



The Intersection of Justice and European Union Integration: War Crimes Adjudication in Kosovo

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ABSTRACT

This paper explores the connection of justice and European Union (EU) integration through the lens of war crimes adjudication in Kosovo. Following the Kosovo conflict of 1998-1999, the adjudication of war crimes has become an important aspect of the region's efforts to align with EU accession criteria. The paper examines the adjudication of war crimes in Kosovo, conducted by international, hybrid, and local tribunals. It addresses the challenges faced and the reforms implemented to meet EU accession criteria. The study underscores that the importance of adjudication of war crimes in meeting EU accession criteria, promoting reconciliation, and fostering regional cooperation. It concludes that while important progress has been achieved, substantial challenges and tasks still lie ahead.

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Introduction

The Kosovo conflict from 1998-1999 was characterized by widespread human rights abuses. According to the Kosovo Memory Book, over 13,517 people were killed or went missing. This includes 10,415 Albanians, 2,197 Serbs, and 528 Roma, Bosniaks and other minority groups.¹ Over 1,600 people are still missing - most of them Albanians.² The United Nations High Commissioner for Refugees reports that roughly 700,000 people became refugees, and around 70,000 houses were damaged or destroyed.³

This data highlights the ethnic dimensions of the conflict and the extensive human suffering involved, emphasizing the need for comprehensive justice and reconciliation efforts that address the grievances of all affected communities.

Since the end of conflict, various criminal justice mechanisms - international, national and hybrid courts have addressed the crimes committed. Each of these has encountered success and difficulties.⁴ The adjudication of war crimes is not just about delivering justice for past atrocities; it is also a vital component of Kosovo's broader efforts to integrate into the EU, aligning with the principles of accountability, reconciliation, and rule of law that the EU espouses.

This underscores the dual role of war crimes adjudication as both a process of delivering justice and a strategic mechanism for political and institutional reform aligned with EU integration goals.

This paper explores the adjudication of war crimes in Kosovo adjudication of war crimes and related judicial reforms that have been crucial for the country's path toward EU integration. It also highlights the key obstacles that persist, including the lack of regional cooperation and the unresolved issue of missing persons.

The research questions guiding this paper are: (1) How have war crimes committed during the Kosovo War have been adjudicated through international, hybrid, and domestic mechanisms? (2) What judicial reforms related

to war crimes adjudication has Kosovo implemented to align with EU accession criteria, and what challenges remain?

The study combines both qualitative and quantitative methodology, relying on desk research and document analysis. Sources include EU progress reports, domestic and international legal documents, reports by human rights organisation and academic literature.

The paper first provides an overview on Kosovo conflict then it examines mechanisms established for the adjudication of war crimes in Kosovo. Then it analyses the efforts to reform the justice system as regards to adjudication of war crime cases, highlighting the significant challenges and limitations.

Finally, the article considers the cooperation on war crime cases between Kosovo and Serbia, an issue perceived as a contentious issue by both sides but essential to determine the crimes committed.

Results

An overview on Kosovo War and the Post-War Context

In 1991, the Socialist Federal Republic of Yugoslavia collapsed, resulting in a war that ended in 1995 and the creation of six independent successor states. During this breakup, the Serbian government exploited the power vacuum created by the increasingly weakened federation and established its authority in Kosovo.⁵ On March 23, 1989, Kosovo lost its previous autonomous status and all powers within the Yugoslav Federation, being re-annexed to Serbia. It was assigned a provincial statute as its highest legal authority, significantly diminishing its prior legal standing. Following this, a series of laws were enacted to systematically dismantle the legislation previously established by the Kosovo Assembly, resulting in the complete de-institutionalization of the province.⁶ Additionally, changes to the Serbian Constitution were made that revoked the rights of Kosovo Albanians recognized by the 1974 Constitution. Kosovars refused to obey the new laws.⁷ Consequently, strict policies

¹ Humanitarian Law Center, 'Kosovo Memory Book'

² A war crimes suspect arrested in Kosovo (*Radio Free Europe*, 12 September 2024). <<https://www.evropaelire.org/a/arrestim-i-dyshuar-krime-lufte-/33117654.html>> accessed 30 September 2024.

³ UNHCR, (26 July 1999), *Kosovo Crisis Update*. United Nations High Commissioner for Refugees, available at <https://www.unhcr.org/news/kosovo-crisis-update-73>

⁴ See Bella Murati, 'Layered Justice: Assessing the Acceptance of the Multiple International Criminal Justice Mechanisms in Post-War Kosovo' (2017).

⁵ Alex J Bellamy, 'Kosovo and International Society' (Palgrave Macmillan 2002, London).

⁶ Blerim Reka, 'UNMIK as International Governance in Post-war Kosova: NATO's Intervention, UN Administration and Kosovar Aspirations' (Logos, 2003, Skopje) pg 232.

⁷ Christopher Greenwood, 'Humanitarian Intervention, Case of Kosovo' (2002) *Finish Yearbook of International Law* 141-175.

regarding the Albanian language were established. Albanian television, radio, and press were closed.⁸ Moreover, the majority of Kosovar Albanians were fired from their jobs in the public sector, and torture, arbitrary arrest, and detention without trial were exercised among Kosovars.⁹

These repressive measures reveal the systematic nature of ethnic and political disenfranchisement that heightened tensions and contributed to the outbreak of conflict. The denial of basic rights and cultural suppression significantly deepened divisions and sowed the seeds for armed resistance.

Initially, Kosovars protested peacefully against the repression, then from 1998, the protests turned violent with the creation of the Kosovo Liberation Army (KLA). The KLA, began its revolution by murdering Serb police and paramilitary members, as well as Kosovars who were cooperating with the regime, which led to violent revenge.

