



# BILINGUAL LEGISLATION IN KOSOVO

September 2018



Organization for Security and  
Co-operation in Europe  
Mission in Kosovo



# **BILINGUAL**

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## LIST OF ABBREVIATIONS

<b>CiviKos</b>	Civil Society Platform
<b>CPT</b>	Centre for Peace and Tolerance
<b>DG</b>	Directorate General
<b>EU</b>	European Union
<b>FCNM</b>	Council of Europe Framework Convention for the Protection of National Minorities
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>KIPA</b>	Kosovo Institute for Public Administration
<b>LSB</b>	Legislative Services Branch
<b>MCR</b>	Ministry for Communities and Returns
<b>MLGA</b>	Ministry of Local Government Administration
<b>MLSW</b>	Ministry of Labour and Social Welfare
<b>MoJ</b>	Ministry of Justice
<b>MPA</b>	Ministry of Public Administration
<b>MTI</b>	Ministry of Trade and Industry
<b>OLC</b>	Office of the Language Commissioner
<b>OPM</b>	Office of the Prime Minister
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PWD</b>	Persons with Disabilities
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>US</b>	United States

## EXECUTIVE SUMMARY

Kosovo is a multi-community jurisdiction with a modern legal framework that contains extensive language rights. Albanian and Serbian are both official languages with equal status. At municipal level, depending on the percentage of population, other languages may have official language status<sup>1</sup>.

As part of its mandate, the Organization for Security and Co-operation in Europe (OSCE) Mission in Kosovo monitors compliance by institutions with human rights standards including language rights. Through its ongoing work in the law and justice sector, the OSCE has gained insight into the legislative process, including translation of legislation and how it has evolved and developed over the years. This report assesses the progress made by Kosovo institutions in the implementation of the legal framework governing language rights in the legislative process, and covers all activities in this area through 2017.

In recent years, Kosovo institutions have achieved marked improvements in the implementation of the legal framework governing the legislative process including enhanced public consultation during the drafting process. In 2016, all draft legislative initiatives were made available in both official languages, and in 2015 all but three were made available in both official languages during the public consultation phase of the legislative process.

While bilingualism is enshrined in the legal framework, its implementation still remains weak and requires greater effort and dedication on the part of the government and Assembly in order for it to succeed. Almost all drafting is done in Albanian. Significant discrepancies between the two official language versions are still found in newly adopted legislation, and significant errors exist in the Serbian language versions of laws in force. The language quality of laws translated in Serbian language remains poor. Though opportunities exist within the legislative process to correct these shortcomings, these are often missed. There is an Administrative Instruction on Standards for the Drafting of Normative Acts, the stated purpose of which is “to define and unify standards for the drafting of normative acts”. However, poorly drafted and translated laws continue to be distributed, which suggests either that this Administrative Instruction is not being followed, or that there is no effective mechanism in place to ensure consistency between official language versions of draft laws. Once these laws are at the Assembly level, systematic proofreading does not take place. Deputies that serve in relevant committees rarely review these laws for language quality before they are voted on. An additional issue is how to deal with the existing legal framework – even if the capacity to strengthen law-making in the future is improved. In order for existing laws that contain language discrepancies to be corrected, a legal basis is needed for making such corrections. Without the legal basis to make ministerial corrections – which is contemplated in the draft Law on Legal Acts – any proposed change is subject to the long amendment process applicable to laws.

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<sup>1</sup> See Law No. 02/L-37 on the Use of Languages (Article 2), as promulgated by UNMIK Regulation No.2006/51, 20 October 2006.

Institutions working together can improve the current situation through greater commitment to implementation of language rights in the legislative process. This will require increased translation capacity with resources (including legal terminology books) and training, as well as an improved administrative instruction or other guidelines that delegate responsibility to entities at each level of the drafting process to ensure language compliance. In this respect, the Office of the Language Commissioner should be engaged and consulted regularly as it has an extensive understanding of the existing issues and solutions thereto. Best practices from other multi-lingual jurisdictions may further serve as a model to set effective mechanisms in place to further ensure consistency between official language versions of draft laws.

## INTRODUCTION

Legislation is the main instrument of public institutions used to regulate the conduct of individuals. When the legal framework provides for bilingualism, it is essential for legislation to be equally accessible and accurate in both official languages in order for it to be effective. Society in Kosovo consists of different communities, with Albanian and Serbian as official languages holding equal status. As language rights are an integral part of the fundamental human right to freedom of expression,<sup>2</sup> their fulfilment is essential for ensuring that members of all communities can effectively participate in society and have equal access to justice. As such, in Kosovo, where language rights are enshrined in the legal framework, they must be carefully observed during the drafting, promulgation and implementation of legislation.

The OSCE Mission in Kosovo has been following this issue since its inception. In 2012, the Mission published the report "Multilingual Legislation in Kosovo and its Challenges"<sup>3</sup>, which focused on multilingual legislative system, including municipal level language compliance. In the 2012 report, the OSCE noted that "general budgetary restraints in the public sector, understaffing, lack of qualified translators and insufficient training, along with poor public awareness of the importance of language rights, are major impediments to the multilingual legislation system in Kosovo."<sup>4</sup> At the same time, the OSCE Mission in Kosovo noted that the legal framework provided "safeguards for extensive language rights [...]. However, the implementation of this legal framework remains incomplete."<sup>5</sup>

This report is based on analysis performed since the publication of the 2012 report. The report aims to provide a snapshot of the difference between conclusions then and the current situation, and review the legislative and regulatory framework for a better sense of what might be needed to fully vindicate language rights.

