

A DECADE after **EULEX**

A new approach to IMPROVE the
RULE of LAW in KOSOVO



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A DECADE AFTER EULEX: A NEW APPROACH TO IMPROVE THE RULE OF LAW IN KOSOVO

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LIST OF ACRONYMS

CCPS	COMMON CROSSING POINTS
CIVPOL	CIVILIAN POLICE
CMIS	CASE MANAGEMENT INFORMATION SYSTEM
COE	COUNCIL OF EUROPE
ERA	EUROPEAN REFORM AGENDA
EU	EUROPEAN UNION
EULEX	EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO
EURALIUS	‘CONSOLIDATION OF THE JUSTICE SYSTEM IN ALBANIA’
EUSR	EUROPEAN UNION SPECIAL REPRESENTATIVE
HELP	HUMAN RIGHTS EDUCATION FOR LEGAL PROFESSIONALS
IBM	INTEGRATED BORDER MANAGEMENT
ICITAP	INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING ASSISTANCE PROGRAMME (U.S. STATE DEPARTMENT)
IPA	INSTRUMENT FOR PRE-ACCESSION ASSISTANCE
IT	INFORMATION TECHNOLOGY
JRCB	JOINT RULE OF LAW COORDINATION BOARD
KJC	KOSOVO JUDICIAL COUNCIL
KLA	KOSOVO LIBERATION ARMY
KP	KOSOVO POLICE
KPC	KOSOVO PROSECUTORIAL COUNCIL
MMA	MONITORING, MENTORING AND ADVISING
MOJ	MINISTRY OF JUSTICE
MUP	MINISTRY OF INTERNAL AFFAIRS OF SERBIA
NGO	NON-GOVERNMENTAL ORGANISATION
OSCE	ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE
PAK	PRIVATIZATION AGENCY OF KOSOVO
PECK	PROJECT AGAINST ECONOMIC CRIME IN KOSOVO
PIK	POLICE INSPECTORATE OF KOSOVO
PTK	POST AND TELECOM OF KOSOVO
SAA	STABILISATION AND ASSOCIATION AGREEMENT
SAP	STABILISATION AND ASSOCIATION PROCESS
SC	KOSOVO SPECIALIST CHAMBERS
SPO	SPECIALIST PROSECUTOR’S OFFICE
TAIEX	TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE INSTRUMENT
TAK	TAX ADMINISTRATION OF KOSOVO
U.S.	UNITED STATES
UK	UNITED KINGDOM
UNDP	UNITED NATIONS DEVELOPMENT PROGRAMME
USAID	UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The European Union Rule of Law Mission in Kosovo (EULEX), deployed in late 2008, should phase out and end its mandate; the mission has achieved limited success and its reputation has become questionable. Complex relations and incompatible agendas and interests between the local authorities and EULEX have hindered progress in the area of rule of law. Over ten years after the deployment of EULEX, Kosovo's rule of law and justice sector remain weak, plagued by incompetence, corruption, political interference, and have very little public trust. With EULEX set to depart, public institutions need to take the leading role.

The European Commission's "credible enlargement perspective for and enhanced EU enlargement with the Western Balkans" envisages the launch of several flagship initiatives, the key one being in the area of rule of law. The initiative to strengthen the rule of law will aim to support development and reform through mechanisms such as impact indicators, trial monitoring, case-based peer-review missions and new advisory missions. The Commission has yet to release specific plans for those initiatives in terms of their structure, size or scope. Preliminary discussions reveal some of the challenges.

The government has failed to show sufficient commitment to rule of law reform. A Functional Review of the Rule of Law Sector and the initiative Justice 2020, which focus primarily on the judicial and prosecutorial system are both in progress. In the absence of political will and undefined roles between key actors their agendas have progressed little. Differing perspectives between the local authorities and the EU is expanding; the former lacks the genuine will to implement the reforms and ensure the impact and the latter is not willing to offer anything tangible. Under these circumstances, the new flagship initiatives are at risk of being a repackaging of current projects under a different name.

The EU is reluctant to engage in more robust programmes with Kosovo, it has little to offer in return. Yet in light of these realities, the EU should seize the opportunity of the *credible enlargement strategy for the Western Balkans* to launch a much more robust rule of law agenda for Kosovo (and the Western Balkans). Prior to the launch of a new flagship initiative the EU should take stock of lessons learned from EULEX's monitoring, mentoring, and advising (MMA) functions and should deploy a verification mission, whose task should be to comprehensively evaluate the functioning and performance of the rule of law. Concurrently, the authorities must develop concrete actions and plans that will comprehensively address the deficiencies hindering the rule of law.

With the EU, member states, the United States and other donors already supporting dozens of rule of law-related projects and actions, the new flagship initiatives should not become a duplication of EULEX or of the Instrument for Pre-Accession Assistance (IPA) projects. Important lessons should be drawn from past missions and initiatives, and all new projects should be driven by local demand. With the goal of achieving 'societal transformation' in the area of rule of law, the new initiatives should be based on a comprehensive assessment of lessons learned and principles that can ensure real impact. The following actions must be taken, ahead of implementation or deployment of the new initiatives:

EULEX should go home. Any new action or initiative should take into account NO role for the mission or EULEX personnel.

Launch an independent verification & evaluation mission. Before any new initiative, the EU needs to launch a Priebe-like mission, to independently and fairly evaluate the state of the rule of law, the achievements of EULEX and all ongoing projects. The experts should identify gaps and the actions to be taken, which need to be presented in simple, actionable language. The report should become a manual for reforms and serve as a baseline for any new initiative.

Ensure projects are demand-driven with full local ownership. Any new initiative should be driven by local demand, with close consultation between the donors, the authorities, civil society, and other stakeholders. Likewise, all reform agendas need to place the local authorities in the driver's seat. Citizens want local authorities to be accountable.

Provide for inclusive planning based on a fact-finding mission and consultations. The government has a tendency to design plans and projects on its own. So too do the EU institutions. Both prefer to do their planning independently. The credibility of both has been heavily undermined, and public trust that the government or the EU will create tangible reform in the area of rule of law is very low. To increase the chance of success, the new initiatives should garner much broader support, with the goal of increasing support for reforms from the bottom up. Future EU missions should also regularly report to the wider public.

Any mission support within the country needs to have a well-defined list of tasks, size and scope, which aims to implement priorities without challenging local ownership. With EULEX's tarnished image, any new mission must absolutely differentiate itself from a EULEX-type mission and some of the weaker twinning projects. The EU and local authorities should commit to achieving targeted, realistic benchmarks, and the responsibilities of EU personnel and local authorities should be clearly delineated.

Streamline reform processes. The assessment report and the new initiatives should help to streamline reform processes and to de-fragment rule of law reform. The EU should support a sectoral approach to rule of law reform, which strengthens peer-to-peer review processes and deploys semi-permanent personnel and coordinated projects guided by clear tasks in the sector.

Temper expectations. Framing expectations will be crucial for any new initiative or mission. Local perceptions of EULEX's ineffectiveness derived in part from unrealistic expectations, which EULEX barely addressed. As experience demonstrated, unkept promises are harshly judged in the court of public opinion, which can negatively affect the perceived authority of mission personnel and the overall effectiveness of support for rule of law and judicial reform.

1 INTRODUCTION

Ten years after the establishment of the European Union Rule of Law Mission in Kosovo (EULEX) in 2008, the European Council approved EULEX's fifth and possibly final mandate. Also in 2018, the European Commission unveiled plans for a new rule of law flagship initiative in its enlargement strategy for the Western Balkans.¹ With EULEX being phased out and the Commission's flagship initiative still undefined, Kosovo's rule of law institutions are entering a period of transition and uncertain relations with the international community.

EULEX achieved some progress in policing, customs and strengthening the legal framework. Yet, very few, including EULEX personnel and EU officials, would hail the mission a success. Citizens welcomed EULEX at the outset, expecting that it would catch the 'big fish', combat high-level corruption and organised crime, strengthen judicial independence, and bring Kosovo closer to the EU. Ten years later, however, EULEX has a poor track record in these areas. Some internationally pushed reforms have brought the justice system closer in line with EU standards on paper but have had limited practical effect.

The Ministry of Justice has recently launched two sweeping initiatives, the **Functional Review of the Rule of Law Sector** and **Justice 2020**, with the goal to support and coordinate rule of law and judicial assessment and reform. Still, law enforcement institutions must move beyond ribbon-cutting to demonstrate effectiveness and capacity to meet both local objectives and EU requirements, improve inter-agency coordination, and assume full local ownership for rule of law and justice sector reform. Kosovo and the EU should adopt a post-EULEX strategy, which takes into consideration past experiences, lessons learned, mistakes in shaping a locally-owned landscape, and how the rule of law can be supported by the international community moving forward.

Judicial and legal reforms are driven by two complementary objectives, a state-building agenda and aspirations for EU membership. First, as a new country, Kosovo has to move faster in establishing the rule of law, a cornerstone of any democratic state. Second, aiming to join the EU, it has committed to a number of integration processes requiring reforms, including the Stabilisation and Association Process (SAP), the European Reform Agenda (ERA) and visa-liberalisation.

The box-ticking approach that has accompanied Kosovo's government agenda (i.e. European Reform Agenda and with the focus on passing legislation) and EULEX's desire for a successful legacy has often undermined the goal of developing independent and effective justice institutions in the country.

¹ The rule of law flagship initiatives will expand existing and alternative assistance tools and introduce new support mechanisms, including rule of law advisory missions and case-based peer-review missions as well as trial monitoring and the development of detailed action plans and indicators, European Commission's "A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM,65 final, 2018, available at https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

Yet moving forward, particularly in light of the internal challenges faced by a number of EU member states, the EU will require prospective members to fulfil additional, measurable benchmarks and to demonstrate genuine ‘societal transformation’ in the area of the rule of law.² Domestic institutions have to move beyond superficial, ad hoc reforms to focus on developing a comprehensive approach that supports cultural transformation of the judiciary and independent justice sector institutions that can function in line with European standards, regardless of its relation with the EU at this stage.

Yet, the EU has limited tools to support Kosovo. Many member states insist on keeping some form of EULEX even after 2020, for different reasons. Some recognisers want to maintain their presence and some non-recognisers want to maintain the status-neutrality approach toward Kosovo. Lack of progress on the EU-facilitated dialogue between Kosovo and Serbia makes things worse. The Credible Enlargement Strategy notes that “...A comprehensive, legally binding normalisation agreement is urgent and crucial so that Serbia and Kosovo can advance on their respective European paths”.³ In other words, Kosovo has no EU future until it resolves the disputes with Serbia, and the EU and member states cannot change their position on and approach toward Kosovo until then. In these circumstances, the empty-handed EU may request limited and low key reforms, making the EU reluctant to put forward robust reform-making demands for Kosovo.

On the other side, the government of Kosovo wants rewards for all reforms. It reluctantly implemented the European Reform Agenda (ERA) and is even less engaged in the development of ERA2.⁴ Institutions insist that EU-related reforms shall bring meaningful steps for Kosovo’s EU integration path.⁵ Acknowledging these difficulties and divergences, Kosovo and the EU should work better together to improve the rule of law. Citizens desperately want to see the rule of law perform and respond to their needs and want to keep their government accountable. With the Kosovo institutions in the lead the EU should broadly support the new initiatives.

This report evaluates and identifies possible paths and areas for improvement for rule of law and judicial development under the EU’s planned flagship initiative and corresponding support mechanisms. The analysis and recommendations are based on an assessment of the current state of the rule of law and judicial institutions and of the progress and pitfalls of EULEX.

² Ibid. See also Hoxhaj, Andi “The New EU Rule of Law Initiative for the Western Balkans”, Conference Papers: Rule of Law in the Western Balkans: Exploring the New EU Enlargement Strategy and Necessary Steps Ahead, Aspen Institute, Germany April 2018; see also Elbasani, Arolda “International Promotion of Rule of Law: Facing Connections between Patronage, Crime, and Judiciary Corruption”, Conference Papers: Rule of Law in the Western Balkans: Exploring the New EU Enlargement Strategy and Necessary Steps Ahead, Aspen Institute Germany, April 2018

³ European Commission, “A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans.” Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM, 65 final, February 2018, pg. 7, available at https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

⁴ Balkans Group Report, European Reform Agenda for Kosovo: Challenges to the Good Plan, November 2016 and Balkans Group Report, European Reform Agenda: Good Governance and Rule of Law, Progress Report, October 2017

⁵ “The key Priority is Kosovo’s European Agenda...The goal is to prove that we have taken our jobs seriously, especially in European Integration, and not only give us duties but to take on our own responsibilities”, Prime Minister Ramush Haradinaj quoted in Haradinaj: We must have EU Candidate Status in 2019, Kosova Post, November 3, 2017, available at, <https://kosovapost.net/haradinaj-ne-vitin-2019-duhet-ta-kemi-statusin-e-kandidatit-per/>. Haradinaj also lists EU Candidate Status application by 2020 in his 100 Commitments, available at, <https://reporteri.net/lajme/keto-jane-100-zotimet-e-ramush-haradinajt/>

As it prepares to fully dismantle, domestic institutions must prepare to take the driver's seat, while collaborating early on with the EU to determine the implementation plan for new initiatives.

2 OVER A DECADE UNDER EULEX

EULEX, the largest civilian mission ever launched under the European Security and Defence Policy, comprised of over 3,000 police officers, judges, prosecutors and administrative personnel with an initial 16-month budget of 205 million EUR.⁶ The missions' mandate was to support Kosovo in building sustainable, accountable, and independent rule of law institutions, specifically in the areas of police, customs, and the judiciary.⁷ It deployed as a monitoring, mentoring, and advising (MMA) mission with additional judicial and security-related executive functions, which allowed EULEX police and prosecutors to independently investigate and prosecute cases and granted EULEX judges final authority over cases under their purview.⁸

EULEX only reached full operational capacity in spring 2009. Its mandate was extended in 2010 and again in 2012, by which time the EU had committed 614 million euro for its operations.⁹ In 2012, the Mission was downsized (losing around a quarter of its personnel) and slightly restructured, with the 'Executive Division' managing the executive responsibilities and 'Strengthening Division' overseeing EULEX's MMA functions.¹⁰

⁶ Around 2,000 personnel were international, seconded by EU member states as well as Turkey, Switzerland, Norway, Canada and the United States.

