

**Europeanization of the Rule of Law in Western Balkans – the peculiar
case of the EU’s transformative power failure in Kosovo**

Doctoral (Ph.D.) Dissertation

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Abbreviations

Anti-Corruption Agency – ACA

Anti-Corruption Strategy – ACS

Agency for Managing Seized and Confiscated Assets – AMSCA

Central and Eastern Europe – CEE

Central European Free Trade Agreement – CEFTA

Civil society organizations – CSOs

Commission for Prevention of Conflict of Interest – CPCI

Council of Europe – CoE

Criminal Procedure Code – CPC

Democratic Party of Kosovo – PDK

Democratic League of Kosovo – LDK

Directorate against Economic Crime and Corruption Investigation – DECCI

European Union – EU

European Union Special Representative – EUSR

European Union Rule of Law Mission in Kosovo – EULEX

European Commission – EC

European Commission for the Efficiency of Justice – CEPEJ

Financial Intelligence Unit – FIU

Geneva Centre for Security Sector Governance – DCAF

International Civilian Office – ICO

International Criminal Tribunal for the Former Yugoslavia – ICTY

International Court of Justice – ICJ

Instruments for Pre-accession Assistance – IPA

Kosovo Judicial Council – KJC

Kosovo Prosecutorial Council – KJA

Ministry of Justice – MoJ

Ministry of European Integration – MEI

National Programme for Implementation of the SAA - NPISAA

Non-governmental organizations – NGOs

Organization for Security and Co-operation in Europe – OSCE

Organisation for Economic Cooperation and Development - OECD

European Anti-Fraud Office – OLAF

Project against Economic Crime in Kosovo – PECK

Police Inspectorate of Kosovo – PIK

Stabilization and Association Agreement – SAA

Special Prosecution unit of the Republic of Kosovo – SPRK

United Nations – UN

United Nation Mission in Kosovo – UNMIK

Western Balkan countries – WB

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I. Introduction

Kosovo as one of the youngest states in the World, not just like any other country is facing its challenges toward its integration path. With a constant strive for international recognition amidst strong rejection by Serbia, weak economy and judiciary and internal political fragility, it remains one of the poorest countries in Europe. Albeit the fact that European Union integration is defined as the strategic domestic and foreign policy priority unequivocally embraced by all political and non-political actors, directing its reform efforts and development resources in fulfilling the aspiration of EU accession.

The poor and politically unstable Kosovo since its independence is focused on the European future and invests certain capacities in rebuilding its relationship with neighbors and establishing meaningful dialogue with the EU Commission. However, faced with difficult political context, not being a member of the United Nations, and yet not recognized by 5 EU member states¹ as a result of Serbia's rejection of independent Kosovo, this relationship has been often undermined, and has left the country lagging behind integration. Despite the "status neutral" position induced by the EU and the willingness to find creative forms of entering into contractual relations, primarily because of its rigid nature of decision-making, all Member States have nevertheless agreed that the EU should provide substantial support to Kosovo to ensure the stability not only of Kosovo, but also of the wider Western Balkans region and Europe as a whole.

The relevance of the engagement of the European Union lies also in the historically, impossible to undermine, facts and events that led to the start of the war thinking that it would end with the declaration of independence on February 17, 2008 when became the youngest state.

Opposed strongly by Serbia, the declaration of independence failed to receive a UN Security Council endorsement, thus preventing the newly created state to become a UN member and consequently abolish the UN Security Council Resolution 1244, which remains the cornerstone of problems that Kosovo faces, primarily because of its contested political status – something that the other Western Balkan countries do not face. Namely, as Denis McShane has eloquently explained it in his memoirs "Why Kosovo still matters"², the worm in the bud of the Resolution 1244 clauses 10 and 11 which say that the UN authorizes the Secretary General with the

¹ The 5 non-recognizing EU member states to date are: Romania, Slovakia, Spain, Greece, Cyprus.

² MCSHANE, 2011. p. 49.

assistance of the relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo “under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia”.

Since no one paid attention to these few words, the textual blunder left the door opened to those who still argue today that Kosovo is part of Serbia, regardless the fact that Yugoslavia was officially declared dissolved in 1992. This phrase left Kosovo in limbo and were after used also by 5 of the EU members states and other countries to refrain from official political recognition and adherence into the UN, consequently, entering into normal contractual relations with the European Union which will be clearly seen, have a negative impact on the process of Europeanization throughout.

Regardless, the institutions in Kosovo continued to be built and the political leadership echoed what was already said in the historical 2003 EU Thessaloniki Summit that the Western Balkans perspective lies heavily in the EU³, Kosovo’s strategic priority is the EU membership.

Taking over from the UN administration in Kosovo, the EU became the most important driving force behind reform despite the unclear relations between the EU and Kosovo authorities.

In order to contextualize the above a time-travel in history is required.

The relationship between the European Union and the Western Balkans has been long and withstanding however feeble. The EU member states have echoed constantly the urge and the undisputed European perspective for the troublesome region that has been into armed conflicts since 1989, and the aftermath of these conflicts have brought, democratically deficient governance, partisan administration, economic stagnation, poor development and lack of perspective.

However, being that historical facts are already known and they have been depleted by researchers from all over the world, this thesis will examine only some aspects of the relationship between EU and the Western Balkans region, in its theoretical framework, but focus on two key elements – the Europeanization as a process and its impact on Kosovo, in particular the normative elements in the rule of law sector, nonetheless, drawing the context from the objective historical facts.

The violent disintegration of the Socialist Federal Republic of Yugoslavia has concluded with Kosovo. During the 1998-1999 war, Serbian military, police and paramilitary forces have

³ EU-Western Balkans Summit, Thessaloniki 21 June 2003, C/03/163, 10229/03 (Presse 163), Available at: https://ec.europa.eu/commission/presscorner/detail/en/PRES_03_163 [Last accessed: 12.08.2019]

conducted atrocities of large proportions against the Albanian indigenous civilian population in Kosovo which grew into a fully-fledged armed conflict between the Kosovo Liberation Army and the Serbian security structures.

However, in a narrower interpretation of the conflict, not all of it is as blunt as one may reckon. The conflict between the ethnic Albanians living in Kosovo and the Serbs has been almost half a century old.

The importance of researching in the particular topic of Kosovo is ripe, and more relevant than ever, especially after the positioning of the EU as the frontrunner of the legal reform in Kosovo based on the strategic orientation and the unequivocal support of all political and non-political actors in Kosovo that EU integration remains a top priority. As a subject of the research, to add even further to the political complexity and circumstances surrounding Kosovo's Europeanization process and European Integration, an important prerogative of the research is the decision of the EU to engage as a facilitator in the Pristina-Belgrade dialogue for normalization of the relations. The initiative came at a peculiar moment, right after the International Court of Justice issued the opinion that Kosovo's declaration of independence has not violated the international law, a decision made after Serbia sent the declaration of independence in front of the Court of Justice. Second, the current EU's fatigue in enlargement vis-à-vis the Western Balkans, and internal divisions coupled with BREXIT, have put especially the "insignificant Kosovo" at the bottom of the agenda – however, appalled by the pledges made in the Thessaloniki Summit 2003 and the subsequent Summits, the continuance of the integration path for the entire region has been reflected in the November 2019 Non-Paper on Reforming the European Union accession process sponsored by France⁴ as well as the subsequent joint non paper signed by Austria, Czech Republic, Estonia, Italy, Latvia, Lithuania, Malta, Poland and Slovenia titled "Elements for an enhanced enlargement process and sustained and accelerated integration of the Western Balkans."⁵ The study in itself is significant because it assesses the efficiency of the EU in its delivery as a mediator and reform driven factor and how in the overall context its capacities can be utilized in a more effective way to

⁴ European Council. Non-Paper on Reforming the European Union accession process. Brussels, November 2019. p. 4. Available at: <https://images.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf> [Last accessed: 03.12.2020]

⁵ Joint non-paper by: AT, CZ, EE, IT, LT, LV, MT, PL, SI. Elements for an enhanced enlargement process and sustained and accelerated integration of the Western Balkans. Brussels, December 2019. p.4

overcome the enlargement weariness and enforce the top to bottom approach in Europeanizing the Western Balkans.

Following the External Incentives Model and the Europeanization definition it is obvious that the independent variables represent the implementation of the EU reforms stemming from the Acquis Communautaire and the Copenhagen Criteria for EU candidate and potential candidate member states. Consequently, the dependent variable is the Kosovo's rule of law system and the public administration that became subject of changes as imposed by the Europeanization process induced by the EU.

Living and working for 20 years in Kosovo, 5 of which dedicated work to the state-building process as part of the most important civilian international organization that promulgated the independence, the International Civilian Office (ICO), as well as part of the government during its development and consolidation, has motivated me to utilize my institutional memory and the knowledge acquired to bring to the research field a novelty of an observatory approach to the process of reforms. Seeing through different stages of the institutional building process, with the United Nation Mission in Kosovo, the ICO, and the government in different capacities combined with a robust academic view and research to the subject, these thesis are ought to give a different angle to the Europeanization process of the rule of law sector in Kosovo through an observatory method based on the fact that I have been extensively engaged in the build-up of the institutional architecture and its functionalization. This represents a novel approach, and it will certainly add value to the future research to be conducted on the field where Kosovo can be taken either as a comparative model or as a subject of research on its own.

I.1. Europeanization of the rule of law in the context of the Western Balkans – what is known so far?

The current literature at hand demonstrates deficiency of research in the field of the Europeanization of the Rule of Law sector in Kosovo. Although given the return of the enlargement prospect by the EU with the new leadership, there is an increased interest literature on both the Western Balkan region and on the individual countries' ongoing political, legal, and economic reforms. Yet, insofar there has been no comprehensive research on individual countries from the Western Balkans, apart from Kmezic 2017, on the specificities of the rule of law reform in the individual countries in this region, moreover, drilling down to the subjects of

political corruption, institutional setup, normative reform all this linked to the transformative power of the EU as the main driver of such reforms.

Rule of law and judicial sector reform remain vaguely defined concepts due to “the lack of a coherent theory of judicial independence, and the difficulty to measure the performance of the judicial system”⁶

The democratization and further integration of the Western Balkans is intimately linked to the results produced in its rule of law area. Considering that the rule of law has become one of the main three pillars of the current EU enlargement strategy, the relevance increases not only for evaluating the readiness of the Western Balkan countries to eventually become EU member states, but also for assessing the potential influence of EU institutions on the implementation of the rule of law outside the EU borders. Scholars have argued that the concepts of democracy, rule of law and judiciary are not identical, with the last two not being clearly defined.

Despite the ambiguity in definition of the concepts, the rule of law reform, tangible results in the fight against corruption remain the “gold standard” to be achieved by the Western Balkans countries on their path towards the EU accession. The baseline criteria were established in the Stabilization and Association Agreements with the respective candidate and potential candidate countries which represent not only a contractual relation with the EU at the early phases of accession but also a benchmark for a measurable impact that can contribute to a more concrete recommendations and easier monitoring of progress.

Despite the fact that academic scholarship and democratic politics agree on rule of law as a legitimizing principle for the exercise of state authority, there is no uniform European standard for institution-building or monitoring activities by the EU in this area⁷

Numerous scholars (Kmezic 2014⁸, 2017, Mendelski 2014, Elbasani 2013, Borzel 2011) have pointed out the weaknesses of the EU integration processes in the Western Balkans and the pathologies surrounding these processes on both ends, however have been limited in addressing a particular case study through a more comprehensive lens.

The political space of EU enlargement vis-à-vis the Western Balkans has decreased and yet the 6 countries continue to shape their policies and legislations as well as their governance in line with the EU requirements.⁹ On the other hand, the EU conditionality in the Western Balkans is

⁶ KMEZIĆ, 2014. pp.16-20.

⁷ KMEZIC, 2017. p. 23.

⁸ KMEZIC, M., KADRIBASIC, A., MISEV, V., BIBEZIC, A., KMEZIC, S. and ILIEVSKI, Z., 2014. pp. 128-131.

⁹ DZANKIC, KEIL and KMEZIĆ, 2019. pp. 87-109.

not being effectively implemented due to the political elites in the countries and their “patrons”, moreover including the conflictual legacies from the past.

The fact remains that the process of Europeanization in candidate countries occurs in a different manner than in those occurring in EU member states as stipulated by Sedelmeier¹⁰. However, the Western Balkans apart from the accession of Croatia, has been given an insufficient analytical and research time by both academics and EU integrations practitioners¹¹, mainly due to the internal EU reforms and division bringing event the future of the Union in question after the BREXIT, but also due to the fact that for more than 20 years, as it will be shown in the research, the governments of the WB countries have shown little interest in putting integration objectives above personal or political party benefits intermittently. The Western Balkans conundrum of political corruption and leaders which usually deliver little on political, governance and social commitments coupled with the credibility gap of the EU which is caught in an institutional limbo between its promises and the delivery are an area that deserves a more thorough analysis and academic research because of its uniqueness and particular context.

I.2. Historical facts (ending of World War 2 – 1999)

Both the Serbs that claim Kosovo to be the cradle of their civilization and spiritual land where the holy orthodox Church has its roots, and Albanians who claim to be the first inhabitants of Kosovo since the Illyrian tribes (Albanians descendants), do state ownership claim over the troublesome territory – thus ultimately leading to a long conflict between the two nations.

The territory of today’s Kosovo was inhabited by the ancient Illyrian tribes and over time was conquered by Rome as well as the Byzantine Empire. Slavic migration has occurred in these lands later in the sixth or even seventh century¹².

With the increasing power of the Serbian chiefdoms and dynasties in the, what is known today as the Balkans, Kosovo as a small territory was kept under Serbian predominance.

The subsequent events that occurred have been well analyzed by historians, domestic and international, thus for the purpose of these thesis the research will have a focus on the period after the independence but for the sake of the historical arguments, also the period after Second World War, and Kosovo under Josip Broz Tito regime.

¹⁰ SEDELMEIER, 2011. pp. 17-21.

¹¹ SEDELMEIER, 2010. pp. 519-536.

¹² DEMAJ, 2003. p.123.

Albania in theory a separate kingdom that just happened to be ruled by the King of Italy, was given the lion's share of Kosovo. Most of Kosovo had in fact been conquered by German troops, but at a meeting of the Italian and German foreign ministers in Vienna on April 21, 1941 it was agreed that the largest part of this Albanian inhabited territory should be under Italian control and joined to Albania, in order to prevent Albanian ethnic irredentism from becoming the driving force of anti-German resistance movement.¹³

This agreement was made largely because of Kosovo's rich natural resources of coal, including the Trepca mines and the important railway connections between Serbia, Macedonia, Bulgaria and Greece.

In 1944, i.e 1943 (the events occurred between 31 December and 2 January), 49 delegates of the national liberation Army, anti-fascist movement, communists and nationalists, did discuss for 3 days in Bujan, a village close to Tropoja (Albania) the problems arising from the war against the German invasion. After election of the presidency, two of which were of a Serb nationality, the conference participants unanimously adopted and issued a resolution, of which one key passage stated:

“Kosovo and the Dukagjini Region (et. Dukagjini is the Albanian denomination for the Metohija region – i.e. the western part of Kosovo as imposed by the Serbs), is an area with a majority of Albanian population, which, now as always in the past wishes to be united with Albania... the only way that the Albanians of Kosovo can be united with Albania is through a common struggle with the other peoples of Yugoslavia against the occupiers and their lackeys...”

The chronology of events that occurred following the World War 2 were violent and unpredictable, starting with the death of Tito, Milosevic's rise in power and the disintegration of Yugoslavia and the Balkans wars in the 90's. The importance of this chapter lies in the fact precisely about the EU's (non)commitment to tidy its own backyard. The EU did not learn from the mistakes in Croatia and Bosnia, leaving Kosovo out of the diplomatic table up until the escalation of the conflict to a size that could not have been ignored anymore.

I. 3. The Kosovo – Serbia conflict and the international presence

How the dissolution of Yugoslavia started and ended with the war in Kosovo – what was the role of the EU in this process?

¹³ MALCOLM, 1999. pp. 14-21.

Given that the European intervention and involvement in the territory of ex-Yugoslavia has been circulating around Slovenia, as Austria's first neighbor, Croatia divided by Sea with Italy, and more with the problematic Bosnia and Herzegovina republic which remained the only symbol of multi ethnicity and religiously diverse region from the remnants of ex-Yugoslavia, where Serbs, Bosnians and Croats have been living in harmony throughout the socialist regime of Josip Broz Tito. Focused elsewhere, Kosovo's question was marginalized and left aside of Europe's and UN radar screen.

With the escalating conflict and premises of genocide, ethnic cleansing and war crimes against civilian population, Kosovo became a topic in the international fora discussion. The struggle to bring peace and ceasefire in the dialogue table yielded no results as the killings continued.

Only then, when the Western states convinced that they do not want another Srebrenica¹⁴, the United States of America President, Bill Clinton, gave his memorable speech addressing the American nation in justification of the 78 days of United States led and NATO allied forces bombing campaign against military targets in Serbia, he jointly with the other advisories of the Kosovo freedom had a plan. Building a country from economically, socially and politically destroyed to, gaining full independence as the last nation to secede from what was left of Yugoslavia.

“Right now our firmness is the only hope the people of Kosovo have to be able to live in their own country without having to fear for their own lives. Remember: We asked them to accept peace, and they did. We asked them to promise to lay down their arms, and they agreed. We pledged that we, the United States and the other 18 nations of NATO, would stick by them if they did the right thing. We cannot let them down now... Today we and our 18 NATO allies agreed to do what we said we would do, what we must do to restore the peace. Our mission is clear: to demonstrate the seriousness of NATO's purpose so that the Serbian leaders understand the imperative of reversing course; to deter an even bloodier offensive against innocent civilians in Kosovo and, if necessary, to seriously damage the Serbian military's

¹⁴ Srebrenica massacre, is regarded as the worst genocide in Europe since World War 2. The events occurred in July 1995 with the slaying of more than 7,000 Bosniak (Bosnian Muslim) boys and men, perpetrated by Bosnian Serb forces in Srebrenica, a town in eastern Bosnia and Herzegovina. In addition to the killings, more than 20,000 civilians were expelled from the area – a process known as ethnic cleansing.

capacity to harm the people of Kosovo. In short, if President Milosevic will not make peace, we will limit his ability to make war¹⁵”.

So that, on 10th of June 1999, the British Royal Regiment of Wales, the British Gurkhas and the United States Paratroopers Air Force division were storming their way into Kosovo while in parallel, the Security Council of the United Nations adopted Resolution 1244, at that time seen as a major step towards Kosovo’s final liberation, but soon to be acknowledged as one of the biggest hindrances for Kosovo’s road towards its final status, primarily because of the fact that the Resolution vested unequivocal ruling powers to the Special Representative of the Secretary General, serving as a Head of the United Nations Interim Administration Mission in Kosovo (UNMIK) administration in Kosovo.

With the adoption of Resolution 1244, the international community decided for a subsequent step towards the normalization of the life in Kosovo.

More than ten thousand strong personnel, from all over the world, deployed throughout Kosovo cities, to maintain peace, teach democracy and build state mechanisms, with absolute powers of administration:

“The Special Representative of the Secretary-General, Recalling resolution 1244 (1999) of 10 June 1999, whereby the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the Secretary-General, with assistance of relevant international organizations, to establish an international civil presence in Kosovo, known as the United Nations Interim Administration Mission in Kosovo (UNMIK), in order to provide an interim administration in Kosovo with the mandate as described in the resolution; Acting pursuant to the authority given to him under United Nations Security Council resolution 1244... All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General¹⁶.

Ultimate power was given to the Special Representative of the Secretary General, over the public life in Kosovo, i.e. municipalities, municipal councils, Assembly, Provisional

¹⁵ WASHINGTON POST. Clinton: Containing Milosevic Is Goal. Available at: <https://www.washingtonpost.com/wp-srv/national/daily/march99/clinton25.htm> [Last accessed: 04.10.2018]

¹⁶ UNMIK Regulation 1999/1, 25 July 1999. Available at: https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm [Last accessed: 14.09.2012]

Government Institutions, Police, Customs, Prisons and Judiciary. No actions or whatsoever could be taken, without prior approval of the SRSG.

Moreover, the Resolution 1244 retained Kosovo under the Yugoslav territorial integrity and sovereignty; however, its governance was transferred to UNMIK, i.e. *“UNMIK was a compromise based on Resolution 1244. Its main objectives were to establish an interim civil administration, law and order, promote the process of growing autonomy and self- governance in Kosovo and of fundamental importance create a political process that would make it possible to determine Kosovo’s future status”*¹⁷

This marked a beginning of a process that would go through the challenge of building a country from an economically, socially and politically severely destroyed province to the ultimate goal of gaining formal independence in 2008 strongly anchored around the struggle of accession to the European Union, the United Nations and NATO.

Following a decadelong presence of the United Nations Interim Administration Mission in Kosovo (UNMIK), there was increasing fatigue and impatience in Kosovo for independence and self-determination, and the international community realized that a reconfiguration of its presence was imperative if peace was to be sustained within Kosovo and the region.

After the exhaustive negotiations between Kosovo and Serbia on the status talks led by the former Finnish President Ahtisaari who had understood since 2007 that a continued UNMIK presence would be untenable and that independence from Serbia was the only way forward, the International Civilian Office was established. The lack of a new UNSC resolution backing for the International Civilian Office (ICO) and its mandate on supervision of independence, therefore no consensus by the EU on Kosovo’s status did not provide the ICO with the clarity of vision that it needed at the initial stages.

The complexity of the dynamics on the ground with the Kosovo government publicly deemed UNMIK a liability that no longer served a purpose in the newly independent state and had outlived its usefulness. In order to take more responsibility and position itself more clearly living up to the commitments stipulated in Thessaloniki, the EU of launched its most ambitious security and defense mission, European Union Rule of Law Mission (EULEX). However, this resulted in an arrangement that would not see Belgrade’s cooperation anytime soon, but at the same, seen with skepticism from the Kosovo side as well.

¹⁷ SILANDER, 2009. p. 26.

The legal basis for the Mission's functioning has been set by the Council in the European Union Joint Action 2008/124/CFSP on 4 February 2008¹⁸. In accordance, EULEX operates within the general framework of the UN Security Council Resolution 1244.

1.4. The independence of Kosovo (17 February 2008)

The UNMIK administration continued to rule in Kosovo until 2008, with its executive authority over, ultimately, every process in Kosovo. Kosovo was in a status quo due to the lack of a tailored plan of what is going to happen with the future of Kosovo.

It was clear that the undefined status was not an option.

The messages coming from beyond the Atlantic Ocean were clear: Kosovo is a European country, thus it is a European problem. The EU should step up and take over the processes occurring in the, what was clearly visible, post-independence era.

Finally, the process of negotiations for the Kosovo's final status started under the leadership of Marti Ahtisaari and Albert Rohan¹⁹, the UN special envoys on the Kosovo status. Parties, Kosovo political representatives and Serbian government participated in the negotiations.

As the International Steering Group report stipulates, *"The international community entered Kosovo in June 1999 without an exit strategy and has taken only a few uncertain steps toward defining one. But it did make clear that Belgrade, having violently expelled more than 700,000 Kosovo Albanians in 1999, had lost the right to administer the province, and that following a period of international administration, a political process would determine final status"*.²⁰

The negotiations experienced a massive failure. Nowhere in sight was an approach of positions by either side. While, the UN Special Envoy, Marti Ahtisaari, presented its "conditional independence" plan, the same was again rejected by Serbia and Russia.

The Ahtisaari plan was a compromise that offered the prospect of independence, extensive rights for Kosovo Serbs, security and privileged relations with Serbia, and Serbia the chance to put the past behind it once and for all and realize its European future. It is the best recipe for the creation of a multi-ethnic, democratic and decentralized society and fits within the European

¹⁸ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo. p. 2.

¹⁹ Marti Ahtisaari was a United Nations special envoy for Kosovo, charged with organizing the Kosovo status process negotiations, aimed at resolving a long-running dispute in Kosovo. Albert Rohan was appointed as deputy to the Special Envoy of the Future Status Process for Kosovo, Marti Ahtisaari, by UN Secretary General Kofi Annan in 2005. He played an important role in the Vienna Negotiations on the Final Status of Kosovo, which ultimately resulted in Kosovo's independence.

²⁰ International Crisis Group Report, 2005. p. 6.

Union's multi-ethnic project for the Western Balkans, which ultimately offers the prospect of accession. The EU is already the largest donor in Kosovo and plans to assume the lion's share of responsibility for the post-status Kosovo civilian mission. Ultimately, Kosovo is, and will remain until resolved, a European problem.

After the UN Security Council was unable to agree on a resolution backing conditional, or supervised, independence, the six-nation Contact Group's "Troika" of diplomats started a new round of negotiations between Pristina and Belgrade".²¹ The Troika was represented by, representatives of the United States, Ambassador Frank Wisner, EU representative, Ambassador Wolfgang Ischinger, and a Russian representative, Ambassador Aleksander Botsan – Hartchenko. The talks would last for 120 days, with no compromise reached.

On December 19, 2007 the Security Council would discuss the report of the Troika, which stipulated: "*Throughout the negotiations both parties were fully engaged. After 120 days of intensive negotiations, however, the parties were unable to reach an agreement on Kosovo's status. Neither side was willing to yield on the basic question of sovereignty*".²² Ambassador Ischinger during his media statements, also noted that the Troika did "everything humane" to approximate the positions of the two sides, unsuccessfully.

With growing impatience among the Kosovo Albanian population, a date was set – 17 February 2008, when the newly constituted Assembly of Kosovo coordinated with the United States, and other countries supporting Kosovo's declaration of Independence, will declare its final breakout from Serbia. Among other things, the declaration in its beginning states: "We, the democratically elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. This declaration reflects the will of our people and it is in full accordance with the recommendations of UN Special Envoy Marti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement".²³

International bodies mandated on supervising the declaration of independence were again established through a very creative method. The International Civilian Office, whose mandate was deriving from the International Steering Group joint action plan, was tasked in supervising the implementation of the provisions from the Ahtisaari plan, especially those in regards of minority protection, decentralization, security and religious and cultural heritage – all these

²¹ International Crisis Group Report, 2006. p. 4.

²² UN Security Council, 2007. Report of the European Union/United States/Russian Federation Troika on Kosovo. p. 6.

²³ Kosovo, Declaration of Independence of 17 February 2008.

tailored to measure the increasing demands of the Serbian minority in Kosovo – hoping that ultimately their satisfaction would also guarantee recognition by Serbia which will pave the way to building a normally internationally recognized country.

As P. Russel summarizes, “*the escalation of the conflict was rapid, deliberate, and successful. It took less than a month after the end of Dayton for the first warning signs to be noticed in Washington. By early 1996, the New York Times was asking, “will Kosovo explode?”* In 1999, they succeeded in provoking Western intervention and escaping Serbian control. In 2008, of course, they achieved their ultimate goal of full independence from Serbia.”²⁴

The NEWBORN obelisk was being unveiled in the center of Pristina, in front of what used to be called Boro&Ramiz.²⁵ At the same time, Prime Minister Hashim Thaci²⁶ and President Fatmir Sejdiu²⁷, while the final clearance of the new Constitution was being processed in the office of the International Civilian Representative, were addressing more than 1000 journalists from all over the world, in lieu of the declaration – Kosovo is the youngest state in the world.

A growing fear was that the festivities would again turn into a rampage against the Serbian enclaves, Gracanica being first and foremost, the closest settlement to the capital Pristina. However, none of that happened. The festivities were carried out throughout every city and village, albeit followed with occasional discharges from firearms. But no incidents were reported. And the 120 members of the Parliament, in the presence of the ICR, Head of the EULEX, and other dignitaries, formally voted on the motion of declaration of independence.

Assembly of Kosovo, “Convened” in an extraordinary meeting on February 17, 2008, in Pristina, the capital of Kosovo, “Answering” the call of the people to build a society that honors human dignity and affirms the pride and purpose of its citizens... “Recalling” the years of internationally – sponsored negotiations between Pristina and Belgrade over the question of our political status, “regretting” that no mutually acceptable status outcome was possible, in spite of the good faith engagement of our leaders... Approve the Declaration of Independence.²⁸

²⁴ RUSSELL, 2009. p. 15.

²⁵ The obelisk is named after Boro Vukmirovic and Ramiz Sadiku, emblematic figures of the war against fascism, and symbol of brotherhood and unity), now called the Sports and Youth Centre.

²⁶ Hashim Thaçi, a Kosovar politician who has been the President of Kosovo since April 2016. He was the first Prime Minister of Kosovo. Thaçi became leader of the Democratic Party of Kosovo (PDK), which won the 2007 Kosovo elections. In 2008, Thaçi declared the independence of Kosovo and became its first prime minister.

²⁷ Fatmir Sejdiu is a Kosovar politician. He was the leader of the Democratic League of Kosovo (LDK) and was the first President of Kosovo after the declaration of independence in 2008.

²⁸ Declaration of Independence of 17 February 2008, par. 2.

The very next day, Kosovo was recognized by Afghanistan, which is to be considered as the first one to send a diplomatic note to the Kosovo institutions. This was followed by, USA, Turkey, Germany, United Kingdom, Japan, and many other powerful economies of the world that supported Kosovo's endeavor in perpetuity since the NATO air strikes. All these countries were absolutely convinced that the Comprehensive Proposal for the Kosovo's Status Settlement, known as the Ahtisaari plan, is the best possible way to peace and stability to this troubled region.

Serbia clearly stated that it will never give up Kosovo, considered by the Serbian government and church as the cradle of their history and heritage.

Serbia's parliament promptly adopted a decision purporting to annul this declaration. Serbia and the Russian Federation also immediately protested at the international level, demanding an urgent meeting of the Security Council which, for the first time in several months, would address the Kosovo issue in public. The meeting was opened by the UN Secretary General, who informed it that the Kosovo Assembly had indeed declared independence by unanimous vote of all 109 deputies attending. The Secretary General noted that the declaration confirmed Kosovo's full acceptance of the obligations contained in the comprehensive settlement proposal as well as continued adherence to Resolution 1244 (1999). There had also been a strong commitment by the Kosovo Prime Minister to the equal opportunities of all inhabitants and a pledge that there would be no ethnic discrimination.

The Secretary General also noted a letter from the EU High Representative for Common Foreign and Security Policy, stating that the EU would deploy a rule of law mission within the framework provided by Resolution 1244 and an EU Special Representative for Kosovo. The Secretary General confirmed that, pending guidance from the Council, UNMIK would continue to exercise its mandate under Resolution 1244. The Council then heard statements from the President of Serbia and the Russian Federation condemning the declaration of independence in terms similar to those of their previous statements (discussed above). Serbia requested that the Secretary-General instruct his Special Representative in Kosovo, Mr. Ruecker, to declare the act of secession null and void. 'The Special Representative has binding powers, and they have been used before. I request that he use them again.'²⁹ This demand was echoed by the Russian

²⁹ Immediately upon the declaration of Kosovo's independence, in his address to the Security Council the President of Serbia, Boris Tadic, inter alia, stated: "We request the Secretary-General, Mr. Ban Ki-moon, to issue, in pursuance of the previous decisions of the Security Council, including resolution 1244 (1999), a clear and unequivocal instruction to his Special Representative for Kosovo, Joachim Rucker, to use his powers within the

Federation. Russia also declared that the EU rule of law mission had been launched without the mandate of the Council and was not covered by the existing authority contained in Resolution 1244. Vietnam found that the declaration of independence was not in conformity with Resolution 1244 and stated its commitment to the doctrine of territorial integrity. South Africa made a similar statement, indicating that the current developments in Kosovo would have serious implications for the international community that warranted further study. China offered a rather measured assessment. It did not condemn the declaration of independence outright or straightforwardly declare it illegal. However, it did voice its concern.³⁰

The 18th of February 2008 found the citizens of Kosovo in a calmer atmosphere, however the thrills of excitement about the declaration of independence were holding. Now, Kosovo was preparing itself to turn a brand-new page not only in its own history, but the entire Western Balkans. One day before, the Assembly of Kosovo, reading the declaration of Independence, formally invited the International Civilian Office to supervise an initial period of independence and the European Union to deploy a Rule of Law mission.³¹ With that, the international presence in Kosovo just brought more confusion than clarity to the entire political and power sharing constellation in the country.

In a desperate attempt to annul or change Resolution 1244, UNMIK remained in place. The 6 points of the UN Secretary General Ban Ki Moon plan (June 2008) after the declaration of independence was prepared for the gradual transfer of powers from UNMIK to EULEX. The plan was reassuring that 1. the Serbs part of Kosovo Police Service would remain under the direct authority of SRSG, 2. local and district courts serving in the north of Kosovo will be created, operate within Kosovo court system, but operate under resolution 1244 (1999), 3. customs will be reorganized and international custom officer will be present in all customs points, 4. technical and across-boundary issues will be coordinated by the SRSG, 5. that security of Kosovo boundaries will be maintained by KFOR, and 6. the Serbian Orthodox Church in Kosovo would be afforded international protection.³²

shortest possible period of time and declare the unilateral and illegal act of the secession of Kosovo from the Republic of Serbia null and void. We also request that Special Representative Rücker dissolve the Kosovo Assembly, because it declared independence contrary to Security Council resolution 1244 (1999). The Special Representative has binding powers, and they have been used before. I request that he use them again.” UN Doc. S/PV.5839, 18 February 2008, p. 5.

³⁰ WELLER, 2008. p. 1222.

³¹ “We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European – led rule of law mission”. In: Declaration of Independence of 17 February 2008, par. 5.

³² UN Security Council, Report, 2008. pp. 6-7.

EULEX, established under a Joint European Council Action, would operate under the 1244 umbrella, thus not recognizing the newly created political reality in the country. The European Commission playing an important role in improving social standards in Kosovo, the European Union Special Representative in a coordination role between the EU presences in Kosovo in order to provide political guidance to the local authorities in regard to European affairs, and lastly the International Civilian Office, a sui generis body distinguishing itself from other organizations as the gatekeeper of the Ahtisaari plan, and the supervisor of the independence, headed by the International Civilian Representative.

Although some member states hesitant to recognize Kosovo as an independent country, the European Union was acting in one voice. It noted the independence and committed to help the young state, first and foremost by authorizing and deploying the biggest rule of law mission, EULEX as well as the EU Special Representative. While on 28 February 2008, the recognizing members of the EU, and the United States took the initiative to establish an International Steering Group for supervise Kosovo's independence supervision.³³ On the other hand, taken by the advice of the UN and NATO counterparts, the European Union, started the process of "Europeanizing" the Republic of Kosovo, through the starting of the Dialogue on the Stabilization and Association Agreement, but also deploying the – so far – most costly Rule of Law Mission (EULEX) with executive powers to reform the judiciary, improve Rule of Law, and tackle cases that were deemed impossible to tackle by the, at that time, judicial apparatus.

I.5. The impact of Europeanization on the Western Balkans (2008-2019)

Kosovo is a storyline for an independent country that to an extent also anchors a collective national identity, through its heroes and myths. The 1998 massacre in the Jashari family in Prekaz³⁴ is only a fragment of that storyline. However insignificant it may look, being that this was neither the only nor the most vigorous massacre, and this is a moment where many events converge from.

Based on empirical evidence that will be presented throughout the thesis, it is inevitable to conclude that the heavy international presence in Kosovo has added more confusion to the

³³ International Crisis Group Report, 2008. p. 12.

³⁴ The Attack on Prekaz, also known as the Prekaz massacre,[3] was an operation led by the Special Anti-Terrorism Unit of Serbia on 5 March 1998, to capture Kosovo Liberation Army (KLA) fighters deemed terrorists by Serbia. During the operation, KLA leader Adem Jashari and his brother Hamëz were killed, along with nearly 60 other family members including women and children.

Kosovo integration and state building process rather than helped. The mixed competences, executive powers and mandates deriving from series of international documents being them adopted by the Security Council, the European Council, or ad hoc organizations, such as the International Steering Group, on top of the democratically elected leaders and institutions of Kosovo, one can say are, bluntly said, too much.

Various powers vested in external organizations, claims of sovereignty by a neighboring country in parallel to the weak social and economic situation and a divergent and fragile political scene is a proof that state building and international integration cannot go in parallel along the way. Mostly to blame is the European Union, who despite the lack of consensus on the independence of Kosovo, took over larger engagement in the country without having a clear idea on how it shall proceed. Being a status neutral entity, Kosovo cannot enter into contractual agreements with the EU. However, in order to justify the presence and the transition of responsibilities, the European Commission found new, creative and ad hoc instruments, to treat Kosovo as an “entity” rather than a state, just in order not to distress the non-recognizing member states.

During the theses we will argue and elaborate on several crucial questions. How does the EU apply the partnership module with the countries of Western Balkans when it is clear that Europeanization entails more of EU imposing standards rather than building upon mutual consent? What are the challenges of the Europeanization process? What is the impact of the European Union in political processes and institutions as well as modes of governance? Does Europeanization encourage strengthening of subnational governance? How does the process affect national interests and institutional arrangements in Kosovo? Does it have also social and cultural implications? Is Kosovo ready to embrace Europeanization *per se*?

As a key element of the research topic, in this chapter we will concentrate on the political dialogue and the security legislation, the impact that EU had in the transformation and democratization of these institutions and the legislative framework.

Taking into consideration the aforementioned, from a robust literature review, it is fair to say that scholars have given a little focus to this topic, especially the top-down approach when it comes to the Europeanization of the Western Balkans, and even more Kosovo, which has limited the literature on the attention given to look into the role of domestic factors, institutions, policies and processes in the EU integration path as well as the capacity of Kosovo to cope with the costly Europeanization process. This, in itself has played a role in investigating the extent to

which the Kosovo political elite has undermined the EU's transformative power, but on the other hand, how the EU has erroneously applied the incentivizing models using the rational institutional approach when creatively dealing with Kosovo's complex setup.

II. Literature review – The theoretical concept of Europeanization

How is Europeanization defined? Is there an exact definition of Europeanization? It is a general understanding that the research on the Europeanization topic is modest and insufficient, both in terms of number of research but also what is more important result areas that they focus in order to draw different conclusions. However, from the current literature research, few main theoretical approaches may be drawn from together with the research mechanisms on the process of Europeanization.

The theoretical approaches most commonly used are the rational and the constructivist (or sociological) institutionalism where the political conditionality is seen as the mechanism of influence in the first, while the political socialization as a mechanism in the second approach. These two approached will be further elaborated in the overall context of the candidate countries position, with a focus in Kosovo especially pertaining to the political conditionality paradigm. Nevertheless, it has been noted that there are evident gaps in the research areas of the rule of law, Europeanization in the EU candidate and potential candidate member states, while focus has been given primarily to the current EU member states.

To reflect on the ability of general definitions to describe the Europeanization and other processes attached to it, the definitions of C. M. Radaelli, R. Ladrech and J. P. Olsen will be taken as a starting point. Radaelli as one of the most prominent researchers in the area of Europeanization together with Ladrecht and Olsen due to his versatile views on the process and chosen as representatives of theoretical research.

Radaelli defines Europeanization as “...*processes of (a) construction (b) diffusion (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies*”³⁵. Radaelli does not envisage definition and consolidation at the domestic level and subsequent incorporation back into the domestic, all

³⁵ RADAELLI, 2004. p. 4.

horizontally, outside the EU level (e.g. as a mere convergence of policies). The claim that there is first a definition and consolidation in the EU political process, and only then the adoption of models at national level, clearly refers to the descending Europeanization. Ladrech considers Europeanization to be "*an incremental process of reorienting the direction and form of policies to the extent that the political and economic dynamism of the Community becomes part of the organizational logic of national policies and their formulation.*"³⁶ A simple interpretation refers to the Europeanization of the vertical descending - elements from the European level are adopted at the national level. However, a broader interpretation also leaves room for horizontal processes. Political and economic dynamics can also mean a mere reaction of states to the integration process (states influence each other thanks to integration). This definition can cover horizontal processes, but it is so general that it does not allow them to be described more precisely on its basis alone. Ladrech represents a theoretical approach to the change of actors rather than a definition of the process itself. Olsen defines Europeanization in five separate types according to the subject of change. The fourth type is relevant for the candidate member states Europeanization process - "*the export of forms of political organization and governance that are typical and different for Europe outside European territory.*"³⁷. Although this description includes horizontal processes, it is far from all. The exclusion of intra-EU processes does not allow the use of the Olsen definition, as it will simply not affect any process taking place between Member States.

Others, considering the supranational features of the EU and its impact in the potential member states countries define Europeanization as the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative European rules.³⁸

This definition currently is the most generic accepted explanation of the Europeanization process since its wide-spread inception as a concept in the early 1990s when the European Union was undergoing myriad of changes and institutional reforms for its more coherent internal function but also external relations. In brief, one may say that the Europeanization

³⁶ LADRECH, 1994. pp. 69-88.

³⁷ OLSEN, 2002. pp. 921-952.

³⁸ RISSE, 2001. p. 3.

process is the impact that the EU has on domestic political and normative framework through measures and rewards.

Even though, since Ladrech first introduced a definition of Europeanization in 1994 as an incremental process reorienting the direction and shape of politics to the degree that EU political and economic dynamics become part of the organizational logic of national logic of national politics and policymaking³⁹ the fashionable term of Europeanization has been an increased focus of political science scholars – however – without a clear understanding of the exact definition of the concept.

Nonetheless, most of the research in this concept was directed towards the functionalization of the EU as a body, where the “top to bottom download” approach has been conceptualized, disregarding further analysis on how the Europeanization process would work on non-EU member states. Radaelli in this case provides the importance of faceted alteration of policies and norms and behavior in a country.

One common denominator of the late 1990s scholars that kick-started the modern Europeanization scientific debate, was that this process remains a “top-bottom” approach – a process of blank download of EU norms and policies into the national system and behaviour. As Howell has stipulated,⁴⁰ Buller and Gamble considered Europeanization to be “...*a situation where distinct modes of European governance have transformed aspects of domestic politics*” *notwithstanding the fact that despite the theoretical premise of Europeanization*”.

