

# TOWARDS EQUAL LINGUISTIC QUALITY OF KOSOVO LEGISLATION INTO ALBANIAN AND SERBIAN LANGUAGE

A Step in Filling the Gap in the Implementation of  
the Law on the Use of Languages

October, 2018



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## Lead NGO for publishing the Report

**ECMI Kosovo** ([www.ecmikosovo.org](http://www.ecmikosovo.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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## Equal Rights for All Coalition

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;
- Centre for Social Group Development – member of the Coalition;
- 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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European  
Union  
Kosovo



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## **ACRONYMS**

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<b>UNMIK</b>	United Nations Interim Administration Mission
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>OLC</b>	Office of Language Commissioner
<b>OPOG</b>	Office for Publication of the Official Gazette
<b>ERAC</b>	Equal Rights for All Coalition
<b>ECMI Kosovo</b>	European Centre for Minority Issues Kosovo

## INTRODUCTION

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Linguistic rights are essential for the effective protection and promotion of community rights and for ensuring equal rights for all. As an essential component of both individual and collective identity, language rights are paramount in global human rights discourse, evidenced by their prominent position in international human rights instruments. In order to undo the effects of protracted patterns of discrimination that accompanied decades of ethnic conflict in Kosovo and establish a stable and democratic society, the Constitution of Kosovo and the 2006 Law on the Use of Languages installed an extensive legal framework for guaranteeing equal rights under which any future Kosovar government should operate. Given the crucial place of language in the identity of national communities, the practical importance of language in accessing basic human rights, and the salience of language in the history of ethnic conflict in the region, linguistic rights are a central pillar in this equal rights framework. The Law on the Use of Language defines Kosovo as a multilingual society and sets an elaborate and progressive framework for the protection and promotion of languages in use in Kosovo. While this law was passed under UNMIK in 2006, it remains in operation following the proclamation of Kosovo's independence.

The central point of Kosovo's linguistic legal framework is that Albanian and Serbian have an equal status as official languages at all levels of government. Amongst others, this implies that all Kosovo state institutions must issue and publish legal acts in Albanian and Serbian and that both versions are equally authoritative.<sup>1</sup> In recent years, a number of studies by Kosovo's Office of the Language Commissioner, OSCE, local non-governmental organizations, and Serbian newspapers have brought attention to the poor linguistic quality of the Kosovo legislation in Serbian language. This policy paper elaborates on the findings of these studies, which have defined the scope and impact of the problem, but takes up where previous studies have stopped. It first provides an outline of the issue and lists the grounds for the uneven quality of legislative documents in Serbian and Albanian. It then highlights the impact of the weak implementation of the law on the use of languages in the domain of legislation in particular on access to equal rights in Kosovo and finally presents a number of concrete recommendations for concentrated government action to undo the linguistic inconsistencies between Serbian and Albanian translation of legislation in Kosovo.

Most of the analytical information in this report expands on investigations and reports by the government of Kosovo, the OSCE, ECMI Kosovo, the Platform for Analysis and Research (a non-formal group of 15 NGOs operating in North Kosovo), UNMIK, USAID and the newspaper *Vesti*. *Vesti* has been selected as a newspaper

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<sup>1</sup> Law on the Use of Languages (No. 02/L-37), esp. arts. 5 and 8.

source on this issue due to its significant recent research upon the subject (Petković, 2014; Petković, 2015). These studies provide invaluable and excellent analytical findings on the flawed implementation of language rights in Kosovo in general, as well as detailed findings on the nature and scope of poor linguistic quality of Kosovo legislation translated into Serbian language. The present policy paper complements the findings presented in these studies in two ways. First, it provides a particular focus on the impact of inconsistencies between Albanian and Serbian language in the framework of the ongoing efforts to include Serbian language in the Kosovo judicial system in line with the EU-brokered Brussels Agreement. For this part of the analysis, an interview with Mr Milan Bigović, Judge at the Court of Appeals, was particularly meaningful. Secondly, it provides concrete recommendations to address the issue in lines with the procedures for drafting and revising legislation. For this part of the analysis, researchers of the Equal Rights for All Coalition relied on valuable insights and information from the Legal Department of the Office of the Prime Minister and Language Commissioner Slaviša Mladenović. In order to estimate the political feasibility of the recommendations, finally, ERAC representatives also consulted with the Speaker of Assembly, Mr Kadri Veseli.

