



# The EU's promotion of environmental protection in Kosovo

A Case Study on the Protection of the Environment through Criminal Law in Kosovo

Work Package 4 "Case Studies"



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## **ABSTRACT**

After the declaration of independence in 2008, Kosovo has sought to reach EU legal thresholds of environmental protection. It has adopted a wide environmental legal framework that however is suffering from important problems of enforcement and compliance. The weak implementation is considered to be at the root of illegal practices that are openly carried out in most parts of Kosovo: illegal logging, illegal hunting, illegal waste management, illegal building, destruction of cultural heritage of minorities, etc.

In Kosovo, types of conduct that damage the environment can be sanctioned by administrative or criminal rules and proceedings. There is not a general environmental law but several fragmented administrative laws covering different sectors. The Criminal Code introduces Chapter XXVIII on Criminal Offenses against the Environment, Animals, Plants and Cultural Objects that responds to the Kosovo context. The Environmental Inspectorate is the institution adopting administrative sanctions and initiating criminal procedures.

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## LIST OF ABBREVIATIONS

AoK	Assembly of Kosovo
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
IPA	Instrument for Pre-Accession Assistance
KEK	Kosovo Energy Corporation JSC
KEPA	Kosovo Environmental Protection Agency
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MESP	Ministry of Environment and Spatial Planning
NGO	Non-governmental organisation
NMP4	Fourth National Environmental Policy Plan of the Netherlands
OSCE	Organisation on the Security and Cooperation in Europe
TAIEX	Technical Assistance and Information Exchange Instrument
UN	United Nations
UNEP	United Nations Environmental Programme
UNMIK	United Nations Interim Administration Mission in Kosovo
USAID/Kosovo	United States's Agency for International Development in Kosovo
WB	World Bank

## Executive summary

The EU environmental action regarding Kosovo has essentially been aimed at transforming it into a country that would make an adequate transition into accession, promoting the incorporation of the EU environmental acquis in the Kosovo new policies and legislation. In this case study, the main legal instruments that have been adopted by Kosovo since its declaration of independence in 2008 have been assessed to evaluate their consistency with EU legal framework and the possibility of applying criminal law to enhance environmental protection.

Kosovo has adopted a wide environmental legal framework that however is suffering from serious problems of enforcement and compliance. The weak implementation is considered to be at the root of illegal practices that are openly carried on in most of the territory of Kosovo: illegal logging, illegal hunting, illegal waste management, illegal building, destruction of cultural heritage of minorities, etc.

In Kosovo, types of conduct that damage the environment can be sanctioned by administrative or criminal rules and proceedings. There is no general environmental act but several fragmented administrative laws covering different sectors. The Criminal Code introduces Chapter XXVIII on Criminal Offenses against the Environment, Animals, Plants and Cultural Objects that responds to the Kosovo context. The Environmental Inspectorate is the institution adopting administrative sanctions and initiating criminal procedures.

The analysis of this Chapter considers its capacity to comply with the requirements of the EU Directive on Environmental Crime but it cannot be carried out in full now because Kosovar legal system does not meet the basic requirements and needs:

- To establish secondary legislation stipulating threshold values and standards to determine infringement of environmental laws (Kosovo is still in the process).
- To be capable of enforcing administrative law.

The primary legislation adopted cannot serve to prosecute individuals and legal persons responsible for environmental damage unless the due threshold values and standards are adopted in the different sectors and unless protected zones are declared by the competent authorities in all municipalities in Kosovo. Until then, it is not possible to determine whether an action is above or below the accepted level or if it is just an administrative infringement or an environmental crime according to the different environmental laws and the Criminal Code. Moreover, while viewed as illegal from an environmental standpoint, courts can only act on nationally adopted and officially recognized standards. It has not been possible to have access to environmental case law in English, so this report cannot offer an insight into the way prosecutors and judges apply environmental law.

The past still plays an important role in Kosovo that cannot be covered in this report but it has to be mentioned that there are considerable environmental problems in the Serbian municipalities of Kosovo that require a solution.

## 1 Introduction

Can the European Union export its legal model of environmental protection, including the possibility of protecting the environment through criminal law, to Kosovo? This case study tries to offer an answer



examining not just the EU efforts to introduce and promote environmental protection in the main commitments and negotiation processes with Kosovo but it also analyses the new Kosovo legal order.

Kosovo as a new country has many challenges to protect the environment. It was a territory with no effective environmental management in the past. Now, its main challenges are to enforce a legal framework that has its origin in the legislation adopted by the UNMIK, the United Nations Mission under the mandate of Security Council Resolution 1244/99 and that must incorporate the EU Environmental law *acquis* in order to join the EU.

Before the 2008 Declaration of Independence<sup>1</sup>, Kosovo Provisional Institutions of Self-Government adopted environmental primary legislation taking into account EU Environmental law instruments. Thus, the Law on Nature Conservation has as one of its aims to bring “environmental standards in Kosovo into harmony with those of the European Union, pursuant to section 5.7 of the Constitutional Framework for Provisional Self-Government.”<sup>2</sup> After independence, this primary legislation has been complemented and in some cases repealed by new environmental laws that continue to envisage incorporating the EU environmental *acquis*. This primary law needs to be fully developed through secondary legislation. Until then, infringement procedures cannot be initiated. Some elements of the EU environmental legislation such as limits of admissible spillage, standards of emissions, standards of quality etc. or the designation of zones of protection have to be incorporated in secondary legislation, before criminal law can be applied to punish brand-new environmental crimes.

The model of environmental protection that was created for Kosovo by the Provisional Institutions of Self-Government during the International Administration is a composite of both the continental and the Anglo-Saxon systems relying on a scheme based on an Agency, the Kosovo Environmental Protection Agency (KEPA) and Inspectorate services to supervise implementation of environmental laws. These institutions will be in charge of a wide variety of functions that will depend greatly on an environmental inspectorate with competences and a mandate to supervise and prosecute administrative and criminal infringements. However, the criminal protection of the environment is extremely difficult given that the standards of protection whose infringement would trigger the criminal prosecution are not yet established, in force or enforced by state and local authorities.

Most problems regarding implementation and enforcement of this legal environmental regime are related with weak administrative infrastructure, corruption and organised crime. These problems are aggravated by the lack of public and private sectors capable of assuming responsibility for services still carried out by the state, UNMIK or the EULEX, the EU Mission for the Rule of Law. Municipalities have a core competence

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<sup>1</sup> Kosovo declared its independence in 2008, and since then, it has struggled to be recognized by the international community. In the EU, five Member states have not done it: Cyprus, Malta, Romania, Slovakia and Spain. This situation has led the EU to adopt a special formula to negotiate the agreement on that will be concluded by the EU alone. On this occasion, the agreement will not be adopted using the formula of a mixed agreement, concluded by the EU and its Member States.

<sup>2</sup> See Law No.02/L-18 on Nature Conservation and the Constitutional Framework adopted by the Provisional Institutions of Self-government, its section 5.7 establishes that “The Provisional Institutions of Self-Government shall be responsible for aligning their legislation and practices in all areas of responsibility with relevant European and international standards and norms, with a particular view to facilitating closer economic, social and other ties between the people of Kosovo and other Europeans, and in awareness that respect for such standards and norms will be central for the development of relations with the Euro-Atlantic community”.

to provide environmental services – especially the protected zones and waste management.<sup>3</sup> However the informal sector is still providing most of the environmental-related services, in some cases contravening the recently adopted legislation, for instance, illegal logging providing wood for heating needs. This has made illegal logging one of the most important environmental problems. The lack of waste management throughout the country is also a problem and a challenge. Issues of environmental pollution and liability are also at stake since they must be solved before new private companies resume mining and industrial activities, including the energy sector. Privatisation of coal mines in the country has been considered one of the most important drivers of Kosovo's new economy; however mining companies are not coping with past and present environmental pollution. The Trepca case shows how a mine that was open in the XIII century has become one of the most important sources of air, soil and water pollution of Kosovo because authorities have not in the past nor in the present enforced environmental legislation. Kosovo has not yet adopted its legal proposal on criminal liability of legal persons of 2011, however it is incorporated in Article 40 of the Criminal Code and in the administrative laws. In the case of civil liability, some of the environmental laws expressly provide that legal persons can be held liable for environmental damage.<sup>4</sup>

On the other hand, environment and sustainability have been introduced in the education curriculum, and now Kosovo relies on education in order to comply with one of its Constitutional duties<sup>5</sup>, since “the environmental related responsibilities are an obligation for each and every citizen and come from the Constitution of the Republic of Kosovo which states ‘nature and biodiversity, living environment and national heritage are responsibilities of everybody’.”<sup>6</sup> The financing of environmental protection in Kosovo is also a key issue limiting the possibilities of implementation of the environmental rules, since Kosovo's functional budget classification does not show environmental protection as a separate category and it still depends heavily on international donor support.

Another problem that has not been solved yet is the problems inherited after the war. It has been said “From this it follows that the international community must facilitate instead of impose, empower the people instead of ‘picking the fruits of sorrow’, support local initiatives instead of drowning the post-conflict society in a sea of foreign projects (as has happened in Kosovo), and choose capacity building above importing experts.”<sup>7</sup> However this is exactly what has occurred in Kosovo.

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<sup>3</sup> See World Bank (2011), Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, available at <http://siteresources.worldbank.org/INTKOSOVO/Resources/KosovoCEA.pdf>, last consulted 26.08.2014.

<sup>4</sup> It is the case of Law N°02/I-53 on Hunting. In its Article 55 on damages to wild animals it says: “Legal or natural persons hunting wild animals in contradiction with this law or in the other manner cause damages to hunting area are obliged to compensate the damage caused to hunting area manager.”

<sup>5</sup> See Article 52, point 1 of the Constitution of the Republic of Kosovo.

<sup>6</sup> See Veselaj, Z. and Krasniqi, Z. (2014), “Mapping of Education for Sustainable Development in the New Curriculum of Kosovo and Challenges of Implementation”, *SGEM 2014 International Multidisciplinary Scientific Conferences on Social Sciences and Arts* (2014), p. 805.

<sup>7</sup> See Bloomfield, D., Barnes, T. and Huyse, L. (Eds.) (2003), *Reconciliation after Conflict*, International Institute for Democracy and Electoral Assistance 2003, p.164. The authors refer to a memorandum of UNHCR, where it is said: “In Kosovo, the very word ‘reconciliation’ is so charged for the Albanian community, that it is simply not used”, and regarding the memories of the different ethnic groups it says memory naturally tends to be selective. This is the case in everyday life, even in situations that are not haunted by conflict. Selectivity produces real risks in the context of prolonged violence. Most Albanians and Serbs in Kosovo, or Muslims and Serbs in Bosnia, for example, have developed completely different recollections of their common past. If they are not corrected through mechanisms such as an independent truth commission, then selective memories are handed down from generation to generation”, pp. 25 and 30.

## 2 Methodology

Analysis of Kosovo's environmental law, institutions and actors will be made from an international and criminal legal perspective. The legal framework and academic and professional literature has been studied in order to identify weaknesses and loopholes in the new order as well as problems of implementation and enforcement by state and local authorities.

Given the limited degree of implementation of new environmental rules, there are no statistics or basic information on the number of infringements and environmental crimes. The reports of the World Bank just refer to the problems of pollution derived from the lack of implementation of environmental protection plans, assessing the economic costs of inaction.<sup>8</sup> The EU Progress Report on Kosovo of October 2014 only gives an overall view of the failure to enforce due to the lack of institutional and financial resources without providing any facts and figures.<sup>9</sup> Then, the dark figure of environmental crime is also inflated due to the lack of perception of commission of crimes both by the undertrained administrative civil servants and by citizens, ignoring the illegal nature of their behaviour according to the new rules.

Programmes and strategies are analysed since in many cases the soft law instruments –manuals, guidelines and recommendations- and political commitments are taking the place of the legal ones since the legal system of Kosovo is still in the making, as is even its legal and political designation of Republic of Kosovo, using the current formula of the EU documents “without prejudice to positions on status [from the Member States], and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.”<sup>10</sup>

Many studies on the protection of the environment in Kosovo have already been carried out by international institutions such as the World Bank, the United Nations Environment Programme, the European Commission, etc. None of these studies have examined the criminal responsibility of actors in detail in the case of the environmental protection.

This case study focuses on the legal dimension of measures that have been adopted by the Kosovar authorities, following the path of previous instruments adopted by UNMIK and inspired by EU environmental legislation, to restore and protect the environment and it will examine the possibility of protecting it through criminal law.

Even though we have asked the European Commission and the European Council's General Secretariat to have access to the text of the initialled Stabilisation and Association Agreement between Kosovo and the

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<sup>8</sup> See World Bank (2011), Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, available at <http://siteresources.worldbank.org/INTKOSOVO/Resources/KosovoCEA.pdf>, last consulted 26.08.2014.

<sup>9</sup> See the *Kosovo Progress Report October 2014*, available at [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm), last consulted 8.12.2014.

<sup>10</sup> This is the formula incorporated in the proposals and official documents of the EU. See for instance Proposal for a Council Decision on the conclusion of the Framework Agreement between the European Union and Kosovo on the general principles for the participation of Kosovo in Union programmes, COM(2013)219 final, 22.04.2013.

EU and other relevant documents, we have not received any documents. In some cases the access to the documents has been refused. It has not been possible to have access to environmental case law in English, so this case study cannot offer an insight into the way prosecutors and judges apply environmental law.

During the tense situations to form a government after the June 2014 elections, the website of the Kosovar government were not updated and in some cases did not function at all. During this period, the EULEX mission fell under the shadow of corruption which led the European institutions to adopt an even more restrictive access policy.<sup>11</sup>

## 2.1 General research issues

This report explores the possibility of the EU to export the EU environmental crime concept as part of the EU environmental acquis in the external relations. In the process of seeking to answer this question, new elements will be added to the concept of environmental crime, in order to consider the different results and problems arising when applied in a different legal, economic, social and environmental scenario other than those of the Member States. This different scenario is however the common background of other candidates to EU accession in the Balkans. Some of the results can be of interest for the analyses of those other candidates' situations.

After the declaration of independence, Kosovo has sought to reach EU legal thresholds of environmental protection. In the case of the environment, Kosovo has adopted a wide legal framework that however is suffering from important problems of enforcement and compliance. The weak implementation is considered to be at the root of illegal practices that are openly carried on in most of the territory of Kosovo: illegal logging, illegal hunting, illegal waste management, illegal building, destruction of cultural heritage of minorities, etc.

When examining environmental crimes, the case study may help to characterise the main features of the environmental crimes of the Kosovar Criminal Code and whether its provisions comply with EU requirements as foreseen in the EU environmental acquis, and in particular, with the Environmental Crime Directive 2009.

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<sup>11</sup> Many documents on Kosovo and on EULEX are still classified. The answer given by the General Secretariat of the Council of the EU to the request of access is "It is classified RESTREINT UE/EU RESTRICTED, which means that the unauthorised disclosure of the information contained in the document could be disadvantageous to the interests of the European Union or of one or more of its Member States. The Political and Security Committee has not yet endorsed the document. The document contains detailed operational information as well as internal assessments concerning EULEX KOSOVO and the environment in which the mission operates. The mission has a very important role in contributing to the stability of Kosovo and the region at large and has to work in a delicate political context. Release of the requested document would be very detrimental to the effectiveness of the mission and thus the stability Kosovo and the region, thereby also straining relations with relevant third parties and weakening the position of the mission and of the European Union as a whole. Disclosure of the document would therefore undermine the protection of the public interest as regards international relations. Furthermore, as the document has not yet been approved by all necessary instances within the Council, disclosure of the document at this stage would seriously undermine the decision making-process of the Council. As a consequence, the General Secretariat has to refuse access to the document". Letter of 8 January 2015 Ref. 14/2453-mi/mf

The interdependence between administrative law and criminal law is taken into account when analysing the problems to protect the environment through criminal law. Criminalising certain types of activities when the corpus of administrative law is not yet applied, the institutions are not fit for service and the population is not familiar with the new legal system imposed from above, will condemn the criminal provisions to a lack of or poor enforcement. An added problem that makes criminal prosecution inappropriate now is the fact that administrative environmental laws refer to EU environmental legislation without further legal development to transpose them into Kosovar legislation, breaking the principle of legality that must apply in criminal law.

The report only addresses those questions that have already been analysed by the reports of international institutions in particular:

- 🌐 Crimes regarding the special context and circumstances in Kosovo: illegal logging, illegal waste and pollution from mining activities. E.g. illegal logging activities are prosecuted only when the person has cut more than 3 cubic meters of wood, which is a common practice due to the deficit of energy supply.
- 🌐 Organised environmental crimes: Kosovo is an origin, destination and transit country for illegal timber coming from Macedonia, Albania and Montenegro.

