



Jovana Spremo

# INTEGRATION OF JUDICIARY

in the context of  
Belgrade - Prishtina dialogue  
and EU accession process



ROYAL NORWEGIAN EMBASSY

Belgrade

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INTEGRATION OF JUDICIARY IN THE JUDICIAL SYSTEM OF KOSOVO IN THE  
CONTEXT OF BELGRADE - PRISHTINA DIALOGUE AND EU ACCESSION PROCESS  
Report on implementation and effects of the Justice Agreement

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ACCESSION PROCESS**

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**REPORT ON IMPLEMENTATION AND EFFECTS OF THE JUSTICE AGREEMENT**

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# 1. INTRODUCTION

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When we discuss the process of accession of the Republic of Serbia to the European Union, it is inevitable to mention the solution for the “issue of Kosovo”. Namely, in the negotiating process, Chapter 35 usually includes the issues that could not be placed in any other negotiating chapter, or it serves for the discussion of the issues arising after certain negotiation chapter has been closed. In the case of Serbia, this also refers to monitoring of the dialogue between Belgrade and Prishtina.

Chapter 35 does not constitute replacement of the dialogue between Belgrade and Prishtina led under the auspices of the High Representative of the European Union, but it presents the addition to it, through application of the agreements made within the dialogue. Development of the events within the dialogue is considered in the negotiating process, and the European Union emphasizes that in case there is stagnation in normalization of the relations between Serbia and Kosovo, the EU may, at 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.”<sup>1</sup> In respect of clear dedication of Serbia to becoming a full member of the European Union, in order to avoid above mention scenario, it is necessary to increase the efforts on fulfilment of the obligations from the referred Chapter.

Namely, Chapter 35, as well as Chapters 23 and 24, are the key chapters and the most difficult ones in the process of accession to the European Union, and for this reason, they are the ones that are opened first and closed last. Due to the fact that meeting of these requirements from these chapters has direct impact on the lives of the citizens of Serbia, as well as the citizens of Kosovo, Serbia is responsible to fulfill these and have progress in the dialogue in order to create conditions for these citizens to exercise their rights in respect of access to justice. Equal treatment of all the citizens before judicial institutions is crucial in order to enable unobstructed access to justice.

This is precisely one of the reasons as to why there were efforts to integrate Serbian judges and prosecutors in the judicial system of Kosovo, which was finally initiated by the Brussels Agreement, and formalized by the Justice Agreement. However, in order for such a system to be functioning, Serbia needs to adopt and implement series of decisions, and to develop and propose series of solutions acceptable to the judicial personnel, as well as to the citizens whose rights should be protected by that judiciary.

The issue of integration of judiciary does not refer only to Chapter 35, but also to Chapter 23, which reflects its complexity. This report summarizes the progress made in the direction of real integration of judiciary in northern Kosovo and how Serbia fulfills its obligations in respect of monitoring of real functioning of integration and enabling of access to justice.

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1 European Union, “European Union Common Position, Chapter 35, November 30, 2015”, Brussels, 2015, p. 3.

## 2. JUDICIARY WITHIN THE DIALOGUE BETWEEN BELGRADE AND PRISHTINA

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*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 19, 2013. The Agreement contains 15 points, where point 10 refers specifically to judiciary. As stated within: “The judicial authorities will be integrated and operate within the Kosovo legal framework. The Appellate Court 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 Appellate Court composed both by 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 involved”.<sup>2</sup>

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 the establishment of any new structures required under the agreement, including basic courts and public prosecutor’s offices in Serb majority municipalities.<sup>3</sup> Serbia was under obligation to provide information on the number of its judicial personnel employed in Kosovo who expressed an interest to join the Kosovo legal 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 explicitly stated by the *Implementation Plan of the Brussels Agreement*, both sides will enact all necessary changes of the legal framework, including the application of the Law on Amnesty.<sup>4</sup> 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, this law stipulates “the conditions and

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2 First Agreement of Principles Governing the Normalization of Relations between Belgrade and Prishtina, Brussels, April 2013, available at: <https://www.srbija.gov.rs/specijal/283757>.

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

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

procedures for amnesty of individuals convicted of criminal offences, persons criminally prosecuted of criminal 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<sup>5</sup>. 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.<sup>6</sup> 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.<sup>7</sup>

Precisely 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.<sup>8</sup> The implementation of the Amnesty Law 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, after which the institutions should have been closed, but for a certain period of time they continued to decide in so called “urgent cases”.<sup>9</sup>

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.<sup>10</sup> 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 official decision, model and establishing of jurisdiction for acceptance of these rulings has still not been defined, thus creating legal uncertainty. Since there is no legal framework or instructions of the judicial councils of Kosovo or the Ministry of Justice, it remains unclear whether they have been directly accepted as

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

6 Radio Television of Serbia, “Law on Amnesty in accordance with the Constitution”, September 4, 2013, available at: <http://www.rts.rs/page/stories/sr/story/9/politika/1389478/zakon-o-amnestiji-u-skladu-sa-ustavom.html>.

7 Information received from the surveys 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 koalicija, “Civilized monotony – Civil monitoring of the implementation of the Agreement between Kosovo and Serbia”, Belgrade, 2016, p. 36.

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

part of Kosovo case law, whether the Basic Court in Mitrovica should decide on them again or this problem should be solved in a third way.<sup>11</sup>

## 2.2. Justice Agreement

According to the First Agreement, integration of judicial institutions should have been done until the end of 2013. However, that 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

The Justice Agreement was finally reached in February 2015, almost a year and a half after stipulated deadline.<sup>15</sup> It was emphasized that 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 provides general guidelines for the integration of judges, prosecutors and administrative staff in the judicial system of Kosovo and includes the clauses on provision and adaptation of facilities.

