

How Borderless is Europe?
Multi-disciplinary approach to European Studies

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A Contradictional Example of European Normative Power: EULEX Kosovo

Krisztina Juhász

Origins of European normative power concept

The concept of European normative power derives from Ian Manners, who wrote: "we may best conceive of the EU as a normative power Europe" instead of defining it as a civil or a military power (Manners, 2002: 235). The normative nature of the European Union originates, on the one hand, in the historical background of the integration and, on the other hand, in its special political and legal structure. Firstly, European integration was born in the post-World War 2 atmosphere, after states had been convicted of war and nationalism, searching for a cooperation mechanism which can ensure long-lasting peace in Europe. Secondly, the European Union is a specific mixture of international and supranational methods of governance, which ensures it being a unique actor in international relations. This hybrid entity has a normative basis, which consists of five core and four minor principles. Core values are: peace, freedom, democracy, the rule of law, and respect of human and minority rights. The four minor principles are social solidarity, ban on discrimination, sustainable development and good governance. However, this normative basis does not ensure the normative nature of the EU on its own. An additional element of being a normative power is the intention to validate and spread its normative basis. Manners collected and differentiated six ways of spreading European values:

- contagion: unintentional diffusion of ideas from the EU to other international actors;
- informal diffusion: spreading European values through strategic communications such as new policy initiatives by the EU and declaratory communications such as initiatives from the European Commission;
- procedural diffusion: means institutionalization the relationship between the EU and third parties such as third states or international organizations;
- transference: spreading normative basis when the EU exchanges goods, trade, aid or technical assistance with third parties through largely substantive or financial means;
- overt diffusion: is the result of the physical presence of the European Union in third states and international organizations. Examples of overt diffusion are the EU delegations or special representatives in third countries, the civil or military

- crisis management missions (e.g. EULEX Kosovo) and the High Representative for EU foreign and security policy;
- cultural filter: is based on the interplay between the construction of knowledge and the creation of social and political identity by the subjects of norm diffusion. Examples of the cultural filter at work include the diffusion of democratic norms in China and human rights diffusion in Turkey (Manners, 2002: 244-245).

This paper aims to survey the legal basis, the mandate, the activity and the shortcomings of the EULEX Kosovo, the rule of law mission deployed to Kosovo by the European Union just before it is unilaterally declared independence. EULEX Kosovo is actually an overt normative basis diffuser of the European Union with the central aim to assist and support the Kosovo authorities in the rule of law area, with a specific focus on the judiciary. At the same time EULEX has to face several problems during its work, namely the lack of experts, the legitimacy of the mission and the corruption accusations, which emerged in connection with EULEX judges and prosecutors.

Legal bases and mandate of EULEX Kosovo

The largest civilian mission ever launched under the Common Security and Defence Policy is based on the Council Joint Action 2008/124/CFSP, and it works under the general framework of United Nations Security Council Resolution 1244. Starting with the international legal basis of the mission, the UN SC Resolution 1244 reaffirms "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region and the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo". The resolution authorized the Secretary-General, "with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo."

As the quotation above underpins, the UN Resolution 1244 declared the territorial integrity of the Federal Republic of Yugoslavia and called for substantial autonomy and meaningful self-government for Kosovo, but did not mention independence and the separate statehood of Kosovo. In 2007 the former Finnish President, Martti Ahtisaari prepared a new draft of the Security Council Resolution on the status of Kosovo, in which he recommended a so-called 'supervised independence' for Kosovo. It meant

¹ Although the document did not use the word independence, it states, "Kosovo shall adopt a Constitution. The Constitution of Kosovo shall prescribe and guarantee the legal and institutional mechanisms necessary to ensure that: Kosovo is governed by the highest

that the United Nations Interim Administration Mission in Kosovo (UNMIK), which was established by the UN Resolution 1244, should have ceased its operation, and an International Steering Group comprising key international stakeholders should be set up, which would ensure the international civil control in Kosovo through the International Civil Representative who should be the European Union Special Representative at the same time. Whereas the United States and the EU Presidency supported the Ahtisaari Plan, Serbia and Russia expressed their concerns about the content of the plan, and when Ahtisaari introduced his draft in the Security Council on 3rd April 2007, Russia and a non-permanent member of the Security Council, South Africa declared that they could not support the proposal. Consequently, the Ahtisaari Plan could not replace the UN SC Resolution 1244, which is still in force.

