

**Report**  
**on the**  
**Implementation of the Brussels Agreement**  
**(by the Republic of Serbia)**  
SUMMARY (English version)

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## **I Why monitor the implementation of the Brussels Agreement?**

The Brussels Agreement (hereinafter: Agreement), signed by the Prime Ministers of Serbia and Kosovo, on April 19 2013, was adopted at a Government of Serbia session on April 22 2013, while the Government of Serbia adopted on May 26 2013 the Implementation Plan of the Brussels Agreement (hereinafter: Plan) which entails the realization of a number of measures and activities with stipulated deadlines, according to the original political accord. Bearing in mind the fact that the stated Agreement is of exceptional significance for Serbia in regard to the continuation of the EU integration process, regional stability and cooperation, and particularly from the angle of negotiation chapter 35, Bureau for Social Research (BIRODI) has determined that there is need for organized and systematic monitoring of the Brussels Agreement's implementation, both from the perspective of activities undertaken by the Republic of Serbia, as well as institutions and representatives under her formal and informal influence in Kosovo. The monitoring of the implementation entails key segments of the Agreement through the following indicators: transparency, legality, efficiency, effectiveness and consequences of (non)implementation.

Monitoring of the Agreement's implementation aims to determine the extent of the Agreement's implementation, i.e. sustainability. The second objective of the monitoring is to launch a broader debate in Serbia – through presentation of its results – in regard to the contents and manner of implementation of the Brussels Agreement, as well as to render this subject topical in the media, i.e. in the political and expert circles, particularly from the perspective of the process of Serbia's accession to the EU, which point out that the realization of the Agreement will be one of the key conditions for Serbia's further advancement towards the EU. This objective gains in importance when considering the fact that a debate on the Agreement's implementation is being led in Kosovo, which is not the case in Serbia and in the Serbian public. This position is substantiated by findings of media monitoring carried out by BIRODI during the 2013 local elections in Kosovo, confirming that the Agreement, its contents, interpretation, implementation and meaning have not been an issue of greater presence – neither in the Serbian-language media in Kosovo, nor in the media in Serbia.

Who implements the Agreement and in what way, who are the involved parties, what activities took place and what were their results, to what extent can one speak of transparency and inclusion of different stakeholders in the realization of the Agreement, what are the main obstacles are legal aspects of the Agreement's implementation – these are the key questions our survey attempted to adequately respond to, by means of primarily gathering information from people who live, work or engage in public and political activities in Kosovo and/or are directly or indirectly linked with the realization of the Agreement, primarily from the Serbian side.

This monitoring report has taken into account the fact that the societal stakeholders (civil society, media, politicians) and representatives of institutions which came into existence at the local level following the Brussels Agreement, are the most reliable source of gathering data, as

all the undertaken (non)activities concerning the Brussels Agreement are, in fact, mostly reflected upon the Kosovo territories populated by the Serb community.

## **II Description of methodology and experiences in data collection**

### **2.1 Methodology**

Seeking the best possible methodological framework for conducting this type of survey dealing with a specific subject matter, BIRODI has defined the following indicators:

- Transparency (publicness, manner of decision-making)
- Legality (implementation of measures, whether it leads to violation of existing procedures)
- Efficiency (are the agreed measures, or those creating an impression that they have been agreed upon, being implemented and to what extent)
- Effectiveness/results (what does the implementation of the Agreement bring to the citizens)
- Accountability for the implementation of the Agreement and lack thereof
- Obstacles/obstructions (identification of problems in the implementation/manner of obstruction – institutions, public officials, citizen groups preventing the implementation of the Agreement).

With the intention to obtain relevant information, we have defined a list of 40 stakeholders with the aim to conduct interviews and gather information of significance to the monitoring process. Also, bearing in mind the fact that media reporting on the implementation of the Brussels Agreement represents a significant aspect in the estimate/evaluation of the situation on the ground, BIRODI has organized an orientational media monitoring on the subject of “implementation of the Brussels Agreement” which was carried out during a 4-month period. Findings of the monitoring (stakeholders, topics mostly represented in the media coverage) are stated in Annex 2 of this report.

The survey was carried out during the June – December 2014 period, by means of:

- 38 interviews with relevant societal stakeholders:
  - o Officials – public officials and civil servants from institutions in Serb-majority municipalities (institutions of the Republic of Serbia and the newly-

- established institutions, through the process of realization of the Brussels Agreement);
  - Implementers – appointed persons representing the Republic of Serbia, formally in charge of the implementation of the Brussels Agreement
  - Party officials
  - Civil society activists and important societal stakeholders in the Serb community
  - International community representatives
  - Experts in the observed fields
  - Journalists-analysts
- Legal analysis:
    - Overview of the Constitutional Court of Serbia’s rulings concerning the agreements which preceded the Brussels Agreement and relating to the Agreement itself;
    - Comparative analysis of the legal framework of Serbia and Kosovo, respectively, of significance for the observed aspects of the Agreement;
  - Monitoring of media coverage on the realization of the Brussels Agreement on a designed media sample (period: August – November 2014);

## **2.2 Experiences in data collection**

During the course of the survey, the Bureau for Social Research (BIRODI) team has encountered several obstacles:

- Determining jurisdictions (which persons of which institutions are in charge of what fields/aspects of the Agreement’s implementation) – the survey has shown that the information on jurisdiction of persons representing state organs by the Republic of Serbia in charge of certain aspects of the Agreement’s implementation and/or the negotiation process, are not publicly available (apart from the list of members of the Management Team for the establishment of the Community of Serb Municipalities); In addition to this, when it comes to identified key stakeholders, it was not possible to fully determine their direct jurisdictions pertaining to the realization of parts of the Brussels Agreement, nor in what way the realization is coordinated;
- The persons’ availability for interviews – the course of the survey has shown that the representatives of the Government of the Republic of Serbia (Office for Kosovo and Metohija) were not willing to provide any kind of data pertaining to the implementation of the Brussels Agreement (apart from their own statements in the

media). Several attempts to establish official contact with the Office for Kosovo and Metohija remained unanswered. Also, due to a strong political link between the mayors of newly-established municipalities in Northern Kosovo, interim councils and the Office for Kosovo and Metohija, several attempts to conduct interviews with said institutions yielded no results (permission sought from the Office for Kosovo and Metohija, i.e. Marko Đurić personally, was one of the unofficial explanations). The only interlocutor diverging from this pattern is the mayor of Leposavić who accepted an interview with the BIRODI team's researchers. That is the reason why the BIRODI team was also able to conduct talks with the mayor's associates, heads of assemblies, and deputies of municipal assemblies.

