

Time for Justice in Kosovo

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Anyone who has any interest in Kosovo knows that the country has been and remains a haven for a dreadful complex of clan-based criminality, trafficking and corruption linked to its political leadership. The European Commission's so-called 'progress reports' for 2009 and now 2010 hardly change, with identical expressions repeated: "Kosovo's fight against drug trafficking is still at an early stage." The Commission also states in the 2010 report that "political interference ... hinders the effective fight against organised crime". ... "Kosovo lacks a track record of conviction related to organised crime", and "there has been limited progress in tackling trafficking of human beings".¹

As if these progress reports were not damning enough, there is now the Draft Report of the Legal and Human Rights Committee for the Council of Europe of 12 December 2010, on the "Inhuman treatment of people and illicit trafficking in human organs in Kosovo",² based on an Explanatory Memorandum by Mr Dick Marty, a Swiss member of the Parliamentary Assembly and former state prosecutor. The memorandum of Mr Marty blows the whistle loud and clear, delivering a devastating indictment against the leadership of Kosovo, naming in particular the newly re-elected Prime Minister Hashim Thaçi.

For those who have not read the Marty memorandum, here are a few excerpts to sharpen sensitivities that may otherwise have been dulled by the restrained language of the Commission's progress reports:

Most pertinent to our research, we found that a small but inestimably powerful group of KLA personalities apparently wrested control of most of the illicit criminal enterprises in which Kosovar Albanians were involved in the Republic of Albania, beginning at the latest in 1998. This group of prominent KLA personalities styled itself as the Drenica Group, evoking connections with the Drenica Valley in Kosovo. We found that the Drenica Group has as its chief – or, to use the terminology of organised crime networks, its boss – the renowned political operator and perhaps most internationally recognised personality of the KLA, Hashim Thaçi (paragraphs 56-63 of the Marty memorandum)".

¹ European Commission, *Kosovo – 2010 Progress Report*, SEC(2010)1329, Working Document, 9 November 2010.

² Council of Europe, Draft Report of the Committee on Legal Affairs and Human Rights, *'Inhuman treatment of people and illicit trafficking in human organs in Kosovo'*, AS/Jur (2010) 46, 12 December 2010, including an Explanatory Memorandum by Mr Dick Marty.

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The report goes on to describe gruesome human organ trafficking activities that are believed to have been ongoing in 1999 using facilities at Fushe-Kruje in Albania, not far from Tirana, where the proprietor allegedly shared both clan ties and organised criminal connections with members of the Drenica Group. Captives brought from Kosovo were summarily executed by a KLA gunman, and their corpses transported swiftly to the operating clinic for kidney extractions, with the organs thence exported from Tirana airport (paragraphs 159-167 of the Marty memorandum).

These alleged crimes would plunge the terrible history of the Yugoslavia war crimes to new depths.

What next?

Option 0 would see continuation of the status quo, business as usual. The Council of Europe report would be shelved together with some lofty political declarations.

Option 1 could be based on the recommendation in the draft report of the Council of Europe, which recognises a central role of the EU's 'EULEX' mission in Kosovo "to persevere with its investigative work, without taking any account of the offices held by possible suspects or of the origin of the victims, doing everything to cast light on the criminal disappearances, the indications of organ trafficking, corruption and the collusion so often complained of between organised criminal groups and political circles" (paragraph 19.2.1). However this wording is quite weak; it does not explicitly advocate prosecutorial action, although EULEX prosecutors are empowered to investigate and prosecute a number of crimes, including war crimes, crimes against humanity and organised crime.

Option 2 would see the International Criminal Tribunal for Yugoslavia (ICTY) open a prosecutorial investigation. This would enable the scope of the investigation to extend into Albania – which, like any State, is under an international obligation to cooperate with the ICTY, whereas EULEX only has the authority to work in Kosovo. The ICTY is of course preparing itself for closure and will see the establishment of an International Residual Mechanism by 1 July 2013, but its mission seems not yet accomplished with this most hideous of crimes left unpursued at the level of the most senior leaders. Surely the ICTY would be expected to work in close collaboration with EULEX,

In practice complementary and cooperative action by ICTY and EULEX together would make the most sense, since ICTY could take up the cases involving the most senior leaders, and EULEX could handle lesser cases at the local level, while both would share information.

Option 3 would additionally see the EU respond to its broader political responsibilities, with political action following the launching of prosecutorial action by ICTY and EULEX.

This would take into account the fact that the EU and its member states are in the middle of a multi-year programme of financial aid to Kosovo, following a donor conference in 2008 at which the EU and its member states together pledged €508 million for the years 2009 to 2011. This assistance covers a wide range of programmes and projects for economic infrastructure, political institution building, the rule of law (with the major EULEX mission), education, public health, etc.

With the political leadership of Hashim Thaçi subject to prosecutorial enquiry, the EU would signal that it expected the Prime Minister to resign while the case was under investigation. But it would go further than this, and signal that a new government of Kosovo would have to be led by a Mr Clean, who would get serious over all the current rule of law problems that are well documented. These would moreover be conditions for continuation of various parts of the substantial economic aid programmes now underway.

Furthermore, this renewal of the Kosovo leadership would be conducive to progress in the UN-mandated and EU-mediated dialogue between Serbia and Kosovo, which is due to begin its work early in 2011, with a view to sorting out the outstanding problems between the two parties. For this the Kosovo party needs a new, credible and respected leadership.

This last Option 3, combined with legal action by the ICTY and EULEX, would be consistent with the EU's self-appointed role as leading force for the political transformation and economic integration of the whole of the Western Balkans into modern Europe and its values.