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The Official Bilingualism in Kosovo

Key Preconditions
and Challenges

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Table of Content

| | |
|--|----|
| 1. Introduction | 3 |
| 2. The Office of the Language Commissioner in Kosovo | 6 |
| 2.1. Legal framework for the work of the Language Commissioner | 6 |
| 2.2. Comparative legal analysis | 12 |
| 2.3. Concluding remarks | 16 |
| 3. Shortage of translation staff as an obstacle to efficient justice | 18 |
| 3.1. The existing situation | 18 |
| 3.2. The situation in the courts | 20 |
| 3.3. Conclusions and recommendations | 23 |
| 4. Draft Law on Amendments to the Law on the Use of Languages | 27 |

1. Introduction

The publication "Official Bilingualism in Kosovo – Key Preconditions and Challenges" is the final research document on the project "Creating a Bilingual Kosovo". This project was implemented by the NGO AKTIV in the period from October 2018 to March 2021, based on the financial support of the Embassy of the Kingdom of Norway in Priština. The project was implemented with the aim of improving respect for language rights in Kosovo, primarily the equal institutional use of the Albanian and Serbian languages. This publication is a kind of "legacy" of the project. It should serve as a source of knowledge about the shortcomings of the system of protection of language rights in Kosovo, but also as a guide for further work on overcoming those shortcomings.

The main purpose of the project "Creating a bilingual Kosovo" was reflected in the contribution it was supposed to make to improving the implementation of the Law on the Use of Languages in practice, in order to provide better access to information, public services, and institutional protection to members of the Serb community and other Kosovo residents. However, during the implementation of the project, the project team noticed that the legislative framework itself poses obstacles to the protection of language rights in practice.

The Constitution of Kosovo (2008) and the Law on the Use of Languages (2006) declare that Serbian and Albanian are official languages that are in equal use in all institutions in Kosovo. Official or institutional bilingualism, established in this way, has proven to be too high a standard for Kosovo institutions to achieve. In addition to the often mentioned financial and personnel limitations, during the implementation of this project, it was shown that there is a need to further work on improving the normative framework for the protection of language rights.

Language rights occupy a prominent place in the corpus of human and minority rights. Their role is to enable members of ethnic and linguistic minorities to preserve their special identity, but also to protect their rights and interests before public authorities. That is why modern European legislation and international instruments guarantee respect for language rights. Official bilingualism represents a higher level of protection of language rights and thus is comparatively less common. It is established in order to express the linguistic diversity, but also the division of a certain area. Its role is to

maintain a balance between different ethnolinguistic communities living in one society. The situation is similar in Kosovo.

The official equality of the Albanian and Serbian languages in Kosovo is a special guarantee given to minority communities to ensure their participation in public life and equal access to public services. Serbian is a less represented official language. However, the equal position of members of the Serb community, as well as other residents of Kosovo who rely on the Serbian language in administrative and legal affairs, such as members of the Gorani, Bosniak, part of the Roma, Croat and Montenegrin communities, depends on its equal use by institutions.

Official bilingualism in Kosovo, despite its importance for the protection of the rights of non-majority communities and the preservation of stable inter-ethnic relations, is turning into *tokenism*. Monitoring the actions of institutions regarding the respect of equal use of the Serbian language, which is faithfully documented through reports prepared by the NGO AKTIV as well as other organizations, shows that in practice there is no real and essential equality of the two official languages. The use of the Serbian language is sporadic. At certain times, institutions provide translations into Serbian in order to create the impression of respect for bilingualism. In contrast, there are numerous examples that translation of documents is missing or delayed, or is of insufficient quality, which in turn maintains the unequal and disadvantaged position of Kosovo residents who use the Serbian language.

A special contribution provided by the project "Creating a bilingual Kosovo" concerns the opening of the topic of deficiencies in the normative framework for the protection of language rights, which was not discussed enough before. Legal gaps, ambiguities, and uncertainties give room for legislation to be interpreted differently. This is best illustrated by the fact that no one in Kosovo can be sanctioned for violating language rights in Kosovo, which takes place without any consequences.

This publication builds on previous research work of the NGO ACTIVE. In the first place, it is about the publication "Language obstacles to equal access to services", which points out the legal gaps that characterize the Law on the Use of Languages and procedural laws, as well as the inconsistency of procedural laws with the Law on the Use of Languages. On the same track, this publication opens up another big topic. It is about the legal establishment of the Office of the Language Commissioner.

The publication “Official Bilingualism in Kosovo – Key Prerequisites and Challenges” consists of **three units**. The **first unit** provides an analysis of the legal position of the Office of the Language Commissioner, as well as its comparison with similar bodies around the world. This section discusses the shortcomings and weaknesses of the legal framework for the work of the Office that prevent it from becoming an independent institution that would be able to meet its mandate.

Second unit deals with the problems of translation staff in the courts in Kosovo. This unit is the result of several months of field research aimed at examining whether the courts in Kosovo have the necessary translation staff. This section points out the limitations that court interpreters face in their work, as well as the general shortage of translation staff in courts, and makes recommendations for improving the translation capacity of courts.

The last unit presents the Draft Law on Amendments to the Law on the Use of Languages prepared by the NGO AKTIV. This proposal aims to correct the legal gaps that give institutions the space to choose in which language they will conduct a procedure, while the burden of seeking translation is placed on citizens. The proposal prepared by the NGO AKTIV requires that official bilingualism be interpreted in the best interest of citizens and that the institutions are ex-officio obliged to consider the language that the party knows better as the official language in administrative and legal proceedings.

The publication “Official Bilingualism in Kosovo – Key Prerequisites and Challenges” seeks to contribute to expert and theoretical discussion on the problems of official bilingualism in Kosovo. The questions it raises and the solutions it offers are not final. It is necessary for it to serve as an occasion for other actors, primarily those who come from institutions, to get involved in the conversation about these problems and potential solutions.

2. The Office of the Language Commissioner in Kosovo

2.1. Legal framework for the work of the Language Commissioner

The Office of the Language Commissioner in Kosovo has faced criticism over its ability to effectively preserve, promote, and protect language rights in Kosovo. This report will attempt to examine the development of the Office of the Language Commissioner from its inception in policy and law, and to point out how legal discrepancies and policy failures hinder its work. The report will then compare its legal and policy framework with those of leading international counterparts to investigate where the Office differs from others and what lessons can be learnt.

Law No. 02/L-37 on the Use of Languages

The Office of the Language Commissioner was established in April 2012 by Regulation No. 07/2012 and adopted by the Government of Kosovo, to serve as a body under the auspices of the Office of the Prime Minister (OPM).¹ The legal basis for its formation is in the Law on the Use of Languages (2006), which stipulates that the Government of Kosovo shall establish the Language Commission with the task to oversee the implementation of the same Law.

Law No. 02/L-37 on the Use of Languages lays out the role and responsibilities of the Language Commission under Article 32.² From its inception under Article 32(1), the Language Commission is tasked with the responsibility to “supervise the implementation of this Law”. Then, added to this are the responsibilities to “take actions and measures within its authority to ensure recognition of the equal status of the official languages and the compliance with this Law” under Article 23(2), to “conduct and carry out investigations pursuant to any complaint made to it that, by act or omission” under Article 32(3), and to “inform the Government and the Assembly of Kosovo on the legal and other measures undertaken to implement this Law” on an annual basis under Article 32(11).

