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**The EULEX in Kosovo: Why The Biggest EU Mission became the Biggest EU Failure?–
Part one: from the End Of Kosovo War (1999) Until the Initiation of EULEX (2007)**

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Abstract: As the largest Common Security and Defense Policy mission² and one of the most expensive missions ever undertaken by the European Union (EU), ³ the European Union Rule of Law in Kosovo, known as EULEX, has not been one of the most successful missions of the European Union. This article shortly illustrates and evaluates the EULEX mission Kosovo since 2008 and its main challenges, which are numerous but it will specifically tackle the main

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² “EULEX KOSOVO EU Rule of Law Mission in Kosovo.” European Union External Action. October 2014. http://eeas.europa.eu/archives/docs/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf. (accessed: 29.12. 2017).

³ Borger, Julian. “EU accused over its Kosovo mission: ‘Corruption has grown exponentially.’” The Guardian. Nov. 2014. <https://www.theguardian.com/world/2014/nov/06/eu-accused-over-kosovo-mission-failings>. (accessed: 01.05. 2018).

issues that have been a major problem and impossible for Kosovo to deal with: such as the European integration; high level corruption and the alleged war crimes. The EULEX encountered not only the perplexing situation and decision making in the European Union and its instruments but also the political circumstances in Kosovo where the United Nations Mission in Kosovo through a UN Security Council (UNSC) Resolution 1244 was also in place. The UNMIK was becoming obsolete practically but at the same time its mission has never been replaced by another resolution by the UNSC. The EULEX mission and tasks were clearly defined but this mission overall has not entirely been successful.

Keywords: EULEX, Kosovo, overview

From the end of Kosovo War (1999) until the declaration of independence (2008)

When the European Union was planning to send a mission to Kosovo the Member States assumed that since Kosovo and Serbia had entered a phase of negotiations they would reach an agreement and the mission will be deployed efficiently⁴. But the EU member states were not talking in a unified voice. In fact, even before the war⁵ began in Kosovo and later on during the NATO intervention in March – June, 1999⁶, and after the war, the international community has never managed to reach consensus on Kosovo in account of major themes, such as the status talks and the internationally supervised independence, and the recognition of the Republic of

⁴ “Council Joint Action 2006/623/CFSP of 15 September 2006.” The Council of the European Union. 2006. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006E0623&from=EN>. (accessed: 01.05. 2018).

⁵ Dahmann, Klaus. “Start of the Kosovo War (1999).” Deutsche Welle. 2013. <http://www.dw.com/en/start-of-the-kosovo-war-1999/a-16765955>. (accessed: 02.05. 2018).

⁶ NATO bombed Serbian forces for 78 days in order to stop the killing, genocide and the ethnic cleansing in Kosovo.

Kosovo after it declared its independence in 2008⁷. Indeed, the EU divergence towards Kosovo exists to this day considering there are five out of twenty eight EU Member States that do not recognize the Republic of Kosovo as an independent nation-state. The five European Union member states that haven't recognized Kosovo's independence are Slovakia, Greece, Cyprus, Romania and Spain.⁸

After the war in 1999, the international community entered a comfort zone and felt comfortable under the status quo of Kosovo. Only after a very large scale of riots all over Kosovo broke out in 2004 that erupted as an ethnic clash,⁹ did the international community acknowledge that the situation was no longer sustainable. The EU, the United States, and the United Nations were concerned about the situation and the United Nations Secretary General, Kofi Annan, appointed the former Finnish President Martti Ahtisaari as special envoy for future status process for Kosovo. The status talks between Prishtina and Belgrade began in 2006 through the UN led mission which was underway to mediate the dialogue between Kosovo and Serbia regarding Kosovo's status. As the talks had commenced, the EU almost at the same time had launched a fact finding mission to Kosovo; in July 2006 the SG/HR Solana and Commissioner Rehn submitted a report on 'The Future EU Role and Contribution in Kosovo' to the Council of Europe analyzing the nature, size and responsibilities of the EU's role after status settlement, and help Kosovo's EU perspective, but neutral to the conclusions of the Status negotiations.¹⁰

⁷ "Kosovo." Freedom House. 2010. <https://freedomhouse.org/report/freedom-world/2010/kosovo>. (accessed: 03.05.2018).

