



Norwegian Embassy



LANGUAGE IMPEDIMENTS to Equal Access to Services



Mitrovica 2020



Norwegian Embassy



This publication was produced within the framework of the project “Creating Bilingual Kosovo”, which is funded by the Royal Norwegian Embassy in Pristina and implemented by the NGO AKTIV. The content of the publication is the sole responsibility of the NGO AKTIV and does not necessarily reflect the views of the Royal Norwegian Embassy in Pristina.

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1. Introduction

In modern democratic societies, the role of enshrined linguistic rights is manifold. On the premise that the mother tongue constitutes one of the fundamental determinants of ethnical or national belonging, safeguarding linguistic rights enables communities to preserve and promote their separate group identity. At the same time, it facilitates the inclusion of linguistic minorities into a wider political and societal processes, contributing to their integration and strengthening of social cohesion.¹

Besides individuals, linguistic rights concern state authorities by stipulating series of obligations. In addition to negative obligations to refrain from linguistic-based discrimination and restrictions of linguistic freedom in the private sphere, state authorities are under positive obligations as well. This concerns not only obligations to enable enjoyment of the linguistic rights of the individuals, but also that institutions must take account of the use of specific languages as a language of procedure in performing some of their tasks.

In cases when institutions acknowledge only one language as official, the members of linguistic minorities are holders of a guaranteed right to use their language in certain public affairs. In the systems with the acknowledged equal use of two or more official languages, institutions assume a higher level of obligations. In terms of individual rights, official bilingualism implies the right of citizens to use the official language of their choice in proceedings before the institutions. The institutions have a reciprocal obligation to provide citizens with services in the official language of the choice of a person, and to ensure that no person shall be exposed to any disadvantage as a result of the choice made for the official language. Furthermore, a special focus is put on the protection of less widespread official language.²

¹ Language Rights of Linguistic Minorities A Practical Guide for Implementation, OHCHR, https://www.ohchr.org/Documents/Issues/Minorities/SR/LanguageRightsLinguisticMinorities_EN.pdf.

² Swedish in Finland, The Swedish Assembly of Finland, https://www.folktinget.fi/Site/Data/1597/Files/246902_Folktinget%20ordlistasus2012.pdf.

According to the existing constitutional and legal framework, Kosovo is officially bilingual. The Constitution of Kosovo (2008), namely Article 5 Paragraph 1, stipulates that Albanian and Serbian are the official languages. Law on the Use of Languages (2007) in Article 2 paragraph 1 stipulates that Albanian and Serbian are official languages of Kosovo which enjoy an equal status in Kosovo institutions. Nevertheless, past experience unfolds that the equality of official languages is not fully realized in practice, foremost in regard to the official use of Serbian language as a less represented official language.³

Linguistic rights, among other things, serve to enable citizens to realize their other rights, first and foremost, the access to justice and courts and the right to good governance. Therefore, the equality of citizens before state organs depends on whether the official bilingualism is realized in practice. Nevertheless, the question to what extent Serbian-speaking citizens of Kosovo are enabled to realize their rights under equal conditions has not been sufficiently researched.

The study “Language Impediments to Equal Access to Services” conveys the results of several months of research which aimed to fill the gaps in comprehending the extent to which equal access to public services in both official languages is realized in Kosovo. The fundamental question that this research sought to answer was whether the Kosovo Serbian-speaking citizens are enabled to safeguard and promote their rights and interests under equal conditions before the administrative organs and judicial authorities. The abovementioned research was composed of **two parts**. The first part of the research relied on the process of **gathering empirical data**, whilst the second part was focused on the **comparative analysis of legal documents**.

The aim of the **first part** of the research was to identify language barriers that the members of Serbian and other non-majority communities are facing in proceedings conducted before the organs of local and central administration and courts. The research sought to reach out to the community and to ascertain the experience of the individuals regarding the use of the Serbian language. Applied data collection methods were

³ Shortcomings of the protection of linguistic rights in Kosovo are pointed out by NGO AKTIV in the other publications produced in the frame of project “Creating Bilingual Kosovo”. For more informations please see: General Overview of Language Rights in Kosovo and Annual Report on Language Rights in Kosovo, NGO AKTIV, 2019.

interviews with the experts and **focus groups**. Focus groups were held in those municipalities where the Serbian community represents a minority. These municipalities were selected in order to examine and closely scrutinize the extent to which the access to public services in the Serbian language is enabled in municipalities whose vast majority of public servants are from the Albanian community.

The **second part** of the research was dedicated to the analysis of the legal documents. The subject matter of the analysis covered the relevant provisions of legal acts stipulating the use of language before the administrative organs and judicial authority in Kosovo, as well as the legal documents prescribing the use of official languages in other multilingual systems. The goal of this analysis was to determine in what fashion the Kosovo legal framework safeguards and promotes the bilingual standards in proceedings before the administrative and judicial organs, as well as to what extent Kosovo legal framework is harmonized with international standards in this domain.

The results of the empirical research are showing that the equal use of official languages in Kosovo institutions is not fully realized. Members of the Serbian community are facing barriers while using their own language in proceedings conducted before the organs of local and central administration and judicial authorities. Access to public services is made difficult since certain institutions are lacking the Serbian-language translation of numerous announcements, notifications, inscriptions, guidelines and official forms. The biggest problem that the citizens are facing concerns the police behavior during minor traffic offences, as well as the issue of rendering judicial rulings in the Albanian language. The analysis of legal documents shows that Kosovo's legislation is not in harmony with the highest international standards pertaining to the official multilingualism. Kosovo's legislation does not sufficiently oblige administrative and judicial organs to base their decisions regarding linguistic issues in the proceedings on the rights and interests of the parties.

The content of the study is divided into several chapters. The Introduction chapter is followed by a presentation of the findings of the empirical research. The third chapter is dedicated to the analysis of Kosovo's legal framework. The fourth section introduces the comparative legal analysis of multilingual systems. The final chapter is composed of discussions, findings and recommendations.

2. Findings of the Empirical Research

2.1 Interviews

The making of this study was set in motion by interviews with the experts whose work concerns promotion and protection of citizen's rights and interests. For the purpose of this research, 11 persons were interviewed during the time period from December 2019 to March 2020. Among the interviewees, there were 3 lawyers, 2 representatives of civil society, 1 representative of the international organization, 2 representatives of central institutions, 2 legal advisers and 1 judge.⁴ Even though the linguistics rights are not the primary professional concern of the interviewees, they do deal with this issue due to the implications it has on the rights and the position of their beneficiaries and clients. Based on their experience, the interviewees shared their knowledge as to how the implementation of linguistic rights is indirectly reflected in the possibility of citizens to access public services and realize their rights.

The insights in the application of linguistics rights gained through interviews paved the way for the further course of the research and crystalized specific subject matters that were subsequently thoroughly scrutinized through focus-group discussions and comparative legal analysis. The section below discloses the summary of key findings based on the information gathered from the conducted interviews.

The interview summary

Throughout all the conducted interviews taken together, a subject matter that was accentuated as prevalent concerned the respect of linguistic right in the judiciary. Such representation of this subject matter might be explained by the professional experience of the interviewees, of whom seven specifically deal with the judicial domain. Nonetheless, the other interviewees also referred to the judiciary as probably the most important, yet at the same time the most problematic area, for the realization of linguistic rights.

⁴ Given that certain interlocutors asked to not be directly quoted, the authors of the study decided not to reveal personal information regarding of interlocutors as well. Interview meetings minutes are available upon request.

Over the past years, the poor translation quality of legal texts drew huge attention of both the civil society and international organizations that are active in Kosovo.⁵ Interviewees, among other topics, talked about their experiences with the issues occurring in the courses of court proceedings and realization of due rights before administrative organs as a consequence of lexicosemantic errors in the Serbian versions of the legal texts and the discrepancies found with versions in the Albanian language. However, as stated, key actors in implementing the law are fully aware of the existing problems with the translation and are making great efforts to ensure the adequate implementation thereof. Interviewees reckon that there is no quick-fix solution to the problem, hence the single most plausible option would be successive proofreading of each law upon being reintroduced in the assembly proceeding.

A somewhat more serious problem for the functioning of the judiciary lies in the insufficient number of court interpreters and translators, in addition to lack of legal knowledge and qualification of current cadre of interpreters and translators. Insufficient translation capacities have repercussions on all phases of court proceedings, which consequently leads to jeopardizing the entitled rights of the parties to a fair trial within a reasonable time. This problem with the cadre of interpreters and translator's is additionally entangled by the requirements regarding formal education as a prerequisite that the interpreters/translators should meet in order to be hired. Furthermore, on the long run it is expected that the availability of Serbian-speaking lawyers will gradually decrease.

Rights and interests of the citizens are predominantly threatened when court-proceeding related documents are issued in a language that the involved party doesn't use in the proceeding. The experiences of the interviewees regarding this issue are manifold. In practice, many examples have been encountered such as when the Serbian-speaking defendant receives the filed indictment and evidence in the Albanian language, or when a party is required to sign court documentation which is not translated in a language that he or she understands, as well as when court rulings and judgements are rendered in a language that party to the proceeding doesn't understand.

⁵ NGO AKTIV wrote about this problem in the previous publication created within the framework of the project "Creating Bilingual Kosovo". See: General Overview of the Language Rights in Kosovo (2019), NGO AKTIV.

Interlocutors of the conducted interviews, as stated, met all sorts of cases, for instance when Serbian-speaking parties to the criminal proceeding and contentious procedure are provided with judgments filled in the Albanian language. In the past, such practice caused certain parties, for examples repatriated persons and internally displaced persons, to miss the deadline for filing pleadings or appeals related to property court disputes because they received the judgment in the language they did not understand.

