

Małgorzata Andrzejczak-Świątek\*

# The process of reconciliation between Serbia and Kosovo and the international legal strategies of the EU States, the USA, and Russia

## (with particular emphasis on the activities of the Kosovo Specialist Chambers)

Proces rekonyliacji między Serbią i Kosowem oraz strategie prawnomiędzynarodowe państw UE, Stanów Zjednoczonych i Rosji (ze szczególnym uwzględnieniem działalności Specjalnych Izb Sądowych Kosowa)

**Abstract:** The aim of this article is to analyse the international legal and political process of reconciliation between Serbia and Kosovo in terms of its impact on the scope of development directions and strategies of the European Union countries as well as Russia and the USA.

Particular emphasis was placed on the treatment of these issues in the light of the activities of the Kosovo Specialist Chambers and Specialist Prosecutor's Office.

The main theses assumed for the purposes of this article are as follows: firstly, that the policy of reconciliation between Serbia and Kosovo is multidimensional, including the necessity of the process of international criminal liability for the crimes committed by both states, while at the same time influencing the dilemmas of the development directions of individual European countries, but also of the European Union and the United States.

In addition, the legal and political stabilization of the Balkan region, especially in the context of relations between Kosovo and Serbia, and the possibility of cooperation with these states as part of intergovernmental international organizations, is strategically extremely important for the EU, the USA, as well as for Russia.

\* Dr Małgorzata Andrzejczak-Świątek – Faculty of Security and Legal Studies, Police Academy in Szczytno, Poland, ORCID: <https://orcid.org/0000-0002-1112-0214>, e-mail: [m.andrzejczak@wspol.edu.pl](mailto:m.andrzejczak@wspol.edu.pl).

The Author critically analyses issues using polemics with the standpoint presented in the doctrine of the subject as well as interpreting selected instruments of international law and Kosovo's national law. The deliberations resulted in conclusions as to the determinants in terms of the directions of the legal and political development of the EU and Russia resulting from the complicated process of reconciliation and mutual settlement of sins by Serbia and Kosovo.

**Keywords:** Serbia, Kosovo, Belgrade-Pristina dialogue, Kosovo Specialist Chambers

**Streszczenie:** Celem artykułu jest analiza międzynarodowego prawnopolitycznego procesu pojednania Serbii i Kosowa pod kątem jego wpływu na zakres kierunków i strategii rozwoju państw Unii Europejskiej oraz Rosji i USA. Szczególny nacisk położono na potraktowanie tych zagadnień w świetle działalności Specjalnych Izb Sądowych Kosowa oraz Prokuratury Specjalnej.

Główne tezy przyjęte na potrzeby tego artykułu są następujące: po pierwsze, polityka pojednania Serbii i Kosowa jest wielowymiarowa, w jej zakres włączyć należy konieczność procesu międzynarodowej odpowiedzialności karnej za zbrodnie popełnione przez oba państwa, a jednocześnie czas wpływający na dylematy kierunków rozwoju poszczególnych państw europejskich, ale także Unii Europejskiej i Stanów Zjednoczonych. Ponadto stabilizacja prawna i polityczna regionu bałkańskiego, zwłaszcza w kontekście relacji między Kosowem a Serbią, oraz możliwość współpracy z tymi państwami w ramach międzyrządowych organizacji międzynarodowych ma strategiczne znaczenie dla UE, USA, a także dla Rosji.

Autorka poddaje analizie powyższe zagadnienia, polemizując ze stanowiskiem prezentowanym w doktrynie przedmiotu oraz interpretując wybrane instrumenty prawa międzynarodowego i prawa krajowego Kosowa. Rozważania zaowocowały wnioskami co do uwarunkowań w zakresie kierunków rozwoju prawnopolitycznego UE i Rosji, wynikających ze skomplikowanego procesu pojednania i wzajemnego rozliczenia win Serbii i Kosowa.

**Słowa kluczowe:** Serbia, Kosowo, dialog Belgrad-Pristina, Specjalne Izby Sądowe Kosowa

## Introduction

There is no doubt that the Balkan states' development model is correlated with the development strategy of the European Union and Russia as well as their relations with the United States.

The main theses assumed for the purposes of this article are as follows: firstly, that the policy of reconciliation between Serbia and Kosovo is multidimensional, including the necessity of a process of international criminal liability for crimes committed by both states. There is no doubt that the degree of involvement in supporting this process determines the relations at the levels: state – EU; EU – Russia; EU – USA; USA – Russia, which subsequently affects the global picture of political, legal, and international development of these entities.

Moreover, the legal and political stabilization of the Balkan region, especially in the context of relations between Kosovo and Serbia, and the possibility of cooperating with these countries as members of intergovernmental international organizations, is strategically extremely important for the EU, the USA, and Russia.

In view of the above, the process of reconciliation between Serbia and Kosovo, and the mutual settlement of sins, determines the political strategy not only in the Balkan area locally, but globally, shaping the relations of EU countries with Russia and the USA.