⁸ Mitrovic, Milos. "Five EU members under pressure to recognize Kosovo." Independent Balkan News Agency. 2015. <http://www.balkaneu.com/eu-members-pressure-recognize-kosovo/>. (accessed: 03.05.2018).

⁹ Traynor, Ian. "Fourteen dead as ethnic violence sweeps Kosovo." The Guardian. 2004. <https://www.theguardian.com/world/2004/mar/18/balkans>. (accessed: 02.05.2018).

¹⁰ "Council Joint Action 2006/623/CFSP of 15 September 2006." The Council of the European Union. 2006. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006E0623&from=EN>. (accessed: 01.05.2018).

However, after 14 months of UN-led negotiations, the results of the negotiations reflected the compromises between Kosovo and Serbia, and were noted on the Comprehensive Proposal for the Kosovo Status Settlement¹¹. The end of the status talks resulted with the proposal of President Ahtisaari for a supervised independence of Kosovo¹². Since Serbia did not acknowledge the Proposal's conclusions, Kosovo then declared unilaterally its independence on 17 February, 2008¹³.

UN involvement in Kosovo (UNMIK) and then the EU appears via the EULEX

As one of the greatest contributors to Kosovo after the war¹⁴, the EU could not stay indifferent and was willing to become engaged but its role has been status neutral ever since. The EU had sent a team as early as February 2006 as fact finding mission and concluded the EU must contribute in Kosovo once Prishtina and Belgrade agree on the settlement¹⁵ as Prishtina and Belgrade had begun status talks. As it turns out Belgrade has never accepted the recommendations for a supervised independence of Kosovo. Despite Serbia's opposition to the

¹¹ "Report of the Special Envoy of the Secretary-General on Kosovo's future status." United Nations Security Council. 2007. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf>. (accessed: 22.12.2017).

¹² Ibid

¹³ "Kosovo Declaration of Independence." Kosovo Assembly. 2008. http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf. (accessed: 01.05.2017).

¹⁴ The so-called Quint countries, the main sponsors of Kosovo's independence - France, Germany, Italy, the UK and the US, are among the greatest contributors. "EU and Nato sponsor confrontational mission in Kosovo." EU Observer. May 2018. <https://euobserver.com/foreign/113645>. (accessed: 04.05. 2018).

¹⁵ "Council Joint Action 2006/623/CFSP of 15 September 2006." The Council of the European Union. 2006. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006E0623&from=EN>. (accessed: 01.05. 2018).

Comprehensive Plan,¹⁶ the EU had agreed to deploy its mission in the area of Rule of Law Mission to Kosovo.¹⁷ EU believed that it would take over the United Nations Mission in Kosovo, UNMIK, but as it turns out the United Nations Security Council did not amend or replace the UNSC Resolution 1244 as a basis for the UNMIK. The UNMIK mission was adopted by the Security Council in its resolution 1244 in 1999 with a mandate to help safeguard the situation in Kosovo for a peaceful and a safe environment for all inhabitants in Kosovo and at the same time improves regional stability in the region of the Western Balkans.¹⁸

The EU displayed creativity and responsibility to take an active role in the buildup of Kosovo institutions rather than be a government like with an executive authority as UNMIK which was an all present mission and acted as government with all the responsibilities of running all Kosovo's affairs. Taking into account the report of the United Nations Secretary General S/2008/692¹⁹ in 2008, the UN recognized the talks and the relationship of the EU mission with UNMIK. The UN Secretary General in his report gave the green light for EULEX to deploy stating, "I expect EULEX to move forward with its deployment in the coming period and assume responsibilities in the area of policing, justice, and customs, under the overall authority of the United Nations, under a United Nations umbrella headed by my Special Representative, and in

¹⁶ "Report of the Special Envoy of the Secretary-General on Kosovo's future status." United Nations Security Council. 2007. <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf>. (accessed: 22.12.2017).

¹⁷ Dijkstra, Hylke., "The Planning and Implementation of the Rule of Law Mission of the European Union in Kosovo" *Journal of Intervention and Statebuilding* Vol. 5. 2011. <http://www.tandfonline.com/doi/abs/10.1080/17502977.2011.566481>. (accessed: 27.12. 2017).

¹⁸ "United Nations Mission in Kosovo," United Nations. 1999. <https://unmik.unmissions.org/mandate>. (accessed: 04.05. 2017).

