

THE ROLE OF EULEX ON THE RULE OF LAW FUNCTIONALISATION IN KOSOVO

Avdi SMAJLJAJ

*Department of Political Sciences and International Relations,
Epoka University, Tirana, Albania
asmajljaj@epoka.edu.al; smajljaj.avdi@gmail.com*

Abstract

For a considerable time there was and still appears to persist the international perception that Kosovo (previously provisional) authorities are not capable to take on their hands the responsibility of the rule of law. Even after eight years of UNMIK mandate the situation on the ground proved not to have changed to an extent that the rule of mandate be trusted to local authorities, especially expected after the declaration of the independence in 2008. Based on that and the UN Special Envoy Marti Ahtisaari's proposal for the supervised independence solution to the Kosovo issue, the EU Council agreed on a joint action to mandate a CSDP rule of law mission in Kosovo, named EULEX, pertaining to undertake the responsibility for the rule of law functionalisation in Kosovo. There was a hope, in particular at the beginning of the EULEX deployment, that it will give the meaning to the stateness of Kosovo through making justice and the rule of law system work and functional. The paper argues that EULEX mission in Kosovo is necessary, but unlikely to fulfil its mission. Taking into account the three levels of rule of law process such as the laws, the institutions and politics, the rule of law international missions approach, as it is the role of EULEX in Kosovo, principally operate at the second level. While at the heart of the not functioning rule of law system in Kosovo still remains politics. Therefore, the measures and mechanisms the EULEX is using are not suitable to address the rule of law functionalisation in an environment where politics is a master rather than a servant of justice.

Keywords: *Rule of law, Kosovo, EULEX*

Introduction

The rule of law is a fundamental human good. It gives meaning to life in community, while, its frailty or total absence makes life within community unpredictable and unsecured. No citizenship in democracies, in its full meaning, can be ensured if they have feeble rule of law. Establishing and maintaining the rule of law and order is permanent task of states and other communities. Usually, states are supposed themselves to be capable to consolidate and maintain the rule of law, signifying a character of stateness. Nonetheless, there are cases where foreign

support is needed to lend a hand on the rule of law system, principally through international organisations, in cases of states newly established or states experiencing legitimacy crisis. Same is the case with Kosovo rule of law system issue, primarily and previously under UNMIK administration, and then currently under the EULEX rule of law mission.

The paper addresses and aims to shed light on the challenges of the rule of law system in Kosovo and EULEX mission endeavours in this regard within its mandated responsibility. After looking toward the conceptualisation of the rule of law while being so complex concept, the paper moves to the actual challenges pinching the rule of law system functionalisation in Kosovo context, in particular the influence of politics in justice system. Then it explains the EULEX mission, bringing into attention the nature of the mandate, mission, tools, challenges and opportunities, and objectives of the mission. The paper relies primarily on the concept of categorising the rule of law system into three levels and their interrelations and particular requirements, examining the expected potential and real contribution of EULEX into each level and on the general functionalisation of the rule of law system in Kosovo. Finally, the paper examines overall the possibility and capability of EULEX to fulfil its mission, the adequacy of the mission to functionalise the rule of law in Kosovo. Hopefully, the paper opens up an academic and policy oriented debate and triggers critical thinking about the rule of law system in Kosovo, its defects and possible functionalisation, and the role of EULEX mission in this direction. Shall policymakers in practical terms rely on the foreign missions to functionalise in Kosovo, without taking into account their adequacy and capacity, or should the issue be addressed from the root causes of rule of law system disfunctionality, as a guiding principle to functionalise the rule of law? Likewise, the paper seeks to sets off the possible right direction that the rule of law system functionalisation in Kosovo should take. It suggests that in order to functionalise the rule of law system, it must primarily get politics right. It should make politics servant, rather than master of justice. The technical and institutional foreign support should follow, rather than guide it. The paper suffers from various shortcomings. It is more as a starting point to stimulate further empirical studies for finding the right path to functionalise the rule of law in Kosovo. It mainly suggests the root causes of the rule of law system failures and the incapability of foreign missions to handle it in the substantial meaning of the rule of law concept. However, it does not get deep into the exact way Kosovo justice system should take in order to functionalise its rule of law system. So, it is more as opening the door, rather than entering into the concrete solutions.

