

Layered Justice: Assessing the Acceptance of the Multiple International Criminal Justice Mechanisms in Post-War Kosovo

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Gjylbehare Bella Murati¹

1. Introduction

The violent conflict in Kosovo from 1998-1999 was marked by severe human rights abuses. According to the Kosovo Memory Book (2014), 13,517 people were killed or went missing, both civilians and members of armed forces. This includes 10,415 Albanians, 2,197 Serbs, and 528 Roma, Bosniaks and other non-Albanians. UNCHR accounts in 1999 refer to 700,000 refugees and 70,000 homes that had been damaged or destroyed (UNHCR 1999).

Since the end of the Kosovo conflict in June 1999 the international community has been actively involved in seeking justice and has introduced several transitional justice mechanisms. Such extensive involvement by international actors in domestic jurisdiction has attracted the attention of many academics, most of whom have focused on exploring the functioning of international criminal justice (ICJ) mechanisms, their legitimacy, and providing extensive analysis of the concepts and doctrines produced by these mechanisms (Dickinson 2003, 1059). However, the mere reception of international criminal justice by the recipient groups, such as the passive and active acknowledgement of its processes remains mostly ignored by previous research.

The objective of this chapter is to identify the dominant discourse of the acceptance of international criminal justice in Kosovo, and how international criminal justice is perceived and appreciated by the recipient groups.

The chapter is divided into five sections. The first provides a brief history of the armed conflict in Kosovo and the second an overview of the ICJ dimension there. The following sections explore today's societal discourse on ICJ in Kosovo. They draw on extensive fieldwork in Kosovo which was carried out from April to July 2016. For the purpose of this research, 67 interviews were conducted with different stakeholders, including representatives of non-governmental organisations, political and religious leaders, media, legal experts, representatives of victim associations, war veterans and representatives of international organisations, and informal

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conversations, emails and telephone exchanges over the course of six months. In addition, desk reviews of socio-legal literature, policy documents, legislation and court verdicts with legal analysis and qualitative research methods applied to a number of selected case studies, observation of dispute processing, analysis of case records were used.

This study is part of a larger research project at the International Nuremberg Principles Academy about the acceptance of ICJ in situation countries.² As stipulated in the underlying methodology, the term acceptance refers to:

‘The agreement either expressly or by conduct to the principles of international criminal justice in one or more of its forms (laws, institutions, or processes). This includes a range of actions from recognising, to giving consent, to expressing outright approval’ (Buckley-Zistel 2016).

Two questions guided the research:

- (1) Whether and how actors accept the work of ICJ mechanisms; and
- (2) How the perceived success/effectiveness of these courts affects overall acceptance.

2. The History of the Kosovo Conflict

In 1991, the Socialist Federal Republic of Yugoslavia collapsed, leading to a war which ended in 1995 and the creation of six independent successor states. During this break-up, the Serbian Government took the advantage of the vacuum created by a progressively weakening federation and installed its apparatus in Kosovo (Bellamy 2002). On 23 March 1989, Kosovo lost its previous autonomous status and all the powers it held within the Yugoslav Federation and was re-annexed to Serbia. It was given a provincial statute as its highest legal authority, which significantly reduced its previous legal status (Reka 2003). Subsequently, a series of laws were adopted to gradually dismantle the previous laws enacted by the Kosovo Assembly, leading to the complete de-institutionalisation of the Province (ibid, 232).³ Changes to the Serbian Constitution were passed which revoked the rights of Kosovo Albanians recognised by the 1974 Constitution (Greenwood 2002; Krieger 2001).

The Kosovo Albanians refused to obey these newly enacted laws and also to subordinate themselves to the new regime.⁴ This resulted in a wave of arrests, unlawful detentions, disappearances, extrajudicial executions, house arrests, and politically motivated trials. The Kosovo judiciary turned into a highly politicised institution which was exposed to pressure from the Serbian Government and the period was characterised by opaque trials, known as

² International Nuremberg Principles Academy. Accessed 19 March 2017. <http://www.nurembergacademy.org/resources/acceptance-online-platform/overview/>.

³ The Law on the Action of Republican Organs Special Circumstances, the work on Termination of Work of SAPK and the executive Council of the Assembly of SAPK, the Law on Labour Relations under Special Circumstances, the University Law, the Elementary Education Law, the High School Law.

⁴ For more about passive resistance in Kosovo, known as Rugova’s strategy, see Clark, 2000.

‘telephone justice’, wherein government officials sought to instruct judges by phone calls in order to have an influence on cases that mattered to them.

By the end of 1997, the passive resistance by Kosovo Albanians had given way to an insurgency led by a paramilitary formation, the Kosovo Liberation Army (KLA). The Serbian Government responded by deploying large numbers of army troops and paramilitary forces. The international community became gravely concerned about the escalation of the conflict, its humanitarian consequences, and the risk of it spreading to other countries. As a result, numerous diplomatic efforts were initiated to resolve the conflict peacefully and the UN Security Council issued several resolutions as a warning to the Serbian Government which were however entirely ignored.⁵ These diplomatic efforts failed to resolve the crisis and led to the consideration of a number of possible military options as the only way to bring an end to the violence.

On 13 October 1998, the NATO Council authorised Activation Orders for air strikes to support diplomatic efforts and force Serbia to withdraw its forces from Kosovo, establishing full cooperation in ending the violence, and facilitating the return of refugees to their homes. However, at the last moment President Milošević agreed to comply and the air strikes were called off. Consent on establishing a Kosovo Verification Mission (KVM) under the Organisation for Security and Co-operation in Europe (OSCE), and a NATO aerial surveillance mission was obtained, allowing the situation on the ground to be observed (OSCE 1998).⁶ Despite these efforts to resolve the conflict peacefully, the situation on the ground did not improve and the extent of the human rights violations reached its peak (OSCE 1998).⁷ The KVM observers reported numerous human rights abuses that amounted to war crimes and crimes against humanity.

On 20 March 1999, the KVM mission had to withdraw from the region due to the obstruction by Serbian forces that prevented it from fulfilling its task. This was followed by a brutal counterinsurgency that resulted in massacres and mass-expulsions of ethnic Albanians. In response, new diplomatic efforts were initiated to resolve the conflict and NATO issued a warning to both sides. In Rambouillet near Paris, two sets of talks were organised (6-23 February and 5-18 March 1999), at which the parties were presented with a comprehensive proposal for a peace agreement (Kumbaro 2001). The talks ended with the Kosovar Albanian delegation’s acceptance of the adopted document and the Serbian delegation’s rejection of it,

⁵ UNSC Resolution 855 issued on 9 August 1993 (on the refusal of the authorities of the FRY to allow a CSCE special mission into Kosovo); UNSC Resolution 1160 issued on 31 March 1998 (on the imposition of an arms embargo on Yugoslavia); UNSC Resolution 1199 issued on 23 September 1998 (on the situation in Kosovo); UNSC Resolution 1203 issued on 24 October 1998 (on agreements for the verification of compliance with the provisions of resolution 1199); UNSC Resolution 1207 issued on 17 November 1998 (on the failure of Yugoslavia to execute arrest warrants issued by the International Tribunal for the Former Yugoslavia); UNSC Resolution 1239 issued on 14 May 1999 (on the relief assistance to Kosovo refugees and internally displaced persons in Kosovo, the Republic of Montenegro and other parts of the Federal Republic of Yugoslavia); UNSC Resolution 1244 issued on 10 June 1999 (on the deployment of international civil and security presences in Kosovo).

