

BRIEF INTRODUCTION TO EULEX KOSOVO

(This annex has been drafted with the assistance of a former colleague from the Council's Legal Service, to enable readers who may not be familiar with the subject to be informed about the creation, objectives and development of EULEX.)

1. The setting up of an international civilian presence in Kosovo

In response to the escalating conflict in Kosovo (which was then a part of the Federal Republic of Yugoslavia (FRY)) in 1998-1999, NATO launched an air campaign ("Operation Allied Force") in March 1999 in order to coerce the Milosevic regime to end the repression in Kosovo and to achieve a number of related objectives. That air campaign was suspended on 10 June 1999 (and subsequently terminated), after the FRY agreed to the conditions which NATO had set out and had signed a Military Technical Agreement the day before.¹

Consequently, also on 10 June 1999, the UN Security Council adopted its Resolution 1244(12999) on the situation in Kosovo.

In that resolution, the Security Council *inter alia*

- decided "*that a **political solution** to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2*" (para. 1) and welcomed "*the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation*" (para. 2); and
- decided "*on the **deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences***" (para. 5) and to that effect, it requested "*the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner*" (para. 6) and authorised "*Member States and relevant international*

¹ Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, text available at http://www.aeo.nato.int/resources/site7423/General_Documents/mta.pdf.

organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below" (para. 7). Both presences were established "for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise" (para. 19).

As regards the international civilian presence, Resolution 1244 authorised *"the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic selfgoverning institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo" (para. 10) and decided that the main responsibilities of the international civil presence included:*

- a) " Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);*
- b) Performing basic civilian administrative functions where and as long as required;*
- c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;*
- d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peacebuilding activities;*
- e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);*
- f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;*
- g) Supporting the reconstruction of key infrastructure and other economic reconstruction;*
- h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;*
- i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;*
- j) Protecting and promoting human rights;*
- k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;" (para. 11).*

The security presence was established by and under the leadership of NATO (operation KFOR)² and the civilian presence was established by the UN Secretary-General under his control and was named the UN Mission in Kosovo (UNMIK).

UNMIK was headed by a Special Representative of the UN Secretary-General (SRSG). In his report of 12 July 1999 the UN Secretary-General divided UNMIK's tasks into four pillars, each led by a Deputy Special Representative, who in each case also represented a different "lead organisation".³ A representative from the UN led the "interim civil administration" pillar.⁴ A representative from the OSCE was in charge of the "institution-building" pillar dealing with democratisation and institution-building, elections and human rights.⁵ A representative from UNHCR headed the "humanitarian affairs" pillar.⁶ An EU representative headed the "Reconstruction" pillar.⁷ In this framework, the EU deployed a Task Force in Kosovo on 1 July 1999 and subsequently set up the European Agency for Reconstruction.⁸

On 25 July 1999, the SRSG promulgated UNMIK Regulation No. 1999/1 on the authority of the interim administration in Kosovo. Section 1.1 thereof provided that "*All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General*".

UNMIK implemented its mandate and increasingly involved the local population and local authorities in the administration of Kosovo, including through a 'constitutional framework for provisional self-government in Kosovo' enacted in 2001.⁹

2. The negotiations over the status of Kosovo

At the same time political negotiations on the future status of Kosovo took place. Indeed, Resolution 1244 authorised the establishment of an international security presence and a

² This presence was to include a "substantial [NATO] participation" and was to function "under unified command and control": see Resolution 1244, para. 7 juncto Annex 2, para. 4.

³ UN Doc. S/1999/779, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 July 1999, paras 43-44. In addition, within these pillar other organisations were involved too.

⁴ *Id.*, paras 54-78.

⁵ *Id.*, paras 79-90.

⁶ *Id.*, paras 91-100.

⁷ *Id.*, paras 101-109. See especially Council Joint Action 1999/522/CFSP of 29 July 1999 concerning the installation of the structures of the United Nations Mission in Kosovo (UNMIK), OJ L 201, 31.7.1999, p. 1 (as subsequently extended) and Council Regulation (EC) No 1080/2000 of 22 May 2000 on support for the United Nations Interim Mission in Kosovo (UNMIK) and the Office of the High Representative in Bosnia and Herzegovina (OHR), OJ L 122, 24.5.2000, p. 27.

⁸ Established by Council Regulation (EC) No 2454/1999 of 15 November 1999 amending Regulation (EC) No 1628/96 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, in particular by the setting up of a European Agency for Reconstruction, OJ L 299, 20.11.1999, p. 1.

⁹ See especially UNMIK Regulation 2001/9 of 15 May 2001 on a constitutional framework for provisional self-government in Kosovo, as subsequently amended (notably by UNMIK Regulation 2002/9 of 3 May 2002) and as implemented inter alia by UNMIK Regulation 2001/19 of 13 September 2001 on the executive branch of the provisional institutions of self-government in Kosovo (as in turn amended by UNMIK Regulation 2002/5 of 4 March 2002 and UNMIK Regulation 2005/15 of 16 March 2005). See also UNMIK Regulation 45 of 11 August 2000 on self-government of municipalities in Kosovo. These UNMIK regulations are available at <http://www.unmikonline.org/regulations/index.htm>.

civilian international interim administration, "under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions", "pending a final settlement".¹⁰ The final status of Kosovo therefore remained to be settled.

In March 2007, the UN Secretary General's Special Envoy for the future status process for Kosovo, Martti Ahtisaari, submitted a Comprehensive Proposal for the Kosovo Status Settlement,¹¹ but this proposal was not accepted by all parties and was not endorsed by the Security Council. The EU was part of a 'troika' with Russia and the US that led further negotiations on the future status of Kosovo,¹² but there was no agreed solution by the agreed 10 December 2007 deadline.

With a perspective to the implementation of a final status agreement, the EU had established an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo already in 2006.¹³

However, the protracted negotiations over the final status of Kosovo ended without agreement being reached on Kosovo's status. Instead, on 17 February 2008, Kosovo unilaterally declared its independence. On 9 April 2008, the Kosovo Assembly adopted the 'Constitution of the Republic of Kosovo', which came into force on 15 June 2008.¹⁴ That independence was subsequently recognized by a majority of States,¹⁵ including a majority of EU Member States.¹⁶

¹⁰ See *inter alia* paras. 10, 11(a), (c) and (f), 6th hyphen of Annex 1 and paras. 5 and 8 of Annex 2.

¹¹ See UN Documents S/2007/168 and S/2007/168/Add.1, both 26 March 2007.

¹² See, e.g. UN press release of 1 August 2007 and EU Council Doc. 12369/07 of 13 August 2007.

¹³ Council Joint Action of 10 April 2006 on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo (2006/304/CFSP), *O.J. L* 112, 26 April 2006, p. 19 as repeatedly extended and amended, including by Council Joint Action of 17 March 2008 (2008/228/CFSP), *O.J. L* 75, 18 March 2008, p. 78.

¹⁴ See UN Doc. S/2008/458 of 15 July 2008, para. 4. For a good account of these developments, see also International Court of Justice, Advisory opinion of 22 July 2010 on *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, <http://www.icj-cij.org/docket/files/141/15987.pdf>, paras. 57-77.

¹⁵ According to the UNMIK website, Kosovo's independence has been recognized by more than 100 UN Member States, see <http://www.unmikonline.org/Pages/about.aspx> (dated 16 February 2015). In its Advisory opinion of 22 July 2010 (above note 14), the International Court of Justice "is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law" (para. 123). The Court specified that the question submitted to it was narrow and specific and "d[id] not ask about the legal consequences of that declaration. In particular, it [did] not ask whether or not Kosovo has achieved statehood. Nor [did] it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State" (para. 51).

¹⁶ The Conclusions on Kosovo of the 18 February 2008 External Relations Council state that "The Council notes that member states will decide, in accordance with national practice and international law, on their relations with Kosovo. ... The Council reiterates the EU's adherence to the principles of the UN Charter and the Helsinki Final Act, *inter alia* the principles of sovereignty and territorial integrity and all UN Security Council resolutions. It underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case which does not call into question these principles and resolutions". To date five Member States have not recognized Kosovo as an independent state: Cyprus, Greece, Romania, Slovakia and Spain.

3. The setting up of EULEX Kosovo

In this context, the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO) was established in February 2008.¹⁷ It reached its initial operational capability in early December 2008,¹⁸ was launched throughout Kosovo on 9 December 2008¹⁹ and achieved its full operational capability on 6 April 2009.²⁰

EULEX Kosovo was part of a wider engagement of the EU in relation to Kosovo. In particular, the EU also appointed an EU Special Representative for Kosovo²¹ and this person also headed the 'International Civilian Office' there.²² Furthermore, Kosovo is covered by the Stabilisation and Association Process²³ and the Instrument for Pre-accession Assistance.²⁴ Obviously, the EU's relations with Kosovo are linked to its relations with Serbia, at least as long as the issue of Kosovo's status is open and EU Member States do not all have the same position on Kosovo's status.²⁵

¹⁷ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *O.J. L* 42, 16 February 2008, p. 92. A partially declassified version of the Concept of Operations is contained in Council Doc. 5978/08 EXT 1 of 27 March 2008.

