

DREJTËSIA SOT

Justice Today Snapshot Analysis **(June 2019 – September 2019)**

Fading into obscurity.

A SNAPSHOT ANALYSIS OF THE RECENT DEVELOPMENTS IN THE JUSTICE SYSTEM OF KOSOVO



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FADING INTO OBSCURITY. A SNAPSHOT ANALYSIS OF THE RECENT DEVELOPMENTS IN THE JUSTICE SYSTEM OF KOSOVO

INTRODUCTION

Judicial system stands as the most pivotal pillar of a democratic society. A transparent, accountable and an efficient judiciary fosters the protection of human rights and a fair and effective access to justice by its citizens.

Nepotism, judicial bias, law violations by judges and prosecutors, lengthy procedures in resolving targeted corruption and organized crime cases, groundless withdrawal of indictments, lighter and no sentencing on high profile corruption cases, are just a few characteristics that continue to hamper the judiciary of Kosovo. What is more, Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC), as the key institution responsible to oversee the independence, impartiality and efficiency of the judicial and prosecutorial system, have not always been successful on completing their duties as required by the Constitution and laws in force.

Group for Legal and Political Studies (GLPS)¹ through its platform 'Justice Today' during June – September 2019, has closely monitored institutions which hold the responsibility of ensuring that the judiciary branch maintains and promotes a standard which serves justice to all citizens of Kosovo and upholds the respect for human rights, guaranteed by the Constitution and European Convention for Human Rights.

More specifically, Justice Today has closely monitored the overall work of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) which consists of close monitoring of their sessions and policy making processes, recruitment processes of judges and prosecutors, possible abuses of their official duties, undertaken disciplinary measures against judges and prosecutors who have conducted violations during their exercise of duty, treatment of targeted corruption and organized crime cases.²

Moreover, Justice Today has closely monitored court hearings of all courts across Kosovo, specifically departments which deal with serious crimes, corruption and organized crime. Justice Today has made sure to put the spotlight on high profile cases of corruption which require immediate action by Kosovo's judicial institutions.³

¹ Group for Legal and Political Studies (GLPS) is an independent, non-partisan and non-profit public policy organization based in Prishtina, Kosovo.

² GLPS has developed a product called 'Justice Today' under the support of the UK Ministry of Foreign Affairs through its Embassy in Prishtina, which provides detailed, credible and first-hand information focusing specifically on all corruption, organized crime and high profile/landmark court cases.

³ The daily reports of the monitoring activities are published in GLPS's platform ROLPIK/Drejtësia Sot, <http://www.rolpik.org/>

This snap shot presents the first analysis of some of the high-profile cases handled by courts and prosecutors in Kosovo. It also presents the actions that the KJC and the KPC as constitutional institutions have failed to take in ensuring and overseeing the independence, impartiality and efficiency of the judicial and prosecutorial system.

1. KOSOVO JUDICIAL COUNCIL

1.1 The Process of Appointment of Special Department Judges

1.1.1 Obscure Appointment of Special Department Judges: A process hidden away from public eye.

The Special Department has been established on July 2019, through the law No. 06/L – 054 on Courts, within the Basic Court of Prishtina and Court of Appeals, as a need to increase efficiency in combating corruption and organized crime.⁴

The Special Department of the Basic Court of Prishtina and the Court of Appeals has the power to try cases that fall within the competence of the Special Prosecution Office.⁵ Meanwhile, Article 4 of the Law No. 03/L-052 on the Special Prosecution Office of the Republic of Kosovo (SPRK) defines the exclusive competence of the SPRK to investigate and prosecute organized crime, extending the jurisdiction of this Prosecution throughout the territory of the Republic of Kosovo.⁶ In other words, the Special Department of the Basic Court of Prishtina and Court of Appeals has the exclusive competence to try cases of organized crime throughout the territory of Kosovo.

KJC on July 2019 has appointed nine (9) judges in the Special Departments; six (6) judges on the Special Department within the Basic Court of Prishtina and three (3) judges on the Special Department of the Court of Appeals.⁷ Given the sensitivity and nature of the scope of work of this department and the role of the appointed judges on trying high profile cases of organized crime, Justice Today has deemed it necessary that the appointment process must be monitored closely.⁸ Despite the continuous request sent by Justice Today to monitor the process of appointment of judges in this department, KJC decided to keep the civil society organizations away from this process. Moreover, the KJC never announced to the public the methodology used on electing the appointed candidates.

