

ACCESS TO JUSTICE IN KOSOVO

REPORT



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Faculty of Philosophy, University of Prishtina, Republic of Kosovo

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We would like to thank the participants of the conference, all of whom generously shared their experiences and perspectives. We thank students of the Human Rights Center of the Essex University for their significant contribution to this report, KIPRED staff, and CPC contributors for all their assistance in organizing and administering the conference.

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About Organizers

The **Human Rights Centre (HRC)** is the oldest academic centre for the study, research and practice of human rights in the UK, located at the University of Essex which is among the UK's top-ten research institutions. Founded in 1982, the HRC comprises over 50 academic staff from 14 Departments spanning Law, Politics, Philosophy, Sociology, History, Linguistics, Psychoanalysis and beyond – many with professional experience from related fields of practice in government, inter-governmental and non-governmental organizations. The HRC has become an innovative multi- and inter-disciplinary centre offering a variety of scholarly programs at undergraduate (LLB and BAs), postgraduate taught (LLMs, MAs and MSc) and postgraduate research (PhDs) levels. There are presently some 250 students from over 60 countries enrolled in all programs. The HRC also offers a rich extra-curricular program which is practice-oriented and aims to prepare graduates for successful professional careers. The HRC is proud for its over 1,600 alumni working for human rights around the world (see: www.ehraa.org). For more on the HRC, see: www.essex.ac.uk/hrc.

The **Kosovar Institute for Policy Research and Development (KIPRED)** was founded in February 2002 with the aim of assisting the transition of Kosovo towards a stable democracy. KIPRED's mission is to promote and strengthen democracy and democratic values in Kosovo and the region. KIPRED aims to fulfill its mission by supporting the consolidation of democracy within public institutions, especially through development of independent public policy research in the field of governance, the development of political parties, and the development of inter-ethnic, regional and international relations. In the policy research component, KIPRED has been actively engaged in local governance sector reform, security sector reform, election reform, rule of law, and scrutinizing the implementation of decentralization and its political and social reflection. More than 50 publications have been published by KIPRED so far, representing a great source of information for local and international organizations but also for the broad public. KIPRED's extensive experience in organizing and facilitating training seminars includes high profile trainings for all political parties in Kosovo and most of the parliamentary committees of the Kosovo Assembly. More information on KIPRED Institute can be found at: www.kipred.net.

The **Centre for Political Courage (CPC)** was founded in 2009 and operates within the Department of Political Science at the University of Prishtina. CPC was established with the purpose of conducting academic research & influencing the policy-making process in Kosovo. The activities of the CPC include: research on topics which include European integration, civil society, rule of law, good governance & minority related issues; producing policy papers, reports, scientific articles, providing trainings, hosting discussions and organizing of conferences on selected topics. Currently CPC is involved in a two year research project titled "The role of Civil Society in Kosovo since 1999" under the Regional Research Promotion Program (RRPP), from the University of Fribourg in Switzerland. CPC is run by a network of professors at the Department of Political Science and students from different field of studies at the University of Prishtina. CPC's network, specifically aims to advance people's aspiration for increased knowledge in regard to social and political fields, but it will also aims to influence institutional and public life.

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1. Background

Kosovo's weak rule of law has hampered access to justice, which translates into violation of basic human rights. Further, the United Nations Development Programme Kosovo's (UNDP) Assessment Report on Access to Justice in Kosovo has stressed that access to justice is directly correlated with combating poverty and resolving social conflicts. The greatest deficiencies in access to justice derive from poor enforcement and implementation of the law, given that the legal framework is quite adequate on paper to ensure a professional judicial system.

The conference "Access to Justice" was organized on June 14 and 15, 2011, in Prishtina, Kosovo. Each day, the conference involved over 50 professors, representatives of governmental and judicial institutions, policy-makers, civil society representatives, advocates, academics and students, representatives of different international organizations, and practitioners of justice and human rights. This conference aimed to provide a forum for focused discussion on the various challenges and opportunities related to access to justice in Kosovo. Furthermore, it aimed to broaden analysis of 'accessing justice' and justice outcomes to include the relationship between citizens and the justice system, and to explore the roles of different institutions of the justice sector, the role of civil society, and the role of different international organizations in the justice sector. The conference went beyond just discussing of the current situation related with the access to justice in Kosovo and justice outcomes, to include analysis of the main legislative and institutional barriers for access to justice. Furthermore, it provided insights and recommendations in order to improve access to justice in Kosovo.

Organized by the KIPRED Institute, the Human Rights Center of the University of Essex, and the Center for Political Courage of the Department of Political Science at the University of Prishtina, the two day conference involved around 140 participants and took place at the Department of Political Science within the Faculty of Philosophy at the Prishtina University. The conference was divided into six sessions, which addressed current areas of key concern for stakeholders including issues of judicial and non-judicial mechanisms, governance and the rule of law, community rights and women's rights. The first day consisted of the opening session of the conference and three discussion panels, and the second day involved three panel discussions and closing of the conference.

The Access to Justice Conference in Kosovo 2011 build on the success of the 2010 two-day conference on Property Rights & Economic Development, co-organized by Essex HRC and Organization for Security and Cooperation in Europe Mission in Kosovo (OMIK). The conference engaged staff and students from the University of Essex, students and professors of the University of Prishtina, numerous IGOs working in Kosovo, and local officials and community representatives. The Access to Justice Conference draws on the joint achievements and established relationships between students from the Universities of Essex and Prishtina.

Key stakeholders included;

- University of Essex HRC staff and students interested in or studying human rights;
- Centre for Political Courage, Department of Political Science, University of Prishtina

- KIPRED and human rights experts, officials, policy-makers and others from Kosovo authorities, NGOs and IGOs working on access to justice or a related sub-topic in Kosovo;
- Academics and students from the University of Pristina;

The range of disciplines, institutional contexts and responsibilities represented by the participants was diverse, but all participants shared a common professional and personal interest in changing of the current state of the justice sector and human rights in Kosovo. The conference offered a significant opportunity to analyze and critically discuss the current situation. Furthermore, it enabled the participants to scrutinize the performance of institutions, especially those of the heavy international presence, and their involvement in human rights and the justice sector since 1999.

In sum, the conference generated recommendations for improving the current situation. Moreover, the conference represented an important medium through which to involve more proactively the university and civil society in joint efforts with representatives of governmental institutions and international organizations in generating recommendations and for improving the justice system.

This report provides information on the central themes of the discussions in the conference panels. It also compiles the implications and problems that were discussed, and it presents recommendations that were generated during the conference.

2.

Mr. Mentor **Agani**, *Professor at the Department of Sociology, University of Prishtina* moderated the opening of the conference. Open remarks were provided by Mr. Hajredin **Kuçi**, *Minister of Justice and Deputy-Prime Minister of the Republic of Kosovo*, Mr. Ian **Liff**, *Her Majesty's Ambassador to the Republic of Kosovo*, Mr. John **Packer**, *Professor of Law and Director at Human Rights Centre, University of Essex*, and Ms. Remzije **Istrefi**, *Director at Center for Political Courage and Professor at the University of Prishtina*.



“Justice is crucial to all other fields of social life.” – Mentor Agani

Professor Mentor **Agani** opened the conference by highlighting the importance of the justice sector for a society and emphasized that access to justice is crucial for the functioning of all fields of social life, for the respect and promotion of human rights, for the functioning of the election process, for state institutions, and for a free trade economy. All of these components of justice will be tackled in this conference. Kosovo has undertaken important steps for establishing a justice system, and further efforts for consolidation of the justice

system are ongoing. In establishing a justice system and justice institutions, it is crucial to have the engagement and joint efforts of all stakeholders in Kosovar society; academic institutions can contribute to enhancing further the functioning of the justice system. The presence of students and professors of the Human Rights Centre of the University of Essex and University of Prishtina will be a further contribution in this process.

