

CSDP'S LITMUS TEST

WHILE EULEX KOSOVO COMES TO AN END, A NEW MOMENTUM ARISES FOR EU ENGAGEMENT IN THE WESTERN BALKANS

POLIS BRIEF N° 5

By Frauke Seebass

On 14 June 2018, EULEX Kosovo, the largest EU civilian mission to date officially came to an end. In close cooperation with the UN and OSCE, the European Union Rule of Law Mission was assembled to reform the judiciary system after Kosovo declared independence from Serbia in 2008. With the stakes high – the failure to protect civilian lives in Bosnia still painfully looming in the background – EULEX put to test the principles agreed upon in the 1992 Maastricht Treaty for a Common Security and Defense Policy (CSDP). Measured by its objective to reform the rule of law in Kosovo, EULEX has evidently failed. However, the EU has drawn from these lessons learned and reinvented its role in the region. 2018 has brought renewed momentum for EU cooperation with the Western Balkans, as concrete strategies set out to pave a rocky road ahead.

RECOMMENDATIONS

- Agree upon a whole-of-government approach to the Western Balkans and its individual member states, ideally in consultation with Paris and The Hague and in line with Brussels.
- Support concrete reform efforts and use their leverage to foster sustainable transformation, including an exchange of lessons learned (specifically Albania's vetting process)
- Increase support for regional cooperation especially in the economic sector to boost market potential, reduce (youth) unemployment and aid reconciliation processes, thus releasing especially Kosovo from regional isolation
- Increase citizen participation in the dialogue in both regions, and give civil society a strong role along on the journey to foster understanding of measures taken

INTRODUCTION

In 1999, the UN Security Council ratified Resolution 1244¹, providing a peace plan for Kosovo and welcoming EU engagement for increased stability. The resolution established an international interim supervising body in the form of the United Nations Interim Administration Mission in Kosovo (UNMIK). Its realm of authority was divided into four pillars, each implemented by a different organization². The first two pillars concerning Police, Justice and Civil Administration were covered by UN bodies, while the Establishment of Democratic

Structures was to be handled by the OSCE. Finally, the EU was to observe Reconstruction and Economic Development. To further its policy goals in the region, the European Council launched the European Union Rule of Law Mission in Kosovo (EULEX Kosovo) based on Council Joint Action 2008/124/CFSP and introduced a Special Representative, affirming its will to adopt a "leading role in strengthening stability in the region"³.

Ten years ahead, while the EU Special Representative and her office still occupy a crucial role in Kosovo's policy decisions, the rule of law remains the major concern and political corruption as well as organized crime continue to thrive⁴. After a final extension, EULEX's mandate expired on 14 June 2018, leaving behind many unresolved issues. While the end of EULEX itself marks the beginning of a new cooperation in the field of the Rule of Law between the EU and Kosovo, looking back on more than 10 years of European engagement in Europe's youngest state (a status still disputed even within the EU) is bound to provide the international community with valuable insights in the field of state building support and international cooperation in Kosovo and beyond. These lessons learned serve to guide further EU engagement in the region given the current momentum of renewed commitment.

THE ROCKY ROAD TO PRISTINA

The failure to save civilian lives during the Bosnian war together with ongoing tensions following the Dayton Peace Accords⁵

¹ UNSCR 1244, retrieved June 2018:

http://www.un.org/depts/english/sr/sr_99/sr1244.pdf

² Pfahl, J. Auswirkungen der deutschen Außenpolitik auf Fluchtursachen. Eine Analyse anhand der Fallbeispiele Kosovo und Syrien (2008).

³ JCA 2008/124/CFSP, retrieved June 2018: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0124&from=DE>

⁴ Transparency International, retrieved June 2018: <https://www.transparency.org/country/KOS>

⁵ Dayton Peace Agreement (OSCE 1995). Retrieved June 2018: <https://www.osce.org/bih/126173>

constituted a fresh and painful memory to Western states as backdrop for the decision to launch NATO airstrikes on military targets in Belgrade in 1999⁶. These came in response to reports of targeted killings of ethnic Albanian communities in Kosovo by the Serbian armed forces.