The powers placed at the Language Commission's disposal under Article 32 include the powers to “conduct and carry out

¹ “Regulation No. 07/2012 on the Office of The Language Commissioner.” *Office of the Language Commissioner*, www.komisioneri-ks.org/repository/docs/Uredba_Regulore_Regulation_07_2012.pdf.

² Law No. 02/L-37 on the Use of Languages.” *Office of the Prime Minister*, www.komisioneri-ks.org/repository/docs/2006_02-L37_en-.pdf.

investigations on its own initiative" under Article 32(4), to "mediate in situations where such mediation is required to ensure the implementation of this Law" under Article 32(5), to "issue Recommendations on remedies required, and recommendations for redress" under Article 32(6), and to issue a written warning "where recommendations of the Language Commission have not been implemented within a reasonable period, as determined by the Commission" under Article 32(7). Additionally, it is tasked to "review, and make recommendations, regarding: (i) Any regulations or administrative instruction made under this Law, and (ii) Any other regulations or administrative instruction that affect or may affect the status or use of the official languages, or languages of communities whose mother tongue is not an official language" under Article 32(9).

The detailed competencies and composition of the Commission were "determined by an Administrative Instruction issued by the Office of the Prime Minister" pursuant to Article 32(10), raising concerns regarding its impartiality and independence. The Language Commission was established in 2007. Due to its limited effectiveness, the Government in its wisdom decided to abolish the Language Commission and chose to appoint a single Language Commissioner to oversee the above-mentioned responsibilities and powers in the system of two official languages, Albanian and Serbian, and three community languages, Turkish, Bosnian, and Roma.³

The phrasing and use of the term "Language Commission" over "Language Commissioner" in the aforementioned Law suggests that the legal drafters possibly intended to have more than one Language Commissioner. Although the term "Language Commissioner" is never used in the Law, it is the last time that "Language Commission" will be used in any laws, regulations, or Government publications, instead being replaced with "Language Commissioner". Clearly, a decision was made by the OPM in the six years between the drafting of the Law on the Use of Languages and the drafting of the Regulation on the Office of the Commissioner to limit the Language Commission to only one Language Commissioner. Be it due to resource constraints or a form of checks and balances on the unbridled investigative and disciplinary powers of the Language Commission is unclear, but the extent to which the Language Commission's responsibilities can effectively be managed by a single person may help to answer for the failures of the Office of the Language Commissioner.

³ "Mandate of Office of the Language Commissioner." *Office of the Language Commissioner*, <https://kryeministri-ks.net/en/the-prime-minister-office/offices/office-of-the-language-commissioner/>.

Regulation No. 07/2012 on the Office of the Commissioner

Regulation No. 07/2012 on the Office of the Commissioner lays out the structure and inner workings of the Office of the Commissioner. The provisions keep Kosovo's official and community languages in mind when offering services in the official languages, Albanian and Serbian, and making services available in Turkish, Bosnian, Romani, and any other community language that has the status of an official language or a language in official use upon request. The possibility is there for the Office to employ those with a working knowledge of community languages that are not yet official languages of Kosovo under Article 4(2). However, "includ[ing] staff that [have a] working knowledge of other languages of communities whose mother tongue is not an official language in the Republic of Kosovo" on the basis that they are "qualified" does not ensure a preference over other qualified candidates that do not have such a skill, nor does it ensure an Office that linguistically reflects the population it serves. In other words, it presents the possibility of employing those with knowledge of community languages, but does not guarantee it. The only language representation quota referred to does not apply to an official language or a community language, but a foreign language, English. A non-specified "minimum number" of Office staff, including the Language Commissioner and those in communications, are required to have a working knowledge of the English language to ensure cooperation with foreign institutions. Later, Article 16 goes on to provide the Office the aim to "preserve, promote and protect the use of" community languages that are not official. Nonetheless, one must question the feasibility of such a task without an enforced quota regarding those that speak community languages.

Both the Language Commission, originally under Article 32 of the Law on the Use of Language, and the Office of the Commissioner, under Article 17 of the Regulation of the Office of the Commissioner, are given the same roles, coincidentally in the same order. Those are the following: to monitor compliance with the Law; to make recommendations; to investigate complaints that an institution within its jurisdiction has failed to comply with the Law or any other legal act relating to the official and community languages of Kosovo; and to issue written warnings.

Although the Office is never referred to in the Law, this gives weight to the possibility that the Office of Language Commissioner and the Language Commission are one and the same with powers copy and pasted from the Law. However, uncertainty may jeopardize the

Language Commissioner's Office, let alone their effectiveness as, given that the Office's competences are ambiguously referred to as being "specified in the Law" that never once refers to the Office. Furthermore, the Law has been democratically passed through Parliament making it a primary legal source, but the Office's entire existence is borne out of a secondary legal source in the form of a Regulation that the Prime Minister signed, thus risking its legality being called into question should there be a judicial review.

Article 32(2) of the Regulation aims to ensure that the "Government Language Commission shall cease to exist". This is an impressive statement considering that such a regulation does have such an authority to dissolve a commission that has been brought into existence through a democratically passed law in the form of the Law on the Use of Languages. This presents a constitutional issue that questions whether the Government's secondary legislation has the authority to take precedence over the Parliament's primary legislation?

Section D paragraph 21 of the European Commission for Democracy through Law (Venice Commission)'s report on "The Relation between Primary and Secondary Legislation" sets out that the legality of a regulation will be doubtful:

- if it is inconsistent with the constitution (including protection for fundamental rights and the observance of international norms)
- if it is inconsistent with a law made by the parliament
- if it goes outside the competence of the body that has made the regulation.⁴

The Prime Minister's actions are inconsistent with the Constitution as they are never once assigned the power to challenge primary legislation in either Article 94 on the Competencies of the Prime Minister or anywhere else in the Constitution of Kosovo. The Prime Minister's actions are also inconsistent with a law passed by the Assembly and go outside of the competences of the Prime Minister and their Office as neither Article 6 of the Regulation on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries nor the most recent supplement confer on them such a

⁴Bradley, Anthony. "The Relation Between Primary and Secondary Legislation." *European Commission for Democracy Through Law (Venice Commission)*, 7 July 2010, [www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-UDT\(2010\)020-e](http://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-UDT(2010)020-e).

power to override primary legislation through their secondary legislation.^{5,6}

The constitutionality and legality of the aforementioned Regulation are made further questionable considering the competences vested in the Language Commissioner. Namely, the Regulation stipulates that institutions under the jurisdiction of the Office of the Commissioner, which is the category that, among others, include the Assembly and courts, have the obligation to cooperate with the Office and provide it with the requested information (Article 16, Paragraph 4), while the Office may require access to their premises and documents, and request cooperation from their employees and even initiate disciplinary proceedings against them (Article 17, Paragraph 2, Items 1-6). Considering that the Office of the Language Commissioner is essentially a subsidiary body of the Prime Minister, the Regulation breaches the principle of separation of power and allows the executive to potentially subjugate the legislative and judicial branches of government.

Another concerning issue related to the legality of the Regulation pertains to the right to complain. The right of the citizens to complain in case their language rights are being violated is not enshrined by law. Instead, it is actually established by the Rules of Procedure of the Office, which in fact represents an Annex to the Regulation. The Regulation, along with its Annex, is an example of secondary legislation as opposed to the Law that has precedence as primary legislation, and thus can be repealed by the Government, or by the judicial body in case it is subject to constitutionality review.