The Serbian forces responded with severe counter attacks, targeting their attacks to KLA members and Albanian politicians. The situation escalated in early 1998 with an indiscriminate attack on civilians in the region of Drenica. This resulted in radicalizing Kosovo's population and KLA, who were greatly supplied with weapons from Albania. In February 1999, the fighting in Kosovo officially became an 'internal armed conflict'.¹⁰ The massacre of Recak in January 1999 led to the organization of the Rambouillet Conference, near Paris, which aimed at finding a peaceful solution. As the talks failed, NATO launched an aerial bombardment on the 24 March 1999. After a 78-day campaign, the war in Kosovo ended with the Kumanovo Agreement on the 9 June 1999.

The NATO intervention resulted in the removal of the forces of the FRY and the installation of the United Nations Interim Administration Mission in Kosovo (UNMIK). Established under Security Council Resolution 1244, UNMIK was granted the authority to temporarily exercise sovereignty over the territory of Kosovo.¹¹

This sequence illustrates the escalation from political repression to armed conflict and the complexity of

regional and international responses. NATO's intervention, while decisive, introduced new legal and political frameworks that have shaped Kosovo's post-war governance and justice mechanisms, but also the ongoing contestation over sovereignty.

The following section examines the accountability mechanisms that have been established in Kosovo. It explores their structure, role, and limitations in delivering justice and how each has contributed or struggled with fighting impunity.

Mechanisms of War Crimes Accountability: International, Hybrid, and Domestic Courts in Kosovo

Accountability for the atrocities committed during the wartime in Kosovo has been pursued through international (International criminal tribunal for the former Yugoslavia-ICTY), hybrid courts such as UNMIK and European Union Rule of Law (EULEX), local courts, and the Kosovo Specialist Chambers (KSC) and Specialist Prosecutor's Office (SPO).

The coexistence of multiple judicial mechanisms reflects efforts to bridge gaps between international norms and local realities, though it also raises issues of coordination, jurisdiction, and perceived legitimacy among local populations.

1. International Criminal Tribunal for the Former Yugoslavia

The first significant mechanism established for war crimes accountability in the region was the ICTY, which played a central role in prosecuting key individual responsible for atrocities committed during the break-up of Yugoslavia, including Kosovo.¹²

During its 24 years of operation, the tribunal tried key political figures and ranking military leaders.¹³ With regard to trials in relation to Kosovo, the number is relatively small: three cases against nine Serbian defendants, and two cases against a total of six Kosovar defendants, including two eminent political figures of KLA as well as a former KLA commander and Kosovar Prime Minister

⁸ Independent International Commission on Kosovo (ed), *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford University Press 2000) 34.

⁹ *ibid.*

¹⁰ In particular Article 3 to the Geneva Conventions of 1949, the Protocol II to those conventions, and the customary rules of war.

¹¹ United Nations Security Council Resolution 1244 (1999)

¹² 'About the ICTY' (ICTY) <<http://www.icty.org/en/about>> accessed 25 September 2024.

¹³ 'Infographic: ICTY Facts & Figures' (ICTY) <<http://www.icty.org/en/content/infographic-icty-facts-figures>> accessed 26 September 2024.

Ramush Haradinaj and Fatmir Limaj.¹⁴ Of nine Serbian defendants, one died before the conclusion of the trial, namely Milosevic, six were sentenced to prison and two were acquitted.¹⁵ On the other hand, one ethnic Albanian defendant, Hajredin Balaj was convicted of war crimes and crimes against humanity against Serbs and moderate Albanians, while other defendants were found not guilty.¹⁶

The tribunal provided truth for several committed crimes, yet the established facts remain contested at national and regional levels.¹⁷ As countries approach membership in EU, they still show resistance to confronting their past and often regard convicted war criminals as heroes.¹⁸

Following the closure of the ad hoc tribunals for the former Yugoslavia and Rwanda, it was established an international court called the International Residual Mechanism for Criminal Tribunals (UNMICT) to carry out the remaining functions of the tribunals.¹⁹

While the ICTY played a key role in establishing accountability, its limited case load for Kosovo and the continued denial or glorification of convicted individuals reflects deep social and political divides. This challenges reconciliation and highlights the limits of international tribunals in resolving contested narratives in post-conflict societies.

2. Hybrid Judicial Mechanisms – UNMIK and EULEX in Bridging International and Domestic Justice

Following the ICTY's establishment, additional hybrid mechanism were introduced in Kosovo to fill gaps in

justice at the domestic level. Among the most important were the judicial roles of the UNMIK and later EULEX missions, which aimed to combine international and local participation.

In the immediate aftermath of Kosovo war, the UNMIK established the judicial system in Kosovo staffed by locals. Soon it became apparent that the poor performance of domestic courts was due to a lack of adequate resources and capacities to adjudicate war crimes.²⁰ In light of these problems, in 2000 UNMIK involved international prosecutors and judges in the judicial system of Kosovo. UNMIK judges adjudicated war crimes jointly with the Kosovo counterpart. On the other hand, international prosecutors dealt with the indictments. This was seen as a situational solution to overcome these challenges, as well as the capacity limitations of the ICTY.²¹ Before the establishment of UNMIK panels, Serb defendants were often discriminated by the judicial institutions based on ethnicity resulting in favour of Kosovars.²² For example, a few former KLA fighters who were arrested by UNMIK police for attacking some Serb houses and shooting at KFOR troops in protest against the failure of KFOR to protect Kosovars in the north of Kosovo from Serbs attacks, were released by the Kosovar judge the next day.²³ UNMIK panels represented a major step forward in securing impartial judiciary and combat impunity.

