

International Criminal Responsibility in Kosovo: Establishment of the International Criminal Court – *de lege lata, de lege ferenda*

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Abstract

The Special Court of Kosovo (Kosovo Specialist Chambers and Specialist Prosecutor's Office) with headquarters in The Hague, is one of the biggest problems Kosovo faced since the declaration of independence. This topic has been treated very little in scientific terms, while in the media it is written very much, calling it harmful to Kosovo, and even had opinions that it is a racist court since the same will initially only judge the KLA (Kosovo Liberation Army) members for alleged war crimes in Kosovo.

The Special Court of Kosovo is presented as a sui generis case in the practice of international courts, the creation of which was preceded by a host of conditions and circumstances such as the failure of UNMIK and EULEX missions of law enforcement and especially the right and timely trial war crimes, the failure of local institutions to act as a sovereign and to create an efficient justice system and in particular their failure to establish a local court for the adjudication of alleged war crimes. Carla Del Ponte's autobiographical book

"The Hunt: Me and War Criminals" crowns this idea with the Report of the Parliamentary Assembly of Council of Europe (Doc 12462).

Key words: Special Court, war crimes, sui generis, hybrid, unbiased justice.

Introduction

The Special Court of Kosovo after the great international pressure has been established by the Assembly of the Republic of Kosovo following the amendment of the Constitution of Kosovo (amendment No. 24) as well as the adoption of the Law on Specialist Chambers and the Specialist Prosecutor's Office, Law No. 05 / L-053, (Sheremeti, F., 2017), with the mandate to adjudicate the alleged crimes committed during the period from 1 January 1998 to 31 December 2000, related to the allegations presented in the Report of the Parliamentary Assembly of Council of Europe Doc.12462 (Law No. 05 / L-053, 2015, art. 1 par. 2), known to us by the name of Dick Marty.

The Special Court of Kosovo based in The Hague is consist of the Specialist Chamber of the Basic Court, the Specialist Chamber of the Court of Appeals, the Specialist Chamber of the Supreme Court and the Specialist Chamber of the Constitutional Court (Law, No.05/L-053, 2015, art.24).

Within this paper, a chronological review of the conditions and circumstances that led to the creation of the Special Court as a *sui generis* case in the practice of international courts will be made. Realistically, Dick Marty's famous human trafficking report and Carla Del Ponte's book "The Hunt: Me and War Criminals" were not decisive for the establishment of this Court, but were also conditioned by the failures of UNMIK and EULEX's missions, of law enforcement, as well as the failure of Kosovo's institutions to form a local war crimes tribunal, as they were formed in Croatia, Bosnia and Herzegovina, and Serbia.

In addition, it is about the scope of the Special Court - *de lege lata* (as it is), in accordance with the Law on Kosovo Specialist Chambers and the Specialist Prosecutor's Office, as well as with the Rules of Procedure and Evidence. This section will discuss alleged crimes that are expected to be judged by this court, its temporal, territorial and personal jurisdiction, as well as its relationship with the courts in Kosovo (concurrent jurisdiction).

And at the end of this paper will be an authorial look for the Special Court of Kosovo *de lege ferenda* (as it should be). Within this section, the authors will express their opinion on

how this Court could have been established and function within the territory of Kosovo. The authors have made efforts to explain how this Court could have been formed in Kosovo and it should have hybrid (mixed), international and local composition at all instances of the process.

1. Conditions and Circumstances that Preceded the Idea of Creating a Special Court of Kosovo

The war crimes trial is the most difficult task of the judiciary of the Kosovo because these crimes are extremely complicated to investigate. It is estimated that the results achieved with regard to the detection of war crimes against the civilian population, which were carried out in Kosovo during 1998-1999, remain small because a large part of those crimes remain unregistered. “This has been the case for many reasons, primarily related to the circumstances in which these crimes were committed, the family circumstances of the victims, especially in cases of rape, disappearance of evidence by the perpetrators, how these crimes were committed, and in addition to all these circumstances, the negligence of the competent organs, be it local or international, is likely to be added to the non-evidencing of war crimes as a circumstance”, (Latifi, V., 2011, p.348-349).