Operating in two official languages is a complex undertaking that requires substantial budgetary resources, structural changes to institutions, and trained specialized staff. It is an accomplishment for countries that manage to operate in multiple languages, such as Canada and Switzerland, or international organizations such as the European Union (EU). It is in this context that the achievements and challenges of Kosovo's institutions to drafting laws in both official languages and solutions to these challenges should be assessed.

The purpose of this report is to provide insight into the current bilingual legislative drafting process at the central level, in order to highlight procedural and practical shortcomings and to provide recommendations to improve the bilingual drafting and translation process and strengthen the implementation of the Law on the Use of Languages. Any successes in improving language compliance at the central level may then serve as a model for the local level as well.

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<sup>2</sup> See Article 19 of the Universal Declaration of Human Rights (UDHR); Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR); and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

<sup>3</sup> OSCE Mission in Kosovo Report Multilingual Legislation in Kosovo and its Challenges, (February 2012), available at <https://www.osce.org/kosovo/87704> (accessed on 07 June 2018).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.



The report is structured as follows: Chapter 1 explains the applicable legal framework governing language rights in Kosovo; Chapter 2 examines mistakes in legislation and their impact; Chapter 3 focuses on the current legislative drafting process and the challenges it poses to achieving bilingualism; Chapter 4 describes legislative drafting processes in comparative jurisdictions that have a bilingual or multilingual tradition; and the final Chapter offers recommendations for strengthening the bilingual law-making process in Kosovo.

## METHODOLOGY

The report is based on (i) qualitative and quantitative assessment of selected laws for language compliance; (ii) interviews with representatives of relevant institutions and civil society organizations; and (iii) observations based on a long-term assessment of draft legislation.

The qualitative and quantitative assessment was undertaken by the OSCE through a two-tiered review process aimed at identifying discrepancies between the Serbian and Albanian language versions of selected laws<sup>6</sup> that are important to the functioning of the law and justice sector in order to facilitate their correction. The first tier of the review process involved an assessment conducted by Serbian- and Albanian-speaking OSCE legal officers, who worked together to identify discrepancies between the two language versions of the laws. During the second tier of the review, their findings were reviewed and proofread by a bilingual legal officer for consistency in legal terminology and language.

In order to understand the current legislative drafting process and identify gaps, the OSCE conducted structured interviews from September to November 2016<sup>7</sup> with representatives from the legal departments of the Ministry of Justice (MoJ), the Ministry of Trade and Industry (MTI), the Ministry of Public Administration (MPA), Ministry of Labour and Social Welfare (MLSW), Ministry of Local Government Administration (MLGA) and Ministry for Communities and Returns (MCR) and the Legal Office of the Office of the Prime Minister (OPM). These ministries and the OPM were selected for interviews as they are active in initiating legislative proposals. In addition, in order to obtain a comprehensive perspective into the legislative process, similar interviews were also held with the Language Commissioner, the Assembly's Directorates for Language Services and Legal Standardization and Directorate for Language Services, the Official Gazette, the Kosovo Institute for Public Administration (KIPA), and representatives of the Civil Society Platform (CiviKos).

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<sup>6</sup> Law No. 03/L-199 on Courts, 24 August 2010; Law No. 05/L-032 on amending and supplementing the Law No. 03/L-199 on Courts, 30 June 2015; Law No. 04/L-149 on Execution of Penal Sanctions, 28 August 2013; Law No. 04/L-015 on Witness Protection, 1 September 2011; Law No. 2004/32 Family Law of Kosovo, 1 September 2006; Law No. 2004/26 on Inheritance in Kosovo, 1 August 2006; Law No. 03/L-10 on Notary, 25 November 2008; Law No. 04/L-002 on amending and supplementing the Law No. 03/L-010 on Notary, 10 August 2011; and Law No. 04/L-017 on Free Legal Aid, 22 February 2012.

<sup>7</sup> Analysis concluded in February 2018 and current information provided is up to date.

## CHAPTER 1: LANGUAGE RIGHTS IN KOSOVO

### a. *Legal Framework*

Kosovo institutions' commitment to key international human rights standards that guarantee language rights is codified in its constitution, which makes specific international legal instruments directly applicable.<sup>8</sup> In addition, the constitution designates Albanian and Serbian as the two official languages, with equal status before the institutions. This naturally requires bilingual laws, and indeed the legal framework in Kosovo including the Law on the Use of Languages requires all laws to be issued in Albanian and Serbian (in addition to English, although it is not an official language). The Law on the Use of Languages also makes reference to the constitution and states that the Albanian and Serbian versions are "equally authoritative".<sup>9</sup> This means that neither takes precedence over the other when it comes to interpretation.

Further improvements have also been made to the framework governing the legislative process in Kosovo. Following the 2011 adoption of a revised set of Rules of Procedure that govern the law-making process<sup>10</sup>, the government also approved the Regulation on Government Legal Service<sup>11</sup> and the Administrative Instruction on Standards for the Drafting of Normative Acts.<sup>12</sup> The Regulation outlines the steps to be taken in the law-making process while the Administrative Instruction aims to unify the style of drafting laws. Moreover, both the Regulation and the Administrative Instruction reiterate the legal requirement that all draft normative acts must be available in Albanian and Serbian.<sup>13</sup> Additionally, in 2016, the government adopted the Regulation on Minimum Standards for Public Consultation Process which requires public consultations to be conducted on policy and legislative initiatives in the official languages.<sup>14</sup>

### b. *Decentralized Monolingual Drafting Model*

Legislative drafting is decentralized in Kosovo, with each government ministry sponsoring draft legislation related to its portfolio. All laws in Kosovo are currently, de facto, initially drafted in the Albanian language and then translated into Serbian, either by in-house translators or by contracted third party translation companies.<sup>15</sup>

<sup>8</sup> Article 22 of the constitution of Kosovo (Direct Applicability of International Agreements and Instruments) states that the following international human rights instruments are directly applicable in Kosovo: Universal Declaration of Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; International Covenant on Civil and Political Rights and its Protocols; Council of Europe Framework Convention for the Protection of National Minorities; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, 15 June 2008.

