

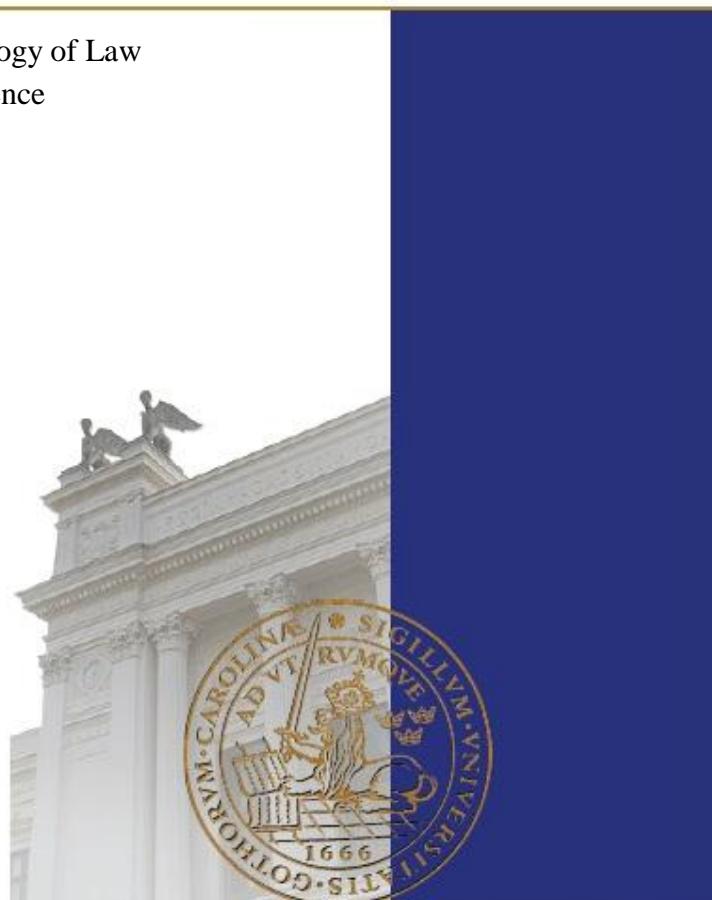
Master Thesis in Sociology of European Law

The EU in Kosovo: Establishing the rule of law?

Berat Mehholli

Department of Sociology of Law
Faculty of Social Science
Lund University

May 2012
Lund, Sweden



The EU in Kosovo: Establishing the rule of law?

Author

Berat Mehholli

Supervisor

Måns Svensson

Thesis for a diploma in Sociology of European Law, 30 ECTS credits,
Department of Sociology of Law, Faculty of Social Science, Lund University

Abstract

Since the collapse of the Warszawa pact Central and Eastern European countries have changed their political agenda towards Western European countries (and the EU) by showing a political will to establish a (new) society based on Western principles and values. Simultaneously the Member states of the European Union have coordinated their foreign and security policy and shown an interest in solving different conflicts outside its borders in order to protect itself and develop cooperation with countries that are outside the EU. In 2008 the European Union increased its presence in the Republic of Kosovo and launched *EULEX Kosovo* whose purpose is to implement EU principles and values in Kosovo's legal system. The aim of this essay was, therefore, to evaluate EULEX's work in Kosovo from a legal sociological point of view where the EU's *rule of law principle* was of interest. The European Commission does not mention EULEX's shortcomings in fulfilling its mission in Kosovo but the EU's rule of law principle is absent in Kosovo. The analyzed empirical data indicates that the EULEX has deceived its mandate in Kosovo because it has not been able to implement European principles and values within Kosovo's legal system the last two years (2009-2011). The European view about a society where the functionality of the state and its different spheres emerge from an independent legal system is opposed by society because Kosovo's state law is not synchronized with existing social norms in society (such as Albanian customary law). In practice, every situation that becomes a legal matter might involve different social norms at the same time where the strongest social norm(s) will decide the outcome of the case. In this context, the development phase of Kosovo's legal system is not precisely clear because Kosovo's legal system falls under the scope of all phases in Turner's development theory simultaneously as it does not. An indication of why certain living law 'versions' are present (and active) within Kosovo's legal system (and society).

Keywords: Albanian customary law, Jonathan H. Turner, Kosovo, the EU, the EULEX, the Living law, the Rule of law

“We are as committed as ever to Kosovo's European perspective. This goal is within reach, provided Kosovo continues with vital reforms and engages without delay, constructively and pragmatically, in regional cooperation. I hope today's report will provide a useful roadmap for Kosovo's preparation for its European perspective”.

Stefan Füle, EU- Commissioner responsible for enlargement and European neighborhood policy, MEMO/10/554 Brussels, 9 November 2010

List of content

Chapter 1	7
1.1 Introduction	7
1.2 Purpose & research question	8
1.3 Relevance for sociology of law	8
1.4 Previous research about the EULEX in Kosovo	9
Chapter 2	14
2.1 The EU in Kosovo before 2008	14
2.2 The EULEX in Kosovo from 2008	15
2.2.1 The rule of law concept	16
Chapter 3	19
3.1 Choice of technique (method)	19
3.1.1 Advantages and disadvantages with case study	19
3.2 The empirical data	20
3.2.1 Delineation & Type of sources	20
3.2.2 The quality of the empirical data	22
3.2.3 Validity and reliability	26
3.2.4 Handling the empirical data	28
Chapter 4	30
4.1 Choice of theory	30
4.1.1 The concept of living law	30
4.1.2 The development of the legal system theory	31
4.2 Justification of choice	38
Chapter 5	40
5.1 Legal culture in Kosovo	40
5.2 The legal situation in Kosovo today (results)	42
5.2.1 An example of the EULEX's work in Kosovo	45
Chapter 6	48
6.1 The concept of living law, legal system development and Kosovo (analyze)	48
6.2 Conclusion	56
Chapter 7	59
7.1 Recommendations	59
7.1.1 Official recognition of Albanian custom law as source of law	59
7.1.2 Equality before the (state) law via international pressure and political will	61

7.2 A final thought	64
References.....	71
Printed sources	71
Electronic sources	75

Chapter 1

1.1 Introduction

The political (and economic) landscape in Europe has changed since France, Germany, Italy and the Benelux countries joined their forces in 1951 and signed the *European Coal and Steel Community Treaty*.¹ The idea of a common market has expanded and increased the political (and economic) cooperation between Western and Eastern European countries under 'the EU- umbrella'; where the EU has strengthened its power by constructing a political (and legal) infrastructure that legitimizes its power and authority in every member state.² In this context, relevant EU –institutions³ have been given executive power (by reducing national executive power) in foreign, security, legal, internal, economic and political policies via the treaties (the 'constitution' of the EU).⁴

The latest ratified treaty (The Lisbon Treaty) created a new political position (*the High Representative of the European Union for Foreign Affairs and Security Policy*) whose purpose is to coordinate the EU's foreign and security policy (like a foreign minister of the EU). The implicit message of this initiative is that the safety of EU citizens from insecurity (cross-border crime for example) is of importance for the EU. The European Union is, therefore, interested in solving different conflicts outside its borders in order to protect itself and develop cooperation with countries that are outside the EU.⁵

On the basis of this, the European Union increased its presence in the Republic of Kosovo and launched the *EULEX Kosovo* in 2008.⁶

¹ The purpose with this treaty was to prevent military rearmament by allowing free movement of coal and steel (important military materials), supervised by France, Germany, Italy and the Benelux countries together.

² Stone Sweet, Alec (2004) *The Judicial Construction of Europe* p:2-4 & 14-17& 19-21

³ The Council, the Commission and the European Parliament

⁴ Piris, Jean-Claude (2010) *The Lisbon Treaty: a legal and political* p: 7-48

⁵ Piris, Jean-Claude (2010) *The Lisbon Treaty: a legal and political* p: 245

⁶ Hydén, Håkan (2012) *Interview with Therese Hydén about EU and integration*

1.2 Purpose & research question

Since the collapse of the Warszawa pact⁷ Eastern European countries have changed their political agenda towards Western European countries (and the EU) by showing a political will to establish a (new) society based on Western principles and values.⁸ A functional (democratic) society, based on Western principles and values, is depended on a functional national legal system whose duty is to handle various forms of disputes according to the written law; immune to external influences (such as the government or political groups).⁹ The explicit purpose with the EU's presence in the republic of Kosovo is to promote and implement these principles and values within the national legal system via the EULEX.¹⁰ The aim of this essay is, therefore, to evaluate their mission from a legal sociological point of view where EU's *rule of law principle* is of interest.

With this said, I have formulated the following research question:

- ⊕ Has the EULEX been able to implement European principles and values in Kosovo's national legal system the last two years?¹¹ If not, why?

1.3 Relevance for sociology of law

Sociology of law studies law and society by using social science theories and methods. The focus of sociology of law is to examine society's impact on law and the law's impact on society (and its norms and values)¹² by conducting research on the basis of Tomas Mathisen's three general questions.¹³ This academic discipline is also interested in norms and how they emerge, their impact on people's behavior and various institutions in society etc.¹⁴

⁷ See for example <http://www.ne.se/lang/warszawapakten>

⁸ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:18-19

⁹ Brante Thomas, Andersen Heine & Korsnes Olav (2007) *Sociologiskt Lexikon* p: 271 & Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:18-19

¹⁰ Hydén, Håkan (2012) *Interview with Therese Hydén about EU and integration*

¹¹ Refers to the time period 2009-2011

¹² Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 1-4

¹³ 1) In which way does law influence our society, 2) in which ways does the society influence the law and 3) which are the interaction between these systems? Alkan Olsson, Johanna (2011) *Lecture 1: What is sociology of law?*, p: 2

¹⁴ Hydén, Håkan (2002) *Normvetenskap*, p: 268 -272

The Lisbon treaty states that the European Union is founded on certain principles and values that European countries are required to fulfill before EU-accession is granted.¹⁵ By being present in the Republic of Kosovo the EU is imposing national authorities (and society) its own principles and values via the EULEX.

The principle and value of interest in this context is, as mentioned earlier, the EU's *rule of law principle*. From my point of view, these principles and values are norms because it is another way of saying 'the way things are done in our society, community, organization etc.'¹⁶ and falls, therefore, under the scope of legal sociological research.¹⁷

1.4 Previous research about the EULEX in Kosovo

Since Kosovo's declaration of independence in 2008 the presence of the EULEX has been a research topic among researchers within social science whose work has given a picture of the political, economic and legal situation in Kosovo.¹⁸ In addition, previous research about the EULEX in Kosovo does also consist of recommendations and suggestions of how EULEX's work in Kosovo should develop in the future etc.¹⁹ Other common denominators of previous research about the EULEX in Kosovo are:

- (a) Rapid changes in the legal system (and society as a whole) are not to be expected; weaknesses in the rule of law are, despite the presence of the EULEX, still evident. Further progress is necessary.²⁰

¹⁵ Piris, Jean-Claude (2010) *The Lisbon Treaty: a legal and political* p: 71 & Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:30-31

¹⁶ Baier, Matthias & Svensson Måns (2009) *Om normer*, p: 60

¹⁷ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 1-4 & Hydén, Håkan (2002) *Normvetenskap*, p: 268 -272 & Baier, Matthias & Svensson Måns (2009) *Om normer*, p: 60

¹⁸ See for example Spyros Economides (2011) *The making of a failed state: the case of Kosovo* European View (2011) 10:195–200 & Giovanni Grevi, Damien Helly and Daniel Keohane (2009) *European Security and Defence Policy: the first ten years (1999-2009)* The European Union Institute for Security Studies ISBN 978-92-9198-157-1

¹⁹ See for example Maria, Derkx & Megan Price (2010) *The EU and rule of law reform in Kosovo*, Conflict research unit, Netherlands Institute for International relations 'Clingendael'

²⁰ See for example: Hughes, James (2009) *Paying for Peace: Comparing the EU's Role in the Conflicts in Northern Ireland and Kosovo*, Ethnopolitics: Formerly Global Review of Ethnopolitics, 8:3-4, 287-306 & Martin Wählisch 2010: *The rule of law in Kosovo*, in Matthias Koetter / Gunnar Folke Schuppert, *Understandings of the Rule of Law in various legal orders of the World*, Rule of Law Working Paper Series Nr. 15, Berlin & Dijkstra, Hylke (2011) *The Planning and Implementation of the Rule of Law Mission of the European Union in Kosovo*. Journal of Intervention and Statebuilding, 5(2), pp. 193-210.

- (b) EULEX's presence in Kosovo is (more than often) described and explained from a political context where every success and failure of EULEX's work is a reflection of the political climate in the EU towards the state of Kosovo and the political climate in Kosovo towards the EULEX etc.²¹
- (c) Conditions of non-political nature and their relevance for the legal system's efficiency in society are not mentioned by researchers. The political aspect is of course important; the state of Kosovo has not been recognized by all world countries and is under international supervision whose political agenda towards the state of Kosovo has an impact on Kosovo's internal development and security²² but the rule of law in a country has a tendency to also depend on non-political conditions, such as, culture, traditions and customs. Implementing (state) law without representing and integrating different spheres of society becomes, therefore, problematic because the (state) law will deviate from its purpose and target; regulating people's actions in society. "*Law which does not have a moral content is law that has lost its soul; it is just word on paper*".²³

With this in mind, I argue that a proper explanation about the legal situation in Kosovo is not given from a legal sociological point of view.

²¹ See for example: Hughes, James (2009) *Paying for Peace: Comparing the EU's Role in the Conflicts in Northern Ireland and Kosovo*, Ethnopolitics: Formerly Global Review of Ethnopolitics, 8:3-4, 287-306 & Martin Wählisch 2010: *The rule of law in Kosovo*, in Matthias Koetter / Gunnar Folke Schuppert, *Understandings of the Rule of Law in various legal orders of the World*, Rule of Law Working Paper Series Nr. 15, Berlin & Dijkstra, Hylke (2011) *The Planning and Implementation of the Rule of Law Mission of the European Union in Kosovo*. Journal of Intervention and Statebuilding, 5(2), pp. 193-210.

²² See for example http://ec.europa.eu/enlargement/potential-candidates/kosovo/relation/index_en.htm

²³ Hydén, Håkan (2012) *Interview with Roger Cotterrell*

Given that there is huge number of scientific articles and reports about the EULEX's presence in Kosovo it is not possible to mention all of them in this essay. Although, I have tried to select those scientific articles and reports that are most suitable for this essay²⁴ conducted from 2009 to 2011.²⁵

In 2009 Giovanni Grevi wrote that the EULEX has begun to carry out its functions of monitoring, mentoring and advising national authorities and expanded its regional and local activities in Kosovo. In the juridical field, the EULEX has been advising the Supreme Court of Kosovo, supported the drafting of (not implemented yet) national strategies on organized crime and involved in 467 trials for example. Grevi argues that this record is reasonably good but these achievements will only prove sustainable if other necessary challenges (such as organized crime and corruption) are successfully addressed.²⁶ Grevi writes:

Individual Kosovo officials may show great determination but most of the political class remains more committed in words than in deeds, while the lines between political, economic and criminal networks are sometimes blurred. Short of much stronger local commitment and capacity to address crime and corruption and uphold the rule of law, the impact of EULEX will not be decisive. From this standpoint, the specific efforts of EULEX to engage and support local civil society organizations are very important and should be pursued further.²⁷

Verdan Dzihic and Helmut Kramer write that Kosovo is a country with limited sovereignty whose national authorities (the border police for example) does not control its borders in the northern parts of the country (indirectly controlled by Kosovo's Serbian population, assisted by the state of Serbia) and that the EU (via the EULEX) has not been able to solve this issue.²⁸

²⁴ On the basis of the research question

²⁵ On the basis of Google Scholar (search word; The EULEX in Kosovo) about 600 scientific articles, reports etc. where conducted by various scholars about the EULEX in Kosovo between 2009 -2011.