In Kosovo after 1999, several cases of war crimes were investigated by international investigators of ICTY, UNMIK Civilian Police (CIVPOL) and recently by EULEX investigators. (OSCE, 2010, p.8).

After the war and until 2014, prosecution and adjudication of war crimes in Kosovo was an exclusive competence of UNMIK and then of EULEX, even in cases when the prosecution and the Kosovo courts have initiated criminal proceedings for any war crimes case, UNMIK and EULEX have had the right to take it from the locals and to judge the particular case. (Salihu, I., 2016, p. 389).

It is estimated that these two Rule of Law Missions have failed in war crimes trials suspected to have occurred in Kosovo. Among the most common problems that have followed the work of these two missions, which may have affected their failure to properly prosecute war crimes, are delays in dealing with cases, including delays in the investigation phase, prosecution phase, delays in the scheduling of court hearings after the indictment has become final, the stage of the trial, the stage of the complaint, and the lack of witnesses or even defendants during the trial (OSCE, 2010, p.14-15).

An additional problem that has greatly influenced the lengthening of war crimes trials is the removal of international judges from Kosovo when considering a case, due to their engagement with short-term contracts (OSCE, 2010, p. 21). Removal of judges before the trial ends has resulted in the same court proceedings being prosecuted for years, because in our criminal procedure, when the composition of the trial panel changes, according to the rule of adjudication, the adjournment begins again (Sahiti, E., Murati, R. and Elshani, R., 2014, p.776).

To prosecute alleged war crimes in Kosovo, apart from UNMIK and EULEX, local institutions also failed. Responsible institutions in Kosovo have had to act as sovereigns and pay special attention to war crimes trials and for this, among other things, they should create a specialized chamber within the Kosovo judicial system to be exclusively dealt with only the trial of alleged war crimes, as it was created by Croatia, Bosnia and Herzegovina, and Serbia.

Apart from the failures of UNMIK, EULEX and local institutions for the right and timely trial of war crimes in Kosovo, another factor that has led to the creation of the Special Court of Kosovo is the autobiographical book by Carla del Ponte *"La caccia: Io e i criminali di guerra"* published in April 2008, a book that had great echo. The element that paid most attention to this book was the suspicions that Del Ponte raised about the trafficking in human organs, which according to her were made by the leaders of the Kosovo Liberation Army. (Mahmuti, B., 2015, p. 446, (citing Del Ponte, C., 2008, p.457).

The former ICTY prosecutor in this book emphasizes, among other things, that "she got information from journalists way back in 1999 about 300 Serbs who were kidnapped in Kosovo and Metohia and then taken to Albania. At first the prisoners were placed in the camps in Kukes and Tropya in Albania's north, and later surgeons hired by Albanians removed their vitally important organs in field conditions. The Albanian village of Burel was also mentioned, where in a "yellow house" the prisoners were operated on after which their organs were delivered to Italy, and further on, to major West European medical centres" (Guskova, E., 2008)

After the publication of this book, on April 15, 2008, the Russian Parliamentary Assembly member of the Council of Europe, Konstantin Kosachev, submitted a resolution proposal on "Inhumane treatment of people and illicit trafficking in human organs" (Parliamentary Assembly, Doc.11574, 2008). It was signed by 17 members of the Parliamentary Assembly of the Council of Europe, (Mahmuti, B., p. 386-387) and the same aroused great interest, especially within the Committee on Legal Affairs and Human Rights of the Council of Europe, and therefore appointed Dick Marty to draft a report on this issue (Mahmuti, B., 2015, p. 457).

