



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

B | T | D The Balkan Trust
for Democracy
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INTEGRATION OF JUDICIARY IN THE JUDICIAL SYSTEM OF KOSOVO
IN THE CONTEXT OF EUROPEAN INTEGRATION AND THE DIALOGUE BETWEEN
BELGRADE AND PRISHTINA
Report No. 2 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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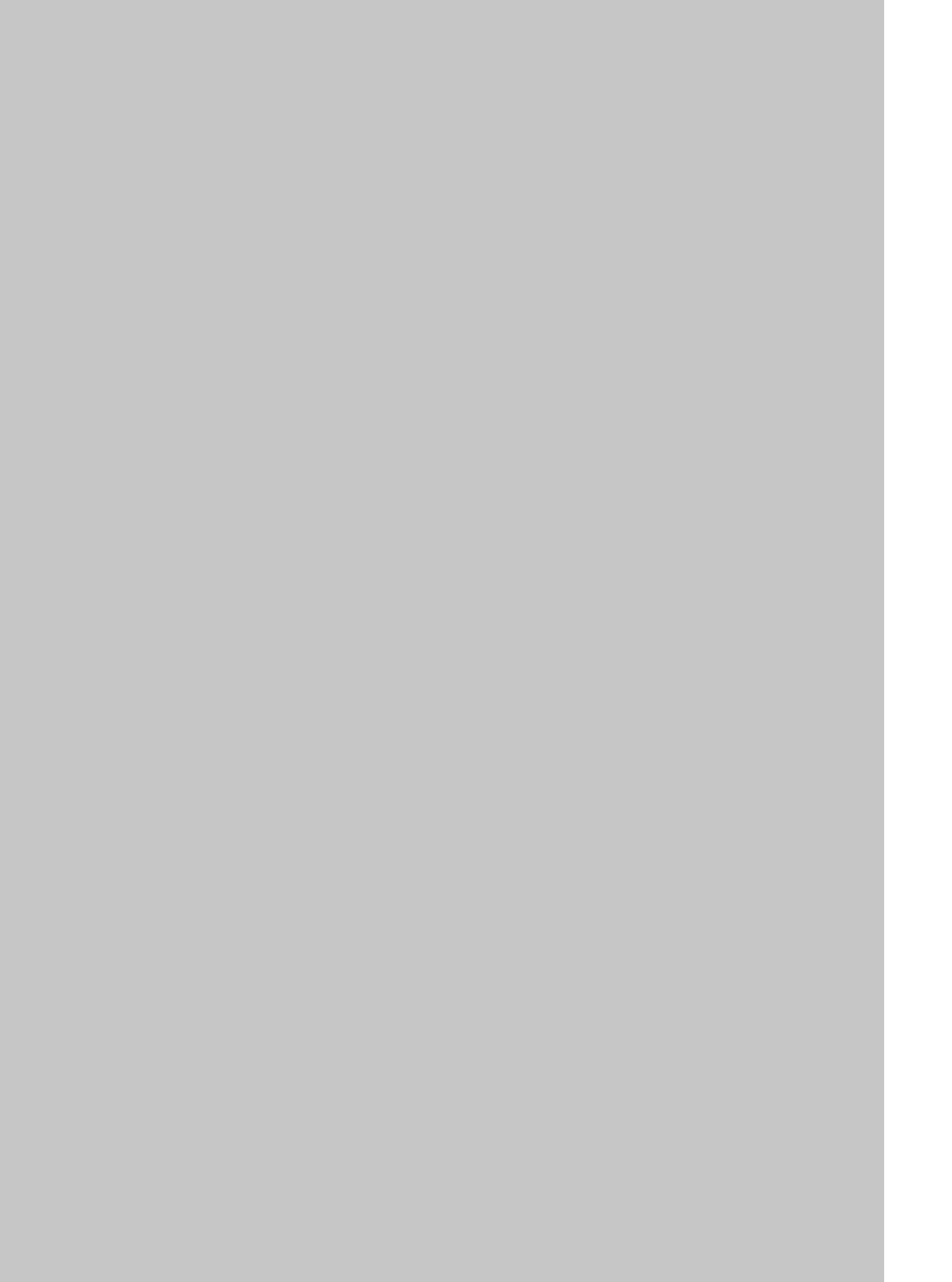
**INTEGRATION OF JUDICIARY IN THE JUDICIAL
SYSTEM OF KOSOVO IN THE CONTEXT OF
EUROPEAN INTEGRATION AND THE DIALOGUE
BETWEEN BELGRADE AND PRISHTINA**

REPORT NO. 2 ON IMPLEMENTATION AND EFFECTS OF THE JUSTICE AGREEMENT

February 2021

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1. Introduction

Report No. 2 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 Pristina” is the result of a research which the Lawyers’ Committee for Human Rights – YUCOM conducted in the period April 2019 – December 2020. In addition to findings on how the agreement was implemented and integration of Serbian judiciary into Kosovo’s institutions started, this report shows the current state how integrated judicial institutions have been working within three years of Agreement’s implementation. Based on the findings of the first report, the second report specifically interprets involvement of Serbian courts in achieving access to justice for citizens living or exercising rights in Kosovo. The findings show whether and to what extent access to justice for citizens of northern Kosovo has been improved.

Chapter 35, as well as Chapters 23 and 24, are the key chapters in the process of accession of Serbia to the European Union, because they provide a framework for enjoying all rights and obligations. Due to the fact that meeting of these requirements from these chapters has a direct impact on the lives of the citizens of Serbia, as well as the citizens of Kosovo, Serbia is responsible to fulfill them and gain progress in the dialogue in order to, to the greatest extent, create conditions for these citizens to exercise their rights in respect of access to justice. The rule of law is also a condition for progress in the process of Kosovo’s European integration. Equal treatment of all citizens before judicial institutions is crucial in order to enable unobstructed access to justice, which remains an obligation of the authorities in Prishtina.

The integration of Serbian judges and prosecutors into the judicial system of Kosovo was initiated by the Brussels Agreement, and accomplished at the beginning of the implementation of the Justice Agreement in 2017. In order for such a system to enable access to justice for citizens, it is required to constantly monitor and identify obstacles appearing as an effect of the implementation. This research starts from the perspective of the effects that the Agreement had on citizens’ rights, and provides recommendations for overcoming the identified obstacles.¹

1 We owe great gratitude to our colleagues from the NGO Aktiv and the Advocacy Center for Democratic Culture (ACDC) from Mitrovica, 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

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 involved”.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 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.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, this law stipulates “the conditions and 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 20th, 2013, within the territory which now con-

2 [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 publically available.

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

stitutes 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

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.⁸ The implementation of the Law on Amnesty began in September 2013. Serbian courts accepted to decide on the cases initiated before July 15th, 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”.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 has not still 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 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.¹¹

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 4th, 2013, available in Serbian.

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 Coalition, “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.

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.

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.¹² As of July 15th, 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.¹³ 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.¹⁴

The Justice Agreement was finally reached in February 2015, almost a year and a half after stipulated deadline.¹⁵ 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 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.

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, BIRODI, 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>.

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”.¹⁶ 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 17th, 2016.¹⁷ The same document emphasizes that the parties agreed that these judges, prosecutors and administrative support staff would be appointed on January 10th, 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 in Mitrovica.¹⁸ After the stalemate at the beginning of implementation, on August 31st, 2017, the agreement

16 Insajder, “[Serbian judges and prosecutors took an oath before Hashim Thaci](#)”, October 24th, 2017, available in Serbian.

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

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

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.¹⁹

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 24th, 2017.²⁰ The total of 40 judges and 13 prosecutors²¹ 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 6th, 2017.

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

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 in Serbian.

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

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. 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 Pristina 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 is temporarily closed, it also refers to monitoring the dialogue between Belgrade and Pristina.

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."²² With regard to Serbia's clear determination to become an equal member of the European Union in the near future, and in order to avoid mentioned scenario, it is required to intensify efforts to fulfill the obligations from the mentioned Chapter.

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)".²³ 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;

22 European Union, "European Union Common Position, Chapter 35, November 30th, 2015", Brussels, 2015, pg. 3.

23 European Union, "European Union Common Position, Chapter 35, November 30, 2015", Brussels, 2015, pg. 2-3.

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.²⁴ 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 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 26th, 2017.²⁵

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”.²⁶

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

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

25 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.

26 Article 2, Ibid.

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 even enacted until the date of publishing the second 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, 2013.²⁷

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 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”.²⁸ 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 23*,²⁹ 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*

27 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.

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

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

and Metohija, was enacted and came into force on October 26th, 2017.³⁰ 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. There was no change in this plan, this point was deleted from the adopted version of the revised Action Plan for Chapter 23, adopted on July 10th, 2020.

