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## **KOSOVO\* SPECIALIST CHAMBERS: ORIGINS, LEGAL NATURE, AND POLITICAL ROLE IN THE CONTEXT OF TRANSITIONAL JUSTICE**

### **Abstract**

This paper examines the legal nature and institutional framework of the Kosovo Specialist Chambers and the Office of the Specialist Prosecutor. The author offers a critical analysis of the establishment process, institutional structure, and political function of the Specialist Chambers, with particular emphasis on the role of the European Union in their creation and operational activities. The study also addresses the key jurisprudential challenges these institutions face. Special attention is devoted to the functioning to date of the Specialist Chambers and the Office of the Specialist Prosecutor – institutions established within the legal system of the self-proclaimed Republic of Kosovo, mandated to investigate and prosecute serious crimes committed in Kosovo and Metohija between 1998 and 2000. The methodological framework of the paper includes both normative and critical methods, with the aim of determining the legal nature and re-examining the functioning of these institutions through the analysis of international legal instruments. In addition to the positivist legal approach, the paper also presents a critical theoretical framework.

**Keywords:** Kosovo\* Specialist Chambers, EU, Kosovo and Metohija, transitional justice, criminal responsibility

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## INTRODUCTION

Within the territory of the Autonomous Province of Kosovo\* and Metohija – currently under temporary international administration established by United Nations Security Council Resolution 1244 (UNSC, S/RES/1244) and forming an integral part of the Republic of Serbia – a distinct judicial institution has been operating since 2015: the Kosovo Specialist Chambers (KSC) and the Specialist Prosecutor’s Office (SPO). The KSC and SPO constitute a unique judicial structure that transcends the framework established by the international legal status of Kosovo and Metohija, as they derive from the internal legal order of the self-proclaimed Republic of Kosovo. These bodies are mandated to investigate and prosecute crimes committed on the territory of Kosovo and Metohija during the period from 1998 to 2000. Although formally part of the Kosovar judicial system, the KSC and SPO were established as a result of the implementation of obligations and recommendations of regional intergovernmental organizations, primarily the Council of Europe and the European Union. Their operation is marked by a degree of internationalization, reflected in the engagement of international judges and the relocation of the Court’s seat outside the territory of Kosovo and Metohija, to The Hague.

The legal nature and institutional framework of the KSC and SPO determine their characteristics, functioning, and classification. This raises the question of whether their legal nature is international, hybrid, or domestic. In this context, the paper will analyze the legality of their establishment and operation, as well as assess their performance, the “judicial policy” pursued by the Court and the Prosecutor’s Office, and consider key jurisprudential challenges they face. The methodological framework of this study encompasses several methods aimed at analyzing and critically assessing a legal institution. First, the historical method was employed to illuminate the historical context surrounding the formation and development of judicial institutions in Kosovo and Metohija. Subsequently, the content analysis method was used to interpret legal instruments, political agreements, and other documents. Such a normative positivist legal approach facilitated insight into the key provisions of judicial documents and international acts, which are

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\* All references to Kosovo in this document should be understood to be in the context of United Nations Security Council Resolution 1244 (1999).

later examined from a critical perspective. The core of the study is the case study method, focusing on the establishment and operation of the judicial institution known as the Specialist Chambers of Kosovo. Through comparative analysis, this work seeks to position the Specialist Chambers within the spectrum of international and domestic judicial institutions, comparing it with other similar bodies. Finally, the study is framed within a critical theoretical framework, particularly through the concepts of transitional justice and “political justice.”

## **THEORETICAL AND NORMATIVE FOUNDATIONS: TRANSITIONAL JUSTICE AND EU ENGAGEMENT**

The concept of transitional justice encompasses “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of largescale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (United Nations [UN] 2010, 2). These mechanisms include both judicial and non-judicial approaches, such as international engagement at various levels, the prosecution of responsible individuals, reparations, institutional reform, etc. Within the paradigm of transitional justice, there are multiple approaches to achieving its goals. Notably, there exists a duality between the retributive and restorative models of accomplishing the aims of transitional justice. The retributive model is grounded in individual responsibility and appropriate punishment for perpetrators of criminal acts, which is considered essential for the realization of justice. Conversely, the restorative model focuses on the processes of reconciliation and peacebuilding, as well as reparations for victims and the establishment of truth. These two models are complementary in nature, and only through their synergy can meaningful results be attained (Hermann 2017). Therefore, the United Nations opts for a holistic approach that combines the principles of retributive and restorative justice (United Nations [UN] 2023). Furthermore, for the purpose of this study, it is important to emphasize the distinction between domestic (e.g., national courts, truth commissions, etc.), international (e.g., ICTY, ICTR), and hybrid implementations of transitional justice, which will be discussed in the chapter concerning the legal nature of the Specialist Chambers of Kosovo.

The development and popularization of transitional justice have been significantly encouraged by the establishment of *ad hoc* tribunals for

the former Yugoslavia (ICTY) and Rwanda (ICTR). The implementation of transitional justice, as well as the concept itself, has been the subject of criticism and contestation for various reasons. Among other concerns, scholars point to the lack of objective and universal justice, while the concept is often seen as favoring forms of “Europeanization,” “liberalization,” and “democratization,” which inherently involve deeply political and ideological dimensions (Đurković 2022, 135).<sup>1</sup> Although international justice closely follows the (political) trajectory of the general international legal order (Gajić 2019, 102), the question arises as to what extent transitional justice can be “stretched” for political purposes while still remaining justice (Đurković 2022, 136). It is also reasonable to assert that political influences on international criminal justice have a dual effect: the intrusion of politics is both a burden for international criminal law and a prerequisite for its very existence (Ristivojević 2011, 206). The ICTY has been critically assessed by parts of the scholarly community as an example of the instrumentalization of justice for (geo) political purposes and as a tool for historical construction, aligning with the concept of “political justice” as formulated by Kirchheimer (Đurković 2022, 155).<sup>2</sup> In this regard, the concrete instrumentalization of the concept of political justice can also be observed in the establishment and operation of a new judicial institution – the Specialist Prosecutor’s Office and the Kosovo Specialist Chambers. The Specialist Chambers

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<sup>1</sup> With the chosen title of this paper, “The Kosovo Specialist Chambers: Origins, Institutional Framework, and Political Role in the Context of Transitional Justice,” we aim to critically examine transitional justice as an ideologically driven framework for reshaping post-conflict societies in accordance with the political interests of international actors.

<sup>2</sup> Otto Kirchheimer (a student of Carl Schmitt and a representative of the Frankfurt School) developed the concept of “political justice” in his work *Political Justice: The Use of Legal Procedure for Political Ends* (Kirchheimer 1961). Political justice, according to Kirchheimer, refers to situations in which judicial forums and procedures, rather than serving as impartial means of dispute resolution, are instrumentalized to achieve political objectives, whether through the elimination of opponents, the legitimization of authority, or the construction of narratives (Rheinstein 1962). Under the influence of Max Weber, Kirchheimer emphasizes that an order is sustainable only if it is perceived as legitimate, and that courts are the most suitable instrument for legitimizing that order, regardless of whether it is just or unjust (Rheinstein 1962, 199–200). For the discussion on the expansion of the concept of political justice to the concept of geopolitical justice, see: Đurković 2022, 135.

and the Specialist Prosecutor's Office of Kosovo belong to the domestic model characterized predominantly by retributive transitional justice, without involvement of the broader societal and historical dimensions of the conflict under adjudication.<sup>3</sup> Despite efforts by certain academic and political actors to portray these institutions as international in character, the Specialist Chambers and the Specialist Prosecutor's Office, when viewed through the lens of their legal nature, do not belong to the international legal order, but rather to the domestic judicial system of the self-proclaimed Republic of Kosovo as will be discussed in more detail in the following chapters.