To this day, the ruins of the Defence Ministry add prominently to Belgrade's skyline and remind the population of their own losses during the operation, "civilian casualties", used to this day to mourn the injustice Serbia was subjected to in the interpretation of the official government line. Even among moderates, it is still difficult to find a Serb approving of Kosovo's independence, particularly among those living in the Serbian municipalities predominantly in the North of Kosovo.

Already in 2006, the EU established an EU Planning Team (EUPT Kosovo) 'regarding a possible EU crisis management operation in Kosovo in the field of rule of law and possible other areas'⁷. When the country's independence was declared unilaterally on 17 February 2008, the EU increased its efforts by launching a civilian mission to support the reform and establishment of judicial and policing structures and to foster the Rule of Law. EULEX Kosovo has been the largest and most ambitious CSDP⁸ operation to date and has been challenging for all participating member states⁹. It was linked to the ongoing UNMIK mission, as well as supporting NATO's Kosovo Force (KFOR) offensive, both of which are still in operation today. In a Joint Council Action based on UN Resolution 1244, more than 1,500 staff from member states as well as more than 1,000 local personnel were deployed in order to support the justice, police and customs sectors through Monitoring, Mentoring, and Advising (MMA)¹⁰. This included certain executive powers such as the prosecution of organized and interethnic crimes, war crimes and corruption of public officials.

Having assumed responsibility for the small nation in the heart of the Balkans, the international community was determined to do it right this time. Resources established recently and mostly in connection with support efforts for Bosnia were activated and

extended. Germany, for instance, established the Center for International Peacekeeping Operations (ZIF), answering to the Foreign Office in 2002 as a response to the acute challenge of recruiting civil experts for the police mission in Bosnia, the first EU operation Germany took part in¹¹.

Apart from more physical dangers mentioned above, the freshly recruited experts were met with a variety of challenges in the society they set out to reform. While spirits were high following the declaration of independence (commemorated today by a large monument in the center of Pristina reading "NEWBORN"), corruption and clientelism prevailed and transnational organized crime (TOC) was flourishing while the formal economy remained in stagnation. Vast amounts of money – 580 million Euro in the first four years alone – were allocated to the mission, its compound set up close to the UNMIK facilities just outside the capital and judges as well as police and customs officers put in place, working in close cooperation with the local EU representation and the host government.

One principle aim of EULEX Kosovo was to relieve the interim administration provided by UNMIK and gradually hand over these duties to the national government. Despite numerous restraints and public protests, the official government policy in Kosovo has generally been cooperative and even extended the mission's mandate various times, with ministries reporting to the heads of both the EU and EULEX offices and allowing for reports to be conducted by high officials on the progress of the judicial and other crucial sectors in fighting corruption, clientelism and organized crime.

However, according to the recent country report published by the European Commission in April 2018, these problems are still on the forefront despite improvements in many other sectors¹². Considering the original objectives, even EU officials acknowledge the lack of success in EULEX' reform endeavors. But what are the reasons for the mission's inefficacy, and what are lessons learned to apply in future measures of EU support to Kosovo, apart from the obvious challenges listed above?

STATUS QUO, LIP SERVICE, AND REFORMING THE REFORM

Beyond being a test case for the CSDP and restraint from the beginning through its limited mandate, EULEX faced numerous

⁶ Kosovo Air Campaign (NATO 2016). Retrieved June 2018: https://www.nato.int/cps/en/natohq/topics_49602.htm

⁷ JCA 2006/304/CFSP (2006), retrieved June 2018: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/joint_action_kosovo_april06/joint_action_kosovo_april_06_en.pdf

⁸ Treaty of Maastricht on European Union. EUR Lex, Retrieved June 2016: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:xy0026>

⁹ Wittkowsky, A. & Kasch, H. (2012). "Testfall Kosovo. Zwischenbilanz der Europäischen Konfliktbearbeitung."