⁷ See Council of the European Union (4 February 2008), Council Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, available at https://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf. Full Mission Statement: EULEX Kosovo assists the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices. EULEX KOSOVO, in full cooperation with the European Commission Assistance Programmes, shall fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

⁸ See Council of the European Union Council Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, 4 February 2008. In line with the MMA pillar of EULEX's mandate, the Mission assumed the following tasks: (i) helping to eliminate political interference, (ii) ensuring proper investigation, prosecution, adjudication, and enforcement of serious crimes, (iii) enhancing coordination throughout judicial process, particularly with regard to organised crime, (iv) supporting the fight against financial crime and corruption, (v) contributing to the implementation of the Kosovo Anti-Corruption Strategy and Anti-Corruption Action Plan (2008 Council Joint Action). EULEX's executive functions were concentrated in the judiciary, particularly with regard to investigating and prosecuting 'serious crimes' including war crimes, terrorism, organised crime and corruption, inter-ethnic crimes, and financial crimes. While EULEX also played an MMA role in this regard, international investigators, prosecutors, and judges served an executive role either working "jointly with Kosovo investigators, prosecutors, and judges or independently" to address serious crimes and also assumed the authority to create "cooperation and coordination structures between police and prosecution authorities." In line with Kosovo's Law No. 03/L-053 on jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo, EULEX judges formed the majority (2/3) on court panels. EULEX also had some security-related executive responsibilities, with the authority to "ensure the maintenance and promotion of rule of law, public order, and security...as necessary...through reversing or annulling operations decisions taken by the competent Kosovo authorities"; EULEX was also authorised to "assume other responsibilities, independently or in support of the competent Kosovo authorities" in the name of 'rule of law, public order, and security'.

⁹ By which time EULEX had self-reportedly scheduled over 80 hearings, completed the first post-independence District Court trial, identified the remains of 23 missing persons, assumed round the clock presence at two customs gates and partial customs control at northern gates resulting in improved revenue collection and a decrease in oil smuggling. See EULEX "EULEX fully operational", 6 April 2009, available at <http://www.eulex-kosovo.eu/en/news/000159.php>; See also European Court of Auditors "European Union Assistance to Kosovo Related to the Rule of Law," Special Report No.18. 2012, available at https://www.eca.europa.eu/Lists/ECADocuments/SR12_18/SR12_18_EN.PDF

¹⁰ Short history of EULEX, available at <http://www.eulex-kosovo.eu/?page=2,44,197>

2012 was a year of major change. In September, The International Steering Group declared the end of supervised independence, after little more than 4 years of international oversight.¹¹ Two months later, the European Commission's proposal to commence SAA negotiations was approved, by which time the Belgrade-Pristina dialogue was in full swing.¹² Letters exchanged between President Jahjaga and EU High Representative Catherine Ashton paved the way for EULEX's April 2014 mandate renewal, which limited the Mission's executive functions (local judges would now form the majority on court panels and EULEX would not take on new cases with the exception of those pertaining to the north) and tasked EULEX with assisting with the implementation of EU-facilitated agreements between Pristina and Belgrade.¹³ The extension of EULEX's mandate in June 2016 saw EULEX halving its personnel again and losing its executive functions, barring the completion of some ongoing, high profile cases.

In June 2018, EULEX's mandate was renewed for the fifth and likely (and hopefully) final time.¹⁴ The new mandate eliminated the Mission's executive powers in all but two areas.¹⁵ EULEX's scope of work is now limited to two key pillars – monitoring and operations – in line with the following three objectives: **i)** monitoring selected cases and trials, **ii)** monitoring, mentoring and advising the correctional service, **iii)** providing operational support for the implementation of EU-facilitated dialogue agreements.¹⁶

EULEX currently employs around 500 staff, after withdrawing its judges and prosecutors. The mission handed over its case files (around 800) to local institutions, and has already begun phasing out its MMA support to institutions other than the judiciary and prosecution services, perhaps in anticipation of a complete withdrawal in June 2020.¹⁷ Regardless, local institutions assumed responsibility for all transferred investigations, prosecutions and trials.¹⁸

¹¹ For more see the Crisis Group report *Setting Kosovo Free: Remaining Challenges*, 10 September 2012

¹² A landmark Agreement between Kosovo and Serbia was signed in April 2013, for more see Balkans Group report *Serb Integration After the Brussels Agreement*, 19 March 2015

¹³ Ibid.

¹⁴ Council of the European Union "EULEX Kosovo: new role for the EU rule of law mission," Press Release 322/18, 8 June 2018, available at <https://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/pdf>. The nine EULEX tasks highlighted in the 2008 Council Joint Action were not explicitly changed until June 2018, when the Council decided to formally refocus the Mission's mandate. The current mandate has an associated budget of 169.8 million EUR, with nearly 84 million for EULEX operations in Kosovo and 86 million for the specialist chambers and the specialist prosecutor's office.

¹⁵ EULEX maintains executive powers only in the areas of witness protection, support for the specialist chambers and prosecutor's office, and as a second security responder.

¹⁶ Council of the European Union "EULEX Kosovo: new role for the EU rule of law mission", Press Release 322/18, 8 June 2018

¹⁷ EULEX, *Compact Progress Report: Assessing Progress between July 2017 – June 2018*, available at <http://www.eulex-kosovo.eu/eul/repository/docs/106075-CPR-2018-En.PDF>; See also Bertelsmann Stiftung, *BTI Country Report – Kosovo, 2018* Part of Bertelsmann Stiftung's Transformation Index (BTI) available at https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Kosovo.pdf See also Cama, Aida "EU ends Kosovo rule of law mission amid criticism over results." DW.com, 14 June 2018, available at <https://www.dw.com/en/top-stories/s-9097>

¹⁸ Council of the European Union "EULEX Kosovo: new role for the EU rule of law mission", Press Release 322/18, 8 June 2018

2.1 Progress and Pitfalls of the EULEX Mission

EULEX did produce and inspire a number of tangible achievements over the course of a decade.¹⁹ However, few (including EULEX personnel) would consider EULEX's legacy to be one of success. This section provides a brief assessment of EULEX's progress and shortcomings in key areas and of structural and operational challenges which hindered the Mission's success. The shortcomings highlighted in this section can serve as lessons learned for future rule of law advisory missions and EU rule of law support schemes.

2.2 Achievements and Shortcomings in Priority Areas

Customs and Police: EULEX had some success in the area of customs.²⁰ It actively participated in the implementation of the EU-facilitated IBM agreement and the establishment and staffing of interim IBM common crossing points (CCPs) and permanent crossing points (ongoing).²¹ Its personnel offered some mediation support, which allowed for the continuation of CCP construction on the Kosovo side and participated in the IBM Implementation Group.²² EULEX also supported Customs in adopting new reforms and anti-corruption measures and provided MMA support in the areas of compliance, enforcement, and revenue collection.²³ Moving forward, EULEX has now limited its MMA support to 'dialogue-related matters', particularly IBM implementation "until such time that these responsibilities are transferred to an alternative EU mechanism, possibly the EUSR".²⁴

EULEX's support has helped Kosovo Police (KP) to complete 18 out of 20 actions foreseen in the 2012 – 2017 KP Community Policing Strategy Action Plan, improved sustainability and accountability, and notably supported the establishment and training of the Kosovo Police North Quick Response Team and the integration of nearly 300 Kosovo Serb police officers into the KP.²⁵

¹⁹ EULEX legislation experts contributed to drafting, amending or commenting on 96 percent of laws proposed by the Ministry of Justice since 2008 and provided legislative assistance to Kosovo authorities on over 150 laws. EULEX judges have delivered over 600 verdicts. Special Chamber judges adjudicated over 10,000 property cases. EULEX was involved in more than 40,000 court cases and investigated and/or issued indictments in over 400 war crimes cases. EULEX facilitated cooperation between INTERPOL/EUROPOL and Kosovo authorities leading to 100 arrests. Alongside the EU, EULEX helped to establish a reliable civil registry of over 12,000 books. EULEX has also facilitated the return of 506 victims to their families since 2008, although over 1,600 persons remain missing. See Euractiv and AFP "Criticism as Kosovo justice mission EULEX closes judicial operations", 11 June 2018, available at <https://www.euractiv.com/section/justice-home-affairs/news/criticism-as-kosovo-justice-mission-eulex-closes-judicial-operations/>; EULEX Press Office "EULEX on National Day of Mission Persons – Kosovo People Need Closure to the Painful Loss of their Loved Ones", 27 April 2018, available at <http://www.eulex-kosovo.eu/?page=2,10,813>; Hopkins, Valerie "EU courts trouble with Kosovo scandal." POLITICO, 17 November 2017, available at <https://www.politico.eu/article/malcolm-simmons-eulex-eu-courts-chaos-with-kosovo-scandal/>

²⁰ European Court of Auditors, "European Union Assistance to Kosovo Related to the Rule of Law," Special Report No. 18, 2012

²¹ On the Kosovo side, the construction of two of three planned permanent CCPS "advanced despite some technical difficulties," while political problems relating to the relocation of power cables has stalled progress on the third. See Compact Progress Report: Assessing Progress July 2017 – June 2018, pg. 35

²² The IBM Implementation Group met in 2018 after a 16-month hiatus but has again ceased operations due to Serbia's cancellation of all IBM meetings in response to the arrest of a key Serbian official in the north of Kosovo in March 2018. See Compact Progress Report: Assessing Progress between July 2017 – June 2018, pg. 25

²³ EULEX Press Office "Kosovo Customs marks substantial development towards EU recognized standards", available at <https://www.eulex-kosovo.eu/?page=2,10,451>, 11 August 2016

²⁴ Compact Progress Report: Assessing Progress between July 2017 – June 2018, pg. 18

²⁵ Joint Rule of Law Coordination Board, Compact Progress Report in a Nutshell, July 2017 – June 2018, available at <https://www.eulex-kosovo.eu/eul/repository/docs/Anlisht.pdf>

“Positive developments...can be attributed directly to EULEX”, particularly in the areas of riot control, community, and intelligence-based policing.²⁶ While mismanagement continues to inhibit the work of the Police Inspectorate of Kosovo (PIK) and maintaining adequate and representative staffing and equipment remains a challenge for KP, EULEX no longer provides advisory support to KP under its current mandate.²⁷ Despite EULEX claims and contributions for improvements in the area of customs and policing, citizens perceive customs to be the most corrupt institution.²⁸ Perceptions of corruption within the Police have also increased, from 15 per cent in October 2017 to 26 per cent in April 2018, though such perceptions are still among the lowest compared to other institutions.²⁹ EULEX can boast results on paper in customs and policing. However, as the metric of public perception suggests, EULEX was not fully equipped to move beyond technical processes and fell short in modernising and professionalising these institutions, transforming cultures of management, and prompting comprehensive institutional revision.

Judiciary and Justice Sector: The progress made in the areas of customs and policing were not mirrored in the justice sector. EULEX’s executive functions did provide for some tangible outputs. The EULEX Special Prosecution Office was involved in around 1,350 cases, EULEX oversaw nearly 43,000 property cases via the Property Claims Commission, and EULEX judges delivered over 600 verdicts.³⁰ However, EULEX’s MMA functions yielded disappointing results.

EULEX’s key judicial objectives were to support **increased effectiveness, sustainability, multi-ethnicity, accountability and independence of the judiciary and compliance with EU best practices**. EULEX did support the integration of Kosovo Serb judges and prosecutors into the judicial system in 2017.³¹ The mission also supported the development and amendment of the legal framework and made some progress in supporting the implementation of the 2015 justice package laws.³² However, the sustainability, effectiveness, accountability, and independence of justice sector institutions leave much to be desired.

EULEX was largely unsuccessful in helping the judiciary adopt ‘European best practices’ due to “lack of clarity on what such practices are” (considering the multi-national composition of the Mission) and difficulties “transfer[ing] such practices to Kosovo institutions that are intended to internalise them”.³³ The KJC and KPC still require support in developing standards and mechanisms for preventing and combatting political interference as well as for judicial appointments and promotions.³⁴ EULEX failed

²⁶ Zupančič, Rok, Pejić, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pg. 697

²⁷ EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018

²⁸ 39 percent of respondents considered customs to be corrupt in April 2018, while 25 percent perceived corruption in Customs institutions in October 2017.

²⁹ UNDP Kosovo, “Public Pulse XIV”, Pristina, June 2018, available at <http://www.ks.undp.org/content/dam/kosovo/docs/PublicPulse/PP14/Final%20Public%20Pulse%20XIV.pdf>

³⁰ Zupančič, Rok, Pejić, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pp. 599-617

³¹ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD (2018) 156 final

³² Ibid.

³³ Zupančič, Rok, Pejić, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pg. 608

³⁴ Bertelsmann Stiftung (BTI) Country Report, Kosovo, 2018

to counteract political interference in the judiciary, which will remain a key challenge moving forward, and sufficient measures for witness protection have not been put into place.³⁵ Capacity and efficiency remain low. Little attention was paid to court administration, which remains ‘slow and inefficient’.³⁶

Staffing the Mission with competent judges and experienced personnel was also a major challenge – it was “difficult to ensure more and better judges, since EU member states have proved reluctant or at least faced challenges to second a sufficient number of experienced judges in a timely manner. Short-term deployments of one year or less usually appeal to younger and less experienced staff”.³⁷ This in turn limited the impact of EULEX’s MMA and capacity building functions. While the Mission’s support for sustainable reform of the justice sector and judiciary was ‘apparent,’ EULEX “has been less successful in this field, and rule of law is relatively far from fully functioning”.³⁸ Transferring European ‘best practices’ to local judicial institutions and bringing about comprehensive institutional and societal change in the justice sector proved to be beyond EULEX’s capabilities. Helping justice institutions to internalise European norms and standards will likely prove similarly challenging for future EU missions and development partners. Future justice reform programmes or missions can start by providing greater clarity on European judicial norms, standards and practices. This is important for justice sector personnel but also for the general public, as increasing local expectations can serve as a driver for change, local ownership, and institutional accountability. The high turnover of EULEX staff, addressed further in the subsection below, was also a shortcoming that made it difficult for the Mission to prompt normative and institutional transformation within the justice sector.