The Concept of Rule of Law

The rule of law is very complex in its nature. It comprises various substances, actors, and processes at different levels, and at different social, cultural, historical and philosophical settings. Such complexity is reflected into the conceptualisation of the rule of law as well. Normatively, it has held a range of meanings in different

times and contexts. This convolution is due to historical, philosophical and cultural character of the concept itself. One of the traditional and simple straight forward conceptualisation of the *rule of law* is referred to its differentiation and opposite to the *rule of man* (Morlino and Palombella, 2010; Tamanaha, 2004). However most of the conceptualisations of the rule of law belong either to the formal or substantive definitions. The formal conceptualisation is merely concerned with the laws and the process itself, while the substantive approach is more output related, bringing at the heart of the concept the effects that the rule of law achieves (Craig, 1997, 467 - 487). One of all encompassing definitions of the rule of law is offered by the former UN secretary general: “*the rule of law is a concept ... refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, It requires, as well measures to ensure the principles of the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of power, ...*” (Report of the UN Secretary General, 3 August 2004). While as a system or subsystem within the overall political system, the rule of law in general involves three levels: the laws, the institutions, and politics (Carothers, 2006, 7-8). The first level is rather formal, easy to be reformed and less energy and time consuming especially in cases under profound and direct external influence, able to squash the legislatures for passing the required laws, at least on paper. The second level of the rule of law system includes law related institutions such as courts, police, prosecutors, prisons, and public defenders, whose impartiality and the freedom from the political interference is uncomprisable. The third and most challenging level of the rule of law system is the political level. Political influence and dictate has repercussions for the rule of law functionalisation in substantial meaning of the rule of law. The paper relies on the substantial conceptualisation of the rule of law, pertaining to the rule of law outcomes, as end results and ultimate objectives of the rule of law system functionalisation. Whilst at the system level it looks at possibility of rule of law functionalisation through the lenses of categorisation of the rule of law system into three levels. This obscurity and complexity of the rule of law concept definition is reflected also at the empirical stage on the requirements and endeavours needed und pursued to functionalise the rule of law system on the ground. The procedural conceptualisation, on the other side, focuses on ensuring the procedural measures of the rule of law. Yet, setting up laws and procedures alone does not necessarily guarantee the rule of law. Foreign missions could help a lot on setting up procedures, while their institutionalisation and routinisation can be made certain only internally through getting politics right, stopping the interference of politics in justice system.

The Rule of Law And its Endorsement by International Community

The very idea of the rule of law promotion as today applied in terms of the scope and intensity by international community involvement is relatively new. Throughout the life of the UN during the cold war the notion of rule of law was rarely used and quite broadly and loosely framed within the UN peacekeeping mission. It was first used as a term in case of the turmoil situation in Congo in 1961 UNSC Resolution. After the cold war the concept became almost indistinguishable from international peacekeeping, peacemaking and peace building operations. In 1992 summit of UN Security Council, leaders of the countries emphasised the importance of the rule of law empowerment for international peace and security. Since then it got importance and was highlighted in various meetings of UN bodies and commissions, and it got place in a number of international missions, as well as in a number of UNSC Resolutions (Bowden et. al., 2009). From the time of the end of cold war, the importance of the rule of law has been increased consistently. No doubt, the fragility of number of states, increased after the collapse of the cold war ice, posing a threat to regional and international peace and security, largely correlating with the lack of rule of law, made the rule of law issue among the major current security concerns of international community, including the UN and regional bodies, among them the EU. The complex nature of the rule of law is fairly reflected into the conceptualisation of the rule of law by international community. Its conceptualisation takes cultural, regime, traditional, contextual colours among others. This is one of the reasons why the UN concept of the rule of law is so broadly and contextually defined, associated with order and security, which has its substantial implication for the rule of law of the country concerned in general. Largely within the UN the concept of rule of law in various international missions seems to have taken variety of meaning owing from the context and the terrain of mission operation. It mostly includes: law and order; ending impunity for crimes; resolving conflict through law; protecting and promoting human rights; principled governance (Bowden, et. al., 2009). These elements of the rule of law concept defined by UN are developed from pragmatic perspectives based on the specifics of each context of international missions, their experience on the ground, successes and failures as well. Such a widely and flexible concept of UN for the rule of law is being developed consistently, in context related bases and the specific needs and requirements of each context and the role and capacity that UN is meant to play there.