The big bang enlargement of 2004 increased the interest among scholars to further conceptualize and contextualize the Europeanization process extending it beyond member states to candidate and potential candidate states in the South Eastern Europe. The moment of shifting the debate became evident during the fact that many scholars saw the process of Europeanization as an accelerator of Central and Eastern European countries towards EU integration through the fulfillment of the Copenhagen Criteria introduced in 1993 by the Treaty on the European Union and stipulate the following:

- stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.
- a functioning market economy and the ability to cope with competitive pressure and market forces within the EU.

³⁹ LADRECH, 1994. pp. 69-87.

⁴⁰ HOWELL, 2002. p.14.

- ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.

For EU accession negotiations to be launched, a country must satisfy the first criterion⁴¹.

However, ever since, the common denominator of all scholars pursuing the Europeanization research is that the process represents a “top to bottom” approach, i.e. exercise of the EU institutions “transformative powers” vis-à-vis candidate member states.

Radaelli takes the definition further and sees it as an overarching societal and political change, not to be mixed with European integration or convergence, though the process entails both of these processes.⁴²

However, the difference lies in the Europeanization process and how that was applied, as well as the impact it had in the countries of Central and Eastern Europe, with the Western Balkans.

The aim of the scholars researching the Europeanization process is to shed light on the impact of the European Union’s transformative powers into candidate countries and the EU’s conditionality imposed in different levels and models of governance in particular during accession negotiations but also after membership. The 2004 enlargement has outlined a positive outcome of the Europeanization by an imposed logic of appropriateness for adaption of the rules and norms⁴³. This cannot be certainly applied with the Western Balkans conditionality method. Recent literature does preserve the fact that the Europeanization of Western Balkans in the recent years has become a rather difficult and bumpy road – with imposed conditionality but without the external incentives model applied, mainly due to the fact of the incoherence in policy making and policy decision at the EU level.⁴⁴ Researchers have neglected the interest of the influence of EU in the domestic policies in the Western Balkans, merely because of the fact that structural changes induced by the EU (top-bottom approach) was only considered declaratively with no reward presented in the end, and without a clear prospect of moving towards integration.

⁴¹ Copenhagen criteria. Conditions for membership. 1993. Available at: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en [Last accessed: 20.03.2021]

⁴² FEATHERSTONE, 2003. pp. 57-83.

⁴³ SCHIMMELFENNING and SEDELMEIER, 2005. pp. 32-41.

⁴⁴ ELBASANI, 2013. pp. 96-112.

In order to further be able to elaborate on the causes and consequences of this approach, we will take Sedelmeiers⁴⁵ emphasis on the current research on the Europeanization, narrowing it down to two main theoretical approaches – the rational and the constructivist institutionalism.

The rational institutionalism takes forward the EU accession as a process of the adaptation of domestic, behavior, legal infrastructure and policy implementation parameters to the EU standards. Furthermore, literature has defined Europeanization of candidate countries as an EU politically driven process, in which the EU actors including the legal systems, policy initiatives, institutions and processes are imposed vis-à-vis the candidate member states in order for them to be verbatim adopted by the candidate member states.

Specifically, the rational institutionalism explains this alignment by the use of positive and negative incentives, the so called “carrot and stick” policy adopted by the EU with the idea that the EU will be an objective evaluator who will be able to reward progress and punish misconduct, and it has aimed to be an driving force for future EU member states to follow the rules and adopt to the process of Europeanization embracing the values of liberal democracy. This is done to empower domestic actors to converge on the trade-offs between the adoption of norms and policies as well as the cost related to it.

On the other hand, the constructivist approach is more focused on the interaction between the political elites and institutions of the candidate and potential candidate member states and the EU members. This approach focuses on the diffusion of the norms and values, way of thinking on the EU level broken down to the domestic level. When analyzing the process of the Europeanization of the post-communist countries, the former Yugoslav republics here included, some authors find the Europeanization process as a synonym of democratization and adoption of liberal democratic values.⁴⁶ In this context as Schimmelfenning points out that the EU and its conditionality played an important role in successful post-communist democratization and Europeanization of public policies.⁴⁷

In this context, Kosovo is no exception. Its strategic goal enshrined in the Constitution and all other strategic documents point out the imperative of Euro-Atlantic integration. Further in the text, it will be elaborated on how the EU has used the politics of conditionality in the case of Kosovo especially when it comes to the rule of law reform sector.

⁴⁵ SEDELMEIER, 2011. p. 8.

⁴⁶ LEWIS, 2008. pp. 565-566.

⁴⁷ SCHIMMELFENNING and SEDELMEIER, 2019. p. 2.

Taken into consideration the above, even though the rational institutionalism approach applies better when elaborating on the case of Kosovo, both approaches do apply through the lenses of logic of consequences (rational institutionalism approach) and the logic of appropriateness (constructivist approach).

Based on Sedelmeiers and Schimmelfennings External Incentives Model (EIM)⁴⁸ as a mean that uses the logic of the consequences within the rationalist point of view, the EU has set forth numerous rules and norms which a perspective country aspiring to join the Union needs to fulfill simultaneously receiving financial or technical support for compliance, or punishment for non-advancement and non-compliance.

As both Schimmelfenning and Sedelmeier deliberate, when the EIM was introduced primarily in year 2000 with the enlargement of the European Union towards Central and Eastern Europe, now the model of replicating it in the context of the Western Balkans can be seen cumbersome and ineffective, mainly due to the fact that this model alter the cost-benefit calculations of governments in candidate countries and specifies under what conditions such calculations are expected to lead these governments to adopt EU rules: the size of the EU's rewards, the determinacy of the conditions, the credibility of conditionality, and the size of the adjustment costs of compliance for target governments.⁴⁹ When speaking about the credibility of such conditionality, the reason why the External Incentives Model is seen through a skeptical lens by researchers, empirical evidence points out that the incoherence of the EU to deliver on their promises such as the case with Kosovo and the visa liberalization policy as the best example and the Macedonian name resolution dispute condition for opening the negotiations (note by the author: as it will be seen in the empirical analysis, the EU failed to deliver on both occasions on their promise and up to the day when these thesis have been completed, neither Kosovo has received its reward for visa free movement, nor has Macedonia started the negotiations accession).⁵⁰

In the Western Balkans the EU's conditionality has been confined in financial assistance through their IPA funding with a distant promise of EU clear perspective, however without any

⁴⁸ SCHIMMELFENNING and SEDELMEIER, 2019. pp. 10-18.

⁴⁹ SCHIMMELFENNIG and SEDELMEIER, 2019. p. 3.

⁵⁰ When the European Council rejected the start of accession negotiations with North Macedonia and Albania in October 2019, French President Emmanuel Macron insisted that before opening negotiations "we need to reform our membership procedures".

clear time bound roadmap, and the institutional contractual guarantee mechanisms such as the Stabilisation and Association Agreement (SAA).

For the purpose of better understanding the conclusion of the thesis, a further elaborate on the External Incentives Model is needed, differentiating between the criteria and the other facilitating factors that apply to the cost-benefit analysis of the domestic factors in the context of Europeanization and which are – the determination of the EU to deliver on the conditions, the size of the carrot, the credibility of the threat and the cost that related to such adoption.

According to Schimmelfenning and Sedelmeier, the EU needs to determine the conditions for reward from the onset for the candidate and potential candidate countries – linking it strongly to the definition of the conditions by making it clear to the candidate country which criteria it needs to fulfill to receive the reward simultaneously increasing the credibility of the conditionality and increasing the likelihood of adoption,

The second is the carrot offered – and it has been seen from the previous enlargement processes that membership as the most powerful mechanism is a not so effective approach since the prospect of adopting the rules and criteria is far bigger in the accession process, rather than when actual membership takes place. When deliberating on the size of the carrot, the EIM takes into consideration the parallelism between the requirement and the reward, which for the case of the Western Balkan countries has not been the most rationally used model.

The credibility of the conditionality refers to both the credibility of the EU's threat to withhold the reward if conditions are not met and the credibility of the EU's promise to deliver on the reward once they are. Currently the credibility of the reward and the threat in relation to the Western Balkan countries, but Kosovo in particular has been undermined because of a weak internal consensus by the member states to deliver on the promised carrots. But, when deliberating on the credibility of the threat and the reward, we need to also have in mind the concept of EU as a normative power.⁵¹ According to Manners⁵², the notion of normative power EU lies in imposition of EU's identity – i.e. series of principles and shared beliefs that the EU member states sign off to but also instill. This parading resonated well with Radaelli's definition and these norms (liberty, democracy, supranational rule of law and human rights) are well stipulated in the EU Law, which makes them binding to the candidate countries as well – making the threat much more credible.

⁵¹ MANNERS, 2002. pp. 235-258.

⁵² MANNERS, 2002. p. 241.

The last one is the costs incurred by a candidate member state in aligning with the EU acquis, which will also be one of the main focuses of the empirical research, where the alignment can produce better welfare, growth, and material benefits, but at the tradeoff power loss to the political elites or powerful private companies. These costs cannot be influenced directly by the EU, however as scholars argue, if by introducing the conditionality, a wider acceptance of the so-called societal veto players, i.e., the civil society, opposition parties, constituents, would put additional pressure on the government to adopt them, hence the more popular the conditionality is, the more relevance it gains amongst the wider audience.

On the other hand, the constructivist approach uses a different model based on the social learning model which is in line with the logic of appropriateness that can be defined as a perspective that sees human action driven by rules of appropriate or exemplary behavior, organized into institutions. Same can apply to the Europeanization model, where the EU identifies and presumes the values and norms of a candidate or potential candidate member state and bargains into taking them into account in the context of collective identity, norms, values and set of rules. As stipulated by March and Olsen, a self-ruling set of mechanism is an appropriate value and acceptable norm of a societal arrangement. Same as with the EU accession, a government may or may not according to the logic of appropriateness embrace the collective values reaching a compromise in the adaptation of the rules and norms if the Unions legislation, values, norms and policies are persuaded by appropriateness. Harmsen argues that the logic of appropriateness, in the first instance, provides a means for understanding the manner in which national institutional structures mediate the process of integration. Divergent national patterns of adaptation reflect differing politico-administrative structures and cultures.⁵³ In this case as Graziano and Vink point out the Europeanization should not be confused with convergence. Convergence can be a consequence of European integration, but it must not be used synonymously with Europeanization because there is a difference between a process and its consequences of which the social learning model through the positive normative reasoning implies that domestic factors inhibit persuasion, which in the case of Kosovo should be the case, considering the historical, cultural and administrative context.⁵⁴

⁵³ HARMSSEN, 2000. pp. 61-62.

⁵⁴ GRAZIANO, 2013. pp. 31-54.

II.1. Research aims and expected outcome

This research aims to provide a high-quality research on one of the most often mentioned and to a lesser extent academically researched EU's role in the transformation of the Rule of Law sector in Kosovo. Main objectives of the research pertain to the empirical analysis vested in the description and analysis of the EU's transformative power vis-à-vis Kosovo and the domestic changes it incurs. Kosovo's transition from the limited autonomy in the 1990's where this cluster was entirely centralized by the Federal government of Yugoslavia, to the period after the war, where the executive competences laid on the hands of the United Nations Interim Administration in Kosovo headed by the Special Representative of the Secretary General all the way to the independence period subsequent to the final secession in February 2008. The research, on most of its parts will be concentrated on the consequences of each administration, however the focus will be put on the role of the European Union in the reforms of the Rule of Law pillars, being legislative or executive, through the Europeanization theory, and the critical study of European Union.

The research also aims to provide a high qualitative research and conclusion on the inability of both EU and the Kosovo state actors to implement the imposed reforms as such on the ground, taking into consideration the historical and cultural context of the matter with the aim to thoroughly elaborate and conclude on the lessons to be learned on how the EU should approach the countries with a complex and unique historical and cultural discourse, which will serve as a baseline study of the challenges on the Europeanization theory for the Western Balkans region for the future scholars who will pursue the path of integration, in particular of Kosovo, to the European Union.

Along with these aims, the research will bring an extensive comparative chapter on the Progress Reports on Kosovo and the role of the EU in the country with regards to the reform of the rule of law sector. In order to have a more profound understanding on the role of the EU, will analyze qualitatively the Progress Reports issued by the European Commission for each year after the independence as well as the institutional setup of the rule of law – in particular the anti-corruption segment, the public administration as the main driving pillar of the reform as well as most importantly the efficiency and the impact that EULEX had in Kosovo through its very costly Rule of Law mission.

It will provide lessons on background information, methods of action, analysis and recommendations as well as cultural and historical context of application of the Europeanization theory.

Main objectives of this research are the empirical prerogatives, through description, explanation as well as to an extent observation of the EU's impact in the Kosovo's rule of law sector aiming at providing the answer of the transformative power capabilities of the Union to result in these domestic changes through different mechanisms at hand.

II. 2. Contribution to the scientific field

The literature on Europeanization, especially for the Western Balkans, and more specifically on Kosovo is very shallow if not inexistent. Scholars have devoted little attention to Kosovo's path to EU integration in a scientific fashion by researching the effectiveness of the rule of law reform in conjunction with the theory of Europeanization.

This research will provide the fulfillment of the existing gaps in the scientific area when it comes to the study of Europeanization of Kosovo in particular the rule of law sector.

Through the analytical lens, it shall provide in depth research on the efficiency of the EU role of reforming the rule of law sector, surface the correlation with the political aspects and the political cultural norms.

The observatory and analytical methodology used to conduct this research is focused primarily in the following areas:

- The engagement of the European Union in Kosovo and its success
- Country's rule of law, with particular focus to the corruption area, institutional setup and the role of the EU in its development and functioning
- The subjectivity of the measurement of accomplishment of the Copenhagen criteria by the EU and the incentives provided to Kosovo for transposition of EU norms and values into the domestic policy

So far, the research available has been focused primarily on the failure of the domestic political actors to adopt these norms and provide tangible results, however the research will shed light on the other side of the coin, arguing that the Europeanization process as such in theory and practice is not conclusive to one side – the recipient one in this case Kosovo – but instead it's a converging process where rigorous and rigid application of the technical

criteria will only diminish the process of Europeanization and further add to the skepticism and political ambiguity.

II.3. Hypothesis and Research Questions

There are two main causes of the failure to achieve the expectations of the final integration of Kosovo in the EU – as this responsibility is shared both between the EU and the Kosovo decision-makers.

The EU has failed to have a unified position vis-à-vis Kosovo's status, and this is the main obstacle. The second being the creative solutions and the vaguely planned mission of the Rule of Law which has been followed by numerous criticism and fallacies since it was established in 2008. On the other hand, the Kosovo authorities have never engaged in an in-depth analysis of the EU technical requirements on certain processes. Their engagement has been only declarative, without any follow-up on the ground, which has been repeatedly noted in the European Commission progress reports.

The thesis will specifically deal with the presence of the European Union in Kosovo, and its main prerogative to Europeanize the rule of law, with that approximate Kosovo towards the EU integration. It will also analyze the impact that the EU Rule of Law Mission (EULEX) had in the modernization and further Europeanization of the rule of law sector, and how it used its transformative powers with the sticks and carrots policy vis-à-vis Kosovo, powers which have been undermined by the political elite, clientelist oriented approach towards governance, partisan judiciary, and ineffective administration.

I will also argue on the causes and consequences from the EU sponsored dialogue between Serbia and Kosovo on the normalization of the relations, all these to lead towards the main question, whether the EU approach to the rule of law in Kosovo, has been correctly tailored and what will the future hindrances be for Kosovo in the international fora.

I will base my research on Radaelli's, Schimmelfenning's, Featherstones, Olsen's et.al. theory of Europeanization, concluding that, specifically in the Rule of Law sector, the EU's approach should not be rigid towards Kosovo but needs to seriously consider also the cultural and historical context, thus arguing that in these cases, it is not the candidate country that needs to adopt to specific provisions imposed by the EU, but in order to achieve success in the broader European universal value, the Union should adopt to the situation on the ground.

In that order my main research question is that “to what extent the power of the European Union stretches in inducing reform in Kosovo and what Europeanization means for the democratic policies and the democratic legitimacy of decision-making at a national level”? The research will include also explanations on how the goodness of fit and misfit⁵⁵ between the policies of the EU is, on the one hand, and that of Kosovo on the other, and how the Europeanization process of the rule of law in Kosovo is affected by the fit or the misfit of those policies

In line with the research questions, more sub-questions have been answered in order to provide an explanation of the theoretical but also practical impediments of the EU to induce reforms in Kosovo.

- What was the role of the EU amidst other international players in Kosovo’s pre-accession process?
- Were the incentives given to Kosovo sufficient for the political elite to pursue them vigorously? Was the approach right to engage in a facilitation process between Kosovo and Serbia in parallel with the integration process?
- Did Kosovo have sufficient institutional and social capacities to download the EU’s norms in the forms that were required, or were they too ambitious? Did this impede also the implementation of such norms and standards?

In terms of hypothesis, in the course of the research I will prove:

Hypothesis 1. Europeanization definition as theoretized by Radaelli et.al. represents a misfit to post-conflict countries with a more complex set of legal and political background and legacy. EU should use the constructivist approach in trying to Europeanize the perspective member states, rather than the rationalist one. It should adapt to the circumstances in the process, disregarding the rigidity of the imposition of legal and political norms.

Hypothesis 2. Kosovo has a modern and robust institutional framework in the Rule of Law sector, however, the results are missing which is reflected in the European Progress Report for Kosovo. Since for more than a decade the European Union has had the exclusive right in the externally driven conditionality process, nonetheless, has proven to be passive and not credible in offering a clear membership perspective.

⁵⁵ COWLES, CAPORASO and RISSE, 2001. pp. 217-223.

Hypothesis 3. Despite the fact that declaratively the EU has kept the enlargement at the top of their agenda, the approach entailing both Kosovo and Serbia have been more dismissive rather than accepting, primarily because of the fact that the reforms required have been followed formally only, while the rewards and punishments policy has been unequally distributed.

III. Methodology

III.1. Specific research questions and approach

This chapter of the dissertation aims to describe the empirical research approaches used to address the proposed main research questions raised in the previous section.

A mixed research method was applied to understand the complexity of the questions to its scrutiny by utilizing the literature review approach as a secondary research and qualitative research as primary research.

The thesis uses a comprehensive approach to the research based on Radaelli's definition of Europeanization as well as the External Incentives Model of integration introduced by Sedelmeier and Schimmelfenning. The application of a rigorous literature review has further defined the Europeanization concept as applied in the candidate and potential candidate member states but also the impact the process has to the democratic legitimacy of decision-making at a national level. Moreover, this research approach was used to further explore on changes that the European Union imposes on the national politics of candidate countries and the impact that these changes have in respective countries.

While the narrative literature review serves as an end in itself to saturate the above-mentioned research questions, another purpose of this approach was to inform a primary research with the aim of understanding the research sub-questions related to the Kosovo case study; respectively how appropriate the EU policies are applied in Kosovo and how is the Europeanization process of the rule of law in Kosovo affected by the suitability of these policies.

More precisely, this part of a study design derives from the existing theory and literature review that remains incomplete in terms of country-specific context or would further benefit from further completion.

The empirical research will shed light on one of the most emphasized criteria for EU accession, and that is the rule of law with several layers of focus, starting from the fight against corruption, reforming the public administration, respect for minority rights, democratization, all of which have been clearly stipulated in the Stabilization and Association Agreement (2015), but also in other monitoring mechanisms used by EU to scrutinize the potential candidate member states on their path to EU.

Kosovo's rule of law sector has been one of the most crowded sectors when it comes to international interference, mainly due to its sensitive nature but also because of Kosovo's inability to carry out several crucial administrative functions in order to advance on the agenda set forth in the EU's criteria.

The growing relevance of the rule of law criteria, as it has been seen with Croatia's membership, coupled with the political criteria, has urged the need for Kosovo to be researched thoroughly in order to have a clear picture of the institutional setup which has been mainly sponsored by the EU through its mission but also funds such as IPA. During the empirical research, the analysis is conducted in a normative sense providing also a forward-looking aspect which will be beneficial for the processes that lie ahead.

Since the engagement of the EU has been constant but in different capacities, throughout Kosovo's history, the research will focus on the main points, declaration of independence, the conditionality on the constitutional drafting process, the buildup of the rule of law architecture in Kosovo as well as the reforms in the public administration.

III.2. Basic approach of data collection

1. Data collection. Two main methods of equal importance for this study were used for data collection in order to address the research question and sub-questions on the powers of the EU conditionality vis-à-vis Kosovo, its gaps and challenges, and address the raised hypothesis: a holistic approach by using a narrative literature review as a method and in-depth interviews as a qualitative research method to further gain insight and feed the research questions. The thesis uses a single in-depth study with a qualitative method approach based on the specificity of Kosovo's institutional setup as well as its political context in the non-consolidated statehood specter which focuses on the EU conditionality and the ability of Kosovo to adopt the imposed conditions in a two-fold process. In order to be able to answer the research question, however,

multiple datasets from a robust desk-review and semi-structured interviews will be used in order to collect all facets of the dilemma, including the institutional setup with a strong emphasis on the anti-corruption agenda and the Public Administration, as well as the EU integration process.

2. *Rigorous narrative literature review* subdivided into the exploration, interpretation and communication process which was applied to address the key research questions which in this case served as themes. Philosophical assumptions and stances were drawn from a large pool of published information and were organized and stored for further review. Selected information explored from the search focused on books, articles in journals, empirical and non-empirical research, research papers and reports, policy documents as well as public and private records. These were further expanded, and the sources were validated before the interpretation phase. Prior to communicating the information, the data were analyzed and synthesized into cumulative arguments leading to specific conclusions and potential discussions.

The main purpose of the literature review in this research was to identify the key issues and the gaps in this specific field of the research by contextualizing, evaluating and critiquing the sources and issues. More specifically, this method plays a significant advantage to the definition of the Europeanization concept and in understanding the gaps and insufficient information not only in research but also in published results and particularly on the impact the EU policies had in other developing countries by answering the ‘whys’ and ‘hows’ and then extending further into this research field. Last but not least, the literature reviews in this case justifies the need for the primary research to be conducted, and the significance of the chosen method.

3. *Qualitative research* that took place in a form of in-depth interviews⁵⁶ with key informant people in the rule of law sector in Kosovo played, arguably, an irreplaceable role in gaining further insight of the impact of the EU policies have in Kosovo and the overall Europeanization process of the rule of law in Kosovo, primarily dictated by the findings of the literature review.

Even though the findings of the literature review were used to define the broader themes of the instrument designed for the interview, a top-down approach was applied in the interviewing

⁵⁶ Full list of interviews available at the endnotes of the dissertation.

process; topics were introduced as a general idea and details were added in the process. A specific instrument consisting of broad research questions aiming to gain specific insight in line with the main research questions was designed to guide the flow of the interview. This allowed the disclosure and often led to new topics and ideas that potentially did not emerge in the past.

The selection of the key informants involved prior identification of the people enrolled in the judiciary system as well as experts on the rule of law in Kosovo, both national and international.

For practical issues, the interviews were recorded with participants' consent while the collected information from the interviews was then transcribed and coded to be further analyzed and reported accordingly.

4. Content analysis was applied for analyzing the collected information from the key informant interviews firstly as the most reliable method for this particular case as the process focuses on language, features and meaning in context⁵⁷, it involves a systematic process, including coding in the analysis, ultimately making the data verifiable and consequently more reliable. Secondly, it allows the researcher to test the hypothesis both during the interviewing and in the analysis process. Considering that this method involves reading and judgment⁵⁸, collected information was firstly categorized into pre-defined themes through labels and codes then to be selected and interpreted by trying to identify their meaning and potential implications with the aim of presenting the answers to the specific research questions. Hence, *constant comparison* of the newly acquired data in the in-depth interviews with the pre-existing data was used in order to feed and fit the newly emerging themes with the previously drawn ones.

III.3. Potential Limitations and Contribution of Research

Considering the unique historical and cultural discourse of Kosovo, the findings of the research may country-specific and not necessarily applicable or able to generalize to other countries' development.

Both in literature review and qualitative research, the research bias has always been a subject of

⁵⁷ COHEN, MANION and MORRISON, 2011. p. 555.

⁵⁸ COHEN, MANION and MORRISON, 2011. p. 238.

discussion and reliability. The researcher's document selection process, interviewing and analysis in the qualitative research remains unavoidable. On another note, this research model and the findings can serve scholars as a base model for the analysis of a similar country-specific issue in the field of EU and related topics in other countries' development processes.

IV. The (un)constitutional Constitution of Kosovo: The path toward a modern Constitution?

The Constitution of one country is considered as the highest and most sacred legal act adopted by the people elected representatives. It entails the history and the will of the people, while it regulates all pores of the society.

Kosovo, throughout its history, has been a subject of many Constitutional peculiarities and changes, first as an autonomous province within the auspice of the Federative Republic of Yugoslavia, then within the Serbian Republic, the constitutional declaration of Kaçanik⁵⁹, the Constitutional Framework of the United Mission in Kosovo (UNMIK), and the modern Constitution of June 2008, where the fundamentals for the today's state of Kosovo are laid down.

All these multilayered processes to be examined in the thesis more thoroughly, have endeavored to the persistent requirement of the majority Albanian population for self-determination and independence.

Nonetheless, the path to independence as well as to proper constitutional order has been long and violent, taking into consideration the time from the London conference after World War I, where Kosovo was annexed from its natural Albanian state to the territory of Yugoslavia all the way to the 1999 conflict, which has ultimately ended with a 71 day of NATO-led bombing on military and other strategic targets of Serbia in order to end another humanitarian catastrophe in the Balkans.

The liberation of Kosovo was succeeded with the Resolution 1244 of the United Nation Security Council (UNSC 1244), which did stipulate an installation of an international civilian UN mission that will conduct tasks such as, organization and supervision of the provisional self-government institutions as well as the transition of powers to those institutions while

⁵⁹ The Constitution of the Republic of Kosovo. Adopted on 7 September 1990, in Kaçanik.

mediating a political process which is aimed at determining a final status solution for Kosovo, taking into consideration the Rambouillet accords.⁶⁰

Intervening into post-conflict countries, since the end of the Cold War, has been an ambitious project for the international community which has strived to fundamentally reshape the societal landscape by building new state institutions, helping on the economic development and revival, as well as the support for other pillars of the state building architecture. In Kosovo, this started with the adoption of the Constitutional Framework of the Republic of Kosovo, a quasi-constitution, which foresaw developing meaningful self-government pending a final settlement, and establishing provisional institutions of self-government in the legislative, executive and judicial fields through the participation of the people of Kosovo in free and fair elections.⁶¹

Nevertheless, the power vested in the Special Representative of the Secretary-General (SRSG), serving as the Head of UNMIK, was limitless. The exercise of the responsibilities of the Provisional Institutions of Self-Government under the Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244(1999) or this Constitutional Framework.⁶²

While the UNSCR 1244 and the Rambouillet Agreement did reaffirm the territorial integrity of the Yugoslav Federation over Kosovo, the Constitutional Framework made no explicit reference to it nowhere in the text. However, the ambiguity did stand in the mere fact that the Framework did not also explicitly prevent or allow the Declaration of Independence – being that the ultimate powers Constitutional Framework for Provisional Self-Government in Kosovo of decision-making lied in the hands of the SRSG, who had the power to annul any decision taken by the Parliament of Kosovo, moreover, to even dissolve the Assembly single handedly⁶³.

This inconsistency in the power sharing roles, brought the country to the widespread violence of March 2004, where 19 civilians were killed, and hundreds were wounded. The violence

⁶⁰ UNSC Resolution 1244, p. 2.

⁶¹ Constitutional Framework for Provisional Self-Government in Kosovo – signed on March 15, 2001.

⁶² Constitutional Framework for Provisional Self-Government in Kosovo – signed on March 15, 2001, Chapter 12: Authority of the SRSG.

⁶³ Constitutional Framework for Provisional Self-Government in Kosovo – signed on March 15, 2001. Chapter 8: Powers and Responsibilities reserved to the SRSG.

erupted in the split city of Mitrovica, soon to spread all around Kosovo, aimed against the Serbian minority, as well as isolated cases of Roma minority inhabitants.⁶⁴ The riots were triggered after reports were broadcasted of the drowning of three Albanian children in the river Iber in the northern part of Mitrovica who were allegedly chased by local Serbs with dogs.

This marked the first failure of the international community, i.e., UNMIK to protect the human rights and the rights of the minorities, something that was envisaged in all the documents pertaining to their mandate and operations. In the aftermath of the riots, to better illustrate the impatience of the Albanian majority population with the status-quo imposed by UNMIK, was a statement from Democratic Party of Kosovo (PDK) Member of Parliament, Arsim Bajrami: “The barbaric act of the killing of the children . . . has provoked a legitimate revolt by the Albanian population. This should be a lesson for the international community.”⁶⁵

So, soon after the violence, and returning to normal, the UN unable to maintain the status quo, hailed at a start of negotiations for the resolution of the final status of Kosovo, which years after struggling to find common ground between Kosovar and Serbian representatives, but always bearing in mind the Resolution 1244 in place and the obstructions from China and Russia in the Security Council, did finalize with the Marti Ahtisaari’s Comprehensive Status Proposal for Kosovo,⁶⁶ where an enhanced provision for the protection of the Serbian minority was induced, in exchange for a recognition of the “supervised independence of Kosovo” by the UNSC.

In a statement, issued on the same day of 2nd of February 2007, the White House praised the report: “The United States thanks UN Special Envoy Martti Ahtisaari for his efforts to produce a Comprehensive Proposal for a Kosovo Status Settlement. This Settlement Proposal, the product of over a year of negotiations, is fair and balanced. It is a blueprint for a stable, prosperous, and multi-ethnic Kosovo. The Settlement Proposal's broad provisions to protect the rights of all citizens will help advance Kosovo's democratic development.”⁶⁷

⁶⁴ Human Rights Watch. Failure to Protect: Anti-Minority Violence in Kosovo. March 2004. p. 6.

⁶⁵ Report on the Role of the Media in the March 2004 events in Kosovo by the OSCE Representative on Freedom of the Media. 22 April 2004. pp. 12-13.

⁶⁶ The Comprehensive Status Proposal of President Ahtisaari presented to the Kosovo leaders on February 2, and to the UN General Secretary on March 26 in 2007. Report on the Role of the Media in the March 2004 events in Kosovo.

⁶⁷ Press Statement: Sean McCormack – Spokesman Washington, DC: February 2, 2007. p.1 Available at: <https://2001-2009.state.gov/r/pa/prs/ps/2007/february/79774.htm> [Last accessed: 21.03.2020]

I will discuss in the subsequent chapters, briefly the transfer of responsibilities from the UN to the EU, the process of sponsored Constitution of Kosovo, which will have a central emphasis, especially discussing the provisions that were not subject of negotiation during the drafting of the Constitution, conditions that had to be entailed in order to have a widespread support of the Declaration of Independence. However, the questions to be answered in the thesis are, did these conditions of over protecting the Serbian minority created caveats for future problems in the legislative inoperability. How do other Balkan states treat minority groups in their constitutions, being EU or non-EU members? And ultimately, what the super-double-majority principle means for Kosovo's parliament now and in the future?

IV.1. Historic development of constitutional changes across the years

The Republic of Kosovo throughout the years has been a subject of a range of legislative and constitutional changes as it was envisaged by the oppressing regimes, such as the Turks and Yugoslavs respectfully the Serbs.

Since World War II, the constitutional position of Kosovo has gone through 5 stages: the period from 1946-1953; the period from 1953-1963; the period from 1963-1968; the period from 1968-1971 and the latest period from 1971-1974.⁶⁸ After the wide autonomy granted with the Constitution of 1974 under the Josip Broz Tito ruling of Yugoslavia, Kosovo has been the right to govern itself just as the six Republics of the Federation. However, the death of Tito and the fall of Communism in Yugoslavia did debunk the radical nationalistic forces in Serbia. It was only then when Slobodan Milosevic as the president of Yugoslavia, did impose the constitutional amendments of 1989, which stripped Kosovo of any executive powers, and put the province under military and police control of Serbia.

In 1987, the Yugoslav president Ivan Stambolic was asked to travel to Kosovo and talk to the Serbian and Montenegrin nationalists who were planning a large-scale protest to be sent to Belgrade in order to demand more rights for them in Kosovo. Stambolic reluctant to enter a hostile bear-pit (he had already made several speeches criticizing Serbian nationalism), sent his deputy, Slobodan Milosevic instead.⁶⁹

⁶⁸ BAJRAMI, 1998. p. 21.

⁶⁹ MALCOLM, 1999. p. 341.

In the rally organized, there was a clash between the Serbian nationalists gathered in front of the House of Culture in Fushe Kosove (Kosovo Polje) and the Police, provoked and carefully organized by the former. Milosevic rushing out of the meeting, spoke the words on the camera that will define his entire subsequent political career: “No one should dare to beat you”.⁷⁰ This transformed him from a little-known Communist party apparatchik into a demagogic and vicious political leader.

Anticipating the rising of the nationalist sentiment in Serbia, and the takeover of the Communist party by Milosevic, would mean also the annulment of the privileges that the Kosovo province at that time did enjoy with the Constitution of 1974. This put the miners of the biggest coal mine in Kosovo, Trepca, into a hunger strike, on February 1989, demanding for Kosovo to be left within the margins of its independence as prescribed in the 1974 Constitution.

However, the delegates of the 23 March 1989, Provincial Assembly, did vote for the constitutional changes, and placed Kosovo as a province within the Republic of Serbia, unlike the 1974 constitution that foresaw Kosovo as an autonomous territory within the Yugoslav Federation.

IV.1.1. Constitution of 1974

The Constitution of 1974 was structured as usual into two parts: the preamble and the normative part. The preamble of that constitution looks like the preamble of the countries of the communist block and it, therefore, conveys the communist spirit, referring to workers and villagers, socialist and social relations, relations based on self-governance and national equalities, furthermore, the Constitution of the Province further strengthened the constitutional system, on the unique socialist self-governance basis, because these were some of the objectives for the adoption of this Constitution.⁷¹

The Constitution of the Socialist Autonomous Province of Kosovo of 1974 consisted of fundamental principles, general provisions, state regulation, and bodies of the Socialist Autonomous Province of Kosovo. The fourth part comprised of the amendment to the

⁷⁰ MALCOLM, 1999. p. 343.

⁷¹ KRYEZIU, 2016. p. 80.

Constitution of the Socialist Autonomous Province of Kosovo and the fifth, respectively the fifth part consisted of the transitional provisions, which were concluded by Article 402.

The Constitution of 1974 was representing the independence of Kosovo on a highest ever scale, within its hybrid position, because except the fact that Kosovo was a part of Yugoslavia, was also within a federal unit, but not a constituent part of it,⁷² which meant that according to the document Kosovo was not an integral part of Serbia and under the sovereignty of the latter, being the mere reason of Serbia's opposition of these changes.

The provisions of this constitution did allow Kosovo a wide range of sovereign and self-determining prerogatives, such as conducting its own bilateral agreements with other Republics or even states outside of the Federation, had a robust mechanism of protection of the human rights and freedoms, taking all the attributes for a democratic and modern Constitution. However, the Constitution did not recognize the Albanian population that consisted of 90% of the territory as an equal constitutive nation of the Yugoslav Federation, nor the status of Kosovo as a republic, which led to the expression of dissatisfaction by the native Albanian population especially the students.

IV.1.2. Constitutional amendments of 1989

The rise in power of Milosevic, and the nationalist sentiment in Serbia, triggered by a carefully planned course of events taking place in Kosovo, orchestrated by the nationalist leaders of both Belgrade and the, at that time, province of Kosovo, helped Milosevic to raise into power, taking control of the Communist League of Yugoslavia and subsequently taking over the Presidency from Ivan Stambolic.

Milosevic did start consolidating his powers in Serbia and Montenegro, the latter saw as Serbia's natural ally and satellite, everywhere proclaiming his policy in the defense of the Serbs sacred rights in Kosovo. At that moment, everyone knew that Kosovo is next on his hit list.

By the autumn of 1988, he removed two leading Albanians in the provincial Party machinery, Azem Vllasi and Kaqusha Jashari in order to replace them with more compliant figures who

⁷² The Constitution of the Autonomous Province of Kosovo 1974, Official Gazette number 4 of the Autonomous Province of Kosovo. 27 February 1974.

would cooperate in the dismantling of Kosovo's autonomy.⁷³ His protégé in Kosovo was the highly infamous police chief, Rrahman Morina installed as the new party president.

On March 23, 1989, the provincial assembly, a body that was established under the 1974 Constitution, met under siege of armored cars and tanks, where the changes of the Constitution were voted, restricting severely Kosovo's powers, and enabling Serbia to take over the control of the Police, Courts and Civil Defense, matters of social and educational policy, the power to issue administrative instructions as well as ultimately use of the language. The Constitution adopted in Belgrade in 1990 placed Kosovo under its supremacy, taking away every form of autonomous regulation, and at the same time, reaffirming the old denomination for Kosovo used only by the nationalist Serbian forces, Kosovo and Metohija.⁷⁴

IV.1.3. The Constitution of Kaçanik 1990

The protests and the vigorous objection of the Constitutional amendments of 1989 led by the students and the miners in Kosovo, came to an epilogue of hundreds of deaths and thousand arrests, as the situation was becoming tenser and tenser.

In order to respond to the oppression, 114 out of 123 Kosovo delegates in the Kosovo Provincial Assembly, gathered on 2 July 1990 in front of the locked –up assembly building and passed a resolution, albeit with no legal binding force, but with a strong political signal that Kosovo is “an equal and independent entity within the framework of the Yugoslav federation”.⁷⁵

Subsequently, in September 1990, the delegates met in Kaçanik, where they proclaimed the Constitution for the Republic of Kosovo, representing one of the most important milestones in the history of Kosovo, its institutional organization and a step towards the independence of Kosovo.

The changes in the constitutional order of Kosovo have brought the province to a fully scaled war against the Serbian regime. The changes made to the 1974 autonomy, albeit vesting some

⁷³ MALCOLM, 1999. p. 343.

⁷⁴ The Constitution of Serbia adopted in 1990. Available at: http://digitalna.nb.rs/wb/NBS/Tematske_kolekcije/Srpski_ustavi/RA-ustav-1990?search_query=ustav%201990#page/26/mode/1up [Last accessed: 16.21.2020]

⁷⁵ The Constitutional Declaration of 1990. Document accessed from the Archives of Kosovo.

powers into the province legally, politically were not viable and thus unacceptable for the Albanian majority population which was considered as a minority by the Milosevic regime. The power of decision-making lied in the hands of the Serbian elected representatives and those Albanians loyal to the regime, with a disregard for basic human rights, rights for employment, education and social welfare. All that subsequently changed in 1999, when the UN installed its administration, adopted the Constitutional Framework, and paved the way to the Declaration of Independence of 2008, when the Constitution of the Republic of Kosovo was adopted. However, the NATO intervention ended the Serbian repression in Kosovo but never did heal the gap over the final status.

IV.2. The Ahtisaari Constitution – the not well thought provision of minority protection

The discussions about the legal regulative architecture in Kosovo have been echoed since the installation of the UNMIK in its territory.

Inside the international circles, the possibility for a new constitution of Kosovo started in the year 2000, only one year after UNMIK assumed control over the territory.⁷⁶

However, having a proper constitution in place in such a short period after the resolution 1244 enter into power, was an unrealistic prospect, mainly facing a vigorous objection by Russia in the UNSC, something which also the Quint states (contact group minus Russia) have expressed concern over.

In light of establishing a proper power transitional mechanism, acceptable to all sides, the UN came up with the Constitutional Framework which will allow the establishment of the institutions of self-governance in Kosovo and transfer of powers into them however making no reference to the final status of Kosovo.

At that time, the main driving force for the processes ahead, taking into consideration the violent ethnic conflicts in the territory of former Yugoslavia, was the protection of minorities, especially the Serbian minority in Kosovo, seen by the international community as the most vulnerable ethnic group. Thus, a large set of mechanisms were put in place for their protection. However, the international community was overwhelmed by the challenges posed by a

⁷⁶ WELLER, 2008. p. 1227.

combination of post-conflict reconstruction and post-Communist transition. The outbreak of violence in March 2004, rather than the substantial headway made in preparing the province for self-rule, precipitated steps towards finalizing the status of Kosovo. As the Albanian majority turned on the minorities, 19 people were killed and thousands displaced, while private property and cultural heritage sites, including a number of Orthodox churches and shrines, were destroyed.⁷⁷

This led to the start of negotiations about the final status, chaired by the President Marti Ahtisaari, in Vienna in 2006. The Albanians entered the process insisting on independence, the Serbs on unspecified substantial autonomy for Kosovo. Due to such diametrically opposed views, the talks focused on non-status issues: decentralization, cultural heritage, community rights and economic matters,⁷⁸ nonetheless, backed up by the US and the majority of the EU member states, Kosovo did declare its independence in February 2008. However, a range of processes, including the drafting of a new Constitution had to be taken into account for the days ahead of the Declaration of Independence, as many of these provisions were stipulated in the Ahtisaari plan who gave Kosovo supervised independence.

The very first word in the Ahtisaari plan, was Kosovo shall be a multi-ethnic society,⁷⁹ followed by “The exercise of public authority in Kosovo shall be based upon the equality of all citizens and respect for the highest level of internationally recognized human rights and fundamental freedoms, as well as the promotion and protection of the rights and contributions of all its Communities and their members.

Article 1(1.3) further states that “Kosovo shall adopt a Constitution. The Constitution of Kosovo shall prescribe and guarantee the legal and institutional mechanisms necessary to ensure that Kosovo is governed by the highest democratic standards, and to promote the peaceful and prosperous existence of all its inhabitants. The Constitution shall include, but not be limited to, the principles and provisions contained in Annex I of the Settlement”.⁸⁰

⁷⁷ KOSTOVICOVA, 2008. pp. 631-647.

⁷⁸ KOSTOVICOVA, 2008. p. 632.

⁷⁹ The Comprehensive Status Proposal of President Ahtisaari (2007), Article 2(4).

⁸⁰ The Comprehensive Status Proposal of President Ahtisaari (2007), Article 1(3).

It was clear for Kosovo that the protection of minorities (or as all the legal documents refer by the term of communities) will be of imperative importance for the international actors when deciding whether they should allow and/or recognize the declaration of independence.

