

Kosovo – Unique Case of the Parallel Justice System

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Abstract

The end of the 1998/1999 war with Serbia, found Kosovo with two governments, which, UNMIK replaced conform the 1244 Resolution of the SC. UNMIK's operation was based in four pillars and 14 departments. The Department of Justice was a department that operated with obstacles as a result of the organized Serbian parallel system in Kosovo's territory. Which unfortunately transformed into a phenomenon that was allowed silently by UNMIK's administration. The functioning of such an operation damages the interests of Kosovan citizens, who are trialed twice for the same case. Double sentences of Kosovo's citizens in Kosovo's courts and in the parallel Serbian courts that operate in Serbia are causing major problems in the already fragile Kosovan justice system. According to the official data, it results that there are 22 parallel Serbian courts that operate within this parallel system, in North Kosovo and various cities within Serbia. This form of parallel judiciary continues to function even after the Declaration of Independence (2008) and after the arrival of EULEX mission in Kosovo. We think that the functioning of this parallel Serbian system in a territory where it has no sovereignty, as a unique case in Europe, should cease to exist with the sole purpose of empowering and functioning of the juridical and justice system in Kosovo, for the sake of respecting fundamental principles of the human rights and respecting of the ne bis in idem principle.

Keywords: Resolution 1244, Kosovo, UNMIK, Parallel System, Justice.

Introduction

In many writings from foreign and Albanian writers, Kosovo is presented as a unique administrative-politic, national, geographic and historic entity, with a difficult and an immense journey to political and national freedom and independence. During the Ottoman Empire rule, Kosovo was a special administrative unit and was known as the "Kosovo Vilayet".

In the international summit, respectively at the ambassadors conference held in London in 1913, Kosovo was secluded from the Albanian state and during the Balkan Wars was conquered from Serbia and Montenegro. With the support of the great powers, in the Peace Conference held in Paris in 1919, Kosovo is given as a war loot to Serbia and until the year of 1941 it remains a part of the Serbian, Croatian and Slovene Kingdom, sometimes known as Banovina and in times known as the District of Prishtina.

During World War II, Kosovo aligned itself with the anti-fascist movement in hopes that after the war it would be recognized, the right to self-determination, but Tito's government on March 1945 declares a state of emergency within its territory. Under this state of emergency, on the 8th-10th of July 1945, in Prizren an Assembly is held with anonymous delegates, who issue a "Resolution on the annexing and the Union of Kosovo and Metohia with the Federal Serbia", such a resolution to this day is kept a secret for the public.

With the Yugoslavian Constitution of 1946, Kosovo's granted the double subjectivity: as part of the federate and as part of the People's Republic of Serbia with the right to advance its juridical and constitutional position from Province to a Federal Republic. (Constitution 146, Article 44, Paragraph 3). This constitutional right was claimed and requested internationally by the people of Kosovo twice. The first claim was made in 1968, a time this when Western Europe and Yugoslavia too was swept from students movements with democratic demands, from which Kosovo was brought to the Autonomy of 1974. On the second claim, advancement was required on 11th of March 1981, but the demands, from the actual authorities in power in Kosovo, Serbia and Yugoslavia were deemed to be irredentist and counter revolutionary and as such were oppressed with police and military violence. As a result of this constitutional claim and demand an attack begun on the autonomy of 1974 and the imprisonment and sentencing of 6000 people. From March of 1981 to 18th of October 1988 in Kosovo over 584. 000 of its people, about 36% of its population, were persecuted as "irredentists" and "counter revolutionaries" (Horvat, 1989, page 149), most of whom were pupils, students, professors, teachers and Kosovan intellectuals.