Likewise, the rule of law concept by international missions is primarily based on capability of promotion rather than internal rule of law functionalisation driven. It takes into focus the ability of the mission to functionalise the rule of law, and not the primary concerns of the community's necessity for the rule of law. Therefore, externally based rule of law functionalisation is very challenging in itself, because it should to be internally thrust. Rule of law system might be set in motion even externally, but real functionalisation and maintenance requires domestic steering. Often international peacekeeping and peacebuilding missions containing rule of law

as well were quite ambitious, but while encountering the realities on the ground brought even the peacekeeping process in danger in the places they were deployed, leading to a frame of the rule of law as loose as almost detracted from the substantial conceptualisation of the rule of law, pertaining to justify mission's actual operation.

Eulex Mandate as (External) Guarantor of the Rule of Law in Kosovo

One of the major challenges for new and post war countries is law and order. The disordered and chaotic environment caused by war is not conducive to a functional rule of law system. No other dimension of political system is more affected and more complicated to become functionalised by such a milieu than the rule of law. This is principally due to complex, sensitive, and all encompassing nature of the rule of law. Most of the energy of newly created states is dedicated on the endeavours to fight with the legitimacy crisis of just created institutional state structure, including institutional structure of the rule of law. Often these new institutions are in need of external support to catch up and develop to required level. Usually, the external support and assistance on the rule of law suffices the easiest and outer side of the rule of law system, which doubtless helps in substantial functionalisation of the rule of law, while the haunting essential challenges lay mostly on non externally supportable dimension, on domestic and *unseen* part of the rule of law. It is a straightforward issue to build formal institutions, but is more challenging to set them in motion of functioning, build trust on them, and institutionalise them. Essentially, Kosovo is confronted with two inconveniences for the rule of law system functionalisation. It is a newly established state and a decade ago emerged from war. Since then it is still having persisting problems of feeble rule of law, struggling to cope with the functionalisation of the rule of law, in particular with hardly approachable shortcomings of the rule of law system. There has been considerable progress in terms of the outer side, skeleton, establishment of institutional structure of the rule of law, but when it comes to its functionalisation and building of trust on the rule of law still high inadequacies are evident. It resembles a body having a skeleton without muscles, blood, and spirit. The international promotion of the rule of law by UNMIK (United Nations Interim Administration in Kosovo, under the 1244 UNSC Resolution/1999) and now by EULEX has added and is yet adding to the formal structure of the rule in Kosovo, or to the hardware of the rule of law if put so, while the dimension of software the rule of law system is barely externally supportable, especially through the rule of law mission in the UN and currently EU understandings.

Lack of trust among Kosovo society on the rule of law system and its weakness is principally attributable to deficiency of the independence of judiciary as a repercussion of political influence on judicial system. This is perceived for a considerable time even by international community that Kosovo authorities, yet after many years of UNMIK administration, are not capable to take the full responsibility of rule of law on their hands, in particular the rule of law enforcement