The European Union has played a significant role in distributing criminal justice in the region. Its involvement in this area was primarily reflected in the mechanism of conditionality, requiring the countries of the "Western Balkans" to cooperate with the ICTY as part of the stabilization and association process. One of the key conditions for Serbia's EU membership was ensuring full cooperation with the Tribunal, which included cooperation with the ICTY Prosecutor's Office and the extradition of members of the former state leadership. The EU continued its engagement in the field of criminal accountability through support for the establishment and operation of the War Crimes Department at the Court of Bosnia and Herzegovina,<sup>4</sup> as well as the Kosovo Specialist Chambers. Unlike the ICTY as an international institution, these bodies

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<sup>3</sup> The enforcement of this limited procedural "justice," supported by the European Union, appears to amount merely to the fulfillment of formal requirements (in the spirit of "ticking the box") without genuine commitment to establishing the full truth. To prevent justice from becoming a ritualized process of adjudication marked by overt political influences, in the author's opinion, it is imperative to incorporate the restorative approach, which aligns more closely with the comprehensive goals of transitional justice.

<sup>4</sup> The War Crimes Department of the Court of Bosnia and Herzegovina was established in 2005 with the aim of prosecuting war crimes committed during the conflict in Bosnia and Herzegovina from 1992 to 1995. The establishment of this department was the result of the transfer of cases from the ICTY to domestic courts, in accordance with the Tribunal's completion strategy. The Department is composed of both domestic and international judges and prosecutors and operates within the judicial system of Bosnia and Herzegovina (Ivanišević 2008). Its creation marked a significant step in the localization of international criminal justice and was supported by the European Union, both institutionally and financially. For more information on the EU's activities in the field of justice in Bosnia and Herzegovina, see website of European External Action Service (see: European External Action Service n.d.).

were established within domestic judicial systems – of Bosnia and Herzegovina and the self-proclaimed Republic of Kosovo – with direct institutional and financial support from the EU.

These examples represent a unique case in which the European Union, within the framework of its Common Foreign and Security Policy, directly supports the establishment and functioning of national specialized courts. This is particularly significant given that EU law does not confer direct competence in the field of criminal law, but instead provides only for minimum standards and cooperation mechanisms in criminal matters (such as through Eurojust, Europol, and similar bodies). Despite the provisions of Articles 82 and 83 of the Treaty on the Functioning of the European Union, which establish limited and narrowly defined competences for the EU in this area, substantive criminal law and criminal justice systems remain primarily within the jurisdiction of the Member States or international courts and tribunals (Consolidated version of the Treaty on the Functioning of the European Union [TFEU] 2016, Art. 82 and 83).

## **POLITICAL AND INSTITUTIONAL CONTEXT OF THE DEVELOPMENT OF JUDICIAL INSTITUTIONS IN KOSOVO AND METOHİJA**

Although the history of the institutional crisis in Kosovo and Metohija reaches far into the past, this chapter will focus on the more immediate political context surrounding the development of judicial institutions in Kosovo and Metohija from the end of the armed conflict in 1999 to the establishment of the KSC and the SPO. At the outset, it is necessary to highlight the beginning of the escalation of violence in the southern Serbian province, marked by an increase in terrorist activities carried out by the so-called Kosovo Liberation Army (KLA) (Proroković and Lađevac 2018, 171). The culmination of violence occurred between 1998 and 1999, when the so-called KLA declared the start of armed struggle for Kosovo's independence. Until the end of the NATO aggression against the Federal Republic of Yugoslavia and the signing of the Kumanovo Agreement in 1999 (Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, signed at Kumanovo on June 9, 1999), the Republic of Serbia maintained full institutional authority over Kosovo and Metohija. The

Kumanovo Agreement provided for the withdrawal of Yugoslav army and police forces from Kosovo and the entry of KFOR troops. In the same year, the UN Security Council adopted Resolution 1244, which defined the status of Kosovo and Metohija as a territory under international administration within the Republic of Serbia. The United Nations Interim Administration Mission in Kosovo (UNMIK) assumed overall responsibility for establishing peace and building institutions, with its primary objective being to assist, through an international institutional and legal framework, in finding a “desirable solution for Kosovo’s future status” (Surlić i Lazarević 2023, 121). During the mandate of UNMIK in Kosovo and Metohija, violence against the Serbian ethnic community did not cease, as evidenced by frequent attacks on Serbian civilians and religious sites of the Serbian Orthodox Church,<sup>5</sup> among which the most notable are the bombing of the “Niš Express” bus in 2001 and the March Pogrom of 2004.<sup>6</sup>

<sup>5</sup> According to recorded data, a total of 127 Serbian Orthodox Christian religious sites have been damaged, destroyed, or desecrated in Kosovo and Metohija since 1999. In addition, numerous Serbian cemeteries across the region have been vandalized, with some even being converted into illegal waste disposal sites. To date, no comprehensive documentary video archive has been established to systematically document these incidents. Archival footage by Ninoslav Randelović shows medieval Serbian Orthodox religious sites desecrated after 1999. A documentary video containing this invaluable archival material is available at: Randjelovic 2025.

<sup>6</sup> In the case of the bombing of the Niš Express bus, which was transporting Serbian returnees under KFOR escort from Niš to the enclave of Gračanica, 12 Serbian civilians perished, including a two-year-old child (Kosovo Online 2025). The March Pogrom constitutes an ethnic cleansing of Serbs and other non-Albanian communities from Kosovo and Metohija, during which Albanian extremists and former members of the so-called KLA ethnically cleansed six towns and ten villages in Kosovo and Metohija. According to official UN and OSCE reports, during the March 2004 violence in Kosovo and Metohija, 29 Serbian Orthodox churches and monasteries were burnt or desecrated, including 18 monuments of special cultural significance, and approximately 4.100 inhabitants were expelled from their homes within 48 hours (United Nations Security Council [UNSC] 2004); Organization for Security and Co-operation in Europe [OSCE] 2004). The mass destruction of Serbian registry and land books, significant traces of Serbian millennial presence in Kosovo and Metohija, also continued. Approximately 51.000 Albanians participated in acts of violence against Serbs and other non-Albanian populations, while international forces remained passive observers of the violence and exodus (Novosti 2014). Regarding the lack of preparedness and disinterest of international forces in investigating and prosecuting crimes, particularly against the Serbian population, it is noted that by the end of June 2004 about 270 individuals

In accordance with UNMIK Regulation No. 2000/64 of December 15, 2000, on the Assignment of International Judges/Prosecutors and/or Change of Venue, hybrid judicial panels of mixed composition were established with the aim of prosecuting war crimes in Kosovo and Metohija (UNMIK, REG/2000/64). During the mandate of this judicial body from 2000 to 2008, UNMIK initiated a significant number of trials; however, the investigative results were modest, as only one individual received a conviction.<sup>7</sup> According to reports by Human Rights Watch, the judiciary was the least efficient component of the international administration in Kosovo and Metohija. Criticism was directed at poor case management, passivity of the police and prosecution services, problems in coordination between the Kosovo police and UNMIK forces, the absence of adequate witness protection, as well as the inability to conduct investigations against members of UNMIK and KFOR (Human Rights Watch [HRW] 2007) which fostered a perception of the “untouchables” and undermined the rule of law (Lukić, Lađevac, i Jović-Lazić 2010, 68). Moreover, insufficient progress was noted in