- Lack of information (statistical data and documents) on the course of implementation of the Brussels Agreement – during the course of the survey, it was concluded that there is no "organized connection" between the events related to the implementation of activities linked with the Agreement in terms of a document confirming/displaying the sequence of actions, jurisdictions, manner of implementation etc. (apart from the Agreement Implementation Plan which was adopted by the Government of the Republic of Serbia). The implementation of certain activities itself, when it comes to persons in charge and their competences, is beyond public reach.
- Lack of knowledge about the Agreement realization process by a majority of interlocutors – even though, according to the description of their formal jurisdictions, they are connected to the direct implementation of a part of activities contained in the Agreement on the ground, the majority of interlocutors are not familiar with the manner of realization, nor the true content of the Agreement itself. Their concrete activities for the most part relate to carrying out a minimum of activities stipulated by regulations of the institutions in which they operate (be it institutions of Kosovo or Serbia);

### **III Context (atmosphere and conditions in which the Brussels Agreement is being implemented)**

This part of the analysis will present findings and assessments based on the respondents' standpoints on the context in which the Brussels Agreement is being implemented.

After the signing of the Brussels Agreement, participants in the survey have stated the following as positive developments: relative increase of security and freedom of movement for Serbs, improvement of the infrastructure, primarily due to funding by the Republic of Serbia which is distributed via the Office for Kosovo and Metohija, a change of attitude by the international community towards the Serb community (politically speaking, the Serb community is now recognized, according to the respondents' opinion, as a constructive party), especially towards the Serbs outside the northern part of Kosovo; a partial improvement of the municipal authorities' performance in municipalities outside of Northern Kosovo; establishment of IBM (integrated border management in Northern Kosovo) and the process of Republic of Serbia's security staff being integrated in the Kosovar institutions; the fact that local elections were held in 2013, along with the prior appointment of the liaison officer who facilitates the coordination between the international community, Kosovar institutions and the political representatives of Kosovo Serbs.

Ethnic Serb citizens' expectations from the Brussels Agreement are directed towards greater security, freedom of movement, infrastructure of increased quality, rule of law and employment. They view the Brussels Agreement as abolishment of "Serbian institutions" and integration into Kosovo, noting that new Serb institutions have not been established, which they perceive as a problem, as this takes time, as well as the strategy and plan which are non-existent. The key concern by ethnic Serb citizens is that the Brussels Agreement would lead to abolishment of financing from Serbia and job losses, and that the transfer into the Kosovar system would simultaneously entail cultural assimilation and loss of any form of national identity.

Evaluating the attitude by the international community, the respondents have stated that it remains slow and insufficiently objective towards the Serb side, while lenient towards the Albanian one. The slow pace at the level of the international community is primarily attributed to the European Union. On the other hand, actions by OSCE were evaluated as relatively adequate in the case of violation of Serbs' rights. The respondents consider the USA to be the main political stakeholder, one with the most influence and more understanding for the Albanian side.

A general evaluation by the survey participants is that the Brussels process has not contributed to the advancement of the integrity of institutions in Serb municipalities. This is primarily reflected in their functioning: they lack adequate funds (local deputies are not paid on a regular basis; budgetary funds are uncertain and insufficient); technical facilities (premises for the work of the assembly and other local self-government institutions are insufficient or non-

existent); they lack adequate staff structure (experts in drafting and realization of projects supported by international donors; amassment of a large number of offices in the hands of few people who have lost their personal and political integrity).

According to the interviewed respondents, one of the issues which qualifies as the “mother of all questions” is the financing of Serb institutions which was identified as uncertain. This particularly pertains to the scope and manner of financing of Serb institutions in Kosovo (regardless of whether it relates to the Kosovar budget or that of the Republic of Serbia). In addition to this, it was emphasized that the manner of distributing funds to municipalities from the Kosovar budget disfavors smaller-sized and underdeveloped municipalities, most of which in fact include a significant number of Serb municipalities. At the same time, the majority of infrastructure projects are financed – via the interim councils – by the Office for Kosovo and Metohija.

The respondents display a predominant belief that there is no adequate cooperation among the Serb municipalities, i.e. that there is a – albeit not pronounced but still present – division to “Serbian North” and “Serb South Kosovo”.

The communication between the Government of Kosovo and the local self-government inhabited by a Serb majority was described as insufficient, particularly concerning municipalities in Northern Kosovo. Concretely, the Ministry of Administration and Local Self-Government of Kosovo was recognized as the ministry “hampering” communication, i.e. that it was not a constructive force in the process of drafting municipal statutes. Resolving the issue of displaying emblems and coats of arms of Kosovo represented this Ministry’s main priority in this process. Representatives of the Kosovo Government attend the sessions of Serb-majority municipal assemblies. Municipal assembly session minutes are delivered to the Kosovo Government, in line with regular procedure, including all other accompanying decisions. However, the public is not informed on those decisions.

An important challenge is the ownership status of public enterprises at the local level. Namely, in municipalities with a Serb majority, public enterprises are state-owned, whereas the communal enterprises in other Kosovo municipalities are private, which creates a problem regarding the planning of budget fund allocation, as the Kosovo budgetary system does not recognize state-owned local enterprises, as consequence of which a different structure of allocated funds in Serb municipalities’ budgets is created, as well as a different system of performance of activities which used to be the responsibility of local enterprises (e.g. communal services).