This policy paper focuses exclusively on the quality of Serbian-language legal acts. This runs counter to Kosovo's multilingual character, which guarantees the equal use of languages of other communities besides Serbs and Albanians at all levels of government. Yet, the particular status of Serbian as an official language in Kosovo means that every official document in Kosovo should be available in Serbian and that the Serbian variant is equally authoritative as the Albanian is. Hence, as this paper will argue, the issue of poor quality of Serbian-language legislation is particularly pressing from a legal and human rights point of view. Moreover, it can be addressed relatively easily and effectively.

## **THE EQUAL STATUS OF ALBANIAN AND SERBIAN TRANSLATION OF KOSOVO LEGISLATION- BETWEEN THEORY AND PRACTICE**

Language constitutes a core element of human identity at the individual and community level. It is the vehicle through which a person expresses her- or himself and through which he or she is part of a social community. At the group level, language is arguably the most important factor determining national communities. Language also is a crucial tool for accessing other rights. As such, language rights as a fundamental part of general human rights, both as a right in itself and as a medium for accessing other rights. Seen through a human rights lens, language rights defend dignity and identity, but also liberty and equality regarding non-discrimination. Linguistic rights are particularly important for minorities, as they expand diversity, support conflict-prevention, and provide minorities with better access to education, greater female empowerment, better resource management, and improved quality of public services (UN Special Report on Minority Rights, 2017).

Language has been a long-term stressor for community relations in Kosovo. The suppression of the Albanian language played a large role in rising conflict in Socialist Yugoslavia. The abrogation of national rights of Kosovo Albanians by the regime of Slobodan Milosovic at the beginning of 90s, which was followed also by closure of Albanian language schools in Kosovo, ultimately led to the creation of parallel structures during the 1990s, in which Kosovo Albanians provided themselves with education and other daily services while the Yugoslav government enforced Serbian upon its administration (Demaj & Vandenbroucke, 2016; Kostovicova, 2005). Following the war, the roles shifted as the Albanian majority gained greater control over public life and the Serb population withdrew from Kosovo's public sphere. Considering the salient role of language in the protracted ethnic conflict in Kosovo, however, the international community cemented the equal use of Albanian and Serbian language as a basic pillar for a stable multi-ethnic Kosovo after the war of the 1990s (Groß, 2015). Following its independence, Kosovo fully subscribed to the principle of equal use of languages as a constituent pillar of its multilingual identity. While not being a member of the United Nations or the Council of Europe, Kosovo's constitution promotes the values of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities and stipulates that human rights in Kosovo shall be interpreted in line with the decisions of the European Court of Human Rights.

The Kosovar Constitution and the Law on the Use of Languages stipulate "the multilingual character of Kosovo society, which represents its unique spiritual, intellectual, historical and cultural values".<sup>2</sup> Albanian and Serbian language enjoy

<sup>2</sup> Law on the Use of Language (No. 02/L-37), Art. 1.1.iv.

equal status as official language in all Kosovo institutions and both the Latin and Cyrillic alphabet are recognized.<sup>3</sup> Every person has the right to communicate with and receive available services and public documents from Kosovo institution in any of the official languages.<sup>4</sup> Freedom of expression is guaranteed and language-based discrimination is prohibited.<sup>5</sup> A particular stipulation of the Law on the Use of Languages states that all laws, regulations, and subsidiary acts issued at the central and municipal level should be issued and published in the official languages and that all official languages are equally authoritative.<sup>6</sup>

The implementation of the latter stipulation remains, however, flawed. Some flagrant inaccuracies in Kosovo legislation translated into Serbian language have received particular attention in a number of studies conducted by a various range of actors, from the Office of the Language Commissioner at the Office of the Kosovo Prime Minister and the OSCE, over local non-governmental organizations, to local newspapers. Research by the Serbian newspaper *Vesti* found roughly 4,500 errors in a sample of various laws translated from Albanian to Serbian language and around 5,500 errors in the Serbian translation of the Criminal Code of Kosovo, including a grammatical error in the title itself (Petković, 2014; Petković, 2015). These mistranslations include simple grammatical mistakes, intermixing with Bosnian and Croatian words, use of inadequate words, omissions of passages, and nonsensical constructions. It should be noted that not all of these errors have been independently verified by ECMI Kosovo; however, the specific examples given shortly below have been. The impression is given that translations are done in a mechanical way, without considerations for the wider legal context or the specificities of the Serbian language (OSCE, 2012; PAR, 2016). The poor quality of official legal documents in Serbian is often considered emblematic of the gap between Kosovo's ambitious legal framework for the promotion and protection of community rights and the much more flawed praxis (PAR, 2016). When what is ostensibly the same law in fact differs in its alternate translations, this leads to ambiguity regarding its actual meaning. This obscurity as to substance means that the contents of law in practice are easily challengeable and therefore weakened.

