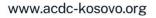


JUNE 2024 CURRENT STATUS OF JUDICIARY AND LAW PRACTICE IN NORTHERN KOSOVO

Challenges and Recommendations



Title: Current Status of Judiciary and Law Practice in Northern Kosovo: Challenges and Recommendations

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The views expressed in this document are solely those of the author and the research team.

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This document provides a brief overview of the complex situation vis-à-vis the status of judiciary and law practice in northern Kosovo, where the resignation of Kosovo Serbs from the police, judiciary, and other Kosovo institutions has had a significant impact.

The brief analysis does not intend to provide a comprehensive overview and assessment of the matter but rather to give concise information on the status of judiciary and law practice, flag some important issues that seem to be under the radar, and, finally, provide a few recommendations to remedy the identified challenges and problems.

This first section of the research focuses on the state of judicial integration in northern Kosovo, particularly in the aftermath of the resignation of Kosovo Serb judges, prosecutors, and supporting staff. It also presents key findings from a survey conducted with judges at the Basic Court of Mitrovica/Mitrovicë, implemented by the NGO ACDC. The survey has shown invaluable insights into the perceptions and experiences of K/Albanian judges regarding the resignations of the K/Serbs judges and staff and its impact on the work of the judiciary in northern Kosovo.

The second part provides an overview of the status of law practice and notary services in northern Kosovo, underlining the challenging issues that shall be addressed by the relevant stakeholders in Kosovo, both local, central, and international. It also highlights possible implications and consequences if the challenging matters are not addressed, in particular, the absence of K/Serb notaries in the north and the insufficient number of licensed lawyers.

Finally, the third part of the document provides recommendations aiming to remedy the shortcomings and improve the situation which would be to the benefit of all residents in the north and Kosovo in general.



The methodology of the research was multifold. Namely, in addition to the desk study, NGO ACDC conducted interviews with judges of the Basic Court of Mitrovica/ë and with the Deputy court president, aiming to assess the progress and remaining challenges in the operation of the integrated judiciary in northern Kosovo, following the resignation of K/Serb judges and staff.

Moreover, NGO ACDC regularly monitored the operation of the court during the entire period since the resignation of Kosovo Serb judges, prosecutors, and administrative supporting staff. Monitoring activities included visits to the court, communication with judges and admin staff, and meetings and discussions with expert lawyers from northern Kosovo, but also with judges who resigned from their functions.

Finally, NGO ACDC has been in regular communication with the representatives of the competent institutions in northern Kosovo and also collected information from parties who sought services from judicial institutions as well as from Notary Offices and lawyers in the north.



THE STATUS OF THE JUDICIARY IN NORTHERN KOSOVO

On November 5, 2022, K/Serb judges, prosecutors, and administrative/support staff resigned from their positions in all judicial institutions in northern Kosovo. This mass resignation was a protest against the failure to establish the Association/Community of Serb Majority Municipalities (ASM/ZSO) and other breaches of the Brussels agreements between Belgrade and Pristina. The Detention Center in North Mitrovica/Mitrovicë was the only institution unaffected by these resignations.

A total of 144 Serbs left the Basic Court of Mitrovica/Mitrovicë, including 25 judges and 119 administrative staff. Additionally, 32 K/Serbs, comprising 10 prosecutors and 22 administrative staff, resigned from the Basic Prosecution Office in Mitrovica. Furthermore, five K/Serb judges and 12 support staff from the Appellate Division in North Mitrovica/Mitrovicë also resigned from their positions.

Following communication with interlocutors from the judicial institutions in Kosovo, they have provided the following details on the remaining number of judges and prosecutors:

The Basic Court of Mitrovica (acting president judge Bekim Veliqi)			
No (0) K/Serb judge and no (0) K-Serb staff			
Twenty one (21) K/Albanian judges, plus admin/support staff			
South Mitrovica:	11 judges (8 civil, 2 minor offenses, and 1 juvenile judges).		
North Mitrovica:	10 criminal judges		
Vushtrri/Vučitrn:	7 judges		



Skenderaj/Srbica:	3 judges
Leposavic and Zubin Potok:	no judges.