This case helps to characterise the main features of:

- 🌐 The inadequacies, shortcomings and loopholes of a legal system created from scratch and importing legal traditions alien to the previous system and that are not always easy to combine: where civil law and common law meet. In the case of Kosovo, there has been an importation of legal institutions such as an Agency, the Kosovo Environmental Protection Agency, KEPA and Inspectorate services to protect the environment through a combination of penalties and criminal prosecutions.

Environmental administrative infringements, misdemeanours and crimes in Kosovo are related with situations of extreme poverty and the consequences of the previous wars. As the IPA 2013 Annual Programme reports, “the situation is rather difficult in urban areas due to changed demographics and the pressure of migration from rural areas. This is reflected in unplanned construction, a poorly managed urban environment and inefficient public services such as waste collection, waste and wastewater treatment. Pollution from power plants and mining activities are adding to already difficult situation and pose serious threat to the health of citizens.”<sup>12</sup> The lack of response to these problems by the national and local authorities is provoking environmental infringements and crimes.

Thus, Kosovo has inherited a large number of environmental problems:

- Uncontrolled use of natural and mineral resources,
- High population density,
- Economic activities with a strong environmental impact, in particular in the logging and mining sectors.
- High levels of air pollution.

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<sup>12</sup> Instrument for Pre-accession Assistance, IPA 2013 Annual Programme. Waste Management 09-2012/02, pp. 1-2.

In this scenario, environmental crime is linked with the lack of respect for the basic rules adopted to protect the environment by UNMIK under the mandate UNSCRS 1244/99 and by the new elected institutions after the declaration of independence in 2008. This situation has continued due to ignorance, lack of resources or the opportunities to make a high profit with environmental crimes.

## 2.2 Problems of enforcement of environmental law

In Kosovo, problems of enforcement are related to:

- 🌐 Basic problems related to weak governance, rule of law, lack of resources, despite the fact Kosovo has appropriate brand-new institutions:
  - Ministry of Environment and Spatial Planning.
  - Kosovo Environmental Protection Agency (KEPA).
- 🌐 Lack of enforcement procedures.
- 🌐 Corruption: It is a general problem in the country and it has affected EULEX as well.
- 🌐 Organised crime: EULEX, UNODOC and INTERPOL are fighting organised crime in the Balkans of which organised environmental crime is a minor aspect, compared to human trafficking and drugs.

## 2.3 Data availability

There are data of domestic and international institutions (see Reference) such as:

- 🌐 The UNEP,
- 🌐 the World Bank,
- 🌐 the OSCE,
- 🌐 the NATO,
- 🌐 the EU,
- 🌐 USAID/Kosovo,
- 🌐 Kosovo's Ministry of European Integration,
- 🌐 as well as shadow reports that challenge those data.

# 3 The EU and the protection of the Environment in Kosovo

The EU has a strong commitment with Kosovo as a democracy, human rights and environmental protection promoter. In July 2014, the EU and Kosovo initialled a Stabilisation and Association Agreement with unique characteristics due to the positions of some Member States regarding Kosovo's recognition as a State. This

agreement whose text has not been made public yet, will resume the previous cooperation that in the case of the environmental protection started in 2003 with the creation of tracking mechanisms of stabilisation.

In the second semester of 2014, Kosovo went through tense situations to form a government after the June 2014 elections and the EULEX mission fell under the shadow of corruption. The European Commission is evaluating the results of the last Progress Report on Kosovo 2014 saying, "The lack of interest in the environment has become a serious issue for public health and the quality of life in Kosovo."<sup>13</sup> Whilst there have been no high-level meetings since the elections, work has continued at the technical level, leading to progress in the areas of customs collection, integrated border management, energy and telecoms. Now after the formation of a new Government on 9 December 2014, new negotiations are ongoing.

Even though Kosovo has adopted most of the legal EU *acquis*, the problems of implementation and enforcement are a main concern since the institutions are not up to the task of guaranteeing the rule of law, an efficient public administration, an independent judiciary and prosecution as well as a private sector with the resources needed to take responsibility for many of the tasks and services still provided by the international administration and EULEX as well as the public authorities.

The privatisation of many of the public services also concerns environmental protection since waste and water treatment are non-existent throughout the country.

The European Commission adopted on 17 December 2014 the funds from the Instrument for Pre-accession Assistance (IPA) that will support programmes focusing "on better governance, with projects aiming at reforming public administration, using EU assistance more efficiently, adopting and enforcing EU standards, as well as implementing more reforms in the judiciary and fundamental rights and further supporting the fight against organised crime and corruption".<sup>14</sup> Kosovo will receive 66,050,000€ to be destined to the following main sectors: "Democracy and governance, Rule of Law and Fundamental rights, Energy, Competitiveness and Innovation, Agriculture and Rural Development."<sup>15</sup> It will benefit from 11.400.000€ of the Cross border programmes dealing with "Tourism, Cultural and Natural Heritage, Environmental protection, Employment, Mobility, Social Inclusion, Competitiveness, SMEs, trade and investments, Youth, education and skills."<sup>16</sup>

### 3.1 The path to accession

On 10 October 2014, the Commission published its Communication, "Enlargement Strategy and Main Challenges 2014-2015" that offers an overview and assessment on the EU's enlargement strategy, its successes, gaps and failures in order to identify challenges and priorities for 2015. This year's "Strategy" Communication is subtitled "Completing the Foundations for Credibility": reflecting the shift in recent years to "frontloading" the core priorities — rule of law, economic governance, and public administration reform — in accession negotiations and enhancing the monitoring of candidate countries.<sup>17</sup> The Strategy

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<sup>13</sup> See European Commission (2014), Progress Report on Kosovo 2014.

<sup>14</sup> European Commission (2014), Press release, IPA: €2 billion package to support reforms in the Western Balkans and Turkey in 2014, Brussels, 17 December 2014, available at [http://europa.eu/rapid/press-release\\_IP-14-2760\\_en.htm](http://europa.eu/rapid/press-release_IP-14-2760_en.htm)

<sup>15</sup> Ibidem.

<sup>16</sup> Ibidem.

<sup>17</sup> See the comments of the Report on these documents of the House of Commons, UK (2014), Ninth Report - European Scrutiny Committee, 43 Common Security and Defence Policy: EULEX Kosovo, commenting the Council Decision amending and extending Joint Action 2008/124/CFSP on the European Union Rule of



underlines the positive impact of their EU perspective on the Western Balkan countries (enhancing stability, improving regional relations, deepening cooperation with the EU on key foreign policy issues, leveraging economic, political and social reform). But it also underlines how much each of the candidate and aspirant countries has to do with regard to implementation, especially in tackling corruption and organised crime, reforming public administration, judicial reform and in those areas encompassed by the fundamental freedoms of European society (embedding a parliamentary process, respecting minority rights, ensuring media freedom, etc.).<sup>18</sup>

On 10 October 2014, the European Commission also published the Progress Report on Kosovo, which is considered one of the potential candidate countries, those without formal Candidate Status but with an agreed EU perspective. The initialling of a Stabilisation and Association Agreement between Kosovo and the EU has been considered a major milestone in EU-Kosovo relations; however, the Progress Report on Kosovo highlights the need for further progress in a number of other areas.

## 3.2 The Future of EULEX

The reform of EULEX is an important issue when considering the enforcement of the rule of law in Kosovo. In 2015, EULEX financial as well as human resources will start to be reduced and withdrawn in order to transfer full jurisdiction to the Kosovar authorities in 2016.<sup>19</sup>

However, Kosovo continues to make slow progress in the fight against organised crime and corruption but needs to be able to demonstrate practical results in this area. The number of convictions and asset-confiscations is low and law enforcement agencies are reluctant to initiate financial investigations. The Progress Report 2014 expresses concerns about judicial impartiality and the very limited progress in improving public administration.<sup>20</sup>

Even though the competences conferred on EULEX in the Criminal Code do not cover environmental protection, jurisdiction over crimes related with the EU funds are envisaged.

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Law Mission in Kosovo (EULEX KOSOVO) (36259), available at <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeuleg/219-ix/21948.htm>.

<sup>18</sup> Ibidem.

<sup>19</sup> See the Kosovo Law No. 04/L-274 of 23 April 2014 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo that refers to the letters exchanged by Catherine Ashton as EU High Representative and the President of Kosovo. In his letter, the Kosovo representative affirms “this invitation will support EULEX KOSOVO under its current mandate until 15 June 2016. With the exception of the provisions on STIF and any judicial proceeding deriving from it, this would be the expected end date for EULEX KOSOVO.”

<sup>20</sup> European Commission, *Kosovo Progress Report October 2014*, available at [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm), last consulted 8.12.2014.



## 4 Legal Framework for environmental protection in Kosovo

The UN Security Council Resolution 1244 and the mandate for UNMIK were the legal bases for the new legal system of Kosovo after the war. Under the UNMIK mandate, the Provisional Institutions of Self-government adopted a Constitutional Framework and a Criminal Code and basic environmental laws that after the independence Declaration have been renewed and developed widely but with a low degree of enforcement by the Kosovar institutions.

The environmental protection legal framework is composed of the following instruments:

- Law on Environmental Protection,
- Law on Nature Protection,
- Law on Special Protective Zones,
- Law on Forests,
- Law on Spatial Planning,
- Law on Strategic Environment Assessment,
- Law on Agricultural Land,
- Law on Cultural Heritage, and
- Law on Construction.
- Law on Hunting.
- Law on Fishing.
- Law on Inspectorate.

These main legal instruments have a correspondence with the EU Environmental law due to the intention to harmonize Kosovar laws with EU environmental law and comply with the requirements imposed by the European Commission through the Instrument for Pre-Accession Assistance (IPA II).<sup>21</sup>

Table 1. Reference list of relevant environmental laws and regulations.<sup>22</sup>

Kosovar Laws and Regulations	Status	EU Acquis/Assessment
Law on Environmental Protection	<p>■ Law No. 03/L-025 “on Environmental Protection” approved by the Assembly of Kosovo (AoK) on 26.02.2009 and promulgated by the President Decree on 19.03.2009;</p> <p>■ Administrative Instruction (AI) No. 02/2004-MESP “on the Establishment of Environmental Protection Inspectorate”, dated 18.02.2004;</p> <p>■ AI No.2004/09-MESP “on the Cadastre of Environmental Polluter Emissions. Forms and Instructions on Form Application”, dated 03.08.2005</p> <p>■ AI No. 22/03-MESP “on Organisation of the Kosovo Environmental Protection Agency”, dated 06.10.2003</p>	<p>■ Directive No. 2003/4/EC of the EP and of the Council of 28.01.2003 “on public access to environmental information”</p> <p>■ Directive No. 2004/35/CE of the EP and of the Council of 21.04.2004 “on environmental liability with regard to the prevention and remedying of environmental damage” as amended by Directive 2006/21/EC and 2009/31/EC;</p> <p>Directive No. 2008/99/EC of the EP and of the Council of 19.11.2008 “on the protection of the environment through criminal law”;</p> <p>■ Directive No. 2003/35/EC of the EP and of the Council of 26.05.2003 “providing for public participation in respect of the</p>

<sup>21</sup> See the Instrument for Pre-Accession Assistance (IPA II), Multi-Country Indicative Strategy Paper (2014-2020), adopted on 30/06/2014, Ref. Ares. (2014), 16/09/2014.

<sup>22</sup> See IPA 2013 Annual Programme, Waste Management: 09 -2012 / 02, Annex 3, pp. 20-24.

		drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives No. 85/337/EEC and 96/61/EC
Law on SEA	<p>■ Law No. 03/L-230 “on Strategic Environmental Assessment” approved by the AoK on 30.08.2010 and promulgated by the Presidential Decree on 18.10.2010. It replaced the Law No.03/L-015 approved by the AoK on 12.02.2009.</p>	<p>■ Directive No. 2001/42/EC of the European Parliament and of the Council of 27.06.2001 “on the assessment of the effects of certain plans and programmes on the environment” (also called “SEA Directive”);</p> <p>■ Directive No. 2003/35/EC of the European Parliament and of the Council of 26.05.2003 “providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment” and amending with regard to public participation and access to justice Council Directives No. 85/337/EEC and 96/61/EC;</p>
Law on EIA	<p>■ Law No. 03/L-214 “on Environmental Impact Assessment” approved by the AoK on 23.09.2010 and promulgated by the Presidential Decree No. DL-048-2010 of 14.10.2010. It replaced the Law No. 03/L-024 approved by the AoK on 26.02.2009;</p>	<p>■ Council Directive No. 85/337/EEC “on the assessment of the effects of certain public and private projects on the environment” approved on 27.06.2985 (the so called “EIA Directive”);</p> <p>■ Council Directive No. 97/11/EC of 3 March 1997 amending Directive No.</p>
Law on IPPC	<p>■ The Law No. 03/L-043 “on Integrated Prevention Pollution Control” approved by AoK on 26.03.2009 and promulgated by the Presidential Decree No. DL-010-2009 of 23.04.2009. AI No. 26/05-MESP “on Issuing Ecological Permit/Licence”, dated 07.11.2005</p>	<p>■ Council Directive No. 96/82/EC of 9.12.1996 “on the control of major-accident hazards involving dangerous substances”, as amended by Directive No. 2003/105/EC and Regulations No. EC/1882/2003 and EC/1137/2008;</p> <p>■ Council Directive No. 1999/13/EC of 11.03.1999 “on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations”, as amended by Regulation No. EC/1882/2003 and Directives No. 2004/42/EC and 2008/112/EC;</p> <p>■ Directive No. 2000/76/EC of the European Parliament and of the Council of 04.12.2000 “on the incineration of waste”, as amended by Regulation No. EC/1137/2008;</p> <p>■ Directive No. 2001/80/EC of the European Parliament and of the Council of 23.10.2001 “on the limitation of emissions of certain pollutants into the air from large combustion plants”, as amended by Directives No. 2006/105/EC and 2009/31/EC;</p> <p>■ Regulation (EC) No. 166/2006 of the European Parliament and of the Council of 18.01.2006 concerning “the establishment of a European Pollutant Release and Transfer Register” and amending Council Directives No. 91/689/EEC and 96/61/EC;</p> <p>■ Council Directive No. 2008/1/EC of</p>

		<p>15.01.2008 “concerning integrated pollution prevention and control” (codified version), as amended by Directive 2009/31/EC;</p> <p>■ Regulation No. EC/1221/2009 of the European parliament and of the C25.11.2009 “on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)”, repealing Regulation No. EC/761/2001, and Commission Decisions No. 2001/681/EC and 2006/193/EC;</p> <p>■ Regulation No. EC/66/2010 of the European Parliament and of the Council of 25.11.2009 “on the EU Eco-label”.</p>
Law on Waste Management and Disposal	<p>■ Law No. 02/L-30 “on Waste” approved by the AoK on 22.07.2005 and promulgated by SRGS on 05.05.2006 (UNMIK Regulation No 2006/31);</p> <p>■ Draft AI “on Waste Import, Export and Transit”, dated 06.02.2009;</p> <p>■ Draft AI “on Mandatory penalties”;</p> <p>■ Draft AI “on Movement of the waste from public surface”;</p> <p>■ Draft AI “for licensing and waste administration”;</p> <p>■ AI No. 83/06-MESP “on Construction and Demolition of Wastes”, dated 20.12.2006;</p> <p>■ AI No. 08/25 “on Liquidation of Pharmaceutical Wastes and Products”, approved by the GoA on 03.07.2008;</p> <p>■ AI No. 03/07-MESP “on Waste Management of Expired Oils”, dated 20.01.2006;</p> <p>■ AI No. 04/07-MESP “on the Management of end of Life Vehicles and their Wastes”, dated 20.12.2006;</p> <p>■ AI No. 05/07 MESP “on Construction and Demolition Wastes”, dated 20.12.2006;</p> <p>■ AI No. 08/07-MESP “on the Competencies of the Waste Treatment Owner and Operator”, dated 26.07.2007;</p> <p>■ AI No. 09/07-MESP “on Package and Packaging Waste”, dated 26.07.2007;</p> <p>■ AI No. 10/07-MESP “on Management of Poly-Chloral Biphenyls and Three-Phenyls”, dated 26.07.2007;</p> <p>■ AI No. 10/07-MESP “on the Landfill Management”, dated 2.08.2007;</p> <p>■ AI No. 12/07-MESP “on Waste Management of Electric and Electronic Equipment”, dated 04.10.2007;</p> <p>■ AI No. 80/07-MESP “on Waste from Expanded</p>	<p>■ Council Directive No. 75/439/EEC of 16 June 1975 “on the disposal of waste oils” as amended by Directives No.87/101/EEC, 91/692/EEC, 2000/76/EC and 2008/98/EC (repealed by Directive No. 2008/98/EC as of 12.12.2010);</p> <p>■ Council Directive No. 86/278/EEC of 12.06.1986 “on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture” as amended by Directive No. 91/692/EEC,</p> <p>■ Regulation No. EC/807/2003 and No. EC/219/2009, to be reviewed starting 2010;</p> <p>■ Council Directive No. 91/689/EEC of 12.12.1991 “on hazardous waste” as amended by Directives No. 94/31/EC and 2008/98/EC and Regulation No. EC/166/2006 (repealed by 2008/98/EC as of 12.12.2010);</p> <p>■ European Parliament and Council Directive No. 94/62/EC of 20.12.1994 “on packaging and packaging waste”, as amended by Regulations No. EC/1882/2003 and EC/219/2009, and Directives No. 2004/12/EC and 2005/20/EC;</p> <p>■ Council Directive No. 96/59/EC of 16.09.1996 “on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)” as amended by Regulation No. EC/596/2009;</p> <p>■ Council Directive No. 1999/31/EC of 26.04.1999 “on the landfill of waste”, as amended by Regulations No. EC/1882/2003 and EC/1137/2008;</p> <p>■ Directive No. 2000/53/EC of the European Parliament and of the Council of 18.09.2000 “on end-of life vehicles”, as amended by Decisions No. 2002/525/EC,</p>