### 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 a Basic Court decides on the allocation of cases.

11 Hoxha, Rreze and 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. 8.

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

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

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

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

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 department 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 department 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 department for minors for the entire Mitrovica region,

The part of the general department 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.

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.

They stated that Serb judges would take “status neutral oath”, that is, “special type of oath which will not be the same as the oath taken by Kosovo Albanian judges”.<sup>16</sup> 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.<sup>17</sup> The same document emphasizes 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. However, that did not occur 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

16 Insajder, “Serbian judges and prosecutors took an oath before Hashim Thaci”, October 24, 2017, available at: <https://insajder.net/sr/sajt/vazno/7784/>.

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

in Mitrovica.<sup>18</sup> After the stalemate at the beginning of implementation, on August 31, 2017, the agreement was reached on implementation of the Justice Agreement, including full integration of judges and prosecutors in the judicial system of Kosovo until October 17 of that year.<sup>19</sup>

As stated in the last published *Progress Report on the Dialogue between Belgrade and Prishtina*, appointment of judges and prosecutors was finally realized on October 24, 2017.<sup>20</sup> The total of 40 judges and 13 prosecutors<sup>21</sup> were integrated 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 of the procedures for appointment of lay judges, enforcement 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.

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18 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 at: <https://www.blic.rs/vesti/politika/kocijancic-sporazum-beograda-i-pristine-o-pravosudu-ce-bit-i-završen-medi-ji-nema/wfsdk4x>.

19 N1, "Integration of judges in the judicial system of Kosovo in October", August 31, 2017, available at: <http://rs.n1info.com/Vesti/a314714/U-oktobru-integracija-sudija-u-kosovski-pravosudni-sistem.html>.

20 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 at: <http://www.kim.gov.rs/doc/pregovaracki-proces/lzvestaj%20o%20dijalogu%2031102017.doc>.

21 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 ACCESSION TO THE EU – CHAPTER 35 AND CHAPTER 23

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When discussing negotiations between Belgrade and Prishtina, this 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. Namely, as stated in the introduction, Chapter 35 refers specifically to monitoring of the dialogue between Belgrade and Prishtina. If we discuss judiciary as one of the more significant points in the negotiations, it should be emphasized that this topic is directly processed in Chapter 23, i.e. part which refers to juridical independence.

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)”.<sup>22</sup> 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 includes specific comments in regards to possibilities for fulfilment of the benchmarks.<sup>23</sup> 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

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

23 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 at: <https://kossev.info/poglavlje-35-dokument-sta-eu-ocekuje-od-srbije-za-kosovo-a-kako-to-srbija-komentarise/>.

court premises. There is a big problem in respect of 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.<sup>24</sup>

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 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”.<sup>25</sup>

In respect of 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 it 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 enacted until the date of this 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 is adoption until December 31, 2013.<sup>26</sup>

Serbia has allegedly not undertaken any obligation to submit quarterly reports to judicial and prosecutorial councils of Kosovo on paid pensions to retired judges and prosecutors integrated in the judicial institutions in Kosovo. Furthermore, there is no basis for that in current laws and regulations in the Republic of Serbia. Since Serbia does not have direct correspondence with judicial and prosecutorial councils of Kosovo, it is considered highly unlikely that it would submit reports to them. The

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24 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”, number 95/17.

25 Article 2, Ibid.

26 Article 12, 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.

data on preparation of these or any other reports by Serbia in respect of fulfilment of the benchmarks are not publicly available.

On the other hand, one the benchmarks from the screening of 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* 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”.<sup>27</sup> One specific activity within this benchmark is more precise definition of the activities required for its realization, as well as the deadline for their implementation shall be realized through negotiations between Belgrade and Prishtina. Although the *European Union Common Position on Chapter*<sup>28</sup> 23, 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 December 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. It is important to point out that none of the reports made by the Council for Monitoring of Implementation of the Action Plan for Chapter 23 contains any data on the status of application of the relevant activity, and only in the recent first draft of the revised Action Plan for Chapter 23 was that entire benchmark completely deleted since **the special interim benchmark** in that respect **did not exist**. In the incomplete explanation in the revised Action Plan, it is stated that *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*, was enacted and came into force on October 26, 2017.<sup>29</sup> It is stated in the explanation that since upon enactment of this regulation the real integration occurred, thus the obligations referred to in Chapter 23 were exhausted.

We would also like to add that the Serbian public receives the information on the progress of the dialogue between Belgrade and Prishtina solely based on bi-annual Reports of the 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. Therefore, it is necessary to state that the report was not done for the period from November 2017 until April 2018, and that the last one dated December 2018 was published only in February 2019.

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

28 European Union, “European Union Common Position, Chapter 23, July 5, 2016”, Brussels, 2016, pg. 4.

29 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”, number 95/17.

## 4. IMPLEMENTATION OF THE JUSTICE AGREEMENT – STATUS AND PROBLEMS

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The Justice Agreement is singled out of the highlights of the political dialogue between Belgrade and Prishtina. However, it was predicted ahead of time that in case all the conditions for the adequate integration of judiciary had not been proposed, many factors would have had impact on the problems faced by the judiciary, particularly in respect of efficiency, as well as independency. Such an outcome was not difficult to predict since the judiciary, as one of the principal pillars of justice for the citizens, is discussed within a political dialogue where the only goal is to get points, both from the voters, and from the international community. In this segment, we will present some of the main challenges faced by the representatives of integrated judiciary and the citizens as of the commencement of implementation of the Justice Agreement.

