

## Transitional Justice in Kosovo

By Colleen Rohan and Raluca Racasan  
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### 1. Introduction

Kosovo's modern history reflects a complex intersection of state-building, identity and international justice. The small, landlocked country in the central Balkan peninsula has a population of roughly two million, 93 per cent of whom are ethnic Albanian, the large majority identifying as Muslim.<sup>1</sup> Kosovo is nevertheless a secular, constitutionally multi-ethnic, and multi-religious state.<sup>2</sup>

Kosovo has had a turbulent modern history. It became part of Yugoslavia in 1918, and, after World War II, an autonomous province of Serbia in the Socialist Federal Republic of Yugoslavia ('SFRY'). In 1989, after Slobodan Milošević came to power, he eliminated Kosovo's autonomy and imposed direct rule from Belgrade, along with systematic repression of its Albanian population.<sup>3</sup> By the late 1990s, Kosovo had become a central theatre of the Yugoslav conflicts, provoking allegations of mass atrocities and an unprecedented international justice response. Its post-conflict experience offers a rare case study of how international, hybrid and domestic mechanisms have interacted, often uneasily, across three decades, exposing persistent tensions around legitimacy and local ownership in a fragile political and social context.

### 2. Conflict in the 1990s

Throughout the early 1990s, Serbian authorities implemented discriminatory policies against Kosovo's ethnic Albanian majority, suppressing the Albanian language, closing Albanian schools, and excluding Albanians from participation in public life, to deter Albanian nationalism. By 1991, thousands of teachers and academics had been dismissed, and discrimination in housing and education was widespread. Around 350,000 Albanians emigrated as the Milošević regime encouraged Serb resettlement.<sup>4</sup>

A peaceful resistance movement in Kosovo began in the early 1990s, led by Ibrahim Rugova. It established a parallel government funded mainly by the Albanian diaspora. When this movement effectively failed, a grass-roots, armed resistance began in 1997 in the form

of the Kosovo Liberation Army ('KLA'), whose main goal was to secure the independence of Kosovo.<sup>5</sup>

The KLA launched armed attacks against Serbian security forces, who responded with large-scale operations targeting ethnic Albanian villages, resulting in widespread civilian casualties, destruction, and forced displacement.<sup>6</sup> The most intense fighting occurred in 1998–1999 during the Kosovo War, when international monitors recorded grave abuses, including arbitrary killings, mass expulsions, and widespread destruction. By June 1999, the Organization for Security and Co-operation in Europe ('OSCE') estimated that over 1.45 million ethnic Albanians (over 90 per cent of Kosovo's Albanian population) had been displaced.<sup>7</sup> Incidents such as the Račak massacre in January 1999 shifted international opinion towards intervention after diplomatic efforts, including the Rambouillet talks, collapsed.

In March 1999, the North Atlantic Treaty Organization ('NATO') launched Operation Allied Force, a 78-day air strike campaign against the SFRY. The operation ended on 9 June 1999, after Milošević acceded to NATO's demands and the withdrawal of Serb forces from Kosovo began,<sup>8</sup> paving the way for United Nations ('UN') Security Council Resolution 1244 (Resolution 1244), which established international administration and a framework for post-war accountability mechanisms.

### 3. The Ex-Yugoslavia Tribunal

The International Criminal Tribunal for the Former Yugoslavia ('ICTY') – created in 1993 under UN Security Council Resolution 827 in response to the atrocities committed during the Yugoslav conflicts in the 1990s – was the first international tribunal since the Nuremberg and Tokyo tribunals with jurisdiction over genocide, crimes against humanity, and war crimes committed across the former Yugoslavia after 1991.<sup>9</sup> With its seat in The Hague and staffed exclusively by international personnel, the ICTY operated until its closure late 2017, with residual functions transferred to the International Residual Mechanism for Criminal Tribunals.

The ICTY's Kosovo-related cases addressed crimes committed primarily during the 1998–1999 conflict and included prosecutions of high-ranking Serbian and Yugoslav officials, as well as members of the KLA. Milošević was indicted for crimes in Kosovo, Croatia and Bosnia. The Kosovo indictment alleged a joint criminal enterprise aimed at

<sup>5</sup> *Ibid.*

<sup>6</sup> See Human Rights Watch, "Federal Republic of Yugoslavia: Humanitarian Law Violations in Kosovo", October 1998 (<https://www.legal-tools.org/doc/cqoug0v6/>).

