

# Civil Registration in Kosovo: a bureaucratic nightmare



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## List of abbreviations:

Administrative Instruction – AI

Department for Citizenship, Asylum and Migration – DCAM

EULEX - European Union Rule of Law Mission in Kosovo

FRY - Federal Republic of Yugoslavia

Ministry of Internal Affairs – MIA

Ombudsperson Institution – OI

UNMIK – United Nation Mission in Kosovo

## Introduction

The first post-independence declaration negotiations between Belgrade and Pristina commenced on 8<sup>th</sup> March 2011, under the auspices of European Union. The basis for these negotiations was set in the resolution 64/298<sup>1</sup> of the General Assembly of the United Nations adopted on 9 September 2010. Although described as “technical” and with the goal to address practical issues of Kosovo citizens, the process achieved little of its intended mission. In an attempt to explain the process, the second EU facilitator of this process, the High Representative of the European Union for Foreign Affairs and Security Policy, Catherine Ashton, described it as an effort in finding practical solutions for the betterment of everyday life of the citizens<sup>2</sup>. In her first public statement in relation to this process, Ashton emphasized that the negotiations taking place in Brussels will prevalingly deal with the topics of: **regional cooperation, freedom of movement and the rule of law**. In present day, 7 years after the initiation of the process many, especially the citizens do not find that much has been done to reach any of the three abovementioned goals. Presuming that the process does truthfully focus on the practical issues of the citizens, reasons as to why it is failing are many and include: lack of political will to implement the agreed due to mistrust between the parties, partial solutions, and information gap caused by the exclusion of the key actors.

The best practical example of how flawed the technical negotiations often are is the agreement on Civil Registry Books<sup>3</sup>. This agreement alongside the first agreement on freedom of movements is the first one reached within the process later to be known as the Brussels Dialogue on 2 July 2011. Consisting of only 4 points the agreement was concise, calling for the establishment of the “fully reliable civil registry in Kosovo “. Although not specifically mentioned, the agreement implied the return of the certified copies of the civil registry books taken from Kosovo to Serbia after the conflict in 1999. The action was supposed to fill in the gaps in Kosovo’s reconstructed central civil status registry. Unfortunately, the agreement encompassed only the civil registry records for the period between 1945 to 1999, thus failing to account for the changes of the civil status of Kosovo residents which were recorded in the Serbian institutions in Kosovo after 1999.

As per the agreement, EULEX was the intermediary between the Serbian and Kosovo government in the implementation of this agreement. According to the information provided by EULEX who oversaw certification of the civil registry copies provided by Serbia, a total of 12391 copies of birth, marriage and death registry books including civil registers and religious registers. The civil registers include records of civil status made between 1946 and 1999, whereas the religious registry books encompass the period between 1886 and 1946.

## Context

As of June 1999, Kosovo is characterized by a parallelism of institutions. UNMIK-founded institutions were gradually transformed into Kosovo institutions, whereas the Serbian institutions continued to function in Serb-majority areas, and although their competences diminished over the years, they remain operational throughout Kosovo to this date. Brussels Dialogue was supposed to change the situation by ensuring integration (or rather transformation) of the remaining Serbian institutions into Kosovo institutions, but the process is yet to be completed. The duality of institutions affected the everyday life significantly, especially in the more homogenous area of northern Kosovo populated by majority Serbian population. However, for the purposes of this report, we will only emphasize the fact that the Serb population all over Kosovo continued to register their civil status only in the Serbian insti-

1 [https://unmik.unmissions.org/sites/default/files/old\\_dnn/GA64298.pdf](https://unmik.unmissions.org/sites/default/files/old_dnn/GA64298.pdf)

2 [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/119663.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/119663.pdf)

3 [http://kryeministri-ks.net/wp-content/uploads/docs/agreement\\_0210\\_civil\\_books.pdf](http://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_civil_books.pdf)

tutions. As a consequence, **the civil status information of this part of the population in Kosovo is not reflected in Kosovo's civil registry books.** This fact in combination with the exclusion of the post-1999 civil registry books from the 2011 agreement on civil registry books results in **18-year-old worth of gap in information on the civil status of a part of Kosovo population.**

This gap in civil status information today creates an array of problems to the citizens who try to either obtain or prove the right to Kosovo citizenship. These difficulties result in either prolongation of the process of obtaining citizenship or failure to issue citizenship and, consequently identification documents to citizens whose information cannot be found in Kosovo's civil registry books. Needless to say, the citizens who do not manage to obtain Kosovo-issued identification documents cannot integrate into Kosovo society. To make the situation worse, they become **paperless persons** from the perspective of the Kosovo government that does not recognize as legal their Serbia-issued documents.

Both the process of proving the right to citizenship and the causes of the phenomena of paperless persons request further elaboration.

## Suspended citizenship

According to the article 32 of the Law on Citizenship of Kosova<sup>4</sup>, *"All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in Republic of Kosova shall be citizens of Republic of Kosova and shall be registered as such in the register of citizens irrespective of their current residence or citizenship."* The same article also defines that the sub-normative acts will determine criteria which shall constitute evidence of the citizenship of the Federal Republic of Yugoslavia and habitual residence in Republic of Kosova on 1 January 1998. The newest of these sub-normative acts is the Administrative Instruction 05/2017<sup>5</sup> of the Ministry of Interior was adopted on the 17 July 2017 to replace the Administrative Instruction 05/2014<sup>6</sup>. The new AI, adopted in July 2017, managed to resolve some of the applicants' issues related to the UNMIK registration. **The issue lies with the interpretation of the articles 3 and 4 of the abovementioned sub-normative acts.** The articles define criteria that prove the possession of citizenship of FRY and permanent residence in Kosovo on 1 January 1998 and the list of required documents to prove the possession of former FRY citizenship and permanent residence on 1 January 1998. Although both the new AI as well as the one it replaced<sup>7</sup>, clearly state that a citizen needs to prove **ANY of four possible criteria and submit ONE of a very extensive list of documents**, the MIA's Department for Citizenship, Asylum and Migration requested that the applicants fulfil **ALL four criteria and submit ALL of the documents listed in the article 4** (article 3 in 2014/05 AI).

