



EULEX AND RULE OF LAW IN KOSOVO

Prishtina, May 2011

ACRONYMS

EULEX	European Union Rule of Law Mission in Kosovo
ICO	International Civilian Office
UN	United Nations
EC	European Commission
KJC	Kosovo Judicial Council
MJ	Ministry of Justice
MIA	Ministry of Internal Affairs
MTPT	Ministry of Transport, Post and Telecommunications
KP	Kosovo Police
EUSR	European Union Special Representative
GK	Government of Kosovo
EU	European Union
UNMIK	United Nations Interim Administration Mission in Kosovo
ECLO	European Commission Liaison Office

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1. EXECUTIVE SUMMARY

The Rule of Law remains weak in Kosovo. After re-appointment of judges, increased expectations of citizens regarding the ability of courts to perform services effectively.

Unfortunately, the government's priorities in this area are more rhetorical. The budget allocated to the institutions of Role of Law is proportionally smaller in 2011 than in 2010. And it is expected to decline further in the years 2012 and 2013.

Although charged with building a strong and effective Rule of Law in Kosovo and fight corruption and the organized crime, EULEX continues to face many challenges. The lack of trust between EULEX and local institutions are presented as an obstacle to achieving this mandate. Although EULEX is involved in several cases of combating corruption and organized crime, so far the expectations that "big fish" will face justice are disappointed.

The public perception is that EULEX and Kosovo government are at odds when it comes to the hot issue of high level corruption. This can be seen from the war of words which is apparently distracting from real issues. This helps to reduce public confidence in the ability of EULEX to fight corruption and also threatens to further strengthen the a strong sentiment of impunity in Kosovo. Satisfaction with EULEX has fallen. And, trust in institutions of Rule of Law in general has decreased within a year.

Reforming the judicial system remains a slow process and it still an urgent challenge for EULEX and the Kosovo institutions. It is worrying that the courts' budget has suffered a decrease proportionally from 2010 to 2011. After re-appointment of judges, citizens' expectations for higher efficiency also increased. Now attention is focused on the judicial system and the required results.

The issue of northern Kosovo remains unresolved. The lack of a functioning court in the northern part of Mitrovica symbolizes lack of law and order and insufficient political will to ensure justice in the north. This issue has not been yet discussed in the talks between Kosovo and Serbia and as a consequence the citizens in north are due to remain in legal limbo.

Finally, there is no progress in comprehensive management of border crossing points 1 and 31 in terms of customs control and preservation of territorial integrity.

2. THE PURPOSE

In December 2009, Balkan Policy Institute-IPOL published a report called, "EULEX: In search of identity", which evaluated the first year of work of EULEX. EULEX itself only published annual reports and IPOL therefore felt it necessary to ensure immediate reporting in order to facilitate public discourse on EULEX.

In June 2010, IPOL has published the next report on the work of EULEX, the report entitled "EULEX: still in search of identity- Second Report on the assessment of the work of EULEX," which has reviewed EULEX operations in connection with previous recommendations of IPOL and in the developments in the last quarter, by knowing the information and opinions given by EULEX and Kosovo's government officials.

Now in the third year of EULEX's work, it is obvious that these reports are much more important than ever due to the lack of progress in the field of rule of law.

This report aims to provide an overview of the scope of the rule of law and evaluate the work of the EULEX mission in Kosovo. The first part is a description of the purpose of EULEX and comparison with the reality created after the mission was set up in Kosovo. Whereas the second part contains recommendations IPOL has given to the EULEX mission, the Government, the EU Special Representative (EUSR) and the EU, aiming to evaluate the work that EULEX has made regarding with these recommendations and what is taken to improve these issues.

Recommendations for EULEX, Kosovo's government, the EU Special Representative (EUSR) and the EU are summarized below.

2.1. For the Government and EULEX

- To use better the Rule of Law Board serving as a forum which can create a list of targets to be achieved within a year.
- To harmonize the strategies between EULEX and the ministries that deal with rule of law.
- To improve internal coordination of EULEX.
- To pay special attention to the reform of the judiciary because it is the main link of the rule of the law.
- Immediate steps must be undertaken for the full functional of the Court in northern Mitrovica, within three months.
- To completely functionalize customs points 1 and 31 soon as possible.

- To be transparent as possible within limits in Bllaca case and other cases.
- To increase the sense of mission within EULEX staff in order to prevent becoming a self-serving mission.
- To identify areas where EULEX can assist in meeting the criteria for visa liberalization.

2.2 For EU and EUSR

- To create pressure on the Kosovo leadership for the necessary reforms in the rule of law with focus on judiciary.
- To create pressure on Belgrade to not hinder the functioning of customs points 1 and 31 and the court in northern Mitrovica.
- To strengthen the leadership that is offered to the EU mission in Kosovo.
- To use the new powers that derive from the Lisbon Treaty for the high representative of the EU to enable better functioning of the EU mission in Kosovo.
- To strengthen the political leadership of the EUSR, and where it is necessary to put pressure to create political will for reform.

3. CHALLENGES OF THE RULE OF LAW IN KOSOVO

The issue of northern Mitrovica remains unresolved. The lack of a functioning Court in the northern part symbolizes lawlessness and lack political will to ensure justice in the North. The need of the EU, of the government of Kosovo, and Serbia to cooperate in a pragmatic spirit has been requested at international levels.

Unfortunately, EULEX has not stopped the Serbian judges and prosecutors appointed to operate in the northern courts regardless of their participation in parallel structures. EULEX consultations with Belgrade have failed to receive support to move forward with the appointment of judges that are acceptable to all communities and residents in the north are due to remain in legal limbo.

The Board of Rule of Law has continued to meet as before. However, there is not yet any public document of this board that shows that there is a common strategy of the Kosovo's government and EULEX to improve the Rule of Law. Although repeatedly the need to strengthen the cooperation between the government of Kosovo and EULEX is mentioned, it has faced difficulties in practice. Reformation of the judiciary and the Rule of Law are listed as priorities by the Kosovo government and EULEX. However, the issue of judicial reform is not taken seriously. The EU Progress Report of the year 2010¹

¹ EU Progress Report on Kosovo, 2010.

criticizes Kosovo for the weak level of Rule of Law. Unfortunately, despite the adoption of several laws, there is not enough political will among none of the actors involved to speed up reforms in the judiciary.

The Kosovo government has created a "task force" to fight against corruption and against organized crime within Kosovo Special Prosecutor (SPRK), in full coordination with EULEX and other institutions.² This was welcomed by EULEX, which provided support for this "task force".³ In the same time, we have witnessed a war of words among high government officials and international related to arrests members of the government for corruption.⁴

There has been little progress in combating corruption, and now it has become clear that this is an area where politics decides when and how action is taken. There are strong perceptions that corruption is at a high level in Kosovo, and also that politics is itself involved in corrupt affairs. Kosovo's judicial system should be ready to investigate and arrest corrupt people. Also the fight against corruption should not be a push from outside but a need for an improved image of the country, rule of law and to strengthen a sustainable economy.