<sup>7</sup> See OSCE, "Kosovo/Kosova: As Seen, As Told – An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999", November 1999 (<https://www.legal-tools.org/doc/nxl0mwhh/>).

<sup>8</sup> Benjamin S. Lambeth, *NATO's Air War for Kosovo: A Strategic and Operational Assessment*, RAND Corporation, 2001, p. 1.

<sup>9</sup> UN Security Council Resolution 827 (1993), UN Doc. S/RES/827, 25 May 1993 (<https://www.legal-tools.org/doc/dc079b/>).

<sup>1</sup> Bekim Bislimi and Andy Heil, "'Let's Just Be Albanians': A New Movement in Kosovo Calls on Muslims to Abandon Islam", *Radio Free Europe/Radio Liberty*, 2 November 2023. There are also approximately 100,000–150,000 Serbs residing in Kosovo, primarily in the north of the country; see, for example, Minority Rights Group International, "Serbs in Kosovo" (available on its web site).

<sup>2</sup> Sonia Sarkar, "What's Behind the Rising Number of Muslim-to-Catholic Conversions in Kosovo", *Worldcrunch*, 21 March 2025. Historically, ethnic Albanians were Catholic. After the area now forming Kosovo was conquered by the Ottoman Empire in the fourteenth century, most inhabitants converted to Islam. Today, movements have emerged advocating a return to Catholicism; see Bislimi and Heil, 2023, *supra* note 1.

<sup>3</sup> United States, Office of the Historian, "A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Kosovo" (available on its web site).

<sup>4</sup> Human Rights Watch, *Under Orders: War Crimes in Kosovo*, New York, 2001, pp. 24–25 (<https://www.legal-tools.org/doc/vuff0ykm9/>).

altering Kosovo's ethnic balance through a campaign of terror against ethnic Albanians in 1999, with charges including deportation, forcible transfer, murder and persecution.<sup>10</sup> The trial began in 2002 but did not reach judgment because Milošević died in 2006, leaving significant factual findings without a final judicial determination.<sup>11</sup>

In the *Šainović et al.* case, senior Serbian and Yugoslav officials, including Nikola Šainović and Dragoljub Ojdanić, were charged with participating in a 1999 joint criminal enterprise to forcibly displace Kosovo Albanians.<sup>12</sup> The trial chamber convicted five of the six accused, finding that killings, widespread destruction, sexual violence, and mass expulsions were carried out in co-ordinated state operations.<sup>13</sup> On appeal, the core findings were upheld.<sup>14</sup> In a separate case, Vlastimir Đorđević, Assistant Minister of the Interior and Chief of the Public Security Department, was convicted for crimes linked to the 1999 deportations and killings of Kosovo Albanians, with his conviction largely upheld on appeal.<sup>15</sup>

The ICTY also prosecuted KLA members. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj were accused of imprisoning, torturing and murdering individuals suspected of collaboration as crimes against humanity and war crimes.<sup>16</sup> The first trial resulted in acquittals for Haradinaj and Balaj, with Brahimaj convicted of some counts.<sup>17</sup> A partial retrial was ordered due to witness intimidation concerns.<sup>18</sup> The retrial again acquitted Haradinaj and Balaj.<sup>19</sup> The judgments highlighted the profound difficulty of prosecuting crimes by non-state armed groups in contexts of witness intimidation. Fatmir Limaj and two other KLA members were also charged with crimes against humanity and war crimes in relation to the Llapushnik/Lapušnik prison camp. Limaj and one co-accused were acquitted; an initial conviction against another accused was later overturned on appeal.<sup>20</sup>

Crimes against humanity require proof of widespread or systematic attacks on civilians. In asymmetric conflicts like the one in Kosovo, insurgent groups such as the KLA lacked the territorial control and organization typically needed to plan large-scale operations, influencing ICTY judgments against their commanders. Furthermore, limited documentation, fragmented command structures, and the small, transient nature of detention sites hindered the collection of reliable evidence and made it difficult to establish patterns of co-ordinated policy or command responsibility. These constraints, combined with strong community loyalty towards the KLA, widely regarded as national protectors, fuelled fear of ostracism and retaliation, discouraging witnesses from

<sup>10</sup> ICTY, *Prosecutor v. Slobodan Milošević et al.*, Indictment, 16 October 2001, IT-02-54 (<https://www.legal-tools.org/doc/5a7da2/>).

