



**RE-ESTABLISHMENT AND REFORM OF THE JUSTICE SYSTEM IN KOSOVO  
1999 – 2011**

**A CONTEXT ANALYSIS**

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Report on:

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## PREFACE

This is the first KCSS research paper which elaborates the developments in the Kosovo's judicial system. It is launched within the scope of KCSS strategic vision for 2011-2013 in expanding the research capacities also in a justice related matters in order to complement the research activities in the security issues. The team would like to acknowledge the support of Open Society Foundation – Think Tank Fund, for making possible the research and release of this publication. Apart from that, it is worthwhile mentioning the overall institutional support of the Think Tank Fund in strengthening the capacities and skills of KCSS researchers.

The publication “Re-Establishment and Reform of the Justice System in Kosovo (1999-2011)” is a context analysis which holistically analyzed the key political and security developments that influenced the consolidation of Justice System in Kosovo. It is divided in several parts in order to reflect the driven factors as well as the main actors throughout the period of twelve years. Furthermore, it pays particular attention towards the legal framework regulating the justice system, the reserved competencies of international presence(s) in Kosovo and the justice system in the North. Nevertheless, having in mind the complex sector and the diverse mechanisms, it was not the intention of the researchers to deepen the analysis in some specific areas of justice but rather to provide a broader overview. In fact, this research is expected to serve as the basis for upcoming research papers of KCSS aiming to address more specifically the important aspects in the broader field of rule of law.

The paper shall serve as reliable source for the students, researchers and the policy makers willing to have a general picture on the developments in this sector.

The KCSS Team

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## LIST OF ABBREVIATIONS

ACPJA	Advisory Council on Provisional Judicial Appointments
CFSGK	Constitutional Framework for Self-Government in Kosovo
CRK	Constitution of the Republic of Kosovo
EJS	Emergence Judiciary System
ESDP	European Security and Defense Policy
EU	European Union
EULEX	European Union – Rule of Law Mission
EUSR	European Union Special Representative
ICR	International Civilian Representative
IJPC	Independent Judicial and Prosecutorial Commission
JIAS	Join Interim Administrative Structures
KDPP	Kosovo Democratic Progress Party
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KJPC	Kosovo Judicial and Prosecutorial Council
KSPO	Kosovo Special Prosecutor’s Office
KTA	Kosovo Trust Agency
KTC	Kosovo Transitional Council
LBD	United Democratic Movement
LDK	Democratic League of Kosovo
OSCE	Organization for Security and Cooperation in Europe
RJS	Reforming of Justice System
SCK	Supreme Court of Kosovo
SPRK	Special Prosecution Office of Republic of Kosovo
SRSR	Special Representative of Secretary General
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations – Mission in Kosovo
UNSC	United Nations Security Council

## INTRODUCTION

Effective rule of law was and will remain critical for Kosovo to develop political, economic and social stability and security. Key to ensuring effective rule of law is a functioning justice system. The way such justice system is organized will be the foundations which will determine if and to what extent the justice system will be able to deliver and fulfill its role. The present brief outline of the development of the justice system in Kosovo since 1999 attempts to sketch out the major policy lines adopted by UNMIK and later by the Republic of Kosovo to structure and organized the justice system in view of the problems, challenges and shortcomings that rule of law is confronted with in Kosovo.

This historical outline is based on the thought that any form of political, administrative and judicial organization reflects the problems and challenges of its time, which it attempts to address by certain organizational forms. However, with time passing, the original purposes and policies tend to be overshadowed by new problems and challenges to be addressed by organizations, which were designed in a different historic context. In order to properly understand existing judicial institutions and bodies, it is important to understand the historic context which shaped their formation and structure. A reform of existing institutions cannot be undertaken without simultaneously taking into consideration the 'past purposes' and the 'current challenges' of such institutions. For this reason, this outline attempts to put each phase of the development of Kosovo's justice system into the political, historic and legal context of its time, thereby trying to show the original purposes and ideas which led to the formation of the justice system we know today.

This brief outline will cover the period from 1999, when UNMIK was deployed to provide an interim administration of Kosovo through the present times, when the justice system operates under the authority of the Constitution of the Republic of Kosovo. This period is sub-divided into four major periods, i.e. the establishment of an emergency justice system by UNMIK (June to December 1999), the justice system under the Joint Interim Administrative Structure (January 2000 to May 2001), the justice system under the Constitutional Framework for Self-Government in Kosovo (May 2001 to February 2008), and the justice system under the Constitution of the Republic of Kosovo (February 2008 to present). Each period is then further sub-divided with certain legal or political landmark events being the anchor for such sub-division.

The outline is primarily based on an assessment of legal instruments addressing matters pertaining to the organization of the justice system. These are first and foremost regulations and administrative directives issued by the SRSG, laws passed by the Provisional Institutions of Self-Government and promulgated by the SRSG, and laws adopted by the Republic of Kosovo. Most of the assessment of the underlying justice sector policies is derived from reports submitted by the Secretary-General to the Security Council, which provide a rich and profound source for tracing the development of Kosovo and its political system since June 1999 until present times.

In order to keep focused on a mere overview of the development of the justice system and the underlying policies, many important elements of the justice system, apart from just the organizational structure, had to be dealt with very briefly or even blended out, e.g. forensics, international judicial cooperation, legal education etc. However, this outline is meant to serve a purpose beyond that of mere

information of the main lines of organizational development of the justice system. It is meant to set the framework for further evaluation by the Kosovar Center for Security Studies of the performance and efficiency of the justice system, which will follow in subsequent studies. The reader should thus consider this paper a first and introductory chapter of a series of papers on this subject.

## **DEPLOYMENT OF UNMIK AND “EMERGENCY JUDICIAL SYSTEM” (June to December 1999)**

### **UNMIK Structure**

On 10 June 1999, the Security Council of the United Nations Organization adopted UNSC resolution 1244 (1999), authorizing the Secretary-General to establish an international presence in Kosovo in order to provide an interim administration for Kosovo 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.

Pursuant to resolution 1244, an interim civil administration authority, known as the United Nations Interim Administration Mission in Kosovo (UNMIK), was established and vested with authority over the territory and people of Kosovo. UNMIK was composed of four main components, lead by the United Nations, which was responsible for civil administration, and supported by UNHCR (humanitarian affairs), OSCE (institution building) and the EU (reconstruction).

All legislative and executive powers, including the administration of the judiciary, were vested in the Special Representative of the Secretary-General (SRSG), as the highest international civilian officer of UNMIK. The SRSG had the authority to appoint any person to perform functions in the interim civil administration, including the judiciary, and to remove such persons if their service was found to be incompatible with the mandate and the purposes of the interim civil administration. Further, the SRSG was authorized to change, repeal or suspend existing laws to the extent necessary for the carrying out of his functions, or where existing laws were incompatible with the mandate, aims and purposes of the interim civil administration. The SRSG was also authorized to issue legislative acts in form of regulations, which would remain in force until repealed by the SRSG.

The SRSG was supported by a Principal Deputy SRSG, and each component was headed by a Deputy SRSG drawn from the international organization responsible for the respective component. While the Deputy SRSG's retained overall responsibility for the activities falling under their responsibility, the SRSG retained the final authority over all components of UNMIK and was authorized to direct the activities of each component to ensure a coherent implementation of UNMIK's mission objectives.

The SRSG was supported by the Executive Committee and an Executive Office, including staff to advise the SRSG on political, legal and economic matters.

Soon after UNMIK's deployment, the SRSB established the Kosovo Transitional Council (KTC), which brought together all major political parties and ethnic groups in Kosovo. The establishment of the KTC was considered an initial step towards the creation of a framework of wider and more inclusive democratic structures covering all aspects of life in Kosovo.

## **“Emergency Judicial System”**

Upon deployment, UNMIK reported to have encountered a situation where Kosovo was a scene of chaos, economic ruin, extensive destruction, lawlessness, widespread retribution, and, in many parts, largely empty of its population. According to UNMIK, the security problem in Kosovo was largely a result of the absence of law and order institutions and agencies. The judiciary was not functioning since many of its previous Kosovo Serb staff had departed, and Kosovo Albanian or other personnel either had not yet returned to Kosovo or had not yet been identified. As a matter of priority, the SRSB had taken immediately upon deployment initial steps to re-establish a multi-ethnic and democratic judicial system.

As a first step, the SRSB issued three emergency decrees, one on the establishment of the *Joint Advisory Council on Provisional Judicial Appointments*, one on its membership, and the third on the appointment of four prosecutors, two investigating judges and a three-judge panel. The “emergency judicial system” was initiated on 30 June 1999 with the opening of the District Court in Pristina, followed by the opening of courts in Prizren, Peja, Gjilan and Mitrovica, and supported by mobile courts. After the initial appointments, the SRSB, following consultations with the Joint Advisory Council on Provisional Judicial Appointments, appointed 36 judges and 12 prosecutors on a provisional basis to serve in this emergency judicial system.

Within the UNMIK structure, the SRSB established the *Judicial Affairs Office*, which, originally, was responsible for (i) the administration of courts, prosecution services and prisons, (ii) the development of legal policies, (iii) the review and drafting of legislation, and (iv) the assessment of the quality of justice in Kosovo. However, shortly thereafter, the development of legal policies and the review and drafting of legislation was transferred to the *Legal Adviser of the SRSB*. The Judicial Affairs Office remained responsible only for operational aspects of the judicial system.