This illustrates the need for international oversight in transitional justice contexts, especially where domestic institutions lack independence or are perceived as biased. The hybrid model aimed to balance international legal standards with local participation, though it often struggled with legitimacy among all ethnic groups.

Shortly after Kosovo declared independence in 2008, EULEX was established as a new form of international

¹⁴ This excludes appeals and re-trials.

¹⁵ See, 'Key Figures of the Cases'(ICTY) <<http://www.icty.org/en/cases/key-figures-cases>> accessed 26 September 2024.

¹⁶ *Prosecutor v. Limaj et al.* (Judgement in Appeals) ICTY IT-03-66-A (27 September 2007). *Prosecutor v. Ramush Haradinaj et al.* (Judgements in Retrial) ICTY IT-04-884bis-T (29 November 2012).

¹⁷ 'ICTY Closing Ceremony Serge Brammertz,' (The Hague, 21 December 2017).

¹⁸ See Florence Hartman, 'The ICTY and EU Conditionality' in Judy Batt and Jelena Obradovic (ed), *War Crimes, conditionality and EU integration in the Western Balkans* (Institute for Security Studies, 2009) pg.69.

¹⁹ See 'About' (*The International Residual Mechanism for Criminal Tribunals*) <https://www.irmct.org/en/about> accessed 14 October 2024.

²⁰ In cases where former KLA members were arrested for attacks on Serbs they would often be proposed for release by the prosecutor, and then release by the investigative judge, whereas Serb defendants would be held in custody for the same crimes.

²¹ Laura A. Dickinson, 'The Relationship Between Hybrid Courts and International Courts: The Case of Kosovo' (2002) 37 *New England Law Review* 4 1059.

²² See Michael E Hartmann, 'International Judges and Prosecutors in Kosovo: A New Model for Post-Conflict Peacekeeping' (United States Institute of Peace 2003).

²³ Northern Mitrovica is a Serb-dominated area of Kosovo controlled by Serbia. See 'Transitional Justice in Kosovo' (KIPRED 2008) 17.

presence. Consequently, UNMIK judges and prosecutors were replaced by their counterpart from EULEX mission.

In 2015, EULEX handed all the cases to local holders of judicial office, and from June 2018 locals have been handling all war crimes cases independently. EULEX continues to monitor specific court cases, including war crimes. Additionally, it provides technical support for the implementation of certain agreements from Kosovo-Serbia dialogue facilitated by the EU.²⁴

This transition marked a shift in ownership of justice processes to domestic institutions, aligning with EU integration benchmarks. However, the withdrawal of direct international involvement also tested the capacity and independence of the local judiciary.

Both UNMIK and EULEX faced challenges due to inadequate witness protection programs and delayed proceedings, and for this reason, they are often criticized by member of the local judiciary.²⁵ These shortcomings significantly undermined the credibility and effectiveness of international missions in delivering justice for war crimes, especially in the context where witness intimidation remains a serious obstacle to accountability. The lack of timely and secure procedures weakened public trust and discouraged victims and witness from participating in trials.²⁶

This shows that while international involvement was essential to support the judicial system, shortcomings as inadequate witness protection and procedural delays undermined public confidence.

3. Domestic Courts: Progress and Persistent Challenges in Kosovo's National Justice System

With the gradual withdrawal of international actors, the responsibility for adjudicating war crimes shifted to Kosovo's institutions. In 2015, the mandate of EULEX was reduced, and the first war crimes cases were handed to local holders of judicial office. From June 2018 locals have been handling all war crimes cases independently. Adjudication of war crimes is a competence of the Special Department at the Basic Court of Prishtina.²⁷ The Special Department of the Kosovo Appellate Court decides upon appeals, while the Supreme Court acts upon requests for extraordinary legal appeals against final decisions.²⁸

The institutional framework signals a commitment to independent adjudication; however, its efficacy is undermined by long-standing systemic weaknesses. The system of justice continues to face old problems. The absence of cooperation with Serbian authorities, unwillingness to prosecute high-ranking suspects, and the lack of a witness protection program are some issues that have jeopardized the adjudication of war crimes.

These enduring limitations weaken public trust in justice mechanisms and reflect broader political hesitations to address crimes committed by one's own side, a challenge common in post-conflict transitions.

In the period from 1999 until September 2024, nearly 70 people have been convicted of war crimes before domestic and international institutions.²⁹ The number of convicted individuals is disproportionately low given the given the high number of victims and casualties. However, the Humanitarian Law Center in Kosovo, in its 2024 report, highlighted that war crime trials are being conducted with professionalism by both the Basic Court and the Court of Appeals, specially by the latter.³⁰ This

²⁴ See What is EULEX? < <https://www.eulex-kosovo.eu/?page=2,60>> accessed 1 October 2024.

²⁵EULEX worked very little to address war crimes < <https://sinjali.com/prokurorja-hajdari-unmik-u-dhe-eulex-i-punuan-shume-pak-per-ti-zbardhur-krimet-e-luftes/>> accessed 1 October 2024.

²⁶ See Parliamentary Assembly of the Council of Europe. (2021). *The Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans* (Doc. 12581), available at https://pace.coe.int/en/files/12581/html?utm_source= (accessed on 3 July 2025).