The Basic Prosecution of Mitrovica (Chief Prosecutor Mr. Ismet Ujkani)

0 K/Serb judges and 0 K-Serb staff

8 K/Albanian prosecutors (including the chief prosecutor), plus admin/support staff

4 K/Serb prosecutors sent from other Prosecution Offices as support

Appeals Division in North Mitrovica

No (0) K/Serb judges and no (0) K/Serb staff

Two (2) K/Albanian judges (who were not seating in North Mitrovica, but travelled from Pristina when appointed to an appellate panel). No admin/support staff.

Basic Court of Prishtinë/Priština (Gračanica/Graçanicë):

Three (3) K/Serb judges plus K/Serb staff

Basic Court of Ferizaj/Uroševac (Štrpce/Shtërpcë):

Three (3) K/Serb judges plus K/Serb staff



Basic Court of Gjilan/Gnjilane (Novo Brdo/Novobrdë)

Three (3) K/Serb judges plus K/Serb staff

The Court of Appeals (Prishtinë/Priština)

No (0) K/Serb judges, four (4) K/Serb supporting staff

The Supreme Court of Kosovo

Two (2) K/Serb judges

In terms of judiciary capacities in the region of Mitrovica/Mitrovicë, it seems that the situation is back to the period from March 2008 until the completion of integration, when the judiciary in the Mitrovica region operated from Vucitrn/Vushtrri. During the mentioned period, it operated in a limited capacity and processed mainly urgent cases due to an insufficient number of judges/prosecutors and staff, plus inappropriate premises. It goes without saying that the case backlog had significantly increased during that period and that the same could be expected in the current circumstances.

Also, it should be emphasized that the mass resignations of K-Serb judges canceled many successes in the work of the Basic Court of Mitrovica/ë, including consistent compliance with the Law on Official Languages in Kosovo, as well as the court's leadership in transparency and the number of published judgments. Namely, the Basic Court of Mitrovica/ë was one of the few Kosovo institutions in which the right to use the Serbian language and the Cyrillic alphabet was consistently enforced, while the court was praised several times by the relevant Kosovo institutions and international representatives for its transparency in its work, especially in terms of the number of published judgments.



Since November 2022, the K/Albanian judges have had difficulties coping with the workload, and it seems that there was no action to cover court branches in Leposavic and Zubin Potok.

As per Art.104(2) of the constitution of Kosovo, "the composition of the Judiciary shall reflect the ethnic diversity of Kosovo".¹ Following the resignation of K-Serb judges from the judicial system in the north of Kosovo in November 2022 this has left a gap that is yet to be filled. With none of the resigned judges returning to their positions and continued challenges faced in recruiting replacement K-Serb judges given many factors (including the limited pool of candidates), this has further exacerbated case backlogs.

At the end of this section, it is important to emphasize the stance of the Kosovo Judicial Council not to accept resignations of judges and supporting staff of Kosovo Serbs, except in two cases where two judges of Kosovo Serbs were allowed to resign. Such a position enables the return of Kosovo Serb judges and staff, which is of great importance for the functioning of justice in northern Kosovo and, ultimately, the public trust in northern Kosovo.

Finally, for more detailed information on the state of justice in northern Kosovo after the resignations of judges and staff of Kosovo Serbs, the authors of this brief analysis refer to the OSCE Mission in Kosovo report, which provides detailed information and presents an excellent overview of the situation and the impact that resignations have had on the work of justice. The mentioned report is available on the OSCE website.²

² OSCE Mission in Kosovo, available at https://www.osce.org/mission-in-kosovo/562500





¹http://old.kuvendikosoves.org/common/docs/Constitution of the Republic of Kosovo with amend.I-XXV 2017.pdf

During the month of April, NGO ACDC conducted interviews with ten judges at the Basic Court of Mitrovica/Mitrovicë to identify their views on the operation of the court following the resignation of K/Serb judges and supporting staff.

The majority of judges stated that the court faced significant challenges following the resignation, mainly being the lack of judges and the increased workload but they claim that the court has been well-organized and there has been no gap in services.

When it comes to the return of the K/Serb judges and supporting staff, again all respondent judges stated that they were expecting their Serb colleagues to return as soon as possible as they had very professional and fruitful cooperation.