Dick Marty on December 12, 2010 submitted to the Parliamentary Assembly of the Council of Europe a draft report on " Inhumane treatment of people and illicit trafficking in human organs in Kosovo". This report on 16 December was unanimously adopted by the

Parliamentary Assembly, and on 7 January 2011 it was handed over to the same in the form of a Resolution (Parliamentary Assembly, Doc.12462, 2011). On January 25, 2011, the Parliamentary Assembly approved it, thus giving the power of the resolution known as Resolution 1782 on "Investigation of allegations of inhuman treatment of persons and illicit trafficking of human organs in Kosovo" (Parliamentary Assembly, Res.1782, 2011).

Dick Marty's Report is seen as the main catalyst for international pressure on Kosovo to establish the Special Court and, therefore, in order to understand why it holds such an epithet, in the continuation of this paper, some of its paragraphs will be elaborated, limited to those who cite crimes allegedly committed as well as suspects for committing these crimes.

In this report, members of the KLA, with particular emphasis on the "Drenica Group", members of which are referred as members of a terrorist and criminal organization, are accused of murder, kidnapping, imprisonment and mistreatment of civilians of various communities living in Kosovo, as well as arms smuggling, drug trafficking, cigarettes and oil trafficking, prostitution, trafficking in human beings and human organs sale (Parliamentary Assembly Report, Doc.12462, 2010, par. 66,71 (footnote 29), 134,159 and 167).

Based on the Resolution 1782 on "Investigation of allegations of inhuman treatment of persons and illicit trafficking of human organs in Kosovo", in September 2011, the EU set up a Special Investigative Task Force which had a duty to investigate whether it had occurred indeed the crimes presented in the Dick Marty's Report (Salihu, I., 2016, p.390).

After three years of investigations, chief investigative officer of the Special Investigative Task Force, Clint Williamson, at a conference in Brussels on July 29, 2014, announced the results of the investigation stating that TFHS found convincing evidence against several former senior officials of the KLA and that the indictment against these individuals for serious violations of international humanitarian law would be very reasonable and that they were ready to file indictments as soon as an appropriate judicial mechanism is established that would secure a trial fully independent, unbiased and safe (Mahmuti, B., 2015, p.500).

2. Special Court of Kosovo - *de lege lata*

In April 2014, there was a paper exchange between the former President of the Republic of Kosovo, Atifete Jahjaga and High Representative for Foreign Affairs and Security, Catherine Ashton, a month later the agreement was ratified by the Kosovo Assembly (Kosovo Law on Ratification of "exchange of letters", 2014). Meaning, this exchange of letters was treated as an international agreement, which among other things included the obligation of the Republic of Kosovo to establish Specialist Chambers and the Specialist Prosecutor's Office within the Kosovo Judicial System (Sheremeti.F., 2017).

In order to enable the establishment of these specialist chambers, the Constitution of Kosovo, by the Assembly of Kosovo, in August 2015, was added Amendment No. 24 and then Law No. 05 / L-053 was approved, which also created and will function in these specialist chambers, (Salihu. I., 2016, pp.391-392), this is the only element that perhaps gives little local character to this Court.

Nearly a year after the adoption of the Law on Specialist Chambers and the Specialist Prosecutor's Office, respectively in February 2016, Kosovo and the Netherlands signed the host country agreement. With this agreement it was decided that the headquarters of the Specialist Chambers and the Specialist Prosecutor's Office should be in The Hague, (Agreement between the Kingdom of the Netherlands and the Republic of Kosovo, 2016) but according to Article 3 paragraph 6 of the Law No. 05 / L-053 the headquarters of this Court will be in Kosovo as well and can also be in another country in exceptional cases and in the interests of justice.

Special Court of Kosovo based on Article 24 of Law No. 05 / L-053 consists of the Chambers (including the Specialist Chamber of the Basic Court, the Specialist Chamber of the Court of Appeals and the Specialist Chamber of the Supreme Court as well as that of the Constitutional Court), the Administrative Office and the Specialist Prosecutor's Office. It follows that the Specialist Chambers are an integral part of any level of the court system in Kosovo, meaning that the Basic Court, the Court of Appeal and the Supreme Court each individually will have a special room which will only deal with the war crimes trial. Within this court will also function a specialist chamber of the Constitutional Court, which will only deal with constitutional referrals regarding the Specialist Chambers and the Specialist Prosecutor's Office (Law No.05/L-53, article 3).

