

# Going south? Integration of Serb Judges and Prosecutors from the North into the Kosovar Justice System

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## Going south? Integration of Serb Judges and Prosecutors from the North into the Kosovar Justice System

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## **GOING SOUTH? INTEGRATION OF SERB JUDGES AND PROSECUTORS FROM THE NORTH INTO THE KOSOVAR JUSTICE SYSTEM**

### **EXECUTIVE SUMMARY**

The so-called judicial integration of the north was hailed as a substantial step forward for both Kosovo and Serbia by the international community. This appreciation was attributed to the 2015 agreement between the two countries through which the Serbian judicial parallel structures in the northern municipalities of Kosovo were discontinued and its staff integrated into the Kosovar judiciary. However, a year after and with international attention diverted, the new courts reflecting the judicial integration remain barely functional, due to an insufficient preparatory work.

If the process is expected to produce something more than a merely formal integration, several actions are required. Since the agreement created an unprecedented and unparalleled division of the Court of Appeals, there is a real risk of creating a detached judiciary for the entire District of Mitrovica. In the short term, it is fundamental to resist the temptation of separating staff and cases along ethnic lines, and thus enhanced efforts need to be put into translation and linguistic assistance. This should include files, cases, hearings, and even legislation and IT infrastructures. At the same time, further efforts are required in continuous training for the new Serb judges and prosecutors, who must be quickly familiarized with the applicable law of Kosovo.

In addition, infrastructural problems should be addressed promptly if the new Courts are to start delivering justice. Thus, it should incorporate the free legal professions, such as notaries and private executors, for which there is a critical shortage. Last but not least, the question of the applicability of decisions taken by the previous parallel structures needs to be clarified in a coherent and predictable manner, in order to establish legal certainty. In the long term, it is necessary to ensure that all new Serb judges, prosecutors, court officials, and lawyers are familiar with the legislation of Kosovo from the outset, in order to avoid the need for constant training and to avert the risk of continuing ethnic separation. That will require substantial not only preplanning by the Academy of Justice, but also cooperation with the higher education institutions operating in the District of Mitrovica.

### **Recommendations:**

1. The Academy of Justice should be provided with sufficient resources to complete the transition to a fully bilingual education center. In addition, in the short term further efforts are required to tackle the mismatch between the applicable Kosovar system and the Serbian practices that the new judges and prosecutors are used to.
2. Further resources need to be devoted to the Basic Court of Mitrovica and the Court of Appeals to expedite the translation of files, the availability of interpreters for the sessions, the establishment of the branches in the northern municipalities and the smooth process of existing and incoming cases.
3. The need for Serbian speaking notaries should be addressed, for which a new round of Notary Examinations must be launched as soon as possible, in order to facilitate these kind of services in the North.
4. A clear legal framework addressing the recognition and/or enforceability of decisions issued by the parallel structures needs to be put in place as soon as possible.

5. Bringing the UPKM into the Kosovar higher education system should remain a long term goal, even if it is an almost impossible endeavor at this time. Thus, a fair and frank engagement with the institution to create actual, genuine cooperation is required.
6. The Academy of Justice needs to be given the clear mandate and resources to introduce the first bridge courses or modules, at least until a different institution can take over that function.

## INTRODUCTION

The normalization of neighborly relations between Kosovo and Serbia is a precondition for their eventual accession to the European Union (EU). In order to fulfill this requirement, both states committed to a dialogue launched in Brussels in March 2011 with the EU as a facilitator. This dialogue aimed to be a factor for peace, security, and stability in the region, and is supposed to promote cooperation, achieve progress on the path towards the EU, and improve the lives of the people. Even though both states and the EU dedicated substantial time and resources, the dialogue has fallen short of expectations. The process should have focused on achieving specific results rather than holding discussions just for the sake of the dialogue.<sup>1</sup>

Despite the general shortcomings of the dialogue, during this period both parties have succeeded to achieve certain results. Under the supervision of the EU, they reached twenty-three agreements tackling technical and political issues. One of them is the Agreement on Justice, brokered in 2015 to create a unitary justice system in Kosovo, which was heralded by both Kosovar and Serbian politicians as one of the most important compromises stemming from the dialogue.