Through the Regulation on the Office of the Commissioner, the OPM chose to redistribute the Language Commission's powers and responsibilities, as laid out in Article 32 of the Law on the Use of Languages, across the Office of the Language Commissioner, as it is enabled to under Article 32(10) of the same Law. This redistribution left the Language Commissioner a mainly managerial and advisory figure as opposed to an empowered institutional figure that can initiate investigations or issue written warnings. To this end, the Language Commissioner's role was indistinguishable from that of the Coordinator of Investigations under Article 21. Article 20 of the Regulation on the Office of the Commissioner lays out the

⁵ "Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries." *Official Gazette of the Republic of Kosovo*, Feb. 2011, gzk.rks-gov.net/ActDetail.aspx?ActID=10533.

⁶ "Regulation (Grk) – No. 07/2020 on Amending and Supplementing the Regulation No. 06/2020 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries." *Official Gazette of the Republic of Kosovo*, July 2020, gzk.rks-gov.net/ActDetail.aspx?ActID=29389.

Commissioner's advisory role, while 14(6) foresees that the "Language Commissioner shall be responsible to supervise and manage the staff of the Office and to assess their performance", when there is already an underutilized 20-person supervisory body in the form of the Language Policy Board whose few roles already include assessing the Language Commissioner, once again raises questions. One appointed figure being given more duties than a board of 20 appointed figures either once again suggests incredible oversight or an attempt to impede the ability of the Language Commissioner to effectively do their job.

The Language Policy Board and the Language Policy Network are two mechanisms that are meant to support the Office of the Language Commissioner and to increase impartiality through the separation of different parties. That said, when the Office of the Prime Minister selects those that make up the Language Policy Board that then selects and recommends candidates to the OPM for the post of Language Commissioner under Article 7(1), the question of impartiality and independence once again arises. This is only compounded by the ability of the OPM-appointed Board to then recommend to the Prime Minister the dismissal of the Language Commissioner pursuant to Article 7(1), as well as to review any complaint of the Language Commissioner regarding the alleged interference with the independence of the Office, either by the Office of the Prime Minister, the government or another institution, which it will then decide upon. Given that two intrinsically linked entities of Government, the OPM and the Language Policy Board, both have the ability to report the Language Commissioner to the other for disciplinary action, the Language Commissioner can be pressured from both sides with common political interests at stake and the Language Commissioner can only report political pressures to the very same two entities under Article 9(2), placing him or her into an echo chamber.

To go back to the subject of quotas, it is also worth noting that the Language Policy Board has a quota whereby the Prime Minister shall appoint a representative to represent each of the following linguistic communities: the Albanian language; Serbian language; Bosnian language; Turkish language; Romani language; Croatian language; Montenegrin language; and Gorani language – three languages (Croatian, Montenegrin and Gorani), more than the Office of the Commissioner offers services in. Once again, this begs the question why is there not an assured representation of community languages in the Office of the Language Commissioner?

Although the Office is endowed with the same powers and responsibilities as the Language Commission and many of those powers are accounted for in the Regulation that divides them between the different roles, not one single position is given the power to write a written warning. This then begs the question whether it is the case that simply anyone in the Office has such a power or absolutely no one does? The first option would pose a dilemma over transparency as everyone issuing written warnings in the name of the Office would not provide a clear line of responsibility, while the second option would mean that there was either great oversight or a purposeful restriction of the Office's powers. Both possibilities are problematic and could explain why there has not been a publicly known instance of the Office issuing a written warning in the eight years since its founding.

2.2. Comparative legal analysis

To compare and better understand where Kosovo's Language Commissioner succeeds and fails, this report shall now explore the findings of comparative legal analysis with the reference to the general principles for human rights protection instruments, as well as some of the best language protection bodies in the World.

The Office of the Language Commissioner is a National Human Rights Institution (NHRI). NHRI(s) are autonomous and independent state bodies that monitor and promote respect for human rights. In addition to general NHRI(s), like the Ombudsperson, the specialized ones can be established to protect certain vulnerable groups, such as ethnic or linguistic minorities. The United Nations Paris Principles provide the international benchmarks against which national human rights institutions (NHRIs) can be accredited by the Global Alliance of National Human Rights Institutions (GANHRI). Currently, Kosovo's Language Commissioner does not have any accreditation by the GANHRI or European Network of National Human Rights Institutions (ENNHRI), nor does its Ombudsperson's Institution, while those of neighboring countries have such accreditation. This may be explained by the Commissioner's inability to meet the six requirements for GANHRI accreditation.⁷ They are the following:

- Mandate and competence: a broad mandate, based on universal human rights norms and standards;
- Autonomy from Government;
- Independence guaranteed by statute or Constitution;

⁷ "Paris Principles," GANHRI, Office of the United Nations High Commissioner for Human Rights, nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx.

- Pluralism;
- Adequate resources;
- Adequate powers of investigation.

The Language Commissioner fails to meet three of these requirements. As earlier stated, its autonomy from Government is questionable given the OPM's ability to change the Office of the Language Commissioner's role and positions through policy changes and to force its hand through pressure from the OPM and the Language Policy Board that can only be reported to the same two entities that also have the power to dismiss the Language Commissioner. The second requirement that the Language Commissioner lacks is adequate resources, an issue that continues on from the last point on autonomy. The Office of the Language Commissioner's budget has to be signed off on by the OPM, which can hypothetically lead to budgetary issues should the OPM have an issue with the work of the Office of the Language Commissioner. The third and final requirement lacking is adequate powers of investigation. Although both the Law on the Use of Languages and Regulation on the Office of the Commissioner lay out the ability of the Office of the Language Commissioner to instigate investigations on their own terms, this is undermined by the fact that the Regulation on the Office of the Commissioner only specifies the Coordinator of Investigations as having such an ability, which might explain the lack of investigations by the Office of the Language Commissioner.

Taking ENNHRI and GANHRI accredited members as prime examples, the structure of Language Commissions differ to that of Kosovo's as they are more impartial and are either more tightly linked to the Ombudsperson Institution or form part of it. Canada's Commissioner of Official Languages is both an agent of parliament, as opposed to working "under the auspices of the Office of the Prime Minister", and doubles as Canada's Official Languages Ombudsman, as opposed to being a separate entity as with Kosovo.⁸ When the Commissioner, "or any person acting on behalf or under the direction of the Commissioner, has been obstructed in the performance of the Commissioner's duties or functions under [the Official Languages] Act, the Commissioner may report that belief and the grounds therefor to the President of the Treasury Board and the deputy head or other administrative head of any institution concerned".⁹ The President of the Treasury Board and the deputy head or other

⁸ "Mandate and Roles." *The Office of the Commissioner of Official Languages*, 18 Sept. 2020, www.clo-ocol.gc.ca/en/aboutus/mandate.

⁹ "Official Languages Act." *Justice Laws Website*, Government of Canada, 12 Feb. 2020, laws-lois.justice.gc.ca/eng/acts/O-3.01/page-6.html#docCont.

administrative head of any institution concerned are entities without the ability to dismiss the Commissioner of Official Languages, therefore reporting obstruction to them avoids the potential for blackmail. The Treasury Board is also where the Commissioner can directly go under Article 52 to get funding to cover any technical or specialized knowledge not covered by the budget allocated to them annually, as opposed to having to submit an annual budget to the OPM for approval as with the Kosovo case that risks impartiality.¹⁰ The contrast with the Kosovo example continues into the Commissioner's role concerning investigations. Article 56(2) of the Official Languages Act specifically names the Commissioner when bestowing upon them the ability to "conduct and carry out investigations either on his own initiative or pursuant to any complaint made to the Commissioner".¹¹ This a power that the Law on the Use of Languages can be interpreted as giving Kosovo's Language Commissioner should the Regulation on the Office of the Commissioner be subject to judicial review due to the constitutional question it raises.