²⁶ Grevi, Giovanni (2009) *EULEX Kosovo*, p: 360-365

²⁷ Grevi, Giovanni (2009) *EULEX Kosovo*, p: 366-367

²⁸ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 7-9 & 17-18

Further on, Dzihic and Kramer mentions the EULEX's inefficiency in guarding democratic values (such as the rule of law)²⁹ by stating that corruption is the biggest obstacle in improving and developing Kosovo's economy³⁰, recommending the EULEX to launch and implement an active anticorruption strategy (for both internationals and citizens of Kosovo) so that "*investments in major projects does not seep away into dubious channels*".³¹ Dzihic and Kramer draws the conclusion that one and a half years of independence and EULEX's presence has not improved people's life in Kosovo because the EULEX (and the government of Kosovo) has not delivered its promises (economic growth, the rule of law etc.).³² They recommend for example that the colossal costs on the Rule of Law Mission "*should be made proportionate to investments directed towards clear improvements in Kosovo's economic and social situation*".³³

Martin Wählisch argues that the republic of Kosovo (assisted by the EULEX) has begun its process in establishing the rule of law in society but lack of coherence between the rule of law on paper and the rule of law in praxis is still evident. For instance, the legal system is the most corrupt sphere in society.³⁴ Wählisch argues that Kosovo's Constitutional Court³⁵ has an important role in decreasing this negative occurrence via its verdicts (and statements) and "*ensure the rule of Law as a key value*".³⁶

The words of the Court about political parties, the role of elections, and the function of the President all exemplify genuine care for democracy. They demonstrate that the

²⁹ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p:18-19

³⁰ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 13

³¹ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 21

³² Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 7& 10-12 & 15 -19

³³ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 21

³⁴ Wählisch, Martin (2010) *The rule of law in Kosovo*, p: 1-12

³⁵ Composed by domestic and international (EULEX) judges

³⁶ Wählisch, Martin (2010) *The rule of law in Kosovo*, p: 10

Constitutional Court it not an alibi institution but a vital device for further legal challenges of the Rule of Law in Kosovo.³⁷

Similar conclusions about EULEX's work in Kosovo are also drawn by Labinot Greiçevci in the article *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*.³⁸ Greiçevci writes also that a positive outcome of the EULEX in Kosovo would strengthen the EU's role in international affairs and send a 'message' that the EU is capable of establishing law and order outside its borders via EU launched missions of various kinds.³⁹ In order to achieve this, the EU must, according to Greiçevci, improve the rule of law in Kosovo via the following steps:

- ⊕ First, "the EU should try and resolve its 'horizontal conflicts', i.e. to speak with one voice"⁴⁰ (refers to those member states that have not recognized Kosovo's independence⁴¹ despite that the ICJ ruled that Kosovo's independence did not violate international law)⁴²
- ⊕ Second, the EU should not tolerate the state of Serbia and its interfering in Kosovo's internal issues and initiate "the mechanisms of 'stick and carrot' in traditional European integration processes"⁴³ and
- ⊕ Third, implementing the first and second step would strengthen the EU's political support for the EULEX which would improve its efficiency, avoid damages that cannot be recovered and prevent "further degradation of the trust of the people of Kosovo toward the EULEX mission".⁴⁴

³⁷ Wählisch, Martin (2010) *The rule of law in Kosovo*, p: 8

³⁸ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 297-301

³⁹ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 301

⁴⁰ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 300

⁴¹ Cyprus, Greece, Spain, Romania and Slovakia, Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 290

⁴² Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 300

⁴³ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 300

Chapter 2

2.1 The EU in Kosovo before 2008

Informally the European Union has been present in Kosovo since the war against Yugoslavia (current Serbia) ended in 1999. Within the framework of the United Nation and its mission in Kosovo (UNMIK) the EU took responsibility of reconstructing and stabilizing Kosovo via the European agency of reconstruction for example. The project of rebuilding houses for the people of Kosovo and public facilities was accomplished without any problems while establishing a stable and functional economic system failed.⁴⁵ Verdan Dzihic and Helmut Kramer write for example that “*the privatization process became virtually a symbol of the misguided policies of UNMIK and the EU*”⁴⁶ because neither domestic nor international officials were investigated for misconduct, such as, corruption and fraud.⁴⁷

On the basis of political changes within the international community about Kosovo’s political status “*the EU began preparations for a new mission in 2006*”⁴⁸. Two years later (when Kosovo declared its independence from Serbia) the EU’s civil mission for law and order (the EULEX) was send to Kosovo based on a decision by the European Council (Joint Action resolution). Simply put, the EU’s official presence in Kosovo began in 2008 when the EULEX⁴⁹ replaced the UNMIK.⁵⁰

⁴⁴ Labinot Grejcevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 300

⁴⁵ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU’s EULEX Mission Delivering on its Promises?*, p: 14-15

⁴⁶ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU’s EULEX Mission Delivering on its Promises?*, p: 14

⁴⁷ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU’s EULEX Mission Delivering on its Promises?*, p: 14

⁴⁸ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU’s EULEX Mission Delivering on its Promises?*, p: 15

⁴⁹ The EULEX’s presence in Kosovo is also regulated by the Constitution of Kosovo where it has been given (limited) executive power. See Muharremi, Robert (2010) *The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law* ZaöRV 70 (2010), 357-379 & Wählisch, Martin (2010) *The rule of law in Kosovo*, in Matthias

Koetter / Gunnar Folke Schuppert, Understandings of the Rule of Law in various legal orders of the World, Rule of Law Working Paper Series Nr. 15, Berlin (ISSN 2192-6905)

2.2 The EULEX in Kosovo from 2008

After Kosovo's declaration of independence the member states of the EU agreed to disagree about recognizing Kosovo as an independent country. The majority of the EU member states recognized the new country while Cyprus, Greece, Spain, Romania and Slovakia have not done this yet on the basis of domestic political issues etc.⁵¹ Regardless of this political climate within the EU, peace and political stability in Kosovo (and the Western Balkans) is considered to be a key priority for the EU.⁵² On the basis of this, the EU launched *the rule of law mission in Kosovo* (dubbed EULEX Kosovo)⁵³ whose purpose is to help and assist domestic law enforcement institutions in their fight against organized crime, corruption of various forms etc. and implement European principles and values in the domestic legal system⁵⁴ (such as, freedom from political interference and progress towards sustainability and responsibility).⁵⁵ According to Labinot Greiçevci "*these aims have been established with the long-term prospect of Kosovo's potential for possible accession to the EU*".⁵⁶

The people working in the EULEX Justice Component are in every day contact with the Kosovan administration of justice. They share their skills and experience with their local counterparts. Kosovo institutions will benefit from this and, as a result, trust in the judicial system should increase.⁵⁷

⁵⁰ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 15-17

⁵¹ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 290

⁵² Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 290

⁵³ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 283

⁵⁴ EULEX Kosovo (2012) The rule of law handbook, p: 3

⁵⁵ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 297

⁵⁶ Labinot Greiçevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 297

⁵⁷ EULEX Kosovo (2012) *EULEX Kosovo Justice Component*

2.2.1 The rule of law concept

The idea of the rule of law has been present for a long time. Influenced by political, socio-economic, religious and historical conditions in society the people (and their leadership) have expressed their interest in maintaining peace and order in society by developing various forms of institutions and procedures. Defining the content of the rule of law and what is necessary to achieve it has been done by national institutions and producers, reflecting society's current political and socio-economic environment for example.⁵⁸

The (English) king John of England signed the *Magna Carta* in 1215 and recognized the rights of his political supporters (a group of barons); they were free subjects of the king, their life, liberty or property could not be taken away from them without legal basis (Article 39). This 'ancient' document is relevant for the rule of law because it planted the seeds for the concept of due process (citizens are entitled to a fair and neutral trial to determine their legal rights) developed in England and the United States.⁵⁹ In 1947 judicial independence (ensuring the rule of law by being immune to external influences (such as political parties) and the right to appeal verdicts to a higher court for review for example) was considered to be an essential 'component' for the rule of law in society.⁶⁰ Felix Frankfurter (U.S. Supreme Court Justice) clarifies:

There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.⁶¹

In Europe the rule of law is often 'associated' with the European Union and its member states. Securing the rule of law is important for the EU because its functionality is constructed around the law whose purpose is to *a)* serve as a guideline for various institutions within the European Union etc. and *b)* solve

⁵⁸ ABA Division for Public Education (2008) *Part 1: What is the rule of law?* p: 4-5

⁵⁹ ABA Division for Public Education (2008) *Part 1: What is the rule of law?* p: 4

⁶⁰ ABA Division for Public Education (2008) *Part 1: What is the rule of law?* p: 5

⁶¹ ABA Division for Public Education (2008) *Part 1: What is the rule of law?* p:5

different disputes within the EU by interpreting the (EU) law.⁶² The rule of law is promoted as an EU principle and value in Article 2 TEU but its meaning is not defined.⁶³ Erik O Wennerström write for example that the European Union refers to the rule of law without specifying whether it is the Anglo-American (rule of law emerges from the courtrooms) or the continental European (rule of law emerges from written constitutions etc.) conception of rule of law that is valid.⁶⁴ The rule of law is, therefore, sometimes defined as supremacy of law, separation of powers or fundamental rights within the EU while the rule of law in EU's external relations, such as the Western Balkan policy, includes measures against corruption and organized crime for example⁶⁵ (see also page 289 for other external relations conceptions).⁶⁶

The 'conclusion' that can be drawn is that there is diversity within the EU about how the rule of law should be defined and that it is reflected in the EU's external and internal policy. Although, the common denominators are respecting the law by not interfering in the legal system's work, integrating different societal actors and solving issues of various nature etc. on the basis of equal treatment before the law⁶⁷ (protecting national citizens from violations by state authorities is also included).⁶⁸

⁶² Stone Sweet, Alec (2004) *The Judicial Construction of Europe* p: 14-15 & 17 & 19-20 & 236-238

⁶³ Differences in conceptualizations of the rule of law can be further illustrated from sentiments and understandings held by those within the Commission and Parliament. For instance, one source defined the rule of law as 'where a state has institutions such as courts and individuals such as judges that are functioning properly and according to laws.' Another source defined the rule of law as 'important for a body of legislation that incorporates human rights as codified internationally, [and] should be applied and observed.' What these differences illustrate are variations in traditions: the former places emphasis upon judges and underlines a more institution-based rule of law conception, while the latter definition emphasizes a rights-based conception of the rule of law. Mineshima, Dale (2002) *the rule of law and EU expansion* p:76

⁶⁴ Wennerström, Erik O (2007) *The rule of law and the European Union* p:34-35 & 49-50

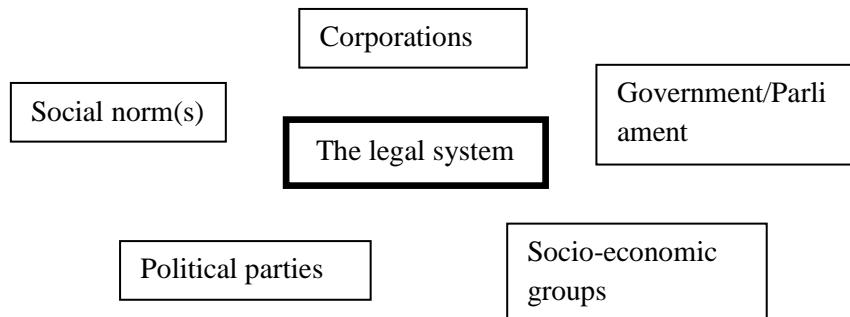
⁶⁵ Wennerström, Erik O (2007) *The rule of law and the European Union* p:160 & 238-239

⁶⁶ Wennerström, Erik O (2007) *The rule of law and the European Union* p:289

⁶⁷ Wennerström, Erik O (2007) *The rule of law and the European Union* p:49-50 & 61-75

⁶⁸ Wennerström, Erik O (2007) *The rule of law and the European Union* p: 77. In 2007, the American Bar Association launched the World Justice Project whose purpose is to establish a common definition of the rule of law and measure the rule of law in practice between various countries. On the basis of this, the World Justice Project has proposed a rule of law definition that consists of the following principles: a) a system of self-government in which all persons, including the government, are accountable under the law, b) a system based on fair, publicized, broadly understood and stable laws, c) a fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced and d) diverse, competent, and independent lawyers and judges. ABA Division for Public Education (2008) *Part 1: What is the rule of law?* p:6

Picture # 1: The legal system according to EU- principles and values. The gap represents the legal system's immunity towards external influences



Chapter 3

3.1 Choice of technique (method)

Case study is a research technique whose purpose is to gain information, knowledge and present an extensive description about an identified case (or cases). The researcher can apply this technique on every kind of case (or cases) he or she wants to study but it is often used on one case at the time.⁶⁹

My research question and the use of case study have a common purpose; to build up an understanding of the case in question and its underlying processes. In order to do that a social science researcher must collect specific and detailed empirical data from the field in various forms (such as interviews, articles and books).⁷⁰

Representative intentions are not of interest. The gained information is specific and related to the case in question and cannot be generalized.⁷¹ Although, the researcher must (still) identify behavior patterns in the collected material in order to link eventual subjects who initially had no connection to each other.⁷² With this in mind, you could say that my case study is, according to George and Bennett, a *disciplined configurative case* because it aims to understand and explain an occurrence in society on the basis of a theoretical reasoning.⁷³

3.1.1 Advantages and disadvantages with case study

There are (according to Hammersley and Gomm) no specific advantages and disadvantages with this technique because the purpose of the case study determines this. They write the following:

Where it is designed to test or illustrate a theoretical point, then it will deal with the case as an instance of a type, describing it in

⁶⁹ Gomm & Hammersley & Foster (2000) *Case study method – key issues, key texts* p:1-3

⁷⁰ May, Tim (2001) *Social Research – Issues, methods and process*, p: 120 -125, 146 & 157-168

⁷¹ Gomm, Hammersley & Foster (2000) *Case study method – key issues, key texts* p:3-7 & 98-99

⁷² May, Tim (2001) *Social Research – Issues, methods and process*, p: 120 -125, 146 & 157-168

⁷³ Alexander L. George and Andrew Bennett (2005) *Case studies and theory development in the social sciences* p: 75

terms of a particular theoretical framework (implicit or explicit). Where it is concerned with developing theoretical ideas, it is likely to be more detailed and open-ended in character.⁷⁴

Although, the strength of case study is its purpose; offer a thick description about the case in question.⁷⁵ The discussion about case study and its generalizability can, according to Robert Stake, be resolved by letting individuals decide on their own if a case study research report is useful for other cases or not.⁷⁶ Case study research is often criticized for its lack of objectivity⁷⁷ since the written text is considered to reflect the researcher's experience from the field.⁷⁸ Given that my empirical data consists of various types of documents (such as *primary sources* and *secondary sources*) this might not be relevant for my essay but if the results in this case study research are questioned a similar case study research (with a different researcher in charge) is possible to conduct.

3.2 The empirical data

3.2.1 Delineation & Type of sources

EULEX's presence in Kosovo comprises several components that are considered to be essential in establishing a modern state, such as, police, judiciary and customs. The purpose of these EULEX components is not to govern or rule in their area but to assist, monitor, advice, mentor and support Kosovo authorities (and institutions) in their work of establishing state authorities (and institutions) in accordance with European (Union) standards and practices.⁷⁹

Research within social science is about making choices in order to demarcate the research and avoid deviation from research question and its purpose. Since

⁷⁴ Gomm, Hammersley & Foster (2000) *Case study method – key issues, key texts* p: p:2-7 & 98-99

⁷⁵ Gomm, Hammersley & Foster (2000) *Case study method – key issues, key texts* p:3-7 & 98-99

⁷⁶ Gomm, Hammersley & Foster (2000) *Case study method – key issues, key texts* p:100

⁷⁷ Research should be independent from personal values and external influences (such as politics or religion). This principle is of importance because many people accept what scientists say is the 'truth', which indirectly means that social science research must appear as objective as possible if it does not want to lose its credibility in society and among people. May, Tim (2001) *Social Research – Issues, methods and process*, p: 9

⁷⁸ May, Tim (2001) *Social Research – Issues, methods and process*, p: 120 -125, 146 & 157-168

⁷⁹ EULEX Kosovo (2012) *What is EULEX?*

separation of different EULEX components is possible (each EULEX component has responsibilities within a certain area) EULEX's legal component (and its work with establishing the EU's rule of law principle) is of interest. Given that social science consists of various academic disciplines (such as political science, sociology and social psychology) a single document can be analyzed (and understood) from different point of views. In this research collected empirical data is read and analyzed from a legal sociological point of view because my case is about identifying (relevant) legal sociological terms (such as social norms) that are embedded in documents (texts) about Kosovo's legal system written by non-legal sociologists. On the basis of this, the aim and ambition is to get an understanding (and eventual explanation) about the legal situation in Kosovo and its present condition by evaluating their work (time period 2009-2011).

As mentioned earlier, the empirical data in this essay consists of various types of documents classified as *primary* and *secondary* sources. There are, according to Tim May, a number of definitions about documents but none of them offers a suitable explanation for research purposes within social science as John Scott's definition.

A document in its most general sense is a written text. Writing is making of symbols representing words, and involves the use of a pen, pencil, printing machine or other tool for inscribing the message on paper, parchment or some other material medium.⁸⁰

The definition above covers many types of documents and it is possible to say that almost everything can be considered as a document as long as it fulfills the criteria stated by John Scott above. This means that everything from government publications to private diaries can be classified as documents useful for research within social science.⁸¹

Within social science documents are (as mentioned earlier) divided in *primary* and *secondary* sources. Primary sources contain data from a relevant time period and

⁸⁰ May, Tim (2001) *Social Research – Issues, methods and process*, p: 178

⁸¹ May, Tim (2001) *Social Research – Issues, methods and process*, p: 179

is a first release of a certain result which has not been interpreted or evaluated yet (for example report of discovery). This kind of sources gives, according to Bertrand Russell, knowledge by acquaintance. Secondary sources refer to quotes or comments based on primary sources and shall be considered as a statement of evidence (for example various types of articles). Secondary sources are, in other words, a kind of interpretation and evaluation of primary sources done by the researcher in question because he or she has not personally witnessed the event etc.⁸²

3.2.2 The quality of the empirical data

By conducting research (on the basis of common values and principles within the scientific community)⁸³ researcher's aim is to describe, understand and explain a certain issue that is present in a society, country, region etc.⁸⁴ Given that research within social science tends to consist of different documents it is also of importance to assess the quality of the (empirical) data because documents are produced by state agencies etc. might not always correspond with the scientific values and principles about conducting research without manipulating the findings.⁸⁵ According to John Scott there are four criteria of doing that:

- ❖ *Authenticity and credibility* (the document in question shall be genuine regarding the information and written by persons knowledgeable in a topic were copies are the same. Difference in various copies lowers the document's authenticity and credibility).⁸⁶

⁸² May, Tim (2001) *Social Research – Issues, methods and process*, p: 178-180 It should also be mentioned that there is a difference between public and private documents; they are produced by different actors (public documents are produced by national and local governments and private documents are produced by single people or companies etc.) which affects their accessibility. May, Tim (2001) *Social Research – Issues, methods and process*, p: 181

⁸³ Esaiasson, Peter (2007). *Metodpraktikan- konsten att studera samhälle, individ och marknad*, p: 17-27 & Gilje, N. & Grimen, H. (2007). *Samhällsvetenskapernas förutsättningar*, p:277-285 & Williams, Malcolm (1999) *Science & Social Science*, p:104-122 & Parker, R M (1990) *Power, control, and validity in research*, p:613

⁸⁴ Chalmers, Alan (2004) *What is this thing called science?*,p:1-4 & & Roberts P et al (2006) *Reliability and validity in research*, p: 41

⁸⁵ Best, Joel Best (2001) *Damned Lies and Statistic*, p: 1-9 & 62-95 & Payne, Judy (2004) *Key Concepts in Social Research*, p:162-165

⁸⁶ May, Tim (2001) *Social Research – Issues, methods and process*, p: 189

- ❖ *Representativeness* (do the documents consist of data that embraces the whole society etc. Is it possible to generalize based on this document?)⁸⁷ and
- ❖ *Meaning* (what is the data in the document about, what does this data tell us and is it relevant for our research?)⁸⁸

The cornerstone of this essay is the documents conducted by the European Commission about Kosovo (so called progress reports). The European Commission is a political institution and its work shall serve and gain EU interests of various kinds, such as, enforcing the EU-law and the EU's relationship with countries outside the EU.⁸⁹ The EULEX's work in Kosovo falls under the scope of the EU's foreign and security policy whose work is (indirectly) evaluated in the progress reports by reporting about the legal situation in Kosovo etc. (on the basis of European standards). The EU is, in other words, interested in how its investment is performing, and given that the state of Kosovo cannot gain EU accession until certain criteria's are fulfilled (such as the rule of law) I argue that the progress reports about Kosovo give an trustworthy picture of the (legal) situation in Kosovo.⁹⁰

Further on, I have also used documents conducted by researchers at different universities⁹¹ and non-governmental organizations, such as, the International Crisis Group, the Balkan Policy Institute and International Policy Analysis.⁹² *The International Crisis Group* is an independent and non-profitable international organization whose purpose is to prevent and solve conflict around the world by advising national governments and international bodies (such as the United

⁸⁷ May, Tim (2001) *Social Research – Issues, methods and process*, p: 190

⁸⁸ May, Tim (2001) *Social Research – Issues, methods and process*, p: 190

⁸⁹ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p: 52-66 & 86-89

⁹⁰ From the European Union I have used the documents The EU (2009) *European Commission – Kosovo 2009 progress report*, Brussels, 14.10.2009 SEC(2009) 1340, The EU (2010) *European Commission – Kosovo 2010 progress report*, Brussels, 9 November 2010 SEC (2010)1329 and The EU (2011) *European Commission – Kosovo 2011 progress report*, Brussels, 12.10.2011 SEC (2011) 1207 in accordance with the research question of this legal sociological research and its aim.

