



# Bridging the Gap

Critical Points for Kosovo's Compliance  
with Council of Europe Standards

This publication was created as part of a project carried out by the non-governmental organization Center for Affirmative Social Actions - CASA with the financial support of the OSF. The views expressed in this publication are solely those of the authors and do not necessarily represent the views of OSF.

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**Research title:**

Bridging the Gap - Critical Points for Kosovo's Compliance with Council of Europe Standards

**Publisher:**

Center for Affirmative Social Actions - CASA

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**Print (copies):**

200

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**Year of publication:**

2024

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# Introduction

On May 12, 2022, the Government of Kosovo embarked on a significant journey by submitting an application for Kosovo's membership in the Council of Europe. This decisive step indicates Kosovo's commitment to align itself with the principles and values upheld by this esteemed international organization. However, more effort is needed to ensure that Kosovo truly meets its membership criteria. Therefore, the following report answers the pressing need for an objective assessment of Kosovo's adherence to the rigorous standards that represent the legacy of the Council of Europe.

The report titled „Bridging the Gap – Critical Points for Kosovo's Compliance with Council of Europe Standards“ serves as a tool in this evaluation process. It has a particular focus on the key thematic areas of democracy, the rule of law, and human rights. By meticulously examining Kosovo's legal framework and operational practices in these areas through the lens of the Council of Europe, with a particular emphasis on the rights of the Serb and other non-majority communities in Kosovo, this report aims to provide a comprehensive analysis of Kosovo's progress towards meeting the standards of the Council of Europe. The perspective that this report assumes is paramount given the historical challenges and experiences faced by the Serb community, making their viewpoint a crucial benchmark for Kosovo's progress towards meeting the standards of the Council of Europe.

This report holds a dual significance. Firstly, it conducts a thorough analysis of Kosovo's current legal framework and practices of pertinence to the position of the non-majority communities, identifying areas where alignment with Council of Europe standards is lacking. Secondly, it offers actionable recommendations aimed at addressing these shortcomings, thereby facilitating Kosovo's progress towards greater compliance with the values espoused by the Council of Europe.

Through an exhaustive examination of legal documents, institutional mechanisms, and practical implementation, this report unveils the shortfalls in governance performance in meeting the standards of the Council of Europe. By bringing these critical points to light, the report aims to foster a constructive dialogue that indicates the areas where more concerted efforts are needed by the Government of Kosovo to meet the requirements for Council of Europe membership.

In the ensuing sections, the report delves into key thematic areas where Kosovo's compliance with Council of Europe standards holds particular significance. From the perspective of the Serb community in Kosovo, the report scrutinizes these critical points to provide actionable guidance that can guide decision-makers in Kosovo towards bridging the gap between current practices and the admirable standards set forth by the Council of Europe. Through this comprehensive analysis, the report aims to contribute to Kosovo's ongoing efforts to align itself more closely with the values of democracy, human rights, and the rule of law endorsed by the Council of Europe.

The successful implementation of the recommendations put forth in this report will not only enhance Kosovo's prospects for Council of Europe membership but also contribute to efforts towards strengthening Kosovo's democratic institutions and practices, respect for human rights and the rule of law, and improving the position of non-majority communities and interethnic relations in Kosovo.



# 1. Democracy

## 1.1 Elections

On January 16, 2022, Serbia held a constitutional referendum to amend the section of the Constitution related to the judiciary. The Serbian government requested the opening of voting centres in Serb settlements in Kosovo to allow registered voters to participate in the referendum. This request received endorsement from the Quint group. In a joint statement by France, Germany, Italy, the United Kingdom, the United States, and the European Union, it was regrettably noted that the Government of Kosovo did not permit the Organization for Security and Cooperation in Europe (OSCE) to collect ballots from eligible voters living in Kosovo for the upcoming referendum, as had been customary in the past.<sup>1</sup> Consequently, a call was made to the Kosovo government to enable Serbs in Kosovo to exercise their right to vote in elections and electoral processes, in accordance with established practice. Despite those appeals, the Assembly of Kosovo passed a resolution against allowing a Serbian constitutional referendum to take place in Kosovo.<sup>2</sup>

The same scenario recurred on April 3, 2022, during Serbian general elections to elect the president of Serbia and members of the National Assembly. Once again, the Government of Kosovo prohibited ethnic Serbs in Kosovo from voting in Serbian elections via polling stations in Kosovo. The ban was contrary to the practice established by the Agreement for OSCE to Facilitate Participation of Serbian Citizens in Kosovo in Serbian National Elections reached in 2012.<sup>3</sup> France, Germany, Italy, the United Kingdom, and the United States issued a statement expressing disappointment, stating that the Government of Kosovo failed to demonstrate commitment to protecting the civil and political rights of all its citizens, including of members of minority groups.<sup>4</sup> This decision was deemed inconsistent with shared values and principles and likely to undermine Kosovo's EU aspirations.

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<sup>1</sup> „Statement from France, Germany, Italy, the United Kingdom, the United States and the European Union“, Italian Embassy in Pristina, [https://ambpristina.esteri.it/en/news/dall\\_ambasciata/2022/01/statement-from-the-embassies-of-2/](https://ambpristina.esteri.it/en/news/dall_ambasciata/2022/01/statement-from-the-embassies-of-2/).

<sup>2</sup> „Kosovo parliament opposes Serbian constitutional referendum in Kosovo“, Euractiv, [https://www.euractiv.com/section/politics/short\\_news/kosovo-parliament-opposes-serbian-constitutional-referendum-in-kosovo/](https://www.euractiv.com/section/politics/short_news/kosovo-parliament-opposes-serbian-constitutional-referendum-in-kosovo/).

<sup>3</sup> „Statement on the Agreement for OSCE to Facilitate Participation of Serbian Citizens in Kosovo in Serbian National Elections“, OSCE, <https://www.osce.org/files/f/documents/d/1/90514.pdf>.

<sup>4</sup> „Joint Statement on Kosovo (23 Mar. 2022)“, French Ministry for Europe and Foreign Affairs, <https://www.diplomatie.gouv.fr/en/country-files/kosovo/news/article/joint-statement-on-kosovo-23-mar-2022/>.



Snap parliamentary elections in Serbia were held again on December 17, 2023, to elect members of the National Assembly. Once more, Serbs living in Kosovo had to travel to Serbia proper to cast their votes because the Government of Kosovo did not permit polling stations to be opened in Kosovo, as per established practice. The OSCE announced its readiness to collect ballots from voters in Serbian elections who would vote in Kosovo, provided that the appropriate conditions are in place.<sup>5</sup> Those conditions primarily included consensus on the approach from all concerned parties, support from Kosovo institutions, and crucially, security support from the Kosovo Police to ensure the integrity of the voting process.

The European Union expressed its view that the decision of Kosovo authorities not to allow Serbia's elections to be held in Kosovo is inconsistent with the spirit of dialogue, the principle of protecting the rights of non-majority communities, and building trust between Kosovo and Serbia.<sup>6</sup> EU Spokesperson Peter Stano recommended resuming practices to allow Serbs to vote in Kosovo during the parliamentary elections on December 17. Stano expressed regret that the established practice of allowing Kosovo Serbs to vote in Serbian parliamentary elections with the facilitation of the OSCE was not permitted again by the Kosovo authorities.

### **Recommendation**

The practice of allowing Serbs to vote in Serbian elections at polling stations in Kosovo should be reinstated in accordance with the 2012 Agreement for OSCE to Facilitate Participation of Serbian Citizens in Kosovo in Serbian National Elections.

## **1.2 Government**

On December 1, 2022, Nenad Rašić assumed the position of Minister for Communities and Returns in the Government of Kosovo, appointed by Prime Minister Albin Kurti. Rašić was appointed when the post was left vacant following the resignation of Goran Rakić and the withdrawal of the Serb List from Kosovo institutions.

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<sup>5</sup> „Davenport: OSCE is ready to collect votes of Serbs in Kosovo, but conditions are currently not in place“, Kosovo Online, <https://www.kosovo-online.com/en/news/politics/davenport-osce-ready-collect-votes-serbs-kosovo-conditions-are-currently-not-place-22/>.

<sup>6</sup> „EU: Kosovo's decision not to allow Serbia's elections is not in line with protecting minority rights“, European Western Balkans, <https://europeanwesternbalkans.com/2023/12/01/eu-kosovos-decision-not-to-allow-serbias-elections-is-not-in-line-with-protecting-minority-rights/>.

The appointment of the new Minister for Communities and Returns contravened Article 96, Section 5 of the Constitution of Kosovo, as it lacked endorsement from deputies in the Assembly of Kosovo representing the Serb community.<sup>7</sup> This provision stipulates that a Minister from the Kosovo Serb Community, if appointed from outside the Assembly's membership, must receive formal endorsement from the majority of Assembly deputies from parties, coalitions, citizens' initiatives, and independent candidates declaring themselves to represent the community in question. Since the new Minister did not hold a deputy position prior to his ministerial appointment, the Constitution mandated that his appointment be endorsed by deputies of the Serb List, which held all deputy seats in the Assembly of Kosovo guaranteed for representatives of the Serb community.

The European Union responded to this situation by urging the Government of Kosovo to adhere to all procedural requirements when appointing a minister from a minority community, emphasizing that such appointments must align with the Constitution of Kosovo. Peter Stano, the spokesperson for the High EU Representative, expressed disappointment with the appointment of the new Minister, stating that it failed to meet the constitutional stipulations.<sup>8</sup>

### **Recommendation**

To ensure compliance with constitutional provisions and procedural requirements, it is recommended that the Government of Kosovo engage in transparent dialogue with representatives of the Serb community, including deputies from the Serb List in the Assembly of Kosovo, to address the concerns raised regarding the appointment of Minister from the Serb community. The dialogue should aim to rectify discrepancies between the appointment of the Minister and the constitutional mandate, as well as to identify the solution that reflects the actual intention of the constitutional provisions.

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<sup>7</sup> „Constitution of the Republic of Kosovo“, [https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_KOSOVO.pdf](https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf).

<sup>8</sup> „EU: Imenovanje Rašića nije u saglasnosti s Ustavom Kosova“, Al Jazeera Balkans, <https://balkans.aljazeera.net/news/balkan/2022/12/2/stano-imenovanje-rasica-razocarenje-nije-u-saglasnosti-sa-ustavom-kosova>.

## 1.3 Local Self-Government

Article 123, Section 1 of the Constitution of Kosovo unequivocally enshrines the „right to local self-government“.<sup>9</sup> Echoing this commitment, Section 3 underscores that Kosovo „respects the European Charter of Local Self-Government“.

While strides have been made in upholding the right to local self-government in Kosovo, a more concerted effort is needed to overcome the challenge surrounding the legality and legitimacy of the operations of local self-government institutions in North Kosovo. Notably, citizens in these municipalities are deprived of their entitlement to local self-government and good municipal governance. Unfortunately, the central authorities have thus far failed to duly address this pressing issue.

