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Bardh Lipa
ORCID ID: 0000-0002-9280-6807
University of Tartu, Estonia

Transitional justice and judicial reform in Kosovo, 1999–2008: A Retrospective Analysis

Wymiar sprawiedliwości w okresie przejściowym i reforma sądownictwa w Kosowie, 1999–20088: analiza retrospektywna

Abstrakt

10 czerwca 1999 roku Rada Bezpieczeństwa Organizacji Narodów Zjednoczonych przyjęła Rezolucję 1244. W konsekwencji, Misja Tymczasowej Administracji Organizacji Narodów Zjednoczonych w Kosowie (UNMIK) stała się organem zarządczym, wykonawczym i sądowniczym w Kosowie. Konteksty historyczne, które wpływały na kształt wymiaru sprawiedliwości w okresie przejściowym wskazują na fakt, że reforma sądownictwa jest elementem kluczowym dla społeczeństw w krajach pokonfliktowych walczących o niezależny wymiar sprawiedliwości i długotrwały pokój. Celem artykułu jest analiza przyczyn niepowodzenia wysiłków UNMIK, by rozwinąć potencjał narodowego systemu sądownictwa w Kosowie z uwzględnieniem zależności pomiędzy wymiarem sprawiedliwości w okresie przejściowym i reforma sądownictwa w Kosowie w latach 1999–2008. Analiza relacji pomiędzy oboma działaniami wykazuje, że wymiar sprawiedliwości w okresie przejściowym był krótkoterminową odpowiedzią na potrzeby bezpieczeństwa w obliczu braku rządów prawa i konieczności eliminacji dyskryminacji etnicznej w systemie sądownictwa. Natomiast reforma systemu sadownictwa skupiała się na przeformułowaniu narodowego systemu prawnego, rozwoju zasobów osobowych i wzmocnieniu nadzoru sądowego. Jednocześnie, brak całościowej, długoterminowej strategii reformy sądownictwa utrudnił proces budowania trwałego potencjału systemu sądownictwa na poziomie lokalnym, obnażając brak koordynacji i wspólnej strategii UNMIK i Organizacji Bezpieczeństwa i Współpracy w Europie (OSCE). W artykule sformułowano tezę, że jedno działanie nie wzmacniało konsekwentnie drugiego. W konkluzji artykułu zawarto również rekomendacje jak wyciągnąć wnioski z niedociągnięć UNMIK w Kosowie, by uniknąć popełnienia podobnych błędów w innych państwach.

Słowa kluczowe: wymiar sprawiedliwości w okresie przejściowym, reforma sądownictwa, interwencja humanitarna, UNMIK, Kosowo

Abstract

On June 10, 1999, the United Nations Security Council adopted Resolution 1244. As a result, the United Nations Interim Mission in Kosovo (UNMIK) became Kosovo's judicial, executive, and

governance authority. The historical contexts that shaped transitional justice demonstrate that judicial reform is critical to post-conflict societies' pursuit of judicial independence and long-term peace. This short article examines why UNMIK's transitional justice efforts failed to develop Kosovo's national judicial capacity, emphasizing the relationship between transitional justice and judicial reform from 1999 to 2008. The relationship between the two endeavors revealed that transitional justice in Kosovo was defined by a short-term response to the need for security in the absence of the rule of law and a correction of court-based ethnic discrimination, whereas judicial reform focused on rewriting national legislation, developing human resources, and strengthening judicial oversight. Simultaneously, the lack of a comprehensive long-term strategy for judicial reform hampered the process of sustained judicial capacity building at the local level, revealing a lack of coordination and a shared strategy between UNMIK and the Organization for Security and Cooperation in Europe (OSCE). I argue that one process does not consistently reinforce the other. The article concludes with some recommendations for capitalizing on UNMIK's shortcomings in Kosovo to avoid a repeat elsewhere.