This article aims to analyse the above theses in relation to the current legal and political situation in both countries, with particular emphasis on the implications of the establishment and operation of the Specialist Chambers for Kosovo.

## **1. The role of the Kosovo Specialist Chambers and Specialist Prosecutor's Office as a step in the reconciliation policy between Serbia and Kosovo**

The conflict in Kosovo between 1998 and 1999 resulted in the deaths of 13,535 people, of which 10,812 were ethnic Albanians (80% of all victims), 2,197 were ethnic Serbs (16% of the victims), and 526 were Roma, Bosnians, and members of other communities (4% of victims). Among the victims are 1,644 people who have not been found so far.<sup>1</sup> All these people died or went missing as a result of war crimes and crimes against humanity, prohibited by and punishable under international criminal law and international humanitarian law.

The reconciliation process should cover the enforcement of the responsibility of the perpetrators for the death and disappearance of all victims.

The Kosovo Specialist Chambers and Specialist Prosecutor's Office were established on the basis of an international agreement ratified by the Kosovo Parliament, amendments to the Constitution, and the Law on Kosovo Specialist Chambers and Specialist Prosecutor's Office. They are temporary and have a specific mandate and jurisdic-

1 Data from: Humanitarian Law Center, *The Kosovo Memory Book*, Pristina, 2011, <http://www.kosovomemorybook.org> [07.10.2020].

tion over crimes against humanity, war crimes, and other crimes under Kosovo law that were initiated or committed in Kosovo between January 1, 1998 and December 31, 2000 by or against citizens of Kosovo or the Federal Republic of Yugoslavia.<sup>2</sup>

In order to give the Chambers a legal mandate to act, an amendment to the Constitution was introduced on 3 August 2015, adding art. 162 of the Kosovo Constitution, which states, *inter alia*, that: “to comply with its international obligations in relation to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011, the Republic of Kosovo may establish Specialist Chambers and a Specialist Prosecutor’s Office within the justice system of Kosovo.”<sup>3</sup> Pursuant to art. 162 sec. 4 of the Constitution, “the Specialist Chambers and the Specialist Prosecutor’s Office shall have full legal and juridical personality and shall have all the necessary powers and mandate for their operation, judicial co-operation, assistance, witness protection, security, detention and the service of sentence outside the territory of Kosovo for anyone convicted [...]”<sup>4</sup>

From the perspective of the reconciliation policy, the most questionable area is the social legitimacy of the establishment of the Specialist Chambers as a court to settle the crimes of members of the Kosovo Liberation Army (KLA).

Aidan Hehir argues that Kosovo’s Specialist Chambers fail to apply a justice mechanism developed as part of a general consensus on the central importance of local legitimacy and local accountability.<sup>5</sup> It is difficult to disagree with this statement. The Chambers were not created in response to internal pressure from Kosovo, but rather their creation was the result of external pressure, mainly from the Council of Europe and the European Union, but also from the United States.<sup>6</sup>

Kosovo has not yet developed a national strategy on transitional justice, mainly due to a lack of political will and the commitment of

2 See more: Kosovo Specialist Chambers & Specialist Prosecutor’s Office, *Background*, <https://www.scp-ks.org/en/background> [07.10.2020].

3 See: Art. 162 of the Constitution of the Republic of Kosovo, available in English at: <https://www.scp-ks.org/en/documents/constitutional-amplements-article-162> [07.20.2020].

4 *Ibidem*.

5 A. Hehir, *Lessons Learned? The Kosovo Specialist Chambers Lack of Local Legitimacy and Its Implications*, “Human Rights Review”, 2019, vol. 20, no. 3, pp. 267-287.

6 *Ibidem*.

both national and international stakeholders. Despite the existence of the UN International Criminal Tribunal for the former Yugoslavia (ICTY), the UN Interim Mission in Kosovo (UNMIK), and the Rule of Law Mission in Kosovo (EULEX) the Specialist Chambers are a kind of “novum,” both in the context of the development of international criminal justice as well as social delegation to account for responsibility for war crimes.<sup>7</sup> In 2008, the year Kosovo announced its declaration of independence, former prosecutor of the International Criminal Tribunal for the former Yugoslavia, Carla Del Ponte, stated that members of the KLA had committed serious and systematic war crimes – including organ trafficking – before, during, and after NATO intervention in Kosovo in 1999.<sup>8</sup>

In connection with the publication of the Prosecutor, the Council of Europe initiated an investigation in 2011, resulting in the presentation of the so-called “Marty’s Report.” The report broadly endorsed Del Ponte’s allegations and blamed senior Kosovo Albanian politicians, in particular, the then foreign minister and former KLA leader Hashim Thaçi.<sup>9</sup>

The first response to the Council of Europe report was the establishment, with support from the USA, of a Special Investigative Task Force (SITF) to determine if there was sufficient evidence to conduct a criminal prosecution. In 2014, the SITF concluded that organ harvesting was on a very limited scale, but there is no doubting the reality of the campaign of persecution against ethnic Serbs, Roma, and other minority populations of Kosovo and against Albanians from Kosovo.<sup>10</sup>

In fact, not much has changed in the context of local legitimacy and public support from Kosovar society since the creation of the Specialist Chambers. In this aspect, undoubtedly, the lack of support on the part of Kosovo citizens in the process of settling crimes committed by the

7 G. Visoka, B. Lumi, *Democratizing Transitional Justice: Towards a Deliberative Infrastructure for Dealing with the Past in Kosovo*, Utrecht 2020.