Organised Crime and Corruption: EULEX’s executive judicial powers raised hopes that the Mission would ‘catch big fish,’ dismantle criminal networks, and combat widespread corruption. However, optimism that EULEX could set a precedent for removing corrupt officials from power which could be replicated down-the-line by local courts proved largely unrealistic. A 2015 external investigation found that EULEX “was unable to lay the foundations of an efficient anti-corruption system for Kosovo, thus failing to convict Kosovo officials in cases of high-level corruption”.³⁹ EULEX’s shortcomings with regard to combatting corruption were three-fold – the Mission, as an executive body, did not sufficiently combat high-level corruption in line with local expectations; the Mission, via its MMA functions, did not sufficiently establish an institutional framework through which local institutions could sustainably combat high-level corruption; and lastly, the Mission itself faced allegations of corruption.

“The outcome of EULEX anti-corruption endeavours has... been meagre; high-ranking corruption cases in particular were not even investigated, which creates an impression of impunity.”⁴⁰ Political considerations influenced EULEX’s choice of cases, and the Mission has been accused of being

³⁵ Ibid.

³⁶ Ibid.

³⁷ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pg. 604

³⁸ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pg. 608

³⁹ Bertelsmann Stiftung (BTI) Country Report, Kosovo, 2018, pg. 14

⁴⁰ Bertelsmann Stiftung (BTI) Country Report, Kosovo, 2018 pg. 34

“too involved with local politics and not forthcoming enough in prosecuting local political elites”.⁴¹ In instances where EULEX did choose to pursue high-profile cases, political interference and the inability to collect sufficient evidence and witness testimonies (as well as an underdeveloped criminal code) made it extremely difficult to prosecute.⁴²

EULEX did arrest a number of high-ranking officials on charges for corruption and organised crime but often failed to deliver convictions in these significant high-profile cases.⁴³ EULEX’s high-profile indictments and arrests were mere ‘Hollywood movie style’ media spectacles and demonstrations of strength ending in dropped cases.⁴⁴ In 2018, EULEX Mission Chief Papadopoulou defended shortcomings in this area, arguing that EULEX’s primary focus was to ‘help build rule of law’ while ‘arrests were secondary’.⁴⁵ However, EULEX’s initial framing and early promises to catch ‘big fish’ reflect poor management of local expectations.⁴⁶ While EULEX’s “effectiveness is based on the attainment of its goals...the local actors’ understanding of what those goals are might not be the same as that of the EU”.⁴⁷ Ultimately, EULEX’s perceived inability to prosecute ‘big fish’ and to combat organised crime and corruption in line with local expectations strengthened perceptions of mission ineffectiveness, weakened EULEX’s credibility, and “ruined the mission’s reputation to the extent that it was broadly seen as a failure”.⁴⁸

EULEX helped local institutions to put a more robust anti-corruption legal framework in place. However, despite progress on paper, political interests and interference continue to inhibit investigations. Institutional coordination between bodies tasked with fighting corruption is lacking and overlapping responsibilities open space for further corruption and mismanagement. The Anti-Corruption Agency lacks “necessary legal mechanisms, staff and budget,” discord between political parties’ limits the ability of the parliament to supervise law enforcement agencies, and compliance with the legal framework in place remains low.⁴⁹ Ultimately, anti-corruption policy “is still not consistent enough to secure convictions in case of high-level political corruption” and “does not get beyond political statements”.⁵⁰

⁴¹ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pg. 608; See also Elbasani, Arolda “International Promotion of Rule of Law: Facing Connections between Patronage, Crime, and Judiciary Corruption”, *Conference Papers: Rule of Law in the Western Balkans: Exploring the New EU Enlargement Strategy and Necessary Steps Ahead*, Aspen Institute Germany, April 2018

⁴² Bytyci, Fatos “EU justice mission leaves Kosovo, accused of failing its mandate”, Reuters, 14 June 2018, available at <https://www.reuters.com/article/us-kosovo-eu-justice/eu-justice-mission-leaves-kosovo-accused-of-failing-its-mandate-idUSKBN1JA1WH>

⁴³ Ibid. See also Kalaja, Besa “The War against Corruption through Media Spectacles”, *Preportr*, 04 October 2012, available at <http://preportr.cohu.org/en/investigations/The-War-against-Corruption-through-Media-Spectacles-172>

⁴⁴ Ibid.

⁴⁵ Bytyci, Fatos “EU justice mission leaves Kosovo, accused of failing its mandate”, Reuters, 14 June 2018

⁴⁶ Ewa Mahr, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 39:1, pp. 71-94

⁴⁷ Ewa Mahr, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 39:1, pp. 76

⁴⁸ Mahr, Ewa “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 39:1, pg. 87. See also Bytyci, Fatos “EU justice mission leaves Kosovo, accused of failing its mandate”, Reuters

⁴⁹ Bertelsmann Stiftung, *BTI 2018 Country Report – Kosovo*, pg. 34

⁵⁰ Ibid.

Lastly, EULEX itself faced its fair share of scandal, and corruption within EULEX became a controversial issue in the period after 2012.⁵¹ Though dismissed by an investigation team commissioned by the High Representative Federica Mogherini, allegations that high-level EULEX officials accepted bribes and the subsequent dismissal of a prosecutor and whistle-blower “reinforced a strong impression... that EULEX has become part of the problem rather than the solution”.⁵² EULEX again attracted unwanted headlines in late 2017, when Chief Judge Malcolm Simmons resigned amidst ‘a barrage of claims and counter-claims’.⁵³ While Simmons cited cases of political interference, corruption, and human resources failings, EU officials highlighted allegations against Simmons and revealed that he was under investigation on multiple counts.⁵⁴ While Simmons claims’ are unsubstantiated, these allegations of corruption likely played a role in contributing to increasing levels of public mistrust in EULEX.⁵⁵ In addition, human resources shortcomings and structural challenges fed a domestic narrative in which EULEX, ‘instead of Europeanizing Kosovo,’ had itself been ‘Balkanized’.⁵⁶

War Crimes: Citizens had hoped that EULEX would prosecute high-level politicians and elites for corruption and organised crime. Instead, “many Kosovo Albanians...saw the prosecutions [against ex-KLA commanders] as a factor diverting EULEX’s resources from its anti-corruption activities”.⁵⁷ Moreover, the Mission’s “prosecution of the military leaders...was deeply problematic for parts of society” as EULEX was perceived to be prosecuting Kosovo Albanian heroes instead of wartime criminals on the Serbian side.⁵⁸ The mission met with further challenges in that “the leading government figures were ex-KLA commanders” and “publicly denounced the prosecutions”.⁵⁹ Ultimately, EULEX solved only 25 war crimes cases and zero wartime rape cases.⁶⁰ Local prosecutors played no role in war crimes investigations prior to 2014.⁶¹ In response to recommendations by a Special Investigative Task Force established by EULEX in 2011, the Kosovo Specialist Chambers (SC) and Specialist Prosecutors Office (SPO) were established in 2015 to try alleged crimes committed by KLA members between 1998 and 2000.

⁵¹ Mahr, Ewa, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 39:1, pp. 71-94.

⁵² Borger, Julian, “EU’s biggest foreign mission in turmoil over corruption row”, *The Guardian*, 5 November 2014, available at <https://www.theguardian.com/world/2014/nov/05/eu-facing-questions-dismissal-prosecutor-alleged-corruption>. See also Borger, Julian, “Maria Bamieh: ‘I learned to adapt and survive’”, *The Guardian*, 5 November 2014, available at <https://www.theguardian.com/world/2014/nov/05/maria-bamieh-suspended-eulex-prosecutor-folk-hero-kosovans>

⁵³ Hopkins, Valerie, “EU courts trouble with Kosovo scandal”, *POLITICO*, 17 November 2017. Simmons reported pressure to convict Fatmir Limaj in order to prevent him from taking part in the 2017 elections in Kosovo. He also highlighted cases of internal corruption and discord within EULEX, claiming that a fellow judge hacked his private email, that EULEX was vulnerable to political interference, that one full-time EULEX judge rarely operated within Kosovo and another held a second full-time job.

⁵⁴ Hopkins, Valerie, “EU courts trouble with Kosovo scandal”, *POLITICO*, 17 November 2017

⁵⁵ UNDP Kosovo “Public Pulse XIV” Pristina, June 2018. According to the April 2018 Public Pulse Poll, 29.9 percent of respondents reported holding perceptions of large-scale corruption amongst EULEX police, up from 20.9 percent in October 2017, while 24.5 percent report perceptions of large-scale corruption in international organisations, a substantial increase from 10.8 percent in October 2017.

⁵⁶ Agron Bajrami qtd. in Hopkins, Valerie, “EU courts trouble with Kosovo scandal”, *POLITICO*, 17 November 2017

⁵⁷ Ewa Mahr, “Local contestation against the European Union Rule of Law Mission in Kosovo.” *Contemporary Security Policy*, 2018, pp. 71-94.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Euractiv and AFP, “Criticism as Kosovo justice mission EULEX closes judicial operations”, 11 June 2018

⁶¹ Hopkins, Valerie, “EU courts trouble with Kosovo scandal”, *POLITICO*, 17 November 2017

The SC and SPO are part of the judicial system but are based out of The Hague and internationally-staffed.⁶²

The North of Kosovo: EULEX operations in the north “triggered...strong and occasionally violent contestation”.⁶³ The local court in North Mitrovica refused to cooperate with EULEX when it deployed in 2008, and 2011 protests and barricades (in response to the deployment of Kosovo Customs to the crossing points in the north) made movement throughout the north nearly impossible.⁶⁴ However, EULEX has since made some progress in the north, building a Kosovo Police Regional Command North, integrating members of Serbian security forces under the Ministry of Internal Affairs of Serbia (MUP) into the Kosovo Police as well as Civil Protection staff into national structures, and presiding over 100 criminal cases in the Mitrovica Basic Court.⁶⁵ In October 2017, 40 judges and 13 prosecutors (all of them Kosovo Serb from northern municipalities) joined the judiciary in compliance with the Justice Agreement resulting from the EU-facilitated Dialogue.⁶⁶ However, the judicial system in the north is incomplete and dysfunctional, with a case backlog in the thousands and inadequate infrastructure or equipment; a “mutual lack of trust with the police headquarters in Pristina” remains and KP lacks “established systems and processes for investigating serious crime” in the north.⁶⁷ Overall, rule of law in the north remains largely absent, with the law of the land deriving primarily from organised criminal networks.

2.3 Pitfalls for Mission Operations

Structural and Personnel Challenges: The short-term, remunerative contracts for the EULEX personnel have also limited its capacity in many ways. First, the short contracts of Mission personnel (often a year or sometimes even half a year), “harmed EULEX’s effectiveness as they did not allow for transfer of knowledge and building of trust” which ‘reinforced’ its ‘lack of competence’.⁶⁸ For example three different prosecutors consecutively worked on a murder case, each restarting the case, which was only concluded after 6 years of trial.⁶⁹

⁶² Article 24 of Kosovo’s Constitution was amended and Law No.05/L-053 was passed to provide a legal basis for this court. Although internationally funded and staffed, the court is not an international court and the four chambers correspond with equivalent courts in Kosovo’s judicial system.

⁶³ Ewa Mahr, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 2018, pg. 84

⁶⁴ Ewa Mahr, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 39:1, pp. 71-94.

⁶⁵ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 20:6, 599-617; See also EULEX Press Office, “Support to the EU-facilitated dialogue between Prishtina and Belgrade”, available at <http://www.eulex-kosovo.eu/?page=2,46>

⁶⁶ EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018

⁶⁷ EULEX Compact Progress Report: Assessing Progress Between July 2016 – June 2017, available at <https://www.eulex-kosovo.eu/eul/repository/docs/CPR-2017.pdf>, pg. 3; EULEX, Compact Progress Report: Assessing Progress between July 2017 – June 2018, pg. 14

⁶⁸ Mahr, Ewa (2018). “Local contestation against the European Union Rule of Law Mission in Kosovo,” *Contemporary Security Policy*, 39:1, pg.86

⁶⁹ Balkans Policy Research Group Interview with EULEX Prosecutor, November 2013, Pristina

Second, most personnel employed by projects with a specific time span, funding allocations, and benchmarks are “interested in skipping from one position to another and reaping the benefits of lucrative international positions, instead of delving into the mud of long-term informality and corruption”.⁷⁰ As many contracts are short-term and well paid, “the usual international reporting on general institutional and judiciary changes that skims the surface of reform is more rewarding for their authors than delving into how and why those institutions are and remain captured in the first place”.⁷¹ According to an anonymous former EULEX employee, “although there is internal criticism, there’s little demand for accountability because there is ultimately more concern for job protection”.⁷² Current plans to implement a multi-year, comprehensive rule of law development project by the EU may be able to avoid this challenge intrinsic to missions such as EULEX which second external personnel and deploy with short-term mandates.

Another challenge was the lack of internal coordination and common standards amongst EULEX’s multi-national staff. EULEX’s difficulties in helping local institutions to adopt European best practices derived in part from a “lack of clarity on what such practices are”.⁷³ The Mission was comprised of staff from different member states, with different backgrounds, trainings, standards, and familiarity with different bodies of law. Evidence is weighted differently and sentences for specific crimes vary between prosecutors and judges as revealed via differences between first court and decisions on appeal.

EULEX also demonstrated a “political preference for not upsetting the status quo”.⁷⁴ Whether deriving from the personal/professional interests of its personnel or a tendency to ‘overemphasise stability’ from decision-makers in Brussels, EULEX’s lack of willingness to rock the boat limited its ability to enact justice and substantial judicial reform.⁷⁵ The preference for reaching political consensus on legislation and initiatives results in ‘watered down reforms’.⁷⁶ EULEX’s (and Brussels’) hesitance to pursue cases or initiatives that were politically risky or could threaten political stability ultimately limited the Mission’s effectiveness, particularly in the area of high-level corruption.⁷⁷

Difficulties Enhancing Local Ownership: While its MMA functions sought to help local institutions to increasingly manage rule of law and judicial matters via a learn-by-doing approach, EULEX’s executive powers essentially stalled the emergence of local ownership.⁷⁸

⁷⁰ Elbasani, Arolda “International Promotion of Rule of Law: Facing Connections between Patronage, Crime, and Judiciary Corruption”, Conference Papers: Rule of Law in the Western Balkans: Exploring the New EU Enlargement Strategy and Necessary Steps Ahead, Aspen Institute, Germany, April 2018, p. 32

⁷¹ Ibid.

