International Judges and Prosecutors
And their role in Kosovo

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Abstract

International judges and prosecutors are today present in various places around the world. They are supposed to function as a complement to the national judiciary and help in the upbuilding of rule of law. However, there are various problems and questions regarding the work they accomplish, which will be discussed throughout this thesis. Kosovo has been chosen as an example since it has a long experience of international judges and prosecutors. Further on it has been debated if the international personnel in the Kosovar judicial system contribute to the capacity-building or not. The following text also brings up several types of courts where the international judges and prosecutors are present. The reason for this is to give an idea of the various forms of international involvement that exists, but also to discuss where justice should be done.

The aim of the thesis has been to find some key problems regarding international judges and prosecutors in national legal systems to be able to make better in the future. During the analyse of those questions various materials have been used, such as regulations, reports and previous research. The conclusion that has been drawn is that international judges and prosecutors can play an important role in the building of rule of law in national legal systems. However, the cooperation among internationals and nationals has to be deeper. Therefore some questions regarding for example salary and language problems must be solved so that the cooperation has the possibility to grow stronger in the future.

Key words: Kosovo, International Judges and Prosecutors, UNMIK, EULEX.
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<tr>
<td>ABA</td>
<td>American Bar Association</td>
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<td>EU</td>
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<td>EULEX</td>
<td>European Union Rule of Law Mission in Kosovo</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>IJP</td>
<td>Program of International Judges and Prosecutors</td>
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<td>KJI</td>
<td>Kosovo Judicial Institute</td>
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<td>KJPC</td>
<td>Kosovo Judicial and Prosecutorial Council</td>
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<td>KTA</td>
<td>Kosovo Trust Agency</td>
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<td>MMA</td>
<td>Mandate for Monitoring, Mentoring and Advising</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<td>SCSC</td>
<td>Special Chamber of the Supreme Court in Kosovo on KTA related matters</td>
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<td>SRSG</td>
<td>Special Representative of the Secretary General</td>
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<td>UN</td>
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<td>United Nations Administration Mission in Kosovo</td>
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1. Introduction

1.1 Aim and main questions

Rule of law is an indispensable part in the reconstruction of war-torn societies. It sets the standards for what is needed in a functioning state and also gives some reconciliation to the concerned people. Further, it is an important part in achieving a stable conflict-free country, in an equal world. The establishment of rule of law leads to further advantages in the form of securing human rights and democracy, and thereby general security for the international community.

Kosovo is a place where the work regarding rule of law have been quite intense in the past years. As a part of the former Yugoslavia, Kosovo suffered from conflicts and tensions between the different regions of the country. In 1998 the tension grew stronger and open conflict between Serbian and Kosovo Albanian military forces were a fact. This led to a substantial amount of international involvement in the country by several actors, such as North Atlantic Treaty Organization (NATO), United Nations (UN) and European Union (EU). One part of the international involvement in Kosovo has been to build up the judicial system according to the rule of law, which is what this thesis will focus on.

The violent situation in Kosovo called for immediate support by international actors. This makes the case of Kosovo unique since there was no time for planning the response from the international community carefully. As a result of the lack of time the international community had to be innovative and come up with various ideas to establish some stability in the region quickly. One of these innovative ideas was to use international judges and prosecutors. This was done partly since the national judges and prosecutors tended to be partial and decided cases different depending on the ethnicity of the prosecuted. To make sure that the decisions were taken more impartially the international personnel were introduced.

However, to bring international judges and prosecutors in to a state without its approval is also intrusive. It tells the state that it is not able to handle the judiciary itself and undermines

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the belief of the state’s capacity. Therefore the introduction of international involvement has to be done as smooth as possible.

The aim of this thesis is to examine some of the questions and problems that can rise from the situation regarding international judges and prosecutors within a national legal system. The reason for doing so is, that around the world there are a lot of countries, like Kosovo, that are not capable themselves to change their judicial system and the situation within it. Thereby there is a further need for international cooperation, which has to be developed to work in the long-term. Further on as we already have seen, the international involvement also requires some acceptance from the concerned state to work practically. As this thesis will show, the introduction of international cooperation is not always easy. Therefore the situation regarding international judicial personnel within a national legal system has to be analysed to prevent unnecessary flaws in the future. This thesis will look into UN’s and EU’s missions in Kosovo and their use of international judges and prosecutors to be able to analyse the problems that has rose in the particular case of Kosovo. The international involvement in this area will be examined in terms of legitimacy, transparency, openness and integrity.

Kosovo has been chosen as an example in this thesis, since the urgent need for help directly after the war forced the international community to find quick solutions but also because the international judges and prosecutors have been represented in the country for around 12 years now. However, there are still various matters that could be changed to make the work more effective. The long involvement in the country makes it more likely to see the flaws and where one should put the effort to make a change, than if the international staff had been represented for a shorter time. Further leads the long involvement to the fact that plenty of research already is done on the case, which opens up for a deeper understanding and thereby a further discussion. The last reason is that Kosovo uses hybrid courts, which means that the judges and prosecutors are supposed to work together with the national judges and prosecutors, instead of being their own community as is in the case with international courts. Those hybrid courts make the question about integration and how the international staff work and are treated in comparison to the national staff even more interesting to look at.

Even more interesting is the criticism coming from several directions regarding the cooperation between nationals and internationals in the hybrid courts in Kosovo. For example

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Almut Schröder argues that cooperation between the international and national judicial personnel is only an exception and even if it is supposed to happen regularly it does not. This statement shows the importance to analyse the work of the international actors, to see if it is conducted in accordance with its purpose or not. It is of highest importance that the cooperation among the international and national legal staff work well since the international judges and prosecutors are not supposed to be in the pertained country constantly. The input from the international organisations are made-up to function as a take-off for the concerned state, therefore the cooperation has to be conducted in certain ways to make it as effective and worthwhile as possible.

In conclusion, this thesis will focus on the situation around international judges and prosecutors in Kosovo with a perspective of how we can use this case as a lecture for the future.

1.2 Method and disposition
The object of this study, international judges and prosecutors in the courts of Kosovo, requires the use of a method wider than the truly judicial. The subject has to be looked upon both from a legal, but also political perspective to be able to understand the reasons behind various decisions. During the work with this thesis, articles from scholars and practisers have been used, as well as reports from various organisations. Legal materials, such as resolutions from the United Nations Security Council (UNSC) and the Rome Statute for the International Criminal Court have also been used. Further information has been achieved from websites by the EU, UN and NATO, which clearly describes what their work in Kosovo is supposed to be.