Keywords: transitional justice, judicial reform, humanitarian intervention, UNMIK, Kosovo

Introduction

Transitioning out of a state of violence and repression is exceptionally challenging. Massive human rights violations and war crimes frequently go unpunished even after a conflict concludes, with perpetrators remaining unaccountable for their actions (Elster, 2004, pp. 47–76). Those responsible or their direct collaborators often retain power, posing long-term obstacles to peace and reconciliation. Without a functioning judicial system, the police and military may carry out those in power's orders and commit additional human rights violations (Roht–Arriaza & Mariezcurrena, 2006, p. 326). Significant efforts have been made in societies ravaged by armed conflict to identify and address past mass human rights violations and war crimes, as well as to establish the rule of law in post-conflict zones, to prevent a repeat of the conflict, facilitate peace-building and state-building processes, and ensure socio-economic growth (Lawther et al., 2017, pp. 11–16). The measures developed and undertaken to address past massive and flagrant human rights violations have primarily concentrated on transitional justice.

While transitional justice aims to identify war crimes, human rights violations, and the underlying causes of conflict to facilitate reconciliation and lay the groundwork for peace between opposing forces during a conflict, judicial reform aims to avert future conflicts by strengthening the capacity and nature of post-conflict judicial systems (Mobekk, 2006, pp. 14–15). The international community, national institutions, or both may spearhead these efforts, emphasizing reforming or establishing national judicial institutions to avert future conflict recurrences. Rebuilding complex judicial systems, bolstering local capacities, and strengthening institutions are critical for post-conflict societies to achieve independence in terms of security and the international community's peace-building efforts to achieve lasting peace. While efforts of both to close gaps in the rule of law are related, they are not mutually reinforcing (Lawther et al., 2017, p. 94). Regardless of these distinctions, the benefits and drawbacks of each transitional mechanism vary and are influenced by

various factors in a postconflict society. Notably, while the connection between transitional justice and judicial reform is acknowledged (Lawther et al., 2017, p. 177), it has not been thoroughly investigated (Mobekk, 2006, p. 1). Kosovo is an especially compelling case study for the study of post-conflict political transitions to the rule of law and for critically evaluating the approach of the United Nations Interim Administration Mission in Kosovo (UNMIK) due to its shortcomings (Paris & Sisk, 2008, pp. 263–270). The United Nations Security Council adopted Resolution 1244 on June 10, 1999. It ended the war and established UNMIK as Kosovo's judicial, executive, and governance authority. According to the exact resolution, Kosovo enjoyed substantial autonomy within the Socialist Federal Republic of Yugoslavia. UNMIK swarmed domestic institutions, and the leaders of the major political parties were tasked with advising the UNMIK chief rather than making or implementing policy (Paris & Sisk, 2008, pp. 275–277). Likewise, UNMIK carried a similar approach towards the locals in Kosovo, where the population and local leadership were disregarded as not trustworthy (Chandler, 2006, p. 65). Furthermore, with UNMIK in charge of direct economic management, Kosovo was a ticking time bomb, with endemic unemployment and poverty on the one hand and emigration stymied by the European Union's Schengen policies on the other (International Crisis Group, 2004, pp. 2–5). Kosovo, for example, has some of the world's largest brown coal reserves. Nonetheless, as Gerald Knaus of the European Stability Initiative in Berlin noted in 2005, the United Nations initially refused to grant investors permits to extract coal out of fear of infringing on their mandate, leaving Kosovo in the absurd position of being unable to use its coal to power its power plant (Knaus & Whyte, 2005). Although this was later resolved, the approach demonstrates a lack of acuity to Kosovo's actual issues. In 2004, unrest erupted in Kosovo following the drowning of three ethnic Albanian children in the Ibar river after being chased into the river by ethnic Serbians (van Willigen, 2013, p. 96). It was further fueled by ethnic Albanians' discontent with the economic and political situation, particularly with regard to the final status question(International Crisis Group, 2004, p. 2). Twenty-seven civilians were killed, including fifteen ethnic Kosovo Albanians and twelve Kosovo Serbs. Kosovo Serb property, churches, and monasteries were damaged or destroyed in the aftermath, escalating tensions between Kosovo Albanians and Kosovo Serbs (van Willigen, 2013, p. 97). Noteworthy, Kosovo's major political institutions' heads, including President Ibrahim Rugova, Prime Minister Bajram Rexhepi, and the Kosovo Assembly's President Nexhat Daci, have all publicly condemned the riots(van Willigen, 2013, p. 136). Moreover, the Kosovo government and the Serbian Orthodox Church worked closely to repair (using Kosovo funds) approximately 35 Orthodox churches and monasteries damaged during the riots. This process was completed in 2010 (Shehu, 2010). Nonetheless, the events of 2004 brought an end to Kosovo's four-and-ahalf-year period of tenuous progress. UNMIK and its efforts to establish institutions and promote democracy have been chastised for their haphazard nature, poor design, andineffectiveness. UNMIK was viewed by the local populace as an occupier rather than a liberator, as it had been previously(Paris & Sisk, 2008, p. 272). UNMIK's approach, which viewed the Kosovo problem as a technical rather than a political problem, demonstrates the frailty of that