⁷² Hopkins, Valerie, “EU courts trouble with Kosovo scandal”, POLITICO, 17 November 2017

⁷³ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pg. 608

⁷⁴ Euractiv and AFP, “Criticism as Kosovo justice mission EULEX closes judicial operations”, 11 June 2018

⁷⁵ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, 20:6, pp. 599-617

⁷⁶ Elbasani, Arolda, “International Promotion of Rule of Law: Facing Connections between Patronage, Crime, and Judiciary Corruption”, Conference Papers: Rule of Law in the Western Balkans: Exploring the New EU Enlargement Strategy and Necessary Steps Ahead, Aspen Institute Germany, April 2018

⁷⁷ Mahr, Ewa, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 2018, 39:1, pg. 84

⁷⁸ Mahr, Ewa, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*,

The executive functions of Mission personnel afforded local authorities little executive experience or responsibility over the outcome of cases. International judges formed the majority on court panels until 2014, and the top-down, closed approach of Mission personnel “resulted in not treating the local actors as partners”.⁷⁹ While local authorities have had full executive authority since, local actors and institutions have often used EULEX’s expansive operations “as a convenient excuse...to justify their own inaction or unresponsiveness”.⁸⁰ Local institutions have largely shied away from accountability, hesitant to prosecute and adjudicate cases of organised crime and corruption, in particular during the presence of foreign prosecutors and judges in the courts. Enhancing local ownership over rule of law and judicial reform should be a key priority for any future EU rule of law mission or initiatives. Comprehensive institutional and sector transformation will remain out of reach if local justice sector institutions continue to take a backseat to international partners.

3 DOMESTIC RULE OF LAW AND JUDICIAL REFORM

The rule of law has seen some improvements in recent years.⁸¹ Kosovo Police (KP) has integrated nearly 300 Kosovo Serb police officers into KP, implemented 18 out of 20 activities outlined in the 2017 – 2021 Community Policing Strategy, and demonstrated improved sustainability and accountability.⁸² The judiciary has made some progress in implementing the 2015 justice package, and Kosovo Serb judges and prosecutors were integrated into the Kosovo judicial system in 2017.⁸³ The Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC), governing bodies of the judiciary and prosecution, have overseen an increase in the case clearance rate and number of solved cases respectively, and they are currently in the process of implementing a Case Management Information System in courts and prosecution offices.⁸⁴ EULEX’s 2018 Compact Progress Report highlighted increased performance and capacity amongst the Police, Judicial and Prosecutorial Councils and the Civil Registration Agency in particular.⁸⁵ However, despite some progress, rule of law remains weak with major shortcomings in the areas of judicial functioning and the fight against organised crime and corruption.⁸⁶

2018, 39:1, pg. 75

⁷⁹ Mahr, Ewa, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 2018, 39:1, pg. 86

⁸⁰ Zupančič, Rok, Pejič, Nina, Blaž Grilj and Peen Rodt, Annemarie, “The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?” *Journal of Balkan and Near Eastern Studies*, 2018, pg. 608

⁸¹ EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018

⁸² EULEX “Joint Rule of Law Coordination Board Compact Progress Report in a Nutshell July 2017 – June 2018”

⁸³ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, 156 final, 2018

⁸⁴ The KJC and KPC are responsible for evaluating and overseeing the work of judges and prosecutors, respectively, for establishing standards for recruitment, proposing candidates for appointment and managing promotions, transfers, dismissals and disciplinary proceedings, EULEX “Joint Rule of Law Coordination Board Compact Progress Report in a Nutshell July 2017 – June 2018.” See also EULEX Press Office, “Final Meeting of the Joint Rule of Law Coordination Board”, 21 November 2018, available at <http://www.eulex-kosovo.eu/?page=2,11,884>

⁸⁵ EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018

⁸⁶ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018

3.1 Remaining Challenges

The authorities have recently undertaken a series of legislative initiatives to improve the performance and accountability of the courts, judges and prosecutors. Constitutional amendments and secondary legislation were adopted in line with the 2015 justice package laws. The 2018 Law on courts requires all courts to publish their judgments on their websites within 60 days, which will increase transparency if fully implemented. The Law on mediation, passed in September 2018, established a Chamber of Mediators with clear procedures. The Assembly also recently adopted the Law on the disciplinary liability of judges and prosecutors and the Law on the state prosecutor. Key legislation was revised including the Criminal and Criminal Procedure Codes, and the Law on Kosovo Judicial Council was amended to align with constitutional amendments on the composition of the KJC.⁸⁷

While efforts by the Government and Assembly have helped to modernise legislation, the recent focus on legislative reform and amending the 2015 justice package has slowed implementation.⁸⁸ On-paper reforms have had little practical effect thus far. The judiciary remains weak and continues to struggle with political interference, poor efficiency, accountability, professionalism, and public perception.

The citizens perceived the courts as the most corrupt national institution in 2016 and as the second most corrupt behind Customs in 2018.⁸⁹ Prosecutors hesitate to take on high-profile cases, and high-level political interference prevents judges from acting independently in sensitive cases.⁹⁰ Sustainable financing of the judiciary also remains a challenge.⁹¹ Additionally, the parliament has directly addressed several sensitive court cases, thus putting political pressure on judges.⁹² The KJC and KPC need to improve standards for protecting the judiciary from outside influence and establish mechanisms for effectively addressing alleged cases of political interference in the judiciary.⁹³ The Kosovo Correctional Service has also been subject to persistent political interference, resulting in the preferential treatment of high-profile inmates.⁹⁴

The KJC and KPC are responsible for overseeing merit-based recruitment processes, yet the fairness of these processes is questionable.⁹⁵

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ UNDP Kosovo, “Public Pulse XI”, Pristina, May 2016, available at http://www.ks.undp.org/content/dam/kosovo/docs/PublicPulse/PPXI/ENG%20version%20Public%20Pulse%20XI_final%20version_May25.pdf; UNDP Kosovo, “Public Pulse XIV”, Pristina, June 2018, the percentage of Public Pulse respondents who perceived large-scale corruption in courts more than doubled from 2016 to 2018. See also Shulte-Cloos, Julia and Delfinë Elshani, “Kosovar Citizens’ Satisfaction with the Rule of Law – An Empirical Study”, Policy Report, Group for Legal and Political Studies, August 2016, available at <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/02/Kosovar-Citizens-Satisfaction-with-the-Rule-of-Law-Institutions-An-Empirical-Study.pdf>, pg. 10: “Nine out of ten individuals (89.97%) evaluate that people with political influence are less likely to face legal consequences whereas only less than one out of ten (9.57%) believe that they are not.”

⁹⁰ Letter from EULEX Judges to the Head of Executive Division, Mats Mattsson, 22 January 2014, available at http://gazetajnk.com/repository/docs/dokumenti_i_Eulex.pdf; See also UNDP and United Nations Office on Drugs and Crime, “Judicial Integrity in Kosovo – Assessment Report”, 2014, available at http://www.ks.undp.org/content/dam/kosovo/docs/SAEK/UNDP%20UNODC%20Report%20on%20Judicial%20Integrity_Eng.pdf; Bertelsmann Stiftung (BTI) 2018 Country Report – Kosovo,

⁹¹ Berat Thaqi, No Money for the Rule of Law, How Kosovo’s Budget Process Affects Judicial Independence, May 2019, available at https://www.ceps.eu/wp-content/uploads/2019/05/LSE2019-06_No-money-for-the-rule-of-law.pdf

⁹² Bertelsmann Stiftung (BTI) 2018 Country Report – Kosovo, pg. 7

⁹³ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 17 April 2018, pg. 14

⁹⁴ EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018

⁹⁵ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018

In 2016, recruitment rules were changed in the middle of an ongoing selection process for judges; the process was cancelled and a new recruitment process opened.⁹⁶ There are countless allegations that the recruitment and selection processes are non-transparent and non-professional. Although the KJC amended the recruitment regulations in July 2017, resulting in slight improvements, substantial action is required to ensure that the recruitment and selection system for judges and prosecutors is fully merit-based and transparent.⁹⁷

The training, education, and skills of prosecutors and judges are inadequate in most cases. The Academy of Justice is responsible for the initial and continuous training of judges, prosecutors, and their staff in line with criteria prepared in cooperation with the KJC and KPC.⁹⁸ While the KJC and KPC are required to conduct performance evaluations for prosecutors and judges every three years, in line with a regulation adopted in April 2017, performance assessments have met with delays.⁹⁹ The KPC and KJC did conduct 81 and 66 performance evaluations in 2017, respectively; “a system has yet to be implemented where judges and prosecutors undergo an effective and systematic evaluation based on clear criteria and with the results feeding into their career paths”.¹⁰⁰

A key challenge for the justice system is the backlog of cases.¹⁰¹ Eliminating old case backlogs was a priority of the 2014 – 2019 Strategic Plan for the Kosovo Judiciary. A high number of incoming cases, the new Law on Minor Offences (which took effect in January 2017), and the lack of financing for and familiarity with dispute resolution tools and mediation have contributed to the lack of progress in clearing court backlogs.¹⁰² As part of the reduction strategy, the KJC is responsible for recruiting associates to assist judges in resolving cases efficiently, but a relatively small budget makes it difficult to do so.¹⁰³ Other factors limiting efficiency include shortcomings in criminal legislation, the absence of a centralised criminal records registry, low commitment of judges to sanction those causing delays, postponement of many hearings due to no-shows, a high rate of cases sent back to the basic courts for retrial, a demonstrated “preference for detention over other restrictive measures”, and the understaffing of courts and prosecution offices.¹⁰⁴

⁹⁶ KLI, “Illegality of Judicial Council and Prosecutorial Council”, November 2016

⁹⁷ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018 See also EULEX Compact Progress Report, and Bertelsmann Stiftung (BTI) 2018 Country Report – Kosovo

⁹⁸ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018

⁹⁹ Ibid.

¹⁰⁰ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018 pg. 15

¹⁰¹ Ibid. See also Bertelsmann Stiftung, BTI 2018 Country Report – Kosovo: While the number of impending cases was reduced from 466,255 in 2013 to 440,627 by the beginning of 2016, court backlogs remain a key challenge. USAID (2015) calculations estimated 56,300 major criminal, civil, and serious crimes cases in Kosovo’s seven basic courts and their 20 corresponding branch courts in July 2014.

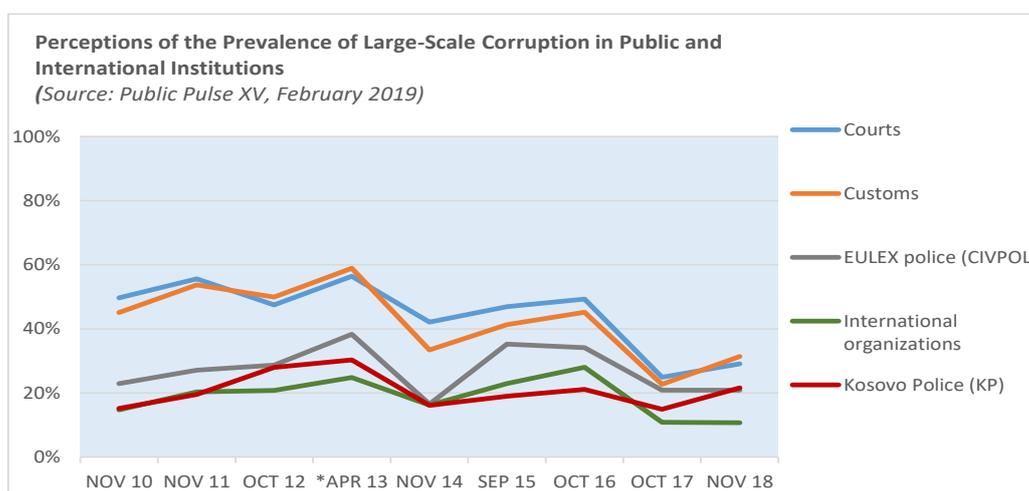
¹⁰² European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018: Alternative dispute resolution and mediation systems could help reduce the backlog of cases and number of incoming cases; however, the public is largely unaware of these mechanisms, and 3 of 7 regional mediation centres have closed due to lack of funding.

¹⁰³ Center for International Legal Cooperation (CILC), FOL Movement, and Kosova Democratic Institute (KDI)/Transparency International, “Kosovo Justice Sector Integrity Scan”, December 2017, available at <http://kdi-kosova.org/wp-content/uploads/2017/12/157-kosovo-justice-sector-integrity-scan-final-eng.pdf>

¹⁰⁴ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, April 2018. See also Bertelsmann Stiftung BTI Country Report –Kosovo 2018

The absence of a comprehensive system for managing and tracking cases has hindered efficiency, accountability, and opportunity for oversight. An electronic case file management system for tracking cases is under development but not yet finalised.¹⁰⁵ Moreover, a large proportion of hearings are still held in judges' offices rather than public courts or chambers, further limiting transparency.¹⁰⁶ Additionally, the authorities must still implement the new law on the disciplinary liability of judges and prosecutors. Although codes of ethics and disciplinary procedures are in place for judges and prosecutors, their implementation remains insufficient and delayed.¹⁰⁷

Despite new strategies, legislation and initiatives, satisfaction with the judiciary remains low. In the April 2018 *Public Pulse Poll* conducted by UNDP and USAID, only 31.2 percent of respondents reported satisfaction with the courts and 29.9 percent reported satisfaction with the Prosecutor's Office, the lowest level for any central institution.¹⁰⁸ Although levels of satisfaction have increased since their 10-year low in September 2015 (at 13.9 and 12.8 percent respectively), they have dropped roughly 6 and 3 percentage points since October 2017.¹⁰⁹



**In 2013 there was no autumn edition of the UNDP Public Pulse; data has been taken from the spring edition*

The composition and appointment procedures of the KJC and KPC are only in line with European standards on paper. These oversight bodies have failed to prompt substantial improvement, uphold internal regulations, or enact legal provisions needed to measure and ensure the accountability and efficiency of the judicial and prosecutorial system. The Law on Kosovo Judicial Council was recently amended to align with 2016 constitutional amendments providing for the majority of KJC members to be elected by their peers.¹¹⁰ However, the EU finds that the KJC does not have the capacity to create the conditions for implementing the legislation included in the July 2015 justice package.¹¹¹

¹⁰⁵ Balkans Group Interview, Ministry of Justice Official, Pristina, 02 December 2018

¹⁰⁶ Balkans Group Interview, Court Administration Advisor, Pristina, 20 December 2016

¹⁰⁷ European Commission, Kosovo* 2018 Report, pg. 15

¹⁰⁸ UNDP Kosovo, "Public Pulse XIV", Pristina, June 2018

¹⁰⁹ Ibid.