<sup>11</sup> See ICTY, "Slobodan Milošević Found Dead in His Cell at the Detention Unit", Press Release, 11 March 2006; and ICTY, "Statement by the ICTY Prosecutor", Press Release, 11 March 2006.

<sup>12</sup> ICTY, *Prosecutor v. Nikola Šainović et al.*, Indictment, 21 June 2006, IT-05-87 (<https://www.legal-tools.org/doc/zs0rh9w/>).

<sup>13</sup> See ICTY, *Prosecutor v. Nikola Šainović et al.*, Judgement, 26 February 2009, IT-05-87-T, vol. 3, paras. 1206–1212 (<https://www.legal-tools.org/doc/d79e85/>).

<sup>14</sup> See ICTY, *Prosecutor v. Nikola Šainović et al.*, Judgement, 23 January 2014, IT-05-87-A, para. 1847 (<https://www.legal-tools.org/doc/81ac8c/>).

<sup>15</sup> ICTY, *Prosecutor v. Vlastimir Đorđević*, Judgement, 23 February 2011, IT-05-87/1-T (<https://www.legal-tools.org/doc/653651/>); ICTY, *Prosecutor v. Vlastimir Đorđević*, Judgement, 27 January 2014, IT-05-87/1-A (<https://www.legal-tools.org/doc/e6fa92/>).

<sup>16</sup> ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Indictment, 16 October 2007, IT-04-84 (<https://www.legal-tools.org/doc/a64071/>).

<sup>17</sup> ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Judgement, 3 April 2008, IT-04-84-T, paras. 502–505 (<https://www.legal-tools.org/doc/y4yy9s/>).

<sup>18</sup> ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Judgement, 19 July 2010, IT-04-84-A, para. 377 ('*Haradinaj et al.*, Appeals Judgement') (<https://www.legal-tools.org/doc/0e6ffb/>).

<sup>19</sup> ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Judgement, 29 November 2012, IT-04-84bis-T, paras. 682–685 (<https://www.legal-tools.org/doc/1bad7b/>).

<sup>20</sup> ICTY, *Prosecutor v. Fatmir Limaj et al.*, Judgement, 30 November 2005, IT-03-66-T, paras. 738–742 (<https://www.legal-tools.org/doc/cr97w9lo/>); ICTY, *Prosecutor v. Ramush Haradinaj et al.*, Judgement, 27 September 2007, IT-04-84-A, p. 116 (<https://www.legal-tools.org/doc/6d43bf/>).

co-operating with investigators.

#### 4. The United Nations Mission in Kosovo

After the war, the international community established multiple presences in Kosovo, most prominently the UN Mission in Kosovo ('UNMIK') and the Kosovo Force ('KFOR'), a NATO-led peacekeeping mission, both operating under Resolution 1244. Their objectives were to maintain security and support Kosovo's reconstruction and state-building.

The relationship between international missions and emerging local institutions was complex. Under Resolution 1244, UNMIK progressively devolved legislative and executive powers to the Provisional Institutions of Self-Government, which it modelled on a parliamentary republic with an elected assembly, government, and non-executive president,<sup>21</sup> while UNMIK retained ultimate authority over legislation, the judiciary, and constitutional oversight.<sup>22</sup> UNMIK decisions, in turn, were subject to the policies of the Special Representative of the Secretary-General, whose policy was reportedly to 'avoid conflicts with Kosovo's elites'.

In the judicial sphere, UNMIK Regulation 2000/64 established war crimes trial panels with at least two international judges (who could form a majority) and one local judge in cases where impartiality or judicial independence was in question. These 'Regulation 64 Panels' handled war crimes and other serious cases that the ICTY could not prosecute due to limited resources or jurisdiction.<sup>23</sup> In practice, however, war crimes trials were often conducted entirely by international judges and prosecutors.

