

# **Policy Paper on Judicial Reform in northern Kosovo**

**September, 2016  
North Mitrovica, Kosovo**

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## **List of Abbreviations**

- 1. KJC – Kosovo Judicial Council**
- 2. KPC – Kosovo Prosecutorial Council**
- 3. KCA – Kosovo Chamber of Advocates**
- 4. SBA – Serbian Bar Association**
- 5. CSOs – Civil Society Organizations**



## Summary/Abstract

This Policy Paper presents findings that NGO Advocacy Center for Democratic Culture (ACDC) reached through implementation of the project “Judicial Reform in North Kosovo” supported by National Endowment for Democracy (NED). The Paper includes the following: Findings on the process of integration of judiciary; findings of the work of justice institutions in northern Kosovo; it lists key challenges and provides recommendations for the consolidation of the judiciary in northern Kosovo.

Firstly, the paper finds that one of the key deficiencies of the process of integration of judiciary has been the lack of transparency in the process. Citizens and civil society organization had very few information on the process itself and the outcomes of the process, which has been confirmed by the public poll survey conducted by NGO ACDC. Secondly, the paper finds that the process has not been comprehensive enough to encompass certain issues of vital interests in particular for the non-majority communities including access to legal aid from licensed lawyers from their community. In conclusion with regard to integration of judiciary the paper finds that not all conditions have been met for an efficient completion and functioning of the judiciary in northern Kosovo.

In addition to the above, the paper presents results of a public poll research on the integration of judiciary conducted by ACDC. The results are public perception based and have very low level of knowledge and awareness among population in northern Kosovo about the implementation of the Agreement on Integration of judiciary.

When it comes to current operation of judiciary, one of the key issues is a huge backlog of cases, a consequence of poor working conditions at the Basic Court of Mitrovica building in Vučitrn/Vushtrri, as well as insufficient number of judges and support staff. The paper, further on, presents findings on compliance with parties’ rights in court procedures with regard to use of official languages, concluding that the level of compliance is not at the required level in accordance with the national legislation and the practice of the European Court of Human Rights. The report also presents challenges related to property litigations cases, where it has been noted that many cases were completed in absentia of a party from a non-majority community, who is usually represented by an assigned counsel.



## Introduction/Executive summary

During period October 2015 – September 2016, NGO ACDC implemented a project “Judicial Reform in North Kosovo”, which was supported by NED. For the successful implementation of the project, NGO ACDC owes its gratitude to lawyers from North Mitrovica, who helped implementation of the project with their advices.

During the project implementation, one of significant segments was monitoring the implementation of the Belgrade-Pristina Agreement on Integration of Judiciary. Based on the interviews with justice actors in northern Kosovo and expert lawyers, NGO ACDC developed and shared regular Quarterly Monitoring Reports on Integration of Judiciary, presenting progress in the implementation process and remaining challenges.

Secondly, project included trainings for law students from northern Kosovo, which improved their capacities for their inclusion into the law practice of Kosovo; while it also included trainings for civil society activists which improve their skills to conduct court monitoring.

In addition, the project included monitoring of work of Vučitrn/Vushtrri Branch Court of Basic court in Mitrovica. The purpose of monitoring work was to establish - what are conditions for work, both for judges and other staff in the Court, as well as level of respecting rights of parties during court procedures.

Finally, the overall objective was to facilitate the process of integration through raising knowledge and awareness of citizens on the implementation of the Belgrade-Pristina Agreement on Integration of Judiciary and also the on the current judiciary stem in northern Kosovo.

During the implementation of this project, NGO ACDC established very good cooperation with both Basic Court in Mitrovica and Basic Prosecution Office, which were transferred to Vučitrn/Vushtrri. Good cooperation is a result of professional performance and support from President of the Basic Cour of Mitroviat, Chief Prosecutor at the Basic Prosecution Office of Mitrovica, Deputy Chief Prosecutor and the President of the Serbian-run Higher Court of Mitrovica, in the process of integration, Also, very good cooperation was established with the court and prosecution administrations, and they provided support to NGO ACDC within areas of their expertise.



## Methodology and Limitations

This Policy Paper is result of one year long monitoring of Justice System in Kosovo within project “Monitoring Judicial Reform in North Kosovo”. Project was supported by National Endowment for Democracy, in additional note views expressed in the research report are the responsibility of the Advocacy Centre for Democratic Culture and do not necessarily reflect the views of the National Endowment for Democracy.