Relying on secondary sources has required a careful reading where the documents have been checked towards each other. It has also been taken into account when and by whom the documents have been written, since is of a great importance to have in mind what the source for the relevant information is while reading. The reason for this is that the authors might beautify their own work and what their organisation has done. Therefore an attempt has been made to use neutral sources as a way of checking the veracity of the information. However, some sources have been frequently used during the process because of their good quality. These are; ‘Hybrid Courts: The Hybrid Category of a New Type of International Crimes Courts’ by S.M.H. Nouwen, *International Judges and Prosecutors in Kosovo: A New Model* Schröder, p.5.
As will be explained later, European Union Rule of Law Mission in Kosovo (EULEX) has only been functioning for four years to this date, which leads to the fact that the material on how they proceed with their work is not unending. Therefore most of this thesis will concern the results that United Nations Administration Mission in Kosovo (UNMIK) has reached during their work, although some results and discussion will also regard the work EULEX has completed. The author will try to make the picture of what the different organisations have made clear, so one can see the results separated from each other. Regarding the development within the judicial system of Kosovo the author of this thesis has tried to make the progress clear to not mix up the different statements and analysis of the problems with each other.

The thesis has been organised to give some theoretical background before the discussion and analysis regarding the international judges and prosecutors takes part. Chapter 2 therefore deals with rule of law and the two biggest international actors in Kosovo and the mandate they are entrusted with. It also includes a description of two courts systems which both includes international involvement, and an analysis of which of those systems is preferred. There after chapter 3 goes deeper into the question of international judges and prosecutors. It will be described more deeply why the international judicial personnel were introduced to Kosovo and how they are selected. Later on the international cooperation within the judiciary will be examined in terms of legitimacy, integrity and professionalism. Chapter 4, as the last chapter, includes some concluding reflections and recommendations for the future. Throughout the thesis two terms are frequently used, these are personnel and staff, which in this case includes the two categories of judicial workers discussed, i.e. judges and prosecutors.

2. Rule of law and international actors in Kosovo

2.1 Rule of Law – what it is and why it is needed

The concept of rule of law dates back to the times for the foundation of the Universal Declaration of Human Rights, where it is stated that the human rights should be protected by the rule of law. However, there is no clear, general statement of what rule of law is, which

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makes it hard to describe and work with.\textsuperscript{11} The UN has although tried to establish a common language for the concept of rule of law, to make the world united in this sense. The concept was explained in the report from the Secretary General in 2004 as;

“A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” \textsuperscript{12}

Although the concept was mentioned already in 1948 the frequent use for it in the UN’s state-building missions is relatively new.\textsuperscript{13} The concept is said to primarily have two functions, both of which concerns setting up rules and standards to protect from arbitration and abuse. One of the functions regards standards to make it visible to the people what kind of effect their arbitration will have. Thereby it also protects from abuse from the state by arbitrary tentatively. The other function is to set up those limitations and procedural balances.\textsuperscript{14}

However, EU, which also works with rule of law promotion in various places, divides the rule of law into five different components in their membership requirements. Those components are;

\begin{itemize}
  \item The principle that all acts by public authorities are founded in and subject to the law;
  \item A system of separation of powers;
  \item Respect for fundamental rights and freedoms;
  \item Independence of the judiciary;
  \item Measures against corruption.\textsuperscript{15}
\end{itemize}

\textsuperscript{13} Zajac Sannerholm, Rule of Law after War and Crisis (2009) p.50.
\textsuperscript{14} Zajac Sannerholm, ‘Rule of Law Promotion After Conflict’, p.6 ff.
Those components may make it more visible what rule of law is compared to the statement from the UN. The may also work as a checklist to examine how far the states have come in their work with rule of law. Those components also show the importance of the judiciary in the rule of law. As one can see there has to be a well-functioning judiciary without any form of corruption for a state to function according to the international standards.

As has been mentioned, the judiciary plays a very important role in the establishment of rule of law and thereby does also the courts so. The president of the International Criminal Tribunal for the Former Yugoslavia, Antonio Cassese, said in 1995;

"Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have had to live under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus Peace and Justice go hand-in-hand."

This shows the importance of the judiciary in the work with rule of law and also in the work of keeping a peaceful world. To be able to fulfil the requirements for a secure state which respects the fundamental rights and freedoms it is indispensable to have functioning courts. Therefore they courts have to be established quickly after the end of a conflict. However, even if a quick start is asked for the courts of course have to fulfil the requirements of independency. Otherwise it is hard to secure that other requirements can be met.

2.2 Kosovo under International Administration

2.2.1 United Nations Administration Mission in Kosovo

UNMIK was established in 1999 under the Security Council’s resolution 1244. In the mentioned resolution one can find the executive mandate that UNMIK was entrusted with. The mandate enabled UNMIK to govern Kosovo and therefore they took over the administration of the country completely. In order to do so they set up four different pillars. Those pillars were supposed to work with various parts of the administration and other functions in the state. The first pillar was “Police and Justice” which were founded to work

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17 S/RES/1244 Adopted by the Security Council at its 4011th meeting on 10 June 1999 (10 June 1999).
18 The structure of the pillars changed a bit in 2001, however, the description of the structure in this thesis only consider what it looked like after the change was made.
with questions regarding the police, judiciary and rule of law. The other pillars were called “Civil Administration”, “Democratization and Institution Building” and “Economic Reconstruction”. All the work was however not carried out by UNMIK and UN, who only were responsible for the first two pillars. The work in the other two pillars was carried out by the Organization for Security and Co-operation in Europe (OSCE) and EU respectively.\textsuperscript{19} However, UNMIK was the only one of these organisations which had executive mandate and thereby could take all decisions they wanted.\textsuperscript{20}

Regarding the establishment of rule of law, this task was shared between OSCE and UN. OSCE worked with capacity building and promotion of human rights, while the UN was responsible for the questions regarding the judiciary and police. The work with establishing a functioning judicial system has been a challenge for the UN since it was hard attacked during the war. The buildings were destroyed, the legal framework was not satisfying according to international standards and there were a lack of legal knowledge among the national legal professionals.\textsuperscript{21}

\subsection*{2.2.2 European Union Rule of Law Mission in Kosovo}

EULEX was established in 2008 and works under the United Nations Security Council Resolution 1244.\textsuperscript{22} It was established to continue the work of UNMIK\textsuperscript{23}. The main goal for EULEX is to assist and support the Kosovar authorities in their work with rule of law, particularly in questions of judiciary, police and customs.\textsuperscript{24} EULEX do not have as broad mandate as UNMIK had, they do not have any mandate to govern or rule Kosovo in any way. Although EULEX still have the possibility to change or cancel a decision taken by the Kosovar authorities.\textsuperscript{25} The organisation is also different from UNMIK in the way that it is a completely civilian mission and do not have any military involvement at all.\textsuperscript{26} EULEX is instead supposed to work with monitoring, mentoring and advising to help the Kosovar authorities to build up their country and therefore their mandate is called Mandate for

\textsuperscript{20} UNMIK/REG/1999/1 on the Authority of the Interim Administration in Kosovo (25 July 1999) 1.1 1.1.
\textsuperscript{21} Perriello & Wierda, p.9.
\textsuperscript{23} Zajac Sannerholm, Rule of Law Promotion After Conflict, p.1.
\textsuperscript{25} Council Joint Action 2008/124/CFSP, art.3 (b).
Monitoring, Mentoring and Advising (MMA). Since EULEX is a mission under the European Union all the member states of EU are involved in this mission, plus some extra states such as the United States, Norway, Turkey, Switzerland and Croatia. There is also a possibility for other states to join. The mandate for EULEX only last until June 2012. However, there is a broad belief that it will be prolonged, since the Kosovar authorities need further help and international involvement therefore is necessary for a longer time.