8 See more: C. Del Ponte, *Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity*, New York 2008.

9 Report of the Parliamentary Assembly of the Council of Europe, Inhuman treatment of people and Illicit trafficking in human organs in Kosovo, Doc. AS/Jur (2010) 46, 12 December 2010.

10 See: Special Investigative Task Force, Statement of the Chief Prosecutor of the Special Investigative Task Force, 29 July 2014, [https://balkaninsight.com/wp-content/uploads/2019/01/Statement\\_of\\_the\\_Chief\\_Prosecutor\\_of\\_the\\_SITF\\_EN.pdf](https://balkaninsight.com/wp-content/uploads/2019/01/Statement_of_the_Chief_Prosecutor_of_the_SITF_EN.pdf) [16.06.2020].

KLA is not conducive to the reconciliation process. At this point, in order to properly understand the attitude of the Kosovar population, especially Albanian population, to the functioning of the Kosovo Specialist Chambers, it is worth paying attention to a specific myth that has developed around the Kosovo Liberation Army. The state, which was founded in 2008 and which had to rewrite its own history, based it largely on the often idealized heroism of partisans fighting for independence. Moreover, after the end of the war, the West – probably rightly – assigned the role of the “perpetrator” to Serbia and wishing to do some penance for the sins caused by the abandonment of Bosnia to Slobodan Milošević, focused on the settlement of crimes committed by the Serbs, creating for this purpose the International Criminal Tribunal for the former Yugoslavia (ICTY) headquarters in Hague. Remember that the ICTY promoted transitional justice and not only focused on the accusations against Serb leadership. Regional KLA commanders were also brought before the Tribunal, including Ramush Haradinaj and Fatmir Limaj, who admittedly were acquitted and their associates sentenced to imprisonment.<sup>11</sup> It cannot be emphasized enough that the scales on the side of Serbia’s fault were tilted not only by the issue of causing the conflict and the number of victims but above all by the crime of genocide in Srebrenica and the disclosure of concentration camps conducted by Serbs in Bosnia.<sup>12</sup>

The doctrine indicates that the less intrusive nature of a hybrid or international tribunal in state sovereignty is to ensure the political legitimacy of these institutions.<sup>13</sup> In practice, as mentioned above, the tribunal is the source of a fierce political struggle in Kosovo, precisely due to the social perception of former fighters as heroes, not criminals. L. E. Fletcher and H. M. Weinstein correctly noted that the perception of international courts is crucial. They also claim that these Tribunals must be seen as legal by those on whose behalf they act in

11 See: The Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj, case number: IT-04-84bis-PT, <https://www.icty.org/case/haradinaj> [June 10, 2020]; The Prosecutor v. Fatmir Limaj, Isak Musliu & Haradin Bala, case number: IT-03-66-PT, <https://www.icty.org/case/limaj> [10.06.2020].

12 See more: E. Vulliamy, *Wojna umarła. Niech żyje wojna. Bośniackie rozrachunki*, Wołowiec 2016.

13 M. Holvoet, *The Continuing Relevance of the Hybrid of Internationalized Justice Model: the Example of the Kosovo Specialist Chambers*, “Criminal Law Forum”, 2017, vol. 28, no. 1, p. 43.

order for their work to be accepted by affected societies.<sup>14</sup> The resistance of the Kosovar society to the creation of a court to settle the faults of KLA members from the beginning was strong. There was also, in principle, understandable political resistance.

The above required a kind of “blackmail” on the part of the European Union and the United States<sup>15</sup> and Kosovo’s parliament only bowed to international pressure when it was proposed that the UN Security Council create a special tribunal outside Kosovo’s jurisdiction.<sup>16</sup>

The role of the special court was understood from the beginning as going much further than just the enforcement of criminal law. Its appointment was incorporated into the process of reconciliation and included in the category of a broader strategy of building new relations between Serbs and Albanians. There are truly “over-optimistic” opinions expressed in the doctrine of the subject in this matter; according to Gëzim Visoka, the Chambers can contribute to ethnic reconciliation and resolve outstanding inter-municipal, social, and interstate issues such as property restitution, sustainable reintegration, and peaceful coexistence in public spaces and institutions.<sup>17</sup> On the other hand, the same author expresses a rather bitter opinion that, twenty-one years after the end of the Kosovo conflict, the state failed to develop a national strategy on transitional justice due to a lack of political will and the involvement of national and international stakeholders to truly engage in the legacy of the past.<sup>18</sup>

The Chambers were operationalized in 2018 when the first hearings took place, and given the number of summonses addressed to senior officials in Kosovo, it was expected that these actions would result in

14 See: L. E. Fletcher, H. M. Weinstein, *A world unto itself? The application of international justice in the former Yugoslavia*, [in:] *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, E. Stover, H. M. Weinstein (eds.), Cambridge 2004, pp. 29-48.