In his opening remarks, Deputy Prime Minister Hajredin **Kuçi** welcomed the conference and stated that he is honored to speak at a conference related to access to justice. Mr. Kuçi pointed out that he would approach this topic from the perspective of those who experience the implementation of justice. According to Mr. Kuçi, the best way to articulate an opinion on the issue of access to justice is through freedom of expression, including the opinions that come from the academic institutions or universities through sharing of experiences and academic concepts. The role of universities is the creation of universal values through learning and scientific research, and this conference will add further to creation of these values. Mr. Kuçi claimed that reality is always different



“Access to justice is not something given away but it is something that state is obliged to ensure.” – Hajredin Kuçi

from perfection and those engaged in politics know this best. Kosovo has achieved progress in the field of the rule of law; however, it is not yet perfect. Kosovar institutions have been focused to this point on good law-making practices, ensuring that all laws are in compliance with international standards and are applicable in Kosovo. The current legislative framework contains several laws that guarantee the equality of all citizens of different ethnicities, gender, age, or political affiliation. For instance, one of the latest draft laws that Kosovar institutions are working on is the Draft Law on Free Legal Aid, which is an advanced law and in compliance with European Union standards. In addition Mr. Kuçi stated that an independent judiciary based on the previous system of Kosovo and the EU standards has been established, as well as the complimentary non-judicial mechanisms including notary, mediation and arbitration. However, there is a great opportunity to enhance the access to justice by seeking more active engagement in different processes of all segments of society, citizens, universities, and state institutions. In particular Kosovar institutions need to have better outreach and must promote existing initiatives and opportunities in order to change the existing perception on the judiciary. These efforts should be supported by the media, civil society and all citizens. Justice needs to be accessible to citizens without any technical and substantial barriers. Mr. Kuçi thanked the organizers and concluded his opening remarks by welcoming the diversity of the opinions resulting from a conference of academic institutions



“The British Government attaches enormous importance to the promotion of human rights around the world.” – Ian Cliff

Her Majesty’s Ambassador to the Republic of Kosovo, Mr. Ian **Cliff**, was the second speaker to address the conference. In emphasizing the importance of this conference, Mr. Cliff stated that promotion of the human rights all over the world is very important for the British government. Hence, the issues of human rights, rule of law and access to justice are at the heart of engagements of the British Embassy in Prishtina and the UK’s Department for International Development (DFID). In the spirit of

this engagement, DFID funds projects to support the Rule of Law Coordination Secretariat, which aims to improve access to justice for Kosovar citizens, by strengthening Kosovar institutions so that they can deliver justice, security, and efficient rule of law.

Mr. Cliff pointed out that Kosovo, as part of its aspirations for EU membership, must address certain issues related to access to justice and the rule of law. These issues have been highlighted as being very challenging in EU Progress Reports and UNDP’s early warning reports. The key challenges that require immediate response are the backlog of cases, long judicial procedures, perception of widespread corruption in judiciary, not enough trained judges, and the perception that some judges lack professionalism and fairness. Mr. Cliff confirmed that some of these issues are being tackled by the relevant institutions and supported the statement of Deputy Prime Minister Kuçi that these issues should go beyond

the Kosovo government to also be the concern of the academic community, civil society and the media. Thus, he considers this conference a step forward in contributing to further improvements in the justice system. According to Mr. Cliff, the very good cooperation between the Center for Political Courage of the University of Prishtina, the Human Rights Center of the Essex University, and KIPRED needs to deepen further in order to deliver results and concrete recommendations and ideas for the benefit of Kosovo society and marginalized groups in particular.

In his address Professor John **Packer** conveyed his the collaboration with the distinguished partners, and the received support and encouragement from Government of Kosovo and the representatives of the Government of UK and DFID.



“In transitional context it is necessary to emphasize non-judicial mechanism which may be proactive and free.” – John Packer

The University of Essex is one of the top 10 research institutions in United Kingdom. Established in 1982, the Human Rights Centre at the University of Essex is the oldest human rights programme in the world. The HRC brings together diverse academic programs, practical work and student representation from all over the world. The HRC shows the breadth and universality of interest in human rights.

Access to justice is a matter of priority everywhere in the world, but is particularly urgent in a young country that is moving from a history of a lack of justice for the population into a new society that is founded on accessible and tangible justice for everyone. Justice should not only encompass a minimum respect for human rights, but also the rule of law, good laws and good governance. Access to justice as a concept is associated particularly with the needs of those who are excluded, marginalized, or very poor and indigent. Access to justice therefore requires preoccupation with looking for “the edges of the system”. But in a young, transitioning country with considerable economic, unemployment, and post-conflict challenges, access to justice does not concern only marginalized groups, but is a central question for the whole population. Therefore, establishment of a working justice system includes many aspects, including establishing the necessary institutional framework that will produce good and effective laws providing equal treatment for everyone. Without an independent and impartial judicial system there cannot be justice for anyone; this fact compels us to place the key focus on the institutional framework and elements associated with the judiciary. Achievement of these standards is often something that comes rather late and is costly for a transitional society, therefore, in a transitional context, it is necessary to emphasize non-judicial mechanisms that may be proactive and be free and accessible for everyone. The institution of the Ombudsperson and others with public interest functions can reach out and create opportunities to address these problems.

It is important to pay special attention to vulnerable groups, especially persons in small villages far removed from public institutions. The new democracy must make sure that it reaches them with regard to all fields of justice, not only on criminal matters, but also civil matters with regard to issues of property and family life. In this spirit, it is important to address disputes that derive from unresolved past conflicts. It is important to have an environment to reconcile disputes, to resolve past conflicts that have not been dealt with, and to give society confidence that justice will be done in case of disputes in order to materially invest. Kosovo stands ten years after a terrible moment in history, and only few years as an independent state. It is on the road to building a free society based on the rule of law, aiming to achieve dignity for everyone and everywhere and working toward a dynamic, sustainable democracy which is peaceful and prosperous.



“Our wish is to establish the newest center with human rights programs at the University of Prishtina.” – Remzije Istrefi

Professor Remzije **Istrefi**, welcomed the conference participants in the name of University of Prishtina. Following on what Professor Packer said on the activities of the Human Rights Center of the Essex University, and the fact that Human Rights Center is the oldest center of its kind in the world, Professor Istrefi stated his wish to establish the newest center on human rights programs at the Prishtina University. Professor Istrefi explained that the Center for Political Courage is an initiative of the students at the University of Prishtina, supported by the Professors, through which they aim to conduct research on the

most crucial issues including European integration, promotion of human rights, and the role of civil society. This conference will serve as the basis for such an endeavor, and collaboration with the University of Essex will enhance the professional engagement of the academic community in Kosovo towards building and maintaining effective judicial and non-judicial mechanisms that would ensure healthy access to justice for all citizens. Kosovo, as the youngest state in the world, faces many challenges and developments, among which the establishment of a justice system based on the rule of law and human rights standards. The discussions, exchange of experience and possible recommendations will serve as a good platform for policy makers and implementers of the justice system. Professor Istrefi invited all participants to contribute to the conference through analyses of the current situation, the exchange of experiences and the establishment of new cooperation networks between the representatives of various institutions and the students and professors of both universities.

3. Governance and the Rule of Law

Mr. Artan Venhari, Head of Special Projects at KIPRED Institute moderated the first discussion panel where Mr. Sylejman Sopa, Director of Department for Access to Justice at the Ministry of Justice, Dr. Bekim Baliqi, Lecturer at University of Prishtina, Mr. Krenar Gashi, Executive Director at KIPRED, and Mr. Ben Reed, Legal Advisor, USAID Enforcing Rule of Law Project delivered their presentations.



In his discussion, Mr. Sylejman **Sopa** focused on the structure of the Ministry of Justice of the Republic of Kosovo and some of the challenges that it faces. Mr. Sopa emphasized that access to justice is still far from satisfactory in Kosovo. Since the establishment of the Ministry of Justice in 2007, efforts have been made to make the system more functional and accessible. Within the Ministry of Justice there is a Department on Access to Justice, which consists of the Division for Legal Aid, Judicial Integration Division and the Victims Protection Division, which provides assistance to the victims of violence and victims of crime. The Judicial Integration Division has functioned within UNMIK since 2003 through its office in Prishtina and 11 Court Liaison Offices throughout Kosovo, mostly in places inhabited by Serbs. The main aim of the division is the integration of non-majority communities, in particular the Serb community, into the justice system. According to Mr. Sopa, the Judicial Integration Division has achieved good results and has become an important component of the Ministry of Justice. The Victims Protection Division was initially established in accordance with UNMIK regulation 1999/24. Despite the established legal framework, there have been difficulties in putting in place the required procedures to protect victims. Similar problems are facing the implementation of the UNMIK Administrative Direction 2001/4 on the prohibition of human trafficking; the government still has not

established a proper office with a coordinator to assist victims. Mr. Sopa welcomed any advice on how to establish such an office.

