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REPRESENTATION OF KOSOVO SERB COMMUNITY IN FREE LEGAL PROFESSIONS IN KOSOVO

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ECMI Kosovo (ecmikosova.org)
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.

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ERAC brings together seven (7) NGOs that work in the domain of ***rule of law*** and ***fundamental rights*** that will work together with an additional ***nineteen (19) grass root NGOs***, with a particular focus on the establishment of a sustainable network of NGOs that are active in the protection and promotion of the fundamental rights of vulnerable and/or marginalised groups. The project's special focus are the following groups: ***all minority communities*** in Kosovo, ***women, youth*** and ***LGBT community***. Although working on similar topics and issues, these NGOs are often divided on the basis of the particular target groups they are working with or the region they are active in. By establishing structural cooperation between selected NGOs and providing formal opportunities for continuous learning, the action generates the sharing of knowledge and experience between NGOs, strengthens their capacities for advocacy with relevant central and municipal institutions, and increases their visibility.

ERAC members are the following organisations:
- European Centre for Minority Issues Kosovo – leader of the Coalition;
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- Centre for Equality and Liberty for the LGBT Community in Kosovo – member of the Coalition;
- Kosovo Center for Gender Studies – member of the Coalition;
- Youth Initiative for Human Rights – member of the Coalition;
- Kosovo Glocal – member of the Coalition;
- Centre for Legal Aid and Regional Development – member of the Coalition.

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REPRESENTATION OF KOSOVO SERB COMMUNITY IN FREE LEGAL PROFESSIONS IN KOSOVO

BACKGROUND

There are five free legal professions in Kosovo, such as lawyers, notaries, private enforcement agents (PEAs), mediators and bankruptcy administrators. These professions are regulated by the government, respectively by the Ministry of Justice (MoJ). MoJ is responsible for drafting the necesseary legislation for regulating these professions,and plays a key role in the ensuring the functionality of the system of legal professions.

The duties and responsibilities of the Ministry of Justice (Departament of Free Legal Professions) as it pertains to four of the five free legal professions (FLPSs), namely notaries, private enforcement agents, mediators and bankruptcy administrators are to propose, draft and ensure the implementation of the legislation in the field of notary, enforcement, jurisprudence (the Bar Exam), mediation and bankruptcy in cooperation with relevant institutions. MoJ is also responsible for liscensing and monitoring (sipervising) the work of notaries, private enforcement agents, mediators and bankruptcy administrators; to prepare analitycal reports as well as provide information on the work of notaries, PEAs and mediators; to provide support to the preparation of manuals and standards by the Chamber of Notaries and the Chamber of Privat eEnforcement Agents; to provide administrative support to the examination commissions and licensing for notaries, PEAs, deputy PEAs and mediators. Other competences with regard to monitoring include preperation of documentation on the review of claims in line with the relevant legislation; to maintain the register of notaries, PEAs and Deputy PEAs, Mediators and Bankruptcy Administrators; as well as maintaining records of persons who have passed the notary exam, and the PEAs exam, keeping the evidence of candidates who have applied for the Bar exam and candidates who have passed the Bar exam, considering that the Bar exam is needed also for the professions of lawyers and PEAs.[1]

Furthermore, according to the amended Governmental Regulation on the Internal Organization of MoJ[2] a new Division will be established at MoJ, namely the Division for Overseeing the Legality of the Work of private enforcement agents, notaries and mediators. The duties and responsibilities of this division shall be as follows: I. conduct the oversight of the legality of the work of private enforcement agents, notaries and mediators in accordance with the Law on Enforcement Procedure, the Law on Notary and the Law on Mediation; II. prepare minutes regarding the conduct of oversight of the legality of the work of Free Legal Professions; III. prepare a report

[1] Regulation GRK -No. 31/2013 on the Internal Organisation of the Ministry of Justice, was approved on 156 meeting of the government of Kosovo with the decision no. 01/156 date 13.11.2013 https://gzk.rks-gov.net/ActDetail.aspx?ActID=10360, Regulation Grk – No.12/2018 On Amending And Supplementing Regulation Grk-No. 31/2013 On The Internal Organization Of The Ministry Of Justice https://md.rks-gov.net/desk/inc/media/C9444161-1189-4794-AEEA-A69FD0181A19.pdf

[2] Regulation Grk – No.12/2018 On Amending And Supplementing Regulation Grk-No. 31/2013 On The Internal Organization Of The Ministry Of Justice https://md.rks-gov.net/desk/inc/media/C9444161-1189-4794-AEEA-A69FD0181A19.pdf

and give recommendations regarding the conduct of oversight of the legality of the work of Free Legal Professions; IV. perform other duties in accordance with the legislation in force'. Overseeing the Legality of the Work of these 3 free legal professions, will be done in accordance with the Law on Enforcement Procedure, the Law on Notary and the Law on Mediation and their relevant by-laws.