⁴ The Assembly of Kosovo, Law No. 06/ L-054 on Courts, Article 13 and Article 24, available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

⁵ Id at article 18.

⁶ The Assembly of Kosovo, Law No. 03 / L-052 on the Special Prosecution Office of the Republic of Kosovo

⁷ Justice today, “ Emerohen udheheqesit e Departamentit Special ne Gjykatën Themelore/ Heads of the Special Department are Appointed at the Basic Court of Prishtina”, (01.08.2019) Available at: <http://www.rolpik.org/emerothen-udheheqesit-e-departamentit-special-ne-gjykatën-themelore-ne-prishtinë-dhe-gjykatën-e-apelit/>

⁸ Justice Today, Press Release, (05.08.2019), available at: <http://www.rolpik.org/komunikate-per-media/>

Consequently, Justice Today has sent a request for access to public documents requesting access to the documents/methodology used in order to assess the competency and professionalism of the candidates for such positions.⁹ However, KJC has remained silent and has not reply to the request submitted by Justice Today. In addition, KJC has not shared any information on the selection process and the methodology of selecting short-listed candidates.¹⁰ It must be noted that the category of data requested by Justice Today does not constitute confidential information but it is considered to be public information. Such action undertaken by KJC calls into question on the real motives for this closed-doors process to the public eye.

With such an act, KJC has seriously violated the principle of transparency and accountability under which this process should have taken place. One should consider that in a process of appointing judges in a department that will treat sensitive cases of organized crime, public scrutiny is a necessity to prevent abuses and arbitration during the appointment procedure.

Currently, Justice Today has filed a lawsuit against KJC for violating the Law No. 03/L-215 on Access to Public Documents. It is to be seen how the Administrative Department of the Basic Court of Pristina will try this case and if our judicial system provides the right means to ensure that the right to access public documents is not violated by an institution mandated from the Constitution to oversee and manage the work of the judiciary in Kosovo.

1.1.2 Violation of the merit-based principle: Appointment of judges without merit.

According to the article 30 of the Law No.06/L-054 on Courts, to serve as a judge in the Special Department, the candidate should meet the conditions to work as a judge in the Serious Crimes' Department and have a positive assessment of the performance.

Given that KJC has not approved Justice Today's request for public information and due to the lack of transparency that has followed this process, the only public information according to the appointed judges is general information provided on court's webpage and information found and reported by the media. According to Justice Today's preliminary evaluation on the profile of the appointed judges based on the public information, it leads to the conclusion that KJC has appointed a number of judges who have failed to meet the requirements stated in the law and regulation. Based on the judges' information provided on court's webpage, judges that have never tried a high profile case or a case which falls in the competence of the serious crimes department have been appointed.¹¹ This information suggests that some of the judges, if not all of them, have not fulfilled the conditions to be appointed as a judge in the Special Department, yet KJC has continued with their appointment.

⁹ Id.

¹⁰ Id.

¹¹ Koha.net, 'Rastet me te renda ne dore te gjyqtareve te zgjedhur ne mjegull/ The high profile cases are to be tried by judges appointed with lack of transparency', (09.09.2019), Available at: <https://www.koha.net/arberi/183192/rastet-me-te-renda-ne-dore-te-gjyqtareve-te-zgjedhur-ne-mjegull/?fbclid=IwAR1xAKQltrbDi7kl2yl-zvOUzChog9vK3kx1eTaN9kXdKdVHXQoxdzRXi-l>

The seriousness and importance of the cases that fall within the competence of the Special Departments, require superb experience and professionalism. In line with this, Article 5 of the Regulation on the Organization and Functioning of the Special Department within the Basic Court of Prishtina and the Court of Appeals states that among many conditions to work as a judge in the Special Department, the judge must also show proven capacities for legal reasoning.¹² Therefore, for the judges to perform their duties accordingly, Justice Today maintains that the KJC should have analyzed their past verdicts in order to assess their proven capacities on legal reasoning which is a necessary precondition given the importance and sensitivity of the cases that the Special Departments will handle.

