

THE PEOPLE IN BETWEEN:

THE FUTURE OF CITIZENSHIP AND FREEDOM OF MOVEMENT OF KOSOVO SERBS AND OTHER NON-MAJORITY COMMUNITIES

ECMI KOSOVO,
April 2018



Acknowledgements

Members of the Coalition would like to thank the interviewees from the different institutions and organizations for their willingness to participate and provide invaluable information and data for this report.

Lead NGO for publishing the Report

ECMI Kosovo (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 - The leader of the Equal Rights for All Coalition;
- Centre for Social Group Development;
- Centre for Equality and Liberty for the LGBT Community in Kosovo;
- Kosovo Center for Gender Studies;
- Youth Initiative for Human Rights;
- Kosovo Glocal;
- Centre for Legal Aid and Regional Development.

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This report has been published within a four (4) years project "Equal Rights for All Coalition" funded by the EU and managed by the European Union Office in Kosovo.

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SERBS AND OTHER NON-MAJORITY
COMMUNITIES



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LIST OF ACRONYMS AND ABBREVIATIONS

CSOs	Civil Society Organisations
MNAO	Mitrovica North Administrative Office
ECMI Kosovo	European Centre for Minority Issues Kosovo
ERAC	Equal Rights for All Coalition
EU	European Union
MIA	Ministry of Internal Affairs
AI	Administrative Instruction
OSCE	Organization for Security –and Cooperation
EULEX	European Rule of Law Mission in Kosovo
DRC	Danish Refugee Council
UNMIK	United Nations Mission in Kosovo
NGOs	Non-Governmental Organizations
OIK	Ombudsperson Institution in Kosovo
FRY	Federal Republic of Yugoslavia

CHAPTER I

A. BACKGROUND

To this day, Serbian public institutions continue to operate in Serb-populated areas in Kosovo, providing services that are essential to the Kosovo Serb community in the fields of education, healthcare, social protection, local self-government and public enterprises. The operation of these institutions alongside Kosovo public institutions is a longstanding concern in Kosovo-Serbia relations. Already in 2006, the OSCE released a report branding them as “parallel structures”, a term that has been in popular use ever since.¹ In addition, Kosovo authorities have vehemently opposed these structures as they operate outside of the central level of Kosovo governance and thus are illegal by standards of Kosovo authorities. Kosovo has conditioned the implementation of agreements within the Brussels Dialogue on the disbandment of these structures.² Moreover, for Serbia’s EU integration SAA Article 135 rather indirectly implies that Serbia would need to engage in finding a sustainable solution in the normalization of the Kosovo-Serbia relations, in this case the process of disbanding the operation of its public institutions within the territory of Kosovo. In the Stabilization and Association Agreement of Serbia, article 135, it is stated: “This Agreement shall not apply in Kosovo which is at present under international administration pursuant to United Nations Security Council Resolution 1244 of 10 June 1999. This is without prejudice to the current status of Kosovo or the determination of its final status under that Resolution.”³ For the time being, the Kosovo Serb community continues to rely on the services provided by Serbian public institutions. This situation is thus very delicate and sensitive. Any attempt to disrupt these institutions would cause a major disturbance within the Kosovo Serb community.⁴

One of the central services provided by Serbian public institutions in Kosovo is civil registry. The Kosovo Serb community continued to make use of Serbian documentation even after the installment of UNMIK Administration (1999) and have continued to do so after the declaration of Independence of Kosovo (2008). In 2000 UNMIK started issuing identity cards and travel documents to the residents of territory of Kosovo. These identity and travel documents were not considered as passports as no nationality was stated in them nor they were issued by a sovereign state, they simply served the purpose of travel and identifying the residents of Kosovo. These documents were available for anyone who could prove their residence in territory of Kosovo during former Yugoslavia. UNMIK stopped issuing the ID cards and travel documents in 2008, after Kosovo declared independence and established its own national ID’s and passports.⁵ In 2011, an agreement was reached between Kosovo and Serbia in order to ease the freedom of movement. Since then Kosovo has worked on enhancing the civil registry system and the civil status offices as well as access to Kosovo citizenship and other identity documentation, however, the situation remains problematic, especially in Northern Serb majority municipalities. In the agreement between Kosovo and Serbia for Freedom of Movement, article 2 it is stated that; *Each party will apply, as soon as operationally feasible, an ID card system for cross Border/boundary travel of residents from the other party.*⁶

¹ OSCE Mission in Kosovo, [Parallel Structures in Kosovo](#) 2006–2007.

² Government of the Republic of Kosovo, [Brief Summary of the Brussels Agreement Package](#) (27 August 2015), p.5.

³ Stabilisation and Association Agreement of Serbia, Article 135

⁴ Institute for Territorial Economic Development. [Public Institutions of the Republic of Kosovo in the North of the Kosovo: What Future Awaits Us?](#) (2017).

⁵ <http://www.refworld.org/docid/3f7d4e3c31.html>

⁶ Agreement on the Freedom of Movement, 2011, Article 2

As a consequence, today, all citizens of Kosovo, at least in theory, have access to three forms of identification documents, two of which are issued from Belgrade, and one from Kosovo:

Passports and ID cards of the Republic of Serbia: These identity documents are issued to Serbian citizens all over Serbia and are accepted worldwide. This document is part of the visa-free regime between Serbia and the EU Schengen Area and is also accepted in Kosovo. These passports and ID cards are issued for citizens residing in Serbia, therefore Serbs residing in Kosovo are not eligible to get them. Kosovo residents do have access to regular Serbian ID cards as long as they have property and are residents in municipalities in Serbia.. Official regular Serbian passports are preferred by Kosovo citizens also because they are subject to visa free travel within the Schengen zone, unlike the Coordination Directorate or the Kosovo passports.