¹¹⁰ European Commission, Kosovo* 2019 Report; Commission Staff Working Document, SWD 216 final, 2019

¹¹¹ Ibid.

The heavy focus on legislative reform and “process of amending the 2015 justice package (laws on the judicial and prosecutorial councils and courts), which started in 2017, has slowed down implementation of the 2015 laws”.¹¹² While the legislative reforms in the areas of judicial functioning and the fight against organised crime represent ‘a significant step forward’, the implementation of new legislation requires fresh commitment to create substantial progress in the area of rule of law.¹¹³

3.2 Fight against Corruption and Organised Crime

In 2010, 76 percent of the population believed that the EU integration process would help in the fight against corruption.¹¹⁴ However, nearly a decade later, the population considers corruption to be the second-most paramount issue facing the country, behind unemployment.¹¹⁵ Despite high hopes that EULEX would dismantle criminal networks and prosecute high-level corrupt officials and elites, corruption and organised crime are still pervasive at all levels of government and a culture of impunity prevails. While, in recent years, there has been some progress prosecuting high-level corruption and organised crime cases with regard to the preliminary confiscation of assets (although not with regard to final confiscation), progress has been slow and largely superficial.¹¹⁶ A revised Law on the prevention of conflicts of interest was adopted in April 2018; the newly adopted Criminal Code revised key corruption-related procedures; and the new Law on extended powers of confiscation “provides simple and robust tools to confiscate assets, including those of which the origin cannot be explained”.¹¹⁷ However, despite legislative reforms and progress on paper, power remains concentrated in the hands of political parties and political and business elites, and state capture remains the reality on the ground. Instigating prosecution of high-level corruption cases has improved somewhat, yet final convictions are uncommon.¹¹⁸ Since 2015, 42 investigations resulted in 31 indictments.¹¹⁹ However, these investigations have resulted in only 7 convictions.¹²⁰ Similarly, preliminary confiscation of assets has increased but final asset confiscation remains low, at around only 17 percent of those initially frozen and seized.¹²¹ Final convictions and confiscation of assets in organised crime and money laundering cases remain a key challenge.¹²² Elites continue to evade prosecution and conviction. The judiciary has demonstrated little will to prosecute high-level cases of organised crime and corruption.¹²³ When prosecutions do occur, they are undermined by political interference and low capacity for managing high-level corruption cases.

¹¹² European Commission, Kosovo* 2019 Report; Commission Staff Working Document, SWD216 final, 2019, pg. 14

¹¹³ Ibid.

¹¹⁴ UBO Consulting, “Survey of Awareness of the EU and European Integration in Kosovo”, 2012, available at http://ceas.europa.eu/archives/delegations/kosovo/documents/press_corner/eupk_survey_report_2012.pdf; See also Mahr, Ewa, “Local contestation against the European Union Rule of Law Mission in Kosovo”, *Contemporary Security Policy*, 2018, 39:1, pp. 71-94

¹¹⁵ UNDP Kosovo “Public Pulse XIV”, Pristina, June 2018

¹¹⁶ European Commission, Kosovo* 2018 Report; Commission Staff Working Document, SWD156 final, 2018

¹¹⁷ European Commission, Kosovo* 2019 Report; Commission Staff Working Document, SWD216 final, 2019, pg. 22

¹¹⁸ European Commission, Kosovo* 2018 Report; Commission Staff Working Document, SWD 156 final, 2018. See also Freedom House: *Freedom in the World*, 2018 – Kosovo Profile

¹¹⁹ European Commission, Kosovo* 2018 Report; Commission Staff Working Document, SWD 156 final, 2018

¹²⁰ Ibid.

¹²¹ During the reporting period for the European Commission’s Kosovo* 2018 Report

¹²² European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018

¹²³ Group for Legal and Political Studies, *Nations in Transit 2018 – Kosovo Report*, Freedom House, available at <https://freedomhouse.org/report/nations-transit/2018/kosovo>

Kosovo urgently needs to focus on increasing the number of prosecutors investigating and prosecuting high-level corruption cases and increasing capacity in the areas of financial investigations, asset confiscation, and witness protection.¹²⁴

Political parties continue to wield substantial control over public institutions and their leaders operate with impunity. The courts rarely address allegations of corruption against political parties or sanction breaches of election and campaign regulations.¹²⁵ Some progress has been made in party transparency; in response to EU pressure to revamp anti-corruption efforts in 2016, specifically targeting the lack of transparency and accountability of political parties, the parliamentary Committee on Public Financial Oversight pushed for external audits on parties' budgets for the first time since 2013.¹²⁶ Audits were completed by the end of 2017, confirming "serious violations of political party finance legislation and severe weaknesses in internal finance control".¹²⁷

The Draft Law on Amending and Supplementing the Law on Financing of Political Entities introduced in October 2018 was intended to strengthen the legislative framework for campaign financing.¹²⁸ However, in June 2019, over 100 civil society organisations participated in a protest against the adoption of the Draft Law; the Kosovo Democratic Institute, which organised the protest, stated that the draft law is "contrary to the constitutional spirit and violates international standards for financing of political parties, in particular the recommendations of the Venice Commission".¹²⁹ The ongoing review of this legislation should account for the June 2018 findings and recommendations of the Venice Commission, a legislative advisory body of the Council of Europe, and should "ensure transparency, accountability and effective enforcement, including clearly defined sanctions".¹³⁰ Sanctions for violations, alongside consistent audits, and regular publication of financial and campaign disclosure reports are needed to advance the fight against high-level corruption within and amongst political parties.¹³¹

Anti-corruption institutions are poorly coordinated and have overlapping mandates.¹³² According to Bertelsmann Stiftung's 2018 Kosovo report, "the fact that a variety of institutions (e.g. the office of the state prosecutor, the anti-corruption task force, the office of the auditor general and also the EULEX mission) are involved in fighting corruption has only resulted in spending without a

¹²⁴ European Commission, Kosovo* 2018 Report; Commission Staff Working Document, SWD 156 final, 2018

¹²⁵ Cornelia Abel qtd. in Transparency International, "Fighting Corruption in the EU Accession Countries in the Western Balkans and Turkey", 10 November 2016, available at https://www.transparency.org/news/pressrelease/fighting_corruption_is_failing_in_eu_accession_countries_in_the_western_bal

¹²⁶ Group for Legal and Political Studies, Nations in Transit 2018 – Kosovo Report, Freedom House, 2018, available at <https://freedomhouse.org/report/nations-transit/2018/kosovo>

¹²⁷ European Commission Kosovo* 2018 Report; Commission Staff Working Document, SWD 156 final, 2018, pg. 7-8

¹²⁸ Office of the Prime Minister of the Republic of Kosovo, "The government approved the Draft Law on Financing Political Parties and the Decision for overtime compensation to the Kosovo Police", 9 October 2018, available at <http://kryeministri-ks.net/en/the-government-approved-the-draft-law-on-financing-political-parties-and-the-decision-for-overtime-compensation-to-the-kosovo-police/>

¹²⁹ Travers, Eve-Anne, "Protesters reject new law on political party funding", Prishtina Insight, 17 June 2019, available at <https://prishtinainsight.com/protesters-reject-new-law-on-political-party-funding/>

¹³⁰ European Commission, Kosovo* 2019 Report. Commission Staff Working Document, SWD216 final, 2019, pg. 22

¹³¹ European Commission, Kosovo* 2018 Report. Commission Staff Working Document, SWD 156 final, 2018

¹³² Freedom House, Freedom in the World 2018 – Kosovo Profile

coherent strategy”.¹³³ Furthermore, anti-corruption efforts rarely go “beyond political statements”.¹³⁴ Assembly oversight of anti-corruption agencies has been weakened by “ongoing clashes between political parties”; this suggests that the political landscape inhibits anti-corruption efforts not only because of backroom deals and party cronyism but also because inter-party dynamics prevent proper oversight.¹³⁵ Moreover, the report suggests that anti-corruption institutions have befallen a fate similar to that of other public institutions, locally and in the Western Balkans – one of fragmentation and ‘agencification’.¹³⁶ Like other rule of law institutions, anti-corruption efforts desperately require streamlining and improved inter-institutional coordination.

In 2018, Kosovo received a score of 37 (and rank of 93) in Transparency International’s Corruption Perception Index, up from a score of 33 from 2013 – 2015, but down from 39 in 2017.¹³⁷ While this score reflects slight developments in the fight against organised crime and corruption on paper, public perception of corruption is increasing. According to the UNDP annual Public Pulse survey, the proportion of respondents perceiving large-scale corruption in a variety of national and international institutions increased from 2017 to 2018 for every institution in question.¹³⁸ In particular, 43 percent of respondents based their opinions on media, 40.5 percent on conversations with friends/relatives, and 9 percent of respondents “formed their opinions based on personal experiences where they were asked for money, gifts or other favours in order to receive certain services”.¹³⁹

3.3 Additional challenges

Transitional justice: in November 2017, the government established a commission to recognise and verify victims of wartime sexual violence, which represents a step forward in adopting a more gender-inclusive approach towards transitional justice. However, the Inter-Ministerial Working Group on Dealing with the Past and Reconciliation has not put forward a strategy on transitional justice and has largely halted its work.¹⁴⁰ In parallel, the President has appointed a working group to establish a Truth and Reconciliation Commission.¹⁴¹

¹³³ Bertelsmann Stiftung (BTI) 2018 Country Report – Kosovo, pg. 34

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Mendelski, Martin, “Good Governance Promotion in the Western Balkans: An Empirical Analysis of the De-politicization and Fragmentation of the State”, Conference Papers: Rule of Law in the Western Balkans: Exploring the New EU Enlargement Strategy and Necessary Steps Ahead, Aspen Institute, Germany, April 2018, Mendelski argues that externally-driven good governance reform and efforts to de-politicize public institutions have resulted in fragmentation and ‘agencification.’ Indeed, in Kosovo, the number of semi-autonomous agencies has grown by over 400% since 1999.

¹³⁷ Transparency International, 2018 see also Euractiv and AFP, “Criticism as Kosovo justice mission EULEX closes judicial operations”, 11 June 2018

¹³⁸ Institutions included: Healthcare (hospitals and family healthcare centres), KEDS, Courts, Customs, Central administration/government, PAK (Privatization Agency of Kosovo), Municipalities (local government), EULEX police (CIVPOL), Education (schools, University), TAK (Tax Administration of Kosovo), PTK, Banks, International Organisations, and Kosovo Police (KP)

¹³⁹ UNDP Kosovo, “Public Pulse XIV”, Pristina, June 2018, pg. 15: Perceptions of the prevalence of large-scale corruption in rule of law and key governing institutions in Kosovo are as follows: Courts (38.6 percent up from 24.9 percent in October 2017 but substantially lower than rates reported from 2010 – 2016 excluding April 2014), Customs (39.1 percent, up from 22.7 percent in October 2017), central administration/government (34.7 percent), Privatisation Agency of Kosovo (34.5 percent), EULEX Police (29.9 percent up from 20.9 percent in October 2017), Tax Administration of Kosovo (28.9 percent), Kosovo Police (25.7 percent up from 14.9 percent in October 2017).

¹⁴⁰ European Commission, Kosovo* 2018 Report, Commission Staff Working Document, SWD 156 final, 2018

¹⁴¹ Haxhijaj, Serbeze, “Can Kosovo’s Wartime Truth Commission Achieve Reconciliation?”, Balkan Insight, 27 June 2018, available at <http://www.balkaninsight.com/en/article/can-kosovo-s-wartime-truth-commission-achieve-reconciliation--06-25-2018>

However, this initiative is widely perceived as a political tool for the Office of the President.¹⁴²

Recent actions call into question the country's commitment to prosecuting war crimes and undermine transitional justice efforts. In 2017, President Thaçi pardoned three ex-KLA (Kosovo Liberation Army) members convicted for crimes.¹⁴³ Also in December 2017, in an orchestrated move, 43 members of parliament (most belonging to the governing coalition) attempted to revoke the Law on the Specialist Chamber and Specialist Prosecutor's Office, which provides for internationally-staffed institutions based out of The Hague to investigate and prosecute alleged crimes committed by KLA members between 1998 and 2000.¹⁴⁴

The North of Kosovo: Kosovo's four northern Serb-majority municipalities remain de facto outside of Pristina's control. Although the four municipalities have legally integrated into the system following the 2013 Brussels Agreement, they mostly report to Belgrade and to a few strong men in the north. Between 2014 and 2017, over 30 cars were burned and over 20 arson cases were reported in the north, mostly politically motivated.¹⁴⁵ Not a single case has been resolved so far. Apart from managing the conflict, both the international community and domestic institutions have accomplished little in the north with regard to rule of law.

4 CURRENT AND ONGOING INITIATIVES

The Joint Rule of Law Coordination Board (JRCB) was established in 2014 as a coordination mechanism to bring together representatives from local and EU institutions, including the Ministry of Justice, KJC and KPC, EULEX, and the EUSR. Since 2014, the JRCB met regularly to identify and set specific tasks and objectives and to assess and review rule of law-related progress and challenges, published in annual Compact Progress Reports. The final meeting of the JRCB was held in late-November 2018, where the Head of EULEX presented the latest Compact Progress Report, which covers JRCB activities from July 2017 to June 2018 and focuses on the progress and development of local rule of law institutions in light of a EULEX scale-down.¹⁴⁶

Kosovo Judiciary Strategic Plan (2014 – 2019): According to the KJC, the first Strategic Plan for the Kosovo Judiciary, 2007 – 2012 “was adopted and then largely ignored”.¹⁴⁷

¹⁴² Ibid.

¹⁴³ GazettaExpress, “President Thaci pardoned ex-KLA members convicted of killing an entire family”, 29 December 2017, available at <https://www.gazettaexpress.com/en/news/president-thaci-pardoned-ex-kla-members-convicted-of-killing-an-entire-family-173410/>

¹⁴⁴ Hopkins, Valerie, “Kosovo politicians in ‘panic attack’ over war crimes court”, POLITICO, 5 January 2018, available at <https://www.politico.eu/article/ramush-haradinaj-hashim-thaci-kosovo-politicians-in-panic-attack-over-war-crimes-court/>; See also European Commission Kosovo* 2018 Report; Commission Staff Working Document, SWD 156 final, 2018 pg. 5

¹⁴⁵ Balkans Group Interview, Civil Society Expert, Prishtina, January 2019. Also BIRN Kosovo has catalogued 74 attacks on Kosovo Serbs involving guns, grenades, arson or explosive devices since 2014, available at <https://balkaninsight.com/2019/01/16/bombs-and-bullets-fear-and-loathing-in-north-kosovo-01-14-2019/>

¹⁴⁶ The 2018 Compact Progress Report highlighted increased performance and capacity amongst the Kosovo Police, Kosovo Judicial and Prosecutorial Councils, and the Civil Registration Agency.

