



EULEX: Still in Search of an Identity

Follow up report assessing the work of EULEX

09/04/2010

Pristina, Kosovo

Executive Summary

EULEX continues to have problems with its image. The purpose of the deployment of this mission in Kosovo was the rule of law, fighting corruption and organized crime. However, despite the enthusiasm shown at the beginning and great expectations, there has been too little progress in this regard. Kosovo has been, and continues to be, portrayed as a country with a high level of corruption in international reports constantly. Lack of achievement in the fight corruption is affecting the further taking root institutions in Kosovo.

EULEX has come out with statements that there will be arrests of senior officials for corruption, but this did not happen. This has led to increased expectations of citizens and their disappointment again. Disappointment of these expectations was seen in the reaction of several civil society organizations against the rule of law situation in Kosovo, expressing dissatisfaction with the performance of EULEX. Satisfaction with the performance of EULEX among citizens has decreased as well.

The issue of judicial reform has not been taken seriously until now. Unfortunately, no political will can be seen on the side of any of the actors involved to speed up reforms in the judiciary. Now, the need for the adoption of the law on courts has become urgent, as well as the restructuring of the courts and the conclusion of the reappointment/vetting process. The small number of judges and prosecutors in EULEX, compared to the number of police officers, remains a major problem. .

The courts in the north that were closed in 2008 are still not fully functional. Now the Mitrovica District Court works only with international judges and prosecutors. However, the activity of Mr. Kermabon in Belgrade and Pristina is a step in the right direction to solve the problem of courts in the north.

Customs points 1 and 31 are still not functional. Currently, these points are in operation with EULEX officials who just do the recording of entry and exit of goods, which are not subject to customs control. In this regard EULEX is still limited in operation pending a political settlement between Pristina and Belgrade. EULEX is not collecting customs taxes in customs points 1 and 31, because it is not defined where the collected money should go. This is status the quo in the northern customs points and it seems it will not change soon.

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Introduction

EULEX continues to have problems with its image. The purpose of the deployment of this mission in Kosovo was the rule of law, fighting corruption and organized crime. However, despite the enthusiasm shown at the beginning and great expectations, there has been too little progress in this regard. Kosovo has been, and continues to be, portrayed as a country with a high level of corruption in international reports constantly, as in the latest report of the U.S. Department of State.

EULEX, respectively the EULEX chief prosecutor, has come out with statements that this spring will bring arrests of senior officials for corruption,¹ but this did not happen. This has led to increased expectations of citizens and disappointed again. Disappointment of these expectations was seen with the reaction of some civil society organizations against the rule of law situation in Kosovo, expressing dissatisfaction with the performance of EULEX. Satisfaction with the work of the citizens EULEX has also fallen according to the UNDP Early Warning Report no. 27. Lack of success in the fight against corruption is causing it to further spread in institutions that have been relatively less affected by it, such as the Kosovo Police.²

In 27th December 2007, Institute of Balkan Policy (IPOL) published a report assessing the first year of the work of EULEX, "EULEX: In Search of an Identity." The report is divided into several parts, the first part is an introduction to the EULEX mission in Kosovo, the goals of this mission and areas in which the mission is focused. The report continues with a section devoted to the achievements that had EULEX in Kosovo, customs, police and judiciary. Next, the report outlines the perceptions of citizens for EULEX. One chapter talks about this mission's problems and failures. The report concludes with a list of recommendations for EULEX, the Government, the EU Special Representative (EUSR) and the EU. They are below:

To the Government and EULEX

- The Joint Rule of Law Coordination Board should be utilized better, serving as a forum which identifies a list of benchmarks to be achieved within a year.
- Strategies between EULEX and ministries dealing with the rule of law should be harmonized.
- Improve internal coordination of EULEX components.
- Special attention to the reform of the judiciary should be paid as it is the main link in the rule of law field.
- Immediate steps should be taken to ensure the full functioning of the court in northern Mitrovica, within three months.
- Ensure the full functioning of customs at gates 1 and 31 as soon as possible.