The significance of this achievement lies in closing one of the main issues still pending since independence. The Serb minority in northern Kosovo separated themselves from the Albanian majority after the unilateral declaration of independence in 2008. In the judicial field it entailed the complete disruption of a unitary judiciary after the United Nations Mission in Kosovo (UNMIK) ceased to exercise those functions. They continued to maintain their relations with Serbia instead, and after Kosovo's judicial system was established, the courthouse in North Mitrovica was seized; the local population rejecting the jurisdiction of Kosovar courts. This situation led to the creation of the so-called parallel structures, based on the pre-existing Serbian courts, which refused the competence of the newly established Kosovar Courts and continued to deal with civil and commercial matters. The criminal system in the North all but collapsed, except for those cases handled by EULEX judges and prosecutors.<sup>2</sup>

During the dialogue, Kosovo's political representatives required the abolishment of these parallel structures. The goal of the Serbian delegation was to protect the interest of the local Serb population by ensuring that they have access to justice on their own terms. The Brussels Agreement conflated these two overarching aims by foreseeing the integration of the Serbian parallel structures into the unitary system, but also stipulated quotas on the representation of the Serb Kosovars therewith. Politically, the agreement marked a successful step towards the normalization of relations between Kosovo and Serbia. However, besides the usual political posturing, the actual implementation of the agreement remains difficult, due to its complexity.

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<sup>1</sup> United Nations General Assembly resolution 64/298, Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law, UNGAOR, 64<sup>th</sup> session, A/RES/64/298, (New York: 9 September 2010). Available at: <https://www.securitycouncilreport.org/atf/cf/%7b65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/ROL%20A%20RES64%20298.pdf>

<sup>2</sup> International Commission of Jurists, Uncharted Transition: the "Integration" of the Justice System in Kosovo, (Geneva: 10 November 2015). Available at: <http://www.refworld.org/pdfid/57ee8b074.pdf>

The Basic Court of Mitrovica will retake its traditional seat in North Mitrovica and will establish four branches in Zubin Potok, Leposavic, Skenderaj, and Vushtrri. The Court will be composed of an ethnically mixed panel, the President being always Serb, while the Vice-President remains Albanian. Most of the supporting staff in the north will be composed of Serbs. The Basic Prosecution Office, headed by an Albanian prosecutor, will be located in the Mitrovica North Administrative Office, in Bosnjacka Mahala, an ethnically mixed area north of the river. In addition, a division of the Court of Appeals will be established in North Mitrovica, sharing the premises with the Basic Court. The panel will be composed of a majority of Serb judges, including its President, and will have jurisdiction as a second instance court over the entire region of Mitrovica.

The difficulty that awaited implementation was already made evident in October 2017, when the ceremony to appoint forty judges and thirteen prosecutors had to be postponed for a week after all of them stood President Thaçi up on the 17<sup>th</sup>. Being reminded of the importance of progress in this matter, the ceremony finally took place on the 24<sup>th</sup> of the same month. This marked a monumental step in the entire process of the dialogue. The European Commission on Kosovo's 2018 Country Report has recognized the integration of Kosovo Serb judges, prosecutors, and their supporting staff in the judicial system as one of the areas that achieved progress during 2017.<sup>3</sup> Nonetheless, despite its importance, the formal ceremony only marked the beginning of the real work.

## CURRENT ISSUES

The first step following the decreeing ceremony of the Serb judges and prosecutors was their formal assignment to the Basic Court of Mitrovica, as well as the division of the Court of Appeals and the Basic Prosecution Office. The State Prosecutor will continue current practices and maintain a single Appellate Prosecution, with prosecutors from Pristina travelling to Mitrovica whenever a case falls under the jurisdiction of the branch established there.