It can be asserted that the continued poor quality of Serbian-language legislation for several years indicates something of an institutional problem. The failure as of yet to remedy the numerous consequential discrepancies between Serbian and Albanian translation of Kosovo legislation suggests a political negligence on the part of the Government to commit time and resources to improve Serbian language version of legislation. However, as we will make clear below, this has changed and there are signs that this issue is been taken seriously by the current Government.

<sup>3</sup> Law on the Use of Language (No. 02/L-37), Art. 1.2.

<sup>4</sup> Law on the Use of Language (No. 02/L-37), Arts. 4.2 & 7.2.

<sup>5</sup> Law on the Use of Language (No. 02/L-37), Art. 3.1.

<sup>6</sup> Law on the Use of Language (No. 02/L-37), Art. 5.4.

A number of examples and the explanations given will shed more light on the sensitivity and potential impact of the issue. Article 2.1 of the Constitution of Kosovo declares (in the English version) "The sovereignty of Kosovo stems from the people, belongs to the people and is exercised in compliance with the Constitution through elected representatives, referendum and other forms in compliance with the provisions of this Constitution". This phrasing is similar in the Albanian version, but within the Serbian version the word "referendum" is not included. The cause of this is possibly attributable to an unprofessional translation. However, in the eyes of some of the Serb community, such mistranslations may have more malicious motives.

Dr Darko Simovic, a Serbian Professor of Constitutional Law, stated in accordance with the research carried out by Vesti that such a mistranslation "was supposed to conceal this mechanism that is conducive to the will of the majority" (Petković 2014). When asked about this phenomenon, the Language Commissioner, Mr. Slavica Mladenovic, stated that the problems are manifold, and the poor quality of laws in Serbian language is more a matter of political negligence and lack of resources to address this issue. However, the lack of professionalism and attention to detail with regard to translation of legislation can be considered a paradigm of the difficulties facing the Kosovar government as a whole.

Regarding the police force, the Serbian and Albanian translated documents grant different amount of authority. The Albanian version of paragraph 4.19 of the Kosovo Police Service Policy Procedure Manual stipulates that "the use of handcuffs is a use of force and must be justified under the KPS use of force policy" while the Serbian version calls the use of handcuffs an action "taken only when other weaker measures are inefficient". The requirement in the Albanian version that the act must be justified versus the Serbian version that says other options must be exhausted creates a security gap and thus "the threshold for the use of force in the Serbian version appears to be lower than in the Albanian version. This has a direct negative impact on the rights of the individual" (OSCE 2012, p.23). Given the destabilizing effects use of force by the police has on civilian populations, specifically in the case of problematic ethnic relations as is the case in Kosovo, the particular passage was corrected following the OSCE's suggestions.

Article 12 of the Kosovo Criminal Code has vastly different interpretations of the same guideline. The Albanian and English versions use the term "refuse attack", while the Serbian refers to "avoid the attack". This greatly changes the right to self-defense and violence between the two communities. A defensive measure in the Albanian text could be seen as an offensive action in the Serbian text if the guideline is interpreted differently by the acting officer. Article 13 too has a great inconsistency. The Serbian version says that the damage you are using must be

smaller than the one that has been threatened, and in the original version [Albanian] it says that it should not be larger (Petković, 2015). This also changes the level of violence justified in self-defense that could lead to an uneven application of the criminal code.

Mistranslations can have grave legal implications. In one case, the Law on Contested Procedure was used to argue against itself due to mistranslations in Article 258(4). A request made by one of the parties was rejected based on the Serbian version of the article. The legal representative of the party objected to this decision, referring to the same provision in the Albanian version, which is the opposite of the Serbian version and allows the request to be made in this case (OSCE, 2012, p.26). Given that both languages and their legal translations have equal authoritative status, this creates a direct conflict between the two versions of the same legal provision.