1.2 Impunity by the KJC to judges proven to have violated the law.

A judge's duty as interpreters and dispensers of justice is to act fairly and impartially, and render verdicts in accordance with the law and in good faith. Professional ethic and accountability of judges in Kosovo is regulated through the Code of Professional Ethic for Judges, Law on Kosovo Judicial Council and Law on Disciplinary Liability of Judges and Prosecutors and the Regulation.

One of the most serious measures that the KJC could take is to propose to the President the dismissal of judges after a final court sentence has been issued for the conviction of a judge or prosecutor. However, in many cases as follows, the KJC has not taken any action against judges who allegedly committed violations in the exercise of their duties and who in the course of their duties violated the substantive criminal law.

Such an action of the KJC represents the total failure and negligence of this institution against the violations established by the Supreme Court of criminal and substantive law. We remind that the KJC is the only institution with the power to discipline judges in the Republic of Kosovo. Moreover, the KJC has a key role in ensuring a fair, independent and impartial judiciary, and any failure to take concrete action in this regard seriously damages the judicial system and the well-being of all citizens in the country.

1.2.1. Issuance of unlawful judicial decisions.

The Kosovo Criminal Code (CCRK) and the European Convention provide that the issuance of unlawful judicial decisions constitutes a criminal offense punishable by effective imprisonment.¹³ Unfortunately in Kosovo, in a large number of cases, judges issue final judgments that are flagrant abuses of the law. So far, KJC has taken no measures to address the violations of judges during court proceedings that have been upheld by Supreme Court decisions in the case of Mr. Emin Beqiri (PML-no.341 / 2018) and Mr. Sali Mekaj (PML.nr.36 / 2019). At the same time, the decisions of both cases which were considered to be in violation of the substantive criminal law are decisions taken by Judges Fillim Skoro and Driton Muharremi, judges of the Judicial Panels of the Court of Appeal in the two concrete cases.

¹² Kosovo Judicial Council (KJC), Regulation no. 03/2018 on the Organization and Functioning of the Special Department within the Basic Court of Prishtina and the Court of Appeals, Article 5.

¹³ Assembly of Kosovo, Criminal Code of the Republic of Kosovo NO. 06/L-074425, article 425.

'Salih Mekaj' case

Mr. Salih Mekaj, former President of the Court of Appeals has been charged with the offense of abusing official position or authority from Article 422, Organized crime from Chapter XXIV of CCRK. During the course of the proceedings, the Prosecution had amended the indictment to have it reinstated the criminal offense from Article 422 for Abuse of Official Position or Authority to Exercise in Influence defined by Article 431 Par.1. of the CCRK. The former President of the Court of Appeals was suspected of being involved in the judicial assignment of two court cases and the legal redress of criminal offenses in these cases. The Basic Court in Pristina acquitted the former President of the Court of Appeal, Mr. Salih Mekaj and the other defendants on the grounds that according to the findings of the first instance court, and subsequently substantiated by the second instance, the contacts of the defendant Salih Mekaj with the defendant V.G. had not presented a criminal offense but a violation of the Code of Ethics. While those with Judge L.M. were allowed because the President of the Court of Appeal has a duty to take an interest in the cases in which custody is prolonged. The prosecutor filed an appeal to the Court of Appeals which upheld the judgment of the Basic Court and found Mr. Sali Mekaj and others not guilty.

In this judgment, the Court of Appeal held that the impugned judgment did not identify any substantial violations of the provisions of criminal procedure. Also, according to this court, the factual situation is correctly and fully established, and consequently there is no violation of criminal law.

Consequently, the prosecutor of the case filed a Request for the Protection of Legality to the Supreme Court of Kosovo. The Supreme Court has found that Mr. Sali Mekaj was acquitted of the charges with legal violations. According to the Supreme Court, the judgment of the Basic Court of Prishtina and the judgment of the Court of Appeals, in the part pertaining to defendant Mr. Salih Mekaj for the criminal offense 'the exercise of influence', are involved with violations of criminal law.¹⁴ Nevertheless, no further actions have been taken either for the Supreme Court nor the Court of Appeals, so the later re-tries the case.

