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NORMALIZATION OF RELATIONS BETWEEN BELGRADE AND PRISTINA AND ACCESS TO JUSTICE



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AND ACCESS TO JUSTICE

Exercising Citizens' Rights before Judicial Institutions in accordance with
Established Agreements and the Issue of Mutual Recognition of Documents

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On behalf of the Publisher:

Katarina Golubović

Authors:

Jovana Spremo and Dragiša Čalić

Translation:

Marija Maljan

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Dosije studio

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**NORMALIZATION OF RELATIONS
BETWEEN BELGRADE AND PRISTINA
AND ACCESS TO JUSTICE**

March 2024

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1. Introduction

The report “Normalization of Relations between Belgrade and Pristina and Access to Justice: Exercising Citizens’ Rights before Judicial Institutions in accordance with Established Agreements and the Issue of Mutual Recognition of Documents” is the result of research conducted by the Lawyers’ Committee for Human Rights – YUCOM between September 2023 and March 2024. Covering the period from November 2022 to March 2024, the Report provides relevant information on the current situation regarding access to justice for citizens living in the territory of Kosovo¹, with a particular focus on the actions of the institutions of the Republic of Serbia and citizens’ engagement with them.

This report was prompted by the expectation that the Annex on the Implementation of the Agreement on Normalization between Kosovo and Serbia (referred to as the Ohrid Agreement) would be swiftly enacted. However, even a year after its signing, implementation had not commenced. The original aim was to examine the Republic of Serbia’s approach to Article 1 of the Agreement, which concerns the mutual recognition of documents. Yet, with no changes in the Negotiating Position for Chapter 35 and no specific guidance from institutions regarding the fulfillment of this or other pertinent articles related to citizens’ rights before institutions, the research team had to adjust its approach.²

Why is this article of the Ohrid Agreement important? Its significance lies in the fact that its proper implementation would optimize the application of the majority of agreements resulting from the EU-mediated dialogue. Furthermore, it would address the plethora of legal gaps and uncertainties faced by citizens residing in Kosovo, whether before Kosovo institutions or within the Serbian system. Given the evolving circumstances, this Report delves into the current political landscape, particularly highlighting the heightened legal uncertainties, especially in northern Kosovo. It provides an overview of pending issues arising from the non-implementation of agreements relevant to access to justice and scrutinizes the actions of the institutions of the Republic of Serbia regarding the Autonomous Province of Kosovo and Metohija. Lastly, apart from recommendations for continuing the dialogue and enhancing access to justice, the Report proposes approaches that both parties could consider facilitating smooth mutual recognition of documents within both institutional frameworks.

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- 1 The report adopts the neutral designation “Kosovo,” avoiding prejudgment of its status. In instances where documents were analyzed or interviews were conducted with specific interlocutors, the terms “Autonomous Province of Kosovo and Metohija” and “Republic of Kosovo” will be used accordingly.
 - 2 Methodologically, the researchers predominantly used the document analysis method, and the data were supported by in-depth interviews with judges of the Basic Court in Leskovac (conducted in February 2024) and a focus group held in Mitrovica on March 14, 2024.

2. The political context of reaching the most recent agreement between Belgrade and Pristina

After a decade of partial implementation of the Brussels Agreement and its related agreements, Belgrade and Pristina reached a new agreement in February 2023, the Agreement on the Path to Normalization between Kosovo and Serbia and shortly after in Ohrid also its Implementation Annex (hereinafter the Ohrid Agreement). The prospect of reaching any agreement seemed unlikely, especially given the preceding events such as the withdrawal of Serbs from Kosovo's institutions on November 7, 2022, as well as a series of protests, barricades in northern Kosovo, and attacks on EULEX.

In early November 2022, a meeting was convened in Zvečan involving the president of the Serbian List, four mayors representing northern Kosovo municipalities, and various representatives from Kosovo institutions in the region, including court personnel, prosecutors, and police officers. The meeting was prompted by the dismissal of the police director for the northern region, who had been suspended for refusing to implement Kosovo's plan for re-registering vehicles with license plates issued by Serbian authorities. During the meeting, it was decided that Serb representatives would withdraw from the institutions until certain conditions were met. These conditions included the "withdrawal of unilateral and illegal decisions regarding the re-registration of license plates", as well as the formation of the Community/Association of Serbian Municipalities in accordance with previously agreed-upon terms. Additionally, they called for adherence to all agreements established as part of the dialogue process, including the formation of a management team to draft the statute of the Community/Association of Serbian Municipalities.³

After months of tension, arrests, and barricades, an Agreement was reached, despite the Serbian side refraining from signing it. Following the meeting, Josep Borrell, the EU High Representative for Foreign Policy and Security, stated his intention to promptly initiate the formal inclusion of the necessary amendments in negotiating Chapter 35 of Serbia's negotiation framework and in the agenda of the Kosovo Special Group for Normalization.⁴ Despite some optimistically set deadlines in the Annex, a year after its acceptance, the implementation of the Ohrid Agreement has yet to start.

The significant event of the year was marked by heightened tensions, stemming from the local elections held in northern Kosovo. The Serbian community's boycott resulted in Albanian mayors being elected with minimal votes, raising doubts about their legitimacy. Subsequent protests and the siege

3 Radio Free Europe, "Representatives of Serbs from northern Kosovo are leaving the institutions", November 5, 2022, available at: <https://www.slobodnaevropa.org/a/32116016.html>.

4 Statement available at: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-press-remarks-high-representative-josep-borrell-after-ohrid-meeting_en.

of municipal buildings in the north by local Serbs ensued.⁵ The situation escalated on May 29, 2023, when Serbs protesting in Zvečan clashed with members of the NATO military mission in Kosovo (KFOR). Approximately 90 KFOR soldiers were injured, some seriously and others lightly, along with around a dozen Serbs involved in the conflicts. In response, the European Union urged Pristina to urgently de-escalate the situation by granting access to municipal buildings in the north. However, as the Government of Kosovo continued to disregard these requests, the EU implemented punitive measures. This included temporarily suspending work on the Stabilization and Association Agreement by the end of June. Additionally, Kosovo's participation in high-level events and bilateral visits was suspended.⁶

On September 24, 2023, one of the most dangerous security incidents occurred in Banjska, located in the northern region of Kosovo. Armed groups, led by Milan Radojičić, a leader of the Serbian List, clashed with the Kosovo police in the village of Banjska, part of the municipality of Zvečan. The confrontation resulted in the death of a police sergeant. Subsequently, an all-day exchange of fire ensued between the armed group, which had barricaded itself inside the Banjska monastery, and the police. During this exchange, three attackers of Serbian nationality were killed.⁷ Serbia did not take the responsibility for the attack, yet it maintained its army on standby for days at the borders of the administrative crossings toward Kosovo. Radojičić, along with most members of the armed group, fled to Serbia, where authorities refused extradition to Kosovo or any third party. Radojičić was detained and interrogated at the request of the Higher Public Prosecutor's Office in Belgrade, which claimed jurisdiction over the case.⁸ He pleaded not guilty and was soon released after the judge overseeing the preliminary proceedings of the High Court in Belgrade rejected the proposal from the High Public Prosecutor's Office in Belgrade to order custody, citing a low risk of escape.⁹ Currently, the status of the proceedings against him for conspiracy to commit criminal acts, illegal production, possession, carrying, and trafficking of firearms and explosive substances, as well as serious crimes against general security, remains unknown. Meanwhile, the decision on vehicle re-registration has been fully implemented without major incidents, despite the ongoing consequences of the events in Banjska.

As a consequence of the factors mentioned above, the newly reached agreement remains unimplemented, and there is a noticeable delay on the part of European Union institutions in compelling the parties to initiate dialogue and genuinely commit to normalizing relations. This commitment should be evident through enhanced accessibility for citizens to appeal to these institutions.