	<p>Batteries and Accumulators”, dated 13.03.2007;</p> <p>■AI No. 81/07-MESP “on Waste Management of Expired Oils”, dated 13.03.2007;</p> <p>■AI No. 05/2008 “on Pharmaceutical Waste Management”, approved by the GoA on 27.02.2008;</p> <p>■AI No. 06-03/2008 “on Hazardous Waste Management”, approved by the GoA on 27.02.2008;</p> <p>■AI No. 03/50 “on the Conditions for the Selection of the Site and the Construction of Landfills”, approved by the GoA on 26.01.2009;</p> <p>■AI No. 04/50 “on Maximum Permitted Levels of Emission and Distribution of Contaminants in Soil”, approved by the GoA on 16.01.2009;</p>	<p>2005/63/EC, 2005/437/EC, 2005/438/EC, 2005/673/EC, 2008/689/EC, 2010/115/EC and Directives No. 2008/33/EC and 2008/112/EC;</p> <p>■Council Decision of 19.12.2002 establishing “criteria and procedures for the acceptance of waste at landfills” pursuant to Article 16 and Annex II to the Directive 1999/31/EC;</p> <p>■Directive No. 2002/95/EC of the European Parliament and of the Council of 27.01.2003 “on the restriction of the use of certain hazardous substances in electrical and electronic equipment”, as amended by Decisions No. 2005/618/EC, 2005/717/EC, 2005/747/EC, 2006/310/EC, 2006/690/EC, 2006/691/EC, 2006/692/EC, 2008/385/EC, 2009/428/EC, 2009/443/EC, 2010/122/EU, and Directive No. 2008/35/EC;</p> <p>■Directive No. 2002/96/EC of the European Parliament and of the Council of 27.01.2003 “on waste electrical and electronic equipment (WEEE)”, as amended by Directive No. 2003/108/EC, 2008/34/EC and 2008/112/EC;</p> <p>■European Standard EN 50419 “on marking of electrical and electronic equipment” in accordance with Article 11(2) of the WEEE Directive;</p> <p>■Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to the Directive 1999/31/EC;</p> <p>■Directive No. 2006/66/EC of the European Parliament and of the Council of 06.09.2006 “on batteries and accumulators and waste batteries and accumulators” and repealing Directive No. 91/157/EEC, as amended by Directive No. 2008/12/EC and Directive No. 2008/103/EC; Commission Decisions 2008/763/EC, 2009/603/EC, 2009/851/EC;</p> <p>■Directive No. 2006/12/EC of the European Parliament and of the Council of 5.04.2006 “on waste” (codified version al so called “Waste Framework Directive”) (repealed by Directive No. 2008/98/EC as of 12.12.2010) and amended by Directive No. 2008/98/EC and Directive No. 2009/31/EC;</p> <p>■Directive 2006/21/EC of the European Parliament and of the Council of 15.03.2006 “on the management of waste from extractive industries” and amending Directive No. 2004/35/EC and Regulation EC/596/2009, as amended by Commission Decisions 2009/335/EC, 2009/337/EC, 2009/358/EC,</p>
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		<p>2009/359/EC, 2009/360/EC;</p> <p>■ Directive No. 2008/98/EC of the European Parliament and of the Council of 19.11.2008 “on waste” (in force as of 12.12.2010) (the so called “Waste Framework Directive”)</p>
Law on Chemicals	<p>■ The Law No. 2007/02-L116 “on Chemical” was approved by the AoK on 27.04.2007 and promulgated by SRSG on 2008</p>	<p>■ Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC</p> <p>■ Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, as amended by Directives 69/81/EEC, 70/189/EEC, 71/144/EEC, 73/146/EEC, 75/409/EEC, 76/907/EEC, 79/370/EEC, 79/831/EEC, 80/1189/EEC, 81/957/EEC, 82/232/EEC, 83/467/EEC, 84/449/EEC, 86/431/EEC, 87/432/EEC, 88/302/EEC, 88/490/EEC, 90/517/EEC, 91/325/EEC, 91/326/EEC, 91/410/EEC, 91/632/EEC, 92/32/EC, 92/37/EC, 93/21/EC, 93/72/EC, 93/101/EC, 93/105/EC, 94/69/EC, 96/54/EC, 96/56/EC, 97/69/EC, 98/73/EC, 98/98/EC, 99/33/EC, 2000/32/EC, 2000/33/EC, 2001/59/EC and 2004/73/EC, and Regulation (EC) 807/2003</p> <p>■ Regulation (EC) No 1272/2008 of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (Text with EEA relevance)</p> <p>■ Directive 98/8/EC of 16 February 1998 concerning the placing of biocidal products on the market, as amended by Regulations (EC) 1882/2003, 1896/2000, 2032/2003 and Directives: 2006/50/EC, 2006/140/EC, 2008/31/EC, 2009/84/EC, 2009/85/EC, 2009/86/EC, 2009/87/EC, 2009/88/EC, 2009/89/EC, 2009/91/EC, 2009/92/EC, 2009/93/EC, 2009/94/EC, 2009/95/EC, 2009/96/EC and 2009/98/EC, 2009/151/EC</p> <p>■ Regulation (EC) No 689/2008 of 17 June 2008 concerning the export and import of dangerous chemicals.</p> <p>■ Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of</p>

		environmental pollution by asbestos, as amended by Directive 91/692/EEC and Regulation (EC) 807/2003.
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Sources: IPA II 2013.<sup>23</sup>

*Table 2: Status of Transposition of EU Law in Kosovo.* MESP and KEPA, Report on the State of Environment 2011-2012.<sup>24</sup>

Areas	EU Directive	Rate of Harmonization (%)
Horizontal legislation	EIA Directive (85/337/EEC)	62
	EIS Directive (2001/42/EC)	100
	Environmental information Directive (2003/4/EC)	26
	Public Participation Directive (2003/35/EC)	60
Air quality	Framework directive on air quality (96/62/EC)	75
	Directive on limit values of SO <sub>2</sub> , NO <sub>2</sub> , NO <sub>X</sub> , particulate matter, and lead on air (99/30/EC)	47
	Directive on benzene and carbon monoxide (2000/69/CE)	50
	Directive on ozone (2002/3/EC)	57
	Directive on arsenic, cadmium, mercury, nickel, and aromatic polycyclic hydrocarbons	20
Waste management	Waste directive (2006/12/EC)	95
	Directive on hazardous waste (91/689/EC)	100
	Directive on waste packages	88
	Directive on packaging and packaging waste (94/62/EC)	90

<sup>23</sup> See IPA 2013 Annual Programme, Waste Management: 09 -2012 / 02, Annex 3, pp. 20-24.

<sup>24</sup> Ministry of Environment and Spatial Planning and Kosovo Environmental Protection Agency, (2013) , Report on the State of Environment 2011-2012, p. 101

	Directive on landfills (99/31/EC)	69
Water quality	Water framework directive (2000/60/EC)	16
	Directive on urban wastewaters (91/271/EEC)	25
	Directive on drinking water (98/83/EC)	68
	Directive on nitrates (91/676/EEC)	7
Nature protection	Birds Directive (79/409/EEC)	83
	Directive on Habitats (92/43/EC)	73
Industrial pollution control	IPPC directive (96/61/EC)	97
	Directive on large combustion plants (2001/80/CE)	64
Chemicals	Directive on hazardous substances (67/548/ECC)	xx
	Directive on GMO control (2001/18/EC)	79

These laws have been adopted in an exceptional context: independence and future accession to the EU. Thus, the Law on Nature Conservation adopted by the Provisional Institutions of Self-Government, under UNMIK, establishes in its Article 2 that “this law creates the basic requirements for nature conservation and for its sustainable utilization, in particular: j) Bringing environmental standards in Kosovo into harmony with those of the European Union (...).”<sup>25</sup> The main problem is the lack of a previous legal tradition for these legal instruments. As the American University in Kosovo Report 2012 said, “Like any other new country, the laws on paper do not necessarily accompany the proper execution of what is expected of them. Therefore in Kosovo implementation of laws is not fully executed and the few implemented laws are not fully respected.”<sup>26</sup>

This weak implementation of laws and regulations has not changed the traditional misuse of Kosovo’s environment, one of them being deforestation. As exposed by the American University of Kosovo Report 2012 “Current undertakings in Kosovo’s forests and fields are happening precisely due to lack of legally imposed sanctions, causing one to believe that hurting the environment will not be punished. These actions include: uncontrolled use of forests for timber and wood, construction sites in national parks, and deforestation in nationally protected zones: equalling quite the contrary of what one would expect under the law.”<sup>27</sup>

<sup>25</sup> Law No. 02/L-18 on Nature Conservation.

<sup>26</sup> See the American University in Kosovo (2012), “Deforestation in Kosovo. A Grave Environmental Concern”, Paper of the American University in Kosovo (American University in Kosovo Report (2012) hereinafter). pp. 14-15.

<sup>27</sup> Ibidem.



## 4.1 Problems of enforcement of the Environmental Law in Kosovo

Basic problems of enforcement are related with weak governance, rule of law, lack of resources, even though Kosovo has a most complex legal framework made of new legislation that must be compatible with the EU requirements. The brand-new institutions are under-resourced and officials and inspectorate services are not well trained.

### 4.1.1 Improving Enforcement and Enhancing Technical Capacities in the Western Balkans and Kosovo

TAIEX is the Technical Assistance and Information Exchange instrument managed by the Directorate-General Enlargement of the European Commission that supports partner countries with regard to the approximation, application and enforcement of EU legislation. Kosovo is one of its beneficiaries as one of the EU potential candidates.<sup>28</sup>

TAIEX's activities related with the Environment protection combine both responses to specific requests on the one hand, and programmed actions on the other. The main foci of activity of TAIEX organised assistance in the area are:

- Proper implementation of Environmental Impact Assessments (EIA) in support of applications for Cohesion Funds by many new Member States;
- Full enforcement of the EU Drinking Water and Urban Waste Water Directives;
- Waste and pollution management, particularly in the mining sector;
- Waste management in ports;
- Implementing the Integrated Pollution Prevention Control (IPPC) Directive;
- Europa Natura 2000 Network underpinned by the Habitat and Birds Directive and;
- Green Public Procurement.<sup>29</sup>

### 4.1.2 Networks to improve enforcement

The EU has promoted the creation of international networks like IMPEL and INECE that have been introduced with different results in the Balkans.

Kosovo joined the EUROPOL Network on Environmental Crime in its 2013 meeting.<sup>30</sup>

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<sup>28</sup> See its presentation at [http://ec.europa.eu/enlargement/taix/what-is-taix/index\\_en.htm](http://ec.europa.eu/enlargement/taix/what-is-taix/index_en.htm)

<sup>29</sup> See TAIEX Infrastructure: Environment, Transport and Energy, available at [http://ec.europa.eu/enlargement/taix/dyn/activities/infrastructure\\_en.jsp](http://ec.europa.eu/enlargement/taix/dyn/activities/infrastructure_en.jsp)

<sup>30</sup> The presentation of EnviCrimeNet characterises it as “an informal network connecting police officers and other crime fighters in the field of environmental crime to learn from each other about the extent and nature of environmental crime, the best practises to handle it, etcetera. With regard to global issues, such as climate change and damage to biodiversity, being involved in the fight against environmental crime is of the utmost importance to the police. Investigating environmental crime is a complex, global issue. Several parties are responsible for the supervision and maintenance of legislation and regulations, which is one of the key problems arising in the fight against environmental crime. Administrative bodies at the municipal, provincial and governmental levels in particular play an important role in supervising companies. Another key characteristic of environmental crime is an interwovenness of legitimate and illegitimate enterprises. In addition, environmental crime, unlike other forms of crime, is often revealed as a result of targeted investigations, rather than reports on an environmental offence committed”, see <http://envicrimenet.eu/EN/>.



## 5 The Protection of the Environment through Criminal Law in Kosovo

Is the protection of the environment through criminal law possible or adequate in Kosovo? The environmental law on paper is fit for purpose but compliance, implementation and enforcement are not, then the lack of implementation is even a driving force for crime based on high profit and low risk of punishment.

One of the reasons for the adoption of the EU Environmental Crime Directive was to trigger better enforcement of environmental law in the EU Member States through criminalizing serious environmental infractions. Its implementation process in the EU Member States has met different obstacles, one of them being the different legal criminal systems and backgrounds in the Member States.

In the case of Kosovo, this case study explores the possibility of exporting the EU model of environmental protection through criminal law. As has been already set out above, the Kosovar environmental legislation has incorporated references to EU legislation as a legal horizon to be reached through further legal development. These environmental laws are going to be developed by the Government and Municipalities, monitored by the Kosovar Environment Protection Agency (KEPA) and enforced by the Inspectorate services with a broad mandate. The Inspectorate services will impose administrative sanctions and will initiate criminal procedures. However its full capacity of action will not be developed until the legislature adopts measures to determine special areas of protection or allowed thresholds values for standards of emissions when appropriate.

The analysis of the legal scheme adopted to protect the environment and to sanction the breaches of environmental laws has shown that Kosovo has a system that combines characteristics of both models of environmental protection in Europe and the USA, the Civil Law and the Common Law systems. Instead of adopting a general law or code for the protection of the environment, Kosovo has a wide variety of statutes to protect the environment by sectors that establish sanctions for their infringements and also refer to criminal investigations and procedures that can be initiated by the administrative authority, i.e. the Environment Inspectorate.

This new legal scheme for the environmental protection, combining the Civil Law and the Common Law features, has been introduced from above into a less developed legal system straining its functionality and applicability by a meagre administration. The civil law system is characterised by its dependence on administrative law, meaning that criminal law will only intervene when according to the principle of legality, the intensity and seriousness of the breach of administrative law standards of environmental protection requires a criminal sanction. On the other hand, the Common Law relies on an Inspectorate with wide powers to sanction and to decide fines or to initiate criminal procedures. This case study examines how the Kosovo Environmental Protection Agency and the Inspectorate systems work on paper. To exemplify this situation, the Law on Hunting show how inspectors will assume a very wide mandate that presents many challenges from the point of view of its enforcement: besides imposing “sanctions” for civil violence, the inspectors can initiate the procedures for civil violence and refer criminal violence.<sup>31</sup> Besides

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<sup>31</sup> See Law N.o 02/L-53 on Hunting, and in particular, its Chapter X on Administrative Sanctions and Article 59 on undertake measures. This Article 59 establishes

59.1. If the hunting inspector in the procedure of inspection verifies that provisions of this law or bylaws issued based on it were breached, he shall order through Decision correction of irregularities and shortages within certain term.

59.2. Against the Decision of the hunting inspector may be appealed to the ministry within 15 days from the day of receiving.

59.3. Appeal against the Decision shall not hinder the execution.

the confusing terminology of the English translation of the law, it appears that the statute envisages civil as well as administrative sanctions and the possibility of initiating criminal proceedings. This law also contemplates the seizing of proceeds.<sup>32</sup>

The different reports prepared by institutions and agencies on the field agree on the problem of lack of commitment of authorities and people. The USAID made a clear and valuable analysis of the problems for applying environmental sanctions:

“Practically all environmental laws include sanctions for non-compliance. However, they are often broad and general requirements that make it difficult to implement sanctions. It is almost impossible to process violators in the courts. An additional implementation problem for sanctions is the present lack of emission standards. Without threshold values (with allowable emission levels), it is not possible to determine whether an emission is above or below the accepted level. While viewed as illegal from an environmental view, courts only act on a nationally adopted and officially recognized standard. Better monitoring of the overall fines and penalty system is needed.”<sup>33</sup>

In Kosovo, types of conduct that damage the environment can be sanctioned by administrative or criminal rules and proceedings. There is not a general environmental law but several fragmented administrative laws covering different sectors. The Criminal Code introduces Chapter XXVIII on Criminal Offenses against the Environment, Animals, Plants and Cultural Objects that responds to the Kosovo context (See Annex B). The Environmental Inspectorate is the institution adopting administrative sanctions and initiating criminal procedures.