According to article 25 of Law No.05/L-053, for the processing of cases, the Chambers will have this composition of judges: Individual judges who, as necessary, perform the functions of pre-trial judge, a three-judge panel and a reserve judge at the Basic Court Chamber, while the Appeals Chamber Court , The Supreme Court and the Constitutional Court, each separately, shall consist of panels of three judges.

All Special Court judges, prosecutors, investigators (police) and other accompanying and administrative staff will be international. The only Albanian element there will be the accused, who if proven to be guilty of imprisonment will suffer in one of the receiving states (Hajdari, A., 2017, p.15).

According to Article 28 of Law No. 05 / L-053, the evaluation and selection of candidates for the appointment of judges for the international register as well as the recommendation for the appointment of the President and Vice-President of the Specialist Chambers has been made by an independent selection panel consisting of three members, all international. Once this panel has prepared the list with the names of the most appropriate candidates, it has presented this list to

the Appointing Authority (Head of EU Common Security and Defence Policy Mission) in the form of a recommendation for the appointment of judges to the International Judges Register. Based on the list received, the Appointing Authority has appointed people from the list as Special Court judges. According to the recommendation of the selection panel, the Appointing Authority has also appointed the President and Vice-President of the Specialist Chambers from the ranks of the Special Chamber's judges (Law No.05/L-053, art. 32 par.1).

In the Special Court there is also the Administrative Office which is responsible for the administration and service of the Specialist Chambers. Within this office there are also the Office for Victims' Participation, the Office of Defense, the Office for Protection and Support of Witnesses, the Office of the Ombudsman, as well as the Court officials who have the authority to exercise the competences given to the Kosovo Police under the laws of Kosovo and always in accordance with the Law of the Special Court (Law No.05/L-053, article 34).

Based on article 3 of Law No. 05 / L-053, the Special Court of Kosovo in exercising its responsibilities shall be based on the Constitution of Kosovo, the Law on Specialist Chambers and the Specialist Prosecutor's Office, which, as *lex specialis* (as a special law), excludes the application of all the general laws which regulate this area, based on the general principle *lex specialis derogat legi generali*, (Salihu, I., 2008, p.361), will be judged by this Court on the basis of other provisions of the laws of Kosovo (including the Criminal Law of the Socialist Autonomous Province of Kosovo 1977, the Criminal Law of the former Yugoslavia and UNMIK regulations, which regulated the issues in the criminal field and which were in force at the time of the commission of suspected criminal offenses), on the basis of customary international law the provisions of which, as defined in Article 19, paragraph 2 of the Kosovo Constitution, have the supremacy in relation to local laws and international human rights law that define the standards of criminal justice and which include the 8 International Conventions to which the Constitution of Kosovo Article 22 has been given priority in case of conflict with local laws. (Salihu, I., 2016, p. 399).

Chapter III of the Law on Specialist Chambers and the Specialist Prosecutor's Office defines the subject jurisdiction, territorial, time, personal and simultaneous jurisdiction of the Special Court of Kosovo.

The Special Court of Kosovo has wide scope jurisdiction that extends to several types of criminal offenses. In accordance with Article 6 of Law No. 05 / L-053, the Special Court of Kosovo has the authority to adjudicate the offenses specified in the Dick Marty's Report, crimes against humanity, war crimes and other crimes envisaged by Kosovo's laws which were applicable at a time when it is suspected that these crimes were committed which are related to the Report of the Parliamentary Assembly of the Council of Europe and the offenses provided for in 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 Criminal Code of Kosovo 2012, when they relate to official procedures and their officials.