### *The situation in North Kosovo*

North Kosovo, situated as the northernmost region of Kosovo bordering Serbia proper, constitutes a landscape where ethnic Serbs represent the majority population. It encompasses the following four municipalities: North Mitrovica, Zvečan, Zubin Potok, and Leposavić. Recent years have witnessed a series of escalating tensions in North Kosovo, leading the local Serb population to disengage from established institutions.

The strife between the Serb population of North Kosovo and the central authorities in Pristina included many issues, ranging from the perceived excessive presence of Special Units of the Kosovo Police in the region to the Government's reluctance to establish the Association/Community of Serb-majority Municipalities. These simmering disputes culminated in heightened tensions. In an act of protest, on November 5, 2022, Serbs from North Kosovo collectively resigned from the institutions, including the Kosovo police, judiciary, municipal offices, and central institutions.<sup>10</sup> Subsequently, snap local elections scheduled for December 2022 were deferred to April 2023 due to prevailing security concerns.

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<sup>9</sup> „Constitution of the Republic of Kosovo“, [https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_KOSOVO.pdf](https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf).

<sup>10</sup> „NEWS Serbs Stage Mass Resignation from Kosovo State Institutions“, Balkan Insight, <https://balkaninsight.com/2022/11/05/serbs-stage-mass-resignation-from-kosovo-state-institutions/#:~:text=Kosovo%20Serbs%20resigned%20from%20their,Serbia%20and%20Kosovo%20in%20Brussels.>

The snap local elections held on April 23, 2023, witnessed an extremely low turnout, as local Serbs opted for a boycott. Consequently, ethnic Albanian candidates assumed the mayors' offices in all four municipalities. The voter turnout was as follows: 1.06% in Leposavić, 4.62% in North Mitrovica, 5.78% in Zubin Potok, and 2.92% in Zvečan.<sup>11</sup>

In June 2023, the European Council imposed measures against Kosovo for its failure to mitigate tensions in North Kosovo, urging immediate steps, including the scheduling of early municipal elections. Responding to these pressures, the Kosovo Government enacted the Administrative Instruction on the Procedure for Initiating, Organizing, and Submitting Citizens' Initiatives to Recall Elections at the Local Level in August 2023.<sup>12</sup>

This Administrative Instruction laid out the protocol for initiating and executing citizens' initiatives to remove incumbent mayors. It affirmed citizens' rights to instigate the removal of mayors, conditioned upon collecting support from at least twenty per cent of the electorate within the respective municipality. Once the required number of signatures is collected, the Central Election Commission organizes a vote to remove a mayor from their position. Should a majority of the voters in the respective municipality, that is fifty per cent of them plus one, vote for the removal of the mayor, the mayor is considered to have vacated the office.

Despite the promulgation of the Administrative Instruction, the Serbs in North Kosovo at first displayed no interest in initiating proceedings to remove incumbent mayors. Serb leaders remained resolute in their boycott of Kosovo's institutions until their demands, particularly concerning the establishment of the Association/Community of Serb-majority Municipalities, were met.

However, in a shift in October 2023, the Serb List, the predominant political party representing the Serb community in Kosovo, announced its willingness to participate in early local elections in northern municipalities without preconditions. The mayors were called to step down to expedite the electoral process, but the appeal was not granted. Consequently, local Serbs agreed to activate the procedure outlined in the Administrative Instruction.

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<sup>11</sup> „Preliminary Results: Vetëvendosje and PDK Candidates Win Snap Local Elections in the North“, Prishtina Insight, <https://prishtinainsight.com/preliminary-results-vetevendosje-and-pdk-candidates-win-snap-elections-in-northern-municipalities/>.

<sup>12</sup> „Administrative Instruction on the Procedure for Initiating, Organizing, and Submitting Citizens' Initiatives to Recall Elections at the Local Level“, <https://mapl.rks-gov.net/wp-content/uploads/2023/09/02-619-4-2023.pdf?/>.

By early December 2023, civic initiatives were formed in each of the four northern municipalities to administer the signature collection for the mayors' removal. The process was launched by mid-January 2024.<sup>13</sup> Despite encountering legal and bureaucratic hurdles, signature collection across all four municipalities was concluded by January 22, 2024, and the submissions were forwarded to the Central Election Commission (CEC) for verification.

On March 8, 2024, the CEC declared that the number of signatures collected in each municipality surpassed the stipulated threshold of twenty per cent of registered voters. The tally of citizens' signatures collected per municipality is as follows: 2,905 in Leposavić, 1,380 in Zubin Potok, 1,714 in Zvečan, and 3,653 in North Mitrovica. Consequently, the CEC scheduled a vote for the removal of mayors from their positions in the four northern municipalities for April 21, 2024.<sup>14</sup>

Despite the overwhelming support garnered for their removal, incumbent mayors remain resolved not to resign from their positions. On the other hand, despite the contested democratic legitimacy, municipal authorities in four northern municipalities persist in enacting controversial decisions, triggering a widespread outcry from the local population. Evidenced by protests and petitions aimed at overturning contentious municipal decisions, this discontent displayed the growing gap between municipal authorities and the local communities they were supposed to serve.

The protracted struggle to remove the incumbent mayors in the four northern municipalities, compounded by the contentious decisions promulgated by municipal authorities, has deepened a profound sense of alienation among the local population in North Kosovo from the institutions of local self-government. Nonetheless, the Kosovo central authorities have failed to undertake concerted efforts to facilitate the reintegration of Serbs in North Kosovo into the electoral and local decision-making processes. Consequently, local Serbs are concerned that the mayoral removal procedure may encounter additional administrative impediments, prolonging the status quo.

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<sup>13</sup> „Kosovar Serbs Start Signing Petitions To Oust Ethnic Albanian Mayors“, Radio Free Europe, <https://www.rferl.org/a/kosovo-serbs-petition-ethnic-albanian-mayors/32782129.html/>.

<sup>14</sup> „Kosovo Election Commission Sets Date for Vote to Dismiss Contested North Mayors“, Balkan Insight, <https://balkaninsight.com/2024/03/08/kosovo-election-commission-sets-date-for-vote-to-dismiss-contested-north-mayors/>.

## **Recommendations**

To uphold citizens' right to local self-government in accordance with the standards espoused by the Council of Europe, Kosovo authorities should seriously address the legitimacy crisis in four municipalities in North Kosovo.

Taking into account the prolonged impasse in resolving the crisis in North Kosovo, mayors and members of municipal assemblies should consider resigning from their positions to pave the way for the expeditious organization of early local elections.

As an interim measure, it is advisable for the incumbent municipal authorities to abstain from implementing contentious decisions that run against the expressed will of the local population in referred municipalities.

Central authorities should explore legal avenues to safeguard citizens' rights to genuine local self-government in North Kosovo pending a sustainable solution to the crisis. This could include exercising administrative oversight over the legality of municipal decisions enacted by the incumbent municipal authorities and if warranted, the dissolution of municipal assemblies.

### **1.4 The Association/Community of the Serb-majority Municipalities**

For over a decade, the establishment of the Association/Community of Serb-majority Municipalities has stood as the most contentious issue in the relations between Belgrade and Pristina. The controversy surrounding this matter stems from the failure to create the Association/Community despite clear obligations outlined in agreements reached between the parties within the framework of the EU-facilitated dialogue.

#### **The Brussels Agreement**

Belgrade and Pristina agreed upon the establishment of the Association/Community in the „First Agreement on Principles Governing the Normalization of Relations“, commonly known as the Brussels Agreement. Signed in April 2013 in Brussels by then Prime Ministers of Serbia, Ivica Dačić, and the Prime Minister of Kosovo, Hashim Thaçi, the agreement underscores the significance of the Association/Community issue, as it opens with a provision on its formation and dedicates six of its fifteen points to the matter. The

Assembly of Kosovo ratified the agreement as an international treaty on June 27, 2013.<sup>15</sup>

The agreement stipulates that there will be an „Association/Community of municipalities where Serbs constitute the majority population in Kosovo“. The structures of the Association/Community will be established on the same basis as the existing statute of the Association of Kosovo Municipalities. The Agreement outlines that municipalities will collaborate in the collective exercise of their competencies through the Association/Community, which will have a „full overview“ in the following areas: economic development, education, health, and urban and rural planning. Additionally, the Association/Community may be granted additional powers by central authorities. It shall also have a representative role to the central authorities and a seat in the Consultative Council for Communities for this purpose.

The origin of the Association/Community of Serb-majority Municipalities dates back to the „Comprehensive Proposal for the Kosovo Status Settlement“, often referred to as the Ahtisaari Plan.<sup>16</sup> Proposed in 2007 by Martti Ahtisaari, the Special Envoy of the UN Secretary-General for the Future Status Process for Kosovo, the Ahtisaari Plan outlined the framework for addressing the status of Kosovo. Following its declaration of independence in 2008, Kosovo pledged to implement the Ahtisaari Plan by integrating its provisions into its Constitution.

The Ahtisaari plan viewed extensive decentralization as a mechanism to safeguard the legitimate interests of Serbs and other non-majority communities in Kosovo. Notably, the decentralization was tailored to address the specific needs and concerns of the Kosovo Serbs, awarding it significant control over its internal affairs through local self-government.

Among its provisions, the Ahtisaari plan envisioned the establishment of six new municipalities with a Serb majority, along with four existing ones. Serb-majority municipalities were entitled to inter-municipal and cross-border cooperation on matters of mutual interest, as well as to collaborate with institutions of Serbia. Moreover, the plan granted enhanced municipal competencies to Serb-majority municipalities, particularly in areas such as secondary healthcare

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<sup>15</sup> „First Agreement on Principles Governing the Normalization of Relations“, Office for Kosovo and Metohija, <https://www.kim.gov.rs/eng/p03.php>.

<sup>16</sup> „Comprehensive proposal for the Kosovo status settlement (S/2007/168/Add.1)“, ReliefWeb, <https://reliefweb.int/report/serbia/comprehensive-proposal-kosovo-status-settlement-s2007168add1>.

and higher education. Additionally, the plan emphasized extensive municipal autonomy in financial affairs, including transparent funding from Serbia.

The stipulation of the Brussels Agreement concerning the formation of the Association/Community represented the actualization of the provisions on inter-municipal cooperation of Serb-majority municipalities enshrined in the Ahtisaari plan. In the context of the Brussels Agreement, the formation of the Association/Community was aimed at facilitating the establishment of new municipalities in North Kosovo and their integration into Kosovo's administrative system. Although four new municipalities in North Kosovo were established, the Association/Community was not formed.