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. Therefore, it is necessary to restate 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. During 2019, no report was published, while the last published report covers the period from September 1st, 2019 until June 15th, 2020.

On May 23rd, 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. The report also recalls the implementation of the measures from Chapter 35. The set of agreements on justice is assessed as a success in the negotiations with Prishtina because, as it is stated, they provide full legal security for persons of Serbian nationality and application of all decisions and judgments of Serbian courts that worked in Serbia's system until December 9th, 2016.³¹

30 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.

31 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 23rd, 2019, p. 25, available in Serbian.

4. New context of dialogue between Belgrade and Pristina in the reporting period

In November 2018, the Prishtina authorities introduced 100% import tariffs on goods from Serbia, due to increasingly frequent diplomatic activities of Belgrade on withdrawal of recognition of Kosovo's independence. Despite warnings from the international community, the announcement of the EU High Representative³², that such actions directly violate the CEFTA Agreement (*The Central European Free Trade Agreement*) and the very spirit of the Stabilisation and Association Agreement (SAA) between the European Union and Kosovo, Prishtina did not withdraw this measure until its mitigation in March 2020. In the middle of March, in the full swing of the declared global pandemic of the COVID-19 virus, the Prime Minister of Kosovo made a decision to abolish customs duties on raw materials and announced that from April 1st, the tax will be replaced by reciprocal measures in relations with Serbia and Bosnia and Herzegovina regarding all issues of customs and replacement by reciprocal trade and political measures.³³ However, this decision was announced two days before the Democratic League of Kosovo launched a no-confidence motion to the Government, precisely due to the announced withdrawal of this measure.³⁴ The Government of Kosovo was voted no confidence on March 23rd, 2020. After the Constitutional Court of Kosovo announced the decision that it is in accordance with the constitution to form a new government without going to the polls, the Kosovo Assembly voted for a new prime minister, Avdulah Hoti, who will take over as chief negotiator on behalf of Prishtina.

In April 2020, the Council of the European Union appointed a new Special Representative for the Belgrade-Prishtina Dialogue and other Western Balkan regional issues, Miroslav Lajčák.³⁵ As officially announced, the tasks of the new EU Special Representative will be to achieve comprehensive normalisation of the relations between Serbia and Kosovo(*), improve good neighbourly relations and reconciliation between partners in the Western Balkans, helping them overcome the legacy of the past, and contribute to the consistency and effectiveness of EU action in the Western Balkans. The dialogue between Belgrade and Pristina was formally resumed on July 12th, 2020,

32 EEAS Press release, "[EU calls Kosovo* to revoke import tax on Serbia](#)", November 7th, 2018.

33 Radio Free Europe, "[Kosovo introduces reciprocal measures to Serbia on April 1st](#)", March 31st, 2020, available in Serbian.

34 EWB, "[Kurti prepares documents to partially lift tariffs from 1 April](#)", March 20th, 2020.

35 Council of EU, "[Belgrade-Prishtina Dialogue: EU appoints a new Special Representative](#)", April 3rd, 2020

which was the first meeting after 20 months of negotiations being interrupted.³⁶ By the end of 2020, two rounds of negotiations were held, in July and September, and the topic of judicial integration has not still been one of the points discussed. As announced, it will be discussed at one of the next meetings during 2021.

On September 4th, 2020, the Prime Minister of Kosovo and the President of Serbia, together with the President of the United States of America signed two documents on the economic normalization of relations in Washington.³⁷ Although the documents included several points regarding political relations, such as respect for minority rights, resolving the issue of missing persons, recognition of diplomas, none of the points involved the judiciary.

36 Radio Television Serbia, "[Continuation of the dialogue between Belgrade and Prishtina, Vučić and Hoti meet in Brussels](#)", July 16th, 2020, available in Serbian.

37 Euractiv.rs, "[Text of the agreement between Serbia and Kosovo on the normalization of economic relations](#)", September 5th, 2020, available in Serbian.

5. Implementation of the Justice Agreement – status and issues

The Justice Agreement is singled out of the highlights of the political dialogue between Belgrade and Prishtina. The judiciary remains an important point of political dialogue, where not enough attention is paid to the effects that the Agreement has on citizens' rights. In this segment, we will present updated data on the challenges representatives of the integrated judiciary and citizens have been facing since the Judiciary Agreement has been implemented by the end of 2020, as well as the proceedings being led before the Basic Court in Leskovac. The section on access to justice is complemented by a brief overview of the functioning of the judiciary in the context of the COVID-19 pandemic.

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 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.³⁸ 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.³⁹ Training for judges was not mandatory, nor for the prosecutors with 3 years of working experience.⁴⁰

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.⁴¹ As stated in the reports of certain international stakeholders, inadequate training in respect of certain laws applied in the Kosovo

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

39 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.

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

41 Ibid.

system is still one of the main problems faced by the integrated judiciary.⁴² 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.⁴³

Another issue that arises 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. 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.⁴⁴ The Commission for Verification of Education Level in Kosovska Mitrovica decides on verification of these diplomas.

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 candidates of Serbian nationality 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.⁴⁵ The Government of Kosovo continued to cooperate with the faculties in Mitrovica, in order to issue as many individual certificates of verification to graduate students and thus enable their work in Kosovo institutions, including courts and prosecutors' offices.⁴⁶

Until July 2018, approximately 130 diplomas were recognized by the Kosovo authorities.⁴⁷ In the first half of 2019, the Commission for Verification of Education Levels issued by the faculties in Kosovska Mitrovica received 49 requests and approved 202, and a similar trend continued until the end of the year. By the end of 2019, the

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

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

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

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

46 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo June 2019, para 18.

47 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. 10

total number of verified diplomas exceeded 1500.⁴⁸ The Washington Agreement also reiterated the mutual recognition of diplomas as an important step for normalization. Compared to 2019, the number of applications decreased in 2020, and only about 60 applications for diplomas' verification were resolved.⁴⁹

Additional issue in non-recognition of the passed Bar exam organized by the Ministry of Justice of the Republic of Serbia. Despite verification of diplomas, and having passed the Bar exam in Serbia, the candidates for judges and prosecutors, had to take the Bar exam once again before the institutions of Kosovo.⁵⁰

The educational program in Kosovska Mitrovica is still adjusted to Serbian curriculum, thus candidates with those diplomas have lack of knowledge of legal framework of Kosovo. The programs of the Academy of Justice for entering the judiciary should include parallels in differences in the legal frameworks and procedures of Serbia and Kosovo, but it is praiseworthy that these several follow-up trainings have been held.

UNMIK and local NGOs have continued the program to support the integration of young lawyers of Serbian nationality in Kosovo into the Kosovo legal system, providing bar exam preparations and internship programs.⁵¹ After passing the bar exam, young judges have to work for a year, while attending the Academy of Justice, before they qualify for the court exam. During that year, they have to meet 30% of judge's norm.⁵² At the end of January 2019, seven new judges from the community of Serb took an oath.

The age structure of integrated judges and prosecutors shows the existence of a great number of judges and prosecutors 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. Trainees in the court and prosecutor's office need one year of internship to meet the requirements for taking the bar exam. Judges stress the need to ensure the constant recruitment of young trainees in order to increase the opportunities for further employment of lawyers of Serbian nationality in Kosovo's judicial system.⁵³ In February 2019, a total of 56 interns completed a year of internship at the Basic Court in Mitrovica,⁵⁴ of which were

48 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo June 2019, para 18.

49 Kossev, "[Professors: Recognition of diplomas benefits everyone; the next step will be university cooperation](#)", September 17th, 2020, available in Serbian.

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

51 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo October 2020, para 36

52 Information received from the surveys performed in Mitrovica in the period October 19-21, 2020.

53 Information received from the surveys performed in Mitrovica in the period October 19-21, 2020.

54 Contact Plus, "[About 60 young people are completing their internship in judicial institutions](#)", January 19th, 2019, available in Serbian.

15 of Serbian nationality.⁵⁵ During 2019, the Basic Court in Mitrovica had 40 trainees, while there were 15 trainees in the court unit in Vučitrn, and 11 in Srbica.⁵⁶ In the Basic Prosecutor's Office in Mitrovica, out of a total of 8 trainees, one of whom is a trainee of Serbian nationality.⁵⁷

For all above listed reasons, these procedures and trainings should be quickly adjusted and changed in order for them to serve the purpose and enable adequate integration. As the trend of integrated judges' retirement still continues, it is necessary to remove all obstacles for persons of Serbian nationality to enter into the Kosovo judicial system. Otherwise, the Agreement will not in fact be implemented and it will be impossible to achieve equal representation of Albanian and Serbian judges in Mitrovica.