¹⁴⁷ KJC, “Kosovo Judiciary Strategic Plan 2014 – 2019”, pg.5, available at [file:///Users/air/Downloads/Strategic%20Plan%202014-2019%20\(1\).pdf](file:///Users/air/Downloads/Strategic%20Plan%202014-2019%20(1).pdf)

Unachieved goals, e.g. reducing the backlog of court cases, were included again in the 2014 – 2019 Strategic Plan, which the KJC intended to use as a ‘living document,’ ‘every-day management tool,’ and ‘road-map’ to guide the development of the judiciary. The Strategic Plan was developed based on input from all sectors of the judicial system and includes five strategic pillars, each with specific goals, accompanying objectives, and corresponding actions plans.¹⁴⁸ These goals largely align with the challenges highlighted in the previous section, including improving coordination between the KJC and non-judicial entities like the MOJ (Objective 1.1.7), strengthening the evaluation and disciplinary processes for judges and judicial staff (Objectives 1.2.1 and 1.2.2), reducing the backlog of cases (Objective 2.4.1), ensuring public access to reliable reports, records, and court data (Objective 3.2.1), developing measurable performance indicators supported and modern technological support systems (Objective 3.4.1), improving training requirements and targeted trainings for judicial personnel and improving legal reasoning and writing abilities of judges (Goal 4.1), and encouraging non-judicial procedures such as mediation to keep the courts efficient (Objective 4.1.5).¹⁴⁹

Functional Review of Rule of Law Sector: In November 2016, the Ministry of Justice launched the Functional Review of the Rule of Law Sector, a Ministry-led process seeking to advance rule of law in line with EU standards.¹⁵⁰ As part of this process, the Ministry committed to conducting a comprehensive assessment of rule of law situation to inform the development of a comprehensive strategy and “harmonise the principles, legislation and institutions responsible in this sector”.¹⁵¹ Streamlining processes should be a high priority for the government, given the ad-hoc, decentralised nature of reforms and initiatives in recent years. Unfortunately, the functional review was delayed due to challenges related to government formation in 2017 and re-launched in March 2018 (despite an initial deadline set in June 2018) with alternative plans for the composition of the steering committee.¹⁵² Differing from the original vision, the Offices of the President and Prime Minister sit on the steering committee alongside members of the judiciary, law faculty, NGOs and civil society, and international donors.¹⁵³ The first comprehensive report deriving from the functional review is expected to be released in 2019 and to identify fundamental gaps within the rule of law sector and wide-ranging interventions and reforms to be implemented over a number of years.¹⁵⁴

¹⁴⁸ The five pillars are (i) building trust and confidence, (ii) enhancing the administration of justice, (iii) broadening access to justice and service to the public, (iv) promoting competence, professionalism and civility, (v) improving court facilities and technology.

¹⁴⁹ KJC “Kosovo Judiciary Strategic Plan 2014 – 2019”

¹⁵⁰ Group for Legal and Political Studies, “The Functional Review of the Kosovar Justice system: an overview of the process so far”, September 2018, available at <http://www.legalpoliticalstudies.org/wp-content/uploads/2018/10/GLPS-Policy-Note-Functional-Review-of-the-Justice-System-in-Kosovo-Final.pdf>

¹⁵¹ Gazeta Express, “Kosovo Launches Functional Review of the Rule of Law Sector”, 9 March 2018, available at <https://www.gazetaexpress.com/en/news/kosovo-launches-functional-review-of-the-rule-of-law-sector-173775/>

¹⁵² Group for Legal and Political Studies, “The Functional Review of the Kosovar Justice system: an overview of the process so far”, September 2018, See also Gazeta Express, “Kosovo Launches Functional Review of the Rule of Law Sector,” 9 March 2018

¹⁵³ Ibid.

¹⁵⁴ Balkans Group Interview, Kosovo Government Official, Pristina, 20 December 2018

Justice 2020 primarily focuses on the judicial and prosecutorial systems and will serve as a coordinating mechanism and complement the Functional Review Process “by establishing opportunities for discussing major topics that require in-depth research and more detailed discussions within the working groups”.¹⁵⁵ The Justice 2020 initiative, headed by the Minister of Justice in cooperation with the Chairs of the Judicial and Prosecutorial Councils symbolises a step forward for the independent functioning of Kosovo’s rule of law institutions and gives hope that local ownership over rule of law and judicial reform will grow and mature as EULEX takes a step back.¹⁵⁶ Supported financially by the U.S. and UK Embassies, EUSR, and EULEX, Justice 2020 was “established proactively at the initiative of Kosovo authorities” and drafted independently by local institutions.¹⁵⁷ Justice 2020 is expected to set short-term priorities, particularly those which can enhance judicial efficiency, in line with the results deriving from the Functional Review.¹⁵⁸

As it stands, Kosovo still “lacks a comprehensive strategy for justice sector reforms and a proper mechanism for inter-institutional coordination”.¹⁵⁹ The Functional Review and Justice 2020 could fill these gaps. These two initiatives demonstrate the Ministry of Justice’s intention to focus on improving coordination and streamlining rule of law reform in the coming years and could serve as foundational platforms to increase local ownership over rule of law a post-EULEX landscape. However, the Ministry of Justice should be wary of launching new programmes or sweeping initiatives fast out of the gate. Initiatives that further decentralise rather than coordinate existing institutions and processes could increase opportunities for mismanagement rather than streamline rule of law and judicial reform processes.

4.1 International Support

Insufficient inter-institutional coordination is not unique to local institutions, as the European Commission’s 2018 Country Report for Kosovo also cited lack of coordination amongst donors resulting in “inefficiencies, incoherence and duplication of efforts”.¹⁶⁰ In order to provide a more complete picture of the full development landscape with regard to rule of law, we provide a brief overview of ongoing, non-EU donor initiatives focused on supporting rule of law in Kosovo:

- **United Nations Development Programme (UNDP):** the Rule of Law Project focuses on three areas: i) strategic planning, policy development and coordination in the area of rule of law, ‘under the leadership of the Ministry of Justice,’ ii) institutional capacity of judicial institutions and career development of legal actors, iii) access to justice and justice service delivery.¹⁶¹

¹⁵⁵ Minister of Justice Tahiri qtd in EULEX Press Office at the Final Meeting of the Joint Rule of Law Coordination Board, 21 November 2018

¹⁵⁶ EULEX Head of Mission Alexandra Papadopoulou qtd in EULEX Press Office “EULEX at the launch of Justice 2020”, 26 September 2018, available at <https://www.eulex-kosovo.eu/?page=2,11,862>

¹⁵⁷ Ibid.

¹⁵⁸ Balkans Group Interview, Ministry of Justice Official, Pristina, 2 December 2018

¹⁵⁹ European Commission, Kosovo* 2018 Report; Commission Staff Working Document, SWD 156 final, 2018, pg. 14

¹⁶⁰ Ibid.

¹⁶¹ UNDP Kosovo, Project Website: Support to strengthening the rule of law in Kosovo, available at http://www.ks.undp.org/content/kosovo/en/home/operations/projects/democratic_governance/support-to-strengthening-the-rule-of-law-in-kosovo.html

- **Organisation for Security and Co-operation in Europe (OSCE):** focus on supporting the independence, impartiality and accountability of the justice system, monitoring and reporting on the judiciary and prosecution, the administration of justice in inter-ethnic cases and cases impacting women and marginalised communities, reviewing and supporting institutions to develop and implement legislation.¹⁶²
- **United States Agency for International Development (USAID):** focus on supporting judicial independence, the implementation of laws, oversight, management and professional skills (primarily within the KJC, Academy of Justice, and courts), combatting pervasive corruption, as well as commercial law, property rights, and alternative dispute resolution mechanisms.¹⁶³ Specific projects include ‘Justice Matters,’ a three-year action to improve access to justice, and the ‘Justice System Strengthening Program.’
- **ICITAP (U.S. Department of Justice):** the U.S. Department of Justice’s International Criminal Investigative Training Assistance Programme has been leading coordination for police development and currently assists the Ministry of Internal Affairs and Kosovo Police particularly in the areas of border management and immigration, IT support for criminal investigations, police and prosecutorial management of organised and financial crimes.¹⁶⁴
- **The British Embassy:** launched a rule of law project in October 2018, which will provide support for the ongoing Judicial Functional Review. British experts will conduct an analysis of the accountability and integrity of the justice sector and will provide four legal experts to work within the Ministry of Justice. Following the independent analysis, project implementers will support the KJC and KPC in preparing action plans. Project personnel will also monitor judicial recruitment and appointment processes and provide mentoring and training to selected judges, specifically in the areas of money laundering, organised crime, and high profile corruption.¹⁶⁵
- **The Embassy of the Netherlands:** have a number of ongoing initiatives, including monitoring corruption cases in the basic courts and the performance of public institutions in relation to the implementation of ERA priorities. Training is also provided to the KPC, Auditor General’s staff and civil servants to improve media relations, better address violations and inefficiencies related to public resource management and strengthen institutional capacity in the field of rule of law. A number of regional programmes are implemented that improve procedural rights protections, strengthen the capacity of public institutions, promote rule of law in the western Balkans, increase public awareness about war crime prosecutions and promote European Human Rights Standards throughout the region.

¹⁶² Ibid.

¹⁶³ USAID Webpage, Rule of Law and Governance, last updated February 2018, available at <https://www.usaid.gov/kosovo/democracy-and-governance>

¹⁶⁴ The United States Department of Justice, Webpage: International Criminal Investigations Program (ICITAP): Europe and Eurasia, available at <https://www.justice.gov/criminal-icitap/europe-and-eurasia>

¹⁶⁵ British Embassy Pristina, “British Embassy launches new project to strengthen Kosovo’s Judicial and Prosecutorial Systems”, available at <https://www.gov.uk/government/news/british-embassy-launches-new-project-to-strengthen-kosovos-judicial-and-prosecutorial-systems>

- **Norway:** has been a strong supporter of strengthening rule of law and anti-corruption efforts. The Kingdom of Norway committed to fully funding the development of a Case Management Information System (CMIS) in courts and prosecution offices, as foreseen in the 2014 – 2019 Kosovo Judiciary Strategic Plan, and has been a key supporter of using alternative dispute resolution methods and of the CMIS Project for Integrative Mediation Kosovo since 2012.¹⁶⁶
- **The Council of Europe Office in Pristina:** began cooperation in 1999. In support of rule of law development and reform, the Office has focused on enhancing judicial and prosecutorial capacities on European Human Rights standards, combatting organised crime and corruption, supporting policy making, and strengthening independent rule of law institutions, including the Office of the Ombudsperson. Kosovo benefits from a number of regional Council of Europe initiatives, including Human Rights Education for Legal Professionals (HELP), a joint project with the EU targeting regional cyber-crime and money laundering (iPROCEEDS), and projects under the Horizontal Facility for the Western Balkans and Turkey 2019 – 2022 (on human rights policing, human rights of prisoners, and corruption in higher education). Two ongoing CoE projects are country specific, one against economic crime and corruption in Kosovo (PECK II) and another supporting the capacity of the Constitutional Court to effectively apply European human rights standards.¹⁶⁷

4.2 EU Processes and Rule of Law Initiatives

EU operations in Kosovo are diverse and far-reaching. EU institutions in Brussels and those operating in-country (EU Office, EUSR and EULEX) have developed and implemented a variety of mechanisms, instruments, funding-schemes, processes and action plans to support development and democratisation in line with European norms and to aid Kosovo on its path towards European integration. The **European Reform Agenda, Stabilisation and Association Process**, and EU enlargement perspective for the Western Balkans all demand substantial reforms in the area of rule of law as preconditions for further EU integration and accession.

The Stabilisation and Association Process (SAP), the EU's framework for relations with Western Balkan countries and the EU's enlargement perspective for the region, is a key pillar of the EU agenda. Kosovo has engaged in the SAP since 2010, and a Stabilisation and Association Agreement (SAA) between Kosovo and the EU entered into force in April 2016, including extensive support to strengthen democracy and the rule of law as one of four key pillars of association.¹⁶⁸

¹⁶⁶ The Norwegian Ministry of Foreign Affairs, "Statement by the Royal Norwegian Ambassador, Mr. Per Strand Sjaastad", Support for Strengthening the Rule of Law in Kosovo – Information campaign on Mediation, March 2017, available at <https://www.norway.no/globalassets/2---world/kosovo/news/statement---outreach-campaign-on-mediation.pdf>

¹⁶⁷ Council of Europe Office in Pristina, Webpage: Ongoing projects, available at <https://www.coe.int/en/web/pristina/ongoing-projects>

¹⁶⁸ Council of the European Union, Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the One Part, and Kosovo*, of the Other Part, Inter-institutional File: 2015/0095 (NLE), 2 October 2015, available at <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>. Article 83 of the SAA (Reinforcement of institutions and rule of law) highlights the following key aims: strengthening the independence, impartiality, accountability and efficiency of the judiciary; developing 'adequate structures' for the police, prosecutors, judges, and all judicial and law enforcement bodies to 'adequately prepare them for cooperation in civil, commercial and criminal matters'; and, 'to enable them to effectively prevent, investigate, prosecute and adjudicate organised crime, corruption, and terrorism'.