UNMIK's judicial independence was constrained by internal policies and political pressures. Some prosecutions were reportedly blocked by senior UNMIK or KFOR officials reluctant to target politically connected figures.<sup>24</sup> Broader problems of corruption and organized crime also affected the judiciary itself.<sup>25</sup> Also, although UNMIK invested in courtroom technology, such as video links to enable witness testimony from abroad, witness co-operation remained limited.<sup>26</sup> Kosovo's small size, close-knit social fabric, and extended family relationships made witnesses often unwilling to testify,<sup>27</sup> while the mission's protection capacity was weak due to scarce resources and limited trained personnel.<sup>28</sup>

UNMIK's overall record in addressing war crimes was widely viewed as inadequate. Of nearly 1,200 potential cases identified, only 37 went to trial between 1999 and 2009. When the European Union Rule of Law Mission in Kosovo ('EULEX') succeeded UNMIK, it dismissed around 500 of these cases for lack of evidence and completed only 15 additional trials by 2013.<sup>29</sup>

<sup>21</sup> Andrea Lorenzo Capussela, *State Building in Kosovo: Democracy, Corruption and the EU in the Balkans*, I.B. Tauris, 2015, pp. 33–34.

<sup>22</sup> *Ibid.*, p. 43.

<sup>23</sup> Gather4Humanity, "Hybrid Tribunals: The Regulation 64 Panels in the Courts of Kosovo" (available on its web site).

<sup>24</sup> Iain King and Whit Mason, *Peace at Any Price: How the World Failed Kosovo*, Cornell University Press, New York, 2015, pp. 59–60.

<sup>25</sup> European Commission, "Kosovo under UNSCR 1244/99: 2009 Progress Report", 14 October 2009, pp. 9–11 (<https://www.legal-tools.org/doc/pkxplqnx/>).

<sup>26</sup> The reluctance to co-operate with foreign-led court proceedings may also reflect customary norms from the *Kanun of Lekë Dukagjimi*, a traditional Albanian code governing honour, kinship and dispute resolution. These laws were transmitted orally for centuries and codified in the late nineteenth century by a Kosovar priest; see University of Texas at Austin, Linguistic Research Center, "Albanian Online" (available on its web site). 'Kanun courts' have traditionally been regarded as the proper forum for resolving disputes, including criminal conduct. For contemporary efforts to align *Kanun* and state court practices, see Republic of Albania, Committee of Nationwide Reconciliation, "Over the Necessity of Cooperation Between State Courts and Kanun Courts About Doing Justice", 27 September 2017.

<sup>27</sup> European Commission, 2009, pp. 11–12, see *supra* note 25.

<sup>28</sup> *Ibid.*, p. 12.

<sup>29</sup> Dominik Zaum, "International Justice and the Prevention of Atrocities", ECFR Background Paper, November 2013, p. 2.

## 5. EULEX

EULEX was officially deployed in Kosovo in December 2008, several months after Kosovo's declaration of independence that February. At the time, the European Union ('EU') did not recognize Kosovo as an independent state. Operating under Resolution 1244, EULEX was mandated to "assume responsibility in the areas of policing, justice and customs under the overall authority of the [UN] [...] and in accordance with resolution 1244".

This mandate created two major challenges. First, there was widespread discontent across Kosovo, outside the Serb-majority north, over the imposition of EULEX authority on the country's newly formed institutions.<sup>30</sup> Second, the mission was expected to strengthen the institutions of a state it did not formally recognize while navigating the legal ambiguity of Kosovo's post-independence constitution and laws, which had no formal standing under Resolution 1244 but were applied daily in domestic courts.<sup>31</sup>

In practice, these challenges mainly reflected divisions within the EU itself, between the five member states that did not recognize Kosovo and those that did. The pragmatic solution was that EULEX respected Kosovo's constitution, and its judges routinely applied Kosovo law in the cases they adjudicated.<sup>32</sup>

Upon deployment, EULEX inherited approximately 1,187 suspected war crimes cases identified by UNMIK, along with an additional 50 cases already referred for indictment.<sup>33</sup> All war crimes prosecutions were handled exclusively by EULEX prosecutors, without partnership or mentoring arrangements to build local prosecutorial capacity. Trial panels typically consisted of three judges, either all EULEX judges or, at most, two EULEX and one local judge. No local judge ever presided over a panel, and this imbalance persisted at the appellate level.<sup>34</sup>

EULEX issued judgments in hundreds of cases involving corruption, organized crime, money laundering, and human trafficking,<sup>35</sup> and was, in its first decade, the EU's largest civilian mission.<sup>36</sup> Its war crimes cases included some key KLA leaders: Sami Lushtaku and Fatmir Limaj, who were acquitted, and Sylejman Selimi, Commander of the KLA, who was convicted for torturing prisoners.