Implementation and management of this project involved three persons, as follows: Project Manager, Expert Consultant, and administrative/financial Associate. The Manager was responsible for organization of visits to Court and prosecution Office, and for regular monitoring of operations of the Court, while the Expert Consultant was in charge for providing expert advices and guidelines on project implementation, particularly the process of monitoring.

The methodology of data collection for this report consists of several methods. Basic method of data collection was interviews with representatives of justice institutions, judges, prosecutors and support staff in Basic Court in Mitrovica. Interviews were performed during the monitoring of court cases, as well as during visits organized by NGO ACDC. During each of interviews, representatives of ACDC asked already prepared, targeted questions, with the aim to obtain relevant information, significant for the report. This information primarily related to functioning of the Court, working conditions, and efficiency in resolving cases. Study visits were also used as a method of data collection, when, in conversation with judges, prosecutors and administrative staff, they gathered information related and significant for the report.

Second method in monitoring process was following certain cases in procedures before Basic Court in Mitrovica. The purpose of following those cases was to establish certain patterns in resolutions of certain type of cases, as well as respecting rights of parties in specific cases. Further, NGO ACDC organized study visits to Basic Court and Basic Prosecution Office in Vučitrn/Vushtrri, and two visits and talks with EULEX Judges in Mitrovica North. Finally, there were also round table discussions.

Main challenge or obstacle, during the monitoring process were poor working conditions in Basic Court. Still, the support from Court President and from representatives of prosecution Office, made possible the monitoring process and study visits to the Court and Prosecution.



## About Belgrade-Pristina Agreement on Integration of Judiciary

On 9 February 2015, Belgrade and Pristina reached the Agreement on integration of judiciary, detailing the process and the conditions for integration of judges, prosecutors and the support staff from the parallel judiciary. The Agreement reads that there will be a single Basic Court of Mitrovica and the single Basic Prosecution Office of Mitrovica, with jurisdiction over seven municipalities, namely North Mitrovica, Zvečan, Zubin Potok and Leposavić (north) and South Mitrovica, Vucitrn/Vushtrri and Srbica/Skenderaj. The Agreement also reads that the Basic Court of Mitrovica will be located in two buildings; courthouse in North Mitrovica will house General Criminal Department and Department of Serious Crimes, while courthouse in South Mitrovica will house General Civil Department, Minor Offenses and Department for Juveniles. According to the Agreement, the Basic Prosecution Office will be located in the multiethnic area of “Bosniak Mahala” in North Mitrovica in the building of the Mitrovica North Administrative Office (MNAO).

Following the agreement, on 23 March 2015 the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) issued vacancy announcements for forty eight (48) judges and fifteen (15) prosecutors from the non-majority communities. After the completion of interviews, thirty six (36) judges and nine (9) prosecutors were selected. In addition to the vacancy announcements in 2015, and given that not all positions were filled, on 29 March 2016, the Kosovo Judicial Council (KJC) issued vacancy announcement for twelve (12) positions of judges from non-majority communities and one hundred and fifteen (115) positions for integration of judicial administration, while the Kosovo Prosecutorial Council (KPC) issued vacancy announcement for six (6) positions of prosecutors from non-majority communities and thirty four (34) positions for integration of administrative staff.

Vacancy announcements were preceded by talks between Belgrade and Pristina delegations in Brussels, when all the details related to integration of support staff were agreed. The agreement allowed for integration of the support staff from Serbian parallel judiciary in Kosovo through a neutral language which was used to set the terms and criteria in the vacancy announcement. This, in practice, means that Serbian diplomas and Serbian bar exam will be accepted for candidates who apply for positions in the vacancy announcements issued within the process of integration of judiciary. However, in a continuation of the process of integration, candidates for judges, prosecutors and professional court associates, who had their Serbian Bar exam completed after 1999, were requested to take the Bar Exam of Kosovo in order to be eligible to assume the position.

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Note: NGO ACDC has contacted some of the candidates who took the Kosovo Bar Exam and they expressed their satisfaction with the professionalism and the treatment that has been afforded to them by the Kosovo Chamber of Advocates, the Kosovo Judicial Council and the Kosovo Prosecutorial Council.

Moreover, the same opinion has been shared with NGO ACDC by the representatives of the Serbian-run judiciary in Kosovo, which is in the process of integration into the Kosovo justice system.



## Citizen's Perception on Integration of Judiciary

NGO ACDC has implemented several public perception researches on the knowledge and awareness of citizens about the Belgrade-Pristina Agreement on Integration of Judiciary. The research was conducted in all four municipalities in northern Kosovo, namely in North Mitrovica, Zvečan, Zubin Potok i Leposavić.