The Special Court of Kosovo has jurisdiction over these crimes against humanity: murder, extinction, slavery, expulsion, imprisonment or other serious restrictions of physical freedom, torture, sexual assault, slavery, forced prostitution, violent pregnancy and any other form of sexual, racial, ethnic or religious violence, forced disappearance persons and other non-human actions (Law No.05/L-053, article 13).

Article 14 of Law No. 05 / L-053, counts all war crimes that will be tried by this Court that have occurred at the time of its jurisdiction. Under this war crimes article, we mean: serious violations of the Geneva Conventions of 12 August 1949, other serious violations of the laws and customs applicable to international armed conflicts, in the event of an armed conflict, which is not of international character. With war crimes under this article, we also understand the serious violations of Article 3, common to the four Geneva Conventions of 12 August 1949, and other serious violations of the laws and customs applicable to armed conflicts that are not of an international character, which are presented in a taxable manner in this article.

In accordance with article 7 of Law No. 05 / L-053 the time jurisdiction (*ratione temporis*) of the Special Court of Kosovo extends to criminal offenses falling under its jurisdiction that occurred between January 1, 1998 and December 31, 2000. Based on how the events in Kosovo occurred, it can be noticed that the jurisdiction of this Court extends to three periods of time in the pre-war, war and post-war period.

This court has territorial jurisdiction over criminal offenses falling within its subject jurisdiction that have started or have been committed in Kosovo (Law No.05/L-053, article 8). Such a way of determining the territorial jurisdiction of this Court has created opportunities for different interpretations. "Legally, this means that the territorial jurisdiction of the Special Court does not extend only to the territory of Kosovo, because with the word "initiated" can also include crimes that may have started in Kosovo and may have continued or even ended in another state." (Sheremeti, F., 2017).

In some cases, the quality of the perpetrator of a criminal offense is also important for determining competence, in such situations it is about personal jurisdiction (*ratione personae*). (Sahiti, E. and Murati, R., 2013, p.147). Based on Article 9 of Law No. 05 / L-053, the Special Court "has jurisdiction over persons of citizenship of Kosovo / FYR or people who have committed crimes within its jurisdiction against persons with Kosovar / FYR citizens wherever those crimes are committed". Based on this section of the Law on Specialist Chambers and the Specialist Prosecutor's Office it results that the Special Court has jurisdiction only on natural

persons who during the period from 1 January 1998 to 31 December 2000 had the citizenship of the former Yugoslav Republic or the current Kosovo citizenship. (Miftari, F., 2016).

It is precisely the personal jurisdiction of this court, which this court, at first glance makes it mono-ethnic because according to this article it results that this court will initially judge only persons with ethnic Albanian origin who are suspected of having committed the crimes falling into its subject matter competence. However, Article 9 of this Law creates space for different interpretations and creates the possibility for the Special Court to be subject to the charges and the trial also to other people suspected of committing crimes which are included in its subject matter and territorial competence, regardless of which ethnicity they belong to, being satisfied by the fact that in the period covered by its time jurisdiction, they have had Yugoslav nationality or have committed crimes against people of Yugoslav nationality or current Kosovo citizenship.

The Special Court of Kosovo within its jurisdiction has superiority over all courts of Kosovo, the supremacy which gives this Court and the Special Prosecutor the right to order the transfer of proceedings in their jurisdiction from all courts (except the Constitutional Court) and Kosovo Prosecutions at any stage of the investigation and trial.

Based on article 10 of Law No.05/L-053, the state prosecutor or the court are obliged to act upon such order and to send to the Specialist Chambers all documents pertaining to the subject matter, because the order of this Court for transfer is final and binding.

3. The Special Court of Kosovo de lege ferenda

The second part of this paper analysed the jurisdiction of the Special Court, *de lege lata* in accordance with the provisions of the Specialist Chambers and the Specialist Prosecutor's Office.

