

# LEGAL CHARACTERISTICS OF THE EU-KOSOVO RELATIONS

Professor **Hajredin KUÇI**<sup>1</sup>

Assistant and doctoral student **Kastriote VLAHNA**<sup>2</sup>

## **Abstract**

*Building a 'rule of law based'-democracy is a challenge for post-communist and post-war societies. Rule of law is a priority for these societies and it is very often prescribed as a membership criteria required by international organizations, such as the European Union. As such an aspiring country, Kosovo is faced with the challenge of building a legal system compatible with that of the European Union member states, but also of developing legal cooperation with other countries. This paper will analyze the process of Europeanisation of the legal system of Kosovo and presents a dynamic impact of the European Institutions and Missions in Kosovo which were introduced and operate despite the fact that Kosovo officially is not recognized by EU institutions and all EU member states. As such, the paper will focus on analyzing the legal treatment and sui generis relations between EU and Kosovo, especially during the UNMIK time, with EULEX mission, of the unique singling modalities and content of SAA, Office of Specialist Chambers of Prosecutors and Judges and including the recommendations for legal cooperation in certain circumstances during the fulfillment of the above mentioned obligations and integration process. The main question addressed in this article is how the EU has influenced the rule of law in Kosovo. In doing so the paper will observe the results of that influence that are sui generis as well as how the EU-Kosovo cooperation has helped keeping the integration process and research strategies for the further cooperation going. This hypothesis will be tested by measuring the inclusion and application of the main European standards in cooperation with the third states. Additionally, comparative methods will be used in finding similarities and differences with other cases. Kosovo faces many challenges in international cooperation, not only with regard to those missions operating in Kosovo itself (such as EULEX, CE, EUO etc.), but also with EU as an organization, especially due to Kosovo's lack of membership in EU. Another challenge faced is the cooperation with EU countries that have not yet recognized Kosovo as a state. This paper emphasizes the efforts of Kosovo's institutions beyond regular means, in order to conduct EU-Kosovo cooperation as one of the prerequisites for building the democracy based on rule of law. The main issues tackled in this paper are how these problems are addressed in practice, which are the obstacles arising, what are the ad hoc means of conducting such cooperation and what are the specificities and perspectives of EU-Kosovo cooperation. As such the paper aims at breaking down some of the legal peculiarities and uncertainties that have been created throughout the years as result of limitations to the international personality, aimed at ensuring that there is a cooperation with EU and non-recognizer countries through other 'innovative' means.*

**Keywords:** EU, Kosovo, legal system, European law, relationship, international cooperation, membership, international organizations, non-recognition.

**JEL Classification:** K33

## **1. Introduction**

Since 1999, integration into the European Union has been a political goal of the citizens and institutions of Kosovo, while since 2003, from the Thessaloniki process, this process has been incorporated within the EU agenda. Examining the legal specifics of this process is of particular importance. These specifics become even more important when it is known that Kosovo's relations with the EU are unique due to the non-recognition by the five EU member states (Spain, Greece, Slovakia, Romania and Cyprus) and consequently by the EU institutions and the EU missions in Kosovo themselves, which makes Kosovo's integration process different from other aspiring countries for EU membership. The rule of law is predominantly said to be one of the main priorities for societies in transition in Europe, particularly for the ones aspiring to join the European Union. This priority appears as a necessity for the establishment of an environment in which citizens enjoy unimpeded access to justice and equality before the law but also as a prerequisite for economic development and fulfilment of the criteria for EU membership. The Republic of Kosovo is no

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<sup>1</sup> Hajredin Kuçi - regular professor in the field of law of international law, Faculty of Law, University of Pristina 'Hasan Pristina', Republic of Kosovo, hajredin.kuci@uni-pr.edu.

<sup>2</sup> Kastriote Vlahna - doctoral student at the University "Hasan Prishtina" Pristina, Kosovo, Department of Civil Law; full time assistant in the field of civil justice, Faculty of Law, University of Prizren "Ukshin Hoti", Republic of Kosovo, kastriote.vlahna@uniprizren.com.

exception in this respect, having set the rule of law as a priority for the above-mentioned reasons.<sup>3</sup> The case of Kosovo is, however, much more complex because of additional factors related to the current stage of state-building, such as the exercise of sovereignty over the entire territory of the country, the difficulties of cooperating with countries that have not yet recognized Kosovo's independence and respecting the presence of the EU rule of law mission in Kosovo (EULEX).

The impact of EU and EC legislation, as well as the case law of the European Court of Human Rights (ECtHR) on the law of the Republic of Kosovo as an aspiring state is significant and has guided the development of the entire legal system. European law is a broad field that includes primary sources (such as founding treaties, etc.) and secondary ones (such as regulations, guidelines and decisions, etc.) while EC law primarily includes the European Convention on Human Rights and Freedoms and its protocols as well as the case law of the European Court of Human Rights and Freedoms (ECtHR) as an EC institution. The process of the establishment of the Kosovo legal and governmental system after 1999 has been under the direct influence of this body of law, thus substantial attention to the rights and obligations of the Republic of Kosovo in relation to these acts of European law should be paid. As such this paper aims to make a concise analysis of the impact of European law on Kosovo law, whether through contractual agreements such as the SAA, or through direct admission to the Kosovo legal system as in the case of European Convention for the Protection of Human Rights and Freedoms (further the KEMLDNJ) or through the unilateral transposition of EU legal acts into the domestic legal system. The paper will also address the impact of case law, in particular the ECtHR, on the local legal system. The special legal relationship that the Republic of Kosovo has with the EU institutions in Brussels or with the representatives of the EU institutions operating in Kosovo which also exercise competencies related to the sovereignty of Kosovo as is the case of EULEX activities is also subject to discussion here.

Additionally, establishing good international cooperation with other countries and international organizations with a scope of work in the field of justice has been set out to be one of the requirements for Kosovo in its EU integration process. Kosovo has made a lot of efforts to meet these criteria regarding the rule of law aiming at a positive evaluation from EU actors, namely the European Commission, but also from the EU member states. As a fledgling state, strengthening international cooperation also contributes greatly to the building of the international personality of Kosovo and also to the internal state-building process. Moreover, and the practical perspective of the challenges that Kosovo has faced and obstacles yet to be overcome are a great source of analysis. The starting point on evaluating the legal basis for international cooperation in Kosovo is to establish its factual 'limited personality' within the international community and international organizations. As a newly established country, having declared its independence in 2008<sup>4</sup> Kosovo has up to date gained membership only in few international organizations such as IMF, World Bank, EBRD,<sup>5</sup> and has yet to become a member of organizations such as United Nations, European Union or Council of Europe. Consequently, Kosovo is not a signatory party to any of the treaties or conventions that are interlinked and dependent from these organizations. In absence of such international presence, Kosovo has attempted to creatively fill in the gaps for such absence through its national legislation. In accordance with the legal framework, the Kosovo Government is the key stakeholder in conducting legal cooperation with other countries. Kosovo's Constitution also encourages international legal cooperation by recognizing general international law and a wide range of international conventions as directly applicable within the legal system of the country although Kosovo is yet to become a

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<sup>3</sup> Program of the Government of the Republic of Kosovo 2015-2018, available at [http://www.kryeministri-ks.net/repository/docs/Government\\_Programme\\_2015-2018\\_eng\\_10\\_mars.pdf](http://www.kryeministri-ks.net/repository/docs/Government_Programme_2015-2018_eng_10_mars.pdf), consulted on 1.08.2021.