⁶ Endorsed by United Nations Security Council Resolution 1203 (1998).

⁷ The human rights abuses were richly documented by numerous human rights organisations, such as Human Rights Watch, Amnesty International and the Helsinki Committee.

labelling it a 'Western diktat' (Hosmer 2001, 13-17). Following Milošević's definitive refusal to sign the Rambouillet accords, NATO launched an air campaign against Yugoslavia on 24 March 1999 that lasted 78 days (Herring 2000, 224-225). After fresh negotiations between Milošević, NATO representatives and the G8 member countries, peace was reached with the signature of a military agreement in Kumanovo, Macedonia, known as the Kumanovo Agreement.⁸ Milošević agreed to the deployment of a NATO-led security force in Kosovo and the establishment of an interim administration under the UN.

The humanitarian intervention led to the removal of the forces of the Federal Republic of Yugoslavia (FRY) and the installation of the United Nations Interim Administration Mission in Kosovo (UNMIK). Established pursuant to Security Council Resolution 1244, UNMIK was empowered to temporarily exercise complete sovereignty over the territory of Kosovo. Until 2005, its structure comprised four pillars, each assigned to different tasks: Pillar I was in charge of police and justice and Pillar II of civil administration, both under the direct leadership of the Special Representative of the UN Secretary-General (SRSG); Pillar III was responsible for democratisation and institution building led by the OSCE; and Pillar IV, led by the European Union (EU), was in charge of reconstruction and economic development.⁹ The SRSG was entrusted with absolute power to exercise the legislative, executive and judicial power over the administering entity, and enjoyed the maximum civilian executive powers envisaged by UNSC Resolution 1244.

During the initial phase of the establishment of UNMIK, many Serbian, Montenegrin and Roma minority groups were exposed to violent attacks, including murders, abductions and usurpation of property rights by some ethnic Albanian civilians and some members of KLA.¹⁰ The attacks were committed based on ethnic identity as an assertion that they had been involved in the violence against the Albanian population (Lopes Cordozo et al. 2003, 351-360). Due to such revenge, these groups withdrew into enclaves designated for their ethnic group and mostly declined to take part in the institutional state building process.

The shortfalls that occurred during the UNMIK deployment had a negative impact on the political process. The power vacuum was used by Serbian extremists - former followers of the Milošević regime - to establish parallel structures in the northern part of Kosovo and to oppose the deployment of an international administration on the ground. These parallel structures were noticeable in public administration, security, the judiciary, and educational and health institutions, each claiming to have the same competencies as they had before the NATO bombing (Marshall and Inglis 2003, 101). Today, these parallel structures mainly deal with property issues. However, until 2003 the parallel structures exercised jurisdiction over criminal and minor offences, which in some cases caused an overlap of jurisdiction and led to double jeopardy. The situation remains the same even today: neither UNMIK nor its successor

⁸ Military Technical Agreement concluded between International Security Force KFOR and the Governments of FRY and Serbia on 9 June 1999.

⁹ United Nations Security Council Resolution 1244 (1999).

¹⁰ For more details see Amnesty International 2003.

European Union Rule of Law Mission (EULEX) has succeeded in becoming fully operational in Northern Kosovo.

3. International Criminal Justice in Kosovo

There are three judicial mechanisms that operate in Kosovo: the International Criminal Tribunal for the former Yugoslavia (ICTY) and its Residual Mechanism (UNMICT); hybrid courts and internationalised court; and the recently established Kosovo Specialist Chambers and Specialist Prosecutor's Office (SCSPO). All are located in The Hague, the Netherlands. Post-war justice in Kosovo thus happens on many layers with institutions that have jurisdiction over the same territory. A further form of acceptance, i.e. the domestication of ICJ into the national legal system, is discussed in another chapter of this edited volume written by Dafina Buçaj (2016).

3.1 International Criminal Tribunal for the former Yugoslavia

The ICTY was initially established to prosecute crimes committed during the break-up of the Socialist Federal Republic of Yugoslavia, but has the authority to prosecute individuals responsible for atrocities committed since January 1991 in the territory of the former Yugoslavia, including those committed a few years later in Kosovo.¹¹ It has the authority to prosecute four 'clusters of offences': crimes against humanity, grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, and genocide.¹² Due to the closure of the *ad hoc* tribunals for the former Yugoslavia and Rwanda, in 2010 the UNSC established an international court called the International Residual Mechanism for Criminal Tribunals (UNMICT) to perform the remaining functions of the tribunals.

The ICTY has focused on key political figures and high ranking military leaders, and the overall number of cases related to Kosovo at the ICTY has been small. To date, it has tried several high-profile individuals, including former Serbian President Milan Milutinović and other high ranking police and military leaders who were tried jointly in the Milutinović proceedings.¹³ They were charged with crimes against humanity including murder, forcible population transfer, deportation, and persecution on political racial or religious grounds. In 2003, further charges were raised against former army, security and police staff for crimes against humanity and violations of the law or custom of war. In addition, the ICTY has indicted two eminent political figures of KLA as well a former KLA commander and Kosovar Prime Minister Ramush Haradinaj and Fatmir Limaj.¹⁴ Both have been acquitted of all charges.

¹¹ For a discussion of ICTY see the chapter by Ana Ljubojevic to this edited volume.

<http://www.nurembergacademy.org/resources/acceptance-online-platform/publications/online-edited-volume/>.

¹² United Nations Security Council Resolution 827 (1993).

¹³ International Criminal Tribunal for the former Yugoslavia, *Milutinović et al.*, Case No. IT-05-87-T, Judgment, 26 February 2009.

¹⁴ International Criminal Tribunal for the former Yugoslavia, *Ramush Haradinaj and others*, Case No. IT-04-84bis-T, Judgment, 29 November 2012.