*To prove FRY citizenship and permanent residence on 1 January 1998, a person must meet one of the following:*

*3.1. was born in Kosovo or one of the parents was born in Kosovo before 1 January 1998;*

*3.2. resided in Kosovo for a continual period for at least 5 years before 1 January 1998;*

*3.3. was forced to leave Kosovo before 1 January 1998 and due to this reason was unable to meet the conditions to be a citizen as defined in the paragraph 3.2 of this article;*

*3.4. was a dependent child that did not meet the conditions under the age of 18 or*

<sup>4</sup> Law on Citizenship of Kosova: [http://www.assembly-kosova.org/common/docs/ligjet/2008\\_03-L034\\_en.pdf](http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L034_en.pdf)

<sup>5</sup> Administrative Instruction 05/2017: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=14900>

<sup>6</sup> Administrative Instruction 05/2014: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9885>

<sup>7</sup> Except for the version in Serbian language which does translate to English as "the following criteria" instead "one of the following criteria".

*under 23 if he/she was attending a regular school in any educational institution before 1 January 1998 and if his/her parents fall under paragraphs 3.1, 3.2 or 3.3 of this Article or are registered based on the Article 3 of the UNMIK regulation 2000/13.*

As a consequence, between March 2017 and July 2017 when this particular AI was in power, people who did not register with UNMIK registry could not register with Kosovo registry either. This practice of the MIA affected primarily displaced persons who have been living in the neighboring countries and are now interested to return, however, it also affected persons who live in Kosovo but were born outside of Kosovo. In the majority of cases, the citizens whose applications for citizenship were denied receive written, but also often oral, explanation that they were denied due to the fact that they were not registered in UNMIK's civil registry which is only **one out of four** of the possible criteria a citizen should fulfil according to the AI.

Fortunately, the new AI 05/2017 did amend a part of the problem related to UNMIK registration, enabling everyone who fulfilled the remaining three criteria to pursue citizenship rights. Furthermore, according to the Ombudsperson Institution report, another of the positive improvements of the new AI is that registration in "the registry book of citizenship is enabled also on the basis of a notarized statement by two witnesses, which will greatly facilitate the registration displaced persons and refugees as well as members of the Roma, Ashkali and Egyptian communities, because a large number of them previously did not regulate its civil status, nor the status of its children, which makes a large number of members of these communities in the category of legally invisible persons"<sup>8</sup>.

Unfortunately, many problems remained unresolved, particularly those relate to marital status and the documentation that needs to be submitted in order to prove the right to citizenship. Even though Srpska List representatives in the government<sup>9</sup> announced that the AI 05/2017 will resolve all the outstanding issues related to civilian registration, including the marital status, this in fact did not happen. The problems in registration that persist to this day will be elaborated in the next chapter.

The problem for some citizens who cannot obtain Kosovo citizenship extends to their Serbian documents as well. Kosovo's Law on Citizenship in Article 3 allows every citizen of Kosovo to have multiple citizenship. In practice, this should mean that any Kosovo citizen can hold passports and any other documents issued in Germany, Switzerland, France or Serbia, and use them to travel through Kosovo. However, the documents that are issued by displaced Serbian Police Directorates of cities in Kosovo are considered illegal and invalid by Kosovo authorities. Here, it is important to stress that after Kumanovo agreement in June 1999, Serbia transferred all of the Police Directorates from Kosovo to towns in Serbia proper. In practice, this meant that the Police Directorate for Kosovska Mitrovica was moved to Raška, Police Directorate for Uroševac/Ferizaj was moved to Leskovac, etc. So, a Serbian citizen with residency in Kosovska Mitrovica would actually have to go to Raška to obtain or renew their Serbian ID cards or driving licenses. This meant that, physically, the documents are issued in Serbia proper, outside of the territory of Kosovo, but the fact that they are issued by displaced PD makes them illegal in Kosovo. Other Serbian documents issued by Police Directorates of towns in Serbia proper are not disputed. In other words, the documents issued to the citizens of Serbia residing in Kosovo are valid anywhere in the world, except in Kosovo, where these people live, and while they are in Kosovo, they are practically apatrids.

## Civil Status and Civil Registration Offices: accessibility and regular procedures

The issuance of identification and travel documents in Kosovo is the responsibility the Civil Registration Agency which has its outposts in every municipality in Kosovo. However, as already mentioned

<sup>8</sup> Annual Report 2017, Ombudsperson Institution, available at: <https://oik-rks.org/en/2018/03/30/annual-report-2017/> (pg. 84)

<sup>9</sup> *Pojednostavljene procedure za dobijanje kosovskih dokumenata*, RTS, available at <http://www.rts.rs/page/stories/sr/story/9/politika/2810100/pojednostavljene-procedure-za-dobijanje-kosovskih-dokumenata.html>

in the Context above the municipal **Civil Registration Offices** were not formed in the administrative centers of the four northernmost municipalities until **December 2016**. Even with their formation, the accessibility of the services is not ideal in northern Serb-majority municipalities, as **Civil Status Offices** remain available only in the Albanian-majority villages of some municipalities. Civil Status Offices are municipal bodies which correspond with Ministry of Internal Affairs' Department for Citizenship, Asylum and Migration (DCAM). These are the offices which handle the update of the information available in the Central Civil Status Registry, a registry containing information on all Kosovo citizens. Civil Status information are: registration of birth, registration of death, of marriage and divorce. Subsequently, these offices also deal with performing of marriages and issuance of: birth, death, citizenship, marriage/divorce certificates, and extracts from the Central Civil Status Registry. To this date, Civil Status Offices are available only in the Albanian-majority villages of the municipalities of Zubin Potok (in Čabër/Čabra as of 07.06.2004), Leposavić/Leposaviq (in Bistricë/Bistrica as of 09.03.2005), Zvečan/Zveçan (in Lipa/Lipë as of 02.07.2002). The municipality of North Mitrovica is a specific case, and this municipality formed both Civil Status and Civil Registry municipal offices on 23 May 2012. The municipality of North Mitrovica is also an exception as this municipality holds the civil registry books of the citizens born in North Mitrovica<sup>10</sup> only after 23.05.2012, whereas the rest of the civil registry books are kept in the municipality of South Mitrovica<sup>11</sup>. This effectively means that, any citizen born in the hospital in North Mitrovica prior to 2012, needs to initiate the procedure for the verification of the right to citizenship in the municipality of South Mitrovica<sup>12</sup>.