mechanisms where the door to political influence is easier opened, or the door is not there at all. The political influence on the rule of law at the legislative level in Kosovo context is heavy internationally over sighted, whereby the laws needed to be passed can arranged through external sway. Yet, the implementation level of the rule of law appears challenging and prone to political control. Such domestic and international perception about the rule of law in Kosovo seems to have not been altered for over a decade and despite international communities' direct role in the rule of law system in Kosovo. This is clearly spelt out at the Report of the Special Envoy Representative of the UN Secretary General Kai Eide in Kosovo in 2005. In his report among other he states "... *There is a little reason to believe that local judges and prosecutors will be able to fulfil in the near future the functions now being carried out by international personnel*" (Letter dated 7 October 2005 of the Secretary General addressed to the President of the Security Council, p. 14). Although, since mandated and its deployment to administer Kosovo after the war, the UNMIK was chief responsible for the rule of law structure in Kosovo. Yet, even after eight years of its mandate and experience on the ground of overall administration, include the rule of law, the situation on the ground proves not to have improved to an expected extent that the rule of law to be trusted to Kosovo authorities, as anticipated after the declaration of the independence in 2008. Based on this and the UN Special Envoy Marti Ahtisaari's proposal (UN Secretary General, "Comprehensive Proposal for the Kosovo Status Settlement") for the supervised independence solution to the Kosovo issue, among others, it was meant to transfer the rule of law responsibilities from UNMIK general administrative and institution building mission, to a more specific rule of law mission under the direct responsibility of the EU. Such a mission is meant to be carried out by a CSDP¹ directed by the European Union. The EU Council agreed² on a joint action (Council Joint Action, 2008/124/CFSP) to mandate a CSDP rule of law mission in Kosovo, named EULEX, pertaining to undertake the responsibility for the rule of law functionalisation in Kosovo, in particular among others cases being directly linked with politics: war crimes, terrorism, organised crime, corruption, interethnic crimes, financial and economic crimes, and other serious crimes. In other words, what the UNMIK and Kosovo provisional institutions failed to achieve for eight years, is meant to be achieved by the EULEX. The primary objective of the mission is set to functionalize the rule of law in Kosovo. The mission is mandated referring to the 1244 UNSC Resolution, and is the largest CSDP mission ever launched by the EU. The mission at the beginning targeted to have 3200 staff, though recent frustration in the mission in terms of not successfully fulfilling the mandate. The mission plans to reduce itself including the number of personnel. In the mission take part EU member states (excluding Cyprus) as well as Norway, Switzerland, Turkey, Croatia, the US and Canada, while others could join as well (www.eulex-kosovo.eu/en/info/whatisEulex.php). The EULEX mission is overwhelmingly and

1 European Security and Defence Policy

2 Except Cyprus, using the "constructive abstention" mechanism (Article 23(1) Treaty on European Union). Arguing that the Ahtisaari's proposal has not been approved by the UN Security Council

enthusiastically welcomed by the Kosovo citizens, disappointed by the long, monotonous and fruitless policies of the UNMIK, in particular futile role of UNMIK on the rule of law system functionalisation. There was a hope, in particular at the beginning of EULEX deployment, that this is an opportunity to give the meaning to the stateness of Kosovo, in terms of making justice work, addressing the most challenging issue in Kosovo. For eight years responsible the UNMIK and Kosovo provisional institutions failed to do so. Now it is the turn for EULEX. However, as a mission it took almost two years to settle itself and seems that is still dealing with the issue of deployment, discussing its structure and mission. Despite long time consuming mission settlement activity, EULEX so far appears to follow the same path the UNMIK did, in terms of its conception of the rule of law and effectiveness of the mission. The society's eagerness hoping on EULEX to ensure the rule of law and bring justice is slowly being vanished as time is passing and ineffectiveness are growing, bringing into question the very mission itself.

Leaving aside the possible outer factors pinching into effectiveness of EULEX mission, such as the non recognition of Kosovo state by five EU member states, or inefficiency of CFSP itself, or the lack of coordination among EU and US as the main players on EULEX priorities (Interview of Vreeswijk, 30.07.2010), the mission's main challenges appears to be its approach to the rule of law in Kosovo based on the common conception of the rule of law by the UN peacekeeping missions, largely ignoring domestic milieu and the issue of external supportability at the *software* level of the rule of law system. EULEX orientation and energy is directed to the *hardware* of the rule of law system that was merely built by the UNMIK administration to its utmost. However, the roots of the problem lay somewhere else. In order for a problem to be solved it should be tackled at its roots, otherwise one should be prepared to encounter it daily. The EULEX rule of law mission in Kosovo is necessary, but it is unlikely to fulfil its mission. Taking into account the three levels of the rule of law process such as the laws, the institutions and politics, EULEX approach on the rule of law mission in Kosovo is principally operating at the second level. While at the heart of the not functioning rule of law system in Kosovo principally remains politics. Therefore, the measures and mechanisms that EULEX is using are not sufficient and suitable to address the issue and fulfil the mission for what it has been mandated. The EULEX is handling a political issue with technical instruments. The signs of failure are becoming frequent, reflected into frustration of the mission in search for an exit strategy, before completing deployment yet.