¹⁹ "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo." United Nations Security Council. November 2008. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2008/692. (accessed: 23.01. 2018).

accordance with resolution 1244 (1999).”²⁰ Adjudicating the role of EULEX in retrospect it could be concluded that this mission was caught up with the political problems regarding the status of Kosovo.

Deployment of EULEX: Problems of perception from different actors on the ground

The EU mission has not been very popular in Kosovo since its settlement. First, and foremost, in account of perception of Kosovars EULEX has failed to fulfill its mandate. It has not been very successful in the area of rule of law, police and fighting corruption at the high level and crime. To make EULEX more notorious among the local population is when it began cooperating with Serbia right up front; this policy approach increased the nationalist behavior of the Kosovo Albanians.

Some political actors in Kosovo believed that the EU mission will support the newly established country build a strong and robust state. Rightly so, despite its neutrality, Kosovo leaders were confident in a mission that would deploy throughout the territory of Kosovo; considering the fact that Kosovo institutions could not control the Serb dominated part in the Northern Mitrovica and with EULEX on the ground it was believed that the Northern part of Mitrovica will be under full control of Prishtina. Kosovo’s strategic partners also believed on the EULEX mission as well encouraging Kosovo leaders to assent to this mission. The Assistant Secretary for European and Eurasian Affairs, Mr. Daniel Fried, had stated at the time when

²⁰ “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo.” United Nations UNSGEC Report 2008S/2008/692. 24 November 2008.
http://www.un.org/ga/search/view_doc.asp?symbol=S/2008/692&Lang=E. (accessed: 23.12. 2017).

EULEX was on its arrangement phase that “the deployment of EULEX, the EU Rule of Law mission throughout all of Kosovo...undivided, independent, sovereign Kosovo.”²¹ Kosovo, de facto, was divided as the central government lacked control in the northern part of Mitrovica town and EULEX was perceived as a good opportunity to extend that control and help “Kosovo authorities establish a single unitary system of the rule of law throughout the country. The effect is to reinforce sovereignty in Kosovo. That, in turn, will help advance Kosovo’s European future,”²² Mr. Fried had noted. As the situation on the ground verifies, Kosovo has not advanced substantially towards European integration despite the EULEX mission being in Kosovo for a decade. In fact, it is the last country in Western Balkans to enter in a contractual relationship with EU via the Stabilization and Association Agreement and it is the only country in this region that has no visa liberalization to travel to EU countries.

Although the deployment of EULEX was not welcomed by all of Kosovars, nor was it by all Serbs, the political elites in power in both sides did claim victory for the EU mission. Officials from both Belgrade and Prishtina tried to take credit for the deployment of EULEX to Kosovo. The Kosovo government asserted that the United Nations Security Council allowed the dislocation of the EU mission to advance and strengthen the independent institutions of Kosovo. Considering the area of responsibility of EU mission, Kosovo government proclaimed that the work of EULEX will also help align domestic policies and the rule of law with the EU standards; and, therefore, get Kosovo closer to European integration. Despite EULEX’s position and the UN Secretary General’s Report for the EU mission as neutral to Kosovo’s status, the political leaders in the government coalition were confident that EULEX will assist in extending control

²¹ Fried, Daniel., Assistant Secretary for European and Eurasian Affairs “Kosovo: Deployment of EULEX.” US Department of State. Interview with BBC Albanian Service. November 26, 2008. <https://2001-2009.state.gov/p/eur/rls/rm/112482.htm>. (accessed: 23.12. 2017).

²² Ibid, Daniel Fried.

over the whole territory in the north where the lack of rule of law was dominating the area, as well as help in implementing the Ahtisaari Plan.²³

The Belgrade, on the other hand, deliberated the deployment of EULEX in Kosovo as a diplomatic victory that EULEX's dislocation is status neutral and within the framework of the UNSC Resolution 1244. Accordingly, the government in Belgrade claimed that the mission is not under the Ahtisaari plan to strengthen the independence of Kosovo and its institutions.²⁴ In many ways, Belgrade was more accurate and precise to predict the mission of EULEX will only serve under 1244 which is one of the main problems in Kosovo and has continued to be an issue due to the non-recognizers who hide behind UNSC Resolution 1244 and find excuses to position themselves neutral to Kosovo's status and some of these EU member states continue to play an impediment role at EU and NATO level towards Kosovo.