However, many cases remained unresolved or were not investigated. Although the Kosovo War claimed thousands of lives, EULEX ultimately adjudicated only 25 war crimes cases. Moreover, despite widespread allegations of systematic rape by Serbian security forces, not a single perpetrator was prosecuted or convicted.

## 6. Kosovo Specialist Chambers

The Kosovo Specialist Chambers ('KSC') and its associated Specialist Prosecutor's Office ('SPO') were established in 2015 following sustained international pressure to investigate serious crimes allegedly committed during and in the aftermath of the Kosovo War which by then had long remained unpunished. The initiative stemmed from the 2011 Council of Europe report by Dick Marty, which alleged that senior KLA members were involved in grave human rights violations, including unlawful detention, ill-treatment, murder, and organ trafficking. The report challenged prevailing post-war narratives by suggesting that the KLA, widely viewed domestically as a liberation force, had

<sup>30</sup> Capussela, 2015, p. 13, see *supra* note 21.

<sup>31</sup> *Ibid.*; and see Vedran Džihic and Helmut Kramer, "Kosovo After Independence: Is the EU's EULEX Mission Delivering on its Promises?", Friedrich-Ebert-Stiftung, July 2009, pp. 14–19.

<sup>32</sup> Capussela, 2015, p. 113, see *supra* note 21.

<sup>33</sup> OSCE, Mission in Kosovo, Department of Human Rights and Communities, "Kosovo's War Crime Trials: An Assessment Ten Years On 1999–2009", May 2010, p. 6 (<https://www.legal-tools.org/doc/jie7bkusu/>).

<sup>34</sup> James Hargreaves, "The EULEX Legacy in the Kosovo Courts", *Osservatorio Balcani e Caucaso Transeuropa*, 4 November 2014.

<sup>35</sup> See EULEX, "Judgments" (available on its web site, see also the EULEX Collection in the ICC Legal Tools Database). Although EULEX's mandate in Kosovo was originally intended to conclude in 2018, it has been repeatedly extended and is currently scheduled to remain in place until June 2027; see "The Mandate of EULEX Was Extended for Another Two Years", *KoSSev*, 6 June 2025.

<sup>36</sup> Council of Europe, Parliamentary Assembly, "The situation in Kosovo and the role of the Council of Europe", PACE Doc. 12281, 7 June 2010, para. C.2.11.

also committed serious crimes, implicating senior figures who later assumed prominent political roles, and by suggesting that international actors had often prioritized political stability over justice.

In response, the EU established a Special Investigative Task Force which concluded that compelling evidence existed of war crimes and crimes against humanity committed by certain former KLA members.<sup>37</sup> Following these findings, Kosovo's leadership and the EU exchanged formal letters in April 2014, committing to the establishment of a dedicated court.<sup>38</sup> Despite initial political resistance, the Kosovo Assembly adopted a constitutional amendment in August 2015,<sup>39</sup> providing a legal foundation for the new court. The amendment was accompanied by Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office, setting out the court's structure, jurisdiction and functioning.

Though formally part of Kosovo's judicial system, the KSC is seated in The Hague and staffed exclusively by international judges and personnel, a choice motivated by concerns over political interference and witness intimidation in relation to the prosecution of former KLA members. Its jurisdiction covers war crimes and crimes against humanity committed between 1 January 1998 and 31 December 2000, as well as offences against the administration of justice.

The first indictment made public in 2020 charged former President Hashim Thaçi and three other senior KLA figures with war crimes and crimes against humanity, including murder, enforced disappearance, persecution, and torture. These proceedings have been among the most politically charged in Kosovo's post-war history, attracting widespread media attention in Kosovo and sparking demonstrations in The Hague at key stages of the trial. Nonetheless, the KSC has gradually built a track record of substantive rulings.

In 2022, Salih Mustafa was convicted of arbitrary detention, torture and murder,<sup>40</sup> marking the KSC's first war crimes judgment. Two years later, Pjetër Shala was found guilty of similar crimes committed at a KLA-run detention facility in Kukës, Albania.<sup>41</sup> The SPO has also pursued multiple obstruction of justice cases: in 2022, two individuals were convicted for obstructing official persons in performing official duties, intimidation and violating the secrecy of proceedings,<sup>42</sup> and in 2024, three others pleaded guilty to similar charges.<sup>43</sup> A separate case related to alleged interference in the *Thaçi et al.* case is ongoing. These prosecutions signal a deliberate effort to protect judicial integrity and deter future obstruction.