On 17th February 2008 Kosovo declared its independence unilaterally, and on 15th June its constitution entered into force, which emphasizes: "The Republic of Kosovo is an independent, sovereign, democratic, unique and indivisible state." The constitution contains references to the Ahtisaari Plan as well, when it states, "All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. They shall take all necessary actions for their implementation". What is more, the constitution declares the priority of the Ahtisaari Plan in case of the collision of the provisions of the Plan and those of the constitution, and the laws and other legal acts of Kosovo when it says, "The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail."

The Council of the European Union adopted the joint action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO just before the declaration of independence.² The joint action traces back its international authorization to the SC Resolution 1244, which does not contain any references to the independence of Kosovo, and derives partly from the debate over Kosovo's independence among the EU member states, and partly that Russia was willing to let the SC Resolution

democratic standards, and to promote the peaceful and prosperous existence of all its inhabitants. [...] Kosovo shall have the right to negotiate and conclude international agreements and the right to seek membership in international organizations. [...] Kosovo shall have its own, distinct, national symbols; including a flag, seal and anthem, reflecting its multi-ethnic character."

² Members of the Council of the European Union intended to accept the joint action before the upcoming declaration of Kosovo's independence, because there was a debate over the status among the member states, and it was to be feared that after the declaration of the independence, the EU would not be able to achieve consensus on launching a rule of law mission in Kosovo.

1244 to be the international legal basis of an EU mission, only if this mission will be status-neutral.

Taking the SC Resolution 1244 as the international legal basis of the EULEX, the European Union left out of consideration the changing constitutional, legal and political situation in Kosovo, but at the same time EULEX experts have to work under the constitution, laws and other legal acts of Kosovo cooperating with the authorities, which were established after the declaration of independence according to the Constitution of Kosovo. The fact, that five EU member states³ are not willing to recognize the independence and statehood of Kosovo actually means that the EU gives assistance to building the rule of law and democracy in a country, of which statehood is not recognized by the EU (Juhász, 2014: 289-290).

Mission's mandate, activity and performance

According to the Article 2 of the joint action: "EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices" (Council Joint Action on the European Union Rule of Law Mission in Kosovo, 2008: 2).

In order to achieve the above-mentioned goals, the EULEX has to accomplish, among others, the following tasks:

- "monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;
- ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities;
- help to ensure that all Kosovo rule of law services, including a customs service, are free from political interference;
- ensure that cases of war crimes, terrorism, organised crime, corruption, international crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently;
- contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;

³ Cyprus, Greece, Romania, Slovakia and Spain.

- contribute to the fight against corruption, fraud and financial crime;
- contribute to the implementation of the Kosovo Anti-Corruption Strategy and Anti-Corruption Action Plan;
- assume other responsibilities, independently or in support of the competent Kosovo authorities, to ensure the maintenance and promotion of the rule of law, public order and security, in consultation with the relevant Council agencies." (Council Joint Action on the European Union Rule of Law Mission in Kosovo, 2008: 2).

EULEX Kosovo is a unique example of civilian mission with executive mandate within the Common Defence and Security Policy. Other distinctive features are the size and the comprehensive approach of the mission. EULEX is the biggest civil mission so far with its 1642-member international staff at the beginning (Grevi, 2009: 353), which was decreased since then and currently has an international personnel of 800 people⁴. Considering the mentoring, monitoring, advising and the executive mandate of the mission regarding justice, police and customs, EULEX is the most comprehensive rule of law mission of the EU.

The mission is conceived as a joint effort with local authorities, in line with the local ownership principle. This is done through monitoring, mentoring and advising, whilst retaining some executive responsibilities in specific areas of competence, such as war crimes, organised crime and corruption. At the beginning, the mission was divided into three activity areas: judiciary, police and custom services. In 2012 the structure of the mission was modified, and since then there are two types of activity: strengthening and executive ones.