⁹¹ For example Faculty of Political Sciences, Universiteit Gent, Belgium and The London School of Economics and Political Science, UK

⁹² In accordance with the research question of this legal sociological research all reports (and articles) about Kosovo (and its legal system) from these organizations are used. Sometimes reports are not published every year by these national and international organizations.

Nations and the European Union). Reports conducted by the International Crisis Group are characterized by for example detailed analysis on a specific issue with recommendations of how potential conflict situations are prevented and managed, new strategic thinking and challenging or refining prevailing wisdom. The reports are conducted by authors with well-known track-records in the academic and the public domain whose work has been highly praised by world leaders (such as former UN Secretary-General Kofi Annan and former U.S president Bill Clinton) and influential media (such as Quentin Peel of the Financial Times and the Economist).⁹³

The Balkan Policy Institute is another independent and non-profitable organization whose purpose is to promote sustainable development and good governance by recommending solutions and strategies to decision makers on the basis of conducted research about a specific societal and public policy issue (such as the rule of law and European Integration). The Balkan Policy Institute does also monitor the implementation of policies and their implications in society. Authors of the Balkan Policy Institute reports are researchers with adequate knowledge that are committed to Kosovo and the region of south east Europe.⁹⁴ *The International Policy Analysis* (part of the international work of the German Friedrich-Ebert-Stiftung) consists of publications and studies about European politics and international politics for example. Its purpose is to develop policy recommendations and advice political decision-makers, civil society actors and experts. Shaping a non-violence policy discourse is, in other words, of interest. Authors of the International Policy Analysis reports are researchers with adequate knowledge about various spheres of society.⁹⁵

⁹³ See <http://www.crisisgroup.org/en/about.aspx>. In accordance with the research question of this legal sociological research all reports (and articles) about Kosovo (and its legal system) from this organization are used, such as, International crisis group (2010) The rule of law in independent Kosovo, Europe Report N°204 – 19 Pristina/Istanbul/Brussels (see <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/204-the-rule-of-law-in-independent-kosovo.aspx>)

⁹⁴ See <http://policyinstitute.eu/eng/about/>. In accordance with the research question of this legal sociological research all reports (and articles) about Kosovo (and its legal system) from this organization are used, such as, Eulex and the rule of law in Kosovo published 2011 (see http://policyinstitute.eu/eng/publications/rule_of_law_and_eulex/) and EULEX: Still in search of identity: 2nd Follow up report on the evaluation of the work of EULEX published in 2009 (see http://policyinstitute.eu/eng/publications/eulex_still_in_search_of_identity_2nd_follow_up_report_on_the_evaluation_of/)

⁹⁵ See http://www.fes.de/ipa/index_en.php. In accordance with the research question of this legal sociological research all reports (and articles) about Kosovo (and its legal system) from this organization are used, such as,

I have also used empirical data (articles) published in newspapers, such as, the (British) *Guardian* and *Osservatorio Balcani e Caucaso*.⁹⁶ Normally these kinds of sources are not considered as suitable empirical data since the information they contain is not a result of a scientific research but I have chosen to consider them as valuable for this essay because *a*) they are written by individuals with adequate knowledge about the EULEX's work in Kosovo, *b*) the information corresponds with other (primary and secondary) sources used in this essay that can be backed up by documents from the EULEX's archive and *c*) falls under the scope of John Scott's definition of documents.⁹⁷

On the basis of John Scott's criteria about the quality of data I argue that the mentioned documents are authentic, credible, representative and relevant⁹⁸ for this essay because *a*) they consist of empirical data about the legal situation (and the situation on other spheres of society) in Kosovo after their declaration of independence and *b*) EULEX's arrival, produced by people with adequate knowledge about this topic. I also argue that the acquired empirical data is adequate in relation to the essay's research question because *a*) it consists of documents covering the legal situation in Kosovo from 2009 to 2011, *b*) similar descriptions about the legal situation in Kosovo are given; progress has been made but the legal system is still vulnerable to external influences despite the EULEX's presence in the country and *c*) the legal situation in Kosovo is not explained from a legal sociological point of view. Conditions of non-political nature (culture, tradition, customs etc.) and their relevance for the legal system's efficiency in society are, in other words, not mentioned or discussed by researchers.

Dzihic, Verdan & Kramer, Helmut (2009) Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?

⁹⁶ Osservatorio Balcani e Caucaso (OBC) is an online news provider and research centre devoted to social and political change in South-East Europe, Turkey and the Caucasus. The OBC team, based in Rovereto (Italy), cooperates with a network of over 40 correspondents and local contributors to deliver online articles and in-depth analyses on these areas on a daily basis. See <http://www.balcanicaucaso.org/eng/content/view/full/75463>

⁹⁷ See May, Tim (2001) *Social Research – Issues, methods and process*, p: 178-179

⁹⁸ May, Tim (2001) *Social Research – Issues, methods and process*, p: 189-190

3.2.3 Validity and reliability

In this context I would also like to argue that this legal sociological research fulfills the principles of validity⁹⁹ and reliability¹⁰⁰. Validity is divided in to a number of 'sub-concepts'¹⁰¹ but internal validity¹⁰² is considered to be the most imported form of validity because it determines whether drawn conclusions made in a study are to be considered as valid or not.¹⁰³ As the author of this legal sociological research I argue that this work fulfills the principle of validity and internal validity because:

- a) Its research question has served as a navigator and a guardian of this legal sociological research by setting the rules of what kind of theories, empirical data and methods are to be considered as suitable and not suitable for this legal sociological research. For example, the empirical data in this research does not consist of information about Kosovo's economic situation because it is irrelevant for this research and its research question. The research question is, after all, the starting point of (every) research and a crucial factor in avoiding deviation while research is conducted.¹⁰⁴
- b) The drawn conclusions indicate that the condition of Kosovo's legal system is a result of the government's and the EULEX's inability to strengthen the rule of law in the county by protecting the national legal system from external

⁹⁹ Validity refers to the extent to which a concept is actually represented by the indicators of such concepts. See Yue, Anthony R. "Validity." Encyclopedia of Case Study Research. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p:960-64 & Roberts P et al (2006) *Reliability and validity in research*. Nursing Standard. 20, 44, p:41-45 & Wolming, Simon (1998) *Validitet – ett traditionellt begrepp i modern tillämpning*. Pedagogisk forskning I Sverige Årg 3 Nr 2 p.81-93 & Payne, Judy (2004) *Key Concepts in Social Research*, p:234-237

¹⁰⁰ Reliability refers to the consistency and stability of research results and is one of two foundational elements (the other being validity) in conducting rigorous research. Reliability assesses the extent to which the results and conclusions drawn from a certain research would be reproduced if the research were conducted again. Ward, Kerry & Street, Chris "Reliability" Encyclopedia of Case Study Research. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p: 801-03 & Roberts P et al (2006) *Reliability and validity in research*. Nursing Standard. 20, 44, p:41-45 & Payne, Judy (2004) *Key Concepts in Social Research*, p:196-199

¹⁰¹ Such as face validity and ecological validity. Yue, Anthony R. "Validity." Encyclopedia of Case Study Research. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009. P:960-64

¹⁰² The validity of claims made in a study. Esaiasson, Peter (2007) *Metodpraktikan- konsten att studera samhälle, individ och marknad*, p: 64 & Parker, R M (1990) *Power, control, and validity in research*, p:613-614

¹⁰³ Parker, R M (1990) *Power, control, and validity in research*, p:613-615

¹⁰⁴ See for example Svennning, Conny (2003) *Metodboken*, p:30-35 & Doorewaard, Hans "Research Questions, Types of" Encyclopedia of Case Study Research. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p:822-25

influences (social norms). There is, in other words, an underlying relationship between the variables *rule of law* and *social norms* affecting the efficiency and functionality of Kosovo's legal system.

When it comes to external validity¹⁰⁵ I argue that findings in this legal sociological research cannot be generalized and applied to similar situations because they are only linked to the state of Kosovo and its legal system. Although, it can serve as a source of knowledge about the European Union's current work with former European communist states (or other EU-missions outside its borders) and a starting point for research about Kosovo's legal system in the future.

The principle of reliability is (from my point of view) fulfilled because *a*) it can be carried out by another researcher in the future, come to similar conclusions and maintain the same margin of error as this legal sociological research (the principles of consistency and stability, dimensions of reliability)¹⁰⁶ and *b*) the empirical data that was gathered from various national and international agencies, institutions etc. who measures the same construct where the conclusions are similar (internal consistency).¹⁰⁷

The principle of equivalency (a component to consistency) can be questioned whatever it can be fulfilled when research is conducted by a single researcher because objectivity might become subjectivity.¹⁰⁸ I argue that this issue can be addressed by conducting a similar legal sociological research (with another researcher) in the future and compare the findings etc.¹⁰⁹

¹⁰⁵ Esaiasson, Peter (2007) *Metodpraktikan- konsten att studera samhälle, individ och marknad*, p: 64 & Parker, R M (1990) *Power, control, and validity in research*, p:615

¹⁰⁶ See Ward, Kerry & Street, Chris "Reliability" *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p: 801-03 & Roberts P et al (2006) *Reliability and validity in research*. Nursing Standard. 20, 44, p:41-45 & Payne, Judy (2004) *Key Concepts in Social Research*, p:196-199

¹⁰⁷ See Ward, Kerry & Street, Chris "Reliability" *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p: 801-03 & Roberts P et al (2006) *Reliability and validity in research*. Nursing Standard. 20, 44, p:41-45 & Payne, Judy (2004) *Key Concepts in Social Research*, p:196-199

¹⁰⁸ Ward, Kerry & Street, Chris "Reliability" *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p: 801-03 & Roberts P et al (2006) *Reliability and validity in research*. Nursing Standard. 20, 44, p:41-45 & Payne, Judy (2004) *Key Concepts in Social Research*, p:196-199

¹⁰⁹ Ward, Kerry & Street, Chris "Reliability" *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009, p: 801-03 & Roberts P et al (2006)

3.2.4 Handling the empirical data

EULEX's mission in Kosovo is (as mentioned earlier) divided into different areas where they shall assist, support, advice etc. national authorities so that their actions are of EU standard.¹¹⁰ Therefore, documents that are used in this essay consist of empirical data about (almost) every societal sphere in Kosovo (for example, the Commissions progress report about Kosovo). Given that the purpose of this essay is to evaluate EULEX's justice component from legal sociological point of view empirical data about the judicial area (from 2009 to 2011) is given priority. The purpose is, in other words, to dismiss irrelevant empirical data for this essay (such as empirical data about Kosovo's economic situation presented in the Commissions progress report). Empirical data from other sources is also of importance because it supplements the EU's progress reports by offering more detailed and specific analysis, examples etc. about the (legal) situation in Kosovo.

The second step of this process is the presentation of the empirical data about the situation in Kosovo's legal system from 2009 to 2011. This means that those documents that I have chosen to present in this essay illustrate the theme of this essay, supported by specific examples (so called 'illustrative style'). The point with this way of presenting the empirical data is to demonstrate a certain point (or certain points) that is of relevance for this essay and its research question.¹¹¹ Another reason of why I chose the mentioned method is because it makes it easier for the researcher to notice if certain parts of the presented empirical data tend to deviate from the essay's theme, research question and purpose.

The third step is to conduct a legal sociological analysis in order to understand (and explain) underlying processes on the basis of collected empirical data. This step will be carried out on the basis of the concept of living law developed by the scholar Eugen Ehrlich.¹¹² The concept of living law is suitable for analyzing the empirical data about the EULEX in Kosovo because the (role) of

Reliability and validity in research. Nursing Standard. 20, 44, p:41-45 & Payne, Judy (2004) *Key Concepts in Social Research*, p:196-199

¹¹⁰ EULEX Kosovo (2012) *What is EULEX?*

¹¹¹ May, Tim (2001) *Social Research – Issues, methods and process*, p: 195-196

¹¹² See Chapter 4: 4.1 Choice of theory and 4.2 Justification of choice in this essay

law is seen from societal context where factors (such as, ideology, history, customs, culture and traditions) are taken under consideration when the (state) law (and its efficiency) in society is studied. The concept of living law gives, in other words, an understanding (and explanation) of why an individual or a society has a certain view about the (state) law's and the legal system's role in society.

Reasoning about how disputes in society should be solved is, therefore, a reflection of how various factors (and their interaction) have formed customs, traditions etc. and 'determined' their role in society (or a union). After all, obedience (and disobedience) to the (state) law is a product of socialization.¹¹³

The empirical data will also be analyzed on the basis of Jonathan H. Turner's theory about the legal system's development. The cornerstone in Turner's theoretical reasoning is that the development of law and the legal system is closely linked to society's own development where the level of complexity in society will determine the legal system's separation from state power, customs etc.¹¹⁴ By using Turner's theory Kosovo's legal system will be placed in a development phase and complement the concept of living law and its purpose mentioned above.

In the final step, the outcome of the analysis and its relation to the research question will be summarized under the caption conclusions.

¹¹³ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 90-92

¹¹⁴ Vago, Steven, (2006) *Law and Society*, p: 41-42

Chapter 4

4.1 Choice of theory

4.1.1 The concept of living law

The concept of living law is a reflection of a country where citizens have different ethnicities and a domestic legal system that is not designed to manage and solve disputes between various ethnic groups (or disputes within ethnic groups). The mentioned concept was developed by Eugen Ehrlich on the basis of the Austro-Hungarian kingdom whose state law was an alien element among people in society. The national law became 'worthless' because daily disputes were managed and solved by cultural and 'legal' codes within the ethnic group. People's daily life consists of social relations between human beings whose actions are "*guided by norms of conduct, not legal norms or statutes alone*" Ehrlich argues.¹¹⁵ Internal norms within an ethnic group are 'unwritten rules' that members of this group recognize as binding; actions that violate these internal norms can (and will) be punished in various forms without involving the legal system and its state law.¹¹⁶

Ehrlich argues also that the concept of living law is crucial for juristic law (while juristic law has 'no' influence in living law) and its development because living

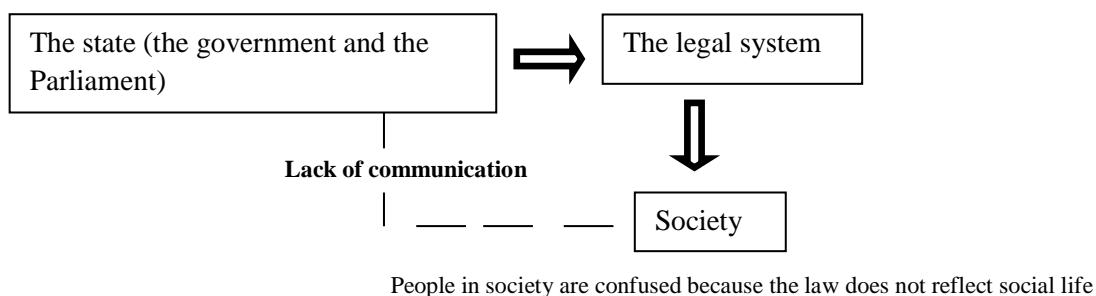
¹¹⁵ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 91 & Ehrlich, Eguen (2009) *Fundamental principles of the sociology of law*, p: 81,369, 388,401,419,486,489,493 & 495-498 & Kozolchyk, Boris (1982) *Living law: introduction*, Arizona Journal of International and Comparative Law, ISSN 0743-6963, 1982, Volume 1, Issue 1, p. 85-87 & Tamanaha Z. Brian (2011) *A Vision of Social Legal Change: Rescuing Ehrlich from "Living Law"* Law & Social Inquiry, ISSN 0897-6546, 2011, Volume 36, Issue 1, p.297 – 318 & Hertogh, Marc (2004) *A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich* Journal of Law and Society, Vol. 31, No. 4 (Dec., 2004), pp. 457-481& Ziegert, K. Alex (1998) *A note on Eugen Ehrlich and the production of legal knowledge* Sydney Law Review, ISSN 0082-0512, 03/1998, Volume 20, Issue 1, p. 108-126 & Nelken, David (1984) *Law in action or living law? Back to the beginning in sociology of law* Legal Studies, ISSN 0261-3875, 07/1984, Volume 4, Issue 2, pp. 157 – 174 & Nelken, David (2008) *Eugen Ehrlich, Living Law, and Plural Legalities* Theoretical Inquiries in Law, EISSN 1565-3404, 06/2008, Volume 9, Issue 2, pp. 1 – 29 & Banakar, Reza (2011) *The Sociology of Law: From Industrialisation to Globalisation*, U. of Westminster School of Law Research Paper No. 11-03, p. 1-32 & Treviño Javier, A (2010) *Classic writings in law and society: contemporary comments and criticisms*, p:123-151 & Vago, Steven (2006) *Law and Society*, p: 5. See also Gurvitch, Georges (2001) *Sociology of law*, p: 148-156 Transaction Publishers, Banakar, Reza & Travers, Max (2002) *An introduction to law and social theory*, p: 33-51 Hart Publishing, Cotterrell, Roger (2008) *Living law*, Hart Publishing, Hertogh, M. L. M (2009) *Living law: reconsidering Eugen Ehrlich*, Hart Publishing & Rokumoto, Kahei (2012) *Sociological theories of law*, p:93-111 International library of essays in law

¹¹⁶ Ibid.

law is based on human interactions in social life and bringing in codes from the living law makes it effective. People do not oppose juristic law if it contains norms from social life (understanding relevant aspects of living law requires, according to Ehrlich, judges with a creative mind).¹¹⁷ There is, in other words, no coherence between law in books and law in action because the law in question does not reflect the people's views etc. The implementation of the (state) law in question becomes problematic because the law deviates from its purpose and target; regulating people's actions in society (see illustration below).