The research has shown the knowledge and awareness of citizens on the process of integration of judiciary and their perception of the entire process.

Some of the key results of the public perception survey are the following:

- Sixty seven percent (67%) of citizens follow the Brussels dialogue between Belgrade and Pristina and thirty seven percent (37%) support the efforts towards the normalization of relations. Majority of citizens believe that the implementation of Brussels agreements is conducted in non-transparent way. In addition, majority of them believe that the Kosovo society does not exhibit clear and firm will to integrate non-majority communities, in particular the Serbian community, into the Kosovo system.
- Even though 67% percent of respondents follow the Brussels dialogue regularly, a very small percentage of them is acquainted with the provisions of the Belgrade-Pristina Agreement on Integration of Judiciary.
- Fifty four (54%) of respondents does not support the integration of judiciary, as they don't believe that the integration will improve their everyday lives, which has been stated by 49% of respondents.
- Only 17% of respondents believe that the Agreement on Integration of Judiciary is implantable in practice.
- Only 26% of respondents were aware about the vacancy announcements for judges and prosecutors issued by the KJC and KPC.
- Even though only 8% of respondents new the number of of judges and prosecutors from Serbian community and other non-majority communities to be integrated, 88% of them were not satisfied with the quota system concerning the ethnic share of positions of judges and prosecutors in northern Kosovo, while a high percentage also stated that the insufficient number of judges and prosecutors will pose a challenge to successful integration.



- Very low percentage of respondents was able to answer from which community the President of the Basic Court will come or where will be the seat of the Basic Court, the division of the Court of Appeals or the Prosecution office. When it comes to trust among communities, it is striking that 64% of respondents stated that they would feel unsecure to access courthouse which will be located in South Mitrovica. Even more, 75% of respondents stated that they would not have trust that their case is in the competence of a judge or prosecutor from another community.

- Forty one percent (41%) of respondents stated that they believe that the Agreement on Integration of Judiciary will never be fully implemented. With regard to reasons for delays in integration of judiciary, respondents cited: Lack of will by Pristina for implementation of the agreement, pressure by the opposition in the Assembly in Kosovo and the lack of political will by the international community.

- Another result shown by the research has shown that the citizens in northern Kosovo use the services of the Serbian-run judiciary institutions in Kosovo and that they have had more trust in those institution in comparison to trust in Kosovo judiciary.



## Key challenges in integration of judiciary

- Political disputes between Belgrade and Pristina

Political disputes between Belgrade and Pristina have been, inter alia, the major obstacles for the completion of integration of judiciary. These disputes includes issues of the establishment of the Community/Association of Serb Municipalities and more recently the issues of telecommunications and the Law on Trepca adopted by the Assembly of Kosovo. Namely, Belgrade's position centered around a view that Pristina has been showing continuous unwillingness to implement agreements which will afford specific rights to members of non-majority communities, in particular the Serbian community. The key agreement in this respect is the Agreement on the Community/Association of Serb Municipalities. Up to date, no progress has been reached in the implementation of this Agreement and neither the Statute for the Community/Association has been approved.

When it comes to latter obstacles, adoption of the Law on Trepca which transformed Trepca from socially owned enterprise (SOE) into a Joint Stock Company, 80% owned by the Government of Kosovo and 20% by workers. Serbian Government protested to such act of Pristina, calling it a confiscation of Trepca.

ACDC interlocutors from Serbian-run judiciary in Kosovo informed that Serbian judges and prosecutors in Kosovo will not integrate before the issue of Trepca is resolved, as they don't want to be an instrument in application of laws which violate the fundamental property rights of Serbs and Serbia in Kosovo. Their representatives also publicly stated they have support for such position from the Government of Serbia.

- Regulation of status of Serbian judges and prosecutors within the Serbian judiciary

This issue has been a continuous obstacle for the integration of Serbian judges and prosecutors into a Kosovo judiciary. During the process of judicial integration, in communication with the officials of the Serbian Ministry of Justice, judges and prosecutors from Serbian-run judiciary in Kosovo were promised special pensions for their service. This was also their condition to resign from Serbian-run judiciary and accept appointments in Kosovo judiciary. NGO ACDC notes that the Constitution of Serbia guarantees the permanent tenure of office for judges and prosecutors and, therefore, in the given circumstances their tenure of office in Serbian-run judiciary may cease only following their resignations.<sup>1</sup>

Even though the adoption of the law was foreseen by the end of August 2016, the law has not even been included in the agenda of the Assembly of Serbia nor it has been adopted by the Government of Serbia as a draft law.