Transparency of institutions in Serbian municipalities is at a low level. Municipality web sites contain basic information and documents related to the municipality’s respective jurisdictions. Assembly sessions are not being announced in the media on a regular basis. Websites mainly contain information on the budget, but not on its execution/expenditures. Even though they are envisioned by the Kosovo laws, public debates and discussions initiated by the head of municipality are not taking place (except for the case of presentation of the 2015 draft



budget which was held in each of the 4 Northern Kosovo municipalities – citizens are not adequately informed on the organization of public debates). Journalists are invited to press conferences but not allowed to ask questions. The media are delivered statements not signed by individuals but by name of institution (e.g. Mayor, Management Team or Interim Council).

A lack of transparency and non-participation during the decision-making process has led to the citizens' disinterest in public debates, i.e. as told by one of the respondents from the ranks of public officials, "they have no suggestions, nor are they interested in anything".

Non-transparency is also a feature of institutions working on the implementation of the Brussels Agreement. The fact of the matter is that the media dedicate little space to reports on the contents and implementation of the Brussels Agreement and, as a consequence, ethnic Serb citizens in Kosovo are deprived of information on the Brussels process. Due to censorship of the issue of the Brussels Agreement in the media, an alternative manner of informing was established, through the internet and social networks.

As a matter of fact, transparency and media freedom were presented as a problem by the interviewed civil society representatives and opposition leaders at the level of the Serb community. A concrete example is the case of Serbian politicians' visits to Kosovo. These are accompanied by insufficient public knowledge on the true contents and purpose of the visits, while the public gatherings organized on those occasions are attended by persons who are loyal and/or will not pose "unpleasant" questions.

## IV Implementation of the Brussels Agreement – findings by fields: security, education, local self-government, judiciary

### 4.1 Management team for the establishment of Community of Serb Municipalities (CSM) and attitude towards CSM

The Management Team was formed by a decision of the Government of Serbia<sup>1</sup>. Membership on the Management Team is voluntary – it represents yet another post held by officials from the Serb community in Kosovo. Management teams do not have their own technical, financial and staff resources –they use the facilities and funds of the Office for Kosovo and Metohija. In relation to this, the Management Team lacks internal normative capacity. Respondents from the ranks of civil society and opposition politicians argue that the implementation period is unrealistically short, as well as that Belgrade itself has its own problems, hence this matter is not of such great priority to it. Proposals regarding the Agreement’s realization coming from persons outside of the “Serbian List” are not being taken into consideration.

According to the members of the Management Team, the main achievements of their hitherto work were the drafting of the Statute of the Community of Serb Municipalities (CSM) and the coordination between the Office for Kosovo and Metohija and local self-government units in Northern Kosovo. They also stated that public debates on the draft statute of the Community of Serb Municipalities were on the agenda for 2015. The said draft is not available to the public, nor has the realization of the announced activities been scheduled.

In addition to this, it is also evident that there lacks a unified plan and/or political platform/document prepared by the Republic of Serbia on how the Community of Serb Municipalities should operate in terms of establishment, functioning, jurisdictions, financing, etc. There are only a few documented ideas conveyed to the researchers by interlocutors from the “Serbian List”, these being of a conceptual nature, without proof that they are in fact part of a political platform (*The Community of Serb Municipalities will assume all jurisdictions and all employees from the disbanded Serb municipalities that are no longer part of the newly-established municipalities according to the Kosovo system; each municipality with a Serb population will have a CSM office; prior to the adoption of the CSM statute, it is necessary for a law on CSM to be passed in the Serbian and Kosovo Assembly, respectively; CSM will be directly financed from Serbia*).

At the same time, the attitude by EU representatives in Prishtina in charge of CSM indicates that the EU will not interfere in the negotiations between Serbia and Kosovo on the nature and jurisdictions of CSM, and that the most important fact is that the realization of the Agreement is lasting and secures stability and communication between the communities.

On the other hand, the political coalition agreement<sup>2</sup> signed by representatives of the “Serbian List” and representatives of parties – DPK (Democratic Party of Kosovo) and DSK (Democratic

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<sup>1</sup><http://www.srbija.gov.rs/vesti/vest.php?id=195693>

<sup>2</sup>[http://www.rtv.rs/sr\\_lat/politika/sta-je-srpska-lista-potpisala-sa-dpk-i-dsk\\_545659.html](http://www.rtv.rs/sr_lat/politika/sta-je-srpska-lista-potpisala-sa-dpk-i-dsk_545659.html)

Union of Kosovo) on a coalition that would constitute the new Government of Kosovo states that the “establishment of the Community of Serb Municipalities shall take place 3 to 5 months from the day of this agreement’s signing”, which causes for additional ambiguity in terms of accountability and jurisdiction for the establishment of CSM (is it performed by municipal assemblies in Serb-majority municipalities, or by the Management Team, or the Kosovo Government?).

## **4.2 Local self-government**

According to the 2013 local election results in Kosovo, and after the by-election of the mayor of Northern Mitrovica in 2014, the constitution process of 4 municipalities in Northern Kosovo (Northern Mitrovica, Zubin Potok, Zvečan, Leposavić) has been completed until June 2014, while the rest of the Serb-majority municipalities in other parts of Kosovo had already been functioning within the Kosovo system and were thus not subject to analysis. Between June of 2014 and late 2014, after the problems involving designations and emblemson official documents of local self-governments in the North had been overcome, the functioning of local self-governments was marked by the following occurrences:

- Lack of working conditions for the work of deputies in municipal assemblies
- Municipal services/divisions/departments according to Kosovo legislation have not been established;
- Vague connections and jurisdictions between the mayor’s office and the Mitrovica North Administration Office (in regard to takeover of employees, work plans, financing, etc);
- Overlapping of offices in interim councils (Serb institutions) and in newly-established municipalities;
- Pressures on deputies who are not members of the “Serbian List” to join the “Serbian List”;
- Drafting of the 2015 budget proposal for local self-governments.