"The Strengthening Division supports Kosovo institutions, judicial authorities and law enforcement agencies in their path towards increased accountability and sustainability through mentoring, monitoring and advising actions (MMA actions). It aims to build capacities and transfer valuable knowledge to Kosovo institutions in order to develop a reliable rule of law system and processes in line with the highest internationally recognised standards and European best practices. The Strengthening Division encourages the normalisation of relations between Pristina and Belgrade Dialogue by assisting the implementation of the provisions of EU-facilitated agreements. Furthermore, it provides assistance to Kosovo authorities on the visa liberalisation roadmap and visa regime, working on the establishment of a fully functional migration management system." (<http://www.eulex-kosovo.eu/?page=2,3>). The Strengthening Division consists of five units: the Police Strengthening Department, the Advisory Unit on Internal Matters, the Advisory Unit on Border Matters, the Advisory Unit on Justice Matters, and the Correctional Unit.⁵

⁴ http://www.eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf (2015.05.25)

⁵ <http://www.eulex-kosovo.eu/?page=2,3> (2015.05.25)

"The Executive Division is focused on delivering rule of law services until the progress of local authorities allows a complete transition of executive functions to them. Under the mandate of the Mission, EULEX Judges and Prosecutors are embedded in Kosovo institutions and serve in accordance with Kosovo law. The focus of the investigation, prosecution and adjudication is on ongoing EULEX cases and those assigned to EULEX in extraordinary circumstances. In the north of Kosovo, Executive Division will retain to adjudicate cases until the EU facilitated Dialogue between Pristina and Belgrade brings a solution for the judiciary." (<http://www.eulex-kosovo.eu/?page=2,2>)

In the field of justice, the strengthening and the executive aspects of the mission function in an overlapping mode. As Spornbauer notes, "In fact, every EULEX prosecutor and every EULEX judge mostly exercises these two functions simultaneously" (Spornbauer, 2010: 791). Taking first the executive function, EULEX judges exercise jurisdiction in mixed panels, which consist of three judges, two of them from Kosovo and one from EULEX (before, two of them were EULEX judges and one was a local judge). This mixed panel works on civil and criminal cases as well. According to the Article 3 of the 'Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo', EULEX judges assigned to criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by the Special Prosecution Office of the Republic of Kosovo – SPRK (Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, 2008: 3). The SPRK has exclusive competence to investigate and prosecute, among others, terrorism, genocide, crimes against humanity, war crimes, organized crime and financial crimes (Law on the Special Prosecution Office of the Republic of Kosovo, 2008: 4). In the area of civil law, EULEX judges have the authority to select and take responsibility over:

- a) cases falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, including cases that have been referred to another court pursuant to the applicable law;
- b) cases falling within the jurisdiction of any court of Kosovo regarding appeals on decisions of the Kosovo Property Claims Commission according to the applicable law;
- c) any new or pending property related civil cases, including the execution procedures, falling within the jurisdiction of any court in Kosovo, if:
 - (i) there is a grounded suspicion of attempts to influence the impartiality or independence of the local judiciary; or
 - (ii) there is a grounded suspicion that the local judiciary is not willing or unable to properly deal with the case; or
 - (iii) there is a grounded suspicion of a serious violation of the fairness of the proceeding" (Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, 2008: 6-7).

Within the framework of the strengthening function, EULEX judges and prosecutors act as mentors, monitors and advisors. Mentoring and monitoring work on the basis of meetings of EULEX judges with local judges, especially through the judicial deliberations. The advising function is implemented only through the Assembly of EULEX judges, which has the right to give formal guidelines or recommendations to the local judicial, legislative or governmental authorities of Kosovo (Spornbauer, 2010: 794-795).

In 2012 the European Court of Auditors published a Special Report on the EU assistance to Kosovo related to the rule of law, in which the body examined the performance of the EULEX on the one hand, and the outcomes of the IPA projects of the European Commission on the other hand. The report notes in general that, "Although overall the EU projects audited have helped to build the capacity of the judiciary, fundamental weaknesses remain. Political interference with the judiciary remains a major problem in Kosovo, notwithstanding the presence of EULEX judges and prosecutors. [...] There is insufficient transparency in the allocation of cases among judges and prosecutors, allocations not always being based on pre-determined objective criteria and procedural safeguards. This is a major shortcoming as it provides opportunities for political interference through the election of the responsible judge or prosecutor." (Special Report on European Union Assistance to Kosovo related to the rule of law 2012: 19). Beside the high level of possibility of political interference, the huge backlog of cases also limits confidence in justice in Kosovo. In order to decrease the number of pending or unfinished cases, the Kosovo Judicial Council has adopted the National Backlog Reduction Strategy in August 2013. According to the strategy there were 142.000 cases designated as backlogged at that time (National Backlog Reduction Strategy 2013: 2).