As it is already stated, prior to submitting the application for ID or travel documents or using any service of the Civil Registration Office, the citizens need to access the services of the Civil Status Offices. After the adoption of the AI 05/2017, these offices are also authorized to perform the process of verification of the right to citizenship<sup>13</sup> of the persons who were citizens of Federal Republic of Yugoslavia with permanent residence in Kosovo on 1 January 1999. By allowing the Civil Status Officers to assess whether the applicant fulfils legal conditions without necessarily consulting the DCAM, the process has become more decentralized and efficient<sup>14</sup>. This means that every person that wishes to obtain Kosovo-issued ID card, can verify their right to citizenship<sup>15</sup> through municipal Civil Status Office and get an extract from the central civil status registry issued by these offices. Upon receiving an extract from the central registry of citizens, the applicant may proceed to Civil Registry Office to apply for ID card and other documents.

Kosovo's Ministry of Internal Affairs official stated that the Ministry is aware that the Civil Status Office services are not easily accessible to all citizens, but that the decision on the formation and location of the Civil Status Offices must be made by the municipal assembly of each municipality.

## Civil registration issues

The lack of fully operational capacities of the Civil Registration Offices and the difficulties in accessing Civil Status Offices are the problems only citizens of northern Serb-majority municipalities face in their access to documents. But these are not the only problems in this process, in fact the larger part

10 Vast majority of the citizens of Zubin Potok, Zvečan/Zveçan and Leposavić were actually born in the hospital in North Mitrovica. Those that were born in hospitals in other municipalities in Kosovo (e.g. Pristina) will have to go and initiate the process of verification of their right to citizenship in the municipality of their birth; whereas those born in a hospital in Serbia (e.g. Novi Pazar or Belgrade), need to initiate this process in the municipality of their current residence in Kosovo.

11 The municipality of South Mitrovica does not have the records for years 1974-1975, but the explanation as to why are these records missing were not provided in time.

12 Once the verification of citizenship right and initial registration in the central civil status is finalized, a citizen can obtain civil status documents in any municipality in Kosovo.

13 If the request of citizens is refused, then according to this administrative instruction, the citizen has the right to complain to the second instance at the Agency of Civil Registry, respectively to the Commission for the Review of Complaints.

14 An official of MIA stated that the Ministry issued the new administrative instruction no. 05/2017 in order for citizens who have not yet received Kosovo documents to be able to be equipped with citizenship and civil status documents, making it possible this way that the service for all Kosovo citizens is as efficient as possible.

15 It is important to discern between two similar legal procedures: the process of verifying the right to citizenship and the process of applying for citizenship. The first refers to people with origin in Kosovo, while the other refers to those who moved to Kosovo and this procedure is far more complicated and time-consuming.

of the problem affects citizens of Serbia residing all around Kosovo and it lies with the unrecognition of the civil status changes made by the Serbian institutions in Kosovo after 10 June 1999.

## Deaths/Births

According to the legislation applicable in Kosovo, a family member is obliged to report death (and birth) of a relative within 30 days of the event. As it was already stated, residents of Serb-majority municipalities predominantly registered and continue to register these events only in Serbian institutions which poses a significant problem when they try to obtain Kosovo documents. If the applicant's parent or both parents died after June 1999 and their death was registered only in the Serbian system, before obtaining the ID card themselves, they need to go through the process of late registration of the parents' death. The issue with this process is that it requires that the family member submits the original confirmation of death issued by a hospital, which, if the death happened a long time ago is likely unavailable to the family members. In addition to this, a fine of 50 euros is foreseen for the late registration of death.

Similarly, the parents that did not register the child's birth in time, must pay penalties too, but occasional non-recognition of the hospital documentation from the Serbian hospital in North Mitrovica by the Civil Status Officers of South Mitrovica is a much serious problem than the simple matter of paying a penalty. To reiterate, given that the Civil Status Office of North Mitrovica was established only in May 2012, any birth that happened in North Mitrovica that needs to be registered and that happened prior to this date, needs to be registered in the municipality of South Mitrovica.

## Marriages

A different issue related to the access to personal documents, affects persons from Serbia who got married in Serbian Civil Status Offices in Kosovo and moved to Kosovo after 1999. Being treated as foreign citizens, these persons need to go through the process of naturalization, however, given the fact that their marriages are considered illegal, made in parallel institutions, they cannot fulfil one of the criteria for naturalization, which is being married to a Kosovar citizen for at least 3 years and having habitual residence in Kosovo for at least 1 year. Hence, a spouse of a Kosovo citizen married in the Serbian system in Kosovo cannot claim Kosovo citizenship. Paradoxically, they also cannot marry in the Kosovo system without first divorcing in Serbia to attain a required 'single status' document. Here it is important to reiterate that Civil Status Offices which perform marriages in Kosovo system are still not fully operational in northernmost municipalities. Furthermore, Kosovo born women, married in the Serbian system in Kosovo after June 1999, may obtain Kosovo documents, but given that their marital status is not recognized, they can only obtain the documents in their maiden name. This forces many Kosovo-born women to maintain two conflicting identities, the "Serbian institution identity" that dubs them as married and carrying their husbands' names and "Kosovo institution identity" where they are single and still carrying their maiden name.