In other cases, entire sections are missing in Serbian. The Albanian version of the Kosovo Police Policy and Procedure Manual of 2007 has a thorough section on non-discrimination policy, which is entirely missing in the Serbian version (OSCE, 2012, p.24). This creates conditions in which discrimination would be justified under certain guidelines by a certain segment of the police force when referring to the Serbian version of the manual. These flagrant inaccuracies, too, were corrected following the OSCE report, but continued instances of large scale differences between the various other government documents demonstrates why more action is still needed to combat this issue.

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How can it be that such widespread inconsistencies appear in the Serbian version of Kosovo's legal acts? A first problem lies in the monolingual process of drafting laws. In order to guarantee linguistic quality of legal acts in cases where various languages are equally authoritative, laws should be drafted and discussed in both languages. Only in that way does the law linguistically reflect the participation of various communities in the drafting process, can linguistic inconsistencies or inaccuracies be addressed during the drafting process, and does the law accurately transmit the same concept in both languages. At the central-level institutions in Kosovo, however, most laws are drafted and written in Albanian in practice. Individual government institutions may propose law and the Government then takes a decision, which leads to the formation of a working group.<sup>7</sup> Such a group will be constituted of the various ministries and institutions who will be affected by such a law.<sup>8</sup> In practice, there is little, if any, participation of Serbian ministers and Serbian-speaking civil servants into working groups. For political reasons, Serbian parties

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<sup>7</sup> Law on Legislative Initiatives (No.04/L-025), esp. art 9.

<sup>8</sup> Regulation of Rules and Procedure of the Government of Kosovo (No.09/2011).

often refuse to participate in the work of Kosovo Government and the Assembly; this then leads to any Serb civil servant unwilling to take part in the working group legislative drafting. Consequently, legislation is usually written in Albanian, being translated into Serbian only once there is a first complete draft law. Amendments to draft laws, especially at the inter-ministerial working group, are often only added in Albanian. After the drafting process is finished, laws are translated into English and only then into Serbian, increasing the chances of discrepancies and mistranslations (OSCE, 2018, p.10; Petković, 2015). This practice creates a disparity in quality of official documents in both official languages, as the Serbian version of the law is always a translation of an original document, or even a translation of English version of law. As such, the linguistic quality of the text reflects the limited participation of Serbs in the legislative process, which shines through in the poor linguistic quality of the legislative acts in Serbian.

An additional problem with the current process is the lack of participation of Serbian civil society in the drafting process of the Kosovar government. The Regulation on Minimum Standards for Public Consultation Process stipulates that all Public Bodies of Kosovo must ensure the equal opportunity of non-discriminatory participation of interested parties and the public in the process of public consultation.<sup>9</sup> Admittedly, even Albanian-language public participation in Government processes is currently lacking: out of the 107 documents adopted by the Government in 2017, only 36 were published on the Online Platform for Public Consultations; of these, only six were commented on by external stakeholders (KCSF, 2018). However, the failure to translate into Serbian until after the completion of the draft process means that the only participation from wider civil society is from the Albanian sphere. Therefore, notwithstanding the poor linguistic quality of legislation itself in Serbian, even the current process of translation can be considered somewhat exclusionary and harmful to the participation of non-majority groups in wider Kosovar society.

Even given the knowledge that a posteriori translations are problematic, no matter how good the translation, an additional problem in Kosovo is that the capacities and resources for providing qualitative translation are low at all levels of government. At the municipal level, in-house translation units often do not exist and translations are outsourced or done ad hoc by available staff. There is often a limited awareness about the need to translate public documents in all official languages, especially in areas with limited presence of non-Albanian communities. As a consequence, a significant number of legislative acts are not available in Serbian (OLC, 2015; OSCE, 2014). At the central level, translation units exist, but often struggle with a lack of qualified staff, budget, and professional equipment (for example, lacking basic computer assisted tools or even legal dictionaries).<sup>10</sup> There are also no official

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<sup>9</sup> Regulation on Minimum Standards for Public Consultation Process (No. 05/2016), Art. 4.1.1.