With the constitutional juridical changes of 1974, Kosovo for the first time in the ex-Yugoslavian juridical system is granted juridical and constitutive subjectivity of the Federation (Constitution 1974, Article 1), within which the legislative authority – Kosovo's Assembly, Executive Council (Government) and the Judicial System (Supreme Court) (law, nr. 21/78 and 49/79, 1979). Despite the guaranteed autonomy with the Constitution of SFRY, with the silenced approval by the political factor of the then Yugoslavia, the Republic of Serbia on 23rd of March 1989 intervened in an unconstitutional manner against Kosovo, abated its political, judicial, educational, health and financial system etc. (Constitution 1974, Article 5). This unconstitutional intervention of Milosevic did not affect the conscious of any from the six republics of SFRY, not even that of the Croatian prime minister of the federal government, Ante Markovic who instead of requiring a prosecution against him for changing the internal borders of Republics and Provinces (Law, nr. 4/77, Article 116, page 46), he himself together with his defense minister Velko Kadijevic celebrated the "Vozd" together with Milosevic in Sava Centre in Belgrade on 28th of June 1989.

After acquiring the support of the Federal Government and especially that of the Yugoslavian Army (Constitution, Article 237 and 240) to the desolation of the Autonomy of Kosovo, the Serbian Vozd begun to implement the project of 1986 of the Serbian Academy to the making of the Greater Serbia followed but one principle "where there's a Serbian grave laying, that there is Serbian land". With the involvement of the People's Army of Yugoslavia in the political processes of Yugoslavia practically a Yugoslavian Spring begun which brought the desolation of the ex-Federate, through wars and genocide, temporarily suspended in Dayton, USA (Dayton Agreement, Ohio, 1995) and ends with the Kumanovo Agreement on 9th of June 1999.

Within less than two year after signing the Dayton Agreement, Milosevic returned once again to the problem of Kosovo, who since 1989 had organized a parallel political and social life, with a Peaceful Resistance which was led from President Dr. Ibrahim Rugova. Its aggressiveness was increased especially after the conclusions drawn from the Badinter Commission which didn't treat Kosovo as a problem nor a special unique entity at all. This political, military and police aggressiveness brought the weakening of the Peaceful Movement and the strengthening and militarization within Kosovo. As a result of such oppressing politics the Kosovo Liberation Army (KLA) was created. In such tensioned situation, the authorities begun to arm Serbian civilian, persons with penal precedent and ordinary convicts (released from jail) who then where engaged in police, paramilitary and army formations. This complicated situation is the followed by the Serbian police and military intervention in Prekaz, in Skenderaj on 5th-7th of March 1998 where over 50 members of the family of the KLA Commander Adem Jashari were murdered and on 24th of March 1998 in Glogjan of Deçani.

On 24th of March 1999, NATO intervenes militarily against Yugoslavia, whose forces led by Milosevic begun to enforce the notorious plan "Horseshoe" (Human Rights Watch PO NAREDENJU, 2001, page 93) for the forceful eviction of every ethnic Albanian from Kosovo. Within a short period of time, the Serbian army, police and the paramilitary burned down entire villages, murdered hundreds of civilians, women children, elders, raped dozens of women and girls and evicted over a million of Albanians to Albania, Montenegro and Macedonia, although NATO's Alliance had begun the bombing of the remaining military targets of Yugoslavia on 24th of March 1999.

After 78 of bombing from the NATO's forces, the Serbian Vozd Milosevic orders the signing of the Kumanovo Agreement on 9th of June 1999, according to which the Serbian forces completely and decisively should leave Kosovo within 11 days. After the Serbian from Kosovo, in Kosovo, conform the 1244 Resolution of the UN the Temporary Administration of UN is installed, known as UNMIK.

Kosovo – in the face of the 16 year old challenges from the Serbian parallel system

1. 1 In accordance with the 1244 Resolution of SC of the UN, UNMIK was the sole legal “administrator” of Kosovo, who based on the authority derived from this resolution, had desolated all of the Kosovan pre 10th of June 1999 institutions. (United Nations S/RES/1244 (1999), 1999)