¹⁰ EULEX Kosovo, retrieved June 2018: <http://www.eulex-kosovo.eu>

¹¹ ZIF Berlin, retrieved June 2018: <http://www.zif-berlin.org/de/ueber-zif/was-wir-tun.html>

¹² Kosovo 2018 Report, European Commission. Retrieved June 2018: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

challenges since its launch, both from outside and from within. Crucially, the people of Kosovo were -and remain- prejudiced against this EU interference in their country due to their double role as mediator in the dialogue with Serbia. Given the high level of poverty and unemployment, the population demands economic opportunities much more than legal reform. Public protests and graffiti opposing the vast international presence can still be found throughout the country¹³ and especially in the Northern –Serb majority– provinces, where due to their limited mandate, EULEX personnel were for a long time not able to execute any reforms due to security threats. Corruption and TOC flourish here especially, resulting in tensions between but also within the ethnic groups. A recent example of this was the murder of Oliver Ivanovic, a Serb politician in the Serb-majority north of Mitrovica, most likely in relation to organized crime¹⁴.

As another example, when new judges were to be sworn in after the 2017 general elections, the Serbian judges were curiously absent and had to be sworn in separately the next day, allegedly due to interference from the government in Belgrade¹⁵. The Serbian party represented on both state and municipal level, Srpska Lista (the Serbian List), is known to follow the official line of the Vučić government and has recently quit parliament in protest of the detention of a Serbian government representative who had entered Kosovo illegally¹⁶. Though the background of this incident remains highly disputed, Srpska Lista representatives meanwhile have returned to their seats. While the EU has very successfully brokered a dialogue between Pristina and Belgrade, this and other recent incidents challenge the process and its achievements¹⁷.

Furthermore, while it was mentioned that the will for cooperation (and corresponding financial support) on the part of the government remained high throughout the mission, implementation was long in coming and progress was slow and

¹³ Violent protests against EU mission in Kosovo. EUObserver (2009). Retrieved June 2018: <https://euobserver.com/news/28583>

¹⁴ Kosovo: The mysterious murder of Oliver Ivanovic. Al Jazeera (2018). Retrieved June 2018: <https://www.aljazeera.com/blogs/europe/2018/05/kosovo-mysterious-murder-oliver-ivanovic-180529144925924.html>

¹⁵ Evidence on swearing-in ceremony of Serb judges published. Gazeta Express (2018). Retrieved June 2018: <https://www.gazetaexpress.com/en/news/evidence-on-swearing-in-ceremony-of-serb-judges-published-173197/>

¹⁶ Kosovo Arrests Serbian Official for Illegal Entry. Balkan Insight (2018). Retrieved June 2018: <http://www.balkaninsight.com/en/article/kosovo-arrest-serb-official-marko-djuric-03-26-2018>

¹⁷ Tensions rise as Kosovo police arrest senior Serbian official. SCMP (2018). Retrieved June 2018: <http://www.scmp.com/news/world/europe/article/2139029/tensions-rise-kosovo-police-arrest-senior-serbian-official>

marginal. The diplomatic dance can be witnessed from one joint conference to the next, with both sides praising each other's efforts and EU officials amicably hinting to minor shortcomings, answered invariably by the respective minister's promise to concentrate all efforts on reform and implementation of the provisions determined in the Stabilization and Association Agreement (SAA) of 2013¹⁸.

Yet, with established elites retaining their power and corruption running high, the envisioned transformation process very much stands in conflict with their interests, and the mission leadership, fearing political instability, was careful not to create open disputes with the government¹⁹. EU policies are a popular target during elections, given their unpopularity among the population, particularly when paired with grievances such as the fact that Kosovo remains the only country in the region not being granted visa liberalization, an issue linked to both border demarcation with Montenegro and rule of law reform²⁰.