### **The General Principles**

In August 2015, Prime Ministers of Serbia Aleksandar Vučić and of Kosovo Isa Mustafa at the time reached an agreement entitled „Association/ Community of municipalities with a majority Serbian population in Kosovo - general principles/main elements“, commonly referred to as the General Principles.<sup>17</sup> The agreement reaffirmed the commitment to establish the Association/Community of Serb-majority Municipalities in accordance with the provisions stipulated in the 2013 Brussels Agreement.

According to the General Principles, the Association/Community would be defined by its Statute, to be adopted by the constituent assembly comprising representatives from the assemblies of member municipalities. Additionally, the Government of Kosovo would adopt a decree to endorse the Statute, subject to review by the Constitutional Court.

In October 2015, then President of Kosovo Atifete Jahjaga referred the General Principles to the Constitutional Court for an assessment of its constitutionality. In December 2015, the Constitutional Court of Kosovo rendered a Judgment assessing the compatibility of the General Principles with the spirit and articles of the Constitution of Kosovo.<sup>18</sup>

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<sup>17</sup> „Association/Community/Community of municipalities with a majority Serbian population in Kosovo - general principles/main elements“, Office for Kosovo and Metohija, <https://www.kim.gov.rs/eng/p17.php>.

<sup>18</sup> „Judgment in Case No. K0130/15“, the Constitutional Court, [https://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ko\\_130\\_15\\_ang.pdf](https://gjk-ks.org/wp-content/uploads/vendimet/gjk_ko_130_15_ang.pdf).



The Court in its Judgement reiterated that ratified international agreements become part of the internal legal system of Kosovo. The First Agreement was ratified as an international agreement on 27 June 2013 by the Assembly of Kosovo, thereby, becoming part of the internal legal order. The establishment of the Association/Community is, thus, required for its implementation of the First Agreement. Therefore, the Court deemed that the establishment of the Association/Community was in compliance with the constitutional requirement and thus is part of the constitutional order of Kosovo.

Upon scrutinizing the General Principles, the Constitutional Court ascertained that the document offers additional procedural guidelines for the elaboration and implementation of the First Agreement. However, the Court noted that several provisions within the document „do not fully meet the constitutional standards“. Consequently, the Court stipulated that the Government of Kosovo's decree regarding the establishment of the Association/Community and the Statute of the Association/Community must meet the constitutional standards and be in compliance with the spirit and articles of the Constitution. Furthermore, they should be submitted to the Constitutional Court to review their constitutionality.

The Constitutional Court's judgment was exploited in the political discourse by incumbent Kosovo officials to falsely claim that the formation of the Association/Community of Serb-majority municipalities violates Kosovo's Constitution. On numerous occasions, Kosovo officials have publicly and explicitly rejected the notion of establishing the Association/Community, arguing that it would undermine Kosovo's sovereignty and disrupt its administrative system.

Contrary to such claims the Constitutional Court did not state or imply that the establishment of the Association/Community of Serb-majority municipalities, in and of itself, would be incompatible with the Constitution. Instead, the Court affirmed that the implementation of the Brussels Agreement, an internationally ratified treaty, requires the establishment of the Association/Community of Serb-majority Municipalities, as an inherent element of Kosovo's constitutional framework. Nonetheless, the Constitutional Court did identify certain provisions of the General Principles that do not comply with the Constitution of Kosovo.

The establishment of the Association/Community is not only an international obligation of Kosovo but also one underscored by its

Constitutional Court. From a legal standpoint, there appear to be no impediments preventing Serb-majority municipalities from voluntarily coordinating the exercise of their competencies of mutual interest through an Association/Community. Furthermore, the establishment of the Association/Community would represent a significant breakthrough in the normalization process between Belgrade and Pristina, as well as a trust-building milestone in relations between the Serb community in Kosovo and the central authorities in Pristina.

The primary dispute impeding the establishment of the Association/Community of Serb-majority Municipalities refers to the scope of its competencies, particularly concerning its potential „executive powers“. The crux of the dispute between Belgrade and Pristina centres on the Association/Community's competencies in this regard.

According to the General Principles, the Association/Community's principal objectives encompass the „performance of public functions and services“ within specific areas. Pursuant to the provisions of the Brussels Agreement, the General Principles states the functions of the Association/Community to include „the exercise of full supervision“ in relation to the following areas: local economic development, education, health, and urban and rural planning. In addition, the General Principles establish that the Association/Community will perform the following tasks: strengthen local democracy; adopt measures to improve local living conditions for returnees to Kosovo; conduct, coordinate and facilitate research and development activities; promote, disseminate and advocate issues of common interest of its members and represent them, including to the central authorities; provide services to its members; assess the delivery of public services to its members and their residents as to support the Association/Community in forming positions of common interests for the participation to the work of the central authorities; conduct monitoring as required for the implementation of its objectives; establish relations and enter into cooperation arrangements with other Associations/Communities of municipalities, domestic and international; etc.

As stipulated in the agreements, the „exercise of full supervision“ by the Association/Community is confined to the areas of economic development, education, health, and urban and rural planning. Even under the most extensive interpretation of the stipulations of the agreements, the Association/Community has not been entrusted with powers capable of undermining the functions of central institutions. This is because the competencies of the

Association/Community fall within the area where the central government of Kosovo already has an obligation to respect the autonomy of municipalities, as enshrined in the Constitution and the Law on Local Self-Government. Additionally, the Association/Community has not been tasked with functions within areas where central institutions hold exclusive competencies, such as security and public order or foreign policy.

According to Article 1, Section 1 of the Law on Local Self-Government, economic development, and urban and rural planning are considered the own competencies of municipalities.<sup>19</sup> Furthermore, the law stipulates that municipalities where the Kosovo Serb community forms a majority possess enhanced responsibilities in healthcare, education, and culture, including the preservation of religious heritage. These municipalities also have the right to participate in the election of local police station commanders. Accordingly, municipalities of North Mitrovica, Gračanica, and Štrpce, have enhanced competencies over secondary health care, while North Mitrovica has enhanced competency over higher education.

According to Article 29, Section 1 of the Law, municipalities have the right to form partnerships to exercise their inherent and enhanced competencies. Furthermore, under Article 30, Section 1, municipalities are entitled to collaborate with institutions in Serbia, including the potential receiving of financial assistance. Additionally, Article 31 allows municipalities to form and belong to associations for the protection and promotion of their common interests.

Given that the Association/Community of Serb-majority Municipalities would serve as a municipal association, the autonomy it would enjoy in the designated areas of its competencies would correspond with that already afforded to municipalities, albeit with additional competencies. The role of the Association/Community role would primarily entail coordinating the efforts of municipalities in fulfilling their functions. Importantly, this would not curtail the authority of central institutions to exercise administrative and legal oversight over the activities of municipalities.

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<sup>19</sup> „Zakon o lokalnoj samoupravi“, <https://mapl.rks-gov.net/wp-content/uploads/2017/10/Zakon-O-Lokalnoj-Samoupravi.pdf>.

## **The Statute of the Association/Community of Serb-majority Municipalities**

In September 2016, the Government of Kosovo appointed a Management Team comprised of four members from the Serb community in Kosovo tasked with drafting the Statute of the Association/Community of Serb-majority Municipalities.

The appointment was made according to the provision of the General Principles. It was anticipated that by August 2018, the Management Team would present the Draft Statute within the framework of the Brussels dialogue.<sup>20</sup> However, this timeline was not met. It was not until May 2, 2023 that the Management Team finally unveiled the draft Statute at a dialogue meeting held in Brussels. Rather than offering constructive feedback, the Government of Kosovo chose instead to dissolve the Management Team, which drew criticism from Brussels.<sup>21</sup>

In an effort to overcome this impasse, the EU took the initiative to propose a draft Statute for the establishment of the Association/Community, submitting it to the parties in October 2023.<sup>22</sup> Despite being called to review the document and provide its views, the Government of Kosovo made no strides in addressing the issue. No meaningful progress has been made since then, leaving the fate of the Association/Community uncertain.

### **Recommendations**

In order to advance the establishment of the Association/Community, it is imperative that the Government of Kosovo promptly reviews both the drafts prepared by the Management Team and the EU. Building upon these documents, the Government of Kosovo should formulate a draft Statute and Decree for the establishment of the Association/Community.

Kosovo officials must refrain from employing harsh rhetoric against the Association/Community and avoid tendentious

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<sup>20</sup> „NEWS Kosovo 'Must' Change Laws for Serb Municipalities Deal“, Balkan Insight <https://balkaninsight.com/2018/07/10/serb-municipalities-Association/Community-needs-kosovo-laws-changes-07-10-2018/>.

<sup>21</sup> „Kosovo Minister Sacks Management Team of Draft Statute for Association/Community“, Pristina Insight, <https://prishtinainsight.com/kosovo-minister-sacks-management-team-of-draft-statute-for-association/>.

<sup>22</sup> „EU denies that a Statute of the Association/Community of the Serb-majority Municipalities had been made public“, European Western Balkans, <https://europeanwesternbalkans.com/2023/11/13/eu-denies-that-a-statute-of-the-Association/Community-of-the-serb-majority-municipalities-had-been-made-public/>.

misinterpretation of the Constitutional Court's rulings and the true essence of the Association/Community.

Additionally, efforts should be made to streamline swift changes in local government within four municipalities in North Kosovo to reflect the democratic will of the local population. This will create an environment conducive to the formation of the Constituent Assembly of the Association/Community, thereby advancing the process of its establishment.



## **2. Rule of Law**

## 2.1 Trials in absentia

In November 2023, the first war crimes trials in absentia commenced. Reports indicated that the Special Prosecutor's Office had initiated six indictments under this framework.<sup>23</sup> Two additional trials were initiated in February 2024.<sup>24</sup>

The inception of trials in absentia for war crimes was facilitated by a series of amendments to the Criminal Procedure Code. Those legislative changes began in July 2019 when the code was initially amended to allow such trials for criminal offenses against international humanitarian law and international criminal law that were committed in the period between January 1990 and June 1999. Subsequent amendments in June 2021 aimed to streamline the process for trials in absentia. By February 2023, further amendments expanded the scope to encompass all types of criminal offenses.<sup>25</sup>

The amendments to the Code were purportedly enacted to facilitate the prosecution of war crime suspects due to the absence of legal cooperation with Serbia. However, experts cautioned that these legal provisions raise concerns regarding respect for human rights.

The initiative to enable trials in absentia originated from the ruling party Vetëvendosje, initially proposed while it was still in opposition. Allegedly due to the absence of cooperation between the prosecution of Kosovo and Serbia, Vetëvendosje sought to ensure trials in absentia for war crimes purportedly committed by Serbs. However, this move drew criticism from human rights NGOs, who argued that conducting indictments and trials in absentia contradicts fundamental human rights principles.<sup>26</sup>

The central concern pertained to the absence of robust safeguards within the legal framework. Specifically, there is worry regarding the

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<sup>23</sup> „Kosovo Begins Two War Crime Trials of Serbs in Absentia“, Balkan Insight, <https://balkaninsight.com/2024/02/21/kosovo-begins-two-war-crime-trials-of-serbs-in-absentia/>.