So far, KJC has taken no measures to stop these illegal practices of judges leaving them unpunished, even though the Supreme Court ruled that they violated criminal law. For this reason, Justice Today finds that the KJC should take specific measures against the participating judges in issuing unlawful judgments in the case. The KJC is an institution mandated by the applicable laws as the authority competent to discipline judges in such cases. Therefore, the failure of the KJC to take concrete steps and initiate disciplinary proceedings against judges who have ruled in this case is a failure of the entire justice system to combat high-profile crime and corruption.

Rasti 'Emin Beqiri'

In this criminal case, the Special Prosecution filed an indictment against Mr. Emin Beqiri, a former Chief of Economic Crimes Department in Kosovo's Police. He was charged with three criminal offenses; (1) abuse of official position or authority under Article 422.1 CCK, (2) obstruction of probation under Article 394 par.2 CCK and (3) failure to report criminal offenses or their perpetrators under Article 386 par.2

¹⁴ Supreme Court Verdict in *Sali Mekaj's Case* (June 2019); Press release, (24.96.2019), available at: <https://kallxo.com/uncategorized/gjykatesit-qe-e-liruan-sali-mekajn/>

regarding par.1 of the CCK. Mr. Rrahim Hashimi was also accused in this case. Through this indictment, he was charged with two criminal offenses; (1) the exercise of influence under Article 431 par.1 of the CCK and (2) ongoing fraud under Article 335 par.1 of Article 81 of the CCK. The lawyers of the defendants filed their objections with the Basic Court of Pristina against the indictment, and the court on 25.06.2018, rejected their requests for dismissal of the indictment and the objection to the evidence.

However, things changed when the Court of Appeal, deciding on the appeals of the defendants' defense filed against the Basic Court ruling, upheld the claims of the defense of the defendant Emin Beqiri. In this way, the Court of Appeal, through this decision, reversed the first instance ruling, so that the defendant Emin Beqiri dropped the indictment for the criminal offenses as above and thereby terminated the criminal proceedings against him. All of these actions were justified by the fact that according to this court there was insufficient evidence to support a well-grounded suspicion that he had committed the criminal offenses he was suspected for. By the same ruling, the Court of Appeal, acting ex officio and ruling on the appeal of Rrahim Hashimi's defense counsel, quashed the first instance ruling and remanded the case for retrial.

In retrial, the Basic Court of Pristina, by a ruling, again rejected the request of the defense counsel of Rrahim Hashimi to drop the indictment and challenge the evidence against him. The defendant's lawyer Rrahim Hashimi filed an appeal with the Court of Appeal against this ruling of the Basic Court. This appeal was partially upheld by the Court of Appeal by a decision dated 21.09.2018, so that the Court of Appeal, ex officio, had reversed the first instance decision by approving the defendant's request for protection. . By this ruling, the Court of Appeal terminated the criminal proceedings for the criminal offense of Influence on the ground that it was not established that he had committed the offense. Whereas, for the criminal offense of ongoing fraud the defense appeal was rejected and the procedure was continued with the scheduling of the main trial.

In the present case, we are dealing with two judgments of the Court of Appeal of Kosovo, which terminated criminal proceedings against two defendants Emin Beqiri and Rrahim Hashimi. Respectively, with the impugned decisions, the Court of Appeal dismissed the indictment against Emin Beqiri on the ground that there was insufficient evidence that he had committed these criminal offenses and, by a ruling dated 21.09.2018, the Court of Appeal on the grounds of same as against defendant Emin Beqiri, has terminated the procedure for Rrahim Hashimi for the criminal offense of exercise in influence.

Against these rulings, the State Prosecution has filed a request for protection of legality based on Article 438 par.2 of the Code of Criminal Procedure of Kosovo.

So the Basic Court of Pristina ruled against the defendants and found them guilty. But defendant Emin Beiqri filed a complaint. The Court of Appeal upheld the appeal of Emin Beqiri's defense lawyer, and reversed the ruling of the Basic Court in Pristina dismissing the indictment against Beqiri and terminating the criminal proceedings against him. Rrahim Hashimi, Court of Appeal, remitted the case for retrial to the Basic Court in Pristina.