UNMIK’s authority organogram in Kosovo was approved by the UN in New York (UN, Distr. General S/1999/779, 1999) and was based in four Pillars and 14 Departments. Amongst these departments was the department of Justice, which together with the security sector were a right reserved solely to UNMIK. With the New York approval the “Supreme Court” was constituted but not the Constitutional Court under the pretext that it affects the neutrality against Kosovo’s Status. The functionalization of the Justice system, manner and competences for the selection of prosecutors, judges (article 4) and clerks, order of their dismissal (UNMIK Regulation nr. 1999/18, 1999), order of the penal procedure initiation (UNMIK Regulation nr. 1999/7, 2000/57 1999, 2000, article 1 and article 4), selection and the engagement of foreign judges and prosecutors (UNMIK Regulation nr. 2000/13, 2000) courts, prosecution and the prison system administration were regulated with Special Regulations (UNMIK Reg. nr 2000/15, 2000) also the selection of international and local judges in specific cases created and functionalized a “hybrid justice” (Bassiouni, 1999,) was a competence of the Overseer. (Regulation nr. 1999/6, 1999)

With the purpose of creating the legal and constitutional staff, UNMIK approved the Constitutional Framework as the highest juridical act in Kosovo, (Regulation Nr. 2001/9, 2001), declaring Kosovo as a “... inseparable territory within which the temporary self-governing institutions exercise their responsibilities ... (article 1. 2) and which” ... will be governed as a democracy through the judicial, executive, lawmaking institutions and organs ... (article 1. 4)

But the creation of credible state institutions in Kosovo did not suit Serbia, who through the Serbian minority of Kosovo started the installation of parallel Serbian institution within and outside of it. This occurrence had been the cause of negotiations between UNMIK and Yugoslavia, who in 2001 signed an Agreement of 11 points, including the security field, judicial system and the release of every Albanian from Kosovo who was kidnapped during the war and who remained in Serbian prisons. This agreement also failed, except of the last point in the agreement that of the immediate release of the Albanians from Kosovo who were kidnaped and their return to Kosovo. Afterwards, in 2003 we have the 8 Point Plan of the UN, (Standards before Status, 2003), the plan of the Independent Self-Governing institutions to involve the Serbian minority in its social life, but with no success because this system is still functional (Agreement, 2001) in the field of security, judicial system, PTT, education, health, cadastral system etc., (OSBE, 2003) which until now represents a unique system of the application of two rights within a territory that Serbia has juridical lost since 10th of June 1999. (Serbian Law, nr. 101/2013).

After the Declaration of Independence of Kosovo (17th Feb, 2008), Kosovo’s Government has paid close attention to the deference and respect of the rights of the communities, by also respecting the obligations derived from the Comprehensive Proposal for the Kosovo Status Settlement (CSP), (Kosovo’s Constitution, 2009, Article 143,2) for their involvement in public administration, police (Constitution, 2008, Article 128, point 2, 4) justice (Constitution, 2008, Article 102,2) in the Judicial Council (Constitution, 2008, Article 108,1) and Kosovo’s Prosecution Council (Constitution, 2008, Article 103, point 3,6,10). The Republic of Kosovo has accepted the help of EU in the field of Law Enforcement since 2006 for the MEUP mission (Mission, European Union Peace Team) which as a result of objections in between SC (Security Council) and the EU (European Union) was prolonged until 2008, year this when in Kosovo the EULEX mission was installed, with a clear mandate to fulfill four objectives: first objective being monitoring, mentoring and counseling (**MMC**), **second objective being that of executive, third being “North”, and fourth objective being the support for the implementation of dialogue.** (<http://www.eulexkosovo.eu/eul>)

Despite all of these Constitutional and Legal measure undertaken by the Government of Kosovo, Serbia in a sophisticated order continues to support and finance the parallel system in Kosovo and does not trust EULEX either, who legally has its agenda in the Republic of Kosovo predetermined to fight crime and create security for all of its citizens. (Law nr. 03/L-052 and Law Nr. 04/L -273)

The operation of the Serbian parallel courts in Kosovo and Serbia

2. 1 After the signing of the Kumanovo Agreement, the Serbian police, paramilitary and military forces left. With them the police officers, prosecutors, judges and other Serbian administration officials who had been working in Kosovo until 10th of June 1999. With their leave they took along files of the judicial cases, cadastral books, civil state books which are placed in different cities of Serbia. The parallel organs are spread throughout Serbia and within Kosovo's territory and operate in the judiciary, police, state administration and cadastral field, civil service, education, health etc.. These parallel organs offer different services to Kosovo's citizens, by organizing judicial hearings (penal, contested and non-contested), (OSBE, 2006-2007, page 24) and by equipping citizens with different documents (passports, different civil state certificates, issuing drivers licenses, legalize contracts of estate purchases etc.)