Apart from the fact that the establishment of local self-governments in Northern Kosovo represents one of the more successful parts of the Agreement which was practically implemented, this area, too – according to statements by our interlocutors – was marked by political and informal influence on decision-makers (elected representatives in local self-governments). This is particularly visible when it comes to the drafting of the budget proposal in 4 municipalities in Northern Kosovo for 2015, when all 4 municipal assemblies removed the issues of education and health from the budget proposal, even though these areas, according to the Kosovo legislation, must be included in the local self-governments’ budgets. Our interlocutors confirmed that they had been instructed to reach such decision by the Office for Kosovo and Metohija with the justification that the financing of health and education would be in the jurisdiction of the future Community of Serb Municipalities (which is contrary to regulations valid in Kosovo). What also remained unclear is how the public

communal enterprises that are not recognized by Kosovo law would be financed or, rather, function at all (more on this in the section on legal analysis of regulations in Serbia and Kosovo).

### 4.3 Judiciary

According to the respondents' opinion, the post-Brussels period is featured by a decrease in rule of law which is reflected by the incomplete process of establishment of courts according to the Kosovo system in Serb municipalities, as well as a decreased scope of work of courts in the North. Respondents from the ranks of attorneys have highlighted the problem of criteria for electing judges in the newly-established courts according to the Kosovo system, as well as the undereducated court staff and judges, violation of presumption of innocence in many cases, treatment of detainees and violation of procedures and norms pertaining to protection of detainees' rights, and procedural flaws in civil and criminal procedures.

From the perspective of the Agreement's implementation, respondents have stated that as of July 15 2014, courts in Kosovo that are part of the Republic of Serbia's system were no longer processing criminal cases, following instructions given by the Ministry of Justice. At the same time, the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutors' Offices<sup>3</sup> which defines the territorial jurisdictions and seats of courts (both of general and special jurisdictions) and prosecutions, stipulates that the establishment of courts and public prosecution offices for the territory of the Autonomous Province of Kosovo and Metohija, as well as their seats and territorial jurisdictions, are governed by a special law which is yet to be adopted. Apart from that, judges and court staff are on the payroll of the Republic of Serbia, and according to our interlocutors, majority of work is comprised of certifying contracts and powers of attorney, and when it comes to trials – they are not held, except for cases in which both parties are in accord (e.g. divorce cases) and the court only ascertains concord and concludes the dispute.

As for the Kosovo territories populated by Serbs, they are covered by a network of basic/municipal courts in the Kosovo system. The Agreement envisions for a special panel with a majority of Serb judges to be formed in the framework of the Court of Appeals in the Kosovar system, which will have special personal-territorial jurisdiction, i.e. it will have jurisdiction over all municipalities with a Serb majority, without specifying specific material jurisdiction. In addition to this, one division of this court will be located in Northern Mitrovica, and every panel of this division will have a majority of Serb judges. Until the establishment of this special panel with special personal and territorial jurisdiction, the Basic Court in Mitrovica will resume its operation as the only functioning judicial institution in Northern Kosovo.

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<sup>3</sup>[http://www.paragraf.rs/propisi/zakon\\_o\\_sedistima\\_i\\_podrucjima\\_sudova\\_i\\_javnih\\_tuzilastava.html](http://www.paragraf.rs/propisi/zakon_o_sedistima_i_podrucjima_sudova_i_javnih_tuzilastava.html)

Currently, the implementation of the Agreement in the field of judiciary is still being negotiated, and this issue is one of the most challenging in the hitherto course of the negotiations. One of the reasons is the fact that the territorial jurisdiction of the Basic Court in Mitrovica, apart from the Serb-majority municipalities, mirrors the structure of the Serb, i.e. UNMIK district, and also includes Southern Mitrovica, Srbica and Vučitrn, and the composition of the Basic Court and of the prosecution's office should correspond to the ethnic structure of the entire area.

During 2014 there was also an emergence of the issue of "ban" on representation by attorneys who live and work in Kosovo in cases conducted before the courts of the Republic of Serbia, and representation by attorneys who live and work in Serbia in cases conducted before courts in Kosovo. Namely, as early as January 2012, the Government of Kosovo had decided to ban attorneys who are members of the Bar Association of Serbia from representation and accessing courts on the territory of Kosovo. As a result, only a few attorneys from the Serb national community, registered in the Kosovo Bar Association, were able to continue with their work.

Bearing in mind the aforementioned, as well as respondents' answers which predominantly state that "justice is not accessible" to citizens, one can conclude the following:

- Citizens of Northern Kosovo are using the court of the Republic of Serbia for certification of contracts, transcripts and other documents of importance for everyday life;
- Citizens of Northern Kosovo are using the Kosovo Mitrovica Court (relocated to Vučitrn) when it comes to traffic violations and other kinds of misdemeanors, as well as trials for certain types of criminal offenses;
- Citizens of Northern Kosovo are unfamiliar with how to fulfill/protect their rights, which particularly pertains to the Kosovo Mitrovica Court in Vučitrn (unavailability of information in the Serbian language; security-related aspects of movement; extremely subpar working conditions and insufficient number of judges and staff; piled-up cases and unfair trials; and especially the treatment of detainees);
- Citizens of Northern Kosovo have no trust in the existing court instances and expect the solving of this issue through further Brussels negotiations to bring about an improvement of the situation.

#### **4.4 Education**

According to a representative of the Prishtina University seated in Kosovska Mitrovica<sup>4</sup>, the number of students who enroll to University is on the rise (Kosovska Mitrovica is recognized as an important university center), whereas the number of enrolled children in schools south of Ibar is in decline. Accreditation is the main opened question which is to be resolved by means

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<sup>4</sup> Apart from two interlocutors, other representatives of the Prishtina University seated in Kosovska Mitrovica did not agree to take part in this survey.

of accreditation at the international level, which would avoid accreditation by the competent Kosovar institution. The raised questions also include the issue of university property. The decision contained in the Agreement regarding the certification (in Kosovo) of diplomas obtained in Serbia is considered poor. In addition, university and education are perceived as a significant element of the Serbs' survival in Kosovo.