The Supreme Court of Kosovo, based on the Request for Protection of Legality, filed by the State Prosecutor, against the rulings of the Basic Court of Prishtina, and the Court of Appeals, found that both Courts have violated the criminal law in favor of the defendant.

KJC on both of these cases has failed to take measures against judges who issued verdicts who contain violations of the law. Such practices of impunity jeopardize the public trust in judicial institutions and the role of KJC on performing judicial inspection.¹⁵

However, similar to Mecaj's case, the KJC did not take any measures on judges who issued unlawful judgments. As a result of these impunity practices, the same judges are still part of the system. They were not given any disciplinary action and are still part of the judicial panels in the Court of Appeal. Such a practice of impunity, installed by the KJC, clearly demonstrates the neglect and failure of the KJC to address the essence of the problem of the justice system that of impunity for organized crime and corruption.

2. KOSOVO PROSECUTORIAL COUNCIL

2.1. KPC' violations of legality during the appointment processes.

2.1.1. Unlawful appointment of Acting Chief Prosecutor of Basic Prosecution in Prishtina: Breach of the regulation in force.

Justice Today has closely monitored the process of appointment of Chief Prosecutors of the relevant prosecutorial units in Kosovo, including the appointment of Chief Prosecutor of the Special Prosecution and the Acting Chief Prosecutor of the Basic Prosecution in Prishtina.

Law No.06/L –056 on Kosovo Prosecutorial Council (Law on KPC), foresees that KPC is a constitutional body that independently decides on the appointment of Chief Prosecutors of Basic Prosecutions, Special Prosecution and Appellate Prosecution.¹⁶ As a result of the legal gaps in the Law on KPC, the appointment procedure of Chief Prosecutors is only regulated by the secondary legislation which has been amended several times in the last few years.¹⁷ Amending and adopting new regulations has become a practice which has caused legal uncertainty and has significantly affected the appointment procedures for the key positions in the judiciary branch.

¹⁵ The Assembly of Kosovo, Law No.06/L-057 on Disciplinary Liability of Judges and Prosecutors, available at: <http://gzk.rks-gov.net/ActDetail.aspx?ActID=18336>

¹⁶ Assembly of Kosovo, Law No. 06/L –056 on Kosovo Prosecutorial Council.

¹⁷ Assembly of Kosovo, Law no. 06/L-056 on Kosovo Prosecutorial Council, former amendments of the law, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2709>

On 2016, KPC has adopted the Regulation No. 08/2016 Chief Prosecutors Appointment (The 2016 Regulation).¹⁸ The later has been amended twice during 2019 (the first amendment happened just before the call for appointment of Chief Prosecutors was opened).¹⁹

It must be noted that one of the reasons why the 2016 Regulation had to be changed was the necessity to reflect the spirit of the Constitutional Court of Kosovo Decision KI34/17 ('Daka' case).²⁰ In this regard, the 2016 Regulation did not provide to all candidates the right to be treated fairly and equally by the Evaluation Panel (a body established by KPC) which generates the power to qualify and disqualify the candidates based on the points given by this panel. Therefore, a new regulation had to be drafted by KPC in order to comply with the principles decided on the 'Daka' case.

While the Regulation 2016 was on the process of being amended, the Chief Prosecutor of Basic Prosecution of Prishtina, Mr. Imer Beka retired on June 15, 2019 and consequently the Basic Prosecution of Prishtina was left without a Chief Prosecutor. As agreed upon before, KPC had taken the decision to pause the process of appointment of Chief Prosecutors until the new regulation would be adopted. Hence, KPC appointed the Acting Chief Prosecutor disregarding the provisions of the Regulation in force at the time. At the 168th KPC meeting, the Chairman, Mr. Hyseni, recommended prosecutor Kujtim Munishi, as Acting Chief Prosecutor of the Basic Prosecution of Prishtina and KPC approved it. At the time of the appointment, Mr. Munishi was the head of the Serious Crimes Department in the Basic Prosecution of Prishtina.²¹