On the other hand, the opposition voices from both Kosovo and Serbia in respect to the EULEX mission to be deployed to Kosovo were for different reasons. In Serbia, the opposition leaders were accusing their government of agreeing to a mission based on the Ahtisaari Plan that was for an independent Kosovo; thus, this meant acknowledging the independence of Kosovo.²⁵ In Kosovo, equally, the opposing voice was stronger from the non-governmental organizations and civil society rather than opposing parties which had reached consensus with the government prior to the acceptance of the EU mission. One of the strongest opposition voices was the Self-Determination movement (which currently is the largest opposition political party in the Parliament) which took an opportunity to oppose the six-point-plan of the UN- also opposed

²³ Jovanovic, Igor., "EULEX, For a New Kosovo." International Relations and Security Network. December 16, 2008. <https://www.globalpolicy.org/component/content/article/192/38751.html>. (accessed: 19.12. 2017).

²⁴ Ibid.

²⁵ "Accepting EULEX means accepting independence." B92, Tanjug. October 18, 2008. https://www.b92.net/eng/news/politics.php?yyyy=2008&mm=10&dd=18&nav_id=54320 (accessed: 19.12. 2017).

from the government- and rallied in the capital against the EULEX mission criticizing it for being status neutral and under the UNSC Resolution 1244 and as such it would prolong the problems in the country. Moreover, since Serbia had a say in the deployment of the EU mission it would endorse the parallel structures operating in the Serb dominated region in the northern part of Kosovo.²⁶ The rally was considerably large but the official reports from the Kosovo police claimed that only about five thousand protesters were on the streets indicating that the majority of the Kosovars welcomed the EULEX mission.

EULEX Mission and Tasks and the concerns of underachievement

The EU mission consisted of EU member states, the United States, Norway, Switzerland, Turkey and Croatia. According to the Council of the European Union – Council Joint Action 2008/124 CFSP adopted in early February 2008, the European Union Rule of Law, EULEX Kosovo, would strengthen the justice system, police and customs in a multiethnic system that is coherent and up to European and international standards.²⁷ At the beginning, the EULEX had executive responsibilities besides monitoring, mentoring, and an advising role. Among the tasks of EULEX includes, “ensure that cases of crimes, terrorism, organized crime, corruption, inter-ethnic crimes, financial/ economic crimes, and other serious crimes are properly investigated, prosecuted, adjudicated and enforced...”²⁸ Since 2008, the EULEX has been mandated and

²⁶ “Kosovo Protests UN Six-Point Plan for EULEX.” Balkan Insight Kosovo 02 DEC 2008

<http://www.balkaninsight.com/en/article/kosovo-protests-un-six-point-plan-for-eulex>. (accessed: 08.01. 2018).

²⁷ “Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo.” Council Decision. 2008. http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf. (accessed: 20.12. 2017).

²⁸ Ibid. Item (d).

acquired an extension every two years. The latest extension by the Kosovo Assembly occurred in 2016 for the mission to continue implementing its mandate in Kosovo till June 2018.²⁹

In most of the tasks mentioned above, the EULEX is believed to have failed considerably. But this failure is not the sole responsibility of the mission. Kosovo had been governed by UNMIK which was heavily staffed but non-professional and a mission that prevented any real political progress. The EU mission, indeed, inherited a system where cases had been piled up through many years under the UNMIK administration. The local judiciary and the rule of law agencies and institutions were not adequately trained and lacked professionalism during UNMIK years.

On top of all this, the Kosovar perception continues to believe that either UNMIK or EULEX have been able to detach the political influence from the judiciary. Nonetheless, there are numerous factors and an unfortunate background that the capacities and institutional capabilities have been lacking in Kosovo. In 1990s, during the wars in the Former Yugoslavia, Milosevic's regime had expelled thousands of Kosovo Albanians from their jobs including police and the judiciary. This fact is well presented on the Report of the UN Secretary General on the United Nations Interim Administration Mission in Kosovo (UNMIK) dated 12 July, 1999. The Secretary General points out the urgency of developing impartial, independent and multiethnic judiciary to have a functioning rule of law in Kosovo. The Report states that “[p]olitically motivated and ethnically one sided appointments, removals and training led to a judiciary in which, out of 756 judges and prosecutors in Kosovo, only 30 were Kosovo Albanians.”³⁰ After the war in Kosovo in 1999, some judges and prosecutors from the Serb community had left Kosovo that further

²⁹ “On Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo.” Assembly of the Republic of Kosovo. Law No. 05/L-103. <https://www.kuvendikosoves.org/common/docs/ligjet/05-L-103%20a.pdf>. (accessed: 28.01. 2018).