In Finland, the roles that would otherwise be allotted to a Language Commissioner are split between two Ombudspersons. The Chancellor of Justice and the Parliamentary Ombudsman supervise the lawfulness of activities carried out by authorities and, therefore, also ensure that authorities comply with the Language Act and related legislation in all their activities. On the other hand, the Non-Discrimination Ombudsman can handle complaints where language is the basis of discrimination or part of a discrimination case concerning the activities of an authority.¹² This arrangement avoids overloading a single figure with a diverse range of responsibilities, as risked in the Kosovo case, while keeping the focus on the complaints at hand. The Parliamentary Ombudsman has at their disposal the ability to investigate a complaint if the matter to which it relates falls within his or her remit and if there is reason to suspect that the subject has acted unlawfully or neglected a duty.¹³ The Non-Discrimination Ombudsman, formerly the Ombudsman for Minorities, has more of a promotion-type and legal support body role, but nonetheless maintains the right to commence investigations, if

¹⁰ Ibid.

¹¹ "Mandate and Roles." *The Office of the Commissioner of Official Languages*, 18 Sept. 2020, www.clo-ocol.gc.ca/en/aboutus/mandate.

¹² *Linguistic Rights*, p. 12. Ministry of Justice, Finland, oikeusministerio.fi/documents/1410853/4734397/Kielelliset_oiikeudet_esite_EN_WEB_120419.pdf/04d4846b-71a8-42d2-95f6-c7c0e98047e9/Kielelliset_oiikeudet_esite_EN_WEB_120419.pdf.

¹³ Chapter 1, Section 3. "Parliamentary Ombudsman Act (197/2002)." Ministry of Justice, Finland, 2002, www.finlex.fi/en/laki/kaannokset/2002/en20020197.pdf.

necessary to monitor compliance with the Equality Act in matters falling within the Commissioner's competence.¹⁴

Ireland's Language Commissioner, An Coimisinéir Teanga, is an independent role appointed by the President, functions like an Ombudsperson and enjoys extra powers in comparison with other examples of Language Commissioners.¹⁵ An Coimisinéir Teanga may compel a person to attend before them to obtain the necessary information and the person must comply with that requirement under the same immunities and privileges as if he or she were a witness before the High Court.¹⁶ A fine not exceeding €2,000 and/or imprisonment for a term of up to 6 months may be imposed on a person convicted in court of refusing or failing to cooperate with An Coimisinéir Teanga or of obstructing their work.¹⁷ If a public body refuses or fails to cooperate with An Coimisinéir Teanga or if their work is obstructed and if it is proved that this occurred with the consent, connivance or neglect of an official, the official and the public body could be convicted in court in that particular case.¹⁸ In accordance with sections 20 – 30 of the Official Languages Act, An Coimisinéir Teanga conducts investigations on their own initiative, on request from the Minister for Culture, Heritage and Gaeltacht or pursuant to a complaint made to him or her by any person in cases where public bodies are considered to have failed to fulfil their duties under the Official Languages Act.¹⁹ An Coimisinéir Teanga also has the right to investigate any valid complaint in which it is alleged that the provisions of any other enactments relating to the status or use of Irish have been contravened.²⁰ And in contrast to the Kosovo case, An Coimisinéir Teanga submits annual financial accounts by the Office of An Coimisinéir Teanga to not only the Comptroller and Auditor General and the Minister for Culture, Heritage and Gaeltacht, as opposed to the Office of the Prime Minister, but also to the Irish Parliament, the Houses of the Oireachtas, in the interest of transparency.²¹

Norway's Equality and Anti-Discrimination Ombud is different from the above-mentioned cases as it reports directly to the United

¹⁴ "Laki Yhdenvertaisuusvaltuutetusta," *Finlex Data Bank*, 30 Dec. 2014, www.finlex.fi/fi/laki/alkup/2014/20141326.

¹⁵ "OFFICIAL LANGUAGES ACT 2003," An Coimisinéir Teanga, 2003, www.coimisineir.ie/userfiles/files/a3203.pdf

¹⁶ "Powers of An Coimisinéir Teanga," An Coimisinéir Teanga, www.coimisineir.ie/cumhachtaí-an-choimisineara-teanga?lang=EN.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ "Functions of An Coimisinéir Teanga," An Coimisinéir Teanga, www.coimisineir.ie/feidhmeanna-an-choimisineara-teanga?lang=EN.

²⁰ Ibid.

²¹ Ibid.

Nations as opposed to a parliament or government.²² Similarly to Finland's Parliamentary Ombudsman, Norway's Equality and Anti-Discrimination Ombud can initiate investigations, including with police assistance where necessary.^{23,24}

Sweden is yet another country to utilize an Ombudsperson over a separate language commissioner. Its Ombudsperson is also the first on the list to not only be enabled to initiate investigations under its legal framework, but is specifically tasked with investigating the executive too.²⁵ Like its Nordic neighbor, Norway, Sweden splits language discrimination responsibilities between the Equality Ombudsman and the Parliamentary Ombudsmen. In contrast to Kosovo's more political selection of the Language Commissioner by the Prime Minister, Sweden's Ombudsmen and Deputy Ombudsmen are voted in by Parliament, thereby potentially avoiding party lines.²⁶

Wales' Welsh Language Commissioner is appointed by the First Minister. It differs from other foregoing examples in being charged under Article 4(3) of the Welsh Language (Wales) Measure with the power to make a recommendation or representation, or give advice, to Welsh Ministers in writing which they must then have "due regard to in exercising any function to which it relates".²⁷ These extra powers continue into Article 7 that allows for the Welsh Language Commissioner to independently investigate matters within their purview and Article 8(1) that enables the Commissioner to institute or intervene in legal proceedings in England and Wales if it appears to the Commissioner that the proceedings are relevant to a matter in respect of which the Commissioner has a function.²⁸

2.3. Concluding remarks

Kosovo's Language Commissioner and their Office fail to meet international standards, fail to compare with their peers, and fail to conduct the roles originally set out for them for a number of reasons as this report has discussed. The ability to carry out investigations either on their own initiative or pursuant to any complaint made to

²² *The Equality and Anti-Discrimination Ombud*, www.ldo.no/en/ldo-english-page/.

²³ "Parliamentary Ombudsman Act." *Parliamentary Ombudsman of Finland*, 2002, www.oikeusasiamies.fi/en/parliamentary-ombudsman-act.

²⁴ "The Anti-Discrimination Ombud Act." *Norwegian Government Security and Service Organisation*, 20 Feb. 2007, www.regjeringen.no/en/dokumenter/The-Act-on-the-Equality-and-Anti-Discrim/id451952/.

²⁵ "Lag Om Ändring i Lagen (1986:765) Med Instruktion För Riksdagens Ombudsmän." *Swedish Code of Statutes*, 22 Nov. 2018, svensksforfattningssamling.se/sites/default/files/sfs/2018-11/SFS2018-1905.pdf.