3.2 Hybrid Courts

One of the most interesting novelties of the UN Administration in Kosovo was the establishment of a hybrid court system. The hybrid courts exercise competence over persons who bear responsibility for serious violations of humanitarian law. The initial intention of the international community to establish the Kosovo War and Ethnic Crimes Court (KWECC), an internationally-led, *ad hoc* tribunal, was abandoned after negotiations between the international community and Kosovo representatives. KWECC was to have concurrent, primary jurisdiction over serious violations of international humanitarian law, including war crimes, genocide, crimes against humanity and other serious crimes committed on political, ethnic or religious grounds during the armed conflict in Kosovo, starting from 1 January 1998 (Perriello and Wierda 2006, Marshall and Inglis 2003). However, the idea was received with a degree of scepticism by both domestic and international actors. While the domestic actors feared mainly the potential complications of having an additional judicial layer between the domestic system and the ICTY which allegedly would be more likely to initiate criminal investigations against Albanians who had participated in the armed conflict, the international actors were mainly concerned about the security of court personnel and the costs of such a court (Perriello and Wierda 2006).

On 27 May 2000, a hybrid court system option was chosen, enabling the appointment of international judges and prosecutors to serve in domestic courts in Kosovo. They formed part of the domestic judiciary and were grafted onto the domestic judicial system, applying a compound of international and national substantial and procedural law. The involvement of the international judges came as a result of a continuing failure by local judges to conduct fair trials, in particular in serious cases involving minority victims (O'Neil 2002). The international judges and prosecutors (IPJ) dealt mainly with war crimes, and cases involving inter-ethnic and organised crimes. However, very often they were engaged in matters characterised as politically motivated. It was left to their sole discretion to select and take responsibility for new and pending cases.¹⁵ At the same time, a strict case-monitoring practice¹⁶ was instituted that enabled international prosecutors to resurrect cases abandoned by their Kosovo counterparts (Hartmann 2003).

In 2008, the European Union Rule of Law Mission in Kosovo 'EULEX' was established as a new form of international presence. As a consequence, UNMIK judges and prosecutors were replaced by EULEX judges and prosecutors acting in a separate chain of command from the local counterparts.¹⁷ Subsequently, 1,187 acts of suspected war crimes arising from the conflict which have been identified by UNMIK have been handed over to EULEX. As of today, EULEX initiated 51 new war crime cases apart from five ongoing trials. In total, 53 judgments were rendered in

¹⁵ Section 1.2 of UNMIK Regulation 2000/64. The selection of the cases was performed in cooperation with the Head of the Judicial Department.

¹⁶ UNMIK Regulation 2001/2, amending UNMIK Regulation 2000/6, *on the Appointment and Removal of International Judges and Prosecutors*, 12 January 2001.

¹⁷ The self-governing body established pursuant to Art 4 of the Law on Jurisdiction, 2003/03 L 53.

cases related to war crimes. Currently EULEX is investigating more than one hundred war crimes cases.¹⁸

While the ICTY has convicted several individuals in relation to the Kosovo armed conflict, the hybrid courts (UNMIK/EULEX) proved to be hesitant to do so for a long time. It has been reported on several occasions that judges and prosecutors were not comfortable initiating investigations against high-ranking former KLA officers or politicians. At some point the ICTY prosecutors even accused UNMIK of not providing sufficient documents and cooperation for prosecutions.¹⁹ From the very beginning the post-war political leadership obtained the support of international actors which *de facto* offered them immunity against criminal investigations in exchange for their cooperation, and so the general public believed that no court would pursue the KLA. In the eyes of the international actors, former KLA figures were seen as key to stability in Kosovo. A number of respondents in the interviews argued that international actors were willing to ignore the past and present criminal activities of post-war structures in compensation of maintaining fragile peace.²⁰

A permanent and specialised prosecutorial office operating within the Office of the State Prosecutor of Kosovo (SPRK) was established by Law No. 03/L-052 with exclusive competences in relation to international crimes, terrorism and organised crimes (Article 5 Law No. 03/L-052) and subsidiary competences on a substantial number of offences such as torture, money laundering, corruption, trafficking, and murder (Article 9 Law No. 03/L-052). Since its establishment, the SPRK has been composed of a majority of international prosecutors also due to the reluctance of local prosecutors to handle politically sensitive cases. Until 2014 the Head of SPRK was an international prosecutor to be later replaced by a local prosecutor. The Kosovo Chief Prosecutor had no authority on international prosecutors.

The biggest problem the hybrid courts have continuously faced is the lack of jurisdiction over perpetrators residing in the northern part of Kosovo and Serbia. The lack of jurisdiction has mitigated the success of the courts in bringing suspected perpetrators to trial. With a view to the ICTY it is important to note that there is an issue of overlapping jurisdiction regarding the tribunal and the hybrid courts since the latter also retain jurisdiction over war crimes, inter-ethnic crimes and the crimes related to corruption and organised crime. In order to reduce the overlaps, the hybrid courts have exercised their jurisdiction through comity and cooperation with the ICTY. However, the ICTY continues to assert its primacy in virtually any situation.

¹⁸ Statistics obtained from OSCE and EULEX reports and the EULEX.

¹⁹ 'During Petersen's years as head of UNMIK from 2004 until 2006, ICTY prosecutors even accused his mission of not providing sufficient documents and cooperation for prosecutions' (Ristic 2016).

²⁰ Several NGO representatives including some (opposition) politicians stressed that the main goal of the international community in Kosovo is to maintain the fragile peace.

3.3 Kosovo Specialist Chambers & Specialist Prosecutor's Office

In 2010 the idea of establishing a new layer of justice emerged by establishing the Kosovo Specialist Chambers & Specialist Prosecutor's Office (SCSPO). The establishment of the Specialist Chambers and the Specialist Prosecutor's Office relates back to a report on *Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo* issued by Swiss prosecutor Dick Marty, which made serious allegations about the crimes that occurred in the aftermath of the Kosovo conflict (from mid-1999 to mid-2000) led by former high ranking KLA figures. The Parliamentary Assembly of the Council of Europe approved the report in January 2011, expressing concerns about allegations 'that serious crimes had been committed during the conflict in Kosovo, including trafficking in human organs'.²¹ On 3 August 2015, the Kosovo Assembly adopted Article 162 of the Kosovo Constitution and the Law on the Specialist Chambers and Specialist Prosecutor's Office enabling the establishment of the SCSPO with a mandate to try serious crimes committed by the KLA during and in the immediate aftermath of the Kosovo war. The SCSPO has jurisdiction over crimes against humanity, war crimes, and crimes under the criminal codes in force in Kosovo at the time the crimes were committed.²² The Chambers are established under Kosovo law and are composed of international judges and prosecutors. It is not an international tribunal, but a Kosovo national court that administers justice outside Kosovo. The court became operational in February 2017.

4. General Attitudes towards International Criminal Justice

On a general level, in the interviews conducted in the course of this study the vast majority of the respondents (both Albanian and Serbian) were very well informed about the ICJ mechanisms, in particular the ICTY, even though it is not located in the country. This might be because of the long-term presence of the ICTY on the territory of the former Yugoslavia which has raised society's awareness about the functions of the ICTY: 'Our society has witnessed war crimes, not only in Kosovo but in the whole region. I would say that the whole society is somehow familiar with the justice of the ICJ mechanisms.'²³

Despite criticism of ICJ mechanisms, there is a strong desire for retributive justice in Kosovo society. As a consequence, restorative justice remains elusive. While victims associations prefer not to discuss reparations as an alternative form of justice, it has been raised by the representatives of the civil society. Most interviewees believe that restorative justice is just a fancy way to let criminals go free, which enables offenders to escape justice and actually never 'pay for' their deeds.

