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The Neglecting of Non-Serb Minority Communities in the Kosovo–Serb Technical Agreements

On 9 March 2015, the political representatives of the non-Serb minority communities in Kosovo evaluated the judiciary agreement, which was reached between Serbia and Kosovo in Brussels last month, as scandalous and in violation of Kosovo laws. The agreement was sent to Assembly Members last Friday, 6 March 2015, almost one month after the agreement was reached in Brussels during the night of 9–10 February. Representatives of the non-Serb minority communities in Kosovo, which include Ashkali, Bosniaks, Egyptians, Gorani, Roma and Turks, have criticised the fact that the judiciary agreement only mentions Serbs and Albanians and completely excludes other communities. They have threatened to take the case to the Constitutional Court and relevant international courts.¹

No details on the judiciary agreement have been shared with the broader public, but, according to leaks published in the media in Kosovo and Serbia,² the agreement foresees that there will be one Basic Court and one Basic Prosecution Office for the region of Mitrovicë/Mitrovica, with branches in Leposavić/Leposaviq, Zubin Potok, Vushtrri/Vučitrn, and Skenderaj/Srbica. The agreement divides the judges, prosecutors, and staff in the premises of the Basic Court and Basic Prosecution Office in Mitrovicë/Mitrovica between a reserved number of Kosovo Serbs and Kosovo Albanians. It also establishes that the President of the Basic Court in Mitrovicë/Mitrovica will be a Kosovo Serb from northern Kosovo, whereas the Chief Prosecutor of the Basic Prosecution Office will be a Kosovo Albanian.³

Nine Assembly Members representing non-Serbian minority communities in Kosovo – Duda Balje, Čerim Bajrami, and Emilija Redžepi of the Bosniak community; Danush Ademi and Etem Arifi from the Ashkali community; Kujtim Paçak of the Roma community; Müfera Şinik and Fikrim Damka of the Turkish community; and Veton Berisha from the Egyptian community – have criticised the judiciary agreement, once they finally received it for evaluation. The parliamentarians consider that the reservation of a fixed number of places for judges, prosecutors, and staff in the Basic Court and Basic Prosecution Office in Mitrovicë/Mitrovica for only Kosovo Serbs and Albanians is in violation of the Constitution of Kosovo, including the principle of non-discrimination, and the Law on Courts. This is because it excludes members of non-Serb and non-Albanian communities in Kosovo and, thus, violates

¹ <http://koha.net/?id=27&l=47778>

² <http://koha.net/?id=27&l=47778> and

http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=02&dd=10&nav_category=640&nav_id=956521

³ ECMI Kosovo. 'A Unified Court and Legal System in Kosovo' (15 February 2015).

their right to employment and equitable representation in public institutions and the judiciary in particular.⁴

The Constitution of the Republic of Kosovo states that “no one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status”.⁵ The Anti-Discrimination Law legally anchors the principles of equal treatment and fair representation of all persons and all members of communities, including in the domains of employment and access to the public sphere.⁶

The Constitution of the Republic of Kosovo guarantees that communities, and their members, are entitled to equitable representation in public bodies.⁷ With regard to the judiciary in particular, the Constitution of the Republic of Kosovo determines that “at least fifteen percent (15%) of the judges from any other court established with appeal jurisdiction, but not fewer than two (2) judges, shall be from Communities that are not in the majority in Kosovo”. Article 104 (2, 3) of the Constitution of Kosovo and Article 5 of the Law on Courts further specify that “the composition of the judiciary shall reflect the ethnic diversity of the Republic of Kosovo in accordance with the Constitution of Republic of Kosovo and internationally recognized principles of gender equality” and “the ethnic composition of the territorial jurisdiction of each respective court”.⁸ Given that the municipalities that fall under the jurisprudence of the Basic Court in Mitrovicë/Mitrovica – Mitrovicë/Mitrovica South, Mitrovicë/Mitrovica North, Skenderaj/Srbica, Vushtrri/Vučitrn, Zubin Potok, Zvečan/Zveçan, Zubin Potok, and Leposavić/Leposaviq – are also inhabited by members of non-Serb minority communities, these communities should be represented, or at least be able to get represented, in the judiciary, whereas the current agreement seems to allocate all positions in the Basic Court and Basic Prosecution Office in Mitrovicë/Mitrovica exclusively to members of the Kosovo Serb and Albanian communities.

Within the European jurisprudence, the case of *Sejdić and Finci vs. Bosnia and Herzegovina* at the European Court of Human Rights indicates that ethnic quotas for representation in public institutions are in violation of international legislation on human rights. The case found that provisions in the Constitution of Bosnia and Herzegovina, which reserved posts in the Presidency and House of Peoples of Bosnia-Herzegovina to ethnic Serbs, Bosniaks, and Croats only, violated Article 14 of the European Convention on Human Rights, which prohibits discrimination based on “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” with respect to rights under the Convention,⁹ and Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that “the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.¹⁰ Although Kosovo is not a member of the Council of Europe and its citizens consequently do not have access to the European Court for Human Rights and

⁴ <http://koha.net/?id=27&l=47778>; http://www.gazetaexpress.com/lajme/marveshja-per-dreitesine-po-vleresohet-diskriminuese-nga-komunitetet-jo-serbe-pritet-ta-dergojne-ne-kushtetuese-video-85791/?utm_source=referral&utm_medium=web&utm_campaign=c.

⁵ [Constitution of the Republic of Kosovo](#), Art. 24.

⁶ [Anti-Discrimination Law](#), Arts. 2 and 4.

⁷ [Constitution of the Republic of Kosovo](#), Art. 61.

⁸ [Constitution of the Republic of Kosovo](#), Arts 103(6), 104(2,3); [Law on Courts](#), Art. 5.

⁹ Council of Europe, [Convention for the Protection of Human Rights and Fundamental Freedoms](#), Art. 14.

¹⁰ Council of Europe, [Protocol No. 12 to the convention for the Protection of Human Rights and Fundamental Freedoms](#).

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cannot lodge complaints in said court, both the Convention and its Protocols are directly applicable in Kosovo.¹¹

The criticism against the judiciary agreement in fact applies to the entire Kosovo–Serbian negotiation process and the technical agreements that have been reached within that framework. These agreements tend to focus exclusively on the position of the Kosovo Serb community and make no mention at all of the other minority communities. In so doing, these agreement breach the principles of non-discrimination and equitability of all communities in Kosovo, which are cemented in the Constitution and legal framework of the Republic of Kosovo. It is imperative that future agreements take into consideration the inclusion and even participation of other communities in Kosovo and concur with the general multi-ethnic framework of Kosovo.

In addition, the Brussels Dialogue and the agreements reached require more transparency and inclusiveness. The Brussels agreements go well beyond the so called “technical agreements”, as they affect the entire constitutional and legal framework.¹² The European Union is only a facilitator of the dialogue Pristina and Belgrade are undertaking themselves; hence, it has left it up to the parties to inform their relevant actors. Up to now, however, the entire process has been completely closed and the Assembly of Kosovo has only been informed well after any agreement has been reached. For the agreements to be inclusive and politically sustainable, the involvement of the Serbian and Kosovo assemblies is imperative.

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¹¹ [Constitution of the Republic of Kosovo](#), Art. 22.

¹² ECMI Kosovo. [‘The Association/Community of Serb majority Municipalities: A Lot of Speculation, Little Factual Agreement and No Implementation’](#) (22 February 2015).

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About ECMI Kosovo

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.