The operation of these parallel Serbian institutions in different localities within and outside of Kosovo was known to the UNMIK structures, officials of whom in silence approved their operation. (OSBE, 2003) Some of these parallel organs have been dislocated and operate in the name of Kosovo, in cities such as Leskovac, Kragujevac, Vranje, Nis, Kraljevo and elsewhere (OSBE, 2006-2007, page 24). The services offered from the parallel Serbian organs not only for the city of Peja (OSBE, 2006-2007, 30) but also for citizens of other cities of Kosovo can be equipped in electronic order in Serbia. (<http://dokumentakosovometohijasrbija.blogspot.com>)

The practices followed by Serbia represent a major problem for Kosovo's citizens who are in possession of such documents issued by the Serbian parallel institutions who operate in the presence of the international institutions installed in Kosovo. (OSBE, 2006-2007, page 25 - 26). Thus, we have to residencies of police stations, courts, two superiors of the same organ and so on. I. e. in the driver's licenses issued by these organs to Kosovo's citizens in the city of Nis in Serbia, where the residence of Prishtina's Police Station is, has on it written "SUP Prishtina". In a close by of the Norwegian KFOR base by the city of Gračanica is an office that issues passports, IDs, driver's licenses and other documents. (OSBE, 2003, page 41)

Within the territory of Serbia there are 22 operating parallel courts all of them competent for Kosovo's territory and that based on the Law for Residencies, Courts Territories and Public Prosecution of Serbia of the year 2008. (Serbian Law nr. 116/2008 and nr 42/2002)

The courts that have been subject to this form of parallel operation are as follow:

Minor Offences Court in Mitrovica is competent for all of Kosovo's and Metohija's territory with its branches in the Serbian enclaves, Gorazdevac (Peja), Gračanica (Prishtina), Ranilug (Gjilan) and Šterpca (Ferizaj) (Article 2 of this law)

Basic Court in Mitrovica, is competent for all of Kosovo's and Metohija's territory including its branches in Gorazdevac, Gračanica, Ranilug and Šterpca. (Article 3, point 11).

Supreme Court in Mitrovica, second degree court, competent for the resolution of cases dependent on the Basic Court in Mitrovica (Article 4, point 7)

Economic Court in Niš, competent for economic cases of the first degree courts (Article 5, point 8)

Appeal Court in Niš, competent for the Mitrovica territory. (Article 6, point 3)

Nis's Court Branch is competent as a second degree court for all of the Minor Offences Courts in the Mitrovica territory. (Article 7, point 2)

Nis's Court Branch is also competent for the territory of the Supreme Court in Mitrovica (Article 8, point 2)

Basic Prosecution of Mitrovica, is competent for the whole territory of the Basic Court in Mitrovica (Article 9, point 11)

Supreme Public Prosecution of Mitrovica is competent for the territory of Supreme Court of Mitrovica (Article 10, point 7)

Public Appeal Prosecution residing in Niš, had territorial competences in the territory of the Appeal Court in Niš (Article 11, point 3)

According to the information available it seems that such an organization of the justice system has been made with the approval of the highest ranking Serbian state justice organs which has operated in the same order before the 1999 war and forth.

2. 2 In 2013 changes in Law for Courts and Prosecution Organization in Serbia follow, but the operation of the "juridical parallelism" continues until the drawing of a special law in Serbia. (Serbian Law, nr 101/2013) Until this special law can be drafted (Article 17), the operation of these organs continues and cases that are in procedure, whether in prosecution or in courts shall continue to be proceeded.