EULEX is also a member in the Special Chamber of the Supreme Court in Kosovo on Kosovo Trust Agency (KTA) related matters (SCSC). This chamber was founded in 2003 by UNMIK. It was supposed to work as an international court, to deal with the questions that might rise up from the privatization work that KTA carried out. When UNMIK left the judicial arena EULEX took over their work in this chamber.

2.3 Where should justice be done - international courts or at home with international judges?

2.3.1 International courts (International Criminal Tribunal for the Former Yugoslavia and International Criminal Court)

The International Criminal Tribunal for Former Yugoslavia (ICTY) was established in 1993 under chapter VII of the Charter of the United Nations as a response to the grave breaches of international humanitarian law which occurred in the former Yugoslavia. The Statute of the ICTY states that the court has jurisdiction over all crimes against international humanitarian law, such as the Geneva Conventions, the law of war, genocide and crimes against humanity committed in the region of the former Yugoslavia since 1991. According to article 6-9 in the Statute the Tribunal has the right to accuse individual persons responsible for the violations and can also request a state to hand over those persons to the ICTY. The Tribunal is situated in The Hague, but works in close cooperation with the courts in the former Yugoslavia. By its work the ICTY helps in bringing reconciliation to the victims of the offences. They are also

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27 Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, Law no.03/L-053 (13 March 2008) art.2.4.
30 European Union Rule of Law Mission, p.43.
31 European Union Rule of Law Mission, p.43 f.
33 ICTY, Updated Statute of the International Criminal Tribunal for the former Yugoslavia (September 2008) preamble.
34 ICTY, Updated Statute of the ICTY, art.6-9.
said to ensure this work in an impartial way by prosecuting violators from all ethnicities. Another benefit from the work of the Tribunal is that it helps the former Yugoslavia strengthening the rule of law. This is possible since the legal professionals at the Tribunal transfer their knowledge to their colleagues around the Former Yugoslavia and also help them to create their own war crime courts.

Another international court with jurisdiction over the same type of cases as the ICTY is the International Criminal Court (ICC). The ICC was established by the Rome Statute of the International Criminal Court, which entered into force in 2002. It is not a part of the UN, instead all the states that wishes to become a party to the ICC has to sign and ratify the Rome Statute. This has been done by 121 countries have done so far. Article 1 of the Rome Statute gives ICC jurisdiction over persons for the most serious crimes of international concern. This means that ICC can prosecute individuals who in one way or another are responsible for crimes against humanity or other types of serious violations of international law, just as the ICTY. The difference in jurisdiction between those two courts is that the ICTY only have jurisdiction over crimes committed in the former Yugoslavia after 1991. While the jurisdiction of ICC is broader since it includes all the states that are parties to the Rome Statute. This was one of the reasons behind the establishment of the ICC; the international community felt that there was a need for a criminal court that does not only concern a certain region as the ICTY does. However, the jurisdiction of the ICC is also limited in time and the court is only allowed to try cases where the crime was committed after the Rome statute entered into force in 2002.

2.3.2 Hybrid courts

Hybrid courts are supposed to be a mix between a national and international court. This is realized by putting international judges and prosecutors into the national courts. Further it makes them work within the national system together with national judges and prosecutors. These hybrid courts are supposed to bring the best from both the national and the international

35 ICTY. 
40 ICC. 
41 Rome Statute of the International Criminal Court, article 11-12.
world together, without taking the bad part of the two worlds into it.\textsuperscript{42} Hybrid courts are expected to take advantage of the national staff’s knowledge about the domestic system and their respect from the citizens. International judges and prosecutors are on the other hand there to make sure that the international standards are upheld and fair trials are held. Hybrid courts have been established in several former conflict zones, such as Sierra Leone, East Timor, Bosnia y Herzegovina and Cambodia.\textsuperscript{43}

There are different ways in how the hybrid courts are established. Sometimes the population within the state are asked about their opinion, but in most cases it is only the government that is involved in the negotiations that establish hybrid courts.\textsuperscript{44} The involvement by governments risk the impartiality of the hybrid courts since they may have requirements for how the justice should be done, even when international actors are present. This is something the international presence has to be aware of and say no to, to make sure that the independence of the hybrid courts is not threatened. If they are not able to do so, there would not be any need for the international presence in the courts, since they are supposed to be there to end the partiality.

2.3.3 Debating the location for justice

The two chapters above have described international courts and internationalized courts within a national judicial system. There are different opinions regarding which type of court is the most appropriate and thereby where justice should be done. This chapter will discuss the various aspects for the location of justice. Furthermore it will try to discover which of the two forums seems to be the ideal.

First of all, international courts may sometimes lack legitimacy because they are far away from where the crimes were committed. As a result the people from the concerned area do not feel that they have any connection or possibility to be part of the court.\textsuperscript{45} At the same time may national courts not be the best place to prosecute criminals of international crimes, since the judges and prosecutors may have too much connection to the past conflicts. Thereby they will not be able to hold fair trials and treat the prosecuted equally. This is, as mentioned in chapter 2.3.2, one of the reasons why hybrid courts exist. They want to resolve those

\textsuperscript{43} Nouwen, p.191 f.
\textsuperscript{44} Nouwen, p.199.
\textsuperscript{45} Nouwen, p.191.
problems and make the people feel that they are part of the court, while the prosecuted still can feel that they get a fair trial.

One reason for putting the hybrid courts in favour of the international is that the proceedings in the hybrid courts are faster than the ones in the international courts. However, they still take longer time than in the domestic courts.\(^{46}\) Normally there is a wish for time-saving, which makes the hybrid courts a good choice since it provides a mix of the international and national courts by taking the impartiality from the international and the time-saving from the national courts.

Another argument for the hybrid courts is that they are less expensive than the international courts. The ICTY is for example said to cost about $100 million each year.\(^{47}\) The numbers for the hybrid courts in Kosovo is not provided. However, the common view is that they are less expensive in general. One reason for this is probably that the international courts only include international staffs, which has a higher salary than the judicial personnel at national courts.\(^{48}\) Also that the international courts probably are situated in big buildings in industrialised countries makes the cost for the international courts higher than for the hybrid courts in developing countries.