In order to avoid a situation in which a party might miss the deadline for the legal remedies, lawyers are forced to file an appeal against the judgment without waiting for the translation to be provided. According to their interpretation of the law, the deadline for the appeal starts to run when a party signs the receipt of the court document, even if the party received the judgment in a language that he or she doesn't understand. Translation request itself cannot stall the deadline for filing an appeal from running out. In their own words, lawyers' primarily objective is to safeguard the interests of their clients without additional complications, hence they're not prone to tackle the issue of language. Instead, they tend to improvise within the given circumstances, with an aim of minimizing as much as possible the consequences for their clients.

A very delicate situation is noticeable with the detention cases, mainly when a ruling of the imposition or continuation of the detention of the Serbian-speaking detainee is rendered in the Albanian language. Due to short deadlines for filing an appeal, lawyers in those cases file an appeal without previously being acquainted with the content of the ruling. Under those circumstances, lawyers never request a translation of the ruling because it would, paradoxically, harm their clients. In other words, the client would be kept further in detention tantamount to the time required for the translation of the ruling. For this very reason, lawyers consider that for the detention cases separate translators and interpreters are required in order to translate court documents without undue delays.

Nevertheless, court practice is improving as the years go by. Courts aspire to assign cases to the judges that can lead the proceeding in the language of the party. A judge from the Basic Court in Mitrovica, who gave an interview for the purpose of this research, considers that a party has a fundamental right to be acquainted with the documents of the respective case. Accordingly, the interviewee himself is committed to ensuring that all documents from court proceedings under his charge are rendered to the parties in a language that he or she understands even before the

sessions begin. Upon rendering the judgment, it will be immediately sent for translation, whereas each party involved will receive the judgement or a certified translation in a language that he or she understands. Such practice is gradually becoming accepted in other courts Kosovo wide. On the other hand, the shortcoming of this practice is reflected in the prolonged procedures due to the time required for translation.

Although courts across Kosovo have started to show higher considerations toward linguistic rights that the parties are entitled with, yet the interviewees reckon that this issue should not even be subjected to the arbitrariness or goodwill of the judges, or legal analogies. Instead, they reckon that through amendments of relevant laws it must be stipulated that parties have a right to reject the reception of court documents should they be rendered to the parties in a language they do not understand.

With regards to the other institutions, interviewees have accentuated that the level of respecting linguistic rights differs across local self-government units. In certain municipalities, announcements, notifications and official forms are not provided to the sufficient degree in the Serbian language. However, on the other hand, citizens of Serbian communities are not fully aware of their linguistic rights, and even when they are, they're not persistently insisting in the fulfilment of those rights, purportedly in order to avoid eventual complications in accessing the services for which they reached out to authorities. In some municipalities, certain institutions, such as the Cadastral Agency or Center for Social Work failed to provide parties with documents in the Serbian language, consequently having an impact on the realization of other rights including the right to work or social security benefits. In terms of notary service, cases were recorded where, as a condition for the certification of documents, parties were required to attach the translation in the Albanian language of due documents, thus creating additional translation expenses to the parties or costs associated with finding another notary.

2.2. Focus groups

The second part of the research consisted of the focus groups. From February to March 2020, four focus group discussions were held, one in each of the following municipalities: Gjilan/Gnjilane, Kamenica, Vushtrri/Vučitrn and Lipjan/Lipljan. Participants of the focus groups were representatives of Serbian and other non-majority communities from above-stated municipalities. These municipalities were selected in order

to inquire in what way the local authorities in Albanian majority surroundings/municipalities are respecting linguistic rights of non-majority communities. The goal was to determine to what extent the non-majority communities are enabled to access the services provided by the central and local institutions in the Serbian language. During the visit to these municipalities the research team used the opportunity to, along with carrying out the focus group discussions, to pay a visit to the institution in order to directly acquire the impression of the extent to which bilingualism is present therein. Below, the summary of the discussions is presented for each municipality separately.

Municipality of Gjilan/Gnjilane

Participants of the focus groups from Gjilan/Gnjilane municipality (Shilovë/Šilovo village) expressed their doubts that Kosovo is bilingual, as well as that bilingual system is not fully applied in central level of governance, nor is in the municipality of Gjilan/Gnjilane. To quote their words, many Serbian community members are not aware that Serbian is an official language in Kosovo with the equal official status as the Albanian language.

Furthermore, the participants stated that in the municipal buildings, information in the Serbian language are not available, as the announcement and notifications hanging on the doors, notification boards and windows are exclusively in Albanian language. In order to confirm the above stated, during the visit of municipal building the research team had the possibility to verify that it was true. Electronic screens that are located in the premise of Citizens Services Center, likewise, display only information in the Albanian language. However, information that citizens require are available only upon request. In order to obtain much needed information, Serbian-speaking citizens are obliged to directly contact a public servant who, provided he or she speaks Serbian, will explain to them how to access the service they seek. Municipal employees of middle and elder generations most often speak Serbian but, according to the impression of the participants, whether they will speak Serbian or not is just matter of their willingness.

As emphasized by the participants, citizens need to “improvise” to get a job done in the municipality, especially when dealing with complicated issues such as construction permits. Official forms are occasionally not formatted in the Serbian language whereby public servants are helping

them in filling the forms, referring them where to write the name or what information are needed on certain form boxes etc. Even when information or assistance are not provided by the public servants, citizens are not complaining and do not take steps such as filing an appeal. Instead, they tend to “improvise”, asking for help from persons standing in the queue with them and so on. As they say, what matters is to get the job done.

In terms of awareness campaigns and other public announcements initiated by the local self-government authorities on public health, municipal activities etc., participants stated that they are totally uninformed about them. The working mechanism of municipal organs are unfamiliar to them, they don't follow the municipal webpage, therefore they are completely uninformed about the events in the municipality. On the notification boards and on the entrance doors to the municipal building all notifications are written in the Albanian language, except the word “pause”. Regarding public calls, job postings, calls to civil society organizations, applications for agricultural subventions etc., rarely that someone knows where to follow these announcements. Information about municipal assembly sessions are not published in the Serbian language. To quote them, not only that the citizens are isolated information-wise, even when organizations request certain information related to the work of municipal assembly, they do not receive any response.

During the discussion, the participants were asked many questions about the experience with specific institutions. In the **Citizens Services Center**, it does not take much of an effort to get the birth and certificates issued, although sometimes it happened that the name or the surname is mistyped. In the **Civil Registration Agency**, all the notifications and official forms are bilingual. In the **Employment Agency** one female employee provides services in the Serbian language. The only obstacle in providing services by this Agency can be found in the practice of central institutions delivering calls, not rarely, exclusively in the Albanian language, although translation in the Serbian language can be obtained upon request.

In the **Center for Social Work**, things are less favorable when it comes applying linguistic rights. None of the announcements in the building of this Agency is translated in the Serbian language. In that center, a female employee provides services in the Serbian language. However, neither the documents containing guidelines for obtaining certain social security

benefits nor the official form of the decision translated in the Serbian language. As a result, the employee must additionally inform the parties about their rights. Furthermore, certificates issued by the Agency, such as the personal legal capacity certificate or the record showing that person is not the recipient of social assistance, are exclusively issued in the Albanian language. Participants, among others, accentuated few negative experiences with the **Cadastral Directorate**, because certificates are predominantly issued in the Albanian language.

The most crucial remark for the disrespect of linguistic rights is addressed to the **police force**. According to the participants, when a police officer pulls over a driver due to a minor traffic offence, he/she shows no sign of readiness to speak in the Serbian language with the driver. Serbian community members very often are left without due explanations for the reasons for being pulled over, the nature of the offence that was purportedly committed, and not to mention their eventual legal consequences. Charge sheets are mainly compiled in the Albanian language.

With the police authorities, citizens are in contact also when they need a certificate of non-criminal record. According to the participants, the non-criminal record request form is in the Albanian language, although they are assisted by the police officer while filling the form. On the other hand, the non-criminal record certificate issued by the police authority is bilingual. The situation does not differ in the courts when requiring the non-conviction certificate. Regarding courts, the experience of the participants shows that court summonses and judgments are not rarely rendered in the Albanian language, nonetheless in the court sessions the interpreter is always present, if that the proceeding is not conducted the Serbian language.

Municipality of Kamenica

In the municipality of Kamenica, the bilingual standard is carried out at a high level. This is testified by the fact that inside the municipal building all sorts of notifications and information are available in the Serbian language. In addition, the website of the municipality contains the version in the Serbian language which is being regularly updated, and recently the municipality page on the social network Facebook is launched in the Serbian language.

Beside visual impression that demonstrates the respect of bilingual standard, all possible services are provided by the municipality in the Serbian language. The participants during the discussion explained that the party is enabled to submit a request in the Serbian language, whereas the feedback will also be provided in Serbian. All official forms are bilingual. Participants claimed that if a party requires any specific service in the Serbian language, he or she will not be turned away because at any time a municipal employee will always be at one's disposal in order to assist with the translation, if needed.

Municipality before publishing and announcing public notifications deemed as relevant for the citizens, first will translate the material intended to be published and only then will post something on the notification boards of the municipality or in the municipal website. Nevertheless, the only problem occurs when summonses and documents are sent by the central institutions in the Albanian language. In that case, translation will not be requested from the central organs, rather the municipal translator will take over that responsibility.

Remarks that were raised by the participants are related more with the quality of translation of public competition announcements or public calls, as sometimes linguistic illogicalities are present in the announcements making the understanding of the content far more difficult. The second remark is related to the sporadic delays of public calls translation in the Serbian language, considering that are published few days after the Albanian version, as such shortening the deadline for the preparation of application files.

In the **Civil Registration Agency, Employment Agency** and **Center for Social Work** employees speak and communicate in Serbian, then all the official forms are translated, and all documents or certificates are issued in the Serbian language. Participants claimed that even in the **courts** bilingual standards are being respected, with a presence of the translator if the proceeding is not being conducted in the Serbian language, moreover, summonses and judgements are mostly rendered in the language of the party.