¹ SE Times. EULEX investigates high-level corruption in Kosovo. 04 November 2009.

² Meeting with private sector representatives, 25 March 2010 and 01 April 2010.

- To be transparent within possible limits in dealing with the Bllaca case.
- To increase the sense of mission within the EULEX staff to prevent it from turning into a self-serving mission. .
- Identify areas where EULEX can assist in meeting the criteria for visa liberalization.

For the EU and the EUSR

- To create pressure on the Kosovar leadership to undertake the necessary reforms in the field of rule of law with the focus on the judiciary.
- To create pressure on Belgrade, not to hinder the functionalization of customs points 1 and 31, and the court in northern Mitrovica.
- To strengthen the leadership provided to the EU missions in Kosovo.
- To study the possible use of the new powers of the High Representative of the EU, emerging from the Lisbon Treaty, to facilitate the functioning of EU missions in Kosovo.
- EUSR should provide stronger political leadership for the EU missions and, where necessary put pressure to create political will for reform.

This analysis aims to review the work of the EULEX since the publication of report in December. This follow up report will analyze the progress made with regard to these recommendations. The main purpose of this analysis is to see if it made the difference based on these recommendations; To see if the situation has changed since the publication of the first report. Below is a review of the recommendations.

Recommendations for the Government and EULEX

The Joint Rule of Law Coordination Board should be utilized better, serving as a forum which identifies a list of benchmarks to be achieved within a year.

The Joint Rule of Law Coordination Board has continued to meet as before. However, there is no public document designed by this board, yet, which shows that there is a common strategy of the Government and EULEX to improve the rule of law. Nevertheless, the co-chairmen of the board, Deputy Prime Minister Kuçi, and Chief of EULEX Kermabon have emphasized the need to combat corruption.

In the last meeting, improvements in the rule of law, economic development and prospects of European integration were stressed as priorities. The board also noted that priorities can be better achieved by action of the government of Kosovo and EULEX. Yet, so far there are no concrete plans for actions to be taken in relation to these stated priorities. The board has begun to understand the importance of EULEX in helping fulfill the criteria for visa liberalization.³

³ Rule of Law Coordination (<http://www.eulexkosovo.biz/alb/index.php?id=8&n=181>).

The recent changes in the government, where the ministers of Interior and Justice, members of this board, have been replaced, may affect the board's efficiency.⁴

To harmonize strategies between EULEX and ministries dealing with rule of law

Although the need to strengthen cooperation between the Government and EULEX is repeatedly mentioned, this has encountered difficulties in practice. While EULEX has expressed support for the Government of Kosovo, declaring openly that it will help the rule of law in Kosovo, there was sometimes friction between them. When Kosovo was criticized by the U.S. Department of State about the level of corruption, EULEX felt it necessary to emphasize that this is the responsibility of the Kosovo institutions.⁵ The Government of Kosovo established a "task force" to fight corruption and organized crime within the Kosovo Special Prosecutor (SPRK), in full coordination with EULEX.⁶ This was welcomed by EULEX, who offered support for this "task force."⁷ Yet, at the same time, we were witnessing a war of words between senior government and international officials regarding possible arrests of members of government for corruption.⁸

The case of the supposed strategy for the north is an example of a lack of proper coordination between the government, EULEX and other international organizations. Obviously, this document is drawn mainly from international organizations, but it was discussed in the public opinion as a document of the Government and the International Civilian Office (ICO). EULEX was quick to declare that it has nothing to do with this strategy, despite its position that there is an urgent need for improving the rule of law in the north.⁹ Later, the Government took the initiative by appointing a coordinator of the "Strategy for the north" and it remained in government and ICO ownership, even though containing activities foreseen to be conducted by EULEX in the north. Now we are in a situation where there is a coordinator of a "strategy" that was not ever published, and which is denied by the main actors of its eventual implementation.