15 J.-Ch. Cady, N. Booth, *Internationalized Courts in Kosovo: An UNMIK Perspective*, [in:] *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia*, C. P. R. Romano, A. Nollkaemper, J. K. Kleffner (eds.), Oxford 2004, pp. 59 et seq.; E. Mahr, *Local contestation against the European Union Rule of Law Mission in Kosovo*, “Contemporary Security Policy”, 2018, vol. 39, no. 1, pp. 72-94; R. Muharremi, *The Kosovo Specialist Chambers from a Political Realism Perspective*, “International Journal of Transitional Justice”, 2019, vol. 13, no. 2, pp. 1-20.

16 See also: M. Ristic, *Kosovo’s New War Court: How Will It Work?*, *Balkan Transitional Justice*, 06.08.2015, <http://www.balkaninsight.com/en/article/how-will-special-kosovo-court-work%2D%2D08-05-2015> [17.06.2020]; A. Hehir, op. cit., p. 268.

17 G. Visoka, *Assessing the potential impact of the Kosovo Specialist Court*, Utrecht 2017.

18 G. Visoka, B. Lumi, *Democratizing Transitional Justice...*, p. 7.



a large number of indictments in 2019. However, 2019 turned out to be rather passive in this respect; a good number of high-level politicians and former KLA leaders were heard, but little is known about the form and nature of these hearings.<sup>19</sup> Ramush Haradinaj (former KLA commander) resigned in 2019 as Prime Minister due to war crimes suspicions. Therefore, considerable pressure from the EU was noticeable in asking for 2020 to bring the expected results. President Thaçi's accusation is proof that the activities of the Kosovo Specialist Chambers have intensified and that decisions have been made in the context of SC activities in the new five-year mandate, which has only run since 2020.

Pursuant to art. 3 sec. 2 of the Law on Kosovo Specialist Chambers and Specialist Prosecutor's Office, they operate and rule in accordance with: the Constitution of the Republic of Kosovo, this law as a *lex specialis*, other provisions of Kosovo law, customary international law, the primacy of which over domestic law is derived from the Constitution, international law on human rights, which sets the standards of criminal justice, including the European Convention on Human Rights and the International Covenant on Civil and Political Rights.<sup>20</sup> This provision comprehensively illustrates the extraordinary specificity of the Specialist Chambers as an international court, which clearly reflects the legal status of Kosovo as a state. First of all, the Chambers are constitutionally established, which is extremely important in view of the lack of social legitimacy for their establishment. Moreover, in the event of any contradictions in the provisions of a general nature, the Law on Kosovo Specialist Chambers and Specialist Prosecutor's Office shall take precedence. The reference to the fair trial standards for the two most important international treaties on the protection of human rights creates a formal obligation to respect them, despite the obvious lack of ratification of both agreements by Kosovo,<sup>21</sup> but particularly noteworthy is the extremely strong emphasis placed in

19 See more: R. Xoxha, *Paralleling ICTY's jurisprudence with the incoming developments of the Kosovo's Specialized Chambers in Hague*, "Policy Analysis", 2020, no. 2, p. 15.

20 See. Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, [https://www.scp-ks.org/sites/default/files/public/05-l-053\\_a.pdf](https://www.scp-ks.org/sites/default/files/public/05-l-053_a.pdf) [20.07.2020].

21 Kosovo, due to the lack of full recognition in the international arena, is not a member of the United Nations or the Council of Europe. Therefore, it cannot "classically" ratify these treaty instruments created as part of the law-making activity of the organs of these organizations. Despite



the law on Specialist Chambers on the application of common law as a source of law not only of a binding nature but having precedence over national law.

On the other hand, despite the implementation of regulations at the level of national law giving a mandate for the operation of the Specialist Chambers, the Kosovo authorities are quite skeptical about the so-called “Thick version of association” created under the auspices of Brussels and the EU, which is reflected in the Specialist Chambers. Why is this happening? Attention should be paid to the multi-ethnic situation in northern Kosovo compared to the rest of the country. All agreements that have been developed at the Brussels level are designed in such a way that Serbia remains the main sovereign in northern Kosovo and Kosovo institutions remain subordinate, which contradicts Kosovo’s position as an integrated state.<sup>22</sup>

It is, therefore, not surprising that the Kosovo authorities were closer to starting negotiations under the auspices of the USA, initiated by former President Donald Trump, and finalized with the conclusion of an agreement between Serbia and Kosovo in Washington on September 8, 2020.<sup>23</sup> It is true that this agreement has a decidedly economic and political dimension and does not in any way constitute a breakthrough in the process of normalization of relations between Kosovo and Serbia, but merely as a political act, it may send a kind of signal to the EU from the present Kosovo authorities that only these proposals will be acceptable on the part of international entities that oscillate around preserving the integrity of Kosovo as a whole and focusing on the economic dimension, leaving the aspect of responsibility for the crimes of the KLA to national mythology beyond the scope of international legal responsibility.<sup>24</sup>

the non-ratification of international human rights treaties, Kosovo undertakes at the constitutional level to comply with the provisions contained therein.