In accordance with the legal procedures, any newly appointed staff is expected to follow a mandatory Initial Training Program (ITP) which lasts twelve months, during which both judges and prosecutors are not performing their functions, but getting prepared to do so afterwards.<sup>4</sup> In this case, and due to the particular situation, the Academy of Justice prepared an initial orientation program consisting of an intensive fifteen days long course to familiarize the already veteran judges and prosecutors with the particularities of the positive Kosovar material and formal legislation. However, even this short program could not be fully executed due to conflicts of schedules among them, and as a result lasted ten days only.

Overall, the Academy of Justice has struggled to fulfill its functions in this particular situation due to lack of resources and human capacities as well as an insufficient foresight. With close to zero planning, it was expected to adjust its training procedures to prepare experienced judges and prosecutors for the Kosovar judicial system in Serbian. For an Academy that usually deals with young, recently appointed Albanian professionals, that switch has not been simple.

First, the Academy had to surmount the idiomatic barrier. To attend its previous needs, the Academy only had two translators in payroll. Facing the new situation, they were not enough. International donors added two more, yet that still did not cover operational needs. These

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<sup>3</sup> Government of Kosovo, Brussels Agreements Implementation State of Play 1 October 2014 – 20 March 2015, (Pristina: Office of the Prime Minister, 23 March 2015). Available at:

[http://www.kryeministri-ks.net/repository/docs/Kosovo\\_Report\\_on\\_Implementation\\_of\\_Brussels\\_Agreements\\_230315-signed-signed.pdf](http://www.kryeministri-ks.net/repository/docs/Kosovo_Report_on_Implementation_of_Brussels_Agreements_230315-signed-signed.pdf)

<sup>4</sup> Law 05/L-095, 'On Academy of Justice', Official Gazette of the Republic of Kosovo, 6/2017, (8 February 2017), article 19. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=13318>

translators are tasked with both preparing all documents in Serbian and providing simultaneous translation during training sessions. The situation is aggravated by the fact that many training exercises are donor driven, which makes preparing relevant documentation ahead even more difficult.<sup>5</sup>

Second, there has been a certain problematic with the content of the trainings. Officials at the Academy correctly assessed that these newly appointed judges and prosecutors need to go through practical training on the differences between the Serbian and Kosovar legislative systems.<sup>6</sup> It is worth remembering that most of them have several decades of experience on their backs, in some cases even participating in the Kosovar system under the UNMIK administration. In fact, many of them are close to retirement, and thus have more practical concerns and less flexibility than a young professional whose career still lies in front of him would have. At the same time, due to budgetary constraints and problems of coordination with donors, most trainings offered currently either assume a lack of experience in judicial matters or a high degree of familiarity with the Kosovar judiciary, thus not fitting the specific problematic.

Having in mind the issues referred above, the Academy has to ensure that the level of preparedness of judges and prosecutors remains even, and thus any training offered must be in alignment with the strategic documents of the European Reform Agenda and the National Programme for the Implementation of the Stabilization and Association Agreement. Thus, the conjugation of the needs for specific courses and modules must be done in a way that does not jeopardize long term integration of Serb and Albanian professionals into a single system. The Academy has thus far identified this long-term goal, but the lack of resources is still a serious obstacle to that end.<sup>7</sup>

Furthermore, this lack of specifically aimed resources is also slowing down other elements of the judicial integration. In fact, the operative level of the Court is still so low that some officials have been referring cases to the mediation process as an alternative, but that is not a sustainable solution.<sup>8</sup> The same linguistic issues identified in the Academy have also hindered the work of the Basic Court and Prosecution Office of Mitrovica. As the Law requires a random allocation of cases within both institutions, essentially all cases need to be translated into the two official languages to ensure a smooth process. In fact, most Serb officials are advocating for an allocation along linguistic criteria. That would in practice ratify two isolated dimensions of the Justice system along ethnic lines, which may solve efficiency problems in the short term, but definitely does not contribute to an effective integration. Thus far, it has been frequent that a case had to remain on hold while the overburdened translators of the Court prepared it for the official that should deal with it, whose native language was not that of the file.