¹⁸ Javier SOLANA, EU High Representative for the CFSP, announces the start of EULEX Kosovo, Council Doc. S/400/08, 5 December 2008, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/declarations/104524.pdf.

¹⁹ UN Doc. S/2009/149 of 17 March 2009, Annex 1, para. 3. Pursuant to Art. 5(1) of Joint Action 2008/124/CFSP; the decision to launch EULEX KOSOVO was to be taken by the Council upon approval of the OPLAN and the operational phase of EULEX KOSOVO was to start upon transfer of authority from UNMIK.

²⁰ See Javier SOLANA, EU High Representative for the CFSP, welcomes EULEX full operational capability, Council Doc. S/095/09, 6 April 2009, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/esdp/107145.pdf.

²¹ Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo, *O.J. L* 42, 16 February 2008, p. 88, as subsequently extended and amended, including by Council Joint Action 2009/137/CFSP of 16 February 2009, *O.J. L* 46, 17 February 2009, p. 69. The EUSR is to give local political guidance to the EUMEX Head of Mission: see Art. 3(c) Joint Action 2008/124/CFSP and Art. 12(2) Joint Action 2009/137/CFSP.

²² The 8th recital of Joint Action 2009/137/CFSP states that "*The Council foresees that the powers and authorities of the EUSR and the powers and authorities of an International Civilian Representative shall be vested in the same person*". This had been envisaged early on: see already Council Joint Action 2006/623/CFSP of 15 September 2006 on the establishment of a EU-team to contribute to the preparations of the establishment of a possible international civilian mission in Kosovo, including a European Union Special Representative component (ICM/EUSR Preparation Team), *O.J. L* 253, 16 September 2006, p. 29, as extended and amended.

²³ See the 6th recital of Joint Action 2009/137/CFSP. An Association Agreement is being negotiated with Kosovo (Commission, 'EU starts the Stabilisation and Association Agreement negotiations with Kosovo', MEMO/13/938 of 28 October 2013, http://europa.eu/rapid/press-release_MEMO-13-938_en.htm; for the Commission's recommendation, see doc. COM(2013) 200 final of 22 April 2013,

http://ec.europa.eu/enlargement/pdf/key_documents/2013/ks_recommendation_2013_en.pdf). See also the 'EU-facilitated dialogue on the normalisation of relations between Serbia and Kosovo', http://eeas.europa.eu/top_stories/2013/190413__eu-facilitated_dialogue_en.htm, and more generally http://www.eeas.europa.eu/kosovo/index_en.htm.

²⁴ See initially Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), *O.J. L* 210, 31 July 2006, p. 82 (*corrigendum O.J. L* 18, 25 January 2007, p. 11), which included "*Serbia including Kosovo, as defined in UNSCR 1244*" (Annex II of this Regulation and the footnote thereto), and currently Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), *OJ L* 77, 15 March 2014, p. 11, which includes Kosovo as a beneficiary (see Art. 1 and Annex I), with an * reading as follows: "*This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence*".

²⁵ The Stabilization and Association Agreement with Serbia (*OJ L* 278, 18 October 2013, p. 16) provides in its Article 135 that it "*shall not apply in Kosovo which is at present under international administration pursuant to United Nations Security Council Resolution 1244 of 10 June 1999*" and that this "*is without prejudice to the current status of Kosovo or the determination of its final status under that Resolution*". On Kosovo's status and the way it has been named in EU legal acts, see above note 24. Council Decision 2008/213/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of

EULEX KOSOVO's mission was (and remains) to *"assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices ... through monitoring, mentoring and advising, while retaining certain executive responsibilities"*.²⁶

Its tasks are primarily to *"monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities"* and to *"ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities"*.²⁷

The mission took over significant aspects of the mandate of UNMIK, which had by 2008 already transferred large parts of its tasks to the local authorities. In this framework, the SRSB delegated certain decision-making powers to the Head of Mission of EULEX Kosovo, in particular regarding the appointment and removal from office of international judges and prosecutors.²⁸ Also, the SRSB ensured that EULEX Kosovo was covered by the privileges and immunities applicable to UNMIK.²⁹

At the same time, EULEX Kosovo was welcomed by both Kosovo and Serbia³⁰ and Kosovo accorded it privileges and immunities under Kosovar law.³¹

10 June 1999 and repealing Decision 2006/56/EC and its annexes (O.J. L 80, 19 March 2008, p. 46), set out principles, priorities and conditions in the European Partnership with *"Serbia including Kosovo under UNSCR 1244"*.

²⁶ Joint Action 2008/124/CFSP, Art. 2.

²⁷ *Id.*, Art. 3(a) and (b).

²⁸ Letter of 26 November 2008 from SRSB Lamberto Zanier to EULEX Head of Mission Yves de Kermabon and Letter of 15 October 2010 from SRSB Lamberto Zanier to EULEX Head of Mission Xavier Bout de Marnhac.

²⁹ Executive decision No. 2008/36 of 9 December 2008 of the SRSB. The privileges and immunities of UNMIK are set out in UNMIK Regulation 2000/47, 18 August 2000, especially section 3, http://www.unmikonline.org/regulations/2000/re2000_47.htm.

³⁰ This was reflected in a series of letters from and to the Presidents of Kosovo and Serbia (and, on the EU side, the High Representatives (Solana and subsequently Ashton) starting in February 2008 (see also below notes 37 and 38). The underlying basis for the Kosovar and Serbian consent is different. In the case of Kosovo, it is based on the Kosovo Constitution: the Kosovo authorities have stated that they are *"in favour of a quick deployment of EULEX in Kosovo in accordance with the mandate foreseen in the Declaration of Independence, the Comprehensive Proposal for a Kosovo Status Settlement, the Constitution of the Republic of Kosovo, Kosovo legislation, the European Union Joint Action of 4 February 2008 and Kosovo's institutions' invitation to EULEX"* (UN Doc. S/2008/692, 24 November 2008, § 52 and especially Annex I, § 1). In the case of Serbia it is based on Resolution 1244: see *id.*, para. 52 (*"The Government of Serbia has accepted ... the arrangements set out in the present report"*) and UN Doc. S/2009/149 of 17 March 2009, para. 5 (*"the Government of Serbia and a majority of Kosovo Serbs have accepted the deployment of ... (EULEX) on condition that it would fully respect*

The Mission has its main Headquarters in Pristina, (regional and local) offices across Kosovo, a Brussels support element and liaison offices as required and, upon its establishment, consisted of the Head of Mission and staff, organised in a police component, a justice component and a customs component.³² The mission's authorized strength was set at some 3000 staff and in practice it reached a staff level of up to some 2850 staff.³³

The initial duration of the mission was two years and the Joint Action was to expire 28 months from the date of approval of the OPLAN,³⁴ i.e. on 14 June 2010.³⁵ This was subsequently extended in 2010,³⁶ 2012³⁷ and 2014,³⁸ each time for a further two year period.

Cooperation in the field between EULEX Kosovo and KFOR was developed. However, no overarching EU-NATO arrangement on the cooperation between their respective operations was concluded.

Mandate

The 2008 EULEX Kosovo Joint Action referred to UN Security Council Resolution 1244 and the UN Secretary-General's authority under this resolution.

resolution 1244 (1999) and that it would operate under the overall authority of the [UN] and within its status-neutral framework").

³¹ See especially the Law No. 03/L-033 on the Status, Immunities and Privileges of Diplomatic and Consular Missions and Personnel in Republic of Kosovo and of the International Military Presence and Its Personnel, 20 February 2008 (http://www.mfa-ks.net/repository/docs/2008_03-L033_en1.pdf), which explicitly covers EULEX (see Art. 3(2)b).

³² Joint Action 2008/124/CFSP, Art. 6.

³³ See EU Factsheet, EULEX/04, December 2008, annexed to Council Doc. S400/08 of 5 December 2008, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/esdp/104525.pdf.

³⁴ Art. 20 Joint Action 2008/124/CFSP (*supra* note 17).

³⁵ Council Joint Action 2009/445/CFSP of 9 June 2009 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *O.J. L* 148, 11 June 2009, p. 33, 1st recital and Art. 1(2).

³⁶ Council Decision 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *OJ L* 145, 11.6.2010, p. 13. This decision also amended some other provisions, including those on the role of the civilian operations commander, the PSC and the High Representative, to reflect the entry into force of the Treaty of Lisbon.

³⁷ Council Decision 2012/291/CFSP of 5 June 2012 amending and extending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *OJ L* 146, 6.6.2012, p. 46. This decision also add a new task, namely "(j) cooperate with judicial and law enforcement authorities of Member States and third States in the execution of its mandate". See also UN Doc. S/2012/818 of 8 November 2012, Annex I, p. 12 on the invitation and consent of the Kosovar authorities for this mandate extension.

