



BROCHURE



Enhancing Transparency and Rule of Law in Kosovo-Serb Majority Communities



Enhancing Transparency and Rule of Law in Kosovo-Serb Majority Communities

Project supported by the U.S. Department of State **Bureau of International Narcotics and Law Enforcement Affairs (INL)**

Geographical Coverage: K/Serb majority municipalities of **North Mitrovica/Mitrovicë, Zvečan/Zvečan, Zubin Potok, Leposavić/Leposaviq, Gračanica/Gračanicë and Štrpce/Shtërpçë.**

Duration: 1 September 2020 – 31 August 2021

Project Synopsis

The overriding objective of the project is to enhance the depth and quality of the participation of citizens' participation in decision-making processes through a series of actions geared at the establishment of sustainable mechanisms that will enable project stakeholders to more closely and effectively monitor the work of local administrative bodies and courts. Furthermore, the program will seek to improve the administration of justice in northern Kosovo and K/Serb majority areas in the other regions in Kosovo through support to judicial institutions and facilitation of inclusion of young lawyers from the non-majority communities into the law practice. The project will be divided into two components; one dealing with citizens' participation in decision-making processes and the other with support to judicial institutions, with each component led by an organization with specific competencies in those areas.

Specific objectives under component 1:

Specific Objective 1: To increase capacities for anti-corruption action at local level through empowerment of CSOs and their networking into a Local Anti-Corruption Council, which will also include representatives of local self-governments and media.

Specific Objective 2: To contribute to the establishment of local mechanisms for inclusion of citizens' in the decision-making process at local level. This will be achieved through the establishment the Local Anti-Corruption Council to ensure transparency in decision-making processes and act as a bulwark against corrupt practices. This will lead to better transparency at local level will contribute to lowering corruptive behavior by various public institutions in K/Serb majority areas in Kosovo.

Specific objective 3: To increase knowledge and awareness on importance and means of inclusion of citizens in the decision-making process at local level. The objective aims to undertake a wide scope of activities in regard to the awareness raising activities including the representatives of local self-governments in K-Serb majority municipalities in Kosovo, citizens' and CSOs on mechanisms tailored to enhance public participation in the decision-making.

Specific objectives under component 2:

Specific objective 1: To increase the efficiency of the integrated judicial institutions in northern Kosovo and in other K/Serb majority areas in Kosovo.

Specific objective 2: To contribute to better inclusion of young lawyers from the non-majority communities in Kosovo into the law practice.

Specific Objective 3: To raise public awareness on the functioning of the integrated judicial institutions in northern Kosovo and K/Serb majority areas and citizen's rights before these institutions.

Facts on Justice Integration

In a long-awaited positive development, on 24 October, 40 judges and 13 prosecutors from non-majority communities, mainly Kosovo Serbs, were sworn in before the President of Kosovo. In addition, 149 judicial support staff who had previously been selected – 115 for the courts and 34 for the prosecution offices – signed their employment contracts on the same day.

Following the swearing-in ceremony, the Kosovo Judicial Council issued a call for applications for the position of the President of the Basic Court of Mitrovica, which according to the Belgrade-Pristina Justice Agreement was reserved for a judge from the Kosovo Serbian community. Following the selection procedure, judge Nikola Kabašić was elected as the court president.

Also, the Kosovo Judicial Council appointed judge Milan Bigovic from the Kosovo Serbian community as Supervising judge at the North Mitrovica division of the Court of Appeals.

K/Albanian Prosecutor Shyqyri Sylja kept the position of the Chief Prosecutor, as the Agreement reads that the Chief Prosecutors comes from the K/Albanian community.

Facts on integrated justice institutions

The Basic Court of Mitrovica, has jurisdiction over the seven municipalities in the region of Mitrovica: North Mitrovica, Zvecan/Zveqan, Zubin Potok and Leposavić/Leposaviq (north of Ibar River) and South Mitrovica, Vushtrri/Vučitrn and Skenderaj/Srbica (south of Ibar River).

