination of criminal proceedings within the subject matter jurisdiction of the Specialist Chambers;
  - h. ordering the arrest of a person during the investigative stage for a period of no more than forty eight (48) hours on grounds set out at Article 41(6) and in compliance with Article 41 generally, other relevant provisions of this Law and the Rules of Procedure and Evidence;
  - i. filing indictments and pursuing them through all stages before the Specialist Chambers, including responding to any applications at the Specialist Chamber of the Constitutional Court;
  - j. exercising all appellate rights contained within this Law;
  - k. co-operating with police, the Registry, Specialist Chambers and Panels, other Kosovo institutions and entities, states, international organisations and other entities; and
  - l. undertaking all other necessary actions required of the Specialist Prosecutor under this Law.
3. The police within the Specialist Prosecutor's Office shall have the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law in accordance with the modalities established by this Law, including but not limited to those at Article 70(3) of the Criminal Procedure Code, Law No. 04/L-123.
  4. In carrying out these tasks, the Specialist Prosecutor and his or her staff shall, as appropriate, be assisted by Kosovo authorities, entities and persons, and such States and entities as agree to co-operate and assist.



5. The Specialist Prosecutor's Office shall act independently from the Specialist Chambers and the other prosecution authorities in Kosovo. The Specialist Prosecutor and all members of the Specialist Prosecutor's Office shall not seek or receive instructions from any Government or from any other source. The Specialist Prosecutor shall not engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his/her independence. He or she shall not engage in any other occupation of a professional nature.
6. Upon the establishment of the Specialist Prosecutor's Office, the Lead Prosecutor of SITF shall be appointed by the Appointing Authority as the Specialist Prosecutor.
7. Should the Specialist Prosecutor vacate his or her position at any time, a replacement shall be appointed by the Appointing Authority after consideration of suitably qualified applicants. The Specialist Prosecutor shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases.
8. The Specialist Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Specialist Prosecutor shall be at a comparable level as those of the President of the Specialist Chambers and Registrar.
9. The Specialist Prosecutor's Office shall be composed of the Specialist Prosecutor, other Prosecutors, police and such other qualified staff as may be required. Prosecutors and other office holders shall be appointed by the Appointing Authority upon the recommendation of the Specialist Prosecutor.
10. In order to ensure continuity of the investigation, the SITF shall be transferred from its current position within the Special Prosecutor's Office of the Republic of Kosovo (SPRK) into the Specialist Prosecutor's Office. All recognition, privileges, co-operation, agreements, and arrangements with the SITF shall continue after this transfer and shall apply to the Specialist Prosecutor's Office.
11. The Specialist Prosecutor's Office shall be seated in the Host State and may exercise its power and functions in Kosovo, the Host State and any other state which agrees.

#### **Article 36 - Solemn Declaration**

Before taking up their duties under this Law, the President of the Specialist Chambers, Judges, Specialist Prosecutor and Registrar shall each make a solemn declaration/undertaking that they will exercise their functions independently, impartially and conscientiously.

### **CHAPTER VI - CONDUCT OF PROCEEDINGS BEFORE THE SPECIALIST CHAMBERS**

#### **Article 37 - Evidence Collected Prior to Establishment of the Specialist Chambers**

1. Evidence collected in criminal proceedings or investigations within the subject matter jurisdiction of the Specialist Chambers prior to its establishment by any national or international law enforcement or criminal investigation authority or agency including the Kosovo State Prosecutor, any police authority in Kosovo, the ICTY, EULEX Kosovo or by the SITF may be admissible before the Specialist Chambers. Its admissibility shall be decided by the as-

signed panels pursuant to international standards on the collection of evidence and Article 22 of the Constitution. The weight to be given to any such evidence shall be determined by the assigned panels.

2. In principle, all evidence should be produced in the presence of the accused with a view to adversarial argument. Exceptions may be provided in the Rules of Procedure and Evidence adopted pursuant to Article 19 in compliance with human rights standards.
3. Subject to judicial determination of admissibility and weight in paragraphs 1 and 2,
  - a. transcripts of testimony of witnesses given before the ICTY and records of depositions of witnesses made before the ICTY in accordance with Rule 71 of the ICTY Rules of Procedure and Evidence may be admissible before the Specialist Chambers provided that the testimony or deposition is relevant to a fact at issue in the proceedings before the Specialist Chambers;
  - b. transcripts of testimony of witnesses given before a Kosovo court, including pre-trial testimony or testimony preserved as part of a Special Investigative Opportunity under any criminal procedure code applicable in Kosovo at the relevant time, may be admissible before the Specialist Chambers, regardless of whether the judges sitting on the Panel heard the original testimony;
  - c. original documents, certified copies, certified electronic copies and copies authenticated as unaltered in comparison to their originals and forensic evidence collected by any authority listed in paragraph 1 may be admissible in proceedings before the Specialist Chambers; and
  - d. the report or statement of an expert witness admitted into evidence at the ICTY or the testimony of an expert before the ICTY may be admissible before the Specialist Chambers, whether or not the expert attends to give oral evidence before the Specialist Chambers.
4. A Trial Panel shall not require proof of facts which are common knowledge but shall take judicial notice thereof.
5. When deciding on the relevance or admissibility of evidence collected by a State or State authorities other than Kosovo or its authorities, the Specialist Chambers shall not rule on the application of another State's national law.