<sup>24</sup> „First Kosovo War Crimes Trial in Defendant's Absence Begins“, Balkan Insight, <https://balkaninsight.com/2023/11/20/kosovo-launches-first-war-crimes-trial-in-defendants-absence/>.

<sup>25</sup> „The First Indictments in Absentia for War Crimes in Kosovo“, Humanitarian Law Center Kosovo, <https://hlc-kosovo.org/storage/app/media/1.%20Buletini260723/HLCK-Newsletter-July%202023.pdf>.

<sup>26</sup> „The first trials for war crimes in absentia: Justice for victims or a violation of human rights?“, Kosovo Online, <https://www.kosovo-online.com/en/news/analysis/first-trials-war-crimes-absentia-justice-victims-or-violation-human-rights-20-11-2023>.

requirement for reasonable efforts to inform the defendant about the indictment and to summon them for trial. It is deemed that the amendments were enacted to circumvent the due steps of the procedure. Hence, it is feared that without proper safeguards, these mechanisms could potentially be manipulated, leading to abuses of power or intimidation, particularly against Serb defendants. Moreover, there is a prevailing concern that such trials may exacerbate ethnic tensions, potentially resulting in mono-ethnic prosecutions disproportionately targeting Serbs.

It has been observed that Vetëvendosje has included the issue of trials in absentia in its political campaign, further exacerbating concerns about the politicization of legal proceedings. The party's utilization of legislative changes for political gain has spurred further doubts. By intertwining legal matters with political agendas, there is a risk of undermining the integrity and impartiality of the judicial process. Moreover, politicization may erode public trust in the judiciary and perpetuate perceptions of bias or unfairness.

### **Recommendations**

While trials in absentia represent a significant legal tool to address the challenges of prosecuting war crimes, their implementation must be accompanied by robust safeguards to ensure fairness and uphold human rights principles. Efforts should be made to mitigate the risk of abuse and ensure that justice is served impartially, regardless of the ethnicity of the defendant.

It is imperative that political parties, including Vetëvendosje, refrain from politicizing legal reforms such as trials in absentia. The integrity of the judicial system must be safeguarded from undue political interference to ensure that justice is delivered fairly and impartially and to promote public confidence in the judiciary.

## **2.2 Special Police**

In recent years, the deployment of special operation units of the Kosovo Police in North Kosovo has notably increased. This increase commenced prior to the collective resignation of Serbs from the Kosovo Police in November 2022, and it continued to intensify thereafter. The timing of this increase suggests that it is not directly linked to the withdrawal of Serbs from the police force, as the deployment had commenced earlier. This is also evidenced by the



construction of special police bases in North Kosovo which also preceded the resignations.

Civil society organizations and international observers have raised concerns regarding the excessive presence of special police units in North Kosovo, noting its role in exacerbating tensions with the local population.<sup>27</sup> Reports from international organizations, NGOs, and media outlets have highlighted instances of misconduct and brutality perpetrated by police officers.<sup>28</sup> Despite assurances from the Government of Kosovo to gradually reduce their presence, tangible actions in this regard have yet to take place.

The Government of Kosovo failed to exercise restraint in the utilization of special police forces and to use their deployment solely for the situation that warrants doing so. The propensity to rely excessively on special police forces in North Kosovo has eroded the trust of the local Serbs. The indiscriminate use of these units for routine policing tasks is neither proportional nor legitimate and risks further alienating the local population.

### **Recommendations**

The Government of Kosovo should engage in building trust with the Serb community in North Kosovo. This entails refraining from overreliance on special police forces, ensuring accountability for misconduct, and upholding principles of proportionality and legitimacy in law enforcement operations.

It is imperative to ensure that police officers deployed in North Kosovo are proficient in both official languages, as mandated by the law, to facilitate effective communication with all members of the community.

In addition to refraining from overreliance on special police forces, the Government of Kosovo should prioritize the gradual withdrawal of these units from North Kosovo.

Efforts should be made to promote and facilitate the return of Serbs to the Kosovo Police service. This could include providing incentives for Serb individuals to join or rejoin the police force, and establishing support mechanisms to address obstacles they may encounter.

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<sup>27</sup> „Appeal for Peace“, NGO Aktiv, <https://ngoaktiv.org/en/news/appeal-for-peace-2/>.

<sup>28</sup> „Report of the Secretary-General“, United Nations Security Council, [https://unmik.unmissions.org/sites/default/files/s-2023-247 - sg\\_report\\_on\\_unmik.pdf](https://unmik.unmissions.org/sites/default/files/s-2023-247 - sg_report_on_unmik.pdf).

## 2.3 Arbitrary arrest and detention

In recent years, North Kosovo has experienced a rise in violent incidents, leading to an increasing number of arrests among the ethnic Serbs. These arrests have prompted complaints from lawyers regarding impediments to challenging the lawfulness of arrests or detentions in court. Instances of prolonged detention have been reported, compounded by dismissive treatment of appeals by the courts and allegations of undue political influence.<sup>29</sup>

Concerningly, it was reported that detainees were subject to mistreatment by police, including the excessive use of force during apprehension. Several individuals have endured extended pretrial detention under conditions that raise human rights concerns.<sup>30</sup> Such incidents have induced a sense of fear and intimidation among Serbs in North Kosovo, who perceive the police as an instrument of harassment rather than protection.

There have been reports indicating that some police officers deployed in North Kosovo do not speak Serbian, despite police being mandated to operate in both official languages. This language barrier exacerbates tensions and hinders effective communication between the police and the local community, contributing to a sense of marginalization among ethnic Serbs. No meaningful efforts have been taken to improve communication between special police units operating in North Kosovo and the local Serb population and to increase transparency and accountability in their conduct.

### **Recommendation**

Measures must be implemented to ensure that police conduct and operations are in strict accordance with legal standards and human rights principles to rebuild the trust of the members of the Serb community in law enforcement institutions. This includes addressing instances of police mistreatment and excessive force in the arrest and detention cases.

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<sup>29</sup> „Lawyer Miljkovic: Dusan Obrenovic's detention extended for another two months“, Kosovo Online <https://www.kosovo-online.com/en/news/politics/lawyer-miljkovic-dusan-obrenovics-detention-extended-another-two-months-30-10-2023>.

<sup>30</sup> „Report of the Secretary-General“, United Nations Security Council, <https://unmik.unmissions.org/sites/default/files/s2023735.pdf>.

## 2.4 Legal certainty

Over the past few years, media outlets in Kosovo have repeatedly published information regarding lists of individuals suspected of involvement in violent incidents that occurred in North Kosovo, purportedly aiming at undermining the constitutional order. These media reports, at times even featuring names and surnames of suspected individuals, have caused anxiety among the Serbs in North Kosovo, who feared unwarranted arrests. The origins of these lists and their release to the media remained unknown, contributing to the sense of uncertainty.

Following the incident outside the town hall in Zvečan on May 29, 2023, where Serb protesters clashed with KFOR forces, Prime Minister of Kosovo Albin Kurti publicly disclosed the names of 33 Serbs during his address to the Kosovo Assembly, accusing them of instigating the riots.<sup>31</sup> In his remarks, he characterized them as members of a fascist militia and labelled them as criminals. Subsequently, several individuals denied these accusations, claiming that they were not involved in the protests, or even present at the protest site, and providing evidence to support their claims.

### **Recommendation**

Disclosure of lists of alleged suspects by high-ranked officials undermines the presumption of innocence and due process rights and erodes the trust of Serbs in the integrity and impartiality of police and judiciary. Therefore, it is essential for government officials and political leaders to exercise responsibility in their public communication and to refrain from making allegations that unduly target individuals.

## 2.5 Recognition of decisions

The integration of the judiciary stands as one of the most significant outcomes of the EU-facilitated dialogue between Belgrade and Pristina. It refers to the process of integration of the Serb court structures, mainly from North Kosovo into Kosovo's unique justice system. This process was initiated following the signing of the „First

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<sup>31</sup> „Two weeks later, Kurti explains why he revealed the names of 33 Serbs – „We have nothing against the Serb community, but against individuals.“ KoSSev, <https://kossev.info/two-weeks-later-kurti-explains-why-he-revealed-the-names-of-33-serbs-we-have-nothing-against-the-serb-community-but-against-individuals/>.

Agreement of Principles Governing the Normalization of Relation“ in 2013, commonly referred to as the Brussels Agreement.<sup>32</sup>

The Brussels Agreement outlined the vision for judicial integration, emphasizing that „the judicial authorities would be integrated and operate within the Kosovo legal framework“. Subsequently, the details of this process were elaborated in the Justice Agreement which was finalized in February 2015.<sup>33</sup> This agreement provided detailed guidelines for the integration of Serb judges, prosecutors, and administrative staff from the Mitrovica region into the Kosovo justice system.

The integration of Serb judges, prosecutors, and administrative staff into the Kosovo justice system was officially completed in October 2017. However, several challenges persist, underscoring that judicial integration remains an ongoing process that necessitates continued efforts from decision-makers to address the unresolved issues.

One significant shortcoming of the integrated judiciary pertains to the legal validity of decisions rendered by unintegrated Serb courts and administrative bodies from 1999 to 2017. The uncertainty surrounding the recognition and execution of these decisions poses a considerable challenge for the citizens. Presently, the validity of rulings by Serb courts and documents and certificates issued by Serb administrative bodies is not recognized by Kosovo institutions. As a consequence, these documents cannot be used as evidence in court proceedings, nor are they accepted as valid by various institutions in Kosovo, including notaries, civil registry and cadasters.

In order to address the potential challenges faced by the judiciary following the integration, it was agreed to establish a procedure for recognizing the validity of decisions made by unintegrated Serb structures which would be outlined in a document titled „Validity Appeal“. As noted in the document „Conclusions of EU facilitators on Justice“ from November 2016, on December 9, 2016, the Kosovo Judicial Council formally notified all relevant institutions within Kosovo of the binding nature of the „Validity Appeal“ document.<sup>34</sup> This notification underscored the obligation for these institutions to recognize and enforce decisions rendered by unintegrated Serb courts until December 9, 2016.

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<sup>32</sup> „First Agreement of Principles Governing the Normalization of Relations“, Office for Kosovo and Metohija, <https://www.kim.gov.rs/eng/p03.php>.

<sup>33</sup> „Justice Agreement“, Office for Kosovo and Metohija, <http://www.kim.gov.rs/eng/p06.php>.

<sup>34</sup> „Progress Report on the Dialogue Between Belgrade and Pristina (October 2016 – April 2017)“, Office for Kosovo and Metohija, <http://www.kord-kim.gov.rs/doc/pregovaracki-proces/lzvestaj%20o%20dijalogu%20april%202017%20eng.pdf>.