Further to that, the SRSB established a *Court of Final Appeal*, which would have the powers of the Supreme Court of Kosovo as regards appeals against decisions of district courts and until such time that the Supreme Court is re-established. The *Public Prosecutor's Office* was re-established through the appointment of a Chief Public Prosecutor and a Deputy Public Prosecutor. The initial appointments to the Court of Final Appeal and the Public Prosecutor's Office were made by the SRSB after consultations with the Joint Advisory Council on Provisional Judicial Appointments.

In September 1999, the SRSB established the *Advisory Judicial Commission*, which replaced the Joint Advisory Council on Provisional Judicial Appointments. The Advisory Judicial Commission was composed of eight local and three international experts selected and appointed by the SRSB. The Advisory Judicial Commission was responsible for inviting applications of legal professionals for service as judges or prosecutors, for reviewing individual applications, and making recommendations to the SRSB for appointment of candidates as judges or prosecutors. The Advisory Judicial Commission was also

responsible for advising the SRSG on matters related to complaints against judges and prosecutors. The SRSG remained the authority responsible for the appointment and dismissal of judges and prosecutors. In November 1999, the SRSG extended the responsibilities of the Advisory Judicial Commission to also advise the SRSG on matters related to the appointment of lay judges and any complaints against them.

Together with the establishment of the Advisory Judicial Commission, the SRSG established a *Technical Advisory Commission on Judiciary and Prosecution Service*, which was composed of ten local and five international members selected and appointed by the SRSG. The function of the Technical Advisory Commission on Judiciary and Prosecution Service was to assess the present and long-term requirements of Kosovo for the prosecution service and as regards the number, levels and categories of judicial bodies, and to advise the SRSG on the re-establishment of the Supreme Court of Kosovo. In early 2000, the Technical Advisory Commission on Judiciary and Prosecution Service proposed the establishment of a war and ethnic crimes court. However, this idea was never seriously pursued by UNMIK and eventually faded away.

At the end of 1999, the emergency judicial system had 301 judges and prosecutors and 238 lay judges. According to UNMIK, judges, prosecutors and lawyers, especially the judges and prosecutors of the emergency judicial system, had faced considerable pressure and threats in the course of their duties. UNMIK admitted formally, by the end of 1999, that preserving a multi-ethnic judiciary was becoming increasingly difficult. It also reported that a growing atmosphere of fear imperiled efforts to create the rule of law. Witnesses to human rights violations frequently refused to provide information to the police, or if they did, later retracted their testimony or did not appear for court hearings. Judges and prosecutors were receiving threats demanding that they do not pursue investigations against certain suspects or that they release them, despite compelling incriminating evidence gathered by KFOR or UNMIK Police. Impunity, so UNMIK, was emerging as a problem which undermined the substantial efforts to build an independent legal system. Enhancing security measures to protect judges and prosecutors proved to be another challenge

## THE END OF PARALLEL STRUCTURES – JOINT INTERIM ADMINISTRATIVE STRUCTURE (January 2000 to May 2001)

### **Establishment of the Joint Interim Administrative Structure**

On 15 December 1999, the leaders of the Kosovo Democratic Progress Party (PPDK), the Democratic League of Kosovo (LDK) and the United Democratic Movement (LDB) agreed to participate in the establishment by UNMIK of a Kosovo-UNMIK Joint Interim Administrative Structure (JIAS). JIAS would respect and operate under resolution 1244 and recognize the legislative and executive authority of the SRSG. Under the JIAS Agreement, all parallel structures of an executive, legislative or judicial nature were required to be dissolved by 31 January 2000. UNMIK reported that for the first time, after ten years of a “dual” system of governance and administration, a formal commitment to dissolve parallel structures was received from the Kosovo Albanian leadership. All parallel Kosovo Albanian bodies

declared that they had ceased to exist on 31 January 2000, including the “Provisional Government of Kosovo” and the “Presidency of the Republic of Kosovo”.

The JIAS consisted of the *Kosovo Transitional Council*, the *Interim Administrative Council* and 20 *Administrative Departments*. The Kosovo Transitional Council continued its role as a consultative body, while the Interim Administrative Council was responsible for making recommendations to the SRSG for amendments to the applicable law, the issuance of new regulations and policy guidelines for the Administrative Departments.

Each Administrative Department was headed by two Co-Heads. The UNMIK Co-Head and the local Co-Head were appointed by the SRSG, and with respect to the local Co-Head following consultations with the Interim Administrative Council. While the two Co-Heads shared the responsibilities of each Administrative Department, the UNMIK Co-Head retained a unique and non-delegable responsibility to ensure that the provisions and policy of resolution 1244 were implemented throughout JIAS. Each Administrative Department was under the supervision of a Deputy SRSG. Any policy recommendations were made by the Administrative Departments to the Interim Administrative Council through the respective Deputy SRSG.

## **Justice System under JIAS**

In March 2000, the SRSG established the *Administrative Department of Justice* being responsible for the overall management of matters relating to the judicial system and the correctional service and the implementation of policy guidelines formulated by the Interim Administrative Council in matters relating to the judicial system and the correctional service. More specifically, the Administrative Department of Justice, operating under the supervision of the Deputy SRSG for Civil Administration, was responsible to:

- Implement the overall strategy and policies for the development, organization and proper functioning of the judicial system and the correctional service within the framework of the Kosovo Consolidated Budget;
- Propose regulations on the development, organization and proper functioning of the judicial system and the correctional service;
- Coordinate with other Administrative Departments on matters pertaining to the judicial system and the correctional service;
- Cooperate with appropriate organizations in respect of independent monitoring of the judicial system and the correctional service;
- Provide information and statistics on the judicial system and the correctional service, as appropriate;
- Protect confidential personal data relating to the judicial system and the correctional service;
- Facilitate the provision of financial, technical, personnel and material resources for the proper functioning of the judicial system and the correctional service;
- Facilitate cooperation in judicial and correctional matters with appropriate entities inside and outside Kosovo;
- Assist in the training of judges, prosecutors, lawyers, public attorneys, court interpreters, translators, registrars, judicial support personnel and other relevant personnel;

- Assist in the selection, appointment, assignment and removal from office of registrars and judicial support personnel;
- Assist in the recruitment, training and evaluation of personnel for the correctional service;
- Provide for internal prison inspections and management audits of the correctional service.

The final authority for the appointment of judges and prosecutors, subject to recommendation by the Advisory Judicial Commission, as well as final decisions on policy and legislation remained with the SRSG. The Administrative Department of Justice was therefore vested with primarily operational responsibility for the judicial system.

In view of unrest in Mitrovica and the break-down of security and justice structures there, the SRSG appointed for the first time in February 2000 and international judges and an international prosecutor to the District Court of Mitrovica. In May 2000, the SRSG extended the regulation authorizing him to appoint international judges and prosecutors to all courts in Kosovo. By the end of 2000, ten international judges and three international prosecutors were serving in courts throughout Kosovo, including one international judge with the re-established Supreme Court of Kosovo. The appointment of international judges and prosecutors beyond Mitrovica was justified by UNMIK as a measure to build confidence in the judicial system. The particular nature of war and ethnically related crimes and the number of such cases in Kosovo demanded that panels with both local and international components try them.

One of UNMIK's key priorities during 2000 was to increase the capacity of Kosovo's re-established judicial system by allocating human and material resources to it. In August 2000, additional 136 judges and prosecutors and 309 lay judges had been appointed by the SRSG, while 56 courts and 13 prosecutors' offices were operational. UNMIK carefully noted increased activities due to such allocation of resources and expected this trend to continue. During 2000, UNMIK took additional supportive measures to enhance the capacities of the judiciary, including the establishment of the Kosovo Judicial Institute, the establishment of the Ombudsperson Institution, the establishment of the Kosovo Law Center, and providing support to the Faculty of Law at the University of Prishtina.

In view of increasing inter-ethnic and politically motivated violence emerging at the end of 2000, the SRSG adopted in early 2001 a policy whose objectives were (i) maintenance of effective international control and oversight, (ii) enhanced mission capacity to counter the most serious crimes that threaten peace-building efforts, and (iii) closely coordinated development of the institutional foundations of all criminal justice institutions. International judicial support would take the lead in processing the large number of war, ethnic and organized crime. Under this policy, the performance of current judges and prosecutors would undergo rigorous assessment.

In April 2001, the SRSG established the *Kosovo Judicial and Prosecutorial Council (KJPC)*, which replaced the Advisory Judicial Commission that had ceased to function in December 2000. The KJPC was responsible for advising the SRSG on matters related to the appointment of judges, prosecutors and lay-judges, and hearing complaints and taking certain disciplinary action against any judge, prosecutor and lay-judge. The KJPC was composed of nine local and international members selected and appointed by the SRSG. The KJPC and its members would be independent and impartial in the exercise of their functions.

The KJPC would invite applications from legal professionals for service as judges, prosecutors and lay-judges; it would review such applications and make recommendations for appointment to the SRSJ. The final authority for appointing and dismissing judges, prosecutors and lay-judges remained with the SRSJ.

Complaints against a judge, a prosecutor or a lay-judge could be submitted to the KJPC only by the SRSJ or by the Co-Heads of the Administrative Department of Justice. Disciplinary proceedings would be initiated by the KJPC upon the submission of such a complaint or upon a decision of the KJPC on its own to initiate such proceedings. Investigations would be conducted by a member of the KJPC or by the Judicial Inspection Unit, if so requested by the KJPC. Following investigations, the KJPC could make decisions with respect to reprimand, warning and temporary suspension, while decisions on removal from office or function were reserved for the SRSJ. The first disciplinary hearings were conducted in late 2001 resulting in the formal reprimand of a judge and the removal from office of another.