Notaries

The service of notary is a public service, which is exercised by notaries licensed by the Minister of Justice in accordance with the provisions of the Law on Notary[3]. This law regulates the organization and criteria for the exercise of the profession of notary, the administration of the notary's examination, determines the notary's competences, and other issues related to the exercise of the notary's duties in the territory of Kosovo. Notaries are independent and impartial in exercising the services of notary and in exercising the notarial functions prescribed by law.

Upon appointment by the Minister of Justice, the notary, in accordance with article 10 of this law, is obliged to take an oath before the Minister, the President of the Supreme Court and the President of the Chamber. After taking the oath, the individual authorized by the Minister submits to the notary the licensing act (a copy is sent to the Chamber). The content and form of the licensing act is determined by the Minister. The Ministry and the Chamber keep a register[4] of all the licensed notaries. Based on the data from the Notary Chamber, the current total number of notaries in Kosovo is seventy (70), out of which only one (1) notary belongs to the Serb community in Kosovo. The very low representation of Kosovo Serbs in this profession impedes access to justice for this community.

On July 2019 the Ministry of Justice in a media communication noted that given provided by the new Law on Notary which entered into force in early 2018[5] they will start the process of recrutining notaries. The Ministry, also, added that in order to overcome the current challenges, the new Law on Notary provides, among other things, to increase the number of notaries according to the new formula 1 notary to 10 thousand inhabitants.[6] As a result of this process a public competition for the election of notaries has been opened where the Ministry has opened 79 vacant positions for notaries, and among them non-majority municipalities.[7] Hopefully, this will increase the number of Kosovo Serb notaries and improve access to justice.

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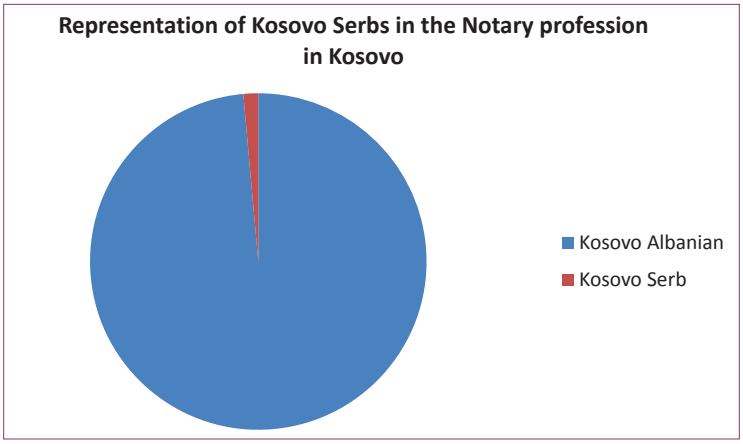
[3] Law No. 06/L –010 On Notary official Gazette Of Kosovo / No. 23 / 26 December 2018 https://gzk.rks-gov.net/ActDetail.aspx?ActID=18334

[4] Register of Noteries http://noteria-ks.org/noteret/

[5] Law No. 06/L –010 On Notary, Official Gazette Of Kosovo / No. 23 / 26 December 2018, Pristinahttps://md.rks-gov.net/desk/inc/media/20765567-A382-4FED-A7CD-AB9ED5A1E0F9.pdf

[6] https://md.rks-gov.net/page.aspx?id=1,15,2047

[7] Ministry of Justice decisions on Noteries https://md.rks-gov.net/page.aspx?id=1,42



Private Enforcement Agents

The private enforcement system is regulated by the Law on Enforcement Procedure[8]. The private enforcement agents (PEAs) and the Chamber of PEAs are monitored by the MoJ Department for Free Legal Professions at the Ministry of Justice. The legality of the work of PEAs is overseen by the MoJ Division for overseeing the legality of the work of notaries, PEAs and mediators. According to this law a "private enforcement agent" is the natural person appointed by the Minister of Justice for the territory of the Basic Court for the enforcement of public authorizations entrusted with the execution of permitted enforcement and execution of enforcement actions. The enforcement agent is independent and performs functions only in accordance with the law. The private enforcement agent's headquarters are located within the territory of the Basic Court for which he has been appointed.