3.1 The Rule of Law from the perspective of local institutions

Local institutions in declarative terms have pledged to improve the situation rule of law as one of the areas which will have priority. The statements of the government officials about the Rule of Law have been very grandiose and it was expected by the citizens of Kosovo that for the first time this issue to be taken seriously by institutions.

But all those claims for judicial reforms and improving the rule of law in Kosovo, which it can be said are pretty ambitious and take strong commitment to achieve, the Kosovo government has tried to cover only with a very modest budget. From this we conclude that the Kosovo's government claims to improve the situation were only claims. And the fact that for this field a small portion from the budget was designated shows that Rule of Law is not treated as seriously as is claimed by rhetoric.

In the figure below we can see appropriations for the Rule of Law in the past years and in new two years. The Budget for "Rule of Law" we have calculated by collecting the budget of the following institutions: Kosovo Judicial Council, the Kosovo

² Special anti-corruption department, Zeri, 26 February 2010.

³ Head of EULEX, Yves de Kermabon, welcomes the establishment of Anti-Corruption Task Force by the Government of Kosovo, <http://www.eulex-kosovo.eu/alb/?id=8&n=197>

⁴ Kuci to EULEX: If you have evidence of corruption, act. Koha Ditore, 19 March 2010.

Prosecutorial Council, Ministry of Internal Affairs, Ministry of Justice, and Anti-Corruption Agency.

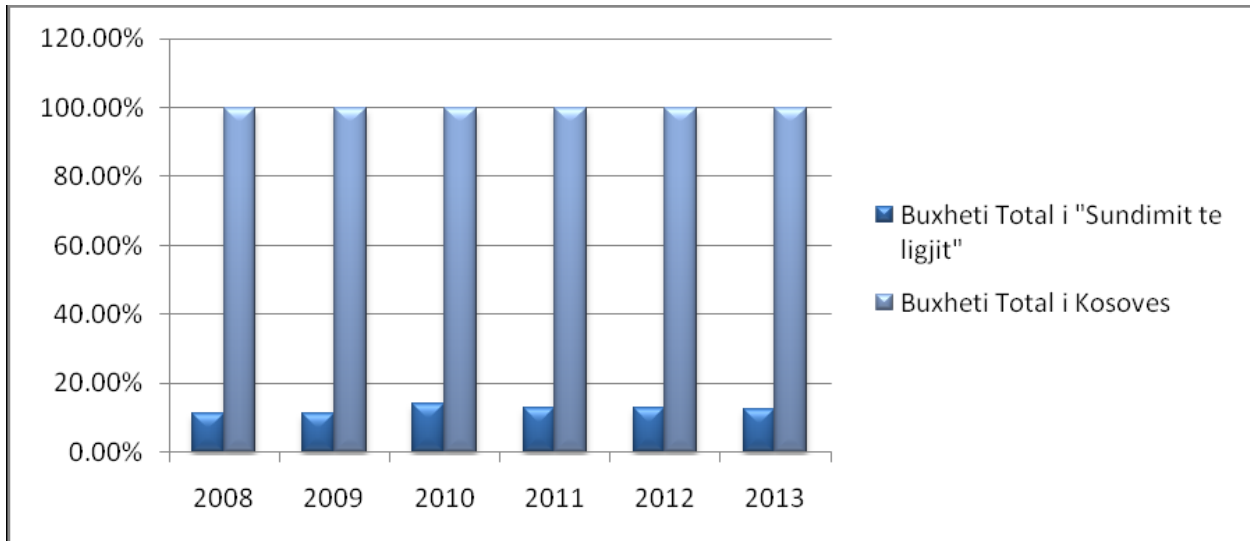


Figure 1. Kosovo Budget for the years 2008-2011 and the forecast for 2012 and 2013. (Total budget and that provided for the rule of law-expressed in percentages)

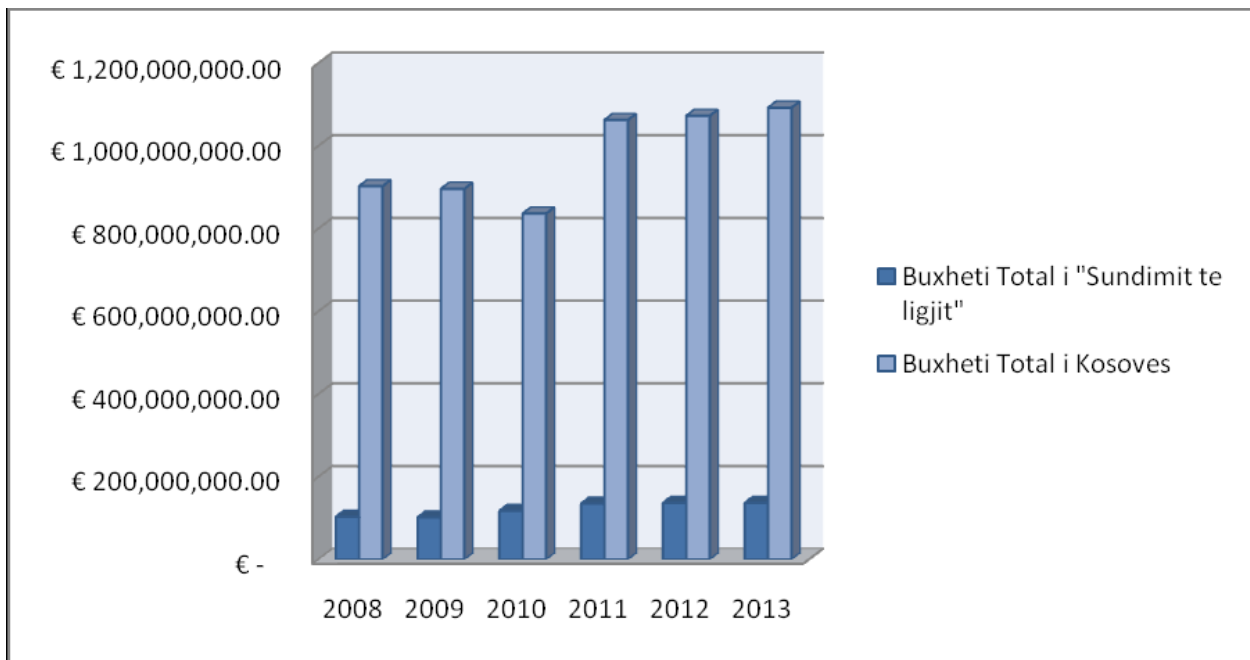


Figure 2. Kosovo's budget 2008-2011 (total budget and that provided for the rule of law - expressed in absolute values)