This problem is in fact exacerbated by the creation of a separate division of the Court of Appeals for Mitrovica. Since the Court of Appeals has a unitary nature and theoretically exercises its powers and competences all across Kosovo from its seat in Pristina. Establishing a separate entity is thus a political decision that badly fits with the overall design of the Kosovar judiciary, and creates problems of uniformity and harmonious application of the Law. If not addressed carefully,

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<sup>5</sup> Besim Morina (Program Manager), Academy of Justice, personal interview, Pristina, June 2016.

<sup>6</sup> Dušan Radaković (Director) and Aleksandar Rapajić (Project Manager), Advocacy Center for Democratic Culture, personal interview, North Mitrovica, June 2018.

<sup>7</sup> Besim Morina, interview.

<sup>8</sup> According to the West's Encyclopedia of American Law, mediation is "a settlement of a dispute or controversy by setting up an independent person between two contending parties in order to aid them in the settlement of their disagreement". Mediation is thus based on mutual trust between the parties and with the mediator. Consequently, given the situation of northern Kosovo, such trust is missing, which substantially limits its effectiveness.

there is a risk of enshrining a purely formal integration, with judges in the district of Mitrovica separated from those working in the rest of the country.

Thus, since changing the existing rules is tantamount to acknowledging the existence of two separate judicial systems, as explained above, Kosovar institutions must now ensure a purely bilingual judiciary. In the short term, it can only cover the District of Mitrovica, but on the long term it must necessarily be extended to the whole country. Not only specific cases involving a Serb will need to be translated, but also all decisions of the Court of Appeals and the Supreme Court, if the Kosovar judiciary is to retain a unity of criterion and jurisprudence. Similarly, any and all procedural questions, IT infrastructure and even legislation need to be reviewed to ensure the highest quality of the text. Thus far, the Serbian version of laws and regulations has been little more than an afterthought, and so of a very low quality. Sometimes, that version even contradicted the original Albanian. Thus, a comprehensive effort needs to be made to ensure the unity of the legal code, along with that of the judiciary. On top of that, and to create an extra difficulty, the use of Latin Serbian or Cyrillic Serbian is still undecided, and the truth remains that few persons are proficient enough in both Albanian and Cyrillic Serbian. Fulfilling this essential requirement is neither going to come cheap nor easily, but the alternative is accepting that Serb and Albanian judges are allowed to follow different judicial traditions.

At the same time, infrastructural problems persist in the Basic Court of Mitrovica, which will also affect the Court of Appeals once cases start reaching second instance. While thus far these have been overshadowed by the most pressing linguistic issues and the lack of familiarity with the system, as those problems are slowly solved, these will become more evident. The budget of the Court is still short for the magnitude of the theoretical work it should cover, and that translates into insufficient material resources. In fact, according to the Serbian government, the earmarked facilities for the different branches of the Court and Prosecutor's Office are still not fully operational.<sup>9</sup> Even if, as of today, the allocated resources are deemed sufficient for the existing workload due to the slow pace at which work is undergoing, it will represent a serious bottleneck in the mid-term.

Furthermore, also the continued lack of Serb notaries represents an extra level of complication for the local population, considering the prominent role that the institution performs in the Kosovar system. The Serbian government calculated that the region requires at least four functioning Serbian speaking notaries and a similar number of private court executors. New examinations need to be organized as soon as possible as part of the implementation process.<sup>10</sup>

Finally, there is still a significant degree of uncertainty regarding any judicial process that was completed by the parallel structures before their disbandment. As a result of the Dialogue, there is a firm compromise from Kosovo to accept the rulings of the parallel structures issued as binding; however, the processes, modalities and competencies for such recognition have not been defined yet. Missing a clear legal framework, and even any guideline from the Kosovo Judicial Council (KJC) or the Ministry of Justice, it remains unclear whether those are directly applicable, require undergoing an international recognition process in the Basic Court or some other simpler *ad hoc* process. This question requires serious thought, as automatic enforcement may lead to some *contra legem* executions (especially in the fields of property and labor), while the more complicated the process is, the more potential it has to generate disruptions. Those may imply a greater backlog, more room for discrepancies in the application of Law depending on the executing judge,