The analysis of this Chapter considering its capacity to comply with the requirements of the EU Directive on Environmental Crime cannot be carried out now because Kosovo legal system does not meet the basic requirements and needs:

- To establish secondary legislation stipulating threshold values and standards to determine infringement of environmental laws (Kosovo is still in the process).
- To be capable of enforcing administrative law.

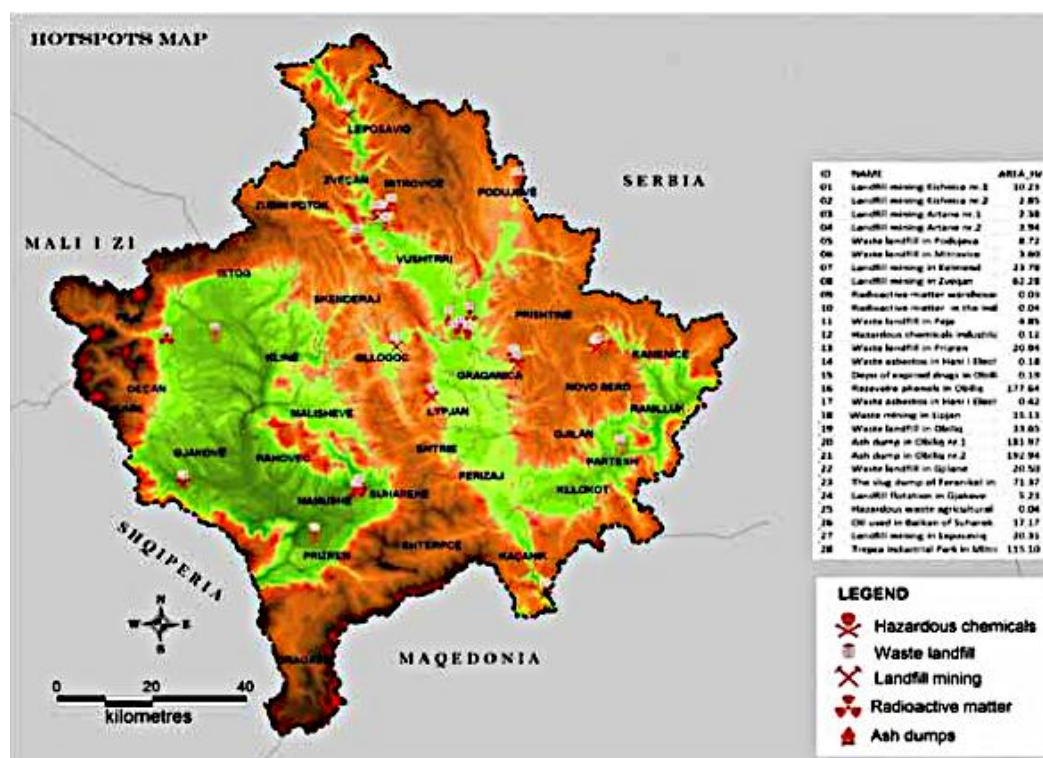
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59.4. If the hunting inspector, during the inspection verifies that the breach is civil or criminal violence, he is obliged to request to initiate the civil procedure respectively report the initiation of criminal procedure.

<sup>32</sup> In its Article 62 on Protection measures, the Law on Hunting establishes: “Besides the penalty for civil violence from Article 61, the person may be sentenced to the protection measures of seizing the mean item used or meant for committing the civil violence and the protection measure of seizing the property achieve as a result of civil violence or remained as a result of committing the civil violence”

<sup>33</sup> USAID (2009), Environmental Threats and Opportunities Assessment (ETOA), p. 15.

## 5.1 Illegal Waste in Kosovo



**Figure 1: Illegal Waste in Kosovo**

Source: MESP and KEPA Report on the State of Waste and Chemicals 2014

The current Kosovo Waste Law No.02/L-30 of 22 July 2005 was adopted by the Provisional Institutions of Kosovo “for the purpose of establishing the Legal Framework on Waste Management in Kosovo and creating mechanisms and conditions according to the European Standards on Waste Management.”<sup>34</sup>

The recent Kosovo Progress Report of the European Commission 2014 offers a sad picture of the efforts at the still early stage of the process to create the required infrastructures to deal with waste management in the country. This shows little advance regarding the situation described in the previous years when it was underlined as one of the most important problems, namely the lack of capacity at municipal level related to management of waste including both landfill and waste separation and recycling which is still very low.

Implementation of European standards on waste management is at a very early stage.<sup>35</sup> As shown in the Kosovo Progress Report 2014:

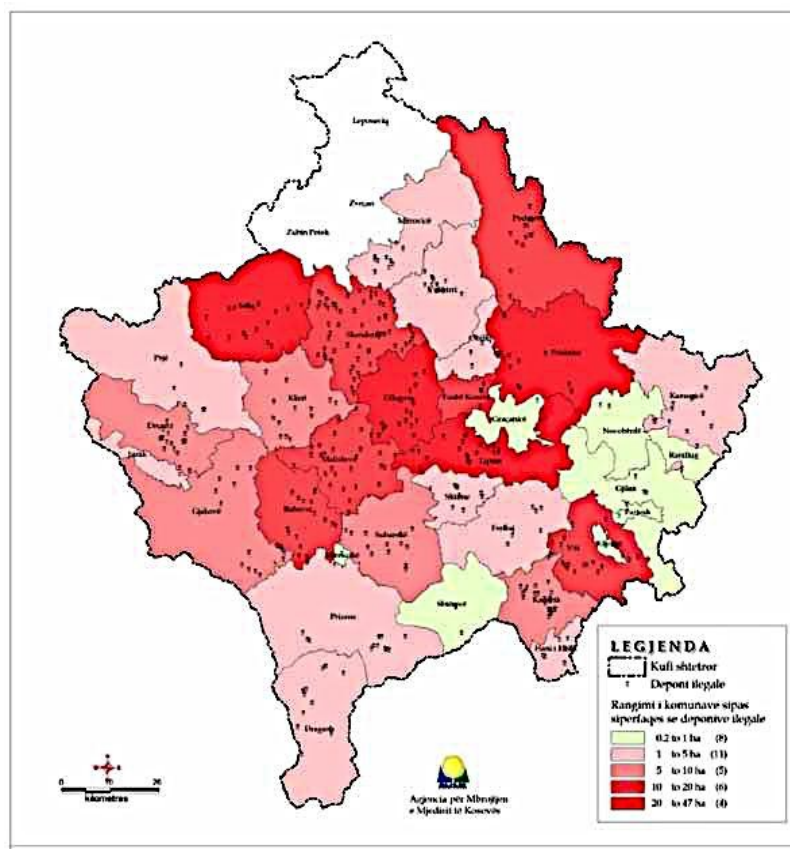
“The Ministry of Environment is drafting a master plan for waste management and is considering private sector involvement. The government approved secondary legislation on the state of the waste catalogue and on the cadastre of environmental pollutants. The basic waste management concepts and definitions need to be developed, including recycling and recovery. There are serious challenges to implement the 2012 law, since the capacity of municipalities, waste and landfill

<sup>34</sup> Some of the Waste Law provisions refer to the EU legislation such as its Art. 34.1: “Transboundary waste movement shall be accomplished in accordance with provisions of this Law, Council Regulation 259/93/EEC, Basel Convention, and in accordance with United Nations Convention on International Transport of Dangerous Goods on Road and the Regulations in regard to transboundary movement of hazardous goods through railway.”

<sup>35</sup> See *Kosovo Progress Report October 2013*, p. 40.

operators and overall funding for investments is still very low. There is no appropriate infrastructure for storing or treating hazardous waste. Therefore, Kosovo either exports its hazardous waste or mixes it with household waste in landfill sites.”<sup>36</sup>

### 5.1.1 Illegal Landfills



**Figure 2: Illegal landfills in Kosovo**

Source: MESP and KEPA, State of Waste and Chemical Report 2014.

In 2013, KEPA identified more than 400 illegal landfills but its work did not cover the Serbian municipalities of the north. Together with the MESP, the KEPA adopted in 2014 an important Report on the State of Waste and Chemicals that proposes in its final recommendations to achieve some basic measures: to prohibit the disposal of waste in illegal landfills and completing the legal framework and effective implementation of laws in waste and chemical sectors.<sup>37</sup> However in the text, the Report affirms, “currently in Kosovo, landfill closure would not be an alternative solution to the problem, because it would consequently create even greater illegal landfills.”<sup>38</sup> Considering the lack of infrastructures and the lack of management of municipal, mining and industrial waste, before initiating criminal investigations and procedures, the adoption of secondary legislation is required and it is necessary to provide local and

<sup>36</sup> Kosovo Progress Report October 2014, p. 47, available at [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm), last consulted 8.12.2014.

<sup>37</sup> See MESP and KEPA (2014), The State of Waste and Chemicals Report, 2014, p. 59

<sup>38</sup> MESP and KEPA (2014), The State of Waste and Chemicals Report, 2014, p. 30.

central administrations with human and financial resources to manage this problem.

### 5.1.2 Polluting Mining and Industrial Activities As Environmental Crimes

Polluting mining and industrial activities cannot be considered environmental crimes if they do not breach a permit, license or threshold establishing the characteristics of environmental damage that can be criminally prosecuted. Without the basic administrative and criminal enforceable laws, no environmental crimes can be prosecuted in Kosovo related to mining and industrial activities. However, most mining and industrial activities in Kosovo cause damage to environment and human health to the point of being considered the most polluted country in Europe.

Article 349 of the Criminal Code criminalises “Allowing unlawful construction or unlawful operation of plants and installations that pollute the environment” establishing that:

“1. Whoever, in violation of the law on protecting the environment, allows the construction or installation of a plant or operates or manages a plant or an installation in which a hazardous activity is carried out and thereby risks causing death or grievous bodily injury to any person, pollutes the environment, the air, soil or water or causes damage of five thousand (5,000) EUR or more to animals or plants or property shall be punished by a fine or by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

3. Whoever in violation of the law, allows or applies technologies that pollutes the environment in large scale or territory shall be punished by a fine or by imprisonment of up to three (3) years.

4. When the offense provided for in paragraph 3 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that takes a significant time or expenses to be remedied, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

5. When imposing a sentence for the criminal offense provided for in this Article, the court may require the perpetrator to undertake certain measures for protection, safeguarding and improving the environment”.

However this provision must be further developed in order to concrete the activities and behaviour that can be qualified as a crime and moreover, it requires enforcement and commitment by public authorities, that so far have just struggled to close, modernize and restructure obsolete and polluting plants, mines and industrial complexes.

In Kosovo, no authorities have dealt with the management of waste or pollution produced by industrial and mining activities.<sup>39</sup> Before the war, the mining sector was public, but no legal instruments were adopted in order to foresee the adoption and updating of standards of environmental protection and pollution control. This situation has led to serious lead water pollution and air pollution and uncontrolled dumpsites all over the country. The MESP and KEPA Report on the State of Waste and Chemicals 2014 presents a dramatic situation “Almost every industry in the past has inherited landfills or hazardous wastes which have negative effects on the environment. Also, besides these waste disposed in landfills, especially heavy metals, substances of various aggregate forms have remained for a long time without being used in facilities, warehouses, and industrial units”.<sup>40</sup> These problems are to be solved before new companies take over the mining and industrial sectors. In this regard, the KEPA has recommended that “During

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<sup>39</sup> Ibidem.

<sup>40</sup> Ibidem.



privatization process, the environmental problems inherited from the past (hotspots) should be addressed; the new owner should take responsibility for rehabilitation of those sites”.<sup>41</sup>

Furthermore, air, water and land impacts of mining and power complexes represent the most difficult challenges in order to comply with EU standards. Most energy in Kosovo is supplied by “old, unreliable and inefficient” coal power plants, one of them, Kosovo A being considered as the most polluting plant in Europe –it should be closed in 2017.<sup>42</sup> Its impact has led the authorities to consider resettling most affected villages. A Draft Law on the Environmentally Endangered Zone of Obiliq and its Surroundings was prepared by the Assembly of Kosovo but has not yet been adopted.<sup>43</sup> Its Article 6.2 dedicated to the adoption of measures for sources of pollution envisaged the big steps to be taken by authorities and companies to deal with pollution, but these measures cannot be adopted now due to the lack of resources and legal instruments.<sup>44</sup>

The case of Trepca<sup>45</sup> is of special importance from different points of view<sup>46</sup> and has been studied widely and reports have concluded that the two main impacts are discharges to surface water of runoff and mining water from tailing ponds, waste dumps, and mining sites with water discharge of high acidity and often heavy metals; and the release of dust from waste disposal areas and mine-tailing facilities.<sup>47</sup> A report

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<sup>41</sup> See KEPA (2011), Report on Environmental Hotspots in Kosovo, p. 94.

<sup>42</sup> USAID Kosovo (2012), Programmatic Impact Evaluation in the Energy Sector in Kosovo; World Bank (2011) Final Report and Background Paper: Development and Evaluation of Power Supply Options for Kosovo.

<sup>43</sup> Draft-Law on the Environmentally Endangered Zone of Obiliq and its Surroundings, 04-L-231.

<sup>44</sup> Art. 6.2 seeks to 2.1. Reducing emissions of dust and other polluting elements within permitted European standards; 2.2. Constantly reducing air pollution from the burning of coal in mines and coal dumps; 2.3. Planning and accomplishing the closure of pits and reclamation of surface mines; 2.4. Creating a security belt by the polluting operators; 2.5. Treating ash dumps in full accordance with the needs for their use, by balancing even with the social interest, as set out in the Law on Strategic Environmental Assessment in the Republic of Kosovo.

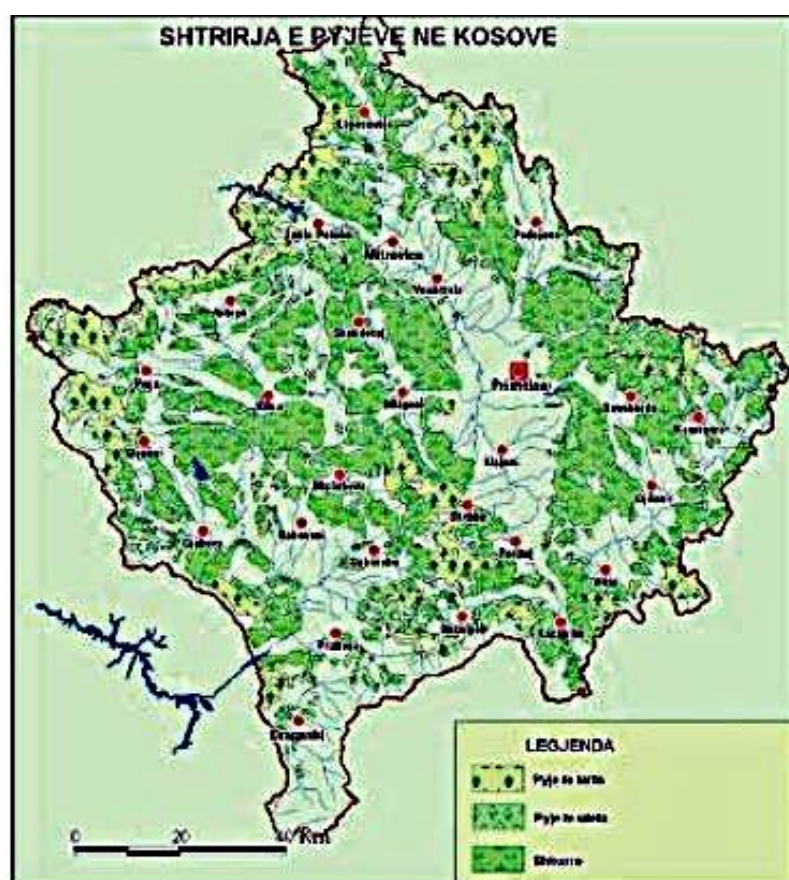
<sup>45</sup> The Trepca Industrial Complex “consists of several mines, three ore concentrators with tailings disposal facilities, a lead smelter, a zinc smelter, and several industrial sites and auxiliary facilities—in total 40 operations with its core business in lead and zinc production. It was once the largest industry and employer in Kosovo by far, but since 1999 most activities have stopped, and today a marginal level of mining and ore processing remains for maintenance and mine development purposes. Both the lead and zinc smelters have been fully withdrawn from operation. About 105,000 tons of ore were extracted from some of Trepca’s mines in 2009 (a small fraction of prewar levels) to produce concentrates for export, equivalent to 4,250 tons of lead and 5,487 tons of zinc”, World Bank (2011), Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, p. 49, available at <http://siteresources.worldbank.org/INTKOSOVO/Resources/KosovoCEA.pdf>

<sup>46</sup> With the amendment of the Law No.03/L-087 on Public Enterprises, the legal status of Trepca has changed from a socially-owned enterprise to a Publicly-Owned Enterprise. For the analysis of the legal and political problems regarding its privatisation see the Work Report August 2008- August 2009 of the Privatisation Agency of Kosovo.