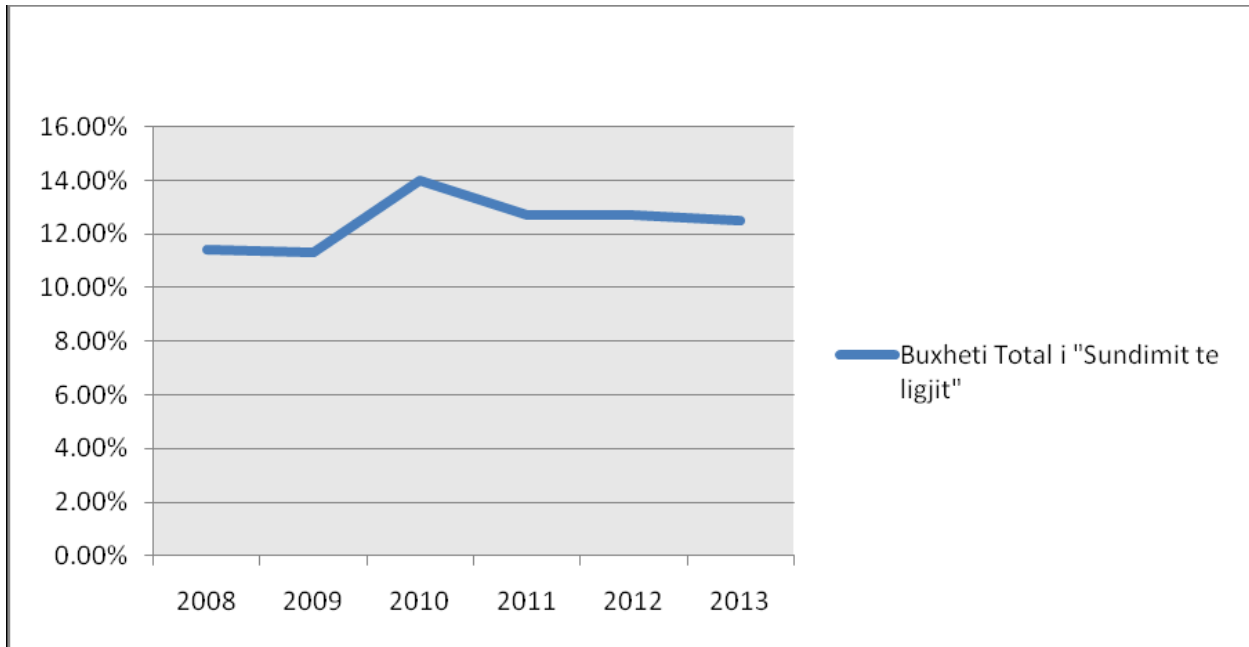


Figure 3. Total budget for the rule of law as a percentage of the budget of Kosovo - the trend

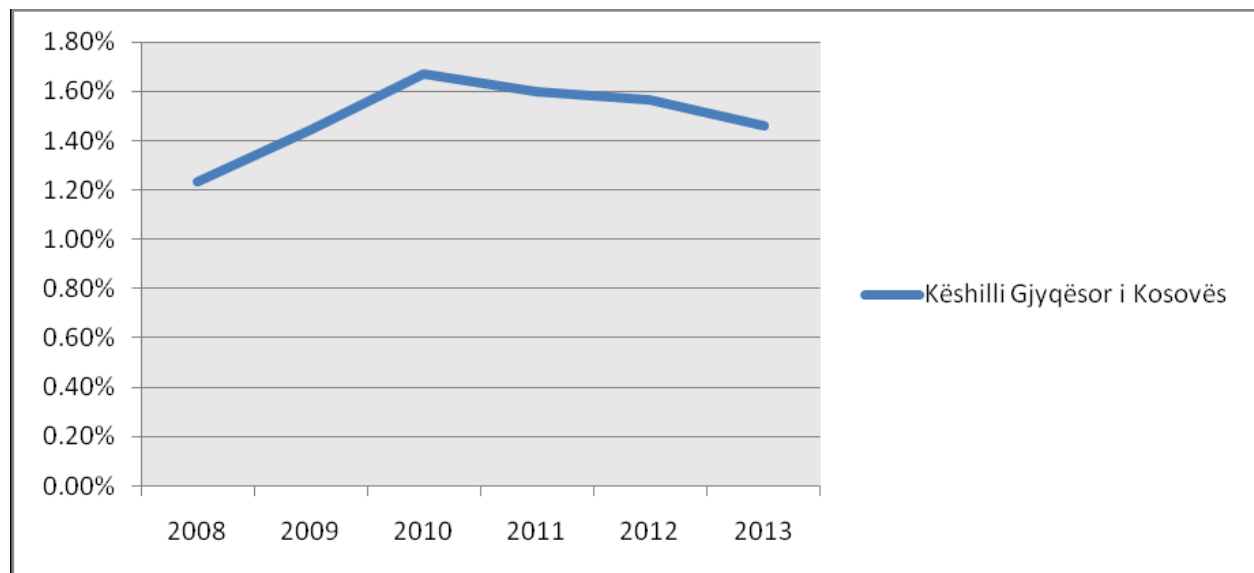


Figure 4. The budget for the court as a percentage of the budget of Kosovo - the trend

4. EULEX (EUROPEAN UNION RULE OF LAW MISSION)

The European Union Rule of Law Mission in Kosovo (EULEX) is the largest civilian mission ever launched under the Common Security and Defense Policy (CSDP).

EULEX's Mission Statement refers to six principal aims: namely, that it will assist Kosovo authorities, judicial authorities and law enforcement agencies in their progress toward:

- ⊙ sustainability,
- ⊙ accountability,
- ⊙ multi-ethnicity,
- ⊙ freedom from political interference,
- ⊙ compliance with internationally recognized standards, and
- ⊙ compliance with European best practices.⁵

These important aims define a shared vision for the future of Kosovo's rule of law institutions, a vision that EULEX would help to achieve. Moreover, it sets out an agenda for Kosovo's European perspective.

Since the deployment of the EULEX mission to date there has been criticism on the work of this mission and its results. Work to date EULEX has not been that effective enough. The reason may be the non-coordination of the International Community and taking concrete steps in the implementation of plans and strategies of this mission into practice.

The initial mandate was for 2 years but the mission is foreseen to be terminated when the Kosovo authorities have gained enough experience to guarantee that all members of society benefit from the rule of law.⁶ Meanwhile, EULEX mandate was extended.

EULEX officials have noted with optimism that the new cooperation will have new and positive results.⁷ Reform should not include only cooperation but also support and investment in infrastructure as well as the income of judges and prosecutors.⁸

⁵ EULEX Program Report 2010, 01 April 2010. Available at: <http://www.eulex-kosovo.eu/docs/tracking/EULEX-MMA-ACTIONS-20102904-ALB.pdf>

⁶ Common Foreign and Police European Union Police. 01 April 2011. Available at: <http://www.consilium.europa.eu/showpage.aspx?id=1458&lang=EN>

Overall annual budget for the mission is currently 165 million (October 2010 to October 2011). This amount covers rent and other expenses for all facilities, transport fleet, also equipment and salaries for international and local staff.