Eulex Challenge and Opportunity to Functionalise the Rule of Law in Kosovo

Generally, the rule of law system involves three major levels and other sublevels: the laws, the institutions, and politics (Carothers, 2006). The first level is merely formal, easy to be reformed and less energy and time consuming especially in cases like Kosovo context, under heavy and direct external influence to squash the legislatures to pass the required laws. Considerably, legislative process due t

international presence in Kosovo has been transformed into a merely technical rather than political issue, having to do more with writing and passing laws. Under heavy international pressure, many laws in Kosovo are written then passed by legislature, even in package procedure (Report of the UN Secretary General to the UN Security Council on the UNMIK, S/2009/149), which is known as less democratic procedure. This was largely due to international community insistence, previously by UNMIK, then followed by the supervisors of independence and influential diplomatic missions in Kosovo. In short, passing any law required was almost doable and trouble free issue. However, the stuck then appeared on the law implementation stage. The second level of the rule of law system includes law related institutions such as courts, police, prosecutors, prisons, and public defenders. One of the main challenges at this level is to ensure the impartiality and the autonomy of these institutions from the political interference. In a country of high level of politicisation, ensuring independence of these institutions from political interference is quite illusionary. Actually, these law implementation institutions are founded by international presence in Kosovo namely UNMIK, and later on consistently supervised and supported by international supervisors of independence, while recently mentored and monitored by EULEX. Certainly, the rule of law institutions in Kosovo political system are quite new and in need of training and assistance, as technical and institutional reforms improve their performance and help the rule of law functionalisation. EULEX is doing most of its activity in this direction in terms of training judges, prosecutors, police and customs. In many cases the EULEX judges themselves are involved in judicial panels, assist prosecutors and police, and make investigation on their own as well. Yet, the question remains to what extent do these reforms, at this level of the rule of law system, suffice to ensure the impartiality and fair trial in the rule of law system as well as government constrains by law to ensure the primacy of law over politics? Principally this is the level of the rule of law system, where international missions can contribute and add in mostly. Therefore, in cases where rule of law limps at the institutional level that entails technical and professional support and assistance, international rule of law missions can be very successful, since they are able to deliver and provide it. If the rule of law is hobbled by politics, it is very challenging for international rule of law missions themselves, since it is an area where such missions can not deliver, because it requires primarily getting politics right in order to have the rule of law from politics and functional. The most challenging issue and more time and energy consuming reforms at the rule of law functionalisation efforts are at the third level known as political level, where politics enslaves justice. The issue of closing the door of politics on the justice system is highly demanding. Political influence and dictate has repercussions for the rule of law functionalisation and effect giving, in substantial meaning of the rule of law. It averts the developments in the right direction of two other levels of the rule of law system, the laws and the institutions. As long as law implementation institutions and judiciary branch linger directly dependent and influenced on politics, it is difficult to talk of the rule of law, or to expect a foreign mission to functionalise it. Politics has been and is still an obstacle to the rule of law function in Kosovo. The lines between political, economic and criminal networks are plenty blurred, and most of the political commitments on the