<sup>47</sup> The Report of the World Bank summarizes many studies that have investigated the environmental contamination and potential control and remediation measures to manage the environmental impacts of Trepca’s former operations (MonTec 2007; ICMM, Felske, and Hara 2006; UNMIK 2001; TekSam 2004; Humboldt University Berlin 2005; Sida 2004; and Golder 2004). World Bank (2011), Kosovo Country Environmental Analysis Cost Assessment of Environmental Degradation, Institutional Review, and Public Environmental Expenditure Review, p. 49, available at <http://siteresources.worldbank.org/INTKOSOVO/Resources/KosovoCEA.pdf>

of World Bank 2010 denounced that “The mines and concentrators had inadequate environmental controls before 1999 and this has not changed. The key point is that most of the environmental emissions from these sites— particularly dust emissions from contaminated sites and waste dumps as well as discharges to groundwater and surface water from mines, contaminated sites, and waste dumping areas— are continual and have little relationship with production. In other words, the environmental legacy of the Trepca sites arguably far exceeds, and over a much wider area, the direct environmental impacts of limited production of concentrates from lead-zinc ores”.<sup>48</sup> Of special concern are the mine’s tailing ponds and dams/heaps—dust, erosion, contaminated runoff water and seepage water, and groundwater contamination and both dust and discharges containing heavy metals.<sup>49</sup> Some of the lessons learned and the conclusions made for Case Study on the Aznalcollar and Ajka accidents could be applied to Trepca.

## 5.2 Illegal Logging in Kosovo



**Figure 3: Forest coverage in Kosovo**

Source: KEPA State of nature report 2006-2007

Illegal logging in Kosovo is both a domestic and an important transnational problem that is part of a broader scenario: illegal logging in the Balkans and in the EU. Among the driving forces for this illegal activity<sup>50</sup> is a high domestic demand that is four times the production, and is mostly used for domestic fuel

<sup>48</sup> Ibidem.

<sup>49</sup> World Bank Report (2010) p. 66

<sup>50</sup> In South East European countries, the most tangible drivers of illegal logging include: unfavourable socioeconomic conditions with low income and high unemployment rates, particularly in rural, mountainous areas; a gap between wood supply and demand on the part of the wood processing industry;

due to the lack of or a deficient energy supply. Taking into account these circumstances, the Criminal Code has foreseen a specific crime for illegal logging that takes into account the social and economic context of this crime, and envisages an exception for logging destined for household uses.

### **Article 358 of the Criminal Code: Forest Theft**

1. Whoever, with the intent to steal, cuts down trees in a forest and the quantity of the timber cut down exceeds two cubic meters shall be punished by a fine or by imprisonment of up to one (1) year.
2. When the offense provided for in paragraph 1 of this Article is committed with the intent to sell the cut timber; if the quantity of the cut timber exceeds five cubic meters; or, the offense is committed in a protected forest, protected park or any other forest used for a specific purpose, the perpetrator shall be punished by a fine and by imprisonment of three (3) months to three (3) years.
3. An attempt to commit the offense provided for in paragraph 1 of this Article shall be punishable.

So, putting aside illegal logging for domestic use, illegal logging is one of the most important environmental problems in Kosovo, causing deforestation and putting ecosystems for flora and fauna at risk.<sup>51</sup> The accessibility to forests has provoked two major problems: illegal woodcutting and forest fires.<sup>52</sup>

According to EULEX, "Illegal logging comes in many forms in Kosovo including logging from public forests without permission, logging in protected areas, false declaration of volume of harvested wood and illegal logging from private forests: Smuggling and illegal accounting practices, extend the list further."<sup>53</sup> Nevertheless, Muzafer Luma, Executive director of Kosovo Forestry Agency, assured in 2012 that the Kosovo Forestry Agency was doing its work correctly in order to stop this needless destruction. He noted, "There are about 8,200 cases, which have been proceeded in courts regarding illegal actions concerning Kosovo's forests," whilst pointing out cases of illegal logging and attacks against foresters or forest guards.<sup>54</sup>

This modus operandi is common to illegal logging crimes all over the world where the legal and illegal activities are intertwined and the real amount of illegal wood is concealed in the official statistics due to corruption and organised crime practices.<sup>55</sup>

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the predominance of public forestland with insufficient forest areas in private ownership through which people could meet their needs for wood; insufficient supply of, and lack of support for the development of, alternative non-wood-based energy sources; institutional weaknesses on the part of the competent authorities, insufficient infrastructure, lack of knowledge, corruption etc.; inefficient judicial authorities; insufficient interest on the part of police authorities in this type of illegal activity; poor inter-institutional cooperation regarding preventive activities, and lack of coordination, cooperation, information exchange and dialogue between stakeholders involved in the prevention and detection of illegal actions; non-transparent procedures for the procurement and sale of wood; and lack of public awareness and lack of engagement of NGOs and civil society; Regional Report p. 82.

<sup>51</sup> See American University in Kosovo (2012). It affirms "Though deforestation in Kosovo is prevalent, it is basically due to: easy access to woodlands, undefined and uncontrolled national borders and weak implementation of environmental laws. These three, when combined become almost a type of encouragement to those wishing to misuse the environment to order to gain economic benefits", p. 10.

<sup>52</sup> American University in Kosovo Report (2012), p. 10.

<sup>53</sup> EULEX News, 2012.

<sup>54</sup> See Balkan Investigative Reporting Network, 2008.

<sup>55</sup> See EFFACE Report in International Instruments, as a case study for the implementation of CITES, it was analysed the Mahogany case.



Illegal logging is also accompanied by related environmental crimes such as forest fires. EULEX has denounced that “Some forest fires, which can pose a real threat to villages and people’s lives, are believed to have been started by illegal wood cutters trying to cover their tracks. The activity has also increased tensions between different communities...”<sup>56</sup>

Illegal logging also has a transnational dimension due to the undefined and uncontrolled borders that in some cases could be considered as an organised crime since the different elements of this type of crime are met. Moreover, the lack of defined borders equals lack of legal implementations and control. Thus, “the lack of capacity to protect forests in Kosovo means that publicly and privately owned forests particularly at the border/boundary are vulnerable and a prime target of wood thieves.”<sup>57</sup> Pursuant to the Safer World Report (2011), “Local government officials allege the destruction of Kosovo’s forest resources by Montenegrin authorities.”<sup>58</sup> According to this report, “Resentment has arisen in the buffer zone between Montenegro and Kosovo over damage to and theft of forest resources – perceived by each side to have been illegally exploited and damaged by the other. Seeing that Kosovo’s forests and mountains are important to Kosovo’s economic development, Montenegro does not fully understand the extent to which it is damaging Kosovo. As much as it has environmental and economic damages, it also causes political conflicts seeing that relations between countries deteriorate in these kinds of circumstances”.<sup>59</sup>

The prevalence of illegal logging indicates that the current organisational and legal infrastructure is not fully functional, mainly due to:

- the insufficient number of employees in the Kosovo Forest Agency;
- age and gender issues;
- the low level of skills and inadequate capacity among the personnel;
- the lack of the rule of law;
- delays in the juridical system; and
- lack of educational institutions on forestry and the wood industry.<sup>60</sup>

The Ministry of Agriculture, Forestry and Rural Development (MAFRD) developed the “Strategy for Forest Development 2010-2020” in cooperation with an inter-ministerial working group and with the support of international experts from UN FAO and the Swedish International Development Cooperation Agency (SIDA). The strategy was approved in November 2009 and is an official guiding document for the improvement of the forestry sector, defining certain fields for intervention identified through close consultation with forestry experts and other stakeholders. Moreover, during the past few years steps have been taken to improve the situation, including the development of agricultural educational schools and some educational and training initiatives established by foreign entities or foreign development agencies.

Despite the existing legal framework for forest management, forests are an obvious target for illegal activities, since they are spread over a large area and it is practically impossible to ensure their full protection. Increasing the degree of protection usually involves a significant rise in the costs of forest management, which is often unacceptable for state-owned companies and forest owners. There is a clear pattern throughout the region for illegal activities to be more common in socially and economically disadvantaged areas. High unemployment figures and low salaries encourage illegal logging, both for

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<sup>56</sup> EULEX News, 2012.

<sup>57</sup> EULEX News, 2012.

<sup>58</sup> SaferWorld Report (2011), *Drawing Boundaries in the Western Balkans*, 2011, pp. 11-13.

<sup>59</sup> *Ibidem*.

<sup>60</sup> *Ibidem*.

firewood and commercial use. It is not uncommon for the forest guards responsible for protecting the forests also to be involved in these activities.

According to a Savcor/World Bank study (Savcor Indufor Oy 2005), the various violations associated with illegal logging can be divided into the following groups: theft; unauthorised harvesting; non-compliance with regulations related to timber harvesting; non-compliance with procedures for timber sales/concession awards; the manipulation of timber data; evasion of taxes and fees; non-compliance with regulations concerning the transportation or exports of timber; and non-compliance with labour laws.<sup>61</sup>

These illegal logging activities can be classified accordingly with the legal framework as administrative infractions, misdemeanours, environmental crimes but also malpractice of administration, corruption and fraud.

Kosovo is reliant on consumption of biomass as a wood fuel in order to meet its 2020 target on consumption of renewable energy. In order to be counted against the target, the wood fuel has to come from legally approved cuts that are currently outweighed by illegal logging.<sup>62</sup>

The emphasis in forest products has been largely on certification of sustainable harvesting from protected forests and prevention of illegal logging. Both are important to the upcoming EU requirements for wood product imports.<sup>63</sup> On the other hand, the legal logging as designed by Kosovo authorities has been criticized for been on short-term leases of 6 months leading to predatory practices, whereas sustainable leases would have been for a period of 40 years.

## Transnational illegal logging

The geographical situation of Kosovo in the Balkans as well as its uncontrolled and undefined borders, have made of it a zone of destination as well as transition of illegal logging of the wood of Albania and Montenegro. The customs authorities control cross-border trade and carry out market and phytosanitary inspections. Irregularities in documentation are a problem that has partly been addressed. Most trade is with Bosnia and Herzegovina, but there is also trade with Montenegro and Serbia, mainly in the form of imports. No significant amounts of illegal wood have been recorded, although there is likely to be a large margin of error. Despite, the Kosovar authorities work in cooperation with the Serbian border police to prevent illegal trade, some irregular practices have been denounced.

### *Box 1: Northern Kosovo: A Gangster's Paradise*

“The situation of legal limbo in the north creates a permissive environment for illicit activity. Border management between the Serb-controlled regions of Kosovo and the Republic of Serbia is limited, because the Serbs do not recognize that there is a border and the Kosovar authorities are not in a position to enforce customs or border controls. The delicate compromise is that the European Union Rule of Law Mission in Kosovo (EULEX)—protected by KFOR—has personnel at the two official border crossings, referred to as gates 1 and 31. The Kosovo Police are present but keep a low profile. However, these officials simply monitor the flow of traffic; they do not search vehicles or act as customs officers. Furthermore, there are a number of

<sup>61</sup> Savcor Indufor Oy (2005), Ensuring Sustainability of Forests and Livelihoods through Improved Governance and Control of Illegal Logging for Economies in Transition, Discussion Paper for the World Bank, Helsinki, May 2005, p.6, [http://siteresources.worldbank.org/INTFORESTS/Resources/SAVCOR\\_illegal\\_logging\\_ENA\\_June2005.pdf](http://siteresources.worldbank.org/INTFORESTS/Resources/SAVCOR_illegal_logging_ENA_June2005.pdf)

<sup>62</sup> See USAID/Kosovo (2014), Country Development Cooperation Strategy 2014-2018, p.33.

<sup>63</sup> USAID/KOSOVO, Mid-Term Evaluation of the Kosovo Private Enterprise Program, 2011, p. 19.

alternative roads in and out of the north of Kosovo that are sometimes blocked but never monitored. As a result, northern Kosovo is a gangster's paradise. Fuel and weapons are trafficked south, while cigarettes, drugs, and people are trafficked north, mostly heading toward Subotica, on the border between Serbia and Hungary, and then into the EU. Indeed, despite complaints by some local Serb officials about restrictions on freedom of movement, smugglers seem to move freely.

Smugglers have little to fear since they have close links with local officials. The Kosovo Police (mostly ethnic Serbs) operate in the north, but they seldom take action against major criminals for fear of reprisals against themselves, their families, and their property. Few crimes are solved, and even the parallel Serb legal institutions in the north admit that they do not have the capacity to deal with serious crime. The irony is that local Serbs say that they are sometimes afraid in this lawless environment.

Unlike when UNMIK had a major police presence in the north, the Kosovo Police and EULEX are seldom visible, and Serbs feel that there is no recourse to justice. This can result in odd situations, like armed gangs of Albanians stealing timber from Serbs in the north, with almost no consequences”.

Source: KEMP, W., SHAW, M. AND BOUTELLIS, A. (2013). *The Elephant in the Room: How Can Peace Operations Deal with Organised Crime*, Publications of the International Peace Institute, June 2013. Available at [www.ipinst.org](http://www.ipinst.org)

Further institutional and practical measures are needed in the border regions to combat trade in illegally logged wood. However, lack of political will, lack of funding and capacity has created a serious obstacle to efficient cross-border cooperation. After the 2013 Belgrade-Pristina agreement facilitated by the EU High Representative Catherine Ashton, a better border cooperation is expected.<sup>64</sup>

## 5.2.1 Biodiversity and Environmental Crimes

Law No. 02/L-18 on Nature Conservation offers a clear example of the problems of protecting the environment through criminal law, directly connected with the role of EU environmental legislation as a normative reference. Its Article 13.2 establishes that:

“Extinguishment, damage, killing, displacement and disturbing of protected species determined through sub-normative act of Article 12 as well as the protected fowls through European Directive 79/409/EEC is forbidden and is sanctioned through provisions of the Law and provisions of Provisional Penal Code of Kosovo.”

This referral to an external instrument, the BIRDS Directive, could constitute a breach of the principle of legality that must inform criminal law, particularly in a system such as the Kosovar. The incorporation of the EU environmental law into secondary legislation must be a pre-requisite of its enforcement by criminal law.

On the other hand the system on Nature Conservation Zones is also strongly linked with the EU environmental law and the Nature 2000 Network in which it is now included. According to this law, “the Ministry is required, after consultation with KEPA, to prepare a list of proposed nature conservation zones on the basis of the site assessment criteria set out in Annex III (Stage1) to the EC Habitats Directive and other relevant scientific information. (...)”<sup>65</sup> The different Nature Conservation Zones – Nature strict sanctuary, National Parks, Natural monuments, Managed zone of habitats, Protected landscape, Protected zone of natural resources- must be designated by National Assembly, the Government or the Municipalities. Until the process of designation is not achieved the law cannot be fully enforced. A further development of general concepts such as conservation status is also required in order to prosecute those activities that cause a threshold of damage that cannot be infringed.<sup>66</sup>

<sup>64</sup>See EEAS, “Serbia and Kosovo Reach a Landmark Deal”[http://eeas.europa.eu/top\\_stories/2013/190413\\_eu-facilitated\\_dialogue\\_en.htm](http://eeas.europa.eu/top_stories/2013/190413_eu-facilitated_dialogue_en.htm)

<sup>65</sup> Article 21.2 of the Law No. 02/L-18 on Nature Conservation.

<sup>66</sup> Article 21.4 of the Law No. 02/L-18 on Nature Conservation just says: “Once an area has been included in a list of proposed nature conservation zones, it is prohibited to cause any deterioration of the conservation status of any part of that area” and conservation status of natural habitats and of species are generally defined in Article 5 on definitions.