Asked how they see the inter-ethnic relations in the court upon the return, all judges answered that the relations would be work-related and friendly, and that the cooperation would continue in a professional and collegial manner.

Finally, most judges were of the opinion that the court could continue functioning in its current capacities but would continue to face challenges. They detailed that the return of K/Serb judges and staff would mean increased efficiency and better trust of the K/Serb community in Kosovo's judiciary.

UNRESOLVED ISSUES

Although the integration of the judiciary, according to assessments of many stakeholders including judges/prosecutors, lawyers, and negotiation



participants, was one of the greatest successes of the Belgrade-Pristina negotiation process, especially in terms of efficiency and cooperation among judges and staff from different communities, several unresolved issues remain. These issues stem from the agreements reached and are of great importance for the realization of the rights of all communities in the Mitrovica region, especially non-majority communities.

COMPOSITION OF APPELLATE PANELS

Another matter where the Government of Kosovo, as well as the competent judicial institutions, departed from the provisions of the 19 April 2013 First Agreement on the Normalization of Relations has been the composition of appellate panels for cases coming from the Serb majority municipalities. Namely, Article 10 of the First Agreement reads the following:

"The judicial authorities will be integrated and operate within the Kosovo legal framework. 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."³

In addition, Article 11 provided for the establishment of an Appellate Division, with permanent seat in North Mitrovica/Mitrovicë with the majority of K/Serb judges. The article reads the following:

"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 dependent on the nature of the case involved."⁴

However, according to judicial interlocutors, these provisions were only partially respected in practice. Namely, some cases coming from the four northern municipalities were decided before the Court of Appeals in

⁴ Ibid.





³ http://old.kuvendikosoves.org/?cid=2,191,1057

Pristina, instead of before the Appellate Division in North Mitrovica/Mitrovicë, although the appellate panels in Pristina were mixed and included Serbian judges.

The practice further changed after 2019 when the Assembly of Kosovo adopted a new Law on Courts, which envisaged the establishment of the Special Department at the Basic Court of Pristinë/Priština which was given exclusive subject matter competencies to adjudicate certain cases, including war crimes, organized crime, etc. The same Law provided that the Special Department is competent to adjudicate all cases within the competence of the Special Prosecution of Kosovo (SPRK).⁵

Since the adoption of the new law, the Kosovo Judicial Council took a stance that the provisions of the First Agreement (and the Justice Agreement) vis-à-vis the composition of the appellate panels at the main seat in Pristina do not apply to cases within the competence of the Special Department, since it did not exist at the time when the First Agreement was reached and ratified in the Assembly of Kosovo by the 2/3 majority.

Nevertheless, it shall be noted that the First Agreement was ratified in the Assembly of Kosovo and that, according to the Constitution of Kosovo, it has precedence over any law in Kosovo. Namely, Article 19.2 reads the following:

"Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo."⁶

Therefore, in line with the Constitution of Kosovo and the well-known legal principle that higher legal acts derogate lower legal acts (*lex superior derogate legi inferiori*) it shall be noted that the new Law on Courts could

⁶http://old.kuvendikosoves.org/common/docs/Constitution of the Republic of Kosovo with _amend.I-XXV_2017.pdf



⁵ Law on Courts, Article 13.1.1, see at <u>https://md.rks-gov.net/desk/inc/media/F6BADB4F-6CD7-42F2-9E54-9D01B98A778E.pdf</u>

not have derogated the provisions of the First Agreement but should have been in accordance with it, since it was ratified by the Assembly of Kosovo.

According to available information and advice from judicial interlocutors, the appellate panels before the Court of Appeals in Pristina are composed exclusively of K/Albanian judges. This is the case even in cases where the party or all parties are coming from the K/Serb majority municipalities in Kosovo.

In reference to this, according to available information, there has not been a single K/Serb judge at the Court of Appeals since the beginning of 2024. This situation is due to the promotion of K/Serb judges to higher positions at the Supreme Court of Kosovo and/or the retirement of judges. Nevertheless, it remains unclear what are the reasons for the lack of action by the Kosovo Judicial Council to issue vacancy announcements and appoint new judges, as it is a legal requirement. On this note, it shall be noted that some lawyers argue that some decisions made on appeal may be challenged on the grounds of failure to comply with the applicable provisions in the composition of the appellate panels in cases coming from the K/Serb majority municipalities.