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- 5 Insajder, "Clash between Serbs and KFOR in Zvečan, dozens injured (photo)", May 29, 2023, available at: <https://insajder.net teme/na-seve-ru-kosova-i-metohije-napeto>
 - 6 Politico, "EU punitive measures against Kosovo: They have entered into force", July 1, 2023, available at: <https://politiko.al/english/kosova/masat-ndeshkuese-ndaj-kosoves-be-kane-hyre-ne-fuqi-i486520>
 - 7 Radio Free Europe, "A month after Banjska: What was said about the attack, those responsible, and the dialogue?", October 24, 2023, available at: <https://www.slobodnaevropa.org/a/kosovo-banjska-32652032.html>
 - 8 Radio Free Europe, "Milan Radoičić denied the commission of criminal acts in the prosecution", October 3, 2023, available at: <https://www.slobodnaevropa.org/a/radoicic-hapsenje-beograd-mup/32621167.html>
 - 9 N1, "Higher Court: Radoičić released from detention, forbidden to go to Kosovo", October 4, 2023, available at: <https://n1info.rs/vesti/milan-radoicic-pusten-iz-pritvora-zabranjen-mu-odlazak-na-kosovo/>

3. Access to justice through dialogue between Belgrade and Pristina

Building upon the previous section, the research's foundational premise is that a crucial aspect of normalization involves ensuring equal and non-discriminatory access to institutions for citizens residing in Kosovo and within the Serbian and Kosovo systems. This includes realizing and enjoying guaranteed rights and freedoms. Access to justice, as defined, encompasses the capacity of individuals to seek and obtain legal remedies through formal or informal judicial channels, adhering to human rights standards.¹⁰ In the subsequent section, we will outline all relevant agreements and obligations of both Belgrade and Pristina, broadly addressing access to justice. While primarily focusing on the judiciary, these obligations may extend to other relevant areas crucial for exercising rights within specific procedures.

- **The First Agreement of Principles Governing the Normalization of Relations (2013)**

Commonly referred to as the Brussels Agreement, it was signed on April 19, 2013. Among its 15 points, point number 10 refers to *the judiciary*:

*The judicial authorities will be integrated and operate within the Kosovo legal framework. The Court of Appeals in Pristina will establish a panel composed of a majority of Kosovo Serb judges to deal with all Kosovo Serb majority municipalities. A division of this Court of Appeals composed both of administrative staff and judges will sit permanently in northern Mitrovica (Mitrovica District Court). Each panel of the above division will be composed of a majority of Kosovo Serb judges. Appropriate judges will sit depending on the nature of the case.*¹¹

The specific article was enforced through the implementation of the Agreement on Justice.

- **The Agreement on Justice (2015)**

The First Agreement stipulated that the integration of judicial institutions should have been implemented by the end of 2013. However, the Agreement on Justice was reached in February 2015.¹² The agreement outlined general guidelines for integrating judges, prosecutors, and administrative staff into the Kosovo

¹⁰ UN Women, "Framework for Measuring Access to Justice including Specific Challenges Facing Women", 2016, available at: <https://rm.coe.int/framework-for-measuring-access-to-justice-including-specific-challenge/1680a876b9>, p. 7.

¹¹ [The First Agreement of Principles Governing the Normalization of Relations](#), Brussels, April 2013.

¹² The Agreement on Justice, February 9, 2015, available in Serbian at: <http://www.kim.gov.rs/p06.php>.

judicial system. Additionally, it included clauses regarding providing and adapting facilities.¹³

The Agreement on Justice has been fully implemented.¹⁴ The appointment of judges and prosecutors was carried out on October 24, 2017.¹⁵ In total, 40 judges and 13 prosecutors were integrated,¹⁶ as well as 145 employees who were employed in courts and prosecutor's offices until then. The first working day of the integrated judiciary was November 6, 2017, and the last was November 7, 2022, when judges, prosecutors and administrative staff of Serbian nationality left the judicial institutions.

As for related agreements considered technical and having a significant impact on access to justice, the most frequently mentioned ones include the Agreement on Registry Books, the Agreement on Cadastral Records, and the Agreement on University Diplomas.

- **The Agreement on Civil Registry Books (2011)**

The agreement was reached as part of the technical dialogue on July 2, 2011. As most of the registry books from Kosovo were either destroyed or transferred to Serbia, it became necessary to establish a reliable civil registry in Kosovo to enhance citizen access and improve their quality of life.

The agreement has been fully implemented. The certification center was located in Niš, Serbia, and the process included staff training, transportation of original registers from different municipalities to Niš and back, as well as digitization.¹⁷ In 2012, Kosovo adopted the Administrative Instruction on the use of certified copies of original civil status registers.¹⁸

All documentation, including religious books, birth, and marriage registers, was printed and verified until March 2014. At that time, Serbia returned 12,036 copies of scanned registers.¹⁹ The

13 See Table 1.

14 For details and minor variations see: Report No. 3 "Integration of Judiciary in the Judicial System of Kosovo in the Context of European Integration and the Dialogue between Belgrade and Pristina", Jovana Spremo and Dragiša Čalić, Lawyers' Committee for Human Rights – YUCOM, Belgrade, July 2022.

15 Office for the Coordination of Affairs in the Process of Negotiation with the Provisional Institutions of Self-Government in Pristina, "[Progress Report on the Dialogue between Belgrade and Pristina, October 2017](#)", Belgrade, 2017.

16 Various reports provide differing figures for the integration of judiciary representatives, with the count of integrated judges ranging from 40 to 44, and prosecutors from 12 to 14.

17 More at: <https://dialogue-info.com/sr/maticne-knjige/>.

18 Government of the RKS, *Administrative Instruction (Mol) no. 01/2015 on the use of certified copies of the basic original civil status registers of Kosovo*, which were taken away by the former Serbian government before June 1999, available at: <https://konsultimet.rks-gov.net/Storage/Consultations/09-12-00-08112018/Final-SR-EN-Projekt%20Udhezimi%20Administrativ%20-%202023.10.2018.docx>.

19 More at: <https://dialogue-info.com/sr/maticne-knjige/>.

original registers are still located in municipalities within the territory of Serbia. Each municipality in the territory of AP Kosovo and Metohija has a specific registry office in cities within central Serbia.²⁰

- **The Agreement on Cadastral Records (2011)**

The Agreement was concluded as part of the technical dialogue on September 2, 2011. Its purpose was to establish reliable cadastral records for the territory of Kosovo. After 1999, many of Kosovo's records from the period 1983-1999 were destroyed, lost, or transferred to Serbia.²¹ This resulted in numerous property disputes that could not be resolved. To address this issue, UNMIK established a cadastral information system, which also encountered problems related to records.

The Agreement on the Cadastral Records remains completely unimplemented. Belgrade was obligated to scan the original cadastral records from the period before 1999, which were moved from Kosovo, and deliver copies to the EU Special Representative. Meanwhile, Pristina was supposed to establish an expert agency tasked with comparing scanned copies of private property, private commercial property, and private church property from before 1999 with the reconstructed Kosovo cadastre.²² The process of digitization of cadastral records in Serbia was completed in March 2016. The first package of digitized copies was handed over to the EU High Representative in Pristina on January 24, 2014. Additionally, cadastral documentation for the municipality of Suva Reka was handed over to the Kosovo side in January 2012. However, in June 2016, Kosovo adopted the Law on the Establishment of the Agency for Property Comparison and Verification (KPCVA).²³ Serbia pointed out that this law contradicts the agreement reached because the decision on property is entrusted to bodies not provided for in the agreement, and it refused to hand over the remaining cadastral records. The cadastral records for AP Kosovo and Metohija are located in Kruševac.

- **The Agreement on University Diplomas (2011)**

The Agreement was reached as part of the technical dialogue on November 21, 2011. Its purpose was to facilitate the integration and employment of citizens who graduate from universities in either the Serbian or Kosovo education system (the other system).

20 In accordance with the Law on Civil Registry Books, the tasks of keeping registers and solving first-level administrative proceedings in the area of registers for the Autonomous Province of Kosovo and Metohija are entrusted to: the city of Niš for the city of Pristina and the municipalities: Podujevo, Glogovac, Obilić, Lipljan and Kosovo Polje; the city of Kragujevac for the municipalities: Peć, Istok and Klina; the city of Kraljevo for the municipalities: Kosovska Mitrovica, Srbica, Zubin Potok, Vučitrn, Zvečan and Leposavić; the town of Kruševac for the municipalities: Prizren, Orahovac, Suva Reka and Gora; the town of Jagodina for the municipalities: Đakovica and Dečani; the city of Vranje for the municipalities: Gnjilane, Vitina, Kosovska Kamenica and Novo Brdo; to the town of Leskovac for the municipalities: Uroševac, Kačanik, Štimlje and Štrpce.