### **Article 38 - Investigation and Preparation of Indictment**

1. The Specialist Prosecutor, other prosecutors and police in the Specialist Prosecutor's Office shall have the power to conduct investigations against persons criminally liable for criminal offences within the jurisdiction of the Specialist Chambers.
2. The Specialist Prosecutor, other prosecutors and police from the Specialist Prosecutor's Office shall have the power to question potential suspects, victims and witnesses, to collect evidence, to conduct on-site investigations and to order the arrest of a person for no more than 48 hours under Article 41. In carrying out these tasks, the Specialist Prosecutor may, as appropriate, seek the assistance of state authorities under Articles 53-55 and if necessary through arrangements made under Article 4.

3. If questioned, the suspect shall not be compelled to incriminate himself or herself or to confess guilt. Nor shall he or she be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman and degrading treatment or punishment. He or she shall have the following rights of which he or she shall be informed prior to questioning, in a language he or she speaks and understands:
  - a. The right to be informed that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Specialist Chambers;
  - b. The right to remain silent, without such silence being considered in the determination of guilt or innocence, and to be cautioned that any statement he or she makes shall be recorded and may be used in evidence;
  - c. The right to be assisted by Specialist Counsel of his or her own choosing and to be questioned in the presence of Specialist Counsel, including the right to have legal assistance provided by the Specialist Chambers without payment by him or her where he or she does not have sufficient means to pay for it;
  - d. The right to have the free assistance of an interpreter if he or she cannot understand or speak the language used for questioning.
4. Upon a determination that a well-grounded suspicion that a person is criminally liable for any offence within the jurisdiction of the Specialist Chambers, the Specialist Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the person is charged under this Law. The indictment shall be filed with the Specialist Chambers together with supporting material.

#### **Article 39 - The Powers and Functions of the Pre-Trial Judge**

1. The Pre-Trial Judge shall have the power to review an indictment, rule on any preliminary motions, including challenges to the indictment and jurisdiction, and make any necessary orders or decisions to ensure the case is prepared properly and expeditiously for trial.
2. The Pre-Trial Judge shall review the indictment. If satisfied that a well-grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If he or she is not so satisfied, the indictment or charges therein shall be dismissed. The Specialist Prosecutor shall not be precluded from subsequently requesting the confirmation of the indictment if the request is supported by additional evidence.
3. The Pre-Trial Judge may, at the request of the Specialist Prosecutor, issue such orders and warrants for the arrest and transfer of persons to the Specialist Chambers and any other orders as may be required for the conduct of the investigation and for the preparation of a fair and expeditious trial, including orders pertaining to a special investigative opportunity and special investigative measures.
4. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the Specialist Chambers, be taken into custody (if not already detained), immediately informed of the charges against him or her and transferred to the Specialist Chambers. If no arrest warrant has been issued and if at liberty, the accused shall be summonsed to appear in person or by video-link at an initial hearing before the Specialist Chambers.

5. At the initial hearing, the Pre-Trial Judge shall read the indictment, satisfy him or herself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Pre-Trial Judge shall ensure that the material supporting the indictment has been or is being provided to the accused in a language the accused understands.
6. Hearings shall be public unless the Pre-Trial Judge decides to close the proceedings in accordance with the Rules of Procedure and Evidence.
7. Consistent with Article 20, the Pre-Trial Judge may determine the working language or languages to be used at any given proceedings, including for the trial phase in order to assist with efficient preparation.
8. After the indictment is confirmed but before the trial has begun, the Specialist Prosecutor may, with the permission of the Pre-Trial Judge (or the Trial Panel if seized) having heard the parties, amend the indictment. If the Specialist Prosecutor seeks to add new charges or to substitute more serious charges, the Pre-Trial Judge shall review such charges and hold an initial hearing in accordance with this Article.
9. Upon application from or notice to the parties, the Pre-Trial Judge (or Trial Panel if seized) may direct that there be joinder or severance in respect of charges against more than one accused.
10. The Pre-Trial Judge may, at the request of any person arrested or appearing pursuant to a summons, issue such orders as may be necessary to assist the person in preparation of his or her defence.
11. The Pre-Trial Judge may, where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons and national security information or the preservation of assets which may be subject to a forfeiture under this Law and the Rules of Procedure and Evidence, including temporary freezing orders, temporary confiscation orders or other temporary measures.
12. The Pre-Trial Judge may, where necessary, seek co-operation of States or inter-governmental, international or national organisations as may be necessary for any of these purposes.
13. The Pre-Trial Judge may, where necessary, at the request of a party or Victims Counsel or on his or her own motion, issue any other order as may be necessary for the preparation of a fair and expeditious trial.

#### **Article 40 - The Powers and Functions of the Trial Panel**

1. After the initial hearing and once any preliminary motions, including challenges to the form of the indictment and jurisdiction, have been resolved, the Pre-trial Judge determines that the case is ready for trial and the President of the Specialist Chambers shall, in accordance with the Rules on Assignment of Specialist Chambers Judges adopted under Article 25(2), constitute a Trial Panel which shall be responsible for the conduct of the trial proceedings.
2. The Trial Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for

the rights of the accused and due regard for the protection of victims and witnesses. The Trial Panel, having heard the parties, may adopt such procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings. It may give directions for the conduct of fair and impartial proceedings and in accordance with the Rules of Procedure and Evidence.