<sup>9</sup> Law No. 02/L-37 on the Use of Languages, Articles 2 and 5, as promulgated by UNMIK Regulation No.2006/51, 20 October 2006.

<sup>10</sup> Regulation No. 09/2011, of Rules and Procedure of the Government, 7 September 2011.

<sup>11</sup> Regulation No.13/2013 on Government Legal Service, 17 June 2013.

<sup>12</sup> Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, 17 June 2013.

<sup>13</sup> Article 14(1), Regulation No.13/2013 on Government Legal Service and Article 4(1.7), Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts.

<sup>14</sup> Regulation (GRK) No. 05/2016 on Minimum Standards for Public Consultation Process, Article 4 (1.2), 13 May 2016.

<sup>15</sup> This information is based on interviews conducted with representatives of government ministry legal departments, the Legal Office of the OPM, the OLC, the Assembly, and KIPA as well as representatives from the civil society platform CiviKos carried out in November and December of 2016.

Each ministry, as well as the Office of the Prime Minister (OPM), has translators and interpreters on staff, but their work consists primarily of non-legal translation. Therefore, no interpreters at the ministry level are solely tasked with the work of legal departments.

After a draft law is translated and public consultations have been completed, a revised draft is then submitted to the OPM, which must conduct a final review to ensure that the draft is consistent with constitutional and legal provisions as well as drafting standards and that versions in both official languages exist.<sup>16</sup> The draft law is then tabled for approval by the cabinet of the government, after which it proceeds to the Assembly.<sup>17</sup> Once the law is in final form, it is then voted on at the plenary session by members of the Assembly. The Assembly then sends the law to the President for promulgation. After promulgation, the final law is published in the Official Gazette, at which point it enters into force. The quality of drafting and translation therefore depends on the capacity of each ministry – and, in cases of amendments, the capacity of the Assembly.

There are no established guidelines that set out either standard translation for legal terms or a translation process that ensures accuracy in drafting and translation of laws.<sup>18</sup> The purpose of the Administrative Instruction on Standards for the Drafting of Normative Acts is “to define and unify standards for the drafting of normative acts”.<sup>19</sup> However, poorly drafted and translated laws continue to be distributed, which suggests that this Administrative Instruction is not being followed. No effective mechanism is in place to ensure consistency between official language versions of draft laws. The absence of such a mechanism perpetuates errors throughout the process of approval of a draft law by the government and the Assembly.

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<sup>16</sup> Article 15(1), Regulation No.13/2013 on Government Legal Service; and Article 42, Regulation No. 09/2011 of Rules and Procedure of the Government.

<sup>17</sup> Rules of Procedure of the Assembly of Kosovo, 29 April 2010.

<sup>18</sup> See the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation, 2015.

<sup>19</sup> Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts, 17 June 2013.

## CHAPTER 2: TRANSLATION ERRORS AND CORRECTIONS

### **a. Mistakes and their Impact in the Law and Justice Sector**

Errors in translation of laws make the application of the law by judges and courts more challenging, and reduce predictability in the legal framework. Since Kosovo has two official languages, it is imperative that laws are consistent in both, because in cases of conflict between the languages, there is no superior version.<sup>20</sup>

In order to illustrate the types of discrepancies observed in the legal framework, the official language versions of the following nine laws were assessed in 2016 by the OSCE for the purpose of this report:<sup>21</sup>

- *Law No. 03/L-199 on Courts;*
- *Law No. 05/L-032 on amending and supplementing the Law No. 03/L-199 on Courts;*
- *Law No. 04/L-149 on Execution of Penal Sanctions;*
- *Law No. 04/L-015 on Witness Protection;*
- *Law No. 2004/32 Family Law of Kosovo;*
- *Law No. 2004/26 Law on Inheritance in Kosovo;*
- *Law No. 03/L-10 on Notary;*
- *Law No. 04/L-002 on amending and supplementing the Law No. 03/L-010 on Notary;*  
and
- *Law No. 04/L-017 on Free Legal Aid.*

The assessment identified 162 minor and 49 substantive mistakes in the translated Serbian language versions of the above-mentioned laws.<sup>22</sup> Minor mistakes included lexical or spelling errors, or letters or words missing in the Serbian language version. These are the most common types of errors and they diminish the overall quality of the draft, even though they may not substantially impact interpretation.

<sup>20</sup> Law No. 02/L-37 on the Use of Languages, Article 5.

<sup>21</sup> The OSCE notes that certain laws were reviewed and language discrepancies were identified in a 2016 policy brief conducted by the Platform for Analysis and Research AKTIV & CPT. This platform analysed the Kosovo constitution and eight other laws mostly related to the rights of non-majority communities in Kosovo and identified approximately 4,220 translation errors. These included logical, lexical, orthographical, spelling and grammatical errors; words that were left out of the translations, and words that were translated in other similar languages to Serbian, such as Croatian. The OSCE did not review these laws. The policy brief is available at: <http://www.ngoaktiv.org/uploads/files/Policy%20Brief%20-%20Quality%20of%20Translation%20of%20Kosovo%20Laws%20into%20Serbian%20Language.pdf> (accessed on 07 June 2018).