One of the most important achievements of the mission was the reopening of the court in northern Mitrovica, which was occupied by Kosovo Serbs in March 2008 and was subsequently closed for eight months. According to the EU-brokered agreement on the normalisation of the relations between Kosovo and Serbia (Brussels Agreement), EULEX gives assistance in the procedure of the integration of courts, judges and prosecutors into the Kosovo legal system in Northern Kosovo. After a long stalemate, in February 2015 an implementation agreement on justice was signed by the prime ministers of Kosovo and Serbia with the intermediary role of HR Federica Mogherini. According to the implementation agreement, one Basic Court and one Basic Prosecution office will be established in the Mitrovica region in accordance with Kosovo laws. The Basic Court president will be Serb, while the president of the prosecutor's office will be Albanian.⁶

⁶ <http://www.balkaninsight.com/en/article/belgrade-pristina-reach-deal-on-judiciary> (2015.05.26)

In the field of police the executive functions are strictly separated from the strengthening ones. Executive tasks are conducted by police officers at the Police Executive Department (PED), while strengthening tasks are conducted by the members of the Police Strengthening Department (PSD). "The PSD assists the Kosovo police (KP) on a management and strategic level in the development and implementation of policies to address criminality, with particular reference to crimes that have a substantial impact on ethnic communities, as well as organized crime. Special attention is given to the enhancement of the efficiency and effectiveness of tools and techniques to fight crime and corruption, as well as to the improvement of the cooperation between KP and prosecutorial agencies. Besides, the PSD offers its expertise to address KP structural weaknesses and to improve its capabilities in resource management." (<http://www.eulex-kosovo.eu/?page=2,3>). PED investigates war crimes, organised crime, high level corruption and other serious crimes, and performs arrests and high-risk operations. Furthermore, EULEX Police conducts patrols in the north of Kosovo and is present at the crossing points Brnjak-Tabalje and Jarinje-Rudnica along the administrative boundary line between Kosovo and Serbia.

The Special Report on the EU assistance to Kosovo, concerning the rule of law, stresses that "Despite assistance from the EU and other donors, Kosovo has made little progress in the fight against organised crime. [...] The investigation of serious crimes is still ineffective due to limited experience and political interference. The Kosovo authorities also lack the capacity to tackle financial and economic crime and money laundering. A major shortcoming affecting the cooperation between police and prosecutors is their lack of a joint database which makes it impossible to track and coordinate their investigation of criminal cases. This has led to situations where prosecutors are unaware of police investigations and vice versa, which seriously hinder the fight against organised crime. The fact that the police and prosecutors have not implemented simple steps, such as common case reference numbers, points to insufficient political will to ensure cooperation." (Special Report on European Union Assistance to Kosovo related to the rule of law 2012: 17).

2014 Progress Report on Kosovo mentions the setting up of the Witness Protection Directorate and child-friendly interview rooms as a success, but it also draws attention to the weakness of intelligence-led policing: "The current Kosovo Police Information System does not include information submitted from KP officers and does not contribute to effective analysis, essential in intelligence-led policing to expose and investigate organised crime. There is no capacity to build a strategic overview of the organised crime situation in Kosovo. A functioning intelligence model (effective gathering, analysing and dissemination of information) would help to create a comprehensive picture of organised crime, detailing threats and trends in criminal networks and groups." (Kosovo 2014 Progress Report, 2014: 51).

Last but not least, EULEX gives assistance to the integration of police officers into Kosovo police in Northern Kosovo, through which 285 policemen joined the KP and a Regional Command for the North was set up (Njelos-Elek, 2014: 5).