### 4.1. 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 assuming 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.<sup>30</sup> 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.<sup>31</sup> Training for judges was not mandatory, nor for the prosecutors with 3 years of working experience.<sup>32</sup>

The opinion is that the training was not adequately adjusted to the needs of the judges and prosecutors who expressed their intention to be integrated in the judicial system of Kosovo. Namely, due to the lack of funds, standard training was just turned into accelerated program, which presumes initial understanding of the subject matter and high level of knowledge of Kosovo legislation.<sup>33</sup> As stated in the reports of certain international stakeholders, inadequate training in respect of certain laws

30 Law no. 05/L – 095 on Academy of Justice, *Official Gazette of the RKS 6/2017*.

31 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.

32 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

33 Ibid.

applied in the Kosovo system is still one of the main problems faced by the integrated judiciary.<sup>34</sup> The above mentioned training was adjusted by being also available in Serbian language. The Academy of Justice currently has 4 translators who translate not only all the materials, literature and required documentation, but also provide simultaneous translations at the training sessions.<sup>35</sup> The research shows that during 2018, the Academy of Justice offered several courses to the integrated judges and prosecutors that showed the differences in the subject matter and procedural law in the legal framework of Serbia and Kosovo.<sup>36</sup>

Another problem is recognition of diplomas, since the candidates with the diplomas of the Republic of Serbia must previously verify/validate their 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. Namely, 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.<sup>37</sup> The Commission for verification of the level of education in Kosovska Mitrovica decides on verification of these diplomas. Validation of diplomas from Serbian universities is still not functioning.

Judicial councils of Kosovo gave the recommendation to the Ministry of Public Administration to amend the Procedure for employment in state authorities in order to enable Serb candidates to start working before completion of the process of verification/validation of their diplomas, since this is a lengthy process and makes the process of integration additionally difficult.<sup>38</sup> Until July 2018, approximately 130 diplomas were recognized by the Kosovo authorities.<sup>39</sup> Additional issue is non-recognition of the passed Bar exam organized by the Ministry of Justice of the Republic of Serbia. The research shows that despite verification of diplomas, and having passed the Bar exam in Serbia, the candidates had to take the Bar exam once again before the institutions of Kosovo.<sup>40</sup>

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34 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo January 2018, p. 6.

35 Reze 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. 6.

36 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

37 European Center for Minority Issues, "Education in Serbian language and verification of diplomas in Kosovo", Prishtina, 2018, p. 5.

38 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018 JUSTICE INTEGRATION p. 36/7

39 Reze 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. 10

40 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

Due to the educational program in Kosovska Mitrovica, which is adjusted to Serbian curriculum, candidates with those diplomas certainly have lack of knowledge of legal framework of Kosovo. It would be much more efficient and useful if the programs of the Academy of Justice would include the differences in the legal frameworks and procedures of Serbia and Kosovo. It should be additionally considered that majority of judges and prosecutors integrated in the judiciary of Kosovo are close to retirement and that the process of engagement of new Serb judicial representatives is made difficult, due to differences in education and administrative obstacles. Certain solution should be found as soon as possible in order to improve and increase their chances of assuming the functions.

The interns in courts and prosecutor's offices need to complete one year of internship in order to meet the conditions for passing of the Bar exam. In February 2019, the total of 56 new interns completed one year of internship in the Basic Court in Mitrovica,<sup>41</sup> out of which 15 Serbs, and at the end of January 2019, seven new judges from Serb community took an oath.<sup>42</sup> For all above listed reasons, these procedures and training should be quickly adjusted and changed in order for them to serve the purpose and enable adequate integration. In the Basic Prosecutor's Office in Mitrovica, there are currently 4 interns, but there are no interns of Serbian nationality.<sup>43</sup>

## 4.2. Challenges for functioning of integrated judiciary

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. Basic Court is located in two facilities, criminal department is located in the northern part, and litigation and non-adversarial departments are in the southern part of Mitrovica. The northern part consists of the department for serious crimes and general department for all criminal offences. Basic Court in Mitrovica is the main seat of the judicial region of Mitrovica, which covers the territory of the Municipalities of Mitrovica North, Mitrovica South, Leposavić, Zvečan, Zubin Potok, Srbica and Vučitrn. Furthermore, the department of the Appellate Court is located in the same building. The southern part of the court includes the department for minors, part of the general department for litigation proceedings, based on uncontested requests, as well as for misdemeanors.

As stated in the Justice Agreement, both sides will be present in all the facilities of the Basic Court in Mitrovica, Basic Prosecutor's Office and department of the Appellate Court in Mitrovica. Total of 9 out of 10 Serb Public Prosecutors have been integrated in the Basic Public Prosecutor's Office in Mitrovica, and 29 judges in the

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41 Kontakt plus, "Approximately 60 young people finishing internship in judicial institutions", January 19, 2019, available at: <https://www.radiokontaktplus.org/vesti/oko-60-mladih-zavrsava-pripravnicki-staz-u-pravosudnim-institucijama/17403>.

42 KoSSev, "37 new judges took an oath before Thaci – seven from Serb community", January 21, 2019, available at: <https://kossev.info/37-novih-sudija-pred-tacijem-polozilo-zakletvu-sedam-iz-srpske-zajednice/>.

43 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

Basic Court. Four branch offices of the Basic Court in Mitrovica have been established in Zubin Potok, Leposavić, Srbica and Vučitrn, and in reality, these branch offices practically started working at the end of 2018. Currently, there are 38 judges of Serbian nationality in the Basic Court in Mitrovica and its branch offices, while the others are allocated in the courts in southern Kosovo, 2 in Gnjilane, Strpce, Gačanica and Novo Brdo and the department of Appellate Court in Prishtina, and 1 in Kamenica, Vitin, Lipljan, Dragas and the Supreme Court of Kosovo.<sup>44</sup> In the municipalities with majority Serb population, two out of three judges in the presiding panels must be Serbs.