<sup>4</sup> Republic of Kosovo Assembly, Kosovo Declaration of Independence, 17 February 2008, available at <http://www.assembly-kosova.org/?cid=2,128,1635>, consulted on 1.08.2021.

<sup>5</sup> Kosovo became a member of World Bank on Jun 29, 2009, and same day also on IMF; Membership on EBRD was finalized on 2012, see Official Gazette of the Republic of Kosovo/No. 34/13 December 2012, Pristina; Law on Ratification of the Agreement Establishing the European Bank for Reconstruction and Development.

contracting party to these conventions<sup>6</sup> on the principle of reciprocity,<sup>7</sup> meaning that Kosovo can conduct a significant number of interactions with other countries even in absence of formal agreements. In terms of 'innovative' legal basis, Kosovo is indeed extremely exceptional, given that the legal provisions, some being transitional in character and additional to the basic laws, were designed specifically to enable Kosovo to conduct international cooperation despite non-universal recognition. In relation to that, there are several key specificities that should be pointed out, most importantly the effects of UN Resolution 1244,<sup>8</sup> which, since its enactment, has served as the legal basis for the establishment of the UN Mission in Kosovo (UNMIK) – a mission that, among other tasks, was entrusted with administering the rule of law in Kosovo, including issues related to international legal cooperation. After Kosovo's declaration of independence and the entry into force of the Constitution of the Republic of Kosovo,<sup>9</sup> the governmental institutions created unilaterally, absorbed the majority of the competences which were prior exercised by UNMIK as the Administering body of the 'territory' at that time.

## 2. The relationship of European law with the law of Kosovo

Kosovo's relation to the EU law is specific and unique, thus we will address some aspects, starting from the modalities of the signing of the SAA and the implementation of the European and International law directly through inclusion in the Constitution of Kosovo, despite not being a member of the international organization; the impact of the decisions of the Council of Europe, the European Court of Justice and the EU; the unilateral harmonization of the laws of Kosovo with the *acquis* as well as the role of the EU missions in Kosovo that have competencies in the field of justice. Non-recognition by the five EU member states makes Kosovo's relationship with the EU specific, both legally and politically. The focus of our treatment is the legal aspect of these reports. In particular, the dilemmas about the legal basis for relations between Kosovo and EU well as formal reciprocity reports created due to the lack of recognition which has led to the creation of a specific relationship, though similar to that with the other states in the region, but also different in the sense of following a more silent integration process which we will analyze in the following.

Since 1999 Kosovo has created legal relations with EU and CoEbe it through UNMIK respectively the pillar of IV which was managed by EU or through the international missions of EU in Kosovo namely EULEX etc. In addition, these relations have been indirectly creates through the unilateral acceptance of acts related to EU integration, which since the Thessaloniki meeting opened the perspective for Kosovo, by transposing EU standards into the laws of Kosovo, but also through other processes related to EU integration such as the Stabilization and Association process, the feasibility study, the annual progress report and a series of documents produced by the E or Kosovo institutions.

## 3. Stabilization and Association Agreement (hereinafter: SAA)

The SAA represents the establishment of the first contractual relations between Kosovo and the EU.<sup>10</sup> Thus, through an international treaty, Kosovo is recognized as a legal and political entity. The SAA recognizes the territory of Kosovo, where in Article 141 states that the SAA<sup>11</sup> will be implemented in the territory of Kosovo. The Lisbon Treaty has made clear the division of competencies between the EU and EU member states in three classifications: exclusive, separate and supplementary. Accordingly, Chapter V of the Lisbon Treaty in foresees which international treaties

<sup>6</sup> Articles 18 – 22 of the Constitution of the Republic of Kosovo of 15 June 2008 (with subsequent amendments of 7 September 2012 and 26 March 2013).

<sup>7</sup> Art. 1.3 Law on International Legal Cooperation. *op. cit.*, note 5.

<sup>8</sup> UN Security Council, *SC Resolution 1244 (1999) on the deployment of international civil and security presences in Kosovo*, 10 June 1999.

<sup>9</sup> Constitution of the Republic of Kosovo, *op. cit.* note 4.

<sup>10</sup> The Stabilization and Association Agreement was ratified by the Assembly of Kosovo on: 01.04. 2016.

<sup>11</sup> For a full text analysis of the SAA see: [www.mie-rks.org/msa](http://www.mie-rks.org/msa), consulted on 1.08.2021.

can be signed by the Union. According to Article 218 of the Treaty it is noted that SAA can be signed from EU. So, SAA between Kosovo and EU was negotiated based on this article. This was one of the changes made with the Lisbon Treaty, from which case Kosovo has benefited because in the previous Treaties the signing and ratification was required from the states separately and in the case of Kosovo that would have created legal difficulties in relation to the EU member states that have not recognized Kosovo and consequently the signing of the SAA would have been impossible. A provision requiring signature and ratification from each EU country is still in force for membership into the EU of new states, which is very likely to be troublesome when time comes for Kosovo to attempt membership in the EU.

According to Article 216 of the TL, the Union can enter into agreements both with third countries and international organizations. According to a simple legal interpretation, the SAA with Kosovo falls into the category of agreements with third countries. Article 216 also states that agreements negotiated by the EU are legally binding and applicable to EU member states. Despite Kosovo's other relations with the EU, such as the feasibility study, the progress report, the political statements of the EU institutions under the SAA, the EU through the signing of the SAA made its first formal commitment and legal promise for Kosovo's European perspective and potential EU membership. On the Kosovo side, it should be noted that the SAA is a legal obligation of the highest hierarchy, and according to the Constitution of Kosovo ratified international agreements are at the level of Constitutional obligations and supersede domestic laws.<sup>12</sup> The content of the SAA according to each chapter, annexes and protocols is similar to other countries in the region that have signed them before. The main difference is that the SAA with Kosovo is negotiated by EU and not with member states of EU due to states that have not recognized Kosovo. From a political point of view, the SAA was signed with one goal: Kosovo's full membership in the EU and it is a unique treaty that only aspiring states sign.

It should however be noted, that in order to accommodate the 5 non-recognizing states and in order to allow the process to move forward, the SAA is signed with a footnote according to which the status of Kosovo is not prejudiced and balances the position with the opinion of the International Court of Justice on Kosovo and Resolution 1244.<sup>13</sup> This was done in order to satisfy both parties, the states that have recognized Kosovo and those that have not yet recognized it. Some sensitive issues that states retain as sovereign competencies and that are related to common policy and security, issues of weapons of mass destruction, etc. have been treated differently, as they belong exclusively to the member states. These issues can be negotiated later according to the legal and political environment of Kosovo with these countries. It should also be recognized that the non-recognition by the five member states of EU has not only impacted the negotiations and signing of the SAA but will continue to impact the fulfilment of obligations the SAA, but also other activities such as the legally binding agreement with Serbia and may influence the decision of these states in the future and it is important that this happens in terms of full membership of Kosovo in the EU.