- 22 *Stalled Normalization between Kosovo and Serbia: What is the way forward? Association of Serbian Majority Municipalities - Transitional Justice and Dealing with the Past - Foreign Policy and Regional Cooperation. Notes from Conversation with Experts*, Prishtina 2021.
- 23 A. Domachowska, *Serbia i Kosovo: porozumienie o normalizacji relacji ekonomicznych*, “Komentarze IES”, 2020, no. 248.
- 24 *Ibidem*; K. Schenkel, *The Kosovo Specialist Court and Transitional Justice. Public Perceptions on the KSC and the need for a comprehensive TJ approach*, Utrecht 2021; G. Visoka, B. Lumi, *Citizens Perspective on a Future Strategy for Transitional Justice in Kosovo*, Utrecht 2020.

## 2. Influence of the political and legal situation in Kosovo and Serbia on the reconciliation process and relations with the European Union countries, Russia, and the United States

Currently, a key figure in the political and legal arena in the reconciliation process between Serbia and Kosovo is former president Hashim Thaçi. As mentioned above, Prosecutor Carla Del Ponte accused H. Thaçi, former KLA commandant, of participation in an organized criminal group operating in Kosovo and Albania before, during, and after the military operations in Kosovo. The situation is complicated by the fact that on June 24, 2020, the Kosovo Specialist Prosecutor's Office presented an indictment against President Hashim Thaçi for crimes committed in connection with the allegations made by Carla Del Ponte, upheld in Marty's Report.<sup>25</sup>

According to the Prosecutor's Office, these crimes involve hundreds of known victims of Albanian, Serbian, Roma, and other origin and involve political opponents.<sup>26</sup> In the years 1998-1999 during the war in Kosovo, Thaçi, as the commander of the KLA, together with nine KLA commanders, was to be responsible for the murders and torture of one hundred Kosovo Serbs, but also Roma and Albanians, who were political opponents of the KLA and Thaçi.<sup>27</sup>

Four cases are currently proceeding before the Kosovo Specialist Chambers and Specialist Prosecutor's Office:<sup>28</sup>

- against Salih Mustafa;<sup>29</sup>
- against Hashim Thaçi et al.;<sup>30</sup>
- against Pjetër Shala;<sup>31</sup>

25 See: Kosovo Specialist Chambers & Specialist Prosecutor's Office, Press Statement, 24 Jun 2020, <https://www.scp-ks.org/en/press-statement> [01.07.2020].

26 Ibidem.

27 Ibidem.

28 See: Kosovo Specialist Chambers & Specialist Prosecutor's Office, *Cases*, <https://www.scp-ks.org/en/cases> [20.04.2021].

29 Case KSC-BC-2020-05. The indictment was confirmed on 12 June 2020 and the final version was made public on 28 September 2020.

30 Case KSC-BC-2020-06. The indictment against the four accused was confirmed on 26 October 2020 and made public on 5 November 2020.

31 Case KSC-BC-2020-04. The indictment against Shala was confirmed on 12 June 2020 and the redacted version made public on 15 April 2021.

- against Hysni Gucati & Nasim Haradinaj.<sup>32</sup>

The problem with the indictment of the president of Kosovo is basically illustrated by the problem with the social legitimacy of the functioning of the Specialist Chambers. Kosovar society lacks understanding and acceptance of the actions of the Prosecutor's Office and the Court in The Hague, which, however, are constitutional to such an extent that even the left-wing party Vetëvendosje, which – as a rule – is opposed or even hostile to the president, expresses the conviction that the war was right. Most of the Kosovar society see the indictment of the president as a kind of “bottom line,” which is to prove the guilt of the “KLA as a whole.”<sup>33</sup>

Paradoxically, the indictment of the President of Kosovo is not entirely in the interest of those who sought to create the Specialist Chambers by applying unprecedented pressure in this regard. The loss of power by H. Thaçi may contribute to a destabilization of the political and social situation in Kosovo. Such a scenario is not in the interest of the European Union or the United States, but it may strengthen Russia's influence in the region and give impetus to greater revisionist activity, questioning war crimes and the crime of genocide committed by Serbs during the war with Kosovo.

It cannot be denied that as a result of Donald Trump coming to power, there has been some dissonance as to who is steering the negotiation process between Serbia and Kosovo. The two main international actors, the USA and the European Union, are disagreeing on who is leading the peace process. What the two entities have in common is a common long-term goal, i.e., resolving the neighborhood dispute on the unstable Balkan peninsula and ensuring Kosovo's sovereignty. Russia is taking advantage of the instability. Undoubtedly, the defeat of Donald Trump and the election of the current US President Joe Biden, may contribute to a change in the direction of US policy towards Kosovo and bring it closer to the Brussels vision of a “thick association.”

