

# EULEX'S IMPACT ON THE RULE OF LAW IN KOSOVO

## *Impacto de Eulex en el Estado de Derecho en Kosovo*

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### **ABSTRACT**

Kosovo is the largest per capita recipient of EU financial aid in the world, and is home to the largest civilian crisis management mission ever launched by the Union (EULEX). However, it is questionable whether this assistance has been sufficiently effective. The judiciary continues to suffer from political interference, inefficiency and a lack of transparency and enforcement.

This paper considers the EU's assistance to Kosovo in the field of the Rule of Law and attempts to assess whether it is achieving its intended results. It discusses what EULEX's impact has been on overall progress in the main areas of the Rule of Law: the police and justice.

**Key words:** European Union, EULEX, Police, Justice, Rule of Law.

### **RESUMEN**

*Kosovo es el mayor receptor per cápita de la ayuda financiera de la UE en el mundo, y es el hogar de la mayor misión de gestión civil de crisis jamás lanzado por la Unión Europea (EULEX). Sin embargo, es dudoso que esta ayuda haya sido suficientemente eficaz. El poder judicial sigue sufriendo la interferencia política, la ineficiencia y la falta de transparencia y cumplimiento. En este trabajo se considera la asistencia de la UE para Kosovo en el ámbito del Estado de Derecho y se intenta evaluar si se están alcanzando los resultados previstos. Se discute el impacto de EULEX en el progreso global de las principales áreas del Estado de Derecho: la policía y la justicia.*

**Palabras clave:** Unión Europea, EULEX, policía, justicia, Estado de Derecho.

## I. INTRODUCTION

The Rule of Law is a highly contested concept –perhaps, as Jeremy Waldron suggests, even drawing on familiar terminology, “an essentially contested concept” (Waldron, 2002). Yet, as the present paper is primarily interested in evaluating the impact of the European Union Rule of Law Mission in Kosovo (EULEX) regarding two of its pillars, police and justice, this conceptual instability is less an analytical hurdle than a threshold insight.

Building and strengthening the Rule of Law in third countries, particularly those in transition or those emerging from a period of armed conflict, has become a central focus of the work of the European Union (EU). It is recognized that the advancement of the Rule of Law is essential to the maintenance of peace and security, the realization of sustainable development, and the protection of human rights and fundamental freedoms.

In this setting, this article aims to analyse EULEX’s impact on the Rule of Law in Kosovo and answer the following questions: Has EU assistance been effective in the field of (the) Rule of Law? What has progress regarding the police and the judiciary been like? What have EULEX’s main difficulties been in this field?

The article is organized as follows: The first part begins with a conceptual approach to the Rule of Law and its importance in post-conflict situations such as Kosovo. In this part, we argue that the Rule of Law is one essential factor of the peacebuilding strategies of the EU in its aims to achieve peace and stability. The second part analyses EULEX as the largest crisis management operation ever launched by the EU and some of the constraints on it since its deployment in 2008. The mission continues to operate principally based on its initial mandate provided by the Council Joint Action 2008/124/CFSP of February 2008, and apart from some follow-up amendments made to it, the mission’s *raison d’être* remains unchanged. In addition to its overall aim of assisting Kosovo in strengthening its Rule of Law institutions and ensuring their independence, the mission continues to hold some executive powers. It enjoys such powers especially when dealing with war crimes and organized crime and corruption, while at the same time covering the police, customs, and judicial sectors.

In the third part we attempt to assess what EULEX’s impact has been on overall progress in Kosovo in the Rule of Law’s main areas: police and justice. We then conclude that, despite the EU’s significant assistance, progress in improving the Rule of Law in Kosovo has been limited by worryingly high levels of organized crime and corruption that continue to be present within Kosovan institutions.

## II. THE RULE OF LAW

Rule of Law institutions are considered indispensable for internal security and law enforcement purposes, and for ensuring the transparency, accountability and control of security forces (Hurwitz and Studdard, 2005: 2). Thus, it is possible to argue that the Rule of Law has become a critical component of the current debate on peacebuilding strategies.

While the judiciary is the primary institution concerned with the Rule of Law, the inclusion of Rule of Law assistance as part of integrated conflict management approaches has reinforced pre-existing linkages with governance and security institutions, and further justifies the need to place Rule of Law reforms within a broader analytical framework.

Over the past decade, the EU has increasingly supported the implementation of missions designed to strengthen the Rule of Law in countries susceptible to or recovering from violent conflict. Policy-making and programming activities have included advice on: constitution-making and legislative drafting, judicial and law enforcement reforms; support for human rights institutions, anti-corruption and transparency initiatives, and regulatory mechanisms and administrative law.

There is a growing body of literature on the subject and greater awareness about the importance of these missions in vulnerable countries, such as Kosovo.<sup>1</sup> While the relevance of the Rule of Law in volatile situations is generally undisputed, the challenges and constraints in the implementation of these missions in insecure environments and the real contributions to the prevention or mitigation of conflicts are issues that have yet to be fully explored.

The Rule of Law is a concept defined by the United Nations Secretary-General

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (UN Security Council, 2004: parag. 6).

The definition encompasses a wide spectrum of interdependent institutions, competencies and actors who operate within the inter-dependent sub-sectors of justice and security and converge under the broader scope of the Rule of Law and governance. These sub-sectors include, *inter alia*: justice, the judiciary, law-enforcement corrections, civilian oversight mechanisms, civil society, and, customary law and traditional conflict-resolution.