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were arrested on suspicion of committing criminal acts such as murder, arson, theft, breaches of public order, and other offenses during the two days of March violence. By the end of August, 80 individuals were convicted with sentences ranging from reprimands and fines up to 200 euros, to imprisonment from two to six months (Lukić, Lađevac, i Jović-Lazić 2010, 67). Nevertheless, Florim Ejupi was arrested in Tirana the same year on terrorism charges in the case of the Niš Express bus bombing. He was extradited to UNMIK but later escaped from the American military base Bondsteel near Uroševac. After being re-arrested in Tirana, he was returned to UNMIK, whose judicial panels found him guilty and sentenced him to 40 years in prison for terrorism (Bureau of Democracy, Human Rights and Labor 2009). However, after the establishment of the EULEX mandate, Ejupi’s case was reopened. The EU mission acquitted him in the appeals process, citing lack of evidence (EULEX 2009). UN special rapporteurs informed the Secretary-General about the absence of the rule of law and disregard for international standards in Kosovo. Since the international community did not take any measures, it appeared that the UN accepted justifications by the Kosovo Police Service, attributing the main problem to the unwillingness of citizens to cooperate with the police (Lukić, Lađevac, i Jović-Lazić 2010, 68).

<sup>7</sup> The most notable case heard before the UNMIK panel involved the prosecution of suspects related to the Drenovac camp (2006). The panel in the first instance convicted three former members of the so-called Kosovo Liberation Army for war crimes against Kosovo Albanians in the Drenovac camp in 1998; however, all were acquitted on appeal. Furthermore, the murder of a witness in this case remains unresolved (Bureau of Democracy, Human Rights and Labor 2009).

the investigation and prosecution of perpetrators responsible for crimes during the March Pogrom (HRW 2007, 417).

The Human Rights Advisory Panel (HRAP) of the UNMIK, in its 2016 Final Report (*Final Report of the Human Rights Advisory Panel: History and Legacy, Kosovo, 2007–2016*), emphasized that the UNMIK was responsible for human rights violations, particularly the right to life under Article 2 of the European Convention on Human Rights. According to HRAP's findings, UNMIK failed to investigate disappearances and killings in 233 cases reported to the Panel, which occurred subsequent to the arrival of the UN Mission in Kosovo. Consequently, an apology from UNMIK would be expected in light of its apparent lack of interest in examining the cases of the killed and missing persons (UNMIK 2016, 84).

In February 2008, the institutions in Pristina under the UNMIK mandate adopted a unilateral declaration of independence for Kosovo (Office of the Prime Minister 2008).<sup>8</sup> In December of the same year, the international framework for the functioning of institutions in Kosovo and Metohija effectively changed. The EU and the UN Secretary-General have agreed to exchange letters, outside the framework of the voting procedure in the Security Council, in which the EU is entrusted with the authority to lead the mission under Resolution 1244 (Doli 2019, 136–137). Instead of UNMIK, the European Union took over the development of judicial institutions in Kosovo and Metohija. Based on the EU Council Joint Action 2008/124/CFSP of February 4, 2008, the European Union Rule of Law Mission in Kosovo (EULEX) was established, assuming the powers of UNMIK (Council of the European Union [CEU] 2008). EULEX commenced its mission on December 9,

<sup>8</sup> As highlighted by the International Court of Justice (ICJ) in its 2010 advisory opinion (ICJ 2010), "...a group of persons acting together in their capacity as representatives of the people of Kosovo" proclaimed the unilateral secession from the Republic of Serbia (International Court of Justice 2010, par. 109). The Court carefully framed its language to emphasize that the independence was not declared by the official provisional institutions under the UNMIK legal framework but rather by this group acting as representatives of the people of Kosovo (Ilić 2021). Consequently, the ICJ concluded that the unilateral declaration of independence did not violate international law (International Court of Justice 2010, 7). Had the declaration been issued by the Provisional Institutions (e.g., the Assembly of Kosovo), it might have constituted an act outside UNMIK's mandate and likely contrary to UN Security Council Resolution 1244. Although the ICJ's advisory opinion holds moral significance, it is not legally binding.

2008 and represents the largest EU mission in the area of the Common Foreign and Security Policy (Cierco and Reis 2014, 650).

Like the UNMIK mission, the powers of EULEX included responsibilities in the areas of security and police, rule of law, internally displaced persons, as well as the authority to take over investigations and judicial cases from UNMIK and previous judicial panels (European Union Rule of Law Mission in Kosovo [EULEX] 2009). EULEX's work in the judiciary faced numerous criticisms due to problems in court procedures, effectiveness, and especially political bias, along with serious failures in investigations involving prominent "members of the Kosovo political elite" (Capussela 2015). The Organization for Security and Cooperation in Europe (OSCE) mission in Kosovo also highlighted in its 2012 report that "judges are not fully ready to issue verdicts solely based on law but tend to act in advance according to expectations of external influences" (Organization for Security and Cooperation in Europe [OSCE] 2012, 7).

By taking over the mandate from UNMIK, the EU created a situation in which there was no longer an effective UN administration to challenge the institutions of Kosovo and their legitimacy. Although EULEX did not formally contest the UN international legal framework, it acted as a mission friendly toward Kosovo's statehood. By omitting the implementation of the international legal framework, the EU enabled Kosovo's institutions to establish effective control over state functions and exercise sovereign authority, while the EULEX mission became fully integrated into the so-called Kosovo legal system (Doli 2019, 145–146). Over time, the EULEX mission transformed from an executive body to a purely advisory institution; since June 2018, EULEX has exclusively performed an advisory role in building the so-called Kosovo institutions. In the meantime, the KSC and SPO were established in 2015, which is the subject of the next chapter.

In accordance with international law and the UN universal order, UN Security Council Resolution 1244 remains the only generally binding international document regarding the status of Kosovo and Metohija. Within Resolution 1244 and its two annexes, the "territorial integrity and sovereignty" of the Federal Republic of Yugoslavia (FRY) is mentioned six times, as well as the "substantial autonomy" Kosovo is to enjoy within the FRY, i.e., today's Republic of Serbia (Proroković and Ladevac 2018, 174–175).

## THE ROLE OF THE COUNCIL OF EUROPE AND THE EUROPEAN UNION IN THE ESTABLISHMENT OF THE KOSOVO SPECIALIST CHAMBERS AND THE SPECIALIST PROSECUTOR'S OFFICE

The idea of prosecuting individuals responsible for crimes committed on the territory of Kosovo and Metohija, as part of a deeper and more thorough investigation, emerged following the allegations made by Dick Marty, the Special Rapporteur of the Council of Europe's Committee on Legal Affairs and Human Rights. These allegations were presented in his report entitled "Inhuman treatment of people and illicit trafficking in human organs in Kosovo," published on December 12, 2010 (Parliamentary Assembly of the Council of Europe [PACE] 2011).<sup>9</sup> Marty's report also prompted the European Union to initiate an investigation and to condemn international crimes committed on the territory of Kosovo and Metohija, with particular emphasis on the crimes allegedly committed by members of the so-called Kosovo Liberation Army (KLA). Consequently, the process of establishing the Kosovo Specialist Chambers and the Specialist Prosecutor's Office involved two regional organizations – namely, the Council of Europe (CoE) and the European Union (EU) – each of which played a distinct role and made a unique contribution.