Another argument against the international courts is that they are only able to handle a few cases every year.\(^{49}\) This makes them ineffective in both the costs and the number of prosecuted. One the other hand, the reason for the lengthy processes might be that the international courts conclude a deeper investigation than the hybrid courts. However, this should not be the case since it would mean that the hybrid courts are not working hard enough neither.

Further on, as will be discussed in chapter 3.3, there is sometimes a problem with the recruitment of international judges and prosecutors to take part and work within the hybrid courts.\(^{50}\) This problem might stem from the fact that the hybrid courts exists in post-war societies where the environment most often is not fully secured. The international courts discussed in this thesis are both situated in the Hague\(^{51}\), which is a location with a secure environment in the middle of Europe where the judges and prosecutors should not have to feel

\(^{46}\) Perriello & Wierda, p.27.  
\(^{48}\) Perriello & Wierda, p.16.  
\(^{49}\) Only 15 cases have been brought to the ICC. ICC, ‘Situations and cases’, retrieved 2012-05-08 <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>.  
\(^{50}\) Dickinson, p.1063.  
\(^{51}\) ICC <http://www.icc-cpi.int/Menus/ICC/About+the+Court/> & ICTY <http://www.icty.org/sections/Aboutthe-ICTY/>.  

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insecure at all. Therefore the international courts might be favoured in this case, since some international personnel might prefer them because of security reasons.

The hybrid courts also have a problem with the physical infrastructure that the international courts does not have. Since the hybrid courts are established in post-war countries the physical infrastructure for example court buildings, has often been destroyed, therefore it might be very hard to carry out proceedings. Despite this problem the hybrid courts provides some kind of capacity-building to the national judiciary that the international courts does not. The international judges and prosecutors are supposed to work together with their national counterparts in the hybrid courts. Therefore they also have the possibility and task to transfer their knowledge to those, so the national judicial personnel can learn and carry on with the fair and effective trials themselves in the future. A mission like this might be hard to carry out for the personnel in the international courts since they are too far away from their colleagues in the national courts.

In conclusion, there are different reasons for and against hybrid and international courts as has been shown. It is hard to say which alternative is the best. However, it seems like the hybrid courts has more positive factors than the international courts, at least while looking at the ones mentioned above. However, both international and nationals courts might be needed, but in different ways and for different crimes. As Dickinson argues, hybrid courts should be seen as a complement, instead of its own alternative to the international and national courts.

3. International Judges and Prosecutors in Kosovo

3.1 Background – problem they respond to

“Court buildings looked as if a plague of heavily armed locusts had swept through, scouring the grounds for anything valuable and leaving broken windows and ripped-out electrical sockets in their wake.” This is the picture given of Kosovo right after the war in 1999, from a country where the only thing left of houses were the chimney and some outer walls. The situation called for immediate help and extremely rapid response from the international community.

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52 Dickinson, p.1065.
53 Dickinson, p.1068 & p.1070.
54 Dickinson, p.1060.
56 O’neill, p.44.
The problem in Kosovo was that the different ethnicities had not been able to cooperate after the war which caused problems even in the judicial area. One of the problems was that the citizens felt like the ethnicities were treated differently depending on if they had the same ethnicity as the judge or not. Another problem was that the judiciary were neither impartial nor independent, although both impartiality and independence are two important components in a fair trial according to various international documents, such as the Universal Declaration of Human Rights.\(^{57}\) A further problem was to know which law should be applicable and also that the judges lacked experience in the system.\(^{58}\) To be able to solve those problems the international community responded with various actions which will be explained further in this chapter.

One of the first things that had to be done was to establish which law should be applicable in the territory of Kosovo. At first the Serbian law in use before 1999 was decided to be applicable.\(^{59}\) However, this was not popular among the Kosovo Albanians since they felt that it was the law from the people that had been oppressing them. Therefore the law from 1989 was decided to be used instead, together with international standards. The reason for this was to secure that the law was not incompatible with, among others, the international human right standards.\(^{60}\)

There was also a problem regarding the application of law. Because of the conflicts the judges and prosecutors with Albanian ethnicity had not been present in the judiciary for a long time and thereby they lacked the knowledge of applying law and especially international law.\(^{61}\) At the same time, the Serbs, who had the knowledge, did not want to work in the Kosovar judicial system.\(^{62}\) Another problem in Kosovo was the lack of an important part of rule of law, which is the compliance with human rights standards. The judicial staff in Kosovo did not see those standards as legally binding. Instead they were seen as guidance for how it could be.\(^{63}\) As a result of this the international community, i.e. UNMIK, decided to let international judges and prosecutors in to the system.\(^{64}\) Their way of doing so was by

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58 Hartmann, p.4 f.
59 UNMIK/REG/1999/1, section 3.
63 Schröder, p.17.
64 Dickinson, p.1062.
establishing hybrid courts, a mix of international and national courts, which has been explained in chapter 2.3.2.

Most of the problems which have been shown here, stems from the conflict between the various ethnicities in the region and their unwillingness to cooperate with each other. The international judges and prosecutors were introduced to work alongside their colleagues from both ethnicities. Moreover they tried to bring the ethnicities together, to secure the justice system and as a result also secure the rule of law and state itself.

3.1.1 The international actors response
UNMIK established a programme for international judges and prosecutors in 2000, which would help to establish rule of law in the judicial system. This programme was the first of its kind and had thereby never been tried before.\(^65\) However, the program only appointed two internationals to one of the court districts in Kosovo. This showed to be way too few since they were outvoted by the Albanian judges most of the times. This is why UNMIK later created the ‘Regulation 64 Panels’, which will be described further down. As already have been stated, these international judges were supposed to work together with their national colleagues, to help them develop their skills and make the judicial system correspond to rule of law. One of the specialities with the international judicial personnel in Kosovo was that the only limitation they had in what kind of cases they could deal with is that it had to be a criminal case. In other hybrid courts the internationals often have limitations to only deal with, for instance, war crimes. This is not the case in Kosovo, where the international personnel even can take over cases which the nationals already have started dealing with.\(^66\) Another interesting part of this is that the international personnel in Kosovo can chose which case they want to work with by themselves, there is no special appointment of cases to those.\(^67\)

In May 2000, the Regulation 2000/34 changed the problem with international judges and prosecutors in only one of the court districts by growing the Programme of International Judges and Prosecutors (IJP) to make it include all the five court districts and even the Supreme Court.\(^68\) This was a good decision since the problem with partiality did not only exist in Mitrovica, the first court district, but also in the other districts. Although the problem was probably worse in Mitrovica since this is the district closest to Serbia and therefore has a lot of Serbian inhabitants that did not like the judicial decisions taken against them.