Serbia Coordination Directorate Passports and Police Directorates ID cards: These documents are particularly issued to Serbian citizens residing in Kosovo since 2009. The Coordination Directorate in Belgrade is responsible for issuing passports for Serb citizens in Kosovo, the Police Directorates in the cities within Serbia proper are responsible for issuing ID cards for Serb citizens in Kosovo. These types of documents are not included in the visa-free regime, but are accepted as official documents worldwide.

Kosovo Passports and ID cards: These passports and ID cards are issued by Kosovo authorities to all citizens of Kosovo. The identity documents are accepted by all states that have recognized Kosovo, but do not allow for visa-free travel to the EU Schengen Area⁷. The ID cards are recognized by Republic of Serbia enabling the holders of these ID cards to travel in and out between Kosovo and Serbia.

The Serbian Coordination Directorate passports and Police Directorate ID cards in particular have been a major source of controversy. These particular documents were introduced in August 2009 – when visa liberalization was established between Serbia and the EU Schengen Area – and fall outside of the visa-free regime.⁸ In principle, they may be issued to all citizens in Kosovo. In practice, however, they are mostly issued to the members of the Kosovo Serb community and other communities in areas where Serbian parallel institutions operate. In 2015, the Kosovo authorities declared that the passports and ID cards issued by Coordination Directorate and Police Directorates of Serbia are not valid and are even illegal in Kosovo.⁹ In late April 2016, Minister of Dialogue Edita Tahiri led the argument to put into effect the ban on passports and ID cards issued by Coordination Directorate in Belgrade and Police Directorates of Serbia.¹⁰ The ban has been in practice largely since spring 2017.¹¹ The ban restricts Kosovo Serbs and other persons who are only in possession of the ID cards issued by Police Directorates to travel between Serbia and Kosovo. Furthermore, the ban has led to confiscation of other documents that citizens need to access services provided by Serbian parallel institutions, like health care and education, as well as other services¹². For these services, residents require documents issued by the Coordination Directorate and Police Directorates.

⁷ There are countries that don't recognise Kosovo as a country but that they do accept or recognise Kosovo's passport. For instance, Greece.

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0366:FIN:EN:PDF>

⁹ <http://archive.koha.net/?id=27&l=89172>

¹⁰ <https://www.voal.ch/prishtina-zyrtare-nuk-pranon-pasaportat-e-leshuara-nga-beogradi-per-serbet-e-kosoves/>

¹¹ <http://www.radiokontaktplus.org/vesti/gradani-sa-srpskim-dokumentima-na-kosovu-u-problemu/10354>

¹² Because of the retention of these documents by Police Officers. Also during 2017 we received several cases from our ERAC paralegals in North Kosovo, where citizens of the four northern municipalities complained that they were left without health care services due to not receiving their health cards from Serbia.

According to the agreement on freedom of movement, which was reached in the framework of the Brussels Dialogue already in 2011, Serbia and Kosovo agreed to establish an ID card system which would enable free travel between Serbia and Kosovo for residents of both parties.¹³ It was established that in time Kosovo ID cards should be issued to all residents of Kosovo and that the ID cards issued by the Serbian Police Directorates would be gradually withdrawn. Due to the slow process of providing access to Kosovo ID's to Kosovo Serb's and other holders of Coordination Directorate and Police Directorate personal documents, the Coordination Directorate passports and Police Directorates ID cards remained in use as the only means of allowing Kosovo Serbs and other non-majority communities to enter and exit the territory of Kosovo.¹⁴ There also is regional variation in the implementation of the agreement. There has been some progress on establishing access to Kosovo ID cards in Serb-majority municipalities south of the Ibër/Ibar River. Residents of the four northern municipalities, have to rely on the three offices in the remote villages, and the Mitrovicë/Mitrovica North Administrative Office of Kosovo, MNAO, for obtaining Kosovo IDs.¹⁵ An additional complication is that the public services offered by Serbia's parallel public institutions and other public companies such postal services and banks remain only accessible with the Serbian Police Directorates ID cards or Coordination Directorate passports.¹⁶

The negotiations between Kosovo and Serbia have reached new implementation phases of the agreements and the necessity and demand of a Kosovo ID has grown amongst Kosovo Serbs and other non-majority communities as a result.¹⁷ Therefore, the boycotting of housing census and civil registration back in 2011 from Kosovo Serbs and some other members of non-majority communities¹⁸ is now backfiring in the bureaucratic procedures, to access the Kosovar ID and proving the Kosovo residency. Kosovo authorities lack data on many Kosovo Serbs and their residency in the Kosovo territory, but the problem is expected to be tackled due to the returning of civil registry books from Serbia to Kosovo.¹⁹

¹³ Agreement on the Freedom of Movement, 2011, Article 2

¹⁴ The reason is either that the application for citizenship was denied, or that civil status offices were not yet established in the 3 northern municipalities, but are rather located in remote villages. In cases of Serb citizens, it also was due to the safety, language and costly reasons to go to Albanian majority municipalities to get their birth certificates and fulfill application for Kosovo ID's or passports.

¹⁵ The municipal administrations were developed in the 3 northern municipalities in 2016.