4.1 EULEX Kosovo Justice Component

One of the central aims of the Justice Component of EULEX is to improve and strengthen Kosovo's judiciary to make it fully multi-ethnic, impartial, free from political influence and capable of holding fair trials according to international standards and best European practices. The Justice Component comprises about 420 people. Of this, around 70 people work in the prison system and there are more than 50 judges and around 30 prosecutors.⁹

EULEX judges have accepted 185 criminal cases from UNMIK. These cases are complex cases that involve criminal preliminary proceedings, investigations, indictments, trials, appeals, extraordinary legal remedies and new trials.¹⁰

During 2010 the European Council noted with satisfaction the achieved results in promoting the rule of law by EULEX in Kosovo in a difficult environment of the judicial system and rule of law, including criminal prosecution and trial of criminal, sensitive and important cases mission played a significant role in strengthening stability in the region in accordance with it's European perspective.¹¹

In theory it seems very simple, maybe a goal can be achieved very quickly. But it is questionable how EULEX doing its job, has changed the situation of the judicial system in Kosovo, and which is the contribution of EULEX in this regard?

The judicial system remains fragile and as such should be changed and reformed in order to have greater effectiveness in it's work and to overcome obstacles and resolve cases that are still waiting to many years to make a decision and to reach their conclusion.

⁷ Meeting with EULEX officials, 20 March 2011.

⁸ Conclusions of Round table on Rule of Law - How to overcome challenges. Media Center, Caglavica, 29.06.2010.

⁹ EULEX Kosovo Justice Component, 20 March 2011. Available at: <http://www.eulex-kosovo.eu/en/justice/>

¹⁰ EULEX: Annual report on judicial activities of the EULEX judges.

¹¹ Vedran Džihić and Helmut Kramer: Kosovo after independence. Is it fulfilling its promises EULEX mission. Available at: <http://library.fes.de/pdf-files/id/ipa/06571.pdf>

The issue of judicial reform is not taken seriously until now. Unfortunately, there isn't enough political will to any of the actors involved to speed up reforms in the judiciary. Already, it has become an urgent need to restructure the courts. Courts in the north that were closed in 2008, are not yet fully operational.¹²

EULEX judges and prosecutors in Kosovo have a duty to assist the judicial authorities for their principle towards sustainability and accountability and in further developing and strengthening an independent multiethnic justice, ensuring that these institutions are free from interference policy and respect the standards that are internationally recognized and European best practices.¹³

In addition to internal challenges and lack of human capacity EULEX is being challenged from abroad. Shortly after the publication of the Mr. Dick Marty's report including allegations of illegal trafficking of human organs, calls to begin investigations, were made by the International Community. Although the role of EULEX was brought to question in this direction, EULEX announced it will begin its investigation into the so-called case of "Yellow House", including claimed transfers by the KLA in 1999 of about 400 Serbian prisoners and others in detention facilities in Albania. No sufficient evidence has been provided for these claims.¹⁴

In 2009 up to September 2010, EULEX has completed five war crimes cases, eight of them are ongoing and 27 are in pre-trial stages. EULEX has completed eight cases in related to March 2004 riots, during the same period.¹⁵

Recent events in Kosovo, especially attacks on officials in the northern part of Kosovo influenced the EULEX to be more active and involved in various issues. At the same time recent events meant that the promises of catching "big fish" involved in corruption in Kosovo were put aside. Among the most "spectacular" cases was the raid on the offices of the Ministry of Transport and Communications and Minister Fatmir Limaj's apartment, something that for a time strained relations between the Kosovo government and EULEX.¹⁶

In April 2010 EULEX was investigating six cases related to corruption, while prosecutors were evaluating 10 cases, in order to find out if there is a need to initiate an investigation. Chief State

¹² Ibid.

¹³ Assembly of EULEX Judges, 01 April 2011. Available at: <http://www.eulex-kosovo.eu/en/justice/assembly-of-the-eulex-judges.php>

¹⁴ Human Rights Watch: World Report 2011-Kosovo, 24 January 2011

¹⁵ Ibid.

¹⁶ EULEX fighting corruption in Kosovo, 10 February 2011. Available at: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/blogreview/2010/05/21/blog-02

Prosecutor's Office and in cooperation with the chief of Anti-Corruption Agency (ACA), have established joint working groups which are composed of prosecutors and officials of Anti-Corruption Agency (ACA) in order to identify the gaps and strengthening of cooperation.¹⁷

4.2 EULEX Customs Component

A very important component which directly affects the reduction of the level of organized crime is a component of EULEX Customs. Currently the customs component consists of 75 international and 27 local staff.

Customs still remain a weak point that needs improvement. Kosovo still has large contraband which is multiethnic, but in fact it seems that most of it happens in the north of Kosovo and this problem should be solved as soon as possible.

4.3 EULEX Kosovo Police Component

The EULEX Police Component has a total strength of approximately 1.400 International police officers, deployed all over Kosovo. The personnel are structured according to their respective tasks in three departments: Strengthening Department, Executive Police Department and Special Police Department.

The Police Component is part of the overall EULEX support to the Kosovo authorities in the rule of law area. We assist the Kosovo Police (KP) in working towards a multi-ethnic police that is free from political interference and serves the people of Kosovo.¹⁸

The Police Component is part of the overall EULEX support to the Kosovo authorities in the rule of law area.¹⁹ Police Component is the largest component and which is considered as the most successful in its work. The personnel are structured according to their respective tasks in three departments: Strengthening Department, Executive Police Department and Special Police Department.

A very important movement in this component is cooperation with the Kosovo Police in the plan of raising the level of security in northern Mitrovica. During this action the first

¹⁷ FOL Movement: The Bermuda Triangle: Relations between the Anti-Corruption Agency, Public Prosecution and EULEX, 01 April 2011. Available at:

http://levizjafol.org/images/uploads/files/Trek%C3%ABnd%C3%ABshi_Bermud%C3%ABs_-_V%C3%ABshtrim_mbi_marr%C3%ABdh%C3%ABniet_e_institucioneve_anti-korrupsion.pdf

¹⁸ EULEX Kosovo Police Component, 03 May 2011. Available at: <http://www.eulex-kosovo.eu/en/police/> (25.05.2011)

¹⁹ EULEX Kosovo Police Component, 02 April 2011. Available at: <http://www.eulex-kosovo.eu/en/police/> (25/05/2011)

arrests were made by EULEX in the north of Mitrovica, where a Serbian citizen was arrested for contraband.²⁰

However, the recent arrests made by EULEX where police commander was arrested in Prizren and lack of coordination with the Ministry of Internal Affairs in relation to these issues point to a low level of cooperation between EULEX and Kosovo police.

As in all of Kosovo, also in the north EULEX has component of monitoring, mentoring and advising Kosovo Police. But EULEX also has some corrective powers in relation with the performance of KP, as part of its executive mandate. Police investigations and operations that fall under the executive mandate of EULEX (high-level corruption, organized crime, war crimes, etc.) are being executed by EULEX police.

4.4 Satisfaction with the work of EULEX in Kosovo

The work of EULEX in Kosovo did not receive greater support from citizens. The fact that the presence of the UNMIK mission in Kosovo has not enjoyed much support and citizens' satisfaction with the work of this mission was not at a high level shows that EULEX in Kosovo came at a time where it had to do a lot to gain public trust.

Low levels of satisfaction with the work of EULEX in Kosovo during 2008 shows that skepticism about the presence of international missions in Kosovo and their work in Kosovo was very large. In mid and late 2009, satisfaction with the work of EULEX has been growing significantly, EULEX public appearances with promises to arrest the so-called "big fish" has caused citizens to believe in the work of EULEX into Kosovo.