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1. Article 146 of the Constitution of Serbia available at [http://paragraf.rs/propisi/ustav\\_republike\\_srbije.html](http://paragraf.rs/propisi/ustav_republike_srbije.html)



- **Condition of premises**

One of the important prerequisites for the completion of integration of judiciary is renovation and adaptation of premises in northern Kosovo. Up to date, renovation works took place in the courthouse in South Mitrovica and at the building which will house the Basic Prosecution Office of Mitrovica. No renovation works have been done at the courthouse in North Mitrovica and in court branches in Leposavic and Zubin Potok municipalities.

- **Recognition of decisions of the parallel courts**

This issue is of great importance having in mind that the Serbian-run courts have rendered a high number of decision, especially in civil cases. Non-recognition of that decision would lead to a legal and rule of law chaos in northern Kosovo and would violate the right of citizens to legal certainty. Nevertheless, NGO ACDC notes that, according to interlocutors from justice institutions in Kosovo, there has been a Belgrade-Pristina Agreements which has foreshadowed the recognition of those decisions.

- **Low capacities for ensuring compliance with language rights**

When it comes to compliance with language rights, it has been noted during the implementation of the project that translation from Albanian to Serbian is always provided during proceedings. Also, the forms and documents used at the court are also regularly translated. However, given that according to practice of the European Court of Human Rights a party has a right to have a proceeding at her/his own language, which rarely happens before the Basic Court of Mitrovica. This is due to a fact that the two Kosovo Serb judges were on the list of judges but have not actually worked at the court. In addition, the Basic Court of Mitrovica has only two interpreters and no equipment for simultaneous interpretation.

In addition to use of languages before courts in court proceedings, another very serious challenge is poor translation of laws into Serbian language,. It has been highlighted by a number of legal experts and competent organizations in Kosovo that law texts in Serbian and Albanian in many cases contain completely different provisions. Such situation can lead to different interpretations and application of law and, thus, to legal uncertainty.



- **Low number of lawyers from non-majority communities in membership of the Kosovo Chamber of Advocates**

When it comes to integration of lawyers from non-majority communities in the law practice of Kosovo, including membership in the Kosovo Chamber of Advocates (KCA), no progress has been made. According to available information from K-Serbian members of the KCA and its Non-Majority Committee, no lawyers from the K-Serbian community took the Bar exam during 2016. This is again due to the issue of non-recognition of diplomas issued by the University of North Mitrovica. Nevertheless, NGO ACDC has been informed by the President of the KCA Non-Majority Committee that OSCE is planning on offering trainings to lawyers from non-majority communities and that the Bar examination for those candidates would take place in December 2016. NGO ACDC notes that integration of lawyers from non-majority communities into the law practice in Kosovo is great importance for the consolidation of the rule of law, especially in northern Kosovo where there are only five lawyers who are active members of the Kosovo Chamber of Advocates.

- **Lack of cooperation between the Kosovo Chamber of Advocates and the Serbian Bar Association**

No Memorandum of Cooperation has ever been signed to establish and detail cooperation between the Kosovo Chamber of Advocates and the Serbian Bar Association. Such agreement would allow free practice of Serbian lawyers in Kosovo in vice-versa. Currently, lawyers from Serbia are not allowed to practice in Kosovo, as in line with the provisions of Kosovo Law on Bar.<sup>2</sup> In this situation, citizens from non-majority communities very often do not have access to lawyers from their own community, given just few non-majority lawyers in KCA and the fact that the lawyers from Serbia are not allowed to practice in Kosovo due to a lack of reciprocity which is to be established by an agreement of cooperation between the two Bar Associations.

- **Backlog of cases**

The number of unresolved cases before the Basic Court of Mitrovica is very high. According to the Statistics on the work of the courts in Kosovo, prepared by the Kosovo Judicial Council (KJC), the total number of case backlog is 64,385 including court branches in Srbica/Skenderaj and Vucitrn/Vushtrri. Such huge backlog of cases will pose a great challenge for the future operation of integrated judiciary and, therefore, further efforts in the implementation of the Backlog Strategy are needed.

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2. Article 40.1 of the Law on the Bar reads that: "Lawyers from other countries may practice bar in the territory of the Republic of Kosovo under the reciprocity conditions." Article 40.2. reads that: "The confirmation that there is a reciprocity agreement shall be given by the Ministry of Justice after taking the preliminary measure of the opinion of the Chamber of Advocates."