³⁸ Council Decision 2014/349/CFSP of 12 June 2014 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, *OJ L* 174, 13.6.2014, p. 42. This decision also introduced some technical amendments, including the explicit conferral of legal capacities on the mission (through the insertion of an Article 15a into Joint Action 2008/124/CFSP) and a Project Cell for identifying and implementing projects (through the insertion of an Article 16a into Joint Action 2008/124/CFSP). See also UN Doc. S/2014/558 of 1 August 2014, Annex I, p. 17 on the invitation and consent of the Kosovar authorities for this mandate extension.

The first recital mentions Resolution 1244 and its authorization for the UN Secretary-General, "with the assistance of relevant international organisations, to establish an international civil presence in Kosovo" as well as the responsibility of the international civilian presence to "in a final stage, oversee[...] the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement". The 7th recital states that "The [UN] Secretary-General also noted the readiness of the EU to play an enhanced role in Kosovo, as reflected in the conclusions of the Brussels European Council on 14 December".³⁹

Furthermore, pursuant to Article 5(1) of this Joint Action, "The operational phase of EULEX KOSOVO shall start upon transfer of authority from the United Nations Mission in Kosovo, UNMIK". In addition, the 2nd recital defines the Kosovo organs, institutions and authorities referred to in the Joint Action as the "institutions created on the basis of Resolution 1244" and the SG/HR has declared that the EULEX mission operates "in the framework of the UNSC 1244"⁴⁰ and under the overall authority of the UN.⁴¹

This (envisaged) transfer of authority from UNMIK to EULEX Kosovo took some time to work out but as of June 2008 a number of successive reports by the UN Secretary-General on UNMIK⁴² and their implementation, as well as an endorsement thereof by the Security Council,⁴³ took forward this process, which was accompanied by a reconfiguration of UNMIK. From the UN perspective, this remains the situation until today.⁴⁴

From these reports, it appears that the UN and Serbia have accepted the enhanced role of EULEX Kosovo, accompanied by the reconfiguration of UNMIK, under the overall authority of the United Nations, under a UN umbrella headed by the UN Secretary General's Special

³⁹ See UN Doc. S/2007/768 of 3 January 2008, § 35.

⁴⁰ Remarks by Javier SOLANA, EU High Representative for the CFSP, on UN reconfiguration of the civilian presence in Kosovo, Council Doc. S223/08, 21 June 2008, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/esdp/101372.pdf.

⁴¹ Summary of intervention of Javier SOLANA, EU High Representative for the Common Foreign and Security Policy before the meeting of international organisations active on the ground in Kosovo (EU, NATO, UN, OSCE), Brussels, 18 July 2008, Council Doc. S257/08, 18 July 2008, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/esdp/101884.pdf ("*Le dernier rapport du Secrétaire Général des Nations unies le rappelle à tous et définit le cadre de l'action de chacun. Ainsi pour la mission EULEX, il fixe son cadre d'opération sous l'autorité de la résolution 1244. En clair, EULEX opérera sous l'autorité globale des Nations unies et je veillerai à fournir tous les rapports nécessaires à leur Secrétaire Général*" (emphasis added).

⁴² See especially UN Documents S/2008/354 of 12 June 2008, §§ 10-20; S/2008/458 of 15 July 2008, §§ 3 and 30-33 and UN Doc. S/2008/692, 24 November 2008, §§ 23-29 and 50-52.

⁴³ UN Doc. S/PRST/2008/44, 26 November 2008 ("*The Security Council welcomes ... Report ... S/2008/692 ... and, taking into account the positions of Belgrade and Pristina ..., welcomes their intentions to cooperate with the international community. The Security Council welcomes the cooperation between the UN and other international actors, within the framework of Security Council Resolution 1244 (1999), and also welcomes the continuing efforts of the [EU] to advance the European perspective of the whole of the Western Balkans, thereby making a decisive contribution to regional stability and prosperity*").

⁴⁴ Eg. in UN Doc. S/2015/74 of 30 January 2015, the UN Secretary-General states that "[EULEX Kosovo] continues to be present in Kosovo, in line with the statement by the President of the Security Council of 26 November 2008 (S/PRST/2008/44) and my report of 24 November 2008 (S/2008/692)" (para. 2). According to the UNMIK website, "UNMIK continues to implement its mandate in a status neutral manner and operate under Security Council resolution 1244 (1999)": <http://www.unmikonline.org/Pages/about.aspx> (information dated 16 February 2015).

Representative, within the status neutral framework of the UN and in accordance with Resolution 1244 (1999).⁴⁵ To quote from a June 2009 UN SG report:

In line with my reports ... and the Security Council's presidential statement of 26 November 2008 ... EULEX ... has continued to operate under the overall authority of the [UN] and within the status-neutral framework of Security Council resolution 1244 (1999). ... I welcome the assumption of full operational capability by EULEX. Its operational role in the rule of law sector, under the overall authority and within the status-neutral framework of the United Nations, is key to the maintenance of stability on the ground.⁴⁶

The transfer of authority process included the conclusion of a number of arrangements, e.g. on the handover of assets and of justice-related investigative and case files between UNMIK and EULEX.⁴⁷ Pragmatic solutions were developed to deal with difficulties arising from the status question. For instance, UNMIK continued to exercise certain responsibilities with regard to external relations in the justice area, including requests for international legal assistance from and to non-recognizing countries even after local authorities took over responsibility for international legal assistance requests to and from countries which have recognized Kosovo as of 19 March 2009 and UNMIK also continues to play a role in facilitating contacts with INTERPOL and with the ICTY.⁴⁸ The reconfiguration and downsizing of UNMIK was finalized by 1 July 2009, leaving it with a personnel strength of some 500 to perform the residual UNMIK tasks.⁴⁹

Regular reports on the mission are annexed to the periodic reports of the UN secretary General on UNMIK.⁵⁰

The mandate and tasks of EULEX Kosovo as set out in the legal act have remained the same, with limited exceptions.⁵¹ However, the OPLAN has been amended a number of times and

⁴⁵ See especially UN Doc. S/2008/692, 24 November 2008, paras. 23, 28 ("all parties have accepted the reconfiguration of the structure and profile of the international presence ... to one that corresponds to the evolving situation in Kosovo and enables the [EU] to assume an enhanced operational role throughout Kosovo, in particular in the areas of international policing, justice and customs"), 29 and 50 ("my Special Representative and Head of UNMIK is facilitating the [EU] preparations to undertake an enhanced operational role in Kosovo in the rule of law area. EULEX will fully respect Security Council resolution 1244 (1999) and operate under the overall authority and within the status neutral framework of the United Nations. EULEX will submit reports to the [UN] on a regular basis") and UN Doc. S/2009/149 of 17 March 2009, paras 12 ("In line with the presidential statement of 26 November 2008 ... EULEX assumed full operational responsibility in the area of rule of law on 9 December within the framework of resolution 1244 (1999) and under the overall authority of the United Nations") and 37 ("I have noted the commitment of EULEX to fully respect resolution 1244 (1999) and operate under the overall authority and within the status-neutral framework of the [UN]. ... EULEX has begun to submit reports to the [UN] on its activities on a regular basis"). See also note 30 above on the position of Serbia.

⁴⁶ UN Doc. S/2009/300 of 10 June 2009, §§ 6 and 41.

⁴⁷ See respectively UN Doc. S/2009/300 of 10 June 2009, § 20 and UN Doc. S/2009/149 of 17 March 2009, § 13 as well as UN Doc. S/2008/692, 24 November 2008, §§ 23-24.

⁴⁸ UN Doc. S/2009/300 of 10 June 2009, § 22.

⁴⁹ *Id.*, §§ 18-19 and UN Doc. S/2009/497 of 30 September 2009, paras. 2-5.

⁵⁰ These reports are available on the UN website and also easily accessible on the UNMIK website at <http://www.unmikonline.org/Pages/UNMIK%20Key%20documents.aspx>.

there have been significant changes in the way in which this mandate and these tasks have been implemented and in the organisation of the mission. For example, EULEX Kosovo also facilitates the implementation in the rule of law sector of relevant aspects of agreements reached in the framework of the EU-facilitated dialogue on the normalisation of relations between Serbia and Kosovo.⁵²

These changes in the planning documents include a significant evolution of the executive mandate.

The executive mandate

Initially, EULEX Kosovo consisted of three thematic components: a police component, a justice component and a customs component.⁵³ In each of these components, EULEX Kosovo could perform both advisory and executive tasks. This is indicated in its mission, which refers to "*monitoring, mentoring and advising, while retaining certain executive responsibilities*"⁵⁴ and in several of its tasks. Pursuant to Article 3 of Joint Action 2008/124/CFSP, these tasks include:

(a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;

(b) ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities;

... (d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, ...;

... (h) assume other responsibilities, independently or in support of the competent Kosovo authorities, to ensure the maintenance and promotion of the rule of law, public order and security, ...;

⁵¹ See especially above notes 37 (cooperation with judicial and law enforcement authorities of Member States and third States in the execution of its mandate) and 38 (project cell) and see below (change in mission structure).