This meant that the political class in Kosovo need to allow a lot more leverages for the particular protection of the Serbian minority, so that the appetites of the international community would be fulfilled and in addition it will give them an additional argument vis-à-vis Serbia, Russia and China in order to obtain an endorsement of the UNSC for the Ahtisaari plan.

Nonetheless, the plan was never endorsed by the UNSC facing veto from China and Russia, but Kosovo backed up by the Western powers, especially the United States, did declare independence on February 17, 2008.

The drafting of the Constitution as it was envisaged in the Ahtisaari plan, was to be done in 120 days from the day the Plan was presented and adopted. This required a robust international role in advising as well as pressuring the Government elected working group members from the Albanian majority, to concur to the requests for adoption of special provisions that will incentivize the Serbian minority to participate in the institutional life in Kosovo, and so acknowledge the new reality on the ground that Kosovo is now an independent country fully detached from Serbia.

There were attempts to consult widely the population of Kosovo, there is an overwhelming feeling about lack of local ownership over the process. The bottom line, the process of drafting the constitution was conducted by a group of only 21 representatives supported by a team of advisors from the international enforcing agencies in Kosovo and the robust management of the American mission in Kosovo.⁸¹

IV.2.1. The drafting and the adoption of the 2008 Constitution

Kosovo is observed by many as an international project, led by the United States, and taken over in time by the European Union. Its clear European perspective was echoed since the consolidation of the institutions of self-government, established by the UNMIK, and in 2008, this culminated with the Ahtisaari plan, that gave Kosovo independence, albeit supervised one.

⁸¹ WELLER, 2008. p. 1241.

The plan provided broad guarantees for the protection of the Serbian minority in a sovereign Kosovo, including a deep decentralization process that favored the Serbian minority.⁸²

Expecting endorsement by the Security Council, which did not happen, the Ahtisaari plan determined the norms and prerogatives for the Kosovo statehood, even though supervised for a limited period of time. Annex I of the plan was also imposing the Kosovar legislation on the obligations deriving from the key instruments of the human rights that shall be directly applied in Kosovo.

The Plan stipulated that the Constitution shall provide that the rights and freedoms set forth in the following international instruments and agreements shall be directly applicable in Kosovo and have priority over all other law; no amendments to the Constitution shall diminish these rights: Universal Declaration of Human Rights (1948) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (1953); International Covenant on Civil and Political Rights and its Protocols (1976); Council of Europe's Framework Convention for the Protection of National Minorities (1998) Convention on the Elimination of All Forms of Racial Discrimination (1969); Convention on the Elimination of all Forms of Discrimination Against Women (1981); Convention on the Rights of the Child (1990); Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1987).⁸³

Further to the Plan, as specified the President of Kosovo appointed a multi-ethnic Constitutional Commission, responsible for composing and proposing a draft of the Kosovar Constitution.⁸⁴

The process of drafting of the Constitution was conducted in secrecy, sponsored and led by the American mission in Kosovo. And the bargain unveiled later in the public discussions was clear – Kosovar leaders had to adopt unequivocally all the provisions of the Ahtisaari plan into the text of the Constitution, including those of the protection of minorities, while, a specific article in the Constitution did stipulate that in case of any inconsistencies in interpretation

⁸² KOSTOVICOVA, 2008. p. 631. and p. 647.

⁸³ The Comprehensive Status Proposal of President Ahtisaari (2007), Article 2 (1).

⁸⁴ Decree of the President of Kosovo on the appointment of the Kosovar Constitutional Commission, February 19, 2008.

between the Kosovo legal documents including the Constitution and the Ahtisaari plan, the latter will have supremacy over them.

In this sense, the principle of, we will call it, the super-double majority, was introduced where the Constitution of Kosovo sets forth that the Constitution's amendment "shall require for its adoption the approval of two-thirds (2/3) of all deputies of the Assembly, including two-thirds (2/3) of all deputies of the Assembly holding reserved or guaranteed seats for representatives of communities that are not in the majority in the Republic of Kosovo."⁸⁵ This meant that no amendment of the Constitution shall be possible without the vote of the Serbian representatives in the Assembly.

Therefore, the ethnic communities' position in the constitutional amendment process is equal to that of the majority. Given this equality, the ethnic minorities' members in the Assembly can veto a constitutional amendment, thereby totally blocking it. This provision of the Constitution has ensured that the constitutional guarantees for ethnic minorities cannot be altered unless the ethnic minorities themselves agree to it⁸⁶, however, in practice has been proved to be a blocking and destructive mechanism rather than altering and conciliating one.

Further, The Constitution makes a distinction between usual laws and vital interest laws. In that context, the Constitution determines that a law of vital interest requires a double majority in the Assembly for adoption. Laws of vital interest can be adopted, amended, or abrogated only if the majority of the Assembly, and majority of those holding guaranteed seats (i.e., reserved seats) in the Assembly, vote in favor of it. This double majority for laws of vital interest, as opposed to a common majority, makes the participation of ethnic minorities crucial in the adoption process of vital laws. If the vital interest law fails to garner a double majority, this essentially constitutes an ethnic minority veto of any law that might constrain their interests.⁸⁷

IV. 2.2. International and Kosovo's legal framework for minority's protection

European Union, has a long withstanding tradition of promoting unity in diversity, thus emphasizing the principles of treatment with dignity, non-discrimination and other rights that the EU safeguards.

⁸⁵ Constitution of the Republic of Kosovo (2008), Article 144(2).

⁸⁶ DOLI and KORENICA, 2010. p. 55.

⁸⁷ DOLI and KORENICA, 2010. p. 71.

What is the position of the European Union?

The EU approaches the protection of national minorities carefully. There are no specific provisions for the protection of minorities in the Treaties, only the principle of protection of human rights and fundamental freedoms, the requirement to respect cultural diversity and the prohibition of discrimination indirectly protect the interests of minorities.

With the entry into the power of the Treaty of Lisbon, the term “minority” for the first time is included, with a specific reference as it reads, “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.⁸⁸

However, researchers do imply the lack of scrutiny and challenges of robust monitoring of these rights. Taking an example of the Hungarian minority living in Slovakia, the Commission in its 1997 report about Slovakia, before it approached the EU, concluded about ongoing tensions between Hungarian minorities and the Slovakian government and the constitutional and legal framework lacked in that, while “It is true that other texts govern those of minority languages in specific fields (public life, courts, radio and television, public schools and road signs) but these do not cover all situations and there is still no overall [comprehensive text]”. These legal omissions have resulted in a political vacuum where discriminating policies such as cutting back on subsidies and funding for Hungarian cultural associations and the discontinuation of reports and records in bilingual (Hungarian/Slovakian) schools. Accession cannot take place until the treatment and lack of protection of Hungarian minorities in Slovakia are improved.⁸⁹

Thus, the acceptance of ‘group-specific’ cultural and linguistic rights, power-sharing arrangements, and socio-economic rights is seen as central to the accommodation between minorities and majorities in democratic states, but such policies are often highly contested and controversial.⁹⁰

⁸⁸ European Union: Treaty of Lisbon – Article 2.

⁸⁹ Agenda 2000 – Commission Opinion on Slovakia’s Application for Membership of the European Union. p. 22.

⁹⁰ HOROWITZ, 1985. p. 601.

So, herewith taking into consideration this simple example, a clear conclusion can be reached that the EU does impose to an extent the respect for minorities in the acceding countries, however, this is confined to the fundamental rights and freedoms, such as language and culture.

When it comes to the prospect of Kosovo adhering to the European Union has strongly reflected also on the legislative agenda of the country. Starting with its constitution, and the myriad laws, it has ensured the best possible mechanisms for the protection of the minority rights in Kosovo.

With the dissolution of Yugoslavia and the newly formed independent states in the Balkan Peninsula, the previously settled ethnic communities (nationalities) rise up not as ‘new’ minority groups but as autochthonous minority groups distinct from each other by language, religion and culture. The obligations to respect the signed declarations, conventions and treaties as a consequence of their membership in international governmental organizations (IGOs) such as the UN and Council of Europe, forced these countries to introduce legal measures for human rights protection and in specific to form the corpus of minority rights’ protection.⁹¹

As Weller puts it, Kosovo has been proactive in the issue of protection of communities. The substance offered with the legal instruments for the rights of the minorities is broad and has overarching protection against discrimination in full compliance with the EU advanced judicial standards in this issue.⁹²

According to Article 58.2 of the Constitution, Kosovo is obliged to respect the standards in the European Charter for Regional or Minority Languages (hereinafter ‘the European Charter’), which sets forth that states should adopt policies that ensure “the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages”

Furthermore, the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) is one of the most important international legally-binding instruments designed to protect the rights of people belonging to national minorities. The rights and freedoms as set out in the FCNM are directly applicable to Kosovo, according to its Constitution.

⁹¹ ANDEVA, 2012. pp. 7-9.

⁹² WELLER, 2008. p. 1241.

Although Kosovo is not a signatory to the Convention, it is subject to a specific monitoring arrangement in conformity with a 2004 Agreement between UNMIK and the Council of Europe. Currently, reporting to the Council of Europe is carried out by UNMIK, through OSCE Kosovo. The monitoring arrangement takes place every five years and involves three main phases. First, UNMIK prepares a report on Kosovo's compliance with the FCNM to the Council of Europe; second, an independent commission (the Advisory Commission) provides an expert opinion on the report issued by UNMIK, which is also given a chance to comment on this opinion. Finally, a resolution is adopted containing conclusions and recommendations to Kosovo concerning the implementation of the Framework Convention.⁹³

The institutions such as the Consultative Committee on Communities (CCC) under the Office of the President of Kosovo, whose mandate is defined by Article 60 of the Constitution of Kosovo and the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, then after the Office for Community Affairs within the Office of the Prime Minister, Office of the Language Commissioner, the Ministry on Communities and Returns as well as the permanent Assembly Committee on Rights and Interests of Communities and Returns, are numerous safeguard mechanisms in the central level governance towards the implementation of the provisions of protecting the minorities as prescribed in the relevant legal documents all aligned with the EU legislation.

Article 60 of the Constitution of Kosovo on the Mandate of the CCC stipulates:

A Consultative Council for Communities acts under the authority of the President of the Republic of Kosovo in which all Communities shall be represented.

2. The Consultative Council for Communities shall be composed, among others, of representatives of associations of Communities.

3. The mandate of the Consultative Council for Communities shall:

(1) provide a mechanism for regular exchange between the Communities and the Government of Kosovo.

(2) afford to the Communities the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives, and to seek to have their views incorporated in the relevant projects and

⁹³ ECMI Kosovo –The legal framework analysis. p. 2. Available at: <http://www.ecmikosovo.org/en/Kosovo's-Legal-Framework> [Last accessed: 27.02.2020]

programs.

(3) have any other responsibilities and functions as provided in accordance with the law.⁹⁴

On the other Laws, such as the one on Local Self Government foresees the provision of enhanced participatory rights in the selection of the local police station commanders and enhanced competencies in the area of culture to municipalities with a Serb-majority population. In reference to health and education, it outlines the provision of enhanced competencies regarding university education in the municipality of Mitrovica North, as well as in secondary health care in the municipalities of Mitrovica North, Gracanica, Štrpce. Significantly, it also expressly allows municipalities to cooperate directly with institutions of the Republic of Serbia. All this leverage given to the minorities in Kosovo, after 1999, have been brokered by the EU and other relevant institutions, with the silent but robust engagement of the Kosovo political spectrum, in order to gain the participation of the Serbs in the political system of Kosovo, reflecting the multiethnic composition of the state, with that maintain an acceptance policy from Belgrade and receive the sympathy of the international community.

However, as the conclusion will show, many of these have proven to be more of a blocking mechanism by the Serb political leadership in Kosovo directed by Belgrade, rather than a meaningful participatory system for the wellbeing of all communities residing in the country.

Within the Kosovo Parliament, there are currently two parliamentary mandates: those that stem from the elections and have democratic legitimacy and the reserved mandates that represent a mere concession that does not abide by the parliamentary democratic rules and has not been seen in the international parliamentary practice.

The establishment of the reserved mandates has come as an incentive for the holistic representation of all communities in Kosovo in the institutional building and functioning to reflect on the multiethnic nature of Kosovo as stipulated in the Constitution.

However, judging from the behavior of the Serbian minority represented in the Parliament, and their Constitutionally given veto right that creates an unprecedented case of enabling a political to single-handedly defunctionalize the entire work of the Parliament, it can be easily said that such positive discrimination may create a long-lasting negative effect on the deformation of the democracy and the parliamentarism.

⁹⁴ Constitution of the Republic of Kosovo (2008), Article 60 – Consultative Council for Communities.

Table 1: Kosovo’s legal framework of Minority Protection

Legal framework	Laws
International legal framework ⁹⁵	Universal Declaration of Human Rights (Art. 2) (1948) International Covenant on Civil and Political Rights (Art. 27) (1976) Council of Europe’s Framework Convention for the Protection of National Minorities (1998) OSCE Copenhagen Document (1990) OSCE Lund Recommendations (1999) OSCE Oslo Recommendations (1998)
European Union Framework	Charter of Fundamental Rights of the European Union (2001) Art. 2 – Treaty of Lisbon (European Union) (2007)
Kosovo Framework	Constitution of Kosovo (2008) Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo (2008) Law on Anti-Discrimination (2004) Law on Local Self Government (2008) Law on the Use of Languages (2006)

Source: Compiled by the author.

IV.3. Overlooking the Western Balkans

The fear deriving from the ethnic conflicts in ex-Yugoslavia, which brought to the birth of 7 independent states, has made the international community aware of the new order in the Balkan Peninsula. The new states had a long and withstanding cohabitation with different ethnicities, and after the peace accords – many of them continued residing in their respective states. As we will see below, there is a large number of Albanian minorities living in Croatia, Macedonia and Montenegro. In order to avoid any other potential conflict, the international community pledged their commitment to recognize the independence of the newly formed states, but in exchange to have a robust mechanism for the protection of the minorities living in them.

Countries in the Western Balkans – Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro and Serbia did embrace and reflected to its legislative agenda the basic values of freedom, peace, tolerance, respect for human rights and liberties, multiculturalism,

⁹⁵ SOOS and PAP, 2015. p. 30.

democracy and rule of law, however in a different scale. These particular countries were chosen because of their unique multiethnic composition and the presence of different minority groups that are reflected differently in the respective country's legal documents.

IV.3.1. Minorities in Croatia

Croatia was the first of the Republics alongside Slovenia to secede from the Yugoslav federation, in 1991. The foreign ministers of the European Community, who were urged by the United Nations to tidy their own neighborhood, did endeavor into a series of negotiating. With regard to resolving the conflict, the Carrington-Cutileiro Plan, submitted in February 1992 as a result of the peace conference held since September 1991 under the auspices of the EU, aimed to prevent war breaking out in Bosnia. The European proposal took into account the desire for independence already expressed by Slovenia and Croatia, and, subsequently, by Macedonia (15 September 1991) and Bosnia and Herzegovina (15 October 1991), abandoned the continued existence of a Yugoslav Federation but made recognition of the Republics conditional upon a general agreement on minority rights, guaranteed by a Court of Justice, upon the special status of certain regions and upon a common customs policy.⁹⁶

Since the Serbian leadership did refuse the plan, the international recognition of Croatia and Slovenia was postponed until December 1991, in the run up of the Maastricht Treaty, signed by the European Community. The twelve member states decided to recognize every Republic that wanted to be recognized as such, on condition that it respected human rights, minority rights and the right to arbitration. Proceeding in this manner, however, had the drawback of eliminating the previous global agreement between the parties that had been the subject of the peace conference. On 23 December 1991, Germany unilaterally recognized Slovenia and Croatia. It was followed, on 15 January 1992, by its partner countries after the conference's Arbitration Commission had decided that these two Republics satisfied the requisite conditions.⁹⁷

Since then, the Croatian government has extended the human rights legislation and the rights of the minorities living in Croatia, by granting equal rights, language and cultural rights as well as

⁹⁶ GERBET, 2016. p. 3.

⁹⁷ GERBET, 2016. p. 6.

the two thirds majority vote in the Croatian parliament for adopting laws regulating the rights of national minorities.⁹⁸

In addition, according to the Constitutional Law on Human Rights and Liberties and Rights of Ethnic or National Communities or Minorities in the Republic of Croatia (13.12.2002) special rights are guaranteed to the minority groups in Croatia (enjoyable on an individual or a collective basis) and established by Art. 7, in particular in terms of: 1) linguistic rights; 2) education; 3) use of symbols and insignia; 4) culture; 5) practice of religion; 6) media; 7) self-organization and association; 8) representation; 9) participation in public life and local self-government; 10) protection of their existence and exercise of their rights and freedoms.⁹⁹

Ultimately, the minorities have reserved seats in the Croatian parliament according to the abovementioned Law. Article 15 of the Law foresees that “the members of national minorities in the Republic of Croatia shall have the right to elect eight representatives to the Parliament, who shall be elected in a special constituency being the territory of the Republic of Croatia.”. According to the subsequent Article 16, members of the Serbian national minority shall elect three representatives to Parliament consistent with the Constitutional Act on the Rights of National Minorities, while the other seats will be equally divided among other recognized ethnic groups.

Even with this provision at hand, none of the ethnic groups, represented in the Parliament, has the veto power over the legislative agenda of the Croatian Parliament, as the conclusion shows us is the case with Kosovo.

Even though there is a sheer part of the legislative structure in the protection of minorities, the Amnesty International report from 2016/2017¹⁰⁰ did conclude that “UNHCR recorded that about 133,000, over half, of the ethnic Serbs who fled the country during the war had returned by the end of 2016, but it expressed concern about persisting obstacles for Serbs to regain their property. The number of ethnic minorities employed in public services was below the national targets. Serbs faced significant barriers to employment in both the public and private labor markets. The right to use minority languages and script continued to be politicized and unimplemented in some towns”.

⁹⁸ Ustav Republike Hrvatske (1990), Clan 83.

⁹⁹ ANDEVA, 2012. p. 8.

¹⁰⁰ Amnesty International, 2017. pp. 132-133.

IV.3.2. Minorities in Montenegro

Montenegro is a rather diverse country with a small number of inhabitants. It is the smallest of the Republics, and the last one to secede from the Yugoslav Federation, i.e. the Serbia-Montenegro Union formed as a successor of Federative Socialist Republic of Yugoslavia.

In the Constitution of Montenegro (Art. 79) are guaranteed the following 'special minority rights': 1) the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities; 2) the right to choose, use and publicly post national symbols and to celebrate national holidays; 3) the right to use their own language and alphabet in private, public and official use; 4) the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities; 5) the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings also in the language of minority nations and other minority national communities; 6) the right to establish educational, cultural and religious associations, with the state financial support; 7) the right to write and use their own name and surname in their own language and alphabet in the official documents; 8) the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written also in the language of minority nations and other minority national communities; 9) the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action; 10) the right to proportional representation in public services, state authorities and local self-government bodies; 11) the right to information in their own language; 12) the right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs; 13) the right to establish councils for the protection and improvement of special rights.

Montenegro doesn't hold reserved seats for their minorities in the Parliament, while their rights are limited extensively to the preservation of language, culture, tradition and within the local self-government units where they constitute the majority of the population, ex. the Albanian minority living in Ulcinj.

IV.3.3. Minorities in North Macedonia

An interethnic short conflict between the Albanian minority and the Macedonian armed and police forces sparked in spring 2001, with the former demanding more rights as being the largest minority group in Macedonia, with 509.083 out of 2.022.547¹⁰¹ of the total population according to the 2002 census.

The 2001 conflict ended with the Ohrid Framework Agreement (OFA signed September 2001) where important guarantees have been provided for ethnic Albanians, particularly as regards language use and participation in public life, including public-sector employment.

The Albanian-language University of Tetovo established in 1994, however, suppressed by brutal police and military force where several Albanians were killed during the clashes, has been recognized by Macedonian authorities with the OFA.

However, ethnic Albanians remain overrepresented amongst the unemployed, still underrepresented in state employment, and those who live in areas where they do not constitute 20 percent of the population face problems with language use in public administration and access to education in their mother tongue. Ethnic Albanians are often victims of hidden discrimination, including by public officials. Like all groups in Macedonia, they face problems because the education system is segregated and heavily influenced by political parties.¹⁰²

Nevertheless, with the Constitutional and legislative amendments after the entry into force of the OFA, the Albanian minority enjoys highly protected linguistic rights, guaranteed by the Macedonian Constitution and regulated by special laws, in the first place, by the Law on the use of a language spoken by at least 20% of the population and in the units of local self-government. This law ascertains the use of the language (spoken by at least 20% of the citizens in the country) in the Parliament, in the communication with ministries, judicial and administrative proceedings, enforcement of sanctions, communication with the ombudsman, in electoral processes, issuance of personal documents, in keeping personal files records, police force, infrastructure facilities, local self-government, finances, economy, education and science, culture and other areas according to this law (Art.2(2))

¹⁰¹ State Statistical Office of Republic of Macedonia. 2002. p. 34. Available at: http://www.stat.gov.mk/pdf/kniga_13.pdf [Last accessed: 23.04.2020]

¹⁰² Minority Rights Group International. World Directory of Minorities and Indigenous Peoples. Available at: <http://minorityrights.org/country/macedonia/> [Last accessed: 20.03.2021]

The Macedonian Constitution does not foresee reserved seats for the minority groups, however, what Croatia and Macedonia have in common is proportional representation. Whereas Macedonia has a double majority voting for laws regulating the rights of the minorities, the Croatian and the Montenegrin Constitution establish a two-third majority voting.¹⁰³

The double majority voting (the Badinter principle) basically gives the Albanian minority a veto over the laws concerning their community. Taking into consideration the mere fact that insofar every Government in Macedonia has been into coalition with one of the dominant Albanian political parties represented in the Parliament, the “veto” powers were not used as the laws were discussed beforehand by the coalition partners. Moreover, this provision does not apply to the amendments of the Constitution.

On the other hand, the Serbian minority in Kosovo, enjoy a much greater institutional liberty and rights than any other minority in the Western Balkans, but most probably in the European continent as well. These rights have derived from the Ahtisaari Plan and have been copied verbatim as Constitutional provisions in the Constitution of Kosovo, as well as other applicable laws.

From 120 members of the Parliament, until 2010, 20 seats were reserved for the minority political parties (10 for the Serbian minority and 10 for other minorities), whereas starting from the following elections scheduled for 2022, the 20 seats will not be reserved anymore – but they still are guaranteed¹⁰⁴, which means the 20 seats will belong to the minorities but they will need to compete amongst each other in order to be able to sit in one of the guaranteed seats.

As the current situation presides from the institutional perspective and the representation in the central and local institutions, the Constitution of Kosovo is clear on those provisions. Based on the Constitution, one deputy president of the Parliament has to be from the Serbian minority and at least one third of the composition of the Committee on the Rights and Interests of Communities has to be from the Serbian minority. Further, the amendments of the Constitution and the adoption/amendment of vital laws require the two thirds majority of the MP’s as well as the 2/3 of the minority reserved seats, giving the minorities in particular the Serbian minority veto power over any legislative initiative of vital interest, including a possible signature of the treaty for accession to the European Union.

¹⁰³ ANDEVA, 2012. p. 23.

¹⁰⁴ Comprehensive Status Proposal on Kosovo (Ahtisaari Plan). Annex 1 on the Constitutional Provisions (2008), Article 3 – Assembly of Kosovo.

On the executive branch, the Constitution further stipulates that one minister in the government must be from the Serb community and at least one from other minority communities. If the government has more than 12 ministers it should include the third minister with a minority ethnic background. Communities are also entitled to at least four deputy ministerial seats shared equally among the Serb and other non-majority communities. If the government has more than 12 ministers, an additional third deputy minister should be appointed both from the Serb community and other non-majority communities.

Currently, the incumbent Government has one deputy PM post and two Ministerial posts given to the Serbian minority.

The local level has given similar incentives of minority participation in local governance. In municipalities with at least 10% of the population belonging to non-majority communities in those municipalities, a post of Vice President of the Municipal Assembly for Communities is reserved for a representative of the respective minority. The EU Strategy for a 'Multiethnic Kosovo' The 'Ahtisaari Plan' of March 2007, which was fully supported by UN Secretary-General Ban Ki-moon, proposed that Kosovo be led towards 'independence, supervised by the international community', but on the condition that a constitutional framework guaranteed that the new state would be a 'multiethnic' one, with protections and privileges for the Serb and other minority communities.¹⁰⁵

The power sharing mechanism in the post-ethno-conflicts has been often a useful tool towards reconciliation. Lijphart argues that proportional presence of ethnic groups in political institutions and ethnic power-sharing is necessary to secure peace and democratic stability in deeply divided societies.¹⁰⁶

Contrary to Lijphart, Roeder and Rothschild, referring directly to Kosovo, but also other civil war affected countries, have concluded that the power sharing attempt to be established for four and a half years has brought to the collapse of Kosovo.¹⁰⁷

Nine years after the declaration of the independence, and the adoption of the Constitution of Kosovo, the country struggles with building its institutions and internal divisions. The power vested in the minorities with the Constitution of Kosovo is depriving the state to form its own Army.

¹⁰⁵ HUGHES, 2009. p. 998.

¹⁰⁶ LIJPHART, 2004. pp. 96-109.

¹⁰⁷ ROEDER, 2005. pp. 46-59.

According to the Comprehensive Status Proposal of Ahtisaari, the Kosovo Security Force shall have its mandate reviewed after 5 years, by the North Atlantic Treaty Organization (NATO). In 2013, NATO stated that the KSF has reached its full operational capabilities, while the US and the political forces in Kosovo have urged for it to be transformed into a proper military force, named the Kosovo Armed Forces.

This has been a thorn in the eye for the Serbian representatives in the Kosovo Assembly and the Government who, despite being part of the institutions of Kosovo, do still oppose its independence, and with that, have vigorously opposed the creation of the Kosovo Armed Forces.

Dalibor Jevtic, Minister for Returns in the Government of Kosovo in a statement given in February 2016, has stated that “our position is that Kosovo doesn’t need an army since it has KFOR”. Furthermore, Branimir Stojanovic, a deputy Prime Minister in the Government has stated that the members of the Parliament from the Serbian minority, will not vote the Constitutional amendments that will lead to the creation of the Kosovo Armed Forces, same as statements coming from the officials in Belgrade.

Taking all of the above into consideration, the conclusion achieved is that Kosovo will not be able to have an Army, without the votes of the Serbian members of the Parliament, that hold hostage the constitutional amendments needed for such an action.

This as an illustration, proves that the power sharing mechanism in Kosovo, and the extensive minority protection, i.e. inclusion prerogatives were given post declaration of independence, have only deepened the division among ethnic lines between the Serbs and the Albanians, at the same time, giving power to Belgrade to interfere into the internal political processes of Kosovo, through its elected members into the Parliament, and ultimately creating a dysfunctional environment for legislative reform that would be beneficiary to all the Kosovo citizens.

Furthermore, the negotiations between Pristina and Belgrade have further exacerbated the risks of Constitutional fallacies, such as the case with the Association of Serb Municipalities and the provision of a country code for Kosovo from ITU. On both occasions, there has been serious indications of violation of the Constitutional order of Kosovo. On the creation of the

Association of Serb Municipalities, the Constitutional Court even deliberated with a verdict¹⁰⁸ that the principles of the document are not fully within the spirit of the Constitution of Kosovo, Article 3 [Equality in front of the law], paragraph 1 from the Chapter II [Fundamental Rights and Freedoms], and Chapter III [The Community Rights].

In comparison to other countries as it was seen above, both in Macedonia and in Croatia, the minorities do hold reserved seats, and do have some veto powers according to the Badinter criteria, however, those are only reserved for questions pertaining to minority issues only, linked mostly with the use of the language, preservation of culture and history, unlike Kosovo, where the 10 guaranteed seats of the Serbian minority hold hostage any amendment of the Constitution, regardless its substance, alongside the adoption of vital laws,¹⁰⁹ which are directly or indirectly linked with them.

As Marko puts it, no institutional arrangement can guarantee effects as long as good neighborly relations are not developed with Serbia. The rights of the Serb community in Kosovo allow for integration as the conation in Kosovo but the integrative effects following from the constitutional provisions must be made use of and cannot be effective as long as the Serb community in Kosovo – under instruction from Belgrade – boycotts participation in Kosovo institutions.¹¹⁰ Such political prerogative must change unless the international community wants to have another failed state with dysfunctional institutional mechanisms at a place. The case in Kosovo, and the functioning of the Constitutional provisions in the principle of the super-double majority, it doesn't only contribute to political tensions, but also increases the likelihood of ethnic mistrust and decreased social cohesion, for which the international community has vested so much interest and resources into.

¹⁰⁸ Constitutional Court Decision. Case KO 130/15 on the evaluation of compatibility of the document called "Association of the Municipalities with majority of Serbs in Kosovo – Main principles" with the Constitution of the Republic of Kosovo. Available at: https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_130_15_shq.pdf [Last accessed: 22.07.2018]

¹⁰⁹ Laws of vital interest of the communities are, according to the Constitution, considered: "(1) Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in inter-municipal and cross-border relations; (2) Laws implementing the rights of Communities and their members, other than those set forth in the Constitution; (3) Laws on the use of language; (4) Laws on local elections; (5) Laws on protection of cultural heritage; (6) Laws on religious freedom or on agreements with religious communities; (7) Laws on education; (8) Laws on the use of symbols, including Community symbols and on public holidays" (Kosovo Const. Art. 81).

¹¹⁰ MARKO, 2008. p. 444.

V. The Milestone – how towards Public Administration and modernization of the public sector institutions in Kosovo

Undergoing a myriad of regime changes, occupied by different empires and states throughout history, Kosovo has never had a particular administrative experience. With the creation of the Socialist Federative Republic of Yugoslavia, where Kosovo gained its self-ruling autonomy status granted by the Constitution of 1974, the native Albanian majority was able to join the province administration structures. Nonetheless, with the breakup of Yugoslavia, and the forced supremacy of the autonomy imposed by Slobodan Milosevic with the new 1989 Constitution, all Albanian employees in the administration were forcibly dismissed from their workplaces. The war in 1999 was succeeded with the launch of the United Nations Mission in Kosovo (UNMIK), the largest civilian mission at that time, with the task of building a new self-governing administration for the country. That was largely aided by the European Union and its programs of aid.

This chapter will briefly describe the organizational arrangement of Kosovo until the supremacy of its autonomy began by the increased nationalist sentiment of Slobodan Milosevic in the Communist Party of Yugoslavia, in 1989, where Kosovo was stripped off from its self-governing powers and its autonomy abolished. The importance of elaborating on the public administration history and reform lies in the fact that the Administration is regarded as the backbone of the State functioning. As the European Commission Progress Reports have shown throughout the years 2005-2020, the public administration is the most affected sphere of corruption and nepotism in Kosovo, and as such it suffers from a lack of professionalism and efficiency despite the large amounts of EU funds granted to Kosovo, as portrayed in the *Table 5*. The historical aspects of the elaborate below are important to show the changes on the administration and the prevailing lack of administrative memory and experience as a result of the oppressive regime from Milosevic.

V.1. Developments of the Public Administration (1974-1989)

Kosovo throughout its history has been under constant foreign rule and had never a fully-fledged public administration to govern. The mere responsibilities in governing the administration were extended to the Autonomous Province of Kosovo with the Constitution of

the Federative Socialistic Republic of Yugoslavia sponsored and adopted by Josip Broz Tito as its president.

The Constitution of 1974, has put Kosovo on the equal terms with all the other constitutive Republics, thus giving the province autonomous regulatory powers to self-govern.¹¹¹

This marked an era of rapid development on the province both culturally, politically and sociologically. The Constitution of 1974 has allowed for Kosovo to even have its own Province Constitution¹¹² that has been based on the provisions as well as freedoms and liberties as prescribed in the SFRJ Constitutional arrangements.

These provisions gave power to Kosovo to decide on its territorial integrity, stating that without the consent of the Province its borders cannot be changed, for the consent must be given by the Provinces Assembly.¹¹³

The provision can be interpreted as a clear administrative, political and judicial power of the Kosovo's institutions for self-governance¹¹⁴ and vast control over its territory, thus it represents the highest constitutional arrangement for Kosovo being equivalent to the other Republics, and deciding on the matters on its own, until the Declaration of Independence in 2008.

Kosovo between the periods of time 1974 – 1989 has had autonomy over the three crucial governing branches, the executive, the legislative and the judicial one.

The Constitution of the Kosovo Autonomous Province of 1974 has stipulated all the elements of self-rule and was equal to the other Constitutions of the Republics. It was the higher legislative act of Kosovo that governed the role of Provinces Assembly, the Council of Kosovo, the Kosovo Presidency, the Kosovo Executive Council, as well as other mechanisms such as the Constitutional Court, the Supreme Court, the Public Prosecutor, placing the Assembly as the highest organ of power in the sense of duties and responsibilities of the Province.¹¹⁵

As per the administrative arrangements, the Province Assembly has had the veto power over the Constitutional amendments of the Federative Socialistic Republic of Yugoslavia's

¹¹¹ Ustav Socijalističke Federativne Republike Jugoslavije (1974), Articles 9-13.

¹¹² Kushtetuta e Krahines Socialiste Autonome te Kosoves, adopted on 27 February 1974 by the Province Parliament. Ref.number: KK Nr. 010-08. Accessed at the Kosovo archives Official Gazette of the Socialist Autonomous Province of Kosovo. Nr. 4., published on 27 February 1974. p. 43.

¹¹³ The Constitution of SFRJ (1974), Article 5(3).

¹¹⁴ SOÓS, 2015. p. 44.

¹¹⁵ SALIU, 1984. p. 79.

Constitution and the Constitution of the Socialist Republic of Serbia, whereas the internal powers have envisaged adoption of provincial laws, budget, institutional arrangements and any other administrative function as prescribed in the relevant legal documents.¹¹⁶

However, the Province of Kosovo just like Vojvodina which had the same equivalent status, did not have its own flag, coat of arms or anthem, like the other six constitutive Republics did.

Article 2 of the Constitution did stipulate that the two Provinces are a constitutive part of Yugoslavia, nonetheless within the auspice of the Socialist Republic of Serbia. This has subsequently caused series of actions that led to the 1999 bloodshed, with more than 13 thousand civilians killed and more than 800.000 displaced according to the UNHCR official figures.

The breakup of Yugoslavia started with the 1989 changes of the Constitution. The Badinter Arbitration Committee, during the 1990's was convened by the European Community (EC) in order to address questions of secession for the Republics of Slovenia, Croatia, Bosnia and Herzegovina and Macedonia. Facing what was seen as inexorable dissolution of the Federative Socialistic Republic of Yugoslavia's, the aforementioned Republics demanded recognition by the European Union as sovereign states, whereas the Badinter Committee acknowledged their right for secession in delivering 4 opinions by 14th of January 1991¹¹⁷, but did not mention Kosovo, where the tensions were rising high. On March 23, 1989, the provincial assembly, a body that was established under the 1974 Constitution, met under siege of armored cars and tanks, where the changes of the Constitution were voted, restricting severely Kosovo's powers, and enabling Serbia to take over the control of the Police, Courts and Civil Defense, matters of social and educational policy, power to issue administrative instructions as well as ultimately use of the language.¹¹⁸ It is important to mention that the meeting took place without the presence of the Albanian members of the Assembly. Both of these actions led to the escalation and the uprising of the Kosovo Albanians in response to the oppression exercised by the Milosevic regime, resulting in bloodshed, ethnic cleansing, atrocities and humanitarian catastrophe.

¹¹⁶ SALIU, 1984. p. 80.

¹¹⁷ PELLET, 1992. p. 182.

¹¹⁸ MALCOLM, 1998. p. 343.

As it can be concluded from above, the fundamentals of the Kosovo modern administration were laid out in 1974 Constitution. The majority Albanian population had self-governing rule over its inhabited territory and exercised the administrative powers as the legislation in power provided. However, the breakup of Yugoslavia, and the forcible topple of the autonomy by Milosevic, that ultimately led to a violent conflict and the NATO intervention in Kosovo, put a break to the administrative memory of the Kosovo bureaucrats. The subsequent installation of the United Mission in Kosovo and the consequent actions after, will be an uncontested empiric argument about the failure of the international community to properly address the challenges of building a new and professional administration, which will be discussed in the following chapters.

V. 2. The UN efficiency – they gave Kosovo freedom but no future?

Responding to human rights violations and ethnic cleansing of the Albanian population in Kosovo, in March 1999, a US led, and NATO backed up air strike campaign, named Operation Allied Forces, was launched directed on the military and strategic targets of the Republic of Serbia. This brought to the surrender of Serbia¹¹⁹ consequently on 9th of June, with the Military Technical Agreement signed between Serbia and NATO confirmed the withdrawal of all armed and police forces of Serbia from Kosovo. The last action point followed was the installation of the United Nation led Mission in Kosovo as well as the NATO controlled Kosovo Protection Force (KFOR).¹²⁰

The liberation of Kosovo was succeeded with the Resolution 1244 of the United Nation Security Council (1999), which did stipulate an installation of an international civilian UN mission (UNMIK) that will conduct tasks such as, organization and supervision of the provisional self-government institutions as well as the transition of powers to those institutions while mediating a political process which is aimed at determining a final status solution for Kosovo, taking into consideration the Rambouillet accords.¹²¹

¹¹⁹ KER-LINDSAY, 2009. pp.14-17.

¹²⁰ Military Technical Agreement between the International Security Force (KFOR) and the Governments of Federal Republic of Yugoslavia and the Republic of Serbia. 9 June 1999. p. 2. Available at: <http://www.nato.int/kosovo/docu/a990609a.htm> (Last accessed: 22.05.2017) [Last accessed: 16.07.2020]

¹²¹ UNSC Resolution 1244 (1999), par. 8.

Intervening into post conflict countries, since the end of the Cold War, has been an ambitious project for the international community which has strived to fundamentally reshape the societal landscape by building new state institutions, helping on the economic development and revival, as well as the support for other pillars of the state building architecture.

In Kosovo, this started with the adoption of the Constitutional Framework of the Republic of Kosovo in May 2001, a quasi-constitution, which foresaw developing meaningful self-government pending a final settlement, and establishing provisional institutions of self-government in the legislative, executive, and judicial fields through the participation of the people of Kosovo in free and fair elections.¹²²

The war and the killing during the 1998 and 1999 were succeeded by another extraordinary, not least difficult, experience for the Kosovars: a partisan regime that took the powers vested in them for granted. A work of many international organizations, with excessive amount of money, a continuous process of digging for a spark of hope with all the perils embedded in lawless and anarchic “free Kosovo”.

Since the abolition of the Autonomy (1989), and especially during the war in 1999, there practically was no administration in Kosovo. The limited number of Kosovo Serbs that retained their offices especially in the Ministry of Internal Affairs and Secret Services, fled the country upon the arrival of NATO forces and the UN administrators. The latter, being inexperienced and too bureaucratic from its top, i.e., the Security Council and the General Assembly, did not have the sufficient capacities to address all the needs in the post-conflict society.

Kosovo’s civil service just prior to the 2008 declaration of independence faced a lot of challenges, such as the extent legacy from the past communist regime in exercise of duties, lack of legislative modernization, working conditions and human resources, corruption, appointments made on the basis of seniority, political convictions and patronage and ultimately inadequate skills.

Nonetheless, UNMIK did establish a form of administration that reactive to the processes ahead was divided in three periods, the first one being immediately after the war where Kosovo actors

¹²² Constitutional framework for provisional self-government in Kosovo, signed on March 15, 2001. pp. 2-6. Available at: http://www.assembly-kosova.org/common/doc,s/FrameworkPocket_ENG_Dec2002.pdf [Last accessed: 21.04.2020]

mainly the leaders of the Kosovo Liberation Army that formed the Democratic Party of Kosovo (PDK) and the Democratic League of Kosovo (LDK) led by Ibrahim Rugova¹²³ had only consultative role. This followed by the second phase in 2000 where the Joint Interim Administrative Structure was created by UNMIK where different departments had the civil administration role, and the heads of these departments were a Kosovo national and an international administrator. After the adoption of the Constitutional Framework of Kosovo in 2001 the local Provisional Institutions of Self Government were created.¹²⁴

This setup lasted until the Declaration of Independence in 2008, albeit gradual transfer of responsibilities did occur, nonetheless UNMIK was still holding the decision-making powers that superseded the authority both of the local Provisional Institutions of Self Government and the Kosovo Parliament.

Joshi and Mason claim that 48 percent of the 125 civil wars that occurred in seventy-one countries between 1945 and 2005 resurged again¹²⁵ in the context of international administration failure which Skendaj puts it from the theoretical analysis of the international community involved in state-building exercises in Kosovo and elsewhere.¹²⁶

UNMIK has failed in so many prerogatives. Primarily designed as an interim administration, did not have the qualifications to quickly setup a non-partisan administration, and transfer the powers to the national elected authorities. It lacked an exit strategy while struggling to remain politically correct on both ends, with Serbia and with the Kosovo interlocutors which pushed the status quo of Kosovo all the way to the outbreak of violence in 2004.

Instead of concentrating on the low level of administrative reform and training, UNMIK was designed to rule, rather than transfer the know-how. A lack of local knowledge about and sensitivity to the local context also explains the difficulties that international organizations face when they attempt to build democracy and state bureaucracies.¹²⁷

¹²³ Ibrahim Rugova was the President of the partially recognised Republic of Kosova, serving from 1992 to 2000 and as President of Kosovo from 2002 until his death in 2006. He was the President of the the Democratic League of Kosovo (LDK) the first and one of the biggest political parties in Kosovo established in 1989.

¹²⁴ WELLER, 2008. pp. 1226-1227.

¹²⁵ JOSHI, 2011. p. 389.

¹²⁶ SKENDAJ, 2014. p. 6.

¹²⁷ SKENDAJ, 2014. p. 8.

Drawing from conclusions from the Mission in Kosovo, it should have been more vigilant 5 years later when it established the Mission in East Timor – where it did fail again.

Despite the fact that East Timor gained independence in 2002, the UN failed to mitigate the ethnic tensions alike Kosovo same in 1999 and protect the East Timorese people. The interim administration, drawing from the failures in Kosovo, it again adopted incompatible approach to secure peace. To this end Bound by the two-fold culture of non-interventionist sovereignty and risk aversion, the UN was merely engaged in an reactive mode, through diplomacy and bargaining with hands tied since any UN Resolution for intervention required a multinational cooperation between the UN and Indonesia as a member state and the UN was dependent on this cooperation to deploy troops because policy stipulated that NATO's unilateral entrance into Kosovo was an unacceptable violation of peacekeeping culture.