The Basic Court of Mitrovica has its principal seat in Mitrovica, and it includes two courthouses: in North Mitrovica (courthouse in North Mitrovica, previously administered by EULEX) and in South Mitrovica (Jugobanka building). Also, the court has court branches in Zubin Potok, Leposavić/Leposaviq, Vushtrri/Vučitrn and Skenderaj/Srbica to offer easier access to justice to citizen. Court branches in Leposavić/Leposaviq, Vushtrri/Vučitrn, Skenderaj/Srbica and Zubin Potok have the competence to deal only with cases that are in the competence of the General Department.

Courthouse in north Mitrovica accommodates the General Criminal Department and Department of Serious Crimes, while the courthouse in South Mitrovica accommodates General Civil Department, Department for Minor Offenses and Departments for Minors.

Staff: Currently, 53 judges work at the Basic Court of Mitrovica, including 23 Kosovo Serb judges who were hired through the process of justice integration and 30 Kosovo Albanian judges.

The North Mitrovica division of the Court of Appeals was established after the completion of the justice integration, in accordance with the Belgrade-Pristina Brussels Agreement on Justice Integration. According to the Agreement, North Mitrovica division of the Court of Appeals is a new institution, which is specific as the Court of Appeals in Pristina does not have other divisions or branches in Kosovo. The division will have exclusive jurisdiction in all cases from the four municipalities in northern Kosovo, and jurisdiction over cases from the six K-Serb majority municipalities in other regions of Kosovo, except for serious crimes which are in the competence of the Court of Appeals in Pristina.

Staff: According to the Agreement, the division has 5 K-Serb judges and 2 K-Albanian judges and 11 K-Serb supporting staff, while K-Albanian supporting staff have not been assigned to the division yet. However, currently the Division has only two (2) K/Serb judges, following the retirement of two judge and promotion of one judge to the Specialist Department of the Court of Appeals in Pristina.

The Basic Prosecution Office of Mitrovica also has jurisdiction over the seven municipalities in the region of Mitrovica. The Prosecution Office is located at the building located in Bosniak Mahala in North Mitrovica. Unlike the court, the Prosecution Office does not have branches.

Staff: Currently, 20 prosecutors work at the Basic Prosecution Office of Mitrovica, including 10 Kosovo Serb prosecutors who were integrated in line with the Belgrade–Pristina Agreement on Justice Integration and 10 Kosovo Albanian prosecutors.

KEY ACHIEVEMENTS OF THE JUDICIAL INTEGRATION

- The increase of court's efficiency
- Contribution to reconciliation among communities
- Consistent application of laws
- Better quality of court decisions

The majority of judges that NGO ACDC talked to consider that the key achievements of the judicial integration are increased trust in judicial institutions and better access to justice. Judges explained that now citizens have no doubts as to which court they should go to and whether the decision will be enforced. K/Serb judges stated that K/Serb citizens from northern Kosovo feel more secure when their appeals are addressed to the appellate court in their region. Another significant achievement was the resolution of property cases, in which property ownership had been changed based on fraudulent translations.

SPECIFIC ACHIEVEMENTS

1. Multiethnic and Bilingual court

Following the judicial integration, the Basic Court of Mitrovica had become the biggest multiethnic court in Kosovo, with balance in number of judges and supporting staff. Moreover, the court equally use both official languages in Kosovo – Albanian and Serbian, and is capacitated to provide justice in the language of the party. The court has been praised many times for this achievement by many international stakeholders in Kosovo.

2. Transparency

The judicial integration has also resulted in better transparency in the work of the judicial institutions in northern Kosovo. For instance, the Basic Court of Mitrovica was announced more than once as the most successful court in Kosovo in terms of number of published court decisions. The U.S. Ambassador to Kosovo publicly congratulated to the leadership of the court for such extraordinary achievement.

KEY CHALLENGES IN THE JUDICIAL INTEGRATION

- Lack of professional literature
- Huge case backlog
- Disorder of cases
- Lack of legal standardization and dictionary
- Insufficient tolerance
- Complexity of cases
- Multiethnic environment

The judges see the quality of translation as one of the key challenges in the work of the North Mitrovica Division of the Court of Appeals. Other key challenges include the lack of training opportunities and the issue of recognition of decisions rendered by Belgrade-run courts. Interestingly, no judges mentioned the low number of cases assigned to the division by the Court of Appeals in Pristina. In communication with the supervising judge of the Division, UNMIK Justice Section learned that the Court of Appeals in Pristina has approximately 12,000 backlogged cases and that the judges from the Mitrovica Division expressed a willingness to contribute to the reduction of the case backlog. However, the position of the President of the Court of Appeals is that the Division will only receive cases registered from the date when the Division became operational.