#### **4. The impact of European law on the legal system of Kosovo**

Kosovo's legal system belongs to the continental legal family which is the basis and dominance in most legal systems in Europe. EU and CoE law have influenced the construction of Kosovo's legal system due to the country's aspirations for EU and CoE membership. Moreover, the heavy involvement of the international community in the state building process in Kosovo through

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<sup>12</sup> See: Constitution of the Republic of Kosovo, approved on 09.04.2008, which entered into force on: 15.06.2008, Pristina, Republic of Kosovo, in Article 19, paragraph 2, according to which it is stated that: Ratified international agreements and legally binding norms of international law take precedence over the laws of the Republic of Kosovo. See also the commentary on the Constitution of Kosovo by authors: Hasani, Enver & Ćukalović, Ivan, (Edition I), Pristina, 2013, p. 72.

<sup>13</sup> Such a presentation was made according to the Agreement reached in Brussels between Kosovo and Serbia.

the international administration,<sup>14</sup> whether UNMIK or other missions such as the ICO,<sup>15</sup> EULEX,<sup>16</sup> who oversaw the building of the legal system in Kosovo has resulted in the inclusion of the essential international standards the Kosovo law.

It should be noted that in countries with aspirations for EU membership but also requests for political and economic but also diplomatic support, as in the case of Kosovo, then EU law and policy have a higher impact. In Kosovo, this influence can be best evidence by the direct transposition of EU standards in the legal system. All laws adopted after 1999 and in particular by the institutions of Kosovo, have had the obligation to respect the EU criteria, and be harmonized with *acquis communautaire*.<sup>17</sup> The CoE Office in Kosovo has often given opinions on laws that have not met these European standards and criterion. Rule of law legislation, particularly laws on the judiciary, customs and the police have been directly overseen by EULEX representatives who have also been co-executors of these laws since 2008. It should also be noted that the basic laws were drafted with the help of foreign experts, mainly European.

Another form where the impact of EU laws and standards can be best observed, is the direct implementation of some international instruments through the Constitution of the Republic of Kosovo as well as in certain laws as well as the unilateral implementation of EU standards by the institutions and legislation of Kosovo. The majority of the international instruments incorporated in the Constitution safeguard the most fundamental human rights which also form core part of EU values.

## 5. Protection of human rights under EU and CoE law and impact on Kosovo's legal system

The EU and the CoEs see human rights as a universal and indivisible value and actively promote and have a mission to protect them within the EU and represent engagement in relations with non-EU countries. This is why human rights, democracy and the rule of law are fundamental values of the European Union, incorporated into the founding treaties, further strengthened when the EU adopted the Charter of Fundamental Rights in 2000 and reaffirmed when the Charter entered into force with the entry into force of the Lisbon Treaty in 2009. Such legal implementation of the Convention within the EU has enabled the European Court of Justice (hereinafter ECJ) and national courts to move towards a decision based on fundamental human rights even when they apply EU law. The ECJ has reiterated this approach in numerous of its cases.<sup>18</sup> This discourse of reference to fundamental freedoms has also been suggested in the context of EU legal acts, although there are cases of directives in the field of private law where the opposite has occurred.<sup>19</sup> This occurs in the tensions that private law and fundamental rights have e.g. towards the autonomy of the parties vis other parties. After the Lisbon Treaty, the interpretive and decision-making approach has gone in the trajectory of respect for fundamental rights. A similar approach has been followed in Kosovo, in the process of drafting legislation but also in its implementation in many cases, especially in private rights, such as family, property, inheritance, obligation, etc. Within the EU, the member states but also of those in countries that aspire EU membership the relationship between the fundamental rights guaranteed by national constitutions on the one hand and the European Convention on Human Rights on the other is very challenging but also valued at European level. In this respect, our country, in terms of legislation, remains fully harmonized. In a concrete sense, the accession to the EU to the ECHR means that natural and legal persons have the right to appeal to the European Court of Human

<sup>14</sup> See: Resolution 1244 of the Kosovo of OKB, date: 10.06.1999.

<sup>15</sup> See in more detail the Comprehensive Document on the status of Kosovo, approved by the Assembly of Kosovo on dt. March 26, 2007.

<sup>16</sup> See the decision of the EU Council of 8 February 2008.

<sup>17</sup> According to the rules of procedure of the government, every draft law before being processed is required to obtain the consent of the Ministry of European Integration that it is in accordance with the *acquis communautaire*.

<sup>18</sup> Casus: C-281/98.

<sup>19</sup> M. Schilling, *The Interpretation of European Private Law in the Light of Market Freedoms and EU Fundamental Rights*, "Maastricht Journal of European and Comparative Law" 15(2008) 285; Christian Twigg-Flesner, *Key Elements of European Private Law*, in Christian Twigg-Flesner (ed.), *European Union. Private Law*, Cambridge University Press, 2010, p. 12.

Rights in Strasbourg against decisions of the Union and its institutions. Accession will also strengthen the EU credibility, as citizens will be protected in relation to EU acts, similar to the protection currently enjoyed by all Member States. Furthermore, signing the legal system of EU for external oversight may also lead to improved access to its own court legal systems before other bodies.

Finally, given that the European Union, through its Charter of Fundamental Rights,<sup>20</sup> confirms its values, its accession to the European Convention sends a strong political signal for the coherence of attitudes and the coherence of the wider EU interests.<sup>21</sup> Formally, the EU joins the convention under the Agreement Membership completed in accordance with the provisions of Article 218 of the Treaty on the Functioning of the European Union (TFEU).<sup>22</sup> This means that the EU has established a universal and efficient system for the protection of human rights which has an impact on aspiring countries, in this case also in Kosovo. Organizations such as the Organization for Security and Co-operation in Europe - OSCE have an important role to play in ensuring the process and ensuring the protection of human rights.<sup>23</sup> This organization has had a special role in Kosovo since 1999 in the field of law and order, democracy, human rights and minorities.<sup>24</sup>

## 6. The impact of EU legislation in the field of human rights in Kosovo

One of the preconditions that the countries that aspire EU membership must abide by is respect for human rights. Indeed, all agreements with "third countries" related to the field of economic political cooperation contain a clause that categorizes human rights as an essential element in relations between the parties. EU policy on human rights includes civil, political, economic, social and cultural rights and also seeks to promote the rights of women, children, minorities and displaced persons. In particular, they supported and promoted human rights, democracy rule of law and order, the fight against torture, the fight against strategy and other forms of discrimination. In this regard, the EU has adopted legal acts covering general geographical activities within the EU, but also in third countries. These legal acts also affect the legal system of Kosovo, which we will analyze in the following.<sup>25</sup> As noted above, in addition to transposing them into the Kosovo legal system, there has been a unilateral acceptance of the most important instruments in the Constitution of Kosovo without being a member or signatory as a party.