V.3. The handover of the “reform and development” baton from UNMIK to the European Union

The inconsistency of the UNMIK mission, flawed by its bureaucratic mechanisms and procedures forced it to request that Kosovo being in the middle of the European continent, should be treated as a European problem, thus the EU must take over the responsibilities in the further developments.

Immediately after the coordinated Declaration of Independence, on February 17, 2008, by the Kosovo Parliament, the newest Republic was recognized by the majority of the EU member states, USA, Japan, Norway, Turkey and a number of the rest of the democratic world.

A difficult task hailed upon the EU – to help build a state that has little or no administrative memory, burdened by incapacity and overwhelming corruption, moreover to reflect on the pledge given in the 2003 Thessaloniki Summit that the future of the Western Balkans lies within the Union.¹²⁸

The EU Progress Report in 2008 was very clear and concise in its assessment. The review that started in April 2007, showed serious flaws inherited from the pre-independence period.

¹²⁸ Declaration of the EU after the EU-Western Balkans Summit. Thessaloniki, 21 June 2003. C/03/163. 10229/03 (Presse 163), p. 1.
Available at: http://europa.eu/rapid/press-release_PRES-03-163_en.htm [Last accessed: 9.12.2020]

Civil servants continue to be vulnerable to political interference, corruption and nepotism... Overall, despite some progress related to the adoption of an action plan and some legislation, public administration reform still needs to be implemented. Public administration and the coordination capacity of public bodies in Kosovo continue to be weak. Ensuring the delivery of public services to all people in Kosovo and establishing a professional, accountable, accessible and representative public administration is a key priority in the European Partnership for Kosovo.¹²⁹

Having this in mind, the EU has been engaged in Kosovo through multiple mechanisms such as the IPA funds and other mechanisms and projects to be elaborated more below. Other organization such as UNDP have extensively been engaged in Kosovo through their projects for the reform of the Public Administration the latest being The Support to Public Administration Reform project provides high-level policy advice to the Ministry of Public Administration on the process of developing policies and legal instruments which support the implementation of PAR as a technical process worth 1.5 million dollars.¹³⁰

As per the EU, since 1999, the European Agency for Reconstruction, a body established for the purpose of postwar reconstruction by the European Commission, 1999 did pledge the support of 500-700 million EUR per year per Kosovo in the course of the following three years. Only in 1999, the European Commission allocated 150 million EUR from its annual budget for immediate needs for Kosovo.¹³¹

In total Kosovo has received more than €2.3 billion in EU assistance since 1999 (see *Table 2*), while it initially focused on emergency relief actions and reconstruction, it now concentrates on promoting Kosovo's institutions, sustainable economic development and Kosovo's European future.¹³² Once the Declaration of Independence was read, and Kosovo became the newest state in the

¹²⁹ Kosovo (under UNSCR 1244/99) 2008 Progress Report, accompanying the communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2008-2009. COM (2008) 674, Brussels, 5.11.2008. p. 10.

¹³⁰ Summary of the UNDP project. Support to Public Administration Reform. 2015. p. 2. Available at: http://www.ks.undp.org/content/kosovo/en/home/operations/projects/democratic_governance/PAR.html [Last accessed: 24.05.2017]

¹³¹ European Agency for Reconstruction set up for Kosovo. Brussels, 23 June 1999. Press release number: IP/99/411. Available at: http://europa.eu/rapid/press-release_IP-99-411_en.htm [Last accessed: 24.05.2017]

¹³² Kosovo and the EU – An overview of relations between the EU and Kosovo. Available at: https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en#Technical+and+financial+cooperation[Last accessed: 24.05.2017]

world the EU concentrated on a series of projects and ventured towards a more institutional approach.

Table 2: Instrument for pre-accession (IPA) funds distributed to Kosovo in the 2007-2020 period

Kosovo	2007	2008	2009	2010	2011	2012	2013	2014-2020	Total:
Total IPA funds granted to Kosovo	68.3	184.7	106.1	67.3	68.7	70.0	107.2	602.1	1274.4
Reforms in preparation for EU approximation: Democracy and governance	13.0	23.0	18.5	19.8					74.3

Source: European External Action Service.¹³³ Compiled by author.

The clear EU perspective yielded by both EU officials and Kosovo political representatives, had the European Commission engage in drawing different projects within the Instrument for Pre-Accession (IPA) that will benefit Kosovo in its administrative alignment to the EU Acquis and fulfillment of the Copenhagen Criteria Plus (see Table 3).¹³⁴

Insofar, the IPA funds dedicated to the fulfilment of the political and economic criteria, the European Standards and the support activities, from 2007 to 2013 reach the figure of 672.3 million EUR, while the projected cost for the 2014-2020 projects is 645.5 million EUR.¹³⁵

Table 3: Instrument for pre-accession (IPA) funds distributed and planned for Kosovo in the 2014-2020 period for reform of the Public Administration and the Rule of Law Reform

Kosovo	2014	2015	2016	2017	2018-2020	Total (mil. EUR)
Reforms in preparation for EU approximation	37.3	34	31	35.2	99.1	236.6
Democracy and governance	64.4				46	110.4
Rule of law and fundamental rights	73.1				53.1	126.2

Source: European Neighborhood Policy and Enlargement.¹³⁶ Compiled by the author.

¹³³ European External Action Service: Kosovo and the EU. Available at: https://eeas.europa.eu/delegations/kosovo/1387/kosovo-and-eu_en#Technical+and+financial+cooperation [Last accessed: 24.05.2017]

¹³⁴ The “Plus” is added because apart from the Copenhagen Criteria as established by the EU member states as precondition for accession, Kosovo has the additional reform of the public administration and the political dialogue with Belgrade added to it. The European Council Conclusion of 1993 in Copenhagen, referred to as the “Copenhagen Criteria” can be found at: http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en [Last accessed: 24.05.2017]

¹³⁵ Kosovo – financial assistance under IPA. Available at: https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/kosovo_en [Last accessed: 24.05.2017]

With all the money poured in project implementation for the modernization of the public administration, the EU regardless has constantly echoed in its progress report the weak and corrupt public administration that needs a thorough reform. In its 2016 report, the first after the signing of the Stabilization and Association Agreement between the EU and the Republic of Kosovo, the Commission has again like in the previous years addressed the need to address the Commission's recommendations in the area of accountability. According to the Report, non-merit-based recruitment continues to adversely affect effectiveness, efficiency and professional independence of public administration.¹³⁷

Did the EU fail in its role? More than 1.2 billion EUR given for the reform of the public administration in different projects, nonetheless the Progress Reports released by the same EU body that finances these projects identifies serious flaws and lag of reform. All this combined with the lack of political willingness to implement the myriad of laws and regulations especially pertaining to the civil service, exhibits a clear contradiction on the EU's role in Kosovo. They pay for the reform, yet every year no words are spared to criticize its functionality. In a theoretical approach of the Europeanization process, the transformative powers of the EU as explained by Borzel are seriously undermined in the cases of limited statehood which is one of the main causes of ineffective implementation of the EU induced reform, especially when talking about the public administration.¹³⁸

In the case of Kosovo, a deeper analysis is needed, since it represents a *sui-generis* case of international administration and oversight for more than 13 years, in which the EU for the majority of the time period served as a patron.

V.4. Brief overview on the Administration legal framework of Kosovo

Kosovo has adopted numerous laws, strategies and directives that have been put in place to please the appetite of the EU decision makers. The structure that will be listed below (see *Table 7*), will show that actually Kosovo has an up to date and well aligned with EU's interest

¹³⁶ European Neighbourhood Policy and Enlargement Negotiations: Available at: https://ec.europa.eu/neighbourhood-enlargement/instruments/funding-by-country/kosovo_en [Last accessed: 10.10.2020]

¹³⁷ Kosovo 2016 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Communication on EU Enlargement Policy. COM(2016) 715 final, Brussels, 9.11.2016. p. 4.

¹³⁸ BÖRZEL, 2011. p.10.

legislation. The glitch is found in its implementation and the notion of how the administration is perceived by the political forces in the country.

Table 4: Kosovo Laws for the Public Administration

Main laws of the Public Administration of Kosovo	Date of entry into force
Law on Organization and Functioning of the State Administration	11.03.2019
Law on Public Officials	11.03.2019
Law on the General Administrative Procedure	21.06.2016
Law on the State Administration of Kosovo	21.10.2010
Law on the Salaries of the Public Officials	25.06.2010
Law on the Civil Service of Kosovo	25.06.2010

Source: Ministry of Internal Affairs and Public Administration. Compiled by the author.

The core of the Public Administration lies in the Law for Civil Service (2010) which regulates the status of the civil servants as well as their relations with the administration, being that on a central or local level, different Agencies executive and independent ones.¹³⁹ It represents the backbone of the institutional mechanisms for how the public administration works, including the ethics, disciplinary measures, appointments as well as duties and responsibilities.

Adjunct to the core Law on Civil Service is the Law on the Salaries of Civil Service as well as numerous directives and regulations as sub-legal acts that individually regulate a broad range of issues regarding the civil service.

Urged by the need to address the findings of the European Commission’s Progress Reports for Kosovo and the continuous criticism, the Ministry of Public Administration, did adopt two core strategies the Strategy for the Reform of Public Administration (2010-2013) and the Strategy for the Modernization of the Public Administration (2015-2020).

The problem with the Public Administration in Kosovo lies not on the law adopted, but on its implementation. The laws and strategies do proclaim the very democratic spirit that the EU instills. Nonetheless, bringing the recommendations in practice requires political willingness, which is rather costly both economically and politically.

Nobody has had the illusion that Europeanization is a smooth and calm process. It is costly and needs to have a firm determination on both ends, the national authorities i.e. the Government of Kosovo, and the EU.

¹³⁹ Law Nr. 03/L-149 for the Civil Service of the Republic of Kosovo (2010), Art. 1 (2).

The public administration in Kosovo is a large one and saying “large” is being humble in the characterization. The best possible illustration for the major problems that it faces, is when the General Auditor in the 2011 Report, has found in the Ministry of Justice the absurdity of a position classified as a “senior officer for photocopies”.

These cases substantiate by far the claims of Boerzel about the impossibility of the full application of reforms by states with limited statehood. Claims that robust reforms towards the Europeanization in this case of the public administration do bare political cost for the Government that is seen as a potential risk of losing public support.¹⁴⁰ do reflect the fact that the Administration in Kosovo has been seen as a safe haven for the political parties to comfort their members and relatives, something that not only the EU as a whole but also member states individually have constantly been criticizing the Government for.

However, what was the value added to the 1.2 billion EUR donated by the European Union a portion of which is designed specifically for reforming and modernizing the public administration? The Europeanization in its strict definition as prescribed by Radaelli as a set of norms, beliefs and values that are taken on the EU level and implemented on the national level, in the case of Kosovo if we measure it with the “goodness of fit”, it can be clearly seen that it steps on hurdles along the way.

Firstly, Kosovo has not had any institutional memory. The only experience it can draw is from the communist period in the Federative Socialistic Republic of Yugoslavia. Many of the institutional members from that period are either retired or don’t have any desire to adopt to the rapid changes of the modern administration. The transfer from the old to the new and modern administration happened in Kosovo rapidly, started with UNMIK and it goes on with the European Union, thus the adaptation period of those who have had any experience in the state bureaucracy proved to be insufficient.

Secondly, Kosovo has more than 91.000 employees in the public sector in 21 Ministries, with over 70 subordinate bodies in the Office of the Prime Minister and 34 other institutions established by the Kosovo Parliament.¹⁴¹ These institutions have been seen by the Governing political parties as a mechanism to please its constituents, political affiliates and groups of

¹⁴⁰ BÖRZEL, 2011, p. 9.

¹⁴¹ Reforming Public Administration in Kosovo: a proposal to decrease the number of employees in the public administration. GAP Institute Policy Brief, July 2015. Available at: http://www.institutigap.org/documents/99892_Reforming%20%20Public%20Administration%20in%20Kosovo.pdf [Last accessed: 19.09.2020]

interest closely linked with the major political parties. This has been echoed by various analysis and think-tanks as well as foreign diplomats accredited in Kosovo.

While the consequence of this particular negative trend can be argued only upon the lack of political will and the high cost of reform, I see it as a legacy from the not so long ago past time. Immediately after the war mainly the educated youth were attracted to work for one of the hundreds of international organizations operating in Kosovo. They would benefit from a very high salary, at least five times higher than the current average salary in Kosovo, in addition to other benefits. This opened the market for the less competent staff to engage in the public sector established in the form of Departments in times of UNMIK, where salaries and benefits packages were less than attractive – and at that time, no one paid attention to it.

The European Union in its reform induction should take into consideration many prerogatives. Europeanization cannot be seen as a “tailored to fit all” model, without careful analysis of the social, historical and political construct of the prospective countries wishing to join the EU, including Kosovo.

VI. The Europeanization and the Rule of Law in Kosovo – empirical findings

Limited statehood on the verge of a dysfunctional state has been a characteristic of most of the Western Balkan countries. Kosovo is being in the frontrunner seat because of its contested political status. This has yielded in weak and fragile institutional capacities, autocratic leaders, insufficient democratized policy practices and impediments to human rights,¹⁴² and has such has empowered political elites that have hampered the Europeanization process due to their comfortable power seat and the fear of not losing such a commodity.

The European Union’s intervention in Kosovo has started since 1999 as a Pillar 4 within UNMIK, mainly providing aid in the reconstruction of the economy, with little or no political interference because of its unresolved status. Post-2008, with EULEX and the International Civilian Office (ICO) and the diminished role of the UN Administration, the rules have changed.

¹⁴² KMEZIĆ, 2017. pp. 161-123.

Post-independence saw the deployment of European Rule of Law Mission (EULEX), hailed as the EU's largest civilian crisis management operation with around 2,250 staff and an annual budget of approximately 111 million Euros.¹⁴³ Its structure is mainly divided into two major divisions: the Executive Division, which contains judges, prosecutors, police officers, and customs officers and the Strengthening Division, which includes legal specialists, correctional officers, police officers, and customs officers.¹⁴⁴

EULEX mainly operated in the area of rule of law components, with a focus on Justice, Police, and Customs. Yet, the continuous challenges and obstacles in the justice sector, mainly in the fight against corruption and organized crime, keep EULEX mission within the scope of only executive powers.¹⁴⁵ Its key priorities of the mission are to address immediate concerns regarding the protection of minority communities, corruption and the fight against organized crime. The mission is conceived as a joint effort with local authorities; in line with the local ownership principle, with a view to foster a self-sustainable judicial and administrative system in Kosovo, based on the rule of law and European standards.¹⁴⁶

However, the constellation upon which EULEX was established, has serious legal and political impediments, not well thought by the EU institutions prior to deployment. As Muharremi stipulates placing EULEX under the authority of UNMIK and Resolution 1244¹⁴⁷ meant disregarding the new legal order established by the Republic of Kosovo founded on its Constitution and the Ahtisaari Plan.¹⁴⁸

VI.1. The (UN)forgettable Mission in Kosovo

The United Nations Interim Administration Mission in Kosovo (UNMIK) was established by the UN Security Council Resolution 1244 adapted in June 1999 following the success of the NATO military intervention against Serbia. The purpose of UNMIK was to govern Kosovo in a period until political institutions are set in place, socioeconomic conditions improved, minority and refugees returned, human rights situation improved, and basic governance and economic conditions are set in place.

¹⁴³ European Rule of Law Mission in Kosovo Factsheet, December 2009. p. 2.

¹⁴⁴ European Rule of Law Mission in Kosovo Factsheet, December 2009. p. 3.

¹⁴⁵ HOXHA, 2013. p. 8

¹⁴⁶ EULEX factsheet. Available at: <http://www.eulex-kosovo.eu/?id=2> [Last accessed on: 12.11.2019]

¹⁴⁷ United Nations Security Council Resolution S/RES/1244 (1999), 10 June 1999. p. 3.

¹⁴⁸ MUHARREMI, 2015. p. 14.

In 1999, the Kosovo Albanian citizens' euphoria about the liberation of Kosovo was echoing throughout the western media. It did not last for very long though.

Taking into consideration the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security, recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999, regretting that there has not been full compliance with the requirements of these resolutions, determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes, condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party, recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo, reaffirming the right of all refugees and displaced persons to return to their homes in safety, recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia, welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, (Annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the document presented in Belgrade on 2 June 1999 (S/1999/649, (Annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that document, *reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and Annex 2.*¹⁴⁹

The Preamble of the UN Security Council Resolution 1244, together with the pursuant Articles in the Resolution stated the basis for the presence of the UN in Kosovo. What seemed to be frustrating for the Kosovo Albanian citizens in the text of the Resolution, and later in the Constitutional Framework for Kosovo, was the irrevocable fact that Kosovo remained under the territorial integrity and sovereignty of Yugoslavia, thus it states in a contradictory note that this Resolution confirms the positions in the prior Resolutions for autonomy and self-administration for Kosovo. It is clearly stated that the Resolution does not allow self-determination for the people of Kosovo, therefore the reaction was imminent.

¹⁴⁹ United Nations Security Council resolution 1244 (1999) on the situation relating Kosovo. Available at: <https://unmik.unmissions.org/united-nations-resolution-1244> [Last accessed at: 12.18.2020]

Kosovo has the right to self-determination. The creators of the Resolution 1244 were not ready to include this specific element in the text of the 1244, even though the Security Council is bound to allow the right to self-determination based on Article 1 paragraph 2 of the United Nations Chart.¹⁵⁰

The Resolution 1244 consists of contradictions of a special kind in relation to the two previous resolutions of the UN Security Council, 757/1991 and 777/1992, by which the death of Yugoslavia was internationally confirmed as was the automatic heredity of a new Yugoslavia, whereas the Resolution 1244 insists on the sovereignty of the FRY¹⁵¹.

The ambiguity in the interpretation of the Resolution 1244 since it was promulgated followed the UN until the February 17, 2008, when Kosovo unilaterally declared independence from Serbia.

As stated before, the Resolution stated the sovereignty of the FRY and Kosovo as a composite part of it, while on the other hand also demands that full account is to be taken of the Rambouillet¹⁵² accords which in turn speak of determining a final settlement on the basis of the will of the people.¹⁵³ Regardless of these facts, on the 15th of June, the UN administration kicked off its mission in Kosovo – the first-ever operation of its kind.

UNMIK initially brought together four “Pillars” under United Nations leadership.

Pillar I: Humanitarian assistance – with the emergency stage over – led by the Office of the High Commissioner for Refugees (UNHCR), was phased out at the end of June 2000. The other pillars were:

Pillar II: Civil Administration, under the United Nations

Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE)

¹⁵⁰ Interview with Albin Kurti, leader of the Vetevendosje movement conducted by the author on 15. 03.2009. The length of the interview is 27 minutes. Interviews are conducted during my tenure as a senior officer for the International Civilian Office for the purpose of an academic book on Kosovo’s State Building.

¹⁵¹ REKA, 2003. p.166.

¹⁵² Rambouillet Agreement is the name of a proposed peace agreement between Yugoslavia and a delegation representing the ethnic-Albanian majority population of Kosovo. It was drafted by NATO and named after Chateau Rambouillet, where it was initially proposed. The significance of the agreement lies in the fact that Yugoslavia refused to accept it, which NATO used as justification to start the air campaign.

¹⁵³ JUDAH, 2008. p. 94.

Pillar IV: Reconstruction and Economic Development, managed by the European Union (EU).

This unique partnership enabled the mission to set in motion the development of Kosovo's democratic institutions and lay the foundations for a medium and long-term social and economic reconstruction even while the urgent phase of humanitarian assistance and emergency relief was taking place.

The head of UNMIK is the Special Representative of the Secretary-General for Kosovo (SRSG). As the most senior international civilian official in Kosovo, he presided over the work of the pillars and facilitated the political process designed to determine Kosovo's future status. The civilian executive powers come from the UN Security Council, which also authorized an international military presence, KFOR (Kosovo Force).¹⁵⁴

Subsequently, the Resolution 1244, as well as the Constitutional Framework of Kosovo, which gave the basis for the establishment of the Provisional Institutions of Self Government and the Kosovo Assembly, clearly stated that the Interim Administration of the United Nations is just a transitional administration which will function until the Kosovo final political status is resolved.

The role of UNMIK in Kosovo, and the Resolution 1244 was to facilitate a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648)¹⁵⁵

However, no clear deadline was presented as to when the transition period should end, meanwhile there was constant criticism on the status quo maintained by the international community on the frozen status of Kosovo.

UNMIK came with Standards for Kosovo, namely 8 standards that Kosovo needs to fulfill before entering into talks about its final status.

¹⁵⁴ What is UNMIK? United Nations Mission in Kosovo is an international civilian presence mission established under the UNSCR 1244. Available at: <https://peacekeeping.un.org/en/mission/unmik>

¹⁵⁵ UNSC Resolution 1244 (1999), Preamble, par. 9e.

“A Kosovo where all – regardless of ethnic background, race or religion – are free to live, work and travel without fear, hostility or danger and where there is tolerance, justice and peace for everyone.”¹⁵⁶

The standards for Kosovo¹⁵⁷ were established in 2002-2003 as eight fields seen as priorities for the established Kosovo institutions. The purpose of the standards was to create a fairer and more tolerant society and improve the levels of public sector performance. The eight fields were: Functional democratic institutions, Rule of law, Freedom of Movement, Sustainable returns and the rights of communities and their members, Economy, Property Rights (including cultural heritage), Pristina-Belgrade dialogue, Kosovo Protection Corps (KPC).

This document set out the standards that Kosovo had to achieve, in full compliance with the UN Security Council resolution 1244 (1999) and the Constitutional Framework, as well as the original benchmarks statement, endorsed by the Security Council. Furthermore, in the Presidential Statement of December 12, 2003, on the Standards for Kosovo, the Security Council reiterated the primacy of the regulations promulgated by the SRSG and subsidiary instruments there under as the law applicable in Kosovo. Any discriminatory elements in post-March 1989 legislation relating to Kosovo were not to be applied. These standards reinforced Kosovo’s parallel progress towards European standards in the framework of the EU’s Stabilization and Association Process, based inter alia on the Copenhagen criteria. The standards describe a multi-ethnic society where there is a democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background. However, not everybody agreed to the benchmarks set by UNMIK. The general opinion was that UNMIK was bargaining too much with Serbia regarding Kosovo’s issues.

UNMIK was established by UN Security Council Resolution 1244 in 1999 which clearly reaffirms the commitment of all member states to preserve the territorial integrity and sovereignty of ex-Yugoslavia, now held by Serbia. Point 11 of the Resolution foresees the solution of “status” in accordance with the Rambouillet Accords of 1999. These Accords

¹⁵⁶ Standards for Kosovo. Presented Pristina, 10 December 2003.

Available at: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20Standards.pdf> [Last accessed: 09.05.2019]

¹⁵⁷ UNMIK / Provisional Institutions of Self-Government, Standards for Kosovo, January, 2004. (This document sets out the standards that Kosovo must reach, in full compliance with UN Security Council resolution 1244 (1999) and the Constitutional Framework and the original standards/benchmarks statement, endorsed by the Security Council.)

clearly treat Kosovo as part of Serbia. Thus, UNMIK is an institution established to preserve Kosovo as an autonomous region of Serbia. Point 4 of Resolution 1244 also foresees the return of Serbian military & police personnel to patrimonial sites and border crossings. During its ruling, UNMIK never did consult the Kosovo political leadership in the rulings of the Administration, and furthermore, there has been no accountability associated with the possible wrongdoings on the both political but also the programmatic facet.

However, now UNMIK established an international presence in Kosovo decided that over the nine years since, as Kosovo's Provisional Institutions of Self Government (PISG) and now the proper Kosovo Institutions were established and gained the capacity to assume more responsibilities, UNMIK has moved back from an executive role to one of monitoring and support to local institutions.

After the declaration of independence – no official position by the Security Council has been echoed, and with the certain veto of Russia and China over the abolishment of the Resolution 1244, the UNMIK's mandate continued to exist, albeit in a controversial and inconvenient mandate, adopting a position of status neutrality which disavowed all its previous efforts to peace and institutions building in Kosovo.

With this, the EU stepped its efforts to deal with the troubled Western Balkans region.

VI. 2. The establishment of International Civilian Office and the EU Rule of Law Mission

Kosovo under the UNMIK administration and undefined political status has faced many difficulties either in establishing a sound and sustainable policy in its process of European integration or establishing well-functioning institutions in order to draft and implement the policies. Yet as of the inception of the process of European integration, the Kosovo government, based on the prevailing situation and conditions before independence and similarly after the independence declaration, has rather well architected the institutional structures. The complex institutional web established by the government has taken the responsibility to carry the process of European integration within prevailing Kosovo's conditions.¹⁵⁸

¹⁵⁸ Kosovar Institute for Policy Research and Development (KIPRED): Analysis of institutional policy cycle set-up in Kosovo's European Integration Policies. Policy Brief, No. 7. Available at:

According to Pond, the advance EU team in Kosovo had to cope with three immediate challenges. The first was how to finesse the transfer of oversight of Kosovo from UNMIK to the EU mission that the Serbs and Russians branded illegitimate. The second was how to deal with the “parallel structures” that Serbian political and plainclothes security forces had built up in Kosovo in the lax UNMIK era, especially in the northern part of Kosovo that abuts Serbia. The third was how to minimize the expected negative fallout from the Serbian snap election scheduled for May 11, 2008. In the face of the urgent, the merely important priorities, such as ensuring clear Kosovar legislation outlawing insider financial profiteering and conflict of interest, got pushed well down the list of priorities¹⁵⁹.

The new constitution of independent Kosovo came into force on June 15, 2008. For the first time, the final packet of model laws translating the Ahtisaari plan into domestic legislation was signed, not by the head of UNMIK, but by President Fatmir Sejdiu of Kosovo. The Kosovo government now assumed full sovereignty, according to the three-week-old International Steering Group of nations that recognized Kosovar independence. Celebrations were muted. On June 12, 2008 three days before the new holiday of Constitution Day the UN Secretary General Ban Ki Moon finally broke his 17-week silence and addressed the issue of “reconfiguration” of the international presence in Kosovo “in light of the evolving circumstances.”

In parallel letters to Sejdiu and President Boris Tadic of Serbia, he indicated vaguely that the EU would have an “enhanced operational role in Kosovo,” while UNMIK would continue to function. Resolution 1244 would remain “in force until the Security Council decides otherwise”; the UN position on the status of Kosovo was “one of strict neutrality.” Ban further stipulated in his letter to Tadic (the letter he sent to Sejdiu without ever addressing him as “president” omitted these points) that, under “temporary arrangements,” Kosovar Serb police officers “should report to international police” rather than to the KPS and that “[a]dditional local and district courts serving relevant Serb majority areas may be created.”¹⁶⁰

Twenty-five states that recognized Kosovo as an independent state formed the International Steering Group (ISG) for Kosovo and appointed an International Civilian Representative (ICR) to head the International Civilian Office (ICO). The ICR was simultaneously appointed the European Union Special Representative (EUSR) representing a divided European Union (EU),

http://www.kipred.org/repository/docs/Struktura_e_Ciklit_te_Politikave_Institucionale_te_Qeverisjes_Vendore_n_e_Procesin_e_Intergrimit_ne_Bashkimin_Evropian_397529.pdf [Last accessed: 11. 09. 2018]

¹⁵⁹ POND, 2008. p. 3.

¹⁶⁰ POND, 2008. p. 104.

where 22 states recognized Kosovo's independence and five would choose not to do so. The ICR/EUSR's dual mandate was to ensure Kosovo's full implementation of the Ahtisaari Plan as well as prepare it for eventual European integration.¹⁶¹

Initially envisaged as a smaller and lighter international presence, the ICO grew in scope and structure once it became clear that agreement on Kosovo's status by all 27 members of the EU could not be reached. President Ahtisaari had understood since 2007 that a continued UNMIK presence would be untenable and that independence from Serbia was the only way forward, given that all other options had been exhausted.

Before the establishment of the International Civilian Office proper, a smaller preparation office started its work under the name of International Civilian Office Preparation Team (ICO PT) started its work in Kosovo since 2006. Conversely, Jonsson summarizes the role of ICO PT:

*"It was inevitable that Kosovo would declare independence. We all knew that from the moment we were summoned to start preparing for an international oversight body that will safeguard the Ahtisaari plan in the years to come post-independence. It was just a matter of time. However, it was never the plan for the ICO to yield the legacy of UNMIK, still present in Kosovo. Our job was to implement the provisions of Ahtisaari, finish the job and close the door. That is exactly what happened. We went in and out. What we achieved in between, one can be very subjective in his opinion".*¹⁶²

The end of the ICO PT mandate was announced in April 2008. Its task as a Preparation Team was to establish a proper functioning administrative structure, relying on the capacities needed in order for this mission to be capable to implement the Comprehensive Status Proposal (CSP) provisions. Technical discussions ensued between Kosovo and international experts on the provisions of Kosovo's new Constitution and key CSP laws that needed to align with the CSP. Also, a Constitutional Commission was set up under the two Deputy Prime Ministers of Kosovo, legal experts from within the Kosovo government, and with ICO/PT participation. The Commission had several key meetings before the new Constitution took shape.¹⁶³

The ICO Preparation Team had a flexible, but however a concrete approach when discussing the legislative and constitutional agenda in Kosovo. It had to provide formal technical support in the drafting process, at the same time ensuring that the drafting is in full compliance with the

¹⁶¹ The International Civilian Office mandate. Available at: www.ico-kos.org [Last accessed: 16.07.2018]

¹⁶² Interview of the author with the Head of the ICO Preparation Team, Jonnas Jonsson, conducted on 11 January 2013. Interviews are conducted during my tenure as a senior officer for the International Civilian Office for the purpose of an academic book on Kosovo's State Building.

¹⁶³ FEITH, 2013. pp. 19-24.

Ahtisaari plan provisions, ensure political wide and minority representation. If all these criterions were met, then the Head of the ICO was not to be using his formal powers to annul a Government or Assembly decision, a power vested in him with the Ahtisaari proposal and enshrined in the Constitution.

Based on ICO/PT advice and support, the Kosovo Assembly adopted 19 laws that came into effect on 1 June 15, 2008, following the entry into force of the Constitution. This initial package included laws on Diplomatic Immunities and Privileges, Kosovo Police, Kosovo Police Inspectorate, Citizenship, Establishment of Special Protective Zones, Local Self Government, Municipal Borders, Travel Documents, Use of State Symbols, Ministry of Foreign Affairs etc.¹⁶⁴

However, the ICO/PT deployment and early work plan were not without challenges. The disappointment of not having an UNSC resolution backing for the ICO and therefore no consensus by the EU on Kosovo's status did not provide the ICO/PT with the clarity of vision that it needed at the initial stages. Another challenge, which in turn had repercussions for the follow-on ICO/EUSR presence, was the inaccessibility of the ICO office in northern part of Mitrovica following a bomb explosion in the vicinity of the ICO/PT office on 14 February 2008 and violence that erupted in March 2008. The office was relocated to the southern part of Mitrovicë/Mitrovica where it remained until the ICO closed.¹⁶⁵

The ICO had an entirely different aura, compared to other international presences, following its mandate. It was basically the only international organization in town to publicly recognize the independence of Kosovo, moreover, to help that independence document implement in the best possible way. This was the reason why the International Civilian Office had full support and sympathy from the majority Albanian citizens of Kosovo, as well as from the Government leaders.

The complex dynamics on the field, with having Kosovo's future Government expressing strong opposition to UNMIK's future role in the state building, and the EU's very ambitious rule of law mission EULEX, on top of the vigorous supervisory role of the ICO, was a clear sign that the consent or even cooperation from Belgrade is not in near sight. ICO's mandate was not alike the OHR in Bosnia. There had to be an exit strategy, within a reasonable time frame. On the 14 June 2010, the International Steering Group, concluded that 90% of the

¹⁶⁴ FEITH, 2013. p. 10.

¹⁶⁵ ICO/EUSR PT Internal Report. Council of the European Union. 28 April 2008. Brussels, p. 15.

benchmarks are completed. By 2012 there was a credible ISG consensus around the end of supervision, and with that outcome clear the ISG debates of that year tended to be less fraught than previously. But there remains the paradox that some motives for closing the ICO were almost diametrically opposite: at one extreme the desire to remove the impression of supervision and leave Kosovo more clearly sovereign; at the other the desire to remove a stimulus for Kosovo Government dynamism, and leave Kosovo more clearly focused on its probationary relationship with the EU.¹⁶⁶

The CSP had intended the ICO to offer not open-ended reinforcement and co-governance of the Kosovo state, but limited-term supervision and enabling. For much of its existence, the ICO was focused on the achievements that would be necessary to allow its own departure. It drove towards that goal with determination; it used the leverage of ending supervision right to the last days to secure positive developments that might not otherwise have happened, and it departed smoothly because of the functioning system that it left behind. For Kosovo, September 12, 2012 was a positive and significant step not only because of what it said about the development of the state, but also because it stripped away from the state much of the ad hoc international superstructure, and left Kosovo's citizens and politicians in more direct and unmediated relation.¹⁶⁷

However, ICO did not deliver on its most important benchmarks. On the contrary, the delayed presence of the supervisors would have forced the country to tap in one place, without any progress. It did not achieve one of the single most substantial and important aspirations – a new municipality of Mitrovicë/Mitrovica North – nor had the time to build on the significant changes that ICO personnel had started to make in the political environment and Government reach in the northern areas of the country. It took no exemplary action against Kosovo officials or institutions, disappointing many outside and some inside the organization. This was partly the result of a deliberate calculation.¹⁶⁸

On the other side, another cluster of the international presence in Kosovo was the EU agreed mission on the Rule of Law, named EULEX. Its mandate was enshrined in the Ahtisaari Plan, and the mission was formally invited by the Kosovo institutions with the Declaration of Independence. Yet, the EU 27 member states, acted unanimously only when agreeing to deploy

¹⁶⁶ FEITH, 2013. p. 43.

¹⁶⁷ FEITH, 2013. p. 93.

¹⁶⁸ FEITH, 2013. p. 140.

the Mission, whose core principles were, monitoring, mentoring and advising the national institutions in the Police, Judiciary, Customs and Correctional system matters.

Stipulated in the Ahtisaari proposal, Kosovo suffers from independent judiciary, as well as, weak police and disrupted security architecture. In order to complement each other, in addition to the EU presence in form of economic aid (European Commission Liaison Office) and political guidance (European Union Special Representative), the 27 member states, though lacking unanimity vis-a-vis Kosovo's political status, did launch the biggest ESDP mission in its history.

Many problems followed the deployment of EULEX. The opposition of the Serbian community in the rebelled northern part of Kosovo to the extension of EULEX's mandate in that part, the deployment based on Resolution 1244 of the UN Security Council which was vigorously opposed by the Kosovar leadership and their executive mandate and the overstretching to every instance of the security institutions were all indicating towards failure from the very beginning. Moreover, EULEX was perceived as an extended hand of UNMIK, i.e. just another autocratic mission, with overpaid international staff members, that lacks coherence, and brings no bright perspective for Kosovo, neither in the domestic nor international constellation.

In April 2009, EULEX became fully operational. The EU Joint Action of February 2008 and Council Decision of June 2010 and June 2012 provide the legal basis for the Mission. EULEX works within the framework of UN Security Council Resolution 1244.¹⁶⁹

EULEX, with its formal executive powers, and the culture of abdication of responsibility these stimulate in Kosovo's police and judiciary, has held the monopoly on organizing high level corruption, organized crime and war crimes investigation. With the EU's October 2009 Progress Report headlining Brussels' alarm about government corruption and organized crime, EULEX's action or inaction has become the determinant of Kosovo's direction:

“Such alarm implanted in Kosovo society a notion of “original sin”, for which EULEX's torpor in 2009 and early 2010 denied exculpation. The mission seemed very focused on its internal processes, and slow to grasp that tardiness or absence of action, whether born of incapacity or political stop signs, by default protects and nurtures corruption. Despondency began to set in among

¹⁶⁹ EULEX Mission Statement. Available at: <https://www.eulex-kosovo.eu/?page=2,16#:~:text=EULEX's%20overall%20mission%20is%20to,standards%20and%20best%20European%20practices> [Last accessed: 11.08.2020]

*Kosovo's civil society: "The UNMIK time created corruption; the ICO/EULEX time has created a mafia."*¹⁷⁰

However, the trumpeted mission statement of EULEX was a signal for the Kosovo society to not expunge its expectations that the path towards the EU, now with the biggest Rule of Law mission in place, may be closer, i.e.:

*"EULEX supports Kosovo on its path to a greater European integration in the rule of law area. EULEX's skills and expertise are being used to supports the key EU aims in the visa liberalization process, the Feasibility Study and the Pristina-Belgrade Dialogue. EULEX also supports the Structured Dialogue on the rule of law, led by Brussels. EULEX continues to concentrate on the fight against corruption and works closely with local counterparts to achieve sustainability and EU best practices in Kosovo. EULEX prioritizes the establishment of the rule of law in the north".*¹⁷¹

The phrases used in its mission statement, are seen as optimistic for Kosovo as it can be, but the reality on the ground shows an entirely different paradigm. The political impact from which EULEX, even though portrayed as a technical mission, could not remain immune, hampered successful fulfillment of their mandate.

Nevertheless, analysis from a prominent Kosovar think tank, KIPRED¹⁷², shed light on the hurdles that the mission faced. As KIPRED states in their report, "the legal and political intricacies preceding the establishment of EULEX and the local context in which it operates are not the only bumps on EULEX's road to fulfilling its mandate and meeting expectations. The mission was established as a technical rule of law mission, but it did not remain immune from the very circumstances under which the mission was established and the political agenda of its birthplace."¹⁷³

With the deployment of EULEX, Kosovars ought to have stepped one latter closer towards EU consent to enter into contractual agreement with the new country and hopefully gain the so much wanted visa liberalization. Nevertheless, the five no recognizing member states pose a serious barrier to achieve its aim. Moreover, the fight against corruption and organized crime, a precondition set forth by the EU to every aspiring country for accession, has not nearly met,

¹⁷⁰ Youth Initiative for Human Rights. State of constriction? Governance and Free Expression in Kosovo. 2010. p. 19.

¹⁷¹ EULEX Mission Statement. Available at: <https://www.eulex-kosovo.eu/?page=2,16#:~:text=EULEX's%20overall%20mission%20is%20to,standards%20and%20best%20European%20practices>. [Last accessed: 11.08.2020]

¹⁷² KIPRED is a prominent think-tank in Kosovo whose aim is the promotion and consolidation of democracy and democratic values in Kosovo and in the region through independent research, capacity development and institution building. Available at: www.kipred.org [Last accessed: 20.03.2021]

¹⁷³ KURSANI, 2013. p. 12.

despite the nonchalant efforts made by the 100 million euros worth mission with almost 2000 strong police officers and judiciary experts.

Bottom line, EULEX is a political creation. It is an offspring of EU's tentative to leave Kosovo in limbo. For example, "Kosovo is behind even Afghanistan on the issue of visa liberalization. Afghani passport holders can cross 22 borders without restrictions, while Kosovars can only travel to five countries visa-free: Turkey, Albania, Montenegro, Macedonia, and Haiti. 'Male, unmarried, under 30? Good luck,' can be often heard among the lines in front of the consulates in Pristina".¹⁷⁴

EULEX has an incompatible position towards Kosovo. The result of that incompatibility represents failure in coordination within a set of political priorities, i.e., the international recognition, participation in the international forums and organizations, rule of law, EU integration. These can be seen as unintended consequences or caused by other factors such as the lack of political will from the local actors rather than the inert capabilities of the international presences to cope with the big knot raveled around Kosovo's status. However, they represent a failure of the process of reaching the ultimate goal of integration.

Taking upon the advice of the US and other influential UNSC member states, the European Union, after the declaration of independence in Kosovo has continuously taken up the leading role in aiding Kosovo towards a building a democratic and solid society, boosting economic development, enhancing rule of law and ultimately prepare Kosovo for its future membership in the EU family. This has been the case with EULEX.

On 4 February 2008, the Council adopted a Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo.

EULEX is the largest civilian crisis-management mission under the EU Common Security and Defense Policy and the first fully integrated rule of law mission of the EU that balances executive functions with highly ambitious rule of law sector and capacity reforms.

Its mandate is based on the Mentoring, Monitoring and Advising the Kosovar authorities in the rule of law component yet retaining some of the executive competences in extraordinary circumstances.

¹⁷⁴ WAEHLISCH and XHARRA. *Three Years after independence, Kosovo struggles for recognition*. Radio Free Europe analysis. 2011. Available at: http://www.rferl.org/content/commentary_kosovo_third_anniversary/2312109.html [Last accessed: 20.03.2021]

But, the hybrid nature of its functioning affected by the 5 non recognizing EU member states, has added uncertainty and confusion to the judicial branch in Kosovo. Moreover, the composition of the EULEX staff members coming from different backgrounds, being that technical or cultural aspect, different legal practices, but yet operating under the Kosovo Law, the Penal Code and the Penal Procedure Code has just inflated ambiguity and lack of trust by the local population that something might even change.

No relationship can be established between the invitation made by the Kosovo authorities and EULEX's mandate under the joint action as that invitation was not given any relevance as a legal basis for EULEX's establishment and operations. This is further reinforced by the fact that EULEX was placed under the "status neutrality" of Resolution 1244, which is evidently in contradiction to the wording and spirit of the Ahtisaari Plan, the Declaration of Independence and the Constitution of Kosovo, all of which clearly assert the independence and sovereignty of Kosovo. Having accepted to operate under Resolution 1244 and within the UN framework of "status neutrality", EULEX, by implication, has renounced all documents listed by Kosovo authorities as a legal basis for its mandate in Kosovo.¹⁷⁵

However, legal ambiguity does not end here. Since EULEX is not bound by the Constitution of Kosovo, nor its mandate derives from Kosovo's highest state document, but on the contrary relies on the Resolution 1244 of the UN Security Council. However, many of its operational tasks, do conflict with the legal knot that the EU has tied itself in vis-à-vis Kosovo.