Another issue raised in communication with the supervising judge was the jurisdiction of the Division. Namely, ACDC learned that there are different interpretations of the Belgrade-Pristina Justice Agreement when it comes to the territorial jurisdiction of the Division. While the KJC and the President of the Court of Appeals read the Agreement to mean that the Division only has jurisdiction over cases from the four K/Serb majority municipalities in northern Kosovo, the K/Serb judges at the Division read it to mean that they also have jurisdiction over cases from the remaining K/Serb majority municipalities in other regions of Kosovo. It seems that the above described issue prevents the judges of the Division from reaching their monthly quota of resolved cases which, according to judges, is 22-25 cases a month for all judges in Kosovo.

SPECIFIC CHALLENGES

1. Translation

One of the key problems faced by the integrated justice institutions in northern Kosovo is low capacities to ensure compliance with language rights standards and to ensure translation in both official languages, Albanian and Serbian. Namely, the Basic Court of Mitrovica has only two translators, while the North Mitrovica division of the Court of Appeals has no translators. In February 2021, the Kosovo Judicial Council (KJC) issued a vacancy announcement for four (4) additional translators at the Basic Court of Mitrovica, which, however, will not entirely resolve the issue due to large volume of files in backlogged cases which need to be translated into Serbian language in order to be processed by integrated Kosovo Serbian judges. It has to be mentioned that some international actors, primarily UNMIK have been supporting the justice institutions by hiring translators since 2018, but the systematic and sustainable solution has to be reached.

According to our sources from the Basic Court of Mitrovica and Basic Prosecutor's Office, Judiciary is working but with limited capacities due to lack of interpreters. They are struggling with translation of files into Serbian language, given that almost all case files they received were in Albanian language. However, cases were delivered, and Judges are organizing hearings, so finally after 18 years of delay the citizens are starting to enjoy Legal Certainty and Justice. Pure indicator of that is the fact that there is a significant decrease in the number of crimes committed in this period when compared with the period before judicial integration (according to head prosecutor office statistics). What remained to be done is to improve citizen's knowledge and awareness on outcomes of the Integration of Judiciary, which was the part of the activities and what ACDC has done within the current and previous project interventions supported by INL.

2. Recognition of decisions rendered by Belgrade-run court in Kosovo

The Belgrade-Pristina Justice Agreement reads that certain decisions made by Belgrade-run court, especially in civil cases, will be recognized in the Kosovo system. However, up to date, the mechanism which would allow for such recognition has not been established. Because of this problem, many citizens in northern Kosovo have not been able to obtain certain services or exercise certain rights. The President of the Basic Court of Mitrovica informed that the representatives of the justice institutions in northern Kosovo have been working with the KJC and international partners to resolve this issue. According to available information, a Working Group was established through good services of USAID but, however, only two meetings were held, and no progress has been made up to date.

3. Insufficient staff

Since April 2021, the North Mitrovica division of the Court of Appeals works with extremely limited capacities. Namely, following the retirement of two judges and promotion of one judge to the Special Department of the Court of Appeals, the Division operates with two K/Serb judges and two K/Albanian judges, eventhough the Belgrade-Pristina Justice Agreement provides for five (5) K/Serb judges at the Division, The Supervising judge stated that Kosovo Serbian administrative staff is hired, while no Kosovo Albanian administrative staff has joined the court up to date. NGO ACDC also learned in communication with judges that there are confusions about the jurisdiction of this court division.

On the other side, the Basic Court of Mitrovica faces with the lower number of judges and also the supporting administrative staff. The vacancy announcement for the supporting staff was issued March 2021, but has not been completed yet.

4. Poor translation of laws

Finally, the problem affecting the entire judiciary in Kosovo which is present from the beginning and establishment of Kosovo Judiciary is poor translation of laws which is indeed a serious challenge, as laws contain substantive errors on both Serbian and Albanian which makes the work of prosecutors, judges and lawyers much complicated. This problem was supposed to be resolved before the completion of the integration process. ACDC is constantly putting great effort to raise awareness of this problem among the all relevant institutions both national and international, including the foreign embassies.