Asked about the possible resolution of the marital status issue, the MIA official stated that according to the Government Decision no 05/134<sup>16</sup> of the date 01.03.2017, the Ministry of Internal Affairs in cooperation with the Ministry for Dialogue was considering the possibility of compiling a circular that aims to implement this decision, a decision that deals with the registration of all civil status issues that happen in the territory of the Republic of Kosovo, including the north. The document would allow that every request for birth, marriage, or death registration, be processed by the municipal Civil Status Offices. This particular circular was supposed to be issued in March 2018, but there is no official explanation as to why this has not happened yet.

<sup>16</sup> In the decision, it is stated that all the citizens registered in Kosovo civil registry books that do not yet have Kosovo civil status and identification documents may still get them and that such applicants must present "old documents". However, there lacks specific instruction as to what is "an old document" or what type of documents are considered valid: [www.kryeministri-ks.net/repository/docs/134\\_odluke\\_134.docx](http://www.kryeministri-ks.net/repository/docs/134_odluke_134.docx) (srb), [http://www.kryeministri-ks.net/repository/docs/Vendimet\\_e\\_Mbledhjes\\_se\\_134-te\\_te\\_Qeverise\\_se\\_Republikes\\_se\\_Kosoves\\_2017.pdf](http://www.kryeministri-ks.net/repository/docs/Vendimet_e_Mbledhjes_se_134-te_te_Qeverise_se_Republikes_se_Kosoves_2017.pdf) (alb)

However, in July 2018 the government has adopted another decision 296/2018<sup>17</sup> which explicitly allows the recognition of the civil status documents issued by the Serbian institutions in Kosovo for the purposes of registration of citizens in the central civil registry of Kosovo. Unfortunately, it is impossible to analyse the efficiency and comprehensiveness of the decision as, despite the fact that it is supposed to be enforced right after its adoption, two months after its adoption, the decision is still not implemented by the relevant authorities<sup>18</sup>.

## Divorces

Similar to marriages, any divorces concluded in Serbian Courts after 10 June 1999 are also considered illegal. Meaning that the spouses who were married prior to 10 June 1999 but divorced after this date are not registered as divorced in Kosovo civil registry. This creates an array of problems related to property rights and custody, as ex-spouses who wish to sell the property they acquired after their divorce in Serbian institutions are requested to provide the consent of their (ex)spouse by Kosovo authorities. In an interview for Kallxo<sup>19</sup>, the new President of Kosovo's Basic Court of Mitrovica, Nikola Kabašić, stated that the divorces and custody settlements concluded by the Serbian Basic Court in Kosovska Mitrovica could be challenged, if one of the parties declared that they do not recognize the jurisdiction of the Basic Court in Kosovska Mitrovica. If this happens, the Basic Court of Mitrovica will form a commission which will review the challenged decisions of the former Serbian Court.

## Residency

People who cannot obtain citizenship through a marriage could, in theory, like any other foreign citizen apply for temporary residency and a work permit and obtain temporary ID card. After 5 years of renewing this status, a person can opt to apply for Kosovo citizenship. Unfortunately, this is not an option for holders of Serbian documents residing in Kosovo as these documents are considered illegal (as explained in the "Suspended citizenship" section). At the point when the "Serbian" marital status becomes recognized in Kosovo system, citizens of Serbia residing in Kosovo who do not have origin in Kosovo and that are not married to a citizen of Kosovo will still be prevented from registering, no matter how long they have been living in Kosovo. This is why a procedure for retroactive proof of residency must also be established.

## Required documentation

The issues described above affect applicants selectively and depend from different circumstances in their life: when and where they were born, if and when they got married/divorced, if and when they had children or if and when their parents died, if they registered with UNMIK and if they had any changes in their civil status after UNMIK stopped with civil registration. But, an issue that does not discriminate based on these "criteria" is the required documentation. As described in the "Suspended citizenship" section, often, instead of presenting one<sup>20</sup> out of 26 possible documents to prove one's right to Kosovo citizenship, applicants are requested to submit an extended list of documents which many applicants cannot do.

The primary documentation needed to be presented in order to prove that an applicant fulfils one of the criteria for citizenship is listed in the Article 4 of the AI 05/2017:

<sup>17</sup> The text of the decision is available here: <http://crnobelismet.com/wp-content/uploads/2018/07/Odluka-Vlade-Kosova-o-priznavanju-srpskih-izvoda.pdf>

<sup>18</sup> More about the contents of the decision and its possible deficiencies can be read in the article *Nova odluka Vlade Kosova – lakše do dokumenta ali ne još i ne za sve*, available here: <http://crnobelismet.com/nova-odluka-vlade-kosova-lakse-do-kosovskih-dokumenata-ali-ne-za-sve/>

<sup>19</sup> The video recording of the interview is available here: <http://kallxo.com/kabashiq-jam-kryetar-i-gjykates-ne-republiken-e-kosoves/>

<sup>20</sup> The exception is made for the applicants proving their residency in Kosovo prior to January 1998, these applicants need to present two documents to prove the fulfilment of this criteria. Also, applicants who apply for citizenship based on the parent's origin in Kosovo, should provide parent's documents as well.

In order to prove the FRY citizenship, the party should present one of the following documents:

- 1.1. certificate of citizenship of former FRY;
- 1.2. birth certificate or marriage certificate of former FRY;
- 1.3. passport of former FRY, or identification card of former FRY;
- 1.4. any other document that proves the citizenship of former FRY. (Military health card, driver's license, student index, employment booklet).

A more extensive list of 26 documents and different categories of citizenship criteria these documents can prove is provided in the annex of the AI 05/2017. Interpretation of this table by the municipal Civil Status Offices is the most common issue citizens are presented with in attempting to acquire extracts from the central registry of citizens (the first step in acquiring citizenship/documents). It is important to note that, while some document unequivocally prove that an applicant has met criteria, others offer only provisional proof and must be corroborated with another document. For example, an ID card issued by the Federal Republic of Yugoslavia can, depending on a specific case:

- be used as the proof of identity of the applicant,
- be possible proof that the applicant was born in Kosovo,
- be proof that they were resident of Kosovo prior to January 1998.