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<sup>20</sup> Charter of fundamental rights of the European Union (2000/C364/01), [www.eoparl.europa.eu](http://www.eoparl.europa.eu). In this view, various authors thus emphasize the lack of uniform standards in the protection of human rights. Primarily, in compliance with such protection at the level of the United Nations system, with the names given to international and national courts for the potential of safeguarding international law from fragmentation. Indeed, the Court of Justice of the European Communities, the process of assessing the legality of the contested regulation of the Council of the European Union, the legal validity of which, as a Community act, has the right to assess under Article. 230. From the EEC Treaty Establishing. Requests for the protection of human rights began to be addressed in Resolution No. 1456 of 2003, in the framework of the provision that each state is obliged to coordinate measures in the fight against terrorism with its obligations under international law and in particular international refugee law and humanitarian law. quoted according to: A. Nallbani, *European Convention and its implementation in the EU*, MA Thesis, University of Prishtina, 2020. Prishtine, p. 33-45.

<sup>21</sup> Françoise, Tulkens, *EU Accession to the European Convention on Human Rights, European Judicial Training Network - Human Rights and Access to Justice Seminar*, Poland, March 2013, (April 2015): European Judicial Training Network [http://www.ejtn.eu/Documents/Krakow\\_Tulkens\\_final.pdf](http://www.ejtn.eu/Documents/Krakow_Tulkens_final.pdf), consulted on 1.08.2021.

<sup>22</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01 (<http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:12012E/TXT>), consulted on 1.08.2021.

<sup>23</sup> Established by the Helsinki Act of 1975, called the Conference on Security and Co-operation in Europe (CSCE), with the aim of representing a multilateral forum for dialogue and negotiation between East and West, in 1994, the Budapest Summit would be institutionalized and renamed today the Organization for Security and Co-operation in Europe (OSCE).

<sup>24</sup> See OSBE documents and mission in Kosovo since 1999. In particular, it should be noted that the political process influences the establishment of a mechanism to protect human rights and set standards. Many important human rights documents contain political tones but can be important and useful in promoting compliance with human rights standards, and this documents examples of such an individual CSCE/OSCE statement. Finally, considerable attention in these processes has been given to the protection of women, children, refugees, persons with disabilities and national minorities. cit. according to: A. Nallbani, *op. cit.*, p.55.

<sup>25</sup> UE Strategic Framework and Action Plan, Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12, <http://eeas.europa.eu/>, consulted on 1.08.2021.

### 6.1. European Convention on Human Rights (ECHR) its impact on the legal system of Kosovo

The implementation of the ECHR by the Kosovo authorities supports the claims of citizens and institutions to respect human rights to high standards and meets the expectations of international partners that Kosovo has built a legal system of the European model. With this Convention serving as the guideline for constitutional human rights in Kosovo, efforts to build a new state will be influenced by a more European system of rights which has unilaterally taken on a universal character. Protecting the rights and freedoms of citizens in the governing system and the constitution has been one of the main goals of Kosovo institutions but also of the presence of the international community. The Constitution of Kosovo provides broad protections for human rights, including the rights of minorities. One of the main ways to achieve this goal is to refer to existing international legal instruments. On the one hand, this can be seen as a legacy of the period of international administration 1999-2008, when the United Nations Interim Administration Mission in UNMIK (UNMIK) gave a privileged position to international agreements and laws and created a political environment but also society for the observance and implementation of international norms and legislation in Kosovo. Even Kosovo's environment as a post-communist society after the war was easily influenced by new values and the abandonment of tradition which was considered more than national as the former communist system or the Serbian occupation. Of course, the great international support in achieving freedom and the deployment of international missions created sympathy for these values from the institutions and citizens of Kosovo, but they were also builders and correctors of our legal system according to these values. To all this positive atmosphere of acceptance of EU standards in the framework of the legal system is added as essential the almost concessional orientation for integration into the EU and other international institutions. In this regard is the inclusion of several international treaties in the constitution, which was an effective way to make documents legally binding in Kosovo, despite the fact that with limited international recognition of these international organizations where Kosovo is not officially recognized even as member or as a signatory to multilateral international agreements.<sup>26</sup> The integration of international instruments into Kosovo's constitution has been an important step in protecting human rights at the national level. These instruments are directly institutionalized within the constitution. Articles 22, 53 and 58 of the Constitution<sup>27</sup> include a number of international human rights agreements and instruments.<sup>28</sup>

However, given that Kosovo is not a member state of the United Nations and the European Union and the Council of Europe, these international instruments are not always applicable and our citizens can not file complaints to the relevant bodies within these institutions. Kosovo's constitutional commitment to human rights is admirable and the content of Article 22 on the direct implementation of the eight relevant international agreements and instruments shows Kosovo's serious commitment to human rights. However, despite the clearly positive intentions regarding the eight international human rights agreements, it cannot be overlooked that this direct application does not fully reflect the legal framework that these agreements oblige the signatory states to these agreements. This situation poses fundamental problems, because the purpose of these treaties is to create a legal environment for citizens to realize human rights as inalienable and that those rights are no longer available to states but are part of international law that give them direct rights of individuals. While Article 22 of the Constitution defines an external system of rights, including the respective rights, giving priority to a wide range of rights enshrined in the international sphere, this is somewhat weakened by the fact that these rights will be applied, defended and interpreted only by local judges. This means that the crucial

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<sup>26</sup> A. Nallbani, *op. cit.*, p. 54.

<sup>27</sup> See: Constitution of the Republic of Kosovo, approved on 09.04.2008, which entered into force on: 15.06.2008, Pristina, Republic of Kosovo, in Article 22, 53 and 58.

<sup>28</sup> The Universal Declaration of Human Rights (DUDNJ), the European Convention on Human Rights and Freedoms and its Protocols (ECHR), the International Covenant on Civil and Political Affairs (ICCPR), the CoE Framework Convention for the Protection of Minorities (FCNM) and the United Nations Conventions on the Elimination of All Forms of Racial Discrimination (KEGjFDR), and on the Elimination of All Forms of Discrimination against Women (KEGjFDNG), the Convention on the Rights of the Child (CRC) and the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (KKTTNMÇP).

justification for international human rights treaties - the external responsibility of the state - has not been met. The difficulties of direct integration of ICTYs in the local framework of Kosovo have been identified many times. This is especially true in relation to Kosovo's constitutional relationship with the European Convention on Human Rights. For its implementation by the judicial system in particular the Constitutional Court will be written below.