3. Consistent with Article 20, if not already determined by the Pre-Trial Judge, the Trial Panel shall determine the working language or languages to be used at the trial. The Trial Panel may also vary a Pre-Trial Judge's determination made under Article 39(7).
4. The hearings shall be public unless the Trial Panel decides to close the proceedings in accordance with the Rules of Procedure and Evidence.
5. In co-ordination with the Registrar, the Trial Panel shall ensure a complete and accurate record of the proceedings is made, maintained and preserved.
6. Prior to a trial or during the course of a trial, the Trial Panel may, as necessary:
  - a. Exercise any functions or powers of the Pre-Trial Judge referred to in Article 39;
  - b. Require parties to meet disclosure obligations as set out in the Rules of Procedure and Evidence;
  - c. Require the attendance and testimony of witnesses and production of documents and other evidence, if necessary, by obtaining the assistance of States as provided in this Law;
  - d. Provide for the protection of confidential information;
  - e. Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
  - f. Provide for the protection of the accused, witnesses and victims;
  - g. Take any necessary steps to maintain order in the course of a hearing; and
  - h. Rule on any other matters, including the admissibility of evidence.
7. After commencement of the trial, the Specialist Prosecutor may, with the Trial Panel's consent, withdraw charges against the accused. If in the course of the trial, the evidence presented indicates that the factual situation as described in the indictment has changed, the Specialist Prosecutor may, with the permission of the Trial Panel having heard the accused, amend the indictment accordingly including adding additional charges or substituting more serious charges. In such circumstances, the accused may request an adjournment of the trial to allow reasonable time to prepare a defence in relation to the amendment. If the indictment has been substantially modified or extended, the Trial Panel shall adjourn the trial to allow for such preparation.

#### **Article 41 - Detention**

1. No one shall be deprived of his or her liberty by or on behalf of the Specialist Chambers or Specialist Prosecutor, save in such circumstances and in accordance with such proceedings as are prescribed by this Law and the protections enshrined in Article 29 of the Constitution.
2. Any person deprived of his or her liberty by arrest or detention shall be entitled under the procedures provided by this Law and under the Rules of Procedure and Evidence to chal-

lenge the lawfulness of his or her arrest and the conditions of detention, and to have such challenge decided speedily by the Specialist Chambers and his or her release ordered if the detention is not lawful.

3. Any person who is deprived of his or her liberty without an order from the Specialist Chambers shall be brought within forty-eight (48) hours in person before a Specialist Chambers Judge who shall decide on his or her detention or release not later than forty-eight (48) hours from the moment the detained person was brought before the court.
4. Any person deprived of liberty by or on behalf of the Specialist Chambers or the Specialist Prosecutor's Office shall be informed promptly, in a language which he or she understands, of:
  - a. the reasons for his or her arrest, to be followed by written reasons as soon as possible;
  - b. the right to legal assistance through a Specialist Chambers Counsel of his or her own choice, and to have Specialist Counsel assigned to him or her without payment by him or her in any such case if he or she does not have sufficient means to pay for it; and
  - c. the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest.
5. A person deprived of liberty by or on behalf of the Specialist Chambers shall be transferred by way of travel specified in an order to the Specialist Chambers and brought before a Specialist Chambers Judge without delay and shall be entitled to a trial within a reasonable time or to release pending trial. The right of challenge contained in paragraph 2 of this Article shall also apply to a transfer order under this paragraph.
6. The Specialist Chambers or the Specialist Prosecutor shall only order the arrest and detention of a person when:
  - a. there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the Specialist Chambers; and
  - b. there are articulable grounds to believe that:
    - i. there is a risk of flight;
    - ii. he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or
    - iii. the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

7. Persons subject to a detention order by the Specialist Chambers may be detained in detention facilities overseen by the Specialist Chambers and managed by the Registry. If proceedings are relocated in part or whole to the Host State under Article 3, these detention facilities shall be near the seat of the Specialist Chambers in the Host State.

8. The Specialist Chambers Detention Facilities shall meet relevant international standards and shall be inspected and monitored by the ICRC or such other international organisation as agrees to inspect and monitor the facilities.

9. The Registrar shall adopt Rules of Detention, Complaints and Disciplinary procedures for the Detention Facilities in line with international standards and guided by Articles 194-202 of the Kosovo Criminal Procedure Code, Law No. 04/L-123.

10. Until a judgement is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against such a ruling to a Court of Appeals Panel.

11. If released, any person detained in the Specialist Chambers' detention facilities in the Host State shall not be released in the Host State. Instead they shall be transported to and released in the country where they were originally detained on behalf of the Specialist Chambers or in Kosovo, or if they do not have rights of residency in either of those places, in a country where they are ordinarily and/or lawfully resident, or to another State that agrees to accept them.

12. In addition to detention on remand, the following measures may be ordered by the Specialist Chambers to ensure the presence of the accused (including by video-conference "VTC") during proceedings, to prevent reoffending or to ensure successful conduct of criminal proceedings:

- a. Summons;
- b. Order for arrest;
- c. Bail with release in Kosovo, if the accused consents to attend proceedings by VTC;
- d. House Detention in Kosovo, if the accused consents to attend proceedings by VTC;
- e. Promise not to leave his or her place of current residence in Kosovo, if the accused consents to attend proceedings by VTC;
- f. Prohibition on approaching specific places or persons;
- g. Attendance at police station or other venue in Kosovo, if the accused consents to attend proceedings by VTC; and
- h. Diversion.