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<sup>9</sup> Government of Serbia, Izveštaj o napretku u dijalogu Beograda i Prištine (Oktobar, 2017.godine) [Progress report on the dialogue between Belgrade and Pristina (October 2017)], (Belgrade: Office for Kosovo and Metohija, November 2017). Available at: <http://kim.gov.rs/doc/pregovarski-proces/Izvestaj%20o%20dijalogu%2031102017.doc>

<sup>10</sup> Ibid.

and may even reach the absurd of having a Serb judge deciding on the execution of his or her own decision under an international recognition process. Considering this, designing a specific transitional process seems to be the most sensible option.

In conclusion, it seems evident that not sufficient preparatory work was made prior to the formalization of the integration, which was perceived mostly as a political milestone, and not as the launching point of a delicate technical process. Thus, this planning is being hastened now, while improvising solutions for the myriad of problems that are appearing during implementation.

#### RECOMMENDATIONS:

1. The Academy of Justice should be provided with sufficient resources to complete the transition to a fully bilingual education center. Not only the specific orientation course needs to be prepared for Serbs, but also the ITP and Continuous Training Programs (CTP) will have to be provided in both languages. In addition, in the short-term further efforts are required to tackle the mismatch between the applicable Kosovar system and the Serbian practices that the new judges and prosecutors are used to.
2. Further resources need to be devoted to the Basic Court of Mitrovica and the Court of Appeals to expedite the translation of files, the availability of interpreters for the sessions, the establishment of the branches in the northern municipalities and the smooth process of existing and incoming cases. That should be based on a needs assessment that also foresees the expected workload once the most immediate issues are solved.
3. The need for Serbian speaking notaries should be addressed, for which a new round of Notary Examinations must be launched as soon as possible, in order to facilitate these kinds of services in the North.
4. For the sake of legal certainty, a clear legal framework addressing the recognition and/or enforceability of decisions issued by the parallel structures needs to be put in place as soon as possible. There should be a balance between the need of ensuring the lawfulness of the decisions and with the operational capacities of the Court. Thus, considering the transitional nature of the situation, it should design an ad hoc process that is not as burdensome as an international recognition but entails a minimum degree of control.

#### FUTURE OBSTACLES

Even once all the already identified issues are solved, there are some substantial threats to the long-term sustainability of the integrated judicial system. This is mostly due to the consideration of the whole integration idea as an isolated, one-time event. In order to execute this integration, representatives from Serbia, on the one hand, and European Union Rule of Law Mission in Kosovo (EULEX) and the European External Action Service (EEAS) acting in the name of Kosovo, on the other, met in Belgrade in March 2015. During the meeting, information regarding the Serbian judicial staff, including active judges and prosecutors, was exchanged in order to initiate the transfer.

As a result, even though the selection process was cancelled, relaunched, and delayed in several occasions, a call for applications was launched, limited to active Serbian judges,

prosecutors, and supporting staff. These had to undergo the usual selection procedure according to Kosovar legislation, including skill tests and interviews. The selection process was concluded in September 2016, with the approval of the fifty-three judges and prosecutors, as well as an undetermined number of administrative staff. Originally, forty-eight judicial positions, fifteen prosecutorial posts, and one hundred forty-nine other staff positions were opened. Around 10% of the active Serbian personnel in Kosovo requested transfer to other courts in Serbia rather than becoming part of the Kosovar judiciary, while thirty-three applicants were rejected after failing the selection procedure.<sup>11</sup>

The fact that it was a closed examination process ensured that all active personnel would have a fair chance of remaining in position, but at the same time it implied that no outsiders would be allowed during the transition, and made impossible to fill all vacancies. This responds to the political need of ensuring continuity of the operations, but is just a one-time solution.