Picture # 2: The concept of living law

The state (the government and the Parliament) legislate laws and imposes them on society via the legal system



4.1.2 The development of the legal system theory

The legal system draws attention because “*all members of society are involved in the law as legal subjects*”¹¹⁸ and can be discussed etc. on the basis of different theoretical perspectives.¹¹⁹ Generally speaking, you could say that some theoretical approaches argue that the legal system is rational, a crucial component of contemporary society, consists of (social) norms etc.¹²⁰ while other theoretical approaches argue that the positive picture of the legal system (and the law) is embellished and has no roots in reality; the legal system is a political instrument that enables and reinforces inequities in society, promotes conflict and violence, extends state power etc.¹²¹ Jonathan H. Turner argues that a legal system is

117 Ibid.

¹¹⁸ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 182

¹¹⁹ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 117

¹²⁰ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p. 37-142.

¹²¹Friedrichs O, David (2006) *Law in Our Lives: An Introduction*, p: 1-17 See also Sciarraffa, Stefan (1999) *Critical Legal studies: A Marxist Rejoinder*, p:201-202 & 207, Butler, Chris (2009) *Critical Legal Studies and*

composed by the following (basic) elements: *a)* a body of rules/laws, *b)* the capacity to resolve (legal) disputes according to the law, *c)* a set of procedures where old rules are replaced (or eliminated) and new ones are created and *d)* the ability to enforce the law (in society).¹²²

The first mentioned element consists of rules of conduct where individual and collective actions, behavior etc. are regulated. As a part of the daily life normative agreements between people and corporate units are also regulated and can be considered as laws because acceptable and unacceptable behavior, actions etc. are regulated, inviting a third party to intervene if an agreement is not obeyed by one of the parties. Cornerstone of this element is divided in substantive and procedure rules. *Substantive rules* are rules that regulate internal relationships among members of its population, determine deviant behavior and how it should be controlled. *Procedure rules* are rules of how substantive rules should be implemented by third parties regarding relationships that are considered to be of importance and defining deviant acts.¹²³ The second element is about the legal system's capacity to develop (internal) mechanisms where disputes and deviance are resolved in accordance with (relevant) laws. A third party (a judge) is obligated to listen to the case in question and, on the basis of the material (evidence), determine who is guilty and why by interpreting the law in question (a fundamental feature of a court).¹²⁴

In the third mentioned element certain parties (or individuals) are given the right and mandate to change laws, replace laws and create new laws in accordance with (external and internal) circumstances.¹²⁵ The last element regards the legal system's ability to implement laws and decisions in society, an essential factor to coordinate, regulate and control various spheres of society and their relationship.

the Politics of Space, p: 322, Petersen, Hanne (1992) *On Women and Legal Concepts: Informal Law and the Norm of Consideration*, p: 508, Smart, Carol (1995) *Feminism and the power of law*, p: 10-20 & 113-115 & Valverde, Mariana (2009) *Jurisdiction and Scale: Legal Technicalities as resources for theory*, p: 141-145

¹²² Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 80

¹²³ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:80-81

¹²⁴ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:81-82

¹²⁵ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:82-83

Given that a legal system does not have the right to use force the implementation of legal rules and decisions in society is linked to society's composition.¹²⁶

Further on, Jonathan H. Turner argues that development of law (and the legal system) is closely linked to society's own development. The cornerstone of this reasoning is that the level of complexity in society will determine the legal system's separation from state power etc. Changes in society have, therefore, an impact on the legal system's basic elements and their content¹²⁷. In the so called *the primitive legal system* (refers to hunting and gathering, and simple agrarian societies) *the body of rules/laws* is an expression of culture, traditions, norms and values that are present in society and acceptable by its population. Substantive rules and procedural rules are (indirectly) intertwined because they consist of norms from the daily life whose content specifies how violation is defined, managed etc. Some norms are more authoritative than other, such as, headman's claim to property etc. The 'courts' consist of 'judges' (local chiefs or kin leaders for example) who take evidence under consideration and base their verdict on existing social norms ('the law') and litigants (who must obey the verdict, not possible to appeal to a higher instance). Given that disputes where settled face to face the enforcement of the "law" becomes a personal matter to restore honor etc. via feuds and revenge (*the capacity to resolve disputes according to the law and the ability to enforce the law*). The main purpose of this system is to maintain a high degree of social integration and coordination where the right to enact new laws is reserved to a headman with prestige and personal charisma or a king (*a set of procedures where old rules are replaced (or eliminated) and new ones are created*).¹²⁸

¹²⁶ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:83

¹²⁷ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:192-193 & Vago, Steven (2006) *Law and Society*, p: 41-42

¹²⁸ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 80-83 & 110-111& 129-132 & 169-173. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press & Vago, Steven (2006) *Law and Society*, p: 42-43 & Friedrichs O, David (2006) *Law in Our Lives: An Introduction*, p: 31-60 & 142-178

The next phase in law's evolution (*the transitional system*) is characterized by sophisticated agrarian transitions to industrial societies in which economic and political subsystems begin their process of liberating themselves from kinship relations of various kinds. As a result of the industrialization era fundamental societal changes occurred where the 'centralized' society became more decentralized. The *body of laws* is organized on the basis of *civil law* (national laws are legislated by government and parliament), *common law* (Case law based on precedent of earlier decisions), *socialistic law* (law based on socialistic principles) or *religious law* whose purpose is to regulate relationship in various spheres of society by reflecting cultural and traditional values from the past, so called 'civic culture' (substantive law). Procedural law is set apart from substantive law and consists of rules whose content regulates how actors within the legal system shall act etc. (right and duties). In this evolution phase the legal system falls under scope of the state and official courts are established. Legal matters are resolved by a judge (with suitable education and competence) on the basis of the national law. Council of elders, culture, social norms etc. are removed as a court agents via increased autonomy.¹²⁹ Turner writes:

This autonomy is amplified as the practitioners of law – lawyers, judges, and police – become more professionalized, since professionalism inevitable generates its own norms, values, ideologies, and traditions that often deviate significantly from those of the broader society and culture.¹³⁰

The nature of the legal system reflects the autonomy and power a judge has. Written documentation of legal procedures is introduced and lawyers become a profession (*the capacity to resolve disputes according to the law*). Further on, the legitimate right to legislate new laws (also to change and replace laws) belongs to the state (government and parliament members are elected by the people in national elections) where elements, such as, the establishment of the constitution,

¹²⁹ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 79 -83 &192 & 222-231 & 232-244. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

¹³⁰ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 233

the strength of higher courts in the legal system and the legislatures independence from the rulers, has an impact on their work (*a set of procedures where old rules are replaced and new ones are created*). It should also be said that the law in this phase *a)* tends to reflect society's socio-economic and political situation and *b)* is characterized by a high level of deviant laws where law (and legal system) are used to legitimate power and serve economic factors. Societal customs, values etc. are not synchronized and integrated in law and legal system. Law is primary enforced by an organized police force with the legal right to use force if necessary (*the ability to enforce the law*).¹³¹

In the last phase of Turners legal evolution reasoning (*the modern legal system*, refers to post-industrial societies) the structure and nature of the transitional legal system is not changed but the legal system is now larger and more complex. *The body of laws* (with substantive and procedural law) is similar as those in previous phase but 'civic culture'¹³², broad legal claims and political pressure from electorates exert more control on the body of substantive laws together. Free elections with different participating political parties and candidates offers the people a wide range of choice in affecting the content of law since government and parliament (representing the people) remain as the only legitimate 'mechanism' to enact new laws, change laws or replace laws (*a set of procedures where old rules are replaced and new ones are created*).¹³³

Further on, the laws are a network that include local and national laws and private and public codes. The courts have a role of mediation in conflicts that occurs in society where appealing a ruling to a higher court becomes a legal right. Another change is that the law is rational and separated from morality, ethics etc. The judicial system remains under state protection but shall not serve politics, religion,

¹³¹ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 79 -83 &192 & 222-231 & 232-244. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

¹³² Law and legal system where cultural norms, traditions, values, beliefs, and institutional norms are broadly reflected and incorporated Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:238

¹³³ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 79 -83 &192 & 222-231 & 232-244. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

traditions, morals or ethics. The judicial system is independent and carries out its duty based on the written law. As a result of society's level of complexity and volume the legal system becomes an institution where court officials become specialist in various matters (criminal and family law for example). Unfortunately, case overload is considered to be a serious problem that courts in this phase have to deal with (*the capacity to resolve disputes according to the law*). Although it has increased its independency from politics and other societal spheres the legal system remains depended on the police force to enforce the law and legal decisions. Regardless of the legal right to use force if necessary conflicts occur between court and enforcement agencies as a result of invoked procedural laws. In addition Turner writes also that law enforcement in modern societies is also carried out by various administrative (state) agencies (with no connection to the police force) whose work is to check whether various actors are following the law or not.¹³⁴ The level of bureaucracy increases in other words (*the ability to enforce the law*).¹³⁵

In this phase the law and the legal system is also considered as a 'mechanism' of promoting societal change. Turner explains:

With the emergence of a stable legislature, comprehensive law enactment can become a mechanism of social change, establishing new structures and relationships, especially effective court and enforcement systems exist to enforce the changes dictated by laws.¹³⁶

Although, law as an mechanism for achieving social change in society is limited by, for example, *a)* law's deviation from societal customs, values and traditions, *b)* the sphere where changes are planned via legislation and *c)* the polity force and its capacity to decrease (and overcome) cultural and structural resistance.¹³⁷

¹³⁴ For example Federal trade commission in USA and Livsmedelsverket in Sweden

¹³⁵ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 79 -83 &192 & 222-231 & 232-244. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

¹³⁶ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:235

¹³⁷ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 242-243

Beside changes in the legal system's basic elements a few (additional) trends can, according to Turner, also be found in legal system evolution, such as, bureaucratization, professionalization and systematization and centralization.¹³⁸

Bureaucratization began to increase its capacity and volume as national legal system became larger and more complex. As an administrative system where (state) officials carry out their duties according to relevant laws and directives bureaucratization is (generally) considered to be an essential element for the legal system's functioning and autonomy towards other spheres of society.¹³⁹ Although, this advantage can be abused by (state) officials to hide relevant information, documentation and only enforce those laws they consider are of importance.¹⁴⁰

The second trend in this evolution is *professionalization*. With the establishment of courts (and other relevant components of the legal system) education in law is required for judges and lawyers whose work is supervised by relevant laws and regulatory legal associations. Via professionalization law and legal system is stabilized because *a)* legal matters are handled by individuals with legal education and expertise and *b)* traditions, customs etc. about law and the legal system are established and passed on to future generations. Practicing law is not associated with legal immunity.¹⁴¹ Finally, *systematization and centralization* is highlighted. This trend is a result of the state's consolidation and centralization of power where legislation and legal system are systemized and organized in a hierarchy system who determines their jurisdiction etc.¹⁴² On the basis of these components, the law enable society's functionality and coordination by serving as an "*integrative structure of society that preserves, codifies, and translates key cultural symbols into specific rules defining what is deviant, while coordination transactions among actors*".¹⁴³

¹³⁸ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 237 & 240-244

¹³⁹ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 237 & 240

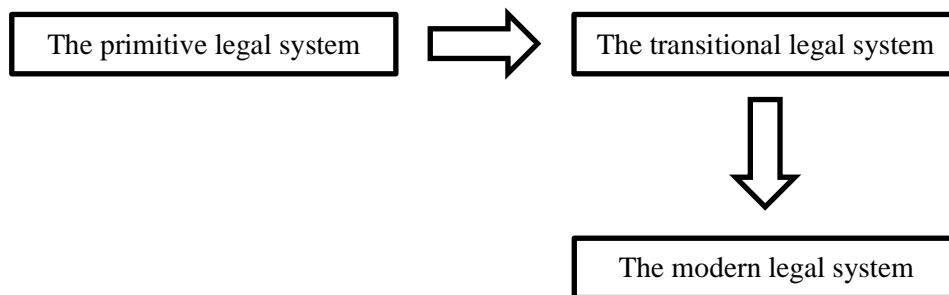
¹⁴⁰ For example, the common process of "copping a plea" in American courts violates the spirit of American procedural law, defendants are (via various forms of threats by court officials) pushed to plead guilty to a lesser charge. Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:240

¹⁴¹ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:240-241

¹⁴² Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:241-244

¹⁴³ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:243

Picture # 3: Segments in Turner's model about the development of the legal system



4.2 Justification of choice

No concept is invoked more often by social scientists in the explanation of human behavior than 'norm'. Particularly for sociologists, norms are fundamental. Despite their importance, however, there is little consensus about them—what they are, how they are enforced, and how they emerge.¹⁴⁴

Generally you could say that (social) norms are direction of actions. Briefly it means that our behavior and actions are coordinated in harmony with existing norms in a particular context or situation. In other words, the norm tells us what we can and cannot do in a particular context, situation etc. and establishes certain routines (and traditions) of how things are done and vice versa.¹⁴⁵ In this case the so-called *socio-cultural system* (a system where individuals must learn what is social, that is, how relationships work etc.) is of importance because the system creates and transmits social norms to future generations by producing and reproducing them. This way, norms tend to reduce complexity, coordinate our actions and integrate individuals in society.¹⁴⁶ Given that law emerges from societal norms, norms are present in the legal system. A legal rule is, therefore, an elevated (social) norm whose sanctions are adopted and enforced by the state and

¹⁴⁴ Horne, Christine, *Sociological perspectives on the emergence of norms*. I Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*, p: 1

¹⁴⁵ Persson, Lars (2010) *Pedagogerna och demokratin; en rättsociologisk studie av pedagogernas arbete med demokratiutveckling*, p:68-69

¹⁴⁶ Hydén, Håkan (2004) *About the relationship between norms and rules*, p: 24-29 & Baier, Matthias & Svensson Måns (2009) *Om normer* p:111 & 176-182

its law enforcement authorities.¹⁴⁷ Law and norms are relevant for the sociology of law because it is interested in why some legal acts are implemented in society without obstruction while others are not successfully implemented in society.¹⁴⁸

The term *theory* can be explained as a scientific tool that aids the interpretation of empirical data and a way of thinking that offers a view on how a phenomenon should be regarded, studied and analyzed.¹⁴⁹ Conducting social research without using or applying social science theory is considered to be impossible because empirical data cannot be analyzed and understood in a proper way.¹⁵⁰ Facts “*do not speak for themselves*” Tim May writes.¹⁵¹ I chose the concept of living law because its content makes it possible of the researcher to understand and explain the positive and negative outcome of (state) law in society at the same time because both outcomes are linked to living law. Based on theoretical science of law the purpose of living law is to study “*the reality of law for its own stake*”.¹⁵² In addition, the theory by Jonathan H. Turner was chosen because it complements the concept of living law by arguing that the legal system’s relation to the state power, customs etc. is also linked society’s own development.¹⁵³

Linkages between law and society are often left implicit; change in the relative importance of these linkages is frequently not discussed; and there is a tendency to place too heavy an emphasis on single variables and thereby ignore the multiplicity of institutional influences on legal development.¹⁵⁴

¹⁴⁷ Hydén, Håkan (2002) *Normvetenskap*, p:268-272

¹⁴⁸ Hydén, Håkan (2002) *Normvetenskap*, p:272

¹⁴⁹ May, Tim (2001) *Social Research – Issues, methods and process*, p: 28-29

¹⁵⁰ May, Tim (2001) *Social Research – Issues, methods and process*, p: 28-29

¹⁵¹ May, Tim (2001) *Social Research – Issues, methods and process*, p: 31

¹⁵² Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 90

¹⁵³ Vago, Steven (2006) *Law and Society*, p: 41-46

¹⁵⁴ Vago, Steven (2006) *Law and Society*, p: 41

Chapter 5

5.1 Legal culture in Kosovo

Unsatisfied with its position within Yugoslavia, Kosovo declared war against the state of Yugoslavia in 1998. The road to the declaration of independence began in 2005 when the international community (especially USA, Russia, United Kingdom, Germany, France and Italy) initiated a political agenda whose purpose was to solve Kosovo's political status (Kosovo was administrated by the UN 1999-2007). Supported by the USA and its European allies Kosovo declared its independence in 2008.¹⁵⁵

The foundation of Kosovo's domestic legal system began after the war against Yugoslavia ended in 1999 on the basis of *legal formalism*¹⁵⁶ and is influenced by Western European countries and their vision about the law (such as logical laws that are independent and immune to external influences).¹⁵⁷ Characterized by a history of wars and occupations by various foreign powers the state of Kosovo has not managed national authorities earlier in its history and, therefore, not been available to establish its own official legal system and legal culture. During the communist era the role of law was undermined by state authorities and their unequal treatment of citizens. People representing different state authorities were above the law while ordinary citizens were expected to follow the law. Knowing people with influence in various state authorities as a regular citizen made you (indirectly) immune to the legal system and the rule of law.¹⁵⁸ Law and justice in Kosovo (as a former communist province in Yugoslavia) had, in other words, a close relationship to the state and its own interests. The court's decision in trials were influenced by politics (the state) because judiciary and politics were intertwined. Enforcing and developing the domestic legal system (and establish the rule of law in society) was not a priority because it was seen as an instrument

¹⁵⁵ Labinot Greicevci (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, p: 288-289

¹⁵⁶ Codified legal system, the laws are legislated by the government and the parliament. Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 187

¹⁵⁷ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 98-99

¹⁵⁸ Brante Thomas, Andersen Heine & Korsnes Olav (2007) *Sociologiskt Lexikon* p: 271 & Vago, Steven (2006) *Law and Society* p: 13-17 & 42-46 & Sörensen, Jens Stilhoff (2008) *Kosovo – vägen till oavhängighet*, p: 8-28

where the state (and the political elite) could exchange favors and legitimize policies for example. They made the law, changed the law and broke the law as they pleased.¹⁵⁹