As described by Mustafa et al. (2011) protected areas network in Kosovo consist of: one national park, 11 nature reserves, two protected landscapes and 82 natural monuments with different natural characteristics: botanical, geographical, geomorphologic, hydrological etc. The history of protected areas starts in 1953, when the first nature reserves were designated for legal protection, with permanent increase of number and size of other protected areas". These authors say, "the network of legally protected areas is quite heavily damaged during and after the last war in Kosovo (1998-99). However, later, Mustafa et al. (2013) consider most of these protected areas as just "so-called parks on paper" due to the fact that "despite having the legal mandate, [...] objectives of management are still on paper, because of the lack of capacities of management authorities to monitor and enforce conservation purposes and objectives."<sup>67</sup>

Veselaj et al. (2012) poses "There is no Red List species for Kosovo. However, some efforts have been made to protect the most endangered species. There is a list of 29 plant species that was proposed last year for legal protection. Animal species are without any strict legal protection. Hunting laws have not spared even some species that are protected by international conventions and European Union directive (EU) directives (Birds and Habitat Directive).<sup>68</sup>

Mustafa et al. (2011) consider that "in the recent decades, populations of many species in Kosovo are in dramatic decline. This mainly happens due to destruction of natural habitats by humans, with or without being aware of it, for their own survival. Intensification of human activities as a result of growth of industry, energy, transport, agriculture, forestry, tourism, etc., still continues to impact on natural habitats by fragmenting them, leaving but small areas for wild flora and fauna".<sup>69</sup> They warned "The facts in the field shows that if necessary steps on implementation of legislation are not undertaken on the awareness raising of the public, in few years the highly valued zones of nature in Kosovo will lose their values as a result of conversion of land for agricultural purposes, development of infrastructure (unplanned and uncontrolled constructions), fragmentation of habitats (especially by streets and quarries), unsustainable exploitation of forest ecosystems, herbs, certain animals, etc."<sup>70</sup>

In 2013, the MESP began measures to combat illegal construction activities in the 'Sharri' national park. However, activities for the establishment of the Natura 2000 network of protected areas have not yet started. As put by the Kosovo Progress Report 2014, Institutions in this area remain weak in terms of the numbers and skills of civil servants and state inspectors for nature protection.<sup>71</sup>

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<sup>67</sup> On the other hand, the Ministry of Environmental and Spatial Planning (MESP) has passed an instruction (Instruction nr. 04/03, 23 May, 2003) for the strict legal protection of some animal species considered rare and endangered, such as: brown bear, lynx, wild goat (*Rupicapra rupicapra* L.), deer (*Capreolus capreolus* L.), wildcat (*Felis sylvestris* Schr.), red deer (*Cervus elaphus* L.), squirrel (*Sciurus vulgaris* L.), gold musteline (*Martes martes* L.), white musteline (*Martes foina* Exleben), the hazel dormouse (*Muscardinus avellanarius* L.). There are cases of trade with species from Kosovo. According to the instructions given for these species, it is especially prohibited to catch, isolate, keep and trade these animals and also actions that breach the foreseen provisions with this instruction will be punished by law", see Mustafa, Behxhet et al. (2013) "Extension of the National Park Sharri Boundaries. Significant Action for Preservation of Natural Values", *Natura Montenegrina* 12 (3-4) 2013, p. 608.

<sup>68</sup> Veselaj, Zeqir et al., (2012), "Biodiversity Conservation Status in the Republic of Kosovo with Focus on Biodiversity Centres", *Journal of Environmental Biology* 33, p. 309.

<sup>69</sup> Mustafa, Behxhet et al. (2011) "Management Status of Protected Areas in Kosovo", *Procedia Social and Behavioral Sciences* 19 (2011) p. 651.

<sup>70</sup> Mustafa, Behxhet et al. (2011), *loc.cit.*, pp. 653-654.

<sup>71</sup> Kosovo Progress Report 2014, p. 41. Regarding illegal constructions, it also says "In general, frequent breaches of legislation across Kosovo negatively affecting religious and cultural heritage sites have continued. Implementation of the general legislative framework governing the protection of cultural heritage remains weak. Illegal construction is a major concern, particularly within Special Protective Zones. Punitive measures against those in breach of laws need to be applied consistently, and illegal construction which has already taken place should be dealt with in accordance with the law. Kosovo authorities, particularly at the local level, need to demonstrate a stronger commitment to protecting cultural heritage. The new government needs to engage actively in this process", p. 28.

## 6 Institutions and Actors in Kosovo

The Kosovo Progress Report 2014 shows low progress and still a weak commitment towards environmental protection due to lack of budget leading to lack of capacity of the administration that should enforce environmental laws. Related with the problem, and as shown in previous reports, Kosovo also suffers from a chronic problem on low quality of environment reporting,<sup>72</sup> that is so important in order to assess enforcement and compliance.

So the European Commission considers that:

“Administrative capacity within the environment and climate sectors is weak. KEPA’s capacity needs to be strengthened to improve, inter alia, the quality of GHG inventory and reports. The budget of the ministry remains insufficient. Funding for investments, in particular for sewage systems, wastewater treatment, and waste treatment and disposal systems, remain outside government expenditure plans. There was no progress in establishing a mechanism to finance environmental projects, in particular the operating costs of environment monitoring institutions and capital investments. An eco tax collected during car registration contributes to the Kosovo budget and is not allocated to any environmental projects.

Overall, Kosovo has not progressed beyond the very initial stages of harmonisation with the acquis in these areas. There has been little progress on new legislation and implementing existing laws. Environment and climate need to become government priorities. The quality of environmental reporting needs to improve to better inform government policies. Kosovo urgently needs to secure financing of monitoring institutions, particularly to ensure the maintenance of existing air and water monitoring networks, and to establish a system for GHG monitoring and reporting. Kosovo needs to adopt a climate strategy and action plan, in line with the expected EU 2030 policy framework on climate and energy.”<sup>73</sup>

### 6.1 Institutions

#### 6.1.1 Ministry of Environment and Spatial Planning

In 2013, the Government of Kosovo created the Ministry of Environmental and Spatial Planning (MESP) and adopted two major instruments: the Strategy on Environment Protection 2013-2022 and the Action Plan on Environment 2013-2017, on 17 July 2013.

The MESP is responsible for environmental policy, the application of laws and supervision of activities for environmental protection and spatial planning. During 2013-2014, as reported to the European Commission, the MESP has adopted some important measures required to enforce environmental laws: It has prepared and finalized the list of classification and labelling of dangerous substances.<sup>74</sup>

The MESP has an important role concerning human and institutional capacity building to increase the capacity at all levels: regarding officials from MESP, KEPA, Inspectorate and Municipalities. At the municipal level, MESP in 2013 organized training for the implementation of environmental legislation with the theme "Environment Thematic Panel".

#### 6.1.2 Ministry of Agriculture, Forestry and Rural Development

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<sup>72</sup> Kosovo Progress Report 2013, p. 39.

<sup>73</sup> *Kosovo Progress Report 2014*, p. 48.

<sup>74</sup> See the First Input to 2014 Progress Report, p. 69.

The forestry institutions are the Ministry of Agriculture, Forestry and Rural Development (MAFRD), along with the Administrative Department of Agriculture, Forestry and Rural Development. The MAFRD is managed solely by Kosovo institutions reporting directly to the Prime Minister as the Head of Government and the Parliament. The MAFRD carries out forestry management through the Forest Department, which is responsible for the development of policies, legal infrastructure, inspection and human resources. It reports directly to the permanent secretary to the minister. This department includes a division for management policies for forests, wild animals and trainings; and a division for inspection and control.

### 6.1.3 Ministry of European Integration

The mission of the Ministry of European Integration is “harmonizing policies of the Republic, aligning its laws with those of the Union, and maintaining widely-engaging and continuous dialogue between the two, while embracing high standards of excellence, knowledge, integrity, accountability and transparency.”<sup>75</sup>

However, as said in the Kosovo Progress Report 2014, “Overall, Kosovo has not progressed beyond the very initial stages of harmonisation with the *acquis* in these areas. There has been little progress on new legislation and implementing existing laws. Environment and climate need to become government priorities. The quality of environmental reporting needs to improve to better inform government policies. Kosovo urgently needs to secure financing of monitoring institutions, particularly to ensure the maintenance of existing air and water monitoring networks, and to establish a system for GHG monitoring and reporting.”<sup>76</sup>

### 6.1.4 Kosovar Environment Protection Agency - KEPA

The Kosovo Environmental Protection Agency (KEPA) is a government institution “that engages, through integrated environmental monitoring, efficient systems of environmental information and continuous reporting on the environmental situation, to maintain quality of air, water, soil and biodiversity, promote the use of renewable energy sources and sustainable use of natural resources in order to ensure a healthy environment for generations present and future in harmony with the progress of economic and social developments,”<sup>77</sup>

All the EU Progress Report on Kosovo describes the Kosovo Environment Protection Agency as insufficiently provided with financial and human resources.

### 6.1.5 Inspectorates for Environmental Protection

All the new environmental laws foresee inspectorates for the supervision of the implementation and enforcement of their provisions and the subsidiary bylaws developing them.<sup>78</sup>

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<sup>75</sup> See its presentation in its website available at <http://www.mei-ks.net/?page=2,1>

<sup>76</sup> Kosovo Progress Report 2014, p. 42.

<sup>77</sup> See its profile available at its website <http://www.ammk-rks.net/index.php?page=2,5>

<sup>78</sup> So for example, Art. 40.2. of the Law No. 02/L-18 on Nature Conservation establishes that “the inspective supervision is conducted by a nature protection inspector in the frame of Environment Inspectorate in coordination with relevant inspectors” and Art. 40.3, e) says that the Inspector of nature protection during implementation of inspection supervises activities, which may adversely affect or damage natural resources. Art. 53.1 of the Law No.02/L-85 on Fishery and Aquaculture establishes that “in cases when violations of the provisions of this Law and sub-legal acts derived from it are verified, the inspector:

a) with a decision orders the elimination of irregularities within a definite term;



Regarding the completion of the legal framework in the field of environment, the Assembly of Kosovo has adopted the Law on the Inspectorate of Environment, Waters, Spatial Planning and Construction, No. 04/L-175, dated 2 October 2013.<sup>79</sup> In its Articles 10 and 11 regarding the scope of the Inspectorate of the Ministry, it refers to the necessity of harmonizing it with the EU environmental legislation. In particular, Article 10 refers to the *EU Minimum Criteria for Environmental Inspections in Member States* which is a non-compulsory instrument, so this Kosovo law upgrades the EU recommendations when establishes that Inspectors has to harmonize its activity with them. Currently, the European Commission is drawing up a new proposal for a mandatory instrument for EU inspections, seeking better enforcement by laggard Member States. Article 11 also refers to harmonizing inspectorate function with the requirements of the European Union for "NATURE - 2000" network, in a vague way that requires further and full development in order to enforce it.<sup>80</sup>

This Law establishes a wide range of powers that enable the inspector to "pronounce the penalty on money in the scene - mandatory penalties<sup>81</sup>- under this law or the relevant laws in force" and to "initiate proceedings of criminal offense because violation of applicable legal provisions to natural and legal persons."<sup>82</sup> The legal technique of the document in its English version is however deficient, when

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- b) submits the violation note the competent organs or requests the initiation of the contravention procedure;
  - c) Undertakes other measures designated by special acts that regulate the responsibilities of the inspectorate.

<sup>79</sup> Law on the Inspectorate of Environment, Waters, Spatial Planning and Construction, No. 04/L- 175, dated 02 October 2013, (Decree No. DL-053-2013, 21 October 2013); it was approved by the Assembly, on 02.10.2013, and promulgated by the Decree of the President of the Republic of Kosovo No.DL-053-2013, on 21.10.2013.

<sup>80</sup> Article 10 on the Inspectorate of Environment Protection establishes:

1. Inspectorate of Environment protection performs inspection supervision and control through environmental inspection by implementing this law and laws related to the field of environment protection.
2. Inspectorate for Environment Protection performs its duties and responsibilities in protecting the environment, by harmonizing its activity with the Recommendations of the European Parliament and the Council on "Minimum Criteria for Environmental Inspections in Member States" (RMCEI 2001/331/EC).

Article 11 on the Inspectorate of Nature Protection establishes:

1. Inspectorate of Nature Protection carries out inspection supervision and control through inspection in the nature by implementing this law and laws and sub-legal acts related to the protection of nature.
2. Inspectorate for nature protection carries out its duties and responsibilities in protecting nature, by harmonizing its activity with the requirements of the European Union for "NATURE - 2000" network.

<sup>81</sup> Article 45 on Mandatory fines establishes :

1. During the supervision, inspection control and in cases when meet the illegitimate actions or activities, the inspector shall enounce the fines in accordance with applicable law.
2. The form and content of the mandatory fine form shall be determined by the Ministry while for the local administration units, the municipal authority.

<sup>82</sup> See Article Article 22 on Powers and duties of inspector that establishes that "1. The inspector in the exercise of duties and responsibilities is authorized to:

- 1.1. control working documents, which allows access to monitor the performance of the subject

addressing important issues such as confiscation that is approached in a restrictive sense limiting it of its possibilities of intervention that however are envisaged in the environmental statutes.<sup>83</sup>

During 2013-2014, Kosovo reported to the EU that the Environmental Inspectorate conducted 321 inspections, which resulted with the following: two criminal initiation; four offense initiations; one mandatory fine; and 297 warnings, orders, recommendations, and other responses to complaints.<sup>84</sup> During 2014, the Environmental Inspectorate reported 172 inspections, which resulted with the following: 10 initiations offenses; 7 decisions and 172 warnings, orders, recommendations, and other responses to complaints.<sup>85</sup>

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relating to law implementation;

1.2. control the competent authority, at central and local level, which has an obligation and responsibility for providing documentation as: consent, permit, license, authorization, certificate, conclusion etc.

1.3. control the municipal inspection in the implementation of legal provisions in the relevant fields;

1.4. propose to the respective municipal body's disciplinary measures against the leaders of the Inspectorate, inspectors and officials for acting and not acting according to responsibilities defined by this law and other applicable laws;

1.5. enter and to control the business premises and working spaces, installations and equipment, work tools, transport vehicles, etc;

1.6. to require the identification document of persons in order to verify identity during inspection procedures;

1.7. ask from the subject of supervision or persons responsible, explanations, written reports regarding the inspection supervision issues;

1.8. provide samples without compensation for analysis or examination for verification in cases provided by law;

1.9. notice the real situation through visual sight, audio and video recording which can be used in the inspection procedure;

1.10. ask from the supervision subject during the control, to enable access to any space, equipment, enclosed facilities, car or tools;

1.11. pronounce the penalty on money in the scene - mandatory penalties - under this law or the relevant laws in force;

1.12. initiate proceedings of criminal offense because violation of applicable legal provisions to natural and legal persons;

1.13. undertake other measures for which he is authorized by this law and other applicable laws.

<sup>83</sup> See Article 43 on Confiscation:

1. If the inspector during the inspection finds irregularities, temporarily seize documents, materials, machines and other work that can be used as evidence in relevant proceedings.

2. Method and procedures of confiscation shall be determined by the Ministry by sub-legal act.

<sup>84</sup> See Ministry of European Integration (2014), First Input of Institutions of the Republic of Kosovo to the European Commission 2014 Progress Report, May 2014, p. 69.

<sup>85</sup> See the Ministry of European Integration (2014), Second Input of Institutions of the Republic of Kosovo to the European Commission 2014 Progress Report on Kosovo, p. 52



In 2013, the Inspectorate of MESP as part of its actions implemented the decision of the Government "To stop the exploitation of sand and gravel in rivers, river beds, and areas around their shores" and carried out continuous s actions and made 4 criminal initiations.<sup>86</sup>

### 6.1.6 Judicial System

After the last reform performed by EULEX when it dismantled all courts, allegedly because of their corruption and malfunctioning, there are 7 courts covering the main regions of Kosovo.

It has not been possible to have access to environmental case law in English, so this case study cannot offer an insight into the way prosecutors and judges apply environmental law.

The nine-member Constitutional Court of Kosovo was established in 2009 as the final authority on the interpretation of the Republic of Kosovo's constitution.

### 6.1.7 Municipalities

Most environmental laws and regulations must be implemented and enforced at the local level. So, for example, Art. 10 of Law No. 02/L-18 on Nature Conservation establishes that "The municipalities have an obligation, in accordance with this law, the Strategy and Action Plan for Nature Conservation, and documentation for Spatial Planning to:

- a. take care for conservation of biological and landscape diversity within their territories;
- b. designate nature conservation zones that are within their territories/jurisdiction;
- c. provide conditions for the protection and preservation of nature conservation zones that are within their territories/jurisdiction;
- d. participate in the procedure for the designation of areas as nature conservation zones to be promulgated by the Government and Assembly; (...)"

Without the fulfilment of these tasks, there cannot be enforcement of administrative law or any prosecution of infringements.

Local authorities have been criticized for their weak action to protect the environment, especially to combat illegal logging and to resolve the problems related with waste management.<sup>87</sup>

## 6.2 Public Participation and NGOs

The Constitutional Framework adopted in 2001 by UNMIK under the Security Council mandate of Resolution 1244/99<sup>88</sup> did not foresee a right for the information related with the environment. The new Constitution adopted in 2008 introduced a right of information and a duty of responsibility towards the environment in its Article 52 on the Responsibility for the Environment that says.

1. Nature and biodiversity, environment and national inheritance are everyone's responsibility.
2. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live.

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<sup>86</sup> See Ministry of European Integration (2013), Input to Progress Report 2013, p. 31.

<sup>87</sup> See American University of Kosovo Report (2012), op. cit., p. 6.