²⁷ The legal landscape was shaped by the Law on Courts, effective since January 2, 2019, especially Article 13, which designates the Special Department at the Basic Court as competent in cases concerning indictments of the SPRK. This jurisdiction extends to cases where the indictment evaluation

procedure remained incomplete prior to the law's enactment. Throughout the year, the courts – primarily according to territorial jurisdiction – examined cases where the indictment evaluation was pending, or where the criminal procedure had been initiated. This comprehensive process ensures that cases progress through all stages of the legal proceedings.

²⁸ Law on Courts Official Gazette of Republic of Kosovo No.03/L-199 (2013).

²⁹ A war crimes suspect arrested in Kosovo (*Radio Free Europe*, 12 September 2024) <<https://www.evropaelire.org/a/arrestim-i-dyshuar-krimet-lufte-/33117654.html>> accessed 30 September 2024.

³⁰ Humanitarian Law Center Kosovo (2024). Kosovo Report 2024, pg.17, available at <https://hlc-kosovo.org/storage/app/media/Raporti%20vjetor%202024/Ko>

suggests that the judicial practices are improving; however, the system faces barriers to accountability yet.

4. Kosovo Specialist Chambers and Specialist Prosecutor's Office: A New Internationalized Justice Initiative

In response to the limitations of both international and domestic mechanisms, a new hybrid institution - the KSC and SPO was established to address specific crimes allegedly committed during and after the conflict.³¹ Its formation is a result of a 2011 report by the Council of Europe rapporteur Dick Marty which links KLA top officials,³² to atrocities committed against Serbs, and those who thought to be collaborating with Serbs. The KSC and SPO are under Kosovo's national legislation and is staffed with international personnel. The Court became operational in 2018, however, its activities were intensified only in 2020 when the SPO started filing indictments.³³ In total, KSC has been dealing with six cases.³⁴ All the accused individuals belong to the Albanian community, including former President of Kosovo Hashim Thaci. On the other hand, war crimes committed by Serbian perpetrators remain unaddressed. Consequently, the local legitimacy of the court is undermined.

The court's narrow focus has led to perceptions of ethnic bias, which could erode its credibility among Kosovars and hinder broader goals of transitional justice and reconciliation.

Nonetheless, the personal jurisdiction of the KSC covers natural persons of Kosovo/FRY citizenship, or persons who committed crimes against persons of Kosovo/FRY citizenship.³⁵ This means that members of the Serb

community or any other minority group in Kosovo can be prosecuted by the court in case of enough evidence of their involvement in human rights abuses. Therefore, the extension³⁶ of the KSC and SPO's mandate to prosecute the wrongdoings of both sides of the 1998-1999 conflict in Kosovo would contribute to increase the court acceptance by the Kosovo people, reveal the truth about the past and encourage acceptance between individuals of conflicting parties.³⁷

Such an expansion would reinforce the principle of impartial justice and pave the way for more meaningful reconciliation and a shared historical narrative.

Addressing War Crimes in the Context of EU Accession: Kosovo's Justice Reform Path

Kosovo has stated its intention to join the EU since declaring independence from Serbia in February 2008.³⁸ Investigating war crimes and resolving the fate of the missing persons who disappeared during the Kosovo war are key issues to the negotiation process between Kosovo and Serbia.³⁹ Additionally, the European Commission's assessment of the effectiveness of Kosovo's judicial system and its reform to EU standards depends on this, among other matters.⁴⁰

This underscores the EU's emphasis on justice and human rights as prerequisites for accession. War crimes accountability is not only a matter of legal compliance but also a test of political maturity and commitment to democratic values.

To this end, Kosovo has undertaken several reforms in the judicial sector to align with the EU agenda, thereby facilitating its integration into the EU. Currently, Kosovo is

[sovo%20report%202024%20ALB%20SRB%20ENG.pdf](https://www.scp-ks.org/en/sovo%20report%202024%20ALB%20SRB%20ENG.pdf)

(accessed on 3 July 2025).

³¹ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, Art. 1 (2).

³² 'Background' (*Kosovo Specialist Chambers & Specialist Prosecutor's Office*, 4 October 2017) <<https://www.scp-ks.org/en/background>> accessed 28 September 2024.

³³ First Indictment Announced at the Kosovo Specialist Chambers ASIL <<https://www.asil.org/insights/volume/24/issue/23/first-indictment-announced-kosovo-specialist-chambers>> accessed 29 September 2024.

³⁴ See 'Cases' (*Kosovo Specialist Chambers & Specialist Prosecutor's Office*), <https://www.scp-ks.org/en/cases>> accessed 30 June 2025.

³⁵ See 'Kosovo Specialist Chambers & Specialist Prosecutor's Office' (*Kosovo Specialist Chambers & Specialist Prosecutor's*

Office), <https://www.scp-ks.org/en>> accessed 14 October 2024.

³⁶ Not only to the findings in the Marty Report.

³⁷ Annalisa Canova, 'Kosovo Specialist Court: A New Way to Seek Justice for Unpunished Crimes and Human Rights Violation in Kosovo? A Possible Solution against the Weakness of International and Domestic Systems' (Universita Ca'Foscari Venezia 2020) 142 <<http://dspace.unive.it/bitstream/handle/10579/19112/8766-22-1248307.pdf?sequence=2>> accessed October 2024.

³⁸ See preamble of the Republic of Kosovo Constitution

³⁹ 'Belgrade- Pristina dialogue – The rocky road towards a comprehensive normalisation agreement' (*European Parliament*) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689371/EPRS_BRI\(2021\)689371_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689371/EPRS_BRI(2021)689371_EN.pdf)> accessed 12 October 2024.