The European Reform Agenda (ERA) was adopted in 2016 and set short-term priorities through the end of 2017 in line with SAA-related requirements, with one of its three key focus areas being good governance and rule of law. While the timeline for ERA I has expired, a key requirement still needed in the “legislative domain is the swift adoption of the provisions concerning the suspension and removal of public officials respectively indicted and convicted for corruption”.¹⁶⁹

ERA II has been drafted but the timeline for its launch is subject to the state of EU-Kosovo relations and coordination between EU and national institutions, which has not been very fruitful in the last several months.¹⁷⁰

In the context of the SAP, the **Instrument for Pre-Accession Assistance (IPA)** is a financial mechanism created in 2007 to aid countries in the process of EU accession. The second iteration of this instrument, IPA II, offers financial assistance during the period of 2014-2020 in line with seven priority areas, one being ‘rule of law & fundamental rights’.¹⁷¹ As EULEX is phased out and its monitoring, mentoring and advising support withdrawn from a number of institutions, IPA II will take on additional importance as a key mechanism for rule of law promotion and judicial reform in Kosovo, and ‘alternative assistance tools’, including IPA funds and projects, will be used to fill the ‘institutional gaps and structural weaknesses’ which remain.¹⁷²

EU Visa liberalisation for Kosovo has been a key priority for successive governments and their constituents. The visa liberalisation dialogue has been closely linked with rule of law reform, specifically the fight against organised crime and corruption. The government has now implemented all 95 priority actions required, and the European Commission announced in July 2018 that Kosovo had met the required benchmarks.

¹⁶⁹ EUSR Apostolova at EULEX Press Office, “Final Meeting of the Joint Rule of Law Coordination Board”, 21 November 2018, available at <http://www.eulex-kosovo.eu/?page=2,11,884>

¹⁷⁰ The EU has been reluctant to launch this initiative in light of Kosovo’s tariffs on the Serbian goods, a decision with which the EU has voiced harsh disagreement, Balkans Group interview, Government and EU officials, Pristina, April – May 2019

¹⁷¹ European Commission, Webpage: Kosovo – financial assistance under IPA II, European Neighbourhood and Enlargement Negotiations, available at https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/kosovo_en. Within this priority sector, funding allocations prioritise projects which focus on ‘strengthening the rule of law; fighting corruption and organised crime; implementing human rights law, and protecting and including minority and vulnerable groups.’

¹⁷² EULEX MMA support will no longer be offered to the Kosovo Police, the Kosovo Judicial Council, the Kosovo Prosecutorial Council, and the Civil Registration Agency, EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018, pg. 2

However, the European Parliament and the Council of the EU must still approve the proposal on visa liberalisation for Kosovo.¹⁷³ Also at the forefront of the EU regional agenda is the continuation of the **EU-facilitated Dialogue between Kosovo and Serbia** and, in turn, the normalisation of Belgrade-Pristina relations and the development of a ‘comprehensive, legally binding normalisation agreement’.¹⁷⁴ EULEX provides technical support in implementing relevant agreements resulting from the dialogue (civil registry, IBM, freedom of movement).

The EUSR’s Rule of Law and Legal Section collaborates with EULEX on a number of initiatives, including capacity building of local institutions, judicial cooperation between local and international institutions, and implementation of the Legislation Review Mechanism. The latter provides the Government and Assembly of Kosovo with advice on EU acquis standards relevant to the Government’s Legislative Programme and benchmarks outlined in EU alignment processes, including the SAP, visa-liberalisation, and EU-facilitated dialogue with Serbia.¹⁷⁵ The EUSR is currently increasing its rule of law team and could potentially utilise this office as an implementing or coordinating body for the forthcoming **rule of law flagship initiative** in Kosovo.

The European Commission released the **enlargement strategy for the Western Balkans** in February 2018. The document stipulates that a number of criteria must be met and significant progress made in crucial areas, the first being rule of law. The Commission highlights that all Western Balkan states need to take immediate action to ensure the independence and efficiency of judicial systems; to eliminate and implement frameworks for preventing corruption;¹⁷⁶

¹⁷³ European Commission, Migration and Home Affairs, Webpage: Visa Liberalisation: Commission confirms Kosovo fulfils all required benchmarks, available at https://ec.europa.eu/home-affairs/news/visa-liberalisation-commission-confirms-kosovo-fulfils-all-required-benchmarks_en

¹⁷⁴ European Commission, “A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans.” Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM, 65 final, February 2018, available at https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

¹⁷⁵ European Union Office in Kosovo, Webpage: Kosovo* and the EU, available at https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en

¹⁷⁶ Kosovo must take steps to eliminate corruption through final court rulings that are enforced, dissuasive sanctions, the strengthening of specialised prosecutorial structures, the allocation of special police units to prosecution offices, and the adoption and enforcements of mechanisms against high-level crime and corruption (including stripping of illegally acquired assets, loss of right to hold office, stricter compliance rules for public officials and complaints mechanisms for citizens). Kosovo must also implement frameworks for preventing corruption, particularly in the area of public procurement by introducing transparency, publicly accessible e-procurement platforms. See European Commission, “A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM, 65 final, 6 February 2018

to counter money laundering and organised crime;¹⁷⁷ and, to further invest in processes of transitional justice.¹⁷⁸

In the 2018 enlargement strategy, the EU introduced six new flagship initiatives, the first being the initiative to strengthen the rule of law. With the newly-announced rule of law flagship initiative, the EU will expand upon existing tools, including detailed action plans, enhance its assessment of reform implementation through new impact indicators, trial-monitoring, case-based peer-review missions and, introduce new rule of law advisory missions.¹⁷⁹

An important element of the enlargement strategy is not regionally applicable, and that is related to Kosovo-Serbia relations. The EU issues a thinly veiled reference to Kosovo's status-related challenges, noting its opportunity to advance on its European path only "once objective circumstances allow".¹⁸⁰ A comprehensive, legally-binding normalisation agreement between both countries must be concluded in order for either to advance on their respective European paths (and must be "irreversibl[y] implement[ed] before accession negotiations with Serbia can be closed").¹⁸¹ Insofar as "a credible accession perspective is the key driver of transformation in the region," a lack of progress in normalising bilateral relations could limit expectations for a comprehensive agreement and, in turn, negatively impact the perceived credibility of accession perspectives and the effectiveness of EU leverage in prompting fundamental reform in the area of rule of law.

¹⁷⁷ Via dismantling criminal networks and their economic bases, using financial investigations and tools (precautionary asset-freezing, a reversed burden of proof for specific types of assets, and more stringent disclosure requirements for businesses, amongst others. See European Commission "A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM 65 final, 6 February 2018, For Kosovo, this includes the handling of war crimes cases and full cooperation with the Kosovo Specialist Chambers. See European Commission, "A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM 65 final, 6 February 2018

¹⁷⁸ For Kosovo, this includes the handling of war crimes cases and full cooperation with the Kosovo Specialist Chambers. See European Commission, "A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM 65 final, 6 February 2018

¹⁷⁹ Ibid.

¹⁸⁰ European Commission, "A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM 65 final, 6 February 2018, pg. 2

¹⁸¹ Ibid.

5 THE RULE OF LAW FLAGSHIP INITIATIVE AND FUTURE OF EU SUPPORT FOR RULE OF LAW REFORM IN KOSOVO

With the 2018 enlargement strategy, the EU committed to support the transformation of Western Balkan states through six new flagship initiatives, the first being the initiative to strengthen the rule of law. As the EULEX mission winds down, plans for the EU's new flagship rule of law initiative and advisory mission will take on increasing significance.

While the EU has touted the rule of law flagship initiative as the framework for EU rule of law support in the Western Balkans moving forward, the shape, role, precise aims, and level of support planned has been only broadly defined. The EU will expand upon existing tools, including **detailed action plans**, enhance its **assessment of reform implementation through new impact indicators**, and provide support via **trial-monitoring, case-based peer-review missions** and, **new advisory missions**.¹⁸² The EU has also committed to continuing support for the work of the International Criminal Tribunals and the Kosovo Specialist Chambers.¹⁸³

The Sofia Declaration, including the 'Sofia Priority Agenda', gives minor additional insights.¹⁸⁴ While reconfirming the EU's plans for **trial monitoring** (in the field of serious corruption and organised crime), **advisory missions** 'with increased support from Member States and the EU,' and systematic, **case-based peer-review missions** focused on monitoring reforms in the Western Balkans, the Sofia Declaration also highlighted the EU's intention to provide support for **better measurement** of results in justice reform and to "enhance support for judicial reform and efforts to fight corruption and organised crime including **capacity building for corruption prevention**".¹⁸⁵

The EU will increasingly rely on the Instrument for Pre-Accession Assistance (IPA) as the primary framework through which programmatic and financial support will be provided to Western Balkan states in line with the enlargement strategy – "in order to ensure adequate funding to support this [enlargement] strategy and a seamless transition to membership, the Commission proposes to gradually increase funding under the [IPA]".¹⁸⁶ The 2018 Compact Progress Report also revealed the EU's intention to increasingly rely on tested, centralised mechanisms like IPA as EULEX exits the rule of law landscape in Kosovo – "while certain institutional gaps and structural weaknesses remain, the European Union will continue its support to [rule of law] institutions in a more limited advisory role through alternative assistance tools, including a number of Instrument for Pre-Accession (IPA) projects".¹⁸⁷

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Developed by the EU and member states, in consultation with Western Balkans partners, at the EU-Western Balkans Summit, May 2018

¹⁸⁵ Council of the European Union, "Sofia Declaration", EU-Western Balkans Summit, Sofia, 17 May 2018, available at https://www.consilium.europa.eu/media/34776/sofia-declaration_en.pdf

¹⁸⁶ European Commission, "A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM 65 final, 2018, pg. 18

¹⁸⁷ EULEX Compact Progress Report: Assessing Progress between July 2017 – June 2018, pg. 2

The IPA-funded EURALIUS (Consolidation of the Justice System in Albania) programme in Albania provides one example of what post-EULEX IPA support for comprehensive rule of law reform may look like.¹⁸⁸ Albania's EURALIUS was launched in 2006 and is "designed to improve the capacity of Albanian Ministry of Justice (MoJ) and other actors and to strengthen the independence, transparency, efficiency, accountability and public trust in the Albanian justice system in line with EU standards and the EU *acquis*".¹⁸⁹ By January 2019, there are over 20 ongoing EU-funded projects supporting fundamental rights and rule of law. However, a major justice package will likely be unveiled in 2020. A multi-year, comprehensive programme to support rule of law in Kosovo is currently in the planning stages. This programme, modelled loosely upon EURALIUS, will be largely funded through IPA and will focus on defragmenting rule of law development support and supporting cohesive sectoral rule of law reform in Kosovo.

Like under EURALIUS, the Ministry of Justice will be the primary implementing authority, alongside the KPC, KJC, as well as the Academy of Justice. The programme is expected to focus broadly in three key areas – i) sectoral management and monitoring, ii) capacity building and implementation of legal framework, and iii) access to justice. Moving forward, the EU also foresees increased focus on twinning actions, as well as increased cooperation with USAID and member state donors in an effort to minimise overlap and to better coordinate the division of labour and programming amongst international donors. While the EU supports the Functional Review Process, plans for the aforementioned programme will likely be unveiled before the Functional Review is released.¹⁹⁰

5.1 Looking Ahead: The Rule of Law Flagship Initiative

The announcement of the flagship initiative forecasts support in the areas of planning, measurement, monitoring, advising and particularly in the area of fight against corruption and organised crime. However, the EU has yet to release specific plans for the implementation or information regarding its structure, size, or scope. The flagship initiative and accompanying advisory mission have only been briefly discussed with the Ministry of Justice, and the EU has not publicly revealed any additional information on the proposed initiative or accompanying advisory mission.¹⁹¹ While EU and local institutions continue to discuss and prepare plans for the flagship initiative, it is worthwhile to evaluate the possibilities, benefits, and shortcomings of potential models for the future rule of law flagship initiative and advisory mission.

¹⁸⁸ Balkans Group Interview, EU Officials, Pristina, November 2018

¹⁸⁹ European Commission, "Instrument for Pre-Accession Assistance (IPA II) 2014 – 2020: Albania – Consolidation of the Justice System in Albania", 2016, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/ipa_2016-038717-4_consolidation_of_the_justice_system_in_albania.pdf

¹⁹⁰ Balkans Group Interview, EU official, Pristina, February 2019

¹⁹¹ Balkans Group Interview, Ministry of Justice official, Pristina, December 2018

1. Demand-driven, smaller-scale support

One possible model for the advisory missions is demand-driven support in response to requests by local actors and institutions. A needs-based and demand-driven support tool currently offered by the EU is the Technical Assistance and Information Exchange instrument (TAIEX), which supports public administrations with the approximation, application and enforcement of EU legislation and facilitates sharing of EU best practices via EU-funded workshops, expert missions and study visits. Within the context of the rule of law flagship initiative, the EU could send expert missions to support local institutions and provide in-depth advice on specific issues in response to local-driven requests. Like under TAIEX, Brussels-based or member state-based advisory support could also be provided in the area of rule of law via funded study visits for personnel and practitioners (i.e. to observe the prosecution and/or adjudication of a corruption case, to observe oversight bodies conducting performance reviews and/or adjudicating disciplinary cases). While it is likely that the foreseen advisory missions will not be fully demand-driven and that the mission will employ some semi-permanent or permanent staff to be based in-country, demand-driven support via expert missions and study visits would constitute useful flexible mechanisms.

2. Demand-driven versus EU-guided support

The future rule of law advisory mission and flagship initiative has been informally discussed with the Ministry of Justice and the KJC and KPC. However, the EU has yet to coordinate with other local institutions or civil society in this regard. The lack of consultation thus far does not necessarily preclude a demand-driven approach moving forward. Rather, it may indicate that the EU personnel in Brussels and Pristina remain in the planning stages.¹⁹² The EU is also waiting to see what derives from locally-driven initiatives, particularly the Functional Review and Justice 2020.

A number of initiatives, both EU-driven and locally-driven, including the findings of the Functional Review and an in-country review by German and Croatian experts, will also influence the shape of the flagship initiative and advisory mission and the modalities of planned support.¹⁹³ The flagship initiative will also be influenced by other ongoing regional initiatives like Albania's EURALIUS, which offer loose examples of what a new justice programme or initiative may look like.¹⁹⁴

The Ministry of Justice will likely serve as the primary point of contact, similar to the model for the upcoming justice programme outlined in the previous section. The EU has allocated 9 million for this programme – the bulk of which will be filtered through the Ministry of Justice; 2.25m will be provided via the Council of Europe specifically for initiatives to counter money laundering, organised crime and corruption; some will be earmarked for the KJC and KPC; and, 4 million will go to the Ministry of European Integration alongside IPA funding (which will allocate substantial financial support for rule of law initiatives in 2020 and 2021).¹⁹⁵

¹⁹² Balkans Group Interviews, Kosovo Government and EU officials, Pristina and Brussels, October-November 2018

¹⁹³ Balkans Group Interview, Kosovo Government Official, Pristina, 20 December 2018

¹⁹⁴ Balkans Group Interview, Kosovo Government Official, Pristina, 20 December 2018

¹⁹⁵ Balkans Group Interview, Kosovo Government Official, Pristina, 20 December 2018

It appears that financial support will not be widely decentralised or scattered across a number of institutions and that the MOJ could have a greater role in shaping the implementation of the flagship initiative than local institutions had with regard to EULEX operations. While it's clear that the MoJ and locally-driven initiatives will play a pivotal role in the implementation process, the structure and nature of support remains undefined and the process of defining the type and nature of support provided by the EU will not be without challenges.