¹⁶ InTER, [Public institutions of the Republic of Serbia in North Kosovo](#), p.16-17

¹⁷ http://ask.rks-gov.net/media/3251/pes_raporti_eng.pdf

¹⁸ http://www.suedosteuropa.uni-graz.at/cse/sites/default/files/papers/musaj_kos_census.pdf

¹⁹ Serbia has returned the civil registry books, but Kosovar authorities are weakly using them to update the registry information or to foster Serbian and other non-majority communities' procedures to obtain ID cards, passports, or citizenship. The problem largely is present in the Northern Serb majority municipalities

B. AIM AND METHODOLOGY

This policy paper will further explore the complexities surrounding citizenship and freedom of movement for Kosovo Serbs and other non-majority communities. Although the study will be conducted through a legal, political and societal lens, the legal perspective will be predominant in regards to the issues surrounding documentation. Based on this, recommendations will be offered to assist policy makers with ways to overcome the complexities surrounding the usage of the Serbian ID card in Kosovo. Moreover, in comparison to previous studies in the topic, this policy paper will take a closer look into the technicalities of the problems on acquiring citizenship and access to ID card of Kosovo. Its purpose is to shed light to the jurisdictional and institutional frameworks that are the key actors in the processes to solving the complexities surrounding the issue. As mentioned, the focus group in this policy paper will be the Serb community in Kosovo, however other non-majority communities, mainly Roma, Bosniak, Gorani, Ashkali, Egyptian communities have been facing similar problems. In many cases the members of other non-majority communities who have been hampered from their right to citizenship or freedom of movement, are residents in Serb majority municipalities. However, many non-Serb communities who are living in all parts of Kosovo have opted for Serbian ID cards, like the Roma communities living in Mitrovica/Mitrovica South, in Dragash/Dragas where large parts of Gorani community live, as well as in other municipalities where Serb and mostly Serbian speaking communities live.

This policy research report is based on desk research of the following key available sources including: Administrative Instructions of Ministry of Internal Affairs; Law on Citizenship of Kosovo; Agreement on the Freedom of Movement as part of Brussels Dialogue for normalization of relations between Kosovo and Serbia; and the Reports on implementation of Brussels Agreements published by the Office of the Prime Minister. Previous relevant studies by other civil society organizations and academics are also included. The desk research was complemented with semi-structured interviews with representatives of the relevant organizations and institutions, such as Ombudsperson Institution Kosovo; Mitrovica North Administrative Office; Municipality of South Mitrovicë/Mitrovica, Civil Registry Office; NGO Aktiv; and Danish Refugee Council. The representatives from Ministry of Internal Affairs and Ministry of Dialogue were contacted, but as the topic surrounding citizenship and freedom of movement for Kosovo Serbs is seen as a political subject, they were not willing to give an interview as the timing of interviews was during the campaigning for central level elections in Kosovo. We also tried to appoint a meeting with the Civil Registry Agency in Prishtina, which is in charge of all Civil Registry Offices in Kosovo, however, despite many efforts, we did not manage to arrange a meeting with them. Moreover, Kosovar and Serbian media which have been covering the topic extensively, are being used as references in this policy research paper.

C. LATEST INCIDENTS

In July 2017, the Kosovo Police confiscated 918 new Serbian health cards at the border crossing Dheu i Bardh/Bela Zemlja. The cards were brought in from Serbia by the director of the branch office for Gjilan/Gnjilane for the health insurance fund of the Republic of Serbia. The health cards were intended for Kosovo Serbs and others who obtained Coordination Directorate passports or IDs issued by the Police Directorates in Serbia. The health cards entitle them to health care services at Serbian parallel institutions. As reported by media, the reason for the confiscation was the inscriptions written on the cards, referring to the “municipality of Gnjilane, Republic of Serbia”. Kosovo police officers explained that the cards were illegal, as the municipality of Gjilan/Gnjilane is not located in Republic of Serbia but in Republic of Kosovo.²⁰ The same reasoning was behind the blocking of border crossings between Kosovo and Serbia with Coordination Directorate passports and Police Directorates ID cards²¹, as they write the cities of Kosovo to be of Republic of Serbia. Although the reasoning of illegality is sensible, it creates a conflicting situation as Kosovo Serbs have limited access to Kosovo civil registry services, due to, lack of services offered by Kosovo institutions to certain parts of Kosovo, especially in the Northern Serb majority municipalities. The ban of Serbian documents is thus hampering the freedom of movement of Kosovo Serbs in and out of Kosovo and restricting access to fundamental rights and services provided by Serbian institutions in Kosovo.²²

From the official Kosovo point of view, the problem concerning the ID cards issued by Coordination Directorate is that it refers to municipalities of the Republic of Serbia within the territory of Kosovo. However, the ID cards or passports issued by the Police Directorates and Coordination Directorate in Serbia, for Kosovo Serbs and other non-majority communities, are essential for access to services provided by Serbian parallel institutions. Approximately 8,000 residents of the 4 northern municipalities are employed in the parallel public institutions of the Republic of Serbia and around 90,000 benefit from the services that these institutions provide, especially in health care and education.²³ The salaries and quality of the services in the Serbian parallel public institutions are higher than what the Kosovo public institutions can provide, which is one of the main reasons why many Kosovo Serbs prefer to keep the Serbian parallel institutions in function.²⁴

The ID cards and passports of Police Directorates and Coordination Directorate are thus not just a guarantee to move freely for Kosovo Serbs from Kosovo into Republic of Serbia, but also grant access to several services that ensure the fundamental rights such as: education, health care and social protection.²⁵ Without such documentation one is not entitled to the services provided by the parallel public institutions of Serbia in the Serb majority municipalities. For those who are not in the possession of the Kosovo documents, are often left in a gap of fundamental rights.

²⁰ http://rtvpuls.com/vesti/kosovska_policija_oduzela_918_srpskih_zdravstvenih_kartica/15189#.WWWXgDoyae08.facebook

²¹ The Coordination Directorate passports and Police Directorates ID cards issued by Serbian authorities in Serbia proper to Kosovo citizens. These documents have the cities within the territory of Kosovo mentioned as cities of Republic of Serbia.

²² Ombudsperson Institution of Kosovo, as well as our paralegals in the north Kosovo have received cases, where those left without e.g. health cards, are not able to receive health services.

²³ INTER, [Public institutions of the Republic of Serbia in North Kosovo](#), p.29.

²⁴ NGO Aktiv publication, Trend Analysis: Public Opinion of Citizens in North Kosovo. 2017.