In conclusion, NGO ACDC underlines the importance of dialogue and efforts by all relevant stakeholders in Kosovo to remedy the current situation and push for the appointment of new K/Serb judges to meet the legal requirements vis-à-vis the composition of appellate panels. However, this will be dealt with in the Recommendations Section.

RECOGNITION OF DECISIONS ISSUED BY BELGRADE-RUN COURTS IN KOSOVO

Another part of the First Agreement and the Justice Agreement that was not implemented in practice was the one on the recognition of decisions issued by Belgrade-run courts in Kosovo, which were operational until the end of September 2017.



Namely, Annex 1⁷ of the Justice Agreement had foreseen that the decisions issued by the Belgrade-run courts in Kosovo would be validated unless they violated the rights of third parties. It was further agreed to establish a Commission/Panel that would come up with a methodology for the recognition of such decisions. However, since no progress was made in years after the agreement, in 2019, USAID in Kosovo took the initiative to form an Ad Hoc Commission to propose the modus for the recognition of the mentioned decision, in line with the Agreement.⁸ The Commission was composed of representatives of both sides and it included the president of the Basic Court of Mitrovica/Mitrovicë at the time.

However, despite efforts invested by USAID as a moderator, no progress has been made since the two parties had completely opposite views on the way forward. The whole effort ended after two meetings held and has never been initiated again.

On this note, NGO ACDC notes that a significant number of residents have not been able to enjoy rights acquired through decisions of the Belgraderun courts in Kosovo due to the failure to agree on the modus for the recognition of these decisions. Many of them still await to enjoy rights from their marriage, inheritance, or various types of contracts. Also, many residents struggle to have their civil or marital status regulated and recognized in Kosovo due to the non-recognition of the aid decision.

Therefore, it is of utmost importance to address this issue as soon as the judiciary is consolidated again, i.e. when the K/Serb judges and prosecutors and supporting staff return to their positions. This mostly applies to civil cases that do not affect the rights of third parties and would not undermine the jurisdiction of the Kosovo legal system and its competent institutions.

⁸ Information communicated by the interlocutors from the judicial institutions in northern Kosovo and by interlocutors who were part of the Belgrade-Pristina technical talks on justice in Brussels.



⁷ The Annex is not publicly available, but NGO ACDD associates had an opportunity to have a look into it after the completion of the judicial integration.

There are currently no K/Serb notaries in northern Kosovo. Although a vacancy was announced in 2018 for the municipalities in the region following judicial integration, it was subsequently cancelled and has not been re-advertised.

Recently, the Ministry of Justice announced the appointment of notaries in Kosovo, including six positions for the northern municipalities. This vacancy was open from April 2 to 17 and detailed the following allocation: North Mitrovica/Mitrovicë: two positions, Leposavić/Leposaviq: two positions, Zvečan/Zveçan: one position, and Zubin Potok/Zubin Potoku: one position.

From our sources, we learned that eight K/Serbs have successfully passed the Notary Exam and are eligible to apply for these positions. However, one candidate, a former judge at the Basic Court of Mitrovica/ë, is nearing retirement. Our sources also indicated that only four K/Serbs have applied for the available positions.

A significant concern is that the six notary positions in the northern municipalities might be filled by K/Albanian candidates. K/Serb candidates are reluctant to accept these roles due to the current situation following the resignations of K/Serb judges and prosecutors in the north. This could lead to further trust and language rights issues, as K/Albanian notaries operate exclusively in Albanian, even when dealing with K/Serb parties. It is worth noting that in South Mitrovica/Mitrovicë, there are two notary offices, with one having closed due to the retirement of a notary. Neither of the remaining notaries draft documents in Serbian, instead using court-sworn interpreters for oral translation.

Financial reasons partly explain this practice. Interpreters are paid only 10 EUR for oral translation, while translating a full document costs 10 EUR per page. However, there may be additional factors contributing to this situation.



The Law on Notary allows such practice. Article 32.1. reads that "All notarized deeds shall be issued in the Albanian or the Serbian language, depending on the language better known by the notary processing the act. Notarized deeds may also be issued in other languages, in cases when the notary takes the personal legal liability regarding the knowing of such a language."