However, the strongest remark raised by the participants is referred to the police authorities. In contact or communication with the police due to an eventual minor traffic offence, each official record and fine thereof are written in the Albanian language. Provided that the party declares not to

sign an official record because he or she does not understand it, the police officers on those occasions might be unpleasant and cause problems. Citizens under those situations reckon that they are indirectly coerced to sign the official record, despite of not being sure what exactly they sign, just to avoid any undesirable problem with the police. If a police officer speaks Serbian, citizens eventually might gain insight through verbal explanation by the police officer.

Participants of the discussion in the municipality of Kamenica, to a certain extent raised a critical voice toward the Serbian community members for not learning Albanian. On the other hand, members of the Albanian community in a quite large number speak Serbian, what explains the bilingual standard in first place in this municipality. Nonetheless, as stated, among Serbian citizens in Kamenica exists an eager to learn Albanian and many more would be interested to attend language courses, provided that the courses are organized. The problem they are facing with is related with the lack of local media (radio, TV) in the Serbian language, for which reasons they are not able to be informed about the events in the municipality.

Municipality of Vushtrri/Vučitrn

In the municipality of Vushtrri/Vučitrn implementation of a bilingual standard is satisfactory. Many announcements are available in Serbian language on notification boards or municipal main entrance, including agenda of municipal assembly. The research team during the visits had a possibility to talk with the Chief of Municipal Cadastral Service who at the same time is acting Officer for the Use of Languages, who was willing to answer in Serbian to questions asked by the team in regard to the respect of linguistic rights within the municipality.

Significant number of municipal employees, especially middle generation, speak Serbian language. When a party comes in the municipality building, all processes are conducted in Serbian since at any given time an employee will be available to provide assistance. As stated by the participants, it never occurred that a party left the municipal building without being able to access the service due to any inability to understand the language. Yet, occasionally it might happen that the party upon the entry of required information into civic records, gets a certificate in the Albanian language. However, the parties usually do not want to wait for the translation of the certificates, although they are entitled to request it,

because even without the translation they can finish the job. In the Office in charge for the allocation of agricultural subventions, the official forms until recently were formatted only in the Albanian language, nevertheless, currently the Office is working to tackle the problem in order to provide a translated form in the Serbian language. Job vacancies are bilingual, and only announced after the translation is available in both languages. All the translation work of the municipality is carried by a single translator.

Civil Registration Agency at the fullest extent provides services in the Serbian language. In the **Center for Social Work** all the guidelines and information are available in Serbian, any existing service is bilingual including necessary documents or forms.

The participants did not have significant complaints regarding the **police authorities**. When a police officer pulls over a person, initially the officer will communicate in Albanian. However, as soon as the identity of the person is revealed, many police officers are willing to speak in Serbian language. The official form is bilingual, but the official note will be written in Albanian, although the officers are often ready to explain in Serbian the nature of the minor offence. Participants claimed that the bilingual standard is respected by the police authorities when parties require a non-criminal certificate, and also in the courts when the parties require a non-conviction certificate.

Participants of the discussion consider that in the municipality of Vushtri/Vučitrn, bilingual standard despite its limited capacities is respected, nevertheless on the long run this issue will create some troubles. Ultimately, the number of majority community Serbian-speaking public servants will continuously drop, while at the same time that members of Serbian community do not learn Albanian. Participants reckon that learn the Albanian language is important and personally they are interested to learn it. But, they also think that majority of Serbian community members would not be eager to learn Albanian due to the social pressure they could be exposed to. Furthermore, participants have reminded us that in the municipalities with Serbian majority quite rarely that some of the municipal employees would be capable of providing services in the Albanian language.

Municipality of Lipjan/Lipljan

Discussion participants in the municipality of Lipjan/Lipljan have favorably rated how bilingual standard is carried out in their environment. However, the rationale behind the favorable rating is not referred to their local institutions rather to the community itself. Their understanding is that the Albanian citizens in the municipality of Lipjan/Lipljan speak very well Serbian language and they try to speak in everyday life. This is referred to younger generations trying to preserve the use of Serbian language although they were not obliged to learn it.

Despite that, when it comes to institutions things are quite different. Discussion participants claimed that the municipal authority does not respect linguistic rights to the required degree. It is quite impossible to find even a single translation of any notification in the Serbian language. The research team had the possibility to verify the claim during the visit made to the municipal building. The whole picture gets clearer by just seeing that on the walls of **Citizens Service Center** notifications with detailed information about the work of the civic registry and other related certificates, but only in the Albanian language. Under given circumstances, the party is forced to search for required and necessary information on its own. Participants reckon that it is the duty of the municipality to provide the translation of everything that the citizens should be aware of. In addition to that, a way to get the job done in the municipality is through the assistance of Serbian-speaking employees who show their readiness to provide information that the party requires.

In terms of public competition announcements or public calls, in general translation is provided, but at times with the incomprehensible meaning of the translation. Participants declared that on a rare occasion they will or would check the municipal webpage since its content is not fully translated. The text of the public competition announcements or public calls in the municipal webpage in the Serbian language is very often not available. Participants evaluated the municipality as an authority that does not provide bilingual standards neither *online* nor *offline*.

In the **Civil Registration Agency** and **Center for Social Work**, employees speak Serbian language so the services can be easily accessed. During the visit of the Center for Social Work, the research team noticed a significant contrast with the municipality. In the building of the Center, notifications

are provided with the guidelines to social protection services, in contrast to the municipality, containing information in both languages.

In terms of **police authorities**, experience of the participants varies. Sometimes the police conduct the whole proceeding in the Albanian language, but there are also examples that the police officers are trying to speak Serbian. Official registry in written form is always filled in the Albanian language. One participant mentioned a situation in which a police officer explained to him that he is entitled to demand an explanation in the language he understands from the due police officer regarding the nature of minor offence, if committed. Experience with the court also varies. Participants are aware of some cases when the summonses and judgements were rendered in the Albanian language to Serbian-speaking parties, although on some cases this can be attributed to the fact that the party was represented by a lawyer from Albanian community.

The basic impression of the discussion is that, along with some specific problem, the entitled rights can be realized and they can function in their daily activities in the Serbian language. In this regard a credit should be given to local population who showed readiness to speak in the Serbian language. Their impression is that the Albanian community members are more interested in learning Serbian than what would be the opposite case. Participants claimed that they would be interested to attend Albanian language courses, if available, because that would enable them with better communications skills in their surroundings.

3. Legal framework of bilingualism in Kosovo

The following section of the study analyses the legal framework that defines the official bilingualism in Kosovo. The analyses will be based on the respective legal provisions intended to regulate the right of the citizens on the use of official languages in dealing with the administrative bodies and judicial authorities. Relevant provisions of the Law on the Use of Languages and Procedural Laws are covered by the analysis. A case study of the Criminal Procedure Code is introduced as a special segment due to the far-reaching importance that the protection of linguistic rights in the criminal proceedings carries in the realization of other rights and freedoms of the individual.

The Law on the Use of Languages (2007)

The Law on the Use of Languages constitutes a main legal act through which the constitutional provision of bilingualism in Kosovo is elaborated. Articles 1 and 2 of the Law prescribe that the Albanian and Serbian are the official languages ensuring the equality of the status to their use in Kosovo institutions.

In view of the central institutions, Article 4 stipulates the equality of the official languages to their use. This implies that every person has the right to communicate with, and to receive available services and public documents, from the central institutions “in any of the official languages”, All central institutions have a duty to ensure that every person can communicate with, and can obtain available services and public documents from, their organs and institutions “in any of the official languages”.

As perceived by the above-quoted provisions, the Law stipulates the right on the use of “any of the official languages” in the central institutions. Nevertheless, this does not necessarily imply that the language chosen for communication with the institutions is at the discretion of the citizens. In that regard, it does not come as a surprise the fact that public servants sometimes do consider that they have fulfilled their duty and the obligation by rendering certain information to citizens in the Albanian language.

Article 12 of the Law stipulates that the official languages shall be used on an equal basis in judicial proceedings. Courts and prosecution bodies, as well as other authorities involved in a criminal procedure, shall, in any proceedings before them ensure that any person participating in criminal or any other judicial proceedings “may use the official language of his or her choice”. Article 13 foresees that the courts shall conduct proceedings “in the official language or official languages chosen by parties to the proceedings”, and upon the request of any party to the proceedings, facilities shall be made available for simultaneous interpretation of the proceedings, from one official language into another. Pursuant to the Article 14 courts have a duty to issue documents related to the proceedings in the “official language(s) chosen for the proceedings and in other official languages if so requested by any party to proceedings”.

Provisions concerning the use of language in the courts confirm the equality of the official languages. In that regard, the Law establishes three stances the official languages might have in the conduct of the proceedings. Any of the two official languages shall be the language of the proceeding (the language of the judge), the language used by the party in the proceeding (with the help of the translator), and the language that the judicial related documents are made. However, the issue that is not addressed by the Law in an unambiguous fashion, is the principle based on which the language of the proceeding is determined. Hence, the Serbian-speaking party does not enjoy the full guarantee that the proceeding shall be conducted in a language that the respective party understands, although the party may exercise the right for interpretation assistance if the procedure is carried out in the language other than their own. With respect to court-related documents, the Law does not prescribe any imperative that the court documents shall be delivered within a reasonable time in the official language of the party, but upon the request of the party instead.

The Law on Contested Procedure (2008)

Pursuant to Article 6. Of the Law on Contested Procedure (LCP) the proceeding shall be conducted “in any of the official languages of the court”. Articles 6. and 96. prescribes that the parties and other participants in the procedure that “do not understand or speak the official language of the court” shall have the right in the proceeding to speak “their language or the language they understand”. If the procedure is not conducted in the language of the party or other participants in the

procedure, upon their request shall be provided “verbal interpretation into their language or language they understand of all submissions and evidences”.