⁵² See e.g. UN Doc. S/2013/631 of 28 October 2013, Annex I, p. 10 and see above note 23 on that dialogue.

⁵³ Joint Action 2008/124/CFSP, Art. 6.

⁵⁴ Joint Action 2008/124/CFSP, Art. 2.

The executive functions/responsibilities include cases in which EULEX Kosovo directly performs executive tasks instead of the local authorities. This is *inter alia* the case where EULEX prosecutors and judges deal with cases alone. Nevertheless, they do so as part of the Kosovar legal and judicial system, into which they are integrated, and their decisions constitute local Kosovar decisions. In other cases, EULEX Kosovo performs executive tasks jointly with the local authorities, e.g. in the framework of mixed customs teams and prosecution services or courts composed of both EULEX staff and local Kosovar staff. Here too, EULEX' role is part of the Kosovar legal and judicial system. Finally, EULEX had the power to reverse or annul operational decisions taken by the competent Kosovo authorities where this was necessary to ensure the maintenance and promotion of the rule of law, public order and security. In this case, EULEX acted as, or on behalf of, the international supervisor.⁵⁵

There is a dual legal basis for these executive powers. On the one hand, in the framework of Security Council Resolution 1244, in 2008 and 2010, the SRSG delegated certain decision-making powers to the Head of Mission of EULEX Kosovo, in particular regarding the appointment and removal from office of international judges and prosecutors.⁵⁶ On the other hand, Kosovar laws and the Kosovar authorities provide for EULEX to exercise certain executive tasks.⁵⁷

In the field of the judiciary, these laws include especially the Law on jurisdiction, case selection and case allocation of of EULEX judges and prosecutors in Kosovo adopted in 2008⁵⁸ as well as the Law on the Special Prosecution Office of the Republic of Kosova, also adopted in 2008.⁵⁹ As regards judges, the main mode was mixed chambers with a majority of EULEX judges but there were also cases exclusively assigned to EULEX judges.

In terms of organisation, the Head of the Justice component was in charge of this component of the mission, which included a prosecution branch headed by the EULEX Chief Prosecutor and the Assembly of EULEX judges, headed by its President. Nevertheless, the Head of the Justice component did not have the authority to issue instructions to EULEX judges and prosecutors, in order to ensure their impartiality and independence.

⁵⁵ See Articles 146-147 of the 2008 Constitution of Kosovo, referring to the powers of the International Civilian Representative. These provisions were repealed in 2012 by amendments to the Constitution 'regarding the ending of international supervision of the independence of Kosovo', adopted by Decision of the Assembly of the Republic of Kosovo, No. 04-V-436 on 7 September 2012, *Official Gazette of the Republic of Kosova*, No. 25, 7 September 2012 (http://www.md-ks.net/repository/docs/Amendments_on_the_constitution_of_the_republic_of_Kosovo_regarding_the_ending_of_international_supervision_of_independence_of_Kosovo.pdf).

⁵⁶ See the letters cited above in note 28. See also UNMIK Regulation No. 2001/2 of 12 January 2001 amending UNMIK Regulation No. 2000/6, as amended, on the Appointment and Removal from Office of International Judges and International Prosecutors.

⁵⁷ This was reflected in the letters cited above in note 30.

⁵⁸ Law No. 03/L-053 of 13 March 2008, *Official Gazette of the Republic of Kosova*, Year III, No. 27, 3 June 2008, http://www.md-ks.net/repository/docs/on_the_jurisdiction.pdf.

⁵⁹ Law No. 03/L-052 of 13 March 2008, *Official Gazette of the Republic of Kosova*, Year III, No. 27, 3 June 2008, http://www.md-ks.net/repository/docs/law_on_the_special_persecution.pdf. See especially its Article 15.

Furthermore, in 2009 a Human Rights Review Panel was established with the mandate to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate.⁶⁰

In 2011 the OPLAN was amended to provide for the establishment within EULEX Kosovo of the Special Investigative Task Force (SITF) to conduct an independent criminal investigation into the war crimes and organised crime allegations contained in the Council of Europe report of January 2011 by Senator Dick Marty entitled 'Inhuman treatment of people and illicit trafficking in human organs in Kosovo'.⁶¹ The SITF is part of EULEX' executive mandate and was situated in the mission's Justice component, while operating very much autonomously.

From the outset, the aim of EULEX Kosovo was to gradually reduce the executive mandate and to transfer as much as possible the corresponding responsibilities to the Kosovar authorities. This *inter alia* led to some changes to the OPLAN approved in 2010 when the mission was first extended. It led to more significant changes in the framework of the next extension of the mission in 2012, with the approval of further changes to the OPLAN, including a reconfiguration of EULEX Kosovo, the development of a Mission Implementation Plan and a "compact" agreed with the Kosovar authorities. These developments were also reflected in changes to Kosovar law.⁶² As regards the structure, the mission was reconfigured into two divisions: a strengthening division and an executive division.⁶³ The latter includes a police branch, a prosecution branch (headed by the EULEX Chief Prosecutor as a Deputy Head of Executive) and the EULEX judges.

In 2014 the mission was again extended for another two years and this is envisaged to be the final extension, except for activities related to the SITF.⁶⁴ In this context, further changes were introduced and reflected in Kosovar law.⁶⁵ For example, in mixed chambers there will

⁶⁰ See <http://hrrp.eu/>.

⁶¹ See <http://www.sitf.eu>.

⁶² See notably Law No. 04/L-148 of 7 September 2012 on ratification of the international agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, *Official Gazette of the Republic of Kosova*, No. 25, 7 September 2012, [http://www.md-ks.net/repository/docs/Ligji_per_ratifikimin_e_marreshesjes_KS-BE-Eulex_\(anglisht\).pdf](http://www.md-ks.net/repository/docs/Ligji_per_ratifikimin_e_marreshesjes_KS-BE-Eulex_(anglisht).pdf).

⁶³ See Article 1(2) of Council Decision 2012/291/CFSP of 5 June 2012, which deleted the wording on the initial 3 component structure. See also <http://www.eulex-kosovo.eu/en/strengthening/> (Monitoring, Mentoring and Advising) and <http://www.eulex-kosovo.eu/en/executive/> (delivering the rule of law services until the progress of local authorities allows complete transition of executive functions to local authorities).

⁶⁴ See Council Decision 2014/349/CFSP of 12 June 2014 (OJ L 174, 13.6.2014, p. 42), Article 1(9) (extension until 14 June 2016) and Council Decision 2014/685/CFSP of 29 September 2014 (OJ L 284, 30.9.2014, p. 51), Article 1(5) (adding after the 2016 end date that "*The Council, acting on a proposal from the High Representative, shall take the necessary decisions in order to ensure that EULEX KOSOVO's mandate in support of the re-located judicial proceedings referred to in Article 3a and the related necessary financial means shall remain in effect until such time as these judicial proceedings have been concluded*"). See also Law No. 04/L-274 of 23 April 2014 on ratification of the international agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo, *Official Gazette of the Republic of Kosova*, No. 32, 15 May 2014, http://www.md-ks.net/repository/docs/Ligji_nr.04-247_anglisht.pdf.

⁶⁵ See especially Law No. 04-273 of 23 April 2014 on amending and supplementing the laws related to the mandate of the European Union Rule of Law Mission in Kosovo, *Official Gazette of the Republic of Kosova*, No. 32, 15 May 2014, http://www.md-ks.net/repository/docs/Ligji_nr.04-273_anglisht.pdf. This law *inter alia* amends Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (above note 58).

in principle be a majority of local judges. Also, a policy was agreed that in principle EULEX prosecutors would not be assigned any new cases, except in extraordinary circumstances on the basis of a joint decision by the competent EULEX and Kosovar authorities.