On a general level, during the interviews it became apparent that many people in Kosovo thought that the ICJ mechanisms were externally imposed and designed to fill a political and

²¹ Council of Europe 2011, Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo.

²² These will include for example the Criminal Code of the Socialist Federal Republic of Yugoslavia (1976), the Criminal Law of the Socialist Autonomous Province of Kosovo (1977).

²³ Personal interview, 20 June 2016.

legal vacuum in a post-conflict country. Although seen as imposed from above, such mechanisms have been welcomed by the vast majority of the Albanian community, as they have been introduced to the society as a part of the peace-building process. It has been observed that the vast majority of Kosovo Albanians had a particular set of expectations about an ICJ involvement. Faith in the international community and an overall perception about international intervention as a rescue that brought freedom to the country has nourished such expectations. However, as pointed out by a legal expert:

‘Promises made at the beginning of the international administration in Kosovo were not realistic. Expectations were raised well above what could be achieved in practice based on the pragmatic circumstances that Kosovo faced after the conflict.’²⁴

It appears that Kosovo society had ‘idealised the international factor, simply by looking at it as a binary opposition. In this context, Serbia is black and international factor is white’,²⁵ said a member of the Kosovo Parliament, Albin Kurti.

The overwhelming majority of Kosovo Albanian interviewees stated that ICJ is a legal duty that arises from international law and which must be respected. The involvement of ICJ is also considered as a way to fill in the gaps of Kosovo’s poor legal culture.²⁶ It has been stressed that Kosovo society lacks neutrality, and that domestic courts are not capable to distribute justice in an equal manner. Moreover, the legacy of the Serbian regime affected the country’s legal culture, including the post-conflict situation, so that international criminal justice is seen as a need for legal certainty and procedural fairness in the administration of justice.

While the majority of Kosovo Albanians welcomed the establishment of ICJ mechanisms, the Serbian minority population had negative attitudes towards both the ICTY and hybrid courts.²⁷ Historical circumstances, especially the NATO intervention in 1999 have created an atmosphere of doubt, distrust and disrespect towards international institutions. According to a UNDP survey conducted in 2012, 87 per cent of Kosovo Serb respondents were not satisfied with the work of the ICTY and expressed doubts about its fairness.²⁸

²⁴ Personal interview Ganimete Asllani Price, Lecturer on Law, Queen’s University Belfast, 16 August 2016.

²⁵ Personal interview, Albin Kurti, Vetevendosje, 11 April 2016.

²⁶ ‘Our judges and prosecutors were not allowed to practice their profession for one decade. Milosevic installed its own judicial regime’, personal interview Gjylfidane Mala, Women’s forum of LDK, 14 April 2016.

²⁷ ‘The Serbian community has been heavily affected by the conviction of Ivanovic. It simply confirms all their doubts that they had towards international community from the very beginning’, personal interview NGO 03, NGO from northern part of Kosovo, Mitrovica, 08 April 2016.

²⁸ UNDP 2012.

4.1 Building Alliances with Political Leaders

The widespread acceptance of the initial involvement of ICJ in Kosovo is linked with a particular moment, the international humanitarian intervention which has been widely perceived by the Albanian community as an act of liberation. The installation of ICJ mechanisms came as part of the UNMIK enterprise and was introduced covertly. Resolution 1244 empowered the SRSG to exercise all legislative and executive authority and to take responsibility for the administration of justice.²⁹

Given an unstable political environment caused by huge political polarisation, between the Democratic League of Kosovo (LDK) party who followed a non-violent strategy and a post-war emerging force from the Kosovo Liberation Army (KLA) structures who carried out more radical elements and who advocated the use of force, UNMIK had no choice than to legitimise their hold on power by bringing them into an institutional framework. In this regard two types of relations emerged, one between UNMIK and Albanians, and a second between UNMIK and Serbian parallel structures in the enclaves and the northern part of Kosovo. As a consequence, former fighters from both sides became part of this new post-war order. They managed to craft alliances with international actors and moved to stable political positions. In this regard, they obtained influential positions in the political, economic, and social life of Kosovo.³⁰

4.2 The Political Leadership's Acceptance of International Criminal Justice

Generally speaking, the attitude of the political leadership towards ICJ mechanisms is characterised by a mixture of different features that arise in different time periods, suggesting that acceptance changes over time and with the performance of courts and tribunals. For instance, among Kosovo Albanians the inception phase of ICJ was met with a 'warm welcome' which came as a result of the gratitude towards the rescuers. However, this phase is also characterised by a lack of awareness about the mandate of the different ICJ mechanisms. The very act of the UN intervention legitimised all forms of institutional arrangements. In the later stage, during the UNMIK's administration, notably after the first arrests of some former KLA members in 2003, the perception of ICJ changed across society, which can be described as a mixture of disapproval and tolerance of ICJ. Political representatives, in particular those belonging to the former military structure continue to believe that the aim of the international community is to create an artificial balance between oppressors and liberators.³¹ Lately, from 2015 onwards, it has been seen as forced compliance. In the words of one politician:

²⁹ United Nations Security Council Resolution 1244 (1999).

³⁰ This stands for both, Albanian and Serbian parties.

³¹ 'The aim of the ICJ actors was not to try war crimes, but to create circumstances that will enable to start investigation of alleged crimes committed by former KLA soldiers', personal interview Pol 01, Pristine, 27 June 2016.

‘Those who negotiated the creation of the Special Chambers were fragile and could not resist pressure exercised by international factors. They were conditioned to do that.’³²

The approval of the Kosovo Specialist Chambers by the Kosovo Government came as a result of compulsory power exercised by the international community and its ability to exercise the multiple functions, and nurture the acceptance of ICJ mechanisms within the political circle. Thus, when it comes to the acceptance of ICJ by the Albanian political leadership, every action reflects dominance and subordination.³³ In 2015, during the negotiation process of the SCSPO some members of the political leadership (mainly the opposition) openly opposed the establishment of the Chambers stating ‘by approving this court, we are turning ourselves into a monster.’³⁴

The political leadership developed ingratiating and servile attitudes towards international actors from the beginning;³⁵ subsequently there is a constant tension between politics and justice. The compliance behaviour towards the international community’s demands is often justified as the fulfilment of the obligation to justice. In the words of a politician:

‘Because of fear and pressure that comes from internationals they are ready to accept everything. By doing so they are not doing a favour to the society, only to themselves, in particular to some individuals which are deeply involved in crimes.’³⁶

By acting in such a manner, the political leadership plays with a double edged-sword: in one way it shows willingness to comply with international demands, while at the same time creatively hiding its actions from the public. For example, during the negotiations concerning the establishment of the SCSPO, the negotiation team, through a lack of transparency, succeeded for some time to prevent the public from understanding the real reasons behind the decision for accepting the establishment of the SCSPO. By doing so they managed to turn the focus on potential benefits for themselves and their followers. In this regard a new law was adopted allowing financial support for the legal protection of the accused by the SCSPO.³⁷ Such an act has been exposed to severe criticism by both the NGO sector and some political representatives.³⁸

‘This law has served as a tool to obtain necessary votes for the Specials Chambers. It has been initiated prior to the adoption of a law on the establishment of the Special

³² Personal interview Pol 04, AAK member, 18 June 2016.

