



# BULLETIN

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## Kosovo: A New Court for Old Accusations

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*A declaration made on 11 April by Atifete Jahjaga, the president of Kosovo, about the need for the appointment of a special court to investigate illegal activities by the Kosovo Liberation Army reflects an intensified debate within the EU on this issue. This coincides with elections to parliament scheduled for September this year and with actions to complete the work of the International Criminal Tribunal for the former Yugoslavia. Despite the difficulties faced in the prosecution of alleged crimes committed during the conflict in the Balkans, these processes help to build political stability in the region and integrate more closely with the EU. Clarifying allegations about criminal activities of the KLA is necessary to shape the permanent rule of law in Kosovo.*

**Special Court for Kosovo.** In recent weeks there has been a revival of a debate within the EU on the need to judge the 1998–2000 activities by the Kosovo Liberation Army (KLA). A 2010 report prepared by Dick Marty (a Swiss prosecutor) for the Council of Europe accuses KLA leaders (including political front-runners such as Hashim Thaçi) of organised criminal activity. The document has been the subject of debate, for example, in the European Parliament. Rather than concerning war crimes, these allegations are about organised crime, such as the control of a criminal group responsible for trafficking weapons, drugs and illegally harvested organs from prisoners of war, mostly Serbs, on the territory of Albania. The report resulted in the disclosure of UN and NATO documents that showed that the KLA leaders could have been involved in crimes against the non-Albanian population during and after the conflict in 1998–1999. What is more, the relationship between the KLA and these shady businesses had been revealed earlier by Carla Del Ponte, the former general prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY).

Although Marty's report resulted in the establishment of a Special Investigation Task Force as part of the EULEX mission in 2011 with the aim to verify the information contained in the document, so far no decision has been taken on the establishment of an international mechanism to try anyone for the alleged KLA crimes. However, a recent statement issued by the president of Kosovo to EU High Representative Catherine Ashton expressing the need for appointing a special tribunal to investigate the allegations from Marty's report gives evidence of progress in this matter. This position mainly stems from the acceptance of intensified actions by the international community to establish such a mechanism. Its formula is yet unknown, but the creation of a tribunal of international experts and under their supervision within Kosovo's justice system seems most likely. This would mean the extension of the EULEX mandate (expiring in mid-2014) and continuation of the mission's engagement in a new form, or one enabling the use of existing institutional output within the new mechanism.

Existing international courts lack the jurisdiction to judge those accused of organised crime during the Kosovo conflict. The International Criminal Court can take up cases related to crimes that took place only after 2001. The ICTY, in turn, is competent to judge individual responsibility for alleged war crimes committed during the conflict in former Yugoslavia, but not organised crime. Therefore, although the ICTY trials also concerned Kosovo Albanians, the suspicions raised in Marty's report were not subject to charges levied before the tribunal. However, even in proceedings concerning alleged crimes by the KLA, the court has pointed to a problem with witness intimidation, which has resulted in a reluctance to cooperate. The issue of effective witness protection may be an essential challenge for the new body as well.

Furthermore, ICTY is about to complete its work. This was made possible after the Serbian authorities captured in 2011 the last of those accused who remained at large (Ratko Mladić, commander of the Army of Republika Srpska, and Goran Hadžić, the former president of the Republic of Serbian Krajina). The Mechanism for International Criminal Tribunals (MICT), launched in July last year, means in practical terms that the tribunal will not undertake new cases and will end its operations after the first-instance judgments in several pending cases are delivered. Appeals from these cases and other, previous convictions will be dealt with by MICT.

**What the ICTY Experience Means for Kosovo.** Despite the end of its activity, ICTY carries a level of experience that can be of some help with the final determination about how to proceed against KLA members who may have participated in criminal actions. Indeed, the court acted with the aim of the prosecution of crimes during the conflict in the Balkans, and the trials—as may be the case in Kosovo—often led to serious political and social consequences. The tribunal faced not only widespread questioning of its competence from the public in the former Yugoslav states but also suffered from the lack of cooperation from the governments of these countries. This resulted in difficulties in both the enforcement of arrest warrants and the collection of evidence.

The judgments of ICTY have been criticised, for example, in Serbia and Republika Srpska, in part because more than half of those accused have been Serbs. Croats, in turn, have accused the tribunal of a lack of understanding of the political circumstances in which the crimes occurred. Judgments against Kosovo Albanians were criticised by the government in Pristina. The ambivalence of Kosovo's political elite to investigate possible KLA involvement in criminal activity may also be politically motivated, and the actions of the international community to prosecute alleged perpetrators will certainly be the subject of criticism from the Albanian community.

In key cases, the cooperation of the Balkan states with the tribunal became more effective only after linking it formally with the EU enlargement process, which covered the western Balkan countries in the beginning of the last decade. In the case of Serbia and Croatia, this manoeuvre resulted in delays at various stages of integration. This was of particular relevance to these two countries because, on the one hand, most of the accused were their nationals, while on the other, closer cooperation with the ICTY resulted in a considerable acceleration of integration with the EU.

Therefore, ICTY played an important role in promoting the rule of law in the post-conflict transformation. Its success can be measured not only by the number of guilty verdicts but also by the reliability of the processes. Furthermore, it helped to develop norms of law that made it possible to judge individuals responsible for war crimes in internal conflicts, such as in Kosovo.

**Conclusions.** The relationship between widespread organised crime during the conflict in Kosovo and the KLA may soon be under scrutiny. The issue has re-emerged just before the forthcoming parliamentary elections, which leaves Prime Minister Thaçi, who has been in office since 2008, in an uncertain position. After the end of the Kosovo conflict, other prominent KLA members also took key functions in state administration. Therefore, one can assume that the reason why the international community lacked motivation to conduct investigations into KLA members' engagement in organised crime during the war was because the priority was given to the stabilisation of the political situation in Kosovo. Moreover, the possible confirmation of charges against some key politicians could have undermined the validity of the international community's support for Kosovo at an early stage of the state-building process.

Despite criticism from the public and the governments of the Balkan states, the trials of the war criminals led to the gathering and disclosure of information on both the crimes committed during the war and the persons involved. This has had bearing on minimising the risk of political abuse related to the conflict, among other things, by closing up the varying perspectives of historical facts among countries in the region and thus on improving reconciliation between the nations and on building good neighbourly relations. This was the case for Serbia and Croatia. A process aimed at clarifying these allegations of crimes committed by KLA members could also have a positive impact on Serbian–Albanian reconciliation.

The EU should therefore ensure that a future body tasked with prosecuting crimes includes an investigation of allegations pertaining to the involvement of the KLA in trafficking of human organs, arms and illegal drugs in order to confirm or put to rest long-lasting speculation about these matters. Given the previous tribunals' experiences concerning protection of witnesses and the opportunistic approach of the political elite in Kosovo to war crimes trials, it seems that it would be relevant to ensure that the prosecution mechanism includes an extensive international element and that it be consolidated with the activities of EULEX. Given the level of involvement of Polish experts in the democratisation of Kosovo so far, taking advantage of their experience would be a valuable contribution to the work of the newly established judicial body.