5.2. Challenges for functioning of integrated judiciary

The process of judicial integration has had much less of an 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. Therefore, this research is more about obstacles to the work of the court. In the following segment, all the challenges that have arisen from the implementation of the Agreement 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 department is in the facility located in the northern part. The Division for Severe Criminal Offences and the General Trial Division for all Criminal Offenses are also there. There is also a department 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.

55 KoSSev, "[37 new judges took the oath before Thaci – seven from the community of Serbs](#)," January 21st, 2019, available in Serbian.

56 Radio Contact plus, "[Tanin: After the integration of the judiciary, Kosovo is moving towards strengthening the rule of law](#)," February 19th, 2020, available in Serbian.

57 Information received in telephone conversation with the administrator of the prosecution in February 2021.

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 Court of Appeals is also a Kosovo Serb, as agreed. As stated in the Agreement on Justice, both parties will be represented in all facilities of the Basic Court in Mitrovica, the Basic Prosecutor's Office and the Department 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 29 Serbian judges were integrated into the Basic Court.

Currently, there are 45 judges in the Basic Court in Mitrovica and its branches is 45, of which 22 are of Serbian nationality.⁵⁸ According to the systematization, 20 vacancies for judges in this court have not been filled. In November 2018, the Judicial Council of Kosovo elected 5 judges of Albanian nationality to the Basic Court in Mitrovica, achieving the number of judges of this nationality, as it is provided for in the Agreement.⁵⁹

Appointing and promoting new judges is under political influence, as the government controls the court budget and has impact on the recruitment process, as well as the unequal conditions for taking office, which was discussed earlier in this report.⁶⁰ The management of the court in Mitrovica believes that it is necessary for the Judicial Council of Kosovo to start announcing extraordinary competitions for taking office reserved for judges of Serbian nationality.⁶¹

There are several judges of Serbian nationality allocated in courts in southern Kosovo, in Gnjilane, Štrpce, Gračanica, Kamenica, Vitin, Lipljan, Dragaš and the Supreme Court of Kosovo, as well as the department of the Court of Appeals in Prishtina.⁶² Currently, in Lipljan, Štrpce, Zubin Potok, as well as the Supreme Court of Kosovo, one judge of Serbian nationality is missing, in Vitin two, and in Mitrovica even six comparing to the planned quota. There are no judges of Serbian nationality in Novo Brdo at all.⁶³

The Judicial Council of Kosovo has appointed two more judges of Serbian nationality to the Department of the Court of Appeals in Mitrovica, therefore from July 1st, 2020, four judges of Serbian nationality and three judges of Albanian nationality

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- 58 According to [the last published quarterly statistical report on the work of the Basic Court in Mitrovica](#) from September 2019, a total of 45 judges have been working, of which 23 are of Albanian nationality and 22 are of Serbian nationality. Searching on court's website, the number of active judges on the website in January 2020 was 44 (22 of Albanian nationality and 22 of Serbian nationality), available in Serbian.
- 59 United Nations Interim Administration Mission in Kosovo, "Report of the Secretary-General", February 2019, p. 14.
- 60 Bertelsmann Stiftung, BTI 2020 Country Report — Kosovo, Gütersloh: Bertelsmann Stiftung 2020, p. 11.
- 61 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.
- 62 Information received from the surveys performed in Mitrovica in the period February 11-13, 2019.
- 63 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

have been working in the Department, as it is provided for in the Justice Agreement.⁶⁴ According to the information obtained from the interviewees, but also from the official reports of the Office for Kosovo and Metohija, in cases coming from municipalities with a majority Serb population south of the Ibar, the panel is composed only of judges of Albanian nationality or judges who are not from the Court of Appeals in Mitrovica. In the first half of 2020, a competition was held to fill two vacancies for judges of the Department of the Court of Appeals in Mitrovica, which covered all the positions agreed for judges of Serbian nationality in this department.

Also, as it is provided for in the Agreement, the acting panel in cases from majority Serb municipalities should be composed of a majority of judges of Serbian nationality from Mitrovica Department, but the President of the Court of Appeals in Prishtina forms the acting panel in these cases with judges of exclusively Albanian nationality.⁶⁵ It was only in the second half of 2019 that the President of the Court of Appeals in Prishtina started assigning criminal cases to the Mitrovica Department,⁶⁶ as well as to invite judges of Serbian nationality who try criminal matters to the chambers in the proceedings before this court in Prishtina.⁶⁷

Out of 22 acting prosecutors in the Basic Prosecutor's Office in Mitrovica, 11 are prosecutors of Serbian nationality.⁶⁸ Also, due to an increasing volume of work, this prosecutor's office temporarily transferred two prosecutors of Serbian nationality from other prosecutor's offices, one from Uroševac, the other from Prishtina. Transferring those prosecutors to the Basic Prosecutor's Office in Mitrovica, these areas in the southern part of Kosovo have been temporarily left without prosecutors of Serbian nationality.⁶⁹

In October 2020, a prosecutor of Serbian nationality was elected for a member of the Prosecutorial Council of Kosovo for a five-year term.⁷⁰ Due to the expiration of the mandate, and the soon acquisition of conditions for the retirement of the current Chief Prosecutor, on November 3rd, 2020, a competition was announced for this position. A

64 Annex I to the 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, 16 March to 15 September 2020, p.3.

65 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, June 2020", Belgrade, 2020, p. 13.

66 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 to May 15, 2019, p. 13.

67 Ibid.

68 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

69 Ibid.

70 The Prosecutorial Council of Kosovo, [Decision](#) of October 29th, 2020, available is Serbian.

status for one candidate was confirmed, he was elected and he will take office in 2021. In accordance with the Agreement, the new Chief Prosecutor is of Albanian nationality.

5.2.2. Personnel, technical and spatial capacities

Although it is provided 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 257 representatives of administrative staff.⁷¹ The national structure regarding the administrative staff is as follows: 72 of Albanian nationality, 69 of Serbian nationality and 4 of Bosnian nationality work in the Basic Court in Mitrovica, 27 of Albanian nationality in Srbica branch office, 26 of Serbian nationality and 1 of Albanian nationality in the Zubin Potok branch office, 25 of Serbian nationality in Leposavic and 32 of Albanian nationality in Vučitrn and 1 Ashkali. The Mitrovica Basic Prosecutor's Office has 65 support staff members.⁷² The latest *Report of the Office for Kosovo and Metohija* states that there is a disproportion in the number of administrative staff, particularly representatives of Serbian and Albanian nationality in the Basic Prosecutor's Office in Mitrovica, due to more intensive employment of persons of Albanian nationality.⁷³ As interpreters are always engaged at the trials or documents' translation, communication among administrative staff is sometimes made difficult and slow.⁷⁴

On the other hand, in terms of positive developments of technical equipment and infrastructure, UNMIK or local NGOs funded most of them, and to a small extent the budget. In June 2020, the President of the Basic Court in Mitrovica opened a new courtroom, fully equipped with the support of UNMIK.⁷⁵ According to representatives of the administrative staff in the court departments in the southern part of Mitrovica, there are still problems with spatial facilities, as there are not enough courtrooms.⁷⁶

There is still no direct connection between the Basic Court and the department of the Court of Appeals in Mitrovica, which is why, although they are in the same building, all the documentation still goes through Prishtina.⁷⁷ The Internet and telephone line between the court buildings in the northern and southern part of Mitrovica do not

71 Information obtained in a conversation with the Deputy Administrator of the Basic Court in Mitrovica. According to [the Report on the work for the third quarter of 2019 of the Judicial Council of Kosovo](#), the number of staff is slightly higher and now it is 261.

72 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.

73 Ibid, p.14

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

75 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, October 2020, p. 11.

76 Center for Alternative Dispute Resolution, "Judiciary in the Mitrovica Region –Research of Public Opinion", Mitrovica, 2020, p. 23.

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

always work properly, making it difficult for staff to regularly communicate on a daily basis.⁷⁸

UNMIK and UNOPS have also provided simultaneous interpretation equipment to the Basic Courts in Prishtina and Mitrovica, enabling citizens to exercise their right to a trial in a language they understand, and the same program has provided technical support to the Ombudsman for Northern Kosovo.⁷⁹

5.2.3. Use of Serbian language and script

The language issue is a primary obstacle in respect of efficient work of integrated judiciary. Despite the announcements, there is still a small number of assigned staff, explicitly interpreters, for the needs of every day interpretations in daily interactions among judges and prosecutors of Serbian and Albanian nationality. The Basic Court in Mitrovica, with its branches, has 9 interpreters employed through a state competition, as well as 10 project-engaged interpreters. There is ongoing announcement for 4 more interpreters. The Basic Public Prosecutor's Office in Mitrovica has 8 interpreters, which is still considered insufficient to cover all necessary interpretation services.

