

Contestation of Kosovo's Statehood from Within: EULEX Judges Adjudicating Privatization Matters through 'Status Neutrality'

Kushtrim Istrefi

Assistant Professor of Human Rights Law and Public International Law,
Utrecht University, Utrecht, The Netherlands; Member of the Netherlands
Institute of Human Rights and Utrecht Centre for Accountability and
Liability Law, Utrecht, The Netherlands

k.istrefi@uu.nl

Abstract

Kosovo's statehood has been contested by foes as well as friends. Much is known about the former and less about the latter. This contribution explores the contestation of Kosovo's independence by the judges of the European Union Rule of Law Mission in Kosovo (EULEX) working on privatization matters before Kosovo courts. As put by the Constitutional Court of the Republic of Kosovo (KCC), EULEX judges working on privatization matters, "simply continued to ignore the existence of Kosovo as an independent State and its legislation emanating from its Assembly". The KCC stated this after EULEX judges working on privatization matters had refused to respect Kosovo laws and institutions subsequent to the 2008 Kosovo Declaration of Independence. This paper explores the judicial dialogue on Kosovo's independence between EULEX judges and the KCC and identifies the limitations and risks of the 'status neutral' policy applied by international organizations to collaborate with Kosovar institutions without prejudging its political status. This submission suggests that 'status neutrality' leads to either acceptance or contestation of Kosovo's statehood and thus brings more uncertainty than clarity to Kosovo's position in international relations.

Keywords

Kosovo – EULEX – status-neutrality – contested statehood – international organizations

We, human beings and human societies, become what we think we are. If we have conflicting ideas of what we are, we become a puzzle to ourselves and to others. If we have no clear idea of what we are, we become what circumstances make us.

PHILIP ALLOT, *the health of nations*

1 Introduction*

On 18 February 2008, a day after Kosovo declared independence, the UN Security Council and the Council of the European Union held extraordinary meetings in New York and Brussels respectively to address the situation created in Kosovo.¹ Given the strong division between member states, the UN and the EU could not agree on a definitive position on Kosovo's Declaration of Independence. Hence, both international organizations remained neutral on the status of Kosovo. For them, status neutrality meant that they could continue to work with Kosovo institutions without prejudging whether they belonged to a new state or they were temporary local institutions under the supervision of the United Nations Interim Administration Mission in Kosovo (UNMIK), 'operating under Security Council Resolution 1244'.² In a rather creative fashion, status neutrality ensured a policy where states and international organizations could collaborate with Kosovar institutions without having to decide on Kosovo's statehood. According to the UNMIK Spokesperson "[s]tatus neutrality actually means that we do not have a stake in the process of recognizing or not recognizing Kosovo, ... the only thing we do is offer support".³

In international organizations where Kosovo could not partake as a member state, status neutrality allowed its participation in some initiatives and even to sign international agreements as long as Kosovo accepted the asterisk stating

* This contribution to the special issue in honor of Professor Hubert Isak touches upon three areas of Professor Isak's research interest, namely EU external action, public international law, and South East Europe. It is in gratitude to Professor Isak for his valuable support as a co-supervisor of my PhD work at the University of Graz. This contribution is built on previous work by the author. Parts of it appear in Kushtrim Istrefi, „Kontestimi i Shtetësisë së Kosovës nga Gjyqtarët e EULEX-it: të Zgjedhësh Ndërmjet Zbatueshmërisë së Ligjeve të Kosovës dhe Rregulloreve të UNMIK-ut“, *Albanian Journal of Legal Studies* (2015). The author is grateful to Luca Pasquet for his helpful comments on an earlier version of this paper.

1 UN Security Council Meeting 5839 of 18 February 2008; The Council of the EU, Conclusions from meeting 285 of 18 February 2008.

2 UN Security Council Resolution 1244 of 10 June 1999, UN Doc S/RES/1244.

3 Faith Bailey, "Kosovo still dogged by status-neutral asterisk", *PrishtinaInsight* (20 July 2016).

that the designation 'Kosovo' is "without prejudice to positions on status, and is in line with [Security Council Resolution 1244] and the ICJ Opinion on the Kosovo declaration of independence".⁴ Some could argue that this form of participation, at least in the embryonic phase of state formation, ensured Kosovo's presence in international affairs and boosted its separate independent legal personality.⁵ Others may argue that Kosovo accepted a form of indeterminacy on its political status. Be that as it may, status neutrality continues to ensure collaboration between Kosovo and other subjects and actors that do not recognize Kosovo as a sovereign state.