Nonetheless, structural shortcomings within the mission contributed to its limited success as well. The European Court of Auditors (ECA) has published a Special Report on the European Union Assistance to Kosovo Related to the Rule of Law in 2012 and lament its limited effectiveness. It concluded: 'In the first place, the limited effectiveness of EU assistance can be explained by the specific circumstances of Kosovo. Nevertheless, the audit found there were significant areas where better management by the [European External Action Service] EEAS and Commission could have made EU assistance more effective.' Staff constraints and especially strategic and coordination shortcomings were criticized, endangering Rule of Law reforms particularly in the North²¹.

The report was especially discouraging given the large financial resources provided to EULEX and wider EU efforts, and the result was a further decrease in credibility. While it led to a restructuring of the mission, EULEX became increasingly sidelined particularly with the taking effect of the SAA which comprises a much wider reform package based on EU accession criteria. Its local popularity further decreased last year, when a

¹⁸ EU starts the Stabilisation and Association Agreement negotiations with Kosovo. European Commission (2013). Retrieved June 2016: http://ec.europa.eu/rapid/press-release_MEMO-13-938_en.htm

¹⁹ EULEX. Anti-corruption and the limits of a quantitative assessment. FOL (2016).

²⁰ Implications of Visa Liberalisation for Kosovo. ECMI Kosovo (2018). Retrieved June 2018: <http://www.ecmikosovo.org/uploads/002.English.pdf>

²¹ ECA Special Report No 18/2012. Retrieved June 2016: https://www.eca.europa.eu/Lists/ECADocuments/SR12_18/SR12_18_EN.PDF

judge was found to have been appointed despite lacking qualifications and in turn accused high officials within the institution of corruption²².

However, expectations directed at this ambitious mission far exceeded its mandate – and the same is true for the eventual commitment by its staff²³. A political mission can never replace policies. EULEX from the very start was missing coherence and guidance, given the lack of an integrated EU line for Kosovo. While equipped with executive powers, these were not just problematic regarding the fear of renewed instability, but also given the mission's objective to create a self-sustainable judicial system independent of international interference; the transition process began in 2014.

ALLIES WITH BENEFITS –

THE SLIPPERY PATH TO EU ACCESSION

The preceding recapitulation makes it clear that the ambitious onset of this prominent CSDP mission was closely followed by a feeling of utter disillusionment. Scattered efforts of UN, OSCE and the lack of coherence even within the EU now stand as a lesson learned the hard way in the political strategy papers of these organizations, and together with internal frictions and external resistance have resulted in a very obvious failure of its original purpose. Yet, a more strategic approach in EU foreign policy based on these lessons has helped sharpen the organization's profile in this field, contributing not least to the 2016 Global Strategy published by High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini²⁴.

While these are positive developments, the EU has no time to waste in the Western Balkans. In recent years, economic stagnation and unequal development have stymied hope for positive effects of the accession process. Grievances from the violent breakup of former Yugoslavia still dominate the (political) narrative of the region and hamper cohesion. At the same time, those born after the war are at risk of becoming a

²² EULEX on Judge Simmons: He was under investigations, subject to serious allegations. Gazeta Express (2018). Retrieved June 2018: <https://www.gazetaexpress.com/en/news/eulex-on-judge-simmons-he-was-under-investigations-serious-allegations-against-him-173250/>

²³ Spernbauer, M. (2010). EULEX Kosovo: The Difficult Deployment and Challenging Implementation of the Most Comprehensive Civilian EU Operation to Date. German Law Journal Vol. 11, No. 08/2010.

²⁴ European Union Global Strategy. EEAS (2016). Retrieved June 2018: <http://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union>

'lost generation', given the lack of opportunities in their countries. For many of them, the only tangible solution is emigration - in most cases to the EU²⁵.