In discussing Marty's report, the Parliamentary Assembly of the Council of Europe, in its resolution of January 7, 2011 (hereinafter: "CoE Report"), put forward a number of specific allegations regarding serious violations of international law, including illicit trafficking in human organs, the establishment of secret detention sites where KLA members allegedly subjected Serbian, Albanian, and Roma detainees to

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<sup>9</sup> In the memoirs of former ICTY Prosecutor Carla Del Ponte, it is revealed that she had sought to extend the Tribunal's investigations to include crimes committed by members of the so-called Kosovo Liberation Army, but was met with "friendly advice" not to pursue this course of action (Del Ponte 2009, 276–305). In her memoirs, she stated, inter alia, that she was in possession of evidence indicating that members of the KLA had, before, during, and after the 1998–1999 armed conflict, committed serious crimes with impunity on the territory of Kosovo and Metohija (Del Ponte 2009, 276–305). These crimes included human organ trafficking and other acts associated with organized crime. Among the KLA leaders potentially bearing the greatest responsibility, Hašim Tači is specifically mentioned (Del Ponte 2009, 276–305).

torture and inhuman treatment, unlawful detention, and organized crime, committed during and after the conflict in Kosovo and Metohija. The CoE Report recommended that the “Kosovo authorities” take appropriate steps to investigate and prosecute these crimes (PACE 2011, par. 15). Furthermore, the Assembly called upon the “Kosovo administration” to fully cooperate with the European Union Rule of Law Mission in Kosovo (EULEX) and the authorities of the Republic of Serbia, in order to ensure the effective investigation and prosecution of those responsible (PACE 2011, par. 19.5). Additionally, it recommended that all Council of Europe member states provide legal assistance in ongoing and future war crimes investigations at the request of competent EULEX authorities and the Republic of Serbia (PACE 2011, par. 19.6).

The Council of Europe thereby initiated the process of establishing independent judicial bodies, without, however, prejudging the independent status of Kosovo or recognizing the Kosovo judiciary as a valid framework for prosecuting the alleged crimes. On the contrary, in its report, the Council of Europe explicitly referred to UN Security Council Resolution 1244, which recognizes Kosovo as a part of the Republic of Serbia (PACE 2011, par. 1).<sup>10</sup> Since 2011, within the framework of the EU’s Common Foreign and Security Policy, the EU Political and Security Committee has considered the allegations raised in the Council of Europe’s Report. In order to conduct an “independent investigation,” a Special Investigative Task Force (SITF) was established, operating under the coordination of EULEX. The SITF determined that there was sufficient evidence implicating former senior officials of the so-called KLA in serious violations of international humanitarian law, including crimes against humanity and war crimes (see Chief Prosecutor of the Special Investigative Task Force 2014). The victims were primarily

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<sup>10</sup> “All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.” (PACE 2011, 1). At the time of writing this paper, so-called Kosovo has not been officially admitted to the membership of the Council of Europe. The membership application was submitted in May 2022, following the expulsion of the Russian Federation from the organization. In April 2023, the Committee of Ministers of the Council of Europe approved the application of so-called Kosovo and forwarded it to the Parliamentary Assembly for a decision, which voted in favor of the membership recommendation. The final decision on membership is within the competence of the Committee of Ministers, which has not yet made a decision (PACE 2024).

Serbs, Roma, members of other minority communities, and Albanians accused of collaborating with the Serbs or opposing the KLA.

The political foundation for establishing the KSC and the SPO was laid through diplomatic correspondence exchanged between Atifete Jahjaga, who was then serving as the President of the self-declared Republic of Kosovo, and Catherine Ashton, the European Union High Representative for Foreign Affairs and Security Policy (Justice Info 2015). This exchange defined the establishment of a new judicial body that would be an integral part of the Kosovo judicial system (Assembly of the Republic of Kosovo 2014). According to this international agreement, the Chambers were to be composed of international judges – excluding citizens of the so-called Republic of Kosovo – who operate outside the territory of Kosovo, and have their sentences executed abroad (Assembly of the Republic of Kosovo 2014). The agreement also provided for the continuation of the EULEX mission and its assistance in supporting the newly created judicial institutions (Assembly of the Republic of Kosovo 2014). The agreement was ratified by the Assembly of Kosovo in 2014, thereby transferring to the Specialist Chambers all necessary executive powers, jurisdiction, and mandate. It was confirmed that the Chambers would operate on the basis of their own Statute, adopt their own Rules of Procedure and Evidence,<sup>11</sup> and be located in a third country (Law on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo 2015).

The seat of the KSC and the SPO was transferred from Kosovo to the Netherlands through international agreements concluded directly between the Kingdom of the Netherlands and the so-called Republic of Kosovo, without EU mediation.<sup>12</sup> The exchange of diplomatic notes

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<sup>11</sup> Based on the amendment to the Constitution of Kosovo (Constitution of the Republic of Kosovo 2008, Art. 162), which was confirmed by the Constitutional Court of Kosovo and approved by the Assembly of Kosovo in August 2015, the Law on the Specialized Chambers and the Specialized Prosecutor's Office was adopted. In March 2017, during the first plenary session, the judges of the Specialized Chambers adopted the Rules of Procedure and Evidence, which came into force in July of the same year, after approval by the Specialized Panel of the Constitutional Court. This act marked the commencement of judicial proceedings of the Specialized Chambers (KSC 2017).

<sup>12</sup> Two agreements have been concluded: the Interim Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting

between the EU and the so-called Republic of Kosovo did not in itself establish the KSC and the SPO as legal institutions, but rather provided the political and legal impetus for their creation within the legal framework of the so-called Kosovo.<sup>13</sup>

## THE LEGAL NATURE OF THE KOSOVO SPECIALIST CHAMBERS

Given the procedure by which the KSC and the SPO were established, questions may arise regarding the legal nature of these judicial institutions. Certain authors emphasize their hybrid nature (see: Cimiotta 2016), albeit without providing a clear legal foundation for such classification. Although the functioning of the KSC and SPO includes certain internationalized elements, such as the presence of international judges and a seat outside Kosovo, this alone does not suffice to qualify them as international or hybrid courts.

In criminal justice, one generally distinguishes between national, international, and hybrid courts and tribunals. Due to certain international elements, the KSC may resemble hybrid mechanisms such as the Special Court for Sierra Leone (International Criminal Law Services [ICLS] n.d., 9), the Special Tribunal for Lebanon, or the UNMIK Panels for Serious Crimes in Kosovo. The Special Court for Sierra Leone and the Special Tribunal for Lebanon were established pursuant to UN Security Council Resolutions 1315 (UNSC, S/RES/1315) and 1757 (UNSC,

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of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, dated January 26, 2016, and the Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, dated February 15, 2016. These agreements have not been registered with the UN Secretariat, as Kosovo is not a state under international law (see: Overheid.nl n.d.; Gajić 2023, 235).

<sup>13</sup> Knowing that the only relevant act regulating the status of Kosovo is UN Security Council Resolution 1244, Brussels is violating international law by treating Kosovo as an independent state. A vivid example of this is the exchange of notes with the so-called Republic of Kosovo concerning the formation of a court within the Kosovo legal system. However, the legitimacy of Brussels' position on Kosovo's independent status can be questioned, as five EU member states do not recognize Kosovo's independence. In this sense, it is noted that the EU has legally failed to create a common stance on the "Kosovo case," and that the establishment of EULEX was the only moment around which member states could agree (Jovanović 2013, 42–47).