<sup>10</sup> Interview with Language Commissioner Slaviša Mladenović, October 2018.

training schemes for translators within government. Translators are underpaid in governmental translation units and the best translators often prefer better-paid jobs in the private sector (OSCE, 2018). A result is that outsourcing of translation assignments to private firms is more common now, although this does not always guarantee the same quality as in-house translations.<sup>11</sup>

Translators often have inadequate formal skills for specialist legal translations, as there are no educational opportunities for specialist legal translating between Serbian and Albanian in Kosovo (OLC, 2015; OSCE, 2018; PAR, 2016). This problem becomes particularly acute with the ongoing integration of Serbian judiciary in the Kosovar judicial framework.<sup>12</sup>The central Government employs translators under the rank “Professional 2” of its internal employment catalogue; however, there are no specific requirements as to levels of educational background for such translators. Moreover, employees under this rank are paid under the relatively low Pay Grade 9 – with 1 being the highest salary and 14 the lowest – meaning that, as aforementioned, the attraction of good quality translators is relatively difficult.<sup>13</sup>In addition, there is no standardized use of legal terms, which creates inconsistency within one language and across languages. In Switzerland, for example, a trilingual dictionary determines which legal term will be used and which are its equivalents in other official languages. Such a practice does not exist in Kosovo, meaning that even within a single ministry different terms are used interchangeably for the same concept.

In addition to lack of funds, the translation process within Government is also marred by a lack of procedures for the translation of legislative texts. The employment of staff is problematic – often, no distinction is made between ‘translators’ and ‘interpreters’ in various government institutions.<sup>14</sup>Frequently, bodies merely employ self-defined ‘linguists’, as panels selecting such employees are unfamiliar with the importance and nature of work that such staff will undertake.<sup>15</sup> These problems are exacerbated by the fact that there is no official certification process, meaning that the competencies of prospective employees are incredibly difficult to assess. A related problem, which particularly pertains to the low quality of Serbian-language translations, is the low number of translators who speak Serbian as their mother-tongue (OSCE 2018). Arguably, the mother tongue of a translator should not affect the quality of the translation, but in combination with the limited educational skills available for specialist legal translations into Serbian, the lack of mother-tongue Serbian-language speakers plays a significant role that can further explain the extremely poor linguistic quality of Kosovo legal documents translated in Serbian.

<sup>11</sup> Interview with Language Commissioner Slaviša Mladenović, July 2018.

<sup>12</sup> Interview with Judge Milan Bigović, Chief of Department of the Court of Appeals, July 2018.

<sup>13</sup> Ministry of Public Administration, Catalogue of Working Countries in Civil Service of Kosovo.

<sup>14</sup> Interview with Language Commissioner Slaviša Mladenović, October 2018.

<sup>15</sup> Interview with Language Commissioner Slaviša Mladenović, October 2018.

The skills and qualifications of translators between Serbian and Albanian and English is also poor. Primary legislation is provided in English, a practice used during the UNMIK period that continues into the present. Many translations into Serbian use the English translation as the original. In addition, many of the human rights treaties and international agreements are English-based, meaning there exist translation concerns not only regarding Albanian to Serbian, but also in these cases from English to the Albanian and Serbian documents. Mistranslations in Serbian regarding international treaties and agreements cannot be truly addressed if the Albanian translation from English is wrong originally and then translated to Serbian incorrectly again.<sup>16</sup>

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<sup>16</sup> Interview with Language Commissioner Slaviša Mladenović, July 2018.

The inconsistency in translations from Albanian to Serbian language legislation in Kosovo has a profound impact. From a purely legal point of view, mistranslations do not violate the Law on the Use of Languages. Particularly at the central level, legal acts are provided in Serbian and Albanian, in accordance with the law (OLC, 2015, p.71). However, the inadequate quality of Serbian versions of Kosovo laws has grave consequences. As indicated in the examples above, it can have legal implications where mistranslations create incongruences between the Serbian and Albanian variants of a particular law.<sup>17</sup> In those cases, “it becomes possible to have two versions of a law, both equally valid, with two different meanings, with potentially serious consequences” (Burema & Najvirtova, 2014, p.14). Within the ongoing efforts to integrate Serbian judges and the Serb and other Serb-speaking communities into the Kosovar judicial system in the framework of the Brussels Dialogue, the need for qualitative and accurate Serbian-language legislation becomes especially urgent.