The year 2010 saw some the reductions and increases in the percentage of the work satisfaction of EULEX in Kosovo, it was year 2010 when EULEX has started to appear in the media more and be more active in the executive. Arrests made by EULEX began to increase citizen's sense of EULEX mission in Kosovo has started to perform the work for which it has been invited to Kosovo. However, the year 2011 is marking the return back in 2008 for EULEX. In May 2011 the percentage of satisfaction

²⁰ EULEX makes first arrest in the north, 02 April 2011. Available at: <http://www.koha.net/index.php/repository/caricatures/?cid=1,7,36180> (25/05/2011).

has fallen to 14%. The cause of this decline may be irritation of the EULEX relationship with the local institutions. Statements of the Government officials against EUELX can affect people in perceiving this mission. War of words between local politicians and EULEX draws attention from real issues of rule of law. Also EULEX investigations against former KLA member for war crimes and arrests are made to express dissatisfaction with the public citizens protest against EULEX.

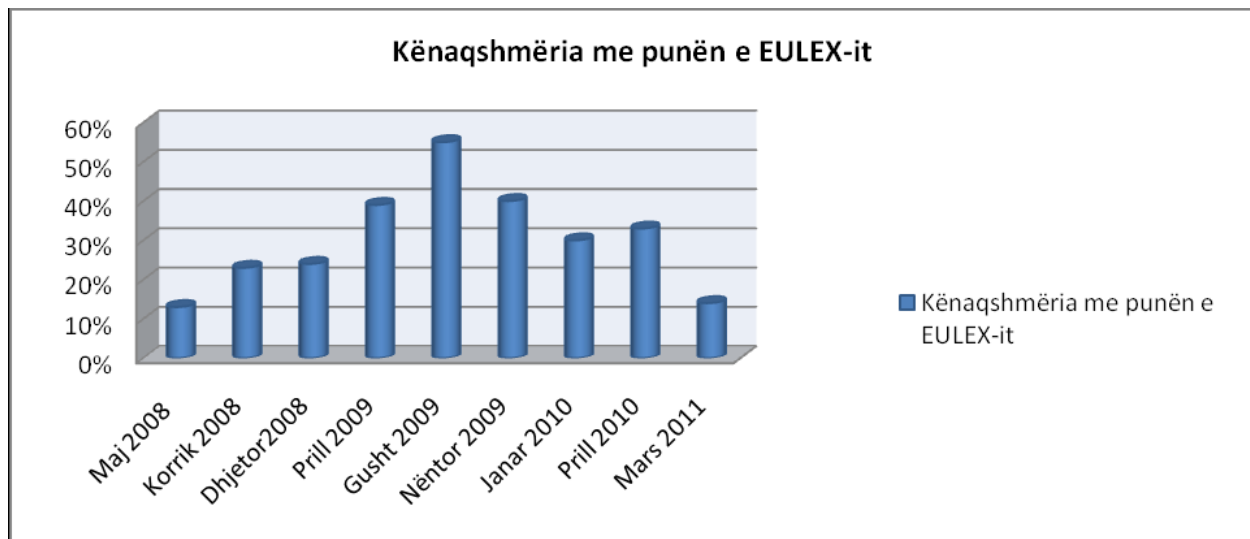


Figure 5. Satisfaction with the work of EULEX (UNDP Kosovo -Early Warning Report)

According to the latest report published by Saferworld in May 2011, perceptions for EULEX have been very mixed. Some people think that EULEX should focus more on executive action, while others thought it should focus on anti-corruption arrests.

EULEX has not only failed to gain confidence of the population, but citizens are disappointed about the fact that EULEX had failed to fulfill their expectations for this mission. Lack of confidence in the work of EULEX mandate comes from frustration with the EULEX's unclear mandate and failure to punish people involved in high level corruption.

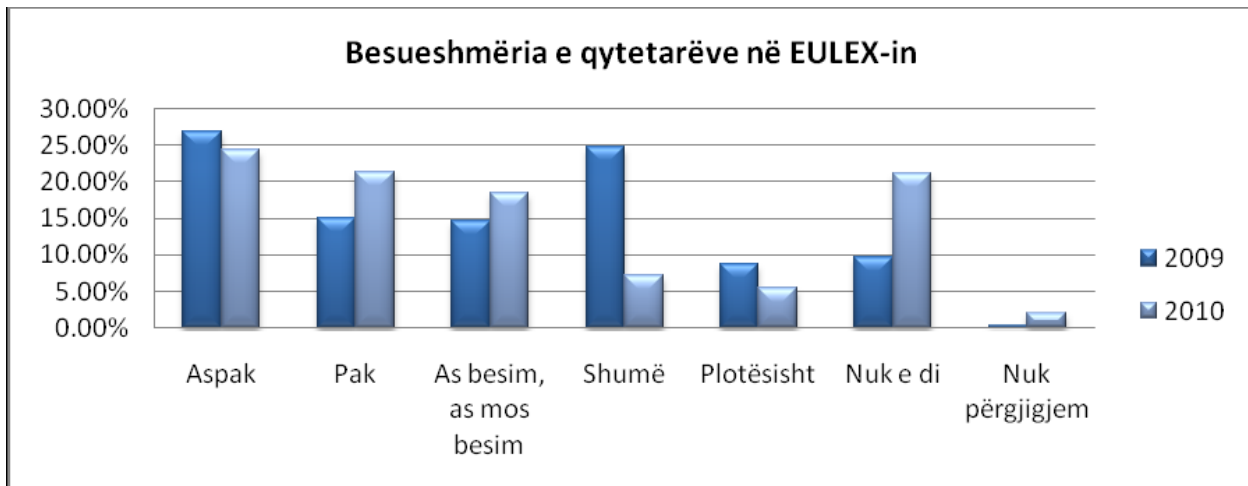


Figure 6. Reliability of citizens in EULEX (Public Perceptions of security in Kosovo: Time to Act)

EULEX has not been able to gain the trust of the citizens of Kosovo. High expectations and disappointment in the performance of this mission led to a huge disappointment.