21 More at: <https://normalizacija.rs/sporazum-o-katastru/>

22 Ibid.

23 The Law no. 05/L-010 <http://old.kuvendikosoves.org/common/docs/ljgjet/05-L-010%20s.pdf>

Since limited progress was made in the degree recognition process, the agreement was revised in 2016.²⁴ Despite these revisions, numerous difficulties persist in this process, leading to the conclusion that the recognition of diplomas has not been fully achieved. According to the latest available data from the Human Rights Committee from Bujanovac, a total of 374 diplomas from Kosovo universities were recognized in the Republic of Serbia. Additionally, in 2014, the Constitutional Court ruled that the agreement was incompatible with the Constitution of the RS.²⁵

In 2015, the Ministry of Education of Kosovo and the University of Kosovska Mitrovica reached an Agreement on the verification of diplomas issued by this university. Subsequently, Regulation No. 21/2015 was enacted by the Government of Kosovo, enabling, for the first time since the war, the confirmation and recognition of diplomas issued by the only higher education institution operating in the Serbian language in Kosovo. This allowed these diplomas to be considered in employment procedures across all public institutions in Kosovo.²⁶ Although the verification procedure is a beneficial mechanism, there was a break in the verification from February 2021 to September 2023 due to the lack of proposed members for the Commission. Since then, the diploma verification procedure has resumed, with the stipulation that only the university diploma is requested, and the graduation certificate is not considered valid.²⁷

- **The Agreement on the Path to Normalization between Kosovo and Serbia (2023)**

After a long break and several crisis situations, negotiators from Belgrade and Pristina reached an agreement on a new Agreement on the Path to Normalization between Kosovo and Serbia on February 27, 2023. The parties stated their aim to preserve peace, overcome the legacy of the past, and create conditions for mutual cooperation for the benefit of the people. Accordingly, perhaps the most important article of the Agreement is Article 1, which reads:

*The parties will mutually cultivate normal, good-neighborly relations founded on principles of equal rights. They will also reciprocally acknowledge each other's documents and national symbols, encompassing passports, diplomas, license plates, and customs stamps.*²⁸

This article does not refer only to personal documents, but also to all documents containing national symbols, indicating its inclusion of extracts from registers, cadastres, as well as all relevant documents and decisions of judicial institutions. Subsequently, on March 18, 2023, in Ohrid, the parties accepted the Annex for the implementation of the Agreement on the Path to Normalization between Kosovo and Serbia.

24 More at: <https://normalizacija.rs/sporazum-o-uzajamnom-priznavanju-univerzitetskih-diploma/>

25 More at: <https://dialogue-info.com/sr/priznavanje-diploma/>

26 European Center for Minority Issues, „ Education in the Serbian language and verification of diplomas in Kosovo”, Pristina, 2018, p. 5.

27 According to the latest data from the Faculty of Law at the University of Kosovska Mitrovica, 25 out of 171 diploma requests from lawyers were verified between September 2023 and March 2024

28 Belgrade-Pristina Dialogue: Agreement on the Path to Normalisation between Kosovo and Serbia, February 27, 2023, available at: https://www.eeas.europa.eu/eeas/belgrade-pristina-dialogue-agreement-path-normalisation-between-kosovo-and-serbia_en.

4. Obligations of Serbia arising from Chapter 35

In Serbia's negotiation process, Chapter 35 serves as a platform for addressing issues that do not fit into other negotiation chapters or arise after the temporary closure of a chapter. It also involves monitoring the dialogue between Belgrade and Pristina. This includes overseeing the implementation and impacts of agreements such as those on the *judiciary, civil registry books, cadastre, and university diplomas*. These monitoring efforts are integral to the normalization of relations between Belgrade and Pristina and involve specific criteria to ensure full implementation.

With *the new EU enlargement methodology*, Chapter 35 has been kept separate from the six clusters. This indicates that its content and progress in those areas will continue to be monitored in a similar manner as before.²⁹ *The document from June 2021 regarding the revised enlargement methodology for negotiations with Montenegro and Serbia* states that Chapter 35 will follow Serbia's negotiating framework. It includes a provision for suspending negotiations if there's insufficient progress in chapters 23, 24, and 35. This suspension mechanism allows not only for pausing negotiations but also for potentially reversing progress made.³⁰

In respect of the obligations of Serbia within Chapter 35 that refers to judiciary, European Union Common Position, Chapter 35 states "Serbia should ensure that it completes its part of the work on implementation of agreements, (...), as well as the other elements of the First Agreement of April 2013 (police, justice, civil protection)".³¹ The following interim benchmarks are listed:

1. Serbia continues to engage constructively in reaching an agreement on the judicial support staff and the premises.
2. Serbia confirms the end of tenure for all its to-be integrated judicial personnel.
3. Serbia enacts a special legislation with regard to Serbian judicial institution in Kosovo as foreseen in the Serbian Law on seats and territorial jurisdictions of Courts and Prosecutors Offices.
4. Serbia provides quarterly information on the payment of pension's benefits for the integrated judicial personnel to the Kosovo judicial and prosecutorial councils, as appropriate.

Based on the monitoring conducted thus far, Serbia has met one interim benchmark (No. 2) fully, partially met one (No. 1), and has not fulfilled two benchmarks (No. 3 and 4).

In relation to the Agreement on Civil Registry Books and the Agreement on Cadastral Records, the obligations for their fulfillment are not explicitly outlined in the benchmarks for

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29 European Commission, *Enhancing the accession process – A credible EU perspective for the Western Balkans*, February 2, 2020, available at: https://ec.europa.eu/neighbourhood-enlargement/enhancing-accession-process-credible-eu-perspective-western-balkans_en, p.6.

30 <https://data.consilium.europa.eu/doc/document/ST-8536-2021-INIT/en/pdf>, p 10.

31 European Commission, "EU Common Position Chapter 35, November 30, 2015", Brussels, 2015, pp. 2-3.

Chapter 35. Additionally, concerning the Agreement on Diplomas there is only one transitional benchmark specified:

1. Serbia, along with Kosovo has pledged to engage in a consistent and constructive process aimed at achieving the outcomes outlined in the 2011 Agreement.

Based on the available information, there hasn't been significant progress noted in meeting this benchmark regarding the fulfillment of obligations outlined in the agreement.³² The monitoring of the criteria outlined in Chapter 35 lacks transparency for the public, as there is no accessible document indicating the specific extent of progress. The reports issued by the European Commission concerning the overall progress within this chapter offer only general statements, rather than detailed insights into the fulfillment of individual benchmarks.

The Annex for the implementation of the Agreement on the Path to Normalization between Kosovo and Serbia reaffirms the commitment of both parties to implement all the articles of the Agreement and the Annex. They agree to fulfill their respective obligations arising from the Agreement and the Annex, which will become integral parts of the accession process to the EU for both Kosovo and Serbia.³³ In terms of Belgrade's responsibilities, it is specified that the EU mediator will initiate the process of amending the benchmarks outlined in Chapter 35 to align with Serbia's new obligations. Furthermore, Kosovo and Serbia have agreed that any failure to fulfill their obligations from the Agreement, Annex, or previously established dialogue agreements could directly impact their EU accession processes and the financial assistance they receive from the EU.

On December 12, 2023, the Council of Ministers of the European Union adopted conclusions on enlargement. These conclusions urge the European Commission to revise the benchmarks for Chapter 35 in Serbia's accession negotiations no later than January 2024. This revision entails incorporating the obligations from the agreement on the path to the normalization of relations between Serbia and Kosovo into Serbia's negotiation framework.³⁴ On February 2, 2024, the European Commission has prepared and submitted a proposal to the EU Council regarding amendments and additions to Serbia's negotiating framework. The proposal is expected to include guidelines for altering the negotiating position for Chapter 35, particularly to formalize the implementation of the agreement and annex from Ohrid. As of the drafting of this report, neither the European Commission's proposal nor any commentary from the EU Council has been made public.

32 See previous chapter.

33 Available at: <https://www.kim.gov.rs/doc/pregovaracki-proces/Aneks%20sa%20Ohrida%202023.pdf>

34 Council of European Union, "Council conclusions on Enlargement", December 12, 2023, available at: <https://data.consilium.europa.eu/doc/document/ST-16707-2023-INIT/en/pdf>.

5. Access to Justice – Current situation and challenges

In the following section, we present updated data on the challenges faced by citizens of Kosovo and individuals from Serbia with unresolved legal issues related to that territory when approaching relevant judicial institutions. We will provide insight into the situation in northern Kosovo one year after the Serbs had left the institutions of the Republic of Kosovo, along with unresolved issues related to unimplemented agreements. Additionally, we will offer information about ongoing proceedings before the Basic Court in Leskovac, focusing on the period from the beginning of 2023 to February 2024.

5.1. Consequences of Serbs leaving the Judicial Institutions of the Kosovo System

As previously highlighted, the most significant consequences for access to justice, particularly for members of the Serbian community in Kosovo, arose from the departure of judges, prosecutors, police officers, and administrative staff from the institutions of the Republic of Kosovo. It is worth recalling that, in accordance with the Agreement on the Judiciary, judges, prosecutors, and administrative staff who previously served in the Serbian judicial system were appointed and carried out their duties within their respective jurisdictions in the Kosovo legal system from November 6, 2017, to November 7, 2022.³⁵ During that five-year period, access to justice for members of the Serbian community, while not fully comprehensive, was facilitated by the ability to engage with judicial officials who spoke their language and whom they trusted to. Additionally, they could seek recourse from institutions located in their immediate vicinity. This arrangement contributed to maintaining access to justice at a satisfactory level.