<sup>22</sup> Note that the list of identified mistakes is based on the OSCE internal assessment of these nine laws and is not exhaustive. The focus of the assessment was on substantive errors.

Substantive mistakes on the other hand do alter the meaning. They create confusion and uncertainty in the legal framework. These include instances where an incorrect word is used to relay meaning, entire sentences are missing or incorrectly translated, or even where sanctions or time periods for exercising rights are different in the two language versions of laws. Examples include, but are not limited to:

- In the Law on Notary, the term “notarized deed” (in Albanian “dokument i noterizuar”) is wrongly translated into Serbian as “contract” or “agreement” (the term used in Serbian is *ugovor* but the correct term would be “*overena isprava*”). There is a legal distinction between a “notarized deed” and a “contract” or “agreement” which is lost between the two official versions.<sup>23</sup>
- The title of Article 191 of the Law on Execution of Penal Sanctions reads “Suspension of execution of sentence” (English), “Pezullimi i ekzekutimit të dënimit” (Albanian), and “Odlaganje izvršenja kazne” (Serbian). The term “suspension” (English) and “pezullim” (Albanian) is not equivalent to the term “odlaganje” (Serbian). The Serbian version “odlaganje” means “postponement” in English and Albanian. There is a significant distinction between “suspending a sanction” (as it reads in the English and Albanian versions) and “postponing” one (in Serbian version) and this distinction is also blurred in the title of this Article due to the discrepancy between the two official language versions.<sup>24</sup>
- In the Law on Courts, certain words that exist in the Albanian language version of the Law were not translated at all into the Serbian language version. For example, in Article 12(2), the Albanian version states that each branch of the basic court shall have one supervising judge “*ka një (1) Gjyqtar Mbikëqyrës*”, while these words are absent from the Serbian version of the Law.<sup>25</sup>
- In the Serbian language version of the Law on Inheritance, the period within which an estate must be settled is five years. In the Albanian language version, the period expires after three years.<sup>26</sup>

These persistent errors indicate a need for greater effort to implement the legal framework, including establishing mechanisms to ensure quality control throughout the legislative process. This would create more clarity in the legal framework and strengthen compliance with the Law on the Use of Languages.

### **b. Obstacles to Correcting Mistakes in Laws**

There is currently no streamlined process for correcting language mistakes in promulgated laws in Kosovo. Any corrections must be drafted as amendments to current legislation and go through the standard drafting process from the proposing institution, to approval by the government of Kosovo and then to the Assembly for a vote (if needed). However, this process is unwieldy, and a straightforward process to correct simple errors would be more efficient. On December 2017, the Government of Kosovo approved the draft Law on Legal Acts, expected to be adopted by the Assembly during the course of 2018, which foresees,

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<sup>23</sup> For example, see the Law on Notary/03/L-10, Art. 3.

<sup>24</sup> Law No.04/L-149 on Execution of Penal Sanctions, Article 191.

<sup>25</sup> Law No. 03/L-199 on Courts, Article 12.

<sup>26</sup> Law No. 2004/26 on Inheritance in Kosovo, Article 101.

among others, a streamlined approach to correcting the mistakes in existing legislation. A correction mechanism as foreseen in the draft Law would provide a legal basis for correcting already existing mistakes. Having a system of corrigenda in place is not unique and, for example, the EU deals with its language corrections by simply publishing its corrections, or *corrigenda*, to already-adopted legislation.<sup>27</sup> These corrections are made through a streamlined process that does not require full institutional scrutiny like the original legislation, thus facilitating the efficient correction of errors in laws.

## CHAPTER 3: CHALLENGES TO BILINGUALISM IN THE LEGISLATIVE DRAFTING PROCESS

### a. Shortcomings at the government Level

In Kosovo's de-centralized legislative drafting model, each ministry has in-house translators that are responsible for all translation related work but are not necessarily trained to translate legal documents. Most of the work of government translators involves non-legal documents and communications, and the capacity of the translators is limited. There are between two and five translators in each ministry, with at least one responsible for translating into the Serbian language. The number of translators is not reflective of the legislative workload demands of each ministry. Ministries often outsource their translation work to third-party translation companies. For example, between 2012 and 2016, the MoJ sponsored 32 laws.<sup>28</sup> In that same period the MLGA sponsored only one law. Despite this, MLGA has three translators for the Serbian language alone and two more, whilst the MoJ only has a total of two translators.<sup>29</sup>

The Office of the Language Commissioner (OLC) has published a comprehensive report titled "Monitoring and Evaluation of Language Rights in Kosovo," which highlighted existing weaknesses in the implementation of language rights in Kosovo, including issues with the current translation model.<sup>30</sup> In the report, the OLC also raised concerns regarding the absence of native Serbian speakers in government translation units, because "in general terms, translators or interpreters ideally work into their mother tongue".<sup>31</sup> Only three out of the approximately 20 translators in the ministries have degrees in the Serbian language, and none of these three are based in the MoJ or OPM, where the vast majority of laws are drafted, reviewed and finalized for government approval.