The *Judicial Inspection Unit*, already mentioned above, was established in May 2001 as part of the Administrative Department of Justice. Apart from conducting disciplinary investigations, if so requested by the KJPC, the Judicial Inspection Unit was also responsible for (i) analyzing and evaluating the functioning of the courts and the public prosecutors' offices, (ii) analyzing and evaluating specific judicial or prosecutorial activities and (iii) making recommendation to the Co-Heads of the Administrative Department of Justice thereto.

## **CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF-GOVERNMENT (May 2001 – February 2008)**

### **Establishing the Provisional Institutions of Self-Government**

In May 2001, the SRSJ promulgated the Constitutional Framework for Provisional Self-Government in Kosovo (Constitutional Framework), which created the Provisional Institutions of Self-Government (PISG) consisting of the Assembly of Kosovo, the President of Kosovo, the Government, Courts and other bodies and institutions as established in the Constitutional Framework. The Administrative Departments, which were established under JIAS, were transformed into Ministries as part of the Government of Kosovo and headed by the Prime Minister. Without prejudice to the final legislative and executive authority of the SRSJ under resolution 1244, the PISG were transferred certain responsibilities, including the preparation of legislation, though the final authority for promulgating regulations remained with the SRSJ.

In the field of judicial affairs, the following responsibilities were transferred to the PISG:

- Making decisions regarding the appointment of judges and prosecutors;
- Exercising responsibilities regarding the organization and proper functioning of the courts, within existing court structures;
- The provision, development and maintenance of court and prosecutorial services;

- The provision of technical and financial requirements, support personnel and material resources to ensure the effective functioning of the judicial and prosecutorial systems;
- The training of judicial personnel in cooperation with the OSCE;
- The organization of examinations for qualifications of judges, prosecutors, lawyers and other legal professionals through an independent professional body;
- The appointment, training, disciplining and dismissing of members of judicial support staff;
- Ensuring coordination on matters pertaining to the judicial system and the correctional service;
- Cooperating with appropriate organizations in respect of independent monitoring of the judicial system and the correctional service;
- Providing information and statistics on the judicial system and the correctional service;
- Protecting personal data relating to the judicial system and the correctional service;
- Ensuring cooperation in judicial and correctional matters with bodies inside Kosovo;
- Assisting in the recruitment, training and evaluation of personnel for the correctional service.

On the other hand, the following powers were reserved for the SRSG:

- Exercising final authority regarding the appointment, removal from office and disciplining of judges and prosecutors;
- The assignment of international judges and prosecutors;
- Exercising powers and responsibilities of an international nature in the legal field;
- Exercising authority over law enforcement institutions and the correctional service.

According to UNMIK, the recognition that law enforcement and justice required sustained international oversight was reflected in the Constitutional Framework, which kept the areas of justice and police under the sole purview of the SRSG. The responsibilities which were transferred to the PISG in the field of justice were vested in the *Ministry of Public Services*. The Constitutional Framework defined the court system to be comprised of the Supreme Court, District Courts, Municipal Courts and Minor Offense Courts. There would also be the Office of the Public Prosecutor as well as offices of district and municipal prosecutors. Judges and Prosecutors would be appointed by the SRSG upon proposal by the Kosovo Judicial and Prosecutorial Council (KJPC) and endorsed by the Assembly of Kosovo. Also, decisions on the promotion, transfer and dismissal of judges and prosecutors would be taken by the SRSG based on recommendations of the KJPC or his own initiative.

An interesting novelty introduced by the Constitutional Framework was the *Special Chamber of the Supreme Court on Constitutional Framework Matters*. This Special Chamber resembled a Constitutional Court since it had jurisdiction to decide, under specific circumstances,

- whether a law adopted by the Assembly was compatible with the Constitutional Framework,
- disputes between the PISG on the extent of their rights and obligations under the Constitutional Framework;
- whether a decision of the PISG violated the independence and responsibilities of independent bodies;
- on the immunity of a member of the Assembly, the Government or the President of Kosovo.

However, this Special Chamber was never staffed and made operational, and thus remained a “court on paper” only.

Another Special Chamber, i.e. the *Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters* was established in June 2002 to adjudicate claims relating to the decisions or

actions of the Kosovo Trust Agency and the related privatization process. The judges of this Special Chamber were appointed by the SRSJ upon consultation with the President of the Supreme Court.

For the purpose of administering the reserved powers in the area of justice, the SRSJ established the “*Police and Justice Pillar*”, also known as “Pillar I”, headed by a newly created position of a Deputy SRSJ. The objectives of “Pillar I” were as follows:

- To consolidate a law and order structure that was responsive to peacekeeping and peace-building objectives and that would contribute to the promotion of the rule of law institutions in Kosovo;
- To maintain effective international control and oversight over police and justice activities during the medium term, so that an effective transition to future management by the Kosovo communities could be implemented;
- To increase the short-term impact of law and order efforts through enhanced coordination of information and work;
- To enable effective police and judicial response against destabilizing serious criminal activity in Kosovo; and
- To establish an unbiased judicial process through initial international participation and reform of the judicial system.

The establishment of Pillar I was supported by increased legislative activities on part of UNMIK to combat serious crime, including terrorism and organized crime with international judges and prosecutors focusing on war crimes, ethnically motivated crimes, organized crime and other crimes that could threaten the peace process. It is interesting to note that less than two years following UNMIK’s deployment and the establishment of an emergency judicial system, UNMIK was already reporting about a reform of the local judiciary to be coordinated by UNMIK’s *Department of Justice*, which seems to have inherited the “reserved” responsibilities of the former Administrative Department of Justice, including responsibility over the Judicial Inspection Unit. The Department of Justice also included a Judicial Integration Section to coordinate a minority recruitment strategy in the judiciary, a Legal Policy Unit as the focal point for policy-making and liaison with Kosovo-based agencies, and a Victim Advocacy and Assistance Unit to provide assistance to witnesses and victims throughout the judicial process.

## **Standards before Status**

In April 2002, the SRSJ announced the beginning of a “Standards before Status” approach, which was accepted by the PISG. This approach was taken in response to UNMIK’s obligation under resolution 1244 to design a process to determine Kosovo’s future status. The idea was that no status issues would be addressed until Kosovo’s society and institutions show that they are able to advance towards a fair and just society meeting minimum preconditions which mirror those that are required for integration into Europe. UNMIK developed benchmarks and a set of progress indicators, while the PISG incorporated the benchmarks into its government program and created a mechanism to track progress, including specific action plans. One of the benchmarks was “rule of law” with “building local law enforcement and judicial capacity” as a sub-component of it. This policy was supplemented in November 2003 by the announcement by the SRSJ of a mechanism to review to the progress of the PISG towards meeting the benchmarks in the “standards-before-status” policy. In December 2003, the SRSJ also launched the

“Standards for Kosovo” document, which elaborated on the original standard paper and set out in detail the standards that Kosovo had to reach.

During this process, one of the key priorities of UNMIK was to increase the number of judges and prosecutors. By the end of 2001, the justice system was staffed with 325 local judges, 51 prosecutors, 617 lay-judges, 8 international judges, 6 international prosecutors and around 1000 operational support staff. It is also worth noting, that by the end of 2001 bar examinations were resumed. By the end of 2002, there were 373 judges and prosecutors, 12 international prosecutors and 12 international judges serving in Kosovo’s justice system. At the end of 2003, there were 316 judges, 53 prosecutors, 14 international judges, 12 international prosecutors and more than 1300 support staff engaged in the justice system. According to UNMIK, the local judges and prosecutors were dealing with 100% of the civil cases and around 97% of the criminal cases, the remainder being dealt with by international judges and prosecutors.

During 2002-2003, UNMIK made efforts to increase the representation of minority communities in the judiciary. For this purpose, an agreement in principle was reached in July 2002 between the SRSG and the Serbian Minister of Justice providing that the authorities of the Federal Republic of Yugoslavia would encourage Serb candidates to submit their applications for service in Kosovo’s justice system and that the Government of Serbia would guarantee pension and social security rights. On the other hand, UNMIK admitted for the first time that Serbia would be responsible for dismantling the structure of parallel courts in which many of the former Kosovo-Serbian judges and prosecutors were employed. The results of the agreement were the re-opening of the courts in Leposavic and Zubin Potok as well as the appointment of 13 Kosovo Serbs as judges and prosecutors in the Kosovo justice system. However, by the end of 2003, the Serbian government still had not implemented its commitments concerning pension payments and other benefits for Serbian judges and prosecutors, and parallel judicial structures still existed in Leposavic, Zubin Potok, Zvecan, and Strpce despite the opening of UNMIK courts in those areas. Further to that, UNMIK acknowledged officially that parallel “district and municipal courts of Pristina” were operating in Nis (Serbia). However, UNMIK intensified its efforts to increase minority, especially Serbian participation in Kosovo’s justice system, though frustrated largely due to lack of cooperation by the Serbian government and security concerns. UNMIK also made efforts to increase access to justice for Kosovo Serbs by opening a municipal court department and a minor offenses court in Strpce, and by opening court liaison offices in Gracanica, Novo Brdo and Gorazdevac.