<sup>88</sup> The Constitutional Framework introduced a Chapter 5 on Responsibilities of the Provisional Institutions of Self-Government that envisaged in its section 5.1 that Provisional Institutions of Self-Government shall have responsibilities in regarding (i) Environmental Protection. See Constitutional Framework for the Provisional Self-Government of Kosovo, available at <http://www.unmikonline.org/constframework.htm>

3. The impact on the environment shall be considered by public institutions in their decision-making processes.

This paragraph 2 of Article 52 gives constitutional status to the basic general right of information, which is one of the rights envisaged by the Aarhus Convention on Access to information, public participation in decision-making and access to justice in environmental matters.<sup>89</sup> Kosovo has not acceded yet to this convention but has incorporated in its legislation the basic principles of the EU Directive that transposes the convention into EU law.

The basic principles of the EU Directive “on public access to environmental information” informed the first Law Environmental Protection of 2003<sup>90</sup> and specially were incorporated in the Law on Environmental Protection adopted in 2009. In 2013, the Service TAIEX of DG Enlargement organised a Workshop in Pristina<sup>91</sup>, to show EU implementation experiences with the Environmental Information Directive and the Aarhus Convention.

The EU and its Member States have promoted public participation and the empowering of NGOs and citizens to protect the environment in the Balkans.<sup>92</sup> The Netherlands financed the regional project on ‘Improving Public Participation: next Steps in Implementing Aarhus Convention in Albania, Bosnia Herzegovina, FYR Macedonia, Serbia and Montenegro and Kosovo.’ One of the most important environmental NGOs in the Balkans, the Regional Environmental Center for Central and Eastern Europe has made a remarkable work promoting public awareness on environmental problems and on the access to justice under Aarhus Convention.<sup>93</sup>

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<sup>89</sup> See MORINA, V. (2006) *The transposition of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention) with the legislation of Kosovo*, REC, March 2006, Pristina. This report was compiled as part of the regional project ‘Improving Public Participation: next Steps in Implementing Aarhus Convention in Albania, Bosnia Herzegovina, FYR Macedonia, Serbia and Montenegro and Kosovo’ Project financed by the Ministry of Foreign Affairs of Netherlands, available at [kos.rec.org/english/pdf/ReportEng.pdf](http://kos.rec.org/english/pdf/ReportEng.pdf)

<sup>90</sup> Morina (2006) criticizes that “law making authorities in Kosovo have failed to address the aspect of public participation in the Law on Environmental Protection. The Law lacks general guiding principles implying the right of citizens to participate in environmental decision making procedures. Practically, all aspects related to Art. 6 of the Aarhus Convention (with the exception of the decision making procedures implying the EIA) have been left unanswered in the present Law. The Law does not provide normative frames for procedures related to public participation in order to enable the public to submit, in writing or, as appropriate, at a public hearing any comment, information or opinions, which might be relevant to the proposed activity. It also lacks provisions related to public participation for the preparation of plans and programmes relating to the environment in a transparent and fair framework. These requirements of Aarhus Convention should find their pronouncement in the present Law of Environmental Protection in order to facilitate the public participation in the field of environmental decision making procedures.” Morina, V. (2006), *op. cit.*, pp. 70-71.

<sup>91</sup> See the information of the different Workshop of TAIEX for the Western Balkans, available at [http://ec.europa.eu/enlargement/taieux/legislative-databases/index\\_en.htm](http://ec.europa.eu/enlargement/taieux/legislative-databases/index_en.htm)

<sup>92</sup> See Morina, V. (2006), *The transposition of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention) with the legislation of Kosovo*, Report compiled as part of the Regional Project ‘Improving Public Participation: next Steps in Implementing Aarhus Convention in Albania, Bosnia Herzegovina, FYR Macedonia, Serbia and Montenegro and Kosovo’, financed by the Ministry of Foreign Affairs of Netherlands, March 2006, Pristina.

<sup>93</sup> It has prepared the ‘Handbook on Access to Justice under the Aarhus Convention’.

## 6.2.1 Regional Environmental Center for Central and Eastern Europe (REC)

Kosovo participates in the Regional Environmental Center for Central and Eastern Europe (REC).<sup>94</sup> REC was established in 1990 by the United States, the European Commission and Hungary. Today, the REC is legally based on a charter signed by the governments of 28 countries and the European Commission, and on an international agreement with the government of Hungary. It defines itself as “a nonpartisan, non-advocacy, not-for-profit international organisation with a mission to assist in solving environmental problems in Central and Eastern Europe. REC fulfils this mission by promoting cooperation among non-governmental organisations, governments, businesses and other environmental stakeholders, and by supporting the free exchange of information and public participation in environmental decision making”.<sup>95</sup> The REC has its head office in Hungary, and country offices and field offices as in the case of Kosovo.

In the last years, REC has launched different initiatives with EU funds, in particular pre-accession funds such as PHARE, CARDS and now IPA II.<sup>96</sup> Some of these initiatives have not had a coherent continuity, as is the case of the projects BERCEN<sup>97</sup> that was to use IMPEL as role model and ECENA<sup>98</sup>, its successor. They managed temporarily to provide cooperation tools and training on environmental legislation but unfortunately, they have not been available once the support of the EU programmes came to an end. In their website there is limited information since the documents produced, e.g. a Training manual for environmental inspectorates or a case study on Kosovo oils waste and environmental crimes are no longer available.<sup>99</sup>

REC has an Office in Kosovo with the goal of “empowering citizenship to and support environmentally mainstreamed policy making”.<sup>100</sup> So, “the office was established to assist in the development and strengthening of environmental civil society; to support the development and enforcement of appropriate environmental policies; and to ensure that environmental issues are taken into consideration during the process of transition”. REC Office Kosovo focuses its activities in three main areas:

- Support to institutions for efficient environmental management.

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<sup>94</sup> See Kosovo Progress Report 2013, p. 20, available at [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm)

<sup>95</sup> See its website presentation available at <http://www.rec.org/>

<sup>96</sup> Instrument for Pre-Accession Assistance (IPA II), Multi-Country Indicative Strategy Paper (2014-2020), adopted on 30/06/2014, Ref. Ares. (2014), 16/09/2014.

<sup>97</sup> BERCEN: The Balkan Environmental Regulatory Compliance and Enforcement Network. The mission of BERCEN was to improve the implementation of environmental law by increasing the effectiveness of enforcement agencies and promoting compliance with environmental requirements, see information available at <http://web.rec.org/documents/bercen/PDF/2ndplenary/AmendedToR.pdf> and <http://archive.rec.org/REC/Programs/REREP/BERCEN/Default.html>

<sup>98</sup> The Environmental compliance and enforcement network for accession, ECENA, was the forum where partners expressed their preferences and needs as well as their problems with enforcement and implementation with limited resources.<sup>98</sup> In 2010, ECENA held a national training in Kosovo. The Ministry of Environment and Spatial Planning of Kosovo, in cooperation with the ECENA Secretariat, organised the first ECENA national training to take place in the local language, whose main goal was to transfer lessons learnt and all the experience gained at ECENA regional trainings to a large number of inspectors and permit writers. The event took place in Pristina on February 2-3, 2010, the number of beneficiaries were around 30 inspectors and permit writers. See [http://archive.rec.org/REC/Programs/environmental\\_policy/ECENA/Default.html](http://archive.rec.org/REC/Programs/environmental_policy/ECENA/Default.html)

<sup>99</sup> New websites are being prepared, but at the moment of finishing this report were not operative.

<sup>100</sup> See REC Kosovo Office presentation available at [http://kos.rec.org/english/index\\_e.html](http://kos.rec.org/english/index_e.html)

- Provision of information/education for civil society.
- Development of sustainable communities.<sup>101</sup>

## 6.2.2 The THEMIS NETWORK

The Themis Network is a regional cooperation initiative among environmental law enforcement units in Albania, Bosnia and Herzegovina, Kosovo, Former Yugoslav Republic of Macedonia, Montenegro, and Serbia, including parts of the judiciary system, which is financed by the Austrian Development Cooperation. The network seeks to increase administrative capacities to tackle environmental crime and enhance regional dialogue and cooperation, “in the context of approximation to European Union environmental legislation.”<sup>102</sup>

The Themis network was officially launched in 2010, on the occasion of a conference on illegal logging and environmental crimes, by the adoption of a joint declaration and the approval of a multi-annual work programme. Between 2012 and 2014, the network operated under the project “Promoting regional cooperation in South Eastern Europe via networking within the authorities responsible for the environment and justice sectors”, according to the principle of ownership by the beneficiaries. Its main guiding bodies were its Steering Committee and Secretariat and the donor countries –Austria, Belgium, Sweden.

The Secretariat—hosted by the Regional Environmental Center for Central and Eastern Europe—worked in cooperation with partner organisations.

In its Themis Work Plan 2012-2013<sup>103</sup>, there were network activities organised in three clusters and targeted at policy makers/legislators from ministries of justice and the environment; judges and prosecutors; and environmental inspectors. The three clusters were Network governance, Natural resources management and Enforcement of Criminal Law. This third cluster was dedicated to:

- Networking and cooperation with international and regional partners,
- Best practice exchange,
- Capacity building towards compliance with the EU Environmental Crime Directive

Among the cooperation activities that THEMIS has initiated, it can be underlined that the Delegates from the Balkans region visited the INTERPOL General Secretariat headquarters to discuss future steps towards strengthening environmental security in the region and to learn about INTERPOL’s tools and services. They have discussed the need to further integrate police into environmental protection and to ensure that officers and prosecutors are knowledgeable about environmental crimes. Dedicated environmental police units or cooperative units involving other departments, such as financial crime, were identified as potential mechanisms to support enforcement of environmental laws.

The delegates also expressed interest in implementing National Environmental Security Task Forces (NESTs) throughout the region to assist in identifying environmental threats and developing coordinated responses. INTERPOL encourages countries to establish NESTs in order to integrate the relevant agencies involved in combating environmental crimes, including environment agencies, police, customs and prosecutors.

Within the activities of THEMIS network, officials from MESP have participated in the Annual meetings of

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<sup>101</sup> Ibidem.

<sup>102</sup> Brochure Themis Network Phase 1.

<sup>103</sup> This plan has as one of its goals to enhance capacity in the region for nature protection, forest management and combating environmental crime via training activities: 8 regional training events, 6 national training events, 1 technical assistance workshop, over 200 officials trained, approximately 800 officials indirectly benefiting from the trainings.

ENVICRIMENET, at Europol, in The Hague. The Network has also examined specific challenges to environmental security in the region such as the illegal hunting and trade of wild species, the illegal shipment of waste – including electronic and hazardous waste – and illegal fishing.<sup>104</sup>

## 6.3 Organised Crime in Kosovo

Corruption and organised crime are two of the most important problems that Kosovo has to resolve in order to become a member of the EU. Most of organised crime in Kosovo is related with human trafficking and drugs, but recently Interpol has pointed out the fact that Kosovo is also the scenario of organised environmental crime.

The Criminal Code adopted under the UNMIK mandate by the Provisional Institutions already introduced provisions on organised crime.<sup>105</sup> The new Criminal Code has now introduced an approach to organised crime that does not define it but qualifies it by its commission by a criminal organisation and is also foreseen as an aggravating circumstance. These legal provisions reproduce closely the UN Convention on organised crime, (the Palermo Convention) however once again its enforcement is hindered by the lack of legal and judicial tradition as well as the limited human resources.

During the period of the international administration, the fight against organised crime was part of the mandates of UNMIK and EULEX, and they developed formulas in order to fight this criminality: e.g. “international prosecutors were inserted into individual cases in district courts, and ad hoc panels containing a majority of international judges were created for selected serious cases”<sup>106</sup> and multinational police units carried out executive policing functions, including arresting organized crime suspects.<sup>107</sup>

The integrated tracking mechanism for investigation and prosecution of organised crime and corruption has produced its second report, covering January – June 2014. The report is being translated and will be shared with relevant stakeholders afterwards.<sup>108</sup>

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<sup>104</sup> “Themis Network visits INTERPOL to strengthen environmental security in Balkans”, 30 January 2014, <http://www.interpol.int/en/News-and-media/News/2014/N2014-013>

<sup>105</sup> In this Criminal Code, Organised crime was defined by Art. 274 of the Kosovo Criminal Code as “[...] a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit”. The term ‘organized criminal group’ meant a structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit. The term ‘serious crime’ meant an offence punishable by imprisonment of at least four years. The term “structured group” meant a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure”.

<sup>106</sup> See Kemp, W., Shaw, M. (2014). *From the Margins to the Mainstream: Toward an Integrated Multilateral Response to Organised Crime*, International Peace Institute, p. 23.

<sup>107</sup> Ibidem.

<sup>108</sup> This report affirms “The law enforcement agencies remain committed towards the fight against organized crime and corruption. In this regard, the KP Division against Organised Crime (DOC) during the second quarter of 2014 has started investigating 149 new cases of organised crime, whereas the total number of cases under investigation during Q2 2014 was 195. During this period, DOC has conducted 38 operative plans and arrested 198 persons. On the same note, only in July 2014 DOC has opened 50 new cases for investigation, conducted 65 arrests and carried out 5 operative plans. (...) According to this report which entails the so called –characteristic criminal offences–, Kosovo prosecutions in this semester had at work 1,806 cases, 7 involving 4,128 persons. At the end of June 2014, KPC managed to solve 535 cases. The report finds that the work of law enforcement agencies was dominated by criminal offences of corruption (42%) and those related to drugs (31%). See Ministry of European Integration (2014), Second Input for the Progress Report 2014, September 2014, p. 70-78.

At the present moment, there is no available information about the attitude of the judiciary regarding this concept and the way it is applied, for example, whether organised environmental crime is considered as an aggravating circumstance or a related crime in conjunction with environmental crime.

## 7 Policy Implications and Conclusions

The Kosovo Government, looking forward to the accession to the EU, has assumed the task of guaranteeing environmental protection taking the EU environmental laws as models to follow. Thus, it has to be not just the guarantor of the EU environmental law as incorporated in its primary legislation. However, its enforcement depends greatly on two important issues: the adoption of secondary legislation incorporating threshold values, areas of protection and the establishment of the institutional structure at the central and local level, fit to monitor and enforce it. The EU has helped to shape Kosovo legal instruments and institutions for the protection of the environment, being a model to follow for the Provisional Institutions of the Interim Government that set out the bases of the Kosovo legal system but also providing funds and expertise to deal with problems at the regulatory level –e.g. harmonization with EU legislation- and at the enforcement level. However, the effectiveness of its help is quite limited in terms of positive outcomes because the weak enforcement constitute by now an unresolved problem that is more severe in the Serbian municipalities of Kosovo due to the prevailing circumstances inherited from the war and the international administration.

The examination of the environmental laws of Kosovo and its Criminal Code has led to the following conclusions:

- 🔗 The Kosovo legal system of protection of the environment is based on a variety of environmental statutes that foresee civil and administrative sanctions for environmental damage as well as the possibility of initiating criminal procedures.
- 🔗 The Criminal Code incorporates brand new environmental crimes that could serve to comply with EU Directive on Environmental Crime. However, this can only happen when the enforcement of environmental statutes is guaranteed by institutions abiding by law, at the administration and at the judicial level.
- 🔗 Kosovo like many Member States experiences serious problems of enforcement due to lack of human resources and expertise as well as corruption and weak governance.
- 🔗 Most environmental problems of Kosovo could be solved with education and training of the population, as well as a better formation of the central and local administration. Poverty and unemployment are some of the most important obstacles for the protection of the environment.






Besides the confusing terminology of the English translation of the examined laws in this case study, it appears that the statutes envisage civil sanctions as well as administrative sanctions and the possibility of initiating criminal proceedings.

Even though most Kosovar environmental laws include sanctions for non-compliance they require further development in order to be enforceable by the Environmental Inspectorate imposing administrative sanctions or initiating criminal procedures. The primary legislation adopted cannot serve to prosecute individuals and legal persons responsible for environmental damage unless the due threshold values and standards are adopted in the different sectors and unless protected zones are declared by the competent authorities in all municipalities in Kosovo. Until then, it is not possible to determine whether an action is above or below the accepted level or if it is just an administrative infringement or an environmental crime according to the different environmental laws and the Criminal Code. Moreover, while viewed as illegal from an environmental standpoint, courts can only act on nationally adopted and officially recognized



standards. It has not been possible to have access to environmental case law in English, so this report cannot offer an insight into the way prosecutors and judges apply environmental law.

Environmental legislation requires enforcement by a coherent structure involving authorities at different levels: state and local authorities need to act consistently. This needs financial and human resources to:

-  Create institutions fit for purpose that abide by the rule of law, of tantamount importance is the provision of Inspectorate services that will play the role of administrative authorities sanctioning administrative infringements as well as those responsible for initiating criminal investigations and prosecutions.
-  Better enforcement of the overall environmental legislation in all municipalities, including Serbian municipalities.
-  A full development of fines and penalty systems is needed.
-  Further legal reforms in order to develop further the criminal liability of legal persons.
-  Increase transparency and access to information for citizens.