\(^{65}\) Hartmann, p.1.
\(^{66}\) Hartmann, p.1 f.
\(^{67}\) UNMIK/REG/2000/6, section 1.1.
\(^{68}\) UNMIK/REG/2000/34, section 1.1.
The establishment of hybrid courts in Kosovo was made by the UN itself since it worked as the government of Kosovo during the time. However, the courts were established under domestic law since the UN had created regulations that gave itself mandate to create domestic laws.\textsuperscript{69} The reason for doing so was probably to make the courts more attached to the state, especially when UN was supposed to hand over the ruling over it to the national government. The establishment of hybrid courts in Kosovo was unique and the first time for UN to try the input from international judicial personnel in national legal system.\textsuperscript{70}

One option for hybrid courts in Kosovo was where international judges and prosecutors chose to sit on the bench for or take over a particular case. This was the first solution that was tried to internationalise and make the courts more independent. However, since the international judges were a minority compared to the national judges they were often outvoted and thereby they did not make a big change for the judiciary.\textsuperscript{71} That the judges and prosecutors could choose which case they wanted to be involved in made it also hard to internationalise and let the nationals learn about fair trials and so forth. The case of Kosovo was different from all the other cases with hybrid courts since the international involvement in the courts was not mandatory.\textsuperscript{72} It can be debated if it is good or bad that the hybrid courts in Kosovo have not been mandatory and thereby institutionalised. On the negative side stands the work of the court will not always be secured from partiality and dependence, which makes the system insecure. At the same time it may help the national judges to learn a bit for themselves. This is however questionable since the reason to have international presence is that the nationals were not able to handle the situation themselves.

Another option for hybrid courts in Kosovo, that was added later, is called ‘Regulation 64 panels’ after the regulation that created them. The regulation made it possible for a party to request international participation in their case. If requested, the UN Special Representative would appoint either an international prosecutor, judge or a panel with three judges where at least two had to be internationals to the case.\textsuperscript{73} These mixed panels were also part of the domestic legal system since there were only representation from the international world in

\textsuperscript{69} Nouwen, p.200.
\textsuperscript{72} Nouwen, p.205 f.
\textsuperscript{73} UNMIK/REG/2000/64 on Assignment of International Judges/Prosecutors and/or Change of Venue (15 December 2000).
form of judges and prosecutors. Therefore they could not take decisions that had international effect and the rights and duties that the panels enjoyed was also only of domestic character.\textsuperscript{74}

The two mentioned types of hybrid courts were one way the UN responded to the problems that occurred in the Kosovar legal system after the conflict in the area. Another actor in Kosovo, EULEX, as we have seen in chapter 2.2.2, also worked with the judiciary.

In the mission statement it is described that EULEX will “develop and strengthen an independent and multi-ethnic justice system . . . , ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practice”.\textsuperscript{75} In doing so the EULEX Judges has to work in accordance with the Law on Jurisdiction, which sets out the rules for when the EULEX Judges can be part of the proceedings, but also how the proceedings should be carried out.\textsuperscript{76} One of the biggest problems in the Kosovar judicial system has, as we have seen, been the ethnic question and how to get all ethnicities, particularly Serbs and Albanians, into the judicial staff on equal grounds. Further it has been a problem how to get fair trials and equal outcomes for the prosecuted.\textsuperscript{77} One part of this is that the Kosovar judges sometimes gets threatened in different ways, this is one reason for the EULEX Judges to step in and take over a case to make sure that justice is carried out in the right way.\textsuperscript{78}

Both the UN and EU have responded, through their operations, as has been shown above, in a bit different ways to the question of building up the judicial system in Kosovo. Further problems regarding the establishment and work by the international judges and prosecutors will be discussed below.

### 3.2 Selection of judges and prosecutors – both international and national

To be able to have a secure justice system there has to be judges and prosecutors that are willing to work and have the right experience. Therefore there has to be some kind of requirements on those so they are easy to find. In this chapter the requirements for international and national judicial staff will be described, and further the differences between them will be discussed.

\textsuperscript{74} Nouwen, p.202 f.
\textsuperscript{76} European Union Rule of Law Mission, p.5 f.
\textsuperscript{77} Cady & Booth, p.59.
\textsuperscript{78} European Union Rule of Law Mission, p.28.
The international judges and prosecutors represented between 2000 and 2008 were selected through a process carried out by UNMIK. They were advised to Kosovo on a six-month basis, just as the other international personnel in UN Peacekeeping Missions. However, their stay could be prolonged if they wished for, and UNMIK approved it, when the first six-month period ended. The contract for the judges and prosecutors in EULEX is a bit longer than the UNMIK contracts, one year, which also can be prolonged if wanted. During the first years the international judges and prosecutors that were selected to work in Kosovo did not have enough knowledge in the field. They did not have experience in international humanitarian law and they did not know enough about the legal framework in Kosovo. The fact that there were no list of available judges and prosecutors for those kinds of appointments made it hard to find the right people for the job. This might be why the Head of the OSCE Legal Systems Monitoring Section has argued, that the ones that were only “good enough” for the job were recruited to serve as international judges in Kosovo. He meant that the recruiters had to be satisfied with the second or third best choice for the appointment since the best ones were hard to find.

The only requirements that existed for the international judges and prosecutors are stated in UNMIK Regulation 2001/2, which states that to have the possibility to get selected as an international judge or prosecutor in Kosovo one should: 2have a university degree in law, has served for at least 5 years in the home country, have high moral integrity and not have a criminal record”. There was no kind of requirement of knowledge or experience in either international humanitarian law or the national system of where the judge was going. In some cases the judges and prosecutors were selected only because they were able to speak English and did not have any previous opinions regarding the conflict in Kosovo. This becomes a problem, which will be discussed later on.

The recruitment of the international judges and prosecutors has been questioned, by among others, the Kosovo Ombudsperson Institution who argues that the recruitment lacks transparency. Their reason for arguing so is that all the power to decide who would be

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80 Hartmann, p.8.  
81 Perriello, & Wierda, p.20.  
83 Betts, Carlson & Gisvold, p.379.  
84 Perriello & Wierda, p.16.  
87 ASIL Proceedings, p.300.
appointed for a position in Kosovo laid in the hands of the Special Representative of the Secretary General (SRSG) alone. Also that the SRSG held interviews with the applicants, behind closed doors, made it hard to see how the final decision was made, except for the general requirements that had to be fulfilled in every case.\footnote{Ombudsperson Institution in Kosovo, \textit{Seventh Annual Report 2006-2007: Addressed to the Assembly of Kosovo}, Ombudsperson Institution in Kosovo (2007) p. 20.} The recruitment of judges and prosecutors in EULEX is the same. They are recruited by EULEX itself which leads to lack of transparency in the process.\footnote{ABA Rule of Law Initiative, \textit{Judicial Reform Index for Kosovo, vol. IV}, American Bar Association, Washington D.C. (October 2010) p.14.} According to the American Bar Association (ABA) the lack of transparency is even bigger under EULEX than under UNMIK. One reason for this is that now, when EULEX is in charge, it is not clear which requirements are valid for the recruitment of judges and prosecutors. It is neither stated if the same requirements that UNMIK used is still in force or not.\footnote{ABA Rule of Law Initiative, \textit{Judicial Reform Index for Kosovo, vol. IV}, American Bar Association, Washington D.C. (April 2002), p. 3.} The openness and transparency of the organisation is important to receive the approval from the people. As part in this work the selection process should be done more openly, even for the international judges and prosecutors.