³⁰ “Report of the Secretary-General on the United Nations.” United Nations S/1999/779.12 July 1999. <http://www.unmikonline.org/SGReports/S-1999-779.pdf>. (accessed: 28.12. 2017).

handicapped the judicial system. It takes years to educate and train new judges and prosecutors and if you conduct a fast track recruiting process to fill the gaps then there is no need to investigate deeply to understand the weakness and unprofessionalism in the judiciary system. This process also created opportunities for political influence and therefore a possibility to select not the most suitable candidates. The consequences of unprofessional staff in the rule of law area Kosovo is suffering to these days. Just recently, the Chief State Prosecutor has been accused of fabricating its bar exam and he was hired by UNMIK.³¹ Although the State Prosecution rejected the allegations of manipulation of bar exam by Chief Prosecutor, Aleksander Lumezi, his reputation and the State Prosecution Office is ruined and, therefore, enforcing the suspicion towards the corrupt judiciary system.

The European Commission has continuously called on Kosovo to back away from political influence on the judiciary system; particularly, not to intervene in criminal cases.³² The Report also expresses the concern regarding the high level of corruption which is also one of numerous conditions posed by the EU for visa liberalization. Based on the Transparency International's Corruption Perceptions Index, Kosovo is ranked at 95 in 2016, out of 176 ranks; in the same rank as Argentina, Benin, El Salvador, Maldives, and Sri Lanka.³³ The EU Commission urges the government of Kosovo to implement the anti-corruption legislative framework which has been adopted by the Assembly but hitches in implementation. In 2016 Report, it is highlighted as a huge concern that certain senior officials, particularly from the northern part of Mitrovica which

³¹ "Lumez's Law Examination Manipulated" (translated). Koha Ditore. 24 tetor 2017.

<http://www.koha.net/arberi/52958/provimi-i-jurisprudences-i-lumezit-i-manipular/>. (accessed: 28.12. 2017).

³² "Kosovo* 2016 Report." European Commission. 9.11.2016. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf. (accessed: 22.01. 2018).

³³ International's Corruption Perceptions Index 2016. Transparency International. 2016 https://www.transparency.org/news/feature/corruption_perceptions_index_2016. (accessed: 26.12. 2017).

is predominantly inhabited by Serbs, do not submit their asset declarations to the Anti-Corruption Agency as required by law.³⁴

Taking into account the delinquency in the area of rule of law, and the delay to align and uphold it up to EU standards, the European Commission must take into account that the challenges that Kosovo is facing have been the sole responsibility and the main pillar of the international community. The EULEX in Kosovo has specifically been tasked to:

(f) contribute to the fight against corruption, fraud and financial crime;

(g) contribute to the implementation of the Kosovo Anti-Corruption Strategy and Anti-Corruption Action Plan.³⁵

It is these particular items on the anti-corruption, noted on the Council Decision, that EULEX is criticized for not tackling sufficiently. In fact, EULEX is shamelessly critiqued for its own affairs of corruption and even for attempting to conceal it and refrain anyone from talking about it. The European Commission Kosovo Report 2016, demanded that Kosovo meet minimum standards for whistleblowers. The country was not doing enough to protect the whistleblowers and they were even subject to attacks and open to denunciations. The report highlighted that the “current law [of Kosovo] on informants is not in line with international standards as it does not meet minimum whistle blowing mechanisms or protection requirements.”³⁶ The hypocritical approach towards Kosovo has hurt Kosovo’s image and it has somehow legitimized the wrongdoing giving an excuse to certain people to continue conducting corruptive affairs because “if EU does it why can’t we, and that they are no better than us?!” It served as an amnesty for the locals who were engaged in corruptive undertakings in a sense that if EU mission is involved in corruptive

³⁴ Ibid. P. 18.