While at the international level status neutrality appeared as a cloudy but workable solution, this became a source of controversy for international missions working in Kosovo, and particularly for the EULEX judges, who on a daily basis had to decide which laws to apply and which authorities had the right to legislate and govern the territory. It has been observed that in the aftermath of Kosovo's independence, "Kosovo Serb authorities insisted on applying the so-called 'UNMIK law'... or earlier Yugoslav codes and regulations [in Serb-majority municipalities], while the new Kosovar authorities enacted fresh legislation in a growing number of fields which was meant to apply country-wide".⁶ EULEX judges, being present in all parts of Kosovo, had to decide whether UNMIK regulations or laws adopted by the Kosovo Assembly after the Kosovo Declaration of Independence must prevail, and whether UNMIK or Kosovo institutions had the final word in the country.

Against that background, this contribution aims to explore the case-law of the EULEX judges regarding the application of Kosovo and UNMIK laws which ultimately touched upon Kosovo's statehood. The analysis commences with a brief overview of the mandate of UNMIK, EULEX, and Kosovo institutions prior to and after Kosovo independence. Next, it examines the decisions by EULEX judges on privatization matters, which reveals a struggle between UNMIK and Kosovo institutions and laws. It then scrutinizes the judicial dialogue between the KCC and EULEX judges on the statehood of Kosovo and the relationship between UNMIK and Kosovo laws. The conclusion zooms out by looking at the

4 E.g. The Stabilization and Association Agreement (SAA) between the European Union and Kosovo signed on 27 October 2015, OJ (2016) L 71/3. See also Peter Van Elsuwege, "Legal Creativity in EU External Relations: The Stabilization and Association Agreement Between the EU and Kosovo", 22(3) *European Foreign Affairs Review* (2017).

5 See Kushtrim Istrefi, "Azemi v Serbia: discontinuity of Serbia's de jure jurisdiction over Kosovo", 4 *European Human Rights Law Review* (2014), 390–392.

6 Giovanni Grevi, "The EU rule-of-law mission in Kosovo", in Giovanni Grevi, Damien Helly and Daniel Keohane (eds.), *European Security and Defense Policy: The first ten years (1999–2009)* (The European Union Institute for Security Studies), p. 358.

way in which status neutrality was shaped by EULEX jurisprudence, and what this means for Kosovo's statehood.

2 UNMIK and Kosovo Institutions

In June 1999, following NATO intervention in the former Yugoslavia and the withdrawal of Yugoslav troops from Kosovo, the UNMIK administration was installed to govern Kosovo.⁷ The Special Representative of the Secretary-General of the UN in Kosovo (SRSG), pursuant to SC Resolution 1244 and UNMIK regulations, was vested with wide powers to govern the territory.⁸ For example, the SRSG was empowered to approve laws, and vet and appoint judges and prosecutors.⁹ UNMIK judges had exclusive powers on issues related to international crimes, inter-ethnic crimes but also on other issues, such as privatization.¹⁰ Under UNMIK regulations, Kosovo's people were represented under the so-called Provisional Institutions of Self-Government of Kosovo (PISG).¹¹ The PISG had a parliament, government and courts but the ultimate power remained with the SRSG. For example, the PISG Parliament, representing the Kosovo people, could adopt laws – but these could only enter into force if approved by the SRSG.¹² In each instance, the SRSG had to examine whether PISG laws were compatible with SC Resolution 1244 and UNMIK regulations, which hierarchically had priority over PISG laws.

Following the adoption of the Kosovo Declaration of Independence of 17 February 2008, the Assembly of the Republic of Kosovo adopted the Constitution and laws without seeking the approval of the SRSG.¹³ This was a natural course of action for the people of Kosovo, who declared the creation of a sovereign state.

7 SC Resolution 1244, *op.cit.* note 2.

8 *Ibid.*

9 UNMIK Regulation 1999/1 (25 July 1999), Section 1(1). See also Carsten Stahn, "Constitution Without a State? Kosovo Under the United Nations Constitutional Framework for Self-Government", 14 *Leiden Journal of International Law* (2001), 531, at 542–543.

