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A UNIFIED COURT AND LEGAL SYSTEM IN KOSOVO?

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On 9 February, the Prime Ministers of Kosovo and Serbia, Isa Mustafa and Aleksandar Vučić, met in Brussels within the framework of the Brussels Dialogue Process. The meeting, organized by the European Union under the chairmanship and guidance of the new European Union High Representative for Foreign Affairs and Security Policy Federica Mogherini, was the first such meeting after a temporary interruption of some ten months due to, among others, elections in Serbia and Kosovo followed by a six-month long political stalemate in the latter country. This was the first meeting between Prime Minister Mustafa and Prime Minister Vučić. An agreement was struck and initialed between the two prime ministers on justice issues in northern Kosovo, but no information was shared on the finer details of the agreement, its scope, nor any deadlines for its implementation.

The agreement on the courts comes after 16 years of parallel court systems in Kosovo, especially in the North. After the war of 1999, Serbia kept its judicial system in function in North Kosovo and Serbian areas south of the Ibër/Ibar River, while Kosovo established its own judicial system. After the Kosovo declaration of independence in 2008, and especially after riots in Mitrovicë/Mitrovica around the court building (17 March 2008), Kosovo courts stopped working in the northern municipalities and the Mitrovicë/Mitrovica Court under the Kosovo system was moved to the Vushtrri/Vučitrn Court building. In 2009, Serbia transformed its judicial system and closed all courts south of the Ibër/Ibar River, only keeping courts in the North. This duality in judicial and legal systems has created many uncertainties about equal access to and efficiency and fairness of justice among the ordinary citizenry. At one point, different courts used laws issued by UNMIK, by the Kosovo Government and by the Serbian Government.

The “First Agreement on Principles Governing the Normalization of Relations”, signed on 19 April 2013 by Prime Minister Hashim Thaçi of Kosovo and Prime Minister Ivica Dačić of Serbia, finally tackled the duality of Serbian and Kosovo judicial systems in the North of Kosovo. It was agreed that the Appellate Court in Prishtinë/Priština was to establish a panel—composed of a majority of Kosovo Serb judges—to cover all Serb-majority municipalities in Kosovo. A division of the Appellate court, including administrative staff and judges, would have Mitrovicë/Mitrovica North as its permanent seat.¹ This agreement should finally integrate the Kosovo judiciary system and defuse the mistrust of the Kosovo Serb community towards the Kosovo justice system, which resulted from a lack of Serbian judges and prosecutors in it.

The implementation of the agreement, however, has been stalled. The implementation plan foresaw the establishment of a working group in charge of developing detailed plans for the integration of Serbian judicial authorities into Kosovo structures and the establishment of any new structures

¹ <http://www.kryeministri-ks.net/?page=2,191> or <http://www.srbija.gov.rs/kosovo-metohija/index.php?id=82315>

required under the agreement, including basic courts and public prosecutors' offices in Serb majority municipalities. By mid June 2013, Serbia should have provided information on the number of judicial personnel interested in joining Kosovo structures, while Kosovo should have made available positions in its judicial structures. The composition of the judiciary should reflect the ethnic composition of the territorial jurisdiction of each court. By the end of 2013, all Serbian court premises in Kosovo should have been closed, new bodies should have been set up and the Serbian personnel should be integrated within the Kosovo system, without a gap in services. Because of the lack of agreement on the implementation, courts under the Serbian system continued to work on all cases except criminal cases, while EULEX judges started to work in Mitrovicë/Mitrovica court on criminal cases. This system gap has provided some space for illegal activities and increasing uncertainty among the population regarding personal and property safety.²

In this regard, the recent agreement on judiciary was more than timely. Prime Minister Mustafa, in a statement to the MPs on 12 February, stated that the agreement will lead to a unified justice system all over Kosovo, and that parallel courts which have been in operation until now will be shutdown. Serbian Prime Minister Vučić, on the other hand, noted that Serbia negotiated the best possible deal with as many Serb judges as possible for northern Kosovo. As with any agreement between Kosovo and Serbia, however, there is a striking lack of transparency on what was actually agreed and the devil is in the details. According to leaks published in the media in Kosovo and Serbia,³ the agreement foresees that there will be one Basic Court and one Prosecution Office for the region of Mitrovicë/Mitrovica. This region encompasses the municipalities of Mitrovicë/Mitrovica South, Mitrovicë/Mitrovica North, Skenderaj/Srbica, Vushtrri/Vučitrn, Zubin Potok, Zvečan/Zvečan, and Leposavić/Leposaviq, and there are currently four existing branches to the Mitrovicë/Mitrovica Basic Court (in Leposavić/Leposaviq, Skenderaj/Srbica, Vushtrri/Vučitrn, Zubin Potok). The agreement also stipulates that "Kosovo law will apply to judicial institutions in accordance with the First Agreement" and that the President of the Basic Court in Mitrovicë/Mitrovica is to be a Kosovo Serb "from northern Kosovo", whereas the Chief Prosecutor of the Basic Prosecution Office is to be a Kosovo Albanian.

ECMI Kosovo welcomes the agreement as an overdue measure to improve access to justice for Kosovo's citizens living in northern Kosovo. There are lack of details as to how and what exactly the agreement contains. However, the prospects of a uniform justice system represents a big step forward, and signify that its decisions are legally-binding and enforceable in all of Kosovo, rather than just in northern Kosovo and certain municipalities. This will increase the public's trust in Kosovo's institutions, and will also send a signal to potential investors to the area who have cited lack of access to judicial remedies as one of the main barriers to entry in the market. While the agreement, by its nature, will be open to interpretation, the fundamentals of it are not: a working legal and judicial system is paramount to the rule of law and security for all and specifically for citizens in northern Kosovo. For the implementation of this basic agreement to be successful this time, transparency and political dialogue will be necessary, not only in Brussels but also within Kosovo.

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² "Civilised Monotony? Civic Oversight of the Kosovo – Serbia Agreement Implementation", p. 37, November 2014.

³ <http://www.gazetaexpress.com/lajme/ja-marveshja-mustafa-vuqig-per-drejtesin-79818/> or http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=02&dd=10&nav_category=640&nav_id=956521

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ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.