The OLC reported challenges in recruiting qualified language professionals into the central level. One reason cited by the OLC was salary, which is reportedly "slightly lower than

<sup>27</sup> Joint Declaration on Practical Arrangements for the Co-decision Procedure (Article 251 of the EC treaty) (2007/c 145/02) page 5 at paragraph 49. See also Legislative Drafting: A Commission Manual (1997). Available at [http://ec.europa.eu/smart-regulation/better\\_regulation/documents/legis\\_draft\\_comm\\_en.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/legis_draft_comm_en.pdf) (accessed on 07 June 2018).

<sup>28</sup> Based on OSCE's review of publicly available information.

<sup>29</sup> Interviews with Legal Department of MoJ held on 26 October 2016, and with Legal Department of MLGA held on 18 October 2016.

<sup>30</sup> Office of the Language Commissioner, "Monitoring and Evaluation of Language Rights in Kosovo", 2015. Available at [http://www.komisioneri-ks.org/repository/docs/Anglisht\\_Finale\\_160315.pdf](http://www.komisioneri-ks.org/repository/docs/Anglisht_Finale_160315.pdf) (accessed on 07 June 2018).

<sup>31</sup> Ibid, p. 60.

standard, in relation to the high workload and responsibilities of the concerned position.”<sup>32</sup> The OLC also identified capacity and capability issues between translators and has recommended that the government create a central translation cell. According to the above-mentioned OLC report, a central translation cell would reduce overall costs and increase quality by bringing together all of the government’s translation capacity.

The absence of qualified translators is exacerbated by a lack of office resources, such as dictionaries or legal dictionaries, online tools that could improve accuracy and consistency, or, most significantly, uniform guidelines in place to ensure a systematic approach to translating and finalizing laws and legal documents.<sup>33</sup> Despite almost all of those interviewed indicating that they have noticed problems with the translation of laws, including discrepancies between language versions, the outlined challenges remain.<sup>34</sup> On a positive note, one of the problems noted in the OLC report has been addressed at the time of reporting. On 3 November 2017, the government established the Committee on analysing the need to establish the Central Translation Unit.<sup>35</sup> At the time of publication of this report, the Committee has held three working group meetings and will recommend creating a legal basis for establishing the Central Translation Unit within the Office of the Prime Minister.

#### ***b. Shortcomings at the Assembly Level***

Translation mistakes in draft laws are not systematically corrected at the Assembly level, although there are several mechanisms through which this could occur.

Within the Assembly, there is the Committee on Rights, Interests of the Communities and Return (the Committee), which is broadly responsible for reviewing draft laws for their compliance with the rights and interests of communities.<sup>36</sup> That Committee could note errors in draft laws, and call for corrections to be made. The Assembly also has its own translation and legal standardization units. These mainly deal with drafts and amendments to laws initiated by the Assembly itself, not those initiated by the government. These units, too, could note errors in draft laws, and call for corrections to be made. Unfortunately, in practice, neither the Committee nor the translation or standardization units review draft laws for language compliance before they are tabled at the Assembly. Therefore, any errors in the draft laws during the government adoption stage persist through to the Assembly reading stage.

Once those draft laws, along with any errors they might contain, are tabled at the Assembly, they are read and voted on by the elected deputies, some of whom are Serbian speakers. This constitutes an opportunity for elected representatives to scrutinize draft legislation before it becomes law. However, it is specifically within the responsibility and mandate of

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<sup>32</sup> Office of the Language Commissioner, *Monitoring and Evaluation of Language Rights in Kosovo* (2015) at pages 56 and 57.

<sup>33</sup> According to representatives of MTI, MPA, MoJ, MLSW, MLGA and MCR. One such online tool that can be utilized is SDL Trados, which is currently used by the Ministry of European Integration in the process of translating the European *acquis* into Kosovo’s official languages.

<sup>34</sup> Based on interviews conducted with the legal offices of the OPM, MTI, MoJ, MLSW, MLSG and the MCR.

<sup>35</sup> See the Government Decision No.05/12, date 03 November 2017. Available at: [http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet\\_e\\_Mbledhjes\\_së\\_12-të\\_të\\_Qeverisë\\_së\\_Republikës\\_së\\_Kosovës\\_2017.pdf](http://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_Mbledhjes_së_12-të_të_Qeverisë_së_Republikës_së_Kosovës_2017.pdf).

<sup>36</sup> The rights and interests portfolio of this Committee might reasonably include language issues. See Article 69 and Annex No. 2 of the Rules of Procedure of the Assembly - Available at [http://www.assembly-kosova.org/common/docs/Rr\\_K\\_RK\\_29\\_04\\_2010\\_2.pdf](http://www.assembly-kosova.org/common/docs/Rr_K_RK_29_04_2010_2.pdf) (accessed on 07 June 2018).



those in the Committee to review draft laws for compliance. It is here where the Assembly has a lost opportunity—once the text is with the Assembly at the reading stage, the deputies who are members of the Committee should intervene where a draft law is not in compliance with the Law on the Use of Languages and the legal framework.

After a law has been voted on, the Directorate of Legal Standardization, Alignment and Harmonization, which is within the Assembly administration, is responsible for sending all the laws to the President for promulgation. This Directorate is responsible, among other things, for ensuring “linguistic standardization (correct translation)”<sup>37</sup> of all draft laws that are adopted in the Assembly. Additionally, the Directorate for Linguistic Services is mandated with editing all Assembly documents, including draft laws. Despite this, draft laws containing mistakes continue to be sent to the Office of the President for promulgation. The OSCE interviewed the Assembly Director of Legal Standardization, Alignment and Harmonization, who indicated that the Directorate suffers from a significant lack of financial and human resources – it has no lawyers who are also linguists, and the translation of laws is only possible through tendering procedures that also require hiring the lowest-cost bidder, which often brings poor results.