President of the Basic Court in Mitrovica is a Kosovo Serb from the northern part of Kosovo, the main prosecutor of the Basic Public Prosecutor's Office in Mitrovica is a Kosovo Albanian. Head of the department of the Appellate Court is also a Kosovo Serb, as agreed, and the department consists of the total of 5 judges who are Kosovo Serbs and 2 judges who are Kosovo Albanians. In November, the Judicial Council of Kosovo elected 5 Albanian judges for the Basic Court in Mitrovica, and after they complete one-year training by the Academy of Justice, that would exhaust the number of judges of this nationality, as stipulated by the Agreement.<sup>45</sup>

As observed, the integration of the judicial personnel has had less impact on the prosecutor's office than on the court, since the prosecutor's office took over the continuity of Kosovo institutions, while more Serb judges than Albanian judges were integrated in the courts, thus having more impact on the efficiency caused by taking over and becoming familiar with the cases. It took 7-8 months as of the integration for the Appellate department to prepare the cases, since that is the highest instance for the municipalities in the north and for six municipalities in the south with majority Serb population.

#### 4.2.1. Bilingualism as a stumbling block

The language issue is a primary obstacle in respect of efficient functioning of integrated judiciary. The language barrier occurs principally due to a small number of assigned staff, specifically translators, for the needs of every day translations in daily interactions of Serb and Albanian judges and prosecutors. Until recently, the Basic Court in Mitrovica had 4, and now there are 10 translators engaged as a part of the project, with currently open announcements for 2 more translators, which is still considered insufficient to cover all the needs for translation services.<sup>46</sup> The Judicial Council of Kosovo repeated the announcement for 3 translators for the Basic Court and 1 for the department of Appellate Court, since there were no candidate with sufficient qualifications to meet the real needs, which is the reason as to why mentioned translators are engaged within the project through the UNMIK.<sup>47</sup> Additionally, due to differently engaged translators and their qualifications, the quality of translations is disputable, which may potentially lead the court to make incorrect conclusions in

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44 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

45 United Nations Interim Administration Mission in Kosovo, "Report of the Secretary-General", February 2019, p. 14.

46 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018 JUSTICE INTEGRATION p. 36/7. Amended by the information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

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47 United Nations Interim Administration Mission in Kosovo, "Report of the Secretary-General", February 2019, p. 14.

the proceedings.<sup>48</sup> The biggest problem is that most frequently the translators are not specialized for translation of legal matters.

The problem which is still expected is if real integration and uniform practice is what is expected, not only does all the documentation in individual cases need to be translated, but also all the decisions of the appellate courts and the Supreme Court should be available in Serbian (and vice versa). Judicial councils of Kosovo also do not have all the documents translated into Serbian, in order to make them equally available to Serb judges and prosecutors.<sup>49</sup>

If, for example, we take into consideration poor quality of translation of the legal framework, not only does it contain grammatical and spelling errors, but also the formulations contrary to the original ones in Albanian, it is highly unlikely to have this process without problems.<sup>50</sup> Low quality translation of the Law on Civil Procedure is particularly singled out, while certain translations even lead to legal insecurity, since the language of the law to be used is decided based on the participants in the proceeding.<sup>51</sup> Furthermore, it is necessary to strengthen the efforts and enable easier access to courts in both languages, that is, absolutely bilingual functioning of courts and public prosecutor's offices.<sup>52</sup>

#### 4.2.2. Allocation of and deciding on cases

Namely, since the process of translation of the entire documentation is extremely slow and complicated, both due to lack of administrative staff and different scope of documentation, the cases are practically allocated based on ethnicity, which is contrary to the idea of integration, but it improves the efficiency. The rules of judicial councils stipulate random allocation of cases, but in reality, as of the commencement of work of integrated judiciary, the cases have been allocated based on the language, while the remaining ones are randomly allocated among the judges until the norm is reached.<sup>53</sup>

In September 2018, the President of the Basic Court in Mitrovica rendered the internal decision on allocation of cases based on the criteria of language, as he stated, due to efficient proceedings and respecting the right to fair trial within reasonable time.<sup>54</sup> As stated in item 6 of the Justice Agreement, in Kosovo, the President of a Basic

48 Kontakt plus, "Integrated judiciary in Kosovo, nine months after, (non) functional", September 2, 2018, available at: <https://www.radiokontaktplus.org/vesti/integrisao-pravosude-na-kosovu-deset-meseci-posle-nefunkcionalno-video/15054>.

49 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018 JUSTICE INTEGRATION p. 36/7

50 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. 8.

51 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

52 European Commission Kosovo\* 2018 Report, p. 14.

53 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018 JUSTICE INTEGRATION p. 36/7

54 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

Court decides on the allocation of cases, which is different from the decision which is envisioned for the Public Prosecutor.<sup>55</sup>

In the Basic Public Prosecutor's Office in Mitrovica, the cases are allocated based on the Rulebook on allocation of cases adopted by the Prosecutorial Council. Based on that, integrated prosecutor shall work only on new cases and will receive them until they have as many cases as those currently working in order to reach equal number of cases.<sup>56</sup> In accordance with Article 7 of the Agreement, the allocation of cases to prosecutors is based on expertise, specialization, personal background and local area knowledge, in accordance with Kosovo law. In practice, the principle of random allocation of cases is applied in accordance with the legal framework and above mentioned Rulebook, but personal experience and familiarity with the local environment (in this case, it could be interpreted through knowledge of the language in which the cases should be processed) are not considered, and it seems that the current solution does not allow for full implementation of the Agreement, that is, have higher efficiency in prosecution of criminal offenders.