rule of law functionalisation so far remain at the rhetorical level (Grevi et. Al., 2009, 366). This implies the necessity of real division of power to ensure the independence of justice institutions. The political interference and influence in the rule of law system in Kosovo is repeatedly and explicitly also pointed out and emphasised on the European Commission Reports of Progress in Kosovo since 2005: *“The justice system remains weak and vulnerable to political interference...”* (Commission of the European Communities, Kosovo Under UNSCR 1244 Progress Report, SEC (2009) 1340/3, 11); *“Along challenges such as corruption and nepotism, the continued political interference at different level and at different forms in a number of cases, including the work of Kosovo Judicial Council, is of serious concern. In several instances judges and prosecutors have refused to deal with sensitive cases. There have been reports of threats and intimidation against them.”* (European Commission, Kosovo* 2010 Progress Report, SEC (2010) 1340/3, 11). Nonetheless, looking at the introductory part of EULEX mission, portraying itself as a technical mission, implies that it has no intention and tools to deal with the third level of the rule of law system functionalisation, the political level, to depoliticise the rule of law system that is considered as the fundament of the pyramid of hitch of the rule of law. Referring to the EULEX mission statement (Council Joint Action, 2008/124/CFSP, Article 2) it became obvious that one of its major objectives in assisting and supporting the Kosovo institutions, judicial authorities, and law enforcement agencies, is to ensure their independence and freedom of these institutions from political interference. In other words, it pertains to depoliticisation of the rule of law system. Yet, the tools used by EULEX do not appear consistent with the objective of ensuring the freedom of judiciary from political interference. As such, it poses defiance to EULEX mission itself pertaining to functionalise the rule of law system, while being incapable to depoliticise law institutions currently under such political influence.

Moreover, referring to the EULEX Programme Reports (EULEX Report 2010, 2011), the achievement of sustainability and accountability of Kosovo institutions, judicial authorities and law enforcement agencies, as additional aims of EULEX, are well specified in terms of the policies and actions taken. Within the sustainability clause are involved obtaining the legal basis, procedures and policies, resources and human skills, budget, sufficient and appropriate buildings, trained and motivated staff. While with the accountability aim is meant the account of activities and documentation of what ever the law institutions do. But, all the elements of the sustainability and accountability do not suffice to constitute and guarantee the freedom of judicial authorities and law enforcement mechanisms from political interference. On the other side, while dealing with the issue of ensuring freedom from political interference of law institutions, judicial authorities and law enforcement agencies, the aims remain vague and ambiguous in terms of the specific and concrete policies and actions required to be undertaken. This makes further obvious the complexity of the rule of law system in Kosovo, high level of political influence on the rule of law system, and the inadequacy of foreign missions to achieve such objectives. The sustainability and accountability are more of procedural and technical nature not ample for a rule of law functionalisation in

substantial meaning of the rule of law. Certainly, they are very important and irreplaceable, but do not guarantee the rule of law, as it is meant to be achieved by EULEX.

Furthermore, moving down to the actions and the field of operation, the major obstacles that EULEX is facing on the ground are cases having a dose of political influence, or linked with politics. This obscurity is best illustrated by the EULEX authorities' commitments as they deployed, and their failure to comply with. This, in turn was very damaging for the image of EULEX among the public, as a result the mission is currently spending a lot on PR campaign to improve its image and trust among disappointed public. Furthermore, the trust of people is a key to the mission's success. It might be the case that people's expectations were higher than EULEX capacity, but in general the mission itself appears unable to functionalise the rule of law, since foreign missions have no adequate means to address rule of law problems at political level. The former acting EULEX chief prosecutor, on an interview about EULEX mission and activities, he promised that within a year they will move with tackling issues of political implications from central level down to even local authorities, including the arrest of many according to him "*big fishes*", predicting a deep heat for August 2010 (Vreeswijk interview for daily newspaper "Koha Ditore", 06.05.2010). Since then the "big fishes" keep on being free and even influence further politics and the rule of law system, making the boundaries between politics, economy, and criminality auxiliary hazier. This leads to establishment and consolidation of a vicious cycle that challenges the rule of law system permanently. The more powerful the "big fishes" are, the more able they would be to influence the rule of law system. The more influenced the rule of law system is by them and politics in general, more shabby would be the rule of law system to put them under its control. Another, important factor which underlines the high level of political influence on the justice system in Kosovo, is the role of various international bodies acting in Kosovo, including the diplomatic missions. They often dictate the agenda and actions of EULEX, reacting on various cases tackled by EULEX, bringing into agenda of the rule of law functionalisation the political consequences of EULEX mission, policies and activities, in a way put forward a sort of politicisation of EULEX rule of law agenda.