The period 2002-2003 was also characterized by remarkably “positive reporting” to the Security Council concerning Kosovo’s justice system. In its reports to the Security Council throughout this period, the Secretary-General described the justice system as having made progress in the prosecution of serious criminal acts, including terrorism, war crimes, and organized crime, and that it had maintained the capacity to address serious crimes and sensitive inter-ethnic judicial matters. According to UNMIK, the period was characterized by a stabilizing trend in the crime situation and serious crimes generally decreasing.

## Aftermath of the “March 2004 Riots”

The riots throughout Kosovo on 17 and 18 March 2004 were described as a serious setback to the stabilization and normalization of Kosovo. While continuing with the implementation of the standards and combating serious crimes (war crimes, inter-ethnic crimes and organized crime), UNMIK established the investigation and prosecution of the perpetrators of the riots as a high priority. While international prosecutors and international judges were spearheading the process, the local judiciary was also increasingly involved despite reports about local pressures on judges and prosecutors. However, with all involvement of the local judiciary in the prosecution and adjudication of the perpetrators of the riots, the OSCE concluded in December 2005 that the Kosovo judiciary’s response had failed to send out a clear message to the population condemning such violence. UNMIK also complained that local leaders and civil society representatives had by and large failed to support UNMIK actions in support of the rule of law. As a result of the riots, the parallel court structures in Northern Kosovo had resumed their operations although they had ceased to operate shortly before March 2004. In response, UNMIK increased efforts to facilitate access to justice for Kosovo Serbs by opening additional court liaison offices in predominantly Serb inhabited areas of Kosovo. The numbers of Serbs joining the justice system remained relatively low.

In February 2005, UNMIK for the first reported about the problem of the increasing backlog in the adjudication and execution of court cases. Henceforth, this topic remained on UNMIK’s agenda although the backlog was constantly increasing over the following years. Continuing intimidation of witnesses and justice system employees was also stressed as a serious obstacle to establishing the rule of law in Kosovo.

However, the “March riots” seem to have accelerated the process of transferring responsibilities in the justice sector from UNMIK to the PISG. By the end of 2004, UNMIK had undertaken a comprehensive review of its competencies under resolution 1244 and had identified a number of responsibilities that did not interfere with sovereignty and could therefore be transferred to the PISG. As a result of such review, a *Ministry of Justice* was established in December 2005 as part of the PISG Government. The Ministry of Justice was responsible for the following activities:

- Develop policies within the scope of its responsibilities, facilitate preparation of and implement legislation in the field of justice, including public prosecution, though excluding matters related to the administration of the judiciary and courts;
- Manage administrative, financial and budgetary affairs of the Ministry, and the development of administrative, technical and financial rules and rules governing support personnel and material resources to ensure the effective functioning of the prosecutorial system without interfering in any way with the operations of the Office of the Public Prosecutor and the conduct of criminal investigations;
- Provide guidance in respect of the development and implementation of the prosecutorial policy of the Office of the Public Prosecutor of Kosovo without interfering in any way with the operations of the Office of the Public Prosecutor and the conduct of criminal investigations;
- Provide training, including professional and vocational training, of prosecutors in cooperation with the Kosovo Judicial Institute;
- Organize examinations for qualification of prosecutors, lawyers and other legal professionals through the Kosovo Judicial Institute and other independent professional bodies;
- Ensure coordination on matters pertaining to the correctional service;

- Co-operate with appropriate organizations in respect of independent monitoring of the prosecutorial system and the correctional service;
- Provide information and statistics on the correctional service and the prosecutorial system;
- Ensure protection of personal data relating to the correctional service and the prosecutorial system;
- Ensure cooperation in correctional matters with appropriate entities inside Kosovo;
- Assist in the recruitment, training and evaluation of personnel for the correctional service;
- Develop and implement policies to ensure fair and effective access of members of all communities to the justice system;
- Provide assistance to victims of crime, and in particular victims of domestic violence and trafficking in human beings, and oversee the office of the Victims Assistance Coordinator;
- Assist UNMIK where appropriate in the exercise of its responsibility for international legal cooperation, including cooperation with the European Court of Human Rights, the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia;
- Represent the Government in disputes and procedures before courts and arbitration tribunals;
- Provide expert support for the preparation by the Government of agreements in the area of international cooperation.

The responsibilities transferred to the PISG were by and large “soft responsibilities” and subject to an interim review of the initial performance of the Ministry of Justice. Upon a positive outcome of such review, the SRSG would assign additional competencies to the Ministry of Justice.

In addition to the Ministry of Justice, UNMIK established in December 2005 the *Kosovo Judicial Council* (KJC) operating under the authority of the SRSG and succeeding the Kosovo Judicial and Prosecutorial Council. The KJC was composed of 11 members, of whom seven were judges, including 2 international judges, and 4 non-judges. The judges included the President of the Supreme Court, 2 judges from the Supreme Court and 4 judges representative from other courts. Among the 7 posts reserved for judges, 2 were occupied by prosecutors, one of them an international prosecutor, until such time that a body responsible for advising the SRSG on matters related to the appointment, disciplining and dismissal of prosecutors only was established. The other members of the KJC were the Minister of Justice, the Chairperson of the Assembly Committee on Legislative, Judicial and Constitutional Framework Matters, the President of the Kosovo Chamber of Advocates, and a professor of law. The President of the Supreme Court was the President of the KJC.

While the SRSG retained the final authority regarding the appointment and removal from office of judges, the KJC was responsible for

- Setting administrative policies and providing administrative oversight for the judiciary and the courts;
- Setting policy and promulgating rules and guidelines for the judiciary and the courts including recruitment; training; and appointment, evaluation, promotion, transfer and discipline of both judges and lay judges, judicial, and non-judicial personnel;
- Exercising responsibilities regarding the organization and proper functioning of the courts;
- Establishing the geographical location, number and structure of the courts in consultation with the Assembly of Kosovo;
- Exercising responsibilities regarding the provision of technical and financial requirements, support personnel and material resources to ensure the effective functioning of the judicial system;

- Setting policy and regulating training of judicial personnel, including professional and vocational training, in conjunction with the Supreme Court of Kosovo, in whole or in part through the Kosovo Judicial Institute (“the KJI”);
- Exercising responsibilities regarding the organization of examinations for qualification of judges through the KJI;
- Exercising responsibilities regarding the appointment, training, disciplining and dismissing of members of judicial support staff;
- Providing information and statistics on the judicial system, as appropriate, including cooperating with appropriate organizations in respect of independent monitoring of the judicial system; and
- Protecting personal data relating to the judicial system.

Concerning the selection and appointment of judges, the KJC would review individual applications and make recommendations to the SRSG on candidates for appointment. The KJC was also tasked to create a Judicial Disciplinary Committee for the purpose of initiating and resolving first-instance issues of alleged misconduct of judges and lay-judges and for determining appropriate sanctions when findings of misconduct were made. Any complaints had to be referred to the Judicial Inspection Unit for investigation, which after completion of its investigation, would determine whether charges should be filed with the Judicial Disciplinary Committee. The Judicial Disciplinary Committee would then decide upon disciplinary sanctions, other than removal of judges and lay-judges from office and could recommend such removal of judges and lay-judges to the SRSG.

## **Status Talks**

Following a comprehensive review of the standards process during 2005, the Security Council decided in October 2005 to launch a political process designed to determine Kosovo’s future status. In November 2005, the Security Council appointed Martti Ahtisaari as the Secretary-General’s special envoy for the future status process who facilitated several rounds of talks between representatives of Kosovo and Serbia in the subsequent months.

During this period, activities related to the organization of the justice system intensified. In April 2006, the SRSG promulgated a regulation on the regulatory framework for the justice system in Kosovo mandating measures to recruit more judges and prosecutors from underrepresented communities and improving access for all communities to justice through the establishment of court liaison offices, municipal courts and municipal minor offenses courts in areas characterized by geographical isolation, lack of security and other relevant factors. This, in fact, referred primarily to areas inhabited predominantly by the Kosovo-Serb community. Thresholds were established for minority community engagement in the justice system, requiring that 15% of judges and prosecutors would have to be from the non-Kosovo-Albanian community, while 8% of all judges and prosecutors were required to belong to the Kosovo-Serb community. Henceforth, measures to increase minority community representation in the justice system and to facilitate access to justice became a key component of UNMIK’s justice sector policy. The regulation also provided for international judges to decide on appeals where ethnic bias was believed to have affected the decision. Perhaps more significantly, the regulation laid the foundations for a judicial reform by mandating the establishment of an Independent Judicial and Prosecutorial Commission to administer a judicial and prosecutorial re-appointment process. Preparations for a

comprehensive judicial and prosecutorial vetting procedure were set in motion with substantial involvement the European Union and the United States in the funding and implementation of the vetting process.