#### **Article 42–Witness Summons**

1. The Specialist Chambers or the Specialist Prosecutor may summons a witness if there is a likelihood that he or she may have information about a crime, the perpetrator or important circumstances relevant to the criminal proceedings.
2. A Victim may be examined as a witness.
3. Any person present in Kosovo summonsed as a witness has a duty to respond to the summons and to testify unless otherwise provided for in this Law or the Specialist Chambers' Rules of Procedure and Evidence.
4. Witnesses travelling to the seat of the Specialist Chambers will be provided with travel, accommodation and *per diem* expenses for their travel as necessary.
5. When requested by the Specialist Chambers, other Kosovo Courts and officials shall assist in the service or enforcement of witness summonses issued by the Specialist Chambers. Witness protection, security and confidentiality shall be considered and addressed in advance of any such request.
6. The Specialist Chambers may enter into arrangements under Articles 4 and 55, or request assistance under Article 55 from other states in which witnesses are present in order to secure the attendance of those witnesses before the Specialist Chambers.
7. If a witness who has been duly summonsed fails to appear or does not justify his or her failure to appear or if he or she leave the place where he or she should be examined without permission or a valid reason, such witness may be compelled to appear and may be fined up to two hundred and fifty (250) EUR for each time he or she failed to appear.
8. If a witness appears when summonsed but after being warned of the consequences refuses to give testimony without legal justification, he or she may be fined up to two hundred fifty (250) EUR. If having been fined the witness refuses to testify, he or she may be imprisoned. This imprisonment shall last for as long as the witness refuses to testify or until his or her testimony becomes unnecessary, or until criminal proceedings terminate, but shall not exceed one (1) month.
9. An appeal against a ruling imposing a punishment of a fine or imprisonment pursuant to this Article shall be decided by a Court of Appeals Panel. An appeal against the ruling on imprisonment shall not stay the execution of the ruling. Punishment under paragraphs 7 and 8 of this Article shall be imposed by a Judge.

#### **Article 43 - Judgement**

1. The Trial Panel shall render and announce judgements and impose punishment on persons adjudged guilty of crimes falling under the jurisdiction of the Specialist Chambers.
2. The judgement shall be rendered by a majority of the judges of the Trial Panel, and shall be announced by the Trial Panel in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.



#### **Article 44–Punishments**

1. The Specialist Chambers may impose upon a convicted person imprisonment up to a maximum term of life-long imprisonment.
2. In considering the punishment to be imposed on a person adjudged guilty of an international crime under this Law, the Specialist Chambers shall take into account,
  - a. the sentencing range for the crime provided under Kosovo Law at the time of commission,
  - b. any subsequent more lenient sentencing range for the crime provided in Kosovo Law, and
  - c. Article 7(2) of the European Convention for Human Rights and Fundamental Freedoms and Article 15(2) of International Covenant for Civil and Political Rights as incorporated and protected by Articles 22(2), 22(3) and 33(1) of the Constitution of the Republic of Kosovo, and the extent to which the punishment of any act or omission which was criminal according to general principles of law recognised by civilised nations would be prejudiced by the application of paragraph 2(a) and (b).
3. In considering the punishment to be imposed on a person adjudged guilty of a domestic crime under Article 15(1), the Specialist Chambers shall take into account,
  - a. the sentencing range for the crime provided under Kosovo Law at the time of commission,
  - b. any subsequent more lenient sentencing range for the crime provided in Kosovo Law.
4. The punishment imposed on persons adjudged guilty of crimes under Article 15(2) shall be in line with the punishments for those crimes set out in the Criminal Code of Kosovo 2012, Law No. 04/L-082.
5. In imposing punishment, the Specialist Chambers shall take into account aggravating and mitigating factors, including the gravity of the crime and its consequences and the individual circumstances of the convicted person.
6. In addition to imprisonment, the Specialist Chambers may order only the convicted person to make restitution or pay compensation to a Victim or to Victims collectively, or may order the forfeiture of property, proceeds and any assets used for or deriving from the commission of the crime and their return to their rightful owner or sale and share between Victims under Article 22 (“a Reparation Order”).
7. Where a person adjudged guilty by the Specialist Chambers is also subject to a sentence of imprisonment imposed by another Kosovo court, any sentence of imprisonment imposed by the Specialist Chambers shall be deemed to run concurrently with the prior sentence unless ordered otherwise.

#### **Article 45 - Interlocutory Appeals**

1. A Court of Appeals Panel shall hear interlocutory appeals from an accused or from the Specialist Prosecutor in accordance with this Law and the Rules of Procedure and Evidence.

2. Interlocutory appeals shall lie as of right from decisions or orders relating to detention on remand or any preliminary motion challenging the jurisdiction of the Specialist Chambers. Any other interlocutory appeal must be granted leave to appeal through certification by the Pre-Trial Judge or Trial Panel on the basis that it involves an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of the Pre-Trial Judge or Trial Panel, an immediate resolution by a Court of Appeals Panel may materially advance proceedings.