In order for this service to be competitive and qualitative, the number of private enforcement agents is determined by the Minister in accordance with the provisions of the Law on Enforcement Procedure. For the territory of the Basic Court, a private enforcement agent's position, as a rule, is set at twenty-five thousand (25,000) inhabitants. According to the data published by the Chamber[9], and the data published by the Ministry[10], the total number of private enforcement agent in Kosovo is forty-two (42). There are no members of the Kosovo Serb community represented in this profession currently. This just goes to show that the Kosovo government needs to work more to reach out to this community and ensure they are part of the system.

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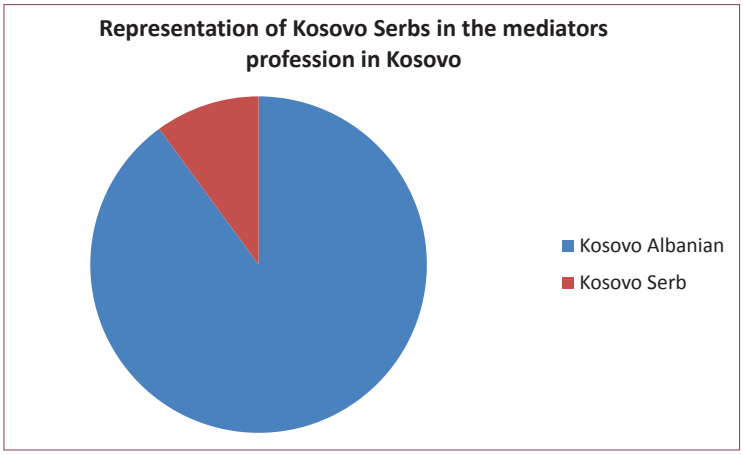
[8] Law No. 04/L-139on Enforcement Procedure Official Gazette Of Kosova/ No. 3/ 31 january2013 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2870, amended and supllemented in 2017 with the Law No. 05/L-118 On Amending And Supplementing The Law No. 04/L-139 On Enforcement Procedure https://md.rks-gov.net/desk/inc/media/69AEC87B-6E47-4CC0-A103-50E80C37011E.pdf

[9] Chamber of Private Enforcement Agents register of Private Enforcemenet Agents http://opk-rks.org/permbaruesit/#1500369839294-b52c003d-3935

[10] Ministry of Justice register of Private Enforecement Agents https://md.rks-gov.net/desk/inc/media/988243B5-9ABF-45CA-B3DB-7F53A905C237.pdf

Mediators

The Mediation Law[11] regulates the functioning, procedure and organization of mediation, as well as the rights, duties and responsibilities of mediators in order to facilitate access to alternative disagreement resolution and disputes, and to promote their friendly solution. By law, a "mediator" is the third person, who is impartial and licensed by the Ministry of Justice, and who has chosen to mediate between the parties in order to resolve disputes, in accordance with the principles of mediation. The Minister of Justice is responsible for the certification of mediators. The Ministry of Justice and the Chamber of Mediators keep the public register[12] of all the licensed mediators in Kosovo. According to the published register, the total number of mediators practicing in the territory of Kosovo is one hundred and eighty-nine (189), out of which nineteen (19) belong to the Kosovo Serb community.



Bankruptcy Administrators

The criteria for administrators competences are set out in article 86 of the Bankruptcy Law[13]. Accordig to the Chapter VII of the Bankruptcy Law, administrators are persons appointed as representatives of the bankruptcy estate. The MoJ maintains the register of the liscensed bankruoptcy administrators. The total number of the liscensed Bankruptcy Administrators in the territory of Kosovo is eighteen (18), andthere are no members of the Kosovo Serb community represented in this profession.