In parallel, the European Union has opened an office - "House of the EU" - with a view to ease the interethnic relations in Kosovo. The mission will be led by the Italian ambassador in Pristina, Michael Giffoni, who was appointed as a facilitator of the EU in the north. He will also cooperate with EULEX and the European Commission. (Naturally, the International Civilian Office is not included).

Special attention to the reform of the judiciary should be paid as it is the main link in the rule of law field

⁴ Meeting with representatives of Government, 08 April 2010.

⁵ "EULEX leaves it to the Government to fight corruption," Koha Ditore 22 March 2010.

⁶ "Special anti-corruption department" Zëri 26 February 2010.

⁷ Head of EULEX, Yves de Kermabon, welcomes the establishment of the Anti-Corruption Task Force by the Government of Kosovo (<http://www.eulex-kosovo.eu/alb/?id=8&n=197>).

⁸ "EULEX Kuqi: If you have evidence of corruption, act," Koha Ditore March 19, 2010.

⁹ "Strategy without KFOR and EULEX," Zëri 26 February 2010.

Reforming the judiciary and the rule of law are mentioned as priorities by the Government of Kosovo and EULEX. However, the issue of judicial reform is not taken seriously. EULEX has not had an active role in the process of reappointment of judges, thus losing the possibility of close monitoring of a very important process.

In addition, EULEX has not made any public pressure on the government of Kosovo to speed up reforms in the judiciary. The Progress Report of the EU for Kosovo of 2009 states that Kosovo still needs to adopt four reform laws: on the courts, the Judicial Council of Kosovo, the Prosecutor and the Prosecutorial Council. Unfortunately, we can not any political will of any of the actors involved to accelerate reforms in the judiciary system. Now, it has become urgent to adopt the laws on courts, restructuring of courts and to conclude the reappointment process.

The small number of judges and prosecutors EULEX, compared with the number of police officers remains a major problem. The number of positions open in judicial component is 59 (including judges, prosecutors, logistics workers), which is very high.¹⁰ Out of the foreseen 50 judges, only 31 are at work, and out of 35 foreseen prosecutor positions, only 15 are filled.¹¹

Another problem is that there is no separation between judges who have to deal with monitoring, mentoring and advising and those who have executive powers. So, EULEX judges are required to perform trials and are also involved in the monitoring of their local colleagues. Also, while the police component of EULEX has a pretty clear plan of monitoring, mentoring and advising and steps to be taken for improvement, there is no such thing for the judiciary and customs components.¹²

As far as executive powers in the cases EULEX deals with are concerned, (as of March 2010), 63 verdicts were given by EULEX judges (516 hearings), while EULEX Prosecutors are working on on 1073 cases (as of January 2010). More specifically, with regard to organized crime (from 16 June 2009 to December 31, 2009) the Section of the Organized Crime Special Prosecutor (SPRK) has been dealing with 45 cases. There is an increase of 10 new cases in this section. Of the 45 cases within this Section, 42 are active cases. 33 cases of organized crime are in a pre-trial stage, and 3 verdicts have been delivered in organised crime cases. Meanwhile, EULEX judges have passed verdicts in 4 corruption related cases.¹³

Immediate steps should be taken to ensure the full functioning of the court in northern Mitrovica, within three months.

¹⁰ In police sector are required 233 total employees, including office and operational staff for war crimes. In the customs sector are 13 job positions open. See: EULEX KOSOVO-Eleventh Call for Contributions (<http://www.eulex-kosovo.eu/vacancies/docs/11th/Annex-I-Job-descriptions-EULEX-Kosovo-11th-CfC.pdf>) (The last is checked on 08/04/2010).

¹¹ Meeting with EULEX, 16 February 2010.

¹² Meeting with EULEX official, 29 March 2010.

¹³ Meeting with EULEX official, 25 March 2010.

The courts in northern Mitrovica that ended working in 2008 are still not fully functional. In March of this year EULEX proposed that the District Court in northern Mitrovica begins work. EULEX proposed that the court begins its work with 6 judges, out of which, two Albanians, two Serbs and two international. The proposal for resumption of work in courts in the north, has faced challenges because Kosovo officials have indicated opposition to the inclusion of Serb judges that were nominated by Belgrade.¹⁴ Now the district court only works with international judges and prosecutors.