Adequate Serbian-language legislation is a must for Serbian judges, prosecutors, and lawyers to function effectively within the Kosovar system. Essentially, the Kosovar judicial system in practice was developed and practiced in a monolingual manner before the Brussels Agreement. Turning it into a multilingual system, in line with Kosovo’s legal framework, is an absolute requirement to establish a stable democracy that guarantees rule of law for the entire population.<sup>18</sup>

More fundamentally problematic for the stability of the Kosovar state, the incongruence of Serbian and Albanian version of Kosovo legislation can also have a far-reaching impact on community relations and the legitimacy of the state among non-majority communities. The poor linguistic quality of legal acts in Serbian de facto creates a service gap between the Albanian majority, which can rely on a comprehensive and linguistically solid legal framework, and the non-majority communities, which rely on a less comprehensive and at times incomprehensible legal framework. The exclusion of minorities from receiving the same quality of services and legal security produces situations which could increase tensions, as state legitimacy drops among non-majority communities because it fails to provide the services they need or violates their right to use their language.

This line of argumentation is clearly present among Serbian non-governmental organizations from North Kosovo, as realized by ECMI’s continued dialogue with such organizations over past years and also in the PAR report on this issue (PAR,

<sup>17</sup> Interview with Judge Milan Bigović, Chief of Department of the Court of Appeals, July 2018.

<sup>18</sup> Interview with Judge Milan Bigović, Chief of Department of the Court of Appeals, July 2018.

2016, p.4-5). It indicates that although linguistic mistakes in legal acts may appear like simple and naïve mistakes, it strengthens Serbs in their distrust of the Kosovar government, which, as far as the provision of legal documents translated into Serbian is concerned, apparently does not care about them enough to produce accurate services.

Ultimately, because of the central role language plays in a community's identity, the state's failure to provide good-quality official documents gravely delegitimizes the state in the eyes of the non-majority communities. The quality of Serbian translations are seen as an indicator of the care of the Kosovar state for the Serbian and other non-Albanian communities. It is "a domino effect": the violations of the language rights of communities reflect the limited access to other human rights for non-majority communities in Kosovo as well. The argument goes that if the government cannot even protect minorities' language rights in its own work, how can it be expected to protect those rights elsewhere (PAR, 2016). Ultimately, if this problem remains unchanged, it sends a negative message to non-majority populations. They do not feel respected by government institutions, and believe that the government does not have the ability or will to solve the problem. Particularly given the history of ethnic conflict, which was centered on the oppression of language rights, the Kosovar government should be aware of the potential destabilizing impact such grievances have.

## THE WAY FORWARD

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To be sure, improving the implementation of the ambitious law on the use of languages in Kosovo requires a plethora of institutional and financial commitments, education, as well as public awareness-raising. The correction of mistranslations in legal documents translated into Serbian language, however, appears a relatively easy and manageable task, with a disproportionately effective impact. As we have seen above, not only do inaccurate translated legal documents into Serbian create legal precedents, they constantly undermine the legitimacy of the Kosovar state, as they are very easily transmitted to the broader population as exemplary of the lack of political will in Kosovo to integrate non-majority communities on equal footing. Resolving this issue would send a positive message to the non-majority communities and the Serbian community in particular concerning the political will of the Kosovar government and state to fully implement the legal framework for equal rights.<sup>19</sup>

A large majority of the Albanian community considers that the country has the most comprehensive and far-reaching human rights regulation in the region and that alleged further concessions are unnecessary and also potentially destabilizing. Hence, there has been little political incentive for the Government to undertake decisions that precisely address inaccuracies in the existing human rights framework (Groß, 2015). However, the integration of Serbian-language judiciary in the Kosovo judicial system has revealed the particular urgency of the issue. Advocacy efforts by local civil society, including the Equal Rights for All Coalition, has placed the issue on the agenda of the government. Representatives of the Equal Rights for All Coalition discussed the issue and the recommendations presented below with Mr Kadri Veseli, Speaker of Parliament, who expressed his support for the presented way forward, indicating the shifting political commitment to deal with the issue.

Recently, however, a significant political shift and a potentially crucial step in the development of equal linguistic quality of legislation translated into Serbian and Albanian language is indicated by the Government's establishment of a working group tasked with creating a Central Translation Unit ("CTU").<sup>20</sup> This working group will first draft a concept document on the nature of the Unit. Subject to approval by the Government, the group will then develop a by-law for the establishment of the Unit. Whilst it should be stressed that this project is only therefore in the preliminary stages of development, it indicates a significant step in the right direction for addressing the issues of inconsistency between legislation translated into Albanian and Serbian language. It is hoped that the progress of the Central Translation Unit continues in order to remedy the significant deficiencies in the quality of Albanian-to-Serbian translation provided by Kosovar government institutions at present.