approach. It also shows how security is inextricably linked to development and reconciliation (Simagan, 2019, p. 102) and, in the case of Kosovo, to its political status, as the UNMIK approach also delayed the resolution of the Kosovo status (Barguès-Pedreny, 2018, p. 54). On the other hand, despite the violence in March, the Kosovar demand for partnership (as well as the transfer of authority) was even stronger than it had been in 2003. The UN special envoy, Kai Eide, responded to this political pressure from Kosovo by submitting a report to the UN Security Council, which was later adopted as a recommendation, and additional competences were transferred to the Kosovo authorities (van Willigen, 2013, p. 97). UNMIK's approach to transitional justice in Kosovo consisted of two components: first, the deployment of international judges and prosecutors to national courts; and second, the implementation of the Regulation 64 Panels in the Courts of Kosovo, through which UNMIK enabled international judges to serve alongside domestic judges in Kosovo's existing courts and international prosecutors and defense attorneys to assist their Kosovar counterparts as well as to ensure impartiality because the international judge could still be overruled by a majority of ethnic Albanian judges (Amnesty International, 2008, p. 13). However, in a 2008 report published by Amnesty International, UNMIK's effort in the justice system was condemned as a "failed experiment" for failing to live up to expectations (Amnesty International, 2008). Despite significant progress made since 2008, Kosovo's national judicial system remains vulnerable, highlighting the issue's complexities. This article seeks to shed light on one of the inherent difficulties in establishing the rule of law in post-conflict areas, focusing on the relationship between transitional justice endeavors and judicial reform. It will look at why transitional justice efforts by UNMIK failed to produce the desired results in post-conflict national judicial capacity development in Kosovo. By examining the characteristics of their respective endeavors, we can better understand the nodes that exist between transitional justice and judicial reform. Further, the theoretical foundations of transitional justice and judicial reform and their interrelationship will be examined, as well as the history of transitional justice and judicial reform in Kosovo from 2000 to 2008, concentrating on the actions that defined both.

Transition to what?

Ruti G. Teitel asserts that she first coined the term "transitional justice" in 1991, in the aftermath of the collapse of the Soviet Union and the late 1980s democratic transitions in Latin America (p. 3). Transitional justice is referred to as transitioning from an authoritarian to a democratic regime or from armed conflict to peace. It involves all a society does to redress the legacy of conflict and massive human rights violations (Roht–Arriaza & Mariezcurrena, 2006, p. 326). Transitional justice is not confined to modern or democratic regimes (Elster, 2004a). Similarly, attempts to address massive and egregious human rights violations predate the concept of transitional justice. According to Jon Elster, societies have gone through some form of transitional justice since antiquity. Elster exemplifies this by examining the two restorations of democracy in ancient Athens in 411 and 403 BC and that of the French Restorations in 1814 and 1815 (p. 3). Three major phases of transitional