Those legal systems and cultures that officially operated in Kosovo where foreign and did not include domestic (Albanian) values, norms etc. Excluded by the state law the Albanian community solved their disputes of various kinds via its own (informal) legal system; *the code of Lekë Dukagjini* (Albanian customary law). The Code is from the 15th century and consists of rules that regulate aspects of people's life (such as marriage, work and solving crime).¹⁶⁰ The heart of the Code is honor/promise (*Nderi/besa* in Albanian) because it is via honor/promise that peace and harmony among Albanians (no matter religion) is established. All kind of disputes can be solved on the basis of the Code¹⁶¹. Albanian customary law does not involve courts as we know them today. Various disputes were solved on the basis of the Code interpreted by The Council of Elders ('people's judges', known for their ability to reach a verdict based on the Code). The participation of chiefs of the brother shank or the heads of the kinships was mandatory otherwise decisions or actions were declared as invalid. Agreements that are reached and based on Albanian customary law are final, mandatory and cannot be changed etc.¹⁶² Simply put, Albanian customary law was (and is) about restoring (and maintaining) social order between people (in society) without involving national law enforcement authorities.¹⁶³

¹⁵⁹ Vago, Steven (2006) *Law and Society* p: 13-17

¹⁶⁰ Gjeçov, Shtjefen Konstantin (2001) *Kanuni i Lekë Dukagjini*, p: VII -XXVII

¹⁶¹ Gjeçov, Shtjefen Konstantin (2001) *Kanuni i Lekë Dukagjini*, p: VII -XIII

¹⁶² Ahmeti, Zef (2012) *The criminal law in the "Kanun of Lekë Dukagjini" - The Albanian customary law*

¹⁶³ See for example Kadare, Ismail (2003) *Broken April*, Vintage

5.2 The legal situation in Kosovo today (results)

The situation in Kosovo is evaluated every year by the European Commission, published as *progress report*. The content of the progress report gives the reader a picture of the political, socio-economic etc. situation in the country on the basis of the *Copenhagen criteria* and EU *acquis* (what has been agreed within the EU).¹⁶⁴

The progress report about Kosovo in 2009 stated that major reforms are needed in order to address priorities for the legal system and strengthen its integrity and efficiency in society.¹⁶⁵ In 2010 the EU-commission stated that the judicial sector has made some progress (such as launched reforms plans for the judicial sector and improved economic situation for the judges and cooperation with EULEX) but remains weak. The Commission writes that the legal system's work and independence is prevented by political interference and its refuse to comply with decisions made by courts at different levels for example. Dealing with sensitive legal cases is not a priority for judges and prosecutors because threats (of various kinds) against them occur.¹⁶⁶ The Commission writes also that the legal system (managed by EULEX) has a limited access in northern Kosovo where the rule of law is, more or less, absent.¹⁶⁷

The process of reforming the national legal system continued in 2011 with a budget of € 17 million¹⁶⁸ and the Constitutional court has reduced the immunity of assembly and government officials by declaring that officials have a responsibility for actions and decisions made in office that are “*outside the scope of their responsibility*”.¹⁶⁹ Kosovo’s legal system has also reduced the number of backlog cases, from 161,273 to 119,000 cases during the last 2 years but the legal system is still considered to be inefficient. Threats and intimidation against judges and political interference are still present and a concern for example. Further on,

¹⁶⁴ The EU (2010) *European Commission – Kosovo 2010 progress report*, p:4 & 6-7 & 29-30. See also the Annual report on the judicial activities of EULEX judges 2010 (available at <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>)

¹⁶⁵ The EU (2009) *European Commission – Kosovo 2009 progress report*, p: 9-11

¹⁶⁶ See also Annual report of EULEX Judges 2010, <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>

¹⁶⁷ The EU (2010) *European Commission – Kosovo 2010 progress report*, p:9-11

¹⁶⁸ See also The Balkan Policy Institute (2011) *The rule of law in Kosovo Prishtinë Kosovo*

¹⁶⁹ The EU (2011) *European Commission – Kosovo 2011 progress report*, p:10

Northern Kosovo continues to oppose the national legal system and the EULEX.¹⁷⁰

The legal situation and EULEX's presence in Kosovo is also a topic of interest in other reports besides the progress reports conducted by the European Commission. In 2009 Giovanni Grevi wrote that the EULEX has begun to carry out its functions of monitoring, mentoring and advising national authorities and expanded its regional and local activities in Kosovo. In the judicial field, the EULEX has been advising the Supreme Court of Kosovo, supported the drafting of (not implemented yet) national strategies on organized crime and involved in 467 trials for example. Grevi argues that this record is reasonably good but these achievements will only prove sustainable if other necessary challenges (such as organized crime and corruption) are successfully addressed.¹⁷¹

Dzihic and Kramer takes it a step further and write that the EULEX *a)* 'inherited' a weak national legal system from 'the UNMIK era', *b)* is operating like the previous international mission in Kosovo and *c)* establishing the rule of law is a secondary goal for the EULEX and its employees since their primary goal is to 'enjoy' their lucrative salaries (and legal immunity).¹⁷² "*You don't establish the rule of law just by former UN police officers swapping their light-blue [UN] berets for dark-blue EU ones*"¹⁷³ they write. No legal actions initiated about misconduct, such as corruption, against domestic and foreign officials is also mentioned as obstacle in implementing European values and principles in Kosovo and its legal system.¹⁷⁴ A year later (2010) Martin Wählisch wrote that the republic of Kosovo (assisted by the EULEX) has begun its process in establishing the rule of law in society but lack of coherence between the rule of law on paper and the rule of law in praxis is still evident. For instance, the legal system whose

¹⁷⁰ The EU (2011) *European Commission – Kosovo 2011 progress report*, p:11-13

¹⁷¹ Grevi, Giovanni (2009) *EULEX Kosovo*, p: 360-365

¹⁷² Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 17-19

¹⁷³ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 18

¹⁷⁴ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 14. See also see Bruno Waterfield (2009) *EU and UN abandon inquiry into missing £60m in Kosovo*, 06 May 2009, The telegraph, <http://www.telegraph.co.uk/news/worldnews/europe/eu/5286042/EU-and-UN-abandon-inquiry-into-missing-60m-in-Kosovo.html>

work shall “*ensure the rule of Law as a key value*”¹⁷⁵ is the most corrupt institution in society.¹⁷⁶

The legal situation in Kosovo was also analyzed by the International crisis group in 2010. They agree that the judicial system in Kosovo is weak and not ‘legitimate’ in the eyes of the people (corruption, nepotism, enforcing rights in court is almost impossible for citizens, corporation etc.) but that the country is not lawless because the rate of violent crime and inter-ethnic crime is low. Given that the legal system is dysfunctional (especially the civil law) “*bribery and even violence have become attractive means of extrajudicial dispute resolution*”.¹⁷⁷ The International crisis group recommends the International community in Kosovo to support EULEX and their work of establishing the rule of law (investigating and prosecuting high-level corruption affairs in society) and increase their political pressure on the government to implement the rule of law in cooperation with international advice and assistance (the EULEX). In other words, national authorities and the EULEX must synchronize their work and policy about the rule of law in society to prevent a lack of legitimacy and substance.¹⁷⁸ Similar recommendations are also given in a report conducted by the Balkan Policy Institute in 2011.¹⁷⁹

In 2010 the US department of state and the Swedish foreign ministry reported about problems in Kosovo’s legal system and stated that the legal system is (in theory) independent but external influences, corruption and the lack of due process are present in practice; creating inefficiency in Kosovo’s legal system.¹⁸⁰ One year later, Freedom House (a non-governmental institution) repeated what previous reports about Kosovo’s legal system have stated earlier¹⁸¹ and wrote the following about the EULEX:

¹⁷⁵ Wählisch, Martin (2010) *The rule of law in Kosovo*, p: 10

¹⁷⁶ Wählisch, Martin (2010) *The rule of law in Kosovo*, p: 1-12

¹⁷⁷ International crisis group (2010) *The rule of law in independent Kosovo* p: I-II

¹⁷⁸ International crisis group (2010) *The rule of law in independent Kosovo* p: 1-5 & 12 -15 & 22-23

¹⁷⁹ See The Balkan Policy Institute (2011) *The rule of law in Kosovo* Prishtinë Kosovo

¹⁸⁰ See The US government (2010) *Department of State: Human rights in Kosovo 2010* & Sveriges regering (2010) *Utrikesdepartementet: Mänskliga rättigheter i Kosovo 2010*. A similar picture is also given in the report of 2011 by the US Government and Swedish government, See for example

<http://manskligarattigheter.dynamaster.se/sv/manskliga-rattigheter-i-varlden/ud-s-rapporter-om-manskliga-rattigheter/europa-och-centralasien?c=Kosovo>

¹⁸¹ Qosaj-Mustafa, Ariana (2011) *Nations in Transit: Kosovo*, p: 285-288 & 298-299

Overall, the EULEX mission has a poor track record of investigating and prosecuting crimes, which continues to hamper effective rule of law in Kosovo. EULEX has some 20 prosecutors and 30 judges deployed in Kosovo, and the judicial system is dependent on them. EULEX struggles to act on its executive mandate, partly because the EU lacks a unified position on Kosovo, as five member states still do not recognize its independence.¹⁸²

5.2.1 An example of the EULEX's work in Kosovo¹⁸³

Corruption is a complex occurrence in society. There is no common definition of what it is and it is not easy to separate it from other forms of social exchanges that occur between people in various spheres of society etc.¹⁸⁴ Despite different definitions, corruption is considered to be a negative phenomenon in society and an obstacle for a country's socio-economic development. It creates an inequality between different socio-economic groups in society before the law, employment; welfare services etc. by affecting the outcome of a certain decision via political (or economic) power for example.¹⁸⁵ The rule of law is, in other words, eroded and misconduct is not always sanctioned by the legal system.¹⁸⁶

Corruption was included in the EU's foreign policy after the collapse of the non-democratic regimes in Central and Eastern Europe¹⁸⁷ and defined as "*the abuse of*

¹⁸² Qosaj-Mustafa, Ariana (2011) *Nations in Transit: Kosovo*, p: 299

¹⁸³ For more examples about the EULEX's work in Kosovo, see the Annual report on the judicial activities of EULEX judges 2010 (available at <http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf>)

¹⁸⁴ Thelander Joakim (2006) *Mutor i det godas tjänst? - Biståndsarbetare i samtal om vardaglig korruption*, p: 17-19 & 24-26

¹⁸⁵ Thelander Joakim (2006) *Mutor i det godas tjänst? - Biståndsarbetare i samtal om vardaglig korruption*, p: 17-23

¹⁸⁶ Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 1 & 5-6 & Thelander Joakim (2006) *Mutor i det godas tjänst? - Biståndsarbetare i samtal om vardaglig korruption*, p: 24-26

¹⁸⁷ Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 1

power for private gain".¹⁸⁸ Corruption was considered to be the regions primary obstacle in achieving socio-economic development where national measures against corruption (and organized crime) was given priority and included in the EU's rule of law concept.¹⁸⁹

Corruption is a well-known term in the political and public debate in Kosovo. It is mentioned as a reason of why there is a lack of foreign investment capital in Kosovo and why citizens have a low trust in state authorities, such as, law enforcement agencies. The high level of corruption in Kosovo has been mentioned by various international institutions, foreign departments etc.¹⁹⁰ recommending the government of Kosovo (and the EULEX) to take initiative and implement strategies in their combat against corruption (demonstrate track record of investigations and convictions) via law enforcement and judicial authorities.¹⁹¹

In 2010, the former governor of Kosovo's Central Bank Hashim Rexhepi was accused by the EULEX for corruption and money laundering. In front of national media he was arrested in his office and spent four months in pre-trial detention. Despite EULEX's primary accusations towards Mr. Rexhepi indictment was not issued by the EULEX prosecutors until 2011. By now the indictment did not include those charges that Mr. Rexhepi was arrested for in 2010 and EULEX judges dismissed the remaining charges on 11 January 2012 (their decision is final, cannot be appealed).¹⁹²

The rulings by EULEX judges if detention should be ordered or conformed towards Mr. Rexhepi was not done on the basis of specific evidence since it was not discussed but referred to by the court. Further on, the charges in question

¹⁸⁸ Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 10

¹⁸⁹ Wennerström, Erik O (2007) *The rule of law and the European Union* p:160 & 238-239 & Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 1 & 5-6

¹⁹⁰ The progress reports conducted by the European Commission and Strategy for Swedish development cooperation with Kosovo, 2009-2012 by the Swedish government for example.

¹⁹¹ See The EU (2009) *European Commission: Progress report Kosovo 2009* & The EU (2010) *European Commission: Progress report Kosovo 2010* & The EU (2011) *European Commission: Progress report Kosovo 2011*

¹⁹² See statements made by the EULEX in Kosovo. <http://www.eulex-kosovo.eu/en/pressreleases/0105.php> & <http://www.eulex-kosovo.eu/en/pressreleases/0212.php> & Capussela, Andrea Lorenzo (2012) *EU fiasco: the case of Kosovo's Central Bank*, p: 1

were excluded by the prosecutors in the indictment and the case should have been closed the following day after the arrest if the evidence and charges were properly studied by EULEX judges according to Andrea Lorenzo Capussela.¹⁹³ It is alarming that 'evidence' during trial was handed to the judge outside the courtroom (the information was not handed over and shown to the defense) and that EULEX's charges against Mr. Rexhepi were, more or less, identical with those charges launched by pro-government media before Mr. Rexhepi was arrested by the EULEX police.¹⁹⁴ The EULEX did, in other words, the political elite in Kosovo a favor because their actions removed an individual the elite considered as their enemy.¹⁹⁵ Capussela writes:

I can think of no worse indictment for a rule of law mission representing the EU: the use of anonymous letters as evidence, secret evidence, and baseless decisions to hold a man in jail - an innocent, we now know. The question therefore arises as to whether these breaches of Mr. Rexhepi's right to a fair trial were the product of sheer incompetence, or the result of a deliberate attempt to cover up the initial mistake.¹⁹⁶

¹⁹³ Former Director of ICO's (International Civilian Office) economic unit in Kosovo.

¹⁹⁴ Capussela, Andrea Lorenzo (2012) *EUfiasco: the case of Kosovo's Central Bank*, p:2

¹⁹⁵ Mr. Rexhepi refused to deposit public funds "into banks friendly to the élite" for example. Although, the political elite were not able to take full control over the Central Bank of Kosovo, the ICO intervened and replaced Mr. Rexhepi by a decent candidate via transparent election process. Capussela, Andrea Lorenzo (2012) *EUfiasco: the case of Kosovo's Central Bank*, p:2-4

¹⁹⁶ Capussela, Andrea Lorenzo (2012) *EUfiasco: the case of Kosovo's Central Bank*, p:2

Chapter 6

6.1 The concept of living law, legal system development and Kosovo (analyze)

The significance of living law can be observed in various aspects of everyday life.¹⁹⁷

The analysis of the empirical data indicates that the difference between the EULEX (including the state law of Kosovo) and the people of Kosovo about how disputes should be solved in Kosovo is a reflection of political and historical legacies. On the basis of Ehrlich's reasoning about the concept of living law you could say that there are two different kinds of living law conceptions in Kosovo which varies from each other and Kosovo's state law (the one that the EULEX was sent to strengthen and legitimize by implementing EU principles and values in the national legal system).

The first living law principle (a heritage from the communist era) consists of social norms where exchanging favors of different nature is considered to be normal and important because 'you never know when you might need help from state officials'. Solving a dispute between citizens or state authorities and citizens becomes a question of which of the parties has the most powerful friend; a factor that will decide the outcome of the case. The implementation of state law in society (via the legal system) is left aside because returning favors to an acquaintance becomes a priority and of a higher value in society (ruling against a friend violates the essential norm in this living law 'version'). Therefore, "*few crimes end with their perpetrators in prison*".¹⁹⁸ On the basis of this, you could say that explicit and implicit message of this living law 'version' is that connections of various kinds solve problems, not Kosovo's state law.

¹⁹⁷ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 91

¹⁹⁸ International crisis group (2010) *The rule of law in independent Kosovo* p: I

Further on, this falls under the scope of the transitional legal system (in Turner's development theory) because the process of increasing the legal system's legitimacy and efficiency by working for the people has begun, simultaneously as it serves political and economic interests; reflecting the political and socio-economic situation in society. Although, it would not be entirely correct to argue that the primitive legal system has been abandoned since disputes between individuals etc. have a tendency to be solved via non-transparent trails (friends with benefits) or outside the legal system where Albanian customary law (not recognized as a source of law by the state) is applied.

From a legal sociological point of view the case against Mr. Rexhepi is a suitable example because it shows how this 'version' of living law operates in Kosovo and how EU principles and values (the EULEX) are overcome in practice. For example, the separation of powers, an essential component of the rule of law, was ignored by the EULEX when they arrested Mr. Rexhepi on the basis of pro-governmental 'information'; establishing close cooperation with the EULEX and making it a governmental asset for removing anti-government individuals. This case is, from legal sociological point of view, also an example of the strength of this 'version' of living law in Kosovo because it indicates that the EULEX has not been able to implement EU principles and values in the legal system (and society) because it did not intervene and questioned the evidence against Mr. Rexhepi. Instead, the EULEX has (indirectly) become a part of this 'version' of living law and abandoned their implementation of EU principles and values in the legal system (and society).

The second living law (Albanian customary law) that operates in Kosovo consists of norms about how Albanians should solve disputes in life. Given that the cornerstone of Albanian customary law is honor and promise, justice is established when the damage of these two 'components' is restored. Justice becomes subjective where the type of dispute decides when justice has been established for the parties' involved. This informal legal system is known by the state authorities and is not opposed because the state and its institutions cannot protect citizens from Albanian customary law. Only those individuals that are involved in a dispute can protect each other (and their families) by solving their

disagreements. Actions and decisions made by the state (on the basis of the state law) are seen as invalid because they do not emerge from Albanian customary law. It should also be mentioned that the legal system has never solved a dispute between families, individuals etc. The example from Dragomir Yordanov (a former judge in EULEX Kosovo) below says it all.