## 7. Challenges and Lessons Learned

Over the past two decades, the international community has introduced a succession of international and hybrid mechanisms in Kosovo, each emerging, at least in part, in response to the real or perceived shortcomings of its predecessor. While all sought to deliver justice and strength-

<sup>37</sup> See Special Investigative Task Force, "Statement of the Chief Prosecutor of the Special Investigative Task Force", 29 July 2014.

<sup>38</sup> "Exchange of Letters between the President of the Republic of Kosovo and the High Representative of the Union for Foreign Affairs and Security Policy", annexed to Law No. 04/L-274 on the Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, 23 April 2014 (<https://www.legal-tools.org/doc/3doos/>).

<sup>39</sup> Constitution of the Republic of Kosovo, 3 August 2015, Article 162 (<https://www.legal-tools.org/doc/fr5lx2/>).

<sup>40</sup> KSC, *Prosecutor v. Salih Mustafa*, Further redacted version of Corrected version of Public redacted version of Trial Judgment, 16 December 2022, KSC-BC-2020-05 (<https://www.legal-tools.org/doc/df5huv/>); *id.*, Public Redacted Version of Appeal Judgment, 14 February 2024, KSC-CA-2023-02 (<https://www.legal-tools.org/doc/ls2v0f/>).

<sup>41</sup> KSC, *Prosecutor v. Pjetër Shala*, Public redacted version of Trial Judgment and Sentence with one confidential annex, 30 April 2024, KSC-BC-2020-04 (<https://www.legal-tools.org/doc/amq4l3xs/>).

<sup>42</sup> KSC, *Prosecutor v. Hysni Gucati and Nasim Haradinaj*, Public Redacted Version of the Trial Judgment, 18 May 2022, KSC-BC-2020-07 (<https://www.legal-tools.org/doc/sg3xq1/>); *id.*, Appeal Judgment, 2 February 2023, KSC-CA-2022-01 (<https://www.legal-tools.org/doc/uzqr5k/>).

<sup>43</sup> KSC, *Prosecutor v. Sabit Januzi et al.*, Public redacted version of Reasons for the Decision on the Plea Agreements, 27 February 2025, KSC-BC-2023-10 (<https://www.legal-tools.org/doc/4kxr0kfo/>).

en the rule of law, their effectiveness was repeatedly undermined by problems of legitimacy, limited local engagement, and recurring operational weaknesses.

A persistent challenge across all mechanisms has been the limited involvement of local actors and the resulting distance from affected communities. The ICTY illustrates this most clearly: established without meaningful local consultation, staffed entirely by internationals, and located outside the region, it was often perceived as a detached institution.<sup>44</sup> Its outreach activities, although extensive in theory, proved insufficient to bridge the physical and psychological divide between The Hague and the experiences of victims in Kosovo.<sup>45</sup>

UNMIK's Regulation 64 Panels, despite including some local judges, faced similar criticism for lack of transparency and limited local ownership.<sup>46</sup> EULEX, too, encountered legitimacy concerns, with allegations of corruption and bribery within its leadership undermining public confidence, compounded by its limited progress in resolving war crimes cases.<sup>47</sup> Even the KSC, although formally supported by Kosovo's political leadership, emerged largely under sustained external pressure, particularly from the EU and the United States of America.<sup>48</sup> Domestic support also eroded amid criticism by prominent officials and even an unsuccessful attempt to dismantle the Court.<sup>49</sup> Its seat in The Hague and its exclusively international staffing further intensify perceptions of detachment, which intensive outreach efforts are attempting to address.

Legitimacy deficits also reflect divergent community perceptions. Kosovo Albanians and Serbs alike have regarded international missions as selective and politically influenced, often believing they served international interests rather than those of victims.<sup>50</sup> More recently, a survey on the KSC highlighted that most Kosovo Albanians regard KSC prosecutions of former KLA members as unfair, while Serbs doubt the impartiality of proceedings and the effectiveness of witness protection.<sup>51</sup>

Another enduring obstacle has been witness and judicial intimidation. The ICTY, UNMIK and EULEX all struggled to secure cooperation in a small, tightly knit society where fear of retaliation was widespread.<sup>52</sup> The ICTY Appeals Chamber itself noted the existence

<sup>44</sup> Sara L. Ochs and Kirbi Walters, "Forced Justice: The Kosovo Specialist Chambers", in *Duke Journal of Comparative and International Law*, 2022, vol. 32, pp. 259–260.