Mr. Sopa also mentioned that the Victims Protection Division has 15 offices throughout Kosovo, which work in coordination with the police and provide legal aid to the victims. Moreover, there is a free hotline available to all citizens. However, several cases including killing of a woman by her husband a few weeks ago in Prishtina, underline the need for more effective preventive measures. The Victims Protection Division can initiate legal procedures to defend victims' rights, and it has been done in cooperation with the US office, OSCE and the Ministry of Interior and Ministry of Labor and Social Affairs. Finally, the Ministry of Justice also provides housing for victims of human trafficking.

The second panelist, Dr. Bekim **Baliqi**, reflected on the relationship between justice, rule of law and democracy. The rule of law is a constitutive element of democracy, especially in transitional societies such as Kosovo. Although politicians often emphasize the importance of the rule of law, there is a gap between formal institutions and reality.

Public trust in the judicial institutions is at an extremely low level in Kosovo, partly for historical reasons and partly from problems arising after 1999. Although the international community stressed the importance of creating solid judicial institutions by dedicating one of the pillars of UNMIK to justice, there have been numerous deficiencies in consolidation of the judicial system. However, the foundations for the respect of some basic human rights, the right of communities and freedom of movement, among others, have been laid.

Dr. Baliqi also highlighted the interdependence between democracy and the rule of law, as well as the importance of political mentality and the perception of justice, stating "justice is not just codes, but also what we perceive as just." The best protector of society is society itself, and the media and citizen participation are thus of great importance. Hence, more than ever the citizens should be encouraged not to wait for institutions, but rather they should interact and support a two-way process in order to ensure that their needs are fulfilled. On the other hand, problems such as organized crime and corruption cannot be tackled by civil society, NGOs or academics alone. Hence, the political will of institutions is essential in order to guarantee justice and establish it as a part of democracy. Democracy is a life-long learning process for which the rule of law is the guarantor of the process.

Mr. Krenar **Gashi** stressed the latest progress reports of the European Commission (EC), which describe the rule of law as the Kosovo's Achilles' heel. Mr. Gashi raised concerns over the long list of issues requiring response, including the enormous backlog of cases pending at the courts. Furthermore, Mr. Gashi questioned the performance of the international community by quoting a KIPRED study showing a weak performance by UNMIK judges since 1999, which contributed to the current backlog.

After its declaration of independence in 2008, Kosovo invited the international community to assist in its transition. International assistance has been generally insufficient and there has been a lack of coordination. The EULEX mission consists of 20 judges, and the rest are police officers, which is not an adequate balance. Moreover, justice system, particularly the courts, was a target for donors; although it was proven that they were not worth investment.

The key players in the justice system also failed to establish a shared database of information and electronic communication, which hinders information exchange and contributes to the current backlog. Without a proper communication between the key rule of law institutions it is very difficult to achieve the desired progress.

The EC progress report points out that, despite having a large number of prosecutors and judges in the region, it has also an extremely high number of unresolved cases. Rhetoric aside, the low budget allocated to this area makes it clear that the rule of law is not a priority. Instead of strengthening the prosecution and the courts, several special mechanisms were established to fight crime and corruption. However, they have not achieved satisfactory results. By contrast, the Constitutional Court has performed good work. According to Mr. Gashi, positive changes were often not the result of political planning but rather the result of international pressure.

The establishment of the rule of law remains the greatest challenge. In its research, KIPRED has focused on the fight against organized crime and corruption, essential elements of the rule of law. One of the main findings has been the lack of a genuine supervisory mechanism for the work of prosecutors and judges, who are compelled by case overload to make quick decisions without due deliberation. On the other hand, a positive development has been the adoption of a new law establishing salaries and wages for judges and prosecutors.

Finally, Mr. Gashi discussed the independence of the judiciary with respect to the powers of executive. There have been cases of direct intervention by the executive, but most have been indirect. This problem still needs to be addressed in order to ensure an independent and impartial judicial system.

Mr. Ben **Reed** elaborated the contribution of USAID's Enforcing Rule of Law Project (EROL), whose aim is to clarify the methods of justice administration. The project framework envisions the cooperation with several institutions, such as the Kosovo Judicial Council and the Office of the President.

The project consists of several parts. Firstly, according to Mr. Reed, justice is seen as a "black box" in Kosovo: the problem enters one side and justice comes out the other side. People believe the box is "broken", but only few know what happens inside that box. Therefore, the mechanisms of justice will be addressed by the project. Secondly, 20 model municipal courts will be established in cooperation with the Ministry of Justice and the Constitutional Court. Thirdly, the project will ensure that the Constitutional Court has access to all the information and technical information it requires to perform its work. While the judiciary is independent, judicial opinions are going to be perceived as political. Therefore, it must be ensured that they are well-founded and based in law. Finally, in cooperation with KIPRED and other NGOs, the project will help governmental organs – such as the Ministry of Justice, the Constitutional Court and the Prosecutor Council – to communicate with civil society regarding how they go about administering justice. The goal is to help governmental agencies to administer justice more efficiently and to inform civil society about that work and enhance its engagement.



The participants showed great interest in further discussing other relevant issues, including sustainability. According to Mr. Baliqi, sustainability deals with a concept, with the efficiency of the legal system itself. Despite investments in several areas, the problem in Kosovo remains the lack of trust. The proportion of prosecutors and judges is also not adequate. Mr. Baliqi criticized EULEX and UNMIK as bad examples of how justice should be handled, as they have been dragging their feet. Sustainability is questionable in Kosovo's current circumstances.

Mr. Reed stressed that the sustainability of judicial reforms is fundamental to the idea of governance and clarified that the project of USAID—focused on mentoring and technical assistance—would have a duration of four years. Following that, Mr. Gashi noted that KIPRED and civil society had been consulted by EROL for the first time in after so many years of international assistance in Kosovo. Linkages like this add to sustainability. Projects by the international community are usually carried out without any thought about an exit strategy or how they can strengthen the local authorities. Hence, sustainability will be achieved only when all stakeholders are involved and their contribution is taken into account.

Another question that was raised was the process of appointment of judges and prosecutors. Subsequently, Mr. Sopa addressed the appointment and supervision of judges. Judges are appointed by the Kosovo Judicial Institute (KJI). The shortlist of candidates is then referred to the President, who promulgates the final appointments. Although judges now receive higher salaries, the backlog of cases is expected to persist. The KJI is also responsible for the supervision of judges, but this issue still needs to be addressed, since performance is currently not closely followed. With regard to the rule of law in Mitrovica, Mr. Sopa explained that there are two functioning offices there, in addition to a court where EULEX judges are working. However, the situation is still complex and work is not proceeding normally.

During the discussion, a participant pointed out that the title of the conference should have been “lack of access to justice in Kosovo” and made several critical remarks regarding the performance of the international community and branches of the government, including the Liaison Offices. In response, Mr. Baliqi clarified that, although the groundwork was laid by the international community after 1999, there had been indeed severe problems in the implementation. With regard to Liaison Offices, Mr. Sopa acknowledged the existence of

several problems, including a lack of legal expertise and qualified candidates. Reorganization or fusions are being considered. In reply to a request for further clarification on the achievements of USAID's project, Mr. Reed stressed that the project has just started and that they have been trying to find out what is wrong. He invited the interlocutor to visit his office in a few months, stressing the importance of holding the relevant actors accountable for the problems of society, including donors such as USAID.