Since neither the Constitution nor the Ahtisaari Plan recognize the United Nation Mission in Kosovo (UNMIK). Special Representative of the Secretary General (SRSG) to be a legitimate public authority, any appointment by the UNMIK SRSG of EULEX judges, who are meant to serve within the judicial system of the Republic of Kosovo, would have to be considered unconstitutional. As a consequence, every decision rendered by a EULEX judge or by a judicial tribunal where a EULEX judge participates, provided such EULEX judge has been appointed under the authority of the UNMIK SRSG under Resolution 1244, is challengeable before the Kosovo Constitutional Court.¹⁷⁶

¹⁷⁵ MUHARREMI, 2015. p. 370.

¹⁷⁶ MUHARREMI, 2010. p. 377.

In theory, it is impossible for EULEX to accomplish its mandate under such circumstances, i.e. pretending to operate formally under the status-neutral framework of Resolution 1244 while at the same time co-operating de-facto in justice and other legal matters with the authorities of the Republic of Kosovo. It would be sufficient for a single ruling from the Kosovo Constitutional Court by which a decision made by a EULEX judge is declared unconstitutional to destroy the card house built by the EU by deploying EULEX under such legal uncertainties.¹⁷⁷

Nevertheless, the current state of play shows that, despite the uncertainty, EULEX is continuing its operations in Kosovo, recently challenged by the President of Kosovo. The missions mandate until now has not been challenged despite some provisional efforts of the President to “evict” the Mission stating that the President has not seen any reason to extend the mandate of EULEX since the Kosovo institutions have full capacity and are entirely competent to fulfil any task as required.¹⁷⁸ Nonetheless, in a subsequent exchange of letters between President Hashim Thaci and EU High Representative, Borrell, it has been indicated that in order to ensure the continuation of the operations of EULEX in the COVID-19 circumstances, Kosovo agrees to the technical extension of the mandate, until the latest June 12, 2021.

In figures, EULEX judges have delivered 620 verdicts, including 460 verdicts in criminal cases, including corruption, organized crime, money laundering, war crimes, and human trafficking, and 146 verdicts in civil cases. These verdicts have included former judges, police officers, assembly member’s prosecutors and high-level officials. The Mission investigated or filed indictments on 250 war crimes cases, thus substantially clearing the backlog of war crimes in Kosovo. Apart from the “inherited cases”, the Mission initiated 98 new war crime investigations and conducted the first investigations into rape as a war crime prosecuting a number of such cases.¹⁷⁹

Contrary to what the figures show, there is a substantial consensus among the public and analysts in Kosovo, and even some EU officials that EULEX has largely failed to address politicized or serious crime.¹⁸⁰

¹⁷⁷ MUHARREMI, 2010. p. 378.

¹⁷⁸ Thaçi përzë EULEX-in: Nuk ka pse rri më në Kosovë! Available at: <https://thealbanianprofile.com/thaci-perze-eulex-in-nuk-ka-pse-rrime-ne-kosove/> [Last accessed: 12.09.2020]

¹⁷⁹ EULEX Facts about the Mission. What does EULEX do? Available at: https://www.eulex-kosovo.eu/eul/repository/docs/177902-EULEX-Mandate-02_20191101.pdf [Last accessed 06.05.2020]

¹⁸⁰ RADIN, 2014. p. 184.

As good as it may sound, EULEX has not delivered what was expected. The costly mission of the European Union member states has so far opened several investigations into alleged corruption cases against, what they call them today as, “big fishes” such as the former Minister of Infrastructure, Fatmir Limaj, mayors, judges and prosecutors, as well as the head of Central Bank of Kosovo. But none of these cases ended with a conviction. A theatre show transmitted in the media with Special Forces storming the center of Pristina, the capital of Kosovo in raids organized by the EULEX, yielded no results.

EULEX has proven craven, passive and fearful of taking on Kosovo’s elite.¹⁸¹ Moreover, EULEX itself for a long time has been plagued by corruption accusations and internal investigation and disciplinary hearings. A whistleblower, British prosecutor working in EULEX, in 2014 has gone public claiming she had evidence of senior EULEX staff members being engaged into corruptive activities, namely the president of the EULEX judges, the Italian Francesco Florit and chief prosecutor Jaroslava Novotna.

The investigation into the case conducted by a special envoy of Frederica Mogherini, the High Representative for EU Foreign Policy and Security, concluded years after these allegations were raised. The result was: the organization has serious flaws; however, no evidence of such corruptive activities has been found.¹⁸²

Criticizing the mandate of EULEX, the report stipulates that oversight is poor. In the beginning no real statistics were kept on judicial work, which doubtless hindered the development of a working culture rooted in strict standards akin to that found in many member states and international courts. It was therefore difficult to assess whether the mission was achieving its goals. After such statistics became available, revealing low level of performance no one really paid serious attention to them.¹⁸³

The false narrative story told by the EU officials about the success of the costly Rule of Law Mission should stop, while immediate reconstruction of the Missions human capacities as well as mandate need to take place. In order to achieve success, EULEX should concentrate more on

¹⁸¹ CAPUSSELA, 2015. p.4

¹⁸² JACQUE, JEAN PAUL: Report to HR Ms. Frederica Mogherini: Review of the EULEX Kosovo missions implementation of the mandate in particular focus on handling the recent allegations. 2015. p. 11. Available at: http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/statements-eeas/docs/150331_jacque-report_en.pdf [Last accessed: 19.02.2020]

¹⁸³ JACQUE, JEAN PAUL, 2015. p.16.

its mentoring and advising mandate, by transferring knowledge from the best practices in Europe on judges and prosecutor's education and selection, and aligning the corruption and organized crime legislation to the cultural, social and political aspect of Kosovo. Otherwise, EULEX will be doomed to have the same adjective as UNMIK did in the past – that of an ultimately failed mission.

During the monitoring of the work of the judiciary, the Kosovo Institute for Justice (IKD), it has been concluded that the performance of the EULEX judiciary hasn't been as nearly efficient or up to the expectations of the Kosovo citizens.¹⁸⁴

An ICO internal memorandum dated March 24, 2010 directed to the EU leadership in Kosovo¹⁸⁵, has shown the lethargic EULEX approach towards fighting corruption. A senior EULEX's public statement that it was investigating high-level officials for corruption instilled a sense of hope that things were moving in the right direction. But only a few weeks later, EULEX issued a series of public statements seemingly backtracking from its original strong statements, damaging both its efforts and its public outreach campaign. EULEX's slow start and its less-than-stellar ability to present its achievements have led some – notably Ilir Deda of KIPRED – to call on EULEX to transfer its executive competences to Kosovo's government. EULEX's own public outreach campaign and statistics speak of a different story, however, noting for example that EULEX has helped decrease smuggling in the North by up to 60%, that it has processed 467 cases in 2008, and that its police component has done an extensive and unprecedented review of the Kosovo Police (see Ref. C). Recent moves by EULEX to increase its capacities in Gates 1 and 31, and the sentencing of 6 customs officers by a court in Gjilan/Gnjilane signify increased efforts in the fight against corruption and smuggling.

As a result of the monitoring, it was clearly seen that, contrary to the expectations for EULEX judges and prosecutors to adopt and implement the European best practices in the Kosovo system in order to enforce the “learn by doing” process, these judges have often in their actions been below the standard – taking unlawful decisions that have jeopardized the legal security of the citizens of the Republic of Kosovo.

¹⁸⁴ Interview of the author with Betim Musliu. Director of the Kosovo Institute for Justice (IKD). Interview conducted via e-mail on 8 March 2017.

¹⁸⁵ International Civilian Office: Rule of Law update – Interoffice Memorandum, 24 March 2010. Author (undisclosed). Unpublished confidential document; 2015.

The Kosovo Justice System has seen significant development with a large focus on legislative creation, and improvement of the skills of those who work within it. The backdrop to this, however, has been executive functions delivered in the main by the United Nations and the European Union. For years many of the legal functions were provided by international lawyers; this has hindered the development of experience and accountability locally.

The international community's oversight has led to a system that lacks ownership. Without ownership it is highly unlikely that attributes such as accountability, integrity and transparency will develop at a local level. This lack of ownership is exemplified through a blame culture that is prevalent throughout the justice system. The domination of the international community has also led to a lack of strategic awareness and organisational performance.

The lack of public confidence in Kosovo's justice system is well known, but just as evident is the lack of confidence in employees within the justice system itself in the capabilities of their colleagues, themselves, and their institutions to deliver quality justice outcomes. This lack of confidence appears to be traceable to overbearing international support, in terms of cause, and is likely to be dissuasive of a desire to take responsibility and to be accountable, in terms of effect. Clearly, corruption itself is driven by powerful criminal motives and this dissertation does not suggest that improving a sense of local ownership of public institutions is capable of reversing those motives. However, the ineffectiveness of local institutions to deal with and deter corruption in any meaningful way may well be traceable to a lack of local ownership.

A further consequence of Kosovo's progress to date is that the identity of the current justice system is linked to the international community. In this dissertation's view, critical to lasting change is the breaking of that link. The public perception that the justice system is unable or unwilling to function by itself and to take responsibility for its mandate also contributes to that lack of identity. Notwithstanding, there will continue to be a significant role to play for thoughtful, well-conceived international support. It is outlined here how, in this dissertation, international assistance of that sort might be rendered. Local institutions and individuals need to lead this effort and the contribution of the international community needs to be balanced to reflect the primacy of local institutions in that process.

VI.3. The grim side of the rainbow - cases of Nuhi Uka and Ramadan Muja

The failures of the judiciary in Kosovo, being on a national level or that of EULEX can best be illustrated with the cases of Nuhi Uka and Ramadan Muja, the former president of the Municipal Court in Pristina, while the latter the mayor of the second biggest city in Kosovo, Prizren.

Both of them have been investigated and charged with serious corruption and organized crime allegations, however, none of them has so far spent a single day in prison for several reasons. Primarily because of the inefficacy of the Court, leaving the case to be outdated thus not being able to continue with proceedings, or prolonging the case by exercising political influence onto different layers of the judiciary.

Nuhi Uka as a president of the Municipal Court, has been dragged into court proceeding for 6 years now, on allegations for being part of organized crime group that has profited and/or damaged the Kosovo budget with approximately 60 million EUR. Ramadan Muja, as a mayor of the second biggest city in Kosovo, Prizren, has signed a contract, illegally giving a municipal- owned property to a private-owned enterprise.

VI.3.1. The case of Ramadan Muja

One of the most intriguing cases in the post-independence Kosovo when it comes to corruption charges is undoubtedly the case of the Prizren mayor, Ramadan Muja. Prizren is the second largest city in Kosovo after the capital Pristina, and it is considered as Democratic Party of Kosovo (PDK) (the biggest ruling political party at that time) stronghold.

Ramadan Muja together with 5 other senior management defendants, was accused of misuse of official position or authority, as stipulated in the article 422 of the Penal Procedure Code of Kosovo.

The accused are suspected to have damaged the budget or have gained illegal financial benefits of at least 60 thousand euros (estimated that the total value of the illegally expropriated land is estimated at around 2 million EUR), while it was proven beyond any reasonable doubt that the mayor Ramadan Muja has been signing contracts in contradiction with his authorization, and engaged himself into the abuse of Kosovo Property Agency managed parcels, noncompliance with orders of the Supreme Court and privation of geodesy experts to testify in court.

The investigation started in the year 2011, and in March 2014, Ramadan Muja was found guilty as charged on four accounts. However, showing the fragility of the judicial system and the failure of standard impose of sanctions, all the defendants were sentenced with no jail time but instead only two years of conditional imprisonment (probation period), and the ban of exercising any public related job for 30 months.¹⁸⁶

It is imperative mentioning that when the indictment against Muja was raised, and the court proceedings were underway, it did not hinder him to run for a mayor for his third term, and surprisingly win again.

He was shown support by the at that time the Prime Minister and currently the President of Kosovo, Mr. Hashim Thaçi who gave statements of support together with the president of Turkey, Taip Erdogan.¹⁸⁷

One of the most memorable moments in the court against Muja is undoubtedly his request “not to be disturbed by the Court during the pre-electoral campaign as it puts him into a unequal position vis-à-vis other candidates. And with this approach, he did gain his third mandate, which he is also currently exercising.

In 2014, right after he got elected as a mayor the court found him guilty on four charges of corruption but sentenced him with a two years’ probation imprisonment. This meant new elections for the city as the Law on Local Governance stipulates that “the mandate of the mayor automatically ceases if he/she is convicted for a criminal act with a sentence of more than 6 months of imprisonment”.

But this verdict was challenged by the defense attorneys in the Appeal Court. The latter decided after 15 months of prolongation to send the case back to retrial. However, the prosecutor of the case did file another appeal against the second instance court in the Supreme Court of Kosovo.

In the ambiguous legal net, the Supreme Court has annulled the decision of the Appeal Court and asked for reconsideration by a new judge panel.

¹⁸⁶ The source of these findings is based on open data collection, interview with defense attorneys of the defendants as well as court proceeding transcripts. (see: http://kallxo.com/wp-content/uploads/2016/05/BIRN-court-report-2015_ALB_web.pdf p.25)

¹⁸⁷ Authors note: Prizren is a city inhabited largely by Albanians with Turkish descent and seen as a stronghold of the Turkish minority political parties. Erdogan’s party has a strong influence in the city; thus, his endorsement of a particular candidate would increase chances of winning.

While the prolongation continues, Ramadan Muja is coming to the end of his term with local elections scheduled around April 2017.

The case of Ramadan Muja cannot be considered as the biggest failure of the EULEX mission but can be considered as one of the biggest problems in the deliberate misinterpretation of the Penal Procedure Code, creating thus a precedent were EULEX, with the verdict of the Supreme Court, after the final verdict of the Appeal Court, have created a brand new legal penal system by creating three regular courts and not two as it is foreseen with the legal instruments.¹⁸⁸

The Supreme Court in this case has approved the appeal of the Prosecution in the Appeal Court on the verdict of the latter – while the Supreme Court ruling in favor of the Appeal, has returned the case in retrial within the Basic Court in Prizren.

At the same time, EULEX have appealed this verdict with the Supreme Court. The latter ruling on the same case, return it to the Appeal Court for retrial. Furthermore, to make things even worse, against all dispositions of the Criminal Procedure Code, they have ordered for the entire judging panel to be changed, thus creating an ambiguous legal environment.¹⁸⁹

The importance of this matter lies in the fact that in both cases the majority of the panels were EULEX judges, and clearly show the disparity of their legal practice and the misinterpretation, or even violation of the legal criminal procedures in the Kosovo system.

VI.3.2. The case of Nuhi Uka

The other case is that of the President of the Municipal Court, Judge Nuhi Uka, who was accused in fraudulent activities that damaged the Kosovo budget with 60 million euros.

The Judge, has had 3 different indictments against him, including, misuse of his senior official position, misconduct, corruption, and organized crime.

In a marathon investigation and trial that lasted since 2013 when Uka was arrested by EULEX, the end result yielded outmost disappointment.

¹⁸⁸ Interview of the author with Tomë Gashi. Attorney – legal representative of Ramadan Muja. Interview conducted via e-mail on 17 December 2016.

¹⁸⁹ Interview of the author with Tomë Gashi. Attorney – legal representative of Ramadan Muja. Interview conducted via e-mail on 17 December 2016.

One the case of damaging Kosovo budgeted by illegally privatizing state-owned property, with fake signatures and documents, Uka was found guilty as charged but sentenced only to two years' probation imprisonment, a verdict which was interpreted as a joke.

Moreover, in the Appeal procedure, the Court decided to annul the decision, and set the defendant free, dropping all charges against him.

In both cases, the majority of the panel were EULEX international judges.

Nuhi Uka, will be tried for one last case of participating in an organized crime enterprise together with a senior PDK member of the Parliament and a former top senior full name KLA official, Azem Syla as well as other defendants.

The two cases give a disrupted message on the strong statements given insofar about the vigorous fight against corruption. Considering the facts of these two cases, it can be concluded that the rhetoric of the fight against corruption remains only rhetoric. Allowing cases to be prolonged and outdated, is a deteriorating signal in the struggle for combating corruption, thus the legislation should be immediately amended not to allow such cases to be outdated, and at the same time a special task force to quickly deal with such cases in a prompt and professional manner.

There is a serious lack of zeal to fight corruption in Kosovo. Being that from political or professional aspect. As it was seen from above, EULEX is failing to deliver, because it is prone to rather keeping a political stability in the country than chasing after "big fishes", or it just does not have the stamina for it.

EULEX has been conscious about the political interference of Kosovo senior leaders to the judiciary. An illustration of the incapability to exercise executive prerogatives is portrayed in a restricted document sent by the EULEX deputy chief of staff dated August 5, to the Head of Mission, Yves de Kermabon on the "systematization on how to react in case of political interference into the independence of the Rule of Law services by local politicians".

Namely, the decision memorandum that has received tracking in Brussels too, suggests that there have been examples of by "local politicians" recently of political interference with the independence of the Rule of Law services in Kosovo. Further, the memorandum explicitly mentions the case of Prime Ministers Thaci (the former President of Kosovo) statement where he has publicly "acquitted" three individuals on trial conducted by EULEX for war crimes. The

reaction as recommended, confined to the issuance of public statements that “these institutions (note: Rule of Law) are free from political interference and adhering to internationally recognized standards and European best practices”, would suffice. This reaction, further according to the document, is warranted to ensure the EULEX credibility, but what is more important, to further emphasize that the local RoL institutions are “in most cases not ready yet to oppose political interference”. This paradigm, despite the fact that EULEX hailed as the most successful and the costliest mission of the EU ever launched, is following throughout today.

Moreover, some problems also stem from the very nature of EULEX which consists of entrusting the execution of justice to prosecutors and judges from outside of Kosovo who come from a variety of member states. Justice cannot be dispensed without taking into account of the local culture, and the Kosovar society has certain specific features which must be born in mind or the work of the judiciary will not be understood.¹⁹⁰

EULEX has insofar sentenced only several low-level figures on corruption charges, which is very insignificant when that is compared to the perception of high-level corruption in the country. The perception remains that the senior the defendant is, the lesser the conviction he gets.

As said, in Kosovo there is a lack of political will to tackle corruption. The establishment of myriad mechanisms to cosmetically fulfill requirements by the EU have been nothing but means to disperse the responsibility of the failure of the judiciary and the law enforcement agencies.

As a recommendation, EULEX should revise its mandate thoroughly, and concentrate more on the vetting and advising national prosecutors and judges, influencing the dismissal of those with shady backgrounds and injection of new blood into the judicial system. It should also focus on two key aspects and that is witness protection and instead of paying approximately 100 million EUR per year for its operations, use funds to increase security and training for the national judges and prosecutors.

The Parliament of Kosovo should give the Agency Anti-Corruption a more robust role in combating corruption, and not limit its scope into only technical aspects which have proved to

¹⁹⁰ JACQUE, JEAN PAUL, 2015. p.16

be inefficient so far. The latter needs to work closely with the State Prosecutors office in all matters regarding organized crime, and the appointment of the Head of this institution should be done by an independent body consisting of academics, civil society, and international experts with a proven track record. The laws and Strategies adopted should in reality reflect a result-oriented approach instead of a theoretical one, adoption of which is perceived as a document “just for having one to show”.

That addressed, the Law on Public Procurement, which is seen as the core of the corruption problem needs drastic changes in order to fill in the gaps left and limit the possibilities for bypassing the law for individual gains and benefits.

Bottom line, EULEX hasn't achieved its goal to improve the enforcing corruption-fighting mechanisms but instead has decided to cohabit with the political elite, instead of engaging in their prosecution.

To sum up, taking upon the experiences from the past, the European Union with EULEX tried to find a creative model on how to approach Kosovo, and with that to reform the Rule of Law in the country – the weakest link in the state consolidation exercise.

It has not only failed to do so, but moreover, it has entered into a dead-end. The Europeanization strives to reform and align the rule of law mechanisms with those of the EU conditions, coped with vague promises and appraisals, which have only added to the inefficiency of the mission, and with that the failure of the Europeanization process.

If we take into consideration the interpretations of Europeanization that take more general concepts which consider it to include, “... processes of (a) construction (b) diffusion (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies” (Featherstone, 2010), then from the Kosovo case we see an entirely different approach used, especially when we take into consideration the relationship ambiguity prevailing over the two.

VI.4. From EU progress reports to EC country reports: the case of Kosovo (2008 – 2019)

The progress report, or these days called as the Country report is a mechanism introduced by the European Commission to measure the achievements of a country in fulfillment of the European agenda within one calendar year.

Since March 2005¹⁹¹, when EU was one of the pillars of the UN Interim Administration in Kosovo, the Commission has been reporting regularly in front of the Council and the Parliament on the progress that the countries from the Western Balkans have achieved when it comes to the EU integration process.

As for Kosovo, this report describes the relations between Kosovo and the EU, analyses the political context of Kosovo, focusing on the democratic institutions, rule of law, human rights, protection of minorities and regional issues, as well as analyses the economic situation together with the capacity of Kosovo institutions to implement the European standards which entails the gradual approximation of the legislation and policies in Kosovo with the “*acquis*”, in coherence with the priorities of the European Partnership.

Why is this relevant to the Europeanization process? The progress report for Kosovo is used often as a sole mechanism of the EU to decide regarding the relationship between EU and Kosovo and at the same time, evaluate the progress on the implementation of the Stabilisation and Association Agreement (2015)¹⁹², the controversial visa liberalization process and is often used as a safe-guard by the EU member states as a “stick” when it comes to the democratic functioning of the institutions, i.e. concluding that Kosovo is not yet mature to adhere to the processes that other WB countries have already been part of.

For the purpose of the research, comparative analysis of the Rule of Law context was undertaken from the last 6 progress reports, since 2013, which clearly shows a rather lethargic approach to the rule of law reform.

All progress reports when they talk about the judicial system since 2013 characterize Kosovo’s judiciary as being at an early stage. Despite the fact that the EULEX Rule of Law mission, was to contribute to the strengthening of the system, and further advancing its reform in line with the EU standards, the progress report 2013 up until 2019 does not change significantly.

¹⁹¹ European Commission: Kosovo (under UNSCR 1244). 2005 Progress Report. COM (2005) 561 final, Brussels, 9 November 2005. p. 6.

¹⁹² Stabilisation and Association Agreement between the European Union, of the one part, and Kosovo, of the other part. OJ L 71, 16 March, 2016. p. 31.

The most commonly used phrase is “the judicial system at an early stage”, prevailing in all reports. The second most used is “some progress achieved” and when the fight against corruption is analyzed the most common phrase is “has some level of preparation”.

A significant milestone in the process of Kosovo’s rule of law Europeanization is featured in the 2013 report, which is characterized as a “historic year for Kosovo”, following the decisions of the Council in June that authorized the opening of negotiations for a Stabilisation and Association Agreement (SAA)¹⁹³ which constituted the start of a significant new phase in EU-Kosovo relations.

What is most significant here is the language used in the progress report, where “Kosovo has demonstrated a commitment to deliver results in the fight against organized crime and corruption, including launching investigations and strengthening the legislative framework, anticipating the signature of the SAA. Further, the argumentation used in the report does surface other positive conclusions such as the good cooperation of the institutions with EULEX, the reform of the justice sector, introduction of the legal framework which “was expected to contribute to the independence, effectiveness, accountability and impartiality of the judicial system”.

Despite the appraisal, in 2013 independent justice remained a challenge and the fight against corruption and organized crime remained at an early stage with an emphasis on witness intimidation.

On the other hand, the discourse was more focused in 2014 mainly due to the agreement of the Kosovo government to establish the Specialist Chambers and the Specialists Prosecutors Office in order to investigate the allegations made by Dick Marty, a parliamentarian of the Council of Europe¹⁹⁴ compiled in a report submitted in the Council of Europe Parliamentary Assembly on 7 January 2011.¹⁹⁵ Nonetheless, the report did again stipulate that Kosovo has made good progress in cooperation with the EU rule of law mission, EULEX, however the rule of law in Kosovo, including judicial independence, and limited results in the fight against organised crime and corruption remains a major concern.

¹⁹³ Joint Report to the European Parliament and the Council on Kosovo's progress in addressing issues set out in the Council Conclusions of December 2012 in view of a possible decision on the opening of negotiations on the Stabilisation and Association Agreement. JOIN(2013) 8 final, Brussels, 22.4.2013. p. 7.

¹⁹⁴ Kosovo Specialist Chambers and Specialist Prosecutor's Office Jurisdiction. Available at: <https://www.scp-ks.org/en/background> [Last accessed: 14.02.2021]

¹⁹⁵ Council of Europe Parliamentary Assembly Report on "Inhuman treatment of people and illicit trafficking in human organs in Kosovo". Doc. 12462, 07 January 2011.

2015 was of no different. Same discourse with similar semantics. Covering the period from October 2014 to September 2015 is characterized by emphasis on the early preparations of Kosovo's judicial system, with the judiciary remaining prone to political interference. A vague recommendation of request to ensure independence in law and in practice, to prevent and fight corruption within the judiciary, to recruit and train more qualified staff and to allocate adequate resources, is in place without a clear set of benchmarks and comparable baselines.

In the 2016 progress report, Kosovo remains at an early stage in developing a well-functioning judicial system. Some good progress has been noted though, setting a clear benchmark of “partly meeting two of the 2015 recommendations”. However, again it is noted identically that the administration of justice is slow and inefficient, and there is insufficient accountability of judicial officials. The judiciary is still vulnerable to undue political influence and rule of law institutions suffer from a lack of funding and human resources.

Differently from other reports, the 2016 report does give clear recommendations of what Kosovo should do in order to advance at this point and they are summarized in the continuous implementation of the justice package, strengthened financial resources for the judicial sector and strengthening the capacity of the judges, prosecutors and support staff, strengthened accountability and reduce the backlog of cases.

The 2018 Progress Report¹⁹⁶ stipulates the same. It covers the period from October 2016 to February 2018 including 2017, and regards Kosovo's judicial system “at an early stage”. In 2018, according to the document, the judiciary is still vulnerable to undue political influence and rule of law institutions need sustained efforts to build up their capacities. The administration of justice remains slow and inefficient. Kosovo still remains at an early stage and has some level of preparation in the fight against corruption.

Finally, the 2019 Kosovo report¹⁹⁷ stipulates that the judiciary is still vulnerable to undue political influence and the administration of justice remains slow and inefficient. Rule of law institutions needs sustained efforts to build their capacities.

¹⁹⁶ European Commission. Kosovo 2019 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2019 Communication on EU Enlargement Policy COM(2019) 260 final., Brussels, 29.5.2019. p. 9.

¹⁹⁷ European Commission. Kosovo Progress Report, 2019. p. 10.

Clearly, as we have seen from the above stipulated reports, these benchmarks have not been met nor recommendations fulfilled in the subsequent years – maintaining a status quo on implementation which was one of the main prerogatives and arguments of EU individual member states to openly express skepticism against the visa-liberalization for Kosovo which in the eyes of the Kosovo leadership was seen as the biggest carrot EU could offer at that point of a time.

By analyzing the argumentation in all reports, it can be concluded that the European Union’s approach to the candidate and potential candidate member states from the Western Balkans was more political than technical, and the assessment of their “Europeanization process”, especially pertaining to Kosovo was rather reactive than proactive, i.e. the report was tailored based on the political circumstances prevailing, the sole political will of the Council and other EU bodies to advance the on the enlargement agenda as well as used as a mechanism to infuse the infamous “carrot & stick” policy. By being the responsible body for the Rule of Law reform through its EULEX mission, it has used the same sentiment of criticism vis-à-vis the authorities in their shortcomings, however, never addressed self-criticism.

From the Kosovo case it can be clearly seen that with the expression of the political will to continue the EULEX mandate ensuring full cooperation, the EU has used the rational approach, by applying the external incentives model, i.e., a positive note on the progress report. However, many would argue, is this sufficient, when no clear perspective of the integration processes, considering the following reports can be found?

VI. 5. Impact of EU instruments and mechanisms on Kosovo

The neo-functionalist approach of using a technical method in order to achieve political effects was also used in Serbia/Kosovo: the EU was able to use its normative power to coax Serbia into signing a number of technical agreements with Kosovo, given that for Serbia the conferral of the (rather symbolic) candidate status was of utmost political importance. As Visoka and Doyle point out, the neo-functionalist interpretation of its own history, the EU uses ‘neo-functional peace’ as an approach for resolving protracted disputes, through deconstructing highly political issues into technical meanings in order to achieve mutually acceptable agreements.¹⁹⁸ Further, Visoka and Doyle claim that neo-functional peace has played a crucial

¹⁹⁸ VISOKA and DOYLE, 2016. p. 862.

role in normalizing political relations and reconciling some of the outstanding disputes between Kosovo and Serbia, especially in the context of achieving technical agreements on issues of mutual interest. These technical agreements concluded between Pristina and Belgrade since March 2011 have the potential to overcome some of the fallout from Kosovo's diplomatic isolation: both sides have agreed on modalities for policing their common borders (or administrative boundaries, as the Serbian side insists), on collecting customs fees and on the recognition of travel documents, number plates and diplomas. Finally, in February 2012, and under significant pressure from the EU, Serbia and Kosovo reached an agreement about the representation of Kosovo at regional organisations, with the potential of overcoming Kosovo's isolation. Whilst they have surely boosted Serbia's efforts towards EU integration, have these technical arrangements also opened the way towards Kosovo's eventual EU accession?

In 1999, the EU proposed the establishment of the Stabilization and Association Process (SAP) for the Western Balkans, as a framework for their EU accession process, emphasizing that the European perspective of these countries would be determined based on their progress toward a sustainable democracy, rule of law, market economy and regional cooperation. Officially launched in 2000, at the Zagreb summit, this perspective was reaffirmed at the Thessaloniki European Council in June 2003.

Kosovo is part of the SAP framework since the Thessaloniki Summit. Until the end of 2009, the political and policy dialogue between Kosovo and the EU within the European agenda was taking place within the Stabilization and Association Process Tracking Mechanism (STM). Through the October 2009 EC communication "Kosovo – Fulfilling its European Perspective", a strengthening of the European perspective for Kosovo was proposed enabling the launching of visa dialogue and Kosovo participation in Community programs, deepening of trade relations, and integration of Kosovo into the economic and fiscal surveillance framework of the Western Balkans. The STM was advanced to 'Stabilization and Association Dialogue' and Kosovo was offered access to IPA component II: Cross-Border Co-operation.

In October 2011 the Commission, through the Progress Report, recommended the initiation of the Feasibility Study for the Stabilization and Association Agreement (SAA). The SAA negotiations were concluded in July 2014. The SAA was signed in October 2015. With the

entry into force of the SAA on April 1, 2016, Kosovo and EU relations advanced from mainly political relations to contractual ones.

In November 2016, the European Reform Agenda (ERA) was launched by the Prime Minister of Kosovo and the Commissioner for European Neighborhood Policy and EU Enlargement Negotiations. The purpose of ERA was to focus on the implementation of key SAA priorities in order to advance the European perspective of Kosovo and improve the lives of citizens. A total of 22 priorities were selected to be met by the end of 2017. Priorities were based on 3 key pillars: (1) rule of law and good governance (2) competitiveness and business environment, and (3) education and employment.

In June 2012, Kosovo received a roadmap for visa liberalization with a total of 95 criteria to be met in areas such as repatriation and reintegration, document security, border management, asylum, migration, public safety and freedom of movement and fundamental rights. In July 2018, the Commission assessed that Kosovo has met all criteria stemming from the visa liberalization roadmap. In September 2018, the European Parliament voted the start of inter-institutional negotiations for the amendment of Regulation 539/2001 in order to allow the free movement of Kosovo citizens throughout the Schengen area. The process has come to a standstill due to a lack of consensus within the Council to move forward with the proposal.

It can be concluded from the above that there are two sides of the coin upon which the blame is to put. EU is not being able to deliver on its promises while Kosovo institutions are failing to reform. The new methodology of enlargement for the EU presented in 2019 has marked a momentum which the Kosovo institutions need to grasp, and further commit to availing political space for the reforms to be pursued in a more vigorous manner. Kosovo is lacking in its implementation of the obligations stemming from the Stabilization and Association Agreement, and moreover, the corrupt and inefficient institutional setup as explained below provides a serious hindrance to the further achievement of obligations and objectives set forth in the European Reform Agenda. On the other hand, the European Union needs to ensure that promises are delivered. As it can be seen in particular with the cases of Kosovo and Serbia, and the “strongarming” into the dialogue process as the fulfillment of the good neighborly relations precondition has not yielded in tangible carrots. Serbia was offered the opening of the accession negotiations however these negotiations will not be able to move forward without the recognition of Kosovo by Serbia since few member states led by Germany have announced to

veto the closure of the chapters. Kosovo on the other hand has been promised a visa liberalization and free movement into the Schengen Zone, a promise that was never materialized because of the strong opposition of some member states such as France and Holland.

VI.5.1. The Stabilization and Association Agreement (SAA)

Entered into force on April 1st, 2016, the SAA constitutes the first contractual relationship between the EU and Kosovo. It is a comprehensive agreement that provides a framework for political dialogue and covers cooperation in a wide variety of sectors, including justice and home affairs, trade, education, employment, energy, environment and a range of other policy areas. Three Stabilization and Association Council meetings, and three cycles of subcommittee meetings have taken place since 2016.

The institutional set up in charge of the supervision of the application and implementation of the SAA is defined in Title X of the Agreement. The Stabilization and Association Council (SAC) is established by Article 126 and consists of representatives of the EU and Kosovo. It has decision-making powers, binding to the parties (Article 128) and functions based on its rules of procedure (Article 127). SAC is assisted in the performance of its duties by a Stabilization and Association Committee composed of representatives of both parties. Based on Article 130, The Stabilization and Association Committee has established 7 subcommittees and 2 special groups. The SAC may decide to set up other special committees or bodies that can assist it in carrying out its duties (Article 131).

A Stabilization and Association Parliamentary Committee is established as per Article 132. It consists of Members of the European Parliament and Members of the Parliament of Kosovo. It acts based on its rules of procedure and meets at intervals, but at least once a year.

VI.5.2. National Plan for the Implementation of the Stabilization and Association Agreement (NPISAA)

Kosovo has undertaken to implement provisions of the SAA within a ten-year period. Preparation of the National Plan for the Implementation of the Stabilization and Association Agreement (NPISAA) is a legal requirement stemming from Article 74, point 3 of the SAA.

The NPISAA is the main Government document that steers SAA implementation. It establishes a comprehensive framework of medium-term reforms (2017-2021) for implementation of the

SAA and approximation of the national legislation with the EU acquis and its implementation and enforcement. It, therefore, contains short-term measures and medium-term priorities, namely legislative and implementing measures and priorities.

Based on the structure of the Copenhagen Criteria, all measures and priorities are divided into three blocks: Political Criteria, Economic Criteria and European Standards – Approximation of Kosovo's Legislation with the EU Acquis. Besides key political and economic reforms required under the SAA, it provides concrete measures within the 33 chapters of the EU acquis (except of chapters 34 and 35).

Block 1: Political Criteria aims to implement the Copenhagen criteria and the relevant SAA provisions for the establishment of political stability and stable institutions guaranteeing democracy, the rule of law and protection of fundamental human rights and of minorities. It covers main areas of legislative, executive, constitutional reforms, reform of the electoral system, public administration and regional cooperation. This block is closely linked with acquis chapters 23 and 24.

Block 2: Economic Criteria aims to implement the Copenhagen and Maastricht Criteria and relevant SAA obligations for the creation of a free and functioning market economy capable of coping with the pressure of free competition in the EU internal market. Based on the new approach set out in the October 2014 Enlargement Strategy, this block is aligned with the Economic Reform Program (ERP).

Block 3: European standards – Approximation of Kosovo's Legislation with the EU Acquis aims to implement the Copenhagen and Madrid Criteria requiring that accession state to have the capacity to assume obligations of EU membership, including goals of political, economic and monetary union. As such, this block includes the whole range of public policies and requires reforming the whole government through the adoption of the entire EU acquis into the national legislation and its implementation, which, thus, requires administrative capacities for this purpose. It contains 33 Acquis chapters and a chapter on the legal framework for the approximation of national legislation with the Acquis. The NPISAA includes actions related to implementation of short-term measures addressing requirements based on 33 chapters of the Acquis.

VI.5.3. The European Reform Agenda (ERA)

The European Reform Agenda (ERA) was launched by the Prime Minister of Kosovo and the Commissioner for European Neighborhood Policy and Enlargement Negotiations in November 2016.

The European Reform Agenda does not replace existing strategies, i.e NPISAA and NDS. While NPISAA is the umbrella framework, ERA serves as a more focused document putting forward medium-term priorities and short-term measures for key reforms that Kosovo has to implement in its EU accession process.

Also, the European Reform Agenda must be seen in conjunction with Kosovo's Economic Reform Program which was submitted to the Commission in January 2016 and which remains the key overarching policy document guiding macroeconomic and fiscal reforms, including recommendations to boost competitiveness and alleviate labor market pressure.

ERA outlines priority actions in the field of good governance and rule of law, competitiveness and investment climate, and employment and education. Twenty-two priorities were agreed upon to be met by the end of 2017. In June 2019 a report on the implementation of ERA was made public. It states that in the period November 2016 to May 2019, 11 out of 22 priorities have been fully implemented (50%) with the remaining 11 priorities (50%) still in the process of being implemented.

ERA 2 (draft) priorities stay in the area of good governance and rule of law, education, competitiveness and investment, but the new draft also makes reference to sustainable development.

VI. 5.4. The Economic Reform Program (ERP)

The Economic Reform Program (ERP) 2019-2021 is a document drafted on a regular annual basis through which the medium-term macro-fiscal framework and economic policies are linked with government priorities. ERP contains medium-term macro-economic projections (including GDP growth, inflation, trade balance and capital turnover), budget plans for the next three years and an agenda for structural reforms that include reforms to boost competitiveness and improve conditions for inclusive growth and job creation.

The structure and content of the ERP are pre-determined by the European Commission Guidance Note on ERP. The program consists of three main chapters and includes: the

macroeconomic framework, the fiscal framework and structural reform priorities for the next three years.

As per the European Commission Guidelines, the Government of Kosovo has appointed the Minister of Finance as National Coordinator for ERP. The National Coordinator at the technical level was supported by: Department for Macroeconomic Policy and International Financial Cooperation at the Ministry of Finance for the part on macro-fiscal framework, and the Strategic Planning Office of the Prime Minister for the agenda of structural reforms.

For the structural reform agenda, area coordinators have been appointed as set out in the EC guidelines, as follows: Energy and Transport Market Reform; Sectorial Developments (Agriculture, Industry and Services), Business Environment and Reduction of Informal Economy; Innovation; Research and Development (RDI) and Digital Economy; Trade-related Reforms; Education and Skills; Employment and Labour Markets; and Social Inclusion, Reduction of Poverty and Equal Opportunities.

VI.5.5. The annual EU country report

The Country Report is an instrument by which the European Commission assesses on an annual basis Kosovo's progress in meeting the European agenda requirements and sets out guidelines on reform priorities. The last Country Report for Kosovo was issued in May 2019.

VI.5.6. Visa liberalization

The European Commission submitted a Visa Liberalization Roadmap to Kosovo in June 2012. The roadmap aimed to identify legislative and other measures that Kosovo was to adopt and implement in the short-term for advancing the visa liberalization process. The roadmap included 95 criteria and was structured according to the following blocks:

- Readmission and Reintegration,
- Document security,
- Border and Migration management,
- Security and Public Order, and
- Freedom of Movement and Fundamental Rights.

The European Commission has issued five reports on Kosovo's progress towards visa liberalization. In July 2018, the Commission confirmed that Kosovo has met the two outstanding visa liberalization requirements on the ratification of the border demarcation agreement with Montenegro and a strengthened track-record in the fight against crime and corruption, thus fulfilling all benchmarks set out in the Visa Liberalization Roadmap. In March 2019, the European Parliament voted in support of the Commission proposal in its first reading. The proposal is pending in the Council.

VI.5.7. Instrument for Pre-Accession (IPA II) 2014-2020 financial perspective

The Instrument for Pre-Accession Assistance (IPA II) is the main financial instrument to provide EU support to the Western Balkan countries in implementing EU accession reforms. Kosovo has received over EUR 650 million from IPA I (2007- 2013). IPA II (2014-2020) has an overall allocated budget of €602 million for Kosovo over the seven-year period.

In September 2018, Kosovo and the EU agreed on the Financing Agreement on the Instrument of Pre-Accession 2018. The Agreement was signed by the EU in February and Kosovo in April 2019. The total estimated cost of the IPA 2018 program is €94,796,800. EU contribution is €90,500,000, whereas Kosovo institutions will provide co-financing of €4,926,800. The deadline for the conclusion of the agreement is 31 December 2019. The deadline for contracting is three (3) years after the conclusion of the agreement. The indicative implementation deadline is six (6) years after the conclusion of the agreement. The final implementation deadline is twelve (12) years after the conclusion of the agreement.

Two sector budget support operations are being implemented in Kosovo: public administration reform (PAR) under IPA 2016 (EUR 25 million) and public financial management (PFM) under IPA 2017 (EUR 25 million). In 2018, the EU Office in Kosovo signed 139 contracts for a total amount of EUR 89 million.

In addition to the financial support, with a view to supporting the implementation of the reforms Kosovo benefits from:

- the Framework Agreement (FWA) between Kosovo and the European Commission on general principles for participation in EU Programs in which Kosovo is eligible to participate. In 2018 Kosovo has joined the Erasmus+, COSME, Europe for Citizens and Creative Europe programs.