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<sup>19</sup> Interview with Judge Milan Bigović, Chief of Department of the Court of Appeals, July 2018.

<sup>20</sup> Government of Kosovo Decision 05/12, 3 November 2017

## RECOMMENDATIONS

The following recommendations provide a clearly manageable road book for addressing the inconsistencies of Serbian-language translation of Kosovo legislation.

### **1. The creation of two commissions to analyze existing laws and come up with an inventory of inconsistencies and inaccuracies in the Serbian and Albanian body of legal documents.**

Although research has been done on inconsistencies and inaccuracies in Serbian compared to Albanian and English legal documents, a complete inventory and analysis of the linguistic quality of all legal documents in force in Kosovo is not available. This is the first step in tackling the issue. Four types of laws should be analysed:

- The 378 laws passed by the general assembly and subsequently published in the Official Gazette.
- The nine international human rights treaties named in Articles 22, 53, and 58 of the constitution.
- The 47 laws for ratification of international agreements.
- By-laws which are issued by the government and registered in the Register of By-Laws in Force.

It is absolutely necessary that linguistic and legal specialists from both the Albanian and Serbian community are involved in this process, in order to guarantee participation of both communities. Otherwise, any findings will be open for discussion and lack any credibility. Given the political complications concerning the place of the University of Mitrovica North in the Kosovar academic landscape, two commissions should be established, which bring together local legal and linguistic expertise and parallelly overview the entire corpus of legal documents. The first commission will be made up by representatives of the Kosovo Assembly, the office of the Language Commissioner and the Law Department and Albanian Language Department of the University of Pristina. The second commission will be made up by representatives of the Kosovo Assembly, the office of the Language Commissioner and the Law Department and Department of Linguistics of the University of Mitrovica North. These commissions will guide the work of the translators. There will be translators for each language with one screener for Albanian, one for Serbian and one for English. Translators will be selected on the basis of clear criteria, with particular attention to demonstrable expertise in legal translations. Each law will therefore be screened by 3 different translators. The translators will come up with a number of

terminology issues which they find during the screenings of the laws. These issues will be put forward to the commissions, after which they will decide if change is needed. Language problems will first be identified by the translators during the screening of the laws. The translators will suggest changes to the commissions after which the assembly will decide whether or not to implement the specific revision.

## **2. Set up a legal team consisting of the Legal Office of the Assembly and the Legal Office of the Prime Minister of Kosovo to develop a new law and by-law for fixing language inconsistencies within the current applicable laws and by-laws.**

There currently is no institutional body authorized to correct mistranslations in an efficient manner. This only strengthens non-majority communities in their belief that there is simply no political will to solve the problem. The Office for Publication of the Official Gazette (OPOG) is the authority that publishes all laws that are passed under Article 80 of the constitution, but this does not apply to sub-legal acts and by-laws. The OPOG does not have the competence to review the language quality of legal texts in the different language versions. It can only correct typing errors and minor spelling mistakes, after consultation with the Assembly of Kosovo. Any inconsistencies must be published in that form, since the law was already passed by the time the OPOG distributes the information (OSCE, 2012, p.13).

To guarantee implementation, the Law on the Use of Languages established a language commission “to preserve, promote and protect the official languages and their equal status in Kosovo”.<sup>21</sup> The Office of the Language Commissioner has the authority to investigate any instances of violations of the Law on the Use of Languages, whether it be reported as a complaint or choosing to investigate on its own initiative. The OLC can provide recommendations and issue a warning if the recommendation is not implemented. As a last resort, the OLC can report the unchanged situation to the Assembly during its annual report.<sup>22</sup> Subsequent regulations strengthened the powers of the OLC to intervene against violations of the Law on the Use of Languages and increased staff, office space, and budgetary resources (OSCE, 2015). However, the OLC cannot fix inconsistencies in past legislation. The OLC can point out where these misinterpretations exist, but it does not have the authority to correct the errors. It requires action from those bodies that have the legal right to enact alterations. The OLC is also at present significantly limited in capacity: in an interview for this report, Slavisa Mladenovic indicated that for greater efficiency in fulfilling its mandate, the OLC could be almost doubled in size. At present, other departments and institutions, which have various other objectives, have influence over official language policy within Kosovo, which can

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<sup>21</sup> Law on the Use of Language (No. 02/L-37), Art. 32.1.