Thus, decisive action is required by the Government of Kosovo. First, because it has already scraped the bottom of the barrel regarding Serbian officials acting on its territory. Those who could be transferred had already been; those who could not, already retired or were moved elsewhere in Serbia. Second, because given the advanced age of most of the transferred judges and prosecutors, in a few years more positions will become available due to retirement.<sup>12</sup>

Once that happens, it will be difficult to replace the professional staff due to the simple mismatch of education. To become a judge or a prosecutor it is required, as in every other country, to have completed Law studies. As of today, almost all Serbs that complete graduate studies in Law in Kosovo have done so in the University of Pristina Kosovska Mitrovica (UPKM), located in North Mitrovica, a State University run by the Serbian government. Consequently, its study programs follow the Serbian curriculum, and Law is no exception.

This implies that, basically, every single Serb that has and will graduate in Kosovo has a foreign degree in Law, which implies studying different legal codes, procedures, and practices. Even if the Diploma Agreement, by which mutual recognition of diplomas is to be guaranteed, was fully implemented, young Serb professionals would still be ill suited to practice Law in Kosovo. As part of said agreement, any Serbian graduate, including those from UPKM, can have the diploma recognized in Kosovo. This process substitutes the nostrification, through a separate Commission constituted within the Prime Minister Office. Until the end of July 2018, 130 diplomas have been recognized through this certification process, according to local media.<sup>13</sup> However, that does not address the issue of them having a weaker knowledge of Kosovar law. In addition, this option still remains widely unknown by the affected population, which is not aware of the ad hoc mechanism that has been constituted. This is a problem that only discourages young professionals and reduces the available pool of candidates, and not only applies to prospective judges and prosecutors, but also to lawyers, notaries, and, *inter alia*, private executors.

There are potential lines of activity to improve this situation, none of which is ideal or cheap. First, the Academy of Justice could arrange for a separated ITP that focuses more on the basic knowledge that is expected from any Law graduate. That, however, would only affect prospective judges and prosecutors and it would also imply separating candidates along ethnic lines, and thus undermine the very idea of a unitary justice system. Alternatively, the Academy could prepare a longer ITP, in which this knowledge is taught before releasing the candidates to the common branch of the Program. However, it would entail a higher difficulty for them compared to their

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<sup>11</sup> Aleksandar Rapajić and Dušan Radaković, interview.

<sup>12</sup> Ibid.

<sup>13</sup> Doruntina Baliu, Njohja e ndërsjellë e diplomave proces 'i ngrirë' [Mutual recognition of diplomas 'frozen'], (Kallxo.com, 21 July 2018). Available at: <https://kallxo.com/njohja-e-ndersjelle-e-diplomave-proces-i-ngrire/>

Albanian colleagues. Neither of them solves the root cause of the problem, as becoming a judge or prosecutor will still be comparatively more difficult for Serbs.

In a long-term perspective, only bringing the UPKM under the umbrella of the Kosovar higher education system or establishing a new Kosovar university that provides education in Serbian will solve the issue. That, however, is a political decision not feasible in the current circumstances, so alternatives need to be articulated. One would be establishing a post-graduate course to that end, but would imply the same organizational difficulties and would not ensure sustainability in the long run. Mid-term, engaging with UPKM so it includes a specific Kosovar Law study program, or at the very least a bridge course, should be considered.

However, short term, the Academy of Justice is the best suited institution to act on the problem, but to do so would require extending its portfolio, budget, and human capacities. Enabling Serb Law graduates to become practitioners in Kosovo is only in the interest of the State, and thus the State needs to address it properly, in a proactive way. That implies facilitating the adaptation to the different legal system in which they are to perform, and thus bridge the gap between their training and their professional requirements. If a bridge program as the one outlined above was to be introduced, it should also count as professional experience for employment purposes, in order to incentivize Serbs to undertake the extra effort to practice Law in Kosovo, instead of simply moving to Serbia. The idea of creating such a program with a generalist approach should also be studied, and perhaps even establishing a second campus in Mitrovica, if the demand ever justified so doing.