On the other hand, a marriage certificate issued by FRY can:

- provisionally prove one's identity (if followed by an ID card or passport),
- it can prove that the applicant or that the applicant's parent was born in Kosovo,
- can provisionally prove that the applicant was Kosovo resident 5 years prior to January 1998 (if accompanied by primary school student index, sworn statement of a witness that the applicant was the resident of Kosovo in the required time period, birth certificate of another country or the birth certificate of the applicant's child born in Kosovo prior to January 1998)
- can prove that the applicant resided in Kosovo prior to January 1998

Reportedly, some of the Civil Status Officers read the table by the column (indicating criteria for citizenship), instead by the row<sup>21</sup> (indication the type of document). As a consequence, some applicants are asked to provide all of the documents that can prove that an applicant is, for example, born in Kosovo, instead of choosing one of the documents from this extensive list.

Other issues citizens also reported are refusal of the Civil Status Officer to even receive the applicant's documents. If the Civil Status Officer is not comfortable enough to issue extracts to the applicant based on the provided documentation, they are obliged to forward the request to the MIA's DCAM whose decision (in case they too find that the applicant does not have sufficient proof of the right to citizenship) can be further appealed at the Basic Court of Pristina, Department for Administrative Mat-

<sup>21</sup> The cells in the table are either empty (showing that a particular document cannot prove the corresponding criteria), or marked "Yes" (showing that a document does prove a certain criteria). If a document only provisionally proves some criteria, the cell is marked "Yes, if accompanied by a document from 3,7 or 6 of this list".

ters<sup>22</sup>. By refusing to accept applicant's documents, **the Civil Status Officers are preventing the citizens from formalizing their request and using all of the accessible legal mechanisms.**

## Institutional response

Civil registration issues and access to documents is a major community problem in Kosovo. However, due to a longstanding societal stigma of the Serb community related to acquisition of Kosovo document, this problem has gone largely unreported. It was only in 2017 that this issue received some media coverage and that pressure started building for the resolution of this problem.

In their report for 2017<sup>23</sup>, the OI problematized the issue<sup>24</sup>. The concrete violations of human rights that occur in the process of civil registration reported by the Ombudsperson Institution (OI) are as follows:

- illegal practice of conditioning the issuance of personal documents through paying property taxes
- inconsistency in the application and individual interpretation of the AI by some civil status offices
- civil servants in the civil status and registration offices in some municipalities (Mitrovicë/Južna Mitrovica, Prizren, Ferizaj/Uroševac, Zubin Potok (in the village of Çabër/Čabra), Gjilan/Gnjilane and Pejë/Peć) asked the appellants to submit together with the request all the documentation referred to in both the Law and the AI, although the Law stipulates that only one document should be submitted as a proof of birth in Kosovo, and also one proof of residence or, if necessary, two documents proving residence in the period of 5 years before January 1, 1998
- Civil Status and Registration Office, refused to accept the complainants' applications for recognition of citizenship and instructed them to submit applications to MIA, the Department on Citizenship, Asylum and Migration in Prishtinë /Priština under the regular procedure for foreigners
- refusal of officers to provide written response with which they reject the application, or the refusal of receipt of the documentation by the municipal Civil Status Offices with the reasoning that they are not obliged to provide reasoning in writing which is in contradiction with the Law on General Administrative Procedure and with the AI 05/2017.
- some officials do not recognize the maternity hospital discharge note from North Mitrovica because this hospital operates in accordance with the system of the Republic of Serbia

In 2017, the OI managed a total of 25 cases related to civil registration which were found admissible by this institution, these 25 cases included 65 individual persons of which one group complaint involved 39 persons from Roma, Ashkali and Egyptian communities. According to the information provided by the OI, in the first 6 months of 2018, the OI received 9 complaints related to civil registration issues:

<sup>22</sup> Out of seven Basic Courts in Kosovo, only the Basic Court of Pristina has the Department for Administrative Matters. Given that it covers all Kosovo, this department is overburdened with cases and from the Ombudsperson institution say that the complainant can wait for up to two years for the decision of this court.

<sup>23</sup> *Annual Report 2017*, Ombudsperson Institution, available at: <https://oik-rks.org/en/2018/03/30/annual-report-2017/> (pg. 83-86)

<sup>24</sup> Apart from the OI in Kosovo, the issue was also reported by the State Department's *Country Reports on Human Rights Practices for 2017*, available at:

<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277181#wrapper> (pg.16 and 20)

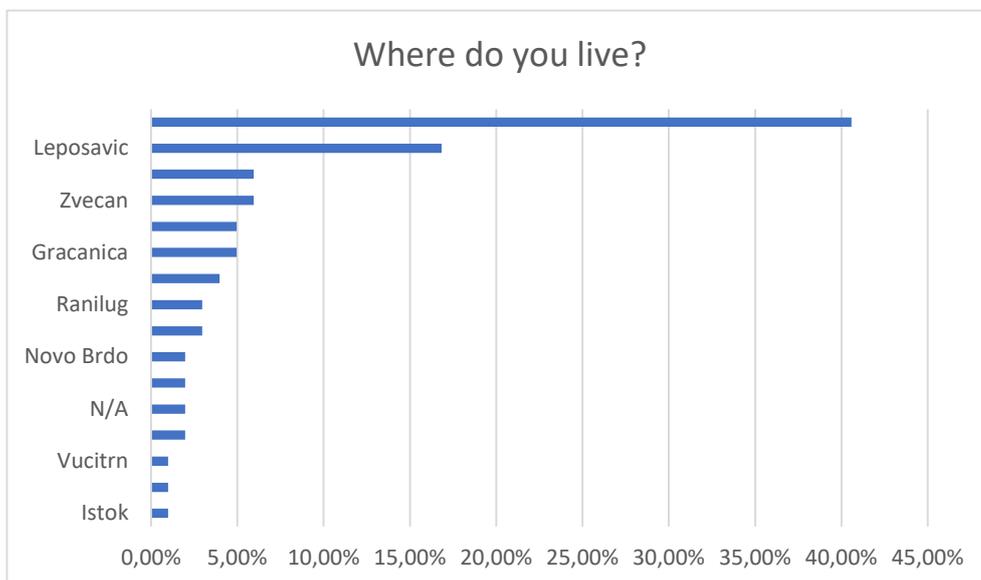
	Albanian	Serb	Bosniak
Priština		1	
Severna Mitrovica		1	
Zvečan/ Zveçan		1	
Kaçanik		1	
Prizren	1		
Podujevo	1		
Ferizaj/Uroševac	1		1