Local governing and rule of law institutions want to take responsibility but constantly insist that little can be changed without the financial and political involvement of key donors. The EU highlights the importance of local ownership but, in practice, continues to promote a half-way approach, with limited early-stage planning or consultations with local actors. With the Ministry of Justice (and KPC, KJC and local rule of law institutions) assuming greater ownership over rule of law and judicial development, in preparation for and anticipation of EULEX's departure, these local institutions may prove hesitant to relinquish newfound authority to a new 'advisory' mission. While local institutions will remain dependent on support from the EU and international donors, there is likely to be some discord between local and EU officials over where the authority lies (publicly) and to what extent EU support will be filtered through the Ministry.

3. In-country mission support

The rule of law flagship initiative can be broken down into four key areas of support – **planning** (via actions plans), **measuring** (development of new impact indicators), **monitoring** (trial monitoring, particularly in the areas of serious corruption and organised crime and case-based peer review missions), and **advising** (advisory missions building upon increased support from Member states and the EU). The first two types of support – planning and measurement – do not necessitate permanent or even temporary in-country support. The EU can support the development of actions plans and impact indicators without deploying new mission staff or personnel on the ground, although sending visiting or temporary experts is a likely possibility. However, the information released by the EU thus far indicates that monitoring and advising support will arrive in the form of semi-permanent in-country personnel. Trial monitoring will require EU personnel to be present on the ground on an intermittent or semi-permanent basis, while the case-based peer-review mission and advisory mission will clearly require some form of in-country, semi-permanent mission support.

4. Size and Scope

The EU has not yet provided any information publicly on the size or scope of the initiative and corresponding advisory missions and case-based peer review missions. Nor does it appear that the EU or local institutions have already developed specific plans for the shape, size, or scope of the flagship initiative.

What we do know is that the EU will provide around 9 million for a multi-year justice programme with the Ministry of Justice, KJC, KPC and Justice Academy as the implementing authorities. However, it is not clear whether the EU Mission plans to explicitly unveil this programme as part of the rule of

law flagship initiative. Although, plans for this programme do fall in line with the intentions outlined in the enlargement strategy, i.e. to implement programmes with a long-term sectoral approach, which builds upon alternative assistance tools like IPA.

It is clear that the flagship initiative and corresponding missions will focus on the fight against corruption, particularly serious corruption and organised crime. While the initiative will also likely focus on improving efficiency of the justice and overall reforms (via case-based peer-review missions), the EU has made it clear that it plans to place increasing importance on coordinating with other international donors, particularly USAID, in an effort to minimise overlap, i.e. other international donors focus heavily on mediation and the EU plans to take a back seat in this area. As such, the scope of EU support for rule of law within the context of the flagship initiative (and the areas in which future advisory missions may focus most heavily) will likely be influenced by ongoing evaluations of local needs and capacities – particularly the Functional Review and in-country review by German and Croatian justice experts – and further consultation between local rule of law institutions, international donors and EU institutions in Kosovo. The results of these review processes and further cooperation between the EU and other donors focused on improving coordination and minimising overlap will better prepare the EU to determine the size and scope of the flagship initiative and advisory mission.

5. Post-EULEX expansive rule of law programme

While the EU's full vision for the new rule of law flagship initiative and accompanying advisory missions appear bold yet vague, it is possible that the combination of missions and mechanisms announced in the enlargement strategy and Sofia Declaration could assume a scope similar to that of EULEX (minus the executive powers) through collective implementation. However, while a wide-scale rule of law programme that internalises some or all of the key aims of EULEX's mandate is feasible, it is unlikely that future EU-funded MMA missions (whether advisory or case-based peer-review missions) would receive a broad, sweeping mandate or budget close to that of EULEX.

The aim and mandate of the advisory missions remain only loosely defined. The EU has committed to continue trial monitoring, providing enhanced support for judicial reform, enhancing efforts to fight corruption and organised crime and building capacity for corruption prevention, and supporting better results measurement. EU efforts in these areas could manifest a more hand-off approach, primarily consisting of activities like helping institutions to develop impact indicators, or could materialise as hands-on, in-country advising and monitoring. If the latter, the missions and alternative assistance tools outlined in the enlargement strategy may assume MMA functions quite similar to those fulfilled by EULEX and outlined in the Mission's current mandate.¹⁹⁶

¹⁹⁶Council of the European Union, "Sofia Declaration", EU-Western Balkans Summit, Sofia, 17 May 2018

It appears that EU plans for support do include provisions for repackaged MMA support.¹⁹⁷ The EU seems to be developing a more sustainable framework to employ a streamlined and sectoral approach towards reform, avoiding some of the human resource challenges encountered by EULEX, and placing greater importance on the implementation and on the capacity of local institutions to internalise and adhere to European standards of justice in practice.

6 LESSONS LEARNED AND RECOMMENDATIONS

EULEX struggled to bring about comprehensive institutional and societal transformation in the area of rule of law. The mission will depart soon, but EU development support for rule of law and the justice sector will continue, primarily within the framework of IPA and the recently announced rule of law flagship initiative. The remaining EU institutions and any future missions in Kosovo will inherit the major challenge of helping local institutions to not only fulfil the requirements of technical integration processes but also to truly internalise European norms, standards, and best practices. Prompting normative and institutional change is an area where EULEX fell short. The following ‘lessons learned’ and recommendations may help future programmes, initiatives, and advisory missions to avoid some of the shortcomings that plagued EULEX, to move beyond box-ticking, and to contribute to the development, modernisation, and professionalisation of rule of law and justice institutions.

- 1. Early Consultation with Local Institutions:** As it stands, the future rule of law advisory mission and flagship initiative have been informally discussed with the Ministry of Justice and the KPC/KJC. EU personnel in Brussels are still in the planning stages for the rule of law advisory missions, while the EU Mission is still in the process of planning a multi-year justice programme which could parallel Albania’s EURALIUS. While the EU has indicated plans to unveil the justice programme ahead of the release of findings from the Functional Review, regulations require IPA programmes to align with country strategies. Moving forward, it is of vital importance that the EU and MoJ lead consultations with the relevant local institutions, international donors, and civil society to develop realistic and implementable plans for EU-funded justice programmes, in line with local needs and capacities, consider and account for local and EU expectations, and codify the responsibilities of supporting and implementing authorities.
- 2. Post-EULEX EU missions – avoiding its pitfalls:** EULEX should fully depart before any new in-country support structures or advisory missions are established/deployed. The mandate, obligations, aims, and objectives of the EU advisory and case-based peer-review missions should be clear to both the local implementing authorities and to the public. Current plans to implement a multi-year, comprehensive rule of law development project by the EU Mission may be able to avoid personnel challenges intrinsic to missions such as EULEX, with seconded external personnel deployed with short-term mandates. However, the EU should ensure that the contracts of those personnel engaging with the advisory or case-based peer review missions allow for transfer of knowledge internally and trust-building with local counterparts. If EU personnel participating in

¹⁹⁷Balkans Groups Interview, EU officials, Pristina, January 2019

case-based peer review missions or trial monitoring only operate in-country on an intermittent basis, multi-year contracts could enhance accountability and enable personnel to build fruitful professional relationships with local counterparts and apply more targeted and tailored expertise over time. As the flagship initiative will also require a smaller number of seconded personnel and may not require those personnel to relocate full-time, it may be easier to compel member states to second high-level experienced personnel.

3. **Comprehensive Review before Deployment:** The EU should comprehensively review and measure the state of rule of law in Kosovo, in close cooperation with local authorities, before deploying any new mission or initiative. Building upon positive experiences in the region, an expert group or review mission modelled after the Priebe mission (deployed in North Macedonia) could be deployed to evaluate and assess performance and systemic rule of law challenges. Concrete recommendations and close consultation with local public institutions and civil society should inform all initiatives moving forward. Ongoing initiatives and any new initiatives or missions should be implemented and deployed in line with the capacities and needs of the justice sector identified via the Functional Review, the German/Croatian expert review mission (should be further publicised), a more public Priebe-like mission, and ongoing and future needs assessments.¹⁹⁸
4. **Encouraging Local Ownership:** Enhancing local ownership over rule of law and judicial reform should be a key priority. Plans to filter financing for initiative implementation through the Ministry of Justice and the Ministry of European Integration could set the stage for increased ownership over the reform process. The MoJ's interest in coordinating with the EU to design hands-on support mechanisms for comprehensive sectoral development and reform bodes well for increased local ownership. The MoJ expresses its preparedness to serve as the local coordination body for the implementation of EU support, in line with locally-derived objectives and structures. However, the Ministry should in turn prepare itself to take accountability for programmatic shortcomings without scapegoating financiers and advisory or EU personnel. While on the EU's side, plans to unveil a multi-year comprehensive justice programme without heavily considering and/or integrating findings from the Functional Review do not demonstrate increasing EU commitment to engendering local ownership. Further integrating EU programmatic planning with ongoing locally-driven initiatives will better ensure that EU-funded programmes align with local capacities and increase the likelihood of implementation.
5. **Streamlining Reform Processes:** Commending the Ministry of Justice for each new initiative unveiled, without evaluating the impact of existing and new programmes and their contribution to overall coordination of rule of law reform will not be helpful in the long-term.

¹⁹⁸Fouéré, Erwan, "Europe Must Be Ready to Punish Macedonia's Leaders", *Balkan Insight*, 22 April 2016. Full report available at <http://www.bezbednost.org/>: The PRIEBE mission was named after Reinhard Priebe, a German expert and former EU official, who chaired the Senior Experts' Group on systemic rule of law issues in the Former Yugoslav Republic of Macedonia. See also European Commission, "The former Yugoslav Republic of Macedonia: Recommendations of Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015" Brussels, 8 June

While the Functional Review can help to streamline rule of law reform moving forward, and Justice 2020 and subsequent short-term programmes can support the implementation of associated reforms in priority areas, EU support should ensure that actions and operations on the ground are streamlined in accordance with these initiatives (and their findings) in coordination with a central, responsible local authority (i.e. the Ministry of Justice). The EU's expressed commitment to defragmenting development support initiatives and enhancing its own coordination with other donors in an effort to minimise overlap and codify the division of labour is a step in the right direction.

6. **Donor Coordination Processes should Include Local Rule of Law Institutions:** allowing local civil society organisations and rule of law institutions to participate in ongoing donor coordination processes would be beneficial. This would better enable local organisations to gain an understanding of the donor landscape and focus areas of different supporting institutions. It would also create space for demand-driven support, thus enhancing local ownership.
7. **Building upon and Integrating Existing Support Structures:** the EU and the Ministry of Justice should build upon existing structures to support rule of law development in Kosovo, limiting the number of new, ad-hoc initiatives and integrating new modalities of support within existing systems insofar as capacity allows. The EU has already expressed commitment to defragmenting development support for rule of law (by enhancing cooperation with international/regional development partners and minimising overlaps across institutions), expanding twinning programmes in the area and initiating a multi-year justice programme within the framework of IPA.
8. **Tempering Expectations:** Framing expectations will be a key challenge for any new EU rule of law initiative or mission. Local perceptions of EULEX ineffectiveness derived in part from unrealistic expectations, which EULEX did little to moderate. The EU and local authorities should commit to achieving targeted, realistic benchmarks, and the responsibilities of EU personnel and local authorities should be clearly delineated. As demonstrated with the EULEX mission, unkept promises are harshly judged in the courtroom of public opinion, which can affect the perceived authority of mission personnel and the overall effectiveness of any development support.

7 CONCLUSION

The key challenges for public institutions relate to implementing the existing legislation and ongoing reforms, combatting corruption and organised crime, and improving the functioning of the judiciary through mechanisms that can ensure enhanced efficiency, transparency, accountability, independence, professionalism, capacity, and oversight.

It is time for Kosovo's institutions to take the driver's seat in steering rule of law and justice sector reform. Justice 2020 and the Functional Review offer local institutions, especially the Ministry of Justice, the opportunity to claim local ownership over the future. Nonetheless, as a young and developing country with eyes set on future EU accession, Kosovo will still continue to rely heavily on technical, programmatic, and financial support from international donors, particularly the European Union.

To enhance the impact of the new rule of law flagship initiative, the government and the EU should set mid-term and long-term goals and objectives with achievable and measurable actions that are easily traced by the wider public. A streamlined process of monitoring the performance of the judiciary shall be established based on an endorsed review mission that earns the trust of all from the outset, notably the public. This can be done only if the programmes, support and initiatives are demand-driven and are broadly consulted. Conversely, the institutions and the EU risk further undermining their reputation should they aim to improvise and fail to draw lessons of over a decade of complex relations between the two.

The Balkans Policy Research Group is an independent, regional think-tank based in Prishtina, Kosovo. We provide timely policy analysis and recommendations on a wide array of state building issues; institutional and democratic consolidation; minority integration and good neighbourly relations: European integration and policy change. We have decades of experience in policy reporting and development, strategic thinking and advocacy with governmental, international and non-governmental organisations.

Our rigorous, detailed, impartial reporting, always based on in-depth fieldwork, is the core of our work. We go beyond mainstream positions and seek to make change through creative, feasible, well-measured and forward-looking policy recommendations with the aim of helping develop strong, vibrant democracies, prosperous states and societies based on rule of law in the Western Balkans.

We engage in high-level advocacy, domestically, regionally and internationally, impacting policy discussions and options with regard to the home affairs and European policies toward the Western Balkans.

Balkans Group has developed other tools and platforms to achieve this change:

The Policy Dialogue promotes Kosovo's domestic dialogue, cohesion and reform-making agenda.

The Policy Forum (a Think-Tankers High-level Advocacy Forum) committed to enhancing the dialogue between the civil society and the institutions.

The Kosovo Serbia Policy Advocacy Group (a forum for Cross-Border Civil Society Cooperation) that aims to communicate, promote and enhance dialogue toward full normalisation between Kosovo and Serbia, and their societies.



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