In conclusion, the success of the judicial integration cannot be measured just in terms of opening courts in the northern municipalities, but in the sustainability of the entire judiciary in the long term. Guaranteeing this requires action in fields beyond purely judicial matters, it involves acting for the future.

#### RECOMMENDATIONS:

1. Bringing the UPKM into the Kosovar higher education system should remain a long-term goal, even if it is an almost impossible endeavor at this time. Thus, a fair and frank engagement with the institution to create actual, genuine cooperation is required. This process should be conducive to create the conditions for the actual study of Kosovar Law within its curriculum, either as part of the general Law program or as a separate diploma.
2. The Academy of Justice, being the best suited institution to act in the short term, needs to be given the clear mandate and resources to introduce the first bridge courses or modules, at least until a different institution can take over that function. That should build up on the knowledge the Academy has already gained about the needs and difficulties of Serb professionals to practice Law in Kosovo, in order to avoid reinventing the wheel at every step.

#### CONCLUSIONS

The Dialogue has served to raise and address a substantial number of unsolved issues between the two parts. Even though the process is nowhere near completion and there are many more political issues to be agreed upon, the Agreement on Justice, which represented the abolishment of the parallel structures, in itself has to be acknowledged as a landmark achievement for both parts; one with the potential of dramatically increasing the living standards of the affected population.

However, in order to achieve that, first it must be implemented successfully. Overshadowed by the humongous political obstacles and repercussions of the agreement, the more technical issues received little attention, and thus a number of institutions related to the judiciary received a heavy task with not enough resources to tackle it.

The Academy of Justice is expected to provide the initial and continuous training to current and future Serb judges and prosecutors, but is ill equipped to act on that mandate, having developed its activity thus far in a monolingual environment. Further resources are required to implement the necessary changes to the curriculum for the specific conditions in which those new judges and prosecutors operate, as well as for the translation of all documents and training sessions.

Similarly, judicial structures in the north must be equipped to fully act on a bilingual mindset by default. That involves both the Basic Court of Mitrovica, the Court of Appeals, and the Prosecution Office. Eventually, also the Supreme Court needs to be brought into that set of practices. The unity of jurisprudence makes it imperative. The same applies to legislation itself, which must be reviewed to ensure the appropriateness of the language employed and its consistency in Serbian and Albanian. In addition, notaries and private enforcement agents must start operating in the Serb majority municipalities as soon as possible, since right now both services are completely unavailable in those areas, and they constitute the basis of most of the civil relations according to the Kosovar legislation.

Finally, both KJC and the Ministry of Justice need to articulate a solution for the recognition of old cases with the highest priority, if legal certainty is to be kept. This solution must be comprehensive, binding and public, keeping a balance between expeditiousness (it cannot be cumbersome or require a long process) and legality (it must ensure a minimum compliance with the positive legislation).

All of those actions are necessary short-term measures that can hardly wait. Mid and long term, the mismatch of education and professional requirements for Kosovar Serb lawyers must also be tackled. Recognition of diplomas under the so-called Diploma Agreement is a necessary step, but not sufficient. As long as no Kosovar Law program is available for local Serbs, creating and retaining a sufficient pool of professionals to provide legal services will be costly and difficult.

That program must ideally be articulated with the participation of the UPKM, or alternatively, with the creation of a specific program within any of the public universities of Kosovo, provided that such institutions have the capacities to tailor the program for the very particular situation, and to provide the service effectively in Serbian. In the short term, such an endeavor needs to build up on the knowledge the Academy of Justice has already gained on the issue, and thus close cooperation and coordination is essential. The sustainability of the judicial system will depend to a large extent on the success of these initiatives.

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## **POLICY ANALYSIS**

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political Studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy relevant choices and recommendations to the key stakeholders and parties of interest.



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