## **6.2. The role of the ECHR in the protection of human rights and its impact on the legal system of Kosovo**

The European Convention and its Protocols constitute a legally binding act for all Contracting States. The European Convention and its protocols, not only to proclaim the law of fundamental human rights and freedoms, but has additionally established a special judicial mechanism for their protection that is unique in the world and allows individuals to file complaints against a signatory country, if it can be confirmed that the victim has a violation of any of the rights guaranteed by the Convention and the Protocols. One of the basic legal principles of the EU is the effective judicial protection of the rights deriving from European Union law, and the individual's right to effective judicial protection as identified in the provision of Article 6 (3) of the Convention. The Treaty on the Functioning of the EU regulates the procedures for the protection of these rights. Thus, by provision 258 TFEU<sup>29</sup> the procedure described in which it is determined whether a Member State does not fulfil the obligation imposed on it by Union law. The system of protection of fundamental human rights and freedoms operating in the territory of the Council of Europe Member States, the care for which was established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, is one of the most developed regional judicial protection system of regional character. This system puts the individual and his rights in the spotlight. The protection of these rights in this system is achieved through two mechanisms: international agreements and through individual applications. The system of international disputes is regulated by the provision of Article 33 of the Convention.<sup>30</sup> This means that each contracting party, through the secretary general, may file a claim with the European Court of Human Rights against other States Parties in connection with violations of the provisions of the Convention and the Additional Protocols in order to safeguard the legal order established by the European Convention.

On the other hand, the system of individual applications, regulated by the provision of Article 34 of the Convention,<sup>31</sup> and this system allows an individual to challenge the decisions of national governments to protect their rights protected by the Convention. This authority of an individual constitutes a subject of international law and represents tangible progress in the system of human rights protection in general. In this way the rights of the individual in relation to the state are ensured.<sup>32</sup>

The mission of protecting human rights was entrusted at the outset to the bodies within the Council of Europe and the European Court of Human Rights, the European Commission of Human Rights and the Committee of Ministers of the Council of Europe, and after the reform based on of the adoption of Protocol 11 to the Convention, the Commission on Human Rights ceased to exist, where the broader powers were conferred on the ECHR, it had jurisdiction to decide on the admissibility of the Referral, as previously decided by the Commission, and the merits of the legal issue.<sup>33</sup> The work of the ECHR with new authorizations began on 1 November 1998 with the entry into force of the

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<sup>29</sup> Article 258 TFEU: If the Commission considers that a Member State has not fulfilled its obligations under the contract, it shall give a reasoned opinion after having allowed that State to give its opinion. If the State concerned does not comply with the opinion within the time limit set by the Commission, the Commission may refer the matter to the Court of Justice of the European Union.

<sup>30</sup> See: Article 33 of the ECHR: Any High Contracting Party may refer to the Court any alleged violation of the provisions of the Convention or of its protocols which it considers to be attributable to any other High Contracting Party. The European Court of Justice is increasingly appealing to the Charter in its rulings: the number of rulings to be explained by the Charter almost doubles from year to year. Also, when referring to the EU Court of Justice for a particular case, national courts are increasingly appealing to the Charter.

<sup>31</sup> The court may receive appeals from any person, non-governmental organization or group of persons claiming to be victims of a violation of the rights set forth in the Convention or its protocols by one of the High Contracting Parties. The High Contracting Parties undertake not to interfere in any way with the effective exercise of this right.

<sup>32</sup> Based on <http://www.un.org/en/sections/issues-depth/international-law-and-justice/index.html>, consulted on 1.08.2021

<sup>33</sup> Ibid.



above protocol.

In the following we will give some explanations on how to raise the issue before the ECHR in order to provide basic explanations for the citizens of Kosovo as professional knowledge but above all as a procedure for the time when the citizens of Kosovo will have the opportunity to address this court. An individual may seek protection only for those rights which are alleged to have been violated and which have been recognized and guaranteed by the European Convention or its protocols, when the filing of an application is not necessary for the applicant to suffer damages for the violation of a law, it suffices only to be a victim of violations of any right set forth in the Convention.<sup>34</sup> The request must be submitted within four months from the day when, in the case of his case in the internal procedure, a final decision has been taken, i.e. from the moment when the applicant fully benefits from all domestic remedies, but before appealing to the Court European party must exhaust all legal remedies available to it in its domestic law.

The court may accept the request even if not all domestic remedies have been used, if the applicant proves that the remedies are not accessible or that the use of remedies would not be appropriate.<sup>35</sup> The same applicant may not reappear before the Court and refer to the same facts.<sup>36</sup> The court does not act on a single claim if it has been referred to another international level of review, unless it arises from the moment the case has been referred to another international level, new facts have been presented that may be relevant to the decision-making.<sup>37</sup> A request which is inconsistent with the provisions of the Convention or its Protocol shall be declared inadmissible by the Court. This means that the request is admissible only if the applicant declares that a right recognized in this Convention has been violated and that the infringer is a State or its authority under its jurisdiction. The court declares inadmissible and a claim that is manifestly ill-founded, viz. that the application, which at first sight does not show any possibility that a right has been violated, inter alia, because they are not supported with any evidence or because the complainant's allegations, even if true, do not will be able to qualify as a violation of certain rights under the European Convention.<sup>38</sup>

The European Court of Human Rights has gone through a well-known path by an institution that initially dealt only with fundamental human rights issues and made declarative statements mainly if they violated the rights of an individual or certain groups. Later, the Court began to deal with individual defense and thus, gradually expanding its jurisdiction, became corrective to the conduct of the domestic legislation of the members of the Council of Europe. What is certainly good is the fact that citizens of the Member States can deal with the European Court of Human Rights. These circumstances undoubtedly affect the correction of the behavior of local courts, but also of other state authorities.<sup>39</sup>

Member States are liable for breaches of certain provisions. Such a violation of these provisions should be quite serious, and in case this violation occurs then the national courts should deal with the process of finding the facts as well as the evidence by attaching the fact as well as the assessment of the violation of EU law. On the other hand, there should be no direct causal link between the breach of a Member State's obligations and the damage suffered by the injured party, without being necessary to prove the intent of the treatment, or the failure to act. The responsibility of the courts for violating EU law is also defined.<sup>40</sup> Member States are liable for breaches of certain provisions, this provision must first of all guarantees certain rights of the individual, a breach must be quite serious, and how to make their choice by national courts in the process of finding the facts

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<sup>34</sup> Gomien, D., *A Brief Guide to the European Convention on Human Rights*, third edition, Council of Europe, 2005, Article 34 of the Convention.

<sup>35</sup> Ibid, Article 35 of the Convention.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid, Article 34 of the Convention.

<sup>39</sup> Ibid. Article 35 of the Convention.

<sup>40</sup> See more: Klaus-Dieter Borhart, *Alphabet of the European Union Law*, Luxembourg: Publications Office of the European Union, 2013, 1997. "Liability for breach of European Union law by the courts. Liability of national courts for breach of The Union can be considered only if the court intentionally ignores the Union law or intentionally violates it and does not ask the Court of Justice to justify the situation in relation to the Union law that is relevant to the decision, in which case it is necessary. for citizens who with such a violation, the damage caused is compensated" - Klaus-Dieter Borhart, *op. cit.* p. 68.

and assessing the seriousness of the breach of EU law. On the other hand, there should not be a direct causal link between the breach of a Member State's obligations and the damage suffered by the injured party, without being required to prove the intent of the treatment, or the failure to act courts for violation of EU law is determined.