According to EULEX, it is up to Pristina and Belgrade to deal with the issue of Mitrovica and northern Kosovo and this should be solved through dialogue.¹⁵ But a political solution does not seem near. However, the visit of Mr. Kermabon in Belgrade is a step in the right direction to solve the problem of rule of law in the north.

Ensure the full functioning of customs at gates 1 and 31 as soon as possible

EULEX officials have said their goal is to restore Kosovo Customs officers and to establish full control at customs points which were burned after the declaration of independence. But there are two issues to be resolved: that of which law should apply and how to distribute customs revenues. Currently, these points are in operation with EULEX officials who just do the recording of entry and exit of goods, which are not subject to customs control. In this regard EULEX is still limited in operation pending a political settlement between Pristina and Belgrade.¹⁶ EULEX is not at all collecting customs taxes on goods in Gates 1 and 31, because they do not know where to send the collected money. This is status quo of the customs in the north and it seems it will not change soon. However, the lack of customs collection can not continue and a technical solution must be found for the disposal / use of revenues to these points without having to expect a political solution to the situation.

To be transparent within possible limits in dealing with the Bllaca case.

Bllaca's case was a case that highlighted the the lack effectiveness of the EULEX judiciary. However, after Mr. Nazim Bllaca went public with his statements regarding his involvement in several murders, and after public pressure by the media in December EULEX gave the order for his house arrest.¹⁷ However, this case remained surrounded in mystery.

After that several arrests were made in connection with this case. First came the arrest of Driton H. who is accused of taking part in two attempted murders, one committed in November 1999 in

¹⁴ "EULEX proposed reopening of the courts in the north, Voice 25 March 2010.

¹⁵ EULEX reconfirms non-intervention in political decision (http://www.bbc.co.uk/albanian/news/2010/04/100403_arber-intv.shtml) 03/04/2010).

¹⁶ Hyseni, Violeta "Still no solution for customs control in the north" BBC Pristina on 23 February 2010.

¹⁷ Press Release: Nazim Bllaca house arrest (<http://www.eulex-kosovo.eu/alb/index.php?id=8&n=165>) (01/12/2009).

Pristina, and the second in June 2000 in Ferizaj.¹⁸ Then there was an arrest of a third person, Mr. Shpresim Uka. Without giving any details about the arrest and the case, after a hearing he was released, being obliged to appear in court once a month. Details about the case and investigation of the Bllaca case by the EULEX prosecutors are not known.¹⁹ This case continues to hold a strong grip in the collective imagination of the public and remains a test for EULEX.

Identify areas where EULEX can assist in meeting the criteria for visa liberalization

As for the liberalization of visas, there are some areas of action within the monitoring, mentoring and counseling program that have direct impact on meeting the conditions of the visa liberalization.

¹⁸ One arrest in the Bllaca case (<http://www.eulex-kosovo.eu/alb/index.php?id=8&n=180>) (12/01/2010).

¹⁹ Bajrami, Selvije "Released Shpresim Uka, 5 March 2010 Voice.

Recommendations for the EU and the EUSR

To create pressure on the Kosovo leadership for needed reforms in the rule of law with the focus of the judiciary

Some high-profile visits have been made in Kosovo at this time. During her visit Baroness Ashton, the High Representative of the European Union for Foreign Affairs and Security and vice president of the European Commission pledged support to Kosovo's path towards the European Union, promising that a team would evaluate the work that has been done to liberalize Schengen Visas. She stressed that of special importance is the rule of law in Kosovo²⁰.

Also, the visits of Foreign Minister of France, Mr. Kouchner, and EU Commissioner for Enlargement, Mr. Fule have stressed the need to improve the rule of law. However, the international community appears divided in terms of pressure for radical changes and so far has failed to impact on the Kosovo leadership to speed up reforms.