The national judges and prosecutors are on the other hand selected by the Kosovo Judicial and Prosecutorial Council (KJPC).\footnote{D., Marshall & S., Inglis, ‘The Disempowerment of Human-Rights Based Justice in the United Nations Mission in Kosovo’, \textit{Harvard Human Rights Journal}, Vol.16 (2003) p.121.} To be selected as a judge one must have a university degree in law and have passed a special exam. The candidates must further not have a criminal record or have been engaged in any discriminatory activities, and last they must have a high moral character.\footnote{ABA Rule of Law Initiative, \textit{Judicial Reform Index for Kosovo, vol. I}, American Bar Association, Washington D.C. (April 2002), p. 3.} After being selected, the judges also have to undergo some training at the Kosovo Judicial Institute (KJI) before they are hired as national judges for a period of three years. After this period they can be reappointed which means that they will serve in the national judiciary until retirement.\footnote{Organisation for Security and Co-operation in Europe Mission in Kosovo, p.13.} This provides some kind of security for the national judges and prosecutors once they have passed the entrance step into the judicial organisation.

As has been shown, the international judges are selected by the UN, while the national judges are selected through a process by the KJPC. However, there is no communication between those two organisations regarding the appointment of judges.\footnote{Perriello & Wierda, p.20.} This is interesting since the judges they select have to work together in the courts. It would therefore be good with some kind of communication so that the requirements, among other things, are looked...
upon in the same way. The biggest difference between the requirements for the international and national judges is that the international judges have to have at least five years of experience, which is not necessary for the national judges. It would probably be hard to recruit national judges that already had experience, because then it would never be possible to recruit new personnel. And the international judges have as one of their aims to function as mentors for the national judges, which would be extremely hard if they did not have any experience themselves. Therefore it is not strange that the requirements differ in this part. However, it can be questioned if there is any requirement regarding the experience itself. The international judges and prosecutors deals with sensitive cases and therefore they should have further experience in the international human rights law. This is, according to an international judge interviewed in Amnesty’s report on Kosovo 2008, something that does not seemed to be valued. The international judge in the report could not remember that any question regarding this was asked during his interview.\textsuperscript{95} It can also be questioned if five years of experience is enough or if the requirement has to be higher. The judges and prosecutors deals with complicated cases and therefore might need more experience. At the same time, they might have got too attached to their own system if they have worked in them for a long time. This is a question of balancing since the judges and prosecutors on the one hand are supposed to adjust to the new judicial system. On the other hand are they supposed to work as mentors and transfer their knowledge, which might be hard of they have not experienced anything themselves.

In the requirements for the national judges it is stated that they are not supposed to have engaged in any form of discriminatory activities, which should be valid also for the international judges. It might be hard to secure this requirement though, since everything may not be documented in detail, especially not for the judges coming from abroad. Even though, it is still very important that the international personnel does not have any pre-existing opinions regarding the conflict in Kosovo, since that would risk even their impartiality. Neither should they have engaged in other forms of discriminatory activities, since they will work with colleagues from all over the world. The cooperation between them would be harder if somebody had discriminatory thoughts about someone else.

In conclusion, requirements are good since they set some standard for what is needed. However, they have to be followed and developed to help in the work with finding the most suitable people for the job.

\textsuperscript{95} Amnesty International, p.21.
3.3 Legitimacy

There are some problems concerning the placement of international judges in a national justice system and require them to work side by side with their national colleagues. Some of the problems which have turned up in the particular case of Kosovo will be further examined in this and the next chapter of the thesis.

As already mentioned, the international judges and prosecutors were supposed to work alongside with their national colleagues. Therefore they had the same jurisdiction, competence and power as the Kosovar judges and prosecutors. Although there were some differences, such as that the international judges and prosecutors only were present in one of the court districts in the first period and that they could select their cases themselves.\(^\text{96}\)

Even though the international judges and prosecutors were not restricted to any special kind of criminal cases, they mostly tried cases concerning war crimes and violence between ethnicities.\(^\text{97}\) This might be either since they are there during a limited time and therefore did not have the possibility to try other cases. Another reason might be that they do not think that they are needed for “easier” cases such as theft. The problem with partiality is probably not as big in those kinds of cases as in cases connected to war. Therefore it is better for the internationals to focus on cases, where it can be more necessary with international input.

There has also been a problem with international judges which have been outvoted. The problem existed for quite a long time in Kosovo and therefore UNMIK created the ‘Regulation 64 Panels’ by Regulation 2000/64, as have been shown above. This lead to, that the international judges were secured more power in the courts. The original system with two judges and three lay judges was changed, and instead a panel with three judges, where at least two of them had to be international was used.\(^\text{98}\) This resulted in that the international judges could not be outvoted. Thereby the problem with the Serbs feeling that they got too high punishments or were accused more than the Kosovo Albanians was solved.

Some of the problematic questions regard how the personnel are treated. There exist some differences between how the international and national staff are treated. However it should be the same since they carry out the same work. Of course the national staffs know how everything works within the state, which the international does not. However, that is not what this concerns. This is instead about salary and protection, where there is a huge gap between the internationals and nationals.

\(^{96}\) Hartmann, p.8.  
\(^{97}\) Hartmann, p.9.  
\(^{98}\) Hartmann, p.11.
Regarding the protection, the international staffs get full protection every hour of the week by body guards and so forth. Whereas the national staffs does not get any kind of protection at all. This is a bit strange since they carry out the same work. Moreover, since the international staffs are there for a limited time, which might imply that they actually are not under the same risk as the national staffs. However, the international staff might stand out more from the crowd, which makes it easier to find and attack them if wanted, although this would not legitimize the high level of protection. Especially not since the national staff that are under risk at all times does not get any protection at all. The nationals should also be under a higher risk for attacks since the question of ethnicity still exist. Therefore the opposite ethnicity may have problems with the decisions taken and want to tell the judges and prosecutors by unlawful means.