Regarding the court documents, Article 97. prescribes that “summonses, decisions and other court documents are sent to the parties in the official language of the court”, while the Article 98. foresees that “the parties and other participants in the procedure shall send claims, appeals and submissions in the official language of the court”.

As can be noted, the LCP introduces a new notion namely term of “in the official language of the court”. However, it remains unclear whether the above-mentioned article is referring to the Albanian or Serbian language, as official languages in all governing institutions in Kosovo, or the courts are given the discretion to choose which of the languages shall be deemed as official. Thereof, it is unclear on what principles shall the language for the conduct of the proceeding be determined. In regard to court-related documents, the Law barely protects linguistic rights. Furthermore, when it comes to the evidence submitted in the court session, the parties have the right to request a translation of the evidence in their language, but only verbally. On the other hand, court documents and decisions that the court renders to the parties, as well the submissions that are given to the courts by the parties, cannot be formatted in the language of the party, but rather “in the official language of the court”.

The Law on Minor Offences (2016)

Pursuant to Article 48. of the Law on Minor Offences the court must ensure in advance that the “defendant understands the language in which the proceeding is being conducted”. The same article prescribes that “The defendant is entitled, during minor offence procedure, to use its own language, namely to be provided with a quality translation in a language he/she understand”. In order to ensure the right in defense and proper proceeding, the Court must provide the “defendant with qualitative written translation in the language he/she understands of all essential decisions taken upon minor offence proceedings, including judgments”.

In juxtaposition to the Criminal and Contested Procedure Laws, the Law on Minor Offences contains higher guarantees of linguistics rights. Nevertheless, it seems to be contradictory that concurrently the defendant is entitled with the right to “understand the language in which

the proceeding is being conducted”, as well with the right of “qualitative written translation in the language that he/she understands”. In case that the proceeding is conducted in the language that the defendant understands, then the translation is not needed at all.

The Law foresees that the defendant is to be provided with the translation of the judgement in a language that he/she understands. This provision marks a breakthrough in terms of protection of linguistic rights in relation to other procedural laws. However, the disadvantage of this provision lies in the fact that it is the dispositive and not imperative norm. Furthermore, the deadline as to which the translation should be rendered has not been set, so hypothetically speaking, a situation might occur in which a defendant is provided with the translation of the judgement long after the expiry of the deadline for submitting an appeal against the decision.

The Law on General Administrative Procedure (2016) and Law on Administrative Conflicts (2010)

The use of language in administrative proceedings is regulated pursuant to the Article 71. of the Law on General Administrative Procedure. This article guarantees that the parties shall be entitled with the right to “to communicate and to receive all communications in their own language” provided that it is one of the official languages in Kosovo. The administrative proceeding language shall be established upon the “first submission or upon the request of the party”. The public organ competent for the proceeding must guarantee this right at no additional cost to the party. Once the language of communication within the proceeding has been established, no administrative act or any other administrative action shall produce any legal effects against the party.

The Law on Administrative Conflicts does not contain any provision on the use of language. On the other hand, Article 63. of the Law foresees that if this law does not contain provisions for the procedures on administrative conflicts, accordingly the law provisions on civil procedures shall be applied.

The Law on Administrative Conflicts contains a high degree of the protection of bilingualism and linguistics rights. In regard to proceedings before the administrative bodies, provided that the mother tongue of the party is one of the official languages, as such it shall be considered as the

language of the proceeding. If the public body undertakes any action in any other language, it shall produce no legal effects concerning the party.

When it comes to administrative proceedings before the court, things are quite different. The use of language is regulated pursuant to the provisions of the Law on Contested Procedure. Considering that in administrative conflicts parties before the court are private individuals versus the government bodies, therefore it would be far more befitting if the question of languages is regulated according to the analogy of the Law on General Administrative Procedure.

3.1. The Right to the Use of Languages in Criminal Proceedings

Introduction

The Criminal Procedure Code (hereinafter the Code or CrPC) constitutes a precisely established set of actions, regulated by law which all public authorities, parties and subjects conducting criminal proceedings are authorized to apply.⁶ Criminal proceeding is law-abiding procedure with an aim of adjudicating certain dispute matters under criminal justice field. Adjudication of certain dispute matters under criminal justice field is initiated by proceedings from one to the next stage of Criminal Procedure, whose end-goal is a decision constituting final judgment in due proceedings.

Pursuant to procedural rules due proceedings of competent authorities and public officials in implementing criminal substantive law are regulated. Provided that criminal procedure is lawfully implemented in a case of a perpetrator who conducted a criminal offence a criminal sanction may be pronounced. Considering that sanctions as foreseen by the criminal code deeply affect certain human rights of indicted persons, its needless to say how important is that due norms of the Code should be to the fullest possible extent precisely set forth in order to protect human rights of all parties involved in proceedings, and especially those of indicted persons.

Further in this text the norms of the Code in the light of the use of language in criminal proceedings will be analyzed, as well the most

⁶ Criminal Procedure Code Nr. 04/J-123 (2012)

common cases of violation of due provisions set by the Code regarding linguistic rights. Further more, few words will be dedicated on how current articles of the Code should be amended for the purpose of advancing the lawfulness of the proceedings, whereas possible ramifications will be unfolded for the involved parties in the event that competent authorities or public officials do violate the right on the use of languages for the persons in criminal proceedings.

Criminal Procedure in Kosovo

Criminal procedure in Kosovo is composed of several stages. The first stage is the formal investigation followed by the second stage that is confirmation of indictment for committed offenses and plea of guilty. Third phase renders the main hearing while the fourth stage tackles the legal remedy.

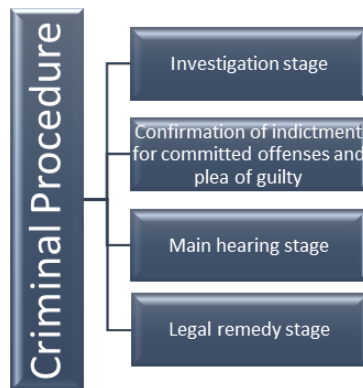


Figure 1: Four stages of Criminal Procedure

Through how many stages the defendant will be subjected depends on many factors. First off, not each stage of the criminal procedure is obligatory. While one of the defendants might be subjected through all the criminal procedure stages, for arguments sake if indicted for criminal offence of *manslaughter*, the other could be indicted for criminal offence of *larceny* thus subjected only through one of the stages. The rationale why one of the defendants for a certain criminal offence will not be subjected through all the criminal procedure stages while the other might be, lies in the fact that the formal investigation stage is not obligatory for offences whose seriousness could impose imprisonment less than 3 years. Furthermore, it depends upon the parties disposition to request a legal remedy if the respective party claims not to be satisfied with the court decision.

The stage of confirmation of indictment for committed offenses and plea of guilty is an obligatory stage. At this stage of the proceeding after the submission of the indictment, the judge sets initial hearing in the course of which the defendant can plead guilty or not guilty. If the defendant pleads guilty, supported by substantial evidence in case files, the judge can accept plea of guilty and even at this stage of the proceeding the defendant may be found guilty for criminal charges against him or her. On these bases we can clearly see that even the main hearing is not obligatory therefore the criminal proceeding can be concluded already at the confirmation of indictment stage. Of course, all of the above-mentioned is valid only if there are well-grounded suspicion that the defendant has committed the offence, otherwise without well-grounded suspicion the state prosecutor shall dismiss by a ruling crime report of the criminal offence.

Linguistic Rights in Criminal Proceedings

Criminal Procedure Code in Kosovo is codified according to the model of modern European legislation. The right on the use of mother tongue by defendants is enshrined in numerous international and domestic regulations. It's quite safe to say that even legislators are aware of the importance on the use of language for the lawfulness of proceedings. Due to this reason, the important emphasis is given starting even in the beginning of the Code as provided in Article 14. that states which languages are to be deemed official in criminal proceedings.

Article 14 Languages and scripts

1. The languages and scripts which may be used in criminal proceedings shall be Albanian and Serbian, unless otherwise provided by law.
2. Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter.
3. A person as set forth in paragraph 2 of the present Article shall be informed of his or her right to interpretation. He or she may waive this

right if he or she knows the language in which the proceedings are conducted. The notification on this right and the statement of the participant shall be entered in the record.

4. Pleadings, appeals and other submissions may be served on the court in Albanian or Serbian, unless otherwise provided by law.

5. An arrested person, a defendant who is in detention on remand and a person serving a sentence shall be provided a translation of the summonses, decisions and submissions in the language which he or she uses in the proceedings.

6. A foreign national in detention on remand may serve on the court submissions in his or her language before, during and after the main trial only under the conditions of reciprocity.

Article 14. of the CrPC stipulates which languages can be used in proceedings, namely any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language, the right of the parties that all submissions may be served on the court in Albanian or Serbian languages, in addition an arrested person, a defendant who is in detention on remand and a person serving a sentence shall be provided a translation of the summonses, decisions and submissions in the language which he or she uses in the proceedings, as well a foreign national in detention on remand may serve on the court submissions in his or her language before, during and after the main trial only under the conditions of reciprocity.

Yet, even at the first article of the law which provides linguistics rights we can clearly see certain illogicalities, imprecisions and the possibility of the article to be interpreted and applied in different ways. On the first paragraph the legislator should have set forth which scripts are to be applied in order to hinder different interpretations and applications. The said provision “their script” brings us to the Constitution of the Republic of Serbia which stipulates that Cyrillic is in official use as script in Serbia. Keeping in mind that in Kosovo exists a high repulsion in relation to the Cyrillic script, which is justified allegedly with the rationale of practicality (utterly pointless and absurd since Latin to Cyrillic conversion applications are available), the legislator instead of the provision “*their script*” should have used the provision “*Latin and Cyrillic scripts*” in order to formally recognize the use of Cyrillic script. In similar fashion the paragraph 5. is

problematic as well, because without any valid reason it separates certain categories of people in proceedings acknowledging the right that all due documents should be delivered in a language which is used in the proceeding. Instead of a such legal formation, as stated above, it would be righteous if the respective article would be formatted as following *“all parties to a criminal proceeding should be provided with the translation of summonses, decisions and submissions in a language they use in the proceeding”*. In this way, by means of only one article we could regulate the issue of submitting documents to all the involved parties in a language they understand, whereby the same parties are enabled to get acquainted with the content of the documents.