³³ Personal interview Shkurte Aliu, Vetevendosje activist, 14 June 2016.

³⁴ ‘During the war, we were not monsters; we were victims’ (Bilevsky 2015).

³⁵ ‘This set of disciplinary mechanisms created political parties servile to the international community and unaccountable and irresponsible to Kosovo citizens in general’ (Visoka 2011, 99).

³⁶ Personal interview Pol 06, Vetevendosje Political Party, 14 June 2016.

³⁷ Republika e Kosovës, Law No. 05/L -054. Accessed 5 July 2016. <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-054%20a.pdf>.

³⁸ ‘The representatives of the LDK party proved not to be in favour of this law although the majority of them have voted in favour of adoption, which is a scandal. The state wants to favour political figures that might be involved in war crimes. They found another way to have access to state money (public)’, personal interview Pol. 08, Pristine, 30 June 2016.

Chambers in order to convince the parliamentary members to vote in favour of adoption.³⁹

This law has served as a tool to obtain necessary votes for SCSP0.⁴⁰ It was initiated prior to the adoption of a law on the establishment of the SCSP0 in order to convince parliamentary members to vote in favour of its adoption. It came as an assurance that the state would stand next to the alleged perpetrators (most of them politicians) and to offer them maximum support.⁴¹

While a large number of Albanian politicians act in compliance with international wishes, the *Vetevendosje* movement is the only one that continues to openly oppose the international intervention in Kosovo (McKinna 2012). Since November 2005, the activists of *Vetevendosje* have campaigned through writing graffiti on public premises, marching on the streets, deflating the tyres of UNMIK cars and organising massive demonstrations. On 10 February 2007, the *Vetevendosje* activists organised a protest calling for the rejection of the then recent proposals for the status of Kosovo issued by UN Special Envoy Martti Ahtisaari, which, according to *Vetevendosje*, would lead to the ethnic division of Kosovo and indefinite international rule. As a consequence of the use of excessive force by UNMIK police, two people were killed and 82 others injured.⁴² Due to such opposing attitudes the *Vetevendosje* movement is generally disliked by international actors and labelled as destructive force in Kosovo (de Borja Lasheras 2016). Yet, while they hold a critical opinion about the international presence in Kosovo, when it comes to the ICJ involvement they prove to be less critical. In their opinion:

‘[C] is necessary, but the justice the ICJ mechanisms want to achieve does not mean justice. This justice aims to achieve peace at any cost. People have a problem to look at justice as the aim of reconciliation. They find it difficult to make peace with Serbia, which does not accept them/us. We need: Political restoration not human restoration.’⁴³

4.3 Civil Society’s Attitude towards International Criminal Justice

Due to the society’s violent past in which ethnic groups were mobilised against each other, the entire Kosovo society continues to be divided along sharp ethnic lines. For a long time the civil society’s involvement in transitional justice processes was very limited. In the aftermath of armed conflicts, certain advocacy activities have been detected involving the collection of testimonies from victims. Unfortunately, none of them considered filing private complaints with the Public Prosecutor’s Office against the alleged perpetrators.

³⁹ Personal interview Pol.09, Peja, 03 July 2016.

⁴⁰ Similar strategy has been used in other countries of the former Yugoslavia. For instance Serbia and Croatia supported so called voluntary surrenders and introduced a legal framework that offers institutional support to suspected individuals. See Subotic 2009.

⁴¹ Parliament approved the special court by a vote of 82 to 22, with 2 abstentions.

⁴² Letter sent by the Acting Ombudsperson to the SRSG, dated 13 February 2007.

⁴³ Personal interview Albin Kurti, member of the Kosovo Parliament, representative of *Vetevendosje*, 11 April 2016.

Recently the NGO sector has become very vocal with regards to demanding justice for past wrongdoings. Although it is generally funded by the donor community and thus its attention is very often directed to external actors, it has started to play an important role in raising awareness and improving the public perception of war crimes trials.⁴⁴ The awakening of civil society is seen as a result of events which occurred in Kosovo's political arena which links the new leadership with acts of corruption and organised crime. As a result, civil society has become vocal and asked the authorities to bring these individuals to justice.

Beginning of August 2016, online media began publishing leaked wiretap conversations between PDK high ranking officials. The leaked wiretaps were collected from a EULEX investigation of PDK official A.G. during his stint as Deputy Minister of Transport and Telecommunications between 2008 to 2011. The leaked conversations revealed that A.G. played an important role in appointing party members to key positions in various independent agencies and state institutions.⁴⁵

One may ask what if this new leadership had not been involved in acts of organised crimes and corruption, would Kosovo society ever have questioned their pre-war activities?⁴⁶ In this context, it is considered by the NGO representative that:

'Corruption should not be given priority, the ICJ should focus on investigating commanders for war crimes first and then for corruption if they want to be accepted by the society. The impunity is and has been a major obstacle for the acceptance of ICJ courts.'⁴⁷

However, looking at the current discourse of Kosovo's civil society in relation to ICJ indicates mixed opinions on the Court's acceptance. While ICJ mechanisms are seen as the only viable option, a set of questions has been raised concerning, for example, the quality and impartiality of justice dispensed by courts that are only focusing on crimes committed by former KLA and are completely powerless to initiate investigations for crimes committed by Serbian military and paramilitary forces:

'Crime does not have nationality, ethnicity or religion. Justice is a double-edged sword. Some will like it, some not. One may accept it, while others not. But in principle, justice has to do with a decision issued by an impartial and independent court. Only then it can be accepted. Speaking in the context of the justice delivered in Kosovo, I must say that our society is a bit disappointed in the ICJ mechanisms that are operating in Kosovo. Expectations were high and little has been done. Perhaps it

⁴⁴ In particular Humanitarian Law Centre, Youth Initiative, Center for Research, Documentation and Publication etc.

⁴⁵ A.G. resigned following a range of protests which had been organised after the wiretaps claims revealing that key political figures of the PDK party exerted strong influence over public sector positions, see Gjinovci 2016. Prior to this on 27 April 2016, A.S. a former KLA fighter, member of Kosovo Parliament and six others had been arrested as part of an investigation involving organised crimes, such as money laundering and the abuse of official positions, see Bytyci 2016.