justice have been identified in the literature. The first phase begins with Germany's, Italy's, and Japan's defeats in 1945 (Elster, 2004, p. 54). Following World War II, the International Military Tribunals in Nuremberg and Tokyo were established. Both courts have recognized crimes against peace and war crimes, and they were established to prosecute Nazi Germany's and Japan's leaders who were most responsible forcrimes against humanity. While the tribunal's impact is significant, the Nuremberg moment was brief, as the Cold War swiftly eliminated many prospects for interstate collaboration necessary to sustain future justice endeavors (Sharp, 2018, p. 2). Later, the Germans assumed responsibility for prosecuting Nazi crimes (still ongoing). The denazification process was also turned over to the Germans, but they demonstrated little interest in confronting their past, and denazification evolved into a tool for political rehabilitation (Elster, 2004, p. 55). The second phase followed democratic transitions in Southern Europe and the junta trial in Argentina. The third phase—the contemporary wave—corresponded with the end of military rule in Latin America and Africa, the end of communism in Central and Eastern Europe, as well as conflicts in the former Yugoslavia (Teitel, 2002, p. 27). Nonetheless, the "Nuremberg Principles" contributed significantly to the development of international law and international humanitarian law in the years that followed (Teitel, 2002, p. 36), and the greatest legacy of the Nuremberg precedent is that state accountability became an international concern (Teitel, 2002, p. 39). Furthermore, the shortcomings of postwar court proceedings reinforced the view that national justice is frequently intrinsically political. This issue can be resolved by utilizing a separate legal system separate from national politics (Teitel, 2002, p. 33). As a result, the International Criminal Court, Special Courts, and Ad Hoc Criminal Tribunals were established to address widespread human rights violations that occurred during periods of political transition and conflict, such as those in the former Yugoslavia, Eastern and Central Europe, Latin America, and Africa.

Kosovo and the international community's efforts in the country

Kosovo, formerly a part of Yugoslavia, had a majority Albanian population and long fought for independence. After a long struggle for equality, Kosovo's status was lifted from an autonomous region within Yugoslavia to a position similar to the other six republics of the federation. This occurred on February 28, 1974, and lasted until March 23, 1989, when the 1974 Constitution was amended, effectively ending Kosovo's autonomy (van Willigen, 2013, p. 34). The change in status given to Kosovo in 1974 incited dissatisfaction in Serbia and, as such, was strongly criticized. According to Azem Vllasi, President of the Autonomous Province of Kosovo from 1985 to 1988 and a senior Yugoslavian official, Serbia demanded in 1976 that its relations with the two provinces - Kosovo and Vojvodina – be reviewed. He noted that following Josip Broz Tito's retirement from politics in 1980, Serbia reintroduced the issue of Kosovo's constitution, claiming that Kosovo had attained a high degree of independence (Vllasi, 2016). Notwithstanding, Kosovo Albanians were treated as second-class citizens even before 1989, and Kosovo was economically underdeveloped. Kosovo was placed under military occupation following the 1989

constitutional changes, and forms of discrimination replaced all forms of political freedom previously enjoyed by Kosovo Albanians (van Willigen, 2013, p. 3). In the aftermath of the changes, Kosovo Albanians turned to nonviolence and civil disobedience, led by Ibrahim Rugova, the Democratic League of Kosovo's leader (LDK)(van Willigen, 2013, p. 52). While Serbia monopolized state structures, a parallel system thrived to support the daily lives of Kosovo Albanians(Visoka, 2018, p. 58). It was an effective and peaceful strategy for averting war with a militarily superior Serbia. As Slovenia, Macedonia, Croatia, Bosnia, and Herzegovina gained independence from Yugoslavia in the early nineties and the Yugoslav federation disbanded, Kosovo sought independence and held a referendum that received 99 percent support (Visoka, 2018, p. 57). On the other hand, Serbian authorities refused to recognize independence, resulting in the growth of the Albanian independence movement. In the late 1990s, Albanians founded the Kosovo Liberation Army (KLA). Following the Drenica massacre on March 5, 1998, in which Serbian troops killed more than 60 Kosovo Albanians, including 29 women and children, the KLAincreased the frequency of its attacks and strengthened its organization (Waller et al., 2014, p. 23). On the other hand, in 1998, retaliatory actions by Serbian forces against guerrilla activity began to spread throughout Kosovo, resulting in numerous civilian casualties. NATO intervened militarily in 1999 through Operation Allied Force to put an end to crimes against humanity (Nenadović, 2010, p. 1158) after coercive diplomacy failed when Slobodan Milosevic refused to sign the Rambouillet peace conference draft agreement (Hehir, 2010, p. 18). Around 13,500 people were killed in Kosovo's last war. Various institutions in Kosovo provide these figures, but the Humanitarian Law Center provides the most compelling evidence. Kosovo Albanians account for the most victims, with 10,812, followed by Serbs with 2,197 and Roma, Bosnians, Montenegrins, and other non-Albanians with 526. Serbian security forces expelled over 900,000 Kosovo Albanians from their homes during the Kosovo war. Ten thousand three hundred five were civilians; out of them, 8661 (84.0%) were Albanian by ethnicity, 1187 (11.6%) were Serbs, 151 (1.5%) were Roma, and the rest were others. 2123 were associated with the KLA. Seven hundred eighteen were soldiers of the Yugoslav Army, and 364 were members of the policemen of the Serbian Ministry of the Interior (Kruger & Ball, 2014). 1 UNMIK was established in response to Security Council Resolution 1244, which placed Kosovo under UN provisional administration. When UNMIK arrived in Kosovo in 1999, the judicial system in Kosovo, never strong to begin with and historically discriminatory towards the ethnic Albanian majority, had already collapsed in the aftermath of Serbia's withdrawal (Hehir & Robinson, 2007, p. 126). This was partly due to the exodus of Serbs from Kosovo, who comprised a sizable portion of the security and judiciary sectors, and to the exclusion of Albanians from police, prosecutor, and judge positions beginning in the late 1980s during Milosevic's tenure (Amnesty International, 2008, pp. 7-10). The challenges in addressing the issues were enormous. The problems were exacerbated by a lack of trained personnel and infrastructure. No justice system can function effectively amid insecurity and deep divisions brought about by war. As a response, Albanians began establishing their administrative structures following the KLA's return which UNMIK later replaced