Furthermore, the Director noted that the deputies from the communities in a numerical minority, who might be expected to bring substantial expertise, never raise language issues. These Assembly members are native speakers, if not experts in all subject matter. Their active review of the legislation on which they vote is crucial both for linguistic coherence and consistency. Ultimately, the engagement of these representatives is a vital factor in ensuring equal access to justice for their community.

### ***c. The role of the Office of the Language Commissioner in Overseeing Bilingualism in Kosovo***

In 2007, the Language Commission was established by the government following the promulgation of the Law on the Use of Languages.<sup>38</sup> Its mandate was to monitor the implementation of the law, preserve, promote and protect official languages and their equal status in Kosovo as well as to provide and protect the languages of communities whose mother tongue is not an official language.<sup>39</sup> Subsequently, the government issued a Regulation establishing the OLC, and in December 2012, appointed Kosovo's first Language Commissioner.<sup>40</sup>

Under its founding Regulation, the OLC is responsible for supervising the implementation of the Law on the Use of Languages and preserving, promoting and protecting the use of official languages of Kosovo.<sup>41</sup> However, despite this responsibility, the Office of the

<sup>37</sup> Unofficial OSCE translation of the Regulation on the Organization and Responsibilities of the Administration of the Assembly (September 2013), reference to Article 12(b). Note that this Regulation is not publicly available and exists only in Albanian.

<sup>38</sup> See Article 32 of the Law on the Use of Languages, as promulgated by UNMIK Regulation No.2006/51, 20 October 2006.

<sup>39</sup> OPM website, Mandate of Office of the Language Commissioner, available at: <http://kryeministri-ks.net/en/the-prime-minister-office/offices/office-of-the-language-commissioner/> (accessed on 7 June 2018).

<sup>40</sup> See Regulation 07/2012 for the Office of the Language Commissioner, available at: [http://kryeministri-ks.net/repository/docs/Rregullore\\_Nr.07\\_2012\\_per\\_Zyren\\_e\\_Komisariatit\\_per\\_gjuhet.pdf](http://kryeministri-ks.net/repository/docs/Rregullore_Nr.07_2012_per_Zyren_e_Komisariatit_per_gjuhet.pdf) (accessed on 7 June 2018). Though the Language Commission still exists under the law, its role and mandate has been subsumed by the OLC.

<sup>41</sup> Article 16 of Regulation 07/2012 for the Office of the Language Commissioner.

Language Commissioner has indicated that it is currently not consistently engaged during the legislative process, and is not regularly consulted on legislation by the government.

## CHAPTER 4: PRACTICES FROM OTHER JURISDICTIONS

### **a. Models and Challenges**

In order to assess the current drafting process in Kosovo and ascertain good practices that could be followed, research and analysis was conducted into other bilingual or multilingual jurisdictions. There is no guaranteed formula for achieving true parity between official language versions of laws. The EU follows a sophisticated translation model, with a large, dedicated translation team, systematic drafting style and mainstreamed drafting and translation. The Canadian model, which is limited to bilingualism, champions true co-drafting between French and English speaking lawyers, specializing respectively in the civil and common law traditions. Switzerland manages three official languages through an extensive and also sophisticated process engaging linguistic and legal terminology specialists throughout the process. These examples indicate that preparing equal versions of laws in multiple languages is a complex process that requires a robust structural system in place and qualified staff to execute it. However, these are also only three of the examples of language compliance in legislative drafting and represent some of the highest standards in accomplishing this. These successful models should be seen as examples by Kosovo institutions in their efforts to achieving bilingualism in Kosovo legislation.

### **b. European Union**

Within the EU, the European Commission is the primary institution responsible for proposing legislation. At the Commission level, draft legislation is prepared in one language by the relevant Directorate-General (DG). The final text is then translated into the other 23 official EU languages.

Within the Commission, this is done under the authority of the DG for Translation. In certain cases, the legal revisers in the Legal Service of the Commission check for consistency of legal meaning between the languages prior to its adoption by the Commission and submission to the Parliament and the Council.<sup>42</sup> Before an act is put before the plenary of the Parliament, lawyer-linguists of the Parliament and of the Council, as well as technical experts, work together to finalize the text, and then to translate the final amended text.<sup>43</sup>

This final text then undergoes a final revision meeting attended by representatives from Member States, the Parliament, the Council, and the Commission, lawyer-linguists representing each official language and other experts, co-ordinators and relevant officials.<sup>44</sup> Here the text is reviewed in the different languages and inconsistencies are

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<sup>42</sup> Sub-chapter 1.2 of Drafting European Union Legislation, Note 2012 – Available at: [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI\\_NT\(2012\)462442\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI_NT(2012)462442_EN.pdf) (accessed on 7 June 2018).

<sup>43</sup> Sub-chapter 1.3 of Drafting European Union Legislation, Note 2012 – Available at: [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI\\_NT\(2012\)462442\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI_NT(2012)462442_EN.pdf) (accessed on 7 June 2018).

<sup>44</sup> Ibid.

addressed. Subsequently, the final text is distributed to the Council's lawyer-linguists who review it again in their respective language and provide any final revised versions back to the Parliament for a final check.<sup>45</sup> Through this extensive model and the use of highly trained staff, the EU manages to produce quality legislation in all of its languages.