⁴⁰ European Commission 'Kosovo 2023 Report' COM (2023) [hereinafter Kosovo 2023 Report]

recognised as a potential candidate for EU membership.⁴¹ Below are some of the key justice reform initiatives that have been implemented concerning fighting impunity for war crimes.

1. Institutional Establishing Departments for War Crimes Adjudication Strengthening: Specialized

One of the most visible reform efforts have been the institutional strengthening of the justice system, particularly through the creating of the specialized departments dedicated to the adjudication of war crimes.

The Law on Courts that entered into force in January 2019, foresaw the establishment of the Special Department within the Basic Court of Prishtina and the Court of Appeals. These departments have the competences to adjudicate and decide on cases that fall within the jurisdiction of the Special Prosecution Office of the Republic of Kosovo (SPRK).⁴²

The SPRK office, has the authority to deal with criminal offences: war crimes, organized crime, terrorism, corruption and financial crime. It must be noted that within SPRK office since 2016, it exists the Department of War Crimes that deals solely with war crime cases. Similarly, the War Crimes Investigation Directorate has been established within the Kosovo Police. As its name shows, this directorate is projected to investigate solely war crimes.

The creation of dedicated institutions indicates Kosovo's intent to build specialized capacities to address complex crimes. However, specialization alone is insufficient without adequate staffing, training, and inter-institutional coordination.

The European Commission's Kosovo Country Report 2024 noted that the War Crimes Department of the SPRK continues to encounter difficulties in managing its workload. There are over 1000 pending war crimes cases, mainly inherited from the EULEX in 2018. The

report also emphasizes the necessity for ongoing training and support for prosecutors and staff, particularly in improving cooperation between police and prosecution.⁴³ In terms of court judicial procedures, they are carried out with sufficient professionalism by judges promptly.⁴⁴ Since the establishment of the Special Department at the Basic Court in Prishtina in 2019, twenty-two legal proceedings concerning war crimes cases in Kosovo have been initiated. By the end of 2023, five of these cases had been resolved with final judgments. Yet, obstacles persist in adjudicating effectively war crime cases.⁴⁵ Most of the first-instance judgments are sent to a retrial or significantly modified by the Court of Appeals.

These setbacks suggest inconsistencies in evidence evaluation or legal reasoning at the first-instance level, possibly reflecting the need for further judicial training or stronger prosecutorial case-building.

Generally, concerns remain about the willingness to try members of the KLA. KLA fighters are regarded as war heroes and freedom fighters by large proportion of politicians and society members in Kosovo.⁴⁶

This political and societal reverence creates an environment of selective justice, where prosecutorial discretion may be influenced by popular sentiment rather than legal merit. Such a climate risks undermining the rule of law and the credibility of the judiciary.

2. Legislative Enhancements: Updated to Criminal and Procedural Codes to Combat Impunity for War Crimes

In parallel with the institutional changes, Kosovo has undertaken important legislative reforms to update its criminal and procedural codes in order to more effectively combat impunity for war crimes and align with international standards. The Criminal Code of the Republic of Kosovo entered into force in 2013, which categorized war crimes under the category of criminal offenses against humanity and values protected by international law. This code was drafted in line with international standards and allowed the possibility of imposing life imprisonment on perpetrators of war crimes.⁴⁷ Later in 2019, a new criminal

⁴¹ 'European Integration Process' (Assembly of the Republic of Kosovo) <https://www.kuvendikosoves.org/eng/european-union-integration-process/> accessed 12 October 2024.

⁴² Law no.08/L-168 on the Special Prosecution Office Article 9.

⁴³ Kosovo 2023 Report pg.22-23.

⁴⁴ War crimes trials: no visible progress (Humanitarian Law Center Kosovo 2023) <https://hlc->

[kosovo.org/storage/app/media/Kosovo%20report%202022%20ALB%20SRB%20ENG.pdf](https://www.kosovo.org/storage/app/media/Kosovo%20report%202022%20ALB%20SRB%20ENG.pdf) accessed 13 October 2024.

⁴⁵ *ibid*

⁴⁶ Jennifer Mueller, 'Do Rebel Groups Talk the Talk or Walk the Walk? Using and Misusing Human Rights and International Humanitarian Law During Times of Conflict' (2014) 22.

⁴⁷ Code no.04/L-082 Criminal Code of the Republic of Kosovo entered into force on the 1st January 2013, <https://gzk.rks->

code further improved entered into force. Yet as regards to war crimes, it had no essential differences from the code of 2013.⁴⁸ The same code continues to be into force at the time of writing this paper.

Before these codes, Kosovo used the Provisional Criminal Code of Kosovo and the Criminal Code of the Socialist Federal Republic of Yugoslavia. This transition from Yugoslav to independent Kosovo legal frameworks marks a symbolic and practical departure from the past.

This pertains to the criminal material code, while important updates on procedural code on war crimes are provided in the section below.

The Kosovo government has been working constantly towards reinforcing legislation to tackle impunity for war crimes. Recently, to address impunity for war crimes, Kosovo revised its Criminal Procedure Code (CPC) introducing trials in absentia for war crimes,⁴⁹ considering that only a couple of suspects have been tried since the end of the Kosovo war because of a lack of judicial cooperation with Serbia. Since Serbia does not recognise Kosovo's independence, it does not extradite suspects to Kosovo, allowing those indicted to live free. Trials in absentia can be held when the judicial authorities have exhausted the means to ensure the presence of the accused.⁵⁰ Under the law, in such cases, the accused is represented by a state-appointed defense attorney throughout the criminal procedure until the final judgment is rendered. Yet, the court must ensure that the accused is aware of his/her charges.⁵¹