²⁵ When such documents are withdrawn from the citizens obtaining them, one can't prove their identity at the hospitals, schools or other services provided by Serbian parallel institutions in Kosovo.

Kosovo IDs, on the other hand, are the least preferred type of IDs for Kosovo Serbs and other communities making use of Serbian parallel institutions.²⁶ While many Kosovo Serbs and other non-majority communities' members already possess Kosovo IDs, many residents, especially in the four northern municipalities, choose not to possess a Kosovo passport or ID for various reasons. It often implies taking a political stance against Kosovo being an independent state. Also important are the limited incentives due to low social benefits and weak employment opportunities. However, with the development of Kosovo institutions in the northern municipalities, the everyday relevance of Kosovo IDs for residents of the North will increase. It is crucial for Kosovo authorities to start ensuring easy access procedures to Kosovo civil registry for residents of the northern Serb majority municipalities.

²⁶ <https://www.rks-gov.net/sq-AL/Qytetaret/Shtetesia/Pages/Leternjoftimi.aspx>

CHAPTER II

A. ACCESS OF KOSOVO SERBS AND OTHER NON-MAJORITY COMMUNITIES TO KOSOVO ID CARDS

When analyzing the access of Kosovo Serbs and other non-majority communities to Kosovo ID cards, we have to make a distinction between the municipalities that are located south of the Ibër/Ibar River and those that are north of the Ibër/Ibar River.²⁷ In the southern Serb majority municipalities, the public institutions of Kosovo are functional and Kosovo Serbs and other communities living in these municipalities have access to services of municipal administration and civil registry and civil status offices. However, even in these municipalities some services are offered by Serbian institutions and the public companies as mentioned earlier.²⁸

According to ECMI staff in the North Mitrovica office, a somewhat different situation prevails in the northern Serb majority municipalities, where the services are provided in local villages, some up to 10-15km from municipality buildings.²⁹ For now the Mitrovicë/Mitrovica North Administrative Office is the only official municipality building where services are provided for the citizens of North Mitrovicë/Mitrovica. To this day, the other three Serb majority municipalities of northern Kosovo do not provide full administrative and civil status services under Kosovo authority. The offices for civil status are not located in the partially established municipality buildings, but rather in the villages such as the village of Bistrica (municipality of Leposaviq/Leposavić), village of Čabra (municipality of Zubin Potoku/Zubin Potok), village of Lipa (municipality of Zvečan/Zvečan). As a consequence, this is a major practical problem in accessing Kosovo ID cards in these municipalities. The MNAO was established in the summer of 2012. It issues civil registry documentation on birth, death and marriages and provides all other services that a municipal administration is expected to under Kosovo law.³⁰ The difference between Civil Status Offices and Civil Registry Offices is important because, except in North Mitrovica where both offices are physically in the same place, in other three northern municipalities Civil Status Offices are in the Albanian-majority villages whereas only Civil Registration Offices are in the administrative centers of the municipalities. Civil Registry Offices in three north municipalities did not provide the service of residency change nor issuance of driving licenses. However, as of December, they all issue driving licenses as well.³¹ For now the services for Kosovo citizenship applications, for the citizens of North Kosovo, are only provided at the municipality of South Mitrovicë/Mitrovica. The restricted competences and functionality of the administrative centers of municipalities in the North of Kosovo sends mixed messages to Kosovo Serbs and other communities living in the North, especially taking into consideration already difficult social cohesion between Albanians and Serbs.³²

²⁷ According to UNHCR interviewee (5.3.2018), municipalities in the south have had fully established municipality administrations under Kosovo system since the 2008. Moreover, the integration of these municipalities into territorial integrity of Kosovo was done properly right after the war under the UNMIK Administration, where the Northern Serb-majority municipalities were not fully under the governance of UNMIK Administration. These premises have resulted to today's problems with the administrations under Kosovo system in the Northern Serb-majority municipalities.

²⁸ OSCE Mission in Kosovo. [Kosovo Communities Profile](#) (2010), p.228-230; Balkans Policy Research Group. [Serb Integration in Kosovo after the Brussels Agreement](#) (2015).

²⁹ ECMI Kosovo, Office in North Mitrovica, August 2017

³⁰ Interview at the Administrative Office of North Mitrovica, August 2017.

³¹ NGO Aktiv Informative Brochure on Procedures for Obtaining Kosovo Documents

³² http://kossev.info/strana/arhiva/na_severu_pocela_sa_radom_kancelarije_kosovske_agencije_za_civilne_registre/10717

What makes the work of the MNAO and civil registry and status offices within the North Serb majority municipalities in Kosovo even less effective, are the lack of proper civil registry books prior to 1999, and the competences to use them. Within the EU-facilitated Belgrade-Pristina technical dialogue process, Kosovo and Serbia reached an agreement regarding the establishment of a fully reliable civil registration system in Kosovo in 2011.³³ With this purpose, the EU has been funding a series of projects implemented by Danish Refugee Council (DRC) in Kosovo. The project 'Data Processing of Civil Registry Books' (CRB) was implemented in two phases between 2012 and 2014 and resulted in the return to Kosovo of over 12,000 civil status registries (over 2.8 million birth, marriage and death records) that were displaced in Serbia and contain information pertaining to the chronology of an individual's life from after World War II to 1999.³⁴ The registries were returned as digital files and hard copies and were certified by the EU Rule of Law Mission in Kosovo (EULEX).³⁵ The returned registries were then shared with Kosovo authorities by EULEX and are available at the central and municipal level. According to Chiara Mossina, the Project Manager at the DRC, both were major steps to support the implementation of the 2011 agreement on civil registries of the Belgrade-Pristina technical dialogue in line with the relevant instructions for digitalization of civil registries.³⁶ The process will also facilitate the use of the returned registries based on Administrative Instruction (MIA) No. 01/2015 on the use of Certified Copies of Original Principal Civil Status Registers of Kosovo which were taken by the Former Serbian Regime prior to June 1999,³⁷ by simplifying the procedure of identifying and finding civil status details on anyone who lived in the territory of Kosovo during the period covered by the returned registries.