²⁶ Chapter 13, Section 3. "Lag Om Ändring i Riksdagsordningen." *Swedish Code of Statutes*, 24 May 2018, svensksforfattningssamling.se/sites/default/files/sfs/2018-05/SFS2018-605.pdf.

²⁷ "Welsh Language (Wales) Measure 2011." *Legislation.gov.uk*, Queen's Printer of Acts of Parliament, 9 Feb.

²⁸ 2011, www.legislation.gov.uk/mwa/2011/1/part/2/crossheading/functions/enacted.

²⁸ Ibid.

the Commissioner is a power the Law on the Use of Languages can be interpreted as giving Kosovo's Language Commissioner and their Office, but can only be applied should the Regulation on the Office of the Commissioner be subject to judicial review due to the constitutional question it raises. The possibility of police assistance could only make these investigations more effective as can be seen in the Finnish example.²⁹ Bringing in language quotas could ensure a more effective Office across the board due to the ending of language barriers and a reliance on an ever-diminishing pool of translators. What is more, no longer needing having to wait for a translator to be arranged would have a great impact on those that speak community languages, as a timely service ensures a shorter delivery time and would send a message of inclusivity to Kosovo's minority language speakers.

Going forward, the Language Commissioner's responsibilities need to be less managerial and could be better carried out were they split between two officials, with one focusing on legislation and another on complaints relating to language rights. In regard to the need for further impartiality, a Language Commissioner elected by parliament would reduce the issue of party lines and independence, whilst a dedicated budget with any extra costs submitted to an entity that has no bearing on the existence of the Ombudsperson would reduce the likelihood of any financial pressure. Most pressingly, either Article 7(1) or Article 9(2) of the Regulation on the Office of the Commissioner needs to be amended as the Language Commissioner cannot be expected to make formal complaints of pressure to the very entities empowered to dismiss them. It is an opportunity that may or may not have already been taken and poses the greatest threat to the impartiality and independence of the Language Commissioner and their Office, given that the threat of dismissal far outweighs the threat of a tighter annual budget.

Only once these issues have been properly addressed can the Language Commissioner and their Office as independent bodies effectively fulfill their roles and bring equality to the official languages of Kosovo and those that speak them.

²⁹ See "Non-Discrimination Ombudsman Is Finland's National Rapporteur on Trafficking in Human Beings." ihmiskauppa.fi, www.ihmiskauppa.fi/en/human_trafficking/anti-trafficking_action_in_finland/non-discrimination_ombudsman.

3. Shortage of translation staff as an obstacle to efficient justice

3.1. The existing situation

In addition to being important for defining the identity of a certain nation and its culture, the mother tongue and script have an extremely practical function in everyday life. The exercise of numerous rights of individuals depends on respect for the right to use them. This is the main reason why modern European legislation recognizes the right of persons belonging to national minorities to use their mother tongue and script in exercising their rights and interests. In addition, at the international level, there are numerous instruments and recommendations governing the use of the mother tongue by persons belonging to national minorities. In the field of the language right protection, specificities are political systems that, by their legislation, recognize two or more languages as official languages that are equally used in public bodies. That is the case with Kosovo as well.

According to the Constitution of Kosovo (2008) and the Law on the Use of Languages (2006), Albanian and Serbian are equal official languages in Kosovo. While the Constitution generally regulates the use of the Serbian and Albanian languages as equals, the Law on the Use of Languages more specifically defines the use of official languages in central, public, private, judicial, and educational institutions as well as the media.

The Brussels Agreement is an act on the normalization of relations between Belgrade and Pristina, which was signed on April 19, 2013. This agreement contains 15 points, among which point 10 refers to the integration of judicial institutions into the Kosovo judicial system. According to the provisions of the agreement, the integration of judicial bodies should have been completed by 2013. However, it was only completed on October 24, 2017, when 40 judges, 13 prosecutors, and 145 administrative workers who were previously employed in courts and prosecutor's offices that functioned within the Serbian judicial system were integrated into the Kosovo judicial system.³⁰ Just after the completion of the integration of the judiciary, the problem of respecting language rights in court proceedings became relevant. Namely, due to insufficient engagement of the institutions

³⁰ "Judicial Council: North integrated into Kosovo's judicial system", Kossev, <https://kossev.info/sudski-savet-sever-integrisan-u-pravosudni-sistem-kosova-kuburovic-veca-pravna-zastita-za-gradjane-srbije/>.

themselves in the implementation of legal provisions that guarantee the equality of the Serbian and Albanian languages, bilingualism has become a "stumbling block" in the regular functioning of the judiciary.

The main obstacle to the successful integration of the judiciary and the establishment of the rule of law in Kosovo has been the problem of translating documents, both in a qualitative and in a quantitative sense. Civil society organizations, lawyers, judges, and citizens themselves highlighted the quality of translation as the main problem in the functioning of the judiciary, as well as the insufficient number of translators in the courts in Kosovo.³¹ The problem of bilingualism is also present during the interaction between the employees in the judicial bodies because a very small number of workers speak and understand both official languages.

Since the beginning of the integration of the judiciary, the situation regarding the transparency of the work of courts in both languages has improved. The Kosovo Judicial Council now offers almost equal information in both Albanian and Serbian.³² However, despite the progress in that field, it is not possible to talk about the absolute equality of the two official languages, since there are still documents that have not been translated into Serbian, and which are therefore not available.

What has not changed, and which is essential for fair treatment in court proceedings, is the quality of the translation of legislative acts into Serbian, which is still at a very poor level. The poor translation of the Law on Civil Procedure is especially emphasized, the different application of which, due to translation errors, produces legal uncertainty.³³

³¹ In previous publications published by the NGO AKTIV within the project "Creating a bilingual Kosovo" the problem of the long wait for the translation of court records into Serbian, and its poor quality, was pointed out, as well as the obstacles it posed to members of the Serb community in accessing justice. See "Language barriers to equal access to services", NGO AKTIV, 2020.

³² Kosovo Judicial Council, <https://www.gjgesori-rks.org/?lang=sr>.

³³ Poor quality of translations of legal acts into Serbian and their inconsistency with the versions in Albanian is a problem to which the NGO AKTIV paid great attention during the implementation of the project "Creating a bilingual Kosovo". NGO AKTIV has published several publications pointing out linguistic errors in the translation of legal texts into Serbian. See: "General Review of Language Rights in Kosovo" and "Annual Report on the Situation of Language Rights in Kosovo", NGO AKTIV, 2019. In addition, panels and trial simulations were organized to draw the attention of the competent authorities to how different interpretations of the same law could cause problems in judicial proceedings. In order to demonstrate the impact of different language versions of the law in force on judicial proceedings, in 2019 the NGO AKTIV held a trial simulation that practically showed how poor translation of laws in Kosovo complicates the interpretation and application of laws and reduces predictability in the legal system. You can watch the simulation here: <https://www.youtube.com/watch?v=-sRvI5RV39E>.

3.2. The situation in the courts

Since respect for language rights in courtrooms is of immeasurable importance for access to justice and protection of other rights and interests of citizens, the NGO AKTIV sought to assess the translation capacity of the courts in Kosovo. To this end, a field survey was conducted covering the courts in Kosovo. The research was conducted in the period from October to November 2019. Data were collected through interviews with translators employed at the headquarters of all 7 basic courts in Kosovo.