32 Case KSC -BC-2020-07. The indictment against the two accused was confirmed on 11 December 2020 and made public on 14 December 2020.

33 Such an opinion was expressed by, among others, Veton Surroi, former Kosovo representative for talks with Serbia. See more: *Kosovo: Prezydent oskarża międzynarodowy sąd o “przepisywanie historii”*, *Gazeta Prawna*, 26.06.2020, <https://www.gazetaprawna.pl/wiadomosci/artykuly/1484598,kosowo-prezydent-oskarza-miedzynarodowy-sad-o-przepisywanie-historii.html> [20.07.2020].

On the other hand, the fact is that in the face of a certain passivity on the part of the EU, which has been leading the negotiation process since 2011, in 2020 it was undoubtedly the United States that began to play a leading role in this process, mainly due to an invitation from Donald Trump to his Kosovar and Serbian counterparts to the tripartite meeting in Washington on June 27, 2020. Not only were the invitations not consulted with the European Union, but Thaçi openly confirmed that the USA took control of the talks: "Kosovo has always trusted the U.S. and has come out victorious (...). This time the U.S. has taken the leadership role, which we welcome."<sup>34</sup>

At this point, it is worth paying attention to the government program approved on June 5, 2020 for the years 2020-2023, especially in terms of relations with Serbia.<sup>35</sup> In fact, the importance of Kosovo's strategic partnership with the USA is explicitly mentioned in the government's foreign policy objectives.

The Kosovo government is aware that good relations with the European Union and the USA depend on the readiness to cooperate with Serbia in the reconciliation process, including the readiness to settle the sins of the Kosovo Liberation Army. This is not convenient for Kosovo, but it is necessary for the country's path to wider international recognition and the possibility of formal membership in international organizations.

Moreover, for Serbia, the stabilization of relations with Kosovo is also a *prima facie* argument for its inclusion in the EU. The result of the above is the observed change not only in the political strategy of both countries but even in the rhetoric used by the political leaders.

When considering the issue of reconciliation between Serbia and Kosovo, it is impossible not to pay attention to the concept of border revision, still present in the policies of both governments. President Aleksandar Vučić is a strong supporter of the correction of Kosovo's borders, in his opinion, reflecting the real limits of the jurisdiction of Serbia and Kosovo. Serbia seems to expect that in return for recog-

34 See: S. Killokoqi, *EU, US display differences over Serbia-Kosovo negotiation*, AP News, 16.06.2020, <https://apnews.com/7fdae2ee083ec9cf1ccb200156d1604a> [20.07.2020].

35 The Prime Minister Office, *The Government of Kosovo approved the 2020-2023 Governance Program*, 05.06.2020, <https://kryeministri.rks-gov.net/en/the-government-of-kosovo-approved-the-2020-20203-governance-program/> [20.07.2020].

nizing the Republic of Kosovo as a sovereign state, it will receive its northern part in return.<sup>36</sup>

In July 2018, the presidents of Kosovo and Serbia proposed a change of territory and a change of borders, which caused a lot of controversy both within society but also on the part of European countries and the USA. Washington clearly prefers to resolve the dispute quickly, even if it requires a border revision. Most European countries, including Germany, in turn, seem to be quite rightly afraid of this solution due to the risk of strengthening separatist movements in the Balkans.<sup>37</sup> Added to this is the general reluctance of Kosovar society to change borders and the issue of respect for the fundamental rights of minorities. After all, this is not about maps, but about the future of a society that has always been multi-ethnic in its deeply historical aspect.

Importantly, the new Kosovo government changes the rhetoric of border revision undertaken in previous years and unequivocally rejects plans to swap territories, announcing a dialogue on normalization of relations and a final agreement with Serbia on mutual recognition within the existing borders.<sup>38</sup> The plan emphasized that the territory of the Republic of Kosovo is one and indivisible and that no institution has a mandate to negotiate territory, sovereignty and territorial integrity, and the constitutional order.<sup>39</sup>

The doctrine expresses the view that the only way for Kosovo to survive in international law and international politics is by preserving its multi-ethnicity and the assumption that the rights of the state and individuals are defined according to the so-called Ahtisaari Plan, which assumes that Kosovo's institutional architecture is not a prod-

36 See also: F. Dietrich, *The Status of Kosovo – reflection on the legitimacy of secession*, "Ethics & Global Politics", 2010, vol. 3, no. 2, pp. 123-142; E. Jovanova, *Redrawing the Borders between Kosovo and Serbia: Nationalists' Fuel or a Rational Solution with the Promise of a European Future?*, "International Journal on Rule of Law, Transitional Justice and Human Rights", 2018, vol. 9, no. 9, pp. 111-119; M. Rossi, *Partition in Kosovo Will Lead to Disaster*, Foreign Policy, 19.09.2018, <https://foreignpolicy.com/2018/09/19/partition-in-kosovo-will-lead-to-disaster-serbia-vucic-thaci-mitrovica-ibar/> [20.05.2021].

