



YUCOM
Lawyers' Committee
for Human Rights

INTEGRATION OF JUDICIARY IN THE JUDICIAL SYSTEM OF KOSOVO

in the Context of European Integration
and the Dialogue between
Belgrade and Prishtina

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for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND

 **Norway**

INTEGRATION OF JUDICIARY IN THE JUDICIAL SYSTEM OF KOSOVO
IN THE CONTEXT OF EUROPEAN INTEGRATION AND THE DIALOGUE BETWEEN
BELGRADE AND PRISHTINA

Report No. 3 on Implementation and Effects of the Justice Agreement

Integration of Judiciary in the Judicial System of Kosovo in the Context of European Integration and the Dialogue between Belgrade and Prishtina

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SYSTEM OF KOSOVO IN THE CONTEXT OF
EUROPEAN INTEGRATION AND THE DIALOGUE
BETWEEN BELGRADE AND PRISHTINA**

REPORT NO. 3 ON IMPLEMENTATION AND EFFECTS OF THE JUSTICE AGREEMENT

July 2022

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1. Introduction

Report No. 3 on the Implementation and Effects of the Justice Agreement “Integration of Judiciary in the Judicial System of Kosovo in the context of European Integration and dialogue between Belgrade and Prishtina” is the result of a research which the Lawyers’ Committee for Human Rights – YUCOM conducted in the period from January 2021 to April 2022. The report includes information on all five years of Justice Agreement’s implementation and shows the current state how integrated judicial institutions have been working, as well as the challenges that the judiciary in Leskovac have been facing with, as it is now in charge of resolving an amount of cases from Kosovo.

The report contains the latest relevant information on the work of the integrated judiciary in the mentioned reporting period, retaining basic information on the content of the agreed obligations within the Brussels dialogue. It focuses in particular on the obstacles to adequate and complete access to justice for citizens living or exercising their rights on the territory of Kosovo. In the last part, it is reviewed the issue of access and communication with public notaries and attorneys at law from the Serbian community in Kosovo and through examples it shows the legal uncertainty of citizens when addressing two judicial systems.

Even with the new enlargement methodology, Chapter 35 is settled as one of the key chapters in the process of accession of Serbia to the European Union, to the extent that it has not been included in any of the six clusters, but fulfilling pre-conditions for its closure will be separately decided. The rule of law is a condition for progress in the European integration process of Kosovo, therefore the authorities in Prishtina should enable all citizens to receive equal treatment before judicial institutions. Through the dialogue between Belgrade and Prishtina, both sides are obliged to ensure the conditions for citizens living on the territory of Kosovo to exercise their rights as well as to ensure their access to justice.

The integration of Serbian judges and prosecutors into the judicial system of Kosovo was initiated by the Brussels Agreement, and it was accomplished at the beginning of the implementation of the Justice Agreement in 2017. Since then, there have been no new agreements for relevant legal professions and services. In addition, systematic monitoring of Agreement’s implementation has not been established, nor proposals for solving issues arose as an effect of its implementation. As before, this research starts precisely from the expected and unexpected effects that the Agreement has had on citizens’ rights and provides recommendations for overcoming the identified obstacles.¹

1 For the purpose of this research, the Lawyers’ Committee for Human Rights performed a series of in-depth interviews (20) with interviewees from the Basic Court in Mitrovica, the Basic Prosecutor’s Office in Mitrovica, the Basic Court in Leskovac, the Constitutional Court of Kosovo, the Judicial Council of Kosovo, attorneys at law, public notaries and non-governmental organizations. We owe great gratitude to our colleagues from the NGO Aktiv, the Advocacy Center for Democratic Culture (ACDC) from Mitrovica and the Kosovo Law Institute (KLI) as well as to all interviewees from Mitrovica, Prishtina and Leskovac, for their support in conducting the research, which this report is a result of.

2. Judiciary within the dialogue between Belgrade and Prishtina

The First Agreement of Principles Governing the Normalization of Relations between Belgrade and Prishtina, better known as the Brussels Agreement, was signed after extensive negotiations on April 19th, 2013. The Agreement contains 15 points, where point 10 refers to judiciary. As stated within: “The judicial authorities will be integrated and operate within the Kosovo legal framework. The Court of Appeals in Prishtina 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 by a majority of Kosovo Serb judges. Appropriate judges will sit dependent on the nature of the case.”²

According to the *Implementation Plan of the Brussels Agreement*, the first planned activity in respect of implementation of the segment on judiciary was to establish a working group until end of May 2013, to implement this part of the Agreement which would develop detailed plans for the integration of Serbian judicial authorities into Kosovo structures and be responsible for establishing any new structures required under the Agreement, including basic courts and public prosecutor’s offices in Serb majority municipalities.³ Serbia was obliged to provide information on the number of its judicial personnel employed in Kosovo who expressed an interest to join the Kosovo judicial system, immediately after *the Law on Amnesty* was passed, while Kosovo would make available positions in its judicial structures. It was also agreed that the composition of the judiciary would reflect the ethnic composition of the territorial jurisdiction of each respective court.

2.1. Preconditions for integration of judiciary in northern Kosovo

As the *Implementation Plan of the Brussels Agreement* explicitly states both sides will enact all necessary changes of the legal framework, including the application of the Law on Amnesty.⁴ This law had to be adopted in order to even enable implementation of the agreements reached within the political dialogue between Belgrade and Prishtina. Namely, its stipulates “the conditions and procedures for amnesty of individuals convicted of criminal offences, persons criminally prosecuted of criminal

2 [The First Agreement of Principles Governing the Normalization of Relations between Belgrade and Prishtina](#), Brussels, April 2013.

3 Functioning of the Working group, i.e. specific data on the work are not publicly available.

4 Implementation Plan of the Agreement on the Normalization of Relations between Belgrade and Prishtina, Brussels, 2013.

offences, or persons who may be subject of criminal prosecution for criminal offences committed before June 20, 2013, within the territory which now constitutes the Republic of Kosovo.”⁵ The perpetrators of the criminal offences, including “assault on the constitutional order, armed rebellion, endangering territorial integrity and constitutional order, espionage, unauthorized border crossing, inciting national, racial, religious or ethnic hatred, discord or intolerance, destroying or damaging property, setting fires, unauthorized possession of weapons, tax evasion, smuggling of goods” shall be exempted from criminal prosecution or execution of punishment.⁶ Once again, it could be said that the Law does not apply to the great extent to the judicial personnel, as much as to the police and civil security personnel.⁷

Concretely, due to the fact that for a long number of years there were parallel institutions in the northern Kosovo, including judicial institutions, there was simply no other way for the people working in those institutions to be integrated in the Kosovo system, without being liable for series of criminal offences, primarily against Constitutional order of Kosovo.⁸ The implementation of the Law on Amnesty began in September 2013. Serbian courts accepted to decide on the cases initiated before July 15, 2013, and render the decisions until September of the same year, from then on the institutions should have been closed, but for a certain period of time they continued to decide in so called “urgent cases”.⁹

After 1999, members of the community of Kosovo Serbs relied on the mentioned courts functioning in the judicial system of Serbia, parallel with functioning of the judicial structures of the UNMIK. These institutions used to provide only access to justice, since in many situations they were unable or unwilling to address the courts of UNMIK, since there was a judicial vacuum under the governance of UNMIK in the northern Kosovo.¹⁰ Another significant thing which resulted from the dialogue between Belgrade and Prishtina was a strong compromise in respect of acceptance of rulings and decisions of judicial institutions which operated in the parallel system. However, the manner of accepting these rulings and decisions, five years since the integration of the judiciary, has not still been defined.

5 Law no. 04/L-209 on Amnesty, “Official Gazette of the RKS” no. 39/2013.

6 Radio Television of Serbia, “[The Law on Amnesty in accordance with the Constitution](#)”, September 4, 2013, available in Serbian.

7 Information obtained from the interviews performed in Mitrovica in the period February 11-13, 2019.

8 Marković, Igor, “Brussels Agreement – a (delayed) peace accord”, Faculty of Political Sciences, Belgrade, 2015. p. 26.

9 Not criminal as well. According to: BIG DEAL Coalition, “Civilized monotony – Civil monitoring of the implementation of the Agreement between Kosovo and Serbia”, Belgrade, 2016, p. 36.

10 SCE Mission to Kosovo, “Parallel structures in Kosovo 2006-2007”, Prishtina, 2007, p. 16.

2.2. The Justice Agreement

According to the First Agreement, integration of judicial institutions should have been done until the end of 2013. However, as it did not happen, creating the vacuum in functioning of judicial institutions, and the entire 2014 was characterized as the year of stagnation in implementation of the Brussels Agreement. As reported at the meeting held in Brussels in February 2014, the parties decreased the differences in their opinions and emphasized that they were close to reaching the agreement with the details.¹¹ As of July 15, 2013, the courts in Kosovo, which were practically still in the judicial system of the Republic of Serbia, stopped accepting criminal cases, in accordance with the instructions received from the Ministry of Justice of the Republic of Serbia.¹² For more than six months prior, there had been no functioning criminal courts in Kosovo's four northern municipalities, creating many problems which have existed until today.¹³

The Justice Agreement was finally reached in February 2015, almost a year and a half after stipulated deadline.¹⁴ The text of the Agreement remained incomplete and without clear timeframes in order to specify when certain points should be fulfilled. On the other hand, the Agreement provided general guidelines for the integration of judges, prosecutors and administrative staff in the judicial system of Kosovo and included the clauses on provision and adaptation of facilities.

11 Civilized monotony – Civil supervision of the application of the Agreement between Kosovo and Serbia, BIG DEAL, Crta, Belgrade 2016, p. 38.

12 Report on the implementation of the Brussels Agreement, BIRODI, Belgrade, 2015, p. 12.

13 Lost in stagnation – Civil supervision of the application of the Agreement between Kosovo and Serbia, BIG DEAL, Crta, Belgrade 2015, pp. 36-38.

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

Table 1: The Justice Agreement

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 offenses 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.¹⁴ Glavni tužilac Osnovnog tužilaštva u Mitrovici je kosovski Albanac. Prostorije se nalaze u Administrativnoj kancelariji Severne Mitrovice (MNAO), u Bošnjačkoj Mahali ili nekoj drugoj zgradi, prema dogovoru dve strane.
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.

Serb judges have taken status neutral oath, the special type of oath which slightly deferred from the oath taken by Kosovo Albanian judges.¹⁵ According to the *Conclusions of the EU Facilitator on Justice*, the list of judges, prosecutors and administrative support staff for integration was harmonized and delivered on October 17, 2016.¹⁶ The same document has emphasized that the parties agreed that these judges, prosecutors and administrative support staff would be appointed on January 10, 2017, and thereby integrated into the Kosovo judiciary. The integration did not happen within specified deadline, but more than half a year after that, since, among other things, the EU was not pleased with the progress and announcing of the competition for the position of the president of the Basic Court in Mitrovica.¹⁷ After the stalemate at the beginning of the implementation, on August 31, 2017, the agreement on the implementation of the Justice Agreement was reached, including full integration of judges and prosecutors in the judicial system of Kosovo until October 17 of that year.¹⁸

Appointment of judges and prosecutors was finally realized on October 24, 2017.¹⁹ The total of 40 judges and 13 prosecutors were integrated,²⁰ and 145 employees who had previously worked in courts and prosecutors' offices. It is stated that in order to achieve success in the process of integration, Serbia insisted on solution of the issues related with establishing the procedures for appointment of lay judges, enforcement of officers and notaries from Serb community, as well as other activities in order to establish efficient and operational judicial system in the Serb majority municipalities. Officially, the first working day of the integrated judiciary was November 6, 2017.

15 Insajder, "[Serbian judges and prosecutors took an oath before Hashim Thaci](#)", October 24, 2017, available in Serbian.

16 Conclusions of the EU Facilitator on justice, November 30, 2016. Available in Serbian at: <http://www.kim.gov.rs/p24.php>.

17 Blic, "[Kocijančić: Justice Agreement between Belgrade and Serbia will be completed: Media: there are no conditions for the work of integrated judiciary](#)", January 9, 2017, available in Serbian.

18 N1, "[Integration of judges in the judicial system of Kosovo in October](#)", August 31, 2017, available in Serbian.

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

20 Different reports point to various numbers of integrated judicial personnel, and the number of integrated judges varies from 40 to 44, and of the prosecutors from 12 to 14.

3. Obligations of Serbia in the process of EU accession – Chapter 35

Negotiations between Belgrade and Prishtina, as a political process, is closely entwined with the process of accession of Serbia to the European Union, to the extent that it could be said that the latter depends on the results of the negotiations. Monitoring the implementation and effects of *the Justice Agreement* is relevant for all those who monitor the process of normalization of relations between Belgrade and Prishtina as well as respect the rule of law in the process of accession to the European Union. In Serbia's negotiation process, Chapter 35, which usually covers issues that cannot be classified in any other negotiating chapter or serves to discuss issues that arise after a certain chapter has been temporarily closed, it also refers to monitoring the dialogue between Belgrade and Prishtina.

The mentioned chapter does not replace the dialogue between Belgrade and Prishtina under the auspices of the European Union, but complements it through the implementation of the agreements made within the dialogue. Developments in the dialogue are taken into account in the negotiation process, and the European Union emphasizes that if there is stagnation in the normalization of Serbia's relations with Kosovo, the EU may even on its own initiative propose "to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed to be solved".²¹

With *the new EU enlargement methodology*, Chapter 35 remains outside the six clusters, which means that its content and progress in those areas will be monitored in a similar way as before.²² *The Document on application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia* from June 2021 states that Chapter 35 will be treated as provided for in Serbia's negotiating framework, including a clause according to which negotiations can be stopped if there is a halt in progress in negotiation chapters 23, 24, but also 35, with the application of the process of reversibility, i.e. the possibility to not only stop the negotiations, but also move backwards.²³

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- 21 European Union, "European Union Common Position, Chapter 35, November 30, 2015", Brussels, 2015, p. 3.
 - 22 European Commission, [Enhancing the accession process - A credible EU perspective for the Western Balkans](#), 2020, p.6
 - 23 Council of European Union, [Application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia](#), 2021, p. 10.

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).”²⁴ 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.