(Strohmeyer, 2001). The situation in 1999 was chaotic in Kosovo. On the one hand, with the majority of Kosovo Albanian refugees returning to find their cities and villages devastated, with no access to even the most basic infrastructure, and on the other, with political tensions in Kosovo and disagreements with internationals, property claims, abuses, killings, kidnappings, and deportations of non-Albanian ethnic groups (primarily ethnic Serbs) on the rise, no group could feel secure without the protection of a functioning judicial system(Hehir & Robinson, 2007, pp. 126–128). The first challenge in addressing lawlessness in a post-conflict society is ensuring security(Mobekk, 2006, p. 4).

Reforms pursuant to UN Security Council Resolution 1244

UNMIK, the Organization for Security and Cooperation in Europe (OCSE), and the European Union (EU) were each assigned one of the four areas (Pillar). Each of these organizations was assigned a specific function. Civil Administration and the Police and Justice (pillar I) were under the direct control of UNMIK (pillar II). Democratization and institution-building were the responsibility of OSCE. At the same time, reconstruction and economic development were the responsibility of the European Union (pillar IV) (Paris & Sisk, 2008, pp. 265–267). NATO'sKosovo Force (KFOR) mission in Kosovo was and continues to be responsible for ensuring a secure environment. The social oppression of Kosovo's Albanian population, which had been codified in the country's national law since Milosevic assumed the presidency of Serbia, was one of the issues confronting Kosovo's judicial reform. As previously stated, Kosovo lacked qualified legal professionals. On the one hand, prior to the conflict, a large number of Serb judges fled the country, leaving only a few in Kosovo. On the other hand, because Kosovo Albanian professionals were barred from judicial positions during Milosevic's rule, the pool of those with substantive judicial experience was extremely small. As a result, UNMIK was faced with the requirement for domestic legal reform and the recruitment and training of local lawyers. UNMIK and the OSCE collaborated on judicial reform in Kosovo under Pillar I, Police and Justice, with the primary objective of establishing and supervising an independent, impartial, multiethnic justice system. Additionally, as part of Pillar III, Democratization and Institution-Building, the OSCE worked with local bar associations to establish an institution for judicial oversight and lawyer education. In their domestic law reform efforts, the first UNMIK Administrative Instruction stated that all laws in effect prior to March 24, 1999, should be amended and applied following international human rights law (IHRL) and Security Council Resolution 1244. On the other hand, Albanian lawyers were outraged because they were well aware of the discriminatory practices that existed during the Yugoslav era. Correspondingly, they began advocating for the Kosovo Criminal Code's implementation, which took effect on March 22, 1989, and other regional laws in Kosovo. Finally, UNMIK issued Regulation No. 1999/24, stating that the set of laws that took effect in March 1989 would be applied to the extent that they did not violate international human rights law. Simultaneously, the European Convention on Human Rights and Fundamental Freedoms (ECHR) was directly applied (Pacquée & Dewulf, 2006, p. 3). As a result,