#### **Article 46 - Second Instance Appellate Proceedings**

1. A Court of Appeals Panel of the Specialist Chambers shall hear appeals against judgement by the Trial Panel from convicted persons or from the Specialist Prosecutor on the following grounds:
  - a. an error on a question of law invalidating the judgement;
  - b. an error of fact which has occasioned a miscarriage of justice; or
  - c. an error in sentencing.
2. An appeal is not a trial *de novo*.
3. The Court of Appeals Panel may affirm, reverse or revise judgements by the Trial Panel and take any other appropriate action.
4. When the Court of Appeals Panel determines that a Trial Panel has made an error of law in a judgement arising from the application of an incorrect legal standard, the Court of Appeals Chamber shall articulate the correct legal standard and apply that standard to the evidence contained in the trial record to determine whether to sustain, enter or overturn a finding of guilty on appeal. Alternatively, if the Trial Panel is available and could more efficiently address the matter, the Court of Appeals Panel may return the case to the Trial Panel to review its findings and the evidence based on the correct legal standard.
5. In reviewing the factual findings of the Trial Panel, the Court of Appeals Panel shall only substitute its own findings for that of the Trial Panel where the evidence relied on by the Trial Panel could not have been accepted by any reasonable trier of fact or where the evaluation of the evidence is wholly erroneous.
6. When the Court of Appeals Panel overturns a Trial Panel's finding of guilt based on one mode of liability and the Trial Panel has failed to make findings on alternative modes of liability, the Court of Appeals Panel shall consider the evidence contained in the trial record, as well as any other Trial Panel findings, to determine whether to enter convictions under an alternative mode of liability. Alternatively, if the Trial Panel is available and could more efficiently address the matter, the Court of Appeals Panel may return the case to the Trial Panel to review its findings and the evidence to determine whether to enter findings of guilt under an alternative mode of liability.

7. A second instance judgement shall be rendered by a majority of the judges of the Court of Appeals Panel, and shall be announced by the Court of Appeals Panel in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
8. Unless the Trial or Court of Appeals Panel orders otherwise, a convicted person shall remain in custody pending an appeal.
9. The Court of Appeals may also hear appeals against judgement by a Trial Panel by Victims' Counsel but only in respect of a Panel's decision on Victim Status or a Reparation Order. During appellate proceedings, Victim Claimants shall be collectively represented as one group by Victims' Counsel assigned by the Registry.

#### **Article 47 - Third Instance Appellate Proceedings**

1. A Supreme Court Panel of the Specialist Chambers shall hear appeals against judgement of a Court of Appeals Panel if the Court of Appeals Panel has modified an acquittal and has instead entered a conviction or when the criminal sanction of life-long imprisonment has been imposed by either the Trial Panel or the Court of Appeal Panel.
2. The provisions in Article 46 shall apply *mutatis mutandis* to the appeals procedure before the Supreme Court Panel of the Specialist Chambers.

#### **Article 48 - Extra-ordinary Legal Remedy**

1. A party may request the re-opening of criminal proceedings . Such a request shall be filed with the Specialist Chambers Supreme Court or an Agreed Arrangement if one is in place for that purpose in accordance with Article 60 (Residual Mechanism).
2. Criminal proceedings terminated by a final judgment may only be reopened if:
  - a. it is proven that the judgment rests on a forged document or a false statement of a witness, expert witness or interpreter;
  - b. it is proven that the judgment ensued from a criminal offence committed by a judge or a person who undertook investigative actions;
  - c. new facts are discovered or new evidence is produced which was not known at the time of the proceedings before the Trial Panel or the Court of Appeals Panel and which, alone or in connection with previous evidence, would have been a decisive factor in reaching a decision and would have fundamentally altered the balance of evidence in the case, leading to a miscarriage of justice were it to be ignored; or
  - d. a person was tried more than once for the same offence or several persons were convicted of the same offence which could have been committed only by a single person or only by some of them.
3. In relation to paragraphs 2(a) or (b) of this Article, criminal proceedings may be reopened only in favour of the accused, except that if it is proven that the circumstances have been a result of a criminal offence committed by the accused or someone acting on his/her behalf or in his/her interest against a witness, expert witness, interpreter, prosecutor, judge, other

official of the Specialist Chambers or Specialist Prosecutor's Office or those close to such persons, in which case criminal proceedings may be reopened against the accused.

4. After a preliminary examination, the Supreme Court Panel, or *ad hoc* Panel assigned by an Agreed Arrangement, may,
  - a. Dismiss the request,
  - b. Re-open and criminal proceedings and
    - i. Reconvene the Trial Panel, if available, or
    - ii. If appropriate, determine the matter itself.
5. A party may request the extra-ordinary mitigation of punishment at any time during the period being served in imprisonment, but not during the last six (6) months of imprisonment. Such a request shall be filed with the Specialist Chambers Supreme Court or an Agreed Arrangement if one is in place for that purpose in accordance with Article 60 (Residual Mechanism).
6. A party may request protection of legality within three (3) months of the final judgment or final ruling against which protection of legality is sought. During criminal proceedings which have not been completed in final form, a request for protection of legality may only be filed against final decisions ordering or extending detention on remand. A request for protection of legality shall be filed with the Specialist Chambers Supreme Court or an Agreed Arrangement if one is in place for that purpose in accordance with Article 60 (Residual Mechanism).
7. A protection of legality request must allege
  - a. a violation of the criminal law contained within this Law; or
  - b. a substantial violation of the procedures set out in this Law and in the Rules of Procedure and Evidence.
8. A request for an extra-ordinary legal remedy under this Article may be filed on the basis of rights available under this Law which are protected under the Constitution or the European Convention on Human Rights and Fundamental Freedoms.