In previous years, lawyers, non-governmental organizations, as well as the citizens themselves have pointed out the problem with translation. However, systematic monitoring and analysis of the situation with the provision of translation was lacking. In addition, translators working in the courts themselves have rarely had the opportunity to talk about the problems they face in their work. The research team's assessment, however, was that translators should be given the opportunity to answer questions regarding the problem of translating documents in the courts. This research, therefore, aimed to contribute to shedding light on the problem of translation from the translator's point of view, which has not been sufficiently discussed so far.

The translators interviewed were asked about the number of translators working in the courts, the working conditions, the overload of cases, the number of documents they translate daily, the average time it takes to translate a document, and other issues that are important for the quality and speed of translation. In addition, the research included an analysis of certain documents that were collected in the courts or downloaded from the Kosovo Judicial Council's website. The basic findings of the research team will be presented below.

The table below lists the number of interpreters in the courts. Data for individual courts are also provided for branches.

| | Number of interpreters in courts |
|--|----------------------------------|
| Basic Court in Pristina | 3 |
| Basic Court in Mitrovica (with branches) | 17 |
| Basic Court in Uroševac/Ferizaj | 2 |
| Basic Court in Prizren | 2 |
| Basic Court in Peć/Peja | 2 |
| Basic Court in Gnjilane/Gjilan (with branches) | 6 |
| Basic Court in Đakovica/Gjakova | 1 |

The number of interpreters per court is determined based on needs. The research team came to this information through conversations with translators, since the regulations on job systematization related to translators by courts were not made available.

Since the Basic Court in Mitrovica includes branches in Vučitrn/Vushtrri, Srbica/Skenderaj, Leposavić, and Zubin Potok, and covers the largest percentage of the Serb population in Kosovo, this court has the largest number of translators. The total number of interpreters in the court seat and branches is 17. According to the number of translators, Mitrovica is followed by the Basic Court in Gjilan, then the Basic Court in Priština, while the Basic Court in Đakovica/Gjakova had only 1 translator.

The general impression that the researchers gained during the interviews is that the translators are not satisfied with the working conditions. The first objection they make is that there are not enough of them, given the influx of cases received daily by one translator. As the courts do not have a sufficient number of translators, they are very often put in a situation where they have to stop working on the translation of a certain document in order to go to trial to translate the hearing, where they would stay for an average of 3 to 5 hours. All this leads to the parties waiting unjustifiably long for the translation of a document. The researchers also learned that there is no translator in the Štrpce department of the Basic Court in Prizren, so a translator who is employed in the Basic Court in Uroševac/Ferizaj performs translation tasks for the court in Prizren.

As for the organization of work itself, it is not determined by any rulebook, so translators determine for themselves the schedule of work they perform during one working day. There is no division of labor within the office itself, leading the same translator to translate documents from Albanian into Serbian as well as from Serbian into Albanian, and to perform simultaneous interpreting during the hearings. According to the research team, out of a total of 33 translators working in the courts, only 3 of them have graduated from the Faculty of Philology, majoring in Albanian language and literature, while most have university degrees, but not from the Faculty of Philology in Albanian or Serbian. Most translators learned the language in school, as they grew up in a multiethnic environment, while they learned legal terms over time through work. There is not a single proofreader in any court who is in charge of proofreading translated documents.

When it comes to professional development, according to the interviewed translators, such initiatives are very rare. The impression is that the Kosovo Judicial Council has not shown enough interest to improve the quality of their work. The translators were not obliged to attend the trainings, while the professional training that some of them attended was mostly organized by the non-governmental sector and international organizations.

Some of the main objections raised by the translators, concern, first of all, the salary coefficient, then the amount of salary they receive for their work, as well as working conditions. Interviewed translators believe that, given the scope of work, their salary should be higher, i.e. in the range of salaries of professional associates. A higher salary would be a motivation for them to work better, but also for other young people to opt for a career in translation. In this regard, it is worrying that the average age of translators is over 55 years.

The following table shows the pace of translation of pages and documents by courts. The second column shows the number of pages that one translator translates on average in one working day. The third column shows the number of days it takes for a translator to translate a document with an average length of between 5 and 8 pages. In other words, it is a question of the number of days that a document spends on average with translators, if it is not an urgent case. The length of waiting for the translation of a document is explained by the fact that translators often have to stop working on the translation because they are entrusted with other tasks.

| Courts | Number of translated pages per day | Time period for document translation |
|---------------------------------|------------------------------------|--------------------------------------|
| Basic Court in Pristina | 7 | 30 days |
| Basic Court in Mitrovica | 6-12 | 2-7 days |
| Basic Court in Uroševac/Ferizaj | 6-10 | 14-30 days |
| Basic Court in Prizren | 5 | 30 days |
| Basic Court in Peć/Peja | 5-6 | 30 days |
| Basic Court in Gnjilane/Gjilan | 5-7 | up to 2 months |
| Basic Court in Đakovica/Gjakova | 9-12 | 30 days |

3.3. Conclusions and recommendations

The situation in the judiciary in Kosovo regarding respect for the right to the language use has shown some progress compared to the previous period. Despite that, it is still not possible to talk about absolute linguistic equality between the two official languages, while the Serbian language continues to be neglected. Language barriers continue to be an obstacle to the efficient functioning of the judicial system in Kosovo, especially to the detriment of members of the Serb community. In this regard, it was noticed that the parties in the procedure avoid using the Cyrillic alphabet for fear that they will lose their rights because the use of the Cyrillic alphabet causes repulsion among some members of the majority community. The fact that the judicial and prosecutorial councils did not work at all to encourage members of the Serb community to use their alphabet contributes to this situation. Another issue that remains unresolved relates to decisions of the Court of Appeals and the Supreme Court that have not been translated and, therefore, are not available to judges, prosecutors, and petitioners from the Serb community.

As research findings indicate, the main problem in providing quality translation in a timely manner is the shortage of translation staff, who cannot effectively respond to the workload of the courts. The translation of a certain document takes a long time because the very process of translating documentation is slow and complicated. Given this situation, the parties have been waiting for a very long

time to exercise their rights, although slow justice is no justice at all. Also, the problem is the lack of knowledge of legal terminology by the translators, and for that reason the quality of the translation is questionable.

Translators in Kosovo are in short supply, to which institutions should pay particular attention. Of additional concern is the fact that even such a deficient workforce does not have a formal qualification for the job it performs. Translators are not professionally trained to translate legal documents, which very often leads to translation errors.

The quality of translation is also affected by the insufficient involvement of the Kosovo Judicial Council in building the capacity of translation staff and improving translation practice. This could be achieved by organizing training for translators, as well as by increasing the salary coefficient, which is not equivalent to the scope and importance of the work that translators perform. A higher coefficient would have a stimulating effect on other people to improve their language skills and make translation their profession.

Despite the fact that the quality of translation and the efficiency of criminal proceedings directly depend on the capacity of the translation staff, so far not enough attention has been paid to the needs of the translators themselves. For this reason, in the future, competent institutions and interested organizations should dedicate themselves to collecting information from the translators themselves in the courts. Information that would be collected in this way would then be compared with information from other participants in the proceedings, which would provide a more comprehensive and objective picture of the problems of language use in court proceedings.

Recommendations

1. Increase the number of hired translators to increase the efficiency of the courts in Kosovo.

There is an urgent need to act in this direction. The rule of law cannot be established in Kosovo if the parties are denied the right to a translation of a decision deciding on their rights or interests, or if they do not receive them in a language they understand or wait unreasonably long for a translation. The issue of speed and quality of translation is closely related to the efficient resolution of disputes.