Finally, in the field of customs, EULEX supports the legislative work, especially the creation of a new Customs Code, and assists the setting up of an integrated border management structure, which is based on the cooperation of three organizations: border police, customs and the Food and Veterinary Agency. The EU funded border management IT system (BMS) is fully operational at all crossing points as well as in regional and central police command centres. Six co-located crossing points with Serbia have been opened, EULEX maintains its presence there. Freedom of movement has been implemented at all six points, and cooperation from both sides is positive and constructive. The most problems emerged at the crossing points of Jarinje and Brnjak where the freedom of movement came true only after the signature of an agreement, in which Kosovo and Serbia agreed that the customs collected in these crossing points would get into a development fund, which can be used only by four Northern municipalities with a Serbian majority (North Mitovica, Zubin Potok, Leposavic and Zvecan).

Shortcomings of the mission

Shortcomings of the mission partly derive from the general deficiency of the EU Common Security and Defence Policy, and partly from the disputed statehood of Kosovo. We would like to underline the under-mentioned problems, which emerged during the launch and the implementation of the mission:

- The fact, that there is a tension between the EU Common Foreign and Security Policy and the Common Security and Defence Policy – namely, that not all of the member states recognize Kosovo as an independent state – is contrary to the ‘comprehensive approach’ that has been always emphasized in connection with the external activities of the EU. On the other hand, the mission traces back its international legal authorization to the SC Resolution 1244, which actually means that the EU gives assistance to the setting up and the strengthening of the rule of law institutions in a state, of which statehood is not recognized by all of the EU member states.
- At the beginning of the operation, in spite of the long planning phase of the mission, the absence of the necessary equipment and infrastructure hampered the work. EULEX could not take over the premises and vehicles from the UNMIK because of the fall of the Ahtisaari Plan and the subsequent political circumstances. EULEX, similarly to other missions, had to launch cumbersome procurement procedures, which caused serious delay (Grevi, 2009: 361-362).
- As we have already mentioned above, EULEX is the largest civil mission that was launched within the CSDP so far. The recruitment of personnel was not a smooth

and short procedure, which is underpinned by the fact that between October 2007 and spring 2009 seven calls for contributions were made, and by May only 80 percent of the envisaged positions were filled (Grevi, 2009: 362). The recruitment was not easier either in the later phase of the mission. According to the Special Report of the European Court of Auditors, between 2010 and 2011 six calls for contributions arrived to the member states and fewer positions were filled than fell vacant. A further shortcoming of EULEX is the short duration of secondments. The average timeframe of one year is insufficient for key positions such as senior advisers, magistrates or organised crime investigators. In some cases staff can only become fully operational after 12 months. This frequent turnover of key advisers is not conducive to the effective transfer of knowledge to the Kosovo authorities and undermines the effectiveness of the mission. (Special Report on European Union Assistance to Kosovo related to the rule of law 2012: 31).

- Another problem related to the staff of the mission is the occasional lack of proper education, language skills and expertise of the seconded personnel. This handicap partly stems from the fact that some member states did not provide appropriate training before the deployment.
- Substantial critique in connection with the activity of the mission is that unreasonable political wariness and discretion dominates the launch of investigations and criminal procedures. Dick Marty, the member of the Parliamentary Assembly of the Council of Europe stated that during the war of 1998-99 the ex-prime minister of Kosovo, Hashim Thaci as the leader of the so-called 'Drenica Group' within the Kosovo Liberation Army, built up his political and economic power leaning on organized crime groups and activities. Marty claimed that "agencies dedicated to combating drug smuggling in at least five countries have named Hashim Thaci and other members of his 'Drenica Group' as having exerted violent control over the trade in heroin and other narcotics" (Report on Inhuman treatment of people and illicit trafficking in human organs in Kosovo, 2010: 15). Andy Sparks, the Deputy Head of Mission of the EULEX responded to Marty's report stating that there had not been launched or conducted any investigation against Thaci by EULEX, but he also added, "If there was any evidence against Thaci than there would be an investigation against him because he has no immunity. Nobody enjoys immunity in the investigation."⁷ One of the reasons of the political wariness and discretion might be the saving of the political stability of Kosovo, but this permissive attitude of the mission strengthens the perception of the immunity of the local political elite on one hand, and weakens the confidence in the rule of law among the citizens on the other hand.

