

Kosovo Special Court

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Preparations for special Kosovo war crimes court gather pace

Kosovo is gearing up to set up a new special tribunal to deal with allegations of war crimes committed by leading members of the Kosovo Liberation Army (KLA). This week special prosecutor Clint Williamson was in Pristina where he discussed the practicalities of setting up the court with the government in preparation for the imminent publication of his findings.

Officially the Brussels-based Special Investigative Task Force (SITF) headed by Williamson will only say he traveled to Pristina "in advance of an announcement of investigative findings". However the Kosovo justice ministry said publication is set for "some-time next week". Williamson is expected to announce that he has not found enough evidence to sustain the most lurid allegations in the 2010 Council of Europe report, lead by a former Swiss prosecutor, Dick Marty: that KLA members removed organs from Serb prisoners to sell abroad.

A dozen mid-level KLA-members

Instead the SITF is said to have amassed enough credible evidence to indict around a dozen mid-level KLA members. They will likely face charges of illegal detention, deportation, torture, murder and disappearances of Serbs and some Albanians taken to secret KLA detention centres in Albania during and right after the 1998-99 conflict with Serbia. No one will officially comment on the rumoured outcome of the investigation but the government line is that the findings will "undoubtedly clear the KLA and Kosovo" of any systematic involvement. "We are certain the grisly parts of the report on organ trading will not be confirmed," deputy Foreign minister Petrit Selimi told IJT.

In April the parliament voted through a resolution agreeing to the establishment of a special court to deal with such cases. Initially the international community insisted on an international tribunal to be wholly based

in The Hague. Pristina refused, mostly because they considered it bad for Kosovo's image to have yet another international tribunal after already having had defendants before the International Criminal Tribunal for the former Yugoslavia (ICTY) [read p. 2]. A deal was struck to set up a special court within the Kosovo legal framework. It will be formally based in Kosovo but the bulk of its work will be done in The Netherlands, including the hearing of witnesses and the receipt of sensitive filings. It is to be run and staffed by internationals from the European rule of law mission EULEX and will have its own statute and rules of procedure and evidence. The Kosovo government is determined to distance these cases from the ICTY, and a suggestion that the Kosovo court could use some spare rooms in the tribunal's building in The Hague was reportedly met with outrage. In a letter to Dutch parliament, Foreign minister Frans Timmermans was positive about the request to host the new entity but says further negotiations with Pristina are needed, to ensure the proceedings meet the highest standards.

While EULEX refuses to comment directly on any aspects of the future special court, deputy chief prosecutor Jonathan Ratel agreed to share some of his experiences in conducting high-level war crimes trials in Kosovo. To him, the difficulties he has encountered show why the international community insisted on a special court with its own statute and rules. "The most significant problem is that the Kosovo legal system has not been significantly updated in terms of criminal evidence and witnesses," he said.

Trials are mostly conducted "on the papers" with little practice of hearing witnesses live in the courtroom. Aside from the problems with witness protection in Kosovo, even willing witnesses flounder in court. "Witnesses coming before the court, under oath, have

difficulty providing evidence against an accused who is present. They do not understand the difference between direct examination or the concept of cross examination by defence counsel," Ratel explains.

But the true Achilles heel for EULEX's international prosecutors is that there is no special chamber. Instead they find themselves trying international prosecutions in municipal and district courts, Ratel laments. "Deploying international prosecutors without special chambers for them to work in, you are literally deploying a carpenter to a work site without tools," he says.

The special court still unclear

Sources say that at the moment the statute of the new court is being drafted by experts in Brussels. "I don't think anybody has a clear picture of what the special court will look like and meanwhile it has already been ratified" by parliament, complains opposition leader Albin Kurti. The Pristina government does not want to speculate further on specifics but warns it will take time to set up. "In any case the process will not take weeks or months. It will take until next year if there are any legal processes" arising from Williamson's findings, Selimi estimates. According to a 2008 UN analysis, it has taken, on average, more than five years to conclude each case at the ICTY.

Already, the Kosovo government and the Dutch have made it clear they would not pay for the court, and that the money would have to come from the EU, US and other donors. One Kosovo official estimated the special court would cost around 300 million euros in all – an expensive figure if compared to the 280 million dollars estimated cost at completion of the Special Court for Sierra Leone, which prosecuted 10 persons in 11 years. The envisaged cost of the future Kosovo court has not been dismissed by other sources familiar with the plans.