The Analysis of the interim benchmarks proposed in the Draft European Union Common Position, Chapter 35, also stipulates specific comments in regards to possibilities for fulfilling the benchmarks.²⁵ Thus, in respect of constructive engagement in reaching of the agreement on administrative personnel and premises, it is stated that “it is possible to fulfill it within relatively short deadline in respect of the court premises. There is a big problem in concluding the agreement on administrative staff, because it is impossible to agree on the court secretary, which is the key position for the functioning of the institution”. Namely, it is not envisioned to conclude special agreement on administrative staff, but this matter was partially solved in the same way as termination of the mandate of Serb judges and prosecutors integrated in judicial institutions in Kosovo. Position of the employees of judicial institutions which were functioning within Serbian judiciary on the territory of the Autonomous Province of Kosovo and Metohija was defined by the *Regulation on exercising of the special rights of judicial officials and employees in judicial bodies and Administration for the Execution of Criminal Sanctions from the territory of the Autonomous Province of Kosovo and Metohija*, which came in force on October 26, 2017.²⁶

Relevant Regulation refers to exercising of special rights of judges and deputy public prosecutors in the Misdemeanor Court in Kosovska Mitrovica, Basic Court in Kosovska Mitrovica, High Court in Kosovska Mitrovica, Basic Public Prosecutor’s Office in Kosovska Mitrovica and High Public Prosecutor’s Office in Kosovska Mitrovica, as well as special rights of employees of judicial bodies. Special rights include right

24 European Union, “European Union Common Position, Chapter 35, November 30, 2015”, Brussels, 2015, pp. 2-3.

25 Kossev, “[Chapter \(DOCUMENT\): What does the EU expect from Serbia in respect of Kosovo, and what are the comments of Serbia!](#)”, October 15, 2015, available in Serbian.

26 Regulation on exercising of the special rights of judicial officials and employees in judicial bodies and Administration for the Execution of Criminal Sanctions from the territory of the Autonomous Province of Kosovo and Metohija, “Official Gazette of the RS”, no. 95/17.

to special pension and right to health insurance. “Judicial officials and employees in judicial bodies shall acquire special rights in case on the date this regulation comes in force they perform only judicial function in judicial bodies or if they are employed only in judicial bodies. Employees in the administration shall acquire special rights if on the date this regulation comes in force they are employed only in the administration. Employees in judicial bodies and administration shall acquire special rights even when they are employed for definite period of time”.²⁷ With this, benchmark no. 2 from this area has been fully fulfilled.

Apart from pension payments as provided for in the Regulation, there are no clear indications that the Republic of Serbia is “constructively engaged” in reaching the agreement on court administrative staff, therefore it is considered that the issue has been resolved within the scope of the Regulation, and with regard to contributing for work premises, information from the field indicates that the contribution in terms of assigning and furnishing the premises comes either from the budget of Kosovo or from foreign donations.²⁸ Accordingly, it can be considered that benchmark no. 1 in this area has been only partially fulfilled.

Concerning special legal regulations which are related with the *Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices in the Republic of Serbia*, the standpoint of the authorities was that it was practically impossible to fulfill this benchmark in accordance with the valid Constitution of the Republic of Serbia and the laws. Special law on courts and public prosecutor’s offices on the territory of the Autonomous Province of Kosovo and Metohija has not been even enacted until the date of publishing this third report, despite the fact that the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices in the Republic of Serbia stipulates its adoption until December 31st, 2013.²⁹ The benchmark from the screening related to judicial independence within the *Screening Report for Chapter 23*, which was included as such in the final version of the *Action Plan for Chapter 23* in 2016 states that it is necessary to “ensure the enactment of a special legislation with regards to Serbian judicial institutions with jurisdiction in Kosovo, consistent with Serbian obligations under the First Agreement of April 19, 2013”.³⁰ One particular activity within this benchmark is related to precisely define the activities required for its realization, as well as the deadline for their implementation and realized through negotiations between Belgrade and Prishtina. Although the *European Union Common Position on Chapter 23*,³¹ does not include the interim benchmark in regards with this issue, it is stated that the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices in the Republic of Serbia stipulates that by De-

27 Article 2, *ibid.*

28 See more in the section Administrative, technical and spatial capacities

29 Article 12, the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices in the Republic of Serbia, “Official Gazette of the RS”, no. 101/2013.

30 Benchmark 1.1.8., “Action Plan for Chapter 23”, the Ministry of Justice of the RS, April 2016, pp. 49-50.

31 European Union, “European Union Common Position, Chapter 23, July 5, 2016”, Brussels, 2016, p. 4.

ember 31, 2013, a special regulation of Serbian judicial institutions being integrated in the Kosovo system would be adopted, but until the date of this position, that regulation has not been enacted.

According to the above stated, it could be concluded that the benchmark which was included in the Action Plan should have been elaborated and divided in specific activities, but it actually came down to only one activity. This benchmark has not been included in the revised Action Plan for Chapter 23, since this was not included in the transitional benchmark, most likely because it was considered that by the time the transition benchmark were applied, this activity would be fulfilled. The Ministry of Justice in its explanation during the revision of Action Plan for Chapter 23 stated that since upon enactment of this regulation the real integration occurred, thus the obligations referred to in Chapter 23 were exhausted.³²

The revised Action Plan for Chapter 23, on the other hand, foresees changes to the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices after changing the Constitution in the part related to the judiciary and sets a deadline for the second quarter of 2022.³³

As the Constitution was amended only in February 2022, *the Action Plan for the Implementation of the 2020-2025 Judicial Development Strategy*, has moved the deadline for adopting the subject law to the first quarter of 2023.³⁴ In accordance with the new Constitutional Law for the Implementation of the Act on Amending the Constitution of the Republic of Serbia, these changes would have to take place no later than February 2023, i.e. two years after the adopted amendments to the Constitution.³⁵ At this moment, it is not known whether the process of amending this law will be used to finally pass a particular law regarding the courts and public prosecutor's offices on the territory of Autonomous Province of Kosovo and Metohija in accordance with the achieved integration into the judicial system of Kosovo. According to the given information, benchmark no. 3 has not been fulfilled.

There is no information that Serbia submits quarterly reports to Kosovo's Judicial and Prosecutorial Councils on pension payments for retired judges and prosecutors who are integrated into judicial institutions in Kosovo.³⁶ Serbia claims that there is no basis for such action in the current laws and its regulations. Since Serbia does not have direct correspondence with Kosovo's Judicial and Prosecutorial Councils, it

32 Regulation on exercising of the special rights of judicial officials and employees in judicial bodies and Administration for the Execution of Criminal Sanctions from the territory of the Autonomous Province of Kosovo and Metohija, "Official Gazette of the RS", no. 95/17.

33 Government of the Republic of Serbia, Revised Action Plan for Chapter 23, 2020, activity 1.1.1.2.

34 The Action Plan for the Implementation of the 2020-2025 Judicial Development Strategy, activity 1.3.26.

35 The Constitutional Law on the Implementation of the Act amending the Constitution of Serbia, "Official Gazette of the RS", no. 115/2021, Article 2.

36 Information confirmed within an online interview with the Judicial Council of Kosovo in April 2022.

is unlikely considered that it will report to it in the future. Benchmark no. 4 is also considered fully unfulfilled.

According to previous shadow reports, Serbia has fully fulfilled 1 interim benchmark, 1 partially, while 2 have not been fulfilled. When it comes to monitoring the fulfillment of the benchmark from Chapter 35, the public does not have access to a single document that indicates the extent of its progress. The reports of the European Commission on the overall progress achieved within this chapter do not provide a precise insight into the fulfilling benchmarks, but only general statements.

In general, the public in Serbia receives information on the progress in the dialogue between Belgrade and Prishtina solely on the basis of statements of the officials, which are often contradictory and on the basis of semi-annual Reports of the Office for Kosovo and Metohija and the Office for Coordination of Affairs in the Process of Negotiation with the Provisional Institutions of Self-Government in Prishtina. To restate, the report was not done for the period from November 2017 until April 2018, and that and for the second half of 2018 was published only in February 2019. On May 23, 2019, the Office for Kosovo and Metohija of the Government of the Republic of Serbia published *the Report on the most important results of the Office for Kosovo and Metohija* (in the period from May 2014 until May 2019), which the President of Serbia presented to the National Assembly.³⁷ During 2019, no regular report was published, although the report for the first half of 2020 also covered the period from September 2019 to the end of the year. It is also the last published report on the website of the Office for Kosovo and Metohija of the Government of the Republic of Serbia, while reports for the second half of 2020 and the first half of 2021 can be found only on the website of the Office for Coordination of Affairs in the Process of Negotiation with the Provisional Institutions of Self-Government in Prishtina.

37 Office for Kosovo and Metohija of the Government of the RS, "[Report on the most important results of the Office for Kosovo and Metohija \(in the period from May 2014 until May 2019\)](#)", Belgrade, May 23, 2019, p. 25, available in Serbian.

4. Political context of dialogue between Belgrade and Prishtina in the reporting period

The EU Special Representative for the Belgrade-Prishtina Dialogue and other Western Balkan regional issues, Miroslav Lajčak, appointed in April 2020 by the Council of the European Union, has continued to perform his mandate.³⁸ After a nine-month standstill negotiations period, the high-level dialogue has been resumed in June 2021.

The President of Serbia, Aleksandar Vučić, and the Prime Minister of Kosovo, Albin Kurti, agreed that there is no other way to move forward, except through dialogue and normalization of relations, and pledged to work on comprehensive normalization.³⁹ In October 2021, they met under the auspices of Germany and France on the sidelines of the European Union-Western Balkans summit in Brdo, Slovenia, when they discussed the Berlin process, freedom of movement and the recognition of diplomas, when they called for the six Western Balkan partners to be “treated as equals”. Vučić stated that Belgrade will continue the dialogue with Prishtina, with a focus on establishing the Association/Community of Serb majority municipalities, as stipulated in the First Agreement of Principles Governing the Normalization of Relations between Belgrade and Prishtina from April 2013.⁴⁰

Lajčak has visited Prishtina and Belgrade several times in order to encourage the progress in the implementation of previously achieved segments related to energy, mutual property and financial claims, internally displaced and missing persons and economic cooperation. There was no special talk about the implementation of the Justice Agreement, i.e. problems related to its implementation.

On September 20, 2021, the Ministry of Internal Affairs of Kosovo, in cooperation with the Kosovo Police, conducted an action at the border crossings in Kosovo, calling for the implementation of the Brussels Agreement between Prishtina and Belgrade on freedom of movement. Until that moment, in the municipalities in the north of Kosovo, it was possible to drive cars with license plates of cities in Kosovo issued by the Ministry of Internal Affairs of Serbia, which was contradictory to the Agreement from Brussels.⁴¹ It resulted with the blockades of two administrative crossings, Brn-

38 Council of EU, “[Belgrade-Prishtina Dialogue: EU appoints a new Special Representative](#)”, April 3, 2020.

39 See at: https://www.eeas.europa.eu/eeas/belgrade-prishtina-dialogue-press-statement-eu-special-representative-miroslav-lajcak-following_en

40 United Nations Interim Administration Mission in Kosovo, Report of the Secretary-General, April 12, 2022, pp. 6-7.

41 Agreement on Freedom of Movement, see at: <https://www.kim.gov.rs/p11.php>

jak and Jarinje, following decision to introduce reciprocal measures towards Serbia. According to the measures, when entering Kosovo, all vehicles with Serbian license plates have to put on trial Kosovo plates. After several days of tension, as it was impossible to find a permanent solution, the issue with removing Serbian license plates and issuing trial ones at the entrance of the administrative crossings to Kosovo was solved by attaching stickers, while Serbian license plates will not be removed and temporary Kosovo ones will not be charged.⁴²

Additional tensions were growing before the referendum in Serbia. It was regarding the change of the Constitution in the part related to the judiciary which was scheduled for January 16, 2022. On January 15, 2022 MPs in the Assembly of Kosovo, with 76 votes, adopted *a Resolution against allowing a Serbian constitutional referendum to take place in Kosovo*, because, as they stated, “it violates the sovereignty and constitutional order of Kosovo and it is contradictory to the Constitution and laws of Kosovo, as well as international standards”.⁴³ The MPs did not refer to the fact that the judiciary has been integrated in Kosovo, and that the referendum will decide on organizing the judiciary that functions in the Serbian judicial system. On the same day, the Republic Electoral Commission (REC) decided that voters from Kosovo and Metohija will be able to vote in the referendum on constitutional changes in Kuršumlja, Raška, Novi Pazar and Vranje.⁴⁴

As of March 2022, there were no joint meetings of the main negotiators. In November 2021, the chief negotiators of Belgrade and Prishtina met separately with Lajčak. On those occasions, Belgrade stated that Prishtina is unwilling to further discuss the implementation of the Association / Community of Serb Municipalities, while Prishtina claimed that the issue of community rights should be included in a broader package. In February 2022, they met again in the same manner with reports of less progress.⁴⁵ The Deputy Assistant Secretary overseeing policy towards the countries of the Western Balkans, Gabriel Escobar, together with Lajčak visited Belgrade and Prishtina in the period from January 31 to February 4 in order to discuss with the parties the modalities for advancing progress in the dialogue and to consult with other interested parties.⁴⁶

42 Daily “Južne vesti”, [“Agreement in Brussels reached, Serbian licence plates won’t be removed, there will be stickers instead of Kosovo ones”](#), September 30, 2021.

43 Radio Free Europa, [“The Assembly of Kosovo adopted a Resolution against holding the Serbian referendum”](#), January 15, 2022.

44 Daily Danas, [“REC: Serbs from Kosovo can vote in Kuršumlja, Raška, Vranje and Novi Pazar”](#), January 15, 2022.

45 United Nations Interim Administration Mission in Kosovo, Report of the Secretary-General, April 12, 2022, p. 7.

46 Ibid.

5. Implementation of the Justice Agreement – status and issues

Five years after the beginning of its implementation, the Justice Agreement has been still cited as one of the highlighting achievements of the political dialogue between Belgrade and Prishtina. Judiciary, as stated by EU representatives, in principle remains an important point of political dialogue. As the attention has been drawn to the effects that the Agreement has on citizens' rights, EU officials assure that they constantly remind the parties in the dialogue that the very beginning of implementation is not the end of obligations they have.

In the following segment, we present updated data on the challenges that representatives of the integrated judiciary and citizens have been facing since the Justice Agreement began to be implemented, as well as on the proceedings that are now being conducted before the Basic Court in Leskovac, with a focus on the period from the beginning of 2021 until April 2022. The segment related to access to justice has been completed with practical examples of legal uncertainty due to appealing to two courts, and in particular considers the issue of availability of public notaries and attorneys at law from the Serbian community.