⁷ EULEX: No investigation against Hashim Thaci http://www.b92.net/eng/news/politics.php?yyyy=2011&mm=07&dd=15&nav_id=75457 (2015. 05.27.)

Last but not least, we have to mention the accusations emerged against some of the EULEX judges and prosecutors, and the leadership of the mission in autumn 2014, which led to the appointment of a legal expert by HR Federica Mogherini with the purpose to investigate the corruption allegations and the mode and procedure in which EULEX leaders dealt with the issue. The scandal which shocked the mission came out into the open in the most popular daily paper, *Koha Ditore*, in October 2014. The newspaper revealed some internal letters written by a British prosecutor, Maria Bamieh, to her superiors alerting them on unlawful activities performed by some of her colleagues. Bamieh stated that the EULEX chief prosecutor and the former chairman of the EULEX Assembly of Judges in 2012 and 2013 had shut down cases for money in exchange. Bamieh was suspended from her post because of the leak of confidential information to *Koha Ditore*, but both the prosecutor and the newspaper said she had not been the source of the leaks.⁸ Bamieh later said that she had informed her superiors about the corruption allegations in her report in 2012, but the Head of Mission and Deputy Head of Mission at that time did not consider that the allegations were based on real facts. In March 2013, new information was gathered by the mission intelligence services concerning the same allegations, so the Head of Mission decided to task a special group with carrying out an investigation. In a later phase, the Head of Mission and the Civilian Operation Commander made a decision to appoint a special prosecutor to investigate the cases which were revealed by the special group (Review of the EULEX Kosovo mission's implementation of the mandate with a particular focus on the handling of the recent allegations 2015: 7). Bamieh and others also criticized this ad hoc procedure and the manner of the appointment of the members of the special group and the special prosecutor.

The corruption allegations and the way in which EULEX leadership dealt with them, caused a serious harm to the mission, of which main purpose is to fight against corruption and organized crime. It was not communicated, but it is likely that as a result of the scandal the then Head of Mission, Bernd Borchardt resigned and was succeeded by Gabriele Meucci. Perceiving the seriousness of the situation, the new High Representative, Federica Mogherini put high the issue of EULEX on her agenda and appointed Jean-Paul Jacqué as an independent legal expert in November 2014. According to his mandate he had to look at the mission's mandate implementation, with a special focus on the handling of the corruption allegations. Jean-Paul Jacqué concluded his work and submitted his partly public report to HR Mogherini at the end of March 2015.

⁸ EULEX: the corruption files <http://www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/EULEX-the-corruption-files-156961> (2015. 05.27.)

Conclusions

The largest and most comprehensive rule of law mission of the EU had an ambitious aim, as its mandate defined the assistance and the support of the Kosovo authorities as a central task in the rule of law area, encompassing justice, police and customs as well.

Since the deployment of the mission in December 2008, EULEX has achieved some really important goals, e.g. the setting up of the Integrated Border Management System, the support of the integration of police officers, judges and prosecutors into Kosovo's institutions in Northern Kosovo, and in general, the assistance in the implementation of the Brussels Agreement.

At the same time EULEX is hampered by some substantial shortcomings, which have a negative impact of the mission performance. What is more, EULEX was able to achieve very little success in the field of fighting against corruption and organized crime. Corruption is omnipresent in Kosovo, which is underpinned by the Transparency International's Corruption Perceptions Index ranking Kosovo to the 110th place of the 175 countries examined in 2014.⁹ In these circumstances corruption allegations in connection with some members of the mission proved themselves to be very serious and dangerous, and undermined the legitimacy of the mission. As the mission's mandate lasts until June 2016, there is a big pressure on the contributing states to revise the mandate of the mission and to make the necessary steps to modify it towards increasing the mission's performance. Furthermore, the date of the possible closure of the mission seems to be too early regarding that Kosovo's rule of law institutions are still not able to take over all of their responsibilities. EULEX has still got a lot to do in the field of supporting the full implementation of the Brussels Agreement.

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⁹ <https://www.transparency.org/cpi2014/results> (2015. 05.27.)

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