<sup>45</sup> Alison Smith, "Outreach and the Kosovo Specialist Chambers: A Civil Society Practitioner's Perspective", in *International Criminal Law Review*, 2020, vol. 20, pp. 130–131.

<sup>46</sup> Ochs and Walters, 2022, p. 260, see *supra* note 44.

<sup>47</sup> *Ibid.*, pp. 260–261.

<sup>48</sup> Sarah Williams, "The Specialist Chambers of Kosovo: The Limits of Internationalization", in *Journal of International Criminal Justice*, 2016, vol. 14, pp. 36–37, 48; Ochs and Walters, 2022, pp. 242, 265, see *supra* note 44.

<sup>49</sup> See, for example, Avni Puka and Fislak Korenica, "The 'Struggle' to Dissolve the Kosovo Specialist Chambers in The Hague: Stuck Between Constitutional Text and Mission to Pursue Justice", in *The Law & Practice of International Courts and Tribunals*, 2021, vol. 20, pp. 551–554.

<sup>50</sup> Gjylbehare Murati, "Layered Justice: Assessing the Acceptance of the Multiple International Criminal Justice Mechanisms in Post-War Kosovo", in Susanne Buckley-Zistel, Friederike Mieth and Marjana Papa (eds.), *After Nuremberg. Exploring Multiple Dimensions of the Acceptance of International Criminal Justice*, International Nuremberg Principles Academy, Nuremberg, 2017, pp. 17–18.

<sup>51</sup> PAX, Centre for Peace and Tolerance, Impunity Watch and Integra, "Public Perception of the Kosovo Specialist Court", May 2021, pp. 4–5, 10–20 (<https://www.legal-tools.org/doc/gzkc1qbi/>).

<sup>52</sup> Ochs and Walters, 2022, p. 261, see *supra* note 44.

of a context of significant witness intimidation and criticized the trial chamber in the *Haradinaj et al.* case for having failed to take the necessary measures to secure the testimony of certain witnesses.<sup>53</sup> The KSC's relocation to The Hague was intended partly to address these vulnerabilities; however, as noted above, intimidation and interference remain recurring problems. The overall success of the KSC's approach and witness protection programme remain to be assessed upon completion of its work.

Intimidation has extended to judicial personnel as well. Local judges on Regulation 64 Panels reported threats when handling KLA-related cases, and UNMIK acknowledged halting some investigations into high-level perpetrators for "political reasons".<sup>54</sup> These pressures were compounded by poor evidence management and inconsistent case handovers between successive missions; many UNMIK files were transferred to EULEX in "deplorable condition", marked by lost evidence and prolonged investigative delays.<sup>55</sup>

Finally, the proliferation of overlapping mechanisms in a small country like Kosovo created confusion and fatigue. The long, un-coordinated sequence of institutions with partially overlapping jurisdiction produced duplication rather than coherence. By the time the KSC began its first trials in the mid-2020s, some victims and witnesses had already provided statements to three different bodies over two decades. This procedural repetition has raised concerns about the 'do no harm' principle, witness fatigue, and the cumulative burden placed on affected communities.

## 8. Conclusion

Kosovo's experience with transitional justice reveals a clear paradox: a remarkable international commitment to accountability that has nonetheless been hampered by persistent problems of distance, legitimacy and co-ordination. At the same time, it shows that even imperfect efforts can help entrench accountability norms, safeguard evidence, and sustain judicial capacity for future prosecutions. International mechanisms add credibility and resources, but they work best when they build genuine local ownership, trust and institutional strength. In the end, lasting accountability depends less on international presence than on legitimacy shared with the society it aims to serve.

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<sup>53</sup> *Haradinaj et al.*, Appeals Judgement, 19 July 2010, paras. 34–49, see *supra* note 18.

<sup>54</sup> Ochs and Walters, 2022, p. 262, see *supra* note 44.

<sup>55</sup> *Ibid.*, pp. 262–263.



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