The following legal provision, which unfortunately does not regulate the right on the use of language although of great importance, unfolds the article of appointing a defense counsel ex officio as set in Article 57. of CrPC.

Article 57 Defense Counsel in Cases of Mandatory Defense

1. The defendant must have a defense counsel in the following cases of mandatory defense:

1.1. from the first examination, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending himself or herself;

1.2. at hearings on detention on remand and throughout the time when he or she is in detention on remand;

1.3. from the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least ten (10) years; and

1.4. for proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of life long imprisonment has been imposed.

1.5. in all cases when a defendant seeks to enter an agreement to plead guilty to a crime that carries a punishment of one (1) year or more of long period imprisonment or lifelong imprisonment, the defendant must be represented by counsel.

2. In a case of mandatory defense, if the defendant does not engage a defense counsel and no one engages a defense counsel on his or her behalf under Article 53 paragraph 8 of this Code, the pretrial judge or other competent judge shall appoint ex officio a defense counsel at public expense. If a defense counsel is appointed ex officio after the indictment has been brought, the defendant shall be informed of this at the same time as the indictment is served.

3. In a case of mandatory defense, if the defendant remains without a defense counsel in the course of the proceedings and if he or she fails to obtain another defense counsel, the single trial judge or presiding trial judge or the competent authority conducting the proceedings in the pre-trial phase shall appoint ex officio a new defense counsel at public expense.

4. A legal person is not entitled to a defense counsel appointed at public expense.

On the condition that we analyze the provision of the Article 57. of the CrPC stipulating the right of the suspect or the defendant for a defense counsel ex officio, we can draw a conclusion that the legislator did not foresee that a defendant has right to be represented by attorney that speaks or understands the language of the defendant. Taking into account that Kosovo is a multiethnic society, consequently the probability is high when a certain case might occur with the defendant that comes from the Serbian community whereas the attorney ex officio from the Albanian community that doesn't speak or barely understands the language of the defendant. This is rather quite frequent case and in the due course of communication between the defendant and the attorney an interpreter will be needed, thus the resulting ramifications might jeopardize the secrecy and confidentiality of the ex parte conversation between the defendant and the attorney. Based on these arguments, provisions of the respective article are lacking the paragraph that would define, *"public authority or bar association will designate an attorney ex officio who will provide adequate defense for the defendant in view of the severity of the criminal offence, in addition the public authority will ensure that the attorney speaks the language that the defendant understands"*.

By all means, a part of the responsibility in appointing an attorney ex officio that understands the language of the defendant lies on the

defendant himself/herself, meaning the defendant must warn off the authority conducting criminal proceeding that the communication with the defense counsel is made more difficult thus request from the same authority to appoint a defense counsel ex officio that understands the language of the party. One of the decisions of the European Court of Human Rights based in Strasbourg deals exclusively with this issue. ECtHR has ascribed the defendant to be taken responsible, who at any given moment could have reacted and request an appointment of a defense counsel that understands and speak his language.

X v. Austria, 6185/73, 29. May 1975, DR 2, 68⁷

68 1. The applicant complains that he was not given the free assistance of an interpreter for contacts with his defense counsel who did not speak the applicant's own language... Paragraph 3 (e) Article 6 in fact only applies to the relations between the accused and the judge... In the circumstances of the present case, the Commission cannot exclude that the preparation of the defense was made more difficult as a result of misunderstandings between the applicant and his counsel. Nevertheless, the applicant must be taken to be responsible for that situation. It was indeed up to him, either to appoint another lawyer with a good knowledge of French or to call for an interpreter he would have remunerated. If he had not sufficient means to pay for a defense counsel and/or an interpreter, he could still have applied for free legal aid. The Commission notes in this respect that, according to Austrian practice, specific linguistic requirements are taken into account by the designation of a court appointed defense counsel. Furthermore, free legal aid may be extended to include the service of an interpreter....

This decision of the European Court reveals that the defendant was taken responsible because he did not request an attorney that understood his language. Nevertheless, the need to appoint a defense counsel ex officio that speaks or understands the language of the defendant is something that the authority should determine during the communication with the defendant, especially if familiar with the difficulties that the defense counsel has in the course of communication with the defendant. However, we cannot neglect the fact that very often the defendant might be a nescient party, that doesn't understand own rights and is unfamiliar

⁷ Jeremy McBride (2009) Human Rights and Criminal Procedure – The Case Law of the European Court of Human Rights, Council of Europe, p. 204.

with the ramifications provided that his/her rights are not adequately applied. Based on these arguments, the blanks of the CrPC should be filled with *“public authority or bar association will designate an attorney ex officio who will provide adequate defense for the defendant in view of the severity of the criminal offence, in addition the public authority will ensure that the attorney speaks the language that the defendant understands”*.

Other Procedural Actions and the Use of Language

Provisions of Article 105 of the CPC sets forth the procedures for the Search and Temporary Sequestration of items found during the search of the property.

Article 105 Search and Temporary Sequestration

....6. A search order shall be issued in writing upon a written application of the state prosecutor or, in exigent circumstances, the authorized police officer.

The legislator under this provision intended to regulate how the search procedure shall be applied. The goal of a search as well investigative actions is to secure the defendant and other relevant evidence in criminal proceeding. A search ought to be applied only upon the order of a competent court, considering that this set of actions might result in a violation of privacy right of the defendant or other parties. However, the legislator was inattentive to set forth in paragraph 6. the following: *“the search order shall be formatted and issued in a language that the party understands”*. Taking into account that the search order is issued to the person whose premise/s is/are being searched, the very same person ought to be acquainted with the respective order, thus the existence of legal formulation is crucial, that is to say the search order ought to be issued in a language that the owner of a premise under search order understands.

The examination of the defendant pursuant to Article 152. of the CrPC could also result with an action that might violate the right of the defendant on the use of own language.

Article 152 Conduct of Pretrial Examination of the Defendant

- 1. The examination of the defendant shall be conducted by the state prosecutor. The state prosecutor may entrust the examination to the police.*
- 2. Before any examination, the defendant, whether detained or at liberty, shall be read the warning in Article 125, paragraph 3 of this Code.*
- 3. Before any examination, the defendant shall be informed of:*
 - 3.1. the criminal offence with which he or she has been charged; and*
 - 3.2. the fact that he or she may request evidence to be taken in his or her defense. If the defendant is in detention on remand, he or she shall also be informed before any examination of his or her right to have defense counsel provided if he or she cannot afford to pay for legal assistance.*
 - 3.3. the right to remain silent and not to answer any questions, except to give information about his or her identity.*

Paragraph 2. of this Article paves the way to the Article 125. paragraph 3. of the CrPC containing the following warning that shall be read to the defendant.

Article 125 paragraph 3. CrPC

At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity the state prosecutor shall read the following warning to the defendant: "This is a criminal investigation of acts you may have committed. You have the right to give a statement but you also have the right to remain silent and not answer any questions, except to give information about your identity. You have the right not to incriminate yourself. If you choose to give a statement or answer questions, you will not be under oath. The information you provide may be used as evidence before the court. If you need an interpreter, one will be provided at no cost to you. If you believe that you may incriminate yourself or a close relative as a result of answering a question, you may refuse to answer. You have a right to a defence attorney and to consult with him or her prior to and during the examination. If you do not understand the question being asked, you should request that the

question be asked differently. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. If you do not understand these rights, you should consult with your attorney”.

The above stated warning is read to the defendant in order that any given statement of the defendant would not harm his/her position in criminal proceeding. Furthermore, pursuant to Article 125 the assistance of interpreter including translation upon the request of the defendant shall be provided. Although the provisions of this law are not disputable since the defendant accordingly is entitled to use own language and to request the assistance of the interpreter, nevertheless the practical implementation of the provisions is disputable because due warnings are not rarely read to the defendant in a language that the defendant doesn't understand. Below the text you'll find inserted example that shows how the defendant from Serbian community gives a statement in written form with the warnings pursuant to Article 125. paragraph 3. formatted in Albanian language. So, the statement is given by the defendant of Serbian nationality in written form in Serbian language, in an official form of the warning in Albanian language. Hence such statement constitutes an inadmissible evidence taken contrary to the provisions of the CrPC.

paragraph 5. clearly states that the defendant shall be provided with a court decision in language he/she understands. Nevertheless, in a large number of cases public authorities are rendering rulings to the defendants in a language they don't understand. This is not an issue with the legal framework itself, but with the direct violation of legal provisions committed by public authorities who should rather be committed in adequate application of prescribed rights without any major deviations. The circumstances are quite different regarding the delivery of court decision to persons kept in detention. Article 14. of the CrPC does not prescribe in what language shall the court decision be rendered to persons kept in detention, nor does the article that deals with the timing of the judgment to be draw up in written and accordingly delivered.