In Accordance to Serbian Law nr 101/2013 for the residences of the Courts and Prosecution in Serbia (Article 12, point 2), court cases of the 16 parallel Municipal Courts in Kosovo are transferred to the competence of 6 courts in Serbia, meanwhile cases of the 5 County Courts and one case of the Economic Court are delegated to 6 courts in Serbia.

Vitija's, Gijlani's and Kamenica's Cases of the Municipality Court, are transferred to the Basic Court in Vranje,

Vushtria's, Mitrovica's and Leposaviqi's Cases of the Municipality Court, are transferred to the Basic Court in Kraljevo,

Dragashi's, Rahoveci's and Prizreni's Cases of the Municipality Court, are transferred to the Basic Court in Krusevac,

Gjakova's, Istog's, Klina's, Peja's, Suharekas's and Ferizaj's Cases of the Municipality Court, are transferred to the Basic Court in Leskovac

Cases of Prishtina Municipality Court - Basic Court in Niš,

Cases of Lipjani's Municipality Court - Basic Court in Prokuplje,

Cases of Gijlani's District Court - Supreme Court in Vranje,

Cases of Mitrovica's District Court - Supreme Court in Kraljevo,

Cases of Peja's District Court – Supreme Court in Leskovac,

Cases of Prizreni's District Court - Supreme Court in Požarevac,

Cases of Prishtina's District Court - Supreme Court in Niš,

Cases of Prishtina's Economic Court - Economic Court in Kraljevo,

Simply put, from all of this, every reader has it hard to understand this "juridical anomaly" and this parallel Serbian system that operates not only in the justice field, (OSBE, 2006-2007, page 25-34) where the judgment of the parallel court remain unexecutable.

Despite the talks between UNMIK representatives and the Serbian institutions throughout these years for the desolation of the parallel system, despite the negotiations in between Kosovo's Government and Serbia's Government in Brussels, Serbia continues to resist the desolation of these parallel organs. Despite the fact the in 34 cities of Kosovo the Kosovo's Justice System if fully operational, assisted by the EULEX Mission, the juridical and constitutional system is operational and nondiscriminatory to none of its communities. In such circumstances, the operation of these many parallel courts is going to damage furthermore those in need of justice. This practice of operation of the Serbian parallel system in a territory with no fact nor juridical sovereignty, in a territory with juridical subjectivity which has international recognition of over half of the member states of the UN, damages not only the interests of Kosovo but also that of its citizens, but firstly it damages the economic interests of the Serbians in Kosovo. The operation of such parallel system violates the basic rights and freedom of humans, also damages the interests of communities and affects in the raise and empowerment of the criminality and organized crime which is quite active in the entire Balkans orbit and as such an obstacle for the Euro-Atlantic integrations of both the countries. Also, as a result of this juridical and court parallelism we have non-merit judgements and

decisions, parallel (two Judgements and Decisions for the same case) and in contrary to all the laws that determine the competences, whether they are territorial or cases. (OSBE, 2006-2007, page 23)

Conclusion

Throughout 96 years of history under the Serbian occupation (1912) until the Declaration of its Independence on 17th of February 2008, Kosovo has known different occupants, different rulers and different administrators. It was secluded from the Albanian State after the decision made by the Great Powers in the London Treaty of 1913. In the Paris Conference of 1919, Kosovo was incorporated into Serbia who under its rule treated it not as required from the international agreement but on the contrary it treated it poorly, with no jobs, no schools, no life and insecurity within their land. Kosovars aligned themselves against fascism during World War II, but Tito, on March of 1945 declared a state of emergency, and forced the elected people of Kosovo to give up from the Bujani's Declaration of 31st of December and 1st – 2nd of 1943, where the people of Kosovo (Albanians, Serbian and Bosnians) declared for self-determination. In a state of curfew, on the 8th – 10th of July 1945, in the then capital city of Kosovo Prizren, a "Resolution for the annexation and the union of Kosovo and Metohija with the Federal Serbia" is drawn, a resolution that to this day is kept a secret for the public.

In the after World War II Yugoslavia, Kosovo was part of the Federate and part of Serbia with the constitutional right for political and juridical advancement within Yugoslavia.