In the remaining of the panel, political intervention and political will were discussed in depth. Mr. Venhari criticized policy makers for their lack of creative policies and solutions. Despite the enormous backlog and insufficient number of judges and prosecutors, nobody has initiated a policy for political change to address such problems. Professor John Packer, Director of the Human Rights Centre of the University of Essex, also commented on the issue of sustainability and political interference. Training programs can be carried out to cultivate a new generation of people who can inculcate the judiciary and civil society with a new political culture, for instance. However, the question is: How can political intervention be addressed *now* in order to prevent it from becoming a long-term political culture problem, as is seen in neighboring countries?

Mr. Sopa also acknowledged that political intervention is a major problem. Citizens do not trust Kosovo's legal system. However, to address this issue adequately, it is essential to prioritize the rule of law and justice at all levels of government, which once again highlights the importance of political will. What can be done? Mr. Baliqi suggested that increasing capacities and professionalism, as well as improving technical assistance, electronic communication and notary services are important measures to be taken.

As Mr. Gashi pointed out, the issue of the separation of powers and political interference is highly complex: there is also self-censorship by judges when dealing with cases that involve high officials, a problem that requires radical measures. Finally, a system of checks and balances is required for the quality of work that is being performed, as well as punitive measures for those who bypass the law. The judicial system will only be able to tackle the challenge of lack of policy-making capacities when it is fully independent.

4. Judicial Mechanisms / Institutions

Mr. Henry McGowen, Chief of Party, Public International Law & Policy Group (PILPG) moderated the panel on the Judicial Mechanisms / Institutions, where the following panelist presented their contributions: Mr. Besim Kelmendi, Special Prosecutor at the Special Prosecution Office at the Republic of Kosovo; Mr. Enver Peci, Head of the Kosovo Judicial Council; Ms. Dzenana Hadermerovic, Legal Advisor at the Constitutional Court of Kosovo; and Mr. Francesco Florit, President of the Assembly of EULEX Judges.



According to Mr. Besim **Kelmendi**, prior to 2011, there had existed a joint judicial and prosecutorial body, but since then, the two have been separated and now a fully independent body of prosecution, the Kosovo Prosecutorial Council (KPC) has been established. KPC officially was established in January 2011, and has been functional since March. Mr. Kelmendi pointed out that the KPC is still a very new body and is still in the initial phase of development. It faces a wide array of challenges, among which insufficient number of staff. The greatest challenge is the reform in the prosecutorial system which requires re-organizing the prosecution system, which will become functionalized in its new form only in 2013. The re-organization, as well as the setting up of the Prosecution Council, is done in cooperation with EULEX and they have the full support of the EULEX prosecutors. The chief prosecutor of the Special Office comes from EULEX, and EULEX prosecutors are ranged alongside domestic ones throughout the system. At the moment the Prosecution Office is working with about 80 prosecutors, yet a greater number is needed and not all vacancies are filled. Mr. Kelmendi concluded that it is of great importance to assure that adequate budget is allocated in order to ensure successful reform of the prosecutorial system.

The Head of the Kosovo Judicial Council, Mr. Enver **Peci** stated that the Kosovo Judicial Council is now the highest body of the judicial system of Kosovo. The work of the Judicial Council consists of many aspects, and faces many challenges. The most important and obvious task is the appointment and re-appointment process of judges. This is due to a vetting process that all judges and prosecutors had to go through in the recent years to arrive at a clear picture of the state of the Kosovo judiciary and to remove people that were not sufficiently qualified from the system. Since then, not all vacancies have been filled and there is a need for more prosecutors and judges. The main challenge remains the overall reform of the judicial system, which hopefully will increase the efficiency of the judicial mechanisms.

The biggest problem is the extremely high number of un-solved cases, which counts over over 200,000 backlog cases. Since this backlog amounts to a state of urgency and is detrimental to the effective application of the law, the Council has adopted special measures to deal with outstanding cases and the results of this strategy are very positive by decreasing the backlog by more than 10% in the first three months.

The audience was then addressed by Ms. Dzenana **Hadermerovic**, legal advisor at the Constitutional Court of Kosovo. She explained that the Constitutional Court has been operative for two years and is based on a European model. Even though it has only been in existence for two years, the Court draws on a rich legal background both because of other regional courts as well as the international system, since the Constitution of Kosovo obliges them to apply cases of, for example, the European Court of Human Rights and other international case law. Ms. Hadermerovic put the focus of her presentation on individual access to court, as guaranteed by article 113.7 of the Constitution. Cases can only be found admissible when several criteria are fulfilled. Many cases are inadmissible, which counts up to 80% at this moment. Ms. Hadermerovic stated that often the mission of the Constitutional Court is being misunderstood by different parties and considered as a court of appeal, yet their mandate is strictly restricted to constitutional cases. As to the access of communities to the Court, Ms. Hadermerovic explained that local government has direct access through the chairperson of the municipality. Ms. Hadermerovic stated the efficiency of the Constitutional Court in dealing with the cases as they had 79 cases in 2009, of which almost all had been decided and in the time frame of 2010 until early 2011 there have been 206 cases, where on 85% of the cases, the Constitutional Court has issued decisions.

Mr. Francesco **Florit** from the EULEX briefly explained what EULEX is, and what it does. Mr. Florit stated that EULEX is an EU mission of EU countries which is also supported by some non-EU countries including Norway, USA, Canada, Switzerland, Croatia, and Turkey. The mission has several components. The police component is roughly more than half of the contingent, while the customs department makes up a small part of it. The justice component is about one third of the EULEX mission. The unit that Mr. Florit is heading consists of 30 to 35 international judges and about 100 supporting staff, both domestic and international. EULEX judges are in the Supreme Court, as well as in all five district courts and in both levels they are co-located with their Kosovo colleagues. The numbers of civil and criminal judges are roughly the same, yet their tasks are different. Civil judges have been doing more monitoring, mentoring, and advising (MMA), while criminal judges provide more concrete

help in cases through their executive mandate. In the future they also will put a greater focus on MMA. Mr. Florit stated that it will take years to re-build the Kosovo judiciary, since it is not enough to modernize the system, but also to re-build and modernize the legal mentality to assist the country in its transition.



A number of important issues were raised, the prosecution of international crime and whether international or national prosecutors dealt with these cases; interference of politicians on the war crimes and similar cases, and on the existence of the trust of the people in the judiciary and whether the trust or mistrust changed across different ethnic groups .

Mr. Kelmendi explained that the Special Prosecution Office of the Republic of Kosovo (SPRK) deals with prosecution of international crimes and that in all cases where several countries are concerned, as for example in cases of organized crime, war crimes, crimes against humanity, several routes are possible. Since the declaration of independence in 2008 and until the official recognition by the UN, Kosovo cooperates with other countries that do not recognize the authority of the Kosovo government through international moderation.

Concerning the political interference, Mr. Kelmendi firmly stated that he does not agree with the opinion of different politicians that war crimes and similar cases connected with the conflict are not of priority and especially that cases against Kosovo-Albanians should not be prosecuted at this time. He continued by saying that the Prosecution Council was not bound by politics but by the law, and that the public often were not aware of the extent of their work, so that public opinion could not be taken as conclusive. He expressed his personal opinion in saying that he did not think that religion or any other ground played a role in the prosecution of cases.

Regarding the trust of people in judiciary, Mr. Peci responded that they were aware that people were critical of the system, yet in recent years there had been an increase of cases

being taken to court. He restated that in the vetting process many judges did not get re-appointed, which is a result of better scrutiny and screening of judges and that the decrease of backlog was an important focus. By raising the income of judges and by adopting special disciplinary measures that will be much harsher than the previous ones, the problem of corruption will decrease in the future. All this would, over time, contribute to increasing trust in the judicial system in the population.

Ms. Hadermerovic agreed that it needs time to build a functioning judicial system. She said she understood that the people of Kosovo had waited for justice for a long time and that they were becoming impatient, yet the system was moving. Adding to this, Mr. Florit reiterated that measures had been adopted that would change the perception of the judicial system positively, namely the vetting system and the raise in pay for judges and prosecutors. The judiciary was improving and they had to keep up the motion. He mentioned the project of USAID introduced in the first panel discussion as a great project.