Although the Government of the Republic of Serbia's Decree on Recognition of Diplomas Issued by the Kosovo Institutions was declared unconstitutional by the Constitutional Court, only two weeks later the Government of the Republic of Serbia adopted a new Decree on the Recognition of Diplomas by Kosovo Universities<sup>5</sup>. *"The new Decree on the special manner of recognition of higher education certificates and valuation of Kosovo and Metohija university curricula in fact relates to Kosovo universities which operate in accordance with United Nations Security Council Resolution 1244. This way, university diplomas by Kosovo universities will be first recognized by the Committee of European Academic Experts, founded by the European University Association, and then considered by independent expert organs of higher education institutions. Today's new Decree by the Serbian Government has introduced a new procedure for recognition of diplomas issued by Kosovo universities, thus overcoming the problem of diploma recognition due to the previous decree's unconstitutionality"* –KoSsev portal, November 14 2014.

With respect to the financing of the University and the school system in general in Kosovo (in all territories in which there is a Serb community), there is no concern that a change in the manner of financing could occur, bearing in mind the fact that the Ahtisaari Plan, too, had envisioned financing of educational institutions in Serb communities by the Republic of Serbia.

#### **4.5 Police and security structures**

The survey *"Police Integration in North Kosovo: Progress and Remaining Challenges in Implementation of the Brussels Agreement"*<sup>6</sup> carried out by the Belgrade Center for Security Policy, states the following: *"during the Brussels talks a list of 337 police officers who were supposed to be integrated was delivered to the Prishtina authorities by the Serbian side. Of these, 285 were invited to join the integration process, while 52 former MUP officers were omitted. It is assumed that these 52 include some that perhaps did not want to join the KP, some who had applied but did not meet all the requirements or some who had not received security clearance. In addition, approximately 800 former MUP staff outside of Northern Kosovo have been retired and omitted from the integration process. This caused dissatisfaction among them, for they consider that the Brussels Agreement relates only to Northern Kosovo"*. The stated assessments were confirmed by BIRODI team's interlocutors, along with the observation that the implementation of the Brussels Agreement has improved the work of the police through additional training, but that this did not contribute to an increase in the quality of its work. At the same time, the sense of security among members of the Serb community has increased.

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<sup>5</sup>[http://www.kossev.info/strana/arhiva/nova\\_uredba\\_o\\_priznavanju\\_diploma\\_kosovskih\\_univerziteta/2861](http://www.kossev.info/strana/arhiva/nova_uredba_o_priznavanju_diploma_kosovskih_univerziteta/2861)

<sup>6</sup>[http://www.bezbednost.org/upload/document/integracija\\_policije\\_na\\_severu\\_kosova.pdf](http://www.bezbednost.org/upload/document/integracija_policije_na_severu_kosova.pdf)

Apart from the fact that, formally speaking, there has been an integration of police and security staff in the Kosovar security structures, three questions/problems remain open, primarily related to the work of the police in Northern Kosovo:

- The issue of management of the Kosovo Intelligence Agency (KIA) – a topical political question which, in statements by political representatives of the Kosovo Serbs<sup>7</sup>, is presented in the context of the Brussels Agreement's realization but also of the coalition agreement on the participation of the "Serbian List" in the Government of Kosovo;
- The issue of police officers' level of training for implementing procedures and law enforcement, and (non)bias in cases in which the parties are of different nationalities (respondents' objections range from the issuing of traffic violation tickets to the preparation of reports and documents during the gathering of data on possible criminal offenders which is a particularly topical issue in Northern Kosovo where a large number of citizens have complaints to that effect);
- The issue of the hitherto results of police work, considering the fact that no case of threat to personal safety, and especially felonies (murders, armed assaults, throwing bombs at natural persons' property, etc.) has resulted even in prosecution of suspects.

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<sup>7</sup>[http://www.rtv.rs/sr\\_lat/politika/sta-je-srpska-lista-potpisala-sa-dpk-i-dsk\\_545659.html](http://www.rtv.rs/sr_lat/politika/sta-je-srpska-lista-potpisala-sa-dpk-i-dsk_545659.html)



## V Work of the Constitutional Court and the Brussels Agreement(s)

To this day, the Constitutional Court of the Republic of Serbia (hereinafter:CCRS) has repeatedly issued rulings on the results of the Brussels process, specifically:

- On decrees adopted based on agreements that were reached in the first part of the dialogue (birth registries, cadastre and recognition of university diplomas); and
- On the Brussels Agreement itself

The outcome of such rulings is manifold, including a public debate on the Agreement which gained much publicity. We shall here only briefly deal with this outcome, leaving procedural questions and public debate aside for now, given the fact that only the final opinion by CCRS is of essential importance.

Regarding the “first” package of Brussels agreements, to this day CCRS has determined the following documents to be in violation of the Constitution and the law:

- Decree on special manner of recognition of higher education certificates and valuation of curricula of universities from the territory of the Autonomous Province of Kosovo and Metohija which operate contrary to regulations of the Republic of Serbia, adopted for the purpose of implementation of the agreement on recognition of university degrees<sup>8</sup>;
- Decree on special manner of processing data contained in registries for the territory of the Autonomous Province of Kosovo and Metohija, adopted for the purpose of implementation of the agreement on registries<sup>9</sup>;
- Decree on special manner of processing data contained in the land cadastre for the Autonomous Province of Kosovo and Metohija, adopted for the purpose of implementation of the agreement on cadastre<sup>10</sup>.

However, the publishing of decisions by means of which CCRS has determined these inaccuracies and, thus, their legal force, has been delayed, and all petitions for stay of enforcement of individual acts and procedures undertaken based on such decrees were dismissed. Essentially, CCRS ruled that such decisions are unconstitutional but took no action to rectify the said unconstitutionality. In this case, legal judgment evidently yielded to political pressure to take no action, although it remains unclear how the existing unconstitutional state can be formalized without alterations to the Constitution itself.