### **c. Canada**

Canada, like Kosovo, has two official languages - French and English. Both are of equal legal standing. Legislation is drafted centrally in Canada by the Department of Justice, Legislative Services Branch (the LSB), which drafts bills and regulations at the request of departments and agencies. The branch also publishes acts in the Canada Gazette and consolidates acts and regulations onto the Justice Law's Website. The LSB is bilingual and employs mechanisms of co-drafting and extensive review processes to ensure the highest quality legislative texts.<sup>46</sup>

The LSB works through a co-drafting legislative model: French- and English-language legislative counsels work together as a team to simultaneously draft bills or regulations. This eliminates the time required for translation and ensures that both language versions are of equal quality. Throughout the process, advice may be sought with respect to linguistic aspects of the drafts. Once a draft is finalized, a threefold revision process is carried out to enhance its quality. The revision team includes lawyers, editors and lawyer-linguists. The revision process ensures linguistic adequacy and equivalence in both official language versions.<sup>47</sup> This extensive co-drafting process utilized by Canada ensures the highest quality language texts are produced and that the guarantee of equality between the two official languages is respected by the legal framework. Both the English and French versions of a law or regulation are equally authoritative and both are to be consulted when undertaking statutory interpretation.

### **d. Switzerland**

Under Switzerland's constitution, German, French and Italian are official languages and all laws are published in those languages. The three official languages have equal status before the law, and as a result, Switzerland undergoes significant investment in order to ensure harmony in its trilingual legal system. Additionally, certain laws are published in the Romansh language, which is a national language but does not have the status of an official language. Though most laws are drafted first in German, some laws are initially drafted first in French or Italian. The Internal Drafting Commission, which is composed of lawyers and linguists from the three linguistic regions, is responsible for reviewing legislative acts in order to determine whether they meet editorial quality during the course of translation.

Since draft normative acts can be initiated by different entities, there are several translation services that translate draft normative acts. Services within the Federal Chancellery (the body responsible for federal administration), the Internal Drafting Commission, or the

<sup>45</sup> Ibid.

<sup>46</sup> Legislative Services Branch Evaluation at p. iii. 2013. Legislation Services Branch Evaluation at <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/13/lb-dsl/p2.html> (accessed on 7 June 2018). ; see also "Bilingual Drafting in Canada" by Lionel A. Levert (former Chief Legislative Counsel in Canada) (1995).

<sup>47</sup> Ibid.

Parliament's Drafting Commission will revise the initial translation, depending on the origin of the draft. The Parliament's Drafting Commission thus completes the work of the Internal Drafting Commission by making sure that amendments suggested to the original text during legislative debates have equal meaning in all languages. Put differently, this Commission checks the wording of the legal texts and decides on the final versions in all official languages to be voted on by the Parliament.

Translation itself may happen either sequentially or simultaneously. Most often, draft normative acts are prepared in one language and translated into the other official languages during the consultation phase by the Internal Drafting Commission.<sup>48</sup>

The Internal Drafting Commission submits drafts of important normative acts through a co-drafting procedure whereby the three language versions are drafted simultaneously. Other normative acts go through a standard drafting procedure and the translations are then subjected to a concordance review. The Parliamentary Drafting Commission continues the work of the prior commission and is also ensuring that translations of these amendments have equal meaning in all languages. This commission is made up of three subcommittees, each representing one of the official languages, which review and finalize the draft normative acts for adoption.

Uniformity across translations is ensured by the Swiss Terminology Service, which is responsible for developing terminology and maintaining it in an online database.

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<sup>48</sup> With special thanks to the Embassy of Switzerland in Prishtinë/Priština for their assistance in providing the information used herein (interview held on 2 February 2017, with subsequent written information provided by the Embassy). See also: "Document Quality Control in Public Administrations and International Organizations: Best Practices and Recommendations" by Paola Migliore (2015).

## CONCLUSION

In the ten years since the Law on the Use of Languages was passed, progress has been slow but steady. In 2015 all but three draft legislative initiatives were made available in both official languages during the public consultation phase of the legislative process, and since 2016, all were made available in both official languages. This progress is not insignificant, and must be recognized.

Nevertheless, shortcomings in the implementation of the Law on the Use of Languages continue to undermine the legal framework, therefore legislative initiatives continue to be translated poorly in the absence of resources and a sufficient number of trained and dedicated translation staff. There is no systematic proofreading of draft laws or regular involvement of lawyers in the process of finalizing the official language versions. Moreover, while there are some mechanisms in place requiring consistent drafting and oversight, in practice these are not followed and need to be strengthened, responsibilities of the government and Assembly clarified and implemented. These and other deficiencies have been repeatedly noted by the OLC, civil society, the OSCE and other international stakeholders.

Implementation of the Law on the Use of Languages is crucial to integration of all members of Kosovo society. Legal acts are central to the protection of rights and should be exact in the official languages. Shortcomings at the government level include the lack of capacity, resources and training of existing translators, and the inefficient distribution of those translators throughout the government is a major impediment to achieving correct translations. This is exacerbated by shortcomings at the Assembly level, which amplify the absence of clear responsibilities and co-ordination within the government for establishing and implementing a process of proofreading through their own lack of quality control and quality assurance mechanisms. Both the government and the Assembly have areas of responsibility and mechanisms in place that should be used to strengthen the language quality of legislation in the official languages. Ultimately, greater commitment and effort are needed by both these institutions to ensure that the legal framework is linguistically uniform.