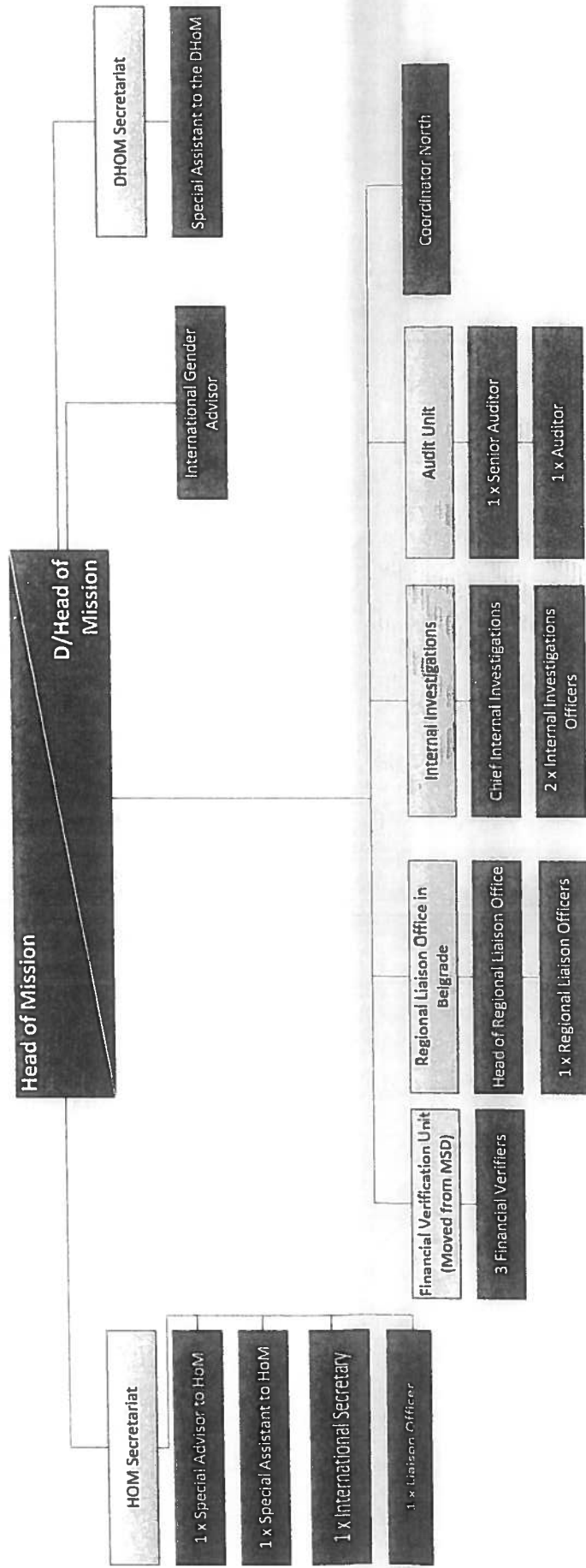
As the work of the SITF approached a trial stage, further arrangements were agreed in 2014 to ensure a fair and effective trial. This includes provisions on relocated judicial proceedings.⁶⁶

⁶⁶ See Council Decision 2014/685/CFSP of 29 September 2014 (OJ L 284, 30.9.2014, p. 51), Article 1 (inserting an Article 3a into Joint Action 2008/124/CFSP on these proceedings, inter alia providing that “*For the purposes of fulfilling its mandate, including its executive responsibilities, as set out in Article 3(a) and (d), EULEX KOSOVO shall support re-located judicial proceedings within a Member State, in order to prosecute and adjudicate criminal charges arising from the investigation into the allegations raised in a report entitled “Inhuman treatment of people and illicit trafficking in human organs in Kosovo” released on 12 December 2010 ...*”). See also Law No. 04-273 on amending and supplementing the laws related to the mandate of the European Union Rule of Law Mission in Kosovo (above note 65).

Annex 2

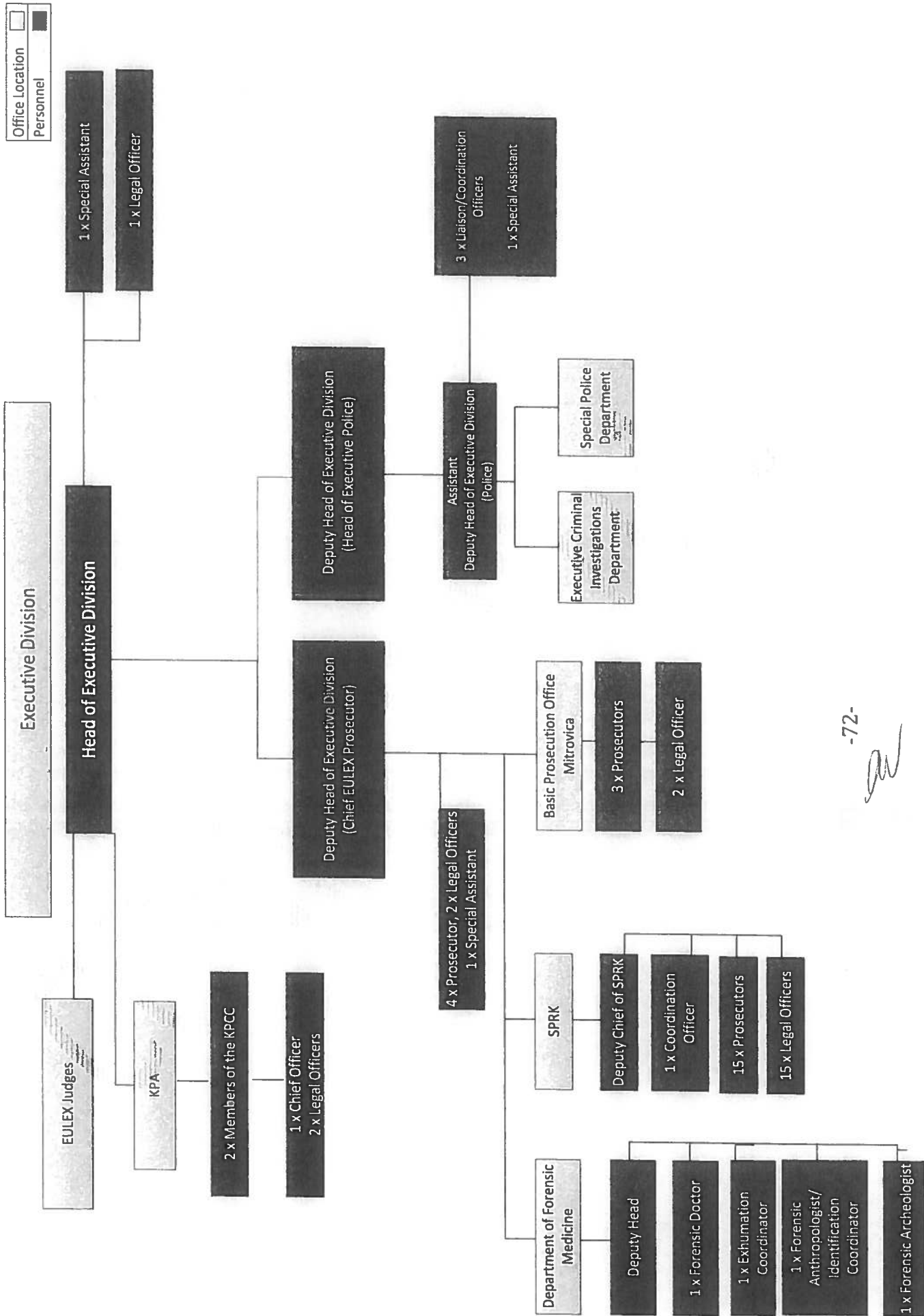
Office Location	<input type="checkbox"/>
Personnel	<input checked="" type="checkbox"/>

Office of the Head of Mission



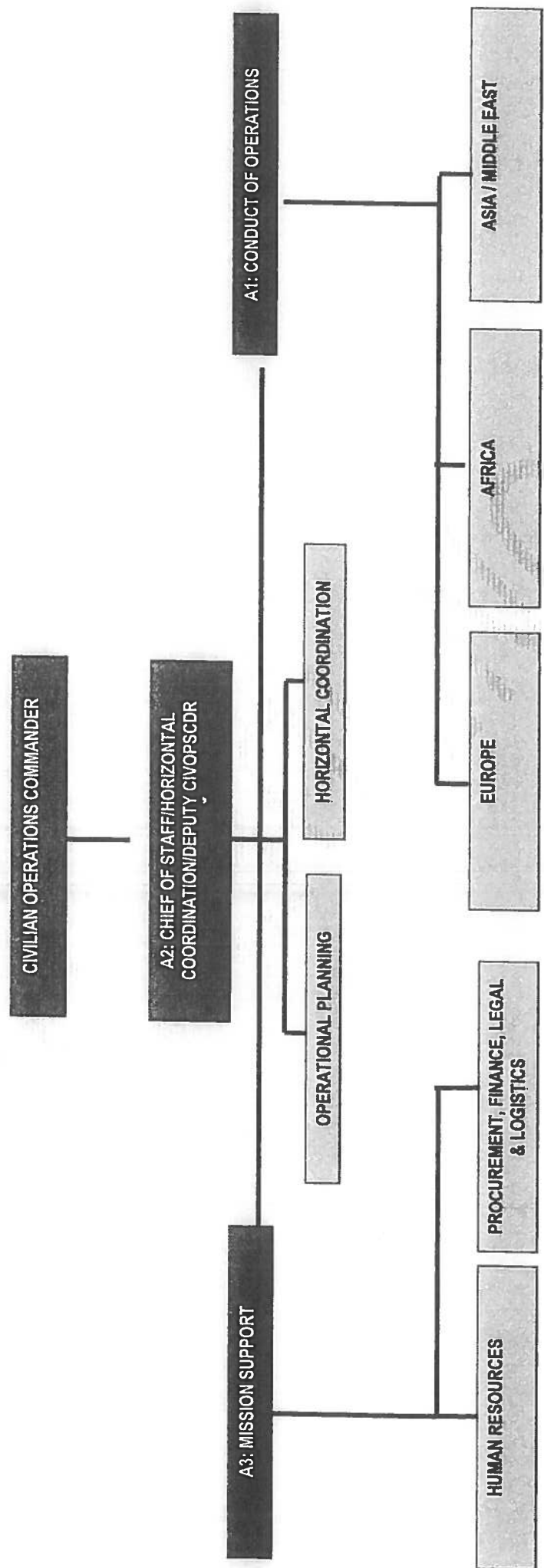
W

Office Location
 Personnel



-72-
[Signature]

Civilian Planning and Conduct Capability (CPCC) – European External Action Service



TIMELINE

2011

November Chief State Prosecutor Kosovo received a letter alleging that Judge [REDACTED] accepted bribes.