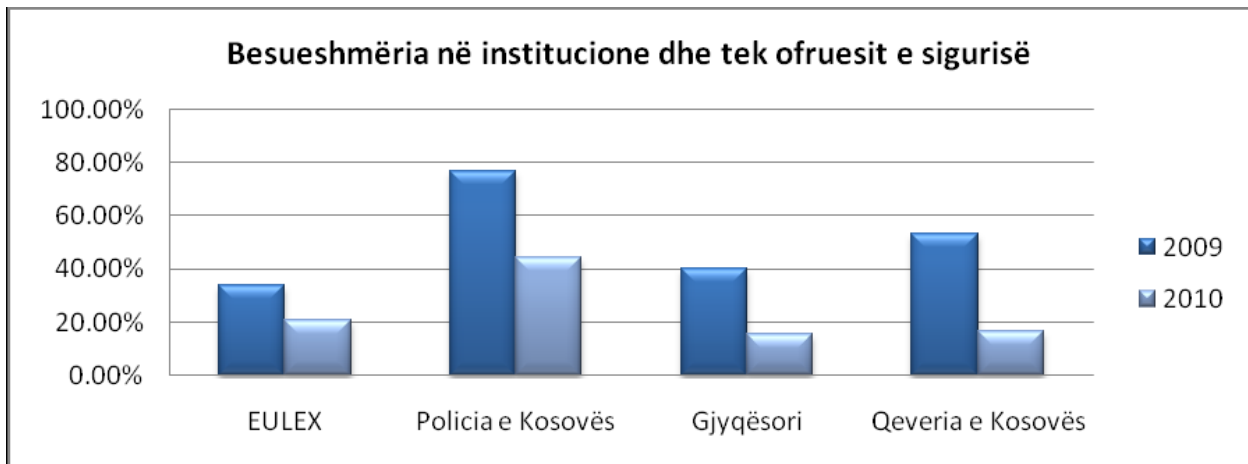


Figure 7. Confidence in the institutions and to security providers (Public Perceptions of security in Kosovo: Time to Act)

It is also worrying that within a year there was a fall in the credibility of domestic institutions of the rule of law and government.

5. RECOMMENDATIONS FOR GOVERNMENT AND EULEX

5.1 Joint Coordinating Board for the Rule of Law should be used better, serving as a forum which identifies a list of standards to be met within a year.

Balkan Policy Institute (IPOL) in the first report evaluating the work of EULEX in Kosovo has made this recommendation. Also in the following reports IPOL has recommended that representatives of civil society in Kosovo be present in the meetings of the Coordination Board for the Rule of Law.²¹

Although the Joint Coordinating Board for Rule of Law has met regularly in the past year, it did not provide or introduce a public document for its work, making it difficult to provide a comprehensive analysis. The Board has noted progress on the rule of law, economic development, and the prospect of European integration as a priority and noted the need for a common strategy for EULEX and the Kosovo Government to tackle these areas. However, a common strategy is not yet designed up to the publication of this report.

The board did not meet during the period of elections in December 2010.

At the last meeting for 2010 which was held in September several issues were discussed, such as the selection of Independent Review Board members, the finalization of the recruitment to the Anti-Corruption Task Force within the Kosovo Special Prosecution Office (SPRK) and a general update on the Action Fiches' tracking mechanisms. The Board was pleased to learn that 25 of the foreseen 30 KP officers have been selected and are already working in the Anti-Corruption Task Force.²²

While in the first meeting after the consolidation of Kosovo institutions Joint Coordination Board for the Rule of Law met in Prishtina, where senior officials of government and EULEX coordinate their work in the field of rule of law. The JRCB has traditionally been chaired by the Deputy Prime Minister and the Head of EULEX. But to emphasize the importance of the European Commission Liaison Office (ECLO) and its principle role in drafting the Progress Report, the Head of ECLO has now become the third co-chair of the meetings.

²¹ EULEX: Still in search of an identity-The second report. July 2010, Available at: http://policyinstitute.eu/images/uploads/EULEX_End_e_kerkim_te_idetititetit.pdf (25/05/2011)

²² Yves de Kermabon co-leads the last meeting of the Joint Board for the Rule of Law. Available at: <http://www.eulex-kosovo.eu/en/news/000257.php> (25/05/2011).

During the meeting, approval was given to the joint six-month work plan of the Ministry of Justice, Ministry of Internal Affairs, and Ministry of Finance together with respective EULEX components, in order to provide a qualitative improvement in the rule of law area during these six months, before the Progress Report. Also, the board noted that in the area of rule of law, a series of laws have been adopted, promising the implementation of these laws throughout the territory of Kosovo, and in full cooperation with EULEX.²³

Besides the fact that this board has already come out with its priorities, not much has been done until now. The JRCB did not come with a clear strategy on how to improve the condition of the rule of law in Kosovo. However the fact that this board has set some priorities is good news. Balkan Policy Institute (IPOL) recommends that work towards achieving this priority should continue developing a proper strategy, a strategy that will be realized in the cooperation of the Government of Kosovo with EULEX.

In recent statements of the board members it is said that relations between EULEX and the government are stronger than ever before. These statements give the impression that the board has a stable relationship and that everything is working just fine.

But in reality everything is different starting from recent statements made public by the chairman and members of this board. We are talking about statements made by the Interior Minister Mr. Bajram Rexhepi, which joined the chairman of the Joint Board for the Rule of Law, Mr. Hajredin Kuqi, who in recent weeks have constantly attacked verbally EULEX. Kosovo's institutions have not spared their criticism for EULEX, especially because of the situation in the northern Kosovo.²⁴ These verbal attacks at high political level do not contribute to the efforts to strengthen the rule of law.²⁵

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

Cooperation between the institutions of Kosovo, respectively ministries dealing with the rule of law in Kosovo is more than necessary at this time in Kosovo. Kosovo's rule of law institutions should enhance cooperation in terms of planning policy and fighting organized crime and corruption at high levels.

²³ "Progress Report is a priority" <http://www.eulex-kosovo.eu/en/news/000284.php> (25/05/2011).

²⁴ Koha Ditore: EULEX – Non Grata (<http://www.koha.net/index.php?cid=1,7,58139>) (25/05/2010)

²⁵ Rexhepi also criticizes EULEX in Brussels, <http://www.koha.net/index.php?cid=1,7,58711> (25/05/2010)

Cooperation of the Ministry of Justice and Ministry of Internal Affairs is a must especially for the executive part of the EULEX mission in Kosovo. Within the Coordination Board for the Rule of Law, Kosovo Government (Ministry of Internal Affairs, Justice and Finance) and EULEX agreed on shared priorities for the six months ahead in the rule of law,²⁶ but in reality, enforcement of these priorities seem too far in the horizon.

Lack of cooperation between EULEX and local institutions can be seen from the fact that finally EULEX has shown no confidence in the Kosovo Police, especially in northern Kosovo where EULEX officials have come out with statements saying that whenever they cooperate with the Kosovo Police there are information leaks. Also tendencies that show EULEX is cooperating more with NATO and KFOR shows that trust and cooperation with local institutions is diminishing.²⁷ This is another reason to conclude that except for the fact that there is no common strategy between Kosovo government and EULEX, these two very important factors for improving the rule of law in Kosovo have no coordination between them. Raids and arrests made by EULEX have recently created a tense relationship.

5.3 Pay special attention to judicial reform as it is the main link in the rule of law

Reforming the judicial system and rule of law in Kosovo is considered as the main priorities of EULEX and the Kosovo government. Despite statements that are made not given much importance is to this issue in reality.