#### **Article 49 - Constitutional Court Petition**

1. The Specialist Chamber of the Constitutional Court shall be the final authority for the interpretation of the Constitution as it relates to the subject matter jurisdiction and work of the Specialist Chambers and the Specialist Prosecutor's Office.
2. The Specialist Chamber of the Constitutional Court shall have jurisdiction over any referral to the Constitutional Court made by persons authorised to make referrals under Article 113 of the Constitution which relates to or directly impacts the work, decisions, orders or judgements of the Specialist Chambers or the work of the Specialist Prosecutor's Office.

3. In accordance with Article 113(7) of the Constitution, individuals, including the accused and victims, are authorised to make referrals to the Specialist Chamber of the Constitutional Court in relation to alleged violations by the Specialist Chambers or Specialist Prosecutor's Office of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all remedies provided by law.
4. In accordance with Article 113(8) of the Constitution, a pre-trial judge or panel of the Specialist Chambers may refer questions of constitutional compatibility of a law to the Specialist Chamber of the Constitutional Court when the question arises in a judicial proceeding, the judge or panel is uncertain as to the compatibility of the contested law with the Constitution and their decision in that case depends on the compatibility of the law at issue.
5. In accordance with Amendment nr 24 and Article 135(4) of the Constitution, the Ombudsperson of the Specialist Chambers appointed under Article 34(9) of this Law, and the Ombudsperson of the Republic of Kosovo, may make referrals under Article 113(2) to the Specialist Chamber of the Constitutional Court.
6. The Judges of the Specialist Chamber of the Constitutional Court shall determine the internal organisation, decision-making processes and other organisational issues for the Specialist Chamber of the Constitutional Court in accordance with Amendment nr 24 of the Constitution and this Law. The Rules of Procedure for the Specialist Chamber of the Constitutional Court shall be included in the Rules of Procedure and Evidence under Article 19.

#### **Article 50 - Enforcement of Punishment of Imprisonment**

1. Imprisonment shall be served in a State designated by the President of the Specialist Chambers from among States that have indicated their willingness to accept persons convicted by the Specialist Chambers for the duration of the sentence imposed, pursuant to arrangements concluded by the Specialist Chambers.
2. Conditions of imprisonment shall be governed by the law of the State of enforcement subject to the supervision of the Specialist Chambers or an Agreed Arrangement if in place for that purpose in accordance with Article 60 (Residual Mechanism) of this Law. Only the Specialist Chambers can alter the duration of the sentence under Article 51 of this Law on pardon and commutation of sentence.

#### **Article 51 - Pardon or Commutation of Sentences**

1. The judgements of the Specialist Chambers shall not be subject to any pardon granted under Article 84(29) of the Constitution, nor shall any person convicted by the Specialist Chambers be eligible for pardon, regardless of where their sentence is served.
2. The length of sentence may only be modified, altered or commuted by the Specialist Chambers or Agreed Arrangement if in place for that purpose in accordance with Article 60 (Residual Mechanism). The Specialist Chambers, or Agreed Arrangement accordingly, shall request notification from the State concerned if, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for commutation of

sentence. There shall only be commutation of sentence if the President of the Specialist Chambers, in consultation with the Specialist Chambers Judges, so decides on the basis of the interests of justice and the general principles of law.

3. A convicted person serving his or her sentence may make an application to the Specialist Chambers should the conditions of detention fail to comply with international standards or protections under the Constitution. The President of the Specialist Chambers shall appoint a single judge to hear such an application under Article 33(2) in accordance the Rules on Assignment of Specialist Chambers Judges adopted under Article 25(2).

## **CHAPTER VII - INTERACTION WITH KOSOVO COURTS AND ENTITIES**

### **Article 52 - The Status, Privileges and Immunities of the Specialist Chambers in Kosovo**

1. The status, privileges and immunities granted to the offices and personnel of EULEX Kosovo under the Law on the Status, Immunities and Privileges of Diplomatic and Consular Mission and Personnel in Republic of Kosovo and of the International Military Personnel, Law No. 03/L-033 shall be extended to the premises, property, papers and personnel of the Specialist Chambers and Specialist Prosecutor's Office in Kosovo. In addition, counsel, experts, witnesses or any other person performing functions as part of the work of the Specialist Chambers and Specialist Prosecutor's Office shall be extended the same status, privileges and immunities.
2. The premises, property, funds, assets, archives and records of the Specialist Chambers, the Registry and the Specialist Prosecutor's Office, wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation, public access or any other form of interference whether by executive, administrative, judicial or legislative action.
3. The Specialist Chambers, its principals, judges and staff shall not be subjected by the government or authorities of Kosovo or any other entity or person in Kosovo to any measure or action that may impact the free and independent exercise of their functions under this Law.