To create pressure on Belgrade, not to hinder the functionalization of customs points 1 and 31, and the court in northern Mitrovica

There was a relatively greater pressure on Belgrade and Pristina on regional cooperation and dialogue. For example, Foreign Minister Bernard Kouchner of France in his meeting with Belgrade officials highlighted the issue of cooperation between Balkan countries, especially cooperation and dialogue between Serbia and Kosovo. On the other hand he had several meetings in Pristina, where, in addition, he made numerous calls for regional understanding and gave support to Kosovo's path toward European Union.²¹

To strengthen the leadership that provided the EU missions in Kosovo

While the international missions in Kosovo are quite unclear with regard to division of powers and areas of action, they lack leadership from the top. Each representative promises to continually support in Kosovo road towards the European Union but on the other hand there is little concrete that will support these words in reality in terms of leadership that is provided for missions here. The case of customs checkpoints in the north is an example of lack of commitment. EULEX has employed personnel who are not able to perform their jobs as customs officers. And, allowing the continuation of the status quo is against the verbal commitment to improving the rule of law in Kosovo.

²⁰ Catherine Ashton visited Kosovo (<http://www.delprn.ec.europa.eu/?cid=1,103.756>) (08/04/2010)

²¹ Kouchner's visit to Serbia and Kosovo (28 February to 2 March, 2010) (http://www.diplomatie.gouv.fr/en/country-files_156/serbia_362/visits_2680/bernard-kouchner-visit-to-serbia-and-Shoot-28.02-02.03.10_13803.html) (08/04/2010)

To study the possible use of the new powers of the High Representative of the EU, emerging from the Lisbon Treaty, to facilitate the functioning of EU missions in Kosovo

Baroness Ashton, should use the right to initiative in order to move the process forward to finding technical solutions to problems without having to wait for political solutions that might not come quickly.

EUSR should provide stronger political leadership for the EU missions and, and where necessary put pressure to create political will for reform

There was discussion about the relationship between the EUSR and Head of Mission of EULEX. If the relationship between them is not professional and collegial the work of the missions will be difficult. And this should be taken into account in selecting the new chiefs of the EU missions in Kosovo. So far EUSR pressure for reform has been low and has come in the form of suggestions for changes to senior officials talked about for corruption. This can actually be counterproductive, leading to conflict with local leaders, especially in light of division within the international community in terms of pressure for reform.

ABOUT US

The Balkan Policy Institute is an independent and not-for-profit think tank that seeks to initiate and deepen public policy debate at all levels of decision making. Based in Pristina, Kosovo, the Balkan Policy Institute works to promote sustainable development and good governance through pragmatic policy making that works for the welfare of the citizens.

Our mission is to strengthen the understanding of the impact that public policies have, among Kosovo's citizens, advocacy groups and decision makers. We do this by identifying issues, undertaking research, and generating innovative solutions and strategies aimed at understanding and resolving societal and public policy issues.

The Balkan Policy Institute aims to offer sound analysis to decision makers; provide advocacy tools to citizens and interest groups and support them in their participation in the decision making processes.

The objectives of the Balkan Policy Institute are to ensure that the processes of European integration, decentralization and market reform are utilized to increase citizen participation in decision making; empower local communities to address their own challenges in a sustainable manner; bring welfare to the citizens; increase the accountability of government and secure a healthier environment.

The Balkan Policy Institute works with partners in civil society, government and academic in employing a comprehensive approach towards achieving its goals; it proactively engages with key actors in the policy making process; it continuously studies issues and develops appropriate responses; and it monitors the implementation of policies and the implications.

The areas of focus of the Balkan Policy Institute's work include governance, sustainable development, social affairs, health, education, economic development, local governance, regional and international affairs, rule of law, transparency and civil society.

The Balkan Policy Institute employs permanent staff and research fellows as well as interns. The staff and fellows of the Institute are motivated and dynamic individuals who are committed to Kosovo and the region of south east Europe.