The Justice component of EULEX is one of the components that has much less staff in comparison with the police and customs components. So this shows that components within the EULEX have large difference.²⁸

²⁶ Interview with Sedat Gashi - Official from the Ministry of Internal Affairs (07/05/2011)

²⁷ Koha Ditore: "EULEX does not trust the Kosovo's Police in the North", Available at:

<http://www.koha.net/index.php?cid=1,22,59374> (05/25/2011)

²⁸ KIPRED: "Looking beyond Mitrovica bridge- an Ahtisaari plus package" October 2008, Available at:

http://www.kipred.net/site/documents/PB_09_ENG.pdf (25/05/2011),

International Staff	As foreseen	Employed
Judges	51	45
Prosecutors	27	24

Figure 8. EULEX staff

The design and implementation of MMA Actions within Kosovo's judiciary continues to be pursued by EULEX experts who divide their time between core executive functions (i.e. investigating crimes and prosecuting persons suspected of offences, and adjudicating cases in court) and providing assistance through structured monitoring, mentoring and advising. This arrangement has yielded some important change within certain parts of the judiciary.²⁹

Through monitoring work in the Kosovo Courts, EULEX judges have identified a number of problems with the suspended cases, including:

- ⊙ Overwhelming caseload;
- ⊙ Insufficient resources, both as regards staff (insufficient judges and support staff to translate claims, particularly from Serbian) and technical equipment;
- ⊙ According to article 68 of the law on Public Financial Management and Accountability, all pending court cases containing claims against a 'Public Authority' shall be notified to the Ministry of Justice and the Ministry of Economy and Finance. Since many of the stayed cases are compensation claims directed towards Kosovo Public Authorities, the Courts are obligated to notify the Ministries. Any such case is automatically suspended until the expiration of a period of 180 days from the moment that the Ministries receive notification of it.
- ⊙ Problems with sending copies of all cases, mainly due to insufficient resources;
- ⊙ Summoning and contacting (often displaced) parties in Serbia;

²⁹ EULEX: "Report for program 2010", Available at: <http://www.eulex-kosovo.eu/docs/tracking/EULEX-MMA-ACTIONS-20102904-ALB.pdf> (25/05/2011)

- ⊙ Particular problems in the Mitrovicë/Mitrovica region regarding general working conditions, especially in the District Court, that refuses to accept appeals due to their specific situation; and
- ⊙ The possible reaction from claimants and the public opinion, in the event that their cases are being dismissed and/or rejected en masse.³⁰

Several hundred cases are under investigation. More than 140 decisions have already been taken by the EULEX judges in a wide range of corruption cases, including organized crime and EULEX prosecutors have been involved in more than 1300 cases, including more than 50 cases of organized crime and about 100 cases of corruption.³¹

5.4 It should take immediate steps to ensure fully functioning of the court in northern Mitrovica, within three months

The issue of the functioning of the District Court in northern Mitrovica continues to challenge further the EULEX mission in Kosovo. EULEX asked Prishtina and Belgrade to be more pragmatic, to allow judges and prosecutors to return to court in order to begin to examine subjects from a multiethnic panel.³² It seems that justice in northern Mitrovica will not be fully functional without putting the issue on the table of negotiations between Prishtina and Belgrade to discuss and find a compromise on this. Since the full functionality has not been realized so far, it will be postponed until the issue is raised at the table of the Prishtina-Belgrade negotiations.

The District Court, Municipal Court and Prosecution Office since 20 February 2008 are outside the scope of authorities of the Republic of Kosovo, since Kosovo Serbs in revolted to the declaration of independence had forcibly occupied these buildings. Since then the courts are partially functional and there are working only EULEX judges.³³

Regarding the District Court, EULEX has declared that a lasting solution will only be achieved in close cooperation with all stakeholders.³⁴ Since getting the EULEX judges in December 2008 there more than 30 trials are completed.

³⁰ Interview with Alessandro Tedesco, Program Manager for Civil Society in the EULEX (05/25/2011)

³¹ Interview with Hans Christian Klasing - EULEX spokesperson for Mitrovica North (05/25/2011)

³² Soon functionalized court in North District, 20.06.2010, Available at:

<http://shqip.time.mk/read/66a9eeaa91/7a62a9f8a4/index.html>

³³ Organization for Security and Cooperation in Europe Mission in Kosovo, the Judicial System in Mitrovica / Mitrovica: News about the ongoing status and concerns about human rights, January 2011, p.4.

³⁴ Interview with EULEX officials, responsible for northern Mitroviës (05/20/2011).

Kosovo Judicial Council will not approve the return of Serb judges and prosecutors in the District Court in northern Mitrovica, although they are already mandated by the Serbian state institutions. Representatives of the institutions stated that they aren't against the inclusion of Serb judges who are in the judicial system in Kosovo, not Serbia's judicial system, because the appointment of judges by the Supreme Council of Serbia in Judicial District Court in Mitrovica is a violation of the Constitution of the Republic of Kosovo and a challenge to the justice system in Kosovo. In no other country can two legal systems exist which operate at the same time, and Kosovo should have a unified legal system. But on the other hand the Serbian government officials have stated that Serbia's judicial system exists in Kosovo since 1999 and the appointment of Serbian judges in Kosovo courts is nothing new.³⁵

Kosovo Albanian judges and prosecutors have been displaced to the Municipal Court in Vushtrri, from 20 February 2008 since the building in northern Mitrovica was forcibly occupied by the Serbian court workers revolted by the act of declaration of independence.

To prevent further damage to the rule of law all involved actors need to increase their efforts in order to restore a functioning judicial system in the Mitrovica region as soon as possible.³⁶

5.5 As soon as possible to ensure the functioning of border points 1 and 31 and to clarify areas of responsibility for border management

The 1 and 31 border points in northern Kosovo serve as entry points to the goods in Kosovo, while their clearance happens at the customs terminal in Mitrovica. And the main problem is that some of the goods entering at these two points are not subjected to customs control; these goods do not come at the customs terminal but remain in the northern part of Kosovo, in Zubin Potok, Leposavic or in any other country in the north.

Immediately after the declaration of independence in 2008, a group of Serbs had torched the border crossings in Leposavic and Zubin Potok, known as points 1 and 31. At this time, Kosovo customs officials were removed from that part of Kosovo. Now EULEX customs officials are located in the area. EULEX claimed that since the

³⁵ Appointment of Serb judges in Kosovo brings Eulex and Pristina feedback (01/06/2011)

<http://www.dw-world.de/dw/article/0,,5090306,00.html>

³⁶ Organization for Security and Cooperation in Europe Mission in Kosovo, the Judicial System in Mitrovica / Mitrovica: News about the ongoing status and concerns about human rights, January 2011, p.10.

deployment of this mission there has been a decline of contraband because about 2/3 of entering goods pay taxes, which means 65-70% pay taxes.³⁷

The decision to return to Kosovo Customs personnel in points 1 and 31 is a matter for the Government. Due to potential security issues, EULEX would expect that such a decision would be taken after consultation with international stakeholders, including KFOR.

Currently the customs component of EULEX is present in gates 1 and 31, which is registering vehicles, drivers and goods. These are customs administrative measures until resuming full checks as they existed before February 19, 2008. Drivers that enter the border points are advised to proceed directly to the South Terminal Mitrovica to pay customs duties, VAT and excise duties on their goods. All collected information is shared with the Kosovo authorities and Serbia.³⁸

Efforts in the field of customs have resulted in a significant decrease in contraband and saved millions of Euros, about 43 million Euro per year. According to EULEX, since the deployment of EULEX in the north smuggling was reduced by 60%.