S/RES/1757), respectively, while the UNMIK Panels were formed by Regulation 60/2000 of the UNMIK (UNMIK, REG/2000/60). A different model of hybrid justice is found in the Extraordinary Chambers in the Courts of Cambodia (ECCC), established by a bilateral agreement between the United Nations and the Government of Cambodia, and supported by UN General Assembly Resolution 57/228 (UNGA, A/RES/57/228A). These institutions were created to overcome the shortcomings of the ICTY and ICTR and to tailor the judicial response to local political realities, legal traditions, and limited resources. All of the above-mentioned hybrid bodies were created in a peacebuilding context, under the auspices or direct initiative of the United Nations. In contrast, the Kosovo Specialist Chambers and the Specialist Prosecutor's Office were established within a regional political and legal framework, with the European Union playing the leading role through its foreign and security policy. This key distinction sets the KSC and SPO apart from other hybrid judicial mechanisms.

The Kosovo Specialist Chambers consist of four judicial panels designed to parallel the national judicial system, encompassing chambers equivalent to the Basic Court, Court of Appeals, Supreme Court, and Constitutional Court. The Constitutional Court panel serves as the highest authority for interpreting the Constitution of Kosovo in matters within the jurisdiction of the KSC and the SPO (KSC n.d. a). Article 103(7) of the Constitution of Kosovo permits the establishment of "specialized courts," provided they are necessary and lawful, defined as "courts with a specifically delineated scope of jurisdiction, remaining [...] within the existing framework of the judicial system of the Republic of Kosovo and operating [...] in accordance with its principles" (Constitutional Court of the Republic of Kosovo [CCRK], No. K026/15). The KSC issue decisions "in the name of the people of Kosovo," operating under the sovereignty of the so-called Republic of Kosovo, as affirmed by the 2015 decision of the Constitutional Court of Kosovo (CCRK, No. K026/15). These institutions were established pursuant to the Law on Specialist Chambers and Specialist Prosecutor's Office, adopted by the Kosovo Assembly on August 3, 2015 (Law on Specialist Chambers and Specialist Prosecutor's Office 2015). The Specialist Chambers and Prosecutor's Office are temporary bodies mandated to prosecute crimes against humanity, war crimes, and other criminal offenses committed in Kosovo between January 1, 1998, and December 31, 2000 (Law on Specialist Chambers and Specialist Prosecutor's Office 2015, Art. 7).

The European Union's involvement in the establishment and functioning of the KSC and SPO has been primarily through the EULEX.<sup>14</sup> The Republic of Serbia supported the EULEX mandate but with reservations, particularly concerning Kosovo's status. Serbia insisted that EULEX should not replace the UNMIK, which operates under Chapter VII of the UN Charter, and that Kosovo's status should remain subject to UN and international law frameworks. The United Nations acknowledged that EULEX assumed "responsibilities in policing, judiciary, and customs under the general authority of the UN within the framework of UNMIK and pursuant to Security Council Resolution 1244" (UN 2008).

The KSC and SPO are composed exclusively of international judges appointed by the Head of the EULEX Mission, based on recommendations from an independent Selection Commission. This Commission includes two international judges with expertise in international criminal law and one internationally appointed official (KSC n.d. b). The international composition of the KSC and SPO reflects more the international nature of Kosovo's administration rather than the intrinsic character of these judicial bodies themselves (Gajić 2023, 240). Additionally, the name of this institution, the Kosovo Specialist Chambers, indicates its affiliation with the Kosovo national legal order, given that the name is not "Specialist Chambers *for* Kosovo", but rather "*of* Kosovo".

## **THE CASE OF THE SO-CALLED KLA BEFORE THE KOSOVO SPECIALIST CHAMBERS: THE PURSUIT OF JUSTICE?**

While awaiting the first-instance verdicts in the case currently pending before the Specialized Chambers of Kosovo against the former Prime Minister and President of the so-called Republic of Kosovo, Hašim Taçi, and his co-accused, this chapter will reflect on the current activities of the KSC and the SPO. By analyzing procedural documents,

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<sup>14</sup> The legal basis for the presence of the EULEX mission is a document entitled "Council Joint Action 2008/124/CFSP," adopted on February 4, 2008. This is the largest civilian mission ever established under the European Union's Common Security and Defence Policy, and its legal basis lies in Articles 14 and 25 of the Treaty on European Union (Williams 2016, 28).

this chapter will also attempt to shed light on the “judicial policy” pursued by this institution.

Regarding jurisdiction for the prosecution of crimes committed on the territory of Kosovo and Metohija, the question arises as to the necessity of establishing a new judicial body, given that at the time of the establishment of the KSC and SPO, the International Criminal Tribunal for the Former Yugoslavia was still actively carrying out its functions,<sup>15</sup> prosecuting the former Prime Minister of the so-called Kosovo and members of the KLA, including Ramuš Haradinaj, Fatmir Limaj, and others, for crimes committed during the Kosovo conflict.<sup>16</sup> The jurisdiction of the ICTY, as defined in Article 1 of the Tribunal’s Statute, encompasses the prosecution of persons responsible for “serious violations of international humanitarian law committed on the territory of the former Yugoslavia after 1 January 1991.” (UNSC, S/RES/827, Art. 1). This means that the territorial jurisdiction of the ICTY covers all former Yugoslav republics, including Kosovo and Metohija, which was an autonomous province of the Republic of Serbia. Furthermore, as stated in Article 1, the ICTY is competent to prosecute perpetrators of crimes committed after January 1, 1991 (UNSC, S/RES/827, Art. 1), which includes the period referred to in the Law on the Specialized Chambers of Kosovo and the Specialized Prosecutor’s Office of Kosovo, namely the period from 1998 to 2000 (Law on Specialist Chambers and Specialist Prosecutor’s Office 2015). The jurisdiction of the ICTY is also affirmed by UN Security Council resolutions, including Resolutions 1160 (UNSC, S/RES/1160), 1203 (UNSC, S/RES/1203), and 1207 (UNSC, S/RES/1207), which call for cooperation with the ICTY regarding investigations in Kosovo.

Currently, several cases are being heard before the KSC, with one of the key cases concerning Hašim Tači, the former Prime Minister of Kosovo and one of the leaders of the so-called KLA. Tači faces two charges under the Law on the Specialized Chambers of Kosovo. The first charge relates to war crimes and crimes against humanity

<sup>15</sup> The ICTY officially concluded its work on December 31, 2017. Following its closure, the remaining functions of the ICTY, including appellate proceedings and the supervision of sentence enforcement, were assumed by the International Residual Mechanism for Criminal Tribunals (IRMCT), which continues to operate in specific cases (UNSC, S/RES/1966).

<sup>16</sup> On the discussion regarding witnesses in this case, see, among others: Frontal.rs 2023.

committed during the 1998–1999 conflict in Kosovo and Metohija (KSC, KSC-BC-2020-06). The trial in this case began on April 3, 2023. Along with Taçi, Kadri Veseli, Redžep Selimi, and Jakup Krasnići are charged with direct involvement in the killings, torture, ill-treatment, enforced disappearances, and persecution of Serbian and other non-Albanian civilians (“opponents of the KLA”) within the framework of the KLA’s activities. The second case was initiated at the end of 2024 and involves charges of obstruction of justice and contempt of Court. According to the Indictment, between April and November 2023, while in detention, Taçi and his co-accused provided confidential information about witnesses to their associates and instructed them to influence testimonies in the main trial for war crimes (KSC, KSC-BC-2023-12).

Crimes for which Taçi and his co-accused are charged took place at several locations in Kosovo and Metohija and in northern Albania, with the victims being individuals referred to in the Indictment as “opponents,” or adversaries of the KLA (KSC, KSC-BC-2020-06, par. 16–17). It is undisputed that behind this unusual terminology lie civilians, i.e., individuals who did not actively participate in hostilities and did not belong to armed forces, the majority of whom were of Serbian descent, but also Roma and ethnic Albanians who did not approve of the terrorist acts of the so-called KLA (KSC, KSC-BC-2020-06, par. 32).