⁴⁶ Personal interview Political Analyst 01, Pristine, 01 April 2016.

⁴⁷ Personal interview, representative of NGO Youth Initiative, 24 June 2016.

was not an easy endeavour, not an easy task, but justice requires serious commitment'.⁴⁸

The personal experience in the judicial system has a direct impact on the acceptance of justice. In this context, the failings repeatedly cited by the respondents include slowness, injustices,⁴⁹ effectiveness, fairness and the lack of professionalism.⁵⁰ According to the Head of the Kosovo Rehabilitation Center, 'the society has lost trust in international justice. Thousands of rape crimes have been reported and imagine nobody has ever undertaken one move to investigate these crimes.'⁵¹

5. Fairness of International Justice

Kosovo's past consists of many layers of oppression, inter-ethnic clashes, and wars. There is thus a common opinion among the Albanian population that suffering resulting from this past has not been acknowledged properly either by the parties involved in those conflicts or by ICJ. Subsequently, a vast majority has been shown to respond both suspiciously and critically to international justice. This shows that the perception about ICJ mechanisms has undergone a significant transformation over the last decade. There is an emotional reaction composed of a mixture of anger, disappointment and frustration at the ICJ actors because of the violation of trust. In the words of Nesrete Kumnova, of the Association of Mothers of Gjakova: 'I used to trust them at the beginning, but not anymore.'⁵² According to the political analyst Shkelzen Gashi, 'blackmailing, political negotiations, negotiations of justice, all of these had negative impact on justice.'⁵³

There is a sentiment that the justice delivered by the ICJ mechanisms (both ICTY and the hybrid courts) lack fairness and efficiency because it has been hampered by a range of different factors. One of them is a lack of a comprehensive witness protection law that specifies procedures for enrolment and responsibilities of the witness and programme, a point raised by almost all interviewees. Additionally, there is also a failure to properly safeguard and maintain confidentiality when changing the identity of protected witnesses, which very often jeopardises their safety. It has been noted that the testimonies of witnesses were poor as most of the time they appeared stressed and confused, and that brought into question the reliability of their testimony. This came as a result of a court's failure to address the issue of familiarisation of the witness with the process of testifying before the court.⁵⁴ This has effectively stalled proceedings,

⁴⁸ Personal interview Gj.A., a lawyer who used to work for NORMA, Pristine, 11 April 2016. The same opinion is shared by Gj.M., Human rights activist who was also affiliated with Women's forum of LDK, Peja, 14 April 2016.

⁴⁹ 'People accept something what is just. Injustice cannot be accepted. So far we have been faced with injustice only', personal interview, NGO 05, NGO from North Kosovo, Mitrovica, 08 April 2016.

⁵⁰ 'They lack professionalism. They cannot keep track of the court documents. For instance, loosing statements of the witness's testimony', personal interview NGO 11, NGO representative, 25 June 2016.

⁵¹ Personal interview Feride Rushiti, Kosovo Rehabilitation Center for Torture Victims, 05 April 2016.

⁵² Personal interview, 09 April 2016.

⁵³ Personal interview, Pristine, 01 April 2016.

⁵⁴ For instance in the case of the Bogujevci family (trial carried out before Special Court in Belgrade, Serbia), the Humanitarian Law Centre appointed a psychologist to prepare witnesses for their testimony before the court, which proved to be very successful. Personal interview Anka Hajdari, Humanitarian Law Center, 25 June 2016.

particularly in the cases when the person was a crucial witness. The failure to ensure adequate protection, support and assistance to witnesses has encouraged non-cooperation between witnesses and prosecution. Many witnesses have not been given the protection and support they deserve, which very often deterred others from giving testimony. It has also been observed that in some cases international prosecutors failed to treat witnesses in a fair and respectful manner. For instance, it has been reported by one witness that 'he was brought by the international prosecutor and police officers to the forest where he was exposed to psychological pressure to testify for a case.'⁵⁵ Forcing a witness under such circumstances to testify is extreme and there is a plausible risk that the witness will commit perjury to do it, argued Genc Nimoni of the Cohu Organisation.⁵⁶

Another related concern that was raised by the respondents was the fairness of justice. One of the most notable gaps relates to the violations of the principles of the administration of justice, particularly carelessness in administering the testimony and witness interference. The survivor of the Qyshk massacre who testified before both international and hybrid courts says:

'I am exhausted. Sick of everything. My testimonies did not bring to jail those who have been directly responsible for all those atrocities. One thing I know, I will not go to the court anymore [...] no testimonies anymore. Why for? Just to help them pretend that they are doing something.'⁵⁷

The representatives of the victims associations stated that the UNMIK prosecutors have been reluctant to initiate investigations although they were in possession of all of the necessary information provided by eye-witnesses and victims' families.⁵⁸ For instance, it has been reported by interviewees who observed the process of the transfer of competencies from UNMIK to EULEX, that many files from the UNMIK prosecutorial office were missing information. In one file, they even found a letter issued by the UNMIK prosecutor ordering investigators to destroy evidence.⁵⁹

Another concern raised in the interviews was the lack of jurisdiction over perpetrators residing in the northern part of Kosovo and Serbia. The northern part of Kosovo is mainly inhabited by the Serbian community, which is concentrated in four municipalities: Leposavić, Zubin Potok, Zvečan and the Mitrovica part of the town in the north. The population of this area has been opposing the installation of the UNMIK administration since the beginning. A majority consider that such an obstacle has mitigated the success of the courts in bringing to trial suspected perpetrators. A former UNMIK official says that in some cases judges were exposed to external pressure and consequently had to give up prosecutions. He refers to the case of Zoran Stanković, a former Serb policeman who was accused of taking part in the Reçak massacre in January 1999.

⁵⁵ Personal interview Genc Nimoni, Cohu Organisation, 09 May 2016.

⁵⁶ Personal interview, 09 May 2016.

⁵⁷ Personal interview Hazir Berisha, 14 April 2016.

⁵⁸ Personal interview Agron Hoti, Association of Victims Krusha e Vogel, Nesrete Kumnova, Association of Mothers of Gjakova, and Lush Krasniqi Victim Association, Gjakova and Krusha e Vogel, 09 April 2016.

⁵⁹ Personal interview Hilmi Jashari, Kosovo Ombudsperson, Pristine, 15 June 2016. He was present during the transfer of competencies from UNMIK to EULEX.

Some former international judges have also reported cases involving political interference during their stay in Kosovo, reflecting the intention of halting an investigation involving the prosecution of 'certain persons'. Consequently, many cases are stalled due to the incapability of prosecutions to secure sufficient evidence as well to ensure the physical security of witnesses (O'Neil 2002). Thus, a number of interviewees fear that the war crimes trials have become the subject of political negotiations between local and international political actors, which indicates that many alleged crimes may remain unresolved and untried.