The Head of the customs component, Mr. Marsden, also noted that they are aware about the sensitivity of this issue, and that the mission is working on transferring competencies to the Kosovo Customs. He claims that "We cannot say how long it can take because everything does not depend on us."

It is estimated that mafia groups in the north cause a loss of 25-30 million Euro to the annual budget of Kosovo.³⁹

³⁷ Interview with Mike Marsden, Head of Customs Component, April 13, 2011.

³⁸ Interview with EULEX officials, responsible for customs (27/04/2011).

³⁹ Interview with Huruglica Naim, director of the Kosovo Customs, April 15, 2011.

5.6 To be as transparent as possible in the Bllaca case and other cases

The EULEX mission since its deployment began with the investigation phase and then entered the stage of trials of different cases. These cases relate to corruption, organized crime or war crimes.

In December 2009, Mr. Nazim Bllaca, who is now accused for murder, attempted murder, planning murder and organizes crime, launched a public statement linking him with involvement in a number of killings. After Mr. Bllaca statements and arrest, a series of arrests were made in relation to cases involving Driton H. accused of participating in two attempted murders and Shpresim Uka. Now, this case has resulted in the indictment and the trial has begun.

Former Minister of MTC, Mr. Limaj, with several other former members of KLA are accused by EULEX that they committed war crimes in the village of Klecka in 1999.⁴⁰ EULEX has also issued arrest warrant for Mr. Limaj. Also, EULEX police have raided the Ministry of Transport and Communications and the properties of the former head of the ministry. The pretexts of these raids have been allegations that Mr. Limaj was involved in corruption affairs in the case of some procurement activities.

The Limaj corruption case is still under investigation, which is considered as a major case that EULEX is building to fight corruption.⁴¹

On December 16, Dick Marty accused Hashim Thaci and the so-called "Drenica group" in a report that he led a criminal organization during the Kosovo war which was involved in murder, drug trafficking and trafficking of organs of murdered Serb civilians. After publication of the claims of the Council of Europe rapporteur, in which Prime Minister Thaci results as "boss" of a criminal group which has been involved selling organs and has committed murders after the conflict in Kosovo, EULEX has sent Dick Marty a letter asking him to provide information or evidence that supported the allegations made in the report. EULEX asked for more evidence for the report so that they can open an investigation.

Investigations have begun but it is not known how long these investigations will last. These are preliminary investigations, due to the fact that Mr. Dick Marty has not yet provided sufficient evidence to initiate more detailed investigations.

⁴⁰ Uncertainty about the immunity of Limaj, <http://www.evropaelire.org/content/article/2342870.html> (26.05.2011)

⁴¹ EULEX continues investigations for "Limaj Case" <http://www.koha.net/index.php?cid=1,22,19871> (26/05/2011)

UN General Secretary Ban Ki-Moon has asked for an independent investigation for the alleged trafficking in human organs in Kosovo, and to have a strong program for the protection of witnesses and the full cooperation of all parties.⁴²

Investigations of ministers (Case Limaj), politicians (Case Daci), senior officials (Case of Central Bank Governor), former KLA commanders (Case Geci), businessmen (Case Dardania) and intelligence services (Case Bllaca) mission can challenge the perception of impunity for serious crimes in Kosovo.⁴³ However, it remains to be seen what will be the result of these investigations.

The mission has made some strides in combating trafficking in human beings and organs, specifically the major cases such as the Tisza case (human smuggling) and the Medicus case (organ trafficking).⁴⁴

5.7 Identify areas where EULEX can assist with the visa liberalization criteria

Regarding the visa liberalization, there are some operational areas within the monitoring program, mentoring and advising, that have a direct impact on meeting the conditions for visa liberalization. Visa liberalization process involves some powerful measures to control migration, such as readmission agreements that oblige Kosovo to accept the return of any citizens who are caught living illegally in the EU.

⁴² Ban Ki Moon urges independent investigation of Dick Marty's report, <http://lajme.shqiperia.com/lajme/artikull/iden/1047033552/titulli/Ban-Ki-Moon-kerkon-hetim-te-pavarur-per-raportin-e-Dick-Martit> (27/05/2011)

⁴³ Interview with Hans-Christian Klasing (EULEX spokesperson for the North) 25/05/2011

⁴⁴ Ibid.

6. RECOMMENDATIONS FOR THE EUROPEAN UNION AND THE EUROPEAN UNION SPECIAL REPRESENTATIVE

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

Considering that the rule of law is one of the most criticized areas in the progress reports on Kosovo made by the European Commission and is the main condition for the stability of Kosovo and its integration in the European Union, EU officials must urge Kosovo's government to move ahead with judicial reform and intensify their commitment to fight organized crime and corruption.

Good news in this context is the fact that from now the chairman of the International Liaison Office (ECLLO) will co-chair meetings of the joint board for the rule of law. This shows that the Government of Kosovo, EULEX and the EU have agreed that Kosovo needs a deep reform to improve the field of rule of law in Kosovo.

6.2 To create pressure on Belgrade not to obstruct the functioning of customs points 1 and 31 and the court in northern Mitrovica

Even though the Balkan Policy Institute (IPOL) has given the recommendation on the first publication of this report we have not seen any concrete action or statement regarding this issue.

IPOL recommends to use the negotiations of Prishtina and Belgrade to put pressure in order to make customs points 1 and 31 functional. Currently, the answer for this recommendation, is that the parties are waiting for any eventual result that comes from these negotiations, which would bring about the functioning of these two problematic crossing points.

6.3 To strengthen leadership provided to the EU missions in Kosovo

While there is some confusion regarding the competencies of the international missions in Kosovo, they also have no clear guidance from above. Representatives repeatedly promise to support Kosovo's path towards European Union, but on the other hand there are few concrete steps that will support these words into reality in terms of leadership that is given to the missions here. The case of crossing points in the north is an example of a lack of commitment.

EULEX has employed personnel who currently are not able to perform their jobs as customs officers. And, allowing the continuation of the status quo is against verbal commitment to improving the rule of law in Kosovo.

6.4 The EUSR should provide strong political leadership of the EU missions, and where it is necessary to apply pressure to create political will for reform

There was a discussion about the relationship between the EUSR and Head of the EULEX mission. If the relationship between them would be professional and collegial work of the mission would not be difficult. And this should be taken into account in the selecting of new heads of EU missions in Kosovo.

So far the EUSR pressure for reform has been low and has come in the form of suggestions for changes to senior officials for corruption. And in fact it could have opposite effect because it could lead to a conflict with local leaders, especially in light of divisions within the international community in terms of pressure for reform. Personal relationships between heads of missions should not have a negative impact on fulfilling their missions' mandates in Kosovo.

The last statement made by Ms Ashton in May of 2011 that the rule of law is the most important issue for the future of Kosovo, for its citizens and a key element in Kosovo's ambitions for integration into the European Union seeking close cooperation with EULEX mission gives hope for more dynamism.

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.

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