³⁵ “Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo.” Council Decision. 2008. http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf. (accessed: 20.12. 2017).

³⁶ European Commission Report 2016. (accessed: 28.12. 2017).

affairs then it must be a norm. Thus, EULEX mission began to be as an added on problem to Kosovo rather than help Kosovo fight corruption and other negative phenomenon.

Moreover, the Transparency International published an article reflecting the concerns from Kosovo citizens and non-governmental organizations requesting from the European Union Rule of Law Mission to protect its own whistleblowers and not intimidate them.³⁷ This came up after EULEX prosecutors themselves accused this organization for mismanagement and corruption. As far back as 2014, the mission spent more time and was preoccupied with its own rule of law issues and trying to protect its reputation rather than help Kosovo rule of law institutions to uphold the international standards. Namely, the EULEX prosecutor Maria Bamieh, openly alleged the mission for unlawful actions and requested continuously internal investigations which were not taken into consideration by EULEX. As a whistleblower for unlawful activity in the mission, it costed her job.³⁸ Prosecutor Bamieh, a British lawyer, since 2014 “has publically accused two top EU officials of taking bribes from criminals in turn for dropping three prosecutions, including murder case – and says she has more evidence about the mismanagement of EU fund.”³⁹

The majority of the Kosovo population welcomed the EU mission and had high hopes that this mission will help them to better their lives and by establishing a rule of law aligned with and up to EU standards. The cover ups of its own corruption and mismanagement sent a horrifying message to Kosovars overall and specifically to whistleblowers in Kosovo. Considering how EU

³⁷ “EULEX needs to support not intimidate whistleblowers.” Transparency International. 12 August 2015. https://www.transparency.org/news/pressrelease/eulex_needs_to_support_not_intimidate_whistleblowers_ (accessed: 20.01. 2018).

³⁸ “Corruption perceptions index 2016.” Transparency International. 2016. https://www.transparency.org/news/feature/corruption_perceptions_index_2016. (accessed: 28.12. 2017).

³⁹ “Maria Bamieh: The British Lawyer Claiming To Expose Corruption at Heart of EU Mission to Kosovo.” Independent. 6 November 2014. <http://www.independent.co.uk/news/world/europe/aria-bamieh-the-british-lawyer-claiming-to-expose-corruption-at-heart-of-eu-mission-to-kosovo-9844893.html>. (accessed: 28.12. 2017).

and its rule of law mission treat the informers within their organization sends a significant scary message to informers in Kosovo.

What is a bit different from the EU mission is that in Kosovo allegations against “big fish” go away and often high level crimes are unpunishable. As soon as the EULEX scandals erupted, the EU foreign policy Chief Federica Mogherini was under a lot of pressure to investigate the accusations. She was devoted to appoint an independent legal expert to investigate corruption allegations, the involvement of the mission’s judges and prosecutors in obstruction of investigations, hiding facts and their involvement with criminals.⁴⁰ The EU’s enquiry on the above allegations came up with a report, drafted by an independent expert appointed by Mogherini and tasked to investigate into the EULEX matter. This expert was a French law professor who concluded that the EU mission in Kosovo did not cover up corruption allegations. He claimed that it was a fortunate situation that the cover up allegations turned out to be untrue but asserted that criminal investigations into corruption cases were ongoing.⁴¹ So far no transparency in the investigations and it seems as if there is more cover ups.

To make matters worse for EULEX mission and consequently a very bad news for Kosovo, the mission was shaken up again recently. At the end of 2017, another British national, Chief Judge Malcolm Simmons, exposed further misconducts within the EU mission in Kosovo. He resigned feeling ashamed serving under this mission accusing EULEX of corruption, misconduct, malpractice and trickery, stating that “I don’t want to be part of this farce anymore.”⁴² Judge Simmons accused his colleagues of hacking into his private e-mail account;

⁴⁰ Poznatov, Maja. “EU to appoint legal expert to investigate Kosovo mission” EURACTIV. Nov 5, 2014. <https://www.euractiv.com/section/global-europe/news/eu-to-appoint-legal-expert-to-investigate-kosovo-mission/> (accessed: 28.12. 2017).

⁴¹ Rettman, Andrew and Nikolaj Nielsen. “Enquiry says Kosovo mission not guilty of 'cover-up'.”Euobserver 14. Apr 2015. <https://euobserver.com/justice/128316>. (accessed: 12.01. 2018).