In the Gjilan district, for example, there was a murder case in which the defendant claimed to be innocent. Nevertheless, once in court, the prosecutor raised the argument: "If you're innocent, why have you sent a mediator to the family of the victim?" For the public opinion, that was a crucial argument, even if not in line with the "official" legal provisions.¹⁹⁹

The murder issue is the darkest side of Albanian customary law; not dealing with this problem in time can lead to blood feuds lasting for generations (at war there is peace among Albanians even if they are in `fight` with each other).²⁰⁰ Families that are in a dispute with each other solve this issue via *the blood brother shank*, *the blood drinking* (and not via the legal system).

After mixture of the blood they exchanged the glasses and it was enough for them also to over-cross their hands, so that everyone drank the blood of the other one. With "1000 joy calls (congratulations, congratulations) they shot off with the cans" and became from enemies to brothers, as it meant in the Kanun (Albanian customary law): new brothers of the same father, the same mother.²⁰¹

¹⁹⁹ Martino, Francesco (2011) *EULEX, the delicate balance of justice*

²⁰⁰ Gjeçov, Shtjefen Konstantin (2001) *Kanuni i Lekë Dukagjini*, p: 80-92

²⁰¹ Ahmeti, Zef (2012) *The criminal law in the "Kanun of Lekë Dukagjini" - The Albanian customary law*

Based on how disputes are resolved and legitimized Kosovo's legal system is to be considered as a *primitive legal system*²⁰² because Albanian customary law is still applied by people in society. Albanian customary law consists of a body of rules/laws that are an expression of Albanian norms, values, culture and tradition whose presence is legitimate among the people in society. As mentioned earlier Albanian customary law is designed to maintain peace and harmony among Albanians by stating rules of conduct and resolving various form of disputes (via a third party). In theory Albanian customary law is divided in substantive rules²⁰³ and procedure rules²⁰⁴ but they are (indirectly) intertwined in practice since the body of rules/laws emerges from societal norms whose content specifies how violation is defined, managed etc. Ordinary courts do not exist as 'legal sessions' are held in private houses (or other private property) where disputes are settled face to face via a third party (enforcement of a decision based on Albanian customary law must be approved by the parties involved and local chiefs or kin leaders). Since a higher (legal) instance does not exist verdicts are final. Law enforcement agencies are not needed because enforcement of the 'law' is a personal matter (via feuds and revenge for example). Simply put, the people are the system's mechanism to implement the body of rules/laws, resolve disputes according to the law and enforce the law. It should also be mentioned that the content of Albanian customary law cannot be changed since the right to enact new laws does not exist. In this case, Albanian customary law can be abolished (and replaced by the official legal system) if Albanians refuse to apply it.

Stating that Kosovo's legal system is entirely based on the characteristics of a primitive legal system is not entirely correct. As the analyzed of the empirical data indicates the state of Kosovo has its own law enforcement institutions that intervene in disputes between individuals. Even if the people involved in a dispute solve it on their own (on the basis of Albanian customary law) state authorities are

²⁰² Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:79 -83 &110-113 & 116 & 129-133 & 165-169 &177-178. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

²⁰³ Rules that regulate internal relationships among members of its population, determine deviant behavior and how it should be controlled .Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:80

²⁰⁴ Rules of how substantive rules should implemented by third parties regarding relationships that are considered to be of importance and defining deviant acts. Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:80

obligated by (state) law to intervene if actions (forbidden by state law) have been committed. The body of laws consists of rational and logical legislations where substantive and procedural laws are clearly divided in theory and practice. In this context, the body of laws is a result of decisions made by the national government and parliament (representing the people) since they are the only legitimate mechanism to enact new laws and enforce it via the national legal system and law enforcement agencies. Therefore, disputes between individuals of various natures shall be resolved by the national legal system (on the basis of the written state law) and not via personal vendettas (considered as a criminal act by state law). In this context Kosovo's legal system might fall under the scope of a *modern legal system*²⁰⁵ because all mechanisms, institutions, agencies etc. that characterizes a society and legal system in this phase are present and official.

Although, I would not argue that Kosovo's legal system is modern either because *a)* the law is not a network where private and public codes are integrated and synchronized with each other (Albanian customary law is excluded from state law), *b)* the legal system is not a mechanism of promoting and implementing societal change since national legislation deviates from Albanian customs, values, traditions etc. and the polity force lacks capacity to overcome cultural and structural resistance by not being comprehensive, trustworthy and legitimate from society's point of view and *c)* autonomy and independency between the legal system, law enforcement agencies and other state authorities (government and parliament for example) is not present in practice, only in theory (heritage from the socialistic era).²⁰⁶ As a result of conflicts between creating legitimacy for law and personal interests etc. the state (government and parliament) obstructs law's and the legal system's autonomy by refusing to activate its mechanisms for establishing a society where legal immunity is abolished.²⁰⁷ There is, in other

²⁰⁵ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p: 79 -83 &192-193 & 222-231 & 232-244 & 266-268 & 271-272. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, *Western Sociological Review*, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

²⁰⁶ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:79 -83 &192-193 & 232-244 & 266-272

²⁰⁷ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:83 & 235 & 266-268

words, a lack of a civic culture²⁰⁸ where legislated laws are respected and accepted by the entire population and state authorities.

Only if a viable civic culture exists – one infused with accepted legal postulates about the relationship between the state and the population – has the legal system been able to exert this influence on polity.²⁰⁹

From this perspective it is more suitable to argue that Kosovo's legal system is a *transitional system*.²¹⁰ As a new country Kosovo is struggling with its transition from a socialistic society to a democratic society where the process of liberating various societal spheres from each other and increase their autonomy has begun. By declaring its independence the government (and parliament) officially gained power to replace socialistic law (law based on socialistic principles) with civil law (national laws are legislated by government and parliament). Body of laws, mechanisms for resolving disputes according to the law, legislature processes and ability to enforce the law are present and available but are characterized by lack of legitimacy, authority, efficiency, transparency and independency in practice. Statements by governmental and EULEX officials about implementing EU principles and values in the domestic legal system are words without substance. Much is said, little is done. From this point of view, it is suitable to argue that law (and the legal system) is a governmental tool whose function is to legitimate state power and serve certain group of people.²¹¹ And, since Albanian customary law is excluded from the state law and people continue to resolve their issues and conflicts outside the court (the legal system) the legal situation falls under the scope of a primitive legal system again. Council of elders, culture, social norms etc. are removed as court agents in theory but not in practice. The official legal system has, in other words, not been able to replace the old 'legal system' and its

²⁰⁸ Law and legal system is, in other words, cultural norms, traditions, values, beliefs, and institutional norms are broadly reflected and incorporated. Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:238

²⁰⁹ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:83

²¹⁰ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:79 -83 &192 & 222-231 & 232-244. See also Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16 & Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press

²¹¹ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:80-81 & 233 & 266-267

legitimacy, authority and efficiency via its work. The old 'legal system' remains valid even if it is not official.

Based on the analyzed empirical data it could also be said that the nature of *bureaucratization*²¹² in Kosovo's legal system is not promoting, defining and preserving its autonomy and independency towards external influences because (state) officials does not carry out their duties according to relevant laws and directives. Instead, its lack of immunity towards external influences has an impact on its obligation and responsibility in enforcing the law in society. In this context, the lack of autonomy and independence towards external influences does also decrease the legal system's level of *professionalization*.²¹³ The legal system cannot establish and pass on internal traditions, customs and values about the law because external interference unable independent legal work. Practicing law is not associated with immunity from external influences and interferences. In addition, it could be argued that the trend of *systematization* and *centralization*²¹⁴ has occurred because the state of Kosovo controls the legislative process but since the national legal system in Kosovo does not serve as an "*integrative structure of society that preserves, codifies, and translates key cultural symbols into specific rules*"²¹⁵ it is not suitable to claim that either.

The legal situation in Kosovo is messy because the (state) law²¹⁶ that should maintain order in society²¹⁷ has no legitimacy in society. In this context the functionality of a legal act in society is also an administrative question since state authorities (law enforcement agencies) are responsible for its functionality in society by educating the people about the law and not impose it on them.²¹⁸ Ehrlich explains:

The art of regulating rivers does not consist in digging a new bed for the river all the way down to its mouth, but in directing

²¹² Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:237 & 240

²¹³ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:240-241

²¹⁴ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:241-244

²¹⁵ Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, p:243

²¹⁶ "a rule of human conduct" according to Ehrlich, Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 10

²¹⁷ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 154

²¹⁸ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 367

the current so that it self-actively creates a new bed of itself.

Likewise statues fulfill their functions only where the great majority of the people obey them in obedience to the promptings of an inner impulse.²¹⁹

The state of Kosovo and the EULEX should, in other words, not convince themselves that all they need to do is employ the means of power at its disposal and overcome obstacles in its way. This strategy is doomed to fail because the civil society (and its components) operate gradually, determinedly, without hesitation and will, sooner or later, influence and “*gain control over the legislative and magisterial machinery of the state*”²²⁰ according to Ehrlich.²²¹ Based on the analyzed empirical data you could say that this scenario is present in Kosovo’s legal system.

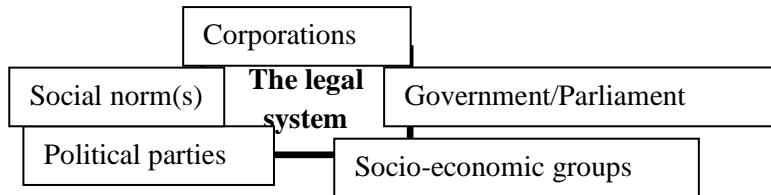
Simply put, there is a lack of coherence between law in books and law in action in Kosovo. The legal acts do not reflect the people’s view etc. whose implementation becomes problematic and the law deviates from its purpose and target (regulating people’s actions in society). Moral content is absent in the (state) law and is replaced by social norms whose legitimacy is not questioned by the people in society because it is a reflection of them, their actions, beliefs etc. With this in mind; it is also hard to determine the legal system’s place in Turner’s development theory because Kosovo’s legal system is a little bit of everything and falls under the scope of all phases in Turner’s development theory simultaneously as it does not. An indication of why certain living law ‘versions’ are present (and active) in Kosovo and its legal system.

²¹⁹ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 367

²²⁰ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 373

²²¹ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 373

Picture # 4: The legal system in Kosovo and its lack of immunity towards external influences²²²



6.2 Conclusion

A justice act is never an individual, an isolated, thing; together with the greater part of its content, it is a part of the prevailing social order.²²³

Establishing peace and stability in society has always been a key priority for the people, domestic rulers and the state power in our history. Influenced by political, economic, religious, social, historical etc. circumstances (and their interaction) countries have chosen different means of achieving a peaceful and stable society. As a result, customs and traditions about how disputes should be solved in society are established. Sometimes these factors are abandoned and replaced as a consequence of changes in society, sometimes these factors are incorporated in the state law in harmony with changes in society, and sometimes these factors are excluded by the state law and coexist with the state law, refusing to 'bow out'.²²⁴ In 2008 the European Union increased its presence in the Republic of Kosovo and launched *EULEX Kosovo* whose purpose is to implement EU principles and values in Kosovo's legal system.²²⁵ On the basis of the essay's research question (has the EULEX been able to implement European principles and values in Kosovo's national legal system the last two years?²²⁶) the aim of this essay was to

²²² The opposite of EU- principles and values, see the concept of the rule of law in this essay

²²³ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 397

²²⁴ See Strahl, Ivar & Strömholm, Stig (2009) *Makt och rätt: rättsidéns gång genom historien? från Babylonien till FN*, Upplaga 12, Iustus, Sweden

²²⁵ Hydén, Håkan (2012) *Interview with Therese Hydén about EU and integration*

²²⁶ Refers to the time period 2009-2011

evaluate EULEX's work in Kosovo from a legal sociological point of view where EU's *rule of law principle* was of interest.

The European Commission does not mention EULEX's shortcomings in fulfilling its mission in Kosovo but the EU's rule of law principle is absent in Kosovo. On the basis of the analyzed empirical data in this essay I argue that the EULEX has deceived its mandate in Kosovo because it has not been able to implement European principles and values within Kosovo's legal system the last two years (2009-2011). The European view about a society where the functionality of the state and its different spheres emerge from an independent legal system is opposed by society because Kosovo's state law is not synchronized with existing social norms in society (such as Albanian customary law). In practice, every situation that becomes a legal matter might involve different social norms at the same time where the strongest social norm(s) will decide the outcome of the case. For example, exchanging favors of different nature is considered to be more important than implementing the state law (based on European principles and values) in society (via the legal system and EULEX). In this context, the development phase of Kosovo's legal system is, based on Turner's development theory, not precisely clear because it falls under the scope of all phases in Turner's development theory simultaneously as it does not. An indication of why certain living law 'versions' are present (and active) in Kosovo and its legal system.²²⁷ The result: Old habits die hard²²⁸ and the state law of Kosovo (based on European principles and values) becomes words written down on a piece of paper.

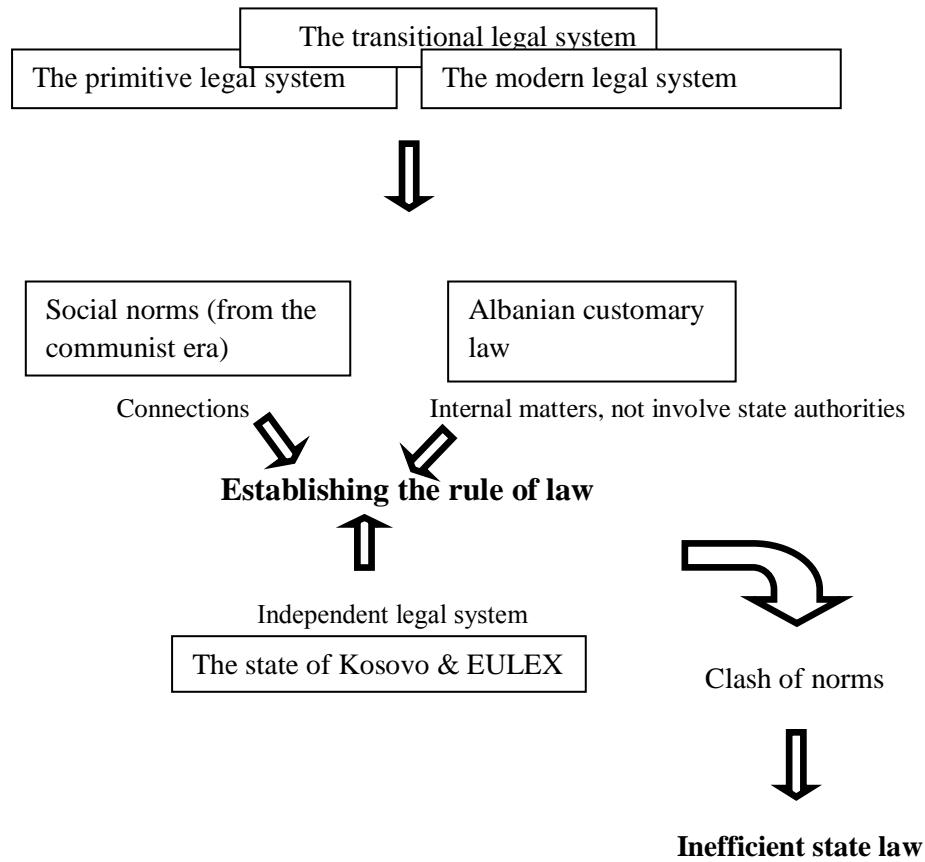
Based on these conclusions, I also argue that the question 'why' has been answered because the way things (legal matters) are handled in Kosovo is an obstacle in establishing EU (LEX) 's rule of law principle in Kosovo. In this context the section of recommendations does also answer the question 'why' by

²²⁷ Kosovo's legal system does not satisfy the first condition of the Copenhagen criteria about independent state authorities, the rule of law and Article 6 (the modern legal system phase in Turner's development theory) in the Lisbon treaty. EU accession (on the basis of Article 49 for example) is, in other words, out of sight for the state of Kosovo at this moment

²²⁸ Once a habit is established, its operation often becomes satisfying and people become accustomed and comfortable with it. On the basis of this, social change will not occur fast because it will be opposed by society or some people, organizations etc. in society. Vago, Steven (2006) *Law and society*, p: 355-356

giving suggestions about how present obstacles can be overcome by the state of Kosovo and EULEX (and establish EU (LEX) 's rule of law principle in Kosovo).

Picture #5: An illustration of how the inefficiency of Kosovo's legal system is caused and why EULEX work with establishing the rule of law is not to be considered as successful



Chapter 7

7.1 Recommendations

The empirical data I have presented in this essay has been from different international reports, national reports and scientific articles where similar (negative) statements and conclusions are drawn about the condition of Kosovo's legal system and EULEX's work. On the basis of this (analyzed) empirical data I have written down two recommendations of how the legal situation in Kosovo could improve (that is, get out of its current situation).

7.1.1 Official recognition of Albanian custom law as source of law

A legal system is, from Ehrlich's point of view, legitimate and accepted when it reflects society's social norms and its view on justice etc.²²⁹ Given that Albanian customary law is more legitimate than Kosovo's state law the national government should officially recognize it as a source of law. The Constitution and law's legislated by Kosovo's parliament shall (of course) remain of a higher rank than the Albanian customary law; the essential thing is that Albanian customary law is given a legal status. This initiative would increase the legal system's legitimacy, credibility and efficiency since people do not oppose juristic law if it contains norms from social life.²³⁰ Involving legitimate state authorities (especially the legal system) in various forms of disputes would strengthen the rule of law and decrease people 'desire' to take the law in their own hands when the legal system reflects their view about how justice should be administered etc.