Scholars and practitioners largely regard this definition as an important step forward in clarifying the nature and the boundaries of the Rule of Law (IPI 2012: 2). Given its strong reference to adherence to human rights norms and standards, it represents an effort to move towards a thorough interpretation, and not solely an effort to consolidate the least common denominator. However, it remains a conceptual definition with no legal value.

Peace and stability can only prevail if the population perceives that (UN Security Council, 2004: 4).

<sup>1</sup> For a review of the growth of the Rule of Law in recent years, see: Carothers (2003); Belton (2005).

politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power...can be addressed in a legitimate and fair manner.

Thus, the task of establishing the Rule of Law requires a comprehensive definition that addresses interrelated justice and security institutions and good governance with due attention to political, economic, social, and even psychological factors. The breakdown of the Rule of Law is the most significant indicator of an escalating conflict, and thus critical for conflict prevention.

In this paper, we analyse the EU contribution to the Rule of Law in Kosovo and two of its important pillars: justice and security. Justice is understood as “an ideal of accountability and fairness in the protection of rights and the prevention and punishment of wrongs” (Idem). It implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It involves: judiciaries, informal and traditional justice systems, alternative dispute resolution structures, legislatures, oversight bodies, the police, prisons and prosecution services, relevant line ministries, lawyers, and civil society organizations (Ball *et al.*, 2007).

Security is “an elastic and diverse concept that can be understood in different forms, depending on its objects: the perception of threats, the protected values, and the means through which these values can be protected” (Nasu, 2011: 1). From a security perspective, Rule of Law institutions are regarded as indispensable for internal security and law enforcement purposes, and for ensuring the transparency, accountability and control of security forces such as the police and the military. According to the Department for International Development (DFID, 2003: 30).

responsible and accountable security forces reduce the risk of conflict, provide security for citizens and create the right environment for sustainable development. The overall objective of security sector reform is to contribute to a secure environment that is conducive to development.

This is one of the reasons for EU assistance to the Western Balkans, and especially to Kosovo, in the field of the Rule of Law. In Fukayama words weak or failing states, may be “the single most important problem for international order. They abuse human rights, provoke humanitarian disasters, drive waves of immigration, threaten neighbours and shelter terrorists” and, among others, he gives the example of Kosovo (Fukayama, 2004: 92).

Kosovo unilaterally declared independence from Serbia in February 2008, but this step was not followed by universal recognition of Kosovo. Five EU Member States have not recognized Kosovo’s independence, which has led the EU to adopt what is termed a ‘status neutral’ position.<sup>2</sup> All Member States have nevertheless agreed that the EU should provide substantial funding to Kosovo with a view to ensuring the stability not only of Kosovo, but also of the wider Western Balkans region and Europe as a whole.

<sup>2</sup> The five EU member states that do not recognize Kosovo are: Spain, Cyprus, Greece, Romania, Slovakia,

The bulk of the assistance was provided under the CARDS programme over the period 2000-2006 (Council Resolution 2666/2000), replacing the previous OBNOVA programme. After this, CARDS was replaced by the Instrument Pre-Accession Assistance (IPA) programme (Council Regulation 1085/2006) covering the period 2007-2013. The situation on the ground was by then quite different. During the CARDS period, many of the states had to (re-)build public institutions after the dissolution of the former Yugoslavia, requiring restructuring of agencies that had been set up under very different political and constitutional regimes, preparing new framework laws, etc. At the same time issues such as the fight against organised crime and corruption assumed increased importance. The speed and depth of subsequent transformations have varied from country to country. The IPA programmes in the Western Balkan states have thus increasingly become defined by the specific challenges and constraints in each state, though with the overarching EU accession criteria remaining largely the same.

Looking at the particular sub-fields within the larger Rule of Law universe, specific judicial reform, the fight against corruption and organised crime, we can say that these are seen as particularly important challenges across the Western Balkans and particularly in Kosovo, challenges which need to be successfully addressed in order for these states to become members of the EU.

Over the last decade the international community has invested major resources in peacekeeping, reconstruction, institution building, economic development and Rule of Law assistance to Kosovo. During the period 1999-2007 Kosovo received 3.5 billion Euros in donor assistance, two thirds of which came from the European Commission and EU Member States.<sup>3</sup> A 2008 Donor Conference pledged an additional 1.2 billion Euros for the period 2009-11, including 508 million euro from the Commission. Overall, Kosovo is “the biggest recipient per capita of EU assistance in the whole world”.<sup>4</sup> During the five years 2007-2011, Kosovo received IPA funding totalling € 422 million. Of this, funding for judicial reform and the fight against corruption and organised crime amounted to € 49.2 million – about 11.7% of total IPA funding (Berenschot and Imagos, 2013: 9). This represents the second-highest share of IPA funding in the region, the largest in terms of absolute funding.<sup>5</sup>

We can thus affirm that the EU is seriously committed to help Kosovo to be a secure and stable country in this region.

### III. EULEX

The EU began preparations for a mission in Kosovo in 2006. It was clear from the beginning of the status negotiations that a fundamental reorganisation of the international community's operations in Kosovo, and consequently those of the EU, must follow

<sup>3</sup> Interview conducted with an high official of European Commission in Brussels, November 2012.

<sup>4</sup> Statement by President Barroso following his meeting with Hashim Thaci, Prime Minister of Kosovo, Pristina, 20 May 2011.