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<sup>8</sup><http://www.ustavni.sud.rs/page/view/0-102006/saopstenje-sa-16-sednice-ustavnog-suda-odrzane-30-aprila-2014-godine-kojom-je-predsedavala-vesna-ilic-prelic-predsednica-ustavnog-suda?qs=%D0%9A%D0%BE%D1%81%D0%BE%D0%B2%D0%BE>

<sup>9</sup><http://www.ustavni.sud.rs/page/view/0-102002/saopstenje-sa-15-sednice-ustavnog-suda-odrzane-24-aprila-2014-godine-kojom-je-predsedavala-vesna-ilic-prelic-predsednica-ustavnog-suda?qs=%D0%9A%D0%BE%D1%81%D0%BE%D0%B2%D0%BE>

<sup>10</sup><http://www.ustavni.sud.rs/page/view/0-101949/saopstenje-sa-3-sednice-ustavnog-suda-odrzane-30-januara-2014-godine-kojom-je-predsedavao-dr-dragisa-b-slijepcevic-predsednik-ustavnog-suda?qs=%D0%9A%D0%BE%D1%81%D0%BE%D0%B2%D0%BE>



As for the Brussels Agreement, CCRS has dismissed the motion for assessment of its constitutionality and legality. Such decision, even though it seems to be the opposite of the one applied to decrees from the “first package” is, in fact, based on the same standpoint. Namely, the Brussels Agreement was treated as a political act. The entire Brussels process is to be viewed as a political one, thus beyond the sphere of control of CCRS, whereas only the implementation of the Brussels agreements can be subject to the CCRS’s evaluation. Currently, its assessment is that it is quite clear that the “first package” of the Brussels agreements was not only implemented unconstitutionally, but the agreements themselves are essentially unconstitutional; however, CCRS stopped short of going any further than ruling on the implementation’s unconstitutionality.

Finally, it is worth pointing out that CCRS has begun to deal with acts pertaining to the implementation of the Brussels Agreement, such as the Decree on conditions for fulfilling the right to special pension by MUP employees on the territory of the Autonomous Province of Kosovo and Metohija<sup>11</sup>. It remains to be seen whether the same principle will be used there, as well, namely the ruling on unconstitutionality without taking any further actions in order to eliminate such unconstitutionality.

## **VII Conclusions and recommendations**

### **7.1 Conclusions:**

1. The implementation mechanism lacks adequate normative capacity, financial, staff-related and institutional resources for the implementation of the Brussels Agreement. This creates a space for the “Serbian List” – by itself or directed from the “headquarters” – to have an incentive or discouraging influence on the Agreement’s implementation. An informal system of influence by the ruling coalition in Serbia is the dominant manner/system for the Agreement’s implementation;
2. There is no mechanism of submitting reports/accountability and possible sanctioning of failure to implement the signed document at the Agreement signatories’ level, which additionally influences its inapplicability;
3. The process of implementation of the Brussels Agreement is non-transparent and non-participative (selective inclusion of stakeholders, mostly from the ranks of political bureaucracy and party membership) thus diminishing the legitimacy and support by local stakeholders, especially in Northern Kosovo;

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<sup>11</sup><http://www.ustavni.sud.rs/page/view/0-102099/saopstenje-sa-3-sednice-ustavnog-suda-odrzane-29-januara-2015-godine-kojom-je-predsedavala-vesna-ilic-prelic-predsednica-ustavnog-suda?qs=%D0%9A%D0%BE%D1%81%D0%BE%D0%B2%D0%BE>

4. Coordination meetings of stakeholders involved in the realization of the Brussels Agreement are not public and their outcome is unknown;
5. There is pronounced centralization of decision-making, resulting in a significant lack of standpoint/opinion by representatives of Serbs living in Kosovo;
6. There is overlapping of offices in the newly-established local self-governments in municipalities in the North with those in interim councils– in such conditions it is almost impossible to determine jurisdictions and work/disposal of funds by both categories of officials, embodied by the same persons; the same example is valid when it comes to ministers/officials at the level of the central authorities in Kosovo – the example of Aleksandar Jablanović, deputy in the Assembly of Serbia<sup>12</sup> and Minister for Communities and Return in the Government of Kosovo;
7. The newly-established local self-government units in Northern Kosovo are not functional – departments were not formed in line with Kosovo laws; it is unclear how the public services will operate, how many persons will the local self-government employ, municipal assemblies lack working conditions, etc);
8. All political parties that are not part of the “Serbian List” are marginalized or excluded from all processes of importance to the Serb community, along with pressures to be co-opted in the “Serbian List”;
9. There is great lack of trust by the Northern Kosovo citizens in Kosovar institutions and the international community, as a result of previous bad experiences (primarily those of a financial and legal nature, e.g. UNMIK administration workers’ termination of employment in Mitrovica when workers were sent home without justification and not paid 6 outstanding monthly salaries – 2006)
10. Pressures by executive authorities against citizens and institutions of the Serb community to participate in activities of the “Serbian List” as the only state-backed representative of Serbian state interests in Kosovo;
11. Bearing in mind the current state, accessibility of justice for the Kosovo Serbs is at a very low level, particularly in Northern Kosovo;

## 7.2 Recommendations

1. The EU needs to transform its “monitor from afar” position into becoming an active stakeholder in the process of implementation of the Agreement’s provisions. A policy in the vein of “the process runs its own course” will not lead to the full implementation of the Brussels Agreement;
2. The Government of the Republic of Serbia and organs in charge of implementing the Brussels Agreement should facilitate conditions for regular information of the public,

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<sup>12</sup>[http://www.parlament.gov.rs/ALEKSANDAR\\_JABLANOVI%C4%86.785.891.html](http://www.parlament.gov.rs/ALEKSANDAR_JABLANOVI%C4%86.785.891.html)