10 *Ibid.*

11 *Ibid.*

12 SC Resolution 1244, *op.cit.* note 2; 54 UN SCOR, 10 June 1999; UNMIK Regulation 1999/24 on the Applicable Law in Kosovo 12 December 1999, as amended by UNMIK Regulation 2001/9 of the UNMIK Constitutional of 15 May 2001.

13 From this period on, the adoption of Kosovo laws is regulated, *inter alia*, by Articles 80, 81, 144 of the Constitution of the Republic of Kosovo.

3 EULEX Mission in Kosovo

EULEX was established through EU Council Joint Action 2008/124/CFSP of 4 February 2008, two weeks before Kosovo declared its independence.¹⁴ The EULEX mission is supported by the EU member states and five contributing states: Canada, Norway, Switzerland, Turkey and the United States. At the time, EULEX was the largest EU-led civilian mission. The EULEX mission included, among others, international judges, who had an executive mandate to adjudicate certain cases in Kosovo. These cases related to international and inter-ethnic crimes, as well as privatization. EULEX judges broadly speaking replaced the mandate of the UNMIK judges.

EULEX operated within the framework of UN SC Resolution 1244.¹⁵ At the same time, its jurisdiction and functioning were regulated by the laws of the Republic of Kosovo.¹⁶ This implied that EULEX had to co-exist with and respect both the UNMIK and Kosovo institutions and laws.¹⁷ The practice suggests that, in principle, EULEX judges applied Kosovo laws and accepted Kosovo institutions. However, the position of EULEX judges on this matter was tested when the two ‘governing authorities’, namely Kosovo institutions and UNMIK, collided in the exercise of mandates related to privatization matters. In the privatization cases, EULEX judges had a challenging task in deciding which law and authority prevails in the case of a norm and institutional conflict between UNMIK and the Republic of Kosovo.

4 Testing Sovereign Powers in the Field of Privatization

Prior to Kosovo's independence, UNMIK regulated privatization issues through, among others, UNMIK regulation 2002/12.¹⁸ UNMIK established the

14 EULEX is established based on the EU Council Joint Action 2008/124/CFSP of 4 February 2008, EU Council Decision 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124/CFSP and the EU Council Decision 2012/291/CFSP of 5 June 2012. See also Martina Spornbauer, “The Difficult Deployment and Challenging Implementation of the Most Comprehensive Civilian EU Operation to Date”, 11(8) *German Law Journal* (2010), 769–802.

15 Erika de Wet, “The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of Eulex” (2009) 103 *The American Journal of International Law* 83, 86.

16 Law No.03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, entered into force on 13 March 2008.

17 de Wet, *op.cit.* note 15.

18 UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency entered into force on 13 June 2002. UNMIK regulations and other legislative acts are published in English

Kosovo Trust Agency (KTA) to deal with privatization issues in the country. In May 2008, the Assembly of the Republic of Kosovo adopted the Law on the Privatization Agency of Kosovo (Law on PAK).¹⁹ The Law on PAK replaced UNMIK Regulation 2002/12 and established the Kosovo Privatization Agency (Kosovo PA) "as the successor of the Kosovo Trust Agency". The Law on PAK provided that "all assets and liabilities of the [UNMIK KTA] shall be assets and liabilities of the [Kosovo PA]".²⁰ Despite the entry into force of the Law on PAK and the establishment of the Kosovo PA, the UNMIK KTA also continued to operate. UNMIK KTA insisted that it remained the final authority on issues of privatization in the country.

The power struggle between the two privatization entities became a litmus test for the co-existence of UNMIK and Kosovo institutions and laws. This test took place in a case concerning privatization before the Special Chamber of the Kosovo Supreme Court on the Kosovo Trust Agency (Special Chamber of the Kosovo Supreme Court), the so-called PAK case, which was decided by a panel composed of EULEX judges.²¹

4.1 *EULEX Judges Contesting Kosovo's Statehood from Within: the PAK Case*

Shortly after its creation, the Kosovo PA started to exercise its mandate in the field of privatization. It developed, among others, a list of employees who could benefit from the privatization of companies in which they had worked. UNMIK KTA contested the authority of Kosovo PA before the Special Chamber of the Kosovo Supreme Court and sought to annul the list. The Special Chamber of the Kosovo Supreme Court, composed of EULEX judges, ruled in favor of UNMIK KTA. The decision was confirmed by the Appellate Panel of the Special Chamber of the Kosovo Supreme Court. The Appellate Panel stated that, pursuant to the applicable law, the UNMIK KTA had to deal with privatization.²² It further ruled that the Law on PAK was "not directly applicable".²³

and available at <https://unmik.unmissions.org/sites/default/files/regulations/02english/Econtents.htm>.