2012

January Chief State Prosecutor Kosovo forwarded the letter alleging that Judge [REDACTED] accepted bribes to the Mission.

March EULEX Chief Prosecutor [REDACTED] wrote a letter saying that a case should not be opened because there would not be sufficient evidence, and because of diplomatic immunity.

26 June [REDACTED] forwarded her report by email to [REDACTED] Head of Justice (copy to [REDACTED]). The report is dated 26 May but it contains intercepts up to 6 June 2012. From the text it seems that the content of the report had been discussed some days before between [REDACTED]

[REDACTED] considered the allegations not sufficiently substantiated.

HoM [REDACTED] and DHoM [REDACTED] were informed by [REDACTED]

October Appointment of [REDACTED] as Head of the Executive Division

2013

1 February [REDACTED] appointed as HoM.

March [REDACTED] received info from [REDACTED] Intelligence and later from EUOCI (EULEX criminal intelligence unit) that there are corruption allegations against a EULEX prosecutor and possibly other mission members.

27 March Consultation with [REDACTED] CivOpsCodr) on secured phone-line.

2-5 May [REDACTED] visit to Kosovo.

16 May [REDACTED] launches preliminary internal investigation. (EULEX memorandum: [REDACTED] note to [REDACTED])

17 May Memo of [REDACTED] following which [REDACTED] approved the creation of a mixed team: '*based on the authority to assign staff to review allegations undermining the implementation of the Council Decision.*'

Late May Intercepts were found by the internal investigation team while looking for possibly manipulated cases.

[REDACTED] came in late August to [REDACTED] because she had become subject of a disciplinary investigation for a minor offense. At the same time she submitted a file to [REDACTED] with

info, including wiretapping. She considered herself as whistle blower and felt harassed. [redacted] gave the file to the preliminary investigation team.

- 8 July [redacted] informed the internal investigation team that a statement from [redacted] was handed over to her and to the State Chief Prosecutor [redacted] who had informed [redacted]
- July-Oct. Some reports about [redacted] were found and handed over by a police officer. [redacted] bank account was checked. President of Assembly EULEX judges was invited to review the Clinton Bombing and Triple Murder cases and concluded that there was no irregularity in the verdict.
- 16 October [redacted] has been interviewed in EULEX HQ on a voluntary basis.
- November The internal investigation was concluded (Nov / Dec) and resulted in a Special Report. (report not dated)
- 6 November [redacted] briefed [redacted] over a secure telephone line about the results of the internal investigation. Decision was taken to start a prosecutorial investigation.
- 11 December EULEX memorandum: [redacted] also signed by [redacted] (as DHoM) DECISION MEMO to [redacted] on a "specific Verifying interview, to select, appoint and deploy a Prosecutor to a special and sensitive investigation" - Appointing [redacted]
- 12 December [redacted] was interviewed for the position of prosecutor.
- 12 December PM Thaci sends a note to HR Ashton on Kosovo needs to assume its state responsibilities.
- 17 December [redacted] deployed Prosecutor to start forming his team of investigators - [redacted] identified a Legal Officer + language assistance from within the mission.

2014

- 8 January EULEX MEMORANDUM from [redacted] to [redacted] recommending the establishment of an independent team for a special investigation; handing over the case to prosecutor [redacted]
- 6 March A preliminary criminal investigation started when Kosovo Police filed an initial report to the Pristina Basic Prosecution Office.
- 10 March Investigation on corruption of internationals was led by EULEX until the arrival of the local state prosecutor on 10 March 2014.
- 13 March Decision to start a formal pre-trial criminal investigation into the alleged irregularities, to be carried out jointly by an external EULEX prosecutor and a Kosovar prosecutor [redacted]
- April Info on the existence of an investigation leaked to media (see note CivOpsCmdr KD to UN dd 9 October 2014)
- 18 April Email from Judge [redacted] to prosecutors, the Mission and CPCC complaining about the handling of the case.

- 19 May Professional search in the office of former HoM [REDACTED] who had mentioned in an interview about the allegations that documentation provided by [REDACTED] was in his office – but nothing was found.
- 30 May Original request Chief State prosecutor Kosovo and Eulex Prosecutor for waiver of immunity
- 4 June [REDACTED] (Prosecutors) sent note to [REDACTED] Kosovo Chief State Prosecutor regarding request waiver of immunity [REDACTED]
- June–August Downsizing of number of prosecutors from 27 to 24 (during the reconfiguration process) [REDACTED] successful as one of the 24 remaining prosecutors.
- 3 July [REDACTED] Chief State Prosecutor note to MoFA Kosovo [REDACTED] Acting Director Chief of State Protocol - Request waiver of immunity [REDACTED]
- 8 July MoFA Kosovo [REDACTED] Act Chief of State Protocol note to [REDACTED] Request waiver of immunity [REDACTED]
- 23 July [REDACTED] note to Head of EULEX Executive Division - Internal memo regarding the immunity of [REDACTED]
- 24 July Head of HRLO sent a note to [REDACTED] requesting waiver of immunity [REDACTED]
- 24 July [REDACTED] sent a note to [REDACTED] requesting waiver of immunity/[REDACTED]
- 24 July [REDACTED] note to [REDACTED] MoFA - Ref. to Motion through [REDACTED] by [REDACTED] warning that it might take time
- 29 August Memo [REDACTED] via [REDACTED] to [REDACTED] in respect of Operation Ghost to grant access to the EULEX business e-mail accounts of 11 former and current EULEX staff members.
- 1 September [REDACTED] FM annulled secondments of all 7 [REDACTED] prosecutors in order to reduce the number of secondments to 4. [REDACTED] had to compete with 17 other candidates following an extraordinary external Call for Contributions. All 7 [REDACTED] prosecutors applied. [REDACTED] was not among the 4 successful candidates. [REDACTED] contract would normally end 21 November 2014.
- 6 October Information in the Albanian media on the lifting of immunity naming [REDACTED]
- 8 October Memo from Independent TF - [REDACTED] - (through [REDACTED]) to DHoM [REDACTED] in her role as Acting HoM [REDACTED], acting Chief State Prosecutor about Albanian leaks to the press (ILA request leaked, already on 6.10 in Tirana based news agencies and on 7.10 in local newspaper Koha Ditore)
- 9 October A note from CivOpsCdr [REDACTED] to UN Office of Legal Affairs asking for agreement on a limited waiver of immunity for [REDACTED]
- 13-16.10 CivOpsCdr decided to send an expert mission to Kosovo to conduct a Directive Management Review.

- 14 October Official Appeal against non-selection in CfC from [REDACTED] to HoM
- 16 October UN note to CivOpsCdr [REDACTED] Agreement Limited waiver of immunity
- 18 October Mission was contacted by a journalist [REDACTED] indicating that he had got hold of a lot of information about the investigation and about [REDACTED] allegations against EULEX.
- 21 October A meeting between EULEX and the journalist confirmed the above.
- 22 October CivOpsCdr sent a note Acting Chief State Prosecutor Kosovo, informing him that a limited waiver of immunity is granted.
- 23 October HoM [REDACTED] suspended [REDACTED] suspected to have leaked sensitive information to the press.
- 24 October After HR endorsement and agreement of UNSG, EEAS transmitted to the Kosovo authorities a partial waiver of the immunity of [REDACTED]
- 27 October As of this date [REDACTED] gave many statements to the media without authorization of the HoM. Initial publication in the Kosovo press of the corruption allegations – [REDACTED]
- Letter EP: Chair Elmar BROK and Ulrike LUNACEK – standing rapporteur on Kosovo addressed to HR/VP Mogherini
- 28 October PSC was briefed by CivOpsCdr [REDACTED]
- 30 October [REDACTED] travelled to Kosovo to reiterate his support to the Head of Mission and the staff while reviewing the latest developments in the investigation;
- 31 October HoM responds to request from OLAF.
- 3 November [REDACTED] note to HR/VP on Decision on the handling of allegations of corruption
- 3 November AFET was briefed by [REDACTED]
- 4 November PSC was briefed by CivOpsCdr [REDACTED]
- 4 November HR announced on her decision to appoint an independent and experienced expert to review the implementation of the Mission's mandate with a focus on the handling of the corruption allegations;
- 10 November HR/VP Statement Appointment [REDACTED]
- 18 November Until 4 December: Ombudsman services carried out several inspections of the EES / EULES Kosovo' files
- 21 November Official end of [REDACTED] secondment
- 1 December Ombudsman's representatives met with [REDACTED]

- 2 December Email from [REDACTED] addressed to HR Mogherini
- 4 December PSC was briefed by CivOpsCdr [REDACTED]
- 4 December Ombudsman closed her own-initiative inquiry OI/15/2014/PMC into the allegations.
- 4 December [REDACTED] sent a note via [REDACTED] to HR/VP (cc: [REDACTED], [REDACTED]) with an update on the developments in the judicial investigation. t.