Current institutions depend greatly on external experts in order to develop the secondary legislation and the required toolbox to implement it. This dependency conditions the timing of transposition and enforcement of the environmental legislation. Once these institutions are capable of performing the mandate that now is only on paper, then it will be possible to confront new tasks such as the criminal prosecution of those activities envisaged in administrative and criminal law.

Special training has been facilitated through EU programmes that have financed networks that temporarily have benefitted human resources. However this aid has had a limited impact over time and the EU has had to demand permanent outcomes and capacities.

And last but not least, there are important environmental problems in the Serbian municipalities of Kosovo that require a solution: as has been shown, the Report on the State of Waste and Chemicals 2014 when mapping the landfills in Kosovo did not cover the municipalities in the north of the country, and organised crime groups are still committing illegal logging in this area.

Extreme poverty and high unemployment are the most important economic problems that Kosovo experiences. They drive the political agenda. The incorporation of environmental requirements in the overall economic and political agenda is a necessity. Without taking into account environmental protection, the future of Kosovo is being designed with serious gaps: The lack of enforcement of legislation on the administrative and criminal liability of companies is offering a carte blanche to invest without assuming the required measures to cope with pollution, putting in jeopardy future investment and the care of the environment.



## MAP OF KOSOVO



**Figure 4: Map of Kosovo**

Source: USAID/Kosovo (2014), Country Development Cooperation Strategy 2014-2018.

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## Annex A Kosovo' Constitutional Provisions related with the Environment

### Article 7 [Values]

1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.

### Article 52 [Responsibility for the Environment]

1. Nature and biodiversity, environment and national inheritance are everyone's responsibility.
2. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live.
3. The impact on the environment shall be considered by public institutions in their decision-making processes.

## Annex B Criminal Code Provisions on Environmental Protection

Criminal Code of the Republic of Kosovo 2011/04-L-082, promulgated with the decision of the Assembly of Republic of Kosovo, No. 04-V-399, dated 22 June 2012. (Adopted by the Assembly on 20.04.2012 and promulgated by the Decree of the President of the Republic of Kosovo of 22.06.2012).

### CHAPTER XXVIII

#### CRIMINAL OFFENSES AGAINST THE ENVIRONMENT, ANIMALS, PLANTS AND CULTURAL OBJECTS

### Article 347

#### Polluting, degrading or destroying the environment

1. Whoever, in violation of the law, pollutes or degrades the air, water or soil or excessively uses or exploits natural resources shall be punished by a fine or by imprisonment of up to two (2) years.
2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.
3. When the offense provided for in paragraph 1 of this Article results in the impairment to health of a significant number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other significant material damage to the environment or an increase in pollution to a critical level the perpetrator shall be punished by a fine and by imprisonment of to five (5) years.

4. When the offense provided for in paragraph 2 of this Article results in the impairment to health of a significant number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other significant material damage to the environment or an increase in pollution to a critical level or critical damage to the environment, the perpetrator shall be punished by a fine and by imprisonment up to two (2) years.

5. When the offense provided for in paragraph 1 of this Article results in irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by a fine and imprisonment of one (1) to eight (8) years.

6. When the offense provided for in paragraph 2 of this Article results in irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

### **Article 348**

#### **Unlawful handling hazardous substances and waste**

1. Whoever, in violation of the law, disposes of, handles, stores, transports, exports or imports hazardous substances or waste likely to cause death or grievous bodily injury to any person or substantial material damage to the quality of the air, soil, or water or to animals, plants or property shall be punished by a fine and by imprisonment of one (1) to three (3) years.

2. Whoever, in violation of the law disposes of, handles, stores, transports, exports or imports radioactive substances or radioactive waste which can cause death or grievous bodily injury to any person or substantial material damage to the quality of air, soil or water or to animals or plants or property shall be punished by a fine and by imprisonment of one (1) to five (5) years.

3. When the criminal offense provided for in paragraph 1 of this Article, is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

4. When the criminal offense provided for in paragraph 2 of this Article, is committed by negligence, the perpetrator shall be punished by a fine or imprisonment of up to two (2) years.

5. When the offense provided for in paragraph 1 or 2 this Article results in death or grievous bodily injury to any person or substantial material damage to property, animals or plants, or the substantial material degradation of the quality of the air, water or soil, the perpetrator shall be punished by a fine and by imprisonment of three (3) to twelve (12) years.

6. When the offense provided for in paragraph 3 this Article results in death or grievous bodily injury to any person or substantial material damage to property, animals or plants, or the substantial material degradation of the quality of the air, water or soil, the perpetrator shall be punished a fine or imprisonment from one (1) to eight (8) years.

### **Article 349**

#### **Allowing unlawful construction or unlawful operation of plants and installations that pollute the environment**

1. Whoever, in violation of the law on protecting the environment, allows the construction or installation of a plant or operates or manages a plant or an installation in which a hazardous activity is carried out and thereby risks causing death or grievous bodily injury to any person, pollutes the environment, the air, soil or water or causes damage of five thousand (5,000) EUR or more to animals or plants or property shall be punished by a fine or by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

3. Whoever in violation of the law, allows or applies technologies that pollutes the environment in large scale or territory shall be punished by a fine or by imprisonment of up to three (3) years.
4. When the offense provided for in paragraph 3 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that takes a significant time or expenses to be remedied, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.
5. When imposing a sentence for the criminal offense provided for in this Article, the court may require the perpetrator to undertake certain measures for protection, safeguarding and improving the environment.

## **Article 350**

### **Damaging objects and installations for protection of the environment**

1. Whoever, damages, destroys, removes or in other manner renders unusable objects or installations for the protection of the environment, shall be punished by a fine or by imprisonment of up to three (3) years.
2. If the criminal offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.
3. If the criminal offense provided for in paragraph 1 of this Article results in the pollution of air, water or soil in large scale and territory, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.
4. If the criminal offense provided for in paragraph 2 of this Article results in the pollution of air, water or soil in large scale and territory, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.
5. When the offense provided for in paragraph 1 and 3 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that takes significant time and expense to be remedied, the perpetrator shall be punished by a fine and by imprisonment of one (1) to eight (8) years.
6. When the offense provided for in paragraph 2 and 4 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that significant time and expense to be remedied, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.
7. When imposing a sentence for the criminal offense provided for in this Article, the court may require the perpetrator to undertake certain measures for protection, safeguarding and improving the environment.

## **Article 351**

### **Production, sale and circulation of harmful substances for the treatment of animals**

1. Whoever produces for the purpose of sale or circulates substances for the treatment or the prevention of disease in animals or birds where such substances are harmful to their life or health shall be punished by a fine or by imprisonment of up to one (1) year.
2. When the offense provided for in paragraph 1 of this Article results in the death of a great number of animals or birds, the perpetrator shall be punished by a fine and by imprisonment of three (3) months to three (3) years.
3. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to six (6) months.
4. When the offense provided for in paragraph 2 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

## **Article 352**

### **Providing irresponsible veterinarian assistance**

1. A veterinarian or an authorized assistant of a veterinarian who, when in providing veterinarian assistance, prescribes or applies obviously inappropriate means or an incorrect method of treatment or fails to use appropriate hygienic measures and thereby causes the deterioration or in general violates the rules of the veterinary profession in the process of treatment and thereby causes sickness, a deterioration of sickness or the death of an animal shall be punished by a fine or by imprisonment of up to one (1) year.
2. When the offense provided for in paragraph 1 of this Article is committed by negligence the perpetrator shall be punished by a fine or by imprisonment of up to six (6) months.
3. When the offense provided for in paragraph 1 of this Article results in the death of a great number of animals or birds, the perpetrator shall be punished by imprisonment of three (3) months to three (3) years.
4. When the offense provided for in paragraph 2 of this Article results in the death of a great number of animals or birds, the perpetrator shall be punished by a fine or imprisonment of up to one (1) year.

### **Article 353**

#### **Unlawful practice of veterinarian services**

1. Whoever without the proper professional qualifications undertakes, for compensation, the treatment for animals or offers other veterinarian services shall be punished by a fine or by imprisonment of up to six (6) months.

### **Article 354**

#### **Failure to comply with orders for suppressing diseases in animals and vegetation**

1. Whoever, at the time of an epidemic, which might endanger livestock, fails to comply with an order or decision issued by a competent authority in accordance with the law providing for measures to suppress or prevent disease shall be punished by a fine or by imprisonment of up to three (3) years.
2. Whoever, during the period of endangerment of vegetation by disease or pest, fails to comply with an order or decision by a competent authority providing for measures to suppress or prevent disease or pest shall be punished as provided for in paragraph 1 of this Article.
3. When the offense provided for in paragraph 1 or 2 of this Article results in considerable damage to property the perpetrator shall be punished by a fine or by imprisonment of up to five (5) years.
4. When the offense provided for in paragraph 1 or 2 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.
5. When the offense provided for in paragraph 3 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.
6. For the purposes of this article, "livestock," means any bovine, goat, equine, bird, poultry, fowl, honeybee, sheep, pig or fish.

### **Article 355**

#### **Pollution of food and water for animals**

1. Whoever, by the use of a noxious or harmful substance, pollutes food or water for animals, birds, bees, wild animals or fish or pollutes any water supply whether natural or man-made that provides water for



animals, birds, bees, wild animals or fish and thereby endangers the life or health of animals, birds, bees, wild animals or fish shall be punished by a fine or by imprisonment of up to two (2) years.

2. Whoever, by the use of a noxious or harmful substance, pollutes any body of water and thereby endangers the survival of animals, birds, bees, wild animals or fish in the water shall be punished as provided for in paragraph 1 of this Article.

3. When the offense provided for in paragraph 1 or 2 of this Article results in the death of a large number of animals, birds, bees, wild animals or fish of a value exceeding ten thousand (10,000) EUR, the perpetrator shall be punished by a fine and imprisonment of three (3) months to three (3) years.

4. When the offense provided for in paragraph 1 or 2 of this Article is committed by negligence, the perpetrator shall be punished by a fine or imprisonment up to three (3) months. When the offense provided for in paragraph 3 of this Article is committed by negligence, the perpetrator shall be punished by a fine or imprisonment of up to six (6) months.

## **Article 356**

### **Destruction of vegetation by harmful substances**

1. Whoever, contrary to the law and by the use of a harmful substance, causes the destruction of, plants, trees or other vegetation and thereby causes damage of ten thousand (10,000) EUR or more shall be punished by a fine or by imprisonment of up to two (2) years.

2. If the offense provided for in paragraph 1 of this Article is committed against a specially protected, plants, trees or vegetation, the perpetrator shall be punished by a fine or by imprisonment from three (3) months to three (3) years.

3. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or imprisonment of up to six (6) months. When the offense provided for in paragraph 2 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

## **Article 357**

### **Devastation of forests**

1. Whoever, in violation of the law or an order by a competent authority, cuts or destroys a forest or in any other way devastates forests shall be punished by a fine or by imprisonment of up to two (2) years.

2. When the offense provided for in paragraph 1 of this Article is committed in a protected forest, protected park or any other forest used for a specific purpose the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.

## **Article 358**

### **Forest theft**

1. Whoever, with the intent to steal, cuts down trees in a forest and the quantity of the timber cut down exceeds two cubic meters shall be punished by a fine or by imprisonment of up to one (1) year.

2. When the offense provided for in paragraph 1 of this Article is committed with the intent to sell the cut timber; if the quantity of the cut timber exceeds five cubic meters; or, the offense is committed in a protected forest, protected park or any other forest used for a specific purpose, the perpetrator shall be punished by a fine and by imprisonment of three (3) months to three (3) years.

3. An attempt to commit the offense provided for in paragraph 1 of this Article shall be punishable.

## **Article 359**

### **Unlawful hunting**

1. Whoever, hunts wild animals when there is a prohibition on hunting or in the territory where hunting is prohibited, shall be punished by a fine or imprisonment of up to one (1) year.
2. Whoever, without permission or other authorization, hunts or kills a wild animal or traps it alive shall be punished by a fine or by imprisonment of up to six (6) months.
3. When the offense provided for in paragraph 1 or 2 of this Article is committed off season; in a group; or against prey of a value exceeding two thousand (2,000) EUR or importance according to hunting regulations, the perpetrator shall be punished by a fine or by imprisonment of up to two (2) years.
4. Whoever hunts endangered or rare species of animals for which there is a prohibition on hunting or hunts a particular species without a specific hunting license for such species shall be punished by a fine and by imprisonment of three (3) months to three (3) years.
5. Whoever hunts by using methods of mass extermination, by using a motor vehicle or by using a strong light shall be punished by a fine and by imprisonment of three (3) months to three (3) years.
6. The wild animals and the hunting equipment shall be confiscated.

## **Article 360**

### **Sale or removal of wild animal trophies from the republic of Kosovo**

1. Whoever unlawfully sells or removes from the Republic of Kosovo a wild animal trophy shall be punished by a fine or by imprisonment of up to two (2) years.
2. Whoever unlawfully sells or removes from the Republic of Kosovo a wild animal trophy acquired from the commission of the offenses provided for in paragraphs 1 to 3 of Article 359 of this Code shall be punished by a fine or by imprisonment of up to three (3) years.
3. The wild animal trophies shall be confiscated.

## **Article 361**

### **Sale or removal of protected goods of nature, plants or animals out of the Republic of Kosovo**

1. Whoever unlawfully sells or removes out of the Republic of Kosovo protected goods of nature, plants or animals under special protection shall be punished by a fine or by imprisonment of up to two (2) years.

## **Article 362**

### **Unlawful fishing**

1. Whoever fishes at the time when the fishing is prohibited or in the waters where the fishing is prohibited, shall be punished by a fine or by imprisonment of up to three (3) months.
2. Whoever fishes using explosives, electricity, poison or intoxicating substances and thereby causes the death of fish in such a way as to harm propagation of fish stocks shall be punished by a fine or by imprisonment of up to two (2) years.

## **Article 363**

### **Damage, destruction and unauthorized removal of protected monuments or objects out of the Republic of Kosovo**

1. Whoever damages or destroys a protected cultural, historical, religious, scientific or natural monument or object shall be punished by a fine or by imprisonment of up to two (2) years.
2. When the offense provided for in paragraph 1 of this Article is committed against a protected cultural, historical, religious, scientific or natural monument or an object that has a unique value or if the offense results in serious damage, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.
3. Whoever, without proper authorization by a competent authority, removes from the Republic of Kosovo a protected cultural, historical, religious, scientific or natural monument or object shall be punished by a fine or by imprisonment of up to one (1) year.
4. When the offense provided for in paragraph 3 of this Article involves a protected cultural, historical, religious, scientific or natural monument or an object that has a unique value, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.
5. For the purposes of this Article, a “protected cultural, historical, religious, scientific or natural monument or object” means an object of veneration of a religious community existing on property dedicated to religious services, a tombstone, grave or some other place of burial, and a public monument, a natural monument, an object of art, science or craft which is kept in a public collection or public exhibition, an object which serves a public need or decorates a public road, square or park, a natural curiosity or an endangered type of animal or plant.
6. An attempt to commit the offense provided for in paragraph 1 or 3 of this Article shall be punishable.

#### **Article 364**

##### **Unauthorized work and appropriation of cultural monuments**

1. Whoever, without authorization by the competent authority, conducts conservation, restoration or research work on a cultural monument, or, despite a prohibition or without the authorization, carries out archaeological excavations or research and thereby destroys or seriously damages a cultural monument or its characteristics shall be punished by a fine or by imprisonment of up to two (2) years.
2. When the offense provided for in paragraph 1 of this Article is committed against a cultural monument of unique value or results in serious damage, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to three (3) years.
3. Whoever, in the course of archaeological or other research, takes possession of or takes away an object which has been excavated or an object which has been found in some other way and which represents a cultural monument shall be punished as provided for in paragraph 2 of this Article.

## **Annex C Geographical Position of Kosovo**

**Source: Ministry of Environment and Spatial Planning, Strategy and Action Plan for Biodiversity 2011 – 2020, p. 4.**

Kosovo is a part in the centre of Balkan Peninsula and lies between the parallel 42° and 44° of northern hemisphere of Land and between meridians 20° and 22°.

Kosovo bounds with Serbia in north and east (351,6 KM), with Monte Negro in North in west (111 ,8 KM) with Macedonia in south (158,7 KM), general length of border line is 700,7 KM.

General Surface:10.908 km2.

Population: 2,1 million

Density of population: round 200 per km<sup>2</sup>

ensity of population: round 200 per km<sup>2</sup>), general l

Number of settlements: around 1466

Capital City: Prishtina around 400,000 inhabitants

Currency: EURO

Highest Peak: Gjeravica - 2656 sl.

Longest River: Drini i Bardhë (122 km), Arable Land:585.000 ha.

Forest Land: 464.800 ha.