### **Article 53 - Co-operation and Judicial Assistance**

1. Subject to the rights of the accused provided for in Article 21, all entities and persons in Kosovo shall co-operate with the Specialist Chambers and Specialist Prosecutor's Office and shall comply without undue delay with any request for assistance or an order or decision issued by Specialist Chambers or Specialist Prosecutor's Office, including, but not limited to, those concerning:
  - a. the identification and location of persons or items;
  - b. the taking of testimony, including taking testimony under oath, and the production of evidence, including expert opinions and reports;
  - c. the questioning of any persons being investigated or prosecuted;
  - d. facilitating the questioning and appearance of persons as witnesses or experts before the Specialist Chambers;
  - e. the protection of victims, potential witnesses and the families of either;

- f. the examination of places or sites, including crime scene investigations, and the exhumation and examination of grave sites;
  - g. the provision of records and documents, including official records and documents;
  - h. the preservation of evidence;
  - i. the service of documents, including judicial documents;
  - j. the arrest or detention of persons;
  - k. the surrender or transfer of persons to the Specialist Chambers;
  - l. the identification, tracing and freezing or seizure of proceeds, property and assets or instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of *bona fide* third parties; and
  - m. any other type of assistance which is not prohibited by law, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Specialist Chambers.
2. An order by the Specialist Chambers shall have the same force and effect as an order issued by any other Kosovo court or judge. Every natural person, corporation, authority or other entity in Kosovo shall comply with any order, decision or request issued by the Specialist Chambers. Any entity or person executing an order of the Specialist Chambers shall comply with any direction specified in that order.
  3. A warrant of arrest issued by the Specialist Chambers shall have the same force and effect as a warrant of arrest issued by any other Kosovo court. Where such a warrant of arrest is executed, the arresting police officer shall transfer the person arrested into the custody of the Specialist Chambers. Notwithstanding formal delivery of a person into the custody of the Specialist Chambers, that person may be detained in a Kosovo detention facility on behalf of the Specialist Chambers if so requested, or if so required until transfer to the Specialist Chambers Detention Facilities can be effected.
  4. When the Specialist Chambers orders the forfeiture of property, proceeds or assets, they shall be delivered to the Specialist Chambers without delay, without prejudice to the rights of *bona fide* third parties, and in accordance with the Rules of Procedure and Evidence.
  5. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained in Kosovo as a result of its enforcement of a judgement of the Specialist Chambers shall be transferred to custody and control of the Specialist Chambers without delay. The Law on Administration and Management of Sequestered and Confiscated Assets, Law No. 03/L-141 shall not be applicable to orders or judgements of the Specialist Chambers or to matters before it.

#### **Article 54 - Interaction with Other Courts and Prosecutors in Kosovo**

1. At each level of the court system in Kosovo, the Specialist Chambers shall have primacy within its subject matter jurisdiction over all other courts in Kosovo.
2. The Specialist Chambers or the Specialist Prosecutor may order the transfer to the Specialist Chambers and the Specialist Prosecutor of proceedings and investigations within their subject matter jurisdiction from any other court or prosecutor in the territory of Kosovo.

3. Any court or prosecutor in receipt of such an order shall transfer to the Specialist Chambers or Specialist Prosecutor's Office, as appropriate, any and all files pertaining to the requested case without delay.
4. The Supreme Court Specialist Chamber may order the transfer of any request for extraordinary remedies which relates to or directly impacts upon the work of the Specialist Chambers. In such cases, the transferring court shall transfer the referral and its case file without delay and notify the applicant of the transfer accordingly.
5. Orders for transfer referred to in the preceding paragraphs are final and binding.
6. All Kosovo courts and prosecutors shall notify the Specialist Chambers and the Specialist Prosecutor's Office without delay should they be aware of an investigation, case or criminal proceedings within the subject matter jurisdiction of the Specialist Chambers.
7. In accordance with Article 53, the Specialist Chambers and Specialist Prosecutor may request the assistance of a Kosovo prosecutor or court in order to fulfil their functions under this Law. Any such request shall be complied with without delay.
8. The Specialist Chambers and Specialist Prosecutor may attach confidentiality measures to any order or request to a court or prosecutor in Kosovo as well as to responses or actions relating thereto.
9. Courts and prosecutors in Kosovo may request the assistance or co-operation of the Specialist Chambers or Specialist Prosecutor. Such requests shall be made in writing and addressed to the President of the Specialist Chambers or the Specialist Prosecutor respectively.

## **CHAPTER VIII - CO-OPERATION AND ASSISTANCE WITH OTHER STATES, ORGANISATIONS AND ENTITIES**

### **Article 55 - Requests for Assistance and Co-operation**

1. The Specialist Chambers, the Registry and the Specialist Prosecutor may request the assistance and co-operation from other states, international organisations and other entities as is necessary for the investigation and prosecution of persons accused of committing crimes within the subject matter jurisdiction of the Specialist Chambers, and the fulfilment of the Specialist Chambers' other responsibilities. In accordance with Article 4, the Specialist Chambers, the Registry and the Specialist Prosecutor may enter into such arrangements as are necessary for this purpose.
2. In addition, the Specialist Chambers, the Registry and the Specialist Prosecutor may also utilise any mutual legal assistance agreements entered into by Kosovo or may make requests for assistance based on the principle of reciprocity. In such circumstances, due to reasons of confidentiality, any letter of request shall be transmitted directly.
3. The Law on International Legal Co-operation in Criminal Matters, Law No. 04/L-031, does not apply to the Specialist Chambers or Specialist Prosecutor's Office.