The Constitution of Kosovo obliges Kosovo institutions, including its courts, to use the case law of the ECtHR as a basis for the interpretation of constitutional human rights and freedoms.<sup>41</sup> However, case law is not directly effective within the Kosovo legal system. Kosovar citizens also cannot send/address a case before the Strasbourg court in case they feel that their rights have been violated by the Kosovo government. However, a person may claim that a domestic court's interpretation of a right or liberty violated the Constitution if the decision did not include a review of the explicit content of the ECtHR case law. To achieve this goal, the constitutional court has expanded its activity in terms of protecting freedoms and human rights. Some cases referred by the Constitutional Court regarding the use of ECtHR case law are: the 2009 Ibrahim and others cases against the Supreme Court, the Kastrati case against the Supreme Court and the 2010 decision, the Bislimi case against MI and others, etc. An analysis of these cases shows a consistent pattern of interpretation by Article 53 of the Constitution by the Court.<sup>42</sup> These and other cases suggest a tendency or trend undertaken by the Court to consider the case law of the ECtHR as a means of advancing the interpretation of constitutional provisions, and not as an obligation requiring compliance with ECtHR precedents. Critically, the Constitutional Court is unable to review the entirety of the jurisprudence of the ECtHR and therefore only examines part of its case law. This is insufficient to determine the true nature of ECtHR law or practice and to provide an accurate result based on its application to the facts.<sup>43</sup> While the Constitutional Court has taken steps in this direction for the regular courts such a thing cannot be asserted and that they may be very rare cases. This non-implementation of this constitutional provision comes as a result of the lack of legal tradition in this field, the technical side of permanent follow-up of decisions but also the professional lack of judges but also lawyers and other parties in court proceedings. An analysis of the judicial system and the effective implementation of European Convention, and respecting the practice of ECtHR, it can be noted that the judicial system of Kosovo in the field of human rights cannot be considered to fully reflect the purpose of the Constitution or the jurisprudence of the ECHR itself. Practically, this greatly undermines human rights in Kosovo and can lead to uncorrected violations of the rights of individuals. The Ombudsperson Institution may play a role in enforcing this law, but the authority of this institution is limited. According to research, it is clear that the legal framework is advanced, but practical implementation lags far behind.

### 6.3. Legal relations of EU institutions with Kosovo

In addition to the cooperation with international organizations within or outside Kosovo, there is bilateral cooperation of Kosovo with various states which can be grouped into two categories: (1) recognizing states, which include neighboring states; EU Member States and states with which Kosovo has legal cooperation and economic relation with (e.g. through free movement of goods and individuals); and (2) cooperation with countries that have not recognized the Republic of Kosovo. Cooperation with these countries is conducted based on the laws outlined above, but also on bilateral agreements with these countries individually.<sup>44</sup> To continue on building of the pattern of 'peculiar

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<sup>41</sup> See: Article 53 states that "Human rights and fundamental freedoms guaranteed by this Constitution shall be construed in accordance with the judgments of the European Court of Human Rights."

<sup>42</sup> See also the cases on the website of the Constitutional Court: <http://gjk-ks.org/>.

<sup>43</sup> A. Nallbani, *op. cit.*, p. 77.

<sup>44</sup> Cf. e.g., Extradition Treaty Between The Government Of Republic Of Kosovo And The Government Of Italy of 19 November 2013; Agreement On Extradition, Mutual Legal Assistance In Criminal Matters And The Transfer Of Sentenced Persons Between the Government Of The Republic Of Kosovo And The Council Of Ministers Of The Republic Of Albania of 31 December 2012; Ratification Of The Agreement On Extradition Between The Government Of The Republic Of Kosovo And The Government Of The Republic Of Turkey of 18 July 2011; Ratification Of The Agreement On Extradition Between The Government Of The Republic Of Kosovo And The Government Of The Republic Of Macedonia of 13 June 2011, etc.

legislation' as means of gap filling legislation due to the non-recognition Kosovo have entered 'mutual arrangement's, a form of soft law to facilitate the exchange of requests and responses in different area<sup>45</sup> not only within the territory of Kosovo, but in its neighboring countries as well.<sup>46</sup>

The relationship of Kosovo with international organizations should be observed from two perspectives: first, the role of international organizations in Kosovo and second, Kosovo's access to international organizations outside Kosovo. Kosovo is characterized by a vast presence of the international community in the country and a strong cooperation with various international organizations in the field of justice. When looking at the vast presence of international organizations in Kosovo, it could be concluded that the widest spread of international organizations in a sovereign state in Europe appears in Kosovo. However, we encounter a completely different situation when looking at the presence of Kosovo in international organizations, including the ones operating in the field of justice. Then it appears that Kosovo is the country with the least access and membership in these institutions. This represents in itself an absurdity. A very positive step in facilitating the international legal cooperation with other countries was conducting a process of succession regarding the agreements concluded by the former Yugoslavia.<sup>47</sup> As previously mentioned, as a consequence of not being a member of Council of Europe, Kosovo is not a signatory to the multilateral treaties concluded within this organization, i.e. extradition treaties, or treaties on mutual legal assistance.

Thus, Kosovo cannot rely on the provisions of these conventions and has to resort to bilateral agreements. Nevertheless, numerous countries have not opted for concluding new agreements with Kosovo and have rather chosen to succeed in agreements previously signed with Yugoslavia; this being a temporary solution, with the purpose of not allowing any gaps until new agreements are signed or Kosovo becomes party to these multilateral treaties. Legal reporting the middle of the EU as a whole and its institutions with Kosovo have a special treatment, not treating it as a sovereign and independent state. Here will be addressed the question of whether this relationship has a sufficient legal basis for bilateral cooperation and the procedures developed by the EU as a party and Kosovo on the other hand that has made ratification procedures as international treaties including legal analysis of their approvals under Articles of the Constitution where international agreements are ratified and where state sovereignty is transmitted. Also, these practical forms of cooperation, which were created in the absence of establishing formal relations with Kosovo, are an indicator of the neutrality of some international organizations towards the status of Kosovo, which is often manifested through the use of the name Kosovo, with the footnote indicated by this designation is without prejudice to the status position, and is in accordance with UNSCR 1244/1999 and the opinion of the International Court of Justice in the declaration of independence of Kosovo.<sup>48</sup> Moreover, this can be seen as a way to compensate for Kosovo's absence from international organizations. As such, these forms of cooperation may also fill the gap caused by the lack of universal recognition of the Republic of Kosovo.

In this respect of neutrality, the most important entity is undoubtedly the UNMIK mission, which was established in June 1999.<sup>49</sup> Although it is a UN mission within it has remained the fourth pillar of the economy represented by the EU and the base of the EU missions in. Kosovo is Resolution 1244 which is the same as that of UNMIK with modifications by the EU Council of Ministers and decisions of Kosovo institutions. Compared to its earlier engagement, UNMIK has now stopped being too active except in northern Kosovo, where the rule of law by Kosovo institutions has always been limited. It has also been less engaged in the field of international legal cooperation, in particular with Interpol. In this regard, they mainly serve as mediators to issue arrest warrants and obtain information

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<sup>45</sup> Procedures on Mutual Legal Assistance for the implementation of the IBM, Technical Protocol (09 January 2013).