However, one of the most persistent criticisms of international courts has been that they lack independence, impartiality, and transparency. From 67 respondents only one declared that she considers ICJ mechanisms to be independent and impartial. The recent allegations from the former international prosecutor Maria Bamiah about malicious and corrupt acts, and the wilful abuse of the judicial office by certain international judges and prosecutors in Kosovo has raised grave concern about the quality of justice provided by internationalised courts. Maria Bamiah came across the wiretaps of the former Minister of Health on trial for bribery and tax evasion, revealing information about attempts to negotiate a lesser sentence from judge F.F. who according to Bamiah (2014), accepted €300,000 from the family of a suspect.

Yet, despite the criticism of ICJ mechanisms, there is a shared view among both the Albanian and Serbian communities that the domestic system lacks the capability to handle cases on its own and that ICJ is the only alternative. It was stressed by interviewees that even after 17 years of state-building the institutions lack capacity, professionalism and independence to carry out prosecutorial and judicial functions on their own: '[I]ocal authorities are avoiding taking responsibilities and therefore everything remains in the hands of the internationals,' stated Don Lush Gjergji, vicar in the Catholic Church.

Lately much has been debated about the establishment of the SCSP, which have been mandated to try serious crimes committed by the KLA during and in the immediate aftermath of the Kosovo war. The very establishment of the SCSP divided the Albanian population into two parts: those who are pro the establishment of the court and those who are strongly opposed. While the majority in Kosovo considered the court to be biased, as it is designed to try only former KLA fighters, and to criminalise the 'liberation war' in Kosovo by putting liberators and oppressors in the same basket, a certain percentage sees the court as an opportunity to 'to get rid of the new leadership.'⁶⁰ However, the court enjoys wide support among the Serbian population due to hopes that it will prosecute crimes against Serbs.⁶¹ Yet, it remains to be seen whether this newest layer of justice will prove successful. The main concern regarding this court is its capacity to search for justice after seventeen years. Most cases involving eyewitness testimony depend on the accuracy of long-term memory. Testimonies that have been taken later

⁶⁰ The Special Chambers are seen as a tool to get rid of political opponents, corrupted leadership, and post-war organised crime. Personal interview Political Analyst 01, Pristine, 01 April 2016.

⁶¹ Interviews conducted by the different NGOs in North Kosovo and Gracanica.

in legal proceedings are very often filled with half-truths and, all too often, misattributed.⁶² So, in this regard, one may have difficulty in accepting as accurate the testimony of witnesses after such a long period of time knowing that their memory may have faded over time.

Some of the criticism regarding the hybrid tribunals refers to the relationship between international observers and Kosovars regarding the influence on the trials. The perceived power-asymmetry as expressed by a judge:

‘They run the entire process. In the panel they were two (internationals) and from our side one, and they have the final word. The documents in the files are missing; they even don’t know where they are. When we ask for a certain document the answer is always the same: UNMIK lost it!’⁶³

The representatives of civil society and the legal community stressed a need for mutual consent and cooperation between national and international actors. They insist on so-called ‘right to shape’ meaning the right to shape justice together. The current practice reflects intrusiveness and polarisation (local/international) which has a direct impact on acceptance of international justice in the society.

6. Allegation of Bias and Selective Justice

Many respondents have lauded the criticism of the ICJ mechanisms in Kosovo, characterising it as a product of political compromise. It seems to be widely believed, by both Kosovo Serbs and Albanians that they neglect the interests of the victims and, instead, render justice based on the interests of groups within a state or according to the interests of international actors. The most frequent issue that has been raised by the respondents was the selective nature of international justice.⁶⁴ For instance, it was argued that the very fact that UN/EU authorities play a primary role in appointing judges and prosecutors makes them vulnerable to the influence of those who might affect their employment prospects. Interviewees from the NGO sector, in particular, argued that this can affect the judges’ impartiality. Representatives from victim’s organisations were concerned that they can also hold an individual view of the Kosovo’s past that favours one side or the other. Each of the interviewees stressed that law needs to be applied consistently and fairly to all those who violate its norms, not just against the weakest party. Yet, when it comes to the weakest party, both communities claim to be the victim and in the weakest position. The Albanian community believes itself to be a victim of the Serbian regime which

⁶² ‘War crime witness testimony is also susceptible to inaccuracy for other reasons. [...] Their stories have sometimes changed form over the years. [...] The phenomenon of ‘misattribution’ of witness memories to the wrong time or place is a familiar event in any trial’ (Wald 2014, 236).

⁶³ Personal interview Judge 03, Peja, 27 May 2016.

⁶⁴ ‘I have a feeling that they were negotiating/calculating justice. For instance in 2015, it opened investigation against 8 Albanians and 2 Serbs’, personal interview Feride Rushiti, Kosovo Centre for Rehabilitation of Torture Victims, 05 April 2016.

committed the most horrific crimes against it, whereas the Serbian community claims to be the victim of a plan designed by extremists and supported by international actors.⁶⁵

The fragility of the ICJ mechanisms can be best explained by poor performance, in particular by the hybrid courts.⁶⁶ It appears that there was significant political pressure on the judicial processes that seriously affected the outcomes. Both local and international judges proved not to be immune to external pressure.⁶⁷ Moreover, the lack of knowledge of the national law has made it difficult for the international prosecutors and judges to process cases appropriately. In addition, a local judge argued that they were very slow in processing cases and very careless with regards to handling sensitive information.⁶⁸ The hybrid courts have been understaffed which led to delays in processing cases. 'With one Sallustro [the most vocal international prosecutor in Kosovo] you cannot initiate so many investigations', stated a legal expert.⁶⁹

However, the majority of interviewees believe that the domestic political leadership bears equal responsibility with ICJ actors for the poor performance of ICJ mechanisms. It appears that ICJ mechanisms are judged by their performance which is examined through universal standards. It has been highlighted that the effectiveness and fairness of any judicial decision depends on impartiality and the independence of a judicial system.

7. What to Accept? Justice as Charity?

How society views and evaluates the work of ICJ mechanisms can serve as a starting point to uncover the successes of these mechanisms. Interviews conducted for this purpose reveal that, notwithstanding the widespread acceptance of the ICJ mechanisms as a concept, there is deep dissatisfaction with the quality and quantity of justice delivered. The majority interviewed associate the ICJ mechanisms with justice. The way the interviewees comprehend justice is linked to the number of accused that come from the ethnic communities concerned. The Albanian community expressed its concern that the courts have not convicted enough suspected war criminals from the Serbian side, while the Serbian community regards as unjust the fact that the ICJ mechanisms are only targeting Serbian officials and rarely officials belonging to the Albanian community, as exclaimed by an NGO representative: 'UNMIK/EULEX did nothing regarding crimes committed by the KLA.'⁷⁰ The distrust has increased after the prosecution of Serbian leader Oliver Ivanović. He was sentenced to nine years imprisonment for war crimes committed against the Albanian population. The NGO sector operating in northern Kosovo jointly declared that this was a politically motivated trial. Another grievance expressed by the

⁶⁵ International Crisis Group. 2002. 'Kosovo and Serbia: A little Goodwill could go a Long Way.' Accessed 05 May 2016.