- and submission of reports to local self-government assemblies and to the People's Assembly of the Republic of Serbia;
3. Involvement of relevant civil society organizations, media, academic community, University and experts in the process of implementation of the Brussels Agreement, and primarily the representatives of the Serb community in Kosovo who are not part of the "Serbian List", and who possess expertise and integrity;
  4. Solving the issue of "double offices" and conflict of interest in local self-governments (particularly in Northern Kosovo) concerning persons who are members of interim councils, as well as members of newly-established local self-governments;
  5. Rendering the drafting of the Community of Serb Municipalities statute transparent and presenting the draft statute as well as the concept of the Community of Serb Municipalities to the public, particularly to the Kosovo municipalities which will constitute the Community of Serb Municipalities, as well as securing mechanisms for public debate and involvement of comments and proposals;
  6. Establishing the monitoring of the Brussels Agreement's implementation in the part concerning its influence on the citizens' quality of life;
  7. In the coming period, the following will be of key importance for the success of the implementation of the Brussels Agreement "on the ground":
    - Establishment of a functioning court in Mitrovica
    - Reaching full functionality of local self-governments in Northern Kosovo along with strengthening of integrity, principles of good governance, accountability and transparency
    - Solving the issue of financing and functioning of local public enterprises
    - Solving the issue of civil protection status
    - Involving all societal stakeholders in drafting the concept of the Community of Serb Municipalities
    - Solving property and legal issues (public enterprises in Kosovo)
  8. Economic and institutional support to the civil society and the media with the aim of their strengthening for the process of monitoring of the Brussels Agreement's implementation.

## Annex 1 - Indicators of the implementation of the Brussels Agreement – tabular display and analysis

Table No.1 – Evaluation of the implementation of the Brussels Agreement

Measure/Item	Result	Consequence	Grade of implementation
Association/Community of Serb-majority municipalities in Kosovo will be established.	None	Lacking rule of law, deficient, non-transparent and irresponsible institutions; strengthening of party structures which control public institutions at the local level	1
Association/Community will be established by adoption of statute			
Structures of the Association/Community will be established on the same foundations as the existing statute of the Community of Kosovar Municipalities			
Member municipalities will have the right to cooperate on the collective implementation of their respective jurisdictions through the Association/Community. The Association/Community will fully supervise the fields of economic development, education, health, urban and rural development.			
The Association/Community will use additional jurisdictions assigned to it by the central authorities.			
The Community will have the role of representative in relations to the central authorities and for that purpose it will have a seat in the advisory community council. A supervisory role is envisioned in the realization of this role.			
All police units in Northern Kosovo will be integrated within the Kosovo Police Force. Salaries will be paid exclusively by the Kosovo Police Force.	Police units integrated and functional	Increased sense of security within the Serb community	7
Members of other Serbian security structures will be offered a seat in corresponding Kosovo structures.	Not measured	Not measured	Not measured
A regional police commander will be appointed in the four Serb-majority municipalities in the North (Northern Mitrovica, Zvečan, Zubin Potok and Leposavić).	Accomplished in June 2013	Somewhat higher degree of trust in the police by the citizens of Northern Kosovo	7

Judicial authorities will be integrated and act within the legal framework of Kosovo. The Prishtina Court of Appeals will establish a committee comprised of a majority of Serb judges, which will have territorial jurisdiction over all Serb-majority municipalities.	In the process of negotiation	In the process of negotiation	1
Local elections will be organized in municipalities in the North, in 2013, with the support from OSCE and in accordance with the Kosovo law and international standards.	Elected representatives in the municipal assemblies and mayors	Begin of establishment of local self-governments according to the Kosovo law – not completed as of January 2015	7
Implementation plan with a timeframe will be drafted until April 26.	Document drafted	Plan with a timeframe drafted	7
Implementation of this agreement will observe the principle of transparent financing.	None	Lack of information and uninformed public	1
Negotiating parties will intensify discussions on the energy and telecommunication sectors and conclude them until June 15.	Discussions intensified but not concluded	Ongoing discussions	1
It was agreed that none of the parties would block, or encourage others to block the other party's accession path to the European Union.	Not measured	Not measured	Not measured
The two parties will establish an implementation committee, with the support of the European Union.	Established, without clear jurisdiction	Purpose and jurisdictions unclear, as well as results and manner of operation	4

**Legend:**

- 1 – not accomplished
- 2 – partially accomplished and led to negative change
- 3 – partially accomplished, without influence
- 4 – partially accomplished and led to positive change
- 5 – fully accomplished and led to negative change
- 6 – fully accomplished, without change
- 7 – fully accomplished, led to positive change
- 8 – not measurable

Table No. 2 – Evaluation of the Brussels Agreement Implementation Plan

Measure/Item	Level of implementation	Main results	Obstacle
Both parties will submit to the Implementation Committee for consideration their detailed plans and timeframes pertaining to legal changes necessary for the implementation of the "First Agreement".	8	Impossible to determine	Level of data exchange between the two parties is impossible to determine
Both parties will have adopted all necessary legal changes required for the implementation of the "First Agreement", including the law on amnesty.	4	Implementation initiated, as indicated by the Courts Organization Act and the Decree on recognition of diplomas	No list of necessary legal changes that are to be implemented, thus impossible to measure progress
The two parties will establish a task force for the implementation of Articles 7–9 of the "First Agreement". The task force will develop detailed plans and timeframes for the integration of Serbian security structure members in the Kosovar structures, as well as for the establishment of any new structure required by the Agreement, which will be carried out with the support from EULEX. Acting Regional Police Commander in charge of the four municipalities in the North will be appointed in accordance with Article 9 of the "First Agreement".	7	Appointed regional police commander; security structures integrated; lacking timeframes for other activities	Unknown
Serbia will commence the closure of facilities of its security structures in Kosovo.	8	No data	No data
Serbia will deliver information, specifying the number and ranks of Government of Serbia employees in the Kosovo security sector who have expressed their interest to join the Kosovo structures.	7	Implemented according to available reports	/
Kosovo will offer posts in the Kosovar police and in other equivalent Kosovo structures based on, as far as possibilities allow, the applicants' place of residence.	7	Implemented according to available reports	Problem regarding place of residence and equivalence of posts – not all employees occupy the same posts as in MUP Serbia
Serbia will initiate the necessary internal procedures for cessation of	4	Process initiated in the	Further progress of the