### **Article 56 - Privileges and Immunities**



1. The Specialist Chambers, the Registry and the Specialist Prosecutor's Office may enter into arrangements with such states as agree to ensure privileges, immunities, exemptions and facilities as are necessary for the fulfilment of their functions and purposes under this Law including for their premises, property, papers, principals, personnel and other persons performing functions necessary for the fulfilment of their purposes, including counsel, experts, witnesses and others.
2. The Specialist Chambers, the Registry and the Specialist Prosecutor's Office may enter into arrangements with such states as agree to ensure that their premises, property, funds, assets, archives, records and documents, wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation, public access or any other form of interference whether by executive, administrative, judicial or legislative action.

#### **Article 57 - Service of Imprisonment**

1. The Specialist Chambers and the Registry may enter into arrangements with states which have indicated their willingness to allow the service of imprisonment sentences within their territory of persons adjudged guilty by the Specialist Chambers.
2. Where such an arrangement has been reached and once the judgement is final, the Specialist Chambers may order the transfer of a convicted person to that third country for service of his or her sentence of imprisonment.
3. The Specialist Chambers or Agreed Arrangement if in place for that purpose under Article 60 (Residual Mechanism) shall retain its supervision responsibility until the sentence of imprisonment has been served and the convicted person released.

#### **Article 58 –Third States and International Institutions**

Third States and international institutions may make an application for necessary measures to be taken in respect of the protection of their servants or agents and for the protection of their confidential or sensitive information. The Rules of Procedure and Evidence shall provide for the procedure for such applications.

#### **Article 59 - The Host State**

1. The terms of any international agreement between Kosovo and the Host State and any side letters or arrangements made between the Host State and the Specialist Chambers or Specialist Prosecutor's Office shall apply to the Specialist Chambers and Specialist Prosecutor's Offices under this Law.
2. The Specialist Chambers may seek the assistance of the Host State if necessary in order to preserve law and order within or in the immediate vicinity of the Specialist Chambers' premises or to remove a person from the Specialist Chambers' premises.

### **CHAPTER IX –FUNCTIONAL ARRANGEMENTS**

#### **Article 60 - Residual Arrangements**

Alternative arrangements may be established to manage residual Specialist Chambers matters once the President of the Specialist Chambers announces that all judgements by the Specialist Chambers have become final, provided that any agreed arrangements are fully internationalised and located outside Kosovo (“Agreed Arrangement”).

#### **Article 61 - Management of the Archives**

1. Without prejudice to any prior conditions stipulated by, or arrangements with, the providers of information and documents, the archives of the Specialist Chambers, the Registry and the Specialist Prosecutor’s Office shall be the property of Specialist Chambers and Specialist Prosecutor’s Office, or an Agreed Arrangement, if in place for that purpose in accordance with Article 60, and shall be maintained in a dedicated repository outside Kosovo.
2. These archives shall be inviolable wherever located. The Specialist Chambers, or Agreed Arrangement if in place for that purpose in accordance with Article 60, shall implement an information security and access regime, including classification and declassification as appropriate of the contents of the archives.
3. Where documentation or information has been given protected confidential status by the Specialist Chamber, only a judge of the Specialist Chambers, or a judge of an Agreed Arrangement if in place for that purpose in accordance with Article 60, can permit the release of such protected information.
4. Where documentation or information has been given protected confidential status by the Specialist Prosecutor, such documentation or information shall not be released without the prior consent of the Specialist Prosecutor, or the Prosecutor of an Agreed Arrangement if in place for that purpose in accordance with Article 60. This continues to apply after criminal proceedings before the Specialist Chambers have been finalised.

#### **Article 62 - Restrictions on Access**

1. Given the security and privacy considerations, the documents, papers, records and archives of the Specialist Chambers, the Registry and the Specialist Prosecutor’s Office shall not be considered public documents of Kosovo. There shall be no general right of access to the records or archives of the Specialist Chambers, including the Registry, and the Specialist Prosecutor’s Office.
2. States, prosecutorial and judicial authorities, other entities or persons may make an application to the Specialist Chambers to gain access to the court records provided that such access is in the interests of justice, and protects and maintains any confidentiality and protections granted to any person by either the Specialist Chambers or the Specialist Prosecutor’s Office.

#### **Article 63 - Budgeting and Reporting**

1. The Specialist Chambers and the Specialist Prosecutor's Office shall have a budget, which shall not come from the budget of Kosovo.
2. The Registrar and the Specialist Prosecutor shall keep proper books of account and other records in relation to the activities, property and finances.
3. The Specialist Chambers shall not be subject to audit by the Auditor of Kosovo.
4. This Law shall prevail over any and all provisions of the Law on Public Finance and Management, in particular Parts XII and XIII (Laws No. 03/L-048, 03/L-221, 04/L-194 and 04/L-116).

#### **Article 64 - Interpretation**

Unless the context clearly requires another interpretation, any reference in this law to another law, an UNMIK regulation or a sub-legal act, or any specific provision(s) thereof, shall be interpreted as including any and all amendments thereto. If such a law, regulation or sub-legal act is repealed and replaced with successor legislation governing the same subject matter, such reference shall – unless the context clearly requires another interpretation - be interpreted as meaning such successor legislation and, where applicable, the analogous provision(s) thereof.

#### **Article 65 - Entry into Force**

This Law shall enter into force [xx].