On the question of whether it was better to tackle war crimes and crimes against humanity within the domestic system or with international courts like ad hoc tribunals by the UN, Mr. Florit stated that dealing with cases of war crimes or crimes against humanity in a domestic court was a lot more practical, flexible and easy, as cases could be dealt with in a matter of weeks instead of years. The co-participation of international judges would guarantee fair trials that were in line with international standards.

The participants raised also concerns over the principles of bringing cases before the Constitutional Court; how much the measures to increase the efficiency of the judiciary had been effective and whether EULEX has completed its mission successfully. Ms. Hadermerovic said that the cases can be brought based on the provisions in the Constitution and that principle of continuing violations applied. Whereas, Mr. Peci thought that the measures for increasing the efficiency in the judiciary had been quite effective, as could be seen by the reduction in the backlog of cases and more cases being taken to court. The vetting process was successful because it got rid of judges that were not adequate; however, it had the negative effect that now there are not enough judges to fill the vacancies. The increase in wages has the positive result of attracting better qualified people, which will in turn increase the efficiency of the system. And finally, Mr. Florit admitted that the successful completion of the mission is a political, not a judicial decision.

5. Non-judicial mechanisms/institutions

Mr. Shkamb Qavdarbasha, Researcher at KIPRED Institute, moderated the session where the following panelist presented their contributions: Mr. Behxhet Shala, Executive Director of the Council for Defense of Human Rights and Freedoms; Mr. Isa Hasani, Director at Investigation Department, Ombudsperson Institution in Kosovo; Mr. Habit Hajredini, Executive Director at Advisory Office of Good Governance, Equal Opportunities, Human Rights and Gender, Office of the Prime-Minister (AOGG)



The moderator opened the discussion by stating that access to justice is crucial in the context of Kosovo and has to be guaranteed through a combination of judicial and non-judicial mechanisms. The latter shall work as a corrective tool of the judiciary, despite the fact that the two do not have any formal connection.

In his presentation Mr. **Shala** highlighted three major challenges faced by the judiciary in Kosovo. The first relates to the differences between the North and the South of the country, both in terms of applicable legislation - Serbian legislation is still applied in Northern Kosovo - and with regards to discriminatory practices. On this latter point, Mr. Shala held that access to justice has not been equal for all. After the war, 80.000/90.000 Kosovo Serbs fled, and their properties were taken by Kosovo Albanians. In trying to solve this situation, there has been discrimination towards the Serbs. On the other hand, the same treatment has been

suffered by Albanians in the North of Kosovo. Although equality exists on paper, it has seldom been applied in practice.

The second issue that arises and that cannot be ignored is the difference between national and international prosecutors in terms of salaries, with the latter being highly privileged. This fact has highly affected the performance of the local judges which has resulted with the general public's low trust in the judiciary.

The last point concerns an evaluation of the activities carried out by EULEX. The EU rule of law mission is supposed to deal, *inter alia*, with organized crime. However, Shala pointed out that little has been done in this field and EULEX should work harder to meet the expectations and tackle this issue.

The debate then moved on to non-judicial institutions, and focused on the role of the Ombudsperson Institution in Kosovo (OIK). Mr. **Hasani** informed the participants that the mandate of OIK is quite broad, encompassing the following: monitoring public institutions, facilitating the citizens' access to administration through effective procedures, mediating between the citizens and the relevant institutions and communicating with the media, addressing cases with the constitutional court. It can also investigate, make recommendations, and issue special reports and annual reports. The main drawbacks with which the Ombudsperson seems to struggle are the non-binding nature of its decisions, together with the lack of a mandate to intervene in court decisions that fall short of procedural requirements, where in this regards, the Ombudsperson can only contact the relevant institutions. In addition, the non implementation of OIK's recommendations, which is not rare for authorities to ignore the letters that ask them to implement a particular decision/observation, remains a continuous challenge. Also, as further explained by Mr. Hasani, there is a need of international support and training to improve the working methods of this institution and help it achieve better results.

The third mechanism presented by Mr. **Hajredini**, is the Advisory Office of Good Governance, Equal Opportunities, Human Rights and Gender (OGG), which is part of the Office of the Prime Minister. Its main task is drafting national strategies and policies on human rights, as well as reviewing human rights laws. Mr. Hajredini stated that after the war, strategies were unclear and there were political difficulties that led to a neglect of human rights, especially the rights of the most vulnerable segments of society including women, children, and minorities. OGG started its work from the revision of legislation, acknowledging that there were considerable challenges arising from the fact that part of the legislation dates back to the time of Former Yugoslavia. Such legislation had to be reviewed and integrated with contemporary provisions which most of them drafted under UNMIK administration. OGG pays special attention to the advancement of the human rights protection of the marginalized groups that suffer from extreme vulnerability, in particular Roma community, elderly, women and children, and disabled persons.

Also, it is worth mentioning that the office deals with Kosovo's reports to United Nations treaty bodies. So far, reports have been prepared for the Committee on Economic Social and Cultural Rights and the Committee on the Rights of the Child. Despite the fact that Kosovo is

not a member of the UN, it applies the UN treaties, following an agreement set by UNMIK. In order to reach its objectives, OGG worked with civil society organizations, as well as with the OIK and other relevant stakeholders, including UNMIK.

The discussion session was opened with the question on the role of media in protection and promotion of human rights. There were different responses from the participants, while Mr. Hajredini considered that despite the very important role that media can play in the field of human rights protection media has not been so active in reporting human rights violations, but also successes in protection and promotion of human rights. Currently, OGG is cooperating with media in preparation of a documentary about the rights of persons with disabilities. On the other hand, Mr. Hasani mentioned that OIK has been cooperating actively with media, though it is evident that OIK's activities were more transparent while the institution was run by an international Ombudsman. Mr. Shala stated that the CDHRF cooperates very much with the media, every year CDHRF organizes a human rights Film Festival where films with human rights content from all over the world are being shown in Prishtina. Mr. Shala added that media has been very active in many individual cases upon the CDHRF request, such is the case of killing of the two protesters by UNMIK. Mr. Shala added that CDHRF regularly cooperates with international human rights organizations and groups among them a close cooperation with Amnesty International.

Another question that was raised was the issue of transitional justice. Mr. Hajredini explained that the AOGG does not have the mandate to work on the issue; it is the Ministry of Justice. Mr. Shala stated that CDHRF has been actively contributed in the war crimes cases that tried in front of Hag tribunal and also in Belgrade. CDHRF served as witness in several cases i.e. Milosevic case, and also contribution with evidences and testimonies. In addition CDHRF contributes also in the cases that are being handled by Kosovo judiciary.

Another issue that was raised was the level of representation within the respective organizations and which are the most marginalized groups within the Kosovo society? Mr. Shala stated that for sure Roma community remains the most discriminated group, despite the fact that there is a broader political conviction that it is Serbs, but this is not true. While Roma community face discrimination in education, employment and all sectors of society, the Serbian community enjoys many privileges under the affirmative measures, they can even block specific processes in the Kosovo Parliament under the Constitution of Kosovo. CDHRF has offices in the north of Kosovo and employees members of different communities.

OIK is multiethnic institution which consists of 20% minority representatives. Mr. Hasani stated that the most marginalized groups of society remain elderly, disabled woman and children.

Panelist agreed that there is a need for continuous support by the international organization in protection and promotion of human rights. International Organizations have been criticized for the lack of coordination among themselves but more for neglecting local institutions and civil society. This has resulted with failure in many projects and mostly in drafting human rights legislation and strategies, and action plans for their implementation. Mr. Hasani praised

all the assistance provided by Organization for Security and Cooperation in Europe, Mission in Kosovo (OMIK). On the other hand, Mr. Shala was very critic on the work and attitude of the representatives of international organizations. He stated that they are not impartial when it comes to support the communities, internationals are not accountable for their human rights violations and mentioned the case of killing of two protesters by Romanian Police, and also he criticized internationals for interference in the work of the CDHRF and mentioned the case of protest in the Dubrava prison where international representatives did not allow CDHRF to monitor the prison.