international and domestic judges and local attorneys began invoking the ECHR in their rulings. The previous laws and the Juvenile Code were repealed in June 2004 in favor of a new interim Criminal Code of Kosovo and Criminal Procedure Code of Kosovo, which took effect in April of that year (International Amnesty, 2006, p. 4). These laws have been modeled after legislation enacted by UNMIK. In addition, the Secretary-report General said that training Albanian lawyers in both national and international law are essential for the post-war situation in Kosovo (Security Council Report, S/1999/779). However, the program's implementation was slowed by protracted negotiations between UNMIK and Albanian lawyers over the content of the national law, which was critical given the program's time constraint. To train lawyers, the OSCE and the local legal community collaborated. In line with that, the OSCE had established the Legal System Monitoring Section (LSMS), the Criminal Defense Resource Centre (CDRC), and the Kosovo Judicial Institute (KJI). The KJI educated and supervised local attorneys. In addition, the OSCE-supported Democratic Institutions and Human Rights (ODIHR) assisted with judicial reform issues. While the primary focus of Kosovo's judicial reforms was on expedited legislation and judge appointments in response to the country's lack of the rule of law, other reforms occurred contemporaneously. One example of judicial reform is the physical reconstruction of courtrooms and other facilities due to the war's extensive damage. International judges appointed by the Special Representative of the Secretary-General for Kosovo (SRSG) were forced to type court proceedings on typewriters due to a lack of court documents and official court record templates resulting from the conflict. The assessment of transitional justice efforts and judicial reforms in Kosovo reveals that transitional justice took two forms: a short-term response to the urgent need to fill a void in the justice system and correcting the resulting discriminatory tendencies among ethnic groups. Onthe other hand, judicial reform took a different approach, rewriting national legislation, developing human resources, and strengthening judicial oversight in addition to meeting immediate needs. In summary, when UNMIK began operations in Kosovo, an immediate need for security became apparent. The efforts leading up to the panel's establishment in Kosovo, as well as the initial judicial reforms, were framed in this context. Both initiatives were necessary in light of the high volume of arrests made by KFOR and other security forces. As a result, both parties were tasked with temporarily filling a void in the legal system. It was decided to work within the framework of existing national laws and courts, with national laws being applied and local judges being appointed prior to the UNMIK mandate for police and judicial reform (Amnesty International, 2008, pp. 9–11). Temporary demands revealed systemic racial bias that had to be addressed. As a result, UNMIK sought to rectify ethnic injustices through the deployment of international prosecutors and judges, as well as through the amendment of national laws to conform to international human rights standards. The Human Rights Advisory Panel in Kosovo was also established in response to persistent discriminatory tendencies within national courts due to the predominance of local staff over international staff.

The nexus between transitional justice and judicial reform in Kosovo

Transitional justice strategies should consider long-term development concerns, maximize development synergies, and directly address development concerns(International Crisis Group, 2004, p. 3). Addressing development issues is critical to achieving long-term peace in postconflict areas (Hehir & Robinson, 2007, p. 129). However, in Kosovo, transitional justice efforts were intrinsically disconnected from long-term development, and strategies for transitional justice that accounted for development synergies were inadequate and often lacking (International Crisis Group, 2004, p. 36). One reason for this is the absence of a universally applicable solution to the issue. The first is the marked difference in how domestic and international prosecutors and judges conduct their business. The collaboration between domestic and international judges practicing in the domestic judicial system has fostered a climate of respect for international human rights standards, as evidenced by references to and citations of international treaties(Mobekk, 2006, pp. 22–23). However, in the case of Kosovo, while local judges and prosecutors eventually handled the majority of criminal and civil cases, the Kosovo panel, presided over by international judges and prosecutors, dealt with ethnic violence and organized crime. Again, this was done to avoid ethnic injustice. This schism between the two parties was not resolved, and strategic collaboration between domestic and international judges and prosecutors was not established, complicating the system's capacitybuilding and staffing efforts. As a second example, it is worth noting, because international judges and prosecutors were appointed temporarily (Amnesty International, 2008, p. 36), the capacity development for international judges and prosecutors was limited, as was the quality improvement for local judges (Amnesty International, 2008, p. 57). Furthermore, it has been noted that international judges and prosecutors received insufficient training (Amnesty International, 2008, p. 24). A third example is a lack of perspective on UNMIK's collaborative relationship with the OSCE. This is not novel, as significant operational issues caused by a lack of coordination among statebuilding agencies have been well documented in the past (Paris & Sisk, 2008, p. 57). OSCE emphasized the long-term development of local judicial capacity by enhancing the judicial system, training local lawyers, and strengthening judicial oversight. For example, those in charge of UNMIK's Pillar I "Police and Justice" have stated that it is not part of their mandate to strengthen the capacity of their respective institutions. As a result, UNMIK has contributed to judicial reform through the appointment of local judges and prosecutors and the development of national legislation, but only to a limited extent through sustained judicial capacity building and the enhancement of the judicial system. While both Kosovo's transitional justice and judicial reform efforts addressed immediate security concerns, transitional justice efforts prioritized long-term judicial reform objectives and strategies, such as developing a sustainable national judicial capacity and strengthening the country's judicial system. When evaluating the efforts and interactions of Kosovo's two entities, retrospectively, at least two distinct and autonomous imperatives should have been used to fill the rule of law vacuum. Security should have been ensured in the short term through transitional justice initiatives; in the long term, it was