5.1. Assuming judicial and prosecutorial function

Before actually being integrated in the judiciary in Kosovo, interested judges and public prosecutors, same as all other judges and public prosecutors who will assume the position, had to complete the training organized by the Judicial Institute of Kosovo (Academy of Justice). Article 19 of the *Law on the Academy of Justice* which refers to training of judges and state prosecutors stipulates that the Academy will organize initial training for newly appointed judges and state prosecutors in duration of twelve months, consisting of theoretical and practical part.⁴⁷ Instead of a twelve-month training completed by judges and prosecutors before assuming their duty, an intensive 15-day training course was created in order to inform already experienced judges and prosecutors of the relevant legal framework. First such training was even shorter and it took 10 days due to different schedule of the participants.⁴⁸ Training for judges was not mandatory, nor for the prosecutors with 3 years of working experience.⁴⁹ Due to the lack of funds, standard training was just turned into accelerated program, whose goal is initial understanding of the subject matter of Kosovo legis-

47 Law no. 05/L – 095 on Academy of Justice, “Official Gazette of the RKS” no. 6/2017.

48 Rreze Hoxha, Francisco José García Martínez, “Going south? Integration of Serb Judges and Prosecutors from the North into the Kosovar Justice System”, Group for Legal and Political Studies, Belgrade, 2018, p.7.

49 Information obtained from the interviews performed in Mitrovica in the period February 11-13, 2019, confirmed in the interviews performed in 2022.

lation.⁵⁰ During 2018, the Academy of Justice offered several courses to the integrated judges and prosecutors that had shown the differences in the subject matter and procedural law in the legal framework of Serbia and Kosovo.⁵¹ Similar trainings have been continuously conducted. Interviewees stated that trainings are also available in Serbian, as well as that the Academy of Justice provides interpreters.⁵²

Another issue that has arisen is recognition of diplomas, since the candidates with the diplomas of the Republic of Serbia must previously verify/validate their diplomas. As the validation of diplomas from Serbian universities still does not work, the experts relied mainly on the process of verification of diplomas. Namely, the process of verification of the diplomas refers to the diplomas from the Faculty of Law in Kosovska Mitrovica acquired as of 1999, and that procedure is much shorter and simpler than the procedure of validation. In 2015, the Ministry of Education of Kosovo and the University in Kosovska Mitrovica reached the Agreement on verification of diplomas issued by this university, and for the first time after the war, the *Regulation of the Government of Kosovo no 21/2015* enabled for the diplomas issued by one higher education institution working in Serbian language in Kosovo to be confirmed and verified for the employment procedures in all public institutions in Kosovo.⁵³

The Commission for Verification of Education Level in Kosovska Mitrovica decides on verification of these diplomas. This procedure is a temporary, affirmative measure for protecting and improving the rights of the citizens of Kosovo, in order to ensure equal access for all citizens of Kosovo to be employed, with the aim of achieving equal representation of all population groups within employing in institutions in the public sector.⁵⁴

Although the verification procedure has been a good mechanism so far, as of February 2021, no diploma from the Faculty of Law has been verified, which makes it difficult for young lawyers from the Serbian community to find a job in the judiciary.⁵⁵ The contracts of some members of the Commission have expired, and were not renewed due to the lack of financial support. In addition, even though the Government of Kosovo was formed in 2021, the Prime Minister of Kosovo has not proposed the members of the Commission until the moment of drafting this report, further preventing its work functionally, which is considered as another measure of reciprocity, this time due to failing to mutually recognize diplomas.⁵⁶ Candidates who previously submitted a request for verification did not even have to wait for the diploma to be formally verified, it was enough to provide proof that they had submitted the request, but from 2021 this is not possible either.⁵⁷

50 Ibid.

51 Ibid.

52 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

53 European Center for Minority Issues, “Education in the Serbian language and verification of diplomas in Kosovo”, Prishtina, 2018, p. 5.

54 See at: https://zck-ks.net/repository/docs/FINAL_UMV_Brochure_SRB.pdf, p. 3.

55 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

56 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

57 Ibid.

The Judicial Councils of Kosovo recommended the Ministry of Public Administration change the procedure for employment in the public sector, in order to allow Serbian candidates to start working before the process of verification/nostrification of their diploma is completed, since it takes a long time and makes integration even more difficult.⁵⁸

The judicial system of Kosovo does not recognize the passed Bar exam organized by the Ministry of Justice of the Republic of Serbia. At the very beginning of the integration, candidates for judges and prosecutors with a verified diploma and passed Bar exam in Serbia had to take the Bar exam again before the Kosovo institutions.⁵⁹ Those who graduate from the faculty in Kosovska Mitrovica in general study according to the educational curriculum of the Republic of Serbia, that is, they have a lack of knowledge regarding the Kosovo legal framework. As this represents an aggravating circumstance later on for taking the Bar exam in the Kosovo system, the Judicial Council of Kosovo suggested the Academy of Justice and the OSCE Mission in Kosovo to support and build special clinics where candidates who are non-Albanian population could become better prepared for taking the Bar exam.⁶⁰

In order to pass the Bar exam, the candidate has to provide a proof of citizenship of the Republic of Kosovo, to be a law graduate, who has worked for at least one year in legal affairs in the courts, the prosecutor's office or in a law office, or has worked for at least two years in professional-legal affairs within or outside the country, in public institutions, state agencies and in the administration of international institutions in Kosovo.⁶¹ From December 2019, when one candidate from the non-majority community passed the Bar exam, not a single one Bar exam was organized until September 2021, probably as a result of the corona virus pandemic. Public calls are published in both Albanian and Serbian.⁶² The current structure of the Bar Exam Commission consists of four members, one of whom is a member from the Serbian community.⁶³ The Judicial and the Prosecutorial Council of Kosovo organize an internship that lasts up to one year. UNMIK and local NGOs have continued the program to support the integration of young lawyers of Serbian nationality in Kosovo into the Kosovo judicial system, providing bar exam preparations and internship programs, as well as professional cooperation through the program for resolving old cases.⁶⁴

Lawyers from the Serbian community experience difficulties with meeting the basic requirements for passing the Bar exam, as well as with potential entry into the judicial system. In addition to the already mentioned issue with diploma verification,

58 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018 JUSTICE INTEGRATION p. 36-37.

59 Information obtained from the interviews performed in Mitrovica in the period February 11 – 13, 2019.

60 Information obtained from an online interview with the Judicial Council of Kosovo, April 2022.

61 The Law no. 04/L-141 on the Bar exam, Article 6.

62 See at: <https://md.rks-gov.net/page.aspx?id=3,43>.

63 Information obtained from an online interview with the Judicial Council of Kosovo, April 2022.

64 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo April 2022, para 67.

unadjusted curriculum at the Faculty of Law in Kosovska Mitrovica requires much more effort to prepare for the Bar exam. Candidates who took the exam complained about the imprecise translation of the test, which led them to different interpretations and solutions of the legal issues. In the last bar exam in December 2021, two candidates did not initially pass the exam precisely due to the poor translation of the test.⁶⁵ The EULEX Mission was also observing the exam, reporting that out of 300 candidates, 11 of whom were from the Serbian community, none passed the test and that this could directly affect the work of the integrated judiciary in the future.⁶⁶

One, even bigger issue is currently the age structure of integrated judges and prosecutors, a great number of them who have already acquired or will soon acquire the condition for retirement. It is of the utmost importance to facilitate the process of hiring new Serbian representatives of the judiciary. After passing the bar exam, future judges have to work for a year while attending the Academy of Justice before they become eligible to take the judicial exam. During that year, they have to fulfill 30% of judge's norm.⁶⁷ It takes three years in total to obtain the qualifications for a professional associate, and it often happens that after one year of internship, candidates for judges have to work in the court in some administrative positions or to go to the law offices, in order to obtain qualification.

The judges emphasize that it is required to ensure the constant recruitment of young trainees in order to increase the opportunities for further employment of lawyers of Serbian nationality in the judicial system of Kosovo.⁶⁸ At the end of March 2022, there were 10 interns working in the court in Mitrovica, and an open competition for new positions was ongoing. The non-governmental organization Advocacy Center for Democratic Culture provides internships for another 10 interns for 3 months, which, in accordance with the contract with the Kosovo Bar Association, is a part of the internship.⁶⁹ As of 2021, there are 14 professional associates working in the Basic Court in Mitrovica, 5 of whom are Serbs, which is still the situation in the moment of drafting this report.⁷⁰ In March 2022, in the Basic Prosecutor's Office in Mitrovica, out of a total of 5 interns, one is of Serbian nationality, while there are 7 professional associates, of which 3 are Serbs and 4 are Albanians.⁷¹

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- 65 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.
- 66 Annex I Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from September 16, 2021– March 15, 2022, p.18.
- 67 Information obtained from the interviews performed in Mitrovica in the period October 19 – 21, 2020.
- 68 Information obtained from the interviews performed in Mitrovica in the period October 19 – 21, 2020, confirmed in the interviews performed in 2022.
- 69 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.
- 70 In 2022, a competition for volunteer interns was announced for: the Basic Court in Mitrovica 20 interns, the Leposavić Branch – 4, the Zubin Potok Branch – 5, the Vučitrn Branch – 15 and the Srbica Branch – 10 interns.
- 71 Information obtained from a telephone conversation with the administrator of the prosecutor's office in February 2021.

For all above listed reasons, it is first of all necessary to reestablish some of the procedures that have allowed young lawyers from minority communities to enter the judiciary, particularly the diploma verification procedure. Additionally insisting on the professionalization of the judiciary, the respondents are afraid of digression from the the Justice Agreement and the documents resulting from it. As the trend of integrated judges' retirement still continues, it is required to constantly provide equal access to Serbs to enter into the judicial system of Kosovo, because otherwise, it will not be possible to actually achieve either the current or the planned quotas of Albanian and Serbian judges in Mitrovica.

5.2. Challenges for functioning of the integrated judiciary

The process of integration of the judiciary after starting the implementation of the Justice Agreement had a less direct impact on the prosecution than on the court. Namely, the prosecutor's office had already worked within the Kosovo system, thus the integration meant only the obligatory involvement of a certain number of prosecutors of Serbian nationality. The court, on the other hand, had worked in the Serbian judicial system, and its integration meant changes in the court administration, but also in the processes of acting and applying substantive and procedural law.

Accordingly, this research, as in previous reports, mainly refers to obstacles in the work of the court, with presentation of available information on the work of the prosecution. In the following segment, current state and all the challenges that have arisen from the implementation of the Agreement for the period from January 2021 to April 2022 will be presented.

5.2.1. Work organization and systematization

In accordance with *the Justice Agreement*, one basic court – Basic Court in Mitrovica and one prosecutor's office – Basic Public Prosecutor's Office in Mitrovica were established for the region of Mitrovica. The Basic Court in Mitrovica is the head office of the judicial region of Mitrovica, which covers the territory of the municipalities of North Mitrovica, South Mitrovica, Leposavić, Zvečan, Zubin Potok, Srbica and Vučitrn. Basic Court is located in two facilities. Criminal division is in the facility located in the northern part of Mitrovica. The Division for Severe Criminal Offences and the General Trial Division for all Criminal Offenses are also there. There is also a division of the Court of Appeals in the same facility. In the southern part of Mitrovica there is a Criminal Division for Juveniles, a Litigation Division, a Non-litigation Division, as well as a Misdemeanor Division. Four branch offices of the Basic Court in Mitrovica were formed in Zubin Potok, Leposavić, Srbica, Vučitrn, but in reality, these departments practically started working at the end of 2018. The facility of the Basic Prosecutor's Office in Mitrovica is located in Bošnjačka Mahala, as agreed in the Agreement. Within the Prosecutor's Office, there is a General Division, a Division for Severe Criminal Offences and a Division for Juveniles.

President of the Basic Court in Mitrovica is a Kosovo Serb from the northern part of Kosovo, and the main prosecutor of the Basic Public Prosecutor's Office in Mitrovica is a Kosovo Albanian. Head of the division of the Court of Appeals is also a Kosovo Serb, as agreed. As stated in the Justice Agreement, both parties will be represented in all facilities of the Basic Court in Mitrovica, the Basic Prosecutor's Office and the Division of the Court of Appeals in Mitrovica. Out of a total of 10 Serbian public prosecutors, 9 were integrated into the Basic Public Prosecutor's Office in Mitrovica, while at the very beginning of the process 29 Serbian judges were integrated into the Basic Court.

The number of judges in the Basic Court in Mitrovica and its branches as of 2021 was 47, of which 21 judges are of Serbian nationality, i.e. one judge less than in the previous section.⁷² There are 31 judges working in the court in Mitrovica, including 17 Serbs and 14 Albanians. There are 7 judges of Albanian nationality working in the court branch in Vučitrn, and 5 in the court branch in Srbica, while there are no Serbian judges in these branches. On the other hand, in the court branch Leposavić, as well as in Zubin potok, there are 2 judges of Serbian nationality, while there are no judges of Albanian nationality. According to the systematization, 20 Serbian judges and 22 Albanian judges should work in the Basic Court in Mitrovica. Data for the first quarter of 2022 for the Basic Court in Mitrovica (without court units) indicate that 12 Serbian judges and 13 Albanian judges currently work in the court.⁷³

In the context of the lack of will to publish additional competitions for selecting judges, the respondents point out that a progress has been made since September 2021, when the new Head of the Judicial Council of Kosovo was elected. In November 2021, the Judicial Council of Kosovo announced the selection process for 54 judges at the level of basic courts throughout Kosovo, of which 8 seats are reserved for judges from the Kosovo Serb community.⁷⁴ The competition for judges of the division of the Court of Appeals in Mitrovica lasted for a year, and finally, in March 2022, 2 judges from the Serbian community were promoted to this division.⁷⁵ A newly elected Head from among Serbian judges governs the division in Mitrovica, in accordance with the Agreement, and currently there are 4 Serbian judges working alongside him, two of them in litigation, two in criminal proceedings.⁷⁶ There are 2 more Albanian judges working in the division, so now the division works at full capacity with a total of 7 judges. It is necessary to appoint an acting supervising judges in the court units in Štrpac and Novi Brdo.⁷⁷

There is still an issue that, in certain cases coming from municipalities with a majority of Serbian population south of the Ibar, decide the benches that do not inc-

72 According to the Annual Report on the Final Work of the Basic Court in Mitrovica from December 2021, there are a total of 47 judges, of which 26 are Albanian and 21 are Serbian nationality. Comparing to the data from the previous reporting cycle, there are 3 judges of Albanian nationality employed, while there is one judge of Serbian nationality less, most likely due to retirement.