There are controversial opinions on trials in absentia. Some view them as beneficial, seeing them as a way to provide justice and fulfil EU expectations for accountability regarding war crimes. Additionally, trials in absentia document that the crimes have occurred and allow families of victims to use the right of

compensation.⁵²

Others, however, do not support such trials, as pursuant to the law, a person tried in absentia can request a retrial anytime, resulting in prolonged legal proceedings. Furthermore, the convicted individuals do not serve the sentence due to the lack of cooperation on extraction between Serbia and Kosovo, as such the proceedings will be deemed ineffective.⁵³

Another issue that must be noted is that if Kosovo joins the Council of Europe,⁵⁴ its citizens will have the right to seek justice from the European Court of Human Rights (ECtHR), an option that has not been possible until now. This would mark a significant development, as individuals tried in absentia could challenge their convictions on the ground of procedural unfairness, especially if their right to be informed of the charges or to be present at trial was not properly guaranteed. As such, any procedural errors concerning the respect for the rights of the accused in trials in absentia could lead to significant financial and time consequences for the country. A good example in this regard is the ECtHR ruling in *Sanader vs Croatia* case.⁵⁵ Sander as a participant in Serb paramilitary forces was sentenced in his absence of war crimes against prisoners of war to twenty years imprisonment. Eighteen years after the verdict was issued, respectively in 2009, Sanader requested a retrial of the case in his presence. The Supreme Court of Croatia rejected his request. Therefore, Sanader took his case to the ECtHR, which in its judgement mentioned that "It has not been shown that he had any knowledge of his prosecution and the charges against him or that he sought to evade trial or unequivocally waived his right to appear in court".⁵⁶ As a result, the ECtHR ordered Croatia to pay Sanader 4,000 euros in damages and 2,500 Euros in costs.⁵⁷

Kosovo's legal framework requires the "invitation for the

gov.net/ActDetail.aspx?ActID=2834> accessed 12 October 2024.

⁴⁸ Code no.06/L-074 Criminal Code of the Republic of Kosovo<<https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf>> accessed 12 October 2024.

⁴⁹ Code no.08/L-032 of Criminal Procedure [hereinafter CPC], Article 303, <<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61759>> accessed 13 October 2024.

⁵⁰ Reasonable efforts, as outlined in Article 303 of the CPC, include summoning to appear in court, issuing a court arrest order, searching the accused's address, issuing a court wanted notice, and conducting an informative campaign calling for the accused to surrender to the court's jurisdiction. Additionally, the summons, along with the indictment, will be published on the official website of the State Prosecutor, the

court conducting the procedure, and in the Official Gazette, urging the accused to surrender

⁵¹ CPC- Article 303.

⁵² Arton Konushevci, 'Ç'efekte kane aktakuzat ne mungese per krime luftë? (Radio Free Europe, 8 Maj 2023) <https://www.evropaelire.org/a/aktakuzat-ne-mungese-krime-luftë-/32401798.html>>, accessed 13 October 2024.

⁵³ *ibid*

⁵⁴ Asambleja Parlamentare e Keshillit të Evropës mbështet anëtarësimin e Kosovës, (Radio Free Europe, 16 April 2023) <<https://www.evropaelire.org/a/asambleja-keshilli-evropes-voton-per-kosoven/32906447.html>> accessed 10 October 2024.

⁵⁵ *Sanader v. Croatia* [2015] 66408/12.

⁵⁶ *Sanader v. Croatia* [2015] 66408/12.

⁵⁷ *ibid*

court session be presented in the official newspaper, then posted in the municipality where the accused had their last place of residence, the invitation to be published on the website of the prosecution and the court ... [and] the international arrest warrant”.⁵⁸ Yet, due to the lack of legal cooperation between Kosovo and Serbia it is difficult for the courts to prove that the accused has been informed of charges against him/her and the ongoing procedure. In this way, trials without the presence of the accused might undermine the rights of the accused in criminal proceedings, respectively of effective defence.

All this suggests that Kosovo judicial institutions must learn from Croatia’s mistakes in war crimes trials in absentia.⁵⁹ It must be ensured that all efforts to secure the presence of the accused have been exhausted, supported by evidence.

It is essential to highlight that trials in absentia provisions in the CPC are in line with Venice Commission recommendations.⁶⁰ Until the end of 2024, the prosecution has filed 14 war crime indictments in absentia.⁶¹ The first judgement in absentia was issued in December 2024, resulting in a 15-year imprisonment sentence for the defendant for war crimes committed against the civilian population.⁶² Other trials are ongoing.

In sum, while trials in absentia can be a necessary legal tool in the face of political and jurisdictional barriers, they must be handled with exceptional diligence. Kosovo’s judiciary must ensure strict compliance with both domestic legal standards and international human rights norms to avoid miscarriages of justice and to protect the integrity of war crimes adjudication. Learning from the shortcomings observed in other jurisdictions—such as Croatia—will be vital for the legitimacy and sustainability of Kosovo’s war crimes

accountability efforts.

3. Strategic Policy Documents: National Strategies on War Crimes and Transitional Justice

Beyond institutional and legal reforms, Kosovo has attempted to address war crimes accountability through strategic policy documents, aiming to guide long-term efforts in prosecution and transitional justice. In this regard, the Kosovo Prosecutorial Council adopted a Strategy on War Crimes in 2019, which subsequently resulted in a new strategy in 2025.⁶³ This strategy aimed to prioritise the prosecution of war crimes cases, and emphasizes the chain of command responsibility, focusing on sexual violence and missing persons. Nevertheless, the implementation of the strategy has had limited results due to a lack of support from political levels in both Serbia and Kosovo.⁶⁴ Most of the key files, evidence, and suspects remain in Serbia,⁶⁵ and there is a lack of judicial cooperation between two countries.⁶⁶

At the national level, war crimes are addressed in the Transitional Justice Strategy, which was approved by the government of Kosovo in 2024. One of the primary goals of the transitional justice strategy is to enhance the prosecutorial and judicial systems, increase the number of police officers involved in the investigation of war crimes, and improve the country’s witness protection program.⁶⁷ This strategy is a step forward, and as such it is acknowledged in the last EU Country Report; however, it lacks sufficient focus on reconciliation.⁶⁸ However, Kosovo has never established a national strategy to tackle war crimes.