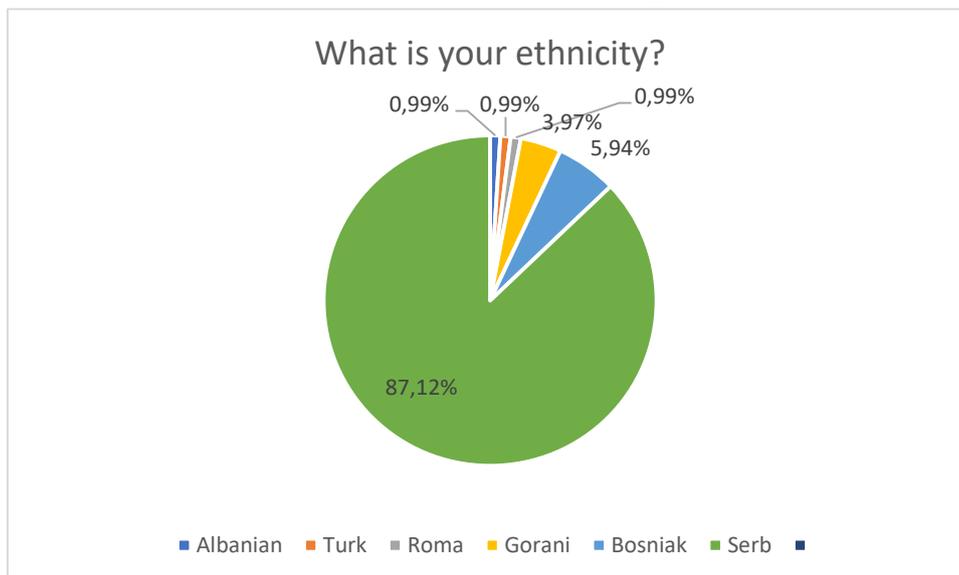
Furthermore, the OI stated that in an effort to address more efficiently some of the issues reported throughout 2017, this institution has opened an *ex officio* case 323/2018 for the municipalities of South Mitrovica, Zubin Potok, Leposavić/Leposaviq and Zvečan/ Zveçan related to civil registration and issuance of extracts from the central citizen registry in these municipalities. The OI predominantly works on complaints initiated by citizens themselves, however, the citizens from the region of Mitrovica are still not fully familiar with Kosovo institutions and this decision of the OI shows proper understanding of the context and needs of the citizens.

In DCMA they say that the process of registration is bureaucratic but that it does not differ from the procedures set out during the UNMIK registration period. They also warn that the process of registration of habitual residents before 1998 will not continue indefinitely and add that, while there are no current plans to phase out the registration period yet, the citizens should register as soon as possible.

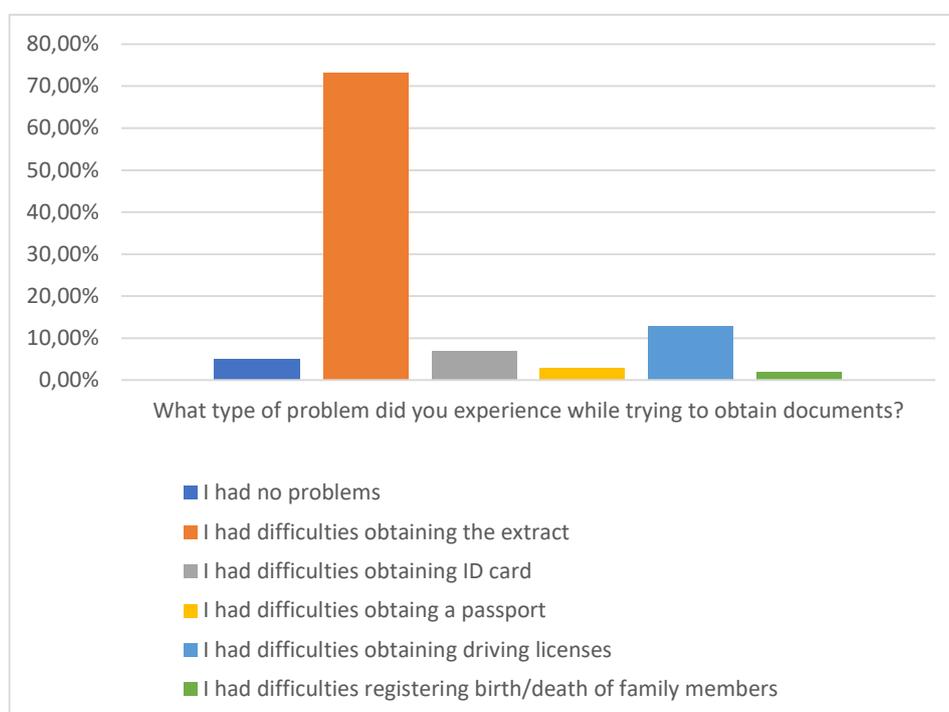
### Citizens' testimonies:

NGO LINK conducted a short on-line survey mid-May 2018 to gather the experiences of citizens throughout Kosovo related to civil registration. In 7 days, a total of 101 citizens responded to our survey. Vast majority of them are the citizens who reside in northern municipalities (69.30%). Likewise, the largest present of respondents are members of Kosovo Serb community (87.12%). As for the gender, 37.62% of the respondents were men, while 62.38% were women. The youngest respondent was 18 and the oldest was 67. The most frequent respondents were those between 30 and 34 years of age, while the average age of the participants was 37. Majority of the respondents (74.25%) was born in Kosovo, while quarter of the respondents (25.74%) were born out of Kosovo.