73 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022. According to information from June 2022, another judge of Serbian nationality was employed in the meantime, but since the reporting period ends in March 2022, the statistics in the report refer to the period from January 2021 to April 2022.

74 Internet presentation of the Judicial Council of Kosovo.

75 Available at: <https://www.gjyqesori-rks.org/2022/03/10/ssk-a-je-odabrao-dvoje-2-sudija-za-unapredenje-u-apelacioni-sud-odeljenje-u-mitrovici/?lang=sr>.

76 Annex I Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from 16 September 16, 2021 – March 15, 2022, p. 17/18

77 The Office for Kosovo and Metohija and the Office for Coordination of Affairs in the Process of Negotiation with the Provisional Institutions of Self-Government in Prishtina, “Progress Report on the Belgrade-Prishtina Dialogue (for the period from January 1, 2021 to June 30, 2021)”, Belgrade, 2021, p. 15.

lude judges from the Division in Mitrovica. This is a consequence of interpreting the jurisdiction of this division in a different manner that is, interpreting the Article 10 of the Brussels Agreement. Referring to the capacities of the division, the Court of Appeals in Prishtina retains the cases in its jurisdiction. The President of the Court of Appeals in Prishtina started assigning criminal cases to the division in Mitrovica only in the second half of 2019,⁷⁸ as well as to invite Serbian judges who decide on criminal matters to councils in legal proceedings before this court in Prishtina.⁷⁹

An additional issue which no progress has been made on concerns the composition of the council in the Special Division of the Court of Appeals in Prishtina. The Brussels Agreement from 2013 and the Justice Agreement require that Kosovo Serb-majority benches should decide on cases originating from municipalities with a Serb-majority population, but those councils have not been established nor was their establishment predicted in the work plans of the Court of Appeals from 2019 to 2022.⁸⁰ There is a debate among the professional public in Kosovo whether this division falls under the regime of the Brussels Agreement (Article 10) and the Justice Agreement, since it was established after starting the implementation of the latter agreement. The work plan for 2022 has implemented the aforementioned work principle to all divisions of the Court of Appeals with the exception of the Special Division.⁸¹

The EULEX mission has continued the counseling program to the President of the Basic Court in Mitrovica and the Head of the Division of the Court of Appeal in Mitrovica, as well as to other judicial authorities in order to support the implementation of the Brussels Agreement and the Justice Agreement, and to enable full respect for the rule of law in the north of Kosovo.⁸² The mission has concluded that electing a Kosovo Serb judge to the Judicial Council of Kosovo could not have been implemented. Out of the 13 members of the Council, the Assembly has to elect some of them, including two Kosovo Serbs, and at least one of them has to be a judge. Two judges applied for this position, none was selected, and therefore the procedure will be repeated. As they point out, in order for the Kosovo Serb candidate to be elected, he should receive the majority of votes from the representatives of the Kosovo Serbs in the Assembly of Kosovo, but the representatives of the Kosovo Serbs boycotted

78 Report of the European Union High Representative for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo, January 16 – May 15, 2019, p. 13.

79 Ibid.

80 Annex I Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from September 16, 2021 – March 15, 2022, p.18.

81 Annex I Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from September 16, 2021 – March 15, 2022, p.18.

82 Report of the European Union High Representative for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo, April 5, 2021, annex I, p. 18.

the voting and refused to support those two candidates.⁸³ There is currently one Serb judge in the Council, although in accordance with the Constitution of Kosovo, 2 seats are reserved.

Of the 19 acting prosecutors in the Basic Prosecutor's Office in Mitrovica, 11 are Serbian prosecutors.⁸⁴ As the prosecutor's council decided, one Serbian prosecutor from the General Division of the Basic Prosecutor's Office in Uroševac was promoted to the Division of Serious Criminal Offenses in the Basic Prosecutor's Office in Mitrovica.⁸⁵ At the beginning of 2022, another Serbian prosecutor was sent from the Basic Prosecutor's Office in Prishtina. There is one member of Serbian nationality in the Prosecutorial Council of Kosovo.

5.2.2. Personnel, technical and spatial capacities

- Although it is provided for by the criteria in the process of Serbia's accession to the European Union and it was a part of the agreement before the signing of the Justice Agreement, there was no special agreement that referred to the administrative staff of courts and prosecutor's offices.

Currently, the Basic Court in Mitrovica, with its units, has 258 representatives of administrative staff.⁸⁶ The structure in terms of nationalities regarding the administrative staff, up until and including the year 2021, is as follows: 73 Albanians, 67 Serbs and 4 Bosnians work in the Basic Court in Mitrovica, 27 Albanians in Srbica branch office, 25 Serbs and 2 Albanians in the Zubin Potok branch office, 24 Serbs in Leposavić and 35 Albanians and 1 Ashkali in Vučitrn. The data for the first quarter of 2022 are slightly different, hence the Basic Court in Mitrovica currently employs 80 Albanians and 64 Serbs, whereas the number of Bosnians remains unchanged (3).⁸⁷ Judges point out the issue of the lack of administrative staff from the Serbian community. The Basic Prosecutor's Office in Mitrovica has 66 support staff members, of which 42 Albanians and 24 Serbs.⁸⁸ The difficulty in the communication between administrative staff is still present, and such communication is made difficult and slow as interpreters are not always available due to other engagements.⁸⁹

83 Annex I Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from 16 September 2021–15 March 2022 p.17/18

84 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

85 Decision of the Prosecutorial Council of Kosovo from May 28, 2021, see at: <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Vendime/2021/Odluka%20Natasha%20Radovic%20ose%20unapre%C4%91uje%20OTKD.pdf>.

86 Annual report on completed activities of the Basic Court in Mitrovica, December 29, 2021.

87 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16–18, 2022.

88 Report of the State Prosecutor of Kosovo for the first half of 2020 and data from the website of the Basic Public Prosecutor in Mitrovica.

89 Information obtained from the interviews performed in Mitrovica in the period March 16–18, 2022.

The renovation and furnishing of the court and prosecutor's office premises have mostly been funded by UNMIK or local NGOs, and to a lesser extent from the budget. In April 2021, UNMIK funded the furnishing of another courtroom, as well as a translation room in the Basic Court in Mitrovica.⁹⁰ As we touch on some of the basic requirements, it is interesting to mention that there is no official telephone line, for both the southern and the northern part of the Basic Court in Mitrovica.⁹¹ Furthermore, there is no direct connection between the Basic Court and the Court of Appeals department in Mitrovica, which is why, even though they are located within the same building, all documentation still goes through Prishtina, which can affect the efficiency of the trial.⁹²

The southern part of the Basic Court building in Mitrovica has not yet been renovated. The premises are currently being leased, which places an additional burden on the Council's budget. The 2022 budget remains identical to the one from 2021. A larger budget, requested precisely for the purpose of resolving issues regarding capacities and work premises, has not been approved. The Government of Kosovo adopted the *Decision on the expropriation of Jugobanka*, the southern court building, and according to the chairman of the Judicial Council, a company has been hired to carry out the renovation works in the next two years.⁹³ Renovation of the Appeals Department building and branch offices in Leposavić is also planned. The Basic Prosecutor's Office in Mitrovica is in similar situation, they also pay rent as they do not have their own premises.⁹⁴

5.2.3. Use of Serbian language and script

The language issue remains a significant obstacle in respect of fully efficient functioning of integrated judiciary, whereas an appropriate number of interpreters represents a crucial condition for the very implementation of the agreement. Various engagements of interpreters and various qualifications they possess result in various quality of interpretation. Expertise in the field of interpreting legal matters is what is most frequently called into question. Practice still shows that most interpreters are not familiar with the Cyrillic script, which creates further issues and prolongs procedures.⁹⁵ Court employees are of the opinion that their position in terms of the number of interpreters is far worse compared to the prosecutor's office, however, they definitely do believe that the proofreader position should also be considered in the court.⁹⁶

90 Access to justice for all: UNMIK upgrades courtrooms in Mitrovica and Prishtina, 28 April 2021, <https://peacekeeping.un.org/en/access-to-justice-all-unmik-upgrades-courtrooms-mitrovica-and-prishtina>.

91 EU Rule of Law Mission Justice Monitoring Report - Findings and Recommendations March 2020 – October 2021 p. 31

92 Information obtained from the interviews performed in Mitrovica in the period February 11- 13, 2019, confirmed in March 2022.

93 Information obtained from the online interview performed in April 2022.

94 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16–18, 2022.

95 Information obtained from the interviews performed in Mitrovica and Prishtina in the period October 19-21, 2020, confirmed in the interview performed in March 2022.

96 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16-18, 2022.

The Basic Court in Mitrovica, with its branches, has 9 interpreters employed through open calls advertised by the state. An additional 10 interpreters were engaged, however their contracts expired in February 2022.⁹⁷ The Basic Court in Mitrovica has submitted over 20 requests for additional interpreters to the Kosovo Judicial Council. The Basic Public Prosecutor's Office in Mitrovica has 7 interpreters, one less compared to the previous reporting period, which is still considered insufficient to cover all necessary interpretation services.

In January 2021, the Prosecutorial Council of Kosovo adopted the *Regulation no. 07/2020 on the engagement and determination of fees for the compensation of translators and interpreters engaged in the prosecutorial system*.⁹⁸ The said regulation relies on the *Regulation no. 07/2019 on certification of court interpreters and translators*, adopted by the Judicial Council of Kosovo in September 2019, with the aim of enabling court translators and interpreters for official and other languages to be certified by the Council. At the session held in February 2022, the Judicial Council of Kosovo approved the announcement of an open call for certification of translators and court interpreters for the following language pairs: Albanian to Serbian and vice versa, Albanian to English and vice versa, as well as Serbian to English and vice versa, including setting up commissions for testing and evaluating candidates for translators and court interpreters for the said language pairs.⁹⁹ The open calls were advertised in March 2022.

The process of translating decisions of the courts of appeals and the Supreme Court into Serbian language has not yet begun. Moreover, the Judicial Councils of Kosovo do not have all the documents translated into Serbian. The quality of translation of the legislative framework is still very poor. In December 2019 the Kosovo Bar Association had its statute and the Lawyers' Code of professional ethics translated from Albanian into Serbian, thus enabling Serbian-speaking attorneys at law to access the Association's main internal documents. There is no systematic solution for corrections of draft laws, or regular engagement of legal experts in the process of drawing up final versions in two official languages. The OSCE points out that, despite certain mechanisms which provide for the consistent drawing up and supervision of draft documents, this is not implemented in practice.¹⁰⁰ The Legal Office of the Prime Minister of Kosovo initiated the development of *Draft Law on Legal Acts*, with the aim of creating a legal basis for the hierarchy of laws and the administrative correction of linguistic errors in the legislation in force and the consolidation of legal texts.¹⁰¹

UNMIK and the local NGO Advocacy Center for Democratic Culture (ACDC) continue to implement the program of support to the Basic Court in Mitrovica by means of including young lawyers in the system of Kosovo and translating case documents in order to reduce the number of unresolved cases. In partnership with the UNDP pro-

97 On February 15, 2022 the contract with UNMIK for interpreters expired, however, it will be extended for another 3 months.

98 The Prosecutorial Council of Kosovo, *Regulation no. 07/2020 on the engagement and determination of fees for the compensation of translators and interpreters engaged in the prosecutorial system*, 2021.

99 The Judicial Council of Kosovo, *Regulation no. 07/2019 on certification of court interpreters and translators*, 2019.

100 OSCE Mission in Kosovo, *Community Rights Assessment Report 5th Edition*, 2021, p. 23.

101 Ibid.

gram, UNMIK finances translators not only for the Basic Court in Mitrovica, but also for the Basic Court in Prishtina and the Basic Court in Uroševac in order to contribute to the systematization of archives and old cases.¹⁰²

5.2.4. Allocating and disposal on cases

At the moment of integration, the rules of judicial councils stipulated arbitrary allocation of cases, but in reality, as of the beginning of integrated judiciary's work, the cases have been allocated based on the language criteria, while the remaining ones were arbitrarily allocated among the judges until the norm was reached.¹⁰³ In September 2018, the then President of the Basic Court in Mitrovica adopted the internal *Decision on allocation of cases based on the language criteria*, for the purpose of proceedings efficiency and respecting the right to fair trial within reasonable time-frame.¹⁰⁴ As specified by Article 6 of the Justice Agreement, in Kosovo, the President of a Basic Court decides on the allocation of cases, which is different from the decision referring to the Public Prosecutor.¹⁰⁵

In the Basic Public Prosecutor's Office in Mitrovica, since the very beginning cases have been allocated based on the *Rulebook on allocation of cases* adopted by the Prosecutorial Council. According to the said Rulebook, integrated prosecutors worked only on new cases and kept on receiving them until they reached the number of cases identical to those prosecutors already working in order for everyone to have an equal number of cases.¹⁰⁶ According to Article 7 of the Agreement, the allocation of cases to prosecutors should be based on their expertise, specialization, personal experience and the knowledge of the local environment, in line with Kosovo law. In practice, the principle of arbitrary allocation of cases was applied, as prescribed by the then applicable statutory framework and the abovementioned Rulebook, while personal experience and the knowledge of the local environment (in this case, it could be interpreted as knowledge of the language in which the cases should be tried) were not considered. Serbia continues to insist that the EU facilitator resolve the allocation of cases in the prosecutor's office on a linguistic basis as well, invoking Article 7 of the Justice Agreement, in order to assign to integrated prosecutors only those cases submitted in Serbian and where proceedings will be conducted in Serbian.¹⁰⁷

102 United Nations Interim Administration Mission in Kosovo Report of the Secretary-General, 12 April 2022, para 67.

103 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018

JUSTICE INTEGRATION p. 36/7

104 Information obtained from the interviews performed in Mitrovica in the period February 11-13.

105 Litigious, non-litigious and enforcement cases are allocated in such semi-controlled arbitrary manner. When it comes to criminal cases, conflicting information has been furnished in the interview. Thus, some participants claim that the language criteria are also applied in the allocation of criminal cases, whereas others claim that it does not apply to criminal cases and that those are only allocated arbitrarily.