⁴² Vhopkins, Alerie. “EU courts trouble with Kosovo scandal.” Politico. 11 Nov. 2017. <https://www.politico>.

the mission was under political interference, and some of his colleagues misused their salaries by not showing up for work and having lucrative second jobs while they are paid by and supposed to work for the EU mission.⁴³

Furthermore, facts were offered and the allegations became public regarding the cases of corruption in Kosovo. One of the biggest corruption-related cases in Kosovo has been the one of former Minister of Transportation (currently he is a deputy Prime Minister), Mr. Fatmir Limaj. Simons declared that he was pressured from his senior officials to convict Fatmir Limaj in order to discredit him who is a “a politician and a former guerilla commander, because the mission did not want him to take part in an upcoming election.”⁴⁴ Indeed, in light of these findings and based on these statements Mr. Limaj is a free man and his corruption case dismissed.

The EU mission also used insulting and derogatory approach by one of the chief judges responsible in the case known as “Drenica Case.” The case is about a few former Kosovo Liberation Army commanders who were found guilty of misconduct during the war and convicted with jail. The language used by the EULEX judge was unacceptable as this group was referred to as animals. The e-mail leaked to the media explicitly revealed the conversations among EULEX judges saying that if they convict these “animals” they would be able to find good jobs anywhere in the EU. The political influence from the senior staff also contributed and altered the findings and the rulings. According to Judge Simmons the EULEX was not for the rule of law mission but it was a political one wanting to make Serbia happy and to continue Prishtina-Belgrade dialogue making the rulings biased and unprofessional.⁴⁵

eu/article/malcolm-simmons-eulex-eu-courts-chaos-with-kosovo-scandal/. (accessed: 30.12. 2017).

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ “EULEX judges call ‘animals’ the defendant in the case ‘Drenica’.” Lajmi. 20 Nov. 2017.

<http://lajmi.net/gjyqtaret-e-eulex-it-quajne-kafshe-te-pandehurit-ne-rastin-drenica/>. (accessed: 28.12. 2017).

The EULEX office in Prishtina rebutted his claims as it did with the Bamieh case stating that Judge Simmons had been a subject to investigations in the past year. According to them, based on independent investigations, the allegations against him are serious.⁴⁶ Then, one might ask why EULEX didn't deal with this case before he accused and published facts in support of his allegations; and why doesn't EULEX be transparent about those internal investigations for the sake of its credibility.

The above "Drenica" case has been related to war crimes. This is another huge area of responsibility of EULEX based on its tasks under the Council Joint Action 2008. Accordingly, EULEX Kosovo shall, "(d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law..."⁴⁷ It is perceived that EU rule of law mission has failed miserably in these fundamental tasks as well creating perplexity among the population and skepticism for its intentions and the professionalism of its personnel.

In 2011, the Council of Europe published a report, known after Senator Dick Marty came up with a report on alleged war crimes committed by ethnic Albanian guerillas, the members of the Kosovo Liberation Army. The Kosovo government was under a lot of diplomatic pressure to establish a special tribunal/ chamber specifically to address these accusations. After years of postponing the approval, the Kosovo Assembly adopted the law in 2015, which will be stationed in The Hague, the Netherlands. The Dutch Foreign Ministry also announced they accepted this role and that "the court will try serious crimes allegedly committed in 1999-2000 by members of

⁴⁶ "EULEX Statement in Relation to the Media Article." European Union External Action. 16 November 2017. <http://www.eulex-kosovo.eu/?page=2,10,737>. (accessed: 08.01. 2017).

⁴⁷ "Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo." Council Decision. 2008. http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf. (accessed: 20.12. 2017).

the Kosovo Liberation Army (KLA) against ethnic minorities and political opponents.”⁴⁸ This tribunal will be composed of international judges within Kosovo judicial system but the housing itself will be in The Hague. The dislocation of the actual chamber is due to numerous reasons, such as to protect the witnesses so they do not feel threatened in Kosovo. EULEX had the task to do exactly what the new Tribunal will be tasked to do it only means damaging Kosovo’s image along the way.