Together with these measures, the SRSG transferred in April 2006 further responsibilities to the Ministry of Justice, which were to include the responsibility to

- Develop policies within the scope of its responsibilities, facilitate preparation of and implement legislation in the field of justice, including public prosecution, excluding matters related to the administration of the judiciary and courts;
- Manage administrative, financial and budgetary affairs of the Ministry, and the development of administrative, technical and financial rules and rules governing support personnel and material resources to ensure the effective functioning of the prosecutorial system without interfering in any way with the operations of the Office of the Public Prosecutor and the conduct of criminal investigations;
- Provide guidance in respect of the development and implementation of the prosecutorial policy of the Office of the Public Prosecutor of Kosovo without interfering in any way with the operations of the Office of the Public Prosecutor and the conduct of criminal investigations;
- Provide training, including professional and vocational training, of prosecutors through the Kosovo Judicial Institute;
- Organize examinations for qualification of prosecutors, lawyers (including trial attorneys) and other legal professionals through the Kosovo Judicial Institute and other independent professional bodies;
- Provide information and statistics on all activities conducted under the authority of the Ministry, while ensuring the protection of personal data;
- Exercise executive oversight over the correctional service and the probation service, except that in emergency situations at Dubrava prison UNMIK would retain and exercise the authority to command and control all operations;
- Develop and implement policies to ensure fair and effective access of members of all communities to the justice system;
- Exercise responsibility in seeking, obtaining, providing and verifying information relating to the location and fate of missing persons, and returning the remains of missing persons, utilizing the assistance and expertise of personnel of the Office of Missing Persons and Forensics and other specialists, subject to UNMIK's authority over all investigations of individual cases of disappearance;
- Exercise responsibility for matters pertaining to forensic medicine including the administration of the Medical Examiners' Office, subject to UNMIK's supervision over the required certification and training of the Medical Examiners' Office personnel and their compliance with international standards. UNMIK would retain direct control over all forensic examination and expert reports relating to criminal cases under the responsibility of international prosecutors, including cases of organized crime, crime against ethnic minorities, terrorism and trafficking in persons;
- Provide assistance to victims of crime, and in particular victims of domestic violence and trafficking in human beings, and oversee the office of the Victims Assistance Coordinator;
- Assist UNMIK where appropriate in the exercise of its responsibility for international legal assistance and cooperation, including cooperation with the European Court of Human Rights, the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia;

- Represent the Government in disputes and procedures before courts and arbitration tribunals; and
- Provide expert support for the preparation by the Government of agreements in the area of international cooperation.

The Ministry of Justice also took over and assumed authority for employment of staff other than internationals engaged by the UNMIK Department of Justice whose salaries were paid from the Kosovo Consolidated Budget and whose responsibilities fell within the competencies which are transferred to the Ministry of Justice.

As an additional measure to enhance access to justice, UNMIK established in June 2006 a legal aid system managed by an independent *Legal Aid Commission* and its Commissioner being appointed by the Prime Minister. UNMIK praised the legal aid system as being the first “state-funded” legal aid agency in the Balkans.

In the area of criminal justice, UNMIK established in September 2006 the *Kosovo Special Prosecutor’s Office* (KSPO) as a constituent unit of the Criminal Division of the UNMIK Department of Justice. The KSPO was composed of international and local prosecutors assigned by the SRSG. The KSPO was responsible for capacity building in the Office of the Public Prosecutor through training and mentoring of Special Prosecutors for the purpose of enhancing their ability to prosecute the most serious criminal offences in Kosovo. However, the KSPO had also jurisdiction with respect to the most serious crimes in Kosovo, including but not limited to cases of organized crime, corruption, criminal offences motivated by race, national or ethnic background, or religion, terrorism and trafficking in persons. Special Prosecutors working within the KSPO under the supervision or monitoring of International Prosecutors were authorized to perform the functions of their office in all courts throughout Kosovo. The KSPO became operational in June 2007. In addition to the establishment of the KSPO, by mid-2007 all district courts were equipped, with the support of the United Kingdom and the United States, with a witness protection system that would improve the ability of the Kosovo justice system to conduct investigations and prosecutions in sensitive cases with protected witnesses.

In December 2006, after lengthy preparations and still pending final arrangements for its funding and implementation, the SRSG established the *Independent Judicial and Prosecutorial Commission* (IJPC) as an autonomous body of the Kosovo Judicial Council (KJC), for the purpose of conducting a one-time, comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments as judges and prosecutors in Kosovo. The appointment process shall be organized in three successive phases:

- Phase 1: The selection of judges for the Supreme Court of Kosovo and public prosecutors for the Office of the Public Prosecutor of Kosovo;
- Phase 2: The selection of judges for the District, Commercial Court and the High Court for Minor Offences and public prosecutors for the Offices of the District Public Prosecutors; and
- Phase 3: The selection of judges for the Municipal Courts and Municipal Courts for Minor Offences and public prosecutors for the Offices of the Municipal Public Prosecutors.

Following completion of the vetting process, the IJPC would make recommendations in writing on candidates for each Court and Prosecutor’s Office in Kosovo to the KJC for submission to the SRSG in conformity with the Constitutional Framework.

As one of the last legislative measures taken by UNMIK following Kosovo's declaration of independence, the SRSG established in June 2008 the Office of the Disciplinary Council and the Judicial Audit Unit within the UNMIK Department of Justice, which succeeded the former Judicial Inspection Unit. The *Office of the Disciplinary Council* was responsible for

- Investigating the activities of judges, prosecutors or lay-judges working in the judicial and prosecutorial system, irrespective of whether they had been the subject of a complaint;
- Prosecuting cases of misconduct before the relevant judicial and prosecutorial disciplinary bodies; and
- Investigating complaints made against a judge, prosecutor or a lay-judge.

By decision of the SRSG, the Office of the Disciplinary Council would be transferred to the Independent Judicial and Prosecutorial Commission and would remain there until the completion of the vetting process.

The *Judicial Audit Unit* was responsible for analyzing and evaluating the functioning of the courts and the public prosecutors' offices and for analyzing and evaluating specific judicial or prosecutorial activities for the purpose of proposing reforms for such activities.

Despite all these measures, described by UNMIK as progressive steps to strengthen the justice system, UNMIK became evidently more critical of the justice system. UNMIK claimed that it was still necessary for international judges and prosecutors to handle the most sensitive cases. The justice system would suffer from inadequate resources, which had a negative impact on the motivation of judges and the capability to attract legal professionals into service with the justice system. UNMIK was also disappointed with the justice system as regards the investigation and prosecution of the March riots perpetrators, criticizing by the end of 2006 that no substantial progress had been made. Concerns were also raised with respect to the increasing backlog of cases criticizing that the implementation of the case management information system, which had been designed to help reducing the backlog, was significantly behind schedule.

## THE JUSTICE SYSTEM OF THE REPUBLIC OF KOSOVO

### **The Justice System under the Constitution of the Republic of Kosovo – An Overview**

After several rounds of talks between Pristina and Belgrade, which had ended without a consensual resolution of the status of Kosovo, the Secretary-General submitted in April 2007 to the Security Council the Comprehensive Proposal for the Kosovo Status Settlement (hereinafter the "Settlement") prepared by the Secretary-General's special envoy Martti Ahtisaari, who proposed as the only viable option the independence of Kosovo supervised for an initial period by the international community. As the Settlement could not be adopted in the Security Council, on 17 February 2008 the Assembly of Kosovo declared the independence of the Republic of Kosovo while fully respecting the Settlement. In April 2008, the Assembly adopted the Constitution of the Republic of Kosovo, which entered into force on 15 June 2008.

The Constitution acknowledges the supremacy of the Settlement in various forms. According to the Constitution, all authorities in the Republic of Kosovo must abide by all of Kosovo's obligations under the Settlement and they must take all necessary actions for their implementation. The provisions of the Settlement take precedence over all other legal provisions in Kosovo. The Constitution, laws and other legal acts of the Republic of Kosovo must be interpreted in compliance with the Settlement. If there are inconsistencies between the provisions of the Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the Settlement, then the latter prevails.

With respect to the justice system, the Settlement provides, inter alia, for

- the establishment of a Constitutional Court;
- Judges and prosecutors to be appointed and dismissed by the President of Kosovo only upon the proposal of the Kosovo Judicial Council;
- the Kosovo Judicial Council, whose composition is determined by the Settlement, to have full independence in the performance of its functions for the purpose of ensuring an integrated, independent, professional and impartial justice system, ensuring access of all persons in Kosovo to justice and guaranteeing that the Kosovo justice system is inclusive and fully reflects the multi-ethnic nature of Kosovo;

The *Constitutional Court* is established as an independent court and as the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. The Constitutional Court is composed of nine (9) judges appointed by the President of the Republic of Kosovo upon the proposal of the Assembly.

According to the Constitution, the *Kosovo Judicial Council* is responsible for conducting judicial inspections, judicial administration, developing court rules in accordance with the law, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction and making recommendations for the establishment of new courts. It is composed of 13 members chosen in the following manner:

- five (5) members are judges elected by the members of the judiciary;
- four (4) members are elected by deputies of the Assembly holding seats attributed during the general distribution of seats; at least two (2) of the four (4) must be judges and one (1) must be a member of the Kosovo Chamber of Advocates;
- two (2) members are elected by the deputies of the Assembly holding reserved or guaranteed seats for the Kosovo Serb community and at least one of the two must be a judge;
- two (2) members are elected by the deputies of the Assembly holding reserved or guaranteed seats for other Communities and at least one of the two must be a judge.

However, for the duration of the mandate of the International Civilian Representative, the Kosovo Judicial Council is composed as follows:

- Five (5) members consist of Kosovo members of the Independent Judicial and Prosecutorial Commission who have been vetted by the Independent Judicial and Prosecutorial Commission as part of Phases 1 and 2 of the Appointment Process;
- The remaining eight (8) members of the Council are elected by the Assembly of Kosovo, except that two (2) out of the four (4) members elected by deputies holding seats attributed during the general distribution of seats must be international members selected by the International

Civilian Representative on the proposal of the European Security and Defense Policy Mission, with one of them being a judge.