The cases from the department in Vučitrn (where Basic Court in Mitrovica was temporarily located until October 2018) led while the judicial institutions functioned in the parallel system have been transferred to Mitrovica, but the registry of all those cases has not been completed.<sup>57</sup> As stated in certain reports, until November 2018, the President of the Basic Court in Mitrovica allocated more than 1000 cases (from the period 2001 to 2008) and 500 cases (as of November 2017) to the judges for deciding.<sup>58</sup> In respect of unsolved cases, every judge of the Basic Court in Mitrovica working on criminal matters has approximately 250 cases, and in litigation department approximately a thousand cases, while 800 criminal cases and 2000 litigations wait for the allocation. Since the mandate of the EULEX ended in June 2018, there are currently approximately 6500 Albanian and 400 Serb cases in the Basic Public Prosecutor's Office in Mitrovica.<sup>59</sup>

Additionally available measure is referring cases to mediation. The cases usually referred to mediation are those considered easier or less complex disputes, such as small thefts, inflicting light bodily injury, theft of electricity, and the like.<sup>60</sup> Referring to mediation is an alternative and should be used in exceptional occasions, but it is sometimes used in order to avoid the complications of translation of the

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55 Such semi-directed random allocation is used for litigation, non-adversarial and enforcement cases. The report shows conflicting information in respect of the criminal cases. Thus, certain number of respondents claim that the language criterion is applied when allocating criminal cases, and part of them claim that it does not apply to criminal cases, and that random allocation is the only criterion.

56 Ibid.

57 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 from 16 April to 15 July 2018, p. 10

58 Annex I 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 from 16 July to 15 October 2018, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, November 2018, p. 15.

59 Ibid.

60 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

cases.<sup>61</sup> Many more cases have been referred to mediation after integration, which is proven by the fact that in 2017, the total of 205 cases were solved in the mediation procedure, while in 2018 that number increased to 493, which is the increase of more than 100%. In the period from October 2017 until December 2018, 71.8 % cases were referred to mediation by the Basic Public Prosecutor's Office in Mitrovica, while 25 % cases were referred by the Basic Court in Mitrovica.<sup>62</sup> The cases solved through mediation are included in the statistics of the Public Prosecutor's Office or the Court.

#### 4.2.3. The effect of final rulings and decisions of “parallel institutions“

Enforcement of final rulings which have acquired the capacity of enforceability is not possible due to the fact that their validity is not recognized by the authorities of the Republic of Kosovo. As observed, the notaries, cadaster and other relevant instances do not recognize these decisions as valid.<sup>63</sup> Back in 2013, after signing of the First Agreement during negotiations between Belgrade and Prishtina, in order to prevent this problem after integration of the judiciary, it was agreed that validity of all these rulings before all the authorities of Kosovo would be regulated in a specific procedure by a separate commission, in the document “Validity Appeal“.<sup>64</sup>

In above referred *Conclusions of the EU Facilitator on justice*, it was agreed that the Kosovo Judicial Council would officially notify all competent Kosovo authorities until December 9, 2016 of the *Conclusions on the document Validity Appeal* of July 2013.<sup>65</sup> Adequate document which would define the procedure of recognition and enforcement of the decisions of Serbian courts on the territory of Kosovo has still not been adopted by the Kosovo authorities, therefore these decisions are not implemented in practice.<sup>66</sup>

The document on recognition of court decisions does not provide sufficiently precise description what types of decisions should be examined by the special commission. According to the standpoints of the respondents, in order to provide access to justice for all the citizens of Kosovo, it is necessary to recognize the effectiveness of all legally final decisions and actions of the courts, as well as administrative authorities which used to function within Serbian institutions on the

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- 61 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.
- 62 Statistics of the Mediation Center from Kosovska Mitrovica.
- 63 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.
- 64 Document “Validity Appeal“ refers to the decisions to be considered by the special commission, and which were rendered by parallel Serb institutions. The document is not available to public, and the information was received through surveys.
- 65 Conclusions of the EU Facilitator on justice, November 30, 2016, available at: <http://www.kim.gov.rs/p24.php>. Document “Validity Appeal“ was not available to the researches.
- 66 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, December 2018”, Belgrade, 2019, p. 12. Available at: <http://www.kord-kim.gov.rs/doc/pregovaracki-proces/lzvestaj%20o%20dijalogu%20decembar%202018%20sr%20cir.pdf>.

territory of Kosovo.<sup>67</sup> That is why there is an ongoing debate what is included in the term “rulings“, as well as “all competent authorities“.

#### 4.2.4. Jurisdiction for solving and retaining old cases

The cases led before Serbian judicial institutions in the period from 1999 to 2017 have the least transparent destiny. In practice, it has even happened that the citizens simultaneously submitted the requests for solving of civil cases both to the courts of UNMIK and to parallel courts. Thus, the need for recognition of rulings in Serbia and Kosovo sometimes led to contradictory legal outcomes, since the courts in one system (whether the system of 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.<sup>68</sup>

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

Even though litigation, non-adversarial and enforcement cases should have been suspended in September 2013, that occurred on October 15, 2017 when the application of the Justice Agreement should have been officially initiated. These cases are predominantly located in other courts in the Serbian judicial system, because, before integration, the jurisdiction was transferred to the courts in the municipalities close to the administrative crossings. It should be noted that currently, those cases which could be enforced on the territory of Serbia are tried before Serbian courts. Finally, based on the *Decision of the Appellate Court in Nis of March 5, 2018*,<sup>69</sup> the *Agreement on enforcement of the Decision on temporary transfer of jurisdiction* was signed on April 17, 2018, thus making official temporary transfer of territorial jurisdiction of the Basic Court in Kosovska Mitrovica and of the High Court in Kosovska Mitrovica to the Basic Court and High Court in Leskovac.

In accordance with this decision, the jurisdiction is transferred to the Basic and High Court in Leskovac due to “inability of these courts to proceed“, and in accordance with Article 24(2) of the *Law on Organization of Courts*.<sup>70</sup> 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,<sup>71</sup> and that until the moment of enactment of the Law, these courts would continue working and performing legal competences on this territory. The Law should have been enacted until December 31, 2013. Since that had not happened, some other formal solution of jurisdiction over these cases had to be found, since they were not directed to Kosovo authorities.