According to OSCE interviewee, the copies of civil registries returned from Serbian cities, should be also saved in an electronic database. Currently the copies are only hard copies and not accessible by each municipality. However, this reflects overall problem in Kosovo with inter-municipal cooperation, where municipalities do not share data between each other. Furthermore, if there is some cooperation, it is not done in an online electronic platform. There is some digitalization happening, in order to enhance electronic use of civil registries in different municipalities, for now it remains a very slow process.³⁸

The returned registry books cover information only until 1999, after that UNMIK books do cover the period 1999 – 2008 but they do not offer full info as not everybody registered with UNMIK, but even so, the little data they do have is not used by Kosovo authorities. Even the Albanian community have problems in this regard, a case with Albanian who had to remarry his wife after the declaration of independence because his marriage was recorded in the UNMIK registry and the extract from UNMIK registry was not considered a legal document by Kosovo authorities. Therefore, during the conference for draft report, Ms. Andric, recommendation referred to renewing efforts to exchange Serbian books after 1999 as these contain far more info on the citizen status.³⁹

³³ https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/123383.pdf

³⁴ <http://drc-kosovo.org/past-projects/>

³⁵ <http://www.eulex-kosovo.eu/?page=2,11,14>

³⁶ Interview with Chiara Mossina, Danish Refugee Council Kosovo, September 2017. See [Administrative Instruction \(MIA\) No. 12/2016](#) on Defining the Procedure for Digitalization of Scanned Basic Civil Status Registries.

³⁷ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10643>

³⁸ Interview with a representative at the OSCE Mission in Kosovo, 15.2.2018

³⁹ Milica Andric, NGO Aktiv, at the conference of draft report "The People in Between", 1.2.2018

B. PROCEDURES AND ISSUES WITH APPLICATION AND PROVING THE RIGHT TO CITIZENSHIP

Article 32⁴⁰ of the Law on the Citizenship of Kosova specifically focuses on the citizens of former Federal Republic of Yugoslavia who resided in the territory of Kosovo. The Article 32.1 states: *“All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in Republic of Kosova shall be citizens of Republic of Kosova and shall be registered as such in the register of citizens irrespective of their current residence or citizenship.”* In order to regulate the above article, an administrative instruction was established in 2014.⁴¹ There has been several flaws in the implementation and interpretation of the administrative instruction which have led to the rejection of many citizenship applications and other documents recognition procedures for Kosovo Serbs and other non-majority communities.⁴² During the conference for draft report, the representative of Ministry for Communities and Returnees, Ms. Snežana Karadžić, pointed out the problem that the Law on Citizenship does not speak about returnees.⁴³ In this report we will not tackle a crucial issue that there is no provision in the law of citizenship, or any other legally binding document for returnees and their documentation procedures. The latter is a growing issue and needs a thorough investigation.

It has been reported that many citizenship applications of Kosovo Serbs and other non-majority communities have been refused. The reported cases are from 2014 to June 2017.⁴⁴ The application itself involves proving the right to citizenship through the set criteria for residents of territory of Kosovo before 1998, in this sense it is not acquiring citizenship by regular provisions for a foreigner. Ombudsperson institutions in Graçanicë/Gračanica and Mitrovicë/Mitrovica have received many cases since 2014 where citizenship applications were refused on weak basis, or due to misinterpretation of the Administrative Instruction (AI) No. 05/2014.⁴⁵ In addition, some of the people who were denied citizenship and other documentation were notified only verbally. The application procedures can take up to 6 months. According to AI No. 05/2014, an application for citizenship who is not registered in the Kosovo civil registry has to apply directly to the Ministry of Foreign Affairs. In case of a rejection, they can appeal with the Civil Registry Agency. In case the Civil Registry Agency confirms the rejection, the applicant can lodge a complaint with the Commission for the Review of Complaints and if needed open a case in the court, which can take up to 2 years to be solved.

According to Ms. Aleksandra Dimitrijevic, the Ombudsperson office representative in Graçanicë/Gračanica, problems with citizenship applications started following the enforcement/implementation of the Administrative Instruction No. 05/2014. This was due to the misinterpretation of the AI in its implementation by the officials working at the Division of Citizenship, within the Citizenship, Asylum and Migration Department of the Ministry of Internal Affairs, which has the duty of providing citizenship and identity documentation to applicants. Ms. Dimitrijevic says that there are cases where applicants were refused citizenship without any notification nor

⁴⁰ Law on Citizenship of Kosova, Article 32

⁴¹ [Administrative Instruction \(MIA\) No. 05/2014](#) About the Criteria that Contain Evidence about the Citizenship of the Federal Republic of Yugoslavia and Permanent Residence in the Territory of Kosovo in January 1, 1998.

⁴² Interview with Milica Andrić, NGO Aktiv, August 2017. See also NGO Aktiv. [Access to Documents in Kosovo: The Main Obstacle to the Integration of Non-Majority Communities](#) (2017).

⁴³ Snežana Karadžić, Adviser for Communities, Ministry for Communities and Return. 1.2.2018.

⁴⁴ Ombudsperson Institution Kosovo and ERAC paralegal cases, 2017.

⁴⁵ [Administrative Instruction \(MIA\) No. 05/2014](#) About the Criteria that Contain Evidence about the Citizenship of the Federal Republic of Yugoslavia and Permanent Residence in the Territory of Kosovo in January 1, 1998.

legal procedures, and the persons in name believe it is due to their ethnic background of being Kosovo Serb or a member of other non-majority community. In the statements made for media, representatives at MIA have denied any claim that connects refused citizenship applications to the ethnic background of the applicant, saying that such discrimination is not being practiced.⁴⁶

The applicant has to provide evidence either as set in criteria of article 3 or 4, not from both. However, in its implementation most of the documents were required as a proof as listed in these articles, otherwise the application was to be most certainly unsuccessful.