6. Violence against Women

*Ms. Nita **Luci**, Professor at the Department of Sociology, University of Prishtina moderated the panel where Ms. Ariana **Qosaj-Mustafa**, Women's Rights Activist, Ms. Vjollca **Krasniqi**, Lecturer in Sociology and Philosophy at University of Prishtina, Ms. Nicole **Farnsworth**, Researcher at Kosova Women's Network, and Ms. Tahire **Haxholli**, Head of the Domestic Violence Unit of the Center for Major Crimes of the Police Service of Kosovo, presented their contributions.*



The first three panelists raised many feminist critical perspectives on the topic violence against women. As such, many issues such as terminology, the representation of women in Kosovo and the issue of the panel title were questioned and debated in an attempt to recognize and deconstruct the power structures at play in this complex issue. Then the debate turned on explaining how and why female victims of violence faced difficulties in accessing justice for the crimes committed against them.

Violence against women is a multi-faceted and complicated problem. It is often the most pervasive and least recognized human rights abuse in the world. This, argued panelists Ms. **Farnsworth** and Ms. **Qosaj-Mustafa**, is not helped by the fact that few understand what the phrase “violence against women” really seeks to define. As such, they sought to challenge the panel’s title (“violence against women”) because of its inaccurate reflection of the interlinked gender and social norms that normalize familial and intimate violence, and make women its most common victims. There was a consensus among the panelists that there is a need to deconstruct these gender and social norms that make violence against women acceptable; there was agreement that stereotypes and traditional attitudes have contributed to

the normalization of domestic violence against women in Kosovo. Ms. **Krasniqi** pointed out that traditions and stereotyped roles have, as they have in many places all over the world, led to accepted unequal power relations between women and men. These have traditionally been used to justify the status quo, and as such necessitate a specific focus on issues that arise from gender interactions and relationships that consistently keep women at a disadvantage. In essence, noted Ms. **Krasniqi**, for real institutional change for women to occur, and for them to achieve effective access to justice, there needs to be a restructuring of social norms and expectations of gender roles in society that challenges traditional power relationships.

Further to this, the Ms. **Farnsworth** discussed how and why these gender norms and traditional attitudes do much to impede women accessing the justice when violent acts are committed against them. Several examples were given, from the common attitude of judges in Kosovo that the focus ought to be on reconciliation rather than providing protection orders; to the fact that victim's families rarely provide the necessary support to women seeking to leave abusive partners; to the broader problem of a lack of tendency to take seriously the issue of violence against women as a public concern rather than a private matter. Ms. **Farnsworth** also revealed that the implementation of new and progressive laws, such as the 2010 domestic violence provision, have attempted to provide comprehensive support for survivors of domestic violence. However, they noted, while victims can sometimes access the legal help they need, there is a systemic lack of emotional, economic and psychological support for such cases. This "watering down" of provisions is a significant barrier to judicial access and legal protection. It was seen that there was a need to place greater emphasis on punitive measures and access to justice for victims through a feminist approach that includes the voice of men and aims to challenge the tolerance and focus on reconciliation presently emphasized in the system.

In order to combat the multiple problems faced by victims, panelists suggested a need to change the political approach taken to incorporate a more feminist approach to the issue of women's rights in Kosovo. As was previously mentioned, this must include educating both men and women about women's rights and women's autonomy, and releasing the control of women's roles and sexuality from the clutches of the state. According to panelist Ms. Tahire **Haxholli**, head of the domestic violence unit for the Centre for Major Crimes, the police have made strides and policing innovations towards circumventing sexist attitudes and increasing access to justice for female victims of violence. For example, Ms. **Haxholli** mentioned the implementation of new regulations such as the establishment of "guardians" for victims, as well as the implementation of educational programs on domestic violence for school children. More work must continue in this direction if Kosovo is to see an improvement in assisting victims of domestic violence and other forms of violence against women.

Though the focus of the panel was primarily on domestic violence, human trafficking, sexual violence, and LGBT rights were raised by several of the panelists as broader gender issues affecting people in Kosovo.

The first set of question concerned the activities of the Kosova Women's Network (KWN), in particular activities related towards strengthening women's self-sufficiency, the usage of language/terminology and its effects on the work of women's rights organizations; trafficking

and sexual violence, the sexual rights of women are, and if there are LGBT rights; and if female police officers are fully integrated into force. In her response Ms. **Farnsworth** responded that there is little support for the integration of women into society as autonomously functioning individuals, there are some counseling programs, but Kosovo is small and can't afford a lot of services. Concerning the trafficking and sexual violence Ms. **Farnsworth** stated that when the family of a victim is supportive, sexual violence is much easier to combat, because the family can be used as a means of assistance and support rather than the state, which often does not have enough resources. She added that Kosovo uses arts, such as music videos of local Kosovo bands, to raise people's awareness about laws and people's rights. This provides a platform for youth to discuss issues and have debates within and across communities. In response to sexual right of women she said that LGBT rights are quite private—apparently in Kosovo there is a live and let live attitude to LGBT, but when people shout about it, it causes problems and boundaries between people and communities.

On the above raised issues Ms. **Krasniqi** responded that translation is very difficult and loaded with meanings, and that she has the distinct impression that words/concepts of rights and feminist language do not always translate into the local languages of Kosovo, the concept of patriarchy is universal, in a way—it is a useful framework on which to discuss gender oppression and inequalities.

Further Ms. **Krasniqi** stated that marital status tends to have a lot to do with whether someone is called a “woman” or a “girl”. In response to the question on sexual rights, she feels that LGBT rights are kept quiet, but that this is a violent act in itself—she feels that not being allowed to be public with LGBT lifestyles/relationships is unfair to them and violent towards them as well. She says that LGBT communities are invisible and Kosovo is a homophobic and fearful society.

Ms. **Haxholli** addressed the issue of women gender representation at the police institution on which she stated that despite the fact that there was a high representation of women at the police service of Kosovo the current situation is not in favor of police women. The change of their personal status has affected a lot the presence of the females in the police service. Ms. **Haxholli** stated that maternity leave for female police officers is very short, so when women get married and decide to have families, they will very often have to leave their jobs as police officers. Concerning the violence against women she stated that including coerced suicides there is a chapter in the criminal code of Kosovo that helps the police to determine how to analyze a suicide. This is helpful towards knowing how to proceed and what questions to ask, Sometimes, however, a family is reluctant to press charges if there has been a coerced suicide—they don't want to get family members in trouble so quite often these go unreported.

Further, Ms. **Haxholli** stated that there is activism and education about domestic violence in Kosovo, too—there's a lot of work being done in schools to educate children about domestic violence—helps to make children aware of problems from the start and shows them how to deal with it/what their rights are.

7. Communities / minorities / groups

Professor Rainer Schulze, Head of the History Department at the University of Essex, chaired the session. The panel was constituted of Ms. Afërdita Sylaj from the NGO 'Community Building in Mitrovica' (CBM), and Professor John Packer, a specialist on minority rights from the University of Essex.



The opening remarks made by Professor Rainer Shulze questioned if there is any equal representation of non-majority groups, whether justice is favored to one of the groups or not or if the cases brought by minorities have different outcomes. The chair also challenged the idea of trust by questioning if the trust is something you feel or is it something that is interpreted differently by communities.

Ms. **Sylaj**, the director of Community Building in Mitrovica (CBM) provided a brief introduction on the background of Mitrovica, where a part of the Serb community in Kosovo resides and the role of civil society and NGOs in bridging the divide between the Albanian and Serb community. CBM, is active since 2001, and they work on different levels, from culture to women and children. In 2010, CBM organized a worldwide conference of all cities in transition. In May 2011 the same conference was held in London. For the future this conference will continue to be held in cities in transition. Among others, they also started a project called "Bridging the Divide" (BtD) that has four components; infrastructural component, strengthening the civil society; M-Magazine and strengthening the youth in the North and to bring people to the same table. One of the most interesting projects is that they use music for integration, as Mitrovica is known for its rock bands. Within a rock school, relationships between Serbs and Albanians were established. The school has one unit in the South and one in the North and they invited each other to visit the other side of the bridge.

They also tried to give grants to the Roma community. CBM plans to work on many levels for community's integration. The CBM strives to demonstrate, through media, that there are some positive activities happening in Mitrovica, since it is so often portrayed negatively.