While analysing each of the provisions of this law separately, especially those that regulate the subject matter, territorial and personal jurisdiction of the Special Court, it has been noted that the content of these provisions, in a few cases, contradicts the one proclaiming the highest emphasis on human rights whether domestic or international.

Article 7 of the Universal Declaration of Human Rights states: "All are equal before the law ...", the same is guaranteed by the Constitution of the Republic of Kosovo, in its Article 24, which states that " all are equal before the law, no one can be discriminated on the grounds of race, colour, gender, language, religion, national or social origin ... ". The Law on the Special Court in its Article 9 is incompatible with these two acts. In this article as stated in the second part of this article, the personal jurisdiction of the Special Court is defined and thus: "... under the applicable criminal laws that were in effect between January 1, 1998 and 31 December 2000,

Specialist Chambers have jurisdiction over Kosovar / FYR citizens or people committing crimes under their jurisdiction against persons with Kosovar / FYR citizens wherever those crimes have been committed". This article formulated in this way makes this court at first sight mono-ethnic, because based on this article it results that within its subject matter and territorial jurisdiction this court will only judge exclusively Albanians, namely members of the Kosovo Liberation Army. It is this article which, among other things, has encouraged us to take an authorial view regarding the scope and competences of the Special Court of Kosovo *de lege ferenda* (as it should be).

If UNMIK and EULEX were to perform their duties properly, paying particular attention to war crimes trials that occurred in Kosovo, if local institutions and other responsible mechanisms were to behave as sovereign and to assume their responsibilities, without waiting for all the most important jobs for our country to be done by internationals and following the example of Serbia, Croatia and Bosnia and Herzegovina would create a separate court which acting within the territory of Kosovo would only deal with the war crimes trial and judge all those suspected of committing those crimes without distinction of ethnic belonging, if Carla Del Ponte's claims in her book were to be treated seriously and especially those of Dick Marty presented in the report which is known to us by his name, if the leaders of institutions in Kosovo would respond to these allegations with facts and evidence proving opposite this Special Court of Kosovo in a foreign land maybe would not be created at all because one was not created nor required to be created for Serbia, Croatia or Bosnia and Herzegovina .

As a result of these and many other failures, the Special Court of Kosovo after the great international pressure was founded and it cannot be undone, but this Court would probably be acceptable, like anything else that came from the internationals, and it would not encourage much debate and dissatisfaction if it were to be established to operate within the territory of Kosovo and to judge all those suspected of having committed crimes falling under its jurisdiction subject, regardless of their national affiliation.

Following this authorial survey on the scope and competences of the Special Court we will try to formulate some of the articles of the Law on Specialist Chambers and the Specialist Prosecutor's Office as they should be.

Based on the time of committing the offense (*tempore criminis*) and the place of committing the offense (*locus delicti commissi*), the article through which the personal jurisdiction of the Special Court of Kosovo would be assigned would have to be formulated in this way:

Specialist Chambers have jurisdiction over all persons suspected of having committed any of the crimes within their jurisdiction during the period 1 January 1998 and 31 December 2000, which have started or have been committed in Kosovo.

Based on the time and place of commission of criminal offense, Special Court of Kosovo should judge all those people suspected of having committed crimes falling within its jurisdiction, including Serbs whose crimes as stated even Dick Marty in his report are well-known and documented. (Marty's Report, par. 30).

Since the Special Court is said to be a Kosovo court, then judges, prosecutors, administration offices and other staff should also be from Kosovo, but since this Court is founded with the initiative and under great international pressure, its composition should have been mixed in all instances of the process and in this way: Specialist Chamber should have been consists of local and international judges. Local judges would be appointed by the President of the Republic of Kosovo with the proposal of the Kosovo Judicial Council, while International Judges would be selected according to the procedures foreseen by the Law No. 05 / L-053, which are described in the second part of this article.