A joint complaint against unjustified rejection of citizenship applications for up to 50 applicants from the Roma community has been lodged in Graçanicë/Gračanica. There are also many cases with applicants from the Serb community, whom are dealt with by the Ombudsperson Institution in Mitrovicë/Mitrovica.⁴⁷ Moreover, ERAC paralegals in the North Kosovo have been contacted by several Serb citizens with a complaint regarding issues to access Kosovo documentation, and cases of denied citizenship applications.⁴⁸ In all of these cases, applications were rejected despite the fact that the clients had provided all the required documentation/evidence which should entitle them to obtain Kosovo citizenship/identity documentation. In some cases, the applicant's application is refused with a simple verbal statement, without initiating any official procedure. Moreover, Ms. Dimitrijevic mentions how Kosovo Serbs, especially in the North, are confused with how to overcome these issues with respect to jurisdiction- especially considering that they are often not aware or they do not understand the mechanics of the Serbian or Kosovo systems.⁴⁹

⁴⁶ <http://prishtinainsight.com/access-denied-mag/>

⁴⁷ Ombudsperson Institution Mitrovica, September 2017

⁴⁸ Vesna Ordic, ERAC Paralegal, North-Mitrovica, 2017

⁴⁹ Interview with Aleksandra Dimitrijević, Ombudsperson Institution in Graçanicë/Gračanica, August 2017

C. ISSUES WITH MARRIAGE CERTIFICATES AND CITIZENSHIP FOR CHILDREN

In contact with residents of Northern Serb majority municipalities, our staff at the ECMI Kosovo office in North Mitrovica have identified two particular problems; concern obtaining Kosovo marriage certificates when one of the partners does not have Kosovo civil documents and Kosovo citizenship for children who are born in Kosovo to parents who are not registered with the Kosovo system.⁵⁰ Below are several concerns that were raised by Kosovo Serbs in these fields, with the relevant passages in the Kosovo Citizenship law.⁵¹

- ***Serbian citizens married to citizens of Kosovo cannot apply for citizenship of Kosovo.***

The specific criteria for acquiring Kosovo citizenship for spouses is that they must have been legally married for at least 3 years and have been living in Kosovo for at least 1 year.⁵² In accordance with the law, Serbian citizens with an official Serbian ID or passport are entitled to Kosovo citizenship after meeting the set criteria. This, however, does not pertain to identity documents issued by the Coordination Directorate or Police Directorates.

- ***Women who reside in Kosovo but get married in the Serbian system and changed their last name after marriage, can get Kosovo documents only with their maiden name and are forced to hold two identities in different systems.***

Anyone who has a Kosovo citizenship and marries a person from another country, has the right to keep their Kosovo citizenship despite the change of their surname. When we talk about Serbian system, we should clearly differentiate the Serbian parallel system in Kosovo and the actual Serbian system in the state of Serbia. As Kosovo does not recognize the marriages registered in the parallel system of Serbia within Kosovo, nor does Republic of Serbia give apostille stamps for birth certificates, marriage certificates etc. to Serb citizens in Kosovo that are required from Kosovo authorities to process civil registry.⁵³ Hence, this remains to be a problem for spouses who change their maiden name.

- ***Children whose parents do not have Kosovo identity documents can only get birth certificate but not citizenship.***

To be able to acquire citizenship of Kosovo by birth, both parents have to be citizens of Kosovo at the time of birth. However, citizenship can be acquired if one parent is a citizen of Kosovo, provided that the child is born in the territory of Kosovo or if "the child is born outside the territory of Kosovo and one parent is stateless or has unknown citizenship."⁵⁴⁵⁵ A related problem is that in many cases, children who were born between 1999–2008 are denied citizenship on account of them not having UNMIK registration. This is very common as these children were not eligible for ID cards at that time so the parents did not register them. For now, these children are issued birth certificates with the citizenship section crossed out. This is not enough to apply for ID cards of Kosovo.⁵⁶ Moreover, birth certificates with apostille stamps are required by Kosovo institutions to procedure the citizenship applications for children born

⁵⁰ ECMI Kosovo Office in North Mitrovica, August 2017

⁵¹ NGO Aktiv. [Access to Documents in Kosovo: The Main Obstacle to the Integration of Non-Majority Communities](#) (2017), p.29.

⁵² Law on Citizenship of Kosova, Article 11

⁵³ <http://kallxo.com/sfida-e-te-lindurve-ne-serbi-per-te-marre-nenshtetesine-e-kosoves/>

⁵⁴ Law on Citizenship of Kosova, Articles 6 & 7

⁵⁵ "...citizenship can be acquired if one parent is a citizen of Kosovo, provided that the child is born in the territory of Kosovo or either if "the child is born outside the territory of Kosovo and one parent is stateless or has unknown citizenship..." stateless and unknown citizenship – they do not count with any civil registry documentation.