Another question that has to be analysed regards the salary. The international judges and prosecutors earn around $100 000 a year, whereas the nationals only earned around €550 each month (€6600 a year) for a very long time. However, the Kosovar government has started to reach a solution to the unjust salaries for the national judges and prosecutors with the Law on Courts. It regulates the work in the courts of Kosovo and was created in 2010. Law on Courts increased the salary for various kinds of judges and prosecutors drastically. In most cases the new salary is at least double the amount than it had been since 2002. This means that the salary for national personnel now is about €1000 each month (€12000 a year). Furthermore, as a result the judicial staff can concentrate on their work in the judiciary and do not have to worry about their income and survival for their family as before. The increased salaries probably also benefits to the national judicial staff in the sense that they feel more valued and want to do a good job in cooperation with their colleagues, both national and international. Further it decreases the amount of bribes in the judicial system, since the national staff do not need to accept bribes if they can survive on their own income.

Even though the salary has risen there is still a huge gap in the level of income. However, there are not any big differences in the expenses the internationals and nationals...
have; they do all need food, a place to live and clothing for themselves and family members. The only thing the internationals need which the Kosovar judges do not is a plane ticket to get to Kosovo. However it does not explain why they need a higher salary. On the other hand it has to be understood that the salary is an important part to attract the international judges. Without a high level of salary some of them might not think it is worth the risk to work in a post-conflict society.\textsuperscript{107} To have had a job as an international judge or prosecutor might be a good experience even at home. Although there are still several factors that might make the applicants think more than once about if they should go or not. First of all, the international judges and prosecutors’ lives in an environment and culture that is totally new and probably more insecure than the one they are used to at home. In most cases they have to leave their family and might also stop or take a step backwards in their carriers at home.\textsuperscript{108} Those factors make it somewhat fair to give the international personnel a higher salary than what the national personnel has.

On the other hand it is still wrong in a question of equality to let the internationals earn a lot more than the national staff. It is also a question of how they are supposed to work together side by side, knowing that they work on different premises and are “worth” different amount of money. Of course everyone should not have the same salary because we work different and have different experience and knowledge. It may also work as a carrot to work harder, if you know that you can get a higher salary. Although the gap should not be as big as now if it is supposed to work as a goal. Especially not since the Kosovar judges and prosecutors probably know that they will never reach the same level as the internationals. The gap has to be minimalized, because, how are you supposed to work alongside with and listen to someone that seems to be way more appreciated than you? For this question to be solved an inventory about what is necessary in the system but also what competences should get what salary has to be done. Furthermore, the staffs have to get paid from the same employer to make them feel like they are one group which belongs together. The reason for this is because if you get paid from different employers you might feel like you are working for different organisations. Thereby you do not have to cooperate as much as if you work for the same organisation. Therefore it should be more cooperation already in the recruitment of judges and prosecutors, so they get employed from the same organisation. However, it might be hard to employ the international personnel in a national governmental organisation, as well as it is

hard to employ national legal personnel within the UN system. Therefore the KJPC should be used as an organisation in between that can cooperate with both types of staff. It would probably make the personnel feel more united and be a possible way to make the salaries more equal.

3.4 Integrity and professionalism

The following chapter will continue to discuss some problems regarding the international personnel within a national legal system. The questions below concern the integrity and professionalism.

The use of law has been one of the problems that have occurred. As we have seen in chapter 3.1, there was a problem regarding which law should be applicable at first. Finally it was decided that the law from 1989 should be used together with international standards. This resulted in that the judges did not have any knowledge about the applicable law. The international judges and prosecutors had not received any form of training or knowledge about the national justice system before arriving to Kosovo. Therefore they had to do some research themselves during their work-time there. This took up a substantial amount of time of each judge’s work, which made them unable to solve as many cases as would have been wished for. Further on, the short time for serving in Kosovo sometimes led to international judges and prosecutors leaving in the middle of an on-going prosecution, which resulted in that the case had to be taken over by someone else and restarted.109

Moreover, the lack of knowledge of the new system sometimes made the international judges and prosecutors keep the system they came from, which they used as a framework for their work in Kosovo. Since the staffs came from different legal traditions this led to conflicts regarding how to punish the prosecuted and deal with different matters.110 However, it seems like the international staff were not too interested to acquire more knowledge about the humanitarian law they were supposed to work in accordance with. A conclusion which can be drawn since most of them did not attend a workshop the ICTY held in 2000.111 Even the KJI held training sessions to raise the knowledge, both among national and international judges and prosecutors. Even in this case there were just a few participants and therefore the conclusion that the judicial workers are not interested in more knowledge can be drawn. However, to make the judiciary work practically everyone needs to have the knowledge about

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109 Perriello & Wierda, p.16 f.
110 Perriello & Wierda, p.23.
111 Marshall & Inglis, p.129.
the applicable law and therefore something has to be done, which will be discussed in chapter 4.

Language is another technical question which created problems between the international and national judges and prosecutors. Since the international staffs most of the times do not speak Albanian, while the national staffs knowledge of English is lacking, it becomes very hard for the judges and prosecutors to communicate. To be able to do so they need translators and interpreters, which is another reason why the processes gets slow. It is also dangerous to work via translators and interpreters since they may not be specialized in the legal language that is used in courts. Thereby they may translate the words in a wrong way or not be able to translate them at all. Another problem with translation is that even though the translators and interpreters are supposed to make both versions of the documents authentic, it might not always be the case. This makes the cooperation harder and misunderstandings are likely to happen. Further will the work with making national law and proceedings in more compliance with international standards be slower. The language problems do not only affect the work within the court, but also the population in Kosovo. When international judges carry out the proceedings in English it is hard for the national population to understand and get access to the documents. This is however an issue that is harder to solve. One cannot require the international judges and prosecutors to know Albanian, because that would make it even harder to find anyone for the job. Another reason to not require the international staff to know Albanian is because if they do so, they will probably have some kind of connection to Kosovo or the area around. This would make them partial just as the national staff. To teach the Kosovar judges and prosecutors English is of course a good idea, since it is necessary in the world today. However, it takes time and also requires economical resources. In the end it would probably be the best solution though, since it is more useful for the Kosovar people to know English than for the international judges and prosecutors to know Albanian. It might therefore be a valuable investment. Especially since it would make it easier for the judges and prosecutors to communicate among each other and also cut down the costs for translators.