A particularly controversial aspect of the establishment of the new political order in Kosovo is the fact that the UN Security Council had identified the actions of the so-called KLA as acts of terrorism, as noted in UNSC Resolution 1160 dated March 31, 1998 (UNSC, S/RES/1160). This resolution called on the Serbian and Albanian leaderships to “condemn the use of extensive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the KLA or any other group of individuals and all external support for terrorist activities in Kosovo, including financing, weapons, and training” (UNSC, S/RES/1160). In the Indictment, Resolution 1160 is interpreted in such a way that it calls on the KLA to condemn the terrorist acts of the organization itself: “By 31 March 1998, the conflict had escalated to a degree that the United Nations (‘UN’) Security Council passed Resolution 1160, prohibiting the sale or supply of weapons and related materials to the FRY, calling upon the FRY to take measures to achieve a political solution to the situation in Kosovo, and urging the KLA to condemn terrorist actions and pursue their goals by peaceful means.” (KSC, KSC-BC-2020-06, par. 21).

For this reason, the SPO avoids classifying the nature of the KLA as a terrorist organization and states that the parties to the conflict were, on one hand, the Kosovo Liberation Army, described as “an organized armed group with a sufficient level of organization to control territory, plan and execute synchronized armed attacks and other offensive and defensive military operations” (KSC, KSC-BC-2020-06, par. 19), and on the other hand, “the forces of the FRY and the Republic of Serbia, including units of the Yugoslav Army, police, and other Ministry of Internal Affairs units, and other groups that fought on behalf of the FRY and Serbia (FRY forces)” (KSC, KSC-BC-2020-06, par. 18). Thanks to this formulation in the Indictment, the so-called KLA is promoted as a national liberation or insurgent movement, to which international law extends legal protection as a legitimate non-state entity.

The Republic of Serbia does not recognize the legal framework within which the KSC and SPO were established (the so-called Constitution of Kosovo), and thus any decision made by the KSC would be treated as illegal. The Republic of Serbia may assert its jurisdiction, conduct its own investigation, and prosecute those responsible, including members of the so-called KLA, before national courts, given that the crimes were committed on the territory of the Republic of Serbia and the perpetrators, members of the so-called KLA, were citizens of the Republic of Serbia. Any cooperation between the Republic of Serbia and the KSC or SPO would signify recognition of the Kosovo legal order, and thereby de facto recognition of the independence of the self-proclaimed state of Kosovo.

## CONCLUSION

The European Union’s policy, manifested through its support for the work of the Specialized Prosecutor’s Office and the Kosovo Specialized Chambers, results in the strengthening of institutional capacities and the legitimacy of Kosovo as an independent state. Such a practice raises the question of whether these mechanisms deliver justice or merely its institutionalized semblance. However, the key issues regarding Kosovo’s international legal status, including the possibility of its recognition as an independent state, cannot be resolved outside the framework of the UN Charter, i.e., outside the Security Council. According to Article 12 of the UN Charter, only the Security Council has the authority to take measures concerning situations that threaten

international peace and security, including deciding on status-related issues in disputed territories (Charter of the United Nations 1945, Art. 12).

Cassese argues that criminal justice rests on principles that transcend national or regional frameworks, as the interest in securing convictions is that of the entire international community (Cassese 1998, 6), as represented in UN bodies.<sup>17</sup> On the other hand, the establishment of universal jurisdiction in criminal justice carries the risk of creating a binding legal system for a “world state” (Gajić 2019, 102). In such a legal-political environment, we believe it would be best to leave criminal justice to national judicial bodies, in this case, the Prosecutor’s Office of the Republic of Serbia.<sup>18</sup>

The instrumentalization of the judiciary undermines trust in both state and international institutions and produces general legal uncertainty. In the context of transitional justice, trials for war crimes, crimes against humanity, and other serious crimes carry significance that exceeds the mere establishment of individual responsibility. Establishing the “official historical truth” and legitimizing political orders are often functions of shaping (new) national identities and historical narratives. In this way, the KSC and SPO operate not only in the legal but also in the political-symbolic realm, thus confirming the thesis of political justice as an extension of politics by other means.

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<sup>17</sup> Cassese, affirming Kelsen’s position on the necessity of international prosecution of crimes, presents numerous arguments in support of the claim that international criminal justice must be realized exclusively at the international, rather than domestic, level – among other reasons, because “most states view recourse to criminal trials as a political tactic rather than as a principled quest for justice” (Cassese 1998, 6).

<sup>18</sup> The competent judicial bodies are the Office of the War Crimes Prosecutor and the Higher Court in Belgrade. The modest results of these judicial bodies to date are available at the: Javno tužilaštvo za ratne zločine n.d.

## REFERENCES

- Assembly of the Republic of Kosovo<sup>19</sup>. 2014. “On Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Rule of Law Mission in Kosovo 2014.” *Official Gazette of The Republic Of Kosova*. Last accessed on July 30, 2025. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9476&langid=2>
- Bureau of Democracy, Human Rights, and Labor. 2009. “2008 Country Reports on Human Rights Practices – Kosovo.” *UNHCR*. Last accessed on July 29, 2025. <https://www.refworld.org/reference/annualreport/usdos/2009/en/66034>
- Capussela, Andrea Lorenzo. 2015. “Eulex’s Performance of Its Executive Judicial Functions.” *SSRN Scholarly Paper*. DOI: 10.2139/SSRN.2561856
- Cassese, Antonio. 1998. “Reflections on International Criminal Justice.” *The Modern Law Review* 61 (1): 1–10. DOI: 10.1093/jicj/mqr004
- Charter of the United Nations, June 26, 1945, 1 UNTS XVI.
- Chief Prosecutor of the Special Investigative Task Force. 2014. “Statement of the Chief Prosecutor of the Special Investigative Task Force.” *Council of the European Union*. Last accessed on July 29, 2014. [https://www.hlc-rdc.org/wp-content/uploads/2014/07/Statement\\_of\\_the\\_Chief\\_Prosecutor\\_of\\_the\\_SITF\\_EN.pdf](https://www.hlc-rdc.org/wp-content/uploads/2014/07/Statement_of_the_Chief_Prosecutor_of_the_SITF_EN.pdf)
- Cierco, Teresa, and Liliana Reis. 2014. “Eulex’s Impact on the Rule of Law in Kosovo.” *Revista de Ciencia Política (Santiago)* 34: 645–663. DOI: 10.4067/S0718-090X2014000300007
- Cimiotta, Emanuele. 2016. “The Specialist Chambers and the Specialist Prosecutor’s Office in Kosovo: The Regionalization of International Criminal Justice in Context.” *Journal of International Criminal Justice* 14 (1): 53–72. DOI: 10.1093/jicj/mqv083
- Consolidated version of the Treaty on the Functioning of the European Union [TFEU], OJ C 202, 7.6.2016, p. 1–388.
- Constitution of the Republic of Kosovo, “Official Gazette of the Republic of Kosovo”, K-09042008, April 9, 2008.

<sup>19</sup> References included in this manuscript do not imply taking a position on status of referenced speakers, which is, as previously stated, in accordance with the UN SC 1244, but serve an analytical purpose.