Thus, the technicality of the EULEX mission adding to technical and professional dimension of the rule of law institutions, does not guarantee the functionalisation of the rule of law, since it has no adequate means to deal with third level of the rule of law, most challenging in case of Kosovo. It can not close the door of politics to justice system. Its contribution is more related to the rule of law in the procedural meaning of the rule of law. Yet, in substantial aspect of the rule of law, such contribution is not expectable, as long as it requires primarily political rather than judicial reforms. In turn, this defies the mission, since the fulfilment of objectives is directly linked with the fate of the mission itself.

Conclusion

To sum up, the EULEX mission in Kosovo is welcomed and indispensable for the time being, at least on the institutional level of the rule of law reforms, but it has no appropriate approach and it lacks the suitable mechanisms to achieve its objectives, functionalisation of the rule of law. It has no means to bring justice system in Kosovo free from political interference, influence and control, which is considered a necessity for the rule of law system to function. Training judges, prosecutors and police, renovating buildings, and heading routine technical bodies, do not ensure the impartiality of judges and security of the rule of law system from political interference. As such, the mission appears to play an animated game behind the ports of the real play field. What is more, the credibility of the CFSP in general is dependent on its achievements on the Balkans (European Council, “A Secure Europe in a Better World”, 2003, 8), part of which is Kosovo and EU has freer hands, through EULEX, to act directly compared to other Balkan countries. For sure, the justice system in Kosovo is in need of better offices, more chairs and tables, and even more and better trained and skilled judges, prosecutors, police and personnel, but what it needs utmost is to get rid of political influence, which can not be affordable by EULEX mission. The rule of law functionalisation in Kosovo needs to get politics right, and EULEX has no such mandate.

References

- Carothers, Th., ed. 2006. Promoting the rule of law abroad – in search of knowledge. Washington D.C.: Carnegie Endowment for International Peace.
- Craig, P., 1997. Formal and Substantive Conception of the Rule of Law: An Analytical Framework, *Public Law*, pp .467 - 487
- Commission of the European Communities, Kosovo Under UNSCR 1244 Progress Report, SEC (2009) 1340/3, Brussels 14.10.2009
- Council Joint Action, 2008/124/CFSP, 04.02.2008
- Eide, K. “A Special review of the situation in Kosovo”, Letter dated 7 October 2005 form the Secretary General addressed to the President of the Security Council
- European Commission, Kosovo* 2010 Progress Report, SEC (2010) 1340/3, Brussels 09.11.2010
- EULEX Report 2010, 2011, at www.eulex-kosovo.eu / (Accessed on June 2012)
- European Council, “A Secure Europe in a Better World”, Brussels 2003

European Commission, Kosovo* 2010 Progress Report, SEC (2010) 1340/3, Brussels 09.11.2010

Grevi, G. et.al., ed. 2009. European Security and Defence Policy – The First 10 Years (1999- 2009). Paris: European Union Institute for Security Studies.

Morlino, L., Palombella, G., ed. 2010. Rule of law and democracy: inquiries into internal and external issues. Leiden, Boston: Brill.

Tamanaha, B. Z., 2004. On the rule of law: history, politics, theory. Cambridge: Cambridge University Press.

UN Security Council “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” Report of the Secretary General, 03.08. 2004

UN Security Council, “Report of the Secretary General on the UNMIK”, S/2009/149, 17.07.2009

UN Secretary General, “Comprehensive Proposal for the Kosovo Status Settlement”, from the UN Secretary General to the President of the Security Council, UN Doc. S/2007/168

Vreeswijk, Johannes – EULEX Acting Chief Prosecutor, interview by the daily newspaper “Koha Ditore”, 06.05.2010

Vreeswijk, Johannes – EULEX Chief Prosecutor, interview by the daily newspaper “Koha Ditore”, 30.07.2010

www.eulex-kosovo.eu/en/info/whatisEulex.php/ (Accessed on June 2012)