106 Ibid.

107 The Office for Kosovo and Metohija and the Office for the coordination of affairs in

• With the support of the European Union and the Council of Europe, a new information system that enables automatic case allocation, as well as the case management database (SMIL / ISUP) were introduced in February 2020.¹⁰⁸ Since then, the database has been used in basic courts and prosecutor's offices, as well as in the Prosecutor's Office of appeal, whereas the Court of Appeals and the Supreme Court started using it in January 2021.¹⁰⁹ Arbitrary and automatic allocations of cases have not yet been implemented at all levels of courts and prosecutor's offices, but are applied at the level of basic courts and prosecutor's offices, currently including the Basic Court in Mitrovica and the Basic Prosecutor's Office in Mitrovica as well.

Although the system has been introduced for the purpose of improving efficiency and preventing fraud in the management of cases, it is safe to conclude that, with the implementation of automatic case allocation in the Basic Court in Mitrovica, Article 6 of the Judiciary Agreement is no longer applied. Certain judges claimed that the system in fact reduced their efficiency, which was probably caused by poor internet connection, but also the fact that some judges do not use the system on a daily basis, instead they transfer their entire caseload at once at the end of the month, thus blocking the system.¹¹⁰ Furthermore, in the particular case of the Basic Court in Mitrovica, even though the court has switched to the automatic case allocation using the system, the chances of allocating a judge who speaks the same language as the party in the proceedings are high.¹¹¹

The cases from the department in Vučitrn, where the Basic Court in Mitrovica was temporarily located until October 2018, tried while the judicial institutions functioned in the parallel system, have been transferred to Mitrovica. The number of old cases has been significantly reduced since 2017, i.e. since the integration of judiciary. During 2021, the Basic Court in Mitrovica handled 16,467 cases (5147 criminal cases and 11,320 civil cases) of which 5722 were resolved (2110 criminal and 3612 civil cases), which is slightly below 35%.¹¹² The court was most efficient when resolving general guilt cases, whereas the highest number of old cases were those referring to felonies. On the other hand, in the domain of civil cases, the court was most efficient

the process of negotiation with the provisional institutions of self-government in Prishtina, "Progress Report on the dialogue between Belgrade and Prishtina (for the period between January 1 and June 30, 2021)", Belgrade, 2021, p. 17.

- 108 Report of the High Representative of the Union for Foreign Affairs and Security Policy to the Secretary-General on the activities of the European Union Rule of Law Mission in Kosovo from 16 September 2019 to 15 March 2020, p. 13; European Commission for the Efficiency of Justice, State of the Implementation of the CEPEJ Cooperation Programs 01.07.2020, p. 11.
- 109 National Audit Office of the Republic of Kosovo, "Audit report on information technology – Case management information system of The Judicial Council of Kosovo and The Prosecutorial Council of Kosovo", Prishtina, 2021, p. 12.
- 110 EU Rule of Law Mission Justice Monitoring Report Findings and Recommendations March 2020 – October 2021 December 2021, p. 31.
- 111 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16–18, 2022.
- 112 The Judicial Council of Kosovo, Statistical report for courts for 2021, Prishtina, 2021, p. 20.

when resolving non-litigious cases, whereas the highest number of old cases were those referring to litigious matters.¹¹³ The department in Leposavić handled 832 cases (572 criminal cases, 260 civil cases), of which 371 were resolved (45%).¹¹⁴ The department in Vučitrn handled 9720 cases (2039 criminal and 7681 civil cases), of which 2916 were resolved (30%).¹¹⁵ The department in Zubin Potok handled 310 cases (139 criminal and 171 civil cases), of which 201 were resolved (65%),¹¹⁶ while the department in Srbica handled 3662 cases (609 criminal and 3053 civil cases), of which 1380 were resolved (38%).¹¹⁷

After the mandate of the EULEX ended in June 2018, the Basic Public Prosecutor's Office in Mitrovica had 6500 Albanian and 400 Serbian cases.¹¹⁸ Today, the number of old cases is somewhat reduced. During the first half of 2021, the Basic Prosecutor's Office in Mitrovica had 9,270 criminal charges-cases, of which 7,025 were resolved, i.e. slightly over 75% of cases.¹¹⁹ Within the same period, the General Department resolved 142 cases less than they received (2007), i.e. 92.92% of received cases. In total, this department resolved 1,865 cases, i.e. 31.01% of cases they had (6014). The Felony department resolved 136 cases less than they received, which is 62.53% of received cases (363), i.e. a total of 227 cases were resolved – 8.48% of cases they received (2449). The Juvenile Department resolved 61 cases more than they received (92), i.e. 166.30%. In total, Juvenile Department resolved 153 cases or 26.37% of the cases it received (427).¹²⁰ Data for the second half of 2021 have not been published. Cases were not statistically processed according to ethnicity of parties in the institution's report.

An additionally available measure is referring cases to mediation. The cases most commonly referred to mediation are those considered easier or less complex disputes, such as petty thefts, infliction of minor bodily injuries, theft of electricity and the like.¹²¹ An increase in cases referred to mediation occurred together with the integration of the judiciary, as evidenced by the fact that in 2017 a total of 205 cases were resolved by means of mediation, whereas in 2018 that number rose to 493, which is an increase of more than 100%. In the period from October 2017 until December 2018, a total of 71.8 % of cases were referred to mediation by the Basic Public Prosecutor's Office in Mitrovica, whereas 25 % of cases were referred by the Basic Court in Mitrovica.¹²² The court's mediation data after the year 2020 are not available. A total of 78 cas-

113 Ibid.

114 Ibid. p. 21.

115 Ibid. p. 22.

116 Ibid. p. 23.

117 Ibid, p. 24.

118 Ibid.

119 The State Prosecutor of Kosovo, [Report for the first half of 2021](#), Prishtina, 2021, p. 52.

120 Ibid.

121 Information obtained from the interviews performed in Mitrovica in the period February 11-13, 2019, confirmed in interviews performed in March 2022.

122 Statistics of the Alternative Dispute Resolution Center in Kosovska Mitrovica.

es referred to mediation from the Basic Prosecutor's Office in Mitrovica were resolved in the first half of 2021.¹²³

Since September 2018, *the Law no. 06/ L-009 on Mediation* has been implemented in Kosovo. Mandatory mediation has been introduced for the purpose of accelerating the proceedings in civil cases thus reducing the number of such cases. The cases specified as those to which the mandatory mediation provision must be applied were less common in the work of the Alternative Dispute Resolution Center in Mitrovica than the criminal ones. This can be attributed to the fact that judges in civil cases refer a smaller number of cases to mediation as they have reservations about mediation as a process.¹²⁴

5.2.5. Work efficiency

Evaluation of work of judges and prosecutors is conducted once a year based on the prescribed norm. The norm for public prosecutors is a minimum of 6 felony cases and a minimum of 23 general offence cases per month. On the other hand, the norm for judges in the Basic Court in Mitrovica is 3 felony cases and 35 general offence cases per month.

For the entire year 2021, this average per judge was 10 criminal cases and 48 civil cases.¹²⁵ According to the data contained in the report for the first quarter of 2022, in the Basic Court in Mitrovica, on average, judges resolved close to 19 cases per month.¹²⁶

For the year 2021, the efficiency of the court for criminal matters was 108% and slightly above 57% for civil matters, due to a large number of both old and new cases. On average, the case resolution rate in the first quarter of 2022 is 85%. What should be taken into account is the fact that, just like in 2020, the court operated for most of 2021 with reduced capacity due to measures related to the COVID 19 virus. As for the number of resolved cases per prosecutor for the Basic Prosecutor's Office in Mitrovica, the result for prosecutors handling felonies is 4.3 criminal charges per month, which is slightly below the norm, and for the general ones 22.3, which fulfills the norm.¹²⁷

123 The State Prosecutor of Kosovo, *Report for the first half of 2021*, Prishtina, 2021.

124 The Alternative Dispute Resolution Center, "*Mediation in Kosovo – Overview and Recommendations*", Mitrovica, 2020, p. 31-32.

125 The Judicial Council of Kosovo, *Statistical report for courts for 2021*, Prishtina, 2022, p. 20.

126 The Judicial Council of Kosovo, *Statistical report for courts for the first trimester of 2022*, Prishtina, 2022, p. 20.

127 State Prosecutor of Kosovo, *Work report of the State Prosecutor – first half of 2021*, Prishtina, 2021, p. 71.

5.2.6. The effect of legally binding rulings and decisions of “parallel institutions”

Enforcement of legally binding rulings which have become enforceable is not possible due to the fact that their validity is not recognized by the authorities of the Republic of Kosovo. The notaries public, cadaster and other relevant bodies do not recognize these decisions as valid.¹²⁸ Back in 2013, after the First Agreement was signed during negotiations between Belgrade and Prishtina, in order to prevent this problem after integration of the judiciary, it was agreed for the validity of these rulings before all Kosovo authorities to be regulated under a special procedure by a separate commission, in the document titled “Validity Appeal”.¹²⁹

In the abovementioned *Conclusions of the EU Facilitator on Justice*, it was agreed for the Judicial Council of Kosovo to officially notify all competent Kosovo authorities by December 9, 2016 of the *Conclusions on the document Validity Appeal* from July 2013.¹³⁰ An adequate document which would define the procedure of recognition and enforcement of the rulings of Serbian courts on the territory of Kosovo is yet to be adopted by the Kosovo authorities, therefore these rulings are not implemented in practice.¹³¹

The document on recognition of court rulings fails to provide sufficiently precise description of types of rulings which should be reviewed by the special commission. According to the opinion of the respondents, in order to provide access to justice for all Kosovo citizens, it is necessary to recognize the effect of all legally binding rulings and actions of the courts, as well as everything referring to the work of these courts on the territory of Kosovo.¹³² The debate pertaining to all that should be encompassed by the meaning of the terms „rulings“ and „all competent authorities“ is ongoing. According to the respondents, the Commission was formed in February 2019 and was chaired by the President of the Court of Appeals. Two meetings were held, however, an agreement on the rulings to be validated by the Commission has not been reached nor has the procedure itself been adopted.¹³³

128 The Judicial Council of Kosovo, Statistical report for courts for the first trimester of 2022, Prishtina, 2022, p. 20.

129 Document titled “Validity Appeal” refers to the decisions to be considered by the special commission, and which were rendered by parallel Serbian institutions. The document is not available to public and the information was received through interviews.

130 [Conclusions of the EU Facilitator on Justice](#), November 30, 2016. The document “Validity Appeal” was not available to persons conducting the research.

131 The Office for Kosovo and Metohija and the Office for the coordination of affairs in the process of negotiation with the provisional institutions of self-government in Prishtina, “[Progress Report on the dialogue between Belgrade and Prishtina, December 2018](#)”, Belgrade, 2019, p. 12.

132 Information updated during interviews performed in Mitrovica and Prishtina in the period November 19 – 21, 2020.

133 Information updated during interviews performed in Mitrovica in the period March 16 – 18, 2022.

Various respondents state various reasons for the lack of progress in this field. The Office for Kosovo and Metohija believes that the issue of recognition and enforcement of rulings of Serbian courts which functioned in Kosovo and Metohija is still pending because the Commission did not adopt an adequate document which would define the procedure for recognition and enforcement of all rulings as of September 16, 2017, whereas the institutions in Prishtina expect the archives to be handed over first.¹³⁴

The European Commission *Report on Kosovo* 2021* clearly highlights the issue of access to rulings and decisions rendered by Serbian courts in Kosovo between 1999 and the integration of Serbian judges in October 2017, and expects a separate agreement or arrangement to be reached with regard to the recognition of such rulings and decisions by Kosovo*.¹³⁵

5.2.7. Jurisdiction for resolving and retaining old cases

The cases tried before Serbian judicial institutions in the period from 1999 to 2017 remain largely outside the scope of the Justice Agreement. As a reminder, during the parallel functioning of the institutions, citizens simultaneously submitted requests for resolving civil cases to both the courts of UNMIK and parallel courts. Thus, the need to recognize rulings in Serbia and Kosovo at times led to contradictory legal outcomes, since the courts in one system (either UNMIK or Serbian) were not aware of the fact that the same case was tried or that the ruling was rendered on the same subject in the other system.¹³⁶

In respect of criminal cases, according to the plan for implementation of the Brussels Agreement – Serbian judicial institutions stopped receiving criminal cases on July 15, 2013. As of that period, only urgent cases, which included interethnic incidents, domestic violence, detention etc., were resolved. The archives and initiated cases have not been officially handed over to Kosovo authorities, and certain respondents claim that the Kosovo authorities are not familiar with the archives location.

Even though civil, noncontentious and enforcement cases should have been suspended in September 2013, it only happened on October 15, 2017 when the implementation of the Justice Agreement should have officially commenced. These cases are predominantly located in other courts in the Serbian judicial system, because, prior to the integration, the jurisdiction was transferred to the courts in the municipalities close to the administrative crossings. We should highlight that currently, those cases which could be enforced on the territory of Serbia are tried before Serbian courts. Lastly, based on the *Decision of the Court of Appeals in Niš dated March 5, 2018*,¹³⁷ the *Agreement on enforcement of the Decision on temporary transfer of jurisdiction* was signed on April 17, 2018 (hereinafter: Agreement on temporary transfer of jurisdiction)

134 The Office for Kosovo and Metohija and the Office for the coordination of affairs in the process of negotiation with the provisional institutions of self-government in Prishtina, "[Progress Report on the dialogue between Belgrade and Prishtina, July 2021](#)," Belgrade, 2021, p. 17.

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

136 OEBS mission to Kosovo, "Parallel structures in Kosovo 2006-2007", Prishtina, 2007, p. 21.

137 Decision on temporary transfer of jurisdiction Su I-1-23/18, the Court of Appeals in Niš, April 16, 2018.

thus making the temporary transfer of territorial jurisdiction from the Basic Court in Kosovska Mitrovica and the High Court in Kosovska Mitrovica to the Basic and High Court in Leskovac official.

In accordance with this decision, the jurisdiction has been transferred to the Basic and High Court in Leskovac due to “inability of these courts to proceed”, and pursuant to Article 24(2) of the *Law on Organization of Courts*.¹³⁸ Namely, the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices in the Republic of Serbia stipulates adoption of the special law in respect of courts and public prosecutor’s offices on the territory of the AP Kosovo and Metohija,¹³⁹ and that until the moment of adoption of the Law, these courts would continue working and having jurisdiction on this territory. The Law should have been enacted by December 31, 2013. Since that did not happen, another formal solution regarding jurisdiction over these cases had to be found, as they were not referred to Kosovo institutions.