RECOMMENDATIONS

1. Language issue to be resolved in systematic manner

Even though the language issue has been temporarily overcome with the support from international stakeholders in Kosovo, it remains as one of key tasks of the justice system to address this issue in a systematic manner. Namely, it is necessary that the vacancy announcements are launched for the positions of translators at justice institutions and that employed translators undergo proper trainings on legal terminology.

Also, it is important to mention that international stakeholders in Kosovo have been supporting the Basic Court of Mitrovica through hiring translators since 2018 (in particular UNMIK and GIZ) but, however, this support will end soon and more sustainable solution is needed.

2. Poor translation of laws to be resolved

One of the key challenges identified through activities with judges and prosecutors and through monitoring activities was the problem of poor language of Serbian version of the Kosovo laws. Therefore, it is of great importance of harmonize the texts of the laws in both Albanian and Serbian languages to avoid different interpretation and application of laws, which may lead to legal insecurity. OSCE has initiated the process to improve the accuracy of laws in Serbian language, which will improve the administration of justice.

3. Raising awareness of the citizens

NGO ACDC activities and conducted research has shown that awareness raising activities are still needed to inform citizens on the operation of the new justice institutions. An outreach campaign conducted by the justice institutions themselves would increase the knowledge of citizens on their work and, consequently, raise the level of trust among citizens in the new integrated justice institutions.

4. Better inclusion of young lawyers

At a number of activities organized by NGO ACDC as part of the project, judges, prosecutor and expert lawyers talked about the age structure of the justice institutions. They advised that the average age is very high and that many judges, prosecutors and advocates will soon retire.

Therefore, it is of outmost importance that the new generation of young lawyers is trained to pass the Bar examination and then offered opportunities to join the justice institutions, especially in northern Kosovo. New energy is very important for the consolidation of the integrated justice system in northern Kosovo.

5. Greater support to the North Mitrovica Division of the Court of Appeals

During monitoring activities, NGO ACDC learned that most of the focus of international and local stakeholders was on the Basic Court and the Basic Prosecution Office of Mitrovica. On the other side, the North Mitrovica division of the Court of Appeals was somehow marginalized and has not received almost no support. This institution of great importance, as it is competent to hear cases from all 10 K-Serb majority municipalities, still lack needed attention for their work and the issue of the Division's jurisdiction is still vague and depends on the decision of the President of the Court of Appeals in Pristina.

Moreover, it also lacks K-Albanian administrative staff and, thus, advocacy efforts are needed to place more focus on the court division and provide support in order to make the division fully functional. Finally, the court division in north Mitrovica has received a very low number of cases from the Court of Appeals in Pristina, which does not contribute to efforts in reduction of case backlog in Kosovo. Therefore, it is important to utilize the resources of the court division in North Mitrovica in reducing the case backlog at second instance.

The situation of the Appellate Division in North Mitrovica

The Belgrade–Pristina Justice Agreement reads that the validity and recognition of decisions issued by Belgrade–run courts, in particular in the civil matters, will be ensured through the work of the Committee which will be established. Four years after the Agreement was signed and year and a half following the completion of the integration, the first meeting of the Committee was held. However, the first meeting facilitated by USAID, brought completely opposite positions vis-à-vis the mechanism for recognition of the said decision. K/Serb judges requested that the Kosovo Judicial Council (KJC) issues an instruction to courts with directions how to ensure recognition of decisions; while the Kosovo authorities requested submission of individual requests through international legal cooperation which, in practice, would require a lot of time as the anticipated number of requests is very high.

On a different note, one of the key novelties of the 2013 Belgrade–Pristina First Agreement and the 2015 Belgrade–Pristina Justice Agreement was the establishment of the North Mitrovica Division of the Court of Appeals. The division represents a new institution, as the Court of Appeals has no other division or branches in Kosovo. The Division has five K/Serb judges and two K/Albanian judges, assisted by eleven administrative and supporting staff, all K/Serb and as K/Albanian supporting staff have never been hired, despite multiple requests by the supervising judge.