A total of 20 judges and 110 administrative staff members from the Basic Court in Mitrovica and its branches in Leposavić and Zubin Potok, along with 4 judges from the Department of the Court of Appeal in Mitrovica, 10 public prosecutors, and 22 administrative staff members from the Basic Prosecutor's Office in Mitrovica, have resigned from their positions.³⁶ The collective resignation on behalf of Serbs employed in the judiciary and prosecution was submitted by the former president of the Department of the Court of Appeal in Mitrovica. On the same day, the Council requested the presidents of the courts and the general director of the Secretariat of the Kosovo Judicial Council (KJC) to evaluate the situation. As competent authorities within their

³⁵ For more information on the implementation of the Justice Agreement, see: Jovana Spremo and Dragiša Čalić, Report No. 3 “Integration of Judiciary in the Judicial System of Kosovo in the Context of European Integration and the Dialogue between Belgrade and Pristina”, Lawyers’ Committee for Human Rights – YUCOM, Belgrade, July 2022.

³⁶ OSCE Mission in Kosovo, “THE MITROVIĆE/MITROVICA JUSTICE SYSTEM Status before and after the mass resignation of Kosovo Serb judges, prosecutors, and administrative staff”, February 2024, pp. 14-15.

respective courts, they were tasked with taking all necessary measures and submitting proposals to the Council to ensure the optimal functioning of the courts' operations.³⁷ At the same meeting, it was noted that a decision regarding the situation would be postponed to a later date.

As early as November 9, 2022, the vice president of the Basic Court in Mitrovica submitted a temporary action plan to the Judicial Council. This plan aimed to ensure continuity in the court's operations and those of its branches. It outlined specific measures for reorganizing and optimizing the functionality of departments within the Basic Court in Mitrovica. Additionally, the plan included steps for identifying cases that may need to be transferred to other courts, as well as reorganizing both professional and administrative staff.³⁸ All Albanian judges were assigned the responsibility of prioritizing cases involving custody, criminal and civil cases related to domestic violence, as well as cases at risk of exceeding the statute of limitations. According to local civil society organizations, the judiciary in the Mitrovica region has regressed to a state reminiscent of the period from March 2008 until the conclusion of integration, characterized by limited capacity and functionality.³⁹

In July 2023, following the implementation of appropriate disciplinary procedures, the Kosovo Judicial Council (KJC) issued decisions imposing disciplinary sanctions against three Kosovo Serb judges who had resigned in November 2022.⁴⁰ Based on disciplinary decisions, the council imposed a disciplinary sanction and recommended dismissal pursuant to Article 7 (1) of *Law no. 06/L-057, on the disciplinary responsibility of judges and prosecutors*,⁴¹ for two Kosovo Serb judges. Additionally, one judge received a public written warning.⁴²

37 Judicial Council of Kosovo, "The Judicial Council of Kosovo met, and the current situation in the judicial system was discussed.", November 7, 2022, available at: <https://www.gjyqesori-rks.org/2022/11/07/sas-tao-se-sudski-savet-kosova-diskutovala-se-trenutna-situaciju-u-suds-kom-sistemu/?lang=sr>.

38 OSCE Mission in Kosovo, "THE MITROVIČE/MITROVICA JUSTICE SYSTEM Status before and after the mass resignation of Kosovo Serb judges, prosecutors, and administrative staff", February 2024, p. 13.

39 Center for the Advocacy of Democratic Culture (ACDC), "Assessment of the Status of the Judiciary and the Police in Northern Kosovo: Impact and Challenges After the Resignations of Kosovo Serbs", September 2023, available at: https://acdc-kosovo.org/publikacije/pub_1695028808.pdf, p. 19.

40 Ibid, p. 16.

41 Law No. 06/L-057, "On Disciplinary Responsibility of Judges and Prosecutors", Official Gazette of the Republic of Kosovo, No. 23.

42 In October 2023, the President of the Republic of Kosovo signed a decree for the dismissal of Serbian judges, including the former President of the Basic Court in Mitrovica, Ljiljana Stevanović, and the former President of the Department of the Court of Appeal in Mitrovica, Nikola Kabašić. This action was taken "due to participation in the political organization, the Serbian List", specifically their attendance at meetings with officials from Belgrade. More available at: <https://www.kosovo-online.com/vesti/politika/osmani-potpisala-ukaz-o-razresenju-srpskih-sudija-ljiljane-stevanovic-i-nikole>.

As of the drafting of this report, decisions regarding the resignations of other judges, prosecutors, and corresponding administrative staff had not yet been reached.

The Basic Court in Mitrovica is currently facing a large number of pending cases, with a noticeable trend of decreasing the rate of resolution for newly received cases. Furthermore, there has been an increasing number of pending cases from the beginning of 2022 to the first half of 2023.⁴³ The OSCE Mission in Kosovo assesses that the collective resignation of Serbs has directly impacted the capacity of the Basic Court in Mitrovica to efficiently and promptly resolve cases.

It can be said that Serbs from the northern region of Kosovo generally do not address the courts operating within the Kosovo judicial system, except in exceedingly rare emergency situations. Interlocutors have noted that cases previously assigned to Serbian judges are presently not being processed, except when a party specifically requests a new judge. In such instances, the request is promptly accommodated, often resulting in the case being assigned to an Albanian judge proficient in the Serbian language.⁴⁴ Currently, the Basic Court in Mitrovica employs 4 interpreters and 5 professional associates, all of whom are of Albanian nationality.

Interlocutors also highlight that a significant part, likely exceeding 30%, of judicial officers, aside from those approaching retirement age, do not intend to rejoin the Kosovo judicial system. Those expressing a desire to return note a significant hurdle: their lack of legal practice for over a year, a dynamic field where continuous engagement is vital for professional growth. This absence from legal practice may lead to missed opportunities for skill enhancement, ultimately affecting the quality of their future work. Presently, all judges and prosecutors under special contracts for community contribution receive their full salaries within the Kosovo system.⁴⁵ This situation has the potential to create a discriminatory dynamic for other representatives of the judiciary from the Republic of Serbia, who receive notably lower salaries compared to their counterparts who previously worked in the Kosovo system and continue to receive the same amount.

43 OSCE Mission in Kosovo, “THE MITROVICÉ/MITROVICA JUSTICE SYSTEM Status before and after the mass resignation of Kosovo Serb judges, prosecutors, and administrative staff”, February 2024, p.21.

44 The information obtained from interlocutors who participated in the focus group organized in Mitrovica on March 14, 2024.

45 Ibid.

5.2. The unresolved issue of the effect of final judgments and decisions made by “parallel institutions”

The enforcement of legally binding judgments that have become enforceable is hindered by the authorities of the Republic of Kosovo’s failure to recognize their significance. This issue persists regardless of whether Serbs currently work in Kosovo’s institutions or not. It is a problem linked to the mechanism of mutual recognition of documents outlined in the Ohrid Agreement, and its resolution will depend on and be closely related to that mechanism.

To revisit the matter, it is worth noting that to tackle the challenges surrounding the integration of the judiciary during negotiations between Belgrade and Pristina, a significant agreement was reached back in 2013. Following the signing of the First Agreement, both parties agreed that the validity of these judgments before all Kosovo authorities would be addressed through a special procedure overseen by a special commission, as detailed in the document titled “Recognition of Court Decisions.”⁴⁶ In *the Conclusions reached by the EU mediator on the judiciary*, it was established that the Judicial Council of Kosovo would officially notify all relevant authorities in Kosovo by December 9, 2016, regarding *the Conclusions on the document concerning the validity appeal*, which was issued in July 2013.⁴⁷ The document on the recognition of court decisions lacks specificity regarding which types of decisions are subject to review by a special commission. Consequently, controversy persists regarding the scope of decisions encompassed by the terms “rulings” and “all competent authorities”, and this issue remains unresolved.⁴⁸ The issue concerns a little over 2000 decisions, with nearly 90% of them comprising cases related to probate, inheritance, divorce, and similar matters.⁴⁹

The Commission, established in February 2019 and chaired by the President of the Court of Appeal, has convened only twice, yet no progress has been made on recognition.⁵⁰ The most recent European Commission’s *Report on Kosovo** in 2021 has explicitly identified as an issue the accessibility of judgments and decisions rendered by Serbian courts in Kosovo between 1999 and the integration of Serbian judges in October 2017. The report anticipates a separate agreement or arrangement concerning the recognition of such judgments and decisions by Kosovo*.⁵¹

46 The document titled “Validity Appeal” pertains to decisions made by parallel Serbian institutions that will be reviewed by a special commission. This document is not publicly available; the information was obtained through interviews.