No matter what the successor of EULEX may look like, it will undoubtedly play a marginal role in the wider EU strategy for Kosovo, in which the rule of law continues to pose the greatest challenge²⁶. However, this year's new Western Balkans initiative spearheaded by the strategy for 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans' has the potential to provide this issue with new momentum²⁷. In order to overcome scattered efforts, the EU Commission therein provides a regional strategy, stressing the mutuality and interdependence of the struggle all six countries face. A crucial next step will be the European Council summit on 28 and 29 June during which a vote will be taken on the Commission's recommendation to open EU accession talks with Macedonia and Albania. At Tuesday's General Affairs Council meeting however, the decision was suspended under conditions until next year's meeting²⁸.

With Kosovo internationally largely isolated, Albania remains its closest partner. The latter is currently undergoing an ambitious vetting process in its judicial system and an audit of civil servants, thereby hoping to overtake current EU accession candidates Serbia and Montenegro in the accession process²⁹. International observers regard the preliminary result as very positive overall and hope for it to generate a lighthouse effect in the region – and who would be a more suitable candidate to carry on this light than Kosovo, Albania's closest ally?

²⁵ Mass Migration-What is driving the Balkan Exodus? Spiegel (2015). Retrieved June 2018:

<http://www.spiegel.de/international/europe/western-balkan-exodus-puts-pressure-on-germany-and-eu-a-1049274.html>

²⁶ EULEX Kosovo: new role for the EU rule of law mission.

European Commission (2018). Retrieved June 2018:

<http://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/>

²⁷ A credible enlargement perspective for and enhanced EU engagement with the Western Balkans. European Commission (2018). Retrieved June 2018:

https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

²⁸ Enlargement and Stabilisation and Association Process.

Council Conclusions. Council of the European Union (2018). Retrieved June 2018:

<http://www.consilium.europa.eu/media/35863/st10555-en18.pdf>

²⁹ Maxhuni, B. & Cucchi, U. (2017): An Analysis of the Vetting Process in Albania. GLPS Policy Analysis - No. 01/2017. Retrieved June 2016: <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/06/Policy-Analysis-An-Analysis-of-the-Vetting-Process-in-Albania.pdf>

THE WAY FORWARD

Given both the turbulent times and current developments in the region, Germany and the EU cannot afford to lose this window of opportunity and must reward current efforts, sending a message to the entire region by effectively signaling support to forces striving for reform³⁰.

A good example is the ongoing Belgrade-Pristina-Dialogue³¹ facilitated by the EU and aiming at normalizing relations between the countries. With the new strategy and flagship initiatives in place, the EU is now in a unique position to help shape their immediate neighborhood based on its values and requirements in cooperation with local actors and to mutual benefit – this is at least as much of interest for Europe as it is for the region.

AUTHOR



FRAUKE SEEBASS

Frauke studied in Germany, Israel and the Netherlands and holds a master degree in Peace and Conflict Studies. She is employed in a project with the German Council on Foreign Relations (DGAP) focusing on fostering policy dialogue in the Western Balkans. She is a member of Polis180 since November 2017.

© Polis180 e.V., Juni 2018

This Polis Brief solely represents the author's opinion and does not speak for Polis180 as an organization.

POLIS180 – GRASSROOTS-THINKTANK

FÜR AUSSEN- UND EUROPAPOLITIK

FRIEDRICHSTRASSE 183, 4. OG

10117 BERLIN

WWW.POLIS180.ORG

³⁰ Wohlfeld, S. (2018). Albanien braucht grünes Licht für EU-Beitrittsverhandlungen. DGAP Standpunkt. Retrieved June 2018: <https://dgap.org/de/think-tank/publikationen/dgapstandpunkt/albanien-braucht-grunes-licht-fur-eu-beitrittsverhandlungen>

³¹ EU facilitated dialogue: relations between Belgrade and Pristina. EEAS, retrieved June 2018: https://eeas.europa.eu/topics/eu-facilitated-dialogue-belgrade-pristina-relations_en