Regarding the composition of the chambers, each body and panel should consist of Kosovo and international judges, in this way the body/ panel in the Specialist Chamber of the Basic Court, the Specialist Chamber of the Court of Appeal and that of the Specialist Chamber of the Supreme Court as well as that of the Constitutional Court would consist of three judges, one of whom should be local and two international. The hybrid composition should also have had the Specialist Prosecutor's Office, the Administrator's Office and within it the Office for the Support and Protection of Witnesses, the Office for the Protection of Victims and the Ombudsman's Office.

Perhaps only by having such a composition, even though it was founded after great international pressure, although it is headquartered in a foreign country, even though convicted persons from it will be serving a sentence in a third country, even though it will act on the basis of the Law on Specialist Chambers and Specialist Prosecutor's Office as a *lex specialis*, it could be called a Kosovo court and would be acceptable and would not encourage debate and dissatisfaction.

Conclusion

During the process of working this paper by studying and analysing existing scientific literature, the Law on Specialist Chambers and Specialist Prosecutor's Office, the Rules of Procedure and Evidence, as well as other domestic and international laws some conclusions have been drawn up.

Analysing the conditions and circumstances that preceded the idea for the establishment of the Kosovo Special Court, it was concluded that UNMIK and EULEX failures to fulfil their missions in the field of rule of law, with particular emphasis on failures of local institutions to act as sovereign and to create a local war crimes chamber or court were key factors that created room for the establishment of this court. Carla Del Ponte's autobiographical book with co-author Chuck Sudetic, "*The Hunt: Me and War Criminals*," was also added to these failures as well as the idea of the establishment of this Court was crowned with Dick Marty's Report "*Inhumane treatment of persons and illicit trafficking of human organs in Kosovo*" Doc.12462, that rightly holds the epithet of the main catalyst for the creation of this Court. From the study of the Law on Specialist Chambers and Specialist Prosecutor's Office, with particular emphasis on the articles that determine the subject matter, territorial, time, personal and simultaneous jurisdiction of this court, it is concluded that the Special Court as such is only formally of Kosovo, because it is completely independent of Kosovo's institutions and is actually presented as a parallel system of local courts.

Analysing its subject jurisdiction, it has turned out that the Special Court of Kosovo, as a local court in a foreign territory, will pay special attention to the trial of the crimes mentioned in the Marty's Report, including the suspicion of trafficking with human organs .

During the elaboration of Article 9 of Law No. 05 / L-053, which defines the personal jurisdiction of the Special Court of Kosovo, it was considered that this Court is in first-sight to be mono-ethnic because it initially appears to share justice in a selective manner by judging only one warring party but by analysing the content of this article it is concluded that from the Special Court all those suspected of having committed crimes within its jurisdiction and not just KLA members can be judged.

In analysing the provisions of Law No. 05-L / 053 it is concluded that in a few cases this law conflicts with the highest domestic and international human rights acts.

Given the fact that this court as a local one will punish the persons responsible for the offenses falling within its subject matter competence and will send them to serve the sentence of imprisonment in a foreign state expressing readiness for it, as well as the fact that the conditions of imprisonment are regulated by the law of the State executing the imprisonment sentence under the supervision of the Specialist Chambers, it is concluded that convicts from Special Court of Kosovo in host countries will be treated as foreigners, even though they have been convicted by a local court.

The imprisonment of convicts by this Court in a third country may lead to isolation, discrimination and other difficulties as to the adaptation of convicted persons from this Court to the penitentiary institutions such as the difficulties in providing health services or even food and

similar difficulties, all because of language. This conclusion is based on the fact that with the European Prison Rules, (Council of Europe: Committee of Ministers, Rec (2006) 2, 2006), which should in principle be implemented in the receiving states of convicts, no specific rules on the provision of health services or other services to foreign convicts are envisaged. So with these rules it is not foreseen the possibility that the health service or other foreign convicted services be offered in the language that he understands.

In the last part of this paper it is concluded that the Special Court of Kosovo, even though it was created after the great international pressure to be called Kosovo's, and perhaps to be acceptable, should at least have hybrid (mixed) international and local content.

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