<sup>5</sup> Interview conducted with an high official of European Commission in Brussels, November 2012.

the formal solution of the status issue. According to the international plans, after the declaration of independence the United Nations Interim Administration Mission in Kosovo (UNMIK) was to be succeeded by an international mission undertaken by the EU, as detailed in the Ahtisaari plan. The European Union Planning Team Kosovo, established in April 2006, assumed the task of making preparations for the EULEX mission (Official Journal of the EU, 2006).

The report published in July 2006 by Javier Solana and Enlargement Commissioner Olli Rehn, entitled *On the Future EU Role and Contribution in Kosovo*, and formulated EU involvement in terms of three components. The first of these was the installation of an EU Special Representative (EUSR) on the model of Bosnia-Herzegovina, who would at the same time head the International Civilian Office (ICO), which was tasked with assisting Kosovo in the EU integration process and implementing the provisions of the Ahtisaari Plan (ICO, 2009). The second was the definition of the role of EULEX in the area of the Rule of Law. In parallel with this, funds were to be made available for Kosovo from the future Pre-Accession Instruments. Thirdly, the EU planned at this time to intensify its activities in Kosovo within the framework of the Stabilisation and Association Process (SAP), as well as to prepare concrete steps for the accession of Kosovo to the EU (Dzihic and Kramer, 2009: 15).

EULEX was conceived as the EU's biggest ever civilian foreign mission, and was intended to support Kosovan institutions in the area of the Rule of Law, and in particular in terms of strengthening capacities in the police, the judiciary and the customs service. The legal basis for the mission was created in a Joint Action resolution of the European Council on 4 February 2008 (Portilla Gómez, 2012: 21).

Meanwhile, Kosovo unilaterally declared independence from Serbia, confirming its acceptance of the Comprehensive Settlement Proposal for Kosovo Status (CSP), its agreement to the deployment of EULEX and the continuation of the NATO presence. In April 2008, the government adopted the "Constitution of the Republic of Kosovo", which came into force in June 2008, when Kosovo assumed a number of responsibilities from UNMIK.

In this context, in December 2008, Javier Solana, High Representative for Common Foreign and Security Policy of the European Union (CFSP), announced the deployment of EULEX, saying that (Council of the EU 2008):

The EULEX mission is deployed in order to assist Kosovo in its progress towards reaching European standards in the areas of police, justice, customs and correctional services. [...] The mission is proof of the EU's strong commitment towards the Western Balkans and it will contribute to the enhancement of stability in the whole region.

A core function of EULEX is to monitor, mentor, and advise (MMA) Kosovo's Rule of Law institutions in establishing institutional practices that support the country's overall democratization.

The EU's EULEX mission –officially launched on 9 December 2008– is its biggest and financially most lavish civil intervention abroad to date. EULEX has a total of around

2,250 international and local staff and an annual budget of around 111 million Euros (EULEX Kosovo, 2012).

EULEX is financed from the EU's Common Foreign and Security Policy (CFSP) budget, with funding being implemented through a contract between the European Commission and the EULEX Head of Mission, who is personally responsible for the EULEX budget.<sup>6</sup>

In a strategic review of EULEX, the European External Action Service (EEAS) proposed the maintenance of some executive functions and the extension of its mandate until June 2014. The Commission service primarily responsible for dealing with Kosovo is the Directorate General for Enlargement. It is responsible for the management of IPA, which is the main source of funding for assistance projects in Kosovo. EULEX is managed by the Civilian Operations commander, who is the Director of the Civilian Planning and Conduct Capability, which is based in Brussels and forms part of the EEAS. He is under the political control and strategic direction of the Political and Security Committee of the Council. The European Union Office manages the implementation of the IPA.

In the period 2007-11 more than half of EU assistance was allocated to the Rule of Law in Kosovo, principally through the CSDP mission but also through the IPA (see Table 1). In this period, IPA funded projects in the areas of policing, justice and customs, as well as funding specific anti-corruption projects up to a total of 92,47 million euros (ECA 2012: 12).

Table 1. EU Assistance for the Rule of Law 2007-11 (commitments in million euro) (1)

| Instrument  | 2007   | 2008   | 2009   | 2010   | 2011   | Total    |
|---|--------|--------|--------|--------|--------|----------|
| EULEX (including Planning Team)<br>(current budget line: 19.03.01.02) | 76,50  | 120,00 | 121,22 | 120,75 | 144,00 | 582,47   |
| IPA wider Rule of Law (2)<br>(22.02.02 and 22.02.04.01)               | 9,30   | 44,52  | 12,05  | 14,20  | 12,40  | 92,47    |
| Instrument for Stability<br>(19.06.01.01)                             | 0,00   | 5,00   | 0,00   | 0,00   | 0,00   | 5,00     |
| Total EU assistance to the wider<br>Rule of Law                       | 85,80  | 169,52 | 133,27 | 134,95 | 156,40 | 679,94   |
| Total EU assistance to Kosovo   | 231,70 | 331,10 | 238,22 | 198,95 | 212,70 | 1 212,67 |
| Total Rule of Law as % of total EU<br>assistance                      | 37%    | 51%    | 56%    | 68%    | 74%    | 56%      |

1. The EU general budget only provides details of the EULEX figures since 2011. In this table the Court has used the figures provided in the 2011 EU budget for the years 2009, 2010 and 2011, and figures obtained from the Commission's internal accounting system for previous years.

2. In addition to policial and judicial projects, IPA "wider Rule of Law" projects include projects related to anticorruption, customs and public financial management reform.

Source: ECA 2012: 13.

<sup>6</sup> Idem.