47 [The Conclusions of the EU Ombudsman on Justice](#), dated November 30, 2016, noted that the “Validity Appeal” document was not accessible to researchers.

48 More is available in the Report No. 3 “Integration of Judiciary in the Judicial System of Kosovo in the Context of European Integration and the Dialogue between Belgrade and Pristina”, Jovana Spremo and Dragiša Čalić, Lawyers’ Committee for Human Rights – YUCOM, Belgrade, July 2022.

49 The information obtained from interlocutors who participated in the focus group organized in Mitrovica on March 14, 2024.

50 Ibid.

51 Report 2021 Kosovo*, European Commission, October 19, 2021, p. 19.

Undoubtedly, this issue is one of the priority matters related to mutual recognition of documents that the parties in the dialogue will need to address in the forthcoming period.

5.3. Jurisdiction to resolve and preserve old cases - the actions of the Serbian judiciary in cases related to the AP of Kosovo and Metohija

Despite what was agreed within the framework of the Brussels dialogue⁵², based on the Decision of the Court of Appeal in Niš from March 5, 2018,⁵³ on April 17, 2018, *the Agreement on the Implementation of the Decision on the Temporary Transfer of Jurisdiction* was signed (further: the Agreement on the Temporary Transfer of Jurisdiction), which made official the temporary transfer of local jurisdiction from the Basic Court in Kosovska Mitrovica and the High Court in Kosovska Mitrovica to the Basic and High Court in Leskovac.

The decision to transfer jurisdiction to the Basic and High Courts in Leskovac was made due to the “impossibility of these courts to act”, as stipulated in Article 24(2) of *the Law on the Organization of Courts*.⁵⁴ Specifically, the Law on the Seats and Areas of Courts and Public Prosecutors’ Offices in the Republic of Serbia mandated the enactment of a special law concerning courts and public prosecutors’ offices in the territory of AP Kosovo and Metohija.⁵⁵ Until such a law was passed by December 31, 2013, these courts were to continue operating and exercising legal competences in this territory. However, since no such law was enacted, an alternative formal solution had to be found for the jurisdiction of these cases, as they were not referred to Kosovo institutions.⁵⁶

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- 52 More is available in the Report No. 3 “Integration of Judiciary in the Judicial System of Kosovo in the Context of European Integration and the Dialogue between Belgrade and Pristina”, Jovana Spremo and Dragiša Čalić, Lawyers’ Committee for Human Rights – YUCOM, Belgrade, July 2022.
- 53 The Decision on Temporary Transfer of Jurisdiction Su I-1-23/18, Court of Appeal in Niš, April 16, 2018.
- 54 Ibid.
- 55 Article 12, The Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices., “Official Gazette of the Republic of Serbia”, no. 101/2013.
- 56 After the conclusion of the Brussels Agreement, the High Council of the Judiciary, in its June 2013 decision, anticipated that the courts in Kosovska Mitrovica would handle initiated cases by July 15, 2013, and render decisions by September 1 of the same year. The Decision of the HJC also specifies that acts initiating cases after July 15, 2013, will be recorded and stored by these courts for later submission and resolution within the framework of the judicial authorities established in accordance with the Brussels Agreement, including basic courts in municipalities with a majority Serbian population. These cases will be stored “in a manner enabling compliance with the deadlines for case submission to judicial authorities in accordance with the Agreement, and in cooperation with EULEX, as defined by a subsequent agreement”. Urgent criminal cases are scheduled to be submitted to EULEX for resolution, while urgent civil cases are expected to be resolved by these courts by September, aligning with the anticipated real integration.

The Decision of the Appellate Court in Niš⁵⁷ dated March 5, 2018, highlighted the absence of judicial institutions established in line with the Brussels Agreement, a position also supported by the Supreme Court of Cassation.⁵⁸ Due to this absence, the Appellate Court emphasized the necessity of temporarily transferring jurisdiction to the courts in Leskovac to resolve these cases. The decision noted a consistent violation of basic human rights in the area, stating that “(citizens) were unable to initiate or continue court proceedings, enforce legally binding court decisions, or have their cases heard within a reasonable time frame, thus infringing upon their right to a fair trial”.⁵⁹ It is stressed the importance of transferring jurisdiction to a functional court within the Serbian judicial system to safeguard citizens’ rights, including property, inheritance, employment, marriage, and other legal matters.

Following this decision, the aforementioned *Agreement on the Temporary Transfer of Jurisdiction* was established.⁶⁰ This agreement outlines various procedures, including those pertaining to inheritance and other non-litigation civil and enforcement cases. It is important to note that while the agreement covers civil and enforcement cases, criminal cases, except for those involving the enforcement of criminal sanctions, are not subject to the transfer of jurisdiction.

5.3.1. Updated data of the Basic Court in Leskovac

The Basic Court in Leskovac received a total of 5018 cases for resolution.⁶¹ Among these, the majority were in executive proceedings (3466), followed by civil proceedings (927), probate proceedings (616), with the remaining cases categorized as non-litigation matters.⁶²

The Basic Court in Leskovac does not handle criminal cases in accordance with the Agreement on the Temporary Transfer of Jurisdiction. However, there are instances where the court receives private criminal lawsuits involving parties residing in the territory of AP KiM (Autonomous Province of Kosovo and Metohija). In such cases, the court declares itself factually and territorially incompetent,

57 The Decision on Temporary Transfer of Jurisdiction Su I-1-23/18, Court of Appeal in Niš, April 16, 2018.

58 In the Decision of the Appellate Court in Niš, it is mentioned that the position was conveyed in a letter from the Supreme Court of Cassation, referenced as Kd 155/13, dated December 4, 2013.

59 The Decision on Temporary Transfer of Jurisdiction Su I-1-23/18, Court of Appeal in Niš, April 16, 2018.

60 The Agreement on the Implementation of the Decision on the Temporary Transfer of Jurisdiction was signed on April 17, 2018, by several officials including the president of the Court of Appeal in Niš, the president of the High Court in Leskovac, the president of the Basic Court in Leskovac, the former president of the High Court in Kosovska Mitrovica, the former president of the Basic Court in Kosovska Mitrovica, and the state secretary of the Ministry of Justice.

61 In the previous reporting cycle, the number of cases stood at 5,008. However, according to the Basic Court in Leskovac, an additional 56 cases were transferred from the archives of the old Basic Court in Kosovska Mitrovica between 2020 and the visit on May 20, 2022, either due to the need for specific files or at the request of the parties.

62 See Table 5 for more details.

citing the decision of the Appellate Court in Niš. If private prosecutors appeal against this decision, the Higher Court in Leskovac typically confirms the initial decision of incompetence at the first instance.

The court assumed jurisdiction over some cases involving the enforcement of criminal sanctions. Several Serbian courts handled cases in which convicted individuals were residents of the territory of AP of Kosovo and Metohija. Since no criminal sanctions were imposed on these individuals due to their unavailability to the authorities, the courts transferred these pending cases to the Basic Court in Leskovac for further proceedings. On July 3, 2018, the Supreme (Cassation) Court notified the presidents of the basic courts that, in the future, the basic courts responsible for rendering the first-instance decision would also handle cases involving the execution of criminal sanctions, given the Basic Court's inability to act in Mitrovica.⁶³ If the first-instance decision was made by a higher court, the case would be managed by the basic court in the jurisdiction of that court's seat.⁶⁴ To prevent these cases from becoming statute-barred, the Basic Court in Leskovac suspended the relative statute of limitations through its actions. However, cooperation from other courts is necessary in cases where the statute of limitations has already expired or expired before receiving the case, as the decision on the statute of limitations is made by the court that issued the judgment. The Basic Court in Leskovac issued summonses to enforce criminal sanctions, and if the party failed to respond, warrants were issued.

The court maintains direct cooperation with the archives of the former court in Kosovska Mitrovica. This is especially important in the context of the need to obtain a certificate from the court archives that no criminal proceedings are being conducted before the court for the area of Kosovo. If there is no information about the conduct of the proceedings from the archive data, the Basic Court in Leskovac issues a decision not to conduct criminal proceedings. However, the issue arises when there are criminal cases that were started before the integration of the judiciary and ended before the integrated Basic Court in Mitrovica. Given that the decisions of that court are not accepted by the state authorities of Serbia, persons whose proceedings have been completed before a court in Kosovo cannot obtain such a certificate. In such cases, they have to wait for the statute of limitations, which can be up to 20 years.