- the Western Balkans Investment Framework (WBIF) for technical assistance projects, as well as infrastructural grants

In parallel, IPA III programming preparations are ongoing. Under the new MMF, 14.5 billion Euros are planned for pre-accession assistance while the programming has undergone some changes such as: programming per priority, no country allocations defined upfront, thematic windows to reflect the specific objectives of the regulation and the introduction of the efficiency principle to avoid backlog based on action maturity. Through its specific objectives IPA III aims to:

1. Strengthen the rule of law, democracy, the respect of human rights, fundamental rights and international law, civil society and security as well as improve migration management including border management.
2. Reinforce the effectiveness of public administration and support structural reforms and good governance at all levels.
3. Shape the rules, standards, policies, and practices of the beneficiaries listed in Annex I in alignment to those of the Union and to reinforce reconciliation and good neighborly relations, as well as people to people contacts and communication.
4. Strengthen economic and social development including through increased connectivity and regional development, agriculture and rural development and social and employment policies, to reinforce environmental protection, increase resilience to climate change, accelerate the shift towards a low carbon economy and develop the digital economy and society.
5. Support territorial and cross border cooperation.

IPA III beneficiaries are expected to prepare strategic responses describing how they intend to benefit from the funding opportunities, while access to funding will be based on the relevance and maturity of proposed actions.

- Judicial reform in Kosovo.
- Improving accountability of the judicial and prosecutorial systems.
- Assessing the Fight Against Organized Crime and High-Level Corruption.

It can be seen from above that Kosovo has enjoyed robust support from the EU in different forms, albeit the implementation from the institutional aspect has shown serious inconsistencies. The instruments for aid to Kosovo in its path for pre-accession are in place, as

are the monitoring and evaluation mechanisms, nonetheless, it falls upon the institutions to engage and commit to their implementation and achievement of the set-forth benchmarks.

VII. Challenges of Improving Anti-Corruption Institutional Framework in Kosovo (2008 - 2019)

Corruption in Kosovo looks to be endemic¹⁹⁹ and systemic. Systemic corruption (centralised or decentralised²⁰⁰) has significantly influenced subsequent political and economic developments in the country. Bribery, embezzlement, state capture, trading in influence, abuse of authority, illicit enrichment etc. are still widespread practices, which indicate that corruption is also institutionalized. Corruption remains a major deterrent to the growth of democracy and hinders the country's EU integration. Corruption also hampers any effort of economic reforms and threatens to discourage both domestic and foreign investor's confidence.

Like other countries in the region corruption in Kosovo is well structured from the "top-down" and between various state agencies. The ties between different sectors of the state and government are normally working at the same levels of power and/or official status and these ties are horizontal structures of corruption. Vertical structures of corruption have developed within the same branches of the state and encompass various administrative levels. The horizontal ties between several branches of state and government, incorporating economic actors in the private sphere, dissolve the state as an independent arbiter of societal conflict. In such situations, political power as a means of control could be still paralleled by economic power. Very hierarchical administrative structures are often politically controlled and much more accountable to the vertical of power than to the citizens that public institutions are supposed to serve.

In addition, Corruption in Kosovo is still fostering the maintenance of informal networks, when an informal hierarchy of clientelism sometimes overlaps with the official state hierarchy. According to some reports "In Kosovo, where unemployment reached an alarming figure of

¹⁹⁹ Country Report for Kosovo 2018. U.S. Department of State. Country Reports on Human Rights Practices for 2015. p. 18: Available at: <https://www.justice.gov/eoir/country/kosovo-contents> [Last accessed: 20.03.2021]

²⁰⁰ Systemic corruption is more decentralized when networks of corruption do not extend all the way to the top of the state apparatus and/or operate relatively autonomous from each other in various state departments and regional/local administrations.

30%, politicians are the richest class in the country. Many big businesses have greatly expanded thanks to politicians' support, who receive millions in return for "their efforts".²⁰¹

Measuring and diagnosing corruption is a core element for conducting the anti-corruption situation assessments. In case of Kosovo different public opinion polls, international indices and reports prove that corruption is seeing as one of the priority areas to be addressed.

Kosovo is the 93 least corrupt nation out of 175 countries, and it was scored 37 points out of 100 on the Transparency International's 2018 Corruption Perceptions Index²⁰². Albania has the worst score of the Balkan states, closely followed by Kosovo and Macedonia. Corruption Index in Kosovo averaged 33.56 Points from 2010 until 2018, reaching an all-time high of 39 Points in 2017 and a record low of 28 Points in 2010.²⁰³

According to the Freedom in the World 2018 report issued by the Freedom House corruption in Kosovo "remains a serious problem, and the institutional framework to combat it is weak. The mandates of Kosovo's four main anti-corruption bodies overlap, and they have difficulty coordinating their efforts. Authorities have shown little commitment to prosecuting high-level corruption, and when top officials are prosecuted, convictions are rare".²⁰⁴

Kosovo ranked 38, 46 (percentile rank: 0 to 100) for "Control of Corruption" in the last World Bank Worldwide Governance Indicators Report.²⁰⁵

Corruption is perceived as the second most significant problem after unemployment in Kosovo according to the Balkan Barometer 2018 Public Opinion Survey.²⁰⁶

²⁰¹ Corruption in The Balkans is Impeding EU Membership. European Sting, 15.01.2019. Available at: <https://europeansting.com/2019/01/15/corruption-in-the-balkans-is-impeding-eu-membership> [Last accessed: 29.09.2020]

²⁰² Transparency International. Corruption Perceptions Index 2018. Available at: <https://www.transparency.org/country/KOS> [Last accessed: 10.09.2020]

²⁰³ Transparency International. Corruption Perceptions Index 2018. Available at: <https://www.transparency.org/country/KOS> [Last accessed: 10.09.2020]

²⁰⁴ Freedom in the World 2018. Freedom House. Available at: https://freedomhouse.org/sites/default/files/2020-02/FH_FIW_Report_2018_Final.pdf [Last accessed: 20.03.2021]

²⁰⁵ World Bank. Worldwide Governance Indicators Report. Available at: <http://info.worldbank.org/governance/wgi/#reports> [Last accessed: 14.09.2020]

²⁰⁶ The Balkan Barometer 2018 Public Opinion Survey also states that "People from Kosovo are significantly more likely than others to believe that hard work is the key to success in the public sector, whereas respondents from Serbia are significantly more likely to agree with the statement that success in the public sector depends on connections and acquaintances." Available at: https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2018.pdf [Last accessed: 08.02.2020]

Kosovo has improved its score from 73.71 to 74.15 points in the World Bank Group's Doing Business 2019 Report, where a higher score indicates a more efficient business environment and stronger legal institutions.²⁰⁷

Global Corruption Barometer (GCB) public opinion survey (2017), which address the citizen's direct experiences with bribery, reported that from 10 to 15 percent of respondents in Kosovo stated that they paid a bribe when they came into contact with a public service in the 12 last months. In public perception, sectoral areas most vulnerable to corruption include the judiciary, customs, public procurement, health, social sphere and education²⁰⁸.

Corruption Perception Study published by the *American Chamber of Commerce in Kosovo* in 2018, revealed that businesses rank corruption as the second most serious problem after inefficient court system. According to the survey "In total, 98% of businesses consider corruption to be a serious problem, while 75% of respondents believe that there is systematic corruption in Kosovo. Courts are ranked as institutions with very high presence of corruption, followed by prosecutor's offices, and Procurement Reviewing Body. In a contrary business ranked Business Registry Agency as the most transparent institution, followed by Tax Administration of Kosovo, Customs and Kosovo Assembly, and Office of the President"²⁰⁹.

By reference to other local surveys, the perception about the prevalence of corruption in different Kosovo institutions varies from the lowest 24.5% (international organizations) to the highest 39% (customs). As it was found by the UNDP Kosovo's study - Public pulse XIV: "the biggest changes in citizen perceptions of corruption are observed in the following institutions: customs (39% in April 2018 as compared to 23% in October 2017), courts (39% in April 2018 as compared to 25% in October 2017), banks (27% in April 2018 as compared to 13% in October 2017), and international organizations (24.5% in April 2018 as compared to 11% in October 2017). Although the percentages have generally increased for the Kosovo Police as

²⁰⁷ World Bank. Doing Business 2019 Report. Available at: <http://www.worldbank.org/en/news/press-release/2018/10/31/doing-business-report-kosovo-improves-its-business-regulations-but-reforms-need-to-be-more-dynamic> [Last accessed: 08.02.2020]

²⁰⁸ Transparency International. Global Corruption Barometer 2017. Available at: https://www.transparency.org/whatwedo/publication/people_and_corruption_citizens_voices_from_around_the_world [Last accessed: 23.09.2020]

²⁰⁹ Corruption Perception Study, Published by the American Chamber of Commerce in Kosovo, under the Fighting of Corruption and Business Ethics project, supported by United Nations Development Programme (UNDP) Support to Anti-Corruption Efforts in Kosovo (SAEK). March, 2018. Available at: <http://www.amchamksv.org/wp-content/uploads/2018/03/Corruption-Perception-Survey.pdf> [Last accessed: 23.09.2020]

well (26% in April 2018 as compared to 15% in October 2017), they still remain one of institutions with the least perceived large-scale corruption”²¹⁰.

Although corruption still remains the country’s one of the main problems some progress has been achieved in the anti-corruption drive.

Kosovo fulfilled the last important condition issued by the European Commission for the visa liberalization roadmap – the fight against corruption and the organised crime, and thus entered also the final phase of this process.²¹¹ In particular, the Commission confirmed that “the Kosovar authorities have established and strengthened a steady track record of investigations and final court rulings in cases concerning organised crime and corruption, thus successfully meeting the final benchmark”.²¹²

The country had steady progress in the anti-corruption legal framework. Important laws in anti-corruption and rule of law fields have been adopted by the Kosovo Assembly on 23 November 2018, including Law on Courts, Criminal Code, Law on Disciplinary Responsibility of Judges and Prosecutors, Law on Extended powers of Confiscation, Law on Judicial Council and the Law on Protection of Whistleblowers. This progress in anti-corruption legislation was recognized in the European Commission 2018 Kosovo Report by indicating that Criminal law provisions on corruption, as well as revised Law on Prevention of Conflict of Interest “are generally in line with relevant European standards”.²¹³

The Government of Kosovo has also adopted a number of regulations and strategies, among which the Anti-Corruption Strategy and Action Plan (2019-2023)²¹⁴, that seeks to improve policies and further good governance. The government has also launched an online Platform in which every draft law and decision is published. Such public participatory mechanism allows

²¹⁰ USAID. Public Pulse XIV, UNDP Kosovo. June 2018. Available at: <http://www.ks.undp.org/content/dam/kosovo/docs/PublicPulse/PP14/Final%20Public%20Pulse%20XIV.pdf> [Last accessed: 23.03.2020]

²¹¹ Kosovo Meets Criteria for Visa Liberalisation, Commission Says. Balkan Insight, 18.07.2018. Available at: <https://balkaninsight.com/2018/07/18/kosovo-fulfilled-all-the-criteria-for-visa-liberalisation-07-18-2018> [Last accessed: 23.03.2020]

²¹² Visa Liberalisation. Commission confirms Kosovo fulfils all required benchmarks. European Commission Press Release. Brussels, 18/07/2018. Available at: https://eeas.europa.eu/delegations/kosovo/48592/visa-liberalisation-commission-confirms-kosovo-fulfils-all-required-benchmarks_en [Last accessed: 06.05.2019]

²¹³ European Commission: Kosovo 2018 Report. Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2018 Communication on EU Enlargement Policy. COM(2018) 450 final, Strasbourg, 17.4.2018, p. 20.

²¹⁴ Still pending adoption by the Assembly of Kosovo.

citizens to contribute to the decision-making process and ensures more transparency of the activities of the decision-makers themselves.

Based on the previous experiences the former National Strategy of Anti-Corruption 2009-2011 and the Anti-Corruption Strategy 2013-2017 the current Anti-Corruption Strategy and Action Plan (2019-2023)²¹⁵ has reformulated, re-structured and analysed in depth the sectoral objectives as well as their activities to come up with a more robust strategic document in addressing the anti-corruption efforts in Kosovo, representing a harmonized approach of inter-institutional commitments to fight the corruption in all spheres in Kosovo. As a result, 4 main pillars of the new Strategy have identified: 1) Public Political sector; 2) Public Administration; 3) Rule of Law and the Judiciary; 4) Public Procurement and management of public finances.

The action plan sets forth the objectives for addressing the shortcomings of the normative aspect but also the implementation of these norms for them to have a greater effect in reducing the corruption in Kosovo.

In the Public Political Sector, the action plan foresees the mechanisms that fight corruption are strengthened, the legislation in place is more aligned to good practices and international standards, increased transparency of the political parties finances, strengthening of the existing financial control capacities and increased transparency for the activities of the public sector.

In the Public Administration, the action plan foresees an agenda where the integrity of the public officials needs to be promoted, the administration is free from nepotism and conflict of interest, the transparency in the recruitment procedures is increased, the sectoral reforms are conducted in a more robust manner and the legislation on the public administration is further aligned with the international norms and standards.

The Rule of Law pillar needs to benefit from increased coordination and cooperation amongst law enforcement institutions, improvement of the legal framework against corruption and the encouragement of the citizens participation, increased transparency and efficiency of the institutions that investigate and prosecute corruption practices as well as reassurance of the protection of victims, witnesses and whistleblowers by the relevant state mechanisms. The Action plan gives a special emphasis on the Public Procurement and management of public finances which will until 2023 make sure that the integrated procurement system is improved and modernized, the existing financial controls mechanisms are reinforced and the mechanisms for fighting the informal economy are in place and functioning.

²¹⁵ Still pending adoption by the Assembly of Kosovo.

Thus, Kosovo almost set out anti-corruption legislative and strategic agenda aimed at improving systemic weaknesses in their infrastructure while implementation is largely left to weak institutions that need support in further institutional reform and capacity building. It falls on the lack of a political will and serious commitment to the necessary changes to address root causes to be able to be accomplished. Without such a strong political commitment to implementation with tangible results, it will be impossible for changes to take effect in the normative but also a practical framework to seriously address corruption issues. Moreover, the organizations and institutions tasked with the fight against corruption, need to be aware of the normative framework persisting in Kosovo to tackle this problem. These institutions need to be aware of their obligations and duties in the institutional fight against corruption. Lastly, the effective monitoring of the implementation needs to be established in order to show progress, address gaps and identify the problems of implementation. This way, also the institutions can increase the accountability of pertaining mechanisms, but also provide a more accurate picture of the situation to the relevant international mechanisms, especially the EU.

VII.1. Anti-Corruption Agency (ACA) of Kosovo

The Anti-Corruption Agency is an independent institution established by a separate law established in 2007. The ACA is responsible for the enforcement of the state policies dealing with the fight against corruption in Kosovo. The scope of work of ACA is focused on the drafting and monitoring of the implementation of the Strategy for Anti-Corruption, the investigation of corruption cases as well as advocating the public on the progressive steps towards the creation of a law-abiding society. The investigative mandate of the ACA is defined in Article 18 of the ACA Law. Agency conducts the procedure of preliminary investigation in case of suspicion of corruption, according to: official duty, or according to the information received by natural and legal persons. It means that ACA can initiate so called administrative investigations, based on complaints received or by its own initiative. The ACA law does not provide for a definition of administrative investigations, however, according to paragraph 2 of Article 18 it could be presumed that under this term is meant investigative measures such are: to seek, collect, investigate, and analyze information and documentation relevant to the case; to seek information from persons involved in the case and to examine the circumstances relating to the case.

According to the ACA Law, the whole “investigative circle” and involvement of the police and prosecutor’s office in it is defined as follows: Agency in exercising its function, if it meets any difficulties shall require assistance from the police. If after completion of preliminary investigative procedures, it is ascertained that are sufficient data and / or reasonably suspects that the case could constitute a criminal offense, the Agency submits the case to the competent prosecutor office for further processing. The competent prosecutor office informs the Agency for further proceeding and final decision in connection with the case. If not suspected of a criminal act but for administrative violations, the Agency forwards the case to the competent administrative body. If after completion of preliminary investigative procedures Agency finds that there is no sufficient data and /or based suspects that the case could constitute a criminal offense or administrative violation, the Agency issues a decision to close the case.

It is obvious that the Law does not provide specific procedures on the division of cases between the ACA and Police and leaves room for its arbitrary interpretation. The only provided criteria for the Police’s involvement in the investigation is “if it (ACA) meets any difficulties”, which is also a confusing term from the point of view of legislative technics. The ACA’s internal regulation on Rules of Procedure also does not contain any procedural criteria on cooperation with the Police. Only relevant reference could be found in the Memorandum of Understanding (MoU) between the ACA and Kosovo Police which was concluded in 2010²¹⁶. However, such important investigative procedures cannot be regulated by MoU’s and must be prescribed in primary legislation. In addition, the above-mentioned MoU also does not set detailed provisions to clarify what happens if both institutions start an investigation without the others knowing in advance.

The Law also does not provide clear provisions on information sharing and coordination between the ACA and Prosecutor Office as well. In practice, it means that every institution with investigative powers can initiate the same case at the same time without informing each other. Because of this reason, there is a systemic problem with overlapping mandates between the ACA, Kosovo Police and all relevant Prosecutorial structures, which hampers proper investigation of corruption cases.

Some international reports also paid attention to another problematic aspect of coordination activities between the ACA and Prosecutors: when cases are transferred to the Prosecutor’s

²¹⁶ Anti-corruption Agency and police of Kosovo signed a Memorandum of cooperation. 28 May 2010. Available at: https://akk-ks.org/en/lajmi_i_plote/936 [Last accessed: 22.08.2020]

office, the ACA only receives feedback with regard to the cases closed, but not the ones that required further investigation. In any case, the follow-up of cases transmitted to other authorities is not consistent. Cases that have been closed by the State Prosecution cannot be reopened, unless additional evidence is obtained. The ACA cannot contest a decision taken by the State Prosecution regarding a specific case that has submitted for its consideration²¹⁷.

On the contrary, according to the ACA's 2017 Annual Report, the cooperation with Prosecution Offices regarding feedback to the Agency for further processing and final decision related to the forwarded cases has significantly advanced and has been stable. The Report states, that in all forwarded cases, the ACA has received written notices from the Prosecution Office. Within the reasonable time limits, the ACA received confirmation by the Prosecution Offices and the Kosovo Police on whether a criminal procedure is initiated and being conducted for the cases reported to the ACA, in order to avoid the investigation of the same cases at the same time by two institutions and to not conduct two separate procedures. During the year, ACA exchanged information on a monthly basis with the Basic Prosecution Offices with regard to the number of forwarded cases in order to align the statistics.²¹⁸

Despite some controversial information, it is clear that overlapping of competencies is in place and the division of mandates needs to be clarified.

The current setup of the ACA is merely sufficient. Serious amendments to its mandate are needed. The EU Kosovo 2018 Report recommended to give the Anti-Corruption Agency "more robust powers to verify asset declarations and to make the declaration system more effective in tackling graft"²¹⁹. The Kosovo Anti-Corruption Agency needs to be transformed into a strong prevention institution and its mandate should be expanded to encompass all corruption prevention tools. In particular, along with already existing prevention functions the Agency

²¹⁷ Project against Economic Crime in Kosovo. Phase II (PECK II). Review of Institutional and Operational Framework and Mechanisms of the Kosovo Anti-corruption Agency. Technical Paper, 2017. pp. 3-6.

²¹⁸ As per ACA's 2017 Annual Report, during the reporting period, 109 information and criminal charges were forwarded to competent institutions for further proceeding. Out of them, 89 criminal charges were forwarded to the Office of the Chief State Prosecutor, for which the Office of the Chief State Prosecutor notified the Agency that they are delegated to the competence of the respective prosecution offices. On the other hand, total 20 information were forwarded to the Directorate for Investigation of Economic Crimes and Corruption within the Kosovo Police (18 forwarded to DIECC, one to the State Prosecution and one to the Special Prosecution (each involving one person). Furthermore, in seventeen (17) cases, following the completion of preliminary investigation proceedings, it is determined that there is no sufficient data and/or reasonable suspicion that the case could constitute a criminal offense, however, it is alleged for administrative violation, and the Agency forwarded these cases to the competent administrative bodies, with a request to initiate disciplinary proceedings.

The value of the damage caused by cases forwarded to competent prosecution offices and police is not specified.

²¹⁹ European Commission: Kosovo 2018 Report. COM(2018) 450 final, Strasbourg, 17.4.2018. p. 20.

needs to have the following competencies: Conducting Corruption Proofing to prevent corruption risks in draft legislation; Integrity Plans - to develop uniform methodology and guidelines for drafting integrity plans, to provide assistance to the public institutions for their functioning and to monitor the implementation of the integrity plans within the established coordination mechanisms; Conducting Institutional Integrity Assessment to identify the risks of corruption within public institutions by using analytical and practical methods; Expanded powers for monitoring declarations of assets and gifts: the Agency should have the necessary powers and more verification tools to check the origin of assets of concerned public officials against a wide range of databases (tax administration, bank transactions, etc.) to identify potential incorrect declarations. Kosovo currently has a very complicated and complex anti-corruption institutional setup. There are up to 20 institutions directly or indirectly involved in fighting corruption, but when it comes to responsibility it becomes difficult to identify a relevant body who is responsible for not bringing tangible results in effectively combat corruption. Considering the multitude of these anti-corruption bodies and structures and their actual performance (see *Table 1*), it is also difficult to define all specific functional and structural patterns.

VII.2. Kosovo Police: Special Anti-corruption Department

Most of the international reports by mistake refer to the existence of 2 different Anti-Corruption Task Forces: one – at the Kosovo Police, and another one – at the Special Prosecutor's Office of Kosovo (SPRK).

In reality, the Special Anti-corruption Department (SACD) or so-called “Anti-corruption Task Force” is a part of the Kosovo Police which operates as a specialized unit within the Investigation Department and is supervised by the SPRK.

SACD was established according to the Government Decision no-02/110 dated 26/02/2010, for investigation of “sensitive cases with corruption and financial character”,²²⁰ within the Special Prosecution Office of the Republic of Kosovo. The Government Decision provided for

²²⁰Kosovo Police – Investigation Department. Available at <http://www.kosovopolice.com/en/investigation-department> [Last accessed: 16.09.2020]

involving both the EULEX and local prosecutors in the SACD, as well as police officers and tax experts.²²¹

Currently, SACD is composed of special prosecutors and 30 police investigators. It conducts an investigation in cooperation with and under the supervision of the SPRK. At the same time as reported Head of the SPRK serves as a coordinator of joint investigation and criminal prosecution process over the most serious cases.

Thus, it could be inferred that the SACD is the type or precedent of the *judicial police* in the Kosovar justice system.

According to the Special Anti-corruption Department (SACD) after completion of preliminary investigations, the Department also cooperates with the Basic Prosecutors' Offices when appropriate.

Although in accordance with the Law on Special Prosecution Office, the SPRK can coordinate and direct the investigation and prosecution of cases falling under its exclusive or subsidiary competence through the offices of the various prosecutors working in Kosovo, neither in primary legislation nor in by-laws there are no references to procedural provisions on conducting joint investigations by the Special Prosecutor's Office of Kosovo (SPRK) and SACD.

Although in accordance with the Law on Special Prosecution Office, the SPRK can coordinate and direct the investigation and prosecution of cases falling under its exclusive or subsidiary competence through the offices of the various prosecutors working in Kosovo, neither in primary legislation nor in by-laws there are no references to procedural provisions on conducting joint investigations by the SPRK and SACD.

At the same time, it is unclear whether any coordinative and cooperative mechanisms exist between the SACD and the Basic Prosecutors' Offices. There is also the risk of overlapping activities between the SACD and ACA during the preliminary investigations on corruption cases. On October 19, 2020 – the same day when EULEX had requested the further strengthening of this institution in which both the EU and the United States government have

²²¹ Republic of Kosovo. Government. Decision Nr. 06/10. Date: 26.02.2010. Available at: http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_Mbledhjes_se_110_-te_te_Qeverise_2010.pdf [Last accessed: 16.09.2020]

invested a lot of resources, the current prime minister, Avdullah Hoti decided to dissolve this institution²²² which is in clear contradiction of the messages conveyed in the EC Kosovo Report requiring further strengthening of the institution and promotion of its work in order to achieve tangible benchmarks in its fight against high profile corruption cases.

Table 5: Legal framework of investigation and prosecution of corruption in Kosovo

Legal framework for investigation and prosecution of corruption in Kosovo	Date of entry into force
The Constitution of the Republic of Kosovo ²²³ ;	09.04.2008
Code No. 06/I-074 Criminal Code ²²⁴ ;	14.01.2019
Law No. 03/L-159 on Anti-Corruption Agency ²²⁵	05.02.2010
Code No. 04/L-123 Criminal Procedure Code ²²⁶ ;	28.12.2012
Law No. 04/L-076 on Police ²²⁷ ;	19.03.2012
Law No. 03/L-231 on Police Inspectorate of Kosovo ²²⁸ ;	16.11.2010
Law No. 03/L-225 on State Prosecutor ²²⁹ ;	29.10.2010
Law No. 03/L-224 on the Kosovo Prosecution Council ²³⁰	29.10.2010
Law No. 03/L-052 on the Special Prosecution Office of of Kosovo ²³¹ ;	03.06.2008
Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo ²³² ;	03.06.2008
Law No. 04/L-030 on Liability of Legal Persons for Criminal Offences ²³³ ;	14.09.2011
Law No. 05/L-034 on Amending and Supplementing the Law No. 03/L-225 on State Prosecutor ²³⁴ ;	14.09.2011
Law No. 05/L-035 on Amending and Supplementing the Law No. 03/L-224 on the Kosovo Prosecutorial Council ²³⁵ ;	30.06.2015
Law No. 04/L-213 on International Legal Cooperation in Criminal Matters ²³⁶ ;	02.09.2013
Law No. 06/L –085 on Protection of Whistleblowers ²³⁷ .	13.12.2018
Law No. 06/I-087 of Extended Powers on Confiscation of Assets ²³⁸	26.12.2018

Source: Kosovo Official Gazette. Compiled by the author.

²²² Betimi per Drejtesi. Paradite EULEX kërkon fuqizim të Task-forcës antikorruption të Policisë, pasdite Qeveria Hoti e shuan Task-forcën. October, 19, 2020. Available at: <https://betimiperdrejtesi.com/paradite-eulex-kerkon-fuqizim-te-task-forces-antikorrupsion-te-policise-pasdite-qeveria-hoti-e-shuan-task-forcen> [Last accessed: 25.03.2019]

²²³ Available at: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

²²⁴ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

²²⁵ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2662>

²²⁶ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

²²⁷ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2806>

²²⁸ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2720>

²²⁹ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2710>

²³⁰ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2709>

²³¹ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2526>

²³² Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2527>

²³³ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2766>

²³⁴ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10934>

²³⁵ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10935>

²³⁶ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8871>

²³⁷ Available at: <https://md.rks-gov.net/desk/inc/media/701773B8-903F-476F-9D1E-2F7CC2C86A84.pdf>

²³⁸ Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18337>

The same dismay was echoed by the US Ambassador to Kosovo, Philip Kossnet, and it clearly portrays the lack of political willingness to strengthen institutions tasked with fight against corruption, but also send clear signals to other independent institutions that individual political figures will be preserved at the cost of the overall rule of law reform and completion of important EU accession benchmarks.

VII.3. Kosovo Police: Directorate against Economic Crime and Corruption Investigation (DECCI)

The Kosovo Police²³⁹ also has another anti-corruption structure within its Investigation Division²⁴⁰, which is called as a Directorate for Economic Crime and Corruption Investigation (DECCI). DECCI deals with all types of economic/financial crimes and abuse of official duty.

DECCI consist of the following sections: Section of Regional Units (eight units), Section of Economic Crimes Investigation, Section of Corruption Investigation, Section of Financial Investigation and Office for Analysis and Statistics.

DECCI is regulated under the Standard Operational Procedures (SOP) – applicable to all divisions of the Kosovo Police. Accordingly, there is no other piece of secondary legislation specifically defining the mandate and operational functions of the Directorate for Economic Crime and Corruption Investigation; i.e. there is no internal regulation determining modus operandi and criteria in the case when other institutions also will start parallel preliminary investigations on the same case. And here appears another problem with regard to coordination of the DECCI activities with other institutions also mandated with preliminary investigations' power, namely with the Anti-Corruption Agency. Clearly written procedures are needed on how the Directorate for Economic Crime and Corruption Investigation and the Anti-Corruption Agency will divide initiated cases among each other to conduct preliminary investigations.

On a positive side, it should be noted that in 2017 the Administrative Agreement was signed between the Kosovo Police and OLAF on information exchange, investigations, financial security, customs and fight against corruption.

²³⁹ Kosovo Police is currently regulated by the Law No.04/L-076 on Police, OG 4/2012, published on 19/03/2012.

²⁴⁰ Crime Investigation Division (CID) itself is divided in five Directorates: a) Directorate for Investigation of Serious Crimes, b) Directorate for Investigation of Economic Crimes and Corruption, c) Directorate against Terrorism, d) Directorate for intelligence and Analysis, and e) Directorate of Forensics

VII.4. Police Inspectorate of Kosovo

Police Inspectorate of Kosovo (PIK) was established in 2006 at the Ministry of Internal Affairs (MIA). PIK is independent from the Kosovo Police and operates on the basis of the Law on Police Inspectorate, Criminal Procedure Code and its own internal regulations and administrative Directions, among them, is a Direction “on Rules and Procedures for completion of Investigation of Integrity”.

Investigation and inspection officers of the PIK are mandated with criminal investigation and inspection of police units, interviewing police officers, collecting data on task accomplishment, and investigating criminal offenses and disciplinary misconduct, including corruption allegations²⁴¹. They report any suspected corruption-related misconduct or breach of duty or of the Code of ethics by fellow staff members as stipulated in the Code of Ethics for Employees of the PIK, Administrative Instruction (MIA) No. 16/2015 for Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK and the Criminal Code. Such reports should generally be made to the direct superior or to the competent prosecutor’s office. When there is a grounded suspicion that the General Director of Police has committed disciplinary violation, the Prime Minister may authorize KPI to conduct disciplinary investigations. KPI upon completion of disciplinary investigations reports to the Prime Minister about the findings.

In relation to the structure and capacities, according to the KPI, they issued applicable regulation on establishing one distinct Division for Fighting Corruption and Organized Crime within the Department of Investigations, however, the division is not operational due to lack of human resources.

PIK has encountered several problems regarding the certainty of the status of PIK officials, in relation to the Draft laws that regulate employment terms in the Civil Service, in which some operational positions with police authorizations are included within a catalogue of working positions for civil servants, which is in breach with the mandate and legal authorization of PIK employees.

As for inter-agency coordination, the PIK reported that the Inspectorate has good cooperation in fighting corruption with the State Prosecutor’s Office, Anti-Corruption Agency and Kosovo Police. However, the EULEX report points out that “the functionality of PIK has been affected

²⁴¹ Law No. 03/L-231 on Police Inspectorate of Kosovo, OG 87/2010, published on 16.11.2010.

by poor inter-institutional cooperation with the police, prosecution and judiciary. Cooperation between PIK and the prosecution still requires further improvement as cases investigated by PIK have not been sufficiently prioritised, investigations have remained too lengthy, while PIK has also not been informed about final decisions issued by courts. The institutional links between PIK and the KP have also remained weak and challenging. Better cooperation between PIK and the KP Department for Professional Standards is still needed to initiate a practice of exchanging case numbers and establishing a tracking mechanism for police officers subject to disciplinary measures.²⁴²”

The PIK has submitted to the working group of drafting the Criminal Procedure Code (CPC) a proposal to include “investigation of integrity” as an investigative method in the CPC. This proposal sounds unclear and needs further clarifications.

VII.5. State Prosecutor, National Coordinator for Combating Economic Crimes, appointed by the State Chief Prosecutor’s Office

Law No.03/L –225 on State Prosecutor defines the State Prosecutor as an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts.²⁴³

The State Prosecutor’s Office (SPO) is a unified system and includes the Basic Prosecution Offices; the Appellate Prosecution Office; the Special Prosecution Office; the Office of the Chief State Prosecutor; and any other organizational unit that may be created to carry out prosecutorial functions.

The SPO empowered to: initiate criminal proceedings, ensure the investigation and prosecution of criminal offences in a timely manner against persons suspected or accused of committing criminal offences; represent charges before the court; exercise regular and extraordinary legal remedies against court decisions; protect the legal rights of victims, witnesses, suspects, accused and convicted persons; cooperate with police, courts, and other institutions; undertake all other actions specified by law.

The structure of the State Prosecutor of Kosovo, generally speaking, reflects Kosovo’s court structure. There are seven Basic Prosecution Offices corresponding to each of the seven Basic

²⁴² EULEX. Compact Progress Report, 2018. pp.16-17.

Available at: <https://www.eulex-kosovo.eu/eul/repository/docs/106075-CPR-2018-En.PDF> [Last accessed: 29.07.2020]

²⁴³ Law No.03/L – 225 on State Prosecutor, published on 29.10.2010.

Courts in Kosovo, at Pristina, Peja, Gjakova, Prizren, Ferizaj, Gjilan and Mitrovica, each office headed by a Chief Prosecutor and dealing with the criminal work coming before the corresponding Basic Court. All criminal cases are now dealt with at first instance in the Basic Courts, replacing an earlier system in which serious crime was dealt with in district courts whereas general crime was dealt with in separate municipal courts. The present system is somewhat asymmetrical since 60% of all the court cases in Kosovo are heard in Pristina, reflecting its demographic and economic dominance. About 95% of all cases dealing with economic crime are dealt with in Pristina²⁴⁴.

It was reported²⁴⁵ that within the SPO ‘Group of Prosecutors against Corruption’ was functional with the main objective to fight corruption, however, on December 1st, 2013 this Group was dismissed on grounds for lack of results. Since that, all corruption cases are distributed proportionally to all prosecutors like other criminal offenses.

According to the Annual Report of the State Prosecutor, “In order to realize this (fighting corruption) priority, implementation of the Strategic Plan (2016-2018) and the action plan to increase efficiency in combating corruption and economic crimes implementation of this plan has started. The Unit for Combating Corruption and Economic Crimes (Unit) has been established, whose actions will be supervised by a separate Commission established by the Council.²⁴⁶”

Commission to oversight corruption and economic crimes cases was created under the Decision of the Chief Prosecutor. The Commission conducts monitoring of the implementation of the strategic development and action plan for the entire prosecutorial system on corruption and economic crime cases, as well, makes a quarterly report with a special report to Kosovo Prosecutorial Council.

Many reports point out that there is a National Anti-Corruption Coordinator functioning position at the Chief Prosecutors Office which reports to the Kosovo Prosecutors Council

²⁴⁴ Corruption risk assessment of the prosecution system in Kosovo. Report. PECK II. Available at: <https://rm.coe.int/peckii-4561-tp13-cra-prosecution/16808ade77> [Last accessed: 22.09.2020]

²⁴⁵Corruption Assessment Report Kosovo 2016. SELDI. Available at: http://seldi.net/fileadmin/public/PDF/Publications/CAR_Kosovo/ASSESSMENT_OF_CORRUPTION-ENG_FINAL__002_.pdf [Last accessed: 19.02.2019]

²⁴⁶ Annual Report of the State Prosecutor. March 2018. p. 14.

(KPC). However, it was found that such position existed during 2012-2015 and was abolished after the establishing of the Commission to oversight corruption and economic crimes cases.

Since 2014 there is also National Coordinator for Combating Economic Crime (NCCEC), which promotes, coordinates, monitors, evaluates and reports on activities of law enforcement institutions which are concerned with prevention, detection, investigation, prosecution and adjudication of crime that generates material benefits.

VII.6. Basic Prosecution Office of Pristina: Anti-corruption and Economic Crime Units

As the beginning of 2016, the Chief State Prosecutor has set up Anti-corruption and Economic Crime Unit within the Serious Crime Department and General Department of the Basic Prosecution Office of Pristina, which handles only corruption and economic crime cases.

As for now the mandate of these units is extended until 2020. Currently, there are 10 prosecutors at the Units who are assigned to deal with anti-corruption and economic crime cases. Out of them, 6 prosecutors are in charge of criminal prosecution for corruption offences, namely for crimes as prescribed in Articles 422-426 of the Criminal Code of Kosovo.

VII.6. 1. Special Prosecution Office of the Republic of Kosovo (SPRK)

The Special Prosecution Office (SPRK) within the office of State Prosecutor has been established in 2006 by a special law.

The SPRK has exclusive competence to investigate and prosecute inter alia money laundering, terrorism offences, organised crime, as well as a subsidiary competence for offences such as trafficking, counterfeiting money, corruption and fraud and other serious offences. In particular the SPRK under its subsidiary competencies among others deals with the cases of high-level corruption too.²⁴⁷

Although the SPRK can coordinate and direct the investigation and prosecution of cases falling under its exclusive or subsidiary competence through the offices of the various prosecutors working in Kosovo, according to the SPRK, the Law has to be amended in order to:

²⁴⁷ Law Nr.03/L-052 on the Special Prosecutor of the Republic of Kosovo (2008), Article 9.

- give exclusive competence (instead of the subsidiary) to the Special Prosecutors' Office over War Crimes, Organized Crime, High-level Corruption cases and Terrorism
- provide specific provisions on coordination for avoiding clashes of competencies with the Basic Prosecutors' Offices which currently takes place in practice.

The Law on the Special Prosecution Office does not provide for a definition of high-level corruption. However, this definition can be found in the SPRK Instruction from 13.11.2013., signed by the Chief Prosecutor, Chief EULEX Prosecutor and Head of the SPRK. According to the Instruction, high-level corruption shall mean any violation of identified Articles of the Criminal Code of Kosovo, without reference to the value of the offense or benefit gained as a consequence, when committed by the President of Kosovo; President and the parliament members of the Kosovo Assembly; Prime-minister, deputy prime-minister(s), and government ministers; mayor of a municipality; Judges of the Supreme Court of Kosovo; Judges of the Court of Appeals; the Chief State Prosecutor; and Chief Prosecutors is an offense constituting high-level corruption. The following Articles of the Criminal Code: Article 291(2); Article 316; Article 405(2); Article 406(2); Article 422; Articles 425-432; and Articles 435-436, are the identified predicate offenses that constitute high-level corruption. If the criminal conduct resulted in a loss, or caused a benefit in excess of €500,000, and the act was committed by a deputy minister; a civil servant of senior level management (General Secretaries or equivalent); ministry or public institution employee in a decision-making, or advisory position, it constitutes a high-level corruption offense. If a violation of any of the identified articles occurs and the monetary loss, fraud, or benefit is in excess of €1,000,000, no matter by whom the offense is committed, it is a high-level corruption offense.

Currently, the SPRK is composed of 18 Prosecutors (3 positions are still under the recruitment process), out of them 7 Prosecutors assigned for competencies to handle high profile corruption cases.

The KPC (Kosovo Prosecutorial Council) has appointed some Procurement and Financial experts to assist the SPRK.

While in general, organizational structure of the prosecutorial system of Kosovo is adjusted to the court system, the SPRK is the exception in this case, as there is no specialized court that would deal with the same offences which are under the SPRK's competencies, including high-level corruption cases.

However, Article 18 of the Law No. 06/L-054 on Courts²⁴⁸ provides for establishing Special Department for cases under the jurisdiction of the SPRK within the Basic Court of Pristina only. All matters in the Special Department for cases under the jurisdiction of SPRK shall be adjudicated by the panel of three professional judges, one of whom shall be the presiding judge.

Judges assigned to work in the Special Department of the Basic Court of Pristina and in the Department for cases under the jurisdiction of the Special Prosecution of the Republic of Kosovo, at the Court of Appeals, may be engaged in trial panels for the adjudication of cases within the Department for Serious Crimes at the Basic Court of Pristina respectively at the Court of Appeals.

VII.7. Kosovo Prosecutorial Council (KPC)

The Kosovo Prosecutorial Council (KPC) is established by the Constitution of Kosovo, as an institution fully independent in exercising its functions with the purpose of ensuring a professional and impartial prosecution system. Its primary functions are to ensure that all persons have equal access to justice and that the State Prosecutor is independent, professional and impartial and reflects the multi-ethnic nature of Kosovo and the principles of gender equality.

As for the relationship between the KPC and the Chief State Prosecutor, some reports pointed out that a key element in the establishment of the KPC appears to have been a view that the Chief State Prosecutor should not have too much power and that the establishment of a prosecutorial council would ensure that not too much power was centralised in the hands of any single person. This is a perfectly reasonable objective and one of the principal reasons why many jurisdictions have established prosecutorial councils²⁴⁹.

The KPC at the end of 2015 adopted Strategic Plan (2016-2018) and the Action Plan for Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption and Economic Crimes, including Sequestration and Confiscation of Illegal Assets. This Strategic Plan has set several goals such as reduction of the number of unsolved corruption cases,

²⁴⁸ Law No. 06/L-054 on Courts (2018), Article 13 (1).

²⁴⁹ Corruption risk assessment of the prosecution system in Kosovo, PECK II. Available at: <https://rm.coe.int/peckii-4561-tp13-cra-prosecution/16808ade77> [Last accessed: 16.04.2019]

increasing efficiency in solving new cases, increasing the level of cooperation with institutions, increase capacity through specialized trainings, accountability and transparency.

This strategic document was expired on December 31, 2018, and it is not valid anymore.

In 2014 the KPC adopted Strategic Plan for Interagency Cooperation between the State Prosecutor and law enforcement agencies in Kosovo in fighting organized crime and corruption, as well as Standard Operating Procedures (SOP) for the selection of Serious Crimes Targets.

It should also be mentioned that in 2013 the KPC has also adopted two significant documents: a) "Strategic Plan for Inter-Institutional Cooperation in the Fight Against Organized Crime and Corruption" and b) "Follow-up Mechanism for Harmonization of Statistical Report on Corruption" followed by Action Plan on Increasing the Effectiveness of the Prosecutorial System in the fight against Corruption. The Action Plan included the assessment of the number of corruption cases in the investigation stage, criteria for prioritising cases, measures for the cooperation of the prosecutors with Police, Anti-Corruption Agency and other applicants of the criminal reports, etc.²⁵⁰

Information about the new anti-corruption strategic plan is not available.

Currently, the KPC does not have any anti-corruption coordinator or focal point who could coordinate activities of anti-corruption structures at different prosecutorial offices.²⁵¹

VII.8. Financial Intelligent Unit (FIU)

The Government of Kosovo has made progress with institutional arrangements against money laundering. The Financial Intelligence Unit (FIU) was established in 2010 and administratively it is placed under the Ministry of Finance.