Due to differently engaged interpreters and their qualifications, the quality of interpretation is disputable, which may potentially lead the court to make incorrect conclusions in the proceedings.⁸⁰ The biggest problem is that most frequently the interpreters are not specialized for interpreting legal matters. Also, practice has shown that most interpreters do not know the Cyrillic alphabet, which further creates issues and extends procedures.⁸¹ Court employees emphasize that interpreters' salaries should be higher, given the volume of work they have, because it happens that professional interpreters do not even apply for positions in the judiciary due to low salaries.⁸²

There is no progress in solving this issue, which makes it difficult to perform work on a daily basis. Therefore, the process of translating the decisions of the courts of appeals and the Supreme Court into Serbian has not even begun, there are no words yet. The Judicial Councils of Kosovo also do not have all the documents translated into Serbian, in order to make them equally available to judges and prosecutors of Serbian nationality.⁸³ As the judges of the court in Mitrovica most often publish their decisions, as well as other letters and documents, i.e. submit them in Serbian

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

79 United Nations Interim Administration Mission in Kosovo - Report of the Secretary-General, July 2018, p. 7.

80 Contact Plus, "[Integrated judiciary in Kosovo, nine months after. \(none\) functional](#)", September 2nd, 2018, available in Serbian.

81 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

82 ACDC, "[Improving the use of official languages before judicial institutions in northern Kosovo](#)", Mitrovica, 2019, p. 18.

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

and in Cyrillic, there is an additional issue as it happens that the Kosovo authorities, which the document was submitted to, refuse to accept it.⁸⁴ This is a major issue not only in terms of equal use of language, but also in access to justice itself.

The quality of translation of the legislative framework is poor and contains grammar and spelling mistakes, as well as contradictory wording from those in the original Albanian.⁸⁵ The representatives of the judiciary noted different versions of the translation of the law into Serbian and Albanian, which changes the meaning of the provision, and opens the possibility of errors in the interpretation of the same law and within the translation.⁸⁶ Low quality translation of the Law on Civil Procedure is particularly singled out, while certain translations even lead to legal insecurity.⁸⁷

In November 2019, UNMIK and the local NGO Advocacy Center for Democratic Culture (ACDC) started implementing mentioned program to support the Basic Court in Mitrovica, not only by including young lawyers in the system of Kosovo, but also by translating case documents to reduce number of unresolved cases. Through this program, a five-week training on improving skills to translate legal matter was held for 30 interpreters.⁸⁸

The lack of interpreters from Albanian into Serbian (*vice versa*) remains a major issue for the Mitrovica Basic Court, leading to further delays in translating documents, particularly regarding ordering and terminating detention.⁸⁹ The citizens are aware that this is an issue for the employees in the court, but also in the prosecutor's office, who have been facing issue every time they address judicial institutions in the north of Kosovo.⁹⁰ According to the annual report of the Office of the Language Commissioner of Kosovo from March 2020, minority communities have difficult access to justice,

84 Interviewees cited this type of experience with the Customs Administration, as well as the Administration for the Enforcement of Penal Sanctions. Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

85 Rreze Hoxha, Francisco José García Martínez, "Going south? Integration of Serb Judges and Prosecutors from the North into the Kosovo Justice System", Group for Legal and Political Studies, Belgrade, 2018, p. 8.

86 ACDC, "[Improving the use of official languages before judicial institutions in northern Kosovo](#)", Mitrovica, 2019, p. 20.

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

88 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo October 2020, para 36 p11.

89 EU Rule of Law Mission Justice Monitoring Report - Findings and Recommendations September 2019 – Mid-March 2020, Prishtina, October 2020, p.10.

90 ACDC, "[Improving the use of official languages before judicial institutions in northern Kosovo](#)", Mitrovica, 2019, p. 16

reduced opportunities to register property and inadequate health care, precisely due to the unequal use of language.⁹¹

5.2.4. Allocation of and deciding on cases

Since the process of translation of the entire documentation particularly in cases is extremely slow, 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. In the moment of integration, the rules of judicial councils stipulated random 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 are randomly allocated among the judges until the norm is reached.⁹²

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.⁹³ As stated in item 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 which is envisioned for the Public Prosecutor.⁹⁴

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.⁹⁵ 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, a valid solution is essentially not effective. Serbia continues to insist that the EU mediator resolve the distribution of cases in the prosecutor's office on a linguistic basis, invoking Article 7 of the Justice Agree-

91 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, October 2020, p 7.

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

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

94 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 interviewees 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.

95 Ibid.

ment, in order to assign to integrated prosecutors only cases submitted in Serbian and where proceedings will be performed in Serbian.⁹⁶

The European Union, i.e. the Council of the EU, continued to work on establishing an electronic database for case allocation. The database should ultimately provide automatic allocation and end all practices where this is still performed according to different rules. The new system was introduced in February 2020 and most criminal cases are assigned in this way.⁹⁷ The question is how this affects the cases before the court in Mitrovica, which were primarily allocated on the basis of language. For integrated judges, the Agreement has greater force than the Law.⁹⁸ It can be concluded that automatic allocation of cases in the Basic Court in Mitrovica can be considered a violation of Article 6 of the Justice Agreement.

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. The number of old cases has significantly decreased since 2017, i.e. since the integration of judiciary. During 2019, the Basic Court in Mitrovica was in charge of 11% of the total old cases, and as many as 36.6% of all cases whose resolving has been delayed.⁹⁹

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.¹⁰⁰ During 2019, the Basic Prosecutor's Office in Mitrovica had 14,433 criminal charges, of which 5,782 were resolved, i.e. slightly over 40%.¹⁰¹ The number of criminal charges – unfinished criminal cases at the end of 2019, compared to the same period in 2018, decreased by 79 or 6.99%.¹⁰² On average, every prosecutor acted in 7,3 cases per month. Data for the first half of 2020 show that this prosecutor's office had 10,598 cases (new 1947), of which 2,212 were resolved, or slightly over 20%.¹⁰³ The General Department resolved 351 cases more than they received, i.e. 122.64% of the received cases, i.e. 1,901 cases were resolved. The Department for Severe Criminal

96 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, June 2020", Belgrade, 2020, p. 13.

97 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 Programmes 01.07.2020, p. 11.

98 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

99 Data available on the website of the Basic Court in Mitrovica.

100 Ibid.

101 State Prosecutor of Kosovo, [Annual Report 2019](#), Prishtina, 2020, p. 54.

102 Ibid, p. 68.

103 State Prosecutor of Kosovo, [Report for the first half of 2020](#), Prishtina, 2020, p. 52.

Offences resolved 73.60% of the received cases, i.e. 237 cases, while the Department for Juveniles resolved 1 case less than received or 98.66% of the cases received (74 cases). The cases were not statistically processed according to ethnicity in institution's report.

Additionally available measure is referring cases to mediation. The cases usually addressed to mediation are those considered easier or less complex disputes, such as small thefts, inflicting light bodily injury, theft of electricity, and the like.¹⁰⁴ Many more cases have been addressed to mediation after integration, which is proven by the fact than 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 addressed to mediation by the Basic Public Prosecutor's Office in Mitrovica, while 25 % cases were addressed by the Basic Court in Mitrovica.¹⁰⁵

In September 2018, it is applied *the new Law no. 06/ L-009 on Mediation* in Kosovo. Mandatory mediation has been introduced to speed up proceedings' application in civil cases and thus reduce the number of that type of cases. The cases listed as those which the mandatory mediation provision must be applied to were less represented in the work of the Alternative Dispute Resolution Center in Mitrovica than criminal cases. This is due to the fact that judges in civil cases address less cases to mediation because they are reserved towards mediation as a process.¹⁰⁶ In the area of Mitrovica, a total of 516 cases were forwarded to mediation in 2019, of which more than 95% were successfully resolved.¹⁰⁷ A total of 242 cases which the Basic Prosecutor's Office in Mitrovica addressed to mediation, were resolved in 2019. It is important to emphasize that the Center trained 50 mediators, who are licensed, of which 15 are of Serbian nationality and 35 of Albanian nationality.¹⁰⁸

5.2.5. Valuation of work

Valuation of work of the judges and prosecutors is performed once a year based on the defined norm. The norm for the public prosecutors is a minimum of 6 cases for severe criminal offences, and for general offences minimum of 23 cases per month. On the other hand, the norm for the judges in the Basic Court in Mitrovica is 3 cases of severe criminal offences, and 35 general offences per month.

In the previous report it could not be specified whether the judges of Serbian nationality managed to fulfill the norm due to the adjusting to work in the system of Kosovo, as in reality the proceedings started in September 2018. According to recent reports in the Basic Court in Mitrovica, the average case resolution rate is slightly abo-

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

105 Statistics of the Alternative Dispute Resolution Center – Mediation Center – Mitrovica

106 The Alternative Dispute Resolution Center, "[Mediation in Kosovo – Overview and Recommendations](#)", Mitrovica, 2020, p. 31-32.