The cooperation between the national and international judges and prosecutors can also be questioned, since several scholars argue that this does not exist to a wide extent. Almut

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112 Perriello & Wierda, p.17.
113 Schröder, p.21.
114 Amnesty International, p.52 f.
115 The reason for me to make this assumption is that Albanian is a minority language spoken by only around 6 million people in the world. BBC, ‘Languages across Europe – Albanian’, retrieved 2012-05-02 <http://www.bbc.co.uk/languages/european_languages/languages/albanian.shtml>.
Schröder argues in his article that “cooperation between international and national jurists is the exception rather than the rule”. Furthermore does he point out that there does not exist a strategy for national capacity building in Kosovo.\textsuperscript{116} He is also of the opinion that only the presence of international jurists in the country makes the nationals feel unnecessary.\textsuperscript{117} Also Carolyn Bull is of the opinion that the Kosovars have not been involved in the rule of law initiatives. She means that there was no strategy created for the nationals to take part in some way.\textsuperscript{118} Furthermore, Laura Dickinson does also state that the international judges and prosecutors have not cooperated with the national actors to a great extent.\textsuperscript{119} Those three statements make clear that there is a widespread opinion that the international involvement within Kosovo has not been effective in the cooperation with their national counterparts. However, the cooperation among the nationals and internationals is a very important part in the long-term capacity-building and therefore has to function to a higher degree. It is hard for the national judicial personnel to become better if they do not have any cooperation with their international colleagues and thereby a possibility to learn.

However, there might have been a progress in this question already, since the President of the Assembly of EULEX Judges in 2009 said that a “high level of partnership has been reached with our national counterparts”.\textsuperscript{120} All the criticism regarding the cooperation that has been mentioned here was written before EULEX took over in 2008. It might therefore be true that a progress has been made and that EULEX learned from the mistakes done by UNMIK in this field. However, it still seems like more could have been done to cooperate with and help the national jurists better. This is probably what EU thought when they created their mandate for monitoring, mentoring and advising in 2008. Since the purpose for the international involvement is long-term capacity-building it is of highest importance that the cooperation between national and international judges and prosecutors work, so the nationals learn and get to know how to carry out their job in the future. Therefore the statement from the EULEX Assembly President in 2009 hopefully is proof for that the work by EULEX has had effect and that they actually cooperate and advise the national jurists in their work.

Moreover, the independency of the international judges has been questioned since they were part of the bigger UN system and could not be considered to be only judges.\textsuperscript{121} This means that since they came from the big UN organisation they had to take into consideration

\textsuperscript{116} Schröder, p.6.
\textsuperscript{117} Schröder, p.20.
\textsuperscript{118} Bull, p.122.
\textsuperscript{119} ASIL Proceedings, p.299.
\textsuperscript{120} European Union Rule of Law Mission, p.3.
\textsuperscript{121} Amnesty International, p.35 f.
what the organisation wanted them to do and not only what they thought was the best. Depending on the level of involvement from the UN one can argue that it was the organisation that decided instead of the judges. In that case the problem with dependent judges would not have been solved with the means of international judges; it would just move the dependency towards another way. Also the international judges and prosecutors present in Kosovo today is part of a bigger organisation; EU. This means that the international personnel can still be dependent on their organisation. However, it might not be as big problem as with the national personnel. The reason for this is that the international organisations want to make it better and stop for example the inequality within the system. This is something the national decision-makers would not have the same possibility to work with.

4. Concluding reflections

This thesis has tried to describe the problems regarding international judges and prosecutors within a national legal system by looking at various aspects and problems that have occurred in the case of Kosovo. In this chapter some ideas for solutions will be presented to make international involvement by international judges and prosecutors function smoother in the future.

The problem regarding lack of knowledge about the applicable law existed already from the start and should therefore have been solved as soon as possible. One solution could have been to give the international judges and prosecutors that were going to Kosovo an introductory course in Kosovar law before arriving to the country. This might have made the learning process shorter, since it would not have occurred at the same time as the adjustment to the new culture. A movement to another culture can include culture shocks and thereby make it harder to take in new information. Another solution could have been to let the international staff serve on a longer term, which would have made their learning process less time consuming. As have been described, the international judges and prosecutors served on a six-month basis and the learning process took up a lot of this time. If the length of appointment would have been one year or more there would still have been time for learning and concluding cases. The judges and prosecutors under EULEX serve on a one-year basis, which means that there has been a progress even in this case. However, further progress is wished for and the best solution would be a mixture of the two mentioned options. The internationals would be given an introduction to the judicial system and law in Kosovo before their arrival. Further they would also serve on longer terms so there would be time to learn
and use the system before they have to leave. This would probably have saved a lot of both time and money for UNMIK and everyone else involved in this project.

Language problems were also a question that was discussed in chapter 3.4. As pointed out there, it is hard to know how to solve the question, since it requires some of the judicial personnel to make an effort to learn a new language. However, it is not only effort that is needed; it also takes a lot of time. Of course it is possible for some people to learn a language quickly, especially if intense studies are carried out. Keeping the national judges and prosecutors busy with language studies for a couple of weeks would however slow down the judicial processes instead. It was also argued in chapter 3.4 that the national staff should preferably learn English instead for the international staff to learn the local language, although this will not make the access to judicial documents easier for the population in the concerned state. Which would result in that translators still would be necessary to translate the documents after the trial is finished. As can be seen, this is not an easy question to solve; it is a balancing between access to justice for the people and possibility for cooperation between the judges and prosecutors. It is therefore necessary to think more about for the future to find a better solution.

There has also been a discussion about salary and protection in this thesis. As mentioned in chapter 3.3 the Kosovar government have recently made an effort to increase the salary for the national judges and prosecutors. That is a start, but the gap between the international and national judicial personnel is still too big and has to be minimized so they can be more equal and as a result carry out their work better. However, the level of salary for the national staff cannot be as high as for the international. It has to correspond to other salaries within Kosovo and the internationals have to get some extra for leaving their safe homes. If it is impossible to raise the salary for the national staff, one idea is to give them more protection instead. As explained earlier in chapter 3.3 the national personnel barely get any protection while the international staffs are protected every hour during their stay. This is also a point of inequality and to give the national staffs some kind of protection would probably make them feel more important and secure. It is also common among employers today, at least in Sweden, to give their employees something else than money when their salary cannot be raised more. It might be of the same or higher value for the employees to get protection instead of money, while it might be the same or lower cost for the employer. Therefore this could be a win-win situation and a good solution in this case.

Even though there are some problems regarding the international involvement in the national courts, they still play an important role in capacity-building and rule of law. One
Albanian judge said that if the international judges would not have arrived, there would have been chaos. And the work to build up the system again after conflict would have taken longer time, if it would have happened at all, without the international cooperation. Therefore the hybrid courts should be used also in the future, however, one should keep in mind and learn from the mistakes in Kosovo. Because even if some progress has been made the question still exists; will the international actors ever be able to leave? As has been shown, the capacity-building have been questioned. A weak capacity-building leads to that the national authorities will have the same problems as in the beginning when the internationals leave. It is also to say that it is the internationals that hold up the system, instead of just supporting the nationals. Therefore, in future operations, capacity-building has to be the main goal and something established from the start.

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122 Perriello & Wierda, p.31.
List of References

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