19 Law No.03/L-067 on the Kosovo Privatization Agency of 21 May 2008, entered into force on 15 June 2008.

20 *Ibid.*, Article 31.

21 Decision ASC-09-0089, Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC), 04 February 2010. Decisions of EULEX judges are published in English and available at <<https://www.eulex-kosovo.eu/?page=2,38,71>>.

22 *Ibid.*, at 3.

23 *Ibid.*

It is worth noting that the Appellate Panel of the Special Chamber of the Kosovo Supreme Court sought the opinion of the SRSG on, *inter alia*, the status of the relevant UNMIK regulations, Kosovo law and Kosovo PA.²⁴ The SRSG, in a letter dated 12 November 2009, argued that:

“UNMIK Regulation 2002/12, which established the KTA, remained in force and was applicable in Kosovo based on ... UNSC resolution 1244 (1999), as it can only be repealed or amended by UNMIK through another Regulation, which has not happened.

... the Law [on PAK] ...without being promulgated by an UNMIK Regulation and purporting to have entered into force on 15 June 2008, could, therefore, not abolish or repeal UNMIK Regulation 2002/12, nor extinguish the legal existence of the KTA as an independent Agency with full juridical personality.”²⁵

The SRSG further held that:

“This present clarification is sufficient confirmation that UNMIK has not in the past, nor will during the continuation of UNSC Resolution 1244 implicitly approve any attempts by PAK to assume succession or authority from KTA and that any disregard for the PAK legislation would prevent the Special Chamber from including the PAK in its proceedings.”²⁶

Faced with two competing governing authorities and laws, EULEX judges chose to recognize UNMIK as the only lawful authority and accepted Kosovo PA only as a *de facto* entity,²⁷ as suggested by SRSG.²⁸ It appears that this time, EULEX judges could not utilize status neutrality to satisfy both parties. The PAK case presents the first instance whereby international judges in Kosovo took a decision that practically scrapped the effects of the Kosovo Declaration of Independence of 2008. For Kosovo, this was an unprecedented challenge in exercising its public functions.

The irony is that this contestation came from EULEX judges, who, though acting within the framework of SC Resolution 1244, operated pursuant to laws

24 Case No. KI 25/10, the Constitutional Court of the Republic of Kosovo, 30 March 2011, para 18. Decisions of the Court are published in English and available at <<https://gjk-ks.org/en/decisions/>>.

25 *Ibid.*, para. 20.

26 *Ibid.*, paras 20–21.

27 Decision ASC-09-0089 of 2010, *op.cit.* note 21, 3.

28 Case No. KI 25/10, *op.cit.* note 24, paras. 20–21.

of the Republic of Kosovo. For Kosovo institutions, this might have felt like the Trojan horse, whereby the largest EU-led mission set up to support state-building became a source of its contestation.

4.2 *Kosovo Constitutional Court: Defending Kosovo's Statehood from Within*

The Kosovo PA referred the PAK case to the KCC, asking it to assess the constitutionality of the decision of the EULEX judges. In particular, it asked whether EULEX judges of the Special Chamber of the Kosovo Supreme Court could invalidate the Law on Kosovo PA, and whether the Kosovo Law on PA prevailed over UNMIK Regulation on UNMIK TA.

The KCC did not shy away from ruling that EULEX judges of the Special Chamber of the Kosovo Supreme Court in the PAK case “simply continued to ignore the existence of Kosovo as an independent State and its legislation emanating from its Assembly”.²⁹ Next, the KCC embarked on its assessment of the case under both international and domestic law.

The KCC decided the present case less than a year after the International Court of Justice (ICJ) had ruled that the Kosovo Declaration of Independence had not violated, among others, the SC Resolution 1244 or the UNMIK Constitutional Framework.³⁰ The KCC made direct use of the ICJ Advisory Opinion on Kosovo to confirm that the establishment of the Republic of Kosovo as an independent and sovereign state was not contrary to SC Resolution 1244.³¹ At first sight, it is highly unusual and unnecessary that a domestic constitutional court, being itself a product of the independence of Kosovo, referred to the ICJ to confirm the legality of its own state. At the same time, this could also be seen as a strategic approach by the KCC to reassure international missions in Kosovo operating within the framework of SC Resolution 1244, that accepting Kosovo institutions and law even when in conflict with UNMIK legislation did not contravene SC Resolution 1244.