- Constitutional Court of the Republic of Kosovo [CCRK], No. K026/15 of April 15, 2015.
- Council of the European Union [CEU]. 2008. “Joint Action 2008/124/CFSP, Council Joint Action of 4 February 2008 on the European Union Rule of Law Mission in Kosovo (EULEX Kosovo).” *Official Journal of the European Union*. Last accessed on July 29, 2025. [https://eur-lex.europa.eu/eli/joint\\_action/2008/124/oj/hrv](https://eur-lex.europa.eu/eli/joint_action/2008/124/oj/hrv)
- Del Ponte, Carla. 2009. *Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity; A Memoir*. New York: Other Press.
- Doli, Dren. 2019. *The International Element, Statehood and Democratic Nation-building*. Cham: Springer Nature Switzerland.
- Đurković, Miša. 2022. *Mračni koridori moći*. Beograd: Catena Mundi, Institut za evropske studije.
- European External Action Service. n.d. “EU Projects in Bosnia and Herzegovina.” *Delegation of the European Union to Bosnia and Herzegovina & European Union Special Representative in Bosnia and Herzegovina*. Last accessed on March 30, 2025. [https://www.eeas.europa.eu/bosnia-and-herzegovina/eu-projects-bosnia-herzegovina\\_en?s=219](https://www.eeas.europa.eu/bosnia-and-herzegovina/eu-projects-bosnia-herzegovina_en?s=219)
- European Union Rule of Law Mission in Kosovo [EULEX]. 2009. *EULEX Izveštaj o programu 2009*. EULEX: Priština.
- Frontal.rs. 2011. “Slučaj Haradinaj: Ubio 30 svjedoka?” *Frontal.rs*. Last accessed on July 29, 2025. <https://www.frontal.rs/slucaj-haradinaj-ubio-30-svjedoka/>
- Gajić, Aleksandar, V. 2019. „O univerzalnosti međunarodnog krivičnog prava i prirodi i ulozi međunarodnog krivičnog pravosuđa.” U *Odgovornost i sankcija u krivičnom pravu – sa posebnim ostvrtom na međunarodno krivično pravo, tradicionalna tematska međunarodna naučna konferencija*, 100–108. Tara: Udruženje za međunarodno krivično pravo.
- Gajić, Aleksandar V. 2023. „Priroda i status Specijalizovanih veća i Specijalizovanog tužilaštva Kosova.” *Crimen* 13 (3): 231–246. DOI: 10.5937/crimen2203231G
- Hermann, Donald H.J. 2017. “Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice.” *Seattle Journal for Social Justice* 16 (1): 71–103.

- Human Rights Watch [HRW]. 2007. *World Report 2007*. New York: Human Rights Watch.
- Ilić, Milica. 2021. „Analiza savetodavnog mišljenja Međunarodnog suda pravde o Kosovu.” *Arhiv za pravne i društvene nauke* 116 (3–4): 227–248. DOI: 10.22182/apdn.342021.10
- International Court of Justice [ICJ], Accordance with the International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010, I.C.J. Reports 2010
- International Criminal Law Services [ICLS]. n.d. “Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions.” *Institute for International Criminal Investigations*. Last accessed on July 30, 2025. <https://iici.global/wp/wp-content/uploads/2024/05/icls-training-materials-sec-4-intl-courts.pdf>
- Ivanišević, Bogdan. 2008. *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*. New York: International Center for Transitional Justice.
- Javno tužilaštvo za ratne zločine. n.d. „Optužnice.” *Javno tužilaštvo za ratne zločine*. Last accessed on May 15, 2025. <https://www.tuzilastvorz.org.rs/sr-lat/predmeti/optu%C5%BEnice>
- Jovanović, Miodrag A. 2013. *Kosovo i Metohija - četiri pravno politička eseja*. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Justice Info. 2015. “European Court in view on Kosovo organ trafficking.” *Justice Info*. Last accessed on March 6, 2025. <https://www.justiceinfo.net/en/2509-european-court-in-view-on-kosovo-organ-trafficking.html>
- Kirchheimer, Otto. 1961. *Political Justice: The Use of Legal Procedure for Political Ends*. Princeton: Princeton University Press.
- Kosovo Online. 2025. “Office for Kosovo and Metohija: Renew Investigation into Attack on Niš Express Bus near Podujevo.” *Kosovo Online*. Last accessed on July 29, 2025. <https://www.kosovo-online.com/en/news/politics/office-kosovo-and-metohija-renew-investigation-attack-nis-express-bus-near-podujevo>
- Kosovo Specialist Chambers [KSC]. n. d. a. “The Kosovo Specialist Chambers in a Nutshell.” *Kosovo Specialist Chambers and Specialist Prosecutor’s Office*. Last accessed on July 29, 2025. [https://www.scp-ks.org/sites/default/files/public/content/220819\\_ksc\\_in\\_a\\_nutshell\\_a5\\_eng\\_online.pdf](https://www.scp-ks.org/sites/default/files/public/content/220819_ksc_in_a_nutshell_a5_eng_online.pdf)

- Kosovo Specialist Chambers [KSC]. n. d. b. “The Panels.” *Kosovo Specialist Chambers*. Last accessed on July 29, 2025. <https://www.scp-ks.org/en/specialist-chambers/chambers>
- Kosovo Specialist Chambers [KSC]. 2017. “Rules of Procedure and Evidence.” *Kosovo Specialist Chambers*. Last accessed on July 29, 2025. [https://www.scp-ks.org/sites/default/files/public/content/documents/ksc-bd-03-rev2-rulesofprocedureandevidence\\_0.pdf](https://www.scp-ks.org/sites/default/files/public/content/documents/ksc-bd-03-rev2-rulesofprocedureandevidence_0.pdf)
- Kosovo Specialist Chambers [KSC], Case No. KSC-BC-2020-06, Prosecutor v. Hashim Thaçi et al. Annex 1 to Public Redacted Version of ‘Indictment’. Indictment of 3 September 2021.
- Kosovo Specialist Chambers [KSC], Case No. KSC-BC-2023-12, Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi, Case No. KSC-BC-2023-12, Indictment confirmed on November 29, 2024.
- Law on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, “Official Gazette of the Republic of Kosova,” no. 32, May 15, 2014.
- Law on Specialist Chambers and Specialist Prosecutor’s Office, “Official Gazette of the Republic of Kosova,” No. 27, August 31, 2015.
- Lukić, Svetlana, Ivona Lađevac, i Ana Jović-Lazić. 2010. *Međunarodno prisustvo na Kosovu i Metohiji 1999–2009*. Beograd: Institut za međunarodnu politiku i privredu.
- Novosti. 2014. „Albanska Oluja je proterala 4000 Srba.” *Novosti*. March 16, 2014. Po<https://www.novosti.rs/вести/насловна/досије.407.html:482924-Albanska-Oluja-je-proterala-4000-Srba>
- Office of the Prime Minister. 2008. “Declaration of Independence.” *Office of the Prime Minister*. Last accessed on July 29, 2025. <https://kryeministri.rks-gov.net/en/news/kosovo-declaration-of-independence/>
- Organization for Security and Cooperation in Europe [OSCE]. 2004. “Kosovo Verification Mission Report.” *Organization for Security and Cooperation in Europe*. Last accessed on July 29, 2025. <https://www.osce.org/files/f/documents/c/c/32381.pdf>
- Organization for Security and Cooperation in Europe [OSCE]. 2012. “Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions.” *Organization for Security and Cooperation*