It should be noted that the principal lesson that can be learnt from Switzerland, Canada and the EU is that there is no "one-size-fits-all" solution. However, the office that arguably has the most relevant expertise in the structure of government is the Office of the Language Commissioner. It is vital that the Language Commissioner be consistently engaged during the legislative process, and regularly consulted on legislation by the government. The role that should be played by the Language Commissioner is to determine what quality control and assurance mechanisms are appropriate to guarantee compliance with the Law on the Use of Languages, given the resources available to the task; and to recommend measures to set those mechanisms in place.

## RECOMMENDATIONS

### **To the government, Office of the Prime Minister, ministries and the government committee on analysing the need to establish the Central Translation Unit:**

- Keep working to establish a centralized and specialized translation unit for the purpose of translation of legislation, in order to create a unified translation force within the government. This can result in more efficient use of existing translation staff, a reduction in outsourcing costs and more consistent translation across institutions.
- When addressing the issues cited herein, assess the costs of potential solutions to ensure that the result is not only functional, but also efficient, sustainable and realistically affordable, in order to ensure proper implementation.
- Lobby for adoption of the draft Law on Legal Acts to address deficiencies in the legislative process. This draft law would provide a streamlined process for correcting language mistakes in existing legislation and establish a process for rectifying mistakes in draft laws before they are adopted. This will allow the efficient correction of language errors in the current legal framework, which will reduce confusion in the future.
- Direct the Language Commissioner to determine what quality control and assurance mechanisms are appropriate to guarantee compliance with the Law on the Use of Languages, given the resources available to the task; and to recommend measures to set those mechanisms in place.
- Adopt new guidelines on translation and implement the existing guidelines on drafting normative acts. There is an absence of guidelines for translators. Unified drafting should be promoted and required in legal texts and translation should be clear and accurate. Further guidelines and instructions are necessary in order to unify the translation process across ministries. Moreover, the current Administrative Instruction on Drafting Normative Acts is not consistently utilized and should be properly implemented.
- Establish a process of systematic proof-reading and reviewing of legal texts prior to tabling draft legislation for government adoption. This can be done by establishing an editing section within the OPM with competence based in law to proof-read and correct typographical mistakes. Similar mechanisms exist in Canada,<sup>49</sup> and the EU. This will reduce the number of discrepancies in laws and ensure higher-quality legal texts in both official languages.

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<sup>49</sup> Government of Canada, Canada Gazette Directorate Mandate – Available at <http://www.gazette.gc.ca/cg-gc/lm-sp-eng.html> (accessed on 7 June 2018); see also Agnieszka Doczekalska, Equality of Languages – Available at: [www.krytykaprawa.pl/fulltxt.php?ICID=1087821](http://www.krytykaprawa.pl/fulltxt.php?ICID=1087821) (accessed on 7 June 2018).

- Include the OLC in the distribution list for internal consultations on draft legislation, and once the government Rules of Procedure<sup>50</sup> are to be amended, include the OLC. This will support the implementation of the Law on the Use of Languages and the guarantees of the constitution related to language rights.
- Address language deficiencies in draft laws, including by accepting language corrections received during the public consultation process.
- Improve the capacity and resources of translators working on draft laws. This can be done by actively recruiting translators and lawyer-linguists with Serbian as a mother tongue, or with established fluency in Serbian, and rolling out bilingual dictionaries and online translation tools and training to all translators.

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<sup>50</sup> Regulation No. 09/2011, of Rules and Procedure of the Government, 7 September 2011 – Available at: [http://www.kryeministri-ks.net/repository/docs/RREGULLORE\\_E\\_PUNES\\_SE\\_QEVERISE\\_SE\\_REPUBLIKES\\_SE\\_KOSOVES\\_NR\\_09\\_2011.pdf](http://www.kryeministri-ks.net/repository/docs/RREGULLORE_E_PUNES_SE_QEVERISE_SE_REPUBLIKES_SE_KOSOVES_NR_09_2011.pdf) (accessed on 7 June 2018).

### **To the Assembly and its deputies:**

- Native Serbian speakers should actively read and review legislation. Their active engagement in legislative review is key to ensuring quality, consistency, and coherence.
- Strengthen the implementation of the current legal framework to ensure that legal acts are thoroughly reviewed and corrected in both official languages before they are finalized. This review can be done by the translation unit, ensuring also that it is equipped with capable, trained staff, and with translation tools.
- The Committee on Rights, Interests of the Communities and Return should review all draft laws for language compliance<sup>51</sup>, and should advocate with other functional committees for enhanced compliance. Committee staff should focus on ensuring language consistency across language versions of legislative texts.

### **To the Kosovo Institute for Public Administration:**

- In co-ordination with the Legal Office of the Office of the Prime Minister, develop a legislative training programme for existing translators that trains them on legal terminology in the official languages, and with the structure, content and terminology of legislative texts and the applicable administrative framework.
- Work with the OLC on recruiting qualified translators and training them; this may involve, *e.g., inter alia*, recruiting and training new translators by developing specialized translation training programmes with a focus on legal terminology which can be provided to individuals who already have Serbian language skills or are native Serbian speakers, but lack the formal training to work as translators.
- An accreditation system for translators should be implemented.

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<sup>51</sup> Rules of Procedure of the Assembly, 29 April 2010. See p. 45, Annex No.2 states that the scope of work of this committee includes "reviewing draft laws for their compliance with the rights and interest of communities", available online: [http://www.kuvendikosoves.org/common/docs/Rr\\_K\\_RK\\_29\\_04\\_2010\\_2.pdf](http://www.kuvendikosoves.org/common/docs/Rr_K_RK_29_04_2010_2.pdf) (accessed on 7 June 2018).