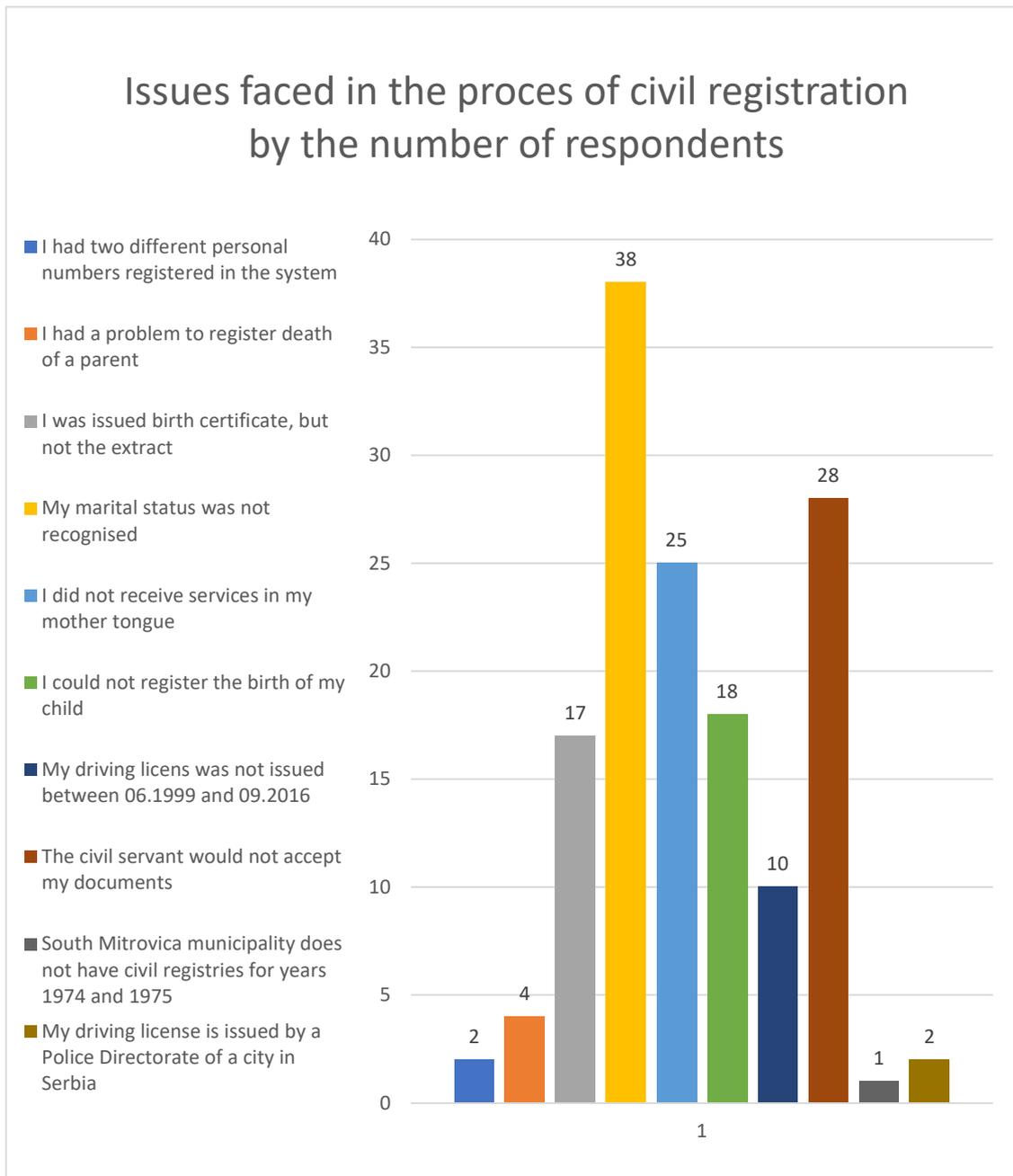


Majority of respondents (73.26%) reported being unable to obtain the extract from the central registry of citizens. This is the first step in civil registration, without which an ID card cannot be obtained. Additional 6.9% of citizens reported having problems with the second step of civil registration, issuance of the ID card. These respondents are women who have not had their marriage recognized and therefore issued documents in their maiden name or people who only obtained birth certificates (proof they were born in Kosovo), but could not obtain extracts (proof of citizenship). Two respondents (1.98%) did not have issues in the process of civil registration personally, but they had issue with registering death of a parent and birth of a child. A small present of respondents (4.95%) stated that they had no problem with the procedure related to civil registration, but that did report issues using their mother tongue in the institutions. Two Bosniak and one Gorani respondent reported not being able to obtain a passport due to refusal of the civil servant to receive documents. The remaining 12.87% respondents reported difficulties obtaining driving licenses<sup>25</sup>.



25 Although acquisition of driving licenses also falls under the access to documents, this topic will not be dealt with in this report. Until January 2018 only the holders of driving licenses issued prior to June 1999 were able to obtain Kosovo driving licenses as well. As of this year, a procedure was established for people who obtained their Serbian driving licenses between June 1999 and September 2016 to obtain Kosovo driving licenses based on the Serbian licenses.

As for the concrete issues the respondents faced, the non-recognition of the marital status was reported as the most common problem affecting over third of respondents (37.62%). The second most recorded issue is the refusal of the civil servants to accept applicant’s documentation (27.72%).



Vast majority of the respondents (81.18%), after facing the difficulties in the process of civil registration opted to do nothing. Only 3.96% sent a complaint to MIA and 2.97% sent a complaint to the OI. Out of these 7 respondents who have taken up legal actions and filed complaints, the 3 who turned to OI institution stated that they are still waiting on a reply, while 2 out of 4 who complained to the MIA have not received and information, 1 as denied the request and 1 did not specify what happened with their complaint. The rest of the respondents either tried to find people who they can pay to help them or were very persistent, going to the Civil Status Offices regularly.