107 Ibid, p. 38.

108 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

ve 88%, which is still much lower than in other basic courts where it exceeds 100%.¹⁰⁹ In 2020, it was significantly reduced, as the courts did not work at full capacity due to measures to fight against the COVID-19 virus, and it was impossible to submit documents online to judges.¹¹⁰

5.2.6. 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.¹¹¹ 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 decisions before all the authorities of Kosovo would be regulated in a specific procedure by a separate commission, in the document “Validity Appeal”.¹¹²

In above referred *Conclusions of the EU Facilitator on Justice*, it was agreed that the Judicial Council of Kosovo would officially notify all competent Kosovo authorities until December 9th, 2016 of the *Conclusions on the document Validity Appeal* of July 2013.¹¹³ 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 be adopted by the Kosovo authorities, therefore these decisions are not implemented in practice.¹¹⁴

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 interviewees, 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 territory of Ko-

109 Information from the website of the Basic Court in Mitrovica.

110 European Commission for the Efficiency of Justice, State of the Implementation of the CEPEJ Cooperation Programmes Report, July 1, 2020, p. 12.

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

112 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.

113 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.

114 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 in Serbian.

sovo.¹¹⁵ That is why there is an ongoing debate what is included in the term “rulings”, as well as “all competent authorities”. According to the interviewees, the Commission was formed and is chaired by the President of the Court of Appeals. One meeting was held in March 2019, but since it has still not been agreed which of the decisions the Commission will validate, nor the procedure itself, there has been no progress in resolving this issue.¹¹⁶ Even in 2020, there was no progress in this field, a corresponding document that would define the procedure for recognizing and executing decisions of Serbian courts on the territory of Kosovo has still not been prepared, in accordance with the mentioned document.¹¹⁷

The problem with not resolving this issue was, for the first time, stated in the latest Report of European Commission on Kosovo* 2020, which states that there is still no procedure in place to implement the agreement providing for the recognition of such judgements and decisions made by Serbian courts in the period from 1999 to 2017, and to make the implementation of the agreement more difficult.¹¹⁸

5.2.7. Jurisdiction for solving and retaining old cases

Destiny of the cases led before Serbian judicial institutions in the period from 1999 to 2017 remains largely outside the scope of the Justice Agreement. 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 decisions 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 decision was rendered on the same subject in the other system.¹¹⁹

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 15th, 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 interviewees 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 15th, 2017 when the implementation 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

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

116 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

117 Office for Kosovo and Metohija, June 2020, p. 14.

118 Report 2020 Kosovo*, European Commission, October 6th, 2020, p. 19.

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

which could be enforced on the territory of Serbia are tried before Serbian courts. Finally, based on the *Decision of the Court of Appeals in Nish of March 5th, 2018*,¹²⁰ the *Agreement on enforcement of the Decision on temporary transfer of jurisdiction* was signed on April 17th, 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 has been 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*.¹²¹ 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,¹²² 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 31st, 2013. Since that had not happened, some other formal solution of jurisdiction over these cases had to be found, as they were not directed to Kosovo authorities.

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 15th, 2013, and that the decisions in those cases would be prepared until September 1st of the same year.¹²³ The Decision of the High Judicial Council contains the reference that the actions on initiation of cases after July 15th, 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”.¹²⁴ 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 Court of Appeals in Nish of March 5, 2018*,¹²⁵ 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

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

121 Ibid.

122 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.

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

124 Ibid.

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

which would reflect the Brussels Agreement had not be established, which was also the standpoint of the Supreme Court of Cassation,¹²⁶ 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 decisions. In above mentioned cases, their right to trial within reasonable time, or right to fair trial has been violated”.¹²⁷ 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*¹²⁸ was concluded based on the decision. Among other things, the Agreement defines proceeding in inheritance cases and other non-adversarial 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”¹²⁹ is still under consideration.

The Internet presentation of the Basic Court in Leskovac includes three 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.¹³⁰ First two minutes are dated in October and December 2018, and have the labels of the Basic Court in Kosovska Mitrovica which is formally

126 In the Decision of the Court of Appeals in Nish it is stated this was the standpoint given in the letter of the Supreme Court of Cassation Kd 155/13 of December 4th, 2013.

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

128 Agreement on implementation of the Decision on temporary transfer of jurisdiction by the President of the Court of Appeals in Nish, 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 17th, 2018.

129 Ibid.

130 Stated documentation is available on the Internet presentation of the Basic Court in Leskovac: <https://bit.ly/2IW1Amv>.

not working any more. The last minutes, which has no labels, only a signature, was created in July 2019 and it delivered 27 more cases to the court in Leskovac.

5.2.7.1. Proceedings in cases before the court in Leskovac

The Basic Court in Leskovac was allocated 5008 cases.¹³¹ Depending on the legal matter, the judges were allocated up to 200 of cases which were primarily within the jurisdiction of the courts in Mitrovica.¹³² According to the matter, most cases were in enforcement proceedings (3464), followed by litigation (924) and probate (605).¹³³

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 December 31st, 2020

Serial No.	Legal Matter	Received	Resolved	Unresolved
1	I	1015	949	66
2	Iv	2330	2229	1
3	P	194	160	34
4	P1	637	509	128
5	P2	93	76	17
6	O	605	553	52
7	R1	1	1	0
8	R2	2	1	2
9	R3	6	6	0
10	PL	1	1	0
11	POM	4	4	0
12	IOI	107	42	65
13	INK	3	1	2
14	IPV I	1	1	0
15	IPV IV	8	8	0
16	PRR	1	0	1

The Basic Court in Leskovac does not act in 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. Before several Serbian courts there were cases where convicted citizens are from the territory of Kosovo. Considering that no criminal sanction was imposed on these convicts due to their inaccessibility to the authorities, the courts addressed these unresolved cases to the Basic Court in Leskovac

131 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 22nd, 2019 in Nish.

132 Information obtained from interviews with judges and requests for access to information of public importance information sent to the Basic Court in Leskovac in January 2021.

133 See Table 2 for details.

for further proceedings. The Court acts in slightly over 56 of these cases. On July 3rd, 2018, the Supreme Court of Cassation addressed an **Announcement** to the presidents of the basic courts that in the future, those basic courts that made the first instance decision will take over the cases of execution of criminal sanctions due to the inability of the Basic Court in Mitrovica to act.¹³⁴ If High Court made the first instance decision, the basic court at the place of arbitration will act for referring.¹³⁵ In order for these cases not to have statute of limitations, the Basic Court in Leskovac with its actions interrupted the relative statute of limitations. However, in cases where the statute of limitations has expired or appeared before the moment of admission, the cooperation of other courts is required, since the decision on the statute of limitations is made by the court that pronounced the verdict.

The Basic Court in Leskovac sent summonses in order to execute the criminal sanction, and if the party did not respond, arrest warrants were issued. In the practice of the court, most of the conducted cases were resolved by arresting on a warrant after crossing the border/administrative crossing on the territory of Serbia. Persons who applied to serve their sentences, received summonses mainly through regular mail, which still works in certain parts of Kosovo, while persons in the uncovered area of Kosovo received through the Ministry of Justice. Since no international legal aid can be initiated for the relations between Serbia and Kosovo, serving the sentence is avoided by not crossing the border with Serbia. As a particular issue, it is noted that the data in the cases that reached the Basic Court in Leskovac are incomplete, and it has happened that a person, who has already served his sentence, was called again to serve it.

As it can be seen from Table 2, there were slightly less than 200 cases from the general litigation, most of which were resolved. Since 2018, the court has received about 90 new cases and most of them relate to monetary claims.¹³⁶ The court was also submitted cases regarding real estate, without the Agreement determining the transfer of jurisdiction for this matter. Although the court is not able to single out the number of cases where the procedure was interrupted, they state that the most frequent interruption of the procedure is in these cases where real estate appears as a subject, i.e. where the right is related to real estate (property, servitude, etc.). Obstacles to act they link to the impossibility to present evidence by expertise, as well as the lack of implementation of the Cadastre Agreement, bringing into question the very effect of the decision.

In terms of **enforcement matters**, the court in Leskovac received over 3,000 old court cases from Kosovska Mitrovica. By the end of 2020, less than 70 of those cases remained unresolved. The biggest issue is the execution, which comes down to execution on real estate. The new Law on Enforcement and Security additionally reduces the jurisdiction of the court, therefore, for example, in family cases, enforcement actions come down to fines, while returning to work, according to the interviewees, is

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

135 Ibid.

136 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 get regular numbers and merge with other cases.

almost impossible.¹³⁷ The Court cooperates with centers for social work that are still working in Kosovo. Public executors working in the system of the Republic of Kosovo cannot act in accordance to court decisions from Serbia.