The Regulation No.01/2019 on the amending of the regulation No.08/2016 on Chief Prosecutors Appointment (the regulation has been amended again on 1st of August 2019), provided for the options to be followed when a prosecutorial unit is left without a Chief Prosecutor. Article 14 of the Regulation No.08/2016 clearly states that the Chief Prosecutor of the respective Prosecution unit shall assign in the position of his/her, the Deputy Prosecutor, who shall replace the Chief Prosecutor when the latter is absent. Furthermore, it specifies that the mandate of the deputy chief prosecutor will proceed for no longer than three months.²²

¹⁸ Kosovo Prosecutorial Council (KPC), Regulation No. 08/2016 on Chief Prosecutors Appointment.

¹⁹ Kosovo Prosecutorial Council (KPC) Regulation No.01/2019 on Amending and Supplementing Regulation No. 08.2016 on the Chief Prosecutors appointment, and Regulation 06/2019 on the appointment of Chief State Prosecutor and Chief Prosecutors of prosecutions of Republic of Kosovo, Chief Prosecutors, available at: <http://kpk-rks.org/legjislacionii/302/rregulloret-2019/302>

²⁰ The Constitutional Court decision (KI34/17), where the Constitutional Court ruled to annul KJC's decision on the appointment of Mr. Enver Peci as the President of the Supreme Court of Kosovo because it found that the voting mechanism implemented by the KJC for the candidates to nominate a candidate for the position of President of the Supreme Court has not provided the necessary measures to guarantee sufficient implementation of the principles of equality, transparency and openness during the voting process. As a result of this wrong voting process and incoherent, all candidates were placed in a position of legal uncertainty, inequality and unmerit selection, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=14804>

²¹ Justice Today, Press Release, (07.06.2019), available at: <http://www.rolpik.org/raporti-i-takimit-te-168-te-te-keshillit-prokurorial-te-kosoves/>

²² Regulation No. 08.2016 on the Chief Prosecutors Appointment, article 14.

Moreover, in the light of the legal maxim "*Lex posteriori derogate lex apriori*"²³, the 2016 Regulation continued to remain in force until the new regulation was to be adopted. At the time of the appointment of the Acting Chief Prosecutor (June 2019), the adoption of the new regulation was postponed, therefore the Regulation 08/2016 on Chief Prosecutor Appointment continued to remain in force.²⁴

Therefore, in the case beforehand, KPC has completely disregarded the regulation in force since it appointed Mr. Kujtim Munishi as Acting Chief Prosecutor regardless of the fact that Mr. Kujtim Munishi did not hold the position of Deputy Chief Prosecutor but the position of the Head of the Serious Crimes Department. What is more, Mr. Imer Beka's deputy was the prosecutor Ibrahim Berisha.²⁵ As provided by the regulation in force, the next in line for the position of Acting Chief Prosecutor would have legally been Mr. Ibrahim Berisha. By appointing Mr. Munishi as the Acting Chief Prosecutor, KPC has entirely disregarded the regulation which at the time was in force. As a result of the decision of KPC, Mr. Ibrahim Berisha, the Deputy Chief Prosecutor who according to the regulation was the right candidate for the position, filed a claim against the KPC's decision. The case is still ongoing.

Justice Today concludes that the appointment of Mr. Kujtim Munishi by KPC was unlawful and in flagrant violation of the regulation No. 08/2016 on Chief Prosecutor's Appointment. The appointment of Mr. Munishi is preserved with great reservation by the public given that in 2017, Mr. Munishi has unlawfully closed the investigation on the Chief State Prosecutor, Mr. Alekander Lumezi, which puts into question the real motives behind his appointment as the Acting Chief Prosecutor of the Basic Prosecution in Pristina.

2.2 KPC's failure to protect and ensure prosecutors' independence: The 'Veterans' Case

Article 3 of Law no. 06 / L-056 on the Kosovo Prosecutorial Council determines that the KPC is the institution responsible for ensuring an independent, professional and impartial prosecutorial system. Also, the same article stipulates that the KPC acts in a way that respects and safeguards the independence of prosecutors while they perform their prosecutorial functions. Consequently, the KPC is the institution responsible for the safety of each prosecutor in the performance of his or her work. Unfortunately, the case discussed below shows the failure of the KPC and the negligence applied by this institution to the prosecutor who investigated the case known as 'Veterans' and qualified as the largest post-war case.