Article 369 Timing and Service of Written Judgment

- 1. The judgment shall be drawn up in writing within fifteen (15) days of its announcement, if the accused is in detention on remand or if detention on remand has been imposed on him/her, while in all other cases it is drawn within thirty (30) days of its announcement. When a case is complex, the single trial judge or presiding trial judge may ask the president of the court to extend the deadline by up to sixty (60) more days for the judgment to be drawn up.*
- 2. The judgment shall be signed by the single trial judge or presiding trial judge and the recording clerk.*
- 3. A certified copy of the judgment containing an instruction on the right to appeal shall be served on the parties.*
- 4. A certified copy of the judgment with an instruction on the right to appeal shall be served on the injured party, on a person from whom an object is confiscated under the judgment and on a legal person upon which the confiscation and recovery of proceeds of crime has been imposed.*
- 5. Where, under the provisions on a single punishment for concurrent criminal offences, the court has rendered a judgment taking into account judgments rendered by other courts, certified copies of the final judgment shall be sent to the courts concerned....*

Considering that the court decisions are not explicitly prescribed in what language shall be delivered to the parties, yet the practice shows that various interpretations of the article in question seems to appear. However, some individual judges are accordingly implementing the Law on the Use of Languages as well the provisions of the Criminal Procedure Code, driven by the principals of justness the parties are provided with court decisions in the language they understand, regardless of the fact that it's not explicitly prescribed in the Article 369. of the CrPC. On the other hand, there are judges who violate the Law on the Use of Languages, applying legal indeterminacy of the Article 369. of the CrPC, therefore the parties are provided with court decisions in a language they don't understand. In order to avoid these types of situations in view of the principle of legal certainty, it is necessary to amend provisions stipulated in Article 369. of the CrPC paragraph 3, as following "*a certified copies of the judgement with the guidelines on the right to an appeal rendered to the parties in mother tongue or language they understand*".

Apparently the most troublesome provision seems to be under the Article 384. of the CrPC characterized as *substantial violation of the provisions of Criminal Procedure*, as one of the cornerstones for appeal. Article in question prescribes which violations are to be deemed substantial, moreover that the Court of Appeal will reverse the ruling provided that violations are confirmed. Violations are deemed as absolutely crucial, in which case if such violations are existent in proceedings it will be considered that the proceeding was wrong in law. Paragraph 1.3. of the same article prescribes that the ruling will be reversed in the event that the trial was not held in a language that the involved parties understand.

Article 384 Substantial Violation of the Provisions of Criminal Procedure

1. There is a substantial violation of the provisions of criminal procedure if:

1.3. the main trial was conducted in the absence of persons whose presence at the main trial is required by law or the accused or defense counsel was, notwithstanding his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language;

It is unfathomable why the legislator deems to be an absolute substantial violation of the right on the use of mother tongue of the parties in proceedings only in the course of the main trial. This provision is not in

accordance (which should have been the case) with the paragraph 14. of the respective law, which in Article 2. clearly states that the person that does not speak the language used in the proceeding will be entitled to speak his/her own language and informed free of charge through the assistance of the interpreter regarding evidence and the facts in the course of the proceeding. Public authority in charge of conducting the proceeding, is obliged to inform the parties regarding their rights. He or she may waive this right if he or she understands the language in which the proceedings are conducted.

As we can see in the Article 14. paragraph 2., the legislator prescribed for all the persons involved in the proceedings (referring not only to parties, defendants, judges and injured parties), that in the due course of proceedings to use their own language and to be entitled with the assistance of the interpreter free of charge. Provided that we consider to be a fact, namely that the entire material evidence is collected i.e. discovered in the investigation stage, yet it is unclear why the legislator foresaw as substantial violation of proceeding only when the right on the use of language is violated during the course of the main trial. Hence, every other violation of the rights on the use of language in the course of criminal proceeding that might occur, apart during the course of the main trial, other than relative it would not be considered as substantial violation of proceedings. Therefore, proving that such violation impacted the lawfulness of the proceeding, would fall on the burden of the party in an appeal where it is claimed. Due to this reason such provision should be amended because it is not in line with the Law on the Use of Language, international conventions and recommendations. Consequently, the aforesaid provision must be amended in a way that absolute substantial violation of the proceeding would be considered in case that: *“if at any stage of the criminal proceeding, parties are not entitled with the right, despite being requested, on the use of language and script, as well if the court decision is rendered in a language that the parties don’t understand”*.

Conclusion

By analyzing certain articles of the Criminal Procedure Code regarding the right on the use of mother tongue in the course of criminal proceedings, we can draw a conclusion that the very same are not prescribed to the satisfactory extent. The indeterminacy of the articles serves as an alibi for certain individuals who violate the right on the use of language.

Furthermore, it is disclosed on numerous occasions that even when provisions are prescribed in detail acknowledging the right on the use of own language in the course of criminal proceedings, nevertheless individuals or authorities are failing to abide.

Taking into account that the revised namely Criminal Procedure Code is under the drafting phase, it is crucial to correct all the shortcomings of the old criminal procedure. The revised Code must precisely prescribe that at any stage of the proceedings, parties shall be entitled with the right on the use of mother tongue, while the public authorities are obliged to render all the court decisions and summonses on the mother tongue of the parties or language they understand. Worth mentioning that along with the possibility of providing an independent interpreter in cases when the respective parties do not understand the language used in the proceeding, it is crucial to provide adequate translation and to appoint professional interpreter. That the quality of the translation is utterly important, even the European Court of Human Right based in Strasbourg highlighted in its judgement for the application 9783/82 *in the case of Kamasinski v. Austria* from 19. December 1989, asserting that the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.⁸

Ramifications are manifolds provided that the rights on the use of own language in criminal proceedings are not recognized. These ramifications to the fullest possible extent affect the defendant in the course of the proceedings by not being lawfully protected and without legal aid. Based on the above-mentioned grounds, it is utterly crucial that the competent authorities in the conduct of criminal proceeding, in this case primarily referring on the courts and prosecution, apply the right on the use of language and script. If this right is disrespected it will lead to violation of constitutional and procedural principles such as protection from discrimination, equality of parties in criminal proceedings, adequacy of defense, freedom of expression and so forth. Above stated principles constitute adopted quintessential values contained in various international conventions, recommendations and domestic principles.

⁸ Jeremy McBride (2009) Human Rights and Criminal Procedure – The Case Law of the European Court of Human Rights, Council of Europe, p. 204.

In order to achieve the purpose of the Criminal Procedure Code, meaning that the criminal sanction can be imposed on a perpetrator of criminal offence only in proceedings lawfully initiated and conducted in accordance with criminal procedure, therefore amendments of procedural rules, in the light of the use of languages at any stage of proceedings in order to prevent arbitrariness of authorities carrying out regulations, are necessary. Criminal Procedure Code serves to guarantee the rights of the defendant or any other participant, and serves as a protection of the parties from the state itself, which due to its arbitrariness could jeopardize fundamental human rights and legal protection.

Along with amendments of the law, it is indispensable to promote linguistic rights in all Kosovan courts and to encourage citizens to speak their own language and use their own script without fear, as well to foster the good will of public authorities and individuals carrying out regulations to continuously respect the rights of each individual in using own language. The State must create favorable environment for its citizens by entitling them to use their own language as a fundamental right. Disciplinary measures against authorities and individuals must be imposed if any citizen in the course of criminal proceeding is disenabled to enjoy his/her rights.

While writing this article, on the official gazette of Kosovo the “Administrative Instruction Nr.2007/01-MPS on determining administrative sanctions for violation of the law on the use of language” was found, but unfortunately it was not possible to provide any comments in regard to its content because it is available only in Albanian language.⁹

⁹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=7473>

4. Comparative legal analysis

The following section of the study elaborates the comparative analysis of bilingualism from the standpoint of legal protection. Relevant legal acts enacting the use of language in countries where two or more languages are in an official use were brought under the scope of analysis. Legal provisions regulating multilingualism rather than those characterized as general safeguard of linguistic rights or the use of minority languages were the subject of the analysis. Considering that the objective of the study is to examine the role of bilingualism regarding access to public services, accordingly the provisions for the use of official languages by the public and judicial authorities were closely scrutinized. Along with national legal system, this analysis incorporates some of the international legal instruments deemed as relevant for the respective subject matter.

Finland

The use of official languages in Finland is regulated by Language Act (423/2003) with a purpose to ensure that Finnish and Swedish are constituted as “national languages of Finland”.¹⁰ The purpose of this Act is to ensure the constitutional right of every person to use his or her own language, either Finnish or Swedish, before courts and other authorities, without him or her needing specifically to refer to these rights. Pursuant to the Language Act, the rights of everyone to a fair trial and good administration are ensured.

Significant difference between Finnish and Kosovan linguistic system lies in the linguistic division that is to say in Finland public institutions as well local authorities might be designated either unilingual or bilingual. Linguistic status of public authorities is determined by the linguistic structure of the population of its district. Contrary to that, in Kosovo according to the Law on the Use of Language all central and local government authorities are considered bilingual. Based on this premise, the following review examines the legal provisions regarding bilingual authorities in Finland.

When it comes to the linguistic rights of private individuals before an authority, pursuant to the Language Act everyone has the right to use

¹⁰ *Language Act (423/2003)*, <https://www.finlex.fi/en/laki/kaannokset/2003/en20030423.pdf>.

Finnish or Swedish before a State authority and an authority of a bilingual municipality. On the other hand, an authority shall arrange that a person to be heard in a matter has the possibility of being heard in his or her own language, Finnish or Swedish. This right concerns the proceedings initiated by private individuals, as well with those initiated an authority. The Act determines that everyone has the right to be heard in his or her own language in a matter that has become pending on the initiative of an authority and that directly affects his or her fundamental rights or the obligation that he or she has been assigned by the authority.

The Act also makes a difference between administrative judicial matters, civil and criminal cases. In terms of the language of proceedings in administrative litigation, the Act explicitly prescribes that **the language of the private individual is used as the language of proceedings**. This provision applies in administrative matters before an authority as well for proceedings in administrative judicial procedure. In administrative litigation, where the parties are an authority and a private individual, the language of the private individual is used as the language of proceedings before the court.