The Basic Court in Leskovac acts on old **cases in family matters** as well, but it also receives new ones. 93 cases were taken over, and 76 of them were resolved by the end of 2020. The characteristic of these cases is that there are situations where it is required to, at the same time, resolve the legal status before the court in Leskovac and the court in the territory of Kosovo (two decisions on divorce or establishing an extramarital union). This usually happens when one of the spouses lives on the territory of Kosovo, and the other in Serbia. Since that the decision, rendered by the court of the Republic of Kosovo, is invisible in the system of the Republic of Serbia, a spouse living in Serbia cannot exercise his or her rights on the basis of that decision. It is impossible to conduct the procedure of recognizing the court decision as Serbia does not recognize Kosovo. The presence of two decisions in the same matter is contrary to the basic principles of law. It happens that the decisions are also different in content.¹³⁸

Obstacles to execute decision which resolve the rights and obligations of persons of Serbian nationality from northern Kosovo have led to the most frequent resolution of the issue by agreement of the parties. However, the division of property cannot be covered by the agreement if it relates to real estate located in the territory of Kosovo.

A total of 605 **probate cases** were transferred to Leskovac, of which 553 were resolved. This is also the area in which Leskovac now receives new cases under the Agreement on Temporary Transfer of Jurisdiction. Issues in these proceedings are inability of the parties to respond to the summonses and incomplete documentation, i.e. the impossibility of submitting it. In court, they emphasize that they have a large number of persons' non-responses, who are indicated with the list of the dead, because their addresses are out of date, some are internally displaced and the like. Those who respond emphasize that they have an issue in collecting documentation. In order to act in these proceedings, the Basic Court in Leskovac needs documentation issued by the authorities of the Republic of Serbia, most often by the registry offices and the cadastre. For the area of four municipalities from the north of Kosovo, the cadastre service is unique and it is located in Zvečan, and for the parts south of the Ibar in Kruševac, the competent registry offices for this territory are still scattered. The parties point out that they often need several days to collect the entire documentation, which they cannot afford, and that greatly affects the duration of these procedures. The Basic Court in Leskovac does not delegate these cases to notaries, but acts on them. Documentation issued by the authorities of the Republic of Kosovo cannot be accepted before this court. This is another consequence of the lack of implementation of the Agreement on Registry Books and the Agreement on Cadastre.

Regarding **labor litigation**, the Basic Court in Leskovac received 637 cases, of which 509 were resolved. About 80 cases were from the period 2006-2009, which had already arrived as old cases, in which no action was undertaken at all. The difficulties

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137 For example, returning to work in institutions that no longer exist.

138 For example, it can happen that before the court of Kosovo, a father gets custody of the child, and a mother pays maintenance, and in Serbia it is opposite situation.

that arose in these cases were related to the documentation in the case itself, being old, incomplete, without updated data, on faded papers, but also it was difficult to find the regulations that apply in these cases. Only three judges acted in these cases, implying that they were the most burdened with Kosovo cases, taking more than 200 cases to their regular cases.

Judges faced with terms that positive law does not recognize, such as “non-working persons”.¹³⁹ On the other hand, in some litigations, the Office of the Attorney General from the territory of Kosovo represents the party,¹⁴⁰ or the head of the temporary body himself.¹⁴¹ The issue arises in the latter situation, as the leaders are politically elected persons who do not necessarily have a law degree, on the contrary, it happens that they even have only the fourth degree. For this reason, it happens that judges have to treat the attorney as an ignorant party, ask for amendments for submissions and the like, further prolonging and complicating the procedure. Proceedings against former public companies, institutions of the Republic of Serbia that have ceased to exist, are suspended. In new cases coming to court, judges emphasize that there is usually no obstacle to act.

Although the courts in Leskovac were burdened due to the implementation of the Agreement on Temporary Transfer of Jurisdiction, by the time this report was created, the Basic Court in Leskovac had got only 2 associates.¹⁴²

Citizens from the territory of Kosovo usually hire attorneys who work in Kosovo to represent them before the courts in Leskovac. Attorneys from Mitrovica often represent parties before the courts in Leskovac, without being active members of the Bar Association of Serbia. Since there is no single standpoint or instruction from the competent authorities, the decision on whether a party’s attorney will be able to be an attorney registered with the Bar Association of Kosovo is made by the judges themselves, usually based on the existing practice of the immediately higher court.¹⁴³ The

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139 In these cases, it is clear that there is an employment contract, but for objective reasons, they could not fulfill the work obligation.

140 There are city attorneys within the temporary bodies in Kosovska Mitrovica, Prishtina and Leposavić, according to the judges who try these litigations in the Basic Court in Leskovac.

141 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.

142 According to the systematization, the court should have 41 judges, including the president, and currently it has 31 judges. Election of 8 new judges is expected during 2021 (selection is postponed due to the COVID-19 virus pandemic).

143 The higher courts most often did not even consider this issue, but took it for granted, since these attorneys also represented parties in first-instance cases. The question was actually asked by the judges of the Basic Court in Leskovac, who acted in the cases for the first time and made a decision on whether not to accept nor to follow the practice of higher instances. Information obtained in the field research of the Lawyers’ Committee for Human Rights YUCOM.

practice is different and representation is selectively approved. Additional issues for attorneys and parties are caused by measures to restrict movement and travel, particularly in the context of the COVID-19 pandemic.

With regard to the costs of the proceedings, the parties coming from the territory of Kosovo will inevitably bear the costs that they will not be able to reimburse at the end of the proceedings if they hire an attorney from Mitrovica (or another part of Kosovo). These are transportation costs for the attorney. Citizens living in Kosovo are placed in an unequal position in this matter, and the Basic Court in Leskovac itself is not able to recognize this type of costs, given that there are attorneys in the court that the party could potentially hire. In the absence of certain regulations, the acting court in Leskovac has no grounds to recognize these costs. The parties have the opportunity to hire an attorney from the area of the acting court, but this complicates the communication between the party and the attorney.

People of Serbian nationality, mostly from the northern municipalities of Kosovo, continue to use the services of Serbian judicial institutions. The Basic Court in Leskovac successfully implemented the Agreement on Temporary Transfer of Jurisdiction. As a result, as well as the real citizens' needs, its jurisdiction has de facto expanded, and this court receives and acts on new cases that integrated judiciary should resolve.

It can be noticed that there is mistrust among judicial officials who are integrated into the judicial system of Kosovo, that Prishtina will unlock the process regarding the recognition of decisions and rulings. In the latest Report for Kosovo* 2020 of the European Commission, it is stated that Prishtina must thoroughly fulfill the agreed obligations, while the issue of transferring jurisdiction in the mentioned cases to the court in Leskovac has not been mentioned.¹⁴⁴

5.3 Access to justice for the citizens

Citizens in northern Kosovo still do not have adequate access to justice. The latest public opinion poll of the Center for Alternative Dispute Resolution from September 2020, above all, shows that one third of the interviewees, citizens of northern Kosovo, do not think that they are well informed about their rights.¹⁴⁵ The same percentage of citizens think that they are not informed enough about the Brussels Agreement and the integration of judicial institutions in the Mitrovica region.

A public opinion poll by the Center for Alternative Judicial Dispute Resolution in the Mitrovica region shows that as many as 57% of interviewees of Serbian nationality do not think that the judicial system in the Mitrovica region has become more efficient after integration. The most common issue they cite is disrespect of Serbian language as the official language, claiming that it contributes to the poor perception of integrated judicial institutions.¹⁴⁶

144 Report on Kosovo* 2020, European Commission, October 6th, 2020, p. 66.

145 The Center for Alternative Dispute Resolution, "Judiciary in the Mitrovica Region - Public Opinion Survey", Mitrovica, 2020.

146 Ibid, p. 25.

Only 43% of citizens who had experience with judicial institutions, particularly the integrated Basic Court in Mitrovica, rated it as “positive”. This is a low percentage especially when considering that slightly more than 20% of interviewees had experience with judicial institutions. A fifth of interviewees agree with the statement that with its integration, the judicial system in Mitrovica region has become more impartial.