All this financial assistance corroborates the EU commitment to play a leading role in ensuring the stability of Kosovo and also its willingness to assist the economic and political development in line with the European perspective on the region.

However, according to the European Court of Auditors (ECA), “despite significant EU assistance, progress in improving the Rule of Law is limited” (2012: 15). This is an object of great concern for the EU. As Greicevci (2011) argues, the stakes are high

a EULEX failure in Kosovo would be a failure of the European project in Kosovo, and potentially in the entire region of the western Balkans.

EULEX has faced a rough road in executing its mandate ever since it deployed, and did not escape severe criticism. Its overall budget and the large number of staff, at least compared to other EU missions abroad, have, by default, increased expectations both among the local population and among the policy makers in Brussels and the EU Member States. The initial statements about the mission’s intentions and capacities as regards fighting corruption and organized crime in Kosovo have not only increased expectations but have also provided hopes that great improvements would take place on the ground. The hopes and trust that the people in Kosovo have lost in their own institutions for fighting some of its biggest societal problems, organized crime and corruption and political interferences in independent institutions, have shifted over to EULEX.

Regardless of whether or not these expectations were realistic, they have not been met, and hopes soon began to fade. Organized crime and corruption continue to be present at worrying levels within the institutions of Kosovo, and political pressure on the judicial and other independent institutions persists, regardless of some improvements. One of the basic problems is that there are almost completely contrasting perceptions regarding EULEX’s work amongst Kosovo’s local population and institutions,<sup>7</sup> those in Brussels not directly involved with the mission but who bear the cost on the one hand,<sup>8</sup> and those who are directly engaged with the mission in Kosovo and Brussels on the other hand. Public satisfaction with the work of the mission in Kosovo stands at 22 percent, while in Brussels the perception is that 70 percent of Kosovar public opinion wants EULEX’s presence.<sup>9</sup> But what has been achieved, up to now, in the main areas of the Rule of Law, police and justice? Is EULEX doing a “good job? What have been its main constraints?

#### IV. EULEX CONSTRAINTS

At ground level, since the period of supervised independence expired, on 10 September 2012, EULEX has faced numerous distinctive challenges, many of which continue to hinder its work particularly in the north of Kosovo. According to the European Court of

<sup>7</sup> Among the local institutions critical voices have been heard from and among: The President of Kosovo, Kosovo’s Interior Minister, Kosovo’s Deputy Prime Minister and Minister of Justice.

<sup>8</sup> Among those are Members of the European Parliament (MEP), some of the Member States, NATO, European Court of Auditors, etc.

<sup>9</sup> Interview conducted with high official of European Commission in Brussels.



Auditors (2012: 29): “EU interventions [in the north] have been very limited and there has been almost no progress in establishing the Rule of Law”.

In the north of Kosovo, EULEX should have been primarily concentrating on reducing crime and smuggling and tackling a number of organized and violent crime cases. However, there are a number of obstacles that have prevented EULEX from making meaningful advancements in these areas in the north of the territory. To start with, EULEX and the Kosovo Police (KP) have faced difficulties in travelling freely throughout the north. This has prevented them from realizing their objective of instating the Rule of Law. We must not forget that the North of Kosovo is one of the most ethnically heterogeneous areas, and the creation of political conditions for multi-ethnicity and reconciliation of all presented itself as the main challenge to the previous UNMIK (Simonsen, 2004: 294, 305). Networks of Kosovo Serbs in the north erected barricades that effectively prevented EULEX and Kosovo Customs and Police from reaching the northern border and prevented people and goods from moving freely throughout much of northern Kosovo. This has undoubtedly placed additional pressure on NATO's KFOR.<sup>10</sup> NATO Secretary General Anders Rasmussen has claimed that EULEX's insufficient capacity has plagued NATO's peacekeeping mission with additional tasks, which were not anticipated or mandated, particularly in the north.<sup>11</sup> In particular, EULEX's inability to halt illegal traffic across the northern borders has forced KFOR to assume additional responsibilities.

KFOR, acting under a security mandate, inhibited trafficking and isolated traffickers along certain routes, but EULEX, acting under a Rule of Law mandate, failed to act in close communication with KFOR to identify and arrest those smugglers and traffickers who frequently use alternative routes across the border (GLPS, 2013: 20).

Moreover, the perception that EULEX is implementing the Ahtisaari Plan and not maintaining a status-neutral platform has plagued EULEX in its border control and customs efforts. In this regard, Serbs in the north and Serbia itself have viewed functional customs as a sign of EULEX's implementation of the Ahtisaari Plan and acceptance of Kosovo's statehood.

Within the context of the June 2012 mandate, EULEX has taken some basic steps to increase its presence in the north with more active involvement in the area of the judiciary and with [the] stronger presence of a new special police unit in northern Kosovo. However, matters are still difficult and EULEX's action continues to be strongly limited in the north, which is considered the most criminalized part of Kosovo.<sup>12</sup>

<sup>10</sup> Under the authority of the United Nations (UN Security Council Resolution 1244) NATO has been leading a peace support operation in Kosovo since 12 June 1999 in support of wider international efforts to build peace and stability in the area. KFOR's mission is to: contribute to a secure environment and ensure public safety and order; support and coordinate the international humanitarian effort and civil presence; support the development of a stable, democratic, multi-ethnic and peaceful Kosovo; and to support the development of the Kosovo Security Force. Available at: <http://www.aco.nato.int/kfor/about-us/mission.aspx> (accessed on July 3, 2013).