Despite the commitment of the Kosovo institutions to recognize the validity of documents issued by unintegrated Serb courts and administrative bodies, progress in implementing this recognition has been notably lacking. The primary obstacle to this has been the absence of a clear and defined procedure for recognizing and enforcing such decisions in alignment with the principles outlined in the „Validity Appeal“ document.

The lack of clear guidelines from the Kosovo Judicial Council or the Ministry of Justice further exacerbates this issue, leaving uncertainty regarding the enforceability of decisions made by unintegrated Serb structures. Without established procedures and mechanisms for recognition, it remains unclear whether these decisions are directly enforceable or if they are required to undergo a formal recognition process.

### **Recommendation**

This lack of recognition of decisions rendered by unintegrated Serb court and administrative bodies from 1999 to 2017 undermines the efficacy of the integrated judiciary and creates obstacles to legal proceedings and administrative processes. To address this issue, a procedure for recognizing the validity of these decisions should be accepted and implemented by all relevant institutions in Kosovo.

## **2.6 Ban on importing goods from Serbia**

On June 15, 2023, the Government of Kosovo took the controversial decision to prohibit trucks with Serbian license plates from entering Kosovo, following the arrest of three Kosovo police officers by Serbian authorities.<sup>35</sup> On 21 June, the Government of Kosovo amended the decision. The revised measure stipulated that the ban would only apply to goods originating from Serbia. Vehicles with Serbian-issued license plates would be permitted to enter Kosovo, provided they were not carrying cargo originating from Serbia.<sup>36</sup>

Despite the subsequent release of the detained officers by a Serbian court on June 26, the ban on Serbian goods entering Kosovo

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<sup>35</sup> „Kosovo bans entry of Serbian vehicles and goods after 3 Kosovo police officers arrested by Serbian police“, European Western Balkans, <https://europeanwesternbalkans.com/2023/06/15/kosovo-bans-entry-of-vehicles-with-serbian-licence-plates-and-imports-of-goods-from-serbia/>.

<sup>36</sup> „Kosovo amends decision, bans only Serbian goods“, N1, <https://n1info.rs/english/news/kosovo-amends-decision-bans-only-serbian-goods/>.

remained in effect.<sup>37</sup> Notably, this decision was communicated verbally and was never formally enacted as a legal act.

This decision significantly disrupted trade and led to shortages of essential goods, adversely impacting the livelihoods and living standards of both Serbs and other citizens of Kosovo. Furthermore, it resulted in shortages of medical supplies in hospitals in Serb areas in Kosovo.<sup>38</sup>

### **Recommendation**

This unilateral action undermines Kosovo's own legal order and existing trade agreements. Therefore, it is imperative that the Government of Kosovo promptly lift the ban on importing goods from Serbia. This step is crucial not only to uphold Kosovo's commitment to trade agreements and principles of free and fair trade but to alleviate the negative consequences experienced by the citizens.

## **2.7 Legal tender**

On January 17, 2024, the Central Bank of Kosovo announced a Regulation on Cash Operations, stipulating that the euro would be the sole currency permitted for cash payments within the Kosovo payments system as of February 1.<sup>39</sup>

This Regulation imposes restrictions that will notably impact the Serb community in Kosovo, as it effectively prohibits the use of Serbia's currency, the dinar, which continues to be commonly employed by in Serb-majority areas in Kosovo. Moreover, it effectively impedes the financial transfers from Serbia to Serbs in Kosovo which is the basis of their livelihood.

The Serbian dinar has served as the de facto currency for cash and commercial transactions in Serb-majority areas in Kosovo since 1999,

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<sup>37</sup> „Serbia Releases 3 Kosovo Police Officers After Arrests Fueled Balkan Tensions“, Voice of America, <https://www.voanews.com/a/serbia-releases-3-kosovo-police-officers-after-arrests-fueled-balkan-tensions/7153909.html>.

<sup>38</sup> „Nine months have passed since the ban on Serbian goods - a political decision that resulted in losses for everyone“, Kosovo Online, <https://www.kosovo-online.com/en/news/analysis/nine-months-have-passed-ban-serbian-goods-political-decision-resulted-losses-everyone>.

<sup>39</sup> „The CBK Board approved the Regulation on Cash Operations“, Central Bank of the Republic of Kosovo, <https://bak-kos.org/the-cbk-board-approved-the-regulation-on-cash-operations/?lang=en>.

a status recognized by UNMIK. Even after 1999, Serbia's payment system continued to operate in the Serb-majority areas within Kosovo. However, the recent decision by the Central Bank of Kosovo aims to effectively abolish the use of the dinar as a currency in Serb areas in Kosovo and to sever the financial ties between Serbs in Kosovo and Serbia.

The decision of the Central Bank has drawn sharp criticism from the international community. This unilateral action has been criticized for exacerbating mistrust and tensions among communities in Kosovo. Critics argue that the decision fails to uphold the principles of good governance, particularly due to the absence of adequate public communication regarding the measure and its implications, especially for the Serb community. Limited public information has left affected populations uninformed about the changes and their potential consequences.

Key international actors, including the European Union, the United States, Germany, France, and others, have repeatedly urged Kosovo to suspend the decision until viable alternatives are provided.<sup>40 41</sup> Their primary concern is to mitigate the adverse effects that such a measure would have on the affected population, particularly the Serb community.

The gravity of the situation prompted the United Nations Security Council to convene a session on February 8 to address the matter.<sup>42</sup> The discussion underscored the urgency of finding a resolution that respects the rights and interests of all communities in Kosovo.

### **Social consequences**

The implementation of this regulation is expected to have significant implications, particularly in sectors reliant on transactions in dinars. It will disrupt payments to individuals employed by Serbian-funded institutions in Kosovo, including education and healthcare institutions. Additionally, individual transfers such as social financial

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<sup>40</sup> „EU Raises Concerns Over Kosovo's Move Banning Dinar Use, Urges 'Sufficient' Transition“, Radio Free Europe, <https://www.rferl.org/a/kosovo-dinars-euros-serbia-european-union/32801389.html>.

<sup>41</sup> „Ban On Serbian Dinar Has Created Challenges In U.S. Relations With Kosovo, Envoy Says“, Radio Free Europe, <https://www.rferl.org/a/kosovo-serbian-dinar-escobar-relations-kurti/32862672.html>.

<sup>42</sup> „Security Council debates Kosovo's new rules on Serbian currency“, UN News, <https://news.un.org/en/story/2024/02/1146382>.

assistance and pension payments, which are often paid in cash, will be disrupted.

Instances of disruption have already been observed, with cash-transfer trucks being prevented from entering Kosovo on two occasions in February. Furthermore, a quantity of dinars intended for pension and social assistance payments, distributed by the Serbian Post Office, was confiscated by the Kosovo Police.

The regulation has been widely criticized for its failure to consider the impact on affected populations, particularly the most vulnerable groups such as persons with disabilities and the elderly, whose livelihood depends on social assistance and pensions. Furthermore, no alternative measures were offered to mitigate the potential adverse effects of the decision.

This lack of consideration for the needs of vulnerable populations raises significant concerns about the well-being and welfare of the Serb community in Kosovo. The decision is likely to have negative repercussions on their living conditions, as it will restrict their access to basic necessities such as education and social services.

It is important to highlight that the impact of the decision extends beyond the Kosovo Serb community. While they are disproportionately affected due to their reliance on payments from Serbia, it is important to recognize that other ethnic groups in Kosovo also receive pensions and other payments from Serbia. Among these groups are members of the Bosniak, Gorani, Roma, and Albanian communities, who also rely on payments from Serbia for their livelihoods.

## **Legal issues**

Another significant concern regarding the Regulation is its potential lack of legality. While the Regulation designates the euro as the sole legal tender in Kosovo for cash transactions, questions arise regarding the authority of the Central Bank to make such a determination.

Article 11, Section 1 of the Constitution of Kosovo indeed stipulates that only one currency shall be used as legal tender in Kosovo, but it does not specify which currency that should be.<sup>43</sup> Moreover, the Law on the Central Bank of the Republic of Kosovo, as stipulated in Article

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<sup>43</sup> „Constitution of the Republic of Kosovo“, [https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION\\_OF\\_THE\\_REPUBLIC\\_OF\\_KOSOVO.pdf](https://mapl.rks-gov.net/wp-content/uploads/2017/10/1.CONSTITUTION_OF_THE_REPUBLIC_OF_KOSOVO.pdf).



16, Section 1, indicates that the currency of Kosovo should be determined by law.<sup>44</sup> However, no such law has been enacted to date.

This absence of a specific law designating the currency for Kosovo raises doubts about the legal basis for the Central Bank's decision to impose the euro as the sole legal tender. Notably, Kosovo adopted the euro as its de facto currency in 2002, despite not being a member of the Eurozone or having the monetary agreement with the European Central Bank.<sup>45 46</sup>

Given these legal ambiguities, it is essential to ensure that any decisions regarding the designation of legal tender in Kosovo are made in accordance with the law. Failure to do so could lead to legal challenges in the future.

## **Recommendations**

Kosovo authorities should engage in meaningful dialogue with all affected communities, particularly the Kosovo Serb community, to understand and address their concerns and needs regarding the Regulation on Cash Operations and explore potential alternatives.

Authorities should prioritize providing adequate information about available alternatives and support to affected populations, especially vulnerable groups such as persons with disabilities and the elderly, whose livelihoods depend on social assistance and pensions.

The Central Bank of Kosovo should ensure that its decision related to currency regulation is in compliance with constitutional and legal frameworks. Proper legislative authorization and procedure should be established for determining the currency used as legal tender in Kosovo.

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<sup>44</sup> „Law on Central Bank of the Republic of Kosovo“, [https://bak-kos.org/repository/docs/korniza\\_ligjore/english/Liqiji%20per%20BQK-ne%20\(anglisht\).pdf](https://bak-kos.org/repository/docs/korniza_ligjore/english/Liqiji%20per%20BQK-ne%20(anglisht).pdf).

<sup>45</sup> „The Euro outside Europe“, European Central Bank, [https://www.ecb.europa.eu/ecb-and-you/explainers/show-me/html/euro\\_outside\\_europe.en.html](https://www.ecb.europa.eu/ecb-and-you/explainers/show-me/html/euro_outside_europe.en.html).

<sup>46</sup> „The euro outside the euro area“, Directorate-General for Economic and Financial Affairs, [https://economy-finance.ec.europa.eu/euro/use-euro/euro-outside-euro-area\\_en](https://economy-finance.ec.europa.eu/euro/use-euro/euro-outside-euro-area_en).