Recently, some forty three Members of the Kosovo Assembly initiated the nullification of this established court by considering more than fifteen thousand veterans who signed a petition. The court is regarded as biased and discriminatory to Kosovo Albanians bearing in mind that they defended themselves against a brutal, totalitarian regime that committed crimes against humanity and systematically conducted ethnic cleansing during 1998-1999. This initiative was disliked by the international community, particularly the European Union and the United States was harshly against it. The US was more aggressive and threatening to Kosovo leaders and Kosovo Members of Parliament that those who support the abolishment or the changing of the law on war crimes would be held responsible and sanctioned. The US Ambassador, Greg Delawie, made a strong press release, the toughest since he has been appointed ambassador to Kosovo, regarding this issue. He powerfully expressed his worries about the future of Kosovo as a democratic and European country and questioned its international commitments. He noted that, “commitment is under grave threat from an initiative to undo or change the law authorizing the Special Court. This effort is a terrible example of self-interest prevailing over the common good and over Kosovo’s interests as a state. And let me be clear: MPs who support this initiative- and the

⁴⁸ “New EU-Backed Court to Try Kosovo War Crimes, Dutch Government Says”
The Guardian. Jan 2016. <https://www.theguardian.com/law/2016/jan/15/war-crimes-court-hague-kosovo-liberation-army>. (accessed: 15.01. 2017).

politicians who lead it, despite their denials – will be subject to specific and harsh consequences should the initiative succeed. They know this; we've told them.”⁴⁹

The US Embassy made it very clear by sending one of the strongest and clearest messages to Kosovo leaders to advance the rule of law and not obstruct it. Ambassador Delawie confirmed US's support for Kosovo as it stood by Kosovo during and after the war which Kosovo fought a just war for a just cause but he wants the Special Court in place because Kosovo as a European country deserves to join NATO and the EU. Kosovo must not establish a sense of impunity as a normal way of conducting affairs because accepting that would mean lack of rule of law, and “would mean return to Milosevic-era-style leadership, which a generation of Kosovo's citizens fought to throw off.”⁵⁰ The US did keep its promise and it refused to issue the travel visa for the Prime Minister of Kosovo and only after publically opposing such initiative was he issued the visa to travel to the US.

The latter example demonstrates the instability and the inability to uphold the rule of law in Kosovo. Despite many problems that were not solved by UNMIK and exclusively by EULEX, there is mistrust and disbelief that the Special Court/Tribunal will be more successful. Also, all these rule of law related issues and unsolved cases, despite the international presence, depict one unfortunate fact, and that is that the Republic of Kosovo is not ready to deal with high profile crimes.

There are countless reasons and arguments to claim that EULEX has been unsuccessful in Kosovo. The European Union Rule of Law EULEX Kosovo has failed in the eyes of Kosovars; it has failed to uphold and promote EU values, and more concretely it has been also a burden on

⁴⁹ Delawie, Greg. “Ambassador Delawie's Remarks about the Special Court”U.S. Embassy in Kosovo.Jan. 17 2018. <https://xk.usembassy.gov/ambassador-delawies-remarks-special-court/>. (accessed: 18.01. 2017).

⁵⁰ Ibid.

EU taxpayers. The EULEX mission cost the EU taxpayers- during its first sixteen months to operate, EUR 205 000 000⁵¹ with less than two thousand people.

Although the EU mission was well represented it did not mean that the mission of EULEX was running smooth and its credibility has constantly been questioned. The local young Albanians did not trust this mission neither have the Serbs. Undeniably, it seems that since Serbia's opposition to Ahtisaari's proposal failed the assumptions of EU then it seems as if EU improvised the mission to Kosovo due to the lack of success. Another outrageous fact that supports the argument of a failed mission is the scandals that occurred within and have followed the EULEX to this day. In addition, another Special Court is established due to failure of EULEX because it will deal exactly with the area of alleged war crimes which has been one of the major tasks of EULEX. The Republic of Kosovo was supposed to be supported and assisted by EU mechanisms to get this country closer to NATO and EU and it seems as if EULEX has only held back the progress in Kosovo because it has fallen behind the other regional countries which do not have such a huge assistance from EU and still are making a better progress towards the Euro-Atlantic integration than Kosovo has despite the international presence and assistance.

⁵¹ "Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo." Council Decision. 2008. http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf. (accessed: 20.12. 2017).

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