The process of translating the case file itself is extremely complicated and slow. In order to avoid the situation of a case becoming obsolete due to waiting for a translation, judges resort to the practice of extracting certain documents from the case to be translated. This makes it easier for translators who then do not have to translate a complete case. However, it is precisely this kind of conduct that can lead to an incorrect decision because the case files have not been fully translated. The interruption of this practice can only be ensured by hiring a larger number of translators. Related to that is the fact that there are decisions and positions of the Courts of Appeals and the Supreme Court of Kosovo that are not available in the Serbian language, and the only reason for that is the insufficient number of translators.

2. Organize continuous training for existing translation staff. Establish translation academies and court translator agencies.

Based on the above, it can be concluded that most court translators in Kosovo learned the language at school or in the place they grew up, but they often do not adequately know the legal terminology of the language they are translating to. This directly affects the quality of the translation itself. For that reason, greater activity of the Kosovo Judicial Council is necessary in order for the existing translation staff to have the opportunity to improve their legal terminology.

One possibility is to form a translation academy, modeled after the Judicial Academy, which future translators would attend over a period of one year. Upon completion of the training, translators would receive a certificate and be registered as court translators. In this way, court translators would become certified translators who would have special permission to engage in translation work, as well as a seal with their name. The seal would certify the translations, thus giving them additional legitimacy and legal confirmation that they are identical to the original. In this way, the accuracy of the translated text would be guaranteed should the document enter international channels or become disputable within the domestic legal process. Also, it would be useful to form an agency or chamber of court translators, which would consist of all accredited translators. In this way, the Kosovo Judicial Council would source the translation staff during a shortage through an agency or chamber.

3. Increase the work of the Kosovo Judicial Council in order to encourage members of the Serb community to use their language and the Cyrillic alphabet in contact with the judiciary without fear of losing their rights.

Greater involvement of the Kosovo Judicial Council is needed in order to guarantee the equality of official languages and encourage the Serb community to use their language and script in communication with the judiciary. Engagement would be reflected in promotional activities, such as the printing and distribution of flyers in Serbian and in the Cyrillic alphabet in all courts in Kosovo, which would encourage members of the Serb community to use their own alphabet without fear of losing a certain right.

4. Increase the salary coefficient provided for translators in order to strengthen the motivation to work.

Based on interviews conducted by researchers with the court translators in Kosovo, there was great dissatisfaction with the current salary coefficient. All interviewed translators answered that they are very dissatisfied with the current salary and that it does not just have a stimulating effect on them, but also on young people to do this work in the future. In the coming period, the Kosovo Judicial Council should increase the salary grade for court translators, as it does not represent an adequate equivalent to the scope and importance of the work they perform.

5. Introduce departments for Albanian and Serbian language at the Faculties of Philology.

Given the shortage of translation staff, it is necessary to introduce departments for teaching Serbian and Albanian at institutions of higher education. In that way, interested young people would be enabled to learn official languages and to become accredited court translators for Albanian and Serbian in the future.

4. Draft Law on Amendments to the Law on the Use of Languages

Amendments to the following articles of the Law on the Use of Languages (Law no. 02 / L-37) are proposed so that it reads:

1. Article 4, paragraph 2 is amended to read as follows:

4.2. Every person has the right to communicate and receive available services and public documents from central institutions of Kosovo in the official language of his/her choice. All central institutions have a duty to ensure that any person can communicate and obtain available services and public documents from their authorities and institutions in the official language used by that person.

2. Article 7, paragraph 2 is amended to read as follows:

7.2. Every person has the right to communicate and receive available services and public documents from municipal institutions and officials in the official language of his/her choice. Each municipal representative and executive body has a duty to ensure that each person can communicate and obtain available services and public documents from any body of municipal institutions in the official language used by that person.

3. In Article 12, paragraph 2 is deleted and paragraphs 2, 3 and 4 are added, which read as follows:

Article 12

12.2. In criminal proceedings, courts, prosecutors' offices, the police and other bodies involved in the proceedings shall consider the official language used by the defendant as the language of the proceedings. If criminal proceedings are conducted against several persons between whom there is disagreement over the language of the proceedings, the courts and other competent authorities shall decide on the language of the proceedings, taking into account the rights and interests of the parties, as well as the economy and efficiency of the proceedings.

12.3. In civil proceedings, courts and other bodies in the proceedings shall consider the official language used by the parties as the language of the proceedings. If there is a disagreement between the parties to the proceedings regarding the language of the proceedings, the court will decide on the language of the proceedings, taking into account the rights and interests of the parties, as well as the economy and efficiency of the proceedings.

12.4. In an administrative dispute between a natural or legal person and an institution, the courts and other bodies in the proceedings shall consider the official language in which the lawsuit was filed as the language of the proceedings.

4. Article 13 is amended to read as follows:

Article 13

13.1. Parties and other participants in criminal and other court proceedings have the right to use their language during the proceedings if they do not speak and do not understand the language in which the proceedings are conducted.

13.2. If the proceedings are conducted in a language that the parties and other participants in the proceedings do not understand, the courts and other bodies in the proceedings shall, at their request, provide interpretation into a language they understand of the matter presented at hearings and during oral enactment of the procedural processes. Upon request, the parties shall be provided with a written translation into a language they understand of the submitted documents, petitions and evidence.

5. Article 14 is amended to read as follows:

Article 14

14.1. Court decisions, warrants, rulings and other court decisions, as well as decisions and files of other bodies in the proceedings, shall be delivered to the party in the language it uses in the proceedings. If it is not known which language the party uses, court decisions are sent to the party in both Albanian and Serbian.

14.2. Other participants in the proceedings who do not understand the language of the proceedings shall be provided, free of charge and within a reasonable time, with a translation of the ruling and other court documents, in whole or in part, into a language they understand if relevant to protecting their rights and interests.

Reasons for adopting amendments to the Law on the Use of Languages

Official bilingualism means that in a legal system, two languages are recognized as absolutely equal. Absolute equality implies that primacy cannot be given to either of the two official languages, regardless of which language is used by the majority.

According to the Constitution of Kosovo and the Law on the Use of Languages, Albanian and Serbian are recognized as official languages in equal use throughout the territory of Kosovo. Accordingly, all court proceedings in Kosovo are conducted in one of the two official languages. However, the current Law on the Use of Languages does not explicitly define the principles on the basis of which the language of proceedings is determined. The ambiguous legal provision that courts will “conduct proceedings in the official language or languages chosen by the parties to the proceedings” has, in practice, led to arbitrary and uneven court decision-making practices regarding the language of proceedings, thus relativizing the equality of official languages before judicial authorities. Such a solution not only lags behind practices in other bilingual judicial systems but is also below the standards of protection of regional and minority languages in monolingual judiciaries.

The European Charter for Regional or Minority Languages (1992) obliges states to ensure, as far as possible, that criminal, civil and administrative proceedings are conducted in a regional or minority language in areas where a significant number of members of the language community reside.³⁴ The Oslo Recommendations on the Right of National Minorities to Use Their Own Language (1998) similarly call on States to consider the possibility of conducting all court proceedings, in areas where minorities live in large numbers, in the language(s) of those minorities when those proceedings concern them.³⁵ The document states that the availability of court proceedings in the language of national minorities makes their

³⁴ European Charter for Regional or Minority Languages, <https://rm.coe.int/168007bf4b>.