On 13 August 2018, the Special Prosecutor of the Republic of Kosovo, Mr. Elez Blakaj resigned from his position as prosecutor on the grounds that his resignation was due to political pressure and constant threats during the investigation of the case known as 'Veterans'. This case is considered to be one of the

²³ "A later law repeals an earlier (law)."

²⁴ At the time of the appointment of the Acting Chief Prosecutor of the Basic Prosecution of Pristina, the Regulation No. 08/2016 – on the Chief Prosecutors Appointment had been amended on February 2019. However, article 14 of the Regulation which foresees the process of assignment of Deputy Chief Prosecutor has remained unaffected by the amendment. Therefore the appointment of the Acting Chief Prosecutor had to be based on the 2006 Regulation.

²⁵ Justice Today, "Prokurori Kujtim Munishi vazhdon te mbetet ushtrues detyre i Kryeprokurorit te Prokurorisë Themelore ne Prishtine/ Prosecutor Kujtim Munishi Remains the Acting Chief Prosecutor of Basic Prosecution of Prishtina", (04.07.2019), available at: <http://www.rolpik.org/prokurori-kujtim-munishi-vazhdon-te-mbetet-ushtrues-detyre-i-kryeprokurorit-te-prokurorisë-themelore-ne-prishtine/>

most sensitive cases in the territory of the Republic of Kosovo as it involves high profile persons. Among them are former KLA war commanders and persons holding senior state positions in Kosovo. The same had made it public that during the investigation phase of the 'Veterans' case, where the accused are Agim Ceku, Nuredin Lushtaku, Sadik Halitjaha, Shkumbin Demaliaj, Qele Gashi, Shukri Buja, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, he and his family have consistently been threatened. The same has stated that his work has been attempted to be influenced by war veterans, Aleksandar Lumezi and the Prime Minister of Kosovo, Mr. Ramush Haradinaj.

Unfortunately, as noted above, the KPC has failed in its primary role. The KPC has also failed to secure the independence of prosecutors in exercising their profession in the present case. Also, the failure to take concrete measures against persons reported to have interfered with the work of the resigned prosecutor clearly shows the KPC's negligence in combating crime and corruption. Moreover, the same in its inaction has created a conducive environment for such crimes by sending messages of impunity to offenders and messages of non-support for the work of courageous prosecutors.

Such an action has damaged and still continues to damage the entire justice system in Kosovo, namely the prosecutorial system, as no action has yet been taken to resolve the allegations and allegations raised by Prosecutor Blakaj of interfering with his work. The Chief State Prosecutor, Mr. Aleksandar Lumezi and the Prime Minister of Kosovo, Mr. Ramush Haradinaj. It is worth noting that the inclusion of these figures or the opening of investigations and the conduct of proceedings against them, without prejudice to their guilt, would send a clear message to the readiness of the Republic of Kosovo's prosecutorial system to combat crime and corruption.

2.3 Appointment of Chief Special Prosecutor and Basic Prosecution in Pristina

Justice Today has monitored the process of establishing the legislative basis for the appointment of chief prosecutors of prosecutorial units and the Chief State Prosecutor. Although we consider that the KPC has opened a channel of consultation with civil society through several meetings during the drafting of the substantive documents, we consider that a final conclusion on the integrity of the process of selecting chief prosecutors should be made only after it has been completed, not at this stage.

3. MONITORING THE WORK AND EFFICIENCY OF COURTS AND PROSECUTION OFFICES

3.1. Targeted cases of corruption and organized crime remain unpunished.

A significant number of targeted cases of corruption and organized crime on the resolution of which the visa liberalization process depends, remains an issue of concern. Court procedures in such cases experience long delays that are hampering the process of resolving the backlog of these cases. In this regard, lack of professionalism of prosecutors and judges are prolonging the process of resolving these cases with a final verdict. In many instances, prosecution and courts selectively address high profile cases. Most of times the prosecution rests and no hard evidence nor witnesses are proposed and presented

before the court of law, such as in *Pronto* case. We must bear in mind that there has been violation of the criminal law by granting impunity to persons who hold powerful positions in Kosovo.