Upon signing of the Brussels Agreement, the High Judicial Council rendered the Decision in June 2013, stipulating that the courts in Kosovska Mitrovica would decide in cases initiated by July 15, 2013, and that the decisions in those cases would be drawn up by September 1st of the same year.¹⁴⁰ The Decision of the High Judicial Council also specifies that the documents used to initiate cases after July 15, 2013 would be recorded and kept by these courts in order for them to later be submitted and resolved within judicial authorities established in accordance with the Brussels Agreement, including basic courts in the municipalities with predominantly Serbian population. Those cases will be kept “in a manner which would enable compliance with the deadlines for submission of cases to judicial authorities in accordance with the Agreement, and in cooperation with EULEX, which will be defined in a subsequent agreement”.¹⁴¹ Urgent criminal cases are to be submitted to EULEX, which will handle them, while urgent civil cases are to be handled by these courts until September, when the actual integration was expected.

As stated in the *Decision of the Court of Appeals in Niš dated March 5, 2018*,¹⁴² five years had passed since the aforementioned decision of the High Judicial Council, and the special Law had not been enacted, adding that the judicial institutions which would be in line with the Brussels Agreement had not been established, which was also the standpoint of the Supreme Court of Cassation,¹⁴³ and insisting on temporary transfer of jurisdiction to the courts in Leskovac in order for these cases to be resolved. The explanation of this decision further stated that the fundamental human rights were constantly violated in this area “because (citizens) were not able to initiate court pro-

138 Ibid.

139 Article 12, the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor’s Offices, “Official Gazette of the RS”, no. 101/2013.

140 Decision of the High Judicial Council no. 06-00 -25 12013-01, June 17, 2013.

141 Ibid.

142 Decision on temporary transfer of jurisdiction Su I-1-23/18, the Court of Appeals in Niš, April 16, 2018.

143 The Decision of the Court of Appeals in Niš states this was the standpoint given in the letter of the Supreme Court of Cassation Kd 155/13 of December 4, 2013.

ceedings, that is, they were not able to exercise their right to legal protection, or continue those which were already initiated, or enforce legally binding court decisions. In the abovementioned cases, their right to trial within reasonable time, or the right to a fair trial has been violated¹⁴⁴. They emphasized the necessity to transfer the jurisdiction to a functional court in the Serbian judicial system in order to protect the citizens' rights, particularly the right to property, inheritance, employment, marriage, etc.

The aforementioned *Agreement on Temporary Transfer of Jurisdiction*¹⁴⁵ was concluded based on this decision. Among other things, the Agreement defines the manner of proceeding in inheritance cases and other non-litigious, litigious and enforcement cases. Except for the cases of execution of criminal sanctions, criminal cases will not be the subject of transfer of jurisdiction. We should highlight that the cases transferred to the Basic and High Court in Leskovac were selected by the former heads of the court in Mitrovica, based on whether they could be enforced or not. It is further stated that the archives would remain in the area of Kosovska Mitrovica and would not be taken over, while the deposit and the inventory would be transferred to courts in Leskovac. The Ministry of Justice undertook to transfer electronic registry to courts in Leskovac, while the possibility of activating electronic database "in the region of the Autonomous Province of Kosovo and Metohija for the purpose of scanning of cases"¹⁴⁶ is still under consideration.

The Internet presentation of the Basic Court in Leskovac still includes three sets of minutes taken at the sessions of the Commission for takeover, review, distribution and allocation of cases of the Basic Court in Kosovska Mitrovica submitted to the Basic Court in Leskovac.¹⁴⁷

5.2.7.1. Cases tried before the court in Leskovac

The Basic Court in Leskovac was allocated 5064 cases.¹⁴⁸ Depending on the legal matter, the judges were allocated up to 200 cases primarily within the jurisdiction of the courts in Mitrovica.¹⁴⁹ According to the legal matter, majority of cases pertained

144 Decision on temporary transfer of jurisdiction Su I-1-23/18, the Court of Appeals in Niš, April 16, 2018.

145 Agreement on implementation of the Decision on temporary transfer of jurisdiction signed by the President of the Court of Appeals in Niš, President of the High Court in Leskovac, President of the Basic Court in Leskovac, former President of the High Court in Kosovska Mitrovica, former President of the Basic Court in Kosovska Mitrovica and the State Secretary of the Ministry of Justice on April 17, 2018.

146 Ibid.

147 The said documentation is available on the Internet presentation of the Basic Court in Leskovac: <https://bit.ly/2lW1Amv>.

148 In the previous reporting cycle there were 5,008 cases, but as stated in the Basic Court in Leskovac, due to the need for certain files or at the request of clients, another 56 cases were transferred from the archives of the old Basic Court in Kosovska Mitrovica between 2020 and the visit date May 20, 2022

149 Information obtained from interviews with judges and requests for access to information of public importance submitted to the Basic Court in Leskovac in May 2022.

to enforcement proceedings (3466), followed by litigation (927), probate (635), whereas the rest were not-litigious cases.¹⁵⁰

Table 2: Summary report on the number of received cases by legal matter, the number of resolved cases and the number of unresolved cases by legal matter as of March 31, 2022

LEGAL MATTER	RECEIVED	RESOLVED	SUSPENDED	UNRESOLVED
P	194	174	84	20
P1	638	613	47	25
P2	93	90	2	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	635	604	68	31
R1	1	1	1	/
R2	2	2	/	/
R3	6	6	/	/
TOTAL	5064	4981	202	83

The Basic Court in Leskovac does not handle criminal cases in accordance with the Agreement on Transfer of Jurisdiction. The Basic Court in Leskovac took over the cases of execution of criminal sanctions. Cases where convicted citizens were from the territory of Kosovo were tried before several Serbian courts. Considering that no criminal sanction was imposed on these convicts due to their inaccessibility to the authorities, the courts referred these pending cases to the Basic Court in Leskovac for further proceeding. On July 3, 2018, the Supreme Court of Cassation submitted an **Announcement** to the presidents of the basic courts stating that, in the future, those basic courts which rendered the first-instance decision would also take over the cases of execution of criminal sanctions due to the inability of the Basic Court in Mitrovica to handle them.¹⁵¹ In case the first-instance decision was rendered by a High Court, the basic court at the place of arbitration will carry out the referral.¹⁵² In order to prevent the statute of limitations of these cases from expiring, the Basic Court in Leskovac took actions to interrupt the relative statute of limitations. However, in cases where the statute of limitations did expire or expired before such cases were received, the participation of other courts is required, since the decision on the statute of limitations is rendered by the court which rendered the ruling.

150 See Table 2 for more details.

151 The Supreme Court of Cassation, *Court Decision VIII 224/18-1*, July 3, 2018.

152 Ibid.

The basic court in Leskovac issued summonses in order to enforce the criminal sanction, and if the party did not respond, arrest warrants were issued. In court practice, the majority of the conducted cases were resolved by the arrest on a warrant after crossing the border/administrative crossing into the Serbian territory. The persons who reported to serve their sentences received summonses mainly through regular mail, which still functions in certain parts of Kosovo, whereas the Ministry of Justice submitted summonses to those persons residing in the area of Kosovo not covered by mail services. Since international legal aid cannot be initiated for the relations between Serbia and Kosovo, serving the sentence is avoided by not crossing the border with Serbia. A particular issue has been observed in the fact that the data in the cases which reached the Basic Court in Leskovac were incomplete, and there have been cases of persons who have already served their sentence being summoned to serve it again.

The court maintains direct cooperation with the archives of the former court in Kosovska Mitrovica. This is particularly important in the context of the need to obtain a certificate from the court archives attesting that no criminal proceedings are being conducted before the court for the area of Kosovo. If there is no such information in the archives, the Basic Court in Leskovac issues a certificate attesting that there are no ongoing criminal proceedings. However, the problem arises when there are criminal cases initiated prior to the integration of the judiciary and completed before the integrated Basic Court in Mitrovica. Since the decisions of the said court are not recognized by the Serbian state authorities, persons whose cases have been completed before the court in Kosovo cannot obtain such certificate. In such cases, they need to wait for the statute of limitations to expire, which can take up to 20 years.

Table 2 shows that there were 194 **general litigation** cases, of which approximately 20 remained unresolved. The majority of new cases pertain to financial claims.¹⁵³ In general, the inflow of general litigation cases has been reduced, including cases from Kosovo. Cases pertaining to real estate were also submitted to the court, although the Agreement does not specify the transfer of jurisdiction for this matter. The most commonly suspended proceedings were those related to real estate cases, i.e. where the right refers to real estate (property, servitude, etc.). Obstacles in proceeding are reflected in the inability to present evidence by means of expertise, while this issue is partially resolved with witness statements. Moreover, parties struggle to obtain the certificate of legally binding rulings of the Kosovo system. It is difficult to present evidence without public documents and registers, and evidence is not recognized unless stamped by the Republic of Kosovo. No issues with submitting have been encountered, and when the ruling is announced, it is posted on the bulletin board or a temporary representative is appointed.

The Basic Court in Leskovac handles old **family matter cases** as well, but also receives new ones. 93 cases were taken over, of which 90 were resolved by the end of March 2022. Situations where it is required to simultaneously resolve the legal status before the court in Leskovac and the court on the Kosovo territory, are typical of these cases. This usually happens when one of the spouses resides on the territory of Kosovo and the other in Serbia.¹⁵⁴ Since the ruling rendered by the court of the Republic of Kosovo is invisible in the Serbian system, the spouse residing in Serbia cannot ex-

¹⁵³ Regarding cases received after the integration of judiciary in Kosovo, the Basic Court in Leskovac does not keep separate records for cases from the territory of Kosovo. They are assigned numbers and merged with other cases.

¹⁵⁴ See section 5.3.3.

ercise his/her rights on the basis of such ruling. It is not possible to carry out the procedure for recognizing the court decision as Serbia does not recognize Kosovo. The existence of two rulings on the same matter is contrary to the basic principles of law.

As neither the ruling nor the confirmation of payment of legal maintenance (alimony) are recognized by Serbia, the parent may be forced to pay double amounts in cases where relations with the other parent receiving alimony are strained, all at the risk of criminal liability. In several cases, the Court of Appeals in Niš overturned the previously rendered rulings, as it had determined that alimony was already being paid. An agreement between the parties has become the most common solution of the issue due to the obstacles impeding the enforcement of rulings pertaining to the rights and obligations of Serbs in northern Kosovo. The investigation cannot be carried out, as it requires the permission of the president of the competent court (which in the case of the Basic Court in Kosovska Mitrovica does not exist operationally). They receive reports from the centers for social work, which operate in the Serbian system. There are generally no mutual claims, and when there are, these are not enforceable. The most common cases are related to custody of children and maintenance. Property matters are resolved in a special procedure for the division of marital assets.

A total of 635 **probate cases** have been handled in Leskovac since the temporary transfer of jurisdiction, of which 604 were resolved. This is also the domain in which Leskovac now receives new cases under the Agreement on Temporary Transfer of Jurisdiction. Just like in the previous period, the most common issues in these proceedings are the failure of the parties to respond to the summonses and incomplete documentation, as well as the impossibility of the submission thereof. Citizens residing in Kosovo or internally displaced persons are faced with the problem of gathering documentation issued by the Serbian authorities, most often from the registry offices and the cadaster. Four municipalities in the north of Kosovo belong to the unified cadaster service located in Zvečan and in Kruševac for the parts situated south of the river Ibar, whereas the competent registry offices for this territory remain scattered. The said process takes several days, which impacts the parties' financial situation and places those with lower income in an unequal position. Probate cases which are not delegated to notaries public are mostly cases from Kosovo, therefore, almost all new probate cases originate from municipalities in Kosovo. There is a high inflow of these cases amounting to about 1,300 since the beginning of 2022. If an estate is located on the territory of Kosovo, and due to the fact that decisions from Serbia cannot be enforced on the said territory, citizens often initiate the same proceedings before the courts in Kosovo. These cases directly demonstrate the consequence of inadequate implementation of the Agreement on Registers and the Agreement on the Cadaster. On a monthly basis, the court handles approximately 40 non-litigious cases, among which probate cases as well, however, those are mostly cases of determining birth or death.

In terms of **enforcement matters**, the court in Leskovac handled 3,466 cases, of which only 4 cases remained unresolved as of March 2022. The biggest issue here are enforcements reduced to enforcement on real estate.¹⁵⁵

As for **labor litigation**, the Basic Court in Leskovac received 638 cases, of which 613 were resolved. A total of three judges handled these cases and it is safe to say that the burden placed on them with cases from Kosovo following the temporary transfer

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155 For valid reasons, persons conducting the research were not able to interview again the judges handling this matter.

of jurisdiction was the heaviest, as they took over more than 200 cases, adding them to the cases they were handling already. Currently, there is no significant inflow of new cases from the territory of Kosovo. Approximately 20 cases remain of those taken over under the Agreement. No significant issues were observed when it comes to handling those cases, compared to the previous reporting period. Difficulties faced at the beginning were related to the case documentation itself, being outdated, incomplete, without updated data, faded on old papers.

In these cases, judges handled disputes initiated by non-working persons.¹⁵⁶ Namely, the term “non-working person” is used for persons who, through no fault of their own, but due to the factual situation resulting from the relationship between Belgrade and Prishtina, remained employed, but did not actually work – instead of salary, they received a fixed amount of compensation.¹⁵⁷ Other doubts are related to cases where the party is represented by the head of the temporary authority.¹⁵⁸ Heads are politically elected persons who do not necessarily own a law degree, in fact, at times they only have the fourth degree of vocational education. In certain municipalities, parties may be represented by the prosecuting attorney from the territory of Kosovo on behalf of such heads.¹⁵⁹ Given that only a small number of municipalities have prosecuting attorneys, who also face difficulties with workload, the representation is occasionally cancelled.¹⁶⁰ Heads of such authorities authorize attorneys at law to take over representation, particularly in complex cases. The question which arose was whether the heads of the temporary authorities were authorized to engage attorneys at law as representatives. The Office for Kosovo and Metohija is of the opinion that the head of the temporary authority may issue a power of attorney on behalf of the municipality as a legal entity.¹⁶¹

Proceedings against former public companies, institutions of the Republic of Serbia which no longer exist have been suspended. Judges emphasize that there are usually no obstacles to try new cases coming to court. Situations in which an institution is not able to submit documentation for valid reasons also occur. In such cases, the rule which prescribes the defendant’s failure to submit requested evidence to be viewed in favor of the plaintiff is disregarded.