³⁵ The Oslo Recommendations regarding the Linguistic Rights of National Minorities & Explanatory Note, <https://www.osce.org/hcnm/oslo-recommendations?download=true>.

members' access to court more direct and simpler, thus improving the protection of human rights. In line with these recommendations, in European judicial systems that recognize one language as an official language, the practice has been established to allow national minorities to request that court proceedings, especially criminal ones, be conducted in minority languages.

When it comes to bilingual judicial systems, the practice is that the language in which court proceedings are conducted is determined in accordance with the interests of the party. A comparative analysis of the Canadian, Irish, Finnish, Maltese and other bilingual justice systems shows that in jurisdictions that recognize two official languages, court proceedings are conducted, *ex officio*, in the official language used by the party.³⁶ This is especially important for criminal proceedings that can lead to the loss of liberty of the accused. Since no official language can take precedence over others in bilingual courtrooms, the defendant is given the right to choose the language of the proceedings, i.e. to request that the proceedings be conducted by a judge who understands the official language he/she speaks. The defendant is therefore granted the right to a trial before a judge who directly understands his/her language, which transcends the right of the defendant to receive translation assistance that will ensure that the judge understands what has been said and written.

With regard to public services and documents provided by central and municipal institutions, the applicable Article 4, paragraph 2 and Article 7, paragraph 2 of the Law on the Use of Languages stipulates that "every person has the right to communicate and receive services and public documents in any official language". This provision does not necessarily imply that citizens choose in which of the two official languages the communication with the institutions will take place. This has led to the widespread practice that civil servants feel that they have fulfilled their legal obligation by providing a service in an official language of their choice.

The proposed amendments to the Law on the Use of Languages aim to determine precisely the manner of deciding in which official language any administrative or court proceedings will be conducted, as well as to define the right of parties and other participants to use their language during the proceedings if they do not understand and speak the language in which the procedure is conducted. The purpose of the proposed provisions is to ensure the essential

³⁶ NVO AKTIV (2020), Language impediments to equal access to services, <http://ngoaktiv.org/srb/publication/language-impediments-to-equal-access-to-services>.

equality of official languages and the protection of linguistic rights in administrative and judicial proceedings in Kosovo in accordance with international standards.

Explanation of individual solutions

Article 4, paragraph 2 and Article 7, paragraph 2 establish that all central and municipal institutions in Kosovo have a duty to ensure that every person can communicate and obtain available services and public documents that they provide in the official language of that person's choice. The proposed provisions unequivocally establish that the right to choose belongs to citizens and not to institutions.

Article 12, paragraph 2, stipulates that criminal proceedings shall be conducted in one of the two official languages. The same article stipulates that in no case may the courts, prosecutor's offices, police authorities or any other body in the proceedings presume or conduct the proceedings in a language other than the one used by the defendant. The purpose of this article is to give the defendant the legal power to choose in which of the two official languages the proceedings against him or her will be conducted. The only possibility for courts or other bodies in the procedure to decide in which official language the procedure will be conducted is if a single procedure is conducted against several persons between whom there is a disagreement about the official language in which the procedure will be conducted.

The reason for such a provision lies in the fact that the rights and interests of the defendants are affected by the fact that proceedings are being conducted against him or her, as well as that the entire apparatus of state coercion is against the defendant. For these reasons, the defendant should be granted the right to choose in which official language the proceedings will be conducted, for reasons of legal certainty. Should there be a problem in practice that court or other authority officials do not speak the official language used by the defendant, the case will be automatically delegated to an official who understands the language used by the defendant. The key factor in determining the official to whom the case will be delegated is their knowledge of the official language used by the defendant. In case there are several defendants who cannot agree on the language of the procedure, the same article gives the discretion to the court or other body in the procedure to

decide on the language of the procedure, following the stated principles.

The poor quality of interpretation during hearings often leads to the defendant not understanding what is being said during the trial, or the court reporter recording what is said by the defendant in an inauthentic manner. Due to the untimely provision of translations of extensive minutes and other documents, as well as the poor quality of translations, the defendant is often not given enough time to prepare for the trial. This all restricts the right to defense. In order to better protect the rights of the defendant during the trial, the proposed provisions provide that the proceedings be conducted in an official language that is closer to the defendant, and not just the right of the defendant to use his/her language during the proceedings. This will ultimately further extend and expand human rights.

Article 12, paragraph 3 and paragraph 4 similarly regulate the decision-making on the language of proceedings in civil, i.e. administrative court proceedings.

The proposed solution stems from the comparative practice of interpreting official bilingualism in the best interests of citizens. When a judicial system recognizes the equal use of two official languages, then the choice of the official language in which the court proceedings are conducted should primarily be guided by the rights and interests of the party. This means that the language of the proceedings is the official language for which it is known, or can be assumed, that the party knows better. In the case of Kosovo, this provision guarantees the right of members of the Albanian and Serb communities to have court proceedings in their mother tongue, or members of other communities, to choose Albanian or Serbian as the language of the proceedings, whichever they know better.

Article 13 provides that courts and other proceedings shall ensure that any person participating in the proceedings may use his or her own language, even if it is not the language of the proceedings. Such a provision is necessary because a person who does not speak or understand Albanian or Serbian may appear as a party to the proceedings. This provision protects the language rights of members of other communities in Kosovo, but also of foreign nationals who may be included by court proceedings in Kosovo.

Since court proceedings in Kosovo can only be conducted in Albanian and Serbian as official languages, other communities in

Kosovo are not given the right to conduct proceedings in their mother tongues. Members of other communities are given the right to choose Albanian or Serbian as the language of the proceedings, depending on which one they know better, but also to use their own language in the proceedings. The right to use one's own language in proceedings is also granted to foreign nationals.

Provisions on the use of their language in proceedings give members of all communities in Kosovo the right to make statements in their mother tongue at hearings, as well as to be provided with a translation into a language that they understand of all oral acts during hearings and other judicial procedures if they do not speak the language in which the proceedings are conducted. This right is granted to the parties as well as to other persons participating in the proceedings. In addition to the interpretation, the parties are granted the right to be provided, upon request, with a written translation into a language they understand of all documents and evidence submitted. This right applies only to the parties. Procedural laws regulate who the parties in the proceedings are.

Article 14 provides that all court decisions, not limited to decisions, orders and judgments, shall be served on the parties in the language used in the proceedings. This obligation does not apply only to the court, but is also extended to other bodies in the proceedings, such as prosecutors, the police, the center for social work, the Office of the Protector of Victims, the mediation center and other bodies or organizations that may appear in court proceedings.

If proceedings are conducted against a party who does not speak the language or does not understand the language of the proceedings, a translation of all documents and decisions of the above-mentioned authorities shall be provided to the party in a language the party understands. Such a provision is necessary for the reason that preclusive deadlines start for the party upon submitting submissions and decisions, and the party may lose the right to a legal remedy due to missing the deadlines stipulated in the named documents. For most decisions and submissions, procedural laws provide for in-person delivery because of the importance that the submission or decision holds for the party. For that reason, it is necessary to provide that the obligation of the body is to deliver the aforementioned documents ex officio, and not only upon request, to the party in the language used in the procedure in order to get acquainted with the content of the document in a timely manner. The proposed provisions ensure that the legal deadline for filing an appeal starts from the moment the court decision is delivered to the

party in a language that the party understands, and not in any language as has been the practice so far. Other participants in the proceedings have the right to be provided with a translation of court records into a language they understand, if this is important for the protection of their rights and interests.