As required by the Settlement, the Constitution sets forth that

- Judicial power in the Republic of Kosovo is exercised by the courts;
- the judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts;
- Courts adjudicate based on the Constitution and the law, and
- Judges are independent and impartial in exercising their functions.

In terms of court organization, the Constitution only mentions explicitly the Supreme Court and the Constitutional Court, while it leaves the details of the court organization to be determined by law.

The Constitution requires that the comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments as judges and public prosecutors in Kosovo continues to be carried out in accordance with the rules established by UNMIK and would not be affected by the termination of UNMIK's mandate or the entry into force of the Constitution. The Independent Judicial and Prosecutorial Commission (IJPC) will submit recommendations on candidates for appointment or reappointment as judges and prosecutors in writing to the Kosovo Judicial Council, which will exercise final authority to propose to the President of Kosovo candidates for appointment or reappointment as judges and prosecutors. The Law on the Temporary Composition of the Kosovo Judicial Council, promulgated in January 2009, provides that the President of Kosovo appoints all members of the IJPC, including the international members and the IJPC Review Panel.

Besides the Kosovo Judicial Council, the Constitution also recognizes the State Prosecutor as an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law. The Constitution provides for a Kosovo Prosecutorial Council, whose function is to ensure that the State Prosecutor is independent, professional and impartial and reflects the multiethnic nature of Kosovo and the principles of gender equality. The Kosovo Prosecutorial Council has to recruit, propose, promote, transfer, reappoint and discipline prosecutors in a manner provided by law.

## **Reform of the Justice System**

The Constitution provides for legislation applicable on the date of the entry into force of the Constitution to continue to apply to the extent it is in conformity with the Constitution until repealed, superseded or amended in accordance with this Constitution. Therefore, since all UNMIK regulations and administrative directions continued to apply, it became necessary to replace them in order to ensure institutional and regulatory compliance of the justice system with the Constitution.

One of the first legislative measures following declaration of independence was the establishment of *Special Prosecution Office of Republic of Kosovo* (SPRK) in June 2008 as a permanent and specialized prosecutorial office operating within the Office of the State Prosecutor of Kosovo. The SPRK will be composed of ten Kosovo Public Prosecutors, with additional prosecutors to be added as needed. The

SPRK would also be composed of additional 5 EULEX prosecutors for the duration of the EULEX KOSOVO in Kosovo. Special Prosecutors have the authority and responsibility to conduct criminal investigations and prosecute crimes falling under the exclusive and subsidiary competence of the SPRK, throughout all the offices of the prosecutors and throughout all courts operating in Kosovo.

A further step towards strengthening the institutional framework for the public prosecution services was the establishment of the Kosovo Prosecutorial Council and the regulation of the State Prosecutor in October 2010. The duties and competencies of the *Kosovo Prosecutorial Council* include the following:

- ensuring that prosecutors act in an independent, professional and impartial manner in the performance of all prosecutorial functions;
- recruiting and proposing, to the President, candidates for appointment and reappointment to prosecutorial office, including candidates from Communities that are not in the majority in Kosovo;
- ensuring that prosecution offices reflect the ethnic composition of their area of jurisdiction in accordance the Constitution;
- proposing candidates to the President for appointment as Chief State Prosecutor;
- in cooperation with the Kosovo Judicial Institute, establishing the standards for recruiting, organizing and advertising the preparatory examination for the qualification of prosecutors;
- determining the number of prosecutors in each prosecution office;
- appointing the Chief Prosecutors for the Basic Prosecution Offices and Appellate Prosecution Office in compliance with the Law on State Prosecutor;
- developing, in coordination with the Office of the Chief State Prosecutor, prosecutorial policies and strategies for effectively combating criminality;
- proposing to the Government and the Assembly measures related to the prosecutorial system and to combat criminality;
- providing and publishing information and statistical data on the prosecution system;
- overseeing the administration of the prosecution offices and its personnel;
- preparing, submitting and overseeing the budget of the prosecutorial system to ensure efficient and effective functioning of prosecution offices and accounting for the use of fiscal resources;
- establishing the procedures for and conducting disciplinary proceedings;

The KPC is composed of nine (9) members who are citizens of the Republic of Kosovo, five (5) of whom are prosecutors. The five (5) prosecutors serving as members of the Council include:

- the Chief State Prosecutor;
- one (1) prosecutor from the Special Prosecution Office;
- one (1) prosecutor from Appellate Prosecution Office; and
- two (2) prosecutors from Basic Prosecution Office.

The non-prosecutor members of the KPC include:

- one (1) member from the Chamber of Advocates;
- one (1) professor from the law faculties of Republic of Kosovo;
- one (1) representative of civil society.

The Minister of Justice is an ex-officio member of the KPC.

Upon the establishment of the KPC, the duties and competencies then being exercised by the Kosovo Judicial Council concerning the public prosecution were transferred to the KPC. The President appoints and dismisses prosecutors upon the recommendations of the KPC.

Within the KPC, there is the Disciplinary Committee, which consists of three (3) members of the Council, two (2) of whom being Prosecutors. The Disciplinary Committee initiates disciplinary proceedings against a prosecutor on the basis of investigations conducted by the Office of Disciplinary Prosecutor. The Office of Disciplinary Prosecutor is established as a separate and independent body that serves both the Kosovo Judicial Council and the Kosovo Prosecutorial Council. With respect to the prosecutorial system, the Disciplinary Prosecutor is responsible for investigating alleged misconduct of prosecutors and presenting the evidence and the case supporting disciplinary action for misconduct to the Disciplinary Committee.

The *State Prosecutor* is organized as follows:

- Basic Prosecution Offices comprised of a General Department, Department for Minors and the Serious Crimes Prosecution Department;
- Appellate Prosecution Office comprised of a General Department and a Serious Crimes Prosecution Department;
- Special Prosecution Office; and the
- Office of Chief State Prosecutor.

For the purpose of implementing the new public prosecution structure, the following implementation schedule was adopted:

- Planning Phase:
  - From January 1, 2011 to December 31, 2011 the KPC would prepare an implementation plan to facilitate the transition from the former prosecution system to the new prosecution system.
- Implementation Phase:
  - From January 1, 2012 to December 31, 2012, the Council would have to carry out its implementation plan.

Following the establishment of the foundations for a reform of the public prosecution system, the next step was the introduction of a reform of the judicial system in August 2010. The *court system* according to the new Law on Courts includes: Basic Courts, the Court of Appeals, and the Supreme Court. The Basic Courts are the courts of first instance in the Republic of Kosovo. The Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law. The Court of Appeals, with its seat in Pristina, is the second instance court with territorial jurisdiction throughout the Republic of Kosovo. Fifteen percent (15%) of the total seats on the Court of Appeals, but in no case fewer than ten seats, are guaranteed to judges from communities that are not in the majority in Kosovo. The Supreme Court is the highest judicial authority in Kosovo and has territorial jurisdiction over the entirety of the Republic of Kosovo. The Supreme Court includes the Appeals Panel of the Kosovo Property Agency and the Special Chamber of the Supreme Court on Privatization Matters. As on the case of the Court of Appeals, the composition of the Supreme Court must reflect the ethnic composition of Kosovo population with at least fifteen percent (15%) of the judges of the Supreme Court, but in no case fewer than three (3) judges, being from communities that are not in the majority in Kosovo.

The new Law on Courts has also addressed one of the key impediments to the motivation of legal professionals to join and stay with the judiciary, i.e. salaries. During their terms of office, judges will receive the following salaries:

- The President of the Supreme Court will receive a salary equivalent to that of the Prime Minister of the Republic of Kosovo;

- All other judges of the Supreme Court will receive a salary equivalent to that of a Minister of the Government;
- The President Judge of the Court of Appeals will receive a salary equivalent to that of a judge of the Supreme Court;
- All other judges of the Court of Appeals will receive a salary equivalent to ninety percent (90%) of the compensation of the President Judge of the Court of Appeals;
- The President Judge of a Basic Court will receive a salary equivalent to the compensation of a judge of the Court of Appeals;
- The Supervising Judge of a Branch of the Basic Court will receive a salary equivalent to ninety-five percent (95%) of the compensation of the President Judge of a Basic Court;
- Each judge of the Basic Court will receive a base salary of not less than seventy percent (70%) of the salary of the President Judge of a Basic Court.

The Kosovo Judicial Council is authorized to promulgate a schedule for additional compensation that recognizes the unique responsibilities of judges serving in the Serious Crimes, Commercial Matters or Administrative Conflicts Departments; but the sum of the base salary and the additional compensation must not exceed ninety percent (90%) of the salary of the President Judge of a Basic Court.

The reform of the court system is foreseen to be implemented according the following schedule:

- Planning Phase:
  - From January 1, 2011 to December 31, 2011 the Kosovo Judicial Council will prepare the implementation plan to facilitate the transition from the former court structure to the new court structure.
- Implementation Phase:
  - From January 1, 2012 to December 31, 2012, the Kosovo Judicial Council will carry out its implementation plan.

The salary reform is required to be implemented from January 1, 2011.

## **From ESDP Mission to EULEX**

Pursuant to the Settlement, Kosovo will be supervised by the International Civilian Representative (ICR), vested with extensive powers, including the annulment of laws and decisions adopted by the organs of the Republic of Kosovo and the removal from office of any public official in the event of a violation of the Settlement or for preserving the rule of law in Kosovo. International judges and prosecutors are to be selected by the European Security and Defense Policy (ESDP) Mission, subject to prior consent of the ICR. The ICR would also be the European Union Special Representative (EUSR), and in this capacity direct the ESDP Mission, whose head is to be appointed by the Council of the European Union. The ESDP Mission would mentor, monitor and advise Kosovo authorities in the area of rule of law and would have certain executive and judicial functions in the judiciary, police, border control, customs and correctional services including the investigation, prosecution and adjudication of cases of war crimes, terrorism, organized crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes.