In his presentation Professor **Packer** noted that he is conscious he is not from the country, so cannot speak about these people from the ground. Nonetheless, he mentioned that access to justice should be coordinated with the individuals concerned and we should think about the obstacles and about special regimes. In this process, he stated, the following question need to be posed: What are the possibilities for disadvantaged persons, after a generation of hate and prejudice? Does the state function in such a way as to dispense equal justice? Judges, lawyers, civil servants are all part of the picture of this society. When speaking about a democratic society, we think about equal opportunities and equal rights.

Professor **Packer** raised a few more particular questions, namely what is the representation in the government offices and to what degree are there means by which active direct and indirect discrimination work against the community members? Trust is a key issue, since persons who belong to such groups do not necessarily have confidence that the institutions, such as judicial bodies and civil services, will help them when needed.

Professor **Packer** identified seven peculiar aspects arising in Kosovo:

- 1) Situation of inversion of power. History showed that one group held power over another. This has changed lately. Then groups suddenly changed hierarchy since inversion changes the relations and gives rise to challenges.
- 2) State formation. In the former Yugoslavia, the dominant philosophy and political structure was "Communism". Within that conceptual framework there were some other constructions. People did not want to be labeled as minorities.
- 3) Power relationship of state as dispensers of prestige and wealth. The old regime controlled much of it, but the function of the state must be equal for all citizens.
- 4) Role of civil service. The state is the civil service. Civil service possesses a certain socio-political role. Are they actually servants or are they privileged persons within the state?
- 5) Extreme situations such as a disproportional amount of refugees, which has a number of implications.
- 6) Complex communities. There are some groups like Roma, Ashkali, Egyptians who were targets of systematic discrimination.
- 7) Law as such, and notion of law. Traditional practices in communities. Access to justice is problematic when even the share of access is ethnic. This is a question for the majority. How to make a state for all?

The audience was fierce to learn more about this issue and initiated a debate over how hatred is played out in public. Ms. **Sylaj** answered that it has not has been fully eradicated. However, she mentioned that the people in Mitrovica are very tired of their situation. Prishtina and Belgrade tend to politicize the situation and thus problems are easily redirected against one or the other group. Another question addressed concerns the significance of the

rock music projects. On the question of whether there are any attempts to use folk music to maintain and appreciate cultural identity? Ms. **Sylaj** explained that recently a band has been established with members from both sides of the river. They write their music, record it and they will issue an album. Until now the rock school has mostly reproduced English songs in order to avoid conflict and political reflection.

On the question as how to deal with minorities within minorities, Professor **Packer** highlighted that participation is important to positively inform the situation that might emerge. Justice must be done and seen to be done by the public. Public perception of confidence from minorities depends on representation from other groups. Positive discrimination might be a method that could be used.

Ms. **Sylaj** pointed out that there is not much done regarding the projects on access to justice in Mitrovica at the moment but that REKOM is a project they are a part of. The chair added a comment that it would have been interesting to get representation from different communities in this panel.

Ms. **Sylaj** explained that working in Mitrovica is not easy, as events do not move fast and donors are very often asking for faster results, which unfortunately is not possible in Mitrovica. Threats are from both Albanians and Serbs. The Serb community is under more pressure from their politicians than Albanians. In Ms. **Sylaj**'s opinion, the authorities have unfortunately not taken any kind of action. She goes to the northern part almost every day and she knows that she undertakes a certain grade of risk doing this. Example: a reporter of M- Magazin was in the northern part. He was first verbally threatened, and later beaten up because of the story he covered. The police and EULEX were alarmed and the perpetrator was identified. There are no details of what happened after the incident.

Ms. **Sylaj** stated that Serbia wants to divide Mitrovica. A division of Kosovo would especially affect Serbs not living in the north, as they will be encouraged to move to the north. It will also have an effect in the Balkans as a whole. Following the reporting incident, it was asked if foreign journalists are more likely to be threatened than locals and if there is any incitement to hatred in the media. Serbs follow news from Belgrade and Albanians from Pristine. CBM has been worked on establishing a single media to bring in news from both sides and also other issues covered by other media outlets. The media is often biased and articles can be considered as hate speech. However, the threats towards journalists come mostly from the journalists' own community.

A question from a local student pointed out that, realistically, in Kosovo, seeing that the level of integration is not satisfactory in the north of Mitrovica might be the result of the ambiguity of Kosovo's status and they should be integrated as in other parts. Professor **Packer** stated that the interpretation is that there are problems of confidence and functioning institutions and re-emergence and eruption of violence can happen again. Everybody agrees on the international standards, but there is disagreement in terms of implementation. There are some inescapable facts such as geography, economy and location of monuments and people will not easily give up their claims. Therefore, he does not view status change in Mitrovica as a solution. He added that justice is one of the problems. One of the remarkable universal

phenomena is that people want justice. If there are problems with access to justice, there is a great deal of history telling us that the failure over time to deliver justice is the recipe that leads to new conflicts in the future.

The coexistence of communities in Kosovo and the best model to follow was brought into discussion. A student from the audience asked whether the Republic of Kosovo should be following France's or the USA's example and asking whether their methods are successful or should another model be tried out.

Ms. **Sylaj** commented on the integration of the north, which she viewed that cannot happen without the cooperation of the community living there. Everything that they have tried to do without involving grass roots action is deemed to fail. Regarding justice in Mitrovica, the courts are not functional since there is a huge backlog in cases and many remain unresolved.

Professor **Packer** considered that it is important to think of who is "we". The idea is that Belgrade speaks for Serbs and Pristine for Albanians. Of course they both have state interests, but who speaks for who must be questioned. The talks between these cities will not work without participation from the population there. Who are the representatives here? Professor **Packer** would advocate for people-to-people bridging where the people have to get involved. The international community also exists and not just as a concept, but with real interest. Some of these can be good and others not. The international community should also follow the same logic, not deciding things FOR the people, but WITH the people. Professor Packer added that the USA and France are different. The USA is a federation, a unitary state. France does not recognize minorities, the USA does. The USA is not a nation state, France is. Hence, neither France nor the US should be the model. Kosovo needs to construct another model.

One of the last issues to be addressed was which is more important: integration or justice? Organized crime has been successful in integration and there is a great cooperation spreading corruption in municipalities. Integration versus justice: a planning question, which come first and what can be achieved? Who is asking who? Maybe the population will say yes to integration and no to justice or the opposite way round? Professor **Packer** suggested that you must have justice and that is also the only substantial solution. He concluded with the fact that the situation in Kosovo is incredibly complex and requires many parallel steps.

8. Civil Law Issues

Mr. Agon Maliqi, Researcher at KIPRED Institute moderated the discussion where Mr. Behxhet Gaxhiqi, Advisor of the Minister of the Ministry of Labour and Social Welfare, and Mr. Haxhi Arifi, Confederation of Free Trade Unions of Kosovo presented their contribution.



Mr. **Gaxhiqi** gave a brief outline on the creation of the Labour Law and its implementation, pension schemes, social assistance initiatives and the Socio-Economic Council. He informed the audience, that the Labour Law had been created in November 2010 and came into force in December 2010. The purpose of the Act was to regulate the rights of employees, for example, long working hours. He spoke of the fact that the Labour Law had been fully implemented in six months, but that there were still problems with compliance by both the public and private sector, but in particular the private sector. Certain bodies have made recommendations on how to implement the law better and the Labour Law Inspectorate has been monitoring compliance of the Act by private businesses. Mr. Gaxhiqi said that if non-compliance with the Act was found, sanctions were to be made to those businesses.

Regarding pension schemes, Mr. Gaxhiqi illustrated that the age for retirement in Kosovo is 65 and that the State provides a pension of €45. As for social assistance, he stated that allowances are given for those with disabilities and for those who are unemployed with children under the age of five.

He spoke also of the formation of the Socio-Economic Council and the advisory capacity with which it makes recommendations to the government of Kosovo. The Council has had four annual meetings and has a good relationship with the trade unions. It addresses any complaints that trade unions may have and has sought to make connections with other

organizations, particularly with countries like Germany. Germany receives a number of seasonal migrant workers and students from Kosovo, so it was important for the Council to make relations with it.