salary payment to staff following their joining of equivalent Kosovo structures and will present this to the task force. This process will be initiated in cases of staff already employed with the Kosovo Police Force.		domain of police, but not in other fields	Agreement's implementation and establishment of the Community of Serb Municipalities
All Serbian security structure facilities in Kosovo will be closed down.	8	No data	/
Members of Serbian security structures in Kosovo will be fully integrated in the equivalent Kosovo structures and their salaries will be paid exclusively from the Kosovo budget.	7	Carried out in full	/
The two parties will establish a task force for the implementation of Article 10 of the "First Agreement".			
Serbia will deliver information on the number of its staff employed with judicial organs in Kosovo who expressed their interest to join the Kosovo structures, immediately following the adoption of the law on amnesty.	8	No data	/
Kosovo will create vacancies in its judicial structures.	/	Not subject of the survey	/
Composition of judicial organs should reflect the ethnic composition of each individual court's territorial jurisdiction.	1	Still being negotiated	
Integration of judicial organs will be completed. All Serbian courts in Kosovo will be closed down, new bodies will be established and the staff integrated into the Kosovar system. There will be no discrepancies in the performing of duties.	1	Still being negotiated	
Serbia will provide a detailed overview of financing of all institutions in Kosovo through the Implementation Committee.	1	No data	/
The manner of fulfilling principles of transparency of financing will be defined by both parties within the Implementation Committee.	1	/	/
Cadastre	6		
Registry	7		
Customs seal	7		
University degrees	4		
Freedom of movement	4		
Regional representation	7		
Integrated border management (IBM)	7		
Agreements pertaining to liaison officers	7		

Special police unit for the protection of religious and cultural heritage	8		
Customs fee collection/development of the Northern Kosovo fund	6		

**Legend:**

- 1 – not accomplished
- 2 – partially accomplished and led to negative change
- 3 – partially accomplished, without influence
- 4 – partially accomplished and led to positive change
- 5 – fully accomplished and led to negative change
- 6 – fully accomplished, without change
- 7 – fully accomplished, led to positive change
- 8 – not measurable

**Transparency**

Summing up the results, we can conclude that the implementation process of the Brussels Agreement is insufficiently transparent, on three levels:

- First institutional level. According to the existing legal system, the Management Team for the establishment of the Community of Serb Municipalities, as well as other representatives of institutions of the Republic of Serbia dealing with implementation of the Brussels Agreement, have no obligation, nor capacities, to present their work to the public.
- Second, participative level pertains to the lack of involvement by citizens, political stakeholders, civil society and the expert/academic public in the process of creating solutions contained in the Agreement and their implementation. This relates primarily to documents governing the work of institutions (municipality statutes and the Community of Serb Municipalities statute). From the perspective of transparency, the Agreement is being presented as a secret only representatives of state or party structures have the right to know of or participate in its implementation.
- Third, media level. Serbian media insufficiently present the content of the Agreement or report about the implementation and the (potential) results/effects of the Agreement's implementation. Monitoring has shown that the information on jurisdictions of persons from the Republic of Serbia state organs in charge of certain aspects of the Agreement's implementation and/or the negotiating process, are not publically available.



## **Legality**

The process of the Agreement's implementation is featured by a conflict between two legal systems (Serbian and Kosovar), which causes some of the decisions from the Agreement being interpreted as unconstitutional, i.e. leaves the possibility of arbitrary actions by officials and institutions. In regard to the Agreement's implementation, the legal framework regulating the implementation is "shallow", thus decreasing the efficiency, accountability and transparency of the process.

## **Effectiveness**

Findings of the monitoring indicate that the hitherto implemented Agreement has (partially) contributed to the Serb community's quality of life in Kosovo, in the following fields: security (partially), infrastructure (partially), advancement of the police's work (significantly) and the shift of the international community's attitude towards the Serb community outside of Northern Kosovo (partially). Rule of law, finances, employment, the Kosovo institutions' attitude towards the Serb community and the institutions' integrity (be it those that need to be disbanded or those that were established) – these are the fields that have been evaluated as those still having a negative impact on the quality of life of the Serb community in Kosovo.

## **Efficiency**

Only three out of a total of 11 items that were subject to monitoring of the Brussels Agreement's implementation have been effectuated and gave positive results, which is just over one quarter of the Agreement. The following aspects of the implementation were positively assessed: implementation of local elections in 2013, integration of police units and the associated appointment of the regional police commander for Serb-majority municipalities in Northern Kosovo.

In regard to the Implementation Plan, the situation is somewhat – albeit not significantly – better. Namely, 14 out of 26 monitored measures from the Implementation Plan have been realized. Out of the 14, nine have been fully realized, although six measures have been agreed upon and implemented prior to the Brussels Agreement's signing (customs seal, regional representation, integrated border management, agreement on the liaison officer and customs fee collection). Apart from the nine fully implemented measures, an additional five were partially fulfilled (cadastre, registries, university degrees, establishment of task forces for Articles 7–9 of the "First Agreement", launching the procedure of cessation of salary payment following the inclusion in the equivalent institutions of the Kosovo structures)

## **Responsibility for implementation and accountability**

The implementation mechanism defined by the Agreement, namely the Implementation Team, lacks a system of accountability concerning the scope and quality of the implemented agreement. The role of evaluator is performed by the EU which, in the case of Serbia, evaluates the implementation of the Brussels Agreement within the framework of negotiation chapter 35.

## **Obstacles**

There are three interpretations in regard to obstacles. According to the first one, the elections – those in Serbia and especially in Kosovo, due to the lengthy negotiation process on the forming of the Government – have been an obstacle for a greater level of implementation of the Brussels Agreement. This interpretation is dominant among respondents from the ranks of state organs and local officials. The second standpoint was presented by representatives of political parties which are not part of the “Serbian List” – namely, that a major obstacle to the implementation of the Brussels Agreement were the very local officials who wish to retain their position and influence. Finally, the third view is the one by the international community which believes that Belgrade and Prishtina have different interpretations of the Brussels Agreement, thus stalling the implementation.