<sup>46</sup> In May 2011, the European Union Political and Security Committee adopted changes in the EULEX Operational Plan which provided for the establishment of the SITF. See also *Administrative Instruction No. 01/2011 for the protection of confidentiality of investigations and potential criminal proceedings* (July 2011).

<sup>47</sup> Republic of Kosovo, Agreements Succeeded – Austria, USA, Belgium, France, Great Britain, Czech Republic, Germany, available at <http://www.mfa-ks.net/?page=2,72>, consulted on 1.08.2021.

<sup>48</sup> Ministry of Foreign Affairs of Kosovo's New Diplomat, Mar/Apr. 2012.

<sup>49</sup> See: UN Security Council Resolution 1244 /1999.

about the perpetrators of the crime,<sup>50</sup> as well as to cooperate with states that have not recognized Kosovo.<sup>51</sup>

In addition, Kosovo has a special relationship with the EU which has dispatched one of the largest civilian missions ever launched under the Common Security and Defense Policy Missions (CSDP). The EU Rule of Law Mission (EULEX) has been established based on an agreement concluded in the form of an exchange of letters between the President of Kosovo and the High Representative of the European Union,<sup>52</sup> which was subsequently ratified by the Parliament of Kosovo and through a decision of the EU Council of Ministers.<sup>53</sup> The mission's mandate has had a special role in the field of justice, including executive powers,<sup>54</sup> in particular in the judiciary, prosecution, police and customs and, among others, in the Department for International Legal Cooperation in the Ministry of Justice.<sup>55</sup>

In September 2012, on the assumption that the capacity of judicial authorities had increased, EULEX was configured and a number of competencies transferred to local authorities. However, the mission retained the aforementioned competencies, including maintaining its role in international judicial cooperation with other countries, especially those that have not recognized Kosovo, but also with international organizations, in particular the EU. The EULEX mission had exercised the aforementioned functions until June 2014 when an extensive transfer of powers took place, thus removing executive powers from EULEX and leaving it primarily a monitoring, and advisory role in the field of international legal cooperation.<sup>56</sup> Such competencies were further minimized with the renewal of the mandate in 2016 for another 2 years.<sup>57</sup> However, EULEX fully exercised operational competencies in the law enforcement sector within the territory in which Kosovo institutions enjoy full sovereignty. However, those powers could not be said to have been fully dispatched in northern Kosovo, a territory which is dominated by Serbs and a territory in which Kosovo's institutions as well as those of EULEX were continuously challenged by both local citizens and Serbia, which de facto had control over the said territory. In terms of international legal cooperation, EULEX has played a positive role in transmitting letters to countries that have not recognized Kosovo or for extraditions, a competence arising out of a special agreement empowering EULEX to act as an intermediary.<sup>58</sup> The agreement at hand has been used as a tool to continue the legal cooperation with countries which do not recognize Kosovo, and that thus do not recognize the laws and institutions of Kosovo. Consequently, there is no direct communication with Kosovo's institutions and the requests sent directly to them would often be returned as non-acceptable. In addition, EULEX also plays a role in facilitating the cooperation and access to international mechanisms such as Europol, Euro just, etc. This approach was a direct one for members of EULEX, but an indirect one for the representatives of Kosovo's institutions and the position of Kosovo regarding membership in these international mechanisms has not changed. If no further steps are taken for Kosovo's direct access to international organizations and legal cooperation with other countries that have not recognized Kosovo, this

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<sup>50</sup> Memorandum of Understanding between the International Criminal Police Organization-INTERPOL and United Nations Interim Administration Mission in Kosovo on Co-operation in Crime Prevention and Criminal Justice, 20 December 2002, available at <http://www.interpol.int/content/download/9519/69777/version/2/file/UnitedNationsInterimAdministrationMissionKosovo.pdf>, consulted on 1.08.2021. Kosovo's police have arrested numerous people wanted by Interpol, even though they had no formal legal obligation to do so since Kosovo is not a member of this organization.

<sup>51</sup> UNMIK has played this special role specifically with Bosnia and Herzegovina, Serbia, and some other states that have not recognized Kosovo. In these cases, UNMIK has cooperated with EULEX, which has conducted a range of activities with local institutions.

<sup>52</sup> Exchange of letters between the President of Kosovo and the EU High Representative of 17 February 2008, 8 August 2008, 21 April 2014, and 9 and 15 of July 2016.

<sup>53</sup> Council of the European Union, *Council Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, 4 February 2008, OJ L 42/92.; Law No. 04/L-148 on the Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo of 07 September 2012.

<sup>54</sup> Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of Eulex Judges and Prosecutors in Kosovo of 03 June 2008.

<sup>55</sup> Law No. 04/L-213, *op. cit.* note 3.

<sup>56</sup> See: Law on Jurisdiction, Case Selection and Case Assignment of EULEX Kosovo Judges and Prosecutors (13 March 2008) as amended. No. 03/L-053, Assembly of Kosovo ("Law on EULEX").

<sup>57</sup> Law 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 (29 June 2016) No. 05/L-103, Official Gazette of the Republic of Kosovo, No. 21.

<sup>59</sup> Exchange of letters, *op. cit.* note 17.

situation will worsen after the departure of the EULEX mission from Kosovo, which based on the new Exchange of Letters between Kosovo and EU has been extended to June 2018.<sup>59</sup> This more to the fact that the initial attempts of Kosovo to acquire membership in Interpol have been faced with difficulties, as the request of Kosovo has been suspended by Interpol until a further evaluation,<sup>60</sup> leaving uncertainties as to when such membership could be gained.