According to the Law on Law on the Prevention of Money Laundering and Terrorist Financing, the FIU is responsible for requesting, receiving, analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering and terrorist financing.²⁵²

²⁵⁰ Strategjia Shtetërore kundër Korrupsionit 2019-2023. March 2019. https://www.psh-ks.net/repository/docs/Action_Plan_-_Corruption.pdf [Last accessed: 16.04.2019]

²⁵¹ Some international reports are mentioning about the existence of National Anti-Corruption Coordinator's position within the KPC.

²⁵² Law 03-L-196 on the Prevention of Money Laundering and Terrorist Financing (2016), Article 4.

The FIU's Oversight Board is chaired by the Minister of Finance and includes the Minister of Internal Affairs, the Chief Prosecutor of Kosovo, the Director-General of the Kosovo Police, the Director of the Tax Administration of Kosovo, the Director-General of the Customs and the Governor of the Central Bank of Kosovo. The Board carries out coordination for state-level anti-money laundering (AML) and terrorism financing policy in cooperation with other institutions and relevant stakeholders and meets at least twice a year.

International conventions and Financial Action Task Force (FATF) recommendations require the inclusion of a number of offences as predicate offences for money laundering such as terrorism, including terrorist financing, trafficking in human beings and migrant smuggling, illicit arms trafficking, environmental crime, fraud, corruption or tax crimes. However, these categories are simply listed and not defined, leaving wide scope for national differences in the range of predicate offences. With this regard, the legislation of Kosovo for criminalization of money laundering uses so called "All serious crimes" approach or "list" approach to predicate crimes, which also includes corruption crimes.

In 2018, the FIU has carried out the National Risk Assessment, in which while identifying threats and risks has also handled corruption. A close working group has listed actions for national and sectional risk assessment. Anti-Corruption Agency along with other relevant institutions was involved in this process.

The FIU has also adopted an Administrative Instruction on Politically Exposed Persons (PEP), aiming at effectively managing the increased risk of money laundering posed by politically exposed persons, in the implementation of provisions on politically exposed persons in accordance with paragraph 1.33 of Article 2, paragraph 1.11 of Article 14 and Article 22 of the Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing²⁵³. In 2018, FIU has also published a Study of Money Laundering Typologies in relation to the PEPs²⁵⁴ (Politically Exposed Persons). By considering that the issue of PEPs is one of the most important points of intersection between AML (Anti Money Laundering) and anti-corruption efforts, addressing such an important tool should be considered as a good practice.

²⁵³Administrative Instruction MoF (FIU-K) No. 02/2018 on Politically Exposed Persons. Available at: http://fiu.rks-gov.net/wp-content/uploads/2018/09/UA_p%C3%ABr_Personat_e_Ekspozuar_Politikisht_dt_03-09-2018.pdf [Last accessed: 28.04.2019]

²⁵⁴United Nations Development Programme – SAEK II: Politically exposed persons: money laundering typologies in Kosovo. 2018. Available at: http://fiu.rks-gov.net/wp-content/uploads/2018/06/PEPs-Typologies_ALB-SRB-ANG.pdf [Last accessed: 21.03.2021]

The FIU has drafted the Standard Operational Procedures for intelligence and operational analysis. At the end of 2014 year has been signed a comprehensive agreement on the cooperation of exchanged information, risk assessment and coordination between institutions and rule of law agencies on combating and preventing economic and financial crimes. The FIU is part of several inter-institutional mechanisms including mechanisms that are related to anti-corruption (see *Table 6*). FIU and Anti-Corruption Agency have also signed a Memorandum of Understanding.

Table 6: Main coordination and cooperation mechanisms for the FIU

Main coordination and cooperation mechanisms for the FIU
FIU Oversight Board (Article 6 of the Law on PPP/LFT)
Accompanying Mechanism Strategy (2014-2018)
National Coordinator on Fighting Economic Crimes
Institutional mechanism of the Strategy against organized crime 2017-2022
Institutional mechanism of the Strategy against Terrorism 2017-2022
Monitoring of mechanisms on implementation of the strategy development and action plan, strategy for prevention of violent extremism and radicalization that lead towards terrorism 2015 – 2020
Mechanism on Targeting serious cases (Targeting of serious crimes)
Working groups on drafting national strategies
Accompanying Mechanism on drafting statistical reports
Groups for delegating and coordination of tasks within agreement on cooperation of exchanged information, risk assessment and coordination between institutions and rule of law agencies

*Source: Financial Intelligence Unit.*²⁵⁵ *Compiled by the author.*

In 2017, Kosovo Financial Intelligence Unit became a member of Egmont Group.²⁵⁶

It was found that the FIU has a good cooperation with the rule of law agencies and other institutions, including the Anti-Corruption Agency and there is no sign of overlapping competencies with them. FIU has the access to the Registry of Anti-Corruption Agency to obtain information about the asset declarations of the senior public officials, including declaring gifts.

²⁵⁵ Egmont Group. Kosovo – Financial Intelligence Unit of Kosovo (NJIF-K). Available at: <https://egmontgroup.org/en/content/kosovo-financial-intelligence-unit-kosovo> [Last accessed: 21.03.2021]

²⁵⁶ Egmont Group. Kosovo – Financial Intelligence Unit of Kosovo (NJIF-K). Available at: <https://egmontgroup.org/en/content/kosovo-financial-intelligence-unit-kosovo> [Last accessed: 21.03.2021]

Statistical data reflecting the cooperative activities between the FIU and Anti-Corruption Agency are as below. (see *Table 7*)

Table 7: Statistical data reflecting the cooperative activities between the FIU and Anti-Corruption Agency

Exchange of Information between FIU and Anti-corruption agency	2015	2016	2017	2018
Number of requests for information received from FIU	3	3	5	7
Number of reports disseminated by FIU to ACA	1	0	3	0

Source: Statistical data provided by the ACA and FIU. Compiled by the author.

VII.9. The Agency for Managing Seized and Confiscated Assets (AMSCA)

A successful asset recovery process resulting in the forfeiture and return of stolen public funds allows the stolen funds to be used to the benefit of the people. According to the World Bank’s STAR Initiative “If just 1 percent of the lower bound of the above figure, some \$200 million, were recovered, then it is estimated that funds would be enough to provide full immunization for eight million infants; or connect half a million households to running water each year; or finance first-line treatment for 1.2 million HIV-positive individuals”.²⁵⁷

The LAW No. 05/L-049 on the management of sequestrated and confiscated assets was adopted by the Kosovo Assembly in 2016. It defines the role and responsibilities of the Agency for the Administration of Sequestrated and Confiscated Property (AMSCA). AMSCA is the central body of state administration, within the Ministry of Justice and performs all functions relating to the maintenance and management of assets, pursuant to a court decision or ex officio.²⁵⁸

According to the AMSCA, it has proper cooperation with the Police, the Prosecutor's Office, the Courts and other agencies. However, other sources raised concerns about the cooperation of courts and prosecution offices with AMSCA²⁵⁹.

²⁵⁷ World Bank. Stolen Asset Recovery Management of Returned Assets: Policy Considerations. Available at: <https://star.worldbank.org/sites/star/files/ManagementReturnedAssets.pdf> [Last accessed: 14.04.2019]

²⁵⁸ The Law No. 05/L-049 on the Management of Sequestrated and Confiscated Assets published on 14.04.2016.

²⁵⁹ E.g. when the AMSCA receives the court order to administer the sequestrated assets and confiscated assets, some of the assets depraved from the possession of the defendant are not addressed to AMSCA for administration. There are cases where the decision for administration of sequestrated cars arrived to AMSCA for execution, but not foreseeing the administration of the apartment. Afterwards, the defence lawyer of the defendant approached AMSCA to seek information about the question if the sequestrated apartment of the defendant has been broken in

The Law also creates a basic ground for international cooperation on asset recovery measures. In particular: where a request is received in Kosovo from another country in respect of assets, and the Courts in Kosovo have accepted the request and assets forming the subject of the request have been transferred to the AMSCA, the latter has responsibility for those assets as if the case had originated in Kosovo. The AMSCA through the assistance of the EU-funded project “Support to the Agency for Managing of Sequestrated and Confiscated Assets” set up a registration system for confiscated assets and has developed guidelines on sequestration and confiscation, which together with relevant templates were disseminated to judges and prosecutors. AMSCA is a member of the Balkan Assessment Recovery Interagency Network (BARIN). Kosovo has an observer status at the Camden Asset Recovery Inter-Agency Network (CARIN) of Europol.²⁶⁰

Having an effective system of criminal asset management is a vital part of the asset recovery chain. This work is highly technical in nature, but at the same time, AMSCA should strengthen its efforts on meticulous record keeping and adopt transparent procedures to ensuring accountability of the asset management system in Kosovo.

The Assessment of the anti-corruption institutional framework of Kosovo shows that the country almost set out anti-corruption legislative and strategic agenda aimed at improving systemic weaknesses in their infrastructure while implementation is largely left to weak and not well-integrated institutional actors which need support in further institutional reform and capacity building.

to. This was the instance when AMSCA realized that an apartment had been sequestrated, but it is not known who is administering the apartment. Other cases occurred where the sequestrated cars were not given to AMSCA for administration, but they were allowed to be used by car rental companies. The other concern regarding the cooperation of courts and prosecution offices with AMSCA is that the Kosovo prosecutors do not give the proposal to sell the assets at sequestration phase. Further, when the final decision is taken, the money of the assets sold could be transferred to Kosovo budget or be given to the party who was acquitted. But, the sequestrated assets are kept for years and in some cases where cars are concerned, their value due to depreciation diminishes significantly. In this scenario, the party acquitted in the final court decision may resort to file law suits for devaluation of his/her assets. Kosovo prosecutors need, as foreseen by law, to give proposals for selling the assets at sequestration phase and avoid prospective law suits for devaluation of assets. See: Assessment report on Mutual Legal Assistance in Criminal matters in Kosovo. Available at:

<http://www.prosecutorsnetwork.org/uimages/MLA%20REPORT%20KOSOVO.pdf> [Last accessed: 14.04.2019]

²⁶⁰ European Police Office: Camden Asset Recovery Inter-Agency Network (CARIN) The History, Statement of Intent, Membership and Functioning of CARIN. 2012. p.14.

Kosovo has a very complicated and complex anti-corruption institutional setup. There are up to 20 institutions directly or indirectly involved in fighting corruption, but when it comes to responsibility it becomes difficult to identify a relevant body who is responsible for not bringing tangible results in effectively combat corruption. Considering the multitude of these anti-corruption bodies and structures and their actual performance, it is also difficult to define all specific functional and structural patterns.

There also seem to be several institutions mandated with fighting and preventing corruption that do not cooperate sufficiently in practice and their competencies are unspecified as well as overlapping. In some cases, these institutions are not well integrated, in the others - their remits are duplicated, and the division of tasks is not clarified. Because of overlapping mandates, some institutions along with the responsibility also lack the ownership of their anti-corruption reform agenda.

Lack of proper inter-agency coordination mechanisms is another area of concern. Mostly the coordination issue is left to the Memorandums of Understanding between the agencies, while primary and secondary legislation doesn't provide for mandatory provisions that will oblige the institutions for efficient information sharing and results-oriented coordination and cooperation. The EU progress reports and several other country integrity assessments have also highlighted that "Inter-institutional trust" is not insufficient between the law enforcers, prosecutors and judiciary, with regard to corruption and related offences.

The thorough research of the institutional assessment has revealed the following specific problems and obstacles which have not been addressed by the EU, however, remains a crucial reform factor in further Europeanization of the rule of law.

- Kosovo Anti-Corruption Agency (ACA) is the main body for corruption prevention. ACA's prevention mandate comprises a majority of the common functions of corruption prevention agencies as defined in the most universal international anti-corruption standard, including the mandate for monitoring the conflict of interest and asset declarations. However, ACA lacks some important corruption prevention tools such are: Corruption Proofing (i.e. anti-corruption expertise of the draft laws), Corruption risks assessment, Integrity Plans and Institutional Integrity Checking.
- Another important prevention function of the ACA is the monitoring of the implementation of the National Anti-Corruption Strategy and Action Plan. However,

this duty is assigned to the Investigative Division, instead of the Corruption Prevention Department. This fact could be perceived that the authorities cannot properly understand the difference between “prevention” and “repression” of corruption.

- National Anti-corruption Council serves as a general political platform for exchanging information and therefore its influence on ongoing anti-corruption policy matters appears to be limited. The Council lacks technical and operational mechanisms for coordination of the process. The institutional assessment also found that miscommunication problems exist between the National Anti-corruption Council and ACA.
- At the government level, there is no inter-ministerial coordination mechanism on anti-corruption cross-sectorial policy measures, and the institutional shortage here is that while the government is responsible for implementing anti-corruption activities as per National Anti-Corruption Strategy and Action Plan, it does not have any structure to coordinate this process.
- The role of the Prime Minister’s Office of Good Governance (OGG) remains limited to cooperation with the ACA regarding the implementation of the Anti-Corruption Strategy.
- Tax Administration’s (TAK) officials as civil servants are not obliged to submit their asset declaration to the ACA. The law on Tax Administration provides that the Director of TAK may require the financial declaration from TAK officials, but failure to submit this declaration does not impose any sanctions. This condition cannot be considered as a good practice.
- Investigative mandate of the ACA as defined in the Law on Anti-Corruption Agency, raises some questions and creates confusion. The Law does not provide specific procedures on division of cases between the ACA and Police and leaves room for its arbitrary interpretation. The only provided criteria for the Police’s involvement in the investigation is “if it (ACA) meets any difficulties”, which is also a confusing term from the point of view of legislative technics.
- The ACA’s internal regulation on Rules of Procedure also does not contain any procedural criteria on cooperation with the Police. Only relevant reference could be found in the Memorandum of Understanding (MoU) between the ACA and Kosovo Police. However, such important investigative procedures cannot be regulated by MoUs

and must be prescribed in primary legislation. In addition, the above-mentioned MoU also does not set detailed provisions to clarify what happens if both institutions start an investigation without the others knowing in advance.

- The Law also does not provide clear provisions on information sharing and coordination between the ACA and Prosecutor Office. In practice, it means that every institution with investigative powers can initiate the same case at the same time without informing each other. Because of this reason, there is a systemic problem with overlapping mandates between the ACA, Kosovo Police and all relevant Prosecutorial structures, which hampers proper investigation of corruption cases.
- Another problematic aspect of coordination activity between the ACA and Prosecutors is that when cases are transferred to the Prosecutor's office, the ACA only receives feedback with regard to the cases closed, but not the ones that required further investigation. Therefore, the follow-up of cases transmitted to other authorities is not consistent.
- Neither in primary legislation nor in by-laws there are no references to procedural provisions on conducting joint investigations by the SPRK and Special Anti-corruption Department (SACD) at the Kosovo Police, which is called as "Anti-corruption Task Force" and is being supervised by the SPRK.
- At the same time, it is unclear whether any coordinative and cooperative mechanisms exist between the SACD and the Basic Prosecutors' Offices. There is also the risk of overlapping activities between the SACD and ACA during the preliminary investigations on corruption cases.
- With regard to the Directorate against Economic Crime and Corruption Investigation (DECCI) at the Kosovo Police, there is no internal regulation determining modus operandi and criteria in the case when other institutions also will start parallel preliminary investigations on the same case. And here appears another problem with regard to coordination of the DECCI activities with other institutions also mandated with preliminary investigations' power, namely with the ACA. Clearly written procedures are needed for how the DECCI and ACA will divide initiated cases among each other to conduct preliminary investigations.
- The functionality of the Police Inspectorate of Kosovo (PIK) has been affected by poor inter-institutional cooperation with the police, prosecution and judiciary. Cooperation

between PIK and the prosecution still requires further improvement as cases investigated by PIK have not been sufficiently prioritised, investigations have remained too lengthy, while PIK has also not been informed about final decisions issued by courts.

- Concerning the relationship between prosecutors and police, investigators reported a lack of communication of the outcome of cases to them by prosecutors and claimed they were not told why no prosecutions ensued. Such a failure to report outcomes is bad practice and means that where a failure to prosecute results from an inadequate investigation no lessons are learnt. It also ensures that prosecutors' reasoning remains unknown and cannot be queried by the investigator. The requirement for prosecutors to report to the investigators the outcome of the cases submitted to them with a view to prosecution is a valuable means of accountability both for investigators and for prosecutors²⁶¹.

Kosovo Prosecutorial Council (KPC) currently does not have any anti-corruption coordinator or focal point who could coordinate activities of anti-corruption structures at different prosecutorial offices. It could be concluded all of the above mentioned duplication of powers and clashes of competencies between the respected institution responsible for investigation and criminal prosecution of corruption lead to situations where one case can be dealt by several agencies and structures without informing each other. This lack of cooperation in certain cases have resulted in a failure of the case in the court.

VII.10. The role/impact of the European Union in increasing the oversight and advocacy role of the civil society organizations

According to Article 2 of the Treaty on European Union (1993), the EU is founded on values such as the Rule of Law (RoL), which are common to the Member States in a society characterized in particular by justice. Mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premise that Member States share a set of common values on which the EU is founded. The EU is a unique legal order. It includes primary law, which is found in the treaties, as well as the EU Charter of Fundamental

²⁶¹ Corruption risk assessment of the prosecution system in Kosovo, PECK II. Available at: <https://rm.coe.int/peckii-4561-tp13-cra-prosecution/16808ade77> [Last accessed: 16.04.2019]

Rights; secondary law, such as regulations, directives and decisions; as well as non-binding legal acts, such as opinions and recommendations.

The participatory approach of policy and law-making processes at the EU level is guaranteed in the Treaty of Lisbon (2009). The Treaty stipulates that: “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.” Further, the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. The institutions shall maintain an open, transparent and regular dialogue with representative associations and NGOs.” The Treaty further obliges the European Commission to carry out consultations with parties concerned and regulates a right of EU citizens to invite the European Commission to submit a proposal on matters necessary for the implementation of the Treaty.

Prior to the adoption of the Treaty of Lisbon, the European Commission developed several documents emphasizing the importance of public participation and providing guiding principles for its implementation in practice. Namely, the White Paper on European Governance²⁶² adopted in 2001 highlights five principles of ‘good governance’ in order to increase the legitimacy of the decision-making processes. The White Paper called on the European Commission to ensure its implementation which resulted in the adoption of the General principles and minimum standards for consultation of interested parties by the Commission (EC Principles and Minimum Standards) in 2002. The standards are organized around five areas: providing clear content of the consultation process, defining consultation target groups, organizing awareness raising publicity and publishing the consultations online, defining time limits for the receipt of responses and acknowledging and providing feedback to the received contributions.

An enabling legal environment for non-governmental organizations (NGOs) and citizen participation (participatory democracy) has de facto been incorporated into the political conditions (democracy and human rights) for the EU accession of the Western Balkan countries, and is regularly addressed in the European Commission (EC) progress reports. To

²⁶² Commission of the European Communities: European Governance. A White Paper. COM (2001) 428, Brussels, 25.7.2001, p. 10.

that end, the EC Directorate-General for Enlargement has developed the Guidelines for EU support to civil society in enlargement countries (2014-2020).²⁶³

According to the above guidelines, an empowered civil society can play an important role in ensuring these principles are upheld in practice. It is also in itself a crucial component of any democracy. „By articulating citizens' concerns, civil society organisations (CSOs) - understood as all non-state, not-for-profit structures in which people organise to pursue shared objectives and ideals – are active in the public arena and engage in initiatives which foster pluralism and further participatory democracy”.

The Guidelines provide that “a country wishing to join the EU needs to have an appropriate legal, judicial and administrative environment for exercising the freedoms of expression, assembly and association. Additionally, the „Commission itself re-iterated that it will engage with CSOs that are committed to strengthening their own capacity to fulfill their objectives. Moreover, CSOs can increase their effectiveness by increasing their capacity for analysis, monitoring and advocacy as well as networking, partnership, coalition-building and active involvement in the policy and law-making processes.”

“Monitoring of judicial proceedings may increase public accountability of the judicial system. By being transparent and allowing the presence of observers during proceedings, courts show to the public how they perform their social functions. The presence of observers helps to eliminate bad practices and promotes good practice examples.”

The Guidelines conclude that mechanisms for cooperation between NGOs and public institutions and access to information of public interest are of critical importance.

According to the Guidelines for EU support to NGO-s, an empowered civil society can play an important role in ensuring these principles are upheld in practice. It is also in itself a crucial component of any democracy. By articulating citizens' concerns, civil society organisations (CSOs) - understood as all non-state, not-for-profit structures in which people organise to pursue shared objectives and ideals – are active in the public arena and engage in initiatives which foster pluralism and further participatory democracy.

²⁶³ DG Enlargement Guidelines for EU support to civil society in enlargement countries (2014-2020). Available at: http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf [Last accessed: 21.03.2021]

The enlargement countries, including the Republic of Kosovo face a range of challenges, especially in fields such as the rule of law, corruption, organized crime, the economy and social cohesion. Civil Society actors and organizations can make a substantial contribution to addressing many of these through their lobbying, advocacy and oversight activities at the national, regional and local level.

When it comes to democratic governance and the rule of law and fundamental rights, including freedom of expression & association and minority rights, they can create demand for enhanced transparency, accountability and effectiveness from public institutions and facilitate a greater focus on the needs of citizens in policy-making.

Beyond this, the involvement of civil society in the pre-accession process can contribute to deepening citizens' understanding of the reforms a country needs to complete in order to qualify for EU membership. This can help ensure EU accession is not just a government exercise and stimulate a balanced public debate, which is crucial to achieving a well-informed decision on EU membership at the end of the pre-accession process.

According to the European Commission Country Report for Kosovo, for 2019, “further progress was made in improving cooperation between civil society and the central government”.²⁶⁴ The adoption of a new Law on Freedom of Association in Non-Governmental Organizations (NGOs), in line with the best international standards and practices, was an important step forward. The publication of a first government report on public funding of non-governmental organisations resulted in more transparency. More efforts are needed to ensure meaningful involvement and cooperation also at local level. Civil society monitoring of, advocacy for and close engagement in European reforms remains key to Kosovo’s progress on its European path.

Additionally, the country report states that Kosovo’s civil society needs to continue, and be further enabled, to play an important role in the democratic debate and in the design and implementation of public policy.

With regard to the public consultations in the policy-making process at central level there are improvements especially during 2018. “Public consultations are organized more regularly,

²⁶⁴ European Commission. Kosovo 2019 Report. COM(2019) 260 final,. Brussels, 29.5.2019. p. 10.

thanks to the minimum standards for such consultations. In 2018, more than 50% of all primary policy documents and draft laws were published for consultation on the web portal; this represents a substantial increase since 2017.” As the response rate from civil society and the public remains relatively low, the government is making efforts to promote the use of the web-portal. Public scrutiny of government work is expected to improve with the new requirement of line institutions to publish annual monitoring reports on the implementation of their strategy documents. Also, in line with the action plan in the open data readiness assessment, the government should make more datasets available on its open data platform. Civil society should be more systematically involved in the design, monitoring and evaluation of government plans and programmes.

VIII. The legality of the Pristina - Belgrade political dialogue: the queer case of Kosovo’s Historic Agreement

After years of struggle and opposite views on the legal status of Kosovo, both Kosovo and Serbia, have decided that the best way to move forward is to engage in a mutual dialogue about issues pertaining to the citizens of respective countries sponsored and mediated by the EU.

The dialogue on technical talks, to be later transformed into a high political dialogue between the representatives of both Governments started in 2011 under the sponsorship and mediation of the European Union, in order to achieve normalization of relations between the two countries – both committed to the EU integration path.

These talks, facilitated by the EU – who has used their stimulating tools to incentivize both parties in implementing the reached conclusions, albeit some more than the other for which it shall be subsequently discussed throughout the thesis, has reached its highlight in April 2013, when the two Prime Ministers, Hashim Thaci of Kosovo and Ivica Dacic of Serbia signed the document on normalization of relations between the two countries in April 2013 called “The First Agreement that regulates the Normalization of relations”.

The 15 points agreement on normalization of the relations signed between Kosovo and Serbia in April 2013, for the normalization of their relations to be more in detail elaborated and analyzed in the Kosovo domestic legal infrastructure, also known as the Historic Agreement of

Brussels (further “the HA”), foresees the creation of the Association of Kosovo Serb municipalities, agreements on Energy and Telecom as well as the Judiciary i.e. Rule of Law.²⁶⁵

Taking the dialogue mediation responsibility very seriously, the EU uses Henry Kissinger’s famous “constructional ambiguity”²⁶⁶ especially when dealing with Kosovo, as a result of its, as it is known, “status neutrality” as a consequence of the five member states that don’t recognize Kosovo as an independent state, in a – what Visoka and Doyle argue – a neo-functional peace approach for resolving disputes through deconstructing highly political issues into technical meanings in order to achieve mutually acceptable agreements.²⁶⁷

However, this approach has proven to leave space for ambiguous interpretation and lack of transparency by both Governments, since their positions sitting at the table are diametrically opposed, i.e. Serbia still sees Kosovo as its integral part, and does everything in its power to block the signing of any document where Kosovo’s statehood is being referred to, while on the other hand, Kosovo authorities proclaim that every agreement signed is a de-facto recognition of its statehood not only by the EU but by Serbia as well. The interpretation maneuverability leased by the EU to parties, has proven to polarize not only the difficult relations between the Government of Kosovo and that of Serbia, but also the political scene in Kosovo, where the Kosovo Serb political parties represented both in the Government and in the Parliament do act as instructed by Belgrade that hinders the normal political life flow in the country.

The dialogue between Pristina and Belgrade as it started bears in itself several inconsistencies and fallacies. Several key facts were not taken into consideration when two sides signed off to the European Union facilitated dialogue, and the first being primarily – Kosovo has not been, and still is not treated as an independent state in the dialogue. The EU cannot sign off to such actions, because of its five non-recognizing member states²⁶⁸ while Serbia remains in its position treating Kosovo as a part of its territory as they stipulate it even in their Constitution preamble.²⁶⁹ Thus the negotiations take place in a neutral terrain, with no state symbols, and no

²⁶⁵ First agreement of principles governing the normalization of relations. 19 April 2013. Full text of the document enclosed in Annex 1.

²⁶⁶ SHUR-OFRY and TUR-SINAI, 2015, pp. 391-435.

²⁶⁷ VISOKA and DOYLE, 2016. pp. 862–877.

²⁶⁸ Five member states of the European Union still don’t recognize Kosovo’s declaration of Independence: Spain, Greece, Slovakia, Romania and Cyprus.

²⁶⁹ Ustav Republike Srbije (2006), Preambula.

official insignia, nonetheless, being treated unequally. Serbia as a state, a candidate country for the EU, and Kosovo²⁷⁰ as a territorial entity.

Imposed better saying than mediated, some of the agreements, such as the creation of the Association of Serb Municipalities which represents the fundament of the HA, did bring an enormous division gap within the political scene of Kosovo, manifested by blocking the work of the Parliament by the opposition parties using protests on the streets and tear gas within the Parliament chamber.

Ultimately, the President of Kosovo, Madam Atifete Jahjaga (2011-2016), did halt the process by sending the agreement to an interpretation by the Constitutional Court, which ruled that some of the provisions in this agreement are inconsistent with the Constitution of Kosovo, thus should be redacted.²⁷¹ This action was seen unfavorably by the Serbian Government as well as the Kosovo Serbs, who boycotted their participation in the Parliament.

The agreements described in *Table 8* if seen from a state functioning perspective have had an impact. Kosovo authorities have nominally extended their reach in the anarchic and lawless northern part of Kosovo, dominated by the minority Serb population who have been constantly disobedient to the Government, regardless of the fact that its full integration still remains wishful thinking as Belgrade refuses to instruct either the political representatives or the citizens into cooperation with the authorities in Pristina.

This chapter brings the most important milestones of the dialogue process, the way how it started and its proceedings, concentrating on the approach used by the EU in this dialogue, as well as the postulate upon which it was set. It will also briefly analyze the agreements reached, focusing further on those contested for the creation of the Association of the Serb municipalities (2015) and the allocation of the Kosovo country code by the ITU. The chapter in its central part shall theoretically as well as empirically argue that in these cases, the Europeanization top to bottom approach as argued by Radaelli is a slippery slope where the constitutional order of Kosovo has been undermined, allowing another State (Serbia) to possess

²⁷⁰ In 2012, Kosovo and Serbia technical negotiators struck a deal for Kosovo's unhindered regional representation. According to the agreement reached on February 2012, Kosovo will be represented with a footnote accompanied with the text This label [i.e., Kosovo] does not prejudice the status of Kosovo and is in accordance with Resolution 1244 and the opinion of the ICJ on Kosovo's declaration of independence."

²⁷¹ Verdict number KO130/15 of the Constitutional Court of Kosovo, Concerning the assessment of the compatibility of the principles contained in the document entitled "Association/Community of Serb majority municipalities in Kosovo general principles/main elements "with the spirit of the Constitution. p. 38.

nominal control over a part of Kosovo's territory.²⁷² Moreover, the constructive ambiguity approach used by the EU in the negotiations, especially with the case of allocating a country code to Kosovo by the ITU, where according to the action plan of implementation Serbia had to give its consent, while Austria did apply for the code, so Kosovo is just a user and not a full owner of it, is seen as a direct interference of one sovereign state in the internal affairs of the other.

Borzel argues fairly that limited statehood is the main cause of ineffective implementation of EU-induced reform²⁷³ when talking about the Western Balkan countries, part of which is Kosovo as well – however it fails to mention the fact that some of the imposed prerogatives from EU, do add to the limit of the statehood in Kosovo as we have seen in the case of the Parliament blocking because of the Association of Serb Municipalities – deemed by all, including the Constitutional Court of Kosovo as unfit with the Constitution, So, in one hand, if the EU imposes reform for compliance with its request, the question remains, why it insists in implementing agreements that are of a clear breach of the Constitutionality? The dialogue between Kosovo and Serbia has been lacking transparency on both ends, and interpreted on the likes and subjectivity of the party involved. The EU here needs to play a more active role in spearheading the efforts of increased transparency in the process, but at the same time urge both sides to refrain from the misinterpretation of facts. EU's position needs to be articulated also to the people, their elected members through their mechanisms, in order to maximize its credibility which recently has not been in prime time.

VIII.1. From UN to EU – the dialogue endeavors of Kosovo and Serbia (2013-still ongoing)

There was a great impatience of the majority Albanian population in Kosovo 5 years after the UN administration first installed itself in the country. The bar of resentment towards the indolence of the United Nations Mission in Kosovo (UNMIK) for resolving the question of the final status was raised high, and the violence outbreak of March 2004 did prove that the status-quo maintained by the UN was not viable anymore. Despite the diametrically opposite positions of Serbia and Kosovo at the highest-level dialogue table in Vienna, in what is referred to as the “meeting of the elephants”, Serbia offering substantial autonomy to Kosovo within the

²⁷² RADAELLI, 2000. pp. 4-20.

²⁷³ BÖRZEL, 2011. pp.10-14.

auspice of Serbia still claiming Kosovo as part of its territory, and Kosovo agreeing to nothing less than independence, negotiations did proceed facilitated by the UN, EU and US, in a spark of hope for achieving a mutually agreed solution. But the prospect for such a conclusion was far from reach.

After years of negotiations, and with an ideal solution acceptable to both parties nowhere in sight, in 2007, the UN special envoy Marti Ahtisaari presented the Ahtisaari Package²⁷⁴ or also known as the Comprehensive Status Proposal for Kosovo (CSP)²⁷⁵, which foresaw a limited time supervised independence for Kosovo, with some strong provisions for the Serb minority protection.

On 17 February 2008, the Parliament of Kosovo without the Serb minority members present, declared the independence and the final secession from the remainders of Yugoslavia – which was followed by the recognition of more than 50 states, including the United States and the vast majority of the EU member states – however without the support of the UN Security Council – which created a parallel legal universe with the Resolution 1244 (1999) in place and added to the ambiguity in the subsequent operations launched by the EU the European Union Special Representative (EUSR) and the EU Rule of Law Mission (EULEX).

Unhappy about the declaration of independence, Serbia turned to the International Court of Justice to seek an opinion on what they call it, “unilateral declaration of independence” of Kosovo. The International Court of Justice (ICJ) in its opinion²⁷⁶ did rule in very clear terms that the declaration of independence did not violate international law nor the Resolution 1244 of the UNSC, however, did not confirm whether Kosovo is de-facto and de-jure a state.

From the ICJ the debate shifted to the UN again, where Serbia demanded that the issue of Kosovo is to be returned to the Security Council – however, learning from the mistakes in the past, the UN referred the issue to the EU, as they said: “this is a European matter” – and at the same time adopting a resolution²⁷⁷ which called for technical dialogue between Kosovo and

²⁷⁴ The Comprehensive Status Proposal of President Ahtisaari. Available at: <http://www.kosovocompromise.com/2008/pdf/Ahtisaaris-Proposal-full-version.pdf> [Last accessed: 24.08.2020]

²⁷⁵ UN presents key plan for Kosovo: BBC News 26 January 2007. <http://news.bbc.co.uk/2/hi/europe/6300999.stm>

²⁷⁶ Accordance with International law of the unilateral declaration of independence in respect of Kosovo. Advisory opinion of 22 July 2010. Available at: <https://www.icj-cij.org/en/case/141> [Last accessed: 21.03.2021]

²⁷⁷ United Nations: Resolution adopted by the General Assembly. Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law. A/RES/64/298, Distr.: General, 13 October 2010.

Serbia with the mediation of the European Union. This mandate was a straightforward and truthful way of explaining what we were doing and why. “Cooperation ... to improve the lives of ordinary people” reflects what people sometimes call “the European method” – seeking peace through practical cooperation rather than through grand rhetoric about the brotherhood of mankind – though sometimes we cannot resist that temptation too. This is the method invented with the Coal and Steel Community. The last objective, “bringing Serbia and Kosovo closer to the EU” is essentially about enlargement: the Thessaloniki promise which the EU will one day make good.²⁷⁸

Nevertheless, the postulate upon which the dialogue has started has been wrong. The EU was aware that because of the opposition because of several crucial points. EU, because of the 5 non recognizing members²⁷⁹, cannot make a fully-fledged promise on the integration path for Kosovo despite its will. Nonetheless, again in a vague and transcendent language it established some sort of contractual relationship, especially with the signing of the Agreement for Stabilization and Association.

Serbia who sits at the opposing side of the table does consider Kosovo still part of its territory, contesting its statehood, thus undermining the equal dialogue position.

Last, but not least, apart from the myriad of problems faced by the boycott of the Serbian political representatives in the Government and the Parliament, Kosovo authorities do not control the entirety of its territory. The northern part inhabited by the Kosovo Serbs, show disregard to the Kosovo legal order, resentment towards any kind of EU presence and existing in a lawless and anarchic environment, abide by the rules of Belgrade only.

It is very important to mention the factuality of the ethnic division line and how did that occur. The division of the country was manned immediately after the war in 1999, when a protest of Mitrovica – the divided city – inhabitants from the Albanian majority escalated in strive to take over the occupied territory of the northern part. This did trigger a NATO/KFOR intervention which in order to prevent the escalation of the conflict set up a security parameter around Mitrovica north, effectively making it a safe haven for Kosovo Serbs from all around Kosovo.

²⁷⁸ COOPER, ROBERT: The Philosophy of the Belgrade-Pristina Dialogue. Posted on 16.07.2015. In: Belgrade - Pristina, EWB Op-eds. Available at: <https://europeanwesternbalkans.com/2015/07/16/sir-robert-cooper-the-philosophy-of-the-belgrade-pristina-dialogue/> [Last accessed: 21.02.2019]

²⁷⁹ Spain, Greece, Cyprus, Slovakia and Romania have refused to recognize the statehood of Kosovo till the day the paper was presented.

In addition, this was also done in order to retain the multiethnic character of the country but it led to a clustering effect in which the north of the river Iber emerged as a Kosovo Serb space while the south as a Kosovo Albanian space.²⁸⁰

Nonetheless, Kosovo made a strategic choice backed by its international friends to rely on Belgrade to deliver the local Serbs to the Kosovo legal order; this worked and ended years of unrest, but it also produced a new Serb political elite that is somewhat inexperienced and tightly bound to Belgrade. The elected Serbs will have to carve out a role for themselves, an identity that goes beyond faithful servants of Serbia and focuses on the people that elected them.²⁸¹

VIII.2. Agreements reached so far between Pristina and Belgrade and their state of implementation

Taking into consideration the nature of the relations between Kosovo and Serbia, despite the yielded paradigm that the negotiations were focused on technical issues, and not political – this for the matter of the fact that political talks would entail the tough questions of recognition, the North and the political relations between Kosovo and Serbia – the dialogue has been political from the day it has started. Sir Robert Cooper who has facilitated these technical talks confirms it. The Dialogue fell into two parts: the first, at official level, was about practical issues. Sometimes it was referred to as “the technical dialogue” by people who wanted to emphasize that the issues were not political. This is nonsense. All issues have both political and technical aspects²⁸².

The negotiations which started in March 2011, did actually concentrate on purely technical issues that have largely hindered the citizens of both states in their everyday life – which again was declaratively the primary concern of the EU officials. Negotiations started on the topics of return of cadasters and the civil registry; free trade (membership in CEFTA, custom stamps); electricity and telecommunication; issues related to freedom of movement (ID and travel documents, car insurance, driver’s license and license plates, air traffic); mutual recognition of

²⁸⁰ GUSIC, 2015. pp. 215-234.

²⁸¹ PRELEC and RASHITI, 2015. pp.12-14.

²⁸² COOPER, ROBERT: The Philosophy of the Belgrade-Pristina Dialogue. Posted on 16.07.2015. In Belgrade - Pristina, EWB Op-eds. Available at: <https://europeanwesternbalkans.com/2015/07/16/sir-robert-cooper-the-philosophy-of-the-belgrade-pristina-dialogue/> [Last accessed: 21.02.2019]

diplomas; missing persons; cultural heritage; crossing points and integrated border/boundary management; regional cooperation²⁸³.

The negotiations continued after the elections in Serbia, and in 2013 the following agreements were reached (see *Table 8*) in the, what is being referred to as, the Historical Agreement (HA 2013), i.e. the creation of the Association/Community of Serb majority municipalities; integration of police and security structures; integration of judiciary; holding elections in northern municipalities in accordance with Kosovo laws and energy and telecommunication.²⁸⁴

Table 8: Agreements signed so far between Kosovo and Serbia within the EU facilitated dialogue on the normalization of relations between the two countries

Agreements signed so far between Kosovo and Serbia within the Dialogue framework	Date of signature
Freedom of Movement	2 July 2011
Custom Stamps	2 September 2011
Vehicle Insurance	25 June 2015
Mitrovica Bridge	25 August 2015
Civil Registry Books	2 July 2011
Cadastral	2 July 2011
Acceptance of University Diplomas	2 July 2011
Integrated Border/Boundary Management	23 February 2012
Regional Representation and Cooperation; The 'Footnote Agreement'	24 February 2012
Energy	8 September 2013
Telecommunications	8 September 2013
First Agreement of Principles Governing the Normalisation of Relations	19 April 2013
Association/community of Serb Majority Municipalities in Kosovo – General Principles/Main Elements	25 August 2015
Establishment of Four Serbian Municipalities in the Northern Part	19 April 2013
Adoption of the Municipal Statutes	11 January 2014
Inauguration of the Municipal Bodies in all Four Municipalities	16 May 2014
Judiciary, Police, Security	25 August 2015

Source: Compiled by the author.

²⁸³ OROSZ, 2016. pp. 13-32.

²⁸⁴ Law Nr. 04/L-199 for the ratification of the first international agreement of the principles that regulate the normalization of the relations between the Republic of Kosovo and the Republic of Serbia. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8892> [Last accessed: 16.03.2020]

The year 2014 was characterized as a lost year for the dialogue because of the Kosovo general elections taking place, and the 6 months of a stalemate because of internal political clashes.

In the meeting between the two Prime Ministers, Mustafa and Vucic in August 2015, both parties agreed on the last document about the action plan on the implementation of the provision from the HA. The delegations initialed the general principles/main elements of the Association/Community of Serb majority municipalities in Kosovo, the Telekom Action Plan, the Action Plan on energy issues and the Bridge in Mitrovica.²⁸⁵ The last point was imposed on the political dialogue table by the local Kosovo Serbs, keeping barricades on the main bridge that divides the city between the Albanian inhabited South and the Serb majority inhabited North part.

For the purpose of this chapter, I will focus only on two of them, which is the Telekom agreement and its implementation as well as the creation of the Association of Serbian Municipalities (ASM). In tackling also, the problem of the EU's soft approach, especially towards Serbia, a portion of the following chapter will be dedicated to the organizing elections of Serbia within the territory of Kosovo.

As per the state of implementation, currently, the +383 country code has been allocated to the Republic of Kosovo for use, as the decision has been published in the International Telecommunications Union (ITU) on December 15, 2016,²⁸⁶ only after Serbia on December 3, 2016 has sent a letter of consent where it has requested for the ITU to allocate an international code for the geographical area of the Autonomous Province of Kosovo and Metohija²⁸⁷ which has represented the first strike on the undermining of Kosovo's statehood with an official document by a UN agency. The lack of transparency in the process has fueled different interpretations of the agreement. Serbia officials insist that with this agreement they have preserved their telecommunications property in Kosovo and have only allocated a geographical area code, the Government of Kosovo has claimed that this is one of the most important steps towards the consolidation of the statehood. Moreover, the opposition political

²⁸⁵ Summary of the Brussels Agreement package. Internal document sent to the Government of Kosovo, by the Minister for Dialogue in the Government of Kosovo, Mrs. Edita Tahiri. 27 August 2015.

²⁸⁶ ITU-t telecommunication standardization sector of ITU complement to recommendation ITU-T E.164 (11/2010). Annex to ITU Operational Bulletin No. 1114 – 15.XII.2016. Available at: https://www.itu.int/dms_pub/itu-t/opb/sp/T-SP-E.164D-2016-PDF-E.pdf [Last accessed: 23.02.2018]

²⁸⁷ ITU Secretary General letter to Rasim Ljajic, Minister for Trade, Tourism and Telecommunications in the Government of Serbia. Geneva, 7 December 2016.

parties in both states have also diametrically diverse opinions. In Serbia, the nationalist parties do claim that with these acts “Serbia is giving away Kosovo and recognizing its existence as a state”, while in Kosovo they claim that the Government has brought Serbia back in Kosovo by agreeing to have a geographical code for Kosovo.