According to Table 5, a total of 194 cases were recorded in general litigation, with 4 remaining unresolved. Most of these new cases involve requests for monetary compensation. Overall, there has been a decrease in the number of cases in general litigation, including those originating from Kosovo. Despite the lack of clarity in the Agreement regarding the transfer of jurisdiction for real estate cases, the court has received submissions related to this matter. Proceedings often experience interruptions, particularly in cases involving immovable property such as ownership or servitude disputes. Challenges in the procedure arise from the difficulty in conducting expert evidence, but these are partially mitigated by witness statements. Additionally, parties frequently encounter obstacles in obtaining confirmation of the finality of judgments from the Kosovo system. The absence of public documents and registers recognized by the Republic of Kosovo complicates the process of proving claims. However, delivery of decisions is not problematic, and once a decision is rendered, it is either posted on the noticeboard or a temporary representative is appointed.

The Basic Court in Leskovac handles both old and new **family law cases**. Out of 93 cases taken over, 90 were resolved by February 2024.⁶⁵ These cases often involve situations where it's

⁶³ Supreme Court of Cassation, Decision Su VIII 224/18-1, July 3, 2018.

⁶⁴ Ibid.

⁶⁵ This indicates that there have been no settlements of old cases in family matters for the past two years.

necessary to address the legal status simultaneously in both Leskovac and courts in Kosovo. This scenario frequently occurs when one spouse resides in Kosovo and the other in Serbia.⁶⁶ However, due to the lack of recognition of judgments from the Republic of Kosovo by the Republic of Serbia, spouses living in Serbia cannot enforce their rights based on such judgments. The procedure for recognizing court decisions is unachivable, as Serbia does not recognize Kosovo's insignia. Having two conflicting judgments on the same matter goes against fundamental legal principles.

The situation in Serbia, where judgments and certificates of alimony payments issued by Kosovo authorities are not recognized, often results in parents having to pay double amounts when relations with the other parent, who receives alimony, are strained. This occurs under the threat of criminal liability. In several cases, the Court of Appeal in Niš has overturned previous decisions upon discovering that alimony had already been paid. Challenges in executing court decisions regulating the rights and obligations of Serbs from the north of Kosovo are frequently resolved through agreements between the parties. Social work centers operating in the Serbian system provide reports, but reciprocity in claims is lacking in most cases, and even when present, they are often unenforceable. Common issues include cases on child custody and support. When one parent resides in Kosovo and the other in Serbia, reports from both centers are required. However, difficulties arise when a parent in Serbia fails to register a new place of residence and is unavailable to prepare a report from the Center for Social Work in Kosovo. Property matters are addressed through a specialized procedure for the division of marital property.

The Basic Court in Leskovac has resolved a total of 635 **probate cases** since the temporary transfer of jurisdiction, with 615 cases already concluded. These cases arise from the Agreement on the Temporary Transfer of Jurisdiction, which mandates the court to handle new cases originating from all over Serbia when citizens from Kosovo, even after moving to Serbia, maintain their residency address in Kosovo. Unlike probate cases elsewhere in Serbia, which are typically handled by notaries public, all probate proceedings in this jurisdiction are conducted before the court and are initiated at the parties' request, not *ex officio*. Additionally, the ownership of real estate is established using a title deed instead of a real estate deed. However, common challenges persist, including parties' failure to respond to invitations and incomplete documentation, often unattainable due to difficulties in obtaining them, especially for citizens residing in Kosovo or internally displaced persons. Obtaining documents from Serbian authorities, particularly from registry offices and the cadastre, poses significant hurdles, as the cadastral service is centralized in Zvečan for four municipalities in northern Kosovo and in Kruševac for areas south of the Ibar River, while competent registry offices are dispersed across Serbia. This process is time-consuming and financially burdensome, particularly for parties with limited incomes. Inheritance cases involving testators residing in Kosovo further burden the court, as they are not entrusted to public notaries. Moreover, for estates located in Kosovo, citizens often initiate proceedings before Kosovo courts due to the challenges of implementing decisions from Serbia in that region. These cases underscore the consequences of the lack of implementation of the Agreement on Civil Registry Books and the Agreement on Cadastral Records.

There has been a noticeable decrease in the number of newly received cases in non-litigation matters, particularly probate cases, since the implementation of the Agreement on the Temporary Transfer of Jurisdiction. These cases often involve matters such as determining birth and death. Previously, citizens would present extracts from registry books issued by authorities in Kosovo for these procedures. However, since such documents were not recognized by the court, citizens now first undergo administrative proceedings before Serbian registry authorities to obtain Serbian documents, which the court does recognize. In addition to birth and death registrations, a

certain number of cases involve determining the level of education or the recognition of diplomas through non-litigation proceedings. These are initiated by citizens who either do not possess their diplomas or whose diplomas are not found in certain school or higher education institution databases. As a result, they are compelled to seek a determination of their education level through court proceedings.

In terms of **enforcement matters**, the court in Leskovac processed 3,466 cases, with only 4 cases remaining unresolved as of February 2024.⁶⁷ The primary challenge in this area lies in executions that are limited to immovable property.⁶⁸

In terms of **labor disputes**, the Basic Court in Leskovac received a total of 638 cases, out of which 637 were resolved as of February 2024. Throughout the implementation of the agreement, three judges have handled these cases, and it's notable that they endured the majority of the temporary transfer of jurisdiction from Kosovo, each taking on over 200 cases in addition to their regular workload. Currently, there hasn't been a significant influx of new cases from the Kosovo region. Of the cases transferred according to the agreement, only one remains pending. Overall, the management of the majority of cases has not posed significant problems compared to the previous reporting period. Initial difficulties primarily stemmed from outdated, incomplete documentation on faded papers within the cases themselves.

In these cases, judges are confronted with disputes initiated by individuals who are not actively employed.⁶⁹ The term "non-working person" refers to individuals who, not due to their own fault, but as a result of the situation stemming from the relationship between Belgrade and Pristina, remained formally employed but did not perform any work. Instead of receiving a salary, they were compensated with a fixed amount.⁷⁰ Often, in an effort to retain all professors/teachers despite a decrease in the number of students, employers reduce their workload, resulting in a corresponding reduction in their salary. This discrepancy with the terms of their employment contracts prompts them to initiate labor disputes.

There were also uncertainties regarding whether jubilee awards are granted to individuals not actively employed or solely to those who are employed, and whether actual work is required to qualify for the jubilee award. Additionally, there is uncertainty concerning the basis for calculating jubilee awards for individuals not engaged in work. Furthermore, a problem arises for employed individuals. Specifically, those on a fixed salary receive a 50% supplement based on a Government of the Republic of Serbia decree⁷¹. However, this supplement is calculated using a base figure lower than the actual salary, and even lower than the minimum wage in the Republic of Serbia.

67 No settlement of older family matters cases has occurred in the past two years.

68 The researchers were not able to re-interview the judges involved in this matter due to objective reasons.

69 In these cases, it is evident that a work contract exists, yet due to objective reasons, the work obligation could not be fulfilled.

70 In accordance with the Conclusion of the Government of the Republic of Serbia, compensation is paid in the amount of 8,960 dinars.

71 Conclusion No. 120-335/2007-14 of the Government of the Republic of Serbia, dated December 25, 2008.

Doubts also arise in cases where a party is represented by the head of the Provisional Authority.⁷² These leaders are politically elected individuals who may not necessarily possess a law school diploma; in fact, some may only have minimal high school qualifications. In certain instances, parties can be represented by the Attorney General's Office from the territory of Kosovo for specific municipalities.⁷³ However, due to a lack of capacity, representation by the attorney general, available in only a few municipalities, may be canceled.⁷⁴ In such scenarios, presidents of these bodies may authorize lawyers to represent them, particularly in complex cases. This raises the question of whether presidents of temporary authorities are indeed authorized to engage lawyers as representatives. According to the position of the Office for Kosovo and Metohija, the president of a temporary authority can issue a power of attorney on behalf of the municipality as a legal entity.⁷⁵

Legal proceedings against former public companies and institutions of the Republic of Serbia, which have since ceased to exist, remain unresolved. Judges note that in new cases brought before the court, proceedings typically proceed without significant obstacles. However, there are instances where institutions are unable to provide documentation due to objective reasons. In such cases, there is a departure from the standard practice where the failure of the defendant to submit required evidence is typically viewed in favor of the plaintiff.