On the other hand, Article 32.2 reads that:

"In the municipal level where the languages have a status of official languages or are used for official purposes as provided by Law, the parties may ask the notary to issue a copy in such a language, as they desire. This copy is deemed to be a notarized deed under paragraph 1 of this Article."

However, if parties use this right, it seems they would bear the costs of translation, which may be regarded as a limitation of the guaranteed right to use the Serbian language before public institutions in Kosovo.

In conclusion, it is important to underline that efforts by all stakeholders are needed to liaise with the competent institutions at the central level, especially the Ministry of Justice, as well as with community leaders from the north and the K/Serb candidates to try to mediate the solutions that suit the interest of the communities in northern Kosovo.

On this note, it shall be emphasized that in case newly appointed notaries in the north do not speak and use the Serbian language in their work, it would create further limitations on the rights of the non-majority communities to receive services in their own language and will further affect the trust toward the Kosovo institutions.



The number of K/Serb lawyers in membership of the Kosovo Bar Association has increased following the integration of the judiciary in 2017. Also, a certain number of lawyers joined law practice after their retirement from their positions in courts and prosecution offices. However, the number is still insufficient given the K/Serb population, especially in northern Kosovo, and having in mind the needs of the law practice.

Reasons for a low number of K/Serb licensed lawyers are multiple. On this note, one of the key issues to be resolved is the recognition of diplomas from Serbian universities, as a number of young lawyers in Kosovo are in possession of those diplomas and are not eligible to apply for the Bar Examination before their diploma is validated ("nostrification" process) by the Ministry of Education in Kosovo. The resolution of this matter has been pending since the start of the Belgrade-Pristina dialogue process in Brussels and has not been resolved despite the Agreement on Diplomas, made in 2011.

Additionally, the research team discussed with expert lawyers from the north the legal practice in Kosovo from the perspective of a member of a non-majority community and they pointed out that out of approximately 900 lawyers in Kosovo, about 4.1% are from non-Albanian communities, and there is a decreasing tendency year by year. They also pointed out the administrative and language barriers young lawyers face, which discourage them from entering the profession.

Respondent lawyers assured that there has always been interest from young lawyers to engage in law practice, but the problem is the verification of diplomas, which has been an issue for years. They also raised the issue of job vacancies where the law guarantees the rights of minority communities, but verified diplomas are required, hindering the employment of minority community members.



Furthermore, the lawyers explained the Bar exam procedures in Kosovo from a minority community member's perspective and stressed the importance of preparatory courses. They emphasized that understanding and interpreting the law and then preparing for the Bar is essential for candidates. It was further underlined that preparatory courses should be led by experts in the Kosovo legal system, to cover both theory and practice, helping non-majority community members to pass the Bar Exam and facilitating their inclusion into the law practice in Kosovo.

Another problem that has not been addressed properly by the competent institutions in Kosovo are few Bar Examination terms during the year, although the Law on the Bar Examination reads that there shall be four terms per year. In Article 12 para 3, the Law reads the following: "The exam is organized every three (3) months respectively four (4) times within one (1) calendar year".⁹

Finally, another issue that should be addressed is the work of the Kosovo Bar Association on the inclusion of lawyers from the non-majority communities. Namely, NGO ACDC learned that the Non-Majority Committee of the Bar Association either does not exist or has been completely dysfunctional. The organization learned from the K/Serb lawyers who presided over the Committee in the past that it seemed that efforts were lacking in ensuring the active participation and representation of non-majority community lawyers within the Kosovo Bar Association.

