Legal Recognition of Public Documents Issued in the Republic of Kosovo in Bosnia and Herzegovina: Normative Challenges and Practical Consequences

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I. Introduction

Public documents play a crucial role in the exercise of both personal and other rights of individuals. The procedure for recognising foreign public documents issued in most countries of the region in Bosnia and Herzegovina has been considerably simplified. In addition to the application of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention), Bosnia and Herzegovina has concluded treaties on international legal assistance in civil matters with countries in the region. On the other hand, the recognition of foreign public documents issued in the Republic of Kosovo is virtually impossible. Although a large number of individuals originating from the Republic of Kosovo reside in Bosnia and Herzegovina, and a significant proportion of them have acquired citizenship of Bosnia and Herzegovina over time, the recognition of public documents issued in Kosovo is regulated de iure but remains unattainable de facto.

II. Breach of Treaty Obligations by Bosnia and Herzegovina

Bosnia and Herzegovina, became a contracting party to the Apostille Convention through succession on 29 August 1993. The Republic of Kosovo, on the other hand, became a party to the Apostille Convention by signing it on 6 November 2015 and ratifying it on 14 August 2016.

Pursuant to Article 12 of the Apostille Convention, when a new state accedes to the Convention, existing Contracting States have the right to raise an objection to its accession within six months of receiving notification thereof. If such an objection is raised, the Convention does not establish treaty obligations between the objecting state and the newly acceding Contracting State.

Despite the fact that Bosnia and Herzegovina and the Republic of Kosovo have not established diplomatic relations, and that the official position of Bosnia and Herzegovina remains that it does not recognise Kosovo's independence, Bosnia and Herzegovina did not raise an objection within the six-month period prescribed by the Convention. Nor did it submit any reservations, diplomatic notes or declarations indicating that it did not wish the provisions of the Convention to apply to public documents issued in Kosovo. It therefore follows that the competent authorities of Bosnia and Herzegovina knowingly accepted the treaty obligations arising from the provisions of the Apostille Convention in relation to Kosovo.

III. Examination of Civil Registry Offices in Bosnia and Herzegovina – An Overview of Administrative Practice

All five civil registry offices examined, four from the Federation of Bosnia and Herzegovina and one from Republika Srpska, stated that they had not recognised marriage or birth certificates issued in Kosovo. In its decision dated 25 December 2024, the Department for General Administration and Common Affairs of the City of Tuzla stated that it had not registered, and does not register, civil status information on the basis of certificates issued by the authorities of the Republic of Kosovo due to the absence of diplomatic relations.

The Department for General Administration of the Municipality of Novo Sarajevo, in its decision dated 13 October 2024, stated that, in addition to the absence of diplomatic relations, the civil registry office does not recognise public documents issued in the Republic of Kosovo because such documents cannot be considered duly legalised under Articles 54 and 55 of the Law on Civil Registers of the Federation of Bosnia and Herzegovina and paragraph 135 of the Instructions on Maintaining Civil Registers in the Federation of Bosnia and Herzegovina.

Such an interpretation by the civil registry offices is incorrect for several reasons.

Paragraph 135(b) of the Instructions on Maintaining Civil Registers in the

Federation of Bosnia and Herzegovina provides that:

> *… if an extract from a civil register issued by a foreign authority originates from a state that is a signatory to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents – The Hague, 5 October 1961 ('Official Gazette of the SFRY – Supplement', No. 10/62 and 'Official Gazette of the SFRY – International Treaties', No. 10/62), the legalisation of such an extract shall be carried out by means of an Apostille certificate prescribed in the Annex to that Convention, …*

The absence of diplomatic relations between states that are contracting parties does not constitute grounds for refusing to recognise a public document issued by the competent authorities of one of those states, provided that the document meets all the requirements prescribed by the Apostille Convention. This interpretation follows from the official handbook of the Hague Conference on Private International Law concerning the application of the Apostille Convention, which states:

> *Apostilles issued in accordance with the requirements of the Convention must be recognised in the State in which they are to be used. Apostilles may only be rejected if and when their origin cannot be verified …*

IV. District Court in Banja Luka, Bosnia and Herzegovina

Interestingly, a different approach is taken regarding the recognition of judicial decisions rendered by courts in Kosovo. Unlike public documents, judicial decisions are not subject to categorical refusal of recognition; instead, they are examined in accordance with the applicable law.

In its official correspondence, the District Court in Banja Luka stated that, by Decision No. 11 0 V 035551 23 V of 25 April 2024, it recognised a foreign judicial decision, namely the judgment of the District Court in Gjilan of 18 November 2004, which became final on the same date and dissolved the marriage between the parties concerned. Consequently, the judgment produces legal effects and its enforceability is established in Bosnia and Herzegovina, and it constitutes a valid document for registration in the civil registers.

Such an approach by the courts raises the question of the legal provisions or

powers on the basis of which administrative authorities act differently. If a court considers a recognised judgment to constitute a valid document for registration in the civil registers, the significance of the court's lawful approach is undermined in circumstances where executive authorities, namely administrative bodies, fail to deal appropriately with such documents.

V. Conclusion

The process of recognising public documents issued by the institutions of Kosovo represents one of the more complex legal issues in Bosnia and Herzegovina. A detailed interpretation of the provisions of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, together with the absence of mutual reservations or objections between the Contracting Parties, establishes an obligation on the part of Bosnia and Herzegovina to apply the ratified Convention in relation to the Republic of Kosovo as an equal contracting party to the Hague Convention.

Accordingly, giving precedence to domestic legislation over the provisions of the Convention in matters concerning the recognition of Kosovo public documents constitutes an incorrect application of private international law. evertheless, such an approach has been adopted by the competent authorities in Bosnia and Herzegovina.

Finally, it is necessary to emphasise that the inability to obtain recognition of Kosovo public documents in Bosnia and Herzegovina entails direct violations of certain fundamental human rights. In Bosnia and Herzegovina, the European Convention on Human Rights has constitutional force. The status of the ECHR within the legal system further reinforces the importance of respecting the human rights guaranteed by the Convention. The inability to legalise public documents such as birth certificates, marriage certificates, driving licences and similar documents in Bosnia and Herzegovina prevents citizens of Kosovo from enjoying the rights guaranteed by
the Convention, which must be available to all individuals within the territory of Bosnia and Herzegovina as a contracting party to the European Convention on Human Rights.