- in Europe*. Last accessed on July 29, 2025. <https://www.osce.org/files/f/documents/e/8/87138.pdf>
- Overheid.nl. n.d. "Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands." *Treaty Database*. Last accessed on July 30, 2025. <https://verdragenbank.overheid.nl/en/Treaty/Details/013132>
- Parliamentary Assembly of the Council of Europe [PACE]. 2011. "Inhuman treatment of people and illicit trafficking in human organs in Kosovo, Doc. 12462." *PACE*. Last accessed on March 20, 2025. <https://www.refworld.org/reference/countryrep/coepace/2011/en/78267>
- Parliamentary Assembly of the Council of Europe [PACE]. 2024. "Application by Kosovo for membership of the Council of Europe, Doc. 15958." *PACE*. Last accessed on July 29, 2025. <https://www.ecoi.net/en/file/local/2110362/doc.+15958.pdf>
- Proroković, Dušan, and Ivona Lađevac. 2018. "Kosovo case and the role of the United Nations." In *Kosovo: sui generis or precedent in international relations*, 170–183. Belgrade: Institute of International Politics and Economics.
- Randjelovic, Ninoslav. 2025. Holy Places Demolished – Kosovo 2025 [Video]. *YouTube*. Last accessed on July 29, 2025. [https://youtu.be/ir3iH\\_7pY\\_4](https://youtu.be/ir3iH_7pY_4)
- Rheinstein, Max. 1962. "Review of Political Justice: The Use of Legal Procedure for Political Ends by Otto Kirchheimer." *University of Chicago Law Review* 30 (1): 197–203.
- Ristivojević, Branislav. 2011. „Uticaj politike na razvoj i uobličavanje međunarodnog krivičnog prava." *Anali Pravnog fakulteta u Beogradu* 59 (1): 205–222.
- Surlić, Stefan, and Andrijana Lazarević. 2023. „Princip teritorijalnog integriteta: političke posledice traganja za finalnim statusom Kosova i Metohije." *Srpska politička misao* 80 (2): 115–131. DOI: 10.5937/spm80-44429
- United Nations [UN]. 2008. *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo S/2008/692*. New York: United Nations.
- United Nations [UN]. 2010. "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice." *United Nations*.

- Last accessed on July 29, 2025. <https://digitallibrary.un.org/record/682111?v=pdf>
- United Nations [UN]. 2023. “Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice: A Strategic Tool for People, Prevention and Peace.” *United Nations*. Last accessed on March 6, 2026. <https://peacemaker.un.org/sites/default/files/document/files/2024/03/202307guidancenote-transitionaljusticeen.pdf>
- United Nations General Assembly [UNGA], A/RES/57/228A, Resolution 57/228 (2002) Adopted by the General Assembly.
- United Nations Interim Administration Mission in Kosovo [UNMIK], REG/2000/60, On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission.
- United Nations Interim Administration Mission in Kosovo [UNMIK], REG/2000/64, On the Assignment of International Judges/Prosecutors and/or Change of Venue.
- United Nations Interim Administration Mission in Kosovo [UNMIK]. 2016. “The Human Rights Advisory Panel: History and Legacy, Kosovo, 2007-2016: Final Report.” *United Nations Interim Administration Mission in Kosovo*. Last accessed on July 29, 2025. [https://unmik.unmissions.org/sites/default/files/hrap\\_final\\_report\\_final\\_version\\_30\\_june\\_2016.pdf](https://unmik.unmissions.org/sites/default/files/hrap_final_report_final_version_30_june_2016.pdf)
- United Nations Security Council [UNSC]. 2004. “March violence in Kosovo ‘huge setback’ to stabilization, reconciliation, under-secretary-general for peacekeeping tells Security Council.” *United Nations Security Council*. Last accessed on July 29, 2025. <https://press.un.org/en/2004/sc8056.doc.htm>
- United Nations Security Council [UNSC], S/RES/827, Resolution 827 (1993) Adopted by the Security Council at its 3217<sup>th</sup> meeting, on May 25, 1993.
- United Nations Security Council [UNSC], S/RES/1160, Resolution 1160 (1998) Adopted by the Security Council at its 3868<sup>th</sup> meeting, on March 31, 1998.
- United Nations Security Council [UNSC], S/RES/1203, Resolution 1203 (1998) Adopted by the Security Council at its 3937<sup>th</sup> meeting, on October 24, 1998.

- United Nations Security Council [UNSC], S/RES/1207, Resolution 1207 (1998) Adopted by the Security Council at its 3944<sup>th</sup> meeting, on November 17, 1998.
- United Nations Security Council [UNSC], S/RES/1244, Resolution 1244 (1999) Adopted by the Security Council at its 4011<sup>th</sup> meeting, on June 10, 1999.
- United Nations Security Council [UNSC], S/RES/1315, Resolution 1315 (2000), Adopted by the Security Council at its 4186<sup>th</sup> meeting, on August 14, 2000.
- United Nations Security Council [UNSC], S/RES/1757, Resolution 1757 (2007), Adopted by the Security Council at its 5685<sup>th</sup> meeting, on May 30, 2007.
- United Nations Security Council [UNSC], S/RES/1966 (2010), Resolution 1966 (2010), Adopted by the Security Council at its 6463<sup>rd</sup> meeting, on December 22, 2010.
- Williams, Sarah. 2016. "The Specialist Chambers of Kosovo: The Limits of Internationalization." *Journal of International Criminal Justice* 14 (1): 25–51. DOI:10.1093/jicj/mqv081

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## **СПЕЦИЈАЛИЗОВАНА ВЕЋА КОСОВА\*: НАСТАНАК, ПРАВНА ПРИРОДА И ПОЛИТИЧКА УЛОГА У КОНТЕКСТУ ТРАНЗИЦИОНЕ ПРАВДЕ**

### **Резиме**

Специјализована већа Косова (СВК) заједно са Канцеларијом специјалног тужиоца (КСТ) чине јединствену правосудну институцију, која функционише на територији Аутономне покрајине Косово и Метохија, која се налази под привременом међународном управом успостављеном Резолуцијом 1244 Савета безбедности УН. Успостављање и рад СВК и КСТ превазилазе оквире утврђене међународним правом које одређује Косово и Метохију у саставу Републике Србије, будући да проистиче из унутрашњег правног поретка самопроглашене „државе Косово”. СВК и КСТ имају мандат да истраже и процесуирају злочине учињене на територији Косова и Метохије у периоду од 1998. до 2000. године. Формално сасвим интегрисани у косовски правосудни систем, ови органи су успостављени као резултат спровођења обавеза и препорука Савета Европе и Европске уније. Рад ових правосудних органа карактерише изванредан степен интернационализације, који отвара дебату о њиховој правној природи. Наиме, да ли је претежни карактер СВК и КСТ хибридни или национални. Међутим, у раду се објашњава да интернационализујући елементи попут иностраних судија нису довољни чиниоци који један суд чине међународним. Управо су међународне судије и други елементи, одраз међународне природе управе на Косову и Метохији. Правна природа и институционални оквир СВК и КСТ одређују карактеристике, рад и класификацију ових органа. У том контексту, рад се бави анализом легалности њиховог оснивања и функционисања, као и оценом досадашњег рада и „правосудне политике” коју воде Суд и Тужилаштво, уз разматрање појединих јуриспруденцијалних изазова са којима се

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суочавају. Анализиране су и кључне одреднице поступака који се воде пред СВК, како би се извео закључак о доследности досадашњег рада. Методолошки оквир рада подразумева нормативни и критички метод, са циљем утврђивања правне природе и преиспитивања рада ових институција, посредством анализе међународних правних инструмената. Поред позитивноправног приступа, у раду је изложен и критички теоријски оквир, кроз појмове транзиционе и „политичке правде”.

**Кључне речи:** Специјализована већа Косова, ЕУ, Косово и Метохија, транзициона правда, кривична одговорност

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