The KCC then clarified that under domestic law and pursuant to Article 145 of the Kosovo Constitution, UNMIK legislation only continued to be applicable if in conformity with the Kosovo Law on PA.³² It also found that EULEX, as part of the Kosovo judiciary, “did not adjudicate based on the Constitution

²⁹ *Ibid.*, para. 53.

³⁰ Advisory Opinion on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, International Court of Justice, 22 July 2010, para. 84.

³¹ Case No. KI 25/10, *op.cit.* note 24, para. 54.

³² *Ibid.*, para. 58.

and the law as foreseen in ... Constitution, since it considered the Kosovo Law on PA not as a law".³³

4.3 *PAK Case back to EULEX Judges: Whither Kosovo Statehood?*

Following the decision by the KCC, the PAK case returned to the EULEX judges of the Special Chamber of the Kosovo Supreme Court. In decision SCA-09-0042 of 2012, a mixed panel of EULEX judges of the Special Chamber accepted that "[t]he Panel as a Kosovar Court holds itself bound by ...[the] decision [of the KCC]".³⁴ At the same time, it refused to accept the KCC reasoning as regards the UNMIK legislation emanating from the UN law.

The mixed panel of EULEX judges ruled that the contested UNMIK Regulation with regard to privatization issues, just like SC Resolution 1244 "have no time limit".³⁵ This entailed that, as a matter of law, they remained in force despite the fact that, after the Kosovo Declaration of Independence, UNMIK legislation had been repealed by Kosovo laws. The panel further found that, pursuant to international law, UNMIK legislation and institutions could not be affected by Kosovo law. In particular, it held that the Kosovo Declaration of Independence of 2008 had not had "any influence on the validity and applicability of Law based on the power of the United Nations".³⁶

Having said that, however, the mixed panel of EULEX judges found that the UNMIK administration and its legislation had ended because of UNMIK's failure to exercise its mandate. The panel noted in this regard that UNMIK had not promulgated legislation since June 2008,³⁷ and "[i]nstead of continuing to administer Kosovo [Socially Owned Enterprises] there remained just occasional expression of concern and occasional appearance in [Specialist Chambers of the Kosovo Supreme Court]".³⁸

In light of the above, the mixed panel of EULEX judges further held:

"The Kosovo population needed a secured status of the country and a current administration and legislation. In view of the inability of the Security Council to resolve the provisional status of Kosovo and the

33 *Ibid.*, para. 60.

34 Decision SCA-09-0042, Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, 29 November 2012, 4.

35 *Ibid.*

36 *Ibid.* The EULEX judges further found that the KCC has misunderstood the way in which UN law pursuant to Chapter VII applies in Kosovo.

37 *Ibid.*

38 *Ibid.*

omission of UNMIK to administer Kosovo (which would require more than expressing concern and protesting) the acts of Kosovo legislature are now valid even if they conflict with UN Regulations formerly issued by UNMIK.³⁹

It is noteworthy that, while the mixed panel of EULEX judges rejected the KCC's reasoning on UNMIK regulations, it did not explain what law empowered the panel to engage in interpreting UN law.⁴⁰ The panel devoted less than a page to explaining its findings and provided no reference to primary or secondary sources of international or domestic law. In that light, the findings by the mixed panel of EULEX judges on the UNMIK administration, and its oscillation between *de facto* and *de jure* acceptance of Kosovo laws remain controversial. Some may argue that EULEX judges in the first place lacked a mandate to make such far reaching interpretations. The Permanent Court of International Justice in *Jaçorzina* observed "that it is an established principle that the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it".⁴¹ Sir Michael Wood further argued that "[only the Security Council, or some body authorized to do so by the Council, may give an authentic interpretation in the true sense".⁴²

Be that as it may, the mixed panel of EULEX judges being called on the one hand by the UNMIK SRSG to not recognize a Kosovo law and institution, and on the other hand by the KCC to recognize Kosovo's independence and its laws even when repealing UNMIK legislation, had an uneasy task. While EULEX judges could have striven for a form of 'judicial economy',⁴³ they chose to follow a journey of direct confrontation with both 'governing' authorities. In that path, however, EULEX judges did not provide an orthodox and well-reasoned interpretation of both domestic and international law.