Including domestic social norms in national law is not something new. In Sweden (one of the EU's member state that is considered to be a 'rule of law country')²³¹ Swedish customary law (*sedvanerätten*) has a legal status and is a source of law. This 'section' in Swedish state law consist of social norms that exist between various industries or social groups that have solved their disputes in the same way

²²⁹ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 90-91

²³⁰ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 91

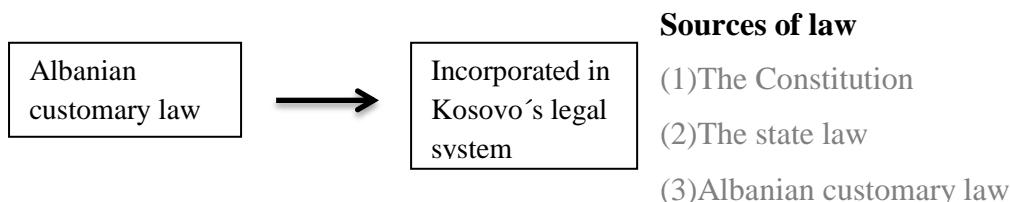
²³¹ Brante Thomas, Andersen Heine & Korsnes Olav (2007) *Sociologiskt Lexikon* p: 271

before there were written laws etc. A citizen (or a group) can refer to this right (norm) and if there is no law(s) or regulation(s) in that area the court can predicate its verdict on sedvanerätten (Swedish customary law). This `section` is not binding for the courts and these type of cases are uncommon²³² but the point is that even a legal system based on the ideas of legal formalism²³³ has (and can have) segments of living law. The state of Kosovo should, in other words, follow the Swedish example. This way, the state of Kosovo would move towards a legal system of European standard without ignoring and excluding its historical legal culture.

Picture # 6: Illustration of recommendation #1

Albanian customary law is given legal status.....

becomes a source of law in Kosovo´s legal system.....



The legal system's authority, trustworthiness, efficiency etc. improves and the mission in achieving European standards becomes less complicated.

²³² Zetterström, Stefan (2004) *Juridiken och dess arbetsätt – en introduktion*, p: 51- 52

²³³ Laws and regulations legislated by a domestic government (and parliament) and operationalized by the legal system. Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*, p: 98-99

7.1.2 Equality before the (state) law via international pressure and political will

Although the rule of law tends to have different definitions as a concept, the general idea of this vision is that the law (and the legal system) is the foundation of the state where citizens, state authorities, corporations etc. are equal before the law.²³⁴ In ordinary situations the law reflects the governments' objectives for a social change since the law has the ability to affect people's behavior via its legitimate authority, mandatory and sanctions. When a law is approved by the parliament it has to be implemented and enforced by domestic law enforcement agencies, supported by the government and other relevant actors.²³⁵

In the state of Kosovo, this procedure is only political rhetoric. The analysis of the empirical data indicates that this principle is not present in Kosovo because responsible actors of promoting and implementing this vision in society are, directly or indirectly, above the law. For instance, EULEX employees' are there to implement EU principles and values in Kosovo's legal system but (eventual) legal charges against them about misconduct etc. are not possible because they enjoy legal immunity.²³⁶ Citizens with the right connections inside the legal system or the government for example are, indirectly, immune to the state law because their powerful friends will intervene and protect them if they get in trouble with the law (and the legal system).²³⁷ In contrast, regular citizens (without valuable connections) are expected to obey the (state) law by these actors. If mentioned actors do not respect the (state) law and set themselves above it why should regular citizens obey (and respect) something that it is to their disadvantage?

Given that Kosovo's (state) law is not functioning as a communicative link between the state and different spheres of society, the EULEX and the government (powerful individuals within this institution) must abandon their (direct and indirect) legal immunity and become equal before the law with regular citizens that are expected to obey the law. Given that both EULEX and the state of

²³⁴ Wennerström, Erik O (2007) *The rule of law and the European Union* p:49-50 & 61-77

²³⁵ Vago, Steven (2006) *Law and society*, p: 338-348

²³⁶ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?*, p: 19

²³⁷ See The progress reports about Kosovo from the European Commission 2009-2011

Kosovo are under supervision (from the EU and the international community) this should not be a (major) problem. The mentioned actors of implementing (and establishing) EU principles and values in the domestic legal system are not immune to political (and economic) pressure (the EU has the power to shut down the EULEX and the International community, such as the EU and the IMF, has the power to end its political and economic support for Kosovo).²³⁸ In the short term this would create some 'political chaos' because the established order would be disestablished²³⁹, in the long term it would increase people's trust in the legal system and the legal system's efficiency. This way the legal system would send a message to society and its 'components' that misconduct (of various kinds) will be sanctioned by the legal system regardless of who the individual is in society etc.

After abandoning direct and indirect legal immunity, the EULEX and the government could (on the basis of their legal and political power to initiate and enforce normative change in society)²⁴⁰ proceed and implement EU principles and values (about the rule of law) via for example *a) financial support to relevant change agents*²⁴¹ who share their agenda or impose "*a time-place-manner regulation, backed by criminal or civil sanctions*",²⁴² *b) distribute valuable technical and social information and influence opinion leaders and experts*²⁴³ or *c) infiltrate existing groups (via informers) whose norm-making activity society disfavors while norm-making activities that favors society are strengthened by "funneling subsidies to individuals through it".*²⁴⁴

²³⁸ See Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?* International Policy Analysis, Berlin, Germany & The EU (2011) *European Commission – Kosovo 2011 progress report*, Brussels, 12.10.2011 SEC (2011) 1207

²³⁹ Steven Vago calls this vested interests and organized opposition. See Vago, Steven (2006) *Law and society*, p: 354-357

²⁴⁰ Ellickson, Robert C, *The evolution of social norms: a perspective from the legal academy*. In Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*, p:59-61

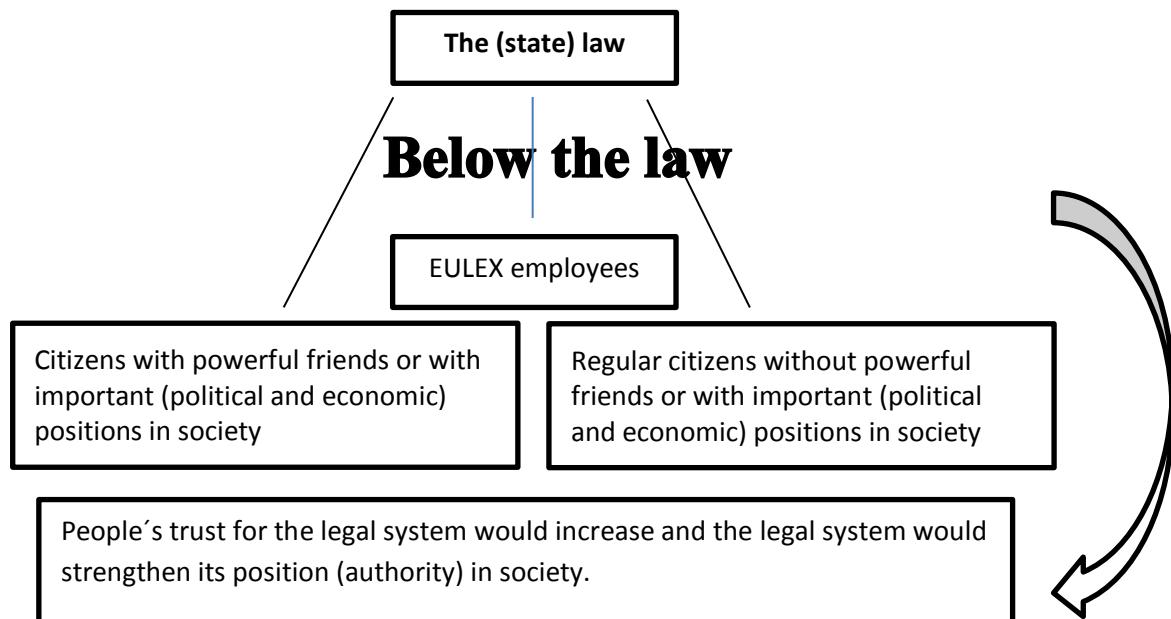
²⁴¹ Individuals, social groups etc. with technical intelligence, social intelligence and leadership skills that can promote a normative change. Ellickson, Robert C, *The evolution of social norms: a perspective from the legal academy*. In Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*, p:41

²⁴² Ellickson, Robert C, *The evolution of social norms: a perspective from the legal academy*. In Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*, p:61

²⁴³ Ellickson, Robert C, *The evolution of social norms: a perspective from the legal academy*. In Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*, p:61

²⁴⁴ Ellickson, Robert C, *The evolution of social norms: a perspective from the legal academy*. In Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*, p:62

Picture # 7: Illustration of recommendation #2



Of course, these suggestions will not achieve its purpose over night because implementing (and establishing) new social norms and replace previous social norms is not a walk in the park but the process must begin sometime. Ehrlich puts it the following way:

All legal development therefore is based upon the development of society, and the development of society consists in this, that men and their relations change in the course of time.²⁴⁵

²⁴⁵ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 396

7.2 A final thought²⁴⁶

After the Second World War European countries chose different political paths to reconstruct their country again. Western European countries chose the democratic path while Eastern European countries chose the communist path.²⁴⁷ This political (and economic) separation between European countries created different societies where the domestic legal system was given different roles in relation to the state power etc.²⁴⁸

In democratic countries the legal system was (and is) considered to be the cornerstone of a functional society and an antithesis to the state power where the highest authority is the law and not the government. Equal treatment of citizens before the law and protecting the separation of powers was (and is), in other words, the legal system's duty in society.²⁴⁹ The political climate in communist countries in Europe revolved around the communist party and their view about society. The cornerstone of their philosophy was (and is) that *a*) the primary goal is to protect the state and its various interests and *b*) members of society shall have identical thoughts and views about things in society as the communist party. Dissidents were, in other words, forbidden and punished by law enforcement agencies. Given that the communist party did not promote separation of powers (and equal treatment of citizens before the law) the national legal system was not given the same duty as it was given in democratic states in Europe. The domestic legal system should serve the state (the communist party) and its interest by implementing the law as it was written. Operating as an antithesis to the state

²⁴⁶ I have chosen to put the case of Kosovo in a larger perspective because *a*) the state of Kosovo is a result of the communist collapse in Central and Eastern Europe and *b*) the European Union has been in this situation before in its work with former communist states that now are integrated in the European Union and a part of its work for peace and stability on the European continent. Although, Albanian customary law makes the case of Kosovo unique even if the post-communist situation is not unique itself.

²⁴⁷ See <http://www.ne.se/lang/kalla-kriget>

²⁴⁸ See for example: Vago, Steven, (2006) *Law and Society*, p: 42-46 & Friedrichs, David O (2006) *Law in our society*, p:150 -158

²⁴⁹ See for example: Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*, p: 121 & Vago, Steven, (2006) *Law and Society*, p: 42-46 & Friedrichs, David O (2006) *Law in our society*, p:150 -152 & Strahl, Ivar (2009) *Makt och rätt*, p:96-107 & 133-164 & Fine, Robert (2002) *Marxism and the social theory of law*, p: 101-118

power was out of question and citizens perceived the domestic legal system as an alien force (a pro-government and dependent institution).²⁵⁰

Influenced by this political (and economic) climate on the European continent democratic countries in Europe put historical disputes aside and formed the European Union²⁵¹ on the basis of common principles and values about society and the legal system's duty in it (Article 6²⁵² and Article 49²⁵³). When the communist regimes were replaced by democratic regimes during the 1990s in central and eastern European countries they did not hide their ambition of ending their exclusion and become a part of the European Union. As a result of these political (and economic) changes the European Union demanded that certain criteria should be fulfilled before any act of accession could be signed with post-communist states (the so called *Copenhagen criteria*).²⁵⁴ Applying (European) states are required to have:

- ⊕ stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities;
- ⊕ a functioning market economy, as well as the ability to cope with the pressure of competition and the market forces at work inside the Union; and
- ⊕ the ability to assume the obligations of membership, in particular adherence to the objectives of political, economic monetary union and synchronize national law with EU legislation.²⁵⁵

Act of accession is, since 1993, given to applicant countries on the basis of the Copenhagen criteria (and article 6 and 49). So far the act of accession has been signed with the Czech Republic, Poland, Hungary, Slovenia, Estonia, Cyprus, Bulgaria, Romania, Latvia, Lithuania, Malta and Slovakia.²⁵⁶ On paper this means

²⁵⁰ See for example: Stone, Alan (1985) *The Place of Law in the Marxian Structure-Superstructure Archetype*, p: 44 & Vago, Steven, (2006), *Law and Society*, p: 42-46 & Friedrichs, David O (2006) *Law in our society*, p:153 - 158 & Strahl, Ivar (2009) *Makt och rätt*, p:112-120

²⁵¹ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p: 9-13

²⁵² The national state shall respect the principles of liberty, democracy, human rights and fundamental freedoms, and the rule of law.

²⁵³ Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union.

²⁵⁴ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:30-31

²⁵⁵ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:30-31

²⁵⁶ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:30-31

that the mentioned countries above have passed the so called *legal transition*.

Pauline Roberts and Jiri Priban explain:

The concept of legal transition describes the process gradual change of a legal system resulting in a fundamentally new normative framework. The former normative framework, which was a starting point of the transitional process, disappears. Unlike revolutionary constitutional and legal discontinuity, transition is a peaceful movement which gradually incorporates new elements and principles into the existing legal system and thus eventually transforms into an entirely different one.²⁵⁷

There are a number of scientific articles etc. about the legal transition in post-communist countries in Europe where the current legal situation is described in these countries before and after EU accession.²⁵⁸ Previous research about these countries indicates that the lack of sufficient resources for courts, the lack of training in EU-related standards and low trust in the national legal system are examples of common denominators.²⁵⁹ Given that the Member states are 'personally' responsible for synchronizing domestic law with EU-law²⁶⁰ the cultural factor and political interference are also mentioned as 'obstacles' in implementing EU principles and values in these countries.²⁶¹ For example, in Hungary labor courts are not overloaded with cases because cultural factors oppose this path²⁶² while the work environment field is considered to be influenced by politics in Slovakia where the government (via the labor inspectorate) has close relations with employers (misconduct is not always sanctioned).²⁶³ Other common denominators for post-communist countries are:

²⁵⁷ Roberts, Pauline & Priban, Jiri & Young, James (2003) *Systems of Justice in transition: Central European experiences since 1989*, p: 1

²⁵⁸ Search on Google scholar 2012-05-07

²⁵⁹ Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* p: 103-111

²⁶⁰ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material* p:30-31

²⁶¹ Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* p: 113-114

²⁶² Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* p: 104-105 & 108-109

²⁶³ Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* p: 109

- ⊕ The corruption heritage from the communist era. This is considered to be a negative phenomenon because it disables society's development in various spheres by replacing the rule of law with various forms of social exchanges,²⁶⁴ creating an unequal society where citizens with political (or economic) power are able to affect an outcome of a legal decision for example.²⁶⁵ In these countries corruption is a well-known term in the political and public debate. The lack of foreign investments and the lack of trust in state authorities, such as, law enforcement agencies are considered to be a result of this phenomenon.²⁶⁶ The European Union defined corruption as "*the abuse of power for private gain*"²⁶⁷ and included it in its foreign policy towards former non-democratic European countries²⁶⁸ and rule of law concept.²⁶⁹
- ⊕ These countries are (according to Gerda Falkner) so called 'world of dead letters' countries because "*the typical mode is to transpose EU directives on the basis of rather politicized decision-making processes*".²⁷⁰ Simply put, structural shortcomings and 'refusing' to implement EU-law and apply verdicts made by the European Court of Justice creates a situation where citizens of these countries are not given the chance to obey (and invoke) EU-law because the national legal system does not give these laws the support they need to develop and reach individuals etc. in society.²⁷¹

²⁶⁴ See for example: Thelander Joakim (2006) *Mutor i det godas tjänst? - Biståndsarbetare i samtal om vardaglig korruption*, p: 17-19 & 24-26 & Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 11-19

²⁶⁵ See for example: Thelander Joakim (2006) *Mutor i det godas tjänst? - Biståndsarbetare i samtal om vardaglig korruption*, p: 17-26 & Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 1 & 5-6 & 19-21

²⁶⁶ See for example Friedrichs, David O (2006) *Law in our society*, p:159

²⁶⁷ Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 10

²⁶⁸ See for example: Pridham, Geoffrey (2002) *EU Enlargement and Consolidating Democracy in Post-Communist States — Formality and Reality*, p: 953-973 & Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 1& 19-21 & http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33301_en.htm

²⁶⁹ See for example: Wennerström, Erik O (2007) *The rule of law and the European Union* p:160 & 238-239 & Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, p: 1 & 5-6 & 19-21 & 182-250 & Pridham, Geoffrey (2006) *European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives*, p:373-400

²⁷⁰ Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* p: 114

²⁷¹ See Sociology of European law (2012) Lecture 3 *Implementation of European Union Law* by Håkan Hydén

- ⊕ Implementing EU-law in (these) EU-member states is a complex multi-phase process where the outcome of this process depends on the efficiency of domestic law-making (synchronizing national law with EU-law), control of law application in practice and actions to enforce law application in relevant areas²⁷²(the implementation of EU law in the member states is supervised by the European Commission).²⁷³ The judicial sphere is; in other words, open for conflicts between the EU and its member states. The latest conflict involves the state of Hungary where the European Commission launched accelerated infringement proceedings against Hungary over the independence of its central bank and data protection authorities as well as over measures affecting the judiciary.²⁷⁴

Mentioned common denominators can (from my point of view) also be summarized as indications of *path dependence*.²⁷⁵ As former communist regimes these countries have created certain ways of doing things that does not characterize democratic countries. In order to replace the communist society (and join the European Union) Western European laws were systematically imported and incorporated in the national legal system; creating a complex and difficult transition period where the past and future co-existed within state authorities (and society as a whole). Given that misconduct of various kinds from the past has