The fragmented strategic approach to war crimes and the lack of coordination between Kosovo and Serbia reflect persistent political and institutional challenges that hinder

⁵⁸ CPC Article 303.

⁵⁹ Xhorxhina Bami and Vuk Tesija, (*Balkan transitional justice*, 20 May 2024) available at [⁶⁰ EU Kosovo 2023 Report.](https://balkaninsight.com/2024/05/20/kosovo-must-learn-from-croatias-mistakes-in-war-crimes-trials-in-absentia/#:~:text=As%20Kosovo%20increases%20the%20focus,and%20follow%20legal%20procedures%20rigorously> accessed 12 October 2024.</p></div><div data-bbox=)

⁶¹ Humanitarian law pg.18

⁶² Ibid.

⁶³ Kosovo Prosecutorial Council, War Crimes Strategy (2025), available at <https://prokuroria-rks.org/wp-content/uploads/2025/05/Strategjia-e-Krimeve-te-Luftes-Nr.820.2025-1.pdf> (accessed on 3 July 2025).

⁶⁴ Serbeze Haxhaiaj, ‘Strategjia e re e Kosoves per krimet e luftes perballet me pengesa politike’ (*Balkan Transitional Justice*, 2019), available at <https://balkaninsight.com/sq/2019/03/13/strategjia-e-re-e-kosove-per-krimet-e-luftes-perballet-me-pengesa-politike/> accessed 10 October 2024.

⁶⁵ *ibid*

⁶⁶ European Commission ‘Kosovo 2024 Report’ COM (2024) [hereinafter EU Kosovo 2024 Report] pg.29.

⁶⁷ Kosovo Ministry of Justice, The Strategy of Republic of Kosovo on Transitional Justice (2024-2034) https://neighbourhood-enlargement.ec.europa.eu/document/download/760acca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20Report_0.pdf accessed 10 October 2024.

⁶⁸ EU Kosovo 2024 Report.

accountability and justice. While the inclusion of war crimes within the broader transitional justice framework signals progress, a more inclusive approach in reconciliation measures is essential.

The Challenge of Missing Persons: Implications for Kosovo's EU Integration Process

Another issue closely tied to war crimes and important for Kosovo's EU integration is the matter of missing persons during the Kosovo war. Simmons and Samuels have argued that "one of the most powerful barriers of healing, reconciliation and rebuilding societies ... is the psychologically unsettling issue of missing persons."⁶⁹

The unresolved fate of those missing from the conflicts in the 1990s continues to be a crucial issue for countries of Western Balkan. In Kosovo, 25 years after the end of the conflict, over 1,600 people remain missing, the majority of whom are Albanians.⁷⁰ The continued absence of answers for the families of the missing deepens the wounds of the past and reinforces inter-ethnic tensions. For many families, the inability to recover the remains of their loved ones or learn the truth about their fate keeps the trauma of war alive in daily life.

The subject of missing persons is also an important component of the EU-facilitated dialogue between Kosovo and Serbia. In 2023, the two parties reached an agreement on a joint Declaration on Missing Persons committing to enhance Kosovo and Serbia's collaboration to resolve cases of missing individuals from the Kosovo conflict.⁷¹ This declaration marked a rare moment of constructive engagement, as the issue of missing persons had been stalled for years. However, the latest EU Report on Kosovo notes that, despite of the formal agreement, the issue of missing persons

continues to be a major challenge.⁷²

Resolving the fate of the remaining missing persons uncovers a pattern of violence and abuse during the conflict, helping to establish a broader context for war crimes adjudication. As such, it may foster reconciliation between former conflicting parties.⁷³ Sustained political will, regional cooperation, and international support will be necessary to ensure that the right to truth for the families of the missing.

Lastly, resolving the missing persons case is also a legal obligation under international human rights law. Families of the missing persons have the right to know the fate of their relatives, and states are obliged to provide answers.

Regional Cooperation on War Crimes Adjudication: Political Obstacles and Legal Frameworks Between Kosovo and Serbia

Closely intertwined with the issue of missing persons and broader war crimes accountability is the challenge of regional cooperation. Attempts at cooperation in the punishment of war crimes between the successor states of SFRY have always been a challenge.⁷⁴ War crimes, war criminals and war crime trials continue to divide the societies of the former Yugoslavia.

As regards Kosovo, cooperation with Serbia remains challenging because Serbia does not recognise Kosovo's independence. The two countries reached an agreement on mutual legal assistance in 2013 as part of the dialogue mediated by the EU. Later the agreement was amended, allowing the parties to exchange judicial information through representatives of the EU. Based on this agreement, the parties have exchanged information on many civil cases.⁷⁵ Yet, practical implementation remains limited. Cooperation on war crimes cases is almost non-existent.⁷⁶ Both sides often hesitate to engage due to the

⁶⁹ Mary Ellen Keough, Tal Simmons and Margaret Samuels, 'Missing Persons in Post-Conflict Settings: Best Practices for Integrating Psychosocial and Scientific Approaches' (2004) 124 *Journal of the Royal Society for the Promotion of Health* 271 204-220.