37 M. Szpala, *Serbia-Kosovo negotiations – playing for time under pressure from the West*, "OSW Commentary", 2018, no. 281.

38 The Prime Minister Office, *The Government of Kosovo approved the 2020-2023...*

39 Ibidem.

uct of people per se, but rather the product of a long-term social, historical, and geopolitical process.<sup>40</sup>

The negotiating agenda for the dialogue is ambitious and shifts responsibility from international players and the president to the government and society, that is, entities that have been rather passive so far. The government is to be the negotiating party, accountable to the parliament as a supervisory body, while the president performs a representative function, exercising his constitutional powers. Civil society, as stated in the document, plays a key role in providing expertise in this process as well as overseeing and ensuring transparency for society and citizens.<sup>41</sup>

Interestingly, however, despite the fact that the plan of the new government – definitely “overambitious,” which is probably nothing new in the case of successive Kosovar governments – relates directly to the policy of reconciliation, it completely ignores the important and key issue of accountability to the Specialist Chambers of suspects or the accused in the Report of the Council of Europe. This specific “silence” is significant and speaks volumes about the approach of the Kosovo authorities to the activities of the Specialist Chambers.

## Conclusions

The reconciliation process between Serbia and Kosovo has a global dimension, involving not only the European Union but also the United States and Russia. On the one hand, social, legal, and political stabilization between these countries is a priority of the direction of the international strategy not only of European countries, but also, when looking at the perspective of Russia and the USA, it is hard not to get the impression that they are mainly concerned with preserving the sphere of influence in this region. For these reasons, the process of settling mutual claims between Serbia and Kosovo and the activities of the Specialist Chambers integrated into it are strongly determined by political influence and the aforementioned strategies.

40 *Stalled Normalization...*; G. M. Gallucci, *The Ahtisaari Plan and North Kosovo*, “TransConflict”, November 2011, [http://www.transconflict.com/10/wp-content/uploads/2011/11/PolicyPaper\\_AhtisaariPlanNorthKosovo.pdf](http://www.transconflict.com/10/wp-content/uploads/2011/11/PolicyPaper_AhtisaariPlanNorthKosovo.pdf) [15.04.2021].

41 *Ibidem*.

It may seem that Kosovo is involved in the activities of the Chambers to the extent required by the European Union. It is dictated by a political interest, not at all reflected in the social need. And because of this, the process of reconciliation with Serbia seems at times to be more in the interest of the EU countries than of Kosovo itself, which is still supported by the United States. Interestingly, it is also in Russia's interest to maintain its influence in the region, and the lack of an agreement between Serbia and Kosovo strengthens its position in the political offensive against the USA.

Therefore, it can be expected that the accusation against the President of Kosovo, brought by the Specialist Prosecutor's Office, and the criminal trial before the Specialist Chambers will be strongly determined by the political influence and the direction of the strategy of international legal development of the EU states, the USA, and Russia. The apparently local tribunal is of great importance for the position and influence of individual international players in the Balkan region.

## References

- Cady J.-Ch., Booth N., *Internationalized Courts in Kosovo: An UNMIK Perspective*, [in:] *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia*, C. P. R. Romano, A. Nollkaemper, J. K. Kleffner (eds.), Oxford 2004.
- Constitution of the Republic of Kosovo, <https://www.scp-ks.org/en/documents/constitutional-amplements-article-162>.
- Del Ponte C., *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity*, New York 2008.
- Dietrich F., *The Status of Kosovo – reflection on the legitimacy of secession*, "Ethics & Global Politics", 2010, vol. 3, no. 2.
- Domachowska A., *Serbia i Kosowo: porozumienie o normalizacji relacji ekonomicznych*, "Komentarze IEŚ", 2020, no. 248.
- Fletcher L. E., Weinstein H. M., *A world unto itself? The application of international justice in the former Yugoslavia*, [in:] *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, E. Stover, H. M. Weinstein (eds.), Cambridge 2004.
- Gallucci G. M., *The Ahtisaari Plan and North Kosovo*, "TransConflict", November 2011, [http://www.transconflict.com/10/wp-content/uploads/2011/11/PolicyPaper\\_AhtisaariPlanNorthKosovo.pdf](http://www.transconflict.com/10/wp-content/uploads/2011/11/PolicyPaper_AhtisaariPlanNorthKosovo.pdf).
- Hehir A., *Lessons Learned? The Kosovo Specialist Chambers Lack of Local Legitimacy and Its Implications*, "Human Rights Review", 2019, vol. 20, no. 3.