# 3. Human rights

## 3.1 Ethnically motivated incidents

Ethnically motivated incidents against members of the Serb community in Kosovo have been a persistent concern, posing significant challenges to interethnic relations and reconciliation efforts. Such incidents continue to occur sporadically, perpetuating tensions and mistrust between communities. Figures on the prevalence and gravity of these incidents vary, with different sources providing different accounts. However, multiple reports and sources confirm that such incidents occur, though there is no agreement on their exact number.<sup>47 48 49</sup>

These incidents often involve acts of discrimination, harassment, vandalism, and violence targeting individuals or properties associated with the members of the Serb community. They not only undermine the safety and security of Serb individuals but also hinder efforts to foster stable interethnic relations and promote peaceful coexistence in Kosovo.

### Recommendations

Efforts to address ethnically motivated incidents require robust law enforcement, effective judicial proceedings, and sustained commitment and initiatives aimed at promoting tolerance, respect, and reconciliation among all ethnic groups in Kosovo.

Political leaders should refrain from engaging in hate speech and inflammatory rhetoric that may contribute to exacerbating tensions between communities.

## 3.2 Property rights – expropriation in North Kosovo

The Government of Kosovo initiated the expropriation of land in the municipalities of Leposavić and Zubin Potok in mid-January 2023, declaring it as „immovable property of special public interest, necessary for the implementation of infrastructure projects of public

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<sup>47</sup> „In 2022, Serbs in Kosovo were targeted 150 times, and Kurti’s government doubled the number of incidents“, Kosovo Online, <https://www.kosovo-online.com/en/news/politics/2022-serbs-kosovo-were-targeted-150-times-and-kurtis-government-doubled-number>.

<sup>48</sup> „Rast etnički motivisanih incidenata na Kosovu prati političke krize“, Radio Slobodna Evropa, <https://www.slobodnaevropa.org/a/sever-kosovo-medjuetnicki-incidenti-vucic/32591195.html>.

<sup>49</sup> „Ethnically motivated incidents in Kosovo and Metohija, 2021-2024.“, Office for Kosovo and Metohija, <https://www.kim.gov.rs/eng/incidenti.php>.

interest". Even before the decision was announced, construction of the Police base commenced, sparking protests from local residents and a call from the European Union to uphold property rights and expropriation procedures. In response to the criticism, the Kosovo government organized public hearings in the respective municipalities in mid-February 2023, despite the fact that the expropriation process had already commenced and police compounds were already under construction.<sup>50</sup>

On May 10, 2023, the Government of Kosovo retroactively adopted preliminary decisions on the expropriation of land owned by Serbs in the municipalities of Leposavić and Zubin Potok, citing vague „infrastructure projects of public interest“ as the justification without specifying their nature. This retrospective decision aimed to justify the unauthorized construction of police bases in North Kosovo that began in January 2023. It is estimated that the expropriation targeted around 138 hectares of land in the region.

### **Legal issues**

From the legal standpoint, the entire process of expropriation was flawed from its inception. Land was seized and buildings erected before formal decisions were made. Local residents were left uninformed about the purpose of the expropriation and the public interests it purportedly served. The lack of transparency was stark, as affected individuals were not notified of the expropriation, nor were public consultations held as mandated by the law. In fact, the locals learned that the building of new police bases was planned in the vicinity of their households by noticing construction machines and armoured personnel carriers. Moreover, the Government's decisions lacked legal basis and failed to adhere to defined procedures.<sup>51</sup>

The confiscation of private property without the consent of the owners and their participation in the expropriation process constitutes a clear violation of the relevant legal framework. Specifically, the Law on Expropriation of Immovable Property outlines a set of procedures to be followed in cases of expropriation.<sup>52</sup> These procedures include notifying the owners of the parcels subject to

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<sup>50</sup> „CSOs demand that the Kosovo government stop all projects on expropriated land“, KoSSev, <https://kossev.info/312036-2/>.

<sup>51</sup> „Kosovo Serb Villagers Stage Camp Protest to Stop Land Expropriation“, Balkan Insight, <https://balkaninsight.com/2023/03/10/kosovo-serb-villagers-stage-camp-protest-to-stop-land-expropriation/>.

<sup>52</sup> „Law on Expropriation of Immovable Property“, <http://old.kuvendikosoves.org/?cid=2,191,342>.

expropriation, conducting public consultations in the affected municipalities, and providing fair compensation to the owners. This also requires granting the owners the possibility to challenge any expropriation decision before it becomes final. Only after giving the affected individuals the opportunity to raise their concerns and objections, Government can make a final decision. None of these essential legal steps were observed in the expropriation of land in North Kosovo.

Moreover, the decisions made by the Government of Kosovo regarding the expropriation purportedly for „special public interest“ lacked legal justification. According to Article 4 of the aforementioned law, expropriation must serve a legitimate public purpose. This entails a due proportion between the need to conduct the expropriation and the achievement of the public interest, as well as a demonstration that the purpose cannot be fulfilled without the expropriation. It is notable that the citizens of the affected region were not included in the process of defining the public interest, raising questions about whether the construction of additional police bases truly serves their best interests.

The European Union criticized Kosovo's actions, highlighting the violation of property rights and the absence of due procedure in the expropriation process.<sup>53</sup> The EU issued a statement to remind the Government of Kosovo that „legal procedures foresee steps such as the advanced notification and comprehensive information of property owners, their right to submit comments on the requested expropriation, the possibility of an appropriate legal remedy and their adequate compensation before the process is brought to its conclusion“. The EU warned that the Kosovo Police bases were constructed on private and socially owned land, in some cases prior to initiating the expropriation procedure. The EU, therefore, urged Kosovo authorities to „strictly adhere to legal procedures in the expropriation of immovable property, to do their utmost to ensure that due process is followed and that the property rights of affected owners and interest holders are fully respected“.

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<sup>53</sup> „Statement on Government's Decision the Expropriation of Land for Public Interest in the Municipalities of Leposavić/Leposaviq and Zubin Potok“, European Union External Action, [https://www.eeas.europa.eu/delegations/kosovo/statement-governments-decision-expropriation-land-public-interest-municipalities-leposavi%C4%87leposaviq\\_en?s=321](https://www.eeas.europa.eu/delegations/kosovo/statement-governments-decision-expropriation-land-public-interest-municipalities-leposavi%C4%87leposaviq_en?s=321).

## **The Basic Court judgement**

Local Serbs whose land was subject to expropriation filed lawsuits regarding the actions of the Government of Kosovo before the Basic Court. On December 18, 2023, the Basic Court in Pristina rendered a judgment annulling the preliminary decision of the Government of Kosovo on land expropriation in the municipalities of Leposavić and Zubin Potok from May 2023, returning it for reconsideration. The Court determined that these expropriations were illegal and contrary to the law.<sup>54</sup>

Acting upon the lawsuit of local Serb residents against the Government of Kosovo, the Court in Pristina confirmed that a portion of their land was encompassed by the decision on illegal expropriation, emphasizing that the preliminary decision was unfounded and violated the relevant law on expropriation. The Court stressed that the preliminary decisions lacked any justification for why the land was expropriated as the Government of Kosovo failed to explain the achievement of a public goal in the case of approving the expropriation of real estate for the public interest. Furthermore, the court ruled that „the defendant did not clearly explain and argue why it is necessary to expropriate the real estate of the plaintiff in this specific case, did not clarify the facts to property owners for whom the preliminary decision for expropriation was issued, and did not specify the legal public purpose in the case of expropriation“.

The Basic Court in Pristina noted that the expropriation authority violated procedural rules outlined in Article 10 of the Law on the Expropriation of Immovable Property. The failure to adhere to procedural rules led to an unlawful decision to accept the request for expropriation. The Court emphasized the necessity to follow proper procedures, including allowing interested parties to comment on the requested expropriation within ten calendar days, as outlined in Article 8 of the same law.

In conclusion, the Court's ruling underscores the importance of upholding legal procedures in expropriation processes and respecting property rights. It highlights the need for transparent and lawful procedures, ensuring that decisions made by authorities serve the public interest while safeguarding individual rights.

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<sup>54</sup> „The court in Pristina annulled the Government's decision on the expropriation of land in northern Kosovo“, Kosovo Online, <https://www.kosovo-online.com/en/news/politics/court-pristina-annulled-governments-decision-expropriation-land-northern-kosovo-10-1>.

In response to the judgement, the Government of Kosovo maintained that the expropriation process in the North was legal and transparent. Prime Minister of Kosovo Albin Kurti announced that the Government would not abandon the expropriation process but instead assign advisors from relevant ministries to formulate a new proposal.

While a portion of the property in North Kosovo is being returned to the owners, the Government of Kosovo plans to proceed with the decision on expropriation. Namely, the Government of Kosovo lost two court cases pertaining to land expropriated in North Kosovo for the construction of police stations. Accordingly, it announced the exemption of the property of plaintiffs who had won court cases from further expropriation. However, this exemption applies only to a portion of the property, enabling the Government to proceed with its final decision on expropriation for the remaining sections.<sup>55</sup>

### **Recommendations**

The Government's failure to adhere to legal procedures and engage in transparent dialogue with affected communities underscores a disregard for the rule of law and property rights. It is imperative that all projects related to expropriated property be halted, and comprehensive consultations with affected communities, their representatives, and civil society be initiated.

The Government of Kosovo should fully abide by the ruling of the Basic Court in Pristina and cancel the expropriation of the land in question. It should also base its future expropriation decisions on the legal standards defined therein.

To ease the tensions, the Government of Kosovo ought to refrain from proceeding with any further expropriation of land in North Kosovo until the local population is assured that their property rights are fully safeguarded. It is paramount to address any concerns that the expropriation was initiated as a means of discriminating against the ethnic Serb population in North Kosovo.

It is imperative that the Government of Kosovo ensures the strict observance of due process in all expropriation procedures, thereby guaranteeing the full respect of property rights.

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<sup>55</sup> „The government gives up properties in the north for which it lost court cases“, Koha <https://www.koha.net/en/arboretum/406563/the-government-gives-up-the-properties-in-the-north-for-which-it-lost-court-cases>.

Upholding the public interest requires genuine engagement and respect for the concerns and rights of all stakeholders in North Kosovo. Therefore, the Government of Kosovo should make concerted efforts to effectively communicate the reasons behind expropriations to the affected population and actively involve them in defining the public interest and priorities.

### 3.3 Language Rights

The Framework Convention for the Protection of National Minorities (1995), in Article 5, obliges member states of the Council of Europe and other signatory states to guarantee national minorities the right to express their own culture and use their mother tongue. In addition, the Charter mandates that pluralistic and democratic society must respect the ethnic, cultural, linguistic, and religious identity of each individual, but also that it is needed to create appropriate conditions for preserving, expressing, and developing national identities.<sup>56</sup> In multinational, multicultural, and multilingual environments, such as Kosovo, the preservation of language undoubtedly represents a crucial issue for the survival of minority communities facing the challenge of assimilation by the majority community.