<https://www.crisisgroup.org/europe-central-asia/balkans/kosovo/kosovo-and-serbia-little-goodwill-could-go-long-way>.

⁶⁶ The respondents share a common opinion that the ICTY has performed better than domestic courts.

⁶⁷ Swedish judge, Christer Karphammar, who previously worked as a judge and as a prosecutor in Kosovo, stated that he 'directly knows of several cases in which UN and KFOR senior officials opposed or blocked prosecution of former Kosovo Liberation Army members, including some now in KPC (TMK). [...] The investigations were stopped at a high level.' For the entire time he worked in Kosovo, 'the judiciary was not allowed to work independently' (O'Neil 2002, 91).

⁶⁸ Personal interview, Local judge of the Basic Court in Peja, Peja, 27 May 2016.

⁶⁹ Personal interview, 21 July 2016.

⁷⁰ Personal interview NGO 03, North Kosovo, 08 April 2016.

respondents is the deep dissatisfaction with the sentencing practice of the ICJ mechanisms. It appears that the ICJ sentences are too lenient and do not constitute sufficient punishment.⁷¹

For victims and their families, the acceptance in the context of ICJ is associated with a positive outcome.⁷² 'Any time we hear that someone has been arrested it gives us some hope. And soon after you hear that investigations are pending, perpetrators are acquitted, or if we are lucky there is a court verdict and very often with a ridiculous sentence' explained Agron Hoti from the Association of Victims of Krusha e Madhe. Victims and their families moreover want institutions to treat them fairly and to operate according to fair rules. They concede that international justice is necessary and cannot be objected to, as this would have a negative impact on justice. It seems that beneficiaries of justice are careful not to antagonise distributors of justice.

Nevertheless, the overall majority of interviewed stakeholders (both Albanian and Serbian) accept the idea of ICJ intervention, as they see it as the only viable option. Without ICJ, very few criminals would have ever stood trial. International justice has been associated with the international community's willingness and responsibility to deal with mass atrocities. A majority of respondents agree that Kosovo's domestic system is inherently weak and not sufficiently balanced and impartial to adjudicate on past atrocities, in particular to deal with crimes committed by members of the ruling leadership. Domestic courts are neither well prepared nor willing to deal with individual criminal responsibility for crimes committed during the war:

'Domestic actors not only lack willingness to deal with past atrocities but they are exposed to constant fear. For instance, prosecutors do not dare to initiate and investigate, prison guards are weak and not capable to carry out their duty, doctors need to be at the disposal of the perpetrators to issue fake diagnosis, witnesses are not protected, etc. The judicial system is corrupted and fragile.'⁷³

Several respondents stressed that current practice is mainly focused on pacifying the region and not on delivering justice. This is because, to date, both the ICTY and hybrid courts have applied 'selective prosecutorial policy' served by political games.⁷⁴

This range of grievances about the justice of the international mechanisms has been termed by a respondent as 'justice as charity,' i.e. 'justice' out of pity.⁷⁵ It has been claimed that the behaviour of the ICJ actors mirrors those of humanitarian aid workers. Accordingly, they have turned 'dealing with a legacy of human rights abuse' into charity.

⁷¹ Personal interview NGO 02, 14 April 2016.

⁷² Personal interview, Krusha e Madhe, 09 April 2016.

⁷³ Personal interview Pol. Analyst 01, Pristine, 01 April 2016.

⁷⁴ 'Selective justice accompanied with political calculations. Hybrid courts postpone the investigation of war crime cases in order to keep this fragile peace', personal interview, representative of the Humanitarian Law Centre, 15 April 2016.

⁷⁵ Personal interview, Nesrete Kumnova, Representatives of Victims Associations and founder of NGO Thirjet e Nenave, 09 April 2016. The war crime survivor of the Qyshk massacre call it 'a misery of justice', personal interview Hazir Berisha, 14 April 2016.

8. Conclusion

Having been continually exposed to a wide range of atrocities in the past, in 1999 the majority of the Kosovo Albanian population regarded the international community's intervention as the salvation of the nation. The international actors were portrayed as liberators who not only brought peace and security, but also democracy and justice. Besides gratitude, there was a lot of trust in the international community, and subsequently, every undertaking was considered beneficial for society. However, since 2003, the trust in the international courts has been gradually decreasing. Large parts of the Kosovo Albanian population started to believe that the ICTY is trying to establish a sort of political balance between Belgrade and Pristina in order to enhance its reputation among the Serbian population and 'seek forgiveness' for the NATO bombardment in 1999.

In the interviews, it was apparent that there is a common opinion that domestic courts suffer from low capacity and manifest low willingness to prosecute war criminals. It was argued that the Kosovo judicial system lacks willingness, suffers from neglect, and remains subject to influence by nationalist elements and the overall interests of international actors. The post-war leadership emerging from periods of massive violations of human rights is unable, for a combination of practical and political reasons, to prosecute those responsible for the past human rights abuses.

The general perception of the presence of selective justice seems to be one of the most problematic aspects of the acceptance of the ICJ in Kosovo. The selective justice and numerous political calculations left the ICJ mechanisms in a difficult position. Nevertheless, victims and their families are still in search of justice and the truth. Despite the fact that most of them feel neglected and ignored by international prosecutors and judges, and do not perceive the system as just and fair, they still opt for retributive justice.

Subsequently the SCSPo became a last hope for justice although it is seen with a degree of suspicion by the majority in Kosovo. There is a common opinion that it will share the same destiny as the hybrid courts in Kosovo which have been surrounded by a range of shortcomings, lengthy procedures, interferences of external factors that resulted in the selectiveness of justice and subsequently have limited their contribution to truth, justice, and reconciliation. According to a representative of the Youth Initiative:

'Both UNMIK and EULEX courts failed to bring justice, so it is difficult to believe that SCSPo can do it. The Special Chambers should deal with crimes committed by both sides, Albanian and Serbian. My fear is that most of the crimes committed by the Serbian regime will remain unpunished.'⁷⁶

⁷⁶ Personal interview, 24 June 2016.

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Despite widespread criticism, ICJ is associated with the international rule of law, the equity and court fairness that needs to be observed by everyone, including both those that deliver justice and the beneficiaries of justice. It was expected to be perfectly just and simply promoting the true account of justice. Not to allow to be perceived as charity workers that turn justice into an act of charity, a form of justice that is obtained through blind eyes, with no effort, no responsibility and no risk. A type of justice that reflects will and ideologies of superstructures, of those that pose greater skills to bring intelligent decisions and deliver justice in their own way.

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