⁵⁶ Interview with Milica Andrić, 2017

in Kosovo but not registered in the civil registry of Kosovo but that of parallel institutions of Serbia in Kosovo Serbian authorities, however, do not give these apostille stamps to parents who need them for applying for Kosovo citizenship, as Serbia does not recognize Kosovo as an independent state.⁵⁷

- ***Citizens older than 18 years who apply for citizenship must have at least one parent with Kosovo or UNMIK ID card and to submit evidence that they live in Kosovo for more than 5 years.***

The law on citizenship of Kosovo, article 31, considers all holders of UNMIK documentation after 1999 as entitled to Kosovo citizenship, if they have been residents in territory of Kosovo under FYR; "Every person who is registered as a habitual resident of Republic of Kosova pursuant to UNMIK Regulation No. 2000/13 on the Central Civil Registry shall be considered a citizen of Republic of Kosova and shall be registered as such in the register of citizens."⁵⁸ Therefore, a child born to such citizen, should have the right by birth to citizenship of Kosovo. Nevertheless, no adult, over 18 years old, needs to have one of his or her parents from Kosovo in order to be able to apply for the Kosovo citizenship. There are only three basis to which one can acquire citizenship: the right by birth, as mentioned earlier; both or one of the parents have Kosovo citizenship; or through the naturalization process.⁵⁹ The only requirement for any foreign person to apply for Kosovo citizenship is to prove that they have been living in Kosovo for 5 years or more.⁶⁰ Nevertheless, for citizens who are already 18 or older, and born in Kosovo, there is another path to practice their right to the citizenship. If one of the parents of the applicant has Kosovo citizenship or UNMIK ID card, then the application can be made by the parent or the parents and the application apart from one of the evidences defined; birth certificate, certificate of citizenship, ID card or passport of Kosovo, must be attached with a applicants birth certificate, that proves that the he or she is his or her child.^{61 62}

⁵⁷ <http://kallxo.com/sfida-e-te-lindurve-ne-serbi-per-te-marre-nenshtetesine-e-kosoves/>

⁵⁸ Law on Citizenship of Kosova, Article 31

⁵⁹ Interview with UNCHR, 5.3.2018.

⁶⁰ Law on Citizenship of Kosova, Articles 9 & 10

⁶¹ Administrative Instruction (MIA) Nr. 05/2017, Article 5

⁶² Concerning people from former Federal Republic of Yugoslavia.

D. STREAMLINING THE PROCEDURES: THE NEW AI ON CRITERIA FOR CITIZENSHIP

After several meetings and coordination with central and local institutions, OSCE managed to get positive results for the establishment of a new AI. For the efforts to convince the need for new AI, OSCE brought the case of 13 Serb returnee families in Lubozhde, Istog. Due to unfortunate displacement these families had lost most of their documentation that proved their residency in Istog before 1998. OSCE had several meetings with civil registry office in Istog and was being a liaison for the returnee families to get the Kosovo documentation, even when they were not able based on criteria of old AI 2014.

In March 2017, Prime Minister signed the agreement to establish a new AI regulating the proof of former Yugoslavian residents in territory of Kosovo. Moreover all the regional OSCE offices have been following the developments on implementation of the new AI. So far the results are positive.⁶³ In July 2017, this administrative instruction was replaced with a new one, with the aim to solve the implementation and misinterpretation issues, while the competences for implementation moved to local level.⁶⁴ Beside this the processing time is now only 30 days, compared to 6 months as it was with the old AI 2014. If decision on citizenship is not made within 30 days, the applicant can appeal to the responsible institution.⁶⁵ The main purpose of this administrative instruction is to regulate the criteria about the evidence to prove the citizenship or a residency in the territory of Kosovo before January 1st, 1998, and facilitate the implementation of the legal prescription which guarantees citizens or residents of FRY in the territory of Kosovo before January 1st, 1998 entitlement to the citizenship of Kosovo.

In comparison to the old AI, articles 3 and 4 have shifted places while including changes with a clearer language and wider options for evidence of proof.

Article 3 of the administrative instruction presents four different criteria, of which the applicant must meet at least one to be able to apply for Kosovo citizenship:

- the person was born or at least one of the parents was born in the territory of Kosovo before January 1st, 1998.
- the person had been residing in Kosovo for at least five years prior to January 1st, 1998.
- the person was forcefully displaced from Kosovo and therefore was not able to reside regularly in Kosovo for five years prior to January 1st, 1998.
- the person was a dependent child that did not meet the conditions under the age of 18 or under 23 if he/she was attending a regular school in any educational institution before January 1st, 1998, and if his/her parents fall under paragraphs the above criteria of this Article or are registered based on the Article 3 of the UNMIK regulation 2000/13.

Article 4 sets out the required documents, where at least one is needed, to prove the possession of citizenship or residency during the former FRY prior to January 1st, 1998:

- the person needs a certificate of citizenship of former FRY
- or alternatively a birth or a marriage certificate of former FRY
- any identity documentation or passport of former FRY

⁶³ Interview with OSCE Mission in Kosovo, 15.2.2018.

⁶⁴ [Administrative Instruction \(MIA\) No. 05/2017](#) About the Criteria that Contain Evidence about the Citizenship of the Federal Republic of Yugoslavia and Permanent Residence in the Territory of Kosovo in January 1, 1998.

⁶⁵ Interview with UNCHR, 5.3.2018.

- or alternatively a driver's license, student index, health card etc. or any other document that proves the citizenship of former FRY

When any person has proved one of the above they are also required to provide the following identification evidence in order to prove that their documents are real:

- an official identity document or passport, with photo or fingerprints, of any country or its institution
- or alternatively of any agency or institution of United Nations
- and other reliable evidence or witnesses
- if none of the above is applicable, there are other accepted documents that are listed as proof(see appendix of accepted documents)

This administrative instruction was put into force in mid July 2017, and because of this, very little can be said in terms of how it works in practice. However, the new administrative instruction is more precise and detailed than the previous one. Moreover, UNCHR in Kosovo as well as GIZ have organized trainings during the fall 2017 with municipal officers regarding the new AI No. 05/2017.⁶⁶ Based on new AI, any individual who was a former/current citizen of Kosovo whom wants to seek Kosovo citizenship, should be able to. More specifically, citizenship can be proved by an extended list of documented evidence; with a minimum of 2 witnesses before the notary, and this can be submitted as a proof. Moreover, as the competences for registries and citizenship applications are now moved to local level, one can go directly to the local registry offices of their place of birth with the relevant evidence/s set in the criteria of AI and apply for citizenship and other personal documents. This once more indicates the importance of establishing functioning local administrations under Kosovo system in the Serb majority municipalities in northern Kosovo.