Mr. Gaxhiqi also spoke of vocational training schemes and opportunities that were being provided for students, which was of particular interest to the student audience members. He said that co-operation was taking place between businesses and the training schemes to facilitate this.

The second part of the discussion was carried out by Mr. Haxhi **Arifi** who works for the Confederation of Free Trade Unions of Kosovo. Mr. Arifi's presentation concentrated on the development of trade unions in Kosovo after the fall of the communist regime. According to Mr. Arifi there are about 35,000 members of different trade unions within Kosovo, however these members are mostly working within the public sector as they have found it very difficult to encompass members from the public sector. The Labour Law which was created after the war has been an important development, even so Kosovo has a long way to go in regard to unemployment and privatization of the market. Mr. Arifi and the Confederation of Free Trade Unions of Kosovo realized that privatization would take place and would have major influence on the market and employment, even so he suggested that the way privatization has been carried out has been very damaging in many aspects and especially in relation to unemployment, which he claims is now worse as a result. Unemployment has also been affected by the lack of labour laws, however as a new labour law now has been introduced he is hoping things will change.

The Confederation of Free Trade Unions of Kosovo is a member of the EU Trade Confederation, World Trade Organization and other Pan-European Organizations and the aim of all trade unions is to protect workers and their rights. Mr. Arifi emphasize that even though Kosovo has many different trade unions, it is important that they cooperate rather than continuing being fragmented as they are to a large extent today. As trade unions are independent from the Government he believes that they would be more efficient if they work together as a unit. Dialogue is a very important part of trade unions' mandate because as evidence suggests one will actually achieve more by using communication as a means rather than strikes. However, strikes must always be an option, but it should be the last resort according to Mr. Arifi, as when one has resorted to strikes there are no other options available.

Mr. Arifi added that nowadays there is a lack of commitment from the younger generations in regard to trade unions, and according to Mr. Arifi many do not see the value in these organizations. The Confederation of Free Trade Unions of Kosovo has made several attempts to recruit young people, however the result have not been great. Mr. Arifi claims that the previous lack of laws in regard to employment and employees have lead corruption to flourish within Kosovo, which is why these trade unions are vital, as they aim to provide for good conditions and regulations for all workers who join them. Corruption is a major problem in Kosovo both in the public and private sector which Mr. Arifi admits to. The state has suffered and keeps suffering as a result of the high level of corruption and the level of taxes collected has been as low as twenty percent, which is obviously very damaging for the

state of Kosovo. Even so, developments have started to occur and the current monitoring of the implementation of the Labour Law can prove to have great importance for employees and employers in Kosovo.

The main themes of discussion were on maternity leave, especially in the private sphere, the right to strike, and whether the vocational training opportunities was successful in providing jobs for students.

Mr. Gaxhiqi spoke of the fact that the private businesses were offering three months unpaid maternity leave, but that the government was paying for the rest. He also asserted that 1234 students undertook the training, but of those he was unsure how many were able to secure employment.

Mr. Arifi with regard to the right to strike, asserted that there were three strikes in the years 2008, 2009 and 2010, but that the ten requests that were made and resolved were achieved through dialogue, which is much more difficult to achieve, as opposed to strikes and demonstrations.

9. Conclusion remarks



In their concluding remarks the organizers expressed their appreciation to all participants for their contributions, sincere and open discussions. Professor **Packer** devoted special thanks to organizers and translators without whose assistance this conference would not have been possible. And the merits for smooth functioning of the conference go to Mr. Adem Gashi for all his efforts and professionalism in overall organization and management of the conference. Professor Packer concluded that the conference was very substantial and reach, with many crucial issues discussed for the development of justice sector in Kosovo. The conference and the experience from Kosovo, beneficial cooperation from KIPRED and CPC, will serve as whole life learning and will serve to extend further the reaches of the conference beyond this conference. Specific follow up between the two universities in future activities and cooperation.

Professor **Istrefi** concluded by saying that this conference has served as a platform for discussion of a very important topic the access to justice, but at the same time issues like building up the statehood in a unique situation such is the one in Kosovo. She invited the students to consider for their future research and scientific study issues of building state institutions and build up democratic processes, to consider international contribution in these processes and also the role of local intellectual elite, civil society and all citizens of in the process of creation of new states.

Mr. **Gashi** stated that he is honored to thank everyone for their participation in the name of KIPRED and in particular he thanked students of Essex University for their courage to come to Kosovo. Mr. Gashi pointed out that all contributions, discussions and recommendations will be published and KIPRED will further monitor and takes the responsibility to push further implementation of all conference findings by the policy makers in practice

10. Conference Recommendations

- Access to justice is a matter of priority everywhere in the world, but particularly in a Kosovo as young country with society that is founded in justice is a matter of urgency not only as ideal but something that is accessible and tangible for everyone.
- Although, Kosovo has undertaken important steps for establishing a justice system, and further efforts for consolidation of the justice system are going on, in establishing justice system and justice institutions, it is crucial to have engagement and joint efforts of all stakeholders in Kosovo society, including academic institutions in enhancing further the functioning of the justice system.
- The current legislation framework contains many laws that provide for equality of all citizens without any distinction as per ethnicity, gender or age, political affiliation. The very advanced Law on free Legal Aid needs to be adopted and enter in to force as soon as possible in order to provide assistance marginalized and vulnerable groups in Kosovo.
- Although the judicial framework has been established, and also the independent judiciary based on EU standards is in the process of its establishment, a lot of emphasizes need to be placed on creation and enhancement of other alternative non judicial mechanism namely that of notary, mediation and arbitration.
- In the entire process of establishment and efficient functioning of the justice system it is needed the engagement of all segments of society, the role of citizens, and universities, in order to strengthen further access to justice.
- Trust in judicial institutions is extremely low in Kosovo, partly due to historical reasons and problems that arose after 1999. Therefore, special attention needs to be devoted on changing the existing perception on the judiciary. Here the role of media, civil society and all citizens is crucial.
- Access to justice as a concept is associated particularly with the interests and needs of those who are excluded, marginalized, or very poor and indigent groups. But in a young country, a transitional society, with considerable challenges related to economical developments, high unemployment rate, issues related to the past conflict, access to justice should not concern only marginalized groups, but it essential question for all population.
- The application of the legislation needs to be unified. In particular the differences between the North and the South of the country, both in terms of applicable legislation -Serbian legislation is still applied in Northern Kosovo- and with regards to discriminatory practices need to be addressed.
- Integration of the north cannot happen without the cooperation of the community living there.
- The current situation related to several grave cases, such as the killing of a woman by her husband situation and in general protections of women from violence have shown to be not so effective. Therefore, relevant institutions, Ministry of Justice, Judicial

System and Police Service need to undertake proactive measures in offering the necessary protection, and developing more effective preventive measures.

- In order for real institutional change for women to occur, and for them to achieve effective access to justice, and effective preventive measures, there needs to be a restructuring of social norms and expectations of gender roles in society that challenges traditional power relationships.
- In order to combat the multiple problems faced by domestic violence victims, there is a need to change the political approach taken to incorporate a more feminist approach to the issue of women's rights in Kosovo. This must include educating both men and women about women's rights and women's autonomy, and releasing the control of women's roles and sexuality from the clutches of the state
- There is the lack of a genuine supervisory mechanism for the work of prosecutors and judges, who are compelled to make quick decisions without due deliberation due to the overload. More judges and prosecutors need to be hired and also trained further.
- Another issue that should not be ignored is the difference between national and international prosecutors in terms of salaries, with the latter being highly privileged. This fact has highly affected the performance of the local judges which has resulted with the general public's low trust in the judiciary. This issue needs to be addressed accordingly.
- In evaluating of activities carried out by EU rule of law mission (EULEX) that is supposed to deal, *inter alia*, with organized crime, little has been done. EULEX should work harder to meet the expectations and tackle this issue.
- There is a genuine need to have more persons with the human rights background. University of Prishtina and Human Rights Center of the University of Essex should cooperate in establishing academic programs with human rights content at the University of Prishtina.