In terms of criminal proceedings, The Act prescribes that **the language of the defendant is used as the language of the proceedings**. Similar as with the administrative matters namely administrative judicial procedure, also in criminal cases private individuals are in front of the State. Under those circumstances, the language of the proceedings is determined on the interests of the parties. Criminal Procedure Code foresees that court shall conduct proceedings in Finnish or Swedish language, whereas the judicial rulings will be rendered in Finnish or Swedish language pursuant to the Language Act.¹¹ The party that speaks Finnish or Swedish has the right for interpretation and translation in cases when the proceedings are held in a language that is not his/her.

Regarding proceedings in civil cases, the matter might be somewhat complicated considering that the parties involved in the proceeding might be private individuals speaking different official language. If the parties speak the same language, given language will be deemed as the language of the proceeding. If the parties speak different languages and cannot agree on the language to be used, the court decides on the language of

¹¹ *The Criminal Code of Finland*, <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>.

the proceedings with regard to the rights and interests of the parties. The party whose language is not the language of the proceeding has the right for translation and interpretation.

Formulation concerning the “rights and interest of the party” when designating a proceeding language is frequently used throughout the Act. When it comes to appellate cases, the language used in First Instance Proceeding will be used as a language before the Appellate and Supreme Court.

Special provisions of the Act regulate the issue of judgement, decision and other documents related to the decision issued by the Court. The Act prescribes that the judgment, decision and other document issued by an authority is drafted in the **language of the proceedings**. Taking into account the above-mentioned affirmation that the language of the party shall be deemed as the language of the proceeding, it basically means that the party involved in a certain litigation matter enjoys the right of the decision to be rendered in his or her language.

In terms of notices, summonses and letters that are sent to parties or to a person who, under law, is to be notified of a pending case or a case that is to be taken up for consideration, in the **language of the recipient** if this is known or can reasonably be ascertained. If the language of the recipient cannot be ascertained, then notices, summonses and letters will be sent both in Finnish and Swedish language. Likewise, the Act prescribes the general obligation in contact with legal persons to use their official language (Finnish or Swedish), if deemed possible to be asserted, or both.

Switzerland

Federal Act on National Languages and Understanding between the Linguistic Communities (2007) that went into effect aims promoting and to strengthen quadrilingualism as one of Switzerland's fundamental characteristics as well to consolidate the internal cohesion of the country.¹² The Act safeguards and encourages individual and institutional plurilingualism, and determines the obligation of the Confederate

¹² *Federal Act on the National Languages and Understanding between the Linguistic Communities*, <https://www.admin.ch/opc/en/classified-compilation/20062545/index.html>.

authorities to equally treat four Swiss languages, and in similar fashion to preserve and promote Romansh and Italian as national languages.

The official languages of the Confederation are German, French and Italian, while Romansh is an official language in dealings with persons who speak this language. When it comes to choose an official language, the Act prescribes that the any person dealing with a federal authority, including courts, may do so in the official language of their own choice. The federal authorities shall answer in the official language in which they are addressed by the party.

North Macedonia

According to the Law on the Use of Languages (2018), the official language is the Macedonian language, as well the language spoken by at least 20% of the citizens (Albanian language).¹³ The Law explicitly doesn't prescribe that the Macedonian language shall be granted with the primacy of an official language, however doesn't guarantee the equality of Macedonian and Albanian language. Nevertheless, the primacy of the Macedonian language in relation to the Albanian language throughout the Law is implicitly present, for example, the provisions that in all central institutions as well in the units of local self-governments the official language in addition to the Macedonian language is the language spoken by at least 20% of the citizens. Furthermore, the Law directly prescribes the Albanian language only in the first Article, while in further Articles the Albanian language is referred only as "language spoken by at least 20% of the citizens".

The Law prescribes that citizens generally have the right to use any of the official languages, whilst the institutions have the obligation to enable them with the use and application of those official languages in any proceedings, as well as the implementation of those procedures in that official language. The citizens have the right to use any of official languages in judicial, administrative, enforcement proceedings, pre-trial and investigative procedures, criminal and misdemeanor procedures, litigation and non-contentious proceedings as well procedures for execution of sanctions. Courts, public prosecution offices, as well as all other organs, bodies and other institutions are obliged to enable the use

¹³ Law on the Use of Languages, <http://api.gov.mk/wp-content/uploads/2019/06/THE-LAW-ON-THE-USE-OF-LANGUAGES-PDF.pdf>.

and application of any of the official languages in due or other proceedings. Organs are obliged ex officio to ensure that the use, communication and procedures are conducted in a language spoken by at least 20% of the citizens, if the person or participant speaks a language spoken by at least 20% of the citizens. Furthermore, the Law prescribes that all proceedings before the court shall be conducted in Macedonian language and in language spoken by at least 20% of the citizens, if a judge, public prosecutor, party or other participant in the procedure is a person who speaks that language. All decisions and other acts arising from the procedures shall be adopted and issued in both official languages.

According to the Law, the notarial documents and certificates can be issued in Macedonian language and in the language spoken by at least 20% of the citizens. In the procedures before the enforcement agent, if a participant is a person who speaks the language spoken by at least 20% of the citizens of the Republic of Macedonia, the orders, the conclusions, the minutes, the official notes and other acts of the enforcement agent shall be issued in Macedonian language and in the language spoken by at least 20% of the citizens. Institutions responsible for execution of sanctions are obliged to communicate in proceedings in Macedonian language and in the language spoken by at least 20% of the citizens, provided that the respective persons speak that language, as well those persons shall be granted the right to communicate in that language.

Criminal Procedure Code prescribes that the official language in criminal proceedings is Macedonian language whilst the other language is referred as the language spoken by at least 20% of the citizens pursuant to the provisions of the Law.¹⁴ The defendant, damaged party, prosecutor, witness as well other participants in the proceeding, that speaks the official language other than Macedonian shall have the right to speak his or her language in the proceeding. Submissions of the parties shall be provided in the language in which the proceeding is conducted, whilst the person that speaks other official language may provide the submission in his or her language. Summonses, decision and other related writs are to be rendered in the language used in the proceeding. A person that speaks an official language other than Macedonian, shall be served summonses, decisions and other court writs in his or her language.

¹⁴ *Criminal Procedure Law*, https://www.legislationline.org/download/id/6377/file/FYROM_CPC_am2010_en.pdf.

The Litigation Procedure, shall be conducted in Macedonian language, whilst the other official language spoken by at least 20% of the citizens shall be used in litigation procedure in accordance with the Law on Litigation Procedure.¹⁵ Citizens that speak other official language have the right to use that language in the proceeding. Summonses, decision and other court writs shall be addressed to the parties and other participants in the procedure in Macedonian language, whilst the parties whose official language is other than the Macedonian language, shall be served with summonses, decisions and other court writs in that language as well. The parties shall file lawsuits, appeals and other submissions to the court in Macedonian language, whilst parties whose official language is other than the Macedonian language can file lawsuits, appeals and other submissions to the court in their language.

Ireland

The purpose of Official Languages Act (2003), among other, is to ensure the use of both languages in judiciary and to provide public services.¹⁶ Official languages in Ireland means the Irish language, being the national language and first official language, and the English being a second official language.

In terms of the use of language before the court, a person may use either of the official languages during any of the court proceeding stages and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language. The Act prescribes that every court has, in any proceedings before it, the duty to ensure that any person appearing in or giving evidence before it may be heard in the official language of his or her choice. If a State or public body is positioned as a party to civil proceeding before the Court, the State or the public body shall use in the proceedings, the official language chosen by the other party.

Public bodies have a duty to enable each person to communicate with the State in either of the official languages. Where a person communicates in writing or by electronic mail in an official language with a public body, the public body shall reply in the same language. To recapitulate, public bodies have a duty to reply in the same language they were addressed in

¹⁵ *Law on Litigation Procedure*, https://www.legislationline.org/download/id/4450/file/fYROM_Law%20on%20Litigation%20Procedure_No.7-2011_en.pdf.

¹⁶ *Official Languages Act*, <http://www.achtanna.ie/en.act.2003.0032.1.html>.

first place. Where a public body communicates in writing or by electronic mail with the general public or a class of the general public for the purpose of furnishing information to the public or the class, the body shall ensure that the communication is in the Irish language or in the English and Irish languages.

Malta

Official languages in Malta are Maltese language, being the national language and first official language, and the English being a second official language.

The use of English language before the court is regulated by a special Act (1965).¹⁷ This Act foresees that in a Court of civil jurisdiction, all the parties are English-speaking persons, the court shall order that the proceedings be conducted in the English language. The court shall order where any one of the parties is an English-speaking person and none of the parties is a Maltese-speaking person, the court shall order that the proceedings be conducted in the English language. The proceeding may be conducted in English language when among parties are also Maltese-speaking parties, if a declaration in the records of the court consenting to the proceedings being conducted in the English language is provided. here a court has ordered proceedings to be conducted in the English language, that language shall be used in all subsequent stages of the proceedings. In a court of criminal jurisdiction, if all the persons charged are English-speaking the court shall order that the proceedings be conducted in the English language.

Canada

The purpose of Official Languages Act (1985) is to ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions.¹⁸ English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court. Every federal

¹⁷ *Judicial Proceedings (Use of English Language) Act*, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8703&l=1>.

¹⁸ *Official Languages Act*, <https://laws-lois.justice.gc.ca/eng/acts/O-3.01/page-1.html>.

court has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in the official language of their choice.

Every federal court, other than the Supreme Court of Canada, has the duty to ensure **understanding without an interpreter**. Put in other words, if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English without the assistance of an interpreter. If French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French without the assistance of an interpreter.