Even if we leave aside the practical complexities of travelling to other municipalities, according to Ms. Andric, many Kosovo Serbs fear for their security if they were born in an Albanian majority municipality and have to submit applications in these local offices.⁶⁷ Moreover the Ombudsperson of Kosovo, Hilmi Jashari, is concerned with the fact that there is no court that oversees the work of civil administrations and irregularities that occur in such institutions. This is a problem as many problems are let to slip between the fingers and result into hampering the rights of people to access certain services and enjoy the right to practice them.⁶⁸

⁶⁶ Interview with UNCHR representative, 5.3.2018.

⁶⁷ Interview with Milica Andrić, NGO Aktiv, August 2017.

⁶⁸ Hilmi Jashari, Ombudsperson of Kosovo, "The people in between" draft report conference 1.2.2018

E. CAN PROVISIONS OF DUAL-CITIZENSHIP ADDRESS THE ISSUE OF PASSPORTS AND IDS ISSUED BY THE COORDINATION DIRECTORATE AND POLICE DIRECTORATES?

In many circles, it has been reported that the right to dual citizenship, foreseen in the Kosovo Constitution and subsequent laws, actually allows the Kosovo Serb community to maintain their Serbian Coordination Directorate passports and Police Directorates ID cards and obtain Kosovo citizenship.

Citizens of Kosovo are entitled to dual or multiple citizenships, as guaranteed by the Law on Citizenship of Kosova. Article 3 of the Law on the Citizenship of Kosova states: "A citizen of Republic of Kosova may be the citizen of one or more other states. The acquisition and holding of another citizenship shall not cause the loss of the citizenship of Kosova."⁶⁹ There is special tolerance of dual and multiple citizenship in Kosovo, as any person can keep their citizenship of other country after having acquired Kosovar citizenship. The incentive for dual citizenship was developed with a high consideration of Kosovo Serbs and likeability for them to be the major group practicing this right.⁷⁰ However, this is not the case so far and is unlikely to change if the political disputes between Kosovo and Serbia remain. The crux of the problem is that Kosovo law does not consider passports or ID cards issued by the Coordination Directorate and Police Directorates as equal to official Serbian passports and ID's. In fact, these documents are not covered by the Kosovo citizenship law as they do claim that Kosovo is part of Serbia. An example of this being the ID cards and passports issued from the Police Directorates and Coordination Directorate in Serbia for citizens of Kosovo, stating their city of residence as example 'Kosovska Mitrovica, Republic of Serbia' 'Priština, Republic of Serbia' and other towns in Kosovo. This seems to be the main cause for the invalidity of these type of documents in Kosovo.

One solution how to validate these documents in Kosovo, would be for them not to state municipalities in the territory of Kosovo as part of Republic of Serbia. Nevertheless, all persons residing permanently in the territory of Kosovo, would still need to obtain also Kosovo documentation, since the identity documents of Coordination Directorate in Belgrade and Police Directorates in Serbia proper would not be valid for citizens to access public services provided by Kosovo system.

⁶⁹ Law on Citizenship of Kosova, Article 3.

⁷⁰ EUDO Citizenship Observatory. [Country Report on Citizenship Law: Kosovo](#) (2015).

F. RECOMMENDATIONS

There are several problems that hinder the acquirement of citizenship and freedom of movement for Kosovo Serbs and other non-majority communities whom obtain Serbian parallel structures documentation. We wish to present some recommendations to ease the progress in the future:

- The previous administrative instruction was often misread, misused and implemented on the basis of the competences of the employees working with it, also the competences to issue citizenship were only at the hand of central level, while with the new AI the competences are moved to local level. More capacity building trainings are needed for the local level staff who are implementing the new AI No. 05/2017 and directly working in the offices that issue Kosovo citizenship and other identity documentation.
- Kosovo should prioritize the creation of the fully functioning municipal administrations in the four Northern municipalities, which will enable citizens in these municipalities to access all services that they are entitled to, especially registry offices to apply for citizenship and other personal documentation.
- In line with the technical agreements reached in the Brussels Dialogue, Serbia and Kosovo should guarantee the freedom of movement by facilitating civil registry procedures, in the first place for the Kosovo Serb community and other communities that continue to rely on Serbian parallel public institutions.
- Kosovo authorities should put more focus on the issue of the marriage certificates and preferably work on an administrative instruction or a policy that seeks to regulate the current complexities with non-recognition of marriages registered in the Serbian parallel institutions within Kosovo.
- Issues regarding security concerns, travel expenses and language barriers have been raised by the many people we interviewed. The requirement to obtain a birth certificate for the first time in the municipality of birth should be addressed perhaps by enabling these persons to apply for birth certificates at the central level at the Ministry of the Interior, which enables them not to travel to the respective birth municipality.
- Kosovo and Serbian authorities have agreed to disband the Serbian parallel structures and establish institutions under the Kosovo system as a prerequisite for the agreement of forming the Association of the Serb Majority Municipalities in Kosovo. Most importantly, all parties who share a purpose of progressing the interests of Kosovo Serbs and others should enhance a way of working with implementation of the Brussels agreements without creating a gap for citizens to enjoy their most fundamental rights.
- Kosovo should work on its developments set by the EU for its visa liberalization prospects. Visa liberalization would add huge value to the passport of Kosovo and result in a higher level of interest towards Kosovo citizenship. Especially the persons who are only in possession of Serbian Coordination Directorate passports, that are not visa free, would be stimulated to obtain Kosovar passport.

- There is clear lack of monitoring and coordination of the implementation of Brussels agreements, which has resulted to the stagnation on any progress and prolonged transition of the Kosovo. The EU could increase its involvement to execute the implementation part of the agreements, even though the implementation phase is mainly internal process of Kosovo and Serbia.

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