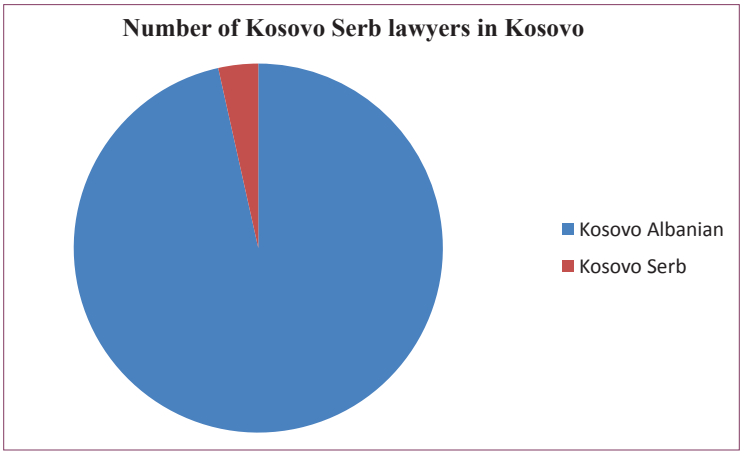
[11] Law No.06/L –009 On Mediation Official Gazette Of Kosovo / No. 14 / 20 August 2018 https://gzk.rks-gov.net/ActDetail.aspx?ActID=17769

[12] Ministry of Justivce register of Mediators https://md.rks-gov.net/desk/inc/media/0284D2EC-42BD-43DC-AE73-76C1DC8E74DC.pdf

[13] Law No. 05/L - 083 On Bankruptcy Official Gazette Of Kosova / No. 23 / 7 July 2016 https://gzk.rks-gov.net/ActDetail.aspx?ActID=12664

Lawyers

The Law on the Bar[14] regulates the conditions for practicing law the rights, obligations and responsibilities of lawyers and practitioners, as well as the organization and work of the Kosovo Chamber of Advocates.. According to this law, a lawyer is considered a person who is registered in the Chamber, who has taken an oath, and practices law. According to the Chamber's published registry[15] on their website, the total number of lawyers in Kosovo is nine hundred and eighteen (918), out of which thirtytwo (32) are members of the Kosovo Serb community.



Casuses and Issues of Kosovo Serb Underrepresentation in Kosovo Legal Professions

Kosovo Serbs are underrepresented in Kosovo's five legal professions to various extents. This underrepresentation cannot be ascribed to one particular factor, but instead to a number of factors individually for each profession. Nevertheless, overarching issues affecting can be idetified spanning through all the professions.

According to the Kosovo Bar Association, a self-governing organisation of Kosovar lawyers established by the Law on Advocacy and Other Legal Assistance, [16] out of 918 lawyers in Kosovo, 25 are Kosovo Serb.[17] Whilst this number is not negligible, it points to insufficent representation of the kosovo Serb Community, who are estimated to constitute around 7.8% of Kosovo's total population. Nevertheless, the Bar examination for qualification as a lawyer within Kosovo holds an objective standard regardless of ethnicity or likewise. Therefore, the factors for lower Kosovo Serb participation as lawyers are more indirect.

[14] Law No.04/L-193on The Bar Official Gazette Of Kosova/ No. 20/ 31 may 2013 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8673

[15] Register of Lawyers on the website of the Kosovo Bar Association http://www.oak-ks.org/sq/lista-e-avokateve

[16] Law No. 04/L-193 On The Bar Official Gazette Of Kosova / No. 20 / 31 May 2013, Pristina https://gzk.rks-gov.net/OfficialGazetteDetail.aspx?GZID=187

[17] Interview with Florim Shefqeti, the Executive Director of the Bar Association, on 08/04/2019

The main purpose of the Kosovo Bar Association is to promote the rule of law in Kosovo and support the reform process. It is considered the voicefor the legal profession, and continually pursues the mission of justice improvement. It has previously implemented projects in coordination with the Organisation for Security and Cooperation in Europe (OSCE) creating internship placements for law students from minority communities, and the Association itself has taken on several Kosovo Serb interns in recent years.

There is no legal barrier that would somehow prevent members of marginalized communities to apply and pass the bar exam. The issue would have to be lack of interest or external factors that affect the citizens in applying or pursuing this career. The Bar Associacion of Kosovo has worked together with the OSCE by organizing tranings for interns in preparing them professionaly to become lawyers. These program trainings have affected three generations of interns. The head of the Kosovo Bar Association states that they had had interns who belonged to the Kosovo Serb community. Moreover, the Bar Associacion of Kosovo has a permanent Committee for communities that is fully functional. Recommendations would include informative and encouraging events that the citizens and members of the communities would gain knowledge about the profession. The head of the Bar Association stated that with proper funding, they could develop training programs that would welcome everyone interested in becoming a lawyer to apply and be part of. [18]

Following an interveiw with a Kosovo Serb lawyer in Mitrovica, an obstacle was highlighted in that a Commission for Verification of Diplomas excludes all graduates from the legal faculty in Serbia, and as such they cannot obtain a certificate or apply for a job in Kosovo. The inadequate representation of Kosovo Serbs in the legal professions seems to affect and cause further emigration of the youth that live in Kosovo.