<sup>11</sup> B92 (2012). NATO chief criticizes EU mission in Kosovo. Available at: [http://www.b92.net/eng/news/politicsarticle.php?yyyy=2012&mm=04&dd=24&nav\\_id=79921](http://www.b92.net/eng/news/politicsarticle.php?yyyy=2012&mm=04&dd=24&nav_id=79921) (accessed on July 4, 2013).

<sup>12</sup> This situation is mainly due to the lack of control over the north by the Pristina-based Kosovo authorities. It has the reputation of being a 'safe haven' for organised crime due to the lack of both a strong police force and a functioning judicial system (Council of the EU, 2011: 29).

Another constraint on EULEX's work results from its lack of human resources. Much of its staff is seconded, contracted by their respective member states. While this is normal, as member states are individually participants in each European Security and Defence Policy mission, many policies related to the seconded staff from individual member states have exposed EULEX to a number of problems, including high staff turnover, poor local knowledge among staff, and member state influence over EULEX's operational practices and standards. While staff contracted by Brussels usually stay in Kosovo for a number of years, staff contracted by member states "are often seconded for too short periods, usually for one year with limited opportunity for contract renewal" (ECA, 2012: 44). The high turnover rate among EULEX staff causes a number of complications, preventing the formation of trust and strong ties between EULEX staff and the staff of local institutions. Additionally, high turnover rates cause legal and operational inconsistencies as well as insufficient familiarity with local practices among EULEX staff. These short-term jobs are also more attractive to younger and less experienced professionals, which compound the lack of expertise and "the necessary capacity building skills" (Idem). In essence, EULEX lacks sufficient human and professional capacity to exercise its mandate. It should have worked with member states to ensure that the mission operated with the authorized number of staff and that staff were deployed for an appropriate time period and had the skills to be successful. Compounding the staffing failures due to staff inexperience and high turnover rates was the absence of an effective coordinated control mechanism, result evaluation, or external auditing that was used to translate output into accountable performance. According to the European Court of Auditors (2012: 39), "without an adequate system to monitor and analyze the amount of time staff spend on individual MMA actions and on executive functions, and without information on payments made to seconded staff", EULEX was unable to evaluate the performance of staff in each respective action and was unable to "assess how a cost-effective EULEX compares with other forms of EU capacity building assistance".

Moreover, EULEX has found it difficult to collaborate effectively with and transfer expertise and capacity to local institutions. The European Court of Auditors identified coordination between the EU institutions and with other donors and Kosovo authorities as an area where serious improvements should be made (Idem: 33). As it stands, EULEX has shifted away from its duty of supporting the building of domestic capacities in Kosovo to fight crime and corruption. It has chosen to do its own work almost independently and without engendering a sense of local ownership. It maintains a number of executive powers over policing and in prosecuting war crimes and a number of high-profile cases of organized crime and corruption in order to ensure that the Rule of Law is strengthened. Nevertheless, strengthening the wider Rule of Law should be the sole responsibility of the local institutions, which will be held accountable for the progress in this area by the local population, as well as by EU support and conditionality for these changes to take place. In this regard, EULEX has done little to ensure that the Kosovan authorities are themselves prepared in the areas of police and justice.

## The Kosovo Police

One of EULEX's pillars in Kosovo regarding police reform consists in the training and capacity reinforcement of the Kosovo Police Force (KP) in order for them to fulfil their mission of the construction of Rule of Law, which is essential for the promotion of stability and security in the territory. The EULEX mission assists the KP in its progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic police service, ensuring that "the institution is free from political interference and adhering to internationally recognised standards and European best practices" (EULEX Report, 2012: 10).

The police component of the EULEX mission is the first pillar in providing a sustainable environment for the country and in achieving minimum standards of Rule of Law delineated by the EU. It is thus not surprising that this sector comprises the allocation of the highest number of human resources. The EULEX Police Component has a total strength of approximately 1,400 International police officers, deployed all over Kosovo (Idem). The personnel are structured according to their respective tasks in three departments, namely: crime, borders, and administration. For the EU, this division is the best way to address the current set of problems.

According to the EULEX Report (2012: 11), the KP is increasing the knowledge and skills of its specialists and introducing new systems of categorizing and recording crime statistics. On the point of intelligence-led policing, much has been done with significant results for the Kosovo Criminal Justice System, as indicated by the number of drug seizures and intelligence-led crime investigations (Idem). KP has developed a "Proactive Drug Strategy" that has shown significant results in terms of drug seizures.

Regarding the second aspect, borders, KP has faced significant challenges, and the overall performance in providing secure borders has been considered 'weak' up to now. The poor communication skills and the inability to fully implement the laws relating to migrants passing through Kosovo are just two of the problems that are mentioned in EULEX's last report (2012: 13).<sup>13</sup>

Concerning the goal of "Tackling Patrols Effectively and Ensuring Public Order", it is possible to observe significant improvements concerning the development of a system of tracking by the Special Intervention Unit and Improvised/Explosive Ordnance Disposal Unit, both highly specialized teams.

Finally, concerning the third aspect, administration, the KP has encountered problems in retaining and training civilian specialists, as well as in recruiting suitable experts from EULEX and other sources to support its efforts. The process of organizational change has proved to be difficult. The most problematic areas are considered the promotion

<sup>13</sup> The EULEX Report affirms, "virtually no progress was made in terms of verifying KP Border compliance with the laws related to Migration" (2012: 14).

system and the capital expenditure performance, due to the interference of those in senior positions and traditional negative practices such as corruption.