International instruments

The European Charter for Regional or Minority Languages (1992) as an important convention for the protection and promotion of the linguistic rights foresees the unalienable right of the person to use his or her regional or minority language in his or her affairs with administrative and judicial authorities.¹⁹ The States are obliged, in respect of those judicial districts in which the number of residents using the regional or minority languages, to provide that the criminal proceedings, civil proceedings and proceedings before courts concerning administrative matters are conducted in regional or minority languages. Alternatively, the persons concerned shall be granted the right in legal proceedings to use their regional or minority language without any additional expenses, while the courts must consider submissions as admissible if submitted by the persons concerned in his or her language, as well to produce documents connected with the legal proceedings in the relevant regional or minority language.

The Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998) foresees a similar solution.²⁰ The document calls on states to consider the possibility that, in areas where minorities live in large numbers, all court proceedings concerning these persons are conducted in the language of that minority. The document notes that the

¹⁹ *European Charter for Regional or Minority Languages*, <https://rm.coe.int/168007bf4b>.

²⁰ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities & Explanatory Note*, <https://www.osce.org/hcnm/oslo-recommendations?download=true>.

extent to which a person can participate directly and easily in proceedings is an important measure of right to court access. The availability of court proceedings in the minority language makes it direct and easier for minority members to access courts, thus improving the protection of human rights.

5. Discussion

The main task of this study was to examine as to which level the realization of citizens' rights is achieved in terms of equal use of official languages in accessing public services and in due communication with the government bodies of Kosovo, chiefly speaking in regard to the Serbian language as a less represented official language. The goal of the study was to answer the question whether Kosovo Serbian-speaking citizens are enabled to safeguard and promote their rights and interest under equal conditions before the administrative organs and judicial authorities.

Provided that a certain governance system acknowledges a particular language as official, the democratic practice institutes that the citizens whose mother tongue differs from the official language are enabled to realize a specific number of rights in their own language. Linguistic rights carry two basic purposes. From the community point of view, its purpose is to safeguard, preserve and promote minority identity, whereas from the individual viewpoint, its purpose is to facilitate the access to public services and realization of other rights for the members of the community.

According to the Constitution and the Laws in pursuance thereof, Kosovo recognizes the equality of two official languages. Official bilingualism constitutes more than just a protection of linguistic rights of minority communities. It implies that the citizens are granted with the right to choose which of the official languages they want to use in communication with the institutions, that is that the institutions have a duty to provide public services for all citizens in official languages under equal conditions. However, in case that an official language has the primacy over the other, or if the citizens have been denied the possibility to communicate with the institutions in the language upon their choice, consequently we cannot corroborate the existence of full equality of official languages.²¹

Empirical evidence acquired during the course of the research reveals that in central and local administrative organs and in the judiciary, full equality of official languages has not been provided. This claim is supported by the

²¹ Pursuant to the systems of Ireland and Malta one language is considered national and first official language, accordingly the official use of second language is adjusted. To the contrary, Kosovan legal framework guarantees full equality of Albanian and Serbian languages.

empirical data unfolding that numerous notifications, guidelines and other documents containing information of interest for most of the citizens are not available in both official languages. Moreover, the relevant documents concerning the interests of specific individuals are not always delivered in the official language of the respective party. Besides the empirical data, of the relevance is also the subjective experience of the individuals. Accordingly, the research has indicated that Serbian-speaking individuals consider to be in an unequal position before the institutions due to their language. With regard to specific institutions, equal use of official languages is the least accomplished in **police** affairs, followed by **court** proceedings.

The second goal of the research was to identify obstacles that hinder the equality of the official languages. In addition to the obstacles regarding translation capacities and the willingness to implement the law, the research pointed out also to obstacles caused by the legal norms. In that respect, the research had affirmed that the bilingual legal framework in Kosovo does not meet the standards of other multilingual systems. Comparative practice shows that official bilingualism is interpreted in the best interests of citizens. This entails the obligation of the administrative and judicial authorities to declare *ex officio* the official language used by the party as the language of the proceedings, as well as to take into account the rights and interests of citizens while deciding on the language issue in the proceedings initiated on their own initiative.

The most sensible issue remains the implementation of official bilingualism before judicial authorities. Considering that the participation of the parties in court proceedings is primarily conditioned by linguistic issues, as such linguistic rights in multilingual court proceedings constitute one of the key determinants in the equity and fairness of the processes, especially in criminal proceedings.²²

In regard to the above cited issue, Phil Chan in his work elaborates the issue of the duty of the courts under the bilingual judicial systems. The issue that Chan addresses is whether the defendant in criminal proceeding is entitled with the right to a trial before the judge who can directly understand her or his language, or it is sufficient to engage an

²² Catherine S. Namakula (2012) Language rights in the minimum guarantees of fair criminal trial, *The International Journal of Speech, Language and Law* 19(1): 73-93, DOI: 10.1558/ijssl.v19i1.73.

interpreter or translator to enable the judge to understand what was said or written. Based on a comparative analysis of Canadian, Irish and international jurisprudence, the author argues that, in a jurisdiction that recognizes two official languages, a defendant in a process that may lead to his or her imprisonment must have the right to choose the language of the proceedings. Taking into account the premise that none of the official languages shall have the primacy over the other in bilingual courtroom, the defendant is entitled to a proceeding conducted by a judge who can directly understand her or his official language.²³

The right of the party to have the proceedings conducted in the official language which they use is explicitly enshrined in Canada, but is implicitly valid in Finnish, Maltese and Irish systems. In criminal proceedings, this right allows the defendant to be directly understood by the judge, which exceeds the defendant's right to receive translation assistance. For these reasons, the European Convention and the Oslo Recommendations call on states to give minority communities such opportunity.²⁴ Nevertheless, the legal framework in Kosovo does not guarantee the right of the party to have a court proceedings conducted in the official language which she or he self-identifies most intimately with, nor judicial authorities, ex officio, have a duty to deliver to the parties documents concerning their rights and obligations in their official language.

²³ Phil C. W. Chan (2007) Official Languages and Bilingualism in the Courtroom: Hong Kong, Canada, the Republic of Ireland, and International Law, *The International Journal of Human Rights* 11(1-2): 199-225, DOI: 10.1080/13642980601176332.

²⁴ In the Republic of Serbia the Serbian language is the only official language. However, the Law on Official Use of Language enables a court proceeding to be conducted in the languages of national minorities. Based on this provision, Higher Court in Novi Sad in 2013 accepted the request of the defendant to conduct a proceeding in Hungarian language. For detailed information please see: https://www.rtv.rs/sr_lat/vojvodina/novi-sad/sudjenje-mladicima-optuzenim-za-izazivanje-nacionalne-mrznje-na-madjarskom-jeziku_390773.html.

6. Conclusion and Recommendations

Official multilingualism in principle reflects the commitment of a given society to safeguard and promote its own cultural and linguistic diversity. Comparative practice points out that concurrently with the development of legal and institutional mechanisms for the protection of linguistic rights, often the mutual understanding of linguistic communities and minorities as well learning languages might be promoted. Considering that one of the official languages is often less represented, institutions are burdened with the additional concern to safeguard and promote its use. Congruently with the spirit of bilingualism, when dealing with the citizens the authorities proactively use their language provided that is known or can be asserted. Otherwise, the burden is placed on the citizens who are often not aware of their linguistic rights.

In order to reinvigorate bilingualism in practice, it is important to establish a favorable climate within the society for the respect of linguistic rights, especially under the limited personnel and financial resources that are prevalent in Kosovo. The importance of a system for the protection of linguistic rights in Kosovo is pertinent due to purposes it serves, including that of conflict resolution and the protection of non-majority communities. It is to a great extent dependent on respect for linguistic rights how much members of the Serbian and other non-majority communities will feel like equal members of the society. Hence, it is crucial to work on the creation of bilingual culture and to harness the will for the equity of official languages in practice.

The goal of this study was to examine as to what extent the Serbian-speaking citizens are enabled to use their language before the administrative and judicial institutions in the realization of entitled rights in an equal fashion. The findings of the research point out that the equality of official languages in institutions is not fully achieved, consequently Serbian-speaking citizens are often exposed to unfavorable positions. Due to these reasons, it is necessary to invest a greater effort in order to protect the use of Serbian language as less represented official language. Accordingly, the equality of citizens can concurrently be promoted.

For the Government and Central Institutions

1. To initiate amending the Law on the Use of Languages in order to explicitly prescribe the duty of administrative organs and the judiciary base their decisions with regards to the linguistic issues on the rights and interests of the citizens.
2. In the course of future amending of the Criminal Procedure Code, the Law on Contested Procedure and the Law on Minor Offences, to set forth a rule according to which the official language of the party shall be used as the language of the proceeding and all the court documents should be ex officio delivered to the party in their official language.
3. Central institutions should assume the obligation that all the documents that are sent to the municipalities must be concurrently made available in all the official languages of the concerned municipality, and that upon the request of the municipality all missing translations must be promptly provided whilst the associated cost are to be covered by the Central Institutions.
4. Central institutions should ensure that all their branches operating on the local level respect the linguistic rights and provide the translation of all notifications, announcements, signboards, guidelines, official forms and other documents in the official languages of the municipality.
5. Central institutions should put an increased attention in regard to proofreading processes of translated documents.
6. Kosovo Police must refrain from the current practice of demanding citizens to sign official documents written in a language that the citizens do not understand, and to ensure that the police officers clearly inform the citizens about their rights and obligations in the official language of the citizens that they are interacting with.
7. Central institutions should provide to their public servants opportunities to learn official languages.

For the Municipalities

1. Municipalities should adopt the principles of the proactive approach to informing citizens in regard to municipal affairs. All the information should be made available to the public in advance in all the official languages concurrently.
2. Municipalities should disclose all the information in regard to the availability of interpreter's cadre and budgetary allocations for translation purposes.
3. Public calls, proposals and competitions should be published concurrently in the official languages of the municipalities.
4. Municipalities should provide the proofreading of the translated documents.
5. Municipalities should work on providing their employees and the local population with the opportunity to learn the official languages.