necessary to ensure that judicial reforms were ethnically equitable and sustained by local lawyers. The challenge was to develop a strategic perspective that weighed both short-term and long-term needs in Kosovo. Following Kosovo's declaration of independence on February 17, 2008, UNMIK withdrew gradually from the country, to be replaced by an EU-led mission. By May 2009, over 1,600 European judges, prosecutors, and police officers had been deployed to Kosovo to assist local authorities. Even today, however, the mission still has an office in Kosovo, but the Kosovo government no longer wants it there. UNMIK is not an administrative mission because Kosovo has a fully functional, democratically elected government. It is not a peacekeeping mission, as Kosovo's law enforcement is responsible for the safety and security of its citizens. As such, UNMIK has ceased to play a significant role in the lives of Kosovo's citizens because the independent State of Kosovo is fulfilling its obligations to its citizens.

Conclusion

The article aimed to assess why transitional justice initiatives have been unsuccessful in developing national judicial capacity, with a particular emphasis on the relationship between transitional justice and judicial reform during the period 1999 to 2008. The first section addresses the historical context for transitional justice. Second, because the international community recognizes judicial reform as a necessary component of post-conflict societies in order to achieve judicial independence and long-term peace, traditional justice is asserted to be primarily concerned with the capacity-building of the domestic judicial system. Third, it looks at the relationship between transitional justice and domestic justice reforms to also determine how both contribute to security sector reform. The second half of the article focuses primarily on the case of Kosovo, defining the issue in terms of the relationship between transitional justice and judicial reform. The connection between the two efforts demonstrates that transitional justice in Kosovo was characterized by a short-term response to the need for security in the absence of the rule of law and a correction of the courts' resulting ethnic discrimination. Despire efforts at judicial reform in Kosovo, the absence of an overall long-term strategy for judicial reform in transitional justice efforts complicated the process of sustained bolstering of local judicial capacity. One example is the division of labor between international and domestic staff; second, international staff was not assigned the responsibility of training local staff; third, UNMIK's support for transitional justice was motivated by immediate needs rather than the long-term need to strengthen judicial capacity. Between UNMIK and the OSCE, there was a lack of coordination and strategy. While this article focuses on transitional justice and judicial reform as two distinct processes aimed at addressing the rule of a law void in post-conflict countries, it does so at their intersection. It demonstrated that one process does not consistently reinforce the other. Additionally, it was intended to establish differences between the two efforts and emphasize the pivotal role of developing a strategy to connect them. The fact that, despite years of international assistance to Kosovo, the local justice system continues to rely on the international community demonstrates the critical significance

of an approach that recognizes and takes into account synergies between the two processes.

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Author's Bionote

Bardh Lipa – a master's degree in political science from the Johan Skytte Institute of Political Studies at the University of Tartu (Estonia), with a concentration in Baltic Sea Region Studies, and a bachelor's degree in political science from the University of Prishtina (Kosovo). His research interests include political parties, populism, peacebuilding following conflict, and state-building. He focuses on the evolution of party politics in Kosovo following the declaration of independence in 2008 and the implications for democratization and state-building in the country.