²⁷² Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* p: 102

²⁷³ Stone Sweet, Alec (2004) *The Judicial Construction of Europe* p:47

²⁷⁴ See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24>

²⁷⁵ Path dependence is an approach to understanding how organizations, institutions, or technologies become “locked in” to particular choices as a result of their structural properties or beliefs and values. It begins with a straightforward assertion that “history matters” in studies of governance and then attempts to explain exactly how history matters through studies of the means through which constraints on normal behavior in organizational life appear and the form that these constraints take. Path dependence is most often used as a concept by studies based around the historical institutionalist approach to political science, with its attendant focus on how institutions come to constrain organizational life. It has become a key concept to explain why institutions in political life don't change as much as we might expect if adopting, for example. A singular problem with uses of path dependence comes in its careless use—it can often appear in studies as a mere assertion that “history matters” in a particular case with little attempt to explain why or how. In order for the concept to have some theoretical credibility, a number of authors have suggested that it might be based around a particular form of technological and institutional development that has particular defining features. Critics of the approach are often concerned that it is somewhat incompatible with forms of institutional analysis based around rational choice approaches. This need not be a problem because, as has been previously noted, one of the key features of path dependence is its discomfort with rationalistic assumptions of behavior and the suggestion that much of human behavior is rather less reflexive than this. See Greener, Ian. "Path Dependence." Encyclopedia of Governance. Ed. . Thousand Oaks, CA: SAGE, 2006. 668-69. SAGE Reference Online. Web. 8 May. 2012 & Pierson, Paul (2000) *Increasing Returns, Path Dependence, and the Study of Politics The American Political Science Review*, Vol. 94, No. 2 (Jun., 2000), pp. 251-267

been sanctioned selectively these countries have not given the legal system the support it needs to increase its trustworthiness and credibility among citizens in society. From the viewer's eye communist and democratic principles and values are simultaneously present in society (and within state authorities) but there is not clear indication of how (and when) the battle between the past (communist principles, values, attitudes etc.) and the future (EU principles, values, attitudes etc.) will end. It is not an indication that state authorities in these countries are not willing to abandon principles, values, attitudes etc. established during the communist era but that fundamental change tends to be slow and difficult because state authorities are *a) 'blocked'* by certain principles and values, *b) cautious* in their learning process and *c) have limited expectations about their world* (for example society's expectations about changes within state authorities). Changing law and imposing new principles, values, attitudes etc. does not change and eliminate former principles, values, attitudes etc. overnight.²⁷⁶

This can also be illustrated by the legal situation in Russia.²⁷⁷ Marina Kurkchiyan writes that there is an assumption that socio-economic changes tends to transform a domestic legal system and sets the question if this assumption can be found in Russia and its post-Soviet transition.²⁷⁸ In order to get a better understanding of "*the Russian way of thinking and doing things*"²⁷⁹ Kurkchiyan goes back in history and draws the conclusion that the Russian legal system (and legal culture) is influenced by the Byzantine culture and the Russian orthodox church where very initiative taken by state leaders (such as Peter the Great in the 17th century, Catherine 11 in the 18th century, Nicholas I in the 19th century and by Gorbachev under late communism in the 20th century) to modernize the legal system (and strengthen the rule of law) has failed since the fall of the Byzantine empire. The

²⁷⁶ This part is based on previous mentioned sources in the footnotes. See for example also : Roberts, Pauline & Priban, Jiri & Young, James (2003) *Systems of Justice in transition: Central European experiences since 1989* & Friedrichs, David O (2006) *Law in our society*, p:157 & Andrei Shleifer (2012) *Seven lessons from post-communist transition* & Nalepa, Monika (2010) *Skeletons in the Closet: Transitional Justice in Post-Communist Europe* & Stan, Lavinia (2010) *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*

²⁷⁷ See for example also Ericson, Claes (2011) *Oligarkerna – Om snabba pengar och förgänglig makt i kapitalismens Ryssland* & Mehholli, Berat (2011) *Rich country= a welfare state?* & Friedrichs, David O (2006) *Law in our society* (p: 150 -158).

²⁷⁸ Marina Kurkchiyan, Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence. Banakar och Traver (2005) *Theory and method in socio-legal research* p:260-261

²⁷⁹ Marina Kurkchiyan, Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence. Banakar och Traver (2005) *Theory and method in socio-legal research*, p:265

cornerstone of this kind of legal system (and legal culture) is that people representing different state authorities are above the law while regular citizens are expected to obey the law. Knowing people with influence in various state authorities as a regular citizen make you (indirectly) immune to the legal system and the rule of law (no matter what kind of legal charges there are against you).²⁸⁰ Developing the Russian legal institution has not been a priority for the Russian state because the legal system in Russia has been (and is), according to Kurkchiyan, of an instrumental character. The political leadership has used it (and use it) for exchanging favors, social engineering and legitimization of policies for example but never for establishing the rule of law in society.²⁸¹ In other words, the post-Soviet transition has until now not affected the Russian legal system (and legal culture). Kurkchiyan writes:

I would argue that Russia is not on the way to a rule of law culture. Something new and quite different is being formed there, something that combines the glossy outward trappings of western law with the more cynical inward conniving of the Russian tradition.²⁸²

Further on, Kurkchiyan writes that lawyers and managers in Russia tend to have a negative attitude towards the West and their way of reasoning about the law because they argue that the West do not offer “*something new and valuable in terms of how to deal with law and how to run their businesses*”.²⁸³ This attitude reminds me of Steven Vago and his statement that Russian businesses do not rely on the legal system for protection from various threats but on (criminal) gangs.²⁸⁴

²⁸⁰ Marina Kurkchiyan, Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence. Banakar och Traver (2005) *Theory and method in socio-legal research*, p:263-267

²⁸¹ Marina Kurkchiyan, Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence. Banakar och Traver (2005) *Theory and method in socio-legal research*, p:263-267

²⁸² Marina Kurkchiyan, Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence. Banakar och Traver (2005) *Theory and method in socio-legal research*, p:277

²⁸³ Marina Kurkchiyan, Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence. Banakar och Traver (2005) *Theory and method in socio-legal research* p:277

²⁸⁴ Vago, Steven (2006) *Law and Society*, p: 16.

References

Printed sources

- ⊕ Alexander L. George and Andrew Bennett (2005) *Case studies and theory development in the social sciences*, Belfer Center for Science and International Affairs, USA
- ⊕ Alkan Olsson, Johanna (2011) *Lecture 1: What is sociology of law?* Sociology of law department, Lund University, Sweden
- ⊕ Baier, Matthias & Svensson, Måns (2009) *Om normer*. Liber Malmö
- ⊕ Banakar, Reza & Travers, Max (2002) *An introduction to law and social theory*, Hart Publishing
- ⊕ Banakar, Reza (2011) *The Sociology of Law: From Industrialization to Globalization*, U. of Westminster School of Law Research Paper No. 11-03, p. 1-32
- ⊕ Best, Joel (2001) *Damned Lies and Statistic*. University of California Press, USA
- ⊕ Brante Thomas, Andersen, Heine & Korsnes Olav (2007) *Sociologiskt Lexikon NordBook*, Skien
- ⊕ Butler, Chris (2009) *Critical Legal Studies and the Politics of Space*. Social and Legal Studies, Vol. 18, pp. 313–332
- ⊕ Chalmers, Damian Gareth, Davies Giorgio, Monti (2010) *European Union law: cases and material*. Cambridge: Cambridge University Press.
- ⊕ Cotterrell, Roger (2008) *Living law*, Hart Publishing
- ⊕ Dzihic, Verdan & Kramer, Helmut (2009) *Kosovo after independence - Is the EU's EULEX Mission Delivering on its Promises?* International Policy Analysis, Berlin, Germany
- ⊕ Deflem, Mathieu (2008) *Sociology of Law: Visions of a Scholarly Tradition*. Cambridge, UK: Cambridge University Press.
- ⊕ Doorewaard, Hans “Research Questions, Types of” *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009. 822-25.
- ⊕ Ehrlich, Eugen (2002) *Fundamental Principles of the Sociology of Law*. New Brunswick Transaction Publishers.
- ⊕ Ericson, Claes (2011) Oligarkerna – Om snabba pengar och förgänglig makt i kapitalismens Ryssland, Nordsteds, Stockholm
- ⊕ Esaiasson, Peter (2007). *Metodpraktikan : konsten att studera samhälle, individ och marknad*. Stockholm : Norstedts juridik
- ⊕ EULEX Kosovo (2012) *The rule of law handbook* Prishtinë, Kosovo
- ⊕ Falkner, Gerda (2010) *Institutional Performance and Compliance with EU Law: Czech Republic, Hungary, Slovakia and Slovenia* Journal of Public Policy, ISSN 0143-814X, 04/2010, Volume 30, Issue 1, pp. 101 - 116

- Fine, Robert (2002) *Marxism and the social theory of law*. In Reza Banakar *Introduction to Law and Social Theory*, London: Hart, 2002, pp.101-117.
- Friedrichs O, David (2006) *Law in Our Lives: An Introduction*, Oxford University Press, USA
- Greener, Ian. "Path Dependence." *Encyclopedia of Governance*. Ed. . Thousand Oaks, CA: SAGE, 2006. 668-69. SAGE Reference Online. Web. 8 May. 2012 & & Pierson, Paul (2000) Increasing Returns, Path Dependence, and the Study of Politics *The American Political Science Review*, Vol. 94, No. 2 (Jun., 2000), pp. 251-267
- Gilje, N. & Grimen, H. (2007). Samhällsvetenskapernas förutsättningar 3:e uppl. Göteborg :Daidalos.
- Gjeçov, Shtjefen Konstantin (2001) *Kanuni i Lekë Dukagjini*. Shëpia botuese Kuvendi, Albania
- Gomm, Roger & Hammersley, Martyn & Foster, Peter (2000) *Case study method – key issues, key texts* Sage Publications Ltd
- Greiçevci, Labinot (2011) *EU Actorness in International Affairs: The Case of EULEX Mission in Kosovo*, Perspectives on European Politics and Society Vol. 12, No. 3, 283–303, Routledge
- Gurvitch, Georges (2001) *Sociology of law*, Transaction Publishers
- Hechter, Michael & Opp, Karl – Dieter (2005) *Social norms*. Russell Sage Foundation New York
- Hertogh, M. L. M (2009) *Living law: reconsidering Eugen Ehrlich*, Hart Publishing
- Hertogh, Marc (2004) *A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich* Journal of Law and Society, Vol. 31, No. 4 (Dec., 2004), pp. 457-481
- Hydén Håkan (2002) *Normvetenskap*. Sociologiska institutionen, Lunds universitet
- Hydén, Håkan (2004) *About the relationship between norms and rules*, Compendium in Sociology of law, department of Sociology of law, Lund University
- International crisis group (2010) *The rule of law in independent Kosovo*, Europe Report N°204 – 19 Pristina/Istanbul/Brussels
- Marina Kurkchiyan, *Researching Legal Culture in Russia: From Asking the Question to Gathering the Evidence*. Banakar och Traver (2005) Theory and method in socio-legal research, Hart Publishing, Oxford and Portland Oregon
- Kozolchyk, Boris (1982) *Living law: introduction*, Arizona Journal of International and Comparative Law, ISSN 0743-6963, 1982, Volume 1, Issue 1, p. 85-87
- May, Tim (2001) *Social Research – Issues, methods and process*, Open University Press
- Mineshima, Dale (2002) *the rule of law and EU expansion* Liverpool Law Review 24: 73–87

- ⊕ Nalepa, Monika (2010) *Skeletons in the Closet: Transitional Justice in Post-Communist Europe* Perspectives on Politics, ISSN 1537-5927, 06/2012, Volume 10, Issue 2, p. 425
- ⊕ Nelken, David (1984) *Law in action or living law? Back to the beginning in sociology of law* Legal Studies, ISSN 0261-3875, 07/1984, Volume 4, Issue 2, pp. 157 – 174
- ⊕ Nelken, David (2008) *Eugen Ehrlich, Living Law, and Plural Legalities* Theoretical Inquiries in Law, EISSN 1565-3404, 06/2008, Volume 9, Issue 2, pp. 1 – 29
- ⊕ Parker, R M (1990) *Power, control, and validity in research*, Journal of learning disabilities, 12/1990, Volume 23, Issue 10, pp. 613 – 620
- ⊕ Payne, Judy (2004) *Key Concepts in Social Research*, Sage United Kingdom
- ⊕ Persson, Lars (2010) *Pedagogerna och demokratin; en rättsociologisk studie av pedagogernas arbete med demokratiutveckling*, Media-Tryck, Lunds Universitet, Sweden
- ⊕ Petersen, Hanne (1992) *On Women and Legal Concepts: Informal Law and the Norm of Consideration*. Social & Legal Studies, Vol. 1, pp. 493-513
- ⊕ Piris, Jean-Claude (2010) *The Lisbon Treaty: a legal and political analysis*. Cambridge: Cambridge University Press.
- ⊕ Pridham, Geoffrey (2002) *EU Enlargement and Consolidating Democracy in Post-Communist States — Formality and Reality*, JCMS: Journal of Common Market Studies, ISSN 0021-9886, 12/2002, Volume 40, Issue 5, pp. 953 – 973
- ⊕ Pridham, Geoffrey (2006) *European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspective* Government and Opposition, ISSN 0017-257X, 06/2006, Volume 41, Issue 3, pp. 373 - 400
- ⊕ Qosaj-Mustafa, Ariana (2011) *Nations in transit: Kosovo*, Freedom House
- ⊕ Roberts, Pauline & Priban, Jiri & Young, James (2003) *Systems of Justice in transition: Central European experiences since 1989*, Ashgate Publishing
- ⊕ Roberts P et al (2006) *Reliability and validity in research*. Nursing Standard. 20, 44, 41-45.
- ⊕ Rokumoto, Kahei (2012) *Sociological theories of law*, International library of essays in law and legal theory, Volume 12, New York University Press
- ⊕ Sciaraffa, Stefan (1999) *Critical Legal studies: A Marxist Rejoinder*, Legal Theory, Vol. 5, pp 201-219
- ⊕ Smart, C. (2002) *Feminism and the power of law*. London, New York: Routledge.
- ⊕ Stan, Lavinia (2010) *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* International Journal of Transitional Justice; Jul2011, Vol. 5 Issue 2, p313-318, 6p
- ⊕ Stone Sweet, Alec (2004) *The Judicial Construction of Europe*. Oxford: Oxford University Press.
- ⊕ Strahl, Ivar (2009) *Makt och rätt*, Isatus , Stockholm, Sweden
- ⊕ Svenning, Conny (2003) *Metodboken*. Eslöv: Lorentz Förlag

- Szarek-Mason, Patrycja (2010) *The European Union's Fight against Corruption: The Evolving Policy towards Member States and Candidate Countries*, Cambridge University Press
- Sørensen, Jens Stilhoff (2008) *Kosovo – vägen till oavhängighet*, Utrikespolitiska Institutionen Stockholm
- Tamanaha Z. Brian (2011) *A Vision of Social Legal Change: Rescuing Ehrlich from "Living Law"* Law & Social Inquiry, ISSN 0897-6546, 2011, Volume 36, Issue 1, p.297 – 318
- The EU (2009) *European Commission – Kosovo 2009 progress report*, Brussels, 14.10.2009 SEC(2009) 1340
- The EU (2010) *European Commission – Kosovo 2010 progress report*, Brussels, 9 November 2010 SEC (2010)1329
- The EU (2011) *European Commission – Kosovo 2011 progress report*, Brussels, 12.10.2011 SEC (2011) 1207
- Thelander Joakim (2006) *Mutor i det godas tjänst? - Biståndsarbetare i samtal om vardaglig korruption*, Lund University Sweden
- Treviño Javier, A (2010) *Classic writings in law and society: contemporary comments and criticisms*, Transaction Publishers
- Turner, Jonathan H (1974) *A Cybernetic Model of Legal Development*, Western Sociological Review, 5, pp. 3-16
- Turner, Jonathan H (1980) *Legal System Evolution: An Analytical Model* (pp. 377-394) in William E. Evan (1980) *The Sociology of Law* New York: Free Press
- Turner, Jonathan H (2003) *Human Institutions: a theory of societal evolution*, Rowman & Littlefield Publishers, USA
- Vago, Steven (2006) *Law and Society*. Upper Saddle River: Pearson – Prentice Hall
- Valverde, Mariana (2009) *Jurisdiction and Scale: Legal Technicalities as resources for theory*. Social & Legal Studies, Vol. 18, pp. 139-157
- Ward, Kerry & Street, Chris "Reliability" *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009. 801-03.
- Williams, Malcolm (1999) *Science & Social Science*, Taylor & Francis Ltd, United Kingdom
- Wennerström, Erik O (2007) *The rule of law and the European Union* , Iustus förlag AB Uppsala Sweden
- Wolming, Simon (1998) *Validitet – ett traditionellt begrepp i modern tillämpning*. Pedagogisk forskning I Sverige Årg 3 Nr 2 p.81-93
- Yue, Anthony R. "Validity." *Encyclopedia of Case Study Research*. Ed. Albert J. Mills, Gabrielle Durepos, and Elden Wiebe. Thousand Oaks, CA: SAGE, 2009. 960-64.
- Zetterström, Stefan (2004) *Juridiken och dess arbetssätt: en introduktion*, Uppsala: Iustus

- Ziegert, K. Alex (1998) *A note on Eugen Ehrlich and the production of legal knowledge* Sydney Law Review, ISSN 0082-0512, 03/1998, Volume 20, Issue 1, p. 108-126

Electronic sources

- ABA Division for Public Education (2008) *Part 1: What is the rule of law?* Available <
<http://www.americanbar.org/content/dam/aba/migrated/publiced/features/Part1DialogueROL.authcheckdam.pdf>> 2012-03-23
- Ahmeti, Zef (2012) *The criminal law in the "Kanun of Lekë Dukagjini" - The Albanian customary law.* Available <
http://www.shkoder.net/en/kanun_en.htm> 2012-03-06
- Capussela, Andrea (2011) EULEX in Kosovo: a shining symbol of incompetence Available <
<http://www.guardian.co.uk/commentisfree/2011/apr/09/eulex-kosovo-eu-mission>> 2012-03-08
- Capussela, Andrea Lorenzo (2012) *EU fiasco: the case of Kosovo's Central Bank* Available <<http://www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/EU-fiasco-the-case-of-Kosovo-s-Central-Bank-110879>> Osservatorio Balcani e Caucaso, 2012-03-28
- EULEX Kosovo (2012) *EULEX Kosovo Justice Component* Available <
<http://www.eulex-kosovo.eu/en/justice/>> 2012-03-06
- EULEX Kosovo (2011) What is EULEX? (electronic) Available <
<http://www.eulex-kosovo.eu/en/info/whatisEulex.php>> 2012-03-22
- Hydén, Håkan (2012) *Interview with Therese Hydén about EU and integration* Available <<http://vimeo.com/36693632>> 2012-02-18
Cybernormer, Lund University
- Martino, Francesco (2011) *EULEX, the delicate balance of justice* Available <<http://www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/EULEX-the-delicate-balance-of-justice-96838>> 2012-03-12 Sofia, Bulgaria