Since the day-one of the work of the Division, its work face challenges related to different interpretation of the Belgrade–Pristina Justice Agreement vis-à-vis the jurisdiction of the Division. Namely, the interpretation of the Kosovo Judicial Council (KJC) and the President of the Court of Appeals in Pristina is that the North Mitrovica court division has jurisdiction only for cases coming from the four K/Serb majority municipalities in northern Kosovo. On the other side, the interpretation of GoS and K/Serb judges is that the court division has jurisdiction also over cases from the remaining six K/Serb majority municipalities in other regions of Kosovo.

Following the careful reading of the Agreement, it can be noted that it reads the following: Article 10 of the First Agreement of Principles Governing the Normalization of Relations reads that “The Appellate Court in Pristina will establish a panel composed of a majority of K/S judges to deal with all Kosovo Serb majority municipalities”. Article 11 of the Agreement reads that “A division of this Appellate Court, composed both by administrative staff and judges will sit permanently in northern Mitrovica (Mitrovica District Court). Each panel of the above division will be composed by a majority of K/S judges. Appropriate judges will sit dependant on the nature of the case involved”.

It can be further noted that the Agreement does provide for court division jurisdiction over cases from the four K/Serb majority municipalities in northern Kosovo; while for cases from the remaining six K/Serb majority municipalities in other regions of Kosovo, the Agreement only reads that these cases will be assigned to a trial panel of majority K/Serb judges, without any reference to K/Serb judges from the North Mitrovica Division of the Court of Appeals. On this note, it can be noted that the Court of Appeals in Pristina has two K/Serb judges who are assigned to panels in cases coming from the six K/Serb municipalities. Therefore, it seems that, according to the Agreement, assignment of cases coming from the six K/Serb majority municipalities south of River Ibar is at the discretion of the President of the Court of Appeals.

Nevertheless, there are additional aspect of this matter which should be considered. First, the Court of Appeals has approximately 12, 000 backlogged cases and the judges from the North Mitrovica division expressed their willingness to contribute to reduction of the backlog by assuming responsibility for processing certain portion of these cases. Also, this would allow judges to reach the monthly case load for judges in Kosovo, which is set at 22–25 cases per month. In 2018, no judge from the division was even close to the standard due to low number of incoming cases. Second, the two K/Serb judges at the Court of Appeals in Pristina are civil judges and, despite this fact, they are also assigned to trial panels in criminal cases. This situation is not prohibited by law but, however, looks not logic knowing that there are two criminal judges at the North Mitrovica Division who in 2018 have not been assigned to a single trial panel for the cases from the six K/Serb municipalities. This also means that K/Serb civil judges cannot preside the trial panel in criminal cases as they are civil judges.

Based on the above, K/Serb judges at the North Mitrovica Division of the Court of Appeals, including K/Serb judges from the Basic Court of Mitrovica, tend to believe that the Division is intentionally marginalized by competent Kosovo authorities. Additional argument in support to this perception is the difference in approach of K/Serb and K/Albanian judges vis-à-vis the Division. Namely, K/Serb judges in their first instance judgements provide advise on right to appeal with reference to the Court of Appeals – the North Mitrovica Division of the Court of Appeals; while K/Albanian judges do not include any reference to the court division in North Mitrovica.

CONCLUSION

In conclusion, it can be argued that the judicial integration has been a successful story as it ensured better Rule of Law in northern Kosovo and, after almost ten years of rule of law vacuum in the north, established a system of effective administration of justice. Interviews with judges and prosecutors and also surveys that NGO ACDC implemented with citizens in northern Kosovo have shown that legal certainty has improved significantly in the north.

Nevertheless, a number of unresolve issues remain and pose a challenge in the functioning of the integrated judiciary. One of the key issues is the issue of the Validity of Appeal or the recognition of decisions issued by Belgrade-run courts in Kosovo. Although a Working Group has been established through mediation of USAID, no progress has been made up to date.

Finally, the issue of the jurisdiction of the Appellate Division in North Mitrovica has to be resolved too as disagreements over this issue and the issue of the composition of panels for cases coming from the K/Serb majority municipalities often result in political instability as it recently happened in the case against the former K/Serb Minister.