Anticipating that the status talks would have some results that would at least lead to a significant transfer of responsibilities from UNMIK to the European Union, the European Union had already established a European Union Planning Team (EUPT) in 2006. Its mission objective was (i) to initiate

planning to ensure a smooth transition between selected tasks of UNMIK and a possible EU crisis management operation in the field of rule of law and other areas that might be identified by the European Council and (ii) to provide technical advice for the EU to contribute to support and maintain dialogue with UNMIK as regards its plans for downsizing and transfer of competences to local institutions. The deployment of EUPT was made within the framework of Resolution 1244 and was legally based on an invitation made by the SRSG in 2006 to the EU Secretary-General/High Representative. In view of the failure of the Security Council to adopt the Settlement and due to internal divisions in the EU as to the recognition of an independent state of Kosovo, it became impossible for the EU to agree on and deploy the ESDP Mission as envisaged by the Settlement. Hence, the European Council of Foreign Ministers adopted the joint action establishing a European Rule of Law Mission in Kosovo (EULEX) in February 2008, shortly before Kosovo's declaration of independence, when Kosovo was formally still and exclusively under resolution 1244.

The mandate of EULEX as set out in the joint action is almost identical with the provisions of the Settlement on the ESDP Mission. EULEX's task is to monitor, mentor and advise Kosovo institutions in all areas related to rule of law and to investigate, prosecute, adjudicate and enforce certain categories of serious crimes. But EULEX has a more robust mandate under the joint action than under the Settlement, as it is also responsible for ensuring the maintenance and promotion of the rule of law, public order and security, which could include the reversion or annulment of operational decisions taken by Kosovo authorities. EULEX also has a general mandate to assume other responsibilities, independently or in support of Kosovo authorities, to ensure the maintenance and promotion of rule of law, public order and security.

On the very day of the adoption of the joint action establishing EULEX, the mission was not mandated under Resolution 1244. The joint action contains no reference to an invitation by the UN or the SRSG as was the case of the joint action establishing the preceding EUPT mission. Although the joint action refers in its preamble to Resolution 1244, the EU could not impose EULEX unilaterally as replacing UNMIK or as a new component of the international civilian presence under Resolution 1244 without the consent of the Security Council. A legal basis for the replacement of UNMIK and the installation of EULEX could have been established only with a new mandate from the Security Council which at that time was not given. The Secretary-General only noted in a report to the Security Council in June 2008 that he had received a letter from the High Representative for the Common Foreign and Security Policy of the European Union informing him of the willingness of the European Union to play an enhanced role in the area of rule of law in Kosovo within the framework provided by Resolution 1244. But that did not imply any form of approval of EULEX to operate under Resolution 1244. In fact, EULEX was ignored by the Secretary-General which led to EULEX's deployment being stalled. Russia's and Serbia's resistance to EULEX and a possible replacement of UNMIK blocked an attempted compromise solution at the UN which would have allowed UNMIK and EULEX to function in parallel for a while. A "legalization" of EULEX from the UN perspective occurred only in November 2008 under the condition that it would operate under Resolution 1244 and under the overall authority and within the status-neutral framework of the UN. EULEX would have to submit reports to the UN on a regular basis and its deployment would be coordinated with UNMIK. Russia's and Serbia's acceptance of this arrangement was bought for the price of the EU Member States accepting EULEX's "status neutrality" and EULEX participating as part of the UN presence in Kosovo in the implementation of the "Six-Point-Plan". The "Six-Point-Plan" refers to a proposal made by the Secretary-General to Serbia's President in June 2008, which was accepted by him in November 2008, that, among others, would eliminate control by Kosovo authorities of police, court and customs services in Serb-majority areas and place them under the direct control of the UN in accordance with Resolution 1244 and in defiance of the Constitution of Kosovo and the Settlement. In

view of EULEX's "legalization" under these terms, as endorsed by the Security Council in November 2008, EULEX became operational in December 2008.

From a Kosovo perspective, the legal situation concerning EULEX's mandate is completely different. In response to the "Six-Point-Plan", which was rejected by Kosovo, Kosovo authorities made it clear that they were in favor of a quick deployment of EULEX in Kosovo in accordance with the mandate foreseen in the Declaration of Independence, the Settlement, the Constitution of the Republic of Kosovo, Kosovo's legislation, the European Union Joint Action of February 2008 and the invitation extended by Kosovo's institutions to EULEX. Kosovo authorities asserted that they would cooperate with EULEX on its deployment throughout the entire territory of Kosovo, based on the mandate foreseen in the documents mentioned above, respecting the sovereignty and territorial integrity of the Republic of Kosovo. Both statements, which were deposited with the UN, neither mention Resolution 1244 nor any of the terms, including "status neutrality", agreed upon between the UN and the EU. From a Kosovo perspective, EULEX operates lawfully only if it is based on any of the documents listed by Kosovo as being legally constitutive for EULEX's mandate.

The joint action establishing EULEX makes no reference to the Settlement, the Constitution of the Republic of Kosovo, the Declaration of Independence or an invitation by Kosovo authorities. No relationship can be established between the invitation made by the Kosovo authorities and EULEX's mandate under the joint action as that invitation was not given any relevance as a legal basis for EULEX's establishment and operations. This is further reinforced by the fact that EULEX was placed under the "status neutrality" of Resolution 1244, which is evidently not envisaged to be so in the Settlement, the Declaration of Independence and the Constitution of Kosovo, all of which clearly assert the independence and sovereignty of Kosovo.

Having accepted to operate under Resolution 1244 and within the UN framework of "status neutrality", EULEX, by implication, has renounced all documents listed by Kosovo authorities as a legal basis for its mandate in Kosovo. EULEX as established by the joint action and placed under "status neutrality" and Resolution 1244 is therefore legally not identical with the ESDP Mission as envisaged by the Settlement. There might be an overlap in certain areas of their mandates, but legally EULEX under the status neutral framework of Resolution 1244 is substantially different from the ESDP Rule of Law Mission as foreseen by the Settlement, which was placed within the framework of an independent and sovereign, though internationally supervised state. The joint action establishing EULEX also defines Kosovo organs, institutions and authorities as those institutions created on the basis of Resolution 1244. This does not include Kosovo's authorities, which were established under the Constitution of the Republic of Kosovo and which derive their legitimacy from the Constitution and no longer from Resolution 1244 or the previous Constitutional Framework.

That events regarding the deployment of the EU rule of law mission did not develop as expected by the EU is also reflected in the promulgation in June 2008 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. This law regulates the integration and jurisdiction of the EULEX judges and prosecutors in the judicial and prosecutorial system of the Republic of Kosovo. Upon the entry into force of this law, the UNMIK Department of Justice was required to handover to the Chief EULEX Prosecutor and to the President of the Assembly of EULEX Judges, pursuant to the modalities and procedures established between UNMIK and the European Union, all files, information, archives and data, in electronic and hard copies related to cases currently investigated, prosecuted or dismissed by UNMIK international prosecutors and the Special Prosecution Office of the Republic of Kosovo, and cases that are or have been under the authority of UNMIK International Judges.

However, this law was drafted and promulgated at a time when EULEX was expected to be deployed in Kosovo under the Settlement endorsed by the Security Council, which, as outlined above, did not materialize as planned. This law, and more explicitly the Law on the Special Prosecution Office of the Republic of Kosovo, which had been prepared jointly, anticipated a “transition day”, i.e. the day on which the EULEX mission starts its mandate in Kosovo. Given EULEX’s subsequent deployment under Resolution 1244 and its status-neutral framework, it is unclear if this law may still serve as a legal basis “for the integration and jurisdiction of the EULEX judges and prosecutors in the judicial and prosecutorial system of the Republic of Kosovo”. EULEX judges cannot be integrated in the judicial and prosecutorial system of the Republic of Kosovo and exercise jurisdiction therein, while being “status-neutral” (thereby negating Kosovo’s declaration of independence and transformation to statehood) and operating under Resolution 1244.

In view of this, a constitutional conflict between the Republic of Kosovo and EULEX was inevitable as of the deployment of EULEX, a conflict which erupted in 2011. The international judges in the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Matters are EULEX judges appointed, as reported by the Secretary-General, under the authority of the SRSG and pursuant to legislation applicable under Resolution 1244. They are not appointed in accordance with the provisions of the Constitution and the Settlement. Following declaration of independence, the Assembly of Kosovo had passed a new law establishing the Kosovo Privatization Agency, which replaced and succeeded the former Kosovo Trust Agency established by UNMIK. However, the Special Chamber had continued to adjudicate on the basis of UNMIK legislation, giving the law passed by the Assembly only the status of an internal regulation. According to the Special Chamber, the legitimate authority was still the Kosovo Trust Agency, represented by the UNMIK Legal Adviser, while the Kosovo Privatization Agency was considered only a factual entity. In a landmark decision of March 2011, the Constitutional Court confirmed that the Special Chamber would not recognize and apply the laws lawfully adopted by the Assembly and that the Special Chamber simply continued to ignore the existence of Kosovo as an independent State and its legislation emanating from its Assembly. The Constitutional Court considered it inconceivable that EULEX judges, integrated in the Special Chamber of the Supreme Court of Kosovo in accordance with the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges refused to apply laws duly adopted by the Assembly of the Republic of Kosovo. It is therefore now established that failure on part of EULEX judges to apply the Constitution and the laws of the Republic of Kosovo would be a violation of the Constitution. It is not clear, how EULEX judges and prosecutors will apply the Constitution and the laws of the Republic of Kosovo without violating EULEX’s deployment under the status-neutral framework of Resolution 1244.