The director of the Kosovo Private Enforcement Chamber believes that if there were to be more private enforcement agents in the cities with = higher percentage of Kosovo Serb community members, this would contribute to more access to justice and better division of labor on municipalities. The Chamber worked together with the 'Free legal professions project' funded by the EU[19] to introduce the legal professions and encourage citizens to engage in these professions by conducting awareness campaigns in Mitrovica and Zubin Potok. During these informative visits, there seemed to be interest from the citizens but so far the Chamber of the Private Enforcement Agents has not received any applications from Kosovo Serb community members. He recommended that the local government be more involved in educating citizens' of the importance of these professions, which evidently would lead to improved services provided by private enforcement agents.[20]

[18] Interview with Florim Shefqeti, the Executive Director of the Bar Association, on 08/04/2019

[19] Kick-off of our project: Support to Free Legal Professions and the Bar Association in Kosovo https://www.bseurope.com/about-us/our-group/kick-our-project-support-free-legal-professions-and-bar-association-kosovo

[20] Interview With Arben Gashi, The Executive Director Of The Chambers Of Private Enforcement Agents, On 25/04/2019

IMPACT

The imapct of Serb underrrepreseentation within Kosovo's legal professions is significant. As a whole, it reflects the lack of participation of the community within Kosovo's public life, leaving to further marginalisation and segregation. This was indicated in interveiws with various stakeholders.

This marginalisation also can accelerate the emigration process of young Serb people from Kosovo; without prospects for employment and increasing marginalisation, the incentive to move to Serbia or other countries is increased.

There needs to be a more inclusive and youth led solution towards this issue.

CONCLUSION AND RECOMMENDATIONS

Apart from the data, interviews were conducted with Kosovo Chamber of Prive Enforcment Agents and the Kosovo Bar Association. The ministry of Justice did not reply to our requests. Furthermore, members of Kosov Serb Community were interviewed.

Kosovo is multi-ethnic society, and this diversity of Kosovo society should be reflected acrros all sectors and professions. This should be the goal, and although there is a long way still to go there, interventions should be taken to ensure this issue is tacked in short term as well. Policies and laws in Kosovo are inclusive of all Kosovo citizens but unfortunately implementation is poor. We found that due to many challenges the the Kosovo Serb community is seriously underrepresented in the Kosovo's free legal professions.There are many reasons why this is an issue, including the language barrier which is one of the most serious impediments to access to justice.

Kosovo Government together with civil society should work together to develop a plan for inclusion of Kosovo Serb community and other minority communities in all professions, inclusing the free legal professions. In the meantime, proactive measures need to be taken by relevant stakeholders to encourage and foster the participation of Kosovo Serbs within the communities. The following concrete actions can therefore be recommended:

- Raising awarness on the importance of implementation of the law on use of languages in Kosovo. Furthermore, there should be better planning and costing of the its implementation.

- The recognition of diplomas should be a more promiment issue and discussed even in all levels.

- Creating internship and fellowship opportunities that provide professional growth and professional experience to young and upcoming lawyers in order for them to take the jurisprudence exam. In turn, this would incentivize them to consider other public professions too, such as notaries, private enforcement agents, mediators and bankruptcy administrators More outreach should be done, and free training should be provided to recent graduates from the Kosovo Serb community, as well as other non-majority communitiesintrested topursue careers and integrate to Kosovo workforce and society.

- The issue of language is a challenge in the legislative framework. Drafting laws and poicies in Kosovo is done in both official languages. Nevertheless, the quality of translation is not the same. There are discrepancies between both versions, and sometimes contradicting articles too. More efforts and resources need to be spend to ensure that there is not collision of laws.

Given that language is and will reamain a challenge in Kosovo there needs to be some analysis on how to incentivize both Kosovo Albanians and Kosovo Serbs to learn each others language. Overcoming the language barrier will take time, and that is why it needs to be a priority and treated more seriously. All should be encouraged to use and speak their own language but at the same time there should be the opportunity to learn each others language, as that would result in a well functioning multi ethnic society.

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