2015

- Mid-January JPJ presentation of initial findings and an exchange of views with EP
- 31 March Presentation of the final report

aw

**Special Prosecution Office of the Republic of Kosovo
Prokuroria Speciale e Republikës së Kosovës
Kancelarija Specijalnog Tužilaštva Republike Kosovo**

Prishtinë/Priština

26 June 2012

FROM:

TO:

CC:

[REDACTED]

**CONFIDENTIAL REPORT REGARDING INTERCEPTION OF
COMMUNICATIONS IN PPS 64/11**

[Handwritten signature]

AV

an

av

W

023

WV

W

aw

AW

PRESENTATION OF COURT CASES RELATED TO THE ALLEGATIONS

The corruption allegations relate to two sets of criminal cases. The first consists of the "Bill Clinton Bombing" and the "Triple Murder" cases. The second involves the [REDACTED] case, to which the "detention visits" case is linked.

A. Bill Clinton Bombing case and Triple Murder case

The two cases are cases handled by EULEX and were judged by a panel primarily composed of EULEX judges, with one exception. [REDACTED] was responsible for the **Bill Clinton Bombing case**, while a local prosecutor handled the **Triple Murder case**. [REDACTED] took an interest in the latter and tried to intervene without being responsible for the case. The two cases are closely linked, since the accused parties in each largely overlap.

The sequence of events is as follows:

1. The facts

- For the **Clinton case**, on 24 September 2007, two people died following an explosion in a bar on Bill Clinton Street. The police believe the bombing was revenge for the murder of a Kosovar police officer.
- During the night of 27 to 28 September 2007, three members of the [REDACTED] family were shot, seemingly because a member of the family had revealed the identity of the person behind the Clinton bombing. It appears to have been a case of assassinating potential witnesses. The investigation identified three culprits. Two members of the local police force, [REDACTED] and [REDACTED], as well as one member of the Kosovo Protection Corp [REDACTED], who were arrested in January 2008 (**Triple Murder case**).

2. The judgment

- The **Clinton Bombing I** trial took place between May and September 2009. The prosecutor was [REDACTED]. The panel consisted of two EULEX judges, including Judge [REDACTED] and one local judge. [REDACTED] were sentenced to 25 years in prison and [REDACTED] was acquitted. During the trial, in view of the weakness of the charges against [REDACTED], [REDACTED] had attempted to downgrade the charge to assisting in murder, but the panel rejected the move in view of the difference between the initial charges and the new ones, against which the accused had not been able to defend himself. [REDACTED] did not appeal the acquittal.
- The following year, on 16 June 2010, the **Triple Murder case** was heard before a mixed panel presided by a local judge assisted by two EULEX judges. The panel did not give credence to [REDACTED] arguments. [REDACTED] was acquitted.
- In June 2011, [REDACTED] spoke to the prosecutor [REDACTED] to relate to her what had really happened. He named parties who had been involved in the crimes, and accused members of the [REDACTED] family and [REDACTED]. [REDACTED] and the local prosecutors seem to have been

convinced by the statements. The appeal was dismissed.

- The judgment in the **Triple Murder** case appeal was given in October 2011. Once again, statements from [REDACTED] failed to convince the Court. Furthermore, the Court indicated that new evidence should not be introduced via an appeal, but rather by requesting a reopening of the case, in particular insofar as [REDACTED] was concerned in view of the *ne bis in idem* principle.

3. Corruption allegations

- After that unsuccessful appeal, [REDACTED] brother claimed that he had been informed by [REDACTED] brother that during the first hearing, Judge [REDACTED] had been bribed by [REDACTED]. [REDACTED] independently confirmed those claims to an investigator. [REDACTED] asked the Chief Prosecutor of Kosovo, [REDACTED] to launch an investigation. The letter was forwarded to the Chief EULEX Prosecutor for assessment. The letter is dated November 2011. It was forwarded to the Chief EULEX Prosecutor on 14 November 2011 and received no follow-up until the new Chief Prosecutor [REDACTED] took up duties on 1 February 2012. After discussion with Chief Prosecutor [REDACTED] her predecessor and her colleagues, [REDACTED] decided not to follow up on the matter. In her response dated 16 March 2012, Chief EULEX Prosecutor [REDACTED] informed [REDACTED] that she would not launch an investigation based on a statement which was not supported by any evidence, that the case was pending before the Court of Appeal, that [REDACTED] defence could make use of this point in Court and that Judge [REDACTED] had immunity. Contrary to what has been written [REDACTED] main argument was not built on Judge [REDACTED] immunity, but rather on the lack of evidence and the fact that the case was pending under appeal.
- In May 2012, the appeal in the **Clinton Bombing I** case was heard before a panel consisting of different members than at first hearing. At this point, [REDACTED] tried to introduce statements taken from [REDACTED] lawyer's absence, in which he downplayed his responsibility and made allegations against the other defendants. As [REDACTED] did not represent the prosecution at that level, the situation led to conflict with the Office of the Chief EULEX Prosecutor (OCEP) and the prosecutor in charge of the appeal. In the end, the documents were submitted, having been sent in a letter to the presiding judge of the appeal panel and recorded. The Court rejected the submission, deeming that the information was not new. The OCEP and appellate prosecutor were highly dissatisfied with the proceedings, which they deemed illegal, while [REDACTED] maintained that the higher duty of disclosure superseded all procedural rules. The appeal was dismissed, as was a third appeal in 2013, making the judgment final.
- [REDACTED] statements gave rise to the **Triple Murder II** case against the parties he had named. The Court ruled that the statements in question were not supported by any evidence and expressed surprise at the support given to them by the prosecution: "the reason why the Prosecution took for granted their words despite the lack of supporting evidence has not been clarified during the trial."
- Around that time, [REDACTED] intelligence sources and EULEX both provided information suggesting that Judge [REDACTED] and others may have been corrupt. In June 2013, the brother of [REDACTED], who received three sentences in the case, told EULEX investigators that he had met with Judge [REDACTED]

in Albania to negotiate the acquittal of the three accused for EUR 250 000 per person.

4. Mrs [REDACTED] actions

- In September 2013, [REDACTED] contacted the Chief Acting Prosecutor to request a meeting with the local prosecutor and investigators on the grounds that the judgment in the Triple Murder I case, which had been final since October 2011, "[had gone] dramatically wrong" and that she believed an innocent person had been convicted. [REDACTED] did not attend the arranged meeting. The Chief Acting Prosecutor informed his chain of command, advising that a local case could not be reopened by EULEX, but rather was only subject to MMA through the Strengthening Division. The advice was followed by the Chief Prosecutor. It is certain that at the time [REDACTED] and a number of her investigators were convinced that [REDACTED] was guilty and that [REDACTED] were not the murderers. Furthermore, the latter two acknowledged their guilt in the Clinton Bombing case, but vehemently denied murdering the members of the [REDACTED] family.
- In September 2013, [REDACTED] defence team filed a request for the protection of legality in the Clinton Bombing I case which was dismissed as unfounded by the Supreme Court on 5 February 2014. A similar request filed by a local prosecutor in relation to the Triple Murder I case had been dismissed on 31 January 2014.
- Subsequently, [REDACTED] launched a criminal investigation into the persons named by [REDACTED], including [REDACTED], who had been acquitted in both this case and the Triple Murder case. In the Clinton Bombing II case [REDACTED] based herself on the above-mentioned statements by [REDACTED] according to which he was allegedly an informant for UNMIK and KFOR, he had informed the authorities, he was only on the premises for his own safety and to be a witness to what had happened. [REDACTED], acquitted in the Clinton Bombing I case, is being prosecuted, among others. In the detention-on-remand hearing, [REDACTED] explained that the charges against [REDACTED] were different to those on which he had already been tried and that the "*ne bis in idem*" (double jeopardy) principle did not apply. The case is ongoing at trial stage. It is worth noting that [REDACTED] is among those suspected of having "bought" his acquittal from Judge [REDACTED], the presiding judge on the first panel. The presiding judge in the Clinton Bombing II case confirmed the indictment, but deemed that [REDACTED] had not submitted new evidence meriting a new trial against [REDACTED] and that the accusation was "artificial, with the aim of circumventing the *ne bis in idem* principle." The case has been ongoing since July 2014.
- On 2 July 2014, [REDACTED] invited the prosecutor [REDACTED] to a meeting with [REDACTED] and [REDACTED]. Prosecutor [REDACTED] did not attend the meeting, prompting the two parties concerned to write to the Head of Mission, blaming the latter for not having taken action to prove their innocence in the Triple Murder case. In their letter, they alleged that Judge [REDACTED] had received money and that they had made this known to the Chief EULEX Prosecutor [REDACTED] who had taken no action. They stressed that they had cooperated with [REDACTED] with a view to reopening the Triple Murder case as they were innocent, that the local prosecutor had requested that the case be reopened and that the Supreme Court had allegedly indicated that it would not object if there was new evidence. [REDACTED] tried to have the case reopened, but nothing was done.