⁹ Law on the Bar Examination, Article 12.3, available at <u>https://cps.rks-gov.net/wp-content/uploads/2020/09/Law-on-the-Bar-Examination.pdf</u>





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K/Serb members of the Kosovo Chamber of Advocates (by region): ¹⁰		
Mitrovica/Mitrovicë Region	12	
Prishtinë/Priština (Gračanica/Graçanicë)	11	
Uroševac/Ferizaj (Štrpce/Shtërpcë	4	
Pejë/Peć	0	
Prizren	0	
Djakova/Đakovica	0	
Gjilan/Gnjilane	3	
Total:	30	

¹⁰ See at <u>https://www.oak-ks.org/en/avokatet</u>







Based on the findings of the research, the recommendations for remedying the failures and improving the situation in judiciary and law practice in the north are the following:

- ✓ Employing or assigning from other courts additional judges to meet the increased workload following the resignation of K/Serb judges.
- ✓ Recruitment of additional full-time translators/interpreters to provide timely translation in both official languages.
- Mobilization of all relevant stakeholders and advocacy activities to address the outstanding issues stemming from the First Agreement and the Justice agreement, especially the composition of appellate panels and the recognition of decisions issued by the Belgrade-run courts in Kosovo.
- ✓ Appointment of K/Serb notaries for the four municipalities in northern Kosovo, aiming to ensure the provision of services in the Serbian language and increase the trust of the non-majority population.
- ✓ Develop and offer training programs for lawyers from the nonmajority communities to create a pool of lawyers to be qualified to apply for positions of judges and prosecutors and/or join the law practice in Kosovo.
- Mobilize competent institutions and the Kosovo Bar Association to reach to the candidates for the non-majority communities to increase the number of licensed lawyers from these communities.
- ✓ Reactivate the Non-Majority Committee of the Kosovo Bar Association, aiming to ensure the active participation of the nonmajority lawyers in the work of the association.
- Develop and implement programs that would provide a safe and friendly environment for lawyers from all communities in Kosovo to exchange knowledge and experience and plan future cooperation.
- Make all efforts to advocate for the return of K-Serb judgers and supporting staff and prepare training programs to facilitate smooth re-integration.



This analysis of the judiciary and law practice in northern Kosovo highlights the sensitivities surrounding the integration of Kosovo Serbs into Kosovo's judiciary, notary services, and law practice. It underscores the significant challenges that have emerged following the resignations of Kosovo Serb judges, prosecutors, and administrative staff.

The research conducted by NGO ACDC has proven invaluable in identifying the status of the integrated judiciary in northern Kosovo, particularly concerning issues that have been overlooked or marginalized in the judicial integration process, especially following the resignations of K/Serb judges, prosecutors, and support staff.

Kosovo Albanian judges viewed the integration as a success, emphasizing the collegial and professional cooperation with their K/Serb colleagues. They noted that integration led to improved service provision and reduced case backlogs as key achievements. However, following the resignations of K/Serb judges and staff, they now face greater challenges but maintain that the judiciary in northern Kosovo is fully operational with no service gaps, a claim supported by official statistics from the Kosovo Judicial Council.

Conversely, K/Serb lawyers practicing in Kosovo do not trust these official statistics. They assert that their workload dropped significantly following the resignations, citing that in 2023 alone, hundreds of hearings were delayed due to the absence of prosecutors.

The key challenges include the lack of judges and prosecutors and the increasing case backlog. Additionally, there are challenges related to translation and the subject allocation system. Although the agreement on the judiciary stipulates that cases should be assigned to judges based on their knowledge of the language of the parties or the case file, cases are assigned to prosecutors based on random distribution. Since 2021, contrary to the agreement, cases in the Basic Court in Mitrovica/Mitrovicë



have been assigned by random selection through software, based on a decision by the Judicial Council of Kosovo.

Public trust in the judiciary among non-majority communities in northern Kosovo has significantly declined, and restoring this trust will require considerable effort following the return of K/Serb judges and prosecutors.

Regarding notary services, the absence of K/Serb notaries in northern Kosovo has been a major issue. K/Albanian notaries in South Mitrovica/Mitrovicë, whose services are used by residents of the four northern municipalities, provide services exclusively in Albanian. This forces K/Serb parties to bear the cost of oral translations, with written translation costs being even higher. Efforts must be made to appoint Serbian-speaking notaries for the northern municipalities to ensure that residents can enjoy their constitutionally guaranteed rights, including the use of Serbian as an official language in Kosovo.

In terms of law practice among K/Serbs, it is evident that the number of K/Serb lawyers is low. Measures should be taken, including reactivating the Non-Majority Committee of the Kosovo Bar Association and removing barriers to taking the Bar Exam, such as recognizing diplomas issued by Serbian universities.