67 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

68 OSCE Mission to Kosovo, “Paralel structures in Kosovo 2006-2007“, Prishtina, 2007, p. 21.

69 Decision on temporary transfer of jurisdiction Su I-1-23/18, Appellate Court in Nis, April 16, 2018.

70 Ibid.

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

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 the cases initiated until July 15, 2013, and that the decisions in those cases would be prepared until September 1 of the same year.<sup>72</sup> The Decision of the High Judicial Council contains the reference that the actions on initiation of cases after July 15, 2013 would be recorded and kept by these courts in order for them to be later delivered and solved within judicial authorities established in accordance with the Brussels Agreement, including basic courts in the municipalities with majority Serb population. Those cases shall be kept “in a way which would enable compliance with the deadlines for delivery of cases to judicial authorities in accordance with the Agreement, and in cooperation with EULEX, which will be defined in subsequent agreement”.<sup>73</sup> The plan is for the criminal cases to be delivered to EULEX which would solve them, while the plan for the civil cases was to be solved by these courts until September, when real integration was expected.

As stated in the *Decision of the Appellate Court in Nis of March 5, 2018*,<sup>74</sup> five years had passed as of the mentioned decision of the High Judicial Council, and the special Law had not been enacted, and it was considered that the judicial institutions which would reflect the Brussels Agreement had not be established, which was also the standpoint of the Supreme Court of Cassation,<sup>75</sup> and it was insisted on temporary transfer of jurisdiction to the courts in Leskovac, in order for these cases to be solved. In the explanation of this decision, it is stated that fundamental human rights are constantly violated in this area “because (the citizens) cannot initiate court proceedings, that is, they do not exercise their right to legal protection, or continue already initiated ones, or organize compulsory enforcement of legally final court rulings. In above mentioned cases, their right to trial within reasonable time, or right to fair trial has been violated”.<sup>76</sup> It is stated that the jurisdiction should be transferred to a functional court in Serbian judicial system in order to protect the rights of citizens, particularly the right to property, inheritance, work, marriage etc.

Above referred *Agreement on implementation of the Decision on Temporary Transfer of Jurisdiction*<sup>77</sup> was concluded based on the decision. Among other things, the Agreement defines proceeding in inheritance cases and other non-adversarial

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72 Decision of the High Judicial Council number 06-00 -25 12013-01, June 17, 2013.

73 Ibid.

74 Decision on temporary transfer of jurisdiction Su I-1-23/18, Appellate Court in Nis, April 16, 2018.

75 In the Decision of the Appellate Court in Nis, it is stated this was the standpoint given in the letter of the Supreme Court of Cassation Kd 155/13 of December 4, 2013.

76 Decision on temporary transfer of jurisdiction Su I-1-23/18, Appellate Court in Nis, April 16, 2018.

77 Agreement on implementation of the Decision on temporary transfer of jurisdiction by the President of the Appellate Court in Nis, 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 State Secretary of the Ministry of justice of April 17, 2018.

cases, litigation and enforcement cases. Except for the cases of execution of criminal sanctions, criminal cases will not be the subject to transfer of jurisdiction. It should be noted that the cases which were transferred to the Basic and High Court in Leskovac were selected by former court managers in Mitrovica, based on the criterion whether they could be enforced. It is stated that the archives would remain in the region of Kosovska Mitrovica and would not be taken over, while the deposit and the inventory would be transferred to the courts in Leskovac. The Ministry of Justice undertook to transfer electronic registry to the courts in Leskovac, while the possibility of activating of electronic database “in the region of the Autonomous Province of Kosovo and Metohija for the purpose of scanning of cases”<sup>78</sup> is still under consideration.

The Internet presentation of the Basic Court in Leskovac includes two minutes from the sessions of the Commission for takeover, overview, distribution and allocation of cases of the Basic Court in Kosovska Mitrovica, which were delivered to the Basic Court in Leskovac.<sup>79</sup> The minutes are dated in October and December 2018, and have the labels of the Basic Court in Kosovska Mitrovica which is formally not functioning any more.

These include more than 5000 enforcement cases and 1000 litigation cases, with majority of labor disputes.<sup>80</sup> This has caused extreme increase of the workload for the judges in Leskovac, because each one of them was allocated more than 300 of these old cases from Kosovska Mitrovica. Due to envisioned increase in the workload, the appointment of four more judges for the Basic Court in Leskovac was promised, but that has not happened yet. It is evident that the judges will increasingly refer to Article 223, paragraph 2 of *the Law on Civil Procedure*, that is, the suspension of the proceeding in case “the party is located in the area which is cut off from the court due to extraordinary events”.<sup>81</sup> Another problem which occurs, and which was the reason why lower instance courts have addressed the appellate courts for the opinion, is the issue of representation of the attorneys at law from Kosovska Mitrovica who are formally members of the Bar Association of Kosovo.

All above stated indicates that the integration which occurred in October 2017 based on the Justice Agreement of 2015, for the authorities of the Republic of Serbia which rendered relevant decisions, and for the system of the state where they function, do not reflect the agreed model of judiciary, despite the fact that the country agreed to the model of integration by other acts. There is obviously lack of trust between holders of judicial functions in functioning of the institutions in the judicial system of Kosovo.

#### 4.2.5. Valuation of work

Valuation of work of the judges and prosecutors is done once a year based on the defined norm. The norm for the public prosecutors is a minimum of 6 cases for serious criminal offences, and for general offences minimum of 23 cases per month. So far, there have been no disciplinary proceedings in the Basic Public Prosecutor’s

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78 Ibid.