Trust in the idea of integrated justice among population of Serbian nationality in northern Kosovo still does not exist, as 81% of surveyed of Serbian nationality state that they would not feel comfortable if a judge of Albanian nationality decides in criminal proceedings where they would be one of a party.¹⁴⁷ Also, slightly over 4% of surveyed of Serbian nationality think that access to justice has been improved since integration, while the majority has no position on the issue.¹⁴⁸

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.¹⁴⁹ Although the forms in the court are bilingual, only the court staff considers the translation to be unreliable, but as the staff are of Albanian and Serbian nationality, in basic communication with the parties desired information is communicated or a request is made in a language they understand.¹⁵⁰

In the reporting period, there was no competition for appointing lay judges, court experts, bailiffs from the Serb community, as well as a competition for appointing acting supervisory judges in the court unit in Štrpce and Novo Brdo.¹⁵¹ Certain issue faced by population of Serbian nationality 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.¹⁵² According to the estimates of the Government of Serbia, at least 4 additional Serbian speaking notaries and at least as many enforcement officers are required for the northern Kosovo, therefore, the exams for this profession for the candidates who meet required criteria should be adjusted and organized.¹⁵³ During Au-

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147 Ibid.

148 Ibid, p. 31.

149 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

150 ACDC, [“Improving the use of official languages before judicial institutions in northern Kosovo”](#), Mitrovica, 2019, p. 17.

151 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, June 2020”, Belgrade, 2020, p. 12.

152 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.

153 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.

gust 2019, corresponding interviews were conducted with eight candidates, who had previously passed the notary exam by July, but no one has taken office yet.¹⁵⁴ In the meantime, Serbian people from the north of Kosovo have been addressing Kosovo notaries for certain issues, certainly with translating all necessary documents. However, most citizens address Serbian institutions in Raska for inheritance statements, as well as certificates of impunity, or resolve necessary issues with notaries in Leskovac, if they continue to exercise their rights in Serbia.

Furthermore, the total of 8 Kosovo Serb attorneys at law work in the northern Kosovo, of which all are men.¹⁵⁵ These attorneys at law also represent the citizens before the courts in Leskovac and other courts which took over “Kosovo cases”, which further affects their availability. 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. Also, it is necessary to emphasize that the Bar Association does not have interpreters who know Serbian language.

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. In respect of validity of these documents, judges do not have a uniform standpoint¹⁵⁶, that is, of administrative acts and certifications issued by Serbian institutions on the territory of Kosovo as of 1999 until integration.

An additional issue is the need for citizens living in the north of Kosovo to have two judgments in the same matter (one from Kosovo and the other from Serbian courts) in order to be able to exercise the full scope of rights guaranteed. This situation is especially problematic when it comes to proceedings in the field of family law. The biggest issue have citizens who got married after September 16th, 2016 before Serbian institutions.¹⁵⁷ In case of divorce, divorce proceedings are initiated at the same time before the Basic Court in Leskovac and divorce proceedings before the Basic Court in Mitrovica, as Kosovo institutions do not recognize these marriages as formally concluded.¹⁵⁸ If it arises a need to exercise other rights that citizens should exercise, and they

154 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-Pristina Dialogue, June 2020”, Belgrade, 2020, p. 13.

155 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

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

157 Decision of the Government of the Republic of Kosovo on the recognition of Serbian certificates from June 10th, 1999 to September 14th, 2016.

158 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

arise from these decisions, citizens again make a decision whether to address one or another court, and potentially they do so before both courts.

In a respect of the right to free legal aid, two free legal aid services have been established within the temporary bodies of the Republic of Serbia on the territory of Kosovo – in Mitrovica, which covers four municipalities in northern Kosovo and the other in Gračanica. In order to exercise the right to free legal aid, citizens have to submit a certificate of unemployment in order to be issued a decision, i.e. an attorney at law assigned on this basis.¹⁵⁹

5.4. The work of the judiciary during the COVID 19 pandemic

Restriction of movement, the so-called complete lockdown due to the outbreak of the COVID-19 pandemic, lasted from March 12th to May 17th, 2020. On March 15th, 2020, the Judicial Council of Kosovo issued *Decision no. 53/2020* that all activities within the Judicial Council of Kosovo and all courts of Kosovo will be reduced and that court presidents shall appoint judges and administrative staff in sufficient numbers to supervise and perform only those activities that are of an urgent nature.¹⁶⁰ The President of the Basic Court in Mitrovica, based on this decision, passed the Decision of SU no. 65/2020 on the same day. The decision reduced all activities of the Basic Court in Mitrovica and court branches in Srbica, Vučitrn, Zubin Potok and Leposavić to a minimum. The proceedings that took place were those of an urgent nature, such as measures to ensure the presence of the defendant, court detention or other measures, cases of domestic violence, as well as other urgent cases that may occur in criminal, civil, misdemeanor and juvenile court proceedings.¹⁶¹

All previously scheduled court hearings or hearings scheduled for March 2020 have been canceled. The court administrator, deputy administrator and assistant administrators had created a special *Duty Roster of Judges and Administrative Staff* who were performing the mentioned urgent court activities, while the others had to be available on the official phone every working day during working hours from 08:00 AM to 04:00 PM.¹⁶²

The prosecutor's offices worked in a similar manner. Thus, on March 16th, 2020, the Decision of the Prosecutorial Council of Kosovo came into force, reducing the activities within the Prosecutorial Council of Kosovo and the Office of the Chief State Prosecutor.¹⁶³ By this decision, in the context of the COVID pandemic 19, the Chief State Prosecutor and Chief Prosecutors of the Kosovo Prosecutor's Offices are authorized to appoint sufficient number of prosecutors and administrative staff to supervise

159 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

160 The Judicial Council of Kosovo, [Decision KJC no. 53/2020](#), March 15th, 2020, available in Serbian.

161 The Basic Court in Mitrovica, [SU Decision no. 65/2020](#), March 16th, 2020, available in Serbian.

162 Ibid.

163 The Prosecutorial Council of Kosovo, [The Monthly Bulletin – March 2020](#), p. 7-8, available in Serbian.

and perform only urgent activities and activities specified by legal deadlines, while Director General of the Secretariat of the Prosecutorial Council of Kosovo and the Director of the Prosecution's Performance Assessment Unit were authorized to do the same regarding administrative staff. All employees in the prosecutorial system who were released from work in the office were obliged to perform their activities through electronic means of communication. There was no additional information on the sub-page of the Basic Prosecutor's Office in Mitrovica in the context of the work during the pandemic.

According to court's website, during the complete restriction of movement, approximately 90 main hearings in civil matters were scheduled, and delays were minimal.¹⁶⁴ For these reasons, the UNDP Office in Kosovo has made efforts to strengthen and facilitate the use of IT infrastructure in courts.¹⁶⁵ The President of the Basic Court in Mitrovica decided that the trials should not be held via video link, due to the violation of the principle of immediacy, as well as the lack of technical equipment of the court.¹⁶⁶

In May 2020, the Prosecutorial Council of Kosovo published an *Interim Guide for Protection against COVID-19 in the Prosecutorial System of Kosovo*, aimed at protecting and preventing the spread of the COVID-19 virus in the workplace in the Prosecutorial System of Kosovo.¹⁶⁷ The guide is available online and in Serbian as well. Hearings and interrogations of the parties are performed in accordance with coordinated manner in advance with the competent prosecutor's offices, the party is accompanied by responsible officials, while the free movement of the parties, without supervision, is not allowed within the premises of the prosecutor's office. By the decision of the Prosecutorial Council of Kosovo of May 29th, 2020, in accordance with the improvement of the situation, the activities of prosecutor's offices have been increased.

On June 2nd, 2020, the Judicial Council of Kosovo adopted an *Action Plan for Emergency Crisis Management* aimed at enabling the smooth functioning of judicial institutions in Kosovo in the state of emergency, particularly those caused by the health situation related to the fight against COVID-19.¹⁶⁸ The plan is developed on the basis of hypothetical situations if the pandemic lasts, i.e. the courts will not work at full capacity; that the pandemic has a second wave in the second part of 2020 or in 2021; as well as if new emergencies occur.

It is envisaged to establish a body, the Council for Emergency Management, which prepares, proposes, monitors and submits reports regarding the implementation of plans for performing judicial activities during the state of emergency. It states

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164 Information available on the website of the Basic Court in Mitrovica.

165 European Commission for the Efficiency of Justice, State of the Implementation of the CEPEJ Cooperation Programmes Report, July 1st, 2020, p. 12.

166 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

167 The Prosecutorial Council of Kosovo, "[Interim Guide for Protection against COVID-19 in the Prosecutorial System of Kosovo](#)", Prishtina, May 2020, available in Serbian.

168 The Judicial Council of Kosovo, "[Action Plan for Emergency Crisis Management](#)", Prishtina, June 2020, p. 1, available in Serbian.

how the bodies will meet, make decisions, but also envisages the possibility of online sessions via different platforms (Zoom, Skype, etc.).

The governing bodies of the Council are formed in each basic court, the Court of Appeals and the Supreme Court, and consist of the president of the court, who is also the head of the governing body, judges supervising branches in basic courts/vice presidents, for the Court of Appeals and the Supreme Court and court administrator.