Analysis of monitoring reports by international and non-governmental organizations published in the last decade shows a worrying continuity in the violation of language rights in Kosovo. The reports of the OSCE from 2014 and the NGO Aktiv from 2022 similarly describe the state of language rights of non-majority communities in Kosovo. The actual situation on the ground has not changed much since the adoption of the Law on the Use of Languages in 2007. It has been observed that there is a tangible discrepancy between what the legal framework guarantees and what happens in practice. The situation in 2014, as well as eight years later, was assessed as „very problematic“. It is noted that citizens still encounter a range of problems in exercising their language rights in practice.

The inability to fully protect language rights in Kosovo is conditioned by numerous factors. These factors are as follows: non-compliance or partial compliance with legal provisions, inadequate interpretation of legal provisions, insufficient understanding of obligations, and a lack of political will to implement language rights. Additionally, the lack of professional staff (translators, editors), as well

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<sup>56</sup> „Framework Convention for the Protection of National Minorities and Explanatory Report“, Council of Europe, <https://rm.coe.int/16800c10cf>.



as financial and human resources, is a significant factor. Lastly, the lack of community awareness of their language rights, as well as the lack of understanding of the institutions about their responsibility and role in preserving language rights, also play a role in language inequality in Kosovo.<sup>57 58</sup>

The state of language rights can be seen as reflecting the state within the society. Although Serbian and Albanian are, according to the law, two official languages in Kosovo, priority is given to Albanian in public life, making Serbian a second-class language. Consequently, Kosovo residents who use the Serbian language become second-class citizens. The violation of language rights becomes a reflection of the marginalization of the Serbian community. This marginalization is visible in many spheres of social and political life: in the media, in access to public services, as well as in everyday life.

Media: Although institutions in Kosovo are legally obligated to communicate with parties in the Serbian language on an equal basis, they often fail to do so, hindering the work of journalists. Journalists are unable to inform members of the Serbian community about significant public decisions. Ministries most often send official statements in Albanian, while translations are either delayed or do not arrive at all. Even in the sessions of the Assembly of Kosovo, translation into Serbian is not available, depriving the public of access to important information.

Representation: Equal representation of non-majority communities in institutions is a significant prerequisite for equality in access to services. The reasons for the unpreparedness of the public administration system in Kosovo to effectively provide services to everyone, including members of non-majority communities, are numerous. The European Union in its Kosovo Progress Report for 2020 warns of insufficient coordination between institutions at the central and local levels, which continues to undermine effective service delivery for minority communities.<sup>59</sup> In addition, when accessing services, members of non-majority communities in Kosovo face administrative (or logistical) costs that members of the majority community in Kosovo do not have. For example, they are forced to

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<sup>57</sup> „Municipal language compliance in Kosovo“, OSCE, <https://www.osce.org/kosovo/120010>.

<sup>58</sup> Nenad Talić. „Recommendations for a Policy Framework on the Implementation of the Law on the Use of Languages“, NGO Aktiv, <https://ngoaktiv.org/wp-content/uploads/2022/12/2022-05-06-Preporuke-engleski1.pdf>.

<sup>59</sup> „Kosovo\* 2020 Report“, European Commission, [https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/kosovo\\_report\\_2020.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/kosovo_report_2020.pdf).

pay for the services of court translators if court documents (decisions, judgments, court files) are in Albanian. Then, they are unable to access online services due to translation issues or incur transportation costs when services provided by institutions are not available locally. There are many examples, and their common denominator is the unpreparedness of the relevant institutions to guarantee access to services for members of non-majority communities in Kosovo under the same conditions that apply to the majority population, although equality is guaranteed by the Constitution.

**Public Institutions:** The right to equal use of Serbian and Albanian in Kosovo institutions is not respected because Serbs cannot effectively use their language in public institutions. This situation is particularly reflected in important areas such as civil registers, personal documents, cadastre, etc.

**Information of Public Interest:** It is worrying that none of the official websites of central institutions is fully translated into Serbian despite obligations under Article 7 of the Law on the Use of Languages.<sup>60</sup>

## **Legal framework**

The guarantee of language rights to minorities in Kosovo is determined by general and special legal acts. First and foremost is the Constitution of Kosovo (2008), then the Law on the Protection from Discrimination (2015), followed by the Law on the Use of Languages (2007), as well as the Framework Convention for the Protection of National Minorities (1993). However, although the legislative framework is considered extremely advanced, its adequate implementation has not been achieved in practice.<sup>61</sup>

The Constitution of Kosovo, in Chapter 3, generally affirms the protection of the rights of non-majority communities in Kosovo in

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<sup>60</sup> On the official website of the Ministry of Economy, the Serbian translation abounds with errors, and in some cases, it is completely absent. The website of the Ministry of Finance, Labor, and Transfers is partially translated into Serbian. The website of the Ministry of Agriculture, Forestry, and Rural Development is somewhat aligned with legal provisions regarding language. The websites of the Tax Administration, the Kosovo Business Registration Agency, and the Kosovo Chamber of Commerce have a large number of errors in translation into Serbian, and the information provided is outdated. Each municipality in Kosovo has its own website, but only seven of them have adapted their content to bilingual requirements. Generally speaking, information or news is not updated on time, while Serbian translation is minimal.

<sup>61</sup> „Kosovo: Jezička prava jedno na papiru, drugo u praksi“. Radio Slobodna Evropa, <https://www.slobodnaevropa.org/a/28844254.html>.

various areas of life (culture, education, health, and others).<sup>62</sup> This also includes the right to use language. Article 5, Section 1, establishes that Albanian and Serbian are official languages.

The Law on the Protection from Discrimination regulates the issue of protection from discrimination based on gender, national affiliation, and other personal characteristics.<sup>63</sup> It also concretizes the provisions of the Constitution prohibiting discrimination on any personal basis, including the right to use language. Of particular importance is that the law also provides procedures for protection from discrimination. The law establishes the institution of the Ombudsman and the procedure and process for protecting citizens exposed to discrimination.

As a ratified international treaty, the Framework Convention for the Protection of National Minorities takes precedence over Kosovo's legal acts, from the Constitution through the mentioned laws and others. This means that its provisions are directly applicable in Kosovo even if domestic laws are not in line with its provisions. Violation of its provisions is a reason to initiate protection procedures for the violation of rights it guarantees before competent institutions, including the Ombudsman, the Language Commissioner, and ultimately seeking judicial protection.

The Law on the Use of Languages was adopted in 2001 by UNMIK regulation. The Assembly of Kosovo adopted this Law in 2007.<sup>64</sup> Articles 1 and 2 of the Law establish that Albanian and Serbian are official languages in Kosovo and enjoy equal status in Kosovo institutions. Article 2 provides that „in municipalities inhabited by a community whose mother tongue is not an official language, and which constitutes at least 5 per cent of the total population of the municipality, the language of the community will have the status of an official language in the municipality and will be used equally with the official languages“. It also provides that „in those municipalities where there is only one community whose mother tongue is not one of the official languages in Kosovo and which represents more than three per cent of the total population of the municipality, that

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<sup>62</sup> The Constitution of Kosovo, as the highest legal act, and the laws aligned with it, including the Law on the Use of Languages, abound with grammatical and spelling in the translation into Serbian. This state of affairs indicates a lack of translation professionals within institutions. Written in different languages, laws can be interpreted differently (or incorrectly).

<sup>63</sup> „Zakon o zaštiti od diskriminacije“, <http://old.kuvendikosoves.org/common/docs/liqjet/05-L-021%20s.pdf>.

<sup>64</sup> „Zakon o upotrebi jezika“, [http://old.kuvendikosoves.org/common/docs/liqjet/2006-02-L37\\_sr.pdf](http://old.kuvendikosoves.org/common/docs/liqjet/2006-02-L37_sr.pdf).

community will have the status of a language in official use in that municipality".<sup>65</sup>

The official bilingualism of Albanian and Serbian in Kosovo was envisaged by the Ahtisaari Plan, thanks to which it became part of the Constitution. In practice, officials in public administration often avoid or even refuse to use the Serbian language in performing their duties. Forms and other documents of central and local institutions are often not translated into Serbian. Even when there is a translation, the content is sometimes incomprehensible, both grammatically and semantically, and often incorrect. This makes it difficult for citizens of non-majority communities in Kosovo to exercise their rights in an equal and nondiscriminatory manner. Even when there is a translation, it is often inadequate. Important documents are poorly translated and full of grammatical, spelling and terminological errors.

The interpretation of the regulations on language rights by the institutions, which refer to the exclusive use of the Latin script when translating into the Serbian language, is also problematic. Such a practice is considered particularly controversial since the Law guarantees the equality of both official languages and their scripts, which in the case of the Serbian language implies the equal use of the Cyrillic and Latin scripts.

The latest cases of flagrant violation of language rights refer to the replacement of traffic signs in North Kosovo, on which toponyms are written first in Albanian, and then in Serbian, using the Latin script. The violation of language rights in this case is reflected in the obligation to first write the inscription in the language that is in majority use in the given area, as well as in the intention to disallow the use of Cyrillic inscriptions.<sup>66</sup>

Reports from both the civil sector and international organizations agree that the legal framework for the protection of language rights is solid, but that it is not applied in practice because there is no political will. This disparity between guaranteed rights and those that are implemented in practice is the result of the following factors: sanctions for violation of language rights are minimal or non-existent,

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<sup>65</sup> For example, in Gračanica, Roma language is the official use, Turskih in Prizren and Mamuša, and in the municipalities of Peć, Dragaš, and Prizren, Bosnian is used alongside the two constitutionally guaranteed official languages.

<sup>66</sup> „Sentic: Serbian language is one of the two equal official languages in Kosovo“, Kosovo Online, <https://www.kosovo-online.com/en/news/interviews/sentic-serbian-language-one-two-equal-official-languages-kosovo-22-3-2024>.

there is no political will to implement the law, citizens themselves are not aware of their rights, etc.

The Law on the Use of Languages foresees the existence of a special body, the Commission for Languages, which was established in May 2007. However, in December 2012, this Commission was transformed into the Office of the Language Commissioner.

The Language Commissioner is an institution connected to the office of the Prime Minister and its responsibilities are focused on the protection, promotion and preservation of official languages in Kosovo. This institution plays an important role in documenting, researching and constantly informing the Prime Minister and other central authorities about cases of language rights violations in Kosovo.

The Language Commissioner, together with the institution of the Ombudsman, should play a key role in the protection of language rights in Kosovo. The problem lies in the fact that the Office of the Language Commissioner does not have autonomy in relation to the Office of the Prime Minister. Such status of the Commissioner affects independence in his work. However, since it has no real possibility of sanctioning rights violations, its work is more important as the work of a mechanism for monitoring and documenting the state of language rights.