## Kosovo Justice

EULEX was less successful in its MMA actions relating to the justice sector (which have now ceased with its new mandate). EULEX “utterly failed to improve the local judiciary or stem corruption and impunity” (Capussela, 2012).

The justice component of EULEX was active in all Kosovo courts with the aim of improving and strengthening Kosovo’s judiciary to make it “fully multiethnic, impartial, free from political influence and capable of holding fair trials according to international standards” (EULEX site).

After its programmatic restructuring in mid-2012, in which the police, justice, and customs components were rearranged into executive departments, the mission decreased the number of its international staff by about 25%. Most of the reductions occurred amongst police officers. Nonetheless, there was no corresponding increase of personnel in the justice sector. To date, the justice component has comprised only 36 judges and 24 prosecutors working with the mission (KIPRED, 2013: 13). This means that there is an average of 1 judge sitting in each of the regular courts, which deal with criminal proceedings.<sup>14</sup>

In addition to the mission’s competences, EULEX judges and prosecutors retained certain executive responsibilities by working together with their local counterparts, ensuring that cases of war crimes, terrorism, organized crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes were properly investigated, prosecuted, adjudicated and enforced, according to the applicable law (EULEX, 2008).<sup>15</sup>

EULEX did not establish internal mechanisms to ensure the transparency of judicial and prosecutorial allocation of cases, performance and decisions or to ensure oversight and internal control mechanisms over the work of the prosecution and judiciary. There was “insufficient transparency in the allocation of cases among judges and prosecutors” (EAC, 2012: 22), as EULEX failed to institute pre-determined objective criteria and procedural safeguards for the allocation of cases to judges and prosecutors. This has allowed for political interference and revealed EULEX’s failure to establish sustainable mechanisms to ensure the political independence of domestic judges and prosecutors. Political interference remains a major problem to the point that “judges are not fully willing to render their judgments on the basis of the law only, but tend to act in anticipatory obedience to external influences” (OSCE, 2012: 7). The threat to the independence of the court system comes from several sides. From the state it is primarily through the control of the budget for the court system, and/or the appointment or termination of

<sup>14</sup> In Kosovo there are 24 municipal courts and 2 additional branches, 5 district courts, 1 economic court, the Supreme Court, and the Special Chamber of the Supreme Court.

<sup>15</sup> They also worked on a number of cases received from UNMIK and on new cases, including on mixed panels with Kosovo judges and prosecutors.

judges and prosecutors and finally the exertion of political pressure in specific court rulings. From the private sector it is through the buying or influencing of legislation and/or outcomes in court cases, though this issue seems to be of much less concern in the region than the threat of state interference and influence.

While EULEX's presence can be credited with removing some level of political interference in the courts (GPLS, 2013: 20), it has not enabled Kosovo courts to develop a sustainable capacity to act free from political interference. Additionally, political interference in the form of threats and intimidation as well as insufficient expertise have rendered the local judiciary unable to handle serious cases of organized crime, corruption, and war crimes (Idem). While these cases exist under the purview of EULEX's executive functions, the insufficient expertise of local authorities to handle these cases reveals that EULEX did not exercise its advisory function in building upon the professional education and professional capacities of domestic judges and prosecutors (Idem: 20).

EULEX also failed in establishing a functional judicial system in the north via the local court in Mitrovica, due to the fact that Serbian judges made decisions based on Serbian laws while Albanian judges based decisions on Kosovar law (ECA, 2012: 28). Without functioning institutional foundations in the north, EULEX was unable to pass on any expertise or generate any higher capacity amongst authorities in the north of Kosovo.

As a consequence of the uncertain status of Kosovo under international law, the justice component is faced with the dilemma of determining the applicable legislation. There continue to exist three parallel sources of legislation in Kosovo. In certain cases, former Yugoslav laws and provisions can still be found, which continue to be applicable. At the same time, there are extensive UNMIK regulations still in place, and following Kosovo's declaration of independence, legislation has been adopted by the Kosovo Assembly.

The relationship between these legal acts and their compatibility remains problematic. Considering the "status neutral" approach, most of the judges would apply UNMIK's regulations still in place in Kosovo, although some of these regulations are being repealed by the new laws that have been adopted by the Kosovo Assembly. In this regard EULEX has not made any statement as to which law will be applicable, although the current practice reveals that most of the laws being referred to and applied in its judgements are those adopted after the Constitution was enacted.

Another challenging issue concerns serious crimes. The unjustified delay of up to five years before trials, the fact that enacting clauses of verdicts lack a legal basis, and the confiscations of objects derived from the commission of a criminal offence as foreseen in the Criminal Code of Kosovo are just some of the problems. Moreover, the reasoning of the verdict in many cases does not contain a clear or detailed evaluation of the defendant's criminal act or of all the collected evidence, which are prerequisites for a judicial system within a Rule of Law.

Additionally, EULEX assessed the infrastructure available for judges in District Courts as insufficient. It also raised concerns with respect to access to justice and with reference to trials conducted in offices, which renders the participation of the public almost impossible.

Although the number of judges and prosecutors in Kosovo remains very low, improvements in the judicial component have been made. This was the case with the appointment of new judges to the Special Chamber of the Supreme Court, Commercial Courts and Municipal Courts, and the decrease in the number of cases pending in Kosovan courts.