With the federative Constitution of 1974, Kosovo became a Constitutive part of SFRY, but the guaranteed autonomy with this constitution ended on 23rd of March of 1989 when Milosevic with the help of the foreign and internal factor desolated it and brought the bloody Yugoslavian Spring – the desolation of Yugoslavia who finally was desolated on the 9th of June 1999 with the signing of the Kumanovo Agreement.

Thus, after 87 years of occupation from Serbia, Kosovo is liberated from the allied forces of NATO and so begun a new phase of its righteous journey to independence which was concluded with the Declaration of Independence on the 17th of February in 2008, recognized internationally. But until the Declaration of Independence, Kosovo was governed by the Temporary Administration of UN, conform the 1244 Resolution of the SC of the UN, as the sole legal authority within Kosovo's territory, authority this that was led by the Special Representative of the UN Secretary. This mission operated based on 14 departments, with a local Counseling Organ that was calls the Joint Temporary Administrative Structure and was conceived on four pillars: Security and Judicial System, Civil Administration, Democratization and building of institutions and Reconstructiona and Economic Development.

And did UNIMK achieve to implement these objectives and tasks set to themselves within the 1244 resolution of the UN?

Based on fact information the temporary UNMIK administration despite individual efforts of the leading staff who were replaced from time to time, did not achieve to implement its main objectives and tasks or partially implemented them.

Despite all of the UNMIK's authorizations, it did not achieve to create a unique juridical system within all of the Kosovo's territory and has tolerated a parallel Serbian system, ([http://www. securitycouncilreport. org](http://www.securitycouncilreport.org)) within Kosovo and in the territory of the Serbian state, a situation that continues to this day, even after the arrival of the EULEX Mission in Kosovo. (Ivanko, RTK, 2009)

In the justice field, UNMIK despite of the professional staff that was selected by themselves, nor EULEX have achieved to complete their objectives for which they have been mandated, to resolution and sentencing of serious criminal offences, war crimes, organized crime and other penal offences of corruption.

In the economic field, UNMIK has not shown flexibility nor farsighted plans in the development of economic resources, on the contrary, some its chosen administrators were included in corruptive affairs (the case of Joe Trashler who was the Administrator of the Fourth Pillar of UNMIK).

In the field of establishing the Public Administration, Education, Health, Sport and Culture, Kosovo is far from its ambitions.

In the field of the relaxation of the reports in between Kosovo and Serbia, despite the efforts in this direction the last aggressive political case of Serbia against the membership of the Republic of Kosovo in UNESCO, says a lot. The UNMIK and EULEX Mission have failed to create a Multiethnic Kosovo by not intervening to terminate and desolate the Serbian parallel system in Kosovo. (Serbian Law nr. 101/2013)

With the purpose of consolidating the justice system the Republic of Kosovo need to do as follows:

An audition has to be made for the work of the EULEX Mission by a Joint Task Force composed of local and international experts including American experts who are to draw clear conclusions of the Rule of Law

A reformatting of EULEX in Kosovo should take place and the establishment of joint colleges based on the law of Special Prosecution of Kosovo for the fight of serious crime should take place

The investigation under the suspicion for possible abuse within this Mission by a joint Task Force and that the employment of prosecutors, judges and other members of the staff who were part of the UNMIK Mission and EULEX Mission of the region not be allowed (Klan Kosova. tv, 2015, Kosovo Today, 2015)

To be required from the UN to end the UNMIK Mission in Kosovo, since this organization has accepted the EULEX Mission within a territory that legally (juridical) it administers.

To be required from the EU to intervene within the Serbian authorities to terminate every financing of unconstitutional and parallel activities within and outside Kosovo and that all the public documents acquired from Kosovo and taken to Serbia should be returned.

To be required from the EU that every financing to the Serbian community in Kosovo from Serbia should be made through a Kosovo's commercial bank, which should be determined in an agreement in between both states (pensions, welfare, different grants etc.) with the sole purpose to eradicate the possibility of money laundry and organized crime.

To establish the Special Court within the assigned timeline, which should operate based on the Laws of the Republic of Kosovo.

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