<sup>22</sup> Law on the Use of Language (No. 02/L-37), Art. 36.2.

lead to a conflict of interest.<sup>23</sup> There are current efforts to draft a new law that grants the OLC “greater influence” for changing mistranslations and inconsistencies in past laws.<sup>24</sup>

Until the Assembly passes this law, changes cannot be made without approval, and thus these errors will most likely remain on the documents until some initiative arises.

### **3. Ensure the continued progress of the establishment of a Central Translation Unit in order to address the discrepancies between translated legislation into Serbian and Albanian language**

#### **3.1 Ensure the creation of CTU continues and is implemented efficiently and fully**

The Government should continue its commitment to the Central Translation Unit creation process to ensure that its establishment is carried out as quickly and efficiently as possible, so that the future quality of translated legislation into Serbian language can be improved without delay. The importance of high quality translation of Kosovar legislation into the Serbian language cannot be understated: it is necessary in order to ensure uniformity with the Constitution of Kosovo and the 2006 Law on the Use of Languages. Moreover, it is essential to maintain a consistent, unambiguous character of Kosovar legislation as a whole and to exhibit its legitimacy to the citizens of Kosovo, in particular those of the Serbian minority. Whilst there are a number of considerations to take into account, it is suggested that the unit should employ between 7 and 10 staff. These staff should constitute a structure in the unit which enables a three-stage approach to efficient translation of future legislation. Firstly, there should be a simple translation phase where Albanian documents are translated into the Serbian language; this should be followed by a legal proofreading stage, in which the legal coherency of such documents is ensured; finally, a stage of editing should take place to identify any mistakes in the translation and to refine the linguistic quality of the final document. Such a tripartite process will ensure the high linguistic quality of future legislation translated into Serbian language drafted by the Central Translation Unit.

Owing to the pay structures of Kosovar Government employees, in which salaries are relatively limited and inflexible, it can be difficult to hire internal professional translators of sufficient quality at present under Professional Level 2 and Pay Grade 9. Upon the establishment of the CTU, the Government should consider employing translators within the Unit under Professional Level 3 and its corresponding higher pay grade. Moreover, the CTU should be provided with the capacity to contract external professional translators when necessary, in order to secure a sufficient quality of translated legislation into Serbian language.

<sup>23</sup> Interview with Language Commissioner Slaviša Mladenović, October 2018.

<sup>24</sup> Interview with Language Commissioner Slaviša Mladenović, July 2018.

### **3.2 Creation of a glossary or dictionary in order to implement standardized terms at both local and central level**

The Central Translation Unit, upon creation, should immediately begin cooperating with the Government in order that the latter can develop a Bilingual Law Dictionary of Kosovo as a mechanism to produce sustainable solutions for resolving language inconsistency problems in the future. A Bilingual Law Dictionary for Kosovo will be written and published under the authority of the Office of the Language Commissioner in order to make language consistency sustainable, following the Swiss model.<sup>25</sup> Input from the Central Translation Unit will ensure both a high standard for the Dictionary and allow the Unit to gain a thorough understanding of the Dictionary, avoiding any confusion or dispute with regards to definitions used. The Dictionary will list Kosovo's legal terms and provide fixed pairs for translating legal terms between Serbian and Albanian. The aim of the dictionary is to standardize terminology used in all state institutions of Kosovo, which will be obliged by law. The dictionary will be structured according to specific areas of law and a brief explanation will be provided wherever there are cases of problematic terms. The dictionary should be approved by the Assembly as the official dictionary for translation of laws. Translators in government institutions and the CTU will be trained to make use of the dictionary.

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<sup>25</sup> The Trilingual Swiss Law Dictionary will be used as an example, of which some example pages can be found here: [https://docs.wixstatic.com/ugd/aed330\\_e593d46518904cb6b1453b8eb1fbbc61.pdf](https://docs.wixstatic.com/ugd/aed330_e593d46518904cb6b1453b8eb1fbbc61.pdf).

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