Nevertheless, there are still many constraints within Kosovo's justice system. Firstly, the number and quality of cases concerned with "high profile" organized crime and corruption remains at 'disappointing' levels.<sup>16</sup> Secondly, the number of cases completed in 2011 was higher than the number of cases admitted, which continues to thwart the most optimistic expectations. Moreover, the impunity for war crimes highlighted the reports of the last few years by Amnesty International, remains one of the most serious human rights concerns. This discontent felt and expressed by Amnesty is not recent. After the disappointment regarding UNMIK's work on this issue, this non-governmental organization still urges the need for EULEX to prioritize the investigation and prosecution of war crimes in Kosovo.

Furthermore, the deficiencies of prosecutorial systems remain a serious obstacle to the Rule of Law in Kosovo. There have even been several cases in which defendants have failed to appear before the court, which has resulted in delays.

The effective implementation of the legal framework in the fight against various forms of organized crime remains a major challenge, particularly in the areas of prevention and the fight against human trafficking, drugs trafficking, and arms trafficking. Despite having already established important elements in the legislative framework, the Kosovan authorities need to achieve tangible results in this area. According to the 2010 Strategic Threat Assessment 'Organised Crime in Kosovo' conducted by the EU Office for Criminal Intelligence (ECA, 2012: 18).

the situation regarding organised crime in Kosovo has not changed considerably since the arrival of the international community in the summer of 1999...investigation of serious crimes is still ineffective due to limited experience and political interference.

Organized crime being a major concern for the European Commission, in May 2012 an initiative at political level called 'Structured Rule of Law Dialogue' was launched. This initiative aims to (EC 2012).

provide a high level forum to regularly assess Kosovo's progress on three issues in particular: the judiciary, the fight against organized crime and corruption...the aim...is to help Kosovo tackle any challenges in these areas at an early stage in the enlargement process.

<sup>16</sup> About 380 verdicts have already been handed down, of which there are approximately 306 verdicts on criminal justice, including 51 verdicts in high-level organized crime and corruption cases. This means that since its deployment in 2008, EULEX judges have on average handed down 78 verdicts per year (or around 2.1 yearly verdicts per judge), of which only around 10 verdicts related to high profile organized crime and corruption cases (or around 0.29 such verdicts yearly per judge) (KIPRED, 2013: 12).

## V. ORGANIZED CRIME AND CORRUPTION

The desire for independence and subsequent international recognition has dominated the overall agenda of the Kosovan authorities. But Kosovo faces other major challenges, in particular poverty and crime. Its GDP per capita of just 2.383 euro is the lowest in Europe.

The situation in Kosovo is still critical and highly unstable with regard to every important aspect of society, despite the enormous injection of resources by the international community since 1999. This applies in particular to the economic and social situation, the Rule of Law, with regard to which the judicial system is powerless in the face of deeply entrenched corruption and mafia influence in society and its structures, and the relations between the Albanian majority and the Serbs, as well as other minorities living in Kosovo.

It has been possible to establish reasonably well-functioning political institutions and to hold parliamentary and municipal elections without major problems. However, the development of a democratic political culture has been extremely difficult. The strategies of UNMIK,<sup>17</sup> the Organization of Security and Cooperation in Europe and the EU for supporting democracy-building in Kosovo have been only moderately successful, among other things owing to the role of the international community as representatives of a protectorate structure. Their broadly applied right to intervene has decisively narrowed the scope and autonomy of Kosovar political actors.

One of the main reasons why Kosovar policy-makers have, over the years, failed to pursue an effective reform policy in such crucial areas as economic and social policy, education, health care and administration has been a status fixation on the part of the Kosovar political class. The achievement of independence, even if for the time being this means only a "limited sovereignty", has become a kind of vague screen of a better future on which the population has projected unrealistic expectations, namely the rapid improvement in the economic situation and the solution of the most pressing social problems. As a result of these expectations the Kosovan authorities find themselves trapped. Rapid progress, especially in the economic and social realm, is not possible, since the urgent problems in Kosovo are to a considerable extent structural in nature, that is, largely the outcome of extremely unfavourable historical and societal circumstances and framework conditions.

The collapse of the Rule of Law in the 1990s created a vacuum, which has been exploited by organized crime both from inside and outside Kosovo. At the same time, the clientelism prevalent throughout Kosovo society and the traditional recourse to a clan-based customary law hinder the establishment and fostering of the Rule of Law.

<sup>17</sup> In June 1999, the United Nations (UN) Security Council adopted Resolution 1244/99, which set up a United Nations Interim Administration Mission in Kosovo (UNMIK) in place of the Government of Serbia. It mandated UNMIK to carry out all aspects of civil administration, establish democratic institutions and create the basis for eventually resolving Kosovo's status. The immediate task of UNMIK in conjunction with the NATO-led Kosovo Force (KFOR) was to establish law and order by ending the violence and repression and allowing for a safe return of all refugees.

Strengthening the Rule of Law in Kosovo is generally considered a pre-requisite for economic development. Moreover, given the international nature of organized crime, the strengthening of the Rule of Law in Kosovo is also important for the EU's internal security.

According to estimates by the Directorate of Organized Crime, the daily turnover of [business resulting from?] organized crime in Kosovo amounts to around € 1.5 million, corresponding to an annual turnover of € 550 million. This represents around one quarter of Kosovo's Gross Social Product (Dzihic and Kramer, 2009: 13). Apparently, organised crime is the sole profitable branch of the economy –in which there is cooperation between Albanians and Serbs. Criminal organisations in the Balkans– in particular Albanians, Kosovans, Serbs and Macedonians, together with Turkish gangs –control the heroin trade in Europe. The Balkans is the transit route for heroin from Afghanistan, and increasingly from other Central Asian countries. Around 90 per cent of the heroin destined for central, western and northern Europe passes through the region (Idem). According to the European police authorities, Kosovo Albanian gangs play an important role in the organisation and control of drug smuggling routes in the Balkans, as well as the regional and international distribution networks in the surrounding area, for example, in Switzerland, Italy and Greece (UN Office on Drugs and Crime, 2008: 58). Moreover, Kosovo still remains a source, transit point and destination for human trafficking (EC, 2008: 20).