The Basic Court in Leskovac has been remarkably successful in implementing the Agreement on the Temporary Transfer of Jurisdiction. Notably, the registry office lacks the capability to maintain a separate register for newly arrived cases from Kosovo, instead, they are assigned regular case numbers. Even five years after the temporary transfer of jurisdiction from the Mitrovica court to Leskovac, the Serbian community, primarily from the northern municipalities of Kosovo, continues to use the services of both the Kosovo and Serbian judicial systems. However, since November 2022, they predominantly address this court, as trust in the Kosovo court, particularly among members of the Serbian community, remains significantly diminished.

Contrary to expectations, there has been no significant increase in the flow of cases to the court, indicating a lack of alternative institutions for matters requiring execution within Kosovo's territory. Access to the Kosovo system proves to be challenging. While the court in Leskovac effectively resolves most citizens' issues within its jurisdiction, legal uncertainty persists. Particularly in family law and property, citizens still need to navigate between courts depending on where execution or implementation is required. Mutual recognition of documents, decisions, and judgments would greatly streamline procedures and undoubtedly reduce the legal uncertainty faced by citizens, especially those in northern Kosovo.

72 Decision regarding the establishment of a Provisional Authority in municipalities within the Autonomous Province of Kosovo and Metohija, as published in the Official Gazette of the RS, issue no. 31/2013.

73 According to the judges presiding over disputes in the Basic Court in Leskovac, city attorneys general with temporary authorities operate in Kosovska Mitrovica, Priština, and Leposavić.

74 For instance, the Municipality of Kosovo Polje is under the jurisdiction of the attorney general in Pristina. However, due to an overwhelming workload, the ombudsman may lack the capacity to adequately represent them.

75 Information obtained from interviews in Leskovac conducted in May 2022.

6. Approaches that the parties involved in the dialogue could apply to the mutual recognition of documents

The institutions of the Republic of Serbia do not acknowledge any documents featuring the coat of arms or seal of the Republic of Kosovo, given the absence of *de jure* recognition. Likewise, Kosovo institutions do not accept recent documents issued by Serbian institutions. This lack of mutual recognition poses a significant barrier to accessing justice. It primarily arises from parties' inability to submit all necessary documents to judicial authorities as evidence or identification, thereby limiting their capacity to fully protect their rights. Furthermore, the non-recognition of documents, such as university diplomas, presents a substantial hurdle to employment for both Serbs in Kosovo institutions and Albanians in Serbian institutions, particularly within judicial and law enforcement bodies, which are crucial for fostering community trust.

The resolution of issues between countries and territories worldwide varies, often reflecting diverse political and practical needs of the involved parties at a particular time.⁷⁶ Whether these solutions strictly adhere to international law is not always paramount, especially in politically complex situations where the primary objective should be to enhance access to justice for those living in legally precarious conditions. Thus, the question of strict adherence to international law may not be of crucial importance in such contexts.

Considering existing models and available options, we propose several methods that could potentially facilitate the practical implementation of Article 1 of the Ohrid Agreement, particularly regarding the mutual recognition of Kosovo documents within the Republic of Serbia.⁷⁷

Approach 1: Within the EU-mediated dialogue, governments could reach an agreement – either orally or in writing – to prepare instructions for individual ministries. Priority should be given to ministries such as the Ministry of State Administration and Local Administration, the Ministry of Construction, Transport and Infrastructure, the Ministry of Education, Science and Technological Development, the Ministry of Justice, the Ministry of the Interior, and the Ministry

⁷⁶ For instance, the Turkish-controlled region of Cyprus lacks international recognition as an independent country, except by Turkey and a few others. Consequently, diplomas issued by higher education institutions in that area, with the exception of those in Turkey, might not be universally recognized. Likewise, Taiwan is not internationally recognized as a sovereign state. Consequently, Taiwanese residents must obtain special documentation to travel to China, as entry into Chinese territory requires specific authorization.

⁷⁷ The models are not fully developed but serve as initial positions from which the parties in the dialogue could begin once the decision to start implementation is made.

of Labour, Employment, Veterans and Social Affairs. These instructions would *outline the process* for recognizing and accepting documents issued by Kosovo authorities and institutions within the scope of each ministry's responsibilities.

Taking the recognition/acceptance of Kosovo university diplomas in the Republic of Serbia as an example, the Ministry of Education, Science, and Technological Development would draft a general act to establish a commission for diploma recognition within the Ministry or at the Qualifications Agency. The specific procedure would be developed later, but based on practices for recognizing other diplomas, it would likely involve submitting the original diploma or a certified copy, completing a request form, attaching an authorized translation into Serbian, and possibly providing additional verifying documents. Once a document is recognized, it would remain valid indefinitely for use within the Republic of Serbia's system.

Approach 2: Official application of the principle of reciprocity regarding the recognition of documents could involve both governments or both parliaments adopting acts that mutually recognize documents from both entities, while adhering to the rules of reciprocity. This would entail following the same model used by one entity for the recognition of documents from the other.

This would involve recognition through practical application, whereby administrative and judicial authorities in the territory of the Republic of Serbia would accept extracts from registers, decisions of administrative authorities, real estate deeds, and other relevant documents. Similarly, the other side would reciprocate. Through this method, without the need for specific instructions, and based on the practices developed over time, the issue of document recognition would be comprehensively addressed.

Approach 3: A special mixed commission should be established within the European Union institutions that facilitate dialogue between Belgrade and Pristina. This commission's mandate would focus on mutual recognition of documents, as stipulated in the Agreement.

The Commission would receive documents, upon the party's request (which may also be in electronic form), whose recognition is disputed in one system. It would then examine and verify these documents, subsequently issuing a validity document that could be used in another system.

Approach 4: Utilizing the model outlined in the Hague Convention on the Recognition of Public Documents would simplify the recognition process. This convention establishes a simplified procedure for legalizing documents among its signatory parties. Since both parties have already signed the convention, adopting its model would facilitate mutual recognition of documents, even before formal legal recognition.

7. Conclusion and recommendations

Access to justice in Kosovo was not fully achievable even during the integration of the judiciary. The situation worsened with the departure of Serbs from institutional roles. Unresolved issues persist, such as the absence of public notaries or executors from the Serbian community. However, in the current situation, these issues are just one aspect of many legal gaps and oversights affecting citizens. Serbia, independently, in a legally unregulated framework concerning the locations and jurisdictions of courts and prosecutor's offices within the territory of the Autonomous Province of Kosovo and Metohija, transferred jurisdiction to courts in Leskovac concerning cases enforceable within Serbia but originating from Kosovo, a region it lacks *de facto* control over. This move, while addressing certain cases, has led to discriminatory treatment of judicial personnel compared to their counterparts integrated into Kosovo's judicial system.

Despite the conscientious and efficient work of both Kosovo courts and those in the Serbian system, the inability to mutually recognize and accept decisions and documents from either system results in adverse consequences for citizens. They are unable to fully exercise their rights without obtaining decisions from both courts, leading to increased costs not only for the procedures themselves but also for collecting decentralized documentation. In the following sections, we propose several general recommendations to enhance access to justice in principle.

7.1. Recommendations for continuation of dialogue between Belgrade and Pristina

- 1) To urgently establish a Joint Committee, led by the EU, tasked with monitoring the implementation of the Agreement on the Path to Normalization between Belgrade and Pristina (hereinafter referred to as "the Agreement"). This committee will ensure transparency in implementing this and previous agreements, providing regular public reports on actual progress and encountered obstacles. Additionally, it will develop indicators to measure progress effectively.
- 2) As both parties have agreed that the Agreement and its Annex for implementation are integral parts of Serbia and Kosovo's respective processes for EU accession, the Council of the EU should promptly decide on accepting the European Commission's proposal to revise the negotiating position for Chapter 35. Furthermore, the EU and Serbia should collaborate on developing an action plan or road map to meet the new transitional benchmarks outlined in Chapter 35. The agenda of the Special Group for the Normalization of Kosovo should equally reflect Kosovo's new obligations arising from the Agreement and its Annex, incorporating measurable indicators.
- 3) To promptly establish mechanism or commission for the mutual recognition of documents, as mandated by the Agreement. This entity's work is essential for ensuring access to justice for citizens residing in Kosovo. It will expedite the implementation of relevant agreements, such as those concerning Civil Registry Books, Cadastre, and University Diplomas, which remain partially or completely

unimplemented. Additionally, it will prevent the need for parallel proceedings before Serbian and Kosovo judiciary due to the current inability to recognize relevant documentation from the other system (e.g., court decisions, probate decisions, notarial and enforcement documents), thus facilitating judicial cooperation.