Here, the legal specifics of these relations and the legal basis where the EU treats them as specific missions and not as accredited in a Sovereign State while Kosovo has acted in accordance with the law against international missions, either by accepting them or by giving them competence. The exchange of letters has been treated as an international treaty by Kosovo ratifying them according to the constitutional procedures of Article 18 regarding the manner of ratification and Article 20 of the Constitution which emphasizes the transfer of sovereignty. International legal cooperation with states and organizations that have not recognized Kosovo is done through EULEX on behalf of Kosovo. The EU Commission Office in Kosovo does not have the quality of other countries. Symbolically, they do not speak on the day of independence or the day of the constitution of the state of Kosovo. It is the same with KFOR, OSCE, etc., which use Security Council Resolution 1244.<sup>61</sup> So EU representatives act on behalf of the EU and the UN in the official legal sense. It should be noted that in terms of legal relations, the EU institutions maintain neutrality towards the status of Kosovo, while in fact, especially in the field of integration processes, there are positive modifications regarding Kosovo, as previously analyzed, but not fully treated as cooperation with a sovereign and independent state. In the field of international legal cooperation, in particular with Interpol, mainly by using UNMIK as an intermediate to issue arrest warrants and receive information regarding perpetrators,<sup>62</sup> as well as with the states that have not recognized Kosovo.<sup>63</sup> In Kosovo there are also other international organizations that have played a role in the rule of law sector, such as the OSCE, UNDP, USAID etc., and in the field of international legal cooperation notably in capacity-building and bilateral or multilateral meetings, as well as in international conferences etc. In the second case, Kosovo's access to international organizations is the smallest part of this collaboration. In most of the cases the cooperation is indirect, through EULEX and UNMIK, or in an initial stage as with UNODC,<sup>64</sup> the Hague Conferences,<sup>65</sup> and Interpol. Nevertheless, there is the perception that the presence of these two international missions has assisted international organizations present in Kosovo to gain full access to the country, and also that to some extent through EULEX, UNMIK and other actions of cooperation in this field a contribution to Kosovo's access to international institutions has been made indirectly. Nonetheless, on the other hand the same international presence is also considered a barrier to potential membership to international organizations. Since Kosovo is already cooperating through international organizations present in the country, and accession to as well as membership of international organizations is a difficult process, even the supporters of Kosovo's independence remain skeptical as to the possibility of Kosovo to join these organizations. The most recent example is that of the denial of the membership of Kosovo in UNESCO<sup>66</sup> due to lack of political will of some countries to vote positively. One may therefore argue that, if, hypothetically,

<sup>59</sup> Exchange of letters, *op. cit.* note 17.

<sup>60</sup> INTERPOL Press Release: INTERPOL General Assembly approves review of membership process, 08 November 2016.

<sup>61</sup> UN Security Council, SC Resolution 1244 (1999) on the deployment of international civil and security presences in Kosovo, 10 June 1999 (hereinafter "Resolution 1244").

<sup>62</sup> Memorandum of Understanding between the International Criminal Police Organization - INTERPOL and United Nations Interim Administration Mission in Kosovo on Co-operation in Crime Prevention and Criminal Justice, 20 December 2002, available at <http://www.interpol.int/content/download/9519/69777/version/2/file/UnitedNationsInterimAdministrationMissionKosovo.pdf>, consulted on 1.08.2021. (Kosovo's Police has arrested many people wanted by Interpol, even though it had no legal formal obligation since it is not a member of this organization.)

<sup>63</sup> UNMIK has played this special role specifically with Serbia, Bosnia and some states which have not recognized Kosovo. In these cases, UNMIK has cooperated with EULEX which has conducted a range of activities with local institutions.

<sup>64</sup> Official records of the Ministry of Justice, *Letter of the Minister of Justice sent to UNODC*, September 2013; Brief of UNODC Mission visit in Kosovo, 17 March 2014, available at <http://www.md-ks.org/?page=1,8,1277>, consulted on 1.08.2021.

<sup>65</sup> Official records of the Ministry of Justice, *Letter of the Minister of Justice sent to the Secretary of the Conferences of HCCH*, October 2013; Brief of the visit of the Secretary to Kosovo, available at <http://www.md-ks.org/?page=1,8,1273>, consulted on 1.08.2021.

<sup>66</sup> New York Times - UNESCO Rejects Kosovo Membership in a Victory for Serbia, Matthew Brunwassernov. 9, 2015.

this collaboration through EULEX and UNMIK were to encounter major obstacles, this would most probably be an incentive to an accelerated membership of Kosovo to international organizations. Therefore, based on the practical situation as described above, it can be said that international organizations have access to Kosovo, but Kosovo, vice versa, does not have direct access to international organizations. Consequently, international organizations fulfil their objectives and missions with relation to Kosovo in the area of international legal cooperation, but Kosovo has no opportunity to either express its requirements to these organizations or to use the legal tools and mechanisms within these organizations, for example conventions or dispute-settlement bodies (most notably the European Court of Human Rights (ECtHR)). The political impact of some countries that have yet to recognize Kosovo is a very determinant factor concerning the potential membership of Kosovo in these international organizations. Due to the internal structural organization and decision-making processes, the political impact of these countries results in a 'neutral stand' of the respective organization taken towards Kosovo's international status, or sometimes even raised to the extent that these organizations express unwillingness to assist Kosovo on the issue of membership. This very often results in a lack of collaboration and therefore perpetrators have taken advantage and benefited from the situation. International legal cooperation with countries that have not recognized Kosovo, remains a problematic issue since these countries do not recognize any of the documents issued by Kosovo institutions including court decisions.

## **7. Conclusion**

The Republic of Kosovo, despite all obstacles, has made a great effort to ensure a higher level of cooperation in legal conduct. Such an effort can be seen from the fact that Kosovo has a good legal basis and readiness for the presence of international institutions in the country. Furthermore, Kosovo has shown excellent cooperation with The Hague Tribunal, UNMIK and the EULEX mission. Kosovo has also shown willingness to cooperate with states, including those that have not yet recognized Kosovo. Kosovo institutions also tend to respect the conventions and decisions of international institutions, although Kosovo is neither a contracting party to these conventions nor a member of these institutions, and thus is not directly bound by the relevant legal norms.

However, Kosovo's motivation for international cooperation is an indicator of the desire and aspiration to join international organizations, mainly in the EU. For this reason, the EU institutions have a neutral attitude towards the status of Kosovo, using the footnote which implies without prejudice to the status of Kosovo, taking into account the opinion of the ICJ and Resolution 1244. In this context, the changes to the Lisbon Treaty enables the signing of an agreement on behalf of the EU, among these agreements such as the SAA with Kosovo. Among other things, it should be noted that the EU has a positive approach regarding the process of European integration of Kosovo and here there is a consensus. However, EU-Kosovo reports are specific for many reasons. Among the main reasons is that Kosovo has not yet been recognized by the five EU member states (Spain, Greece, Slovakia, Romania and Cyprus) this complicates this relationship as recognition by these five EU countries mentioned above is an essential condition in addition to the conditions of interior that must be completed by the state of Kosovo. Therefore, we say that Kosovo's relationship with the EU is specific and is a close cooperation with third countries but in the later stages it may be more complete, or different depending on the political developments with five member states that have not Recognize Kosovo as it was emphasized that in addition to the conditions that Kosovo must meet like any other country aspiring to EU membership is the recognition of the state of Kosovo by these five countries!

When it comes to the internal conditions of the EU, it should be emphasized that among them are the observance of the basic principles of EU law, which among the most important principles are the observance of freedoms and human rights. And for the observance of these principles Kosovo has shown unilateral interest but this does not guarantee full acceptance and in particular the supervision in the observance of this right by the courts of the EU or the EC. In this case, the negligence of the institutions increases and the rights of the citizens may be violated. Considering the above, it can be argued that international cooperation is a challenge for Kosovo institutions, but also for international

missions in the country. If not addressed, especially before these missions leave Kosovo, this challenge will expand, not only in relation to Kosovo's access to international institutions, but also in relation to international institutions with a mission in Kosovo.

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