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

80 Information obtained at the Round table on implementation of the Action Plan for Chapter 23 by the representatives of the Basic Court in Leskovac, held on March 22, 2019 in Nis.

81 Law on Civil Procedure, “Official Gazette of the RS”, no. 72/2011, 49/2013 – decision of the CC, 74/2013 – decision of the CC, 55/2014 and 87/2018.

Office in Mitrovica. On the other hand, the norm for the judges in the Basic Court in Mitrovica is 3 cases of serious criminal offences, and 35 general offences per month.

So far, there are no precise data as to whether Serb judges have accomplished to meet the norm due to adjustments to work in Kosovo system, and particularly due to the fact that the realistic commencement of activities in the cases was September 2018.

#### **4.2.6. Personnel, technical and spatial capacities**

As previously stated, along with a small number of Serb representatives in judiciary, as well as those who will take over these functions in the future, the courts and prosecutor's offices where integrated judiciary is functioning have a problem with lack of interns, as well as with lack of administrative staff. The main issue is that additional budget funds have not been allocated for work of these institutions, and budget of the courts covers only portion of the planned administrative work. Positive step is reflected in the support program of UNMIK and UNOPS aimed at decreasing of the number of unsolved cases through hiring of interns in, among other institutions, the Basic Court in Mitrovica, and including young Serb interns.<sup>82</sup>

In the report of the 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 of October 2017, it is stated that directly after the official integration, certain departments of the court and the prosecutor's office were not operational, since adequate premises were not prepared.<sup>83</sup> However, despite all the problems they faced in the beginning of the integration, there has been a tremendous progress in respect of the equipment in the premises, and the only problem which still exists is lack of direct connection between the Basic Court and the department of the Appellate Court, due to which, despite being in the same building, the entire documentation still goes through Prishtina.<sup>84</sup> Another logistical problem is that the internet and the telephone line between the buildings of the court in northern and southern part of Mitrovica are still not functioning, which makes regular daily communication of the staff more difficult.<sup>85</sup>

UNMIK and UNOPS have provided the equipment for simultaneous translation for the Basic Courts in Prishtina and Mitrovica, in order for the citizens to be able to exercise their right to trial in the language they understand, and the same program provided technical support for the institution of the Ombudsman for the north of Kosovo.<sup>86</sup> Since the translators are always engaged at the trials or are translating

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- 82 United Nations Interim Administration Mission in Kosovo, "Report of the Secretary-General", July 2018, p. 7.
- 83 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, p. 12.
- 84 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.
- 85 Compact Progress Report – European Union Rule of Law Mission Partnership for Justice July 2017- July 2018 JUSTICE INTEGRATION p. 36/7
- 86 United Nations Interim Administration Mission in Kosovo - Report of the Secretary-General, July 2018, p. 7

documentation, communication between administrative staff is sometimes made difficult and slower.<sup>87</sup>

### 4.3 Access to justice for the citizens

When all above stated is taken into consideration, the question is raised as to whether such a system serves its purpose, that is, does it enable adequate access to justice for all the citizens, including those living in northern Kosovo. Recent researches have shown that the citizens in the north think that the judiciary in Mitrovica is functioning extremely poorly.<sup>88</sup> Namely, the citizens are generally unsatisfied with the process of integration of judiciary because they think this is a political issue and it leaves enough space for corruption. The researches show that the citizens in the north do not know clearly where the buildings of judicial institutions are located, nor who works in them, and which laws apply.<sup>89</sup>

Additionally, only a small number of citizens “have partial or full trust if their case is processed by a judge or prosecutor from another ethnic community”, and generally speaking, a great majority does not expect fair trial if they are one of the parties in a proceeding before judicial institutions in Kosovo.<sup>90</sup> These problems are additionally complicated by the inability of certain Serbs from Kosovo to have personal documents done, due to lack of evidence that they used to live or were born on the territory within Kosovo.<sup>91</sup> There is no telephone line for the information about the cases, nor is there an active database about the course of the cases, but the citizens need to come personally to ask questions, which additionally complicates work of the administrative staff.<sup>92</sup>

Along with above mentioned great number of unsolved old cases, as well as legal uncertainty in respect of cases led and solved before parallel structures, the problem faced by Serb population is **lack of notaries**, as well as of enforcement officers working in Serbian language, if we consider their role in the judicial system of Kosovo.<sup>93</sup> According to the estimates of the Government of Serbia, at least 4 additional Serbian speaking notaries and at least as many enforcement officers are needed for

87 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

88 On the scale where 1 represents extremely bad, and 10 extremely good, the results are as follows – Leposavić 3.1, Zubin Potok 4.4, Zvečan 2.5, Kosovska Mitrovica 1.1 based on: InTer, “Survey on the quality of life and employment in northern Kosovo” – December 2018, p. 9.

89 ACDC, “Integration of judiciary – 6 months later, where are we?”, Mitrovica, 2018, p. 8.

90 Only 32% of respondents, that is 62% of respondents based on: Ibid.

91 The examples are given about inability to get a divorce, solve the matters of inheritance, transfer ownership, based on: ACDC “Integration of judiciary – 6 months later, where are we?”, Mitrovica, 2018, p. 21.

92 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019. On the internet page of the Judicial Council of Kosovo, there is a section Schedule of hearings, but it is inactive. Available at: <http://www.gjyqesori-rks.org/sr/courts/scheduleofhearings/list/7?branchid=21>.