7.2. Recommendations for access to justice

1. To facilitate the return of judicial functionaries and police officers to the Kosovo judicial system. Ensure that other legal professions in Kosovo also reflect the ethnic composition of their operating environments. This includes roles such as free legal aid officers, attorneys, public notaries, and bailiffs. By doing so, citizens will have greater confidence in the institutions they address.
2. To develop integrated maps detailing the services of the Republic of Serbia available within Kosovo, which remain responsible for upholding rights and enforcing court decisions in Serbia (such as free legal aid services and social work centers). Additionally, to create a map of registry services within Serbia that maintain records of citizens from the Autonomous Province of Kosovo and Metohija.
3. To accurately reflect the actual situation regarding their seats in Kosovo, when drafting the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.

Tables

Table 1: The Agreement on Justice

1. Kosovo laws will apply to judicial institutions in accordance with the First Agreement.
2. There will be one Basic Court and one Basic Prosecution Office for Mitrovica region.
3. There will be multiple premises for the Mitrovica Basic Court.
4. There are four existing branches to the Mitrovica Basic Court in the Mitrovica region (Zubin Potok, Leposavić, Srbica, Vučitrn).
5. The vast majority of cases coming from the municipalities where the branches are located are adjudicated in the branches, in accordance with the law.
6. In Kosovo, the President of the Basic Court decides on the allocation of cases.
7. The allocation of cases to prosecutors is based on expertise, specialization, personal background and local area knowledge, in accordance with Kosovo law.
8. The vast majority of cases in a Basic Court are decided by single judge, in accordance with Kosovo law.
9. Both sides will be represented in all premises of the Mitrovica Basic Court, the Basic Prosecution Office and the division of the Court of Appeals in Mitrovica.
10. The Mitrovica Basic Court premises in Mitrovica north will host a majority of Kosovo Serbs.
11. The Mitrovica Basic Court premises in Mitrovica north will comprise of:
The division of the Court of Appeals in Mitrovica, which will be composed of 5 Kosovo Serbs and 2 Kosovo Albanian Judges,
The division for serious crimes for the entire Mitrovica region, which will be composed of 4 Kosovo Serbs and 4 Kosovo Albanian Judges,
The part of the general d adjudicating over all criminal offences for Mitrovica north, Mitrovica south and Zvečan.
12. The second premises of the Mitrovica Basic Court in the Mitrovica south will comprise of:
The division for minors for the entire Mitrovica region,
The part of the general division adjudicating over civil matters, uncontested claims, minor offences for Mitrovica north, Mitrovica south and Zvečan,
The second premises will be located in Mitrovica south, in the so-called “YugoBanka” building, or another building to be agreed by both sides.
13. The President of the Mitrovica Basic Court is a Kosovo Serb from northern Kosovo.
14. The Chief Prosecutor of the Mitrovica Basic Prosecution Office is a Kosovo Albanian. The premises are located in the Mitrovica North Administrative Office (MNAO), situated in Bosniak Mahala or another building to be agreed by both sides.
15. A Kosovo Serb will head the division of the Court of Appeals sitting in Mitrovica/north. The Vice President of the Court of Appeal will be a Kosovo Serb sitting in Prishtina.

Table 2: The Agreement on Civil Registry Books

1. The parties will jointly make every possible effort to establish a fully reliable civil registry in Kosovo.
2. A tripartite 'joint committee', consisting of civil registry experts from the two parties and EULEX, the latter acting as a chairperson, will be established to identify gaps in missing original pre-1999 civil registry books.
3. EULEX will certify copies of all original civil registry books from Kosovo, municipality by municipality, in consultation with experts from both sides if required. EULEX will process the certified copies in order to establish a fully reliable civil registry in Kosovo.
4. Upon request, EULEX will be ready to provide specific information from Kosovo.

Table 3: The Agreement on Cadastral Records

1. In order to protect the rights of people with legitimate claims to property, the parties will jointly make every effort to establish a fully reliable cadastre in Kosovo.
2. A tripartite implementation group, consisting of cadastral experts from the two parties and chaired by the EU will monitor the work of a technical agency, (selected by the EU after consultation with both parties), whose role will be to identify gaps in original pre-1999 cadastral records.
3. The EUSR will receive scanned copies of all original pre-1999 cadastral records removed from Kosovo. Upon request, the EUSR will provide specific information from Kosovo.
4. The technical agency, mentioned in bullet 2, will compare all copies of the original pre-1999 private property cadastral records with the reconstructed Kosovo cadastre. Cases where the comparison shows the records not to be the same will be transferred by the tripartite implementation group to an adjudication mechanism in Kosovo. This adjudication mechanism will make a final determination as to which cadastral record is correct.
5. The first instance in the adjudication mechanism will be undertaken by a Commission consisting of International and cadastral and property experts from Kosovo. The majority of the experts will be appointed by the EUSR, considering the interests of all communities concerned.
6. The Kosovo Supreme Court will act as the second, appeal, instance of this adjudication mechanism. Decisions by the Kosovo Supreme Court will be taken by a panel in which international judges will hold the majority and will be final and enforceable and not subject to challenge.
7. Decisions resulting from above adjudication mechanism will be notified to all stakeholders concerned. The Kosovo Cadastre Agency will implement the final decision resulting from above adjudication mechanism by effecting the necessary changes in the Kosovo cadastre.
8. The tripartite implementation group will monitor the quick implementation and functioning of the above arrangements and will regularly brief the Dialogue on progress.

Table 4: The Agreement on University Diplomas

1. On the basis of the operational conclusions of 02 July 2011 on the acceptance of university diplomas, the parties agree to ask the European University Association to certify university diplomas issued by universities of each party for use by the other in connection with further education and/or public employment.
2. Upon verification that university diplomas are issued by authorised institutions in line with European best practices, the certification will be done by a Committee of European academic experts, established by the European University Association.
3. Diploma supplements and transcript of records in the format of those tabled during the Dialogue, and annexed to these conclusions, will be attached to the university diploma. It will be for the authorities of either party to decide which of the documents are valid for this process, provided that the effect is the acceptance of the qualification represented by the diploma.
4. The EU will make every effort to ensure the implementation of above conclusions from January 1, 2012.

Conclusions on mutual diploma recognition based on the original agreements from 2011

1. Acknowledging the limited progress achieved in the implementation of the 2011 Agreement on mutual recognition of diplomas, the Parties agree to renew their efforts and build on the experience to overcome challenges and simplify processes.
2. Parties agree to implement the agreement on diplomas following certification by the EUA. Recognition will be divided into professional and academic. Professional recognition will be performed by the respective relevant governmental bodies, within a maximum of 90 days after receipt of the application and with a ceiling limit fee of equivalent to 50 euros or an equivalent amount. Professional recognition will be deemed sufficient for employment opportunities, including in governmental bodies. Academic recognition will be needed only for the continuation of studies; procedures will depend on the individual higher education institution and will have an overall deadline of five months.
3. All EUA certificates previously obtained will be recognized by the Parties and diplomas certified by the EUA can be directly submitted for recognition. All previous recognitions of diplomas will be treated as valid. The implementing partner will provide the Parties with information on the nature of the applicants request (professional or academic) within a maximum period of two months. In addition, Parties agree to exchange all relevant information on requisite procedures, including fee costs, by the end of February 2016.
4. The agreement on diplomas and these conclusions apply only to all accredited higher education institutions and programs by relevant respective bodies of parties, Belgrade and Pristina respectively. The Parties will exchange the list of accredited Higher Education Institutions by the end of February 2016.
5. The Parties agree that this procedure applies to the following levels of education: Bachelor, Master and PhD. The Parties also agree to recognize the diplomas of elementary, secondary, vocational education, and the fifth level of qualification as per European Qualification Framework (EQF), for which modalities of implementation will be discussed in the next meeting.

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6. Building on the above, the Parties agree to commence phase two of the original project.
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7. The EU will establish a tripartite implementation group by the end of February 2016 to monitor the implementation of these agreements and conclusions.
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8. Concurrent implementation of the agreement on Mutual Recognition of Diplomas by both Parties will resume on March 1, 2016.
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Table 5: Summary report on the number of received cases by subject matter, the number of resolved cases and the number of pending cases by subject matter as of February 29, 2024

SUBJECT MATTER	ACCEPTED	RESOLVED	UNSOLVED
P	194	190	4
P1	638	637	1
P2	93	90	3
PL	1	1	/
PRR	1	1	/
I	1015	1011	4
IV	2332	2332	/
IOI	107	107	/
INK	3	3	/
IPV I	1	1	/
IPV IV	8	8	/
O	616	596	20
R1	1	1	/
R2	2	2	/
R3	6	6	/
TOTAL	5018	4979	39