One of the most troublesome issues to have been discussed in Brussels, and for which still a functioning modality has not been found, is undoubtedly the creation of the Association of Serb Municipalities.

The dialogue, as said earlier, it was presumed that it shall entail difficult political questions – such as the extension of the Kosovo Government authority in the Northern part, something which was lacking since 1999 i.e. since the declaration of Independence. The north has been troubled and out of withering international reach or Governmental authority since 2008. Illegally operating parallel structures, barricades and illegal security bodies have been operating with the funding from Belgrade for years, and those are seen as the only credible organizations fully to be trusted by the local Serbs. However, the dialogue between Kosovo and Serbia did conclude that these structures must be dismantled, and Kosovo authorities should take control over that part.²⁸⁸

Nonetheless, this Agreement was anticipated with grave opposition by the other political parties represented in the Parliament, those forming the political opposition block, with protests and tear gas in and out of the Parliament chamber.

In order to ease the internal political tensions lacking the potential to bring the parties together for a mutually accepted solution, the President of Kosovo, Atifete Jahjaga sent the Agreement to be evaluated for its Constitutionality to the Constitution court, while the opposition parties still claiming that the creation of this entity in Kosovo, is a de-facto division of the country amongst ethnic lines, just as it is in Bosnia and Herzegovina.²⁸⁹

The Agreements have truly been vague in their wording and interpretation, creating an additional impetus for misinterpretation or sparking conflicts between the two countries that are

²⁸⁸ Summary of the benefits from the package of the Agreements concluded in Brussels. Report by the Ministry for Dialogue in the Government of Kosovo to the Government of Kosovo and the Parliament. 27 August 2015. Available at: http://www.kryeministri-ks.net/repository/docs/Perfitimet_shteterore_te_Kosoves_nga_Pakoja_e_marrveshjeve_ne_Bruksel__270815.pdf [Last accessed: 15.05.2019]

²⁸⁹ ECONOMIDES, KER-LINDSAY and PAPADIMITRIOU, 2010. p. 104.

present at the dialogue table. As it will be subsequently discussed, the Visoka and Doyle implied neo-functional peace approach of the EU, has had in terms of integration a positive impact of the Europeanization process, however, it has seriously undermined the functionality of Kosovo – and this just because of the fact that Kosovo is not being treated as a state neither by EU nor by Serbia.

VIII.3. The Association of Serb Municipalities (ASM) an NGO or executive body? Its Legal and Constitutional impact within the Europeanization prism

The Association of Serb Municipalities which has been agreed to be formed with the landmark Agreement for Normalization of Relations in August 2015, is still unclear what will represent. Just another non-governmental body aimed at quasi institutional cooperation between some legal entities i.e. municipalities, or a fully-fledged executive association with rights overarching to the autonomy of one ethnic group in Kosovo.

Being that the EU has backed up, facilitated and yielded the implementation of the provision of this agreement strongly always using the incentives method for both Serbia and Kosovo on their integration path, it is important to analyze it contested provisions through the eye of the Europeanization theory in parallel to the constitutional and legal accords in Kosovo.

VIII.3.1. The Constitutional Court verdict

The Agreement on the creation of the Association of Serb Municipalities brought political violence and turmoil in Kosovo. Its implementation does require the 2/3 majority vote in the Parliament, something which the current ruling coalition partners do not have – while the Agreement on the ASM, together with other arrangements such as the Demarcation with Montenegro was seen as substantially damaging to Kosovo, the former implying that it will give more enhanced responsibilities to the Serbian minority in Kosovo in a mono-ethnic boundary line drawn amongst the municipalities where the Kosovo Serbs do represent the majority of the population, thus dividing the country even more.

In the course of the action in order to block the Constitutional changes, the Vetevendosje! (Self-determination!) political party – the biggest opposition one, joined by the other opposition block parties used tear gas and pepper spray to impede the work of the Parliament. Moreover, street protests were organized on an almost daily basis, some of them resulting in violent clashes between the protesters and the Kosovo Police with aftermath of a lot of injured from

both sides and hundreds of thousands of euros damage to the movable and immovable government property.

To resolve the crisis, President of Kosovo, Mrs. Atifete Jahjaga (2011-2016) turned to the Constitutional Court with the request of interpretation whether the agreement of 25 August 2015 on the principles of the ASM²⁹⁰ reached between the two prime-ministers in Brussels, is in compliance with the Constitution of Kosovo (October 2015).²⁹¹

In addition, the President requested that the Court establishes a provisional measure, meaning that “every action and effect produced by the Principles of the Association to be suspended, thus it is requested that the Court imposes a temporary /provisional measure on the matter raised until a final verdict is reached”.²⁹²

In its reasoning, Amicus Curiae of the Constitutional Court of Kosovo, on the case of the Constitutionality of the ASM, has stipulated that even though the European Charter of Local Governance foresees the municipal cooperation, nowhere can be found what point 4 of the General Principles says that the ASN will “exercise full overview”, a terminology that is vague and inexistent in the legal practice. Further, the Agreement (2013) unlike the General Principles (2015) does not define the Association/Community as a legal entity of a specific character, it doesn't foresee its establishment with a Government decree and it doesn't specify the budget, the administration and the competencies as stipulated in the General Principles.²⁹³ The Agreement (2013) foresees that the ASM shall be in line with the Council of Europe's European Charter of Local Self-Government (1985)²⁹⁴ and the structures of the ASM will be on the same basis as the Association of Kosovo Municipalities.

²⁹⁰ Association/Community of Serb majority municipalities in Kosovo – General Principles/ main elements. Agreed and signed on 25 August 2015, in Brussels by the Prime Ministers of Kosovo and Serbia, mediated by the EU.

²⁹¹ Request for assessment of the compatibility of the principles that the document titled “Association / Community of the municipalities with a majority Serbs in Kosovo – The guiding principles/the main elements” with the Constitution, in the Articles 3 (equality before the Law), par. 1 in Chapter II (the fundamental rights and freedoms) and Chapter II (Rights of the communities and its members) of the Constitution of the Republic of Kosovo. 30 October 2015. Office of the President of Kosovo, Legal Affairs.

²⁹² Constitutional Court of Kosovo. Verdict – reference number AGJ877/15 on the case number K0130/15. 23 December 2015.

²⁹³ Verdict number KO130/15 of the Constitutional Court of Kosovo, Concerning the assessment of the compatibility of the principles contained in the document entitled "Association/Community of Serb majority municipalities in Kosovo general principles/main elements "with the spirit of the Constitution. 2015. p. 9.

²⁹⁴ Council of Europe. European Charter of Local Self-Government. European Treaty Series – No. 122.

In addition, the General Principles use the phrase “municipalities with the majority of Serb population”, in the title and the text as well. This is in contradiction to Article 3 (1), and Article 124 (4) of the Constitution of Kosovo, as well as Article 10 (1) of the European Charter of Local Self-Government.

In its verdict, albeit in a very vague language using legally ambiguous terms such as “not entirely compatible” or “not fully fulfilling the constitutional standards”, has ruled that the judicial act and the Statute have to be in compliance with the Articles 12 (Local Governance), 21.(4) – the general principles of Chapter 2 for the Fundamental Rights and Freedoms, 44 (Freedom of Association) and 124.(4) on Local Self-Government Organization and Operation of the Constitution.²⁹⁵ thus suspending the further processing of the Agreement and untying the political knot in the country.

The Constitutional Court verdict was not well perceived by the Serbian side in the dialogue. They have insisted that the ASM should be formed as soon as possible as agreed in Brussels, since it allows for the Government of Serbia to legally have in control the municipalities of mono-ethnic composition, including the northern part of the country. However, at this point, on the basis of the verdict, the European Union’s reaction has been mild, thus allowing to insist that the dialogue should continue on other matters – allowing the three sides to contemplate finding alternate resolution or wait for the bad blood among the political parties in Kosovo to cool off and ultimately to adopt the ASM General Principles of 2015 in its current form.

The creation of the Association of Serb Municipalities has been a hot potato for all political parties in power in Kosovo. It has been a material for heated debates, political deadlocks and extraordinary elections. With the Serbian government insisting on its formation together with the EU as a deal broker, it is inevitable that this agreement needs to be implemented in order for the dialogue to harvest its fruits.

After the content of the Agreement was sent to the Kosovo Constitutional Court for review, the body judged that four out of five parts were not in full compliance with the constitution as they violate the principle related to the multi-ethnicity of Kosovo. The creation of the ASM will be hard to sell to the opposition political parties if the constitutional court deliberations are not

²⁹⁵ Constitutional Court of Kosovo. Verdict – reference number AGJ877/15 on the case number K0130/15. 23 December 2015. p. 14.

taken into account in full, and the provisions of the ASM is in line with the highest legal act of Kosovo.

VIII.3.2. The Europeanization and the cultural autonomy in Kosovo

The European Union entails the fundamental principles of respect of human rights, democracy and rule of law as a basic pillar of its functioning – and with that, they represent the bare minimum that the aspiring member countries need to fulfill to even begin thinking about entering into contractual negotiations with the EU.

Schimmelfenning *et.al*, stipulates the principle of “political conditionality” that the EU imposes on the member states using the accession incentive as not always productive since the cost of adoption of EU imposed rules for the domestic government is high, politically and economically.²⁹⁶

Borzel and Risse further argue that in order to achieve the process of Europeanization there must be some degree of misfit between the European level processes and domestic ones which ultimately leads to adaptational processes that have a cost – social and political one.²⁹⁷ In the case of the Constitutional changes regarding the creation of the ASM, it is clear that the EU imposed actions are not necessarily mandated to the integration path, but rather an internal Constitutional order. Furthermore, as Kosovo has both legislatively and practically fulfilled as well as exceeded the criterion of respecting the fundamental rights and freedoms for minorities, it can be concluded that the EU is not taking into consideration the historical context of the creation of a mono-ethnic layered institution within the Constitutional order of Kosovo, which contrary to what the aspirations of the EU are – it might get Kosovo further back from its integration path, rather than moving it forward.

The dialogue and the Agreement in this form poses a threat of creating a parallel constitutionally forbidden category of territorial autonomy, which as it is said above, will endanger the multiethnic composition of the country, its fragile relations with the Belgrade authorities and detriment its EU integration path.

In this context, it is argued that whereas territorial autonomy is appropriate to the long-established states and consolidated democracies of the West, it is far less workable in a CEE

²⁹⁶SCHIMMELFENNING, ENGERT and KNOBEL, 2005. pp. 29-50.

²⁹⁷BÖRZEL and RISSE, 2003. pp. 57-83.

context marked by historic disputes over territorial borders, continued geopolitical insecurities and recent or still ongoing processes of democratization. These inherited communist and pre-communist legacies mean that governments in the region have been reluctant to endorse far-reaching territorial autonomy for national minorities, seeing this as a barrier to successful state-building and state consolidation or even as a potential threat to state integrity²⁹⁸

Kosovo's international legitimacy was contested since it declared its independence. It did not have the support of the UN Security Council facing an opposition from Russia and China. Thus, its consolidation and recognition as a state has moved and still goes at a slow pace. Surroi argues that even today, since the Declaration of Independence there have been three layers of contestation, territorial – Serbia claiming that Kosovo still belongs within its borders, the European identity – the non-recognizing members of the EU resulting in a hybrid relation between the two, and the third, however the least important for this thesis, is the global/ideological tug-of-war in which some countries see Kosovo as a product of either US or Western unilateralism and without a UN membership.²⁹⁹

But the question remains, what did the dialogue brought up until today since 2011? Did it help Kosovo on its path towards consolidated statehood or its integration path or was just an excuse to sit on the same table with Serbia so that the latter will ultimately be rewarded with membership. Sir Robert Cooper, one of the first mediators in the talks between the two sides concludes: The Dialogue was never just about Serbia. It was also about Kosovo learning to act like a mature state. That means giving the welfare of the people more importance than the symbols of the state. If Kosovo wants to persuade the world that their independence was justified, they should make their treatment of the Kosovo Serbs a model of how different ethnic communities can live together. One day that might even impress Serbia.³⁰⁰

However, in Kosovo, the reality is different from what the EU perceives. With the myriad provisions of protection of the minorities, including effective veto powers in the Parliament, the Serbian minority can paralyze the decision-making at the central level on any issue that is of vital interest or subject of a constitutional amendment.

²⁹⁸ SMITH, 2014. pp. 15-24.

²⁹⁹ SURROI, 2011. pp. 111-120.

³⁰⁰ COOPER, ROBERT: The Philosophy of the Belgrade-Pristina Dialogue. Posted on 16.07.2015. In: Belgrade - Pristina, EWB Op-eds. Available at: <https://europeanwesternbalkans.com/2015/07/16/sir-robert-cooper-the-philosophy-of-the-belgrade-pristina-dialogue/> [Last accessed: 21.02.2019]

The question of the Serbian minority in Kosovo has been the leitmotif of the negotiations in Brussels. With the Serbian government using the Serb minority in Kosovo as a negotiation bargaining chip, it has perpetually requested that the rights of the minorities in Kosovo are respected and as such preserved in accordance with the European standards. Analysing the institutional setup for the protection of the minorities in Kosovo, the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) is one of the most important international legally binding instruments designed to protect the rights of people belonging to national minorities. Although Kosovo is not a signatory to the Convention, it is subject to a specific monitoring arrangement in conformity with a 2004 Agreement between UNMIK and the Council of Europe.³⁰¹ Currently, reporting to the Council of Europe is carried out by UNMIK, through OSCE Kosovo. The monitoring arrangement takes place every five years and involves three main phases. First, UNMIK prepares a report on Kosovo's compliance with the FCNM to the Council of Europe; second, an independent commission (the Advisory Commission) provides an expert opinion on the report issued by UNMIK, which is also given a chance to comment on this opinion. Finally, a resolution is adopted containing conclusions and recommendations to Kosovo concerning the implementation of the Framework Convention.³⁰²

Kosovo currently possesses normative and institutional mechanisms aligned to the European standards for the protection of the minorities. Yet, despite its advanced legal framework, in addition to the absence of normalization agreement the divisive historical and political narratives, related to the 1999 conflict, continue to fuel the existing trust deficit and hamper inter-ethnic dialogue and reconciliation at the Community level.

The divide is most prominent between Albanians and Serbs and is most visibly manifested in the four northern Kosovo Serb-majority municipalities (North Mitrovica, Zubin Potok, Zvečan and Leposavić). Some progress is achieved in the integration of security and justice institutions in the Kosovo Serb-majority municipalities in the north into the mainstream Kosovo system, in line with the landmark "First Agreement on principles governing the normalization of relations

³⁰¹ Council of Europe. Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities. 30 June 2004. Available at: <https://www.refworld.org/docid/441821b44.html> [Last accessed: 18 March 2021]

³⁰² European Center for Minority Issues Kosovo. International and European framework: Rights of the National Minorities. Available at: <https://www.ecmikosovo.org/en/International-and-European-Framework> [Last accessed: 23.11.2020]

in 2013. A considerable number of Belgrade-sponsored institutions and strong financial and political links between Belgrade and the Serb community still remain in Kosovo and are a source of further division across ethnic lines.

The Association of Serb Municipalities will have full oversight on the economic development, education, health, urban and rural development, as well as security wise where the list of the names for the police commanders in the respective municipalities will be ended by the ASM. It shall have a politically elected representation with a president, vice-president, Assembly and a Council. These are all elements of political territorial autonomy – the third layer of power in Kosovo, which is between the central government and the municipalities. The European Union has imposed the process of “Europeanization” to the Kosovo legal infrastructure since the negotiations for the final status commenced. To an extent, it has brought Kosovo to the limits of normal functionality, while maintaining its status neutrality. On the other hand, it has rewarded Serbia with its candidacy status and opened the negotiations for accession, at the same time minimizing the nationalist role of the euro-skeptic parties in Serbia, those of which the high representative for Foreign Policy and Security, Federica Mogherini did feel on her own skin when addressing the Serbian parliament in March 2017, where the representatives of Vojislav Seselj radicals were booing and chanting “Serbia! Russia! We don’t need the Union!” referring to the EU.³⁰³ Kosovo in this context has just recently only signed the Stabilization and Association Agreement (1999) with the EU, the very first step towards normal contractual relations with the Union.

With this in mind, the approach of the EU vis-à-vis the dialogue should change, and a clear integration perspective to Kosovo should be given, anchoring both countries in the membership path in parallel thus imposing a change of dynamics in the “normalization of relations dialogue between Pristina and Belgrade”.

Both International Relations and International Law scholars are witnessing a competing trend in international life, signaled by the rise of a group of phenomena most often explained in terms of "globalization," "transnationalism" or the "new medievalism." These include the emergence and increasing importance of sub-state and non-state actors, increasing international economic and political interdependence, the perceived transformation or disintegration of state

³⁰³ EU's Mogherini booed in Serbian parliament ahead of Balkan summit. Reuters report 3 March, 2017. Available at: <http://www.reuters.com/article/us-eu-balkans-serbia-idUSKBN16A2A0> [Last accessed: 21.03.2021]

sovereignty, the ascendancy of difficult "global" issues that require coordinated responses, and the continuing financial and administrative crises of the United Nations Organization. In this increasingly complicated environment, students of international order are embracing international "governance" as an alternative to international "government," the traditional liberal internationalist ideal of formal international institutions displacing domestic sovereigns in specific issue-areas.³⁰⁴

In Kosovo, this was proven. The constitutional court ruling on the ASM, presented with a very vague and ambiguous language, didn't merely solve the question of the (un)Constitutionality of the agreement, but it was a definite impetus for the satisfaction of the EU officials to ensure that the dialogue will continue smoothly – and the legal acts will just prove to be of a secondary nature and possibly subject of the amendment. Is this what Europeanization should actually look like?

IX. Conclusion

Despite some visible progress in the European Integration path by Kosovo, the research has shown that a lot has remained to be done. Brussels in all its powers and with all efforts has failed to Europeanize Kosovo, in particular in its area of rule of law and fight against corruption. The processes described in this dissertation have led to the conclusion that within its strive to Europeanize this part of the continent using its carrots and sticks policy of inducing transformative power, the European Union has produced a negative effect, complicating the normative efforts further, imposing decisions, laws and procedures as well as mechanisms that are not compatible to Kosovo's historical, political and social context, adding to the ambiguity of the mandates of a myriad of institutions that are involved in fighting corruption and reforming the rule of law, and finally involving undue political leverage on carrots offered such as the visa liberalization to push its own domestic agenda, regardless the costs associated to it which has ultimately diminished its credibility. On this note, one of the biggest failures of the EU in Kosovo is still perceived to be the visa liberalization process, which is proven to have a larger political implication rather than a purely technical nature as it is stated. The European Commission and the European Parliament have said that "Kosovo has fulfilled all preconditions" and have recommended the lifting of the visa requirements for its citizens, but

³⁰⁴ SLAUGHTER, TULUMELLO and WOOD, 1998. pp. 309-391.

these recommendations have not been anticipated with a great deal of enthusiasm by the member states.

The EU Strategy for Western Balkans³⁰⁵ on the other hand reaffirms declaratively the future of the Western Balkans countries, with the support of the Member States reiterated that the path of the region lies into the EU. In this context, the EU requires for the first time, emphasis on the comprehensive and convincing reforms in the rule of law – where today the countries show clear elements of state capture, including links with organized crime and corruption at all levels of government and administration. This has put the EU as an organization in a difficult position, entangled in the confusion between the positions as a Union and those of individual member states, which have expressed sporadic skepticism on future enlargement processes for the EU, dimming the positive perspective stipulated in the Strategy for the Western Balkans.

For the sake of consistency and clarity, this conclusion will be divided into 3 main sections in order to reflect on the findings from the empirical research answer the research question and conclude on the hypothesis that is set forth:

- The EU's conditionality approach in applying reform to the rule of law sector in Kosovo based on the External Incentives Model.
- The interdependence between the EU conditionality and the domestic factors in the process of Europeanization.
- Other factors impacting the Europeanization of Kosovo linked to its geopolitical position and yet still unresolved political questions of sovereignty in the global fora.

The European Union aspires according to Radaelli's definition to not only be a regulatory mechanism on the normative area but instill a community of values affecting social attitudes, norms, and beliefs. In Kosovo the EU has strived, through both the logic of consequences (the External Incentives Model) and appropriateness (Social learning model), to induce the reform in particular in the Rule of Law and the Public Administration. The Kosovo Parliament, immediately after the declaration of independence has approved all the packages of the Comprehensive Status Proposal in an expedite procedure, without giving the public nor the

³⁰⁵ European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A credible enlargement perspective for and enhanced EU engagement with the Western Balkans. COM(2018) 65 final, Strasbourg, 6.2.2018.

members of parliament the chance to comment on them. The application of this model, made Kosovo legislative members feel that these laws are imposed, and hard to implement.³⁰⁶

The Western Balkan countries are facing a different political momentum from the previous enlargement processes, especially those in 2004. Still poisoned by nationalistic rhetoric and unresolved dealing with the past issues from an ethnological and historical context, the Balkans are in a rather unfavorable political position of negotiation with Brussels, than the countries from the Eastern Europe block, that have detached from the communist legacy for some time now and embraced the European values.

The recent example of Bulgaria's veto over the start of negotiations with the Republic of North Macedonia prior to the 10th of November scheduled meeting of the General Affairs Council where a "framework for negotiation" is on the agenda ahead of the December summit where the EU leaders will decide to launch accession talks with N. Macedonia and Albania, because of "lack of will to find agreement on issues such as common history"³⁰⁷, can serve as a starting postulate of the lethargic approach of the EU as a whole when it comes to the conditionality of the candidate and potential candidate member states to the EU, by giving promises that they are not able to keep. North Macedonia has ended a 2 decades long dispute with Greece over the name issue – which has been an unsurpassable obstacle to the Macedonian NATO and EU integration path. The EU has proven to be passive and weak towards the Greek's persistence on the veto, while on the other hand has been trying to impose conditionality on the Macedonian government to speed up reforms in exchange for opening negotiations for membership card. Once the name dispute traded with a huge political cost to the Prime Minister who brokered and signed the deal with Greece, Zoran Zaev, was settled with the Prespan Agreement (June 2018),³⁰⁸ Macedonia became the 30th NATO member state (March 2020)³⁰⁹ but its path towards

³⁰⁶ GAP Institute. Analizë politikash – Rregulli 61. December 2010. p. 2.

³⁰⁷ Bulgaria Repeats Threat to Block North Macedonia Over History Feud. 14 September 2020. Available at: <https://balkaninsight.com/2020/09/14/bulgaria-repeats-threat-to-block-north-macedonia-over-history-feud> [Last accessed: 01.11.2020]

³⁰⁸ Final Agreement for the settlement of the differences as described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the termination of the Interim Accord of 1995, and the establishment of a Strategic Partnership between the Parties. Signed on 12 June 2018, ratified in both Parliaments of Greece and Macedonia on 25 January 2019 and entered into force on 12 February 2019. Available at: <https://www.un.org/pga/73/wp-content/uploads/sites/53/2019/02/14-February-Letter-dated-14-February-2019.pdf> [Last accessed: 08.11.2020]

³⁰⁹ North Macedonia joins NATO as 30th Ally. NATO Press release, 27 March 2020. Available at: https://www.nato.int/cps/en/natohq/news_174589.htm [Last accessed: 08.11.2020]

the EU integration was stopped, despite the promises for a clear membership. In October 2018, French President Emmanuel Macron, himself rejected Macedonians opening of negotiations talks, covered under the pretention of a need for a reformed enlargement process which gave a huge blow to the EU's credibility in the Balkans. Both chief commissioner Juncker and Council President Tusk publicly stated their dismay on EU's failure emphasizing that this was "a major historic mistake". Tusk went even further in echoing the sentiments by stating that "I feel really embarrassed."

The comparison is important as it brings the conclusion in the context of the application of standards that EU instills vis-à-vis Kosovo as well.

Currently, the EU doesn't have a unified position towards Kosovo as a result of the 5 non-recognizing member states that dispute the country's statehood. However, from a technical point of view, as a comparative method, we can analyze the visa liberalization process, Kosovo being the last one isolated from visa-free travel, and how the EU has lost its credibility to further conditionalize the reform process in Kosovo. Another important momentum in the Kosovo-EU relations, is certainly represented with the role of the EU in the Pristina – Belgrade facilitated dialogue for normalization of relations, a process that has been purely political and used as a strong-arming mechanism in particular against Kosovo. The establishment of the Association of the Serb Municipalities in Kosovo has deemed to violate the Constitution of Kosovo on 23 of its points – yet the EU is instituting that the Association needs to be established. This clearly shows why the rational approach has been seldom ineffective, and even dangerous to the extent. For this reason, the constructivist approach, would have been of a much better use in this, and other cases alike.

The dialogue on the start of the visa-liberalization process was initiated in January 2012, with the roadmap issued for Kosovo in June the same year. A myriad of steps, mainly from a technical nature were needed to be fulfilled in order to reach positive feedback and finally a visa-free regime for its citizens. From that date, the European Commission has published 3 consecutive reports to evaluate the progress of the criteria as stipulated in the roadmap, and finally, in 2016 the EC recommends an approved report for Kosovo's fulfillment of all obligations stemming from the roadmap, consequently, recommending the lifting of the visa regime for its citizens.

However, the nature of decision-making in the European Union, as it could be seen from the empirical research of the thesis – it is not as simple as one may reckon. The EU put additional conditions to the process for Kosovo – one being a purely bilateral dispute between two aspiring member states, (Kosovo and Montenegro), the ratification of the demarcation of the border between the two countries³¹⁰ and a proved track record of the fight against corruption and organized crime both showing that the EU took conditionality on Kosovo on another level, irrelevant to the technical requirements for the visa-liberalization process something that has not been required to any other country before that. After the launching of the most ambitious, largest and costliest EU Rule of Law Mission in Kosovo, the hopes of the Kosovars rose that the executive mandate of the European police and judicial force will engage in a robust fight of high-level corruption of political elites, the culture of impunity and the misuse of public funds. The contradiction paradox remains – the EU wants to see a better track record of a fight against corruption, while it holds the executive powers to do so in Kosovo, and itself has been subject to allegations of corruption and submission to the national political elites that it was supposed to investigate. If in this context we see the application of the External Incentives Model (EIM) the rewards versus the punishment used vis-à-vis Kosovo, one can conclude that the EIM as explained by both Sedelmeiner and Schimmelfenning, has not produced the desired effect.

EULEX lacks accountability towards the Kosovo authorities, and with that, it lacks trust especially among the mission and the local judicial and law enforcement authorities. As Harmann Singh noted in his analysis around the two allegations for corruption and misuse of duties within EULEX by two top officials, Maria Bamieh (international prosecutor) and chief judge Simmons both resigning from the mission as a result of corrupt malpractice prevailing in the top levels of EULEX, the mission should as soon as possible revise its mandate, transfer the competencies to the local authorities embracing the local ownership principle, engage into a meaningful dialogue with the local population and the law enforcement agencies, because that is the only way that mission credibility may be reinstated and further help Kosovo towards Europeanization.³¹¹

³¹⁰ The ratification of the demarcation process between Kosovo and Montenegro has been a yearlong internal heated dispute that resulted in a Government change, violent protests and political stalemate as a result of conceding 8000 hectares of Kosovo land to Montenegro.

³¹¹ SINGH, 2018. p. 1.

The empirical research has shown clearly that the progress of the rule of law reform has stagnated, despite the continuous efforts of the EU. The former Kosovo Rapporteur in the European Parliament, interviewed by the author has stipulated that despite the obvious criticism of the mandate and the work of EULEX, there has been some good to it, especially in improving efficiency and independence of law-making and law enforcing structures, and with that to oppose the criticism she asks: “what would be Kosovo’s situation if there would be no EULEX mission?”³¹²

The Europeanization literature insofar has been focused largely on the theoretical aspect of the Europeanization within the EU Member States, but not on the causality, and the consequence of the actions or better said, non-actions by the EU. The thesis observes beyond the theoretic approach and sheds light on the reluctance of the EU driven pressure to impose the rule of law reform demands that explain why Kosovo has been reluctant to Europeanize regardless the large-scale investment done by the EU so far through different mechanisms. The empirical research shows that the conditionality policy of the EU has been mainly process focused rather than result oriented thus the monitoring mechanisms such as the Country Report do repeat the same sentiment of the recommendations which have not been addressed and without any concrete steps recommended to Kosovo on how to further strengthen them. This will eventually further inspire the future researchers on the topic to have a systemic approach to the researches which would be more result oriented than process focused.

Drifting a bit further from the technical nature of the visa-liberalization, a new momentum, after the International Court of Justice Opinion on the Declaration of Independence was released, with the EU spearheading the facilitation of the negotiations between Kosovo and Serbia for normalizing its relations rose. The additional criteria for membership did elevate to a larger political scale, with the imposition of improving good neighborly relations, however, differentiating the sweetness of the carrot and the swing of the stick when ruling on both Serbia and Kosovo cases. Namely, political concessions made by Kosovo (the Association of Serb Municipalities, undermining the sovereignty by appearing with a footnote, creative ways of entering into agreements without being recognized as an equal legal entity on the table, brought Kosovo only the signature of the Stabilization and Association Agreement, and not a single

³¹² Interview with Tanja Fajon, Euro Parliamentarian Social Democrats of Slovenia. 14-07-2014 / 01-07-2019: Delegation for relations with Bosnia and Herzegovina, and Kosovo. Interview conducted by the author via Skype on 22 September 2017.

step further, whereas with Serbia, despite the undermined conditionality and the harsh rhetoric by the Serbian political, the carrot proved to be much sweeter, with the opening of the chapters for negotiation of its membership. This has by far undermined the conditionality regime and the credibility of the EU of not being able to deliver on its set forth promises.

With this, the study has shown through various empirical findings that the conditionality does not solely depend on the EU force, but also the ability and the persuasiveness of the domestic factors to detach from political messianism and engage in a more concrete implementation of the requirements instead of just ticking the box. In addition, from the theoretical conceptions, one can argue that despite the need for further elaboration of the Europeanization process as defined by Radaelli in the literature review chapter, the additional focus needs to be given in adjusting the theoretical concepts when analyzing Kosovo in the contested statehood prism, but also the Western Balkans in general, because of its troublesome history. This can serve as a starting point of redefining the Europeanization theory for the future scholars on the approaches used by the European Union to further expand on the theoretical framework on the interconnection between the EU and the candidate member states especially in the adoption of the EU Law, whether that is possible as prescribed by Radaelli, Schimmelfenning et.al, or the modality of the conditionality should be based also on the contextual prerogatives of the individual countries. From the research conducted, it is evidenced that there are no available studies so far that inherit the research of the Europeanization to the level of details in the rule of law sector in Kosovo, and this model used in this thesis can serve as a starting premise of analyzing further the degree of Europeanization, causes and consequences in the rule of Law area in Kosovo but also wider in the Western Balkans, with a stronger focus on the anti-corruption efforts.

In this context, as we can see from the myriad of documents and strategies produced by the EU in offering a clear membership perspective to the West Balkan region, when it comes to Kosovo and Serbia, the EU looks at two main issues which are closely linked politically: the Kosovo's contested statehood – the EU doesn't want to bring into the Union bilateral disputes, drawing from the Cyprus lesson, and the careful thread of not de-balancing the internal cohesion because of the 5 non recognizing member states. The Pristina- Belgrade dialogue is one such example where with the signature of the 2013 Agreement on normalizing the relations between Kosovo and Serbia, the latter was promised and won the start of the accession for

negotiation by opening the first chapters, while Kosovo despite the promise, did not receive the visa liberalization, but only the continuation on the Stabilization and Association Agreement dialogue as the first step towards integration. The unequal distribution of rewards comes as a result also from the unstructured dialogue process between Pristina and Belgrade without a clear timeline and end result to be achieved. However, what is known is the fact that neither Serbia nor Kosovo can move forward in the accession process without a final mutually agreeable solution.

Finally, the responsibility lies also on the domestic actors, where the political elite and the decision-making institutions have been overwhelmed by external interests, private businesses, and other powerful actors that hinder the reform because of the political protection that the government political parties sponsored by the same interest groups are indulged with against arrest, prosecution, affecting by large also the impartiality and the efficiency of the judicial sector, something that needs to be amplified in the EU findings but also reflected in the actual work of EULEX mission in Kosovo.

The Europeanization process in Kosovo has been followed by the logic of consequence and in the conception part only. It has been merely sufficient for the authorities to adopt the laws that are in line with European practices, establish institutions that were heavily funded by the EU IPA fund and other pre-accession mechanisms, so that at a glance, the normative structure of the Rule of Law sector in Kosovo looks delightful. However, when the results come to show, as it has been elaborated throughout the thesis, they are lacking, both from Kosovo authorities' side, but also from the EU's pledge to bring Kosovo to the sufficient acceptable European standards in the rule of law area.

What we have learned is a humbling lesson. EU came in pompously in 2008 in Kosovo, pledging to arrest big fishes and reform the judiciary. However, the results nowadays with 1 billion investment in the mission are modest. Kosovo is to blame primarily on itself, nonetheless the need to have a process driven by the people itself instead of going out on TV and saying how we will perform miracles that UNMIK could not.³¹³

³¹³ Interview of the author with European Union External Action Service. Interviewer has asked for his identity not to be disclosed. Interview conducted in Brussels, on 29.07.2017.

The EU officials instead of trying to convince everybody that Kosovo is being fair treated and not under any kind of isolation, should look into their own internal decision-making mechanisms and explain why Kosovo is isolated, and why the conditionality has been met with serious shortcomings. The fact remains that since the signing of the SAA, Kosovo has not moved an inch further in the integration process and the only subject that still remains in the discourse of EU's vocabulary with Kosovo, is the political dialogue between Pristina and Belgrade for which no enthusiasm has been shown in Kosovo.

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Appendixes

I. Key dates of Kosovo's European Union integration process

June 2003: The EU-Western Balkans Thessaloniki Summit confirms the EU perspective for the Western Balkans.

February 2008: Kosovo declares independence.

July 2010: The International Court of Justice concludes that Kosovo's declaration of independence did not violate general international law or Security Council Resolution 1244/99.

March 2011: The EU-facilitated dialogue for the normalisation of relations between Pristina and Belgrade is launched.

April 2013: The First agreement of principles governing normalisation of relations is reached in the dialogue between Serbia and Kosovo.

April 2016: The EU-Kosovo Stabilisation and Association Agreement enters into force.

May 2016: The European Commission issues a proposal to the European Parliament and Council recommending visa liberalisation for Kosovo.

February 2018: The European Commission adopts its strategy for 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans'.

May 2018: The EU-Western Balkans Sofia Summit confirms the European perspective of the region and sets out a number of concrete actions to strengthen cooperation in the areas of connectivity, security and the rule of law.

July 2018: The European Commission confirms that Kosovo has fulfilled all outstanding visa liberalisation benchmarks. Decision on the Commission's proposal is pending in the European Parliament and in the Council.

February 2020: Revised methodology, presented by the Commission, to drive forward the enlargement process with a stronger political steer and in a more credible, predictable, dynamic way.

II. List of Interviews

Interviews made by the author

1. Name of the person: Albin Kurti, leader of the Vetevendosje movement

Date of the interview: 15. 03.2009

Place of the interview: Pristina

2. Name of the person: Jonnas Jonsson, Head of the ICO Preparation Team

Date of the interview: 11 January 2013

Place of the interview: Pristina

3. Name of the person: Betim Musliu – Director of the Kosovo Institute for Justice.

Date of the interview: 8 March 2017

Place of the interview: email

Questions:

1. Taking into consideration the statutory limitations of the cases of Nuhi Uka and Ramadan Muja, both led by EULEX judges and prosecutors, what is the greatest failure of the system established in this case?
2. How heavy is the burden that falls on EULEX in reforming the justice system according to the proclaimed European standards?
3. What is the role of the Kosovar institutions in this process?

4. Name of the person: Tomë Gashi. Attorney of Ramadan Muja

Date of the interview: 17 December 2016

Place of the interview: via E-mail

Questions:

1. The case of Ramadan Muja represents a precedent in the judicial system in Kosovo. Can this case be considered as one of the biggest failures of the EULEX mission in what they call the hunt for the high-profile cases big fishes?
2. Same applies to the case of Fatmir Limaj – has EULEX allowed the statutory limitations to prevail in order to abolish the case and how much did the political influence played a role in this process?
3. How much has EULEX managed to reform and improve the legal infrastructure in Kosovo in line with their mandate?
4. How much is EULEX immune from political influence in Kosovo?

5. Name of the person: Marc de Fleurieu – European Policy Center

Date of the interview: 30.07.2017

Place of interview: Brussels, EPC

Questions:

1. The EU has showed a clear stagnation in the enlargement process. When can we expect a shift in the enlargement policy especially vis-à-vis the Western Balkans?
2. How do you see the role of EULEX in helping Kosovo in its path towards EU integration?
3. What are the policies that Kosovo needs to take into consideration in order to accelerate the fulfillment of the accession criteria?

6. Interview with the EU European External Action Service.

Anonymous interview conducted in person on 29.07.2017 in Brussels.

7. Name of the person: Tanja Fajon – European Parliamentary

Date of the interview: 22 September 2017

Place of the interview: via Skype

Questions:

1. The prospect of EU enlargement has been fainting away right now, especially by the founding member states who are taking a slower more conservative step towards enlargement vis-à-vis the Western Balkans countries. In this respect Kosovo, lagging behind all the other neighboring countries in terms of accession, complemented by the slow enlargement pace - what does it mean for the country?
2. Some of the EU countries especially the founding countries do express reserves when it comes to smaller countries holding the Presidency over the EU for 6 months – arguing that they do not have the political capacities nor the expertise for such a complex exercise (ex. Malta). Do you foresee a different institutional arrangement in terms of decision- making within the EU, before small countries such as Kosovo and Montenegro approach towards EU integration?
3. The reconciliation between Serbia and Kosovo i.e. Serbs and Albanians represents one of the main prerogatives of smoother path towards the EU. In this sense do you consider that the EU taking a soft approach towards Serbia when it comes to Kosovo, tolerating the infliction of the nationalistic sentiment with the political parties in the Kosovo Parliament, and what should change in this respect?
4. Is the non-recognition policy of the EU because of the 5 non recognizers impeding the EU in addressing core issues linked with Kosovo, such as the Rule of Law reform? What would an alternative model of institutional approach the EU undertakes that it tackles the issues that Kosovo society has been struggling with for years now after the independence?
5. How do you see the withdrawal of EULEX’s executive mandate from Kosovo? Do you think that the Kosovo judiciary is ready to tackle hard cases (ex. Croatia), without the help of the EU and how much can this disturb the integration path?
6. Taking into consideration the whole geopolitical developments and the increasing influence of the Russian politics in the WB, will the EU eventually turn on a blind eye on the WB countries, and, in your view, accelerate the accession procedure in this way showing that the project is very much still alive, or will keep the lesson learned from Bulgaria and Romania and make sure that the new members are ready? If the latter is the answer, will that pose a danger for an increased euro-skepticism in the region?
7. In your view, what has the EU done wrong and what right vis-à-vis Kosovo, being the fact that currently is the driving force behind any reform especially pertaining the rule of law sector? Has EULEX delivered on the expectations?

8. Name of the person: Blerta Deliu Kodra – Member of the Kosovo Parliament, Chairman of the Committee on European Integration

Date of the interview: 1 October 2020

Place of the interview: Pristina, Kosovo

1. How do you evaluate the role of the EU and Kosovo in the process of integration?
2. What are the biggest institutional obstacles in these relations and what can be improved from the Kosovo institutional side?
3. Who it is most to blame for the stagnation of the Kosovo's slow pace towards reform and EU integration? What can be done more, or how differently can the problem be approached in order to have tangible results?

III. First Agreement of Principles Governing the Normalisation of Relations – The Brussels Agreement – Brussels, 19 April 2013

1. There will be an Association/Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement.
2. The Community/Association will be created by statute. Its dissolution shall only take place by a decision of the participating municipalities. Legal guarantees will be provided by applicable law and constitutional law (including the 2/3 majority rule).
3. The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo municipalities e.g. President, vice President, Assembly, Council.
4. In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/Association collectively. The Association/Community will have full overview of the areas of economic development, education, health, urban and rural planning.
5. The Association/Community will exercise other additional competences as may be delegated by the central authorities.
6. The Community/Association shall have a representative role to the central authorities and will have a seat in the communities' consultative council for this purpose. In the pursuit of this role a monitoring function is envisaged.
7. There shall be one police force in Kosovo called the Kosovo Police. All police in northern Kosovo shall be integrated in the Kosovo Police framework. Salaries will be only from the KP.
8. Members of other Serbian security structures will be offered a place in equivalent Kosovo structures.

9. There shall be a Police Regional Commander for the four northern Serb majority municipalities (Northern Mitrovica, Zvecan, Zubin Potok and Leposavic). The Commander of this region shall be a Kosovo Serb nominated by the Ministry of Interior from a list provided by the four mayors on behalf of the Community/Association. The composition of the KP in the north will reflect the ethnic composition of the population of the four municipalities. (There will be another Regional Commander for the municipalities of Mitrovica South, Skenderaj and Vushtrri). The regional commander of the four northern municipalities will cooperate with other regional commanders.

10. The judicial authorities will be integrated and operate within the Kosovo legal framework. The Appellate Court in Pristina will establish a panel composed of a majority of K/S judges to deal with all Kosovo Serb majority municipalities.

11. A division of this Appellate Court, composed both by administrative staff and judges will sit permanently in northern Mitrovica (Mitrovica District Court). Each panel of the above division will be composed by a majority of K/S judges. Appropriate judges will sit dependant on the nature of the case involved.

12. Municipal elections shall be organized in the northern municipalities in 2013 with the facilitation of the OSCE in accordance with Kosovo law and international standards.

13. Discussions on Energy and Telecoms will be intensified by the two sides and completed by June 15.

14. It is agreed that neither side will block, or encourage others to block, the other side's progress in their respective EU path.

15. An implementation committee will be established by the two sides, with the facilitation of the EU.