- Holvoet M., *The Continuing Relevance of the Hybrid of Internationalized Justice Model: the Example of the Kosovo Specialist Chambers*, "Criminal Law Forum", 2017, vol. 28, no. 1.
- Humanitarian Law Center, *The Kosovo Memory Book*, Pristina, 2011, <http://www.kosovomemorybook.org>.
- Kllokoqi S., *EU, US display differences over Serbia-Kosovo negotiation*, AP News, 16.06.2020, <https://apnews.com/7fdae2ee083ec9cf1ccb200156d1604a>.
- Kosovo Specialist Chambers & Specialist Prosecutor's Office, *Background*, <https://www.scp-ks.org/en/background>.
- Kosovo Specialist Chambers & Specialist Prosecutor's Office, *Cases*, <https://www.scp-ks.org/en/cases>.
- Kosovo Specialist Chambers & Specialist Prosecutor's Office, Press Statement, 24 Jun 2020, <https://www.scp-ks.org/en/press-statement>.
- Kosowo: Prezydent oskarża międzynarodowy sąd o "przepisywanie historii"*, Gazeta Prawna, 26.06.2020, <https://www.gazetaprawna.pl/wiadomosci/artykuly/1484598,kosowo-prezydent-oskarza-miedzynarodowy-sad-o-przepisywanie-historii.html>.
- Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, [https://www.scp-ks.org/sites/default/files/public/05-l-053\\_a.pdf](https://www.scp-ks.org/sites/default/files/public/05-l-053_a.pdf) [20.07.2020].
- Javanova E., *Redrawing the Borders between Kosovo and Serbia: Nationalists' Fuel or a Rational Solution with the Promise of a European Future?*, "International Journal on Rule of Law, Transitional Justice and Human Rights", 2018, vol. 9, no. 9.
- Mahr E., *Local contestation against the European Union Rule of Law Mission in Kosovo*, "Contemporary Security Policy", 2018, vol. 39, no. 1.
- Muharremi R., *The Kosovo Specialist Chambers from a Political Realism Perspective*, "International Journal of Transitional Justice", 2019, vol. 13, no 2.
- Report of the Parliamentary Assembly of the Council of Europe, Inhuman treatment of people and Illicit trafficking in human organs in Kosovo, Doc. AS /Jur (2010) 46, 12 December 2010.
- Ristic M, *Kosovo's New War Court: How Will It Work?*, Balkan Transitional Justice, 06.08.2015, <http://www.balkaninsight.com/en/article/how-will-special-kosovo-court-work%2D%2D08-05-2015> [17.06.2020].
- Rossi M., *Partition in Kosovo Will Lead to Disaster*, Foreign Policy, 19.09.2018, <https://foreignpolicy.com/2018/09/19/partition-in-kosovo-will-lead-to-disaster-serbia-vucic-thaci-mitrovica-ibar/> [20.05.2021].
- Special Investigative Task Force, Statement of the Chief Prosecutor of the Special Investigative Task Force, 29 July 2014, [https://balkaninsight.com/wp-content/uploads/2019/01/Statement\\_of\\_the\\_Chief\\_Prosecutor\\_of\\_the\\_SITF\\_EN.pdf](https://balkaninsight.com/wp-content/uploads/2019/01/Statement_of_the_Chief_Prosecutor_of_the_SITF_EN.pdf) [16.06.2020].
- Stalled Normalization between Kosovo and Serbia: What is the way forward? Association of Serbian Majority Municipalities - Transitional Justice and*

- Dealing with the Past - Foreign Policy and Regional Cooperation. Notes from Conversation with Experts*, Prishtina 2021.
- Schenkel K., *The Kosovo Specialist Court and Transitional Justice. Public Perceptions on the KSC and the need for a comprehensive TJ approach*, Utrecht 2021.
- Szpala M., *Serbia-Kosovo negotiations – playing for time under pressure from the West*, "OSW Commentary", 2018, no 281.
- The Prime Minister Office, *The Government of Kosovo approved the 2020-2023 Governance Program*, 05.06.2020, <https://kryeministri.rks-gov.net/en/the-government-of-kosovo-approved-the-2020-2023-governance-program/> [20.07.2020].
- The Prosecutor v. Fatmir Limaj, Isak Musliu & Haradin Bala, case number: IT-03-66-PT, <https://www.icty.org/case/limaj> [10.06.2020].
- The Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj, case number: IT-04-84bis-PT, <https://www.icty.org/case/haradinaj> [June 10, 2020].
- Visoka G., *Assessing the potential impact of the Kosovo Specialist Court*, Utrecht 2017.
- Visoka G., Lumi B., *Citizens Perspective on a Future Strategy for Transitional Justice in Kosovo*, Utrecht 2020.
- Visoka G., Lumi B., *Democratizing Transitional Justice: Towards a Deliberative Infrastructure for Dealing with the Past in Kosovo*, Utrecht 2020.
- Vulliamy E., *Wojna umarła. Niech żyje wojna. Bośniackie rozrachunki*, Wołowiec 2016.
- Xoxha R., *Paralleling ICTY's jurisprudence with the incoming developments of the Kosovo's Specialized Chambers in Hague*, "Policy Analysis", 2020, no. 2.