Following is the list of some of the most bizarre problems respondents in our survey described:

- A Serb woman from North Mitrovica, born in Suharekë /Suva Reka is afraid to go the Suharekë / Suva Reka Civil Status Office where she needs to register. She also has to different identification numbers and was said that she will have to choose one.

- A Gorani man from Dragash/Dragaš cannot register the birth of his child. Both he and his wife are Kosovo citizens, but the child was born out of Kosovo.
- A man from Lipljan/Lipjani is married to a woman from Vojvodina he cannot obtain citizenship through naturalization due to non-recognition of their marriage.
- A woman from North Mitrovica struggled for a year to register the death of the parent and get her own extract. Her marital status was not recognized.
- A woman from North Mitrovica cannot register the birth of her child (born in 2005). She is divorced in Serbian court, but her status is not recognized which is why she was told by the civil servant to remarry in Kosovo system, get divorced again and then register her child.
- A man from North Mitrovica failed to register his child (born in 2001). After submitting the needed documentation and paying a fine for late registration he received the decision of MIA allowing the registration of the child in the civil registry. However, the civil servant informed him that his child already has a registration number issued by UNMIK and explained that this is why he cannot register him. The man was told to go to UNIK offices and request they send their civil registry books to the municipal administration of South Mitrovica.
- A woman from North Mitrovica and born in Loznica got married in Kosovo in 2001 and she obtained UNMIK ID card soon after. Her UNMIK registration number is under her husband's surname but she cannot obtain a Kosovo I because her marriage is not recognized. The surname in UNMIK registry and Kosovo civil registry must be the same.
- A woman from North Mitrovica has UNMIK and Serbian marriage certificates as well as UNMIK ID card. The certificates are considered invalid and she cannot obtain the extract from Kosovo central civil registry.
- A Bosniak woman from North Mitrovica cannot register her child because she carried her ex-husband's surname at the moment of the birth of her child. However, her Kosovo documents at that time did not recognize her marriage which is why she was issued Kosovo ID card on her maiden name. Given that the two surnames do not correspond to each other, she is prevented from registering her child.
- A woman from Leposavić/Leposaviq could not obtain extract as she was told that the municipality of South Mitrovica is not in the possession of the civil registry books from 1974 and 1975.

## Conclusion:

Although the announcements of the resolution of some problems related to civil registration, specifically related to recognition of marriages can be heard every couple of months, there have been no real developments. However, even with the resolution of the problems with the recognition of marriages, the problems with late registration of birth/death, and retroactive proof of residency will remain. In order to truly ease the process of civil registration, the government must come forward with a comprehensive solution that will encompass all of the issues. Otherwise partial solutions like the ones brought on by the AI 05/2017 will only continue to exclude groups of people from legalizing their status in Kosovo.

According to the Ministry of Internal Affairs<sup>26</sup>, by August 2017, Kosovo government issued:

	ID card	Passport
Severna Mitrovica	12,407	1,104
Leposavić/Leposaviq	10,100	380
Zubin Potok	5,507	667
Zvečan/Zveçan	5,972	435
<b>Total</b>	<b>33,986</b>	<b>2,586</b>

Newer data show that the percentage of citizens from northern municipalities who are obtaining Kosovo documents is still considerable, as 56% of the documents issued in the first 5 months of 2018 were requests to exchange UNMIK IDs for Kosovo IDs. UNMIK IDs were issued to adults until October 2005 when UNMIK transferred to Kosovo authorities managerial and operational responsibility for civil registration activities. This means that only persons older than 31 years of age possess UNMIK ID cards.

03.01.2018 – 11.05.2018, four Serb-majority municipalities of north Kosovo		Total number
No. of requests for the issuance of <b>ID cards</b> for the first time	466	1071
No. of requests for exchange of UNMIK <b>IDs</b> for Kosovo IDs	605	
No. of requests for the issuance of <b>passports</b> for the first time	109	110
No. of requests for exchange of UNMIK <b>passports</b> for Kosovo passports	1	

The numbers only prove that the demand for Kosovo documents is still high which suggests that the integration is still underway. People who do not manage to register as citizens and obtain ID cards are faced with serious obstacles in freedom of movement, have limited employment opportunities, etc. For example, citizens who only have Serbian documents that are considered illegal can only use these documents to move around the territory of northern Serb-majority municipalities and can exit /Kosovo only on the crossings towards Serbia. If a holder of such document were to attempt to cross from Kosovo to Macedonia, they would be turned away by Kosovo authorities. Similarly, in order to find employment in Kosovo institutions, any applicant which graduated from the University in North Mitrovica (the only Serbian language University in Kosovo) must verify their diploma with Kosovo authorities, this too is impossible without an ID card. Furthermore, the citizens who cannot obtain Kosovo ID cards cannot be legally registered with Kosovo Tax Administration and Trusti. These are only some of the issues undocumented people face.

<sup>26</sup> <http://mediation-mitrovica.org/wp-content/uploads/2018/06/ENG-Beyond-the-Bridge.pdf>

## Recommendations:

- Kosovo and Serbia could renegotiate the exchange of Serbian civil registry books' records to include those made after 1999. Alternatively, Kosovo needs to establish temporary, special procedures for the registration of births, deaths, marriages and divorces registered by the Serbian institutions in Kosovo after 10 June 1999.
  - A speedy solution for the change of the surnames of women registered in the central registry of citizens affected by the non-recognition of marriages made before Serbian Civil Status offices after 1999 and divorces concluded by the Serbian courts between 1999 and 2017 must be reached.
  - Ministry of Internal Affairs must regulate a procedure for the retroactive registration of temporary residency for the people who do not have origin in Kosovo and are not married in Kosovo but have lived in Kosovo for longer than 5 years.
- Civil Status Offices should remain functional in the Albanian-majority villages in order for these services to be as decentralized and as accessible as possible. However, the municipalities should establish these offices in the administrative centers of municipalities of Zvečan/ Zveçan, Zubin Potok and Leposavić/Leposaviq as well.

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