They felt betrayed by EULEX when they were willing to provide new evidence and help EULEX in other serious cases. They gave EULEX 48 hours to respond positively to their request and allow [REDACTED] to pursue the investigation; otherwise, they would make their letters public. [REDACTED] asked to be placed under witness protection and wished to be transferred to Australia.

- Following receipt of the letter and discussion within the mission, the HOM answered that he could not intervene in an ongoing case and he did not have the power to reopen a case that had already been tried. [REDACTED] reacted strongly to the response, deeming that there was a clear case of a miscarriage of justice and the HOM could not wash his hands of the affair.
- In November 2014, the Court of Appeal, composed of three local judges, overturned the verdict in the Triple Murder II case, deeming that the identity of the murderer of the [REDACTED] family members had not been established.

B. The [REDACTED] case and the Detention Visits case

[REDACTED] was Permanent Secretary at the Ministry of Health. He was indicted on 4 July 2012 for different types of corruption and financial crimes. The prosecutor in charge was [REDACTED]. During [REDACTED] detention, the police intercepted several conversations between the accused, his family and [REDACTED] one of his employees.

1. The intercepts

- [REDACTED] selected 11 of the intercepts which, in her opinion, showed that the group had attempted to corrupt the chairman of the Assembly of Judges [REDACTED] and the Chief EULEX Prosecutor [REDACTED]. The intercepts are reproduced in Annex no 4. They do not refer to bribes, but rather to various attempts to meet a certain number of EULEX representatives, to write letters. On several occasions, the correspondents refer to other people who had met the interested parties. In an intercept not included in the file, it is alleged that [REDACTED] received bribes from a rival company of [REDACTED] which would stand to gain from his being convicted, although no evidence is mentioned (see Annex no). It appears that [REDACTED] objective was to end the proceedings as quickly and positively as possible so as to be able to return to work. The best way to do so seemed to be to have [REDACTED] removed from the case and replaced by another prosecutor who would be able to bring proceedings to a conclusion in a few weeks, or even days. The plausibility, *prima facie*, of the intercepts is analysed above. These are the intercepts which were subsequently communicated to the Head of Mission and which are at the root of all the allegations (see above *et seq.*).
- The intercepts were used in evidence in the [REDACTED] trial. In the indictment, [REDACTED] states that it is not suggested that [REDACTED] and [REDACTED] were involved in attempts to obstruct justice and that it is likely that the individuals involved were feeding [REDACTED] inaccurate information in order to calm and comfort him. [REDACTED] later indicated that she had chosen that wording in agreement with her superior to protect the mission's reputation. In any event, having examined the intercepts, the panel of two EULEX judges and one local judge deemed in its judgment of 19 July 2013 that there was no proof that the persons in question had been "approached by the

an

defendant or on his behalf; the Court concludes there was no attempt made to obstruct the evidence, or any preparatory work for an attempt to obstruct the course of justice".

- Although the option was available, [REDACTED] did not launch an investigation into Judge [REDACTED]

2. Handling of the complaints made against [REDACTED] by [REDACTED] lawyer

- On 11 June 2012, [REDACTED] lawyer wrote to [REDACTED] and [REDACTED] Head of SRPK, to complain about [REDACTED]'s behaviour in conducting the case, requesting that measures be taken to put an end to it. The same letter was sent to other mission officials, including the Head of Mission. [REDACTED] interpreted the letter as a request to remove [REDACTED] from the case. [REDACTED] did not interpret it in the same way and, in response to an email from [REDACTED] dated 18 June in which the latter had written "I am not making allegations, but your name is all over my interceptions by the suspects as a person who is going to move me from the case and put someone onto the case who will dismiss it and release [REDACTED] she responded clearly on the same day: "I do understand your concern because besides [REDACTED] may be the only person to move you from the case. However I have never had this intention and I am absolutely aware that there must be legal grounds for this and very strong justification". [REDACTED] replied to the lawyer with a standard letter, confirming receipt of the lawyer's letter and stating that it would be "processed as deemed appropriate in the light of the peculiarity of the case". For his part, the Head of Mission answered that it was not his role to interfere in criminal proceedings and invited him to avail himself of the appropriate legal avenues.

3. The case of non-authorized visits to [REDACTED]


- In June 2012, rumours were circulating that the Minister for Justice had authorised visits to [REDACTED] in the detention centre and that [REDACTED] wanted to launch an investigation into abuse of office by the Minister and detention centre staff, since the judge alone was allowed to authorise such visits. [REDACTED] requested explanations and [REDACTED] provided her with a copy of her ruling on initiation of investigation. Neither [REDACTED] superior, [REDACTED] superior, nor [REDACTED] herself appreciated the Chief EULEX Prosecutor intervening in a specific case, and they challenged her jurisdiction. However, bearing in mind the potential implication of a political figure, according to Article 8.4. of the Law on the Special Prosecution Office of the Republic of Kosovo, the Chief EULEX Prosecutor should be informed through a proper reporting procedure "of any criminal case currently under investigation or prosecution" concerning certain crimes, including abuse of official position or authority. The ROII had been filed with the court on 15 June without [REDACTED] being informed. When she learned of it, she wrote a letter to [REDACTED], Head of SRPK, on 22 June, advising her of her concerns over the incrimination due to the lack of reasonable suspicion of an intention to secure a material benefit. [REDACTED] strongly criticised that analysis on a legal level. She referred again to the content of the intercepts as follows: "As you know there have been a number of telephone interceptions in the case related to this one in which you were mentioned. Personally, I have not at any stage suggested there is any truth in them. However, it is likely your attempted interference in this case would be seen to many observers as highly suspicious". In the end, however, [REDACTED] adopted a ruling on

termination of investigation on 10 May 2013 on the grounds that "there was no material benefit".

4. The current situation

- [REDACTED] was sentenced to 18 months in prison on 19 July 2013. [REDACTED] appealed. The case is currently pending.

ACRONYMES

CEP	Chief EULEX prosecutor
CfC	Call for Contributions
CFSP	Common Foreign and Security Policy
CIVCOM	Committee for Civilian Aspects of crisis management
CivOpsCdr	Civilian Operation Commander
COC	Code of Conduct
CONOPS	Concept of Operations
CoS	Chief of staff
CPCC	Civilian Planning and Conduct Capability
CPU	Close Protection Unit
CSDP	Common Security and Defence Policy
DHoED	Deputy Head of Executive Division (EULEX)
DHoM	Deputy Head of Mission (EULEX)
DHoSD	Deputy Head of Strengthening Division (EULEX)
ED	Executive Division (EULEX)
EEAS	European External Action Service (Brussels)
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representative
HHRO	Head of Human Resources (EULEX)
HoED	Head of Executive Division (EULEX)
HoM	Head of Mission (EULEX)
HoSD	Head of Strengthening Division (EULEX)
HR/VP	High Rep. for EU Foreign and Security Policy / Vice President EC
IBM	Integrated Border Management
IIU	Internal Investigation Unit
MIP	Mission Implementation Plan
MMA	Monitoring, mentoring and Advising (Strengthening Division)
MoU	Memorandum of Understanding
OCoS	Office of Chief of Staff 
ROII	Ruling on Initiation of Investigation
SITF	Special Investigative Task Force
SMR	Six monthly report
SOP	Standard Operating Procedures
SPRK	Special Prosecutor Kosovo - Serious Crimes of interest to EU

INITIALS

[REDACTED]	Former DHOM	[REDACTED]	[REDACTED]
[REDACTED]	Former HoM	[REDACTED]	[REDACTED]
[REDACTED]	Former President of Judges	[REDACTED]	[REDACTED]
[REDACTED]	Head of Mission	[REDACTED]	[REDACTED]
[REDACTED]	Former CPCC Civilian Cmmadr	[REDACTED]	[REDACTED]
[REDACTED]	SPRK Prosecutor	[REDACTED]	[REDACTED]
[REDACTED]	EULEX Chief Prosecutor	[REDACTED]	[REDACTED]
[REDACTED]	EULEX Dep Head of SPRK	[REDACTED]	[REDACTED]
[REDACTED]	Deputy Head of Mission	[REDACTED]	[REDACTED]
[REDACTED]	Civilian Operations Commander	[REDACTED]	[REDACTED]
[REDACTED]	Former EULEX Prosecutor	[REDACTED]	[REDACTED]
[REDACTED]	Former Head Executive Division	[REDACTED]	[REDACTED]
[REDACTED]	Former Head of Justice	[REDACTED]	[REDACTED]
[REDACTED]	Former Dep Head of SPRK	[REDACTED]	[REDACTED]
[REDACTED]	Former HoM	[REDACTED]	[REDACTED]