After the confirmed positive cases of coronavirus COVID-19 in July 2020 in the territory covered by the Basic Court in Mitrovica, the president of this court immediately formed the mentioned body and a *Decision regarding court's activities related to the Covid-19 epidemic* was made after urgent verbal consultation with the supervisory board of judges, the managing administration of the court and some judges of the Basic Court in Mitrovica.

The measures were similar to those in a state of emergency, except that the activities of courts and branches were reduced “to the extent that will ensure recommended protection measures and ensure continuity of court work in all services and processes”, and the scope of judges and administrative staff was reduced to most necessary in each Department on a rotational basis.¹⁶⁹ Judges are divided into two groups that every two weeks schedule trials, hold hearings, and prepare decisions. Priority is given to trials in cases that are urgent in nature. All previously scheduled court trials or hearings for July 2020 were held with undertaking all required protective measures for the participants in the court proceedings and court employees.

Until the adoption of *the new Law on Prevention and Control of Pandemic COVID-19*, on August 14th, 2020, the pandemic in Kosovo was managed based on *the Law on Prevention and Control of Infectious Diseases*. The new law was adopted three months after the Constitutional Court recommended urgent changes to the legal framework due to the implementation of the current measures of the Government to curb the pandemic.¹⁷⁰ Court's activities have been intensified since September 2020.¹⁷¹

On November 24th, 2020, after the meeting of the Governing Body of the Basic Court in Mitrovica, *the Instruction regarding COVID-19* was published. The Instruction prescribes the obligation of strict compliance with the recommended measures by the public health institutions of Kosovo; reduction of staff to the extent that regular work is not hindered (work from home for judges and staff over the age of 60, pregnant women, people with chronic diseases, staff who do not have to be at work every day); scheduled court hearings are held in compliance with strict measures, while there are scheduled only hearings for cases with legal priority from the second instruction. This instruction is still in effect at the time of writing this report.

5.4.1. Access to justice in northern Kosovo during the state of emergency

As health care in Kosovo continues to work according to the principle of parallel institutions, therefore in areas with a majority population of Serbian nationality, hospitals have continued to work under the auspices of the health system of the

169 The Basic Court in Mitrovica, *Decision regarding the activities of the court related to the Covid-19 epidemic*, July 8th, 2020, available in Serbian.

170 *Report of the Secretary-General United Nations Interim Administration Mission in Kosovo*, October 2020, p. 2.

171 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

Republic of Serbia, and it stayed unclear to the population and medical staff what measures should be followed.

Serbian people, as well as other minorities in Kosovo, had a major problem with breaching measures and legal uncertainty, as the amendments to the regulations, as well as the current regulations, were not translated into Serbian and/or other minority languages. This dualism of measures implementation of measures was particularly present during April 2020. The police were a coercive apparatus both for disrespecting the measures of the Government of Kosovo, and those adopted by the Government of Serbia. There was no criminal punishment, but there was a frequent filing of misdemeanor charges by the police, which were most often rejected by the court due to formal shortcomings.¹⁷²

In accordance with the Constitution of Kosovo and the Law on the Use of Languages, both languages, Serbian and Albanian, have official status. Since March 2020, the Government of Kosovo has issued a series of public statements and instructions, announcements, official decisions and other announcements to the media and the public responding the challenges of the pandemic. The exchange of information between the citizens and the Government of Kosovo was conducted exclusively in Albanian, without providing translation into Serbian.¹⁷³

On March 28th, 2020, the Office of the Commissioner of Official Languages of Kosovo published a report stating that minority communities have difficult access to justice, as well as health protection, due to lack or inadequate translation of information regarding measures to prevent the COVID-19 pandemic.¹⁷⁴ On April 15th and June 9th, 2020, the local non-governmental organization stated the situation in the complaint to the Commissioner indicating that it was contrary to the valid Law on the Use of Languages. The Basic Court in Mitrovica published on its website information relevant to preventing the spread of the infection.¹⁷⁵ In the research of the NGO Aktiv from Mitrovica, it is stated that almost half of the interviewees (48.7%) believe that they received information late, and almost 30% that relevant information in Serbian was not available, and that they mostly obtained information from the media about the latest measures.¹⁷⁶

Since the beginning of the COVID-19 pandemic in Kosovo, cases of domestic violence and gender-based violence have increased. From January to June 2020, a total of 1,012 cases of domestic violence were registered, while in 2019 that number was 785.¹⁷⁷ The interviewees emphasized that there has been an increase in cases of domestic violence, and that these cases have been resolved as urgent before the Basic Court in Mitrovica.¹⁷⁸

172 Ibid.

173 NGO Aktiv, "[Towards a more corresponding response to the COVID-19 pandemic](#)", Mitrovica, 2020, p. 5, available in Serbian.

174 Report of the Secretary-General United Nations Interim Administration Mission in Kosovo, October 2020, pp. 7-8.

175 [Infographic](#) available on the website of the court.

176 NVO Aktiv, "[Trend analysis 2020](#)", Mitrovica, 2020, p. 51, available in Serbian.

177 Report of the Secretary-General United Nations Interim Administration Mission in Kosovo, October 2020, p. 10.

178 Information received from the surveys performed in Mitrovica and Prishtina in the period October 19-21, 2020.

6. Conclusion and recommendations

Chapter 35 does not constitute replacement of the dialogue between Belgrade and Prishtina led under the auspices of the European Union, but it presents the addition to it through application of the agreements made within the dialogue. Three years of implementation of the Justice Agreement have brought improvements in the work of judiciary in northern Kosovo, particularly regarding the position of Serbian representatives within the judiciary. However, access to justice for Kosovo citizens, especially members of Serbian community, has not been provided. The very implementation of the Agreement has created a number of issues that are the result of insufficiently considered solutions. Citizens continued to simultaneously address the Serbian and Kosovo judiciaries. This arose due to the lack of methodical monitoring of the implementation and effects of the Agreement and the provision of recommendations on how to adequately resolve the issues, as well as the lack of political will to substantially implement some parts of the Agreement.

Lack of political will remains a key obstacle to resolving issues, not necessarily related to the Justice Agreement, but also to some other points of the Brussels Agreement and the agreements agreed in this dialogue – from the verification of diplomas and bar exams, and to make available and bound registry books as well as cadastre. Without resolving these, but also all previously presented issues that citizens face, the Justice Agreement does not serve one of its basic purposes, which is to provide access to justice to all citizens who should enjoy their rights on the territory of Kosovo.

As none of the recommendations from the previous report have been met, in order to Prishtina and Belgrade improve the implementation of the Justice Agreement, and Serbia to meet obligations from Chapter 35, we reiterate and propose that the authorities of Serbia and Kosovo consider the following recommendations:

6.1. Recommendations for improving the dialogue between Belgrade and Prishtina (for EU)

1. Make the process of negotiations between Belgrade and Prishtina more transparent, in the framework of the renewed dialogue under the auspices of the EU, in particular with regard to the implementation of the agreements reached, including 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 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. Establish regular procedure for monitoring and measuring indicators of the progress in respect of real implementation of each of the agreements reached within the dialogue between authorities in Serbia and Kosovo, under the auspices of the Special Representative for the Belgrade-Prishtina Dialogue.
5. Map all actors and institutions responsible for the implementation of all elements of the Justice Agreement and ensure their coordination and communication.

6.2. Recommendations for improving the work 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. Judicial Councils of Kosovo to announce extraordinary competitions for filling vacancies reserved for Serbian representatives of the judiciary, due to the increased outflow of staff due to their age structure;
5. 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;
6. Enable equal use of language and script in proceedings before judicial institutions;
7. Provide translation of the decisions of the judicial / prosecutorial council, all courts of appeals and the Supreme Court in Serbian and Albanian languages, thus improve the quality and timeliness of translation;
8. Make detailed analysis of the differences in translations of the laws, especially criminal and civil codes and corresponding procedural laws;
9. 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;
10. In order to remove differences in access to justice, to keep the valid principle of allocation of cases for the Basic Court in Mitrovica and enable its application to other courts functioning on the territory of Kosovo, and where judges of Serbian nationality work as well;
11. 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 citizens to enjoy their rights.

6.3. Recommendations for ensuring access to justice

1. 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;
2. Issue instructions regarding the possibility of representing parties who address the courts in Leskovac by lawyers registered with the Kosovo Bar Association;
3. Announce a competition for appointing lay judges, bailiffs and notaries from the ranks of Serb community, and provide a corresponding training program in Serbian language;
4. Make an integrated map of the services of the Republic of Serbia on the territory of Kosovo, which are competent for the application of rights of recognized decisions of the courts in Leskovac and the Basic Court in Mitrovica (free legal aid services, social work centers, etc.).
5. Make 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.