The Basic Court in Leskovac is successfully implementing the Agreement on the Temporary Transfer of Jurisdiction. The registry office is not able to record new cases from Kosovo in a separate register, and assigns them numbers instead. Since the implementation of the Agreement, the court has been heavily loaded with these

156 In these cases, it was clear that there was an employment contract, but for valid reasons, they were not able to fulfill the work obligation.

157 In line with the Government decision, compensation is paid in the amount of RSD 8,960.

158 Decision on establishing the Temporary Authority in the municipalities on the territory of the Autonomous Province of Kosovo and Metohija, “Official Gazette of RS”, no. 31/2013.

159 The prosecuting attorneys exist in the temporary authorities of Kosovska Mitrovica, Prishtina and Leposavić, as stated by the judges who adjudicate on these disputes in the Basic Court in Leskovac.

160 For example, the Municipality of Kosovo Polje is under the jurisdiction of the prosecuting attorney from Prishtina, however, due to high workload, he is not able to provide representation.

161 Information obtained from the interviews performed in Leskovac in May 2022.

cases, which directly resulted in the reduction of its efficiency. Given that these case were expected to overload the court, the Basic Court in Leskovac has put in a request for 4 new judges. The current status remains identical to the one from the previous reporting period, i.e. only two judges were added to the court.¹⁶²

Almost five years after the integration and four full years after the temporary transfer of jurisdiction of the court in Mitrovica to Leskovac, the Serbian community, predominantly from the northern municipalities of Kosovo, uses the services of both Kosovo and Serbian judicial systems. One can now openly call into question the assumption that eliminating legal uncertainty caused by addressing parallel judicial systems was one of the objectives of the integration. Judicial officials who have been integrated into the judicial system of Kosovo remain doubtful of Prishtina unblocking the process of recognizing decisions and rulings, therefore, the archives of the former court in Kosovska Mitrovica has not been handed over to the Kosovo system, instead the court in Leskovac has direct access. The majority of the citizens' issues are indeed resolved before the latter court, however the legal uncertainty lingers, as for some areas, most commonly the domain of family law and probate proceedings, it is still necessary to address both courts, depending on where the enforcement or the execution takes place.¹⁶³

5.3 Access to justice and the citizens' trust

Citizens of northern Kosovo still do not have complete and adequate access to justice. According to the research of the Advocacy Center for Democratic Culture (ACDC), the majority of citizens of northern Kosovo are partially (39%) or fully (47%) familiar with the integration of judiciary, however, even after five years, 14% of the citizens do not know anything about the process.¹⁶⁴ A large percentage of citizens in fact believe that the reason for the lack of information lies in the lack of media coverage of the process, and in general they do not believe that the integration has in any way contributed to the improvement of the rule of law or access to justice. Almost 30% of respondents do not have trust in an independent and fair trial before Kosovo's judicial institutions.¹⁶⁵

Progress in terms of submitting documentation in one's mother tongue has been observed, hence only 25% of respondents stated that they had issues with it, while more than 70% did not, which indicates a change in the practice of institutions. If we compare it to the 2020 public opinion survey on the judiciary in the Mitrovica region conducted by the Alternative Dispute Resolution Center, which shows that as many as 57% of respondents did not think that the judicial system in the Mitrovica region had become more efficient after integration, as well as that the most common problem was the failure to observe the Serbian language as an official language, it is safe to say that some progress has been made.¹⁶⁶ Nevertheless, a large percentage of

162 Information obtained from the interviews performed with judges of the Basic Court in Leskovac in May 2022.

163 For examples from practice see section 5.3.3.

164 The Advocacy Center for Democratic Culture, "Citizens' attitudes on the efficiency of the judicial system in northern Kosovo", Mitrovica, 2022, p. 6.

165 Ibid, p. 9.

166 Alternative Dispute Resolution Centre, "Judiciary in the Mitrovica Region - Public Opinion Interview", Mitrovica, 2020.

respondents believe that integration has to some extent impacted the daily life of the citizens of northern Kosovo, of which 36% find the impact of the integration on the citizens' rights and interests to be positive, while 21% believe it to be negative.¹⁶⁷

Increasing workforce capacities has been suggested as a way of improving the work of the court, as well as a more thorough implementation of the laws on official languages, better court decisions and improvement of the communication with citizens and the public. This also demonstrates the court's need for a spokesperson, as suggested by the interviewed representatives of the judiciary. A similar suggestion has been made for the prosecutor's office.

When asked by the Advocacy Center for Democratic Culture whether they believed the ethnicity of the judge and prosecutor might impact the outcome of a trial, as many as 55% of respondents gave a positive answer, whereas, according to the survey conducted by the Alternative Dispute Resolution Centre in 2020, 81% of respondents from the Serbian community answered that they would not feel comfortable having an Albanian judge deciding in criminal proceedings instituted against them.¹⁶⁸

Regarding access to the court and communication, as already mentioned, there is no telephone line used exclusively to provide information to parties about cases, however, compared to the previous reporting period, the base on which citizens can follow the course of trials has been improved.¹⁶⁹ Court forms are bilingual, and since the appointment of the new president of the court, open door policy has been introduced, which has enabled citizens to receive responses to complaints and objections referring to the work of the court on the last day of the month.¹⁷⁰ If an issue cannot be solved internally within the court, citizens are referred to the Ministry of Justice of Kosovo.

Another relevant issue is the fact that a large number of documents cannot be used as evidence both in proceedings before the court and before other institutions of the Republic of Kosovo. This poses a particular problem when proving property ownership or during probate proceedings. Until the completion of the present report, judges have not expressed a uniform standpoint in respect of the validity of these documents,¹⁷¹ i.e. of administrative documents and certificates issued by Serbian institutions on the territory of Kosovo in the 1990s.

As for the right to free legal aid, the *Law on Free Legal Aid of the Republic of Serbia* provides for establishment of free legal aid services in local self-government units.¹⁷² Accordingly, the temporary authorities of the Republic of Serbia on the territory of Kosovo have the authority to provide free legal aid.¹⁷³ In order to exercise the

167 The Advocacy Center for Democratic Culture, "Citizens' attitudes on the efficiency of the judicial system in northern Kosovo", Mitrovica, 2022, p. 13.

168 Alternative Dispute Resolution Centre, "Judiciary in the Mitrovica Region - Public Opinion Interview", Mitrovica, 2020.

169 Information available on the court's [website](#).

170 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18 2022.

171 The research has shown the existence of a selective approach to this matter by the acting judges.

172 The Law on Free Legal Aid, "Official Gazette of RS", no. 87/2018.

173 Participants highlight that free legal aid can be received in this manner in Mitrovica and Gračanica.

right to free legal aid, citizens must submit a certificate of unemployment to receive a decision or to have an attorney at law assigned to them on this basis.¹⁷⁴ In accordance with the *Law on Free Legal Aid of Kosovo*, Free legal aid agency has been set up and free legal aid is provided through regional and mobile offices, via attorneys at law and NGOs in cases when they enter into partnership with the Agency.¹⁷⁵

The largest volume of free legal aid is provided through or with the support of NGOs. Thus, the organization Aktiv from Mitrovica provides these services as part of the European Union project “Promotion and protection of property rights of internally displaced persons, refugees and returnees upon Readmission agreements”, in the domain of protection of property claims related to displacement of Serbs from Kosovo and Metohija since 1999 including claims of Serbs and other non-Albanians whose property has been damaged, destroyed or illegally occupied.¹⁷⁶ The most extensive program is provided by Kosovo Law Institute which, in cooperation with the Agency and as part of the UN program “Access to Justice”, offers free legal aid on the territory of northern Kosovo, particularly in the domain of protection of minority rights and rights of displaced persons.¹⁷⁷ Similar service is provided by the Advocacy Center for Democratic Culture, which started offering free legal aid on February 1, 2022, with the support of the Agency’s mobile office.¹⁷⁸

In the following sections, we will discuss in more detail the issue of accessibility of notaries public, the work of attorneys at law from the Serbian community, as well as the large issue and legal uncertainty of citizens, particularly those from northern Kosovo, who need to address judicial institutions in both the Serbian and Kosovo judiciary systems, often for the same matter.

5.3.1. Shortage of notaries public in areas with predominantly Serbian population

A large problem of accessing services of notaries public still persists on the entire Kosovo territory, in particular for non-Albanian minority communities. Unlike the period when notarization activities were performed by courts and local self-government units, the said activities are now the exclusive responsibility of notaries public.

Namely, according to the current Kosovo *Law on Notary* from 2018, the number of notaries public and notary public offices is determined under the minister’s decision, by appointing at least one notary public for the territory of each municipality.¹⁷⁹ In exceptional cases, also under the minister’s decision, the number of notaries public may be increased by adding one notary public office for every ten thousand citizens every year, taking into account the number of documents processed by notary public offices on an annual basis.¹⁸⁰ When the Law was adopted, it raised concerns regarding the

174 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18 2022

175 The Law on Free Legal Aid no. 04/L-017, “Official Gazette of the Republic of Kosovo” no. 3/12, article 26.

176 More on: <https://pravnapomoc.org/lat/kancelarije/nvo-aktiv/>.

177 More on: <https://kli-ks.org/en/kosovo-law-institute-promotes-free-legal-aid-center/>.

178 More on: kosovapress.com/sr/%E2%80%8Bbesplatna-pravna-pomoc-nvo-acdc/.

179 “Official Gazette of the Republic of Kosovo” * /no. 23/ The Law on Notary no. 06/l-010, article 8, item 3

180 “Official Gazette of the Republic of Kosovo” * /no. 23/ The Law on Notary no. 06/l-010, article 8, item 4

increase in the number of notaries and the weakening of the eligibility criteria, as well as the criteria for rejection as it opened up space for appointments influenced by politics.¹⁸¹ In particular, there was a discussion about the possibility of registered offices or the required number of notaries public being determined under the minister's decision.

The number of notaries public on the entire territory of Kosovo is currently insufficient. Certain municipalities still do not have any notaries public, such as Istok and Srbica.¹⁸² The situation becomes even more difficult if we observe the number of notaries public in the Serbian community or those who speak Serbian, as there is presently only one notary public of Serbian nationality in Novo Brdo, whereas only one notary public in South Mitrovica speaks Serbian and generally covers all municipalities of northern Kosovo.¹⁸³

According to the estimates of the Serbian Government, there should be at least 4 notaries who speak Serbian in northern Kosovo and at least as many public enforcement officers, therefore it is necessary to adjust and organize licensing exams for this profession accordingly.¹⁸⁴

At the beginning of 2019, the Ministry of Justice announced an open call for 71 notaries public.¹⁸⁵ Eight lawyers from the Serbian community applied to the said open call, passed the licensing exam and completed interviews. The problem arose when the Ministry of Justice adopted the *Decision on canceling the open call* on February 21, 2020, primarily due to the potential risk of corruption, because close to 60 candidates who passed the written exam allegedly had direct connections with the then ruling party or were family members of persons working in the judicial system.¹⁸⁶ However, UNDP and the Kosovo Anti-Corruption Agency came to the same conclusion regarding allegations of a potential conflict of interest, namely that the procedures were duly adhered to.¹⁸⁷ In mid-2019, Koha Ditore newspaper published the names of the candidates and their alleged connection with the outgoing political and judicial system.¹⁸⁸

Cancellation of the open call did, however, indirectly affect the Serbian community's access to justice, because, had the open call not been cancelled, there would have been two Serbian notaries public working in Mitrovica, 3 in Leposavić, 2 in Kosovsko Pomoravlje and 1 in Štrpce. Forty four candidates filed a lawsuit to the Basic Court in Prishtina, demanding the Decision on canceling the open call to be revoked.

181 Kosovo Law Institute, the "Culture of Impunity" in Kosovo, Prishtina, 2022, p. 19.

182 Information available on the Notary Chamber of Kosovo website, link: <https://www.noteria-ks.org/noteret/?lang=sr>

183 Information available on the Notary Chamber of Kosovo website, link: <https://www.noteria-ks.org/noteret/?lang=sr>

184 The Office for Kosovo and Metohija and the Office for Coordination of Affairs in the Process of Negotiation with the Provisional Institutions of Self-Government in Prishtina, "Progress Report on the Belgrade-Prishtina Dialogue, October 2017", Belgrade, 2020, p. 12.

185 Information available on the [website](#) of the Kosovo Ministry of Justice.

186 Kosovo Law Institute, the "Culture of Impunity" in Kosovo, Prishtina, 2022, p. 19.

187 Ibid.

188 Koha Ditore, "[Kandidatët për noterë që kanë lidhje me politikën, sistemin dhe komisionin përzgjedhës](#)," June 29, 2019.

On March 1, 2022, the Administration department of the Basic Court in Prishtina rendered a *decision* accepting the lawsuit of 44 notary public candidates and revoking the decision of the Ministry of Justice.¹⁸⁹

The general impossibility of nostrification and the current impossibility of verification of diplomas will only represent an additional obstacle for lawyers from the Serbian community to apply to future open calls. The *Law on Notary* provides for all notarial documents to be issued in Albanian or Serbian depending on the language spoken better by the notary public compiling the document.¹⁹⁰ The law further stipulates that, in the municipality where the languages have the status of official languages or are used officially at any level in accordance with the law, the clients have the right to request from the notary public to issue them one copy of the document in the desired language. Such copy will be considered a notarial document.

The problem pertaining to non-existence of Serbian notaries in northern Kosovo is partly solved by the activities involving notaries public in South Mitrovica being conducted by a notary public who notarizes documents in the Serbian language as well. The problem has also been overcome by the fact that signatures are notarized by local self-government bodies of Serbian institutions. However, this only helps overcome the problems of signature notarization for administrative purposes, and such notarizations are recognized only by Serbian institutions.¹⁹¹ For any other matter involving the rest of Serbia, which requires a notary public, citizens from the north must go to Raška, Novi Pazar or Leskovac as the closest points, which incurs additional expenses.¹⁹² The authorities in Prishtina and Belgrade do not recognize each other's notarizations or documents issued by the other side, which leaves citizens in legal uncertainty and the only solution would be to appoint notaries in the north as soon as possible.¹⁹³

Another option used at times is for attorneys at law to take part in drawing up, for example, real estate contracts and sign them together with the clients, which does not ensure the form required for the conclusion of such legal transactions, but at least provides some kind of evidence for the future.¹⁹⁴ Until the situation changes, it is safe to say that minority communities, especially the Serbian one, since the Serbian lan-

189 Betimi per Drejtësi - Gjykata aprovon padinë kundër vendimit të MD-së për anulimin e konkursit për noterë: <https://betimiperdrejtësi.com/aprovohet-pa-dia-ne-rastin-ku-kandidatet-per-notere-kerkuan-anulimin-e-vendimit-te-md-se-me-te-cilin-ishte-anular-konkursi-per-notere/>

190 "Official Gazette of the Republic of Kosovo" * /no. 23/ The Law on Notary no. 06/l-010, article 32.