## Recommendations

1. The status of judges, prosecutors and support staff from Serbian-run judiciary, who are in the process of integration, shall be regulated by the Government of Serbia. This action by the Government of Serbia is necessary in order to ensure conditions for appointment of judges and prosecutors in the Kosovo system by the President of Kosovo. Such appointment is not possible before they resign from their positions in Serbian judiciary. The resolution of this issue should include immediate consultations among the Serbian Government officials and the representatives of the judges and prosecutors from Serbian-run judiciary in Kosovo. According to ACDC interlocutors, previous agreement envisaged that the status of judges and prosecutors would be regulated by a special law which would afford them special pensions for their service.
2. Belgrade and Pristina should intensify the dialogue process in Brussels, given the number of open and disputed issues which decently affect the process of judicial integration. Renovation and adaptation of premises shall be accelerated as many do not meet conditions for efficient and effective work of judges, prosecutors and support staff.
3. Consistent and efficient implementation of Belgrade-Pristina agreement on recognition of decisions made by Serbian-run courts in Kosovo is of great importance as many citizens acquired certain rights through such decisions.
4. An initiative on establishing and formalizing cooperation between the Kosovo Chamber of Advocates and the Serbian Bar Association shall be made, by either Belgrade and Pristina or the EU. Such cooperation may provide for improvement of access to legal aid for Serbian and other non-majority communities in Kosovo. ACDC emphasizes that there has been a pretty successful modus of cooperation applied in the case of Commerce Chambers of Serbia and Kosovo, whose representatives regularly meet and plan cooperation.
5. Transparency of Belgrade-Pristina dialogue in Brussels and the implementation of reached agreements shall be improved. Both Belgrade and Pristina should improve cooperation with civil society when it comes to implementation of agreements reached in Brussels, in particular in case of Agreement on Integration of Judiciary. Civil society can play an important role in facilitating a share of information and raising public knowledge and awareness on the process of integration of judiciary. Such intervention would be of great importance knowing the importance of citizens participation in the justice system for its effective work. NGO ACDC notes that an Oversight Committee for Integration of Judiciary has been established, but it does not include representatives of any CSOs.



6. When it comes to greater inclusion of lawyers from non-majority communities into membership of the Kosovo Chamber of Advocates, NGO ACDC proposes that the capacity and visibility of the Non-Majority Committee of the KCA is strengthened in order to have them working with lawyers from non-majority communities on regular basis. Greater number of licensed lawyers from non-majority communities will improve access to legal aid to members of those communities and will improve trust of communities in the justice system. Also, continuous trainings on Kosovo laws are needed in order to equip young lawyers from non-majority communities with knowledge and skills required for practicing law in Kosovo following completion of the Bar exam.

7. Additional efforts are needed concerning the efficient implementation of the backlog Strategy. One of ways could be better cooperation with organizations that provide mechanisms for alternative resolution of conflicts, such as Mediation Centers. Thus, stronger cooperation is needed between Basic Court and Mediation Center in Mitrovica. However, in order to strengthen this cooperation, so the bigger number of cases gets resolved through mediation, it is necessary to improve capacities of Mediation center in Mitrovica, first through number of mediators. The Ministry of Justice is very important factor for realization of this recommendation.

Moreover, additional programs may be included to reduce the backlog of cases, such as internship schemes. In this regard, the Basic Court of Mitrovica has taken certain steps aiming to reduce the backlog of cases, including hiring of forty three (43) interns who are working on 30,000 cases of minor offenses and approximately 1,700 criminal cases. The goal is to close all those case by the end of 2016. In addition, the court cooperates with the Mediation Center Mitrovica and sends eligible cases to mediation, which also contributes to reduction of case backlog

8. Continuous training program are needed for judges and prosecutors who will be integrated, having in mind that they are joining another legal system. This is very important for the equal jurisprudence in Kosovo and for respect of the principle of legal certainty.



## Sources

1. Assembly of Kosovo web-site, <http://www.kuvendikosoves.org/?cid=2,1>
2. Paragraf Lex, [http://paragraf.rs/propisi/ustav\\_republike\\_srbije.html](http://paragraf.rs/propisi/ustav_republike_srbije.html)
3. Interview with President of Basic Court of Mitrovica
4. Interview with Chief Prosecutor at the Basic Prosecution Office of Mitrovica
5. Interview with the President of the Serbian-run Higher Court of Mitrovica
6. Interviews with licensed attorneys at law in northern Kosovo
5. Interviews with judges, prosecutors and administrative staff