39 *Ibid.*, at 5.

40 *Ibid.*, at 4.

41 Permanent Court of International Justice, *Delimitation of the Polish-Czechoslovakian Frontier (Question of Jaworzina)*, Advisory Opinion (1923), PCIJ Series B, No 8, para. 80, 6 December 1923.

42 Michael C. Wood, "The Interpretation of Security Council Resolutions", 2 *Max Planck Yearbook of United Nations Law* (1998), f 82.

43 Marc Weller, "Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?" 24 *Leiden Journal of International Law* (2011), 1.

5 Conclusion

Wolfgang Koeth, in his article “State building without a State” depicts an odd relationship between the EU and Kosovo.⁴⁴ The EULEX mission, by supporting Kosovo institutions in its rule of law efforts, and at the same time remaining neutral *vis-à-vis* Kosovo’s status, were predetermined to test the limits of status neutrality. The PAK case before the mixed panel of EULEX judges of the Special Chamber of the Kosovo Supreme Court showed a direct contestation of Kosovo’s statehood in its own habitat.⁴⁵ This unsurprisingly led to a tense judicial dialogue between the Constitutional Court and EULEX judges. The Constitutional Court instructed the EULEX judges - and through it other international authorities operating in Kosovo on the card of status neutrality - to respect the Kosovo Constitution and laws as well Kosovo institutions in the exercise of their state functions.⁴⁶ The Constitutional Court took an unusual role by trying to protect not only the Constitution but also the legality of Kosovo’s statehood.

This saga did not end smoothly as the mixed panel of EULEX judges once again decided that as a matter of law UNMIK legislation cannot be repealed by Kosovo laws adopted after the Declaration of Independence. At the same time, the mixed panel found that UNMIK, by failing to exercise its mandate in Kosovo, had left them with no other choice but to accept Kosovo laws.⁴⁷

In the PAK case, EULEX judges oscillated from contestation to recognition of Kosovo’s statehood. Hence, the ‘race’ between UNMIK and Kosovo’s independent institutions in exercising final authority in the country resulted in the EULEX judges recognizing the laws and institutions of the Republic of Kosovo. Following this, the Special Chamber changed its name from the ‘Special Chamber of the Supreme Court of Kosovo on Matters relating to the Kosovo Trust Agency’ to the ‘Special Chamber of the Supreme Court of Kosovo on matters relating to the Privatization Agency of Kosovo’.⁴⁸ The importance of renaming consists not only in linguistic symbolism, but also in its semantics as it recognizes Kosovo PA at the cost of UNMIK KTA.

44 Wolfgang Koeth, “State Building without a State: The EU’s Dilemma in Defining Its Relations with Kosovo”, 15(2) *European Foreign Affairs Review* (2010), 227–247.

45 Decision ASC-09-0089 of 2010, *op.cit.* note 21, at 4.

46 Case No. KI 25/10, *op.cit.* note 24, paras. 53–54.

47 Decision SCA-09-0042, Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, 29 November 2012, p. 4.

48 Compare e.g. Decision ASC-10-0002 of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters of 8 March 2010 with Decision C-I-12-0056 of the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency of 15 May 2013, available at <<https://www.eulex-kosovo.eu/?page=2,38,71>>.

The legacy of the EULEX judges in the PAK case shows that status neutrality is nothing but an attempt to hide from the real question of Kosovo's status. Ultimately, it ends with either endorsing or denying the existence of Kosovo as an independent state. As long as the policy of status neutrality remains, however, its indeterminacy brings more uncertainty than clarity to Kosovo's position in international relations. When Kosovo accepted the asterisk "without prejudice to its status" in its agreements with Serbia, Kosovo's Deputy Prime Minister Edita Tahiri stated that the asterisk was a snowflake that would soon melt away.⁴⁹ Since 2012, however, when this statement was made, the snowflake has remained frozen. While at the initial stage of the independence of Kosovo status neutrality provided an entry card to international cooperation, its continuation risks normalizing Kosovo's contested statehood.

49 See Toby Vogel, "What's in a name?", *Politico* (29 February 2012), available at <<https://www.politico.eu/article/whats-in-a-name-2/>>.