93 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.

the northern Kosovo, therefore, the exams for this profession for the candidates who meet required criteria should be adjusted and organized.<sup>94</sup> Since the competences of the *Academy of Justice* also include the trainings for these professions, it should adjust its regular programs for the Serb population who meet minimum of required criteria.<sup>95</sup>

Furthermore, the total of 8 Kosovo Serb attorneys at law work in the northern Kosovo, while there are no local protectors of the rights of the victims trained to work with Serbian victims.<sup>96</sup> These attorneys at law also represent the citizens before the courts in Leskovac and other courts which took over “Kosovo cases“, so the availability of the Serbian speaking attorneys in the territory of Kosovo is questionable. They are the members of the Bar Association of Kosovo. This Bar Association provides *ex officio* assignment of attorneys in criminal cases based on the uniform list, and not based on the knowledge of languages, which may lead to more difficult understanding between the defender and the defendants, which also jeopardized the right to a fair trial.

Additionally, great number of documents used as evidence before the courts are not, in general, recognized by the institutions of the Republic of Kosovo, thus leading to legal uncertainty of the citizens in respect of possibility to use these documents in court proceedings. Namely, based on the surveys, the judges do not have a uniform standpoint<sup>97</sup> in respect of validity of these documents, that is, of administrative acts and certifications issued by Serbian institutions on the territory of Kosovo as of 1999 until integration.

As previously stated, the matter of effect of enforcement decisions rendered by Serbian courts in the territory of Kosovo, has still not been solved, which disables full exercising of other the series of other rights of the citizens.

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94 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, p. 12.

95 Article 22, Law no. 05/L – 095 on the Academy of Justice, *Official Gazette of RKS 6/2017*.

96 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.

97 The survey has shown that there is a selective approach to this problem by acting judges.

## 5. CONCLUSION AND RECOMMENDATIONS

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Chapter 35 does not constitute replacement of the dialogue between Belgrade and Prishtina led under the auspices of the High Representative of the European Union, but it presents the addition to it through application of the agreements made within the dialogue. The Brussels Agreement, as a result of political agreement, has brought a great improvement in certain areas, but there are areas which have not been sufficiently elaborated in advance in order to make their realization possible.

As shown in the report, the judiciary is the segment which constantly refers to the example of good application of the agreements reached in the dialogue between Belgrade and Prishtina, however, not only was the final version of the agreement more than 2 years late, but the commencement of its implementation was as late as that. Although integrated judiciary is functioning within the system with relatively satisfactory results, it is inevitable to mention that without real support and proactive role of the authorities in Serbia and Kosovo, it is impossible to solve the existing and possible problems in application of the Agreement.

Therefore, it is primarily important to have political will for adequate and positive changes in the legal system of Serbia and Kosovo, as well as to find the compromises for all unsolved problems, from recognition of diplomas and bar exams, to the outcome of all the cases and decisions from the period when parallel judicial system functioned, to securing adequate translations of all the decisions, rulings, legal framework, and all corresponding documents in both languages. Only then will the system real function in a way to serve its basic purpose, and that is securing access to justice for all the citizens who need to enjoy all the rights on the territory of Kosovo.

Precisely due to all that, for the purpose of achieving the goals set by the Justice Agreement, and within the dialogue between Belgrade and Prishtina, as well as with the goal of meeting the obligations of Serbia from Chapter 35, we propose that the authorities of Serbia and Kosovo consider the following recommendations:

### **5.1. Recommendations for improvement of the dialogue between Belgrade and Prishtina**

- 1) Make the process of negotiations between Belgrade and Prishtina more transparent, at least in respect of application of the Justice Agreement, and regularly inform the public of the progress;
- 2) Formalize the cooperation between Serbian authorities with the judicial councils of Kosovo in order to create conditions for meeting certain interim benchmarks from Chapter 35 which refer to judiciary;
- 3) Enable reaching and implementation of technical agreements, such as the agreement of registry books, cadaster and university diplomas, the application of which has indirect impact on real functioning of judiciary and citizens' access to justice;

- 4) Establish regular procedure for monitoring and measuring of the progress in respect of real implementation of each of the agreements reached within political and technical dialogue of the authorities in Serbia and Kosovo.

### **5.2. Recommendations for the improvement of functioning of integrated judiciary in Kosovo**

- 1) Secure the conditions and efficient procedures for the recognition of diplomas of faculties of law from Serbia and bar exam passed in Serbia in Kosovo;
- 2) Adjust the curriculum of the Faculty of Law in Kosovska Mitrovica so it includes the legal framework of Kosovo and secure additional courses which would cover the basic differences in subject matter and procedural law of Serbia and Kosovo;
- 3) Training organized by the Academy of Justice in order to assume judicial function should include the differences in subject matter and procedural law of Serbia and Kosovo;
- 4) Simplify the procedures and conditions for hiring of translators in courts and prosecutor's offices in Kosovo with organization of trainings for uniform translation of legal matters;
- 5) Secure translation of the decisions of the judicial / prosecutorial council, all appellate courts and the Supreme Court in Serbian and Albanian languages;
- 6) Make detailed analysis of the differences in translations of the laws, especially criminal and civil codes and corresponding procedural laws;
- 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;
- 8) Remove the differences in the principle of allocation of cases for the Basic Court in Mitrovica and other courts functioning on the territory of Kosovo, and where Serbian judges work as well, while finding a compromise, which is also mutually acceptable;
- 9) Promptly establish the commission which would consider the decisions of Serbian institutions from the period 1999 – 2013 in order to recognize the judicial decisions, as well as other relevant administrative decisions from the period of functioning of Serbian judicial authorities, and to enable exercising of citizens' rights;
- 10) Upon establishing of the commission, hand over the archives of all court cases and other decisions of Serbian judicial bodies to the Kosovo authorities in order to consider them;
- 11) Enable direct formal cooperation between Basic Court in Mitrovica and Basic and High Court in Leskovac, which is temporarily deciding on unsolved cases;

- 12) Publishing of the announcement for the appointment of lay judges, court expert witnesses, enforcement officers and notaries from Serb community, and provide adequate training program in Serbian language.

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