## **UNMIK’s Role in the Justice System after Independence**

With Kosovo declaring independence, the Secretary-General adopted the position that, pending guidance from the Security Council, the UN would continue to operate on the understanding that Resolution 1244 remained in force and that UNMIK would continue to implement its mandate in light of the evolving circumstances. The adoption of the Constitution of the Republic of Kosovo was perceived as a serious challenge to UNMIK implementing its mandate. The Secretary-General openly admitted that there was a conflict between Resolution 1244 and the Kosovo Constitution, which does not take UNMIK into account. While the SRSG was still formally vested with executive authority under Resolution 1244, so the Secretary-General, the SRSG would be unable to enforce this authority. Given the change in

circumstances, the SRSG initiated in June 2008 a process leading to the configuration of UNMIK. Following EULEX's deployment under Resolution 1244, a hand-over of responsibilities in the justice sector took place by the signing of agreements for the transfer justice-related investigative and case files from UNMIK to EULEX. The transfer was completed in June 2009. The Secretary-General also reported to the Security Council, that the SRSG had taken steps to ensure that the appointment of EULEX judges and prosecutors was made under the SRSG's authority and consistent with applicable law under Resolution 1244.

With the transfer to EULEX on its way, UNMIK reduced its capacities in the justice sector to a functioning Rule of Law Liaison Office. Through this office, UNMIK remained active in the field of international legal assistance requests to and from countries which have not recognized Kosovo, as well as in relation to maintaining communication with INTERPOL and the International Criminal Tribunal for the former Yugoslavia. This situation continues despite the adoption by the Ministry of Justice in September 2009 of an administrative instruction on international legal assistance vesting all responsibilities in this area in the Ministry of Justice.

## **The Justice System in Northern Kosovo**

Following Kosovo's declaration of independence, Kosovo-Serbs, supported by Belgrade, boycotted the new institutions of the Republic of Kosovo, including the justice system. In March 2008, Serbian protesters forcefully seized the courthouse in Northern Mitrovica. This courthouse reopened only in October 2008 under the condition that only international judges and prosecutors are placed in the court and provided that they only apply UNMIK legislation issued under Resolution 1244. In Zubin Potok, the municipal and minor offenses are not operational, while in Leposavic the courts function as part of the court system of Serbia. This situation has not changed substantially since declaration of independence. Having succeeded UNMIK with respect to the justice sector, EULEX maintained only a minimal presence in Northern Kosovo (North Mitrovica, Zvecan, Zubin Potok, Leposavic) dealing with the most urgent criminal cases, while Kosovo justice authorities are prevented from exercising jurisdiction there. A recent indication by EULEX that the re-establishment of the justice system in Northern Kosovo would be part of the new dialogue between Pristina and Belgrade was met with vehement resistance and denial on part of the authorities of the Republic of Kosovo.

## CONCLUSIONS

Maintaining effective rule of law is still a challenge in Kosovo and widely perceived as critical for Kosovo's future development and integration in the European Union. Within the period of around 10 years, Kosovo has grown from a state of total collapse of the justice system to a fairly well developed institutional framework in this field. During this period, institution-building was succeeded by partial institutional reform and the creation of new institutions. The sharing of responsibilities between UNMIK and Kosovo and the ongoing transfer of responsibilities did not allow Kosovo's justice institutions to consolidate but they were subject to constant changes in terms of organization and responsibilities. With the new institutional framework in place, Kosovo's justice system now needs stability in order to be able to consolidate and to concentrate on improving the quality, efficiency and performance of justice. This will not be an easy task given that the new justice reform, which is currently in its planning phase, has still to be implemented. It is positive that the vetting process has been by and large successfully completed and that efforts are being made to reduce the backlog of cases before the courts. The adequate provision of resources to the justice system and their efficient management will be critical for the success of the reform.

However, challenges remain, and they are primarily political in nature. Maintaining the unity and uniformity of the justice system throughout Kosovo is a major challenge. The re-integration of North Kosovo under the justice system of the Republic of Kosovo must be one of the key priorities of Kosovo's authorities. Further to that, and in view of the recent decision of the Constitutional Court, Kosovo's authorities must assert vis-à-vis all international actors in Kosovo's justice system that any exercise of judicial and prosecutorial jurisdiction in the territory of the Republic of Kosovo must be based on and exercised in accordance with the Constitution of the Republic of Kosovo. A serious dialogue with the European Union and EULEX will be necessary in this respect. Following the Constitutional Court's ruling, it will be difficult for Kosovo's authorities to accept EULEX to continue exercising judicial and prosecutorial authority in Kosovo within the status-neutral framework of Resolution 1244. On the other hand, the EU will have difficulties in accepting the Constitution of the Republic of Kosovo without abandoning its status-neutral approach. It seems that the "practical arrangements", which were in place until now in the relations between EULEX and Kosovo, will be hardly justifiable in future and that time has come for the EU to re-assess the legal basis of its important role in Kosovo.

## LIST OF LEGISLATION

(In chronological order)

### UNMIK

1. UNSC resolution 1244 (1999)
2. UNMIK Regulation No. 1999/1, as amended, on the Authority of the Interim Administration in Kosovo
3. UNMIK Regulation No. 1999/5 on the Establishment of an Ad-Hoc Court of Final Appeal and an Ad-Hoc Office of the Public Prosecutor
4. UNMIK Regulation No. 1999/6 on the Recommendations for the Structure and Administration of the Judiciary and Prosecution Service
5. UNMIK Regulation No. 1999/7, as amended, on the Appointment and Removal from Office of Judges and Prosecutors
6. UNMIK Regulation No. 1999/18, as amended, on the Appointment and Removal from Office of Lay-Judges
7. UNMIK Regulation No. 1999/24, as amended, on the Law Applicable in Kosovo
8. UNMIK Regulation No. 2000/1 on the Kosovo Joint Interim Administrative Structure
9. UNMIK Regulation No. 2000/6, as amended, on the Appointment and Removal from Office of International Judges and International Prosecutors
10. UNMIK Regulation No. 2000/15 on the Establishment of the Administrative Department of Justice
11. UNMIK Regulation No. 2000/30 on Stamps and Headings of Official Documents of Courts, Prosecutors' Offices and Penal Establishments
12. UNMIK Regulation No. 2000/46 on the Use of Language in Court Proceedings in which an International Judge or International Prosecutor Participates
13. UNMIK Regulation No. 2000/64 on the Assignment of International Judges/Prosecutors and/or Change of Venue
14. UNMIK Administrative Direction No. 2000/13 implementing UNMIK Regulation No. 2000/6 on the Appointment and Removal from Office of International Judges and International Prosecutors
15. UNMIK Regulation No. 2001/8 on the Establishment of the Kosovo Judicial and Prosecutorial Council
16. UNMIK Regulation No. 2001/9, as amended, on a Constitutional Framework for Provisional Self-Government in Kosovo
17. UNMIK Regulation No. 2001/19, as amended, on the Executive Branch of the Provisional Institutional of self-Government in Kosovo
18. UNMIK Administrative Direction No. 2001/4 (Judicial Inspection Unit)
19. UNMIK Administrative Direction No. 2001/17 (Performance Evaluation of Judges and Prosecutors)
20. UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters
21. UNMIK Administrative Direction No. 2002/24 (Department of Municipal Court of Ferizaj in Strpce)
22. UNMIK Administrative Direction No. 2003/13 (Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters)
23. UNMIK Administrative Direction No. 2003/31 (Kosovo Judicial Institute)

24. UNMIK Administrative Direction No. 2004/26 (Department of Municipal Court Pristina in Gracanica)
25. UNMIK Regulation No. 2005/52 on the Establishment of the Kosovo Judicial Council
26. UNMIK Regulation No. 2005/53, amending UNMIK Regulation No. 2001/19 (Establishment of the Ministry of Justice)
27. UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo
28. UNMIK Regulation No. 2006/26, amending UNMIK Regulation No. 2001/19 (Transfer of additional responsibilities to the Ministry of Justice)
29. UNMIK Regulation No. 2006/36 on Legal Aid
30. UNMIK Administrative Direction No. 2006/8 (Disciplinary and Appellate Procedures at the Kosovo Judicial Council)
31. UNMIK Administrative Direction No. 2006/15 (Kosovo Special Prosecutor's Office)
32. UNMIK Administrative Direction No. 2006/18 (Independent Judicial and Prosecutorial Commission)
33. UNMIK Administrative Direction No. 2008/7 (Office of the Disciplinary Council and Judicial Audit Unit)

## **REPUBLIC OF KOSOVO**

1. Constitution of the Republic of Kosovo
2. Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo
3. Law on the Special Prosecution Office of the Republic of Kosovo
4. Law on the Constitutional Court of the Republic of Kosovo
5. Law on the Temporary Composition of the Kosovo Judicial Council
6. Law on Courts
7. Law on the Kosovo Prosecutorial Council
8. Law on State Prosecutor
9. Law on the Kosovo Judicial Council