The entanglement of structures of organised crime with the political class is a major hindrance to positive future development in Kosovo. In this regard Dusan Reljić speaks of a “nexus between politics and cross-border crime” and the phenomenon of so-called “multifunction persons” who pursue political, economic and criminal interests simultaneously (Reljić, 2007: 16).

Kosovo has only one project specifically dedicated to anti-corruption work. With a budget of € 1 million, the project was to support the Kosovo Anti-Corruption Agency, the police, the prosecution service and the Ministry of Justice to develop anti-corruption policies and a legal framework, while also promoting public awareness.

The Law against Corruption was adopted in 2004 and the Kosovo Anti-corruption Agency was established in July 2006. Anticorruption Strategy 2004-2007 and a subsequent one adopted in 2009 with an Action Plan Against Corruption for 2009-2011 were put in place, and steps have been taken to strengthen institutional and legislative capacities to prevent and confront corruption. Awareness in civil society regarding the seriousness of corruption has improved, though high-level corruption is considered prevalent in many areas and remains a serious concern (EC, 2012: 10).

EULEX has had low levels of success in prosecuting major cases of organized crime and corruption in Kosovo. 202 verdicts had been issued for serious criminal cases by mid-October 2011, with 14 related to organized crime and 30 related to major corruption (GLPS, 2013: 11). By April 2012, EULEX judges had handed down verdicts in more than two hundred serious criminal cases, 46 in major organized crime and corruption cases (Nick, 2012). However “when you measure these verdicts against the number of judges...it appears that a EULEX judge has on average resolved 0.17 cases a year of



corruption and 0.07 cases of organized crime –this is way below what is expected of them” (Balkan Insight, 2011).

EULEX has failed in tackling serious crime and corruption for a number of reasons. There is difficulty in calling (and protecting) witnesses that could testify in high-profile cases of crime and corruption (ECA 2012: 19). Therefore, as a consequence, witnesses are unwilling to provide evidence out of fear. Furthermore, political interference and poor management have inhibited EULEX from being successful in tackling organized crime and corruption. In some cases, even Pristina’s political elite is preventing EULEX from tackling high-level cases of crime and corruption in Kosovo, due to the fact that some of these cases include a mix of people belonging or linked to major political parties and businesses (KIPRED 2013: 18).

## VI. CONCLUSION

Although EULEX is by far the largest CSDP mission ever, its effectiveness in strengthening the Rule of Law has been reduced by different constraints. If we consider the endogenous features, we can find: political interference, inefficiency, a lack of transparency and legal personality recognized both at internal and international levels. When we consider the exogenous features, we can mention the lack of political will on the part of EU member states to provide sufficient seconded staff to EULEX.

EULEX has also been handicapped by not having a legal personality and by maintaining a poor connection with the incentives and conditionality used by the Commission, and EEAS have so far proved of limited use in promoting progress on Rule of Law issues in Kosovo, also demonstrating the lack of coherence between the different EU institutions.

What can be questioned are the allocation and distribution of resources among the various EULEX missions. There are an overwhelming number of resources devoted to the task, including the police component, which nevertheless lacks a serious strategy as regards staffing, especially in terms of the judicial component, which has resulted in a reduced number of cases resolved. However, this poor resource management can also be seen amongst the Kosovo authorities, which continue to suffer from a weak budget allocation. The results of the assessment show that there is an urgent need to re-allocate resources, especially in relation to the local judicial personnel, with the need to increase the number of judges and prosecutors and enhance police investigative work. Therefore, whereas the EULEX budget seems high enough to meet initial expectations, the problem is that the Kosovo budget is insufficient to fulfil the required needs.

If it is true that substantial improvements can be observed in Kosovo in recent years, in particular since the EULEX mission reached the area, the strengthening of the Kosovo Police and the Justice System is still characterized by several difficulties that have been described in this paper, including corruption, organized crime and the insufficient priority accorded by the Kosovan authorities to the Rule of Law agenda. Only these can explain why the huge amount of EU assistance has achieved such limited results until now.

Police and justice reform is a task of continual improvement and incremental positive change. It is a process essential to state building, and to securing peace and development. Without a functioning and accountable judiciary in Kosovo there can be no lasting peace or sustainable development.

The local context in which EULEX operates provides little hope for such an international mission to realize the mandate vested in it. Fighting organized crime and corruption on so many levels in a vibrant yet connected society provides little hope for such threats to be dealt with from abroad. The mandate that EULEX has should be gradually transferred to inhabitants to implement. Therefore it is important to establish nationally owned Rule of Law institutions, breaking their strong dependence on EULEX and the international community.

At the same time, it is important that justice institutions do not operate in a vacuum. They must be nationally owned, accountable and trusted by the citizens for whom they were established. Only then can outside assistance such as that of EULEX be truly helpful.

The state institutions must have the primary responsibility in ensuring the proper implementation of all aspects of Rule of Law should Kosovo ever want to be fully capable of functioning on its own and able to accede to EU membership.

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