⁷⁰ Arton Konushevci, 'Ç'efekte kane aktakuzat ne mungese per krimet lufte?' (*Radio Free Europe*, 8 May 2023), available at <https://www.evropaelire.org/a/aktakuzat-ne-mungese-krimet-lufte-/32401798.html> accessed 9 October 2024.

⁷¹ Declaration on President Aleksandar Vucic and Prime Minister Albin Kurti on Missing Persons, (*European Union External Action*, 2 May 2023), https://www.eeas.europa.eu/eeas/declaration-president-aleksandar-vu%C4%8Di%C4%87-and-prime-minister-albin-kurti-missing-persons_en accessed 9 October 2024.

⁷² EU Kosovo Report 2024, pg. 29.

⁷³ Janine Natalya Clark, 'Missing Persons, Reconciliation and the View from below: A Case Study of Bosnia-Herzegovina' (2010) 10 *Southeast European and Black Sea Studies* 425, 432.

⁷⁴ Bashkepunimi per rastet e krimeve te lufte kriter per integrimin evropian, (*Radio Free Europe*, 28 May 2022), <<https://www.evropaelire.org/a/krimet-lufte-ishjugoslavi-/31872893.html>> accessed 13 October 2024.

⁷⁵ Arton Konushevci, 'Bashkepunimi gjyqesor mes Kosoves dhe Serbise, kryesisht ne leter' (*Radio Free Europe*, 22 October 2023), <<https://www.evropaelire.org/a/bashkepunimi-gjyqesor-kosova-serbia/32640930.html>> accessed 12 October 2023.

⁷⁶ The beginning of a New Phase in War Crimes Trials (Humanitarian Law Center Kosovo 2024) <https://hlc->

sensitive nature of the subject. The cooperation between Kosovo and Serbia on war crime cases relies on the political will of both countries.

This ongoing political deadlock illustrates how unresolved sovereignty issues obstruct judicial collaboration and illustrates how unresolved sovereignty issues obstruct judicial collaboration and perpetuate mutual distrust, which ultimately hampers the pursuit of justice. The lack of cooperation not only delays accountability but also deepens societal divisions, making reconciliation more difficult.

As regards to the cooperation with the UNMICT, the EU highlighted that Kosovo justice institutions have good cooperation with the UNMICT in The Hague.⁷⁷ Yet, a former Kosovo war crimes prosecutor in a regional conference had noted that for Kosovo prosecution obtaining information from the mechanism is difficult since Kosovo is not part of the UN and it is not recognised by many member states. The prosecutor emphasized that the requests to the mechanism must go through the Ministry of Justice and the EU office in Kosovo.⁷⁸ Consequently, the institutions are often hesitant to request because of the sensitive nature of the information.⁷⁹

This situation underscores the practical and diplomatic challenges Kosovo faces in accessing international legal mechanisms, which limits the effectiveness of its prosecutions. The indirect channels for information exchange create delays and discourage full cooperation, weakening the overall justice process.

As the years pass, the memory of the conflict may fade, posing a significant challenge for the adjudication of war crimes. Without concerted efforts of two countries to collaborate, the chances for justice and reconciliation may undermine further.

This fading memory of the conflict increases the urgency of cooperation, as evidence, witness testimonies, and institutional knowledge risk being lost over time. Without proactive bilateral engagement, opportunities for justice are likely to diminish, perpetuating cycles of impunity and mistrust.

Conclusion

Justice for war crimes committed during the Kosovo War

kosovo.org/storage/app/media/Kosovo%20report%202023%20ALB%20SRB%20ENG.pdf accessed 12 October 2024.

⁷⁷ EU Kosovo Report 2023.

⁷⁸ War Crimes Prosecutions Still Hampered by Lack of Regional Cooperation, (*Balkan Investigative Reporting*

has been sought through international, national, and hybrid justice mechanisms. Each of these approaches has achieved varying degrees of success, but they also faced significant limitations. Besides offering justice, the adjudication of war crimes has been vital in promoting the rule of law, accountability, and reconciliation, as emphasized by the EU. Kosovo has been actively reforming its justice system to align with EU standards concerning war crime cases. Furthermore, issues related to war crimes and missing persons have been integral to the ongoing dialogue between Prishtina and Belgrade, facilitated by the EU. Significant developments have been made in aligning the justice system with the EU standards, such as creating the specialized departments for war crimes, updating criminal codes, and introducing trials in absentia. While trial in absentia offer a potential solution for overcoming the lack of cooperation with Serbia, they carry significant legal risks and must be conducted with due respect for the rights of the accused to avoid future challenges. Additionally, Kosovo has adopted strategic documents which reflect growing institutional commitment to tackling impunity and addressing the legacy of the war. The issue of missing persons and lack of regional cooperation between Kosovo and Serbia remain main challenges. This reflects the broader political deadlock between two countries. Without political will and sustained international support, the prospects for accountability and reconciliation remain limited.

In sum, while Kosovo has made important progress in addressing war crimes and aligning its justice system with EU standards, obstacles remain. Overcoming impunity, and fostering regional cooperation are essential not only for justice, but also for Kosovo's EU integration process and long-term reconciliation. It has been 25 years since the conflict, and Kosovo risks losing the first generation of war dying and remaining with the second generation that recall little. This not only complicates efforts to hold perpetrators accountable but also undermines the broader pursuit of justice and reconciliation in Kosovo.

COMPETING INTERESTS

The author has no competing interests to declare.

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