191 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

192 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

193 Euronews Serbia, "The Problem of "non-existing citizens" of Kosovo: there are no notaries in the north and the two sides do not recognize each other's notarizations", February 19, 2022.

194 Information obtained from the interviews performed in Mitrovica and Prishtina in the period March 16 – 18, 2022.

guage is one of the official languages of Kosovo, will encounter more difficulties with access to justice compared to the majority population in Kosovo.

5.3.2. Representation by the attorneys at law from the Serbian community before Serbian and Kosovo judicial institutions

A total of 7 Serbian attorneys at law from Kosovo are registered in the Bar Association of Kosovo at the moment and they to a large extent meet the requirements of the Serbian community before all Kosovo courts.¹⁹⁵ The Bar Association provides *ex officio* assignment of attorneys at law in criminal cases based on the unified list, and not based on the knowledge of languages, which may impede understanding between the defense attorney and the defendant, also calling into question the right to a fair trial.

Additionally, they provide representation before the Serbian courts, mainly in Raška, Novi Pazar and Leskovac, i.e., the courts which directly or indirectly took over the so-called “Kosovo cases”. Although the largest number of cases are tried before the Basic Court in Leskovac, citizens coming from the territory of Kosovo most commonly hire attorneys at law who work in Kosovo.

Following the transfer of jurisdiction, there was no uniform standpoint nor instructions from the competent authorities, hence the decision on whether the party could be represented by an attorney at law registered in the Bar Association of Kosovo was made by the judges. Under the decision of the Bar Association of Serbia dated December 1, 2017, attorneys at law registered in the Bar Association of Kosovo with registered offices on the territory of Kosovo and Metohija were permitted to handle cases before courts and other state institutions without any limitations.¹⁹⁶ On November 20, 2018, the High Court in Leskovac adopted a decision on revoking the decision of the Basic Court in Leskovac on rejecting the power of attorney of attorneys at law from Kosovo, referencing the decision of the Bar Association of Serbia. Since then the representation of parties has been unhindered.¹⁹⁷

As previously highlighted, cases tried before the Basic Court in Leskovac predominantly encompass cases pertaining to family law, probate cases, as well as those pertaining to labor law in the event of disputes initiated against institutions functioning within the Serbian system. As for the proceedings costs, parties coming from Kosovo bear large costs which they will not be able to refund at the end of the proceedings if they hire an attorney at law from Mitrovica, such as the costs of transportation of attorneys at law. Due to lack of special regulations, the acting court in Leskovac has no basis to acknowledge such costs. On the other hand, the party’s costs of traveling to Leskovac are high, and the bus lines do not run regularly. The court always makes concessions, therefore these trials are usually scheduled after 12PM, so as to provide enough time for attorneys at law and parties to arrive. Due to the heavy workload of the small number of attorneys at law from Kosovo, more and more attorneys at law from Leskovac and the surrounding area are being hired.

195 Information obtained from the interviews performed in Mitrovica and Prishtina in the period October 19 – 21, 2020.

196 The Bar Association of Serbia, Decision no. 298-6/07, December 1, 2017.

197 High Court in Leskovac, Decision no. 3255/18, November 20, 2018.

5.3.3. Cases simultaneously tried in two systems – Examples from practice

As previously mentioned, citizens residing in the north of Kosovo oftentimes have to obtain two rulings in the same matter (one from Kosovo and the other from Serbian courts) in order to be able to fully exercise the rights guaranteed to them. In the two following examples, we will illustrate the inadequate access to justice, as well as constant legal uncertainty caused by the integration and transfer of jurisdiction which followed: from the domains of family and probate law (probate proceedings).

Case number 1

Two Serbian citizens, one residing on the territory of the Autonomous Province of Kosovo and Metohija and the other on the territory of central Serbia, got divorced under a legally binding ruling of the Basic Court in Leskovac. Under the respective ruling, the custody of the child, who is a minor, was given to parent A residing on the rest of the Serbian territory. Parent B residing in Kosovo is obliged under the aforementioned ruling to pay legal maintenance for the child (alimony), which is also common practice in cases when custody of the child is given to one parent.

The problem arises when parent B fails to pay legal maintenance. That is when an impasse is reached, because filing a criminal charge against this parent for failure to pay legal maintenance for a child does not produce any legal effect in Serbia, as this parent cannot be apprehended by the Serbian authorities. The situation is the same with initiating enforcement proceedings for the purpose of collecting outstanding amounts of legal maintenance.

Moreover, the above situation could not be resolved before the courts operating in the judicial system of Kosovo either. Namely, there is no possibility to file a criminal charge against parent B before the judicial authorities in Kosovo, nor to initiate enforcement proceedings, because the Kosovo court does not recognize public documents of the Republic of Serbia, under the rule of reciprocity, thus there is no basis for initiating enforcement proceedings or filing a criminal charge.

As already mentioned, this child is a minor who belongs to a particularly vulnerable group and who should enjoy the highest level of protection. That is the reason why all authorities involved in such procedures must work in the best interest of the child, which, unfortunately, in the current circumstances and due to the above, is not realistically attainable.

Case number 2

The notary public in Leskovac rendered a legally binding decision on inheritance, which determined the heirs of the testator. The testator was in a domestic partnership and had no children. Once the procedure of determining marital assets was completed, which was not disputed by the legal heirs and was carried out during the probate proceedings, the testator's parents were declared heirs, each inheriting half of the respective assets. According to the provisions of the *Law on Inheritance* of the Republic of Serbia, the domestic partner does not have the inheritance right, hence there were no heirs of the first order, which led directly to heirs of the second order.

Given that the testator owned property on the territory of Kosovo as well and that the rulings of the Serbian authorities do not produce legal effect in Kosovo, the testator's legal heirs initiated proceedings before the Basic Court in Mitrovica as well. The Kosovo *Law on Inheritance*, unlike the Serbian one, provides for the domestic partner's inheritance right.¹⁹⁸ Decision on inheritance rendered by the Kosovo court provides for the right of the testator's domestic partner to inherit one half of the assets, while the other half is inherited by the testator's parents in equal portions.

The above case clearly demonstrates the legal uncertainty citizens from the north of Kosovo face when it comes to inheritance law, because in one legal system the testator's domestic partner has the right to inherit, while in the other he/she does not have the said right, which entails various consequences.

6. Conclusion and recommendations

After almost five years of implementation of the Justice Agreement, it can be said that there are no major differences in how the integrated judiciary functions compared to the judiciary in Kosovo in general. Integrated judges and prosecutors achieve norms, equally solve old cases and smoothly communicate with colleagues and parties. On the other hand, the future holders of these positions will face challenges, taking into account the issues with the verification of diplomas, passing the bar exam and performing professional practice. The issues that have arisen in the meantime have to be eliminated as soon as possible, particularly if it is taken into account the average age of Serbian judges and prosecutors currently in the system. In addition to the need to fill the positions which holders of judicial office from the Serbian community have not yet been elected for, the number of those places will increase more in the following period.

However, adequate access to justice for citizens of Kosovo, particularly for members of the Serbian community, has not still been provided. This, first of all, refers to a large number of completely legally uncertain situations which these citizens find themselves in. The biggest issue arose due to the lack of a mechanism for recognizing court decisions before integration, which is why the entire archive of the former Basic Court in Kosovska Mitrovica and the temporary transfer of jurisdiction of this court to the Basic Court in Leskovac have not been handed over yet. Although the courts in the Kosovo and Serbian systems do their work conscientiously and efficiently in accordance with the circumstances, as it has been impossible to mutually recognize and accept decisions and documents issued by one or the other system, citizens still suffer the consequences. They are not able to exercise their full rights without decisions before both courts and incur high costs not only for conducting these procedures, but also for collecting documentation that is not centralized. On the other hand, as there is an insufficient number of attorneys at law, public notaries and other legal professions from the Serbian community, or those who work in Serbian language, a large number of citizens have been denied access to justice and exercising their rights.

Five years later, the full implementation of the Justice Agreement, as well as the previous provisions from the Brussels Agreement, seem questionable. This primarily refers to Article 6 and 7 of the Agreement, which provide for assigning cases to judges, that is, prosecutors, based on the language criteria or the criteria of knowledge of surroundings, which with the new law and the system for distributing cases automatically, completely loses its meaning, that is, it does not apply. Article 10 of the Brussels Agreement, which refers to the competence of the Division of the Court of Appeals in Mitrovica, if it is interpreted as being competent for all municipalities where Serbs are the majority population, has not also been properly applied, which could be seen from several cases where the council from Prishtina was still leading the cases for these areas. On the other hand, Article 11 of the Justice Agreement, which refers to

the structure of the Division of the Court of Appeals in Mitrovica, has finally been fully implemented.

According to the shadow reporting so far, Serbia has fully fulfilled 1 transitional benchmark from Chapter 35, which refers to the judiciary, 1 partially, while 2 have not been fulfilled. When it comes to monitoring the fulfillment of the benchmark from Chapter 35, the public does not have access to a single document that indicates the progress extent. As there is still no systematic monitoring of the implementation and effects of the Agreement and recommendations on how to adequately solve the issues, it is inevitable that there is still lack of political will, not only to essentially implement certain parts of the Agreement, but also to think more broadly about solving some other issues which prevent citizens from enjoying their rights. There are also issues that indirectly affect access to justice, and are the result of failing in the implementation of the agreed agreements, such as recognizing diplomas and bar exams, the availability and systematizing registry books, as well as information from the cadastre.

The conclusion is the same as in previous reports, that is, without solving all the abovementioned issues that citizens have been facing, the Justice Agreement by itself will not ensure access to justice for all citizens who should enjoy their rights on the territory of Kosovo. In the following, there are repeated recommendations and proposed new ones for the authorities in Belgrade and Prishtina, but also for the EU, which plays an active role in the dialogue:

6.1. Recommendations for improving the dialogue between Belgrade and Prishtina (both parties in the dialogue, including the European External Action Service (EEAS)):

- 1) to establish a regular mechanism / body under the auspices of the office of the Special Representative for Dialogue of Belgrade and Prishtina in order to introduce transparency in the implementation and regular reporting to the public about real progress and obstacles to accomplish it, and to develop indicators for measuring progress in terms of the implementation of each of the agreements reached within the dialogue, including the Justice Agreement;
- 2) to map all the actors and institutions responsible for the implementation of all elements of the agreement (with an emphasis on the Justice Agreement), to ensure their coordination and communication following the example of Chapters 23 and 24, and based on the Negotiating Position for Chapter 35, to prepare an action plan / map for achieving transitional benchmarks from Chapter 35;
- 3) to enable reaching and implementing other related agreements, such as the Agreement of Registry Books, the Agreement of Cadaster and the Agreement of University Diplomas, whose application has indirect impact on real work of judiciary and citizens' access to justice;
- 4) to raise the issue of citizens' access to justice in Kosovo as a topic for some of the next meetings of the main negotiators within the dialogue.

6.2. Recommendations for improving the work of integrated judiciary in Kosovo (both parties in the dialogue):

- 1) to ensure adequate, full and consistent implementation of all articles of the Justice Agreement, including Article 10 of the Brussels Agreement;
- 2) to provide, as a precondition for the further integration of lawyers from the Serbian community into the judicial system of Kosovo, effective procedures for recognizing diplomas from law faculties from Serbia as well as passed bar exams in Serbia in Kosovo, and to support the proposal of ideas for the work of a legal clinic at the Faculty of Law of the University of Prishtina, temporary based in Kosovska Mitrovica, in order to facilitate passing the bar exam and performing of judicial functions;
- 3) the Judicial Councils of Kosovo to more often announce competitions for filling vacancies reserved for Serbian representatives of the judiciary, due to the increased outflow of staff due to their age structure;
- 4) to provide a budget for the sustainable engagement of a sufficient number of interpreters in the courts and prosecutor's offices in Kosovo, to continue training for translating professional legal matters, and to ensure the translation of the decisions of judicial councils, all court of appeals and the Supreme Court into Serbian and Albanian and improve the quality and timeliness of translations, in order to enable the equal use of languages and letters in proceedings before judicial institutions;
- 5) to enable the availability of other related services that ensure access to justice and the protection system in Serbian, in the context of persons who work with victims of criminal acts, attorneys at law, public notaries, bailiffs and others;
- 6) to restart the work of the Commission which should consider and verify the decisions of Serbian institutions from the period 1999 – 2013 in order to prepare the procedure for recognizing court decisions and other decisions related to court actions from the period of functioning of Serbian judicial authorities in Kosovo;
- 7) in accordance with the interim benchmarks, Serbia should enact special regulations in respect of Serbian judicial institutions in Kosovo, as stipulated by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices.

6.3. Recommendations for ensuring access to justice:

- 1) to submit the list of cases, as well as the archive of all court and other decisions related to the activities of former courts from Kosovska Mitrovica, to the competent Commission, as well as information on cases initiated before these courts and transferred to the jurisdiction of the courts in Leskovac, in order to avoid further double actions of the courts;
- 2) to provide the Basic Court in Leskovac with the election of new judges in order to more easily resolve cases from their newly expanded jurisdiction;
- 3) to enact a by-law that will regulate, that is, undoubtedly enable, the work of attorneys at law who are registered in the Kosovo Bar Association (KBA) when representing before courts in Serbia;
- 4) to establish a commission / body whose conclusions will enable the indirect application of court decisions, documents, notarial and bailiff documents of Kosovo authorities to judicial system of Serbia and vice versa, before reaching a legally binding agreement between Belgrade and Prishtina, in order to avoid legal uncertainty for citizens;
- 5) to re-announce the competition for appointing public notaries, and enable public notaries from the ranks of the Serbian community, who successfully passed the previous disputed competition, to enter the position based on those results;
- 6) to make integrated maps of the services of the Republic of Serbia on the territory of Kosovo, which are still competent for the application of rights and court decisions in Republic of Serbia (free legal aid services, social work centers, etc.), as well as an integrated map of registry offices on the territory of Serbia that store data on citizens from the territory of the Autonomous Province of Kosovo and Metohija.



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