### ***Language rights in court proceedings***

The most sensitive issue in the area of language rights in Kosovo is the respect of official bilingualism before judicial authorities. Article 12 of the Law on Use of Languages establishes that official languages are used equally in court proceedings, as well as that courts, investigative and other bodies involved in criminal and other proceedings are obliged to ensure that every person who participates in them can use the „official language of his or her choice“. Article 13 states that the courts shall conduct proceedings in the „official language or languages chosen by the parties to the proceedings“, and that at the request of any party to the proceedings, means shall be provided for simultaneous translation from one official language to another. Article 14 obliges the courts to issue documents related to the procedure in „the official languages selected for the procedure and in another official language, if requested by any party to the procedure“.

Provisions related to the use of languages in courts confirm the equality of official languages. An issue that the law does not resolve in an unambiguous way concerns the principle by which it is determined which official language will represent the language of the proceedings. This has led to the practice that the courts are not guided by the interests of the party when determining the language of the proceedings, so that the official language that the party understands is chosen. Accordingly, a party who speaks the Serbian language is not guaranteed that the proceedings in which they are involved will be conducted in Serbian. When it comes to court documents, the courts do not practice delivering them to the party within a reasonable time in the official language that they use, but a translation is provided only at the request of the party.

The European Charter on Regional and Minority Languages (1992) provides for the right of persons to use their regional or minority language in their dealings with administrative and judicial bodies.<sup>67</sup> States are obliged to, to the extent possible, ensure that in areas where a significant number of members of the linguistic community live, criminal, civil and administrative court proceedings are conducted in the regional or minority language. Alternatively, the parties should be guaranteed the right to use their own regional or minority language in the proceedings without additional costs, while the courts should accept submissions submitted by the parties in their own language, as well as issue documents related to the proceedings in the regional or minority language.

Recommendations from Oslo on the right of national minorities to use their own language (1998) envisage a similar solution.<sup>68</sup> The document calls on states to consider the possibility that, in areas where members of national minorities live in large numbers, all court proceedings concerning these persons are conducted in the language of the minority. The document states that the degree to which a person can directly and easily participate in proceedings is an important measure of court accessibility. The availability of court proceedings in the language of national minorities makes access to the court more direct and simple for their members, which improves the protection of human rights.

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<sup>67</sup> „European Charter for Regional or Minority Languages“, Council of Europe, <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/text-of-the-charter>.

<sup>68</sup> „The Oslo Recommendations regarding the Linguistic Rights of National Minorities & Explanatory Note“, OSCE, <https://www.osce.org/hcnm/oslo-recommendations?download=true>.

Comparative practice shows that in a jurisdiction that recognizes two official languages, a defendant in proceedings that may lead to his imprisonment is given the right to choose the language of the proceedings. As no official language can take precedence over the other in a bilingual courtroom, the defendant must have the right to request that the proceedings be conducted by a judge who understands the official language he speaks. In criminal proceedings, this right allows the defendant to be directly understood by the judge, which exceeds the defendant's right to receive interpretation assistance.<sup>69</sup> <sup>70</sup> For these reasons, the European Convention and Oslo Recommendations call on states to give this opportunity to minority communities as well.

Despite the official bilingualism, the courts in Kosovo do not guarantee the party's right to have the court proceedings conducted in the official language that they use. In addition, practice shows that judicial authorities do not consider that they have an *ex officio* obligation to deliver to the parties documents concerning their rights and obligations in an official language that they understand. If the party received the judgment in a language they do not understand, requesting a translation cannot stop passing the deadline for filing an appeal. This leads the parties from the Serb community to lose their right to a legal remedy because the judgement was delivered to them in Albanian.

## **Recommendations**

The law on the use of languages should be specified through administrative instructions, which would determine more closely the measures to respect language rights. This would put administrative pressure on central and local institutions in the direction of affirmation and realization of full capacity in the implementation of the aforementioned law.

Qualified staff should be provided at the central and municipal level to provide high-quality written translation of documents and requests, as well as oral translation during parliamentary and other meetings. Professional training is necessary, as well as reducing the

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<sup>69</sup> Catherine S. Namakula (2012) Language rights in the minimum guarantees of fair criminal trial, *The International Journal of Speech, Language and Law* 19(1): 73-93, DOI: 10.1558/ijssl.v19i1.73.

<sup>70</sup> Phil C. W. Chan (2007) Official Languages and Bilingualism in the Courtroom: Hong Kong, Canada, the Republic of Ireland, and International Law, *The International Journal of Human Rights* 11(1-2): 199-225, DOI: 10.1080/13642980601176332.



workload of translators, who often sacrifice the quality of the work due to being overburdened.

Increase the number of translators who would work on the correction of previously poorly translated official documents and legal regulations, as well as the Constitution, as well as to increase the efficiency of the work of the administration and the courts. It is necessary to work on the quality of the translation staff. Hence, it is necessary to organize training and continuous improvement of personnel.

Promote the learning of local languages. The first step in that direction would be the establishment of the Department of the Serbian language at the University of Pristina and the Department of the Albanian language at the University of North Mitrovica.

Implement more rigorous punitive measures for violations of language rights.

Encourage the public use of minority languages by politicians who would set an example in promoting linguistic diversity, inclusiveness and tolerance.

Ensure that the courts respect the rule that the official language used by the party is considered the language of the proceedings, especially in criminal matters, as well as that court writs are delivered to the party ex officio in the official language used by the party.

## 3.4 Education

The education system in Serb-majority areas in Kosovo operates according to the plan and program of the competent ministry in the Government of Serbia, which also finances it. In Serb areas in Kosovo in the 2023/24 school year, schooling takes place in 102 educational institutions, while the total number of primary and secondary school students is 14,531.<sup>71</sup>

In accordance with the Law on Higher Education, adopted in 2003 under the auspices of UNMIK, a special university for the Serb community was established in North Mitrovica. Originally conceived as a temporary security measure, this step contributed to the formalization of the institutional framework of university education for the Serb community in Kosovo, which was recognized first by UNMIK,

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<sup>71</sup> „Портал отворених података“, Министарство просвете, <https://opendata.mpn.gov.rs/otvoreni-podaci.html>.



and then by the authorities in Pristina.<sup>72</sup> Today, university teaching in the Serbian language takes place only at that university, whose official name is „University of Pristina with a temporary seat in Kosovska Mitrovica“. The number of students at the University in North Mitrovica in the academic year 2023/2024. year is 5,602.<sup>73</sup> The number of students is decreasing year by year due to the unstable political and security situation in the North of Kosovo.

### **Diploma recognition system**

One of the basic problems of the education system in Kosovo is the process of diploma recognition. This problem still persists, even though the issue was an important part of the Brussels process, as well as the 2020 Washington agreement.

In the earliest stages of the Brussels process, the issue of degree recognition was seen as one of the keys to the integration of minority communities.<sup>74</sup> In the agreement on mutual recognition of diplomas from 2011 it was agreed that graduated students from Kosovo and Serbia will have their diplomas certified through the European University Association.<sup>75</sup> This process included diplomas of basic, master and doctoral studies, while diplomas of basic, secondary, and professional education and the fifth level of professional education, according to the European Qualifications Framework, were left for the next meetings. In January 2016, the scope of the agreement was extended to all levels of education.

In practice, the nostrification process did not prove to be successful. Namely, according to available data, 13 diplomas from Serbia have been certified in Kosovo so far, while 374 diplomas from Kosovo have been recognized in Serbia.<sup>76</sup> The verification of diplomas has not taken place continuously and the process started again in January 2024 for the third time. Verification proved to be a more successful

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<sup>72</sup> Nicasia Picciano, „Segregacija obrazovanja na Kosovu – delom krivica UN-a“, Balkan Insight, <https://balkaninsight.com/sr/2019/03/28/segregacija-obrazovanja-na-kosovu-delom-krivica-un-a/>.

<sup>73</sup> „Портал отворених података“, Министарство просвете, <https://opendata.mpn.gov.rs/otvoreni-podaci.html>.

<sup>74</sup> Nostrification is the process of recognizing diplomas of Kosovo universities in Serbia and Serbian universities in Kosovo, and verification is a special process of recognition of diplomas of the University in North Mitrovica by Kosovo institutions.

<sup>75</sup> „Univerzitetske diplome“, Kancelarija za Kosovo i Metohiju, <https://www.kim.gov.rs/lat/p10.php>.

<sup>76</sup> Milica, Andrić-Rakić, „Šta sporazum o dokumentima znači za Srbiju i Kosovo?“, Deutsche Welle, <https://www.dw.com/sr/%C5%A1ta-sporazum-o-dokumentima-zna%C4%8Di-za-srbiju-i-kosovo/a-63525090>.

process than nostrification. It is considered that verification is more successful primarily because the integration of former employees of the Serbian system into the Kosovo system (administration, court, police) depended on it.

Public opinion surveys have shown that mutual recognition of diplomas would facilitate the employment process, reflecting the economic importance of this issue. The 2020 Washington agreement on the economic normalization of relations between Belgrade and Pristina obliged both sides to recognize each other's diplomas and professional certificates.<sup>77</sup>

All the steps that have been taken so far when it comes to the process of recognizing diplomas have not led to the anticipated results. As of January 2024, only 1,800 diplomas of Kosovo Serbs, as well as members of other minority communities studying in Serbian educational institutions, have been verified.

### ***Ban on the distribution of books in the Serbian language***

The functioning of the Serbian education system in Kosovo is additionally burdened by the ban on importing Serbian textbooks into Kosovo by mail. Schools and parents bring in textbooks independently and at their own risk. The official decision of the Kosovo Government regarding the ban on the distribution of textbooks in the Serbian language does not exist in a formal form.

In June 2016, the Administration of the Post of Serbia informed its customers about the ban on the transfer of printed material in the Serbian language to the territory of Kosovo, and warned them that if they send books and other printed content in the Serbian language, they do so at their own risk because they may be confiscated.

The informal decision of the Government of Kosovo to ban the delivery of publications in the Serbian language is disputed from the point of view of constitutionality and legality. In addition, this decision violates the right to access education.

The ban on the import of printed material in the Serbian language to Kosovo has affected students, who have difficulty accessing textbooks, as well as teachers, who cannot obtain materials for

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<sup>77</sup> „Tekst sporazuma koji je u Vašingtonu potpisao Aleksandar Vučić“, KoSSev, <https://kossev.info/tekst-sporazuma-koji-je-u-vasingtonu-potpisao-aleksandar-vucic/>.

preparing and conducting teaching. The result of this measure is the difficulty of providing educational services in Serb areas in Kosovo.

### **Recommendations**

It is necessary to make a greater effort in order to improve the process of recognition of diplomas at all levels of education in order to enable greater mobility and employment of members of the Serb community within Kosovo society.

The Government of Kosovo should abandon the implementation of the informal decision to ban the import of printed publications in the Serbian language in Kosovo in order to reduce the pressure on the education system in the Serb areas and enable equality in access to education for the Serb community.