Despite the indictments being filed, lack and very slow judicial and prosecutorial activities indicate that the high profile cases are being handled poorly. According to Justice Today's monitoring, in many cases the criminal reports are filed over two years before the indictments are raised, which according to the Criminal Code of Kosovo, constitutes a flagrant violation of the investigation deadline. This, according to the Criminal Code of Kosovo, constitutes a flagrant violation of the timing of the investigation. This is precisely evidenced by the Supreme Court's decision in Mr. Mentor Shamolli (PML, no. 154/17). Moreover, in some high profile cases such as *Sali Mekaj and Emin Beqiri's* cases, the Court of Appeals dismisses the indictments against the defendants, only for the Supreme Court to find the verdicts of the Court of Appeals in violation of the criminal law.²⁶

Justice Today has monitored a significant number of high profile cases of corruption and organized crime. The cases presented below reflect the cases of highest profile, which have been monitored during the period of June – September 2019.

Pronto case (PKR.nr.90/18).

On the occasion of the publication of some wiretaps in the online newspaper "Insajderi", as well as on the basis of the EULEX Memorandum dated 05 August 2016, which states that the wiretaps published by the online newspaper "Insajderi" are the basis for the initiation of an investigation by the SPRK, the SPRK opened an investigation. Consequently, on 15 August 2016, it has been requested from EULEX to bring the interception CDs referring to Adem Grabovci, conducted in the course of an investigation by the EULEX Prosecutor. On 06.04.2018, after many delays, the Special Prosecution filed an indictment for violation of the equal status of citizens and residents of the Republic of Kosovo by Article 193 in conjunction with Article 28 of the CCRK against Defendants: former Deputy Adem Grabovci, former - Minister of Innovation Ministry Besim Beqaj, former deputy Zenun Pajaziti, two former secretaries-general Ilhami Gashi and Xhavit Dakaj, former deputy minister Fatmir Shurdhaj, political advisor at the Ministry of Internal Affairs Sadat Gashi, former director of the board of the public enterprise 'Radoniqi-Dukagjini' in Gjakova Ismet Neziraj, former director of the board of the public enterprise 'Hydro-Drini' in Peja Rexha Abazi, former Prizren Municipal Assembly Chairperson Nijazi Kryeziu and former Head of Supply Unit at the Ministry of Justice Arbenita Pajaziti.

This case addresses the issue of employment based on party affiliation and represents one of the largest scandals of corruption in Kosovo, which requires a high standard of professionalism and legal training. Unfortunately, this has not been applied so far.

First, the indictment filed in this case was initially addressed to the Serious Crimes Department of the Basic Court of Pristina. It was then decided that this case should be dealt with in the General Department of this Court. This action is said to have been taken to relativize the situation and to reduce the importance

²⁶ Verdicts of Supreme Court in *Emin Beqiri* and *Sali Mekaj* cases

of the crime. Then, based on the appeal by the Special Prosecution, the Court of Appeal ruled that the case should be dealt by Serious Crimes Department.

Secondly, at the hearing held on 21.12.2018, the prosecution of the case, Ms. Drita Hajdari, requested that the same be postponed as she had filed a request to initiate a disciplinary investigation against the Presiding Judge, Mr. Shasivar Hoti. It is noteworthy that even before this hearing, the hearings in this case had been adjourned as the prosecutor had requested the exclusion of Mr. Hoti from the panel, a request that was not approved. All of these requirements have contributed to the prolongation of court proceedings in this case. Moreover, the indictment does not mention any party injured by the crime allegedly consumed. Also, one of the procedural shortcomings that characterizes this case is the lack of prosecution witnesses so far.

Therefore, on the basis of the above facts, the prosecution in this case has shown a lack of professionalism in the execution of mandated duties. This situation will necessarily affect the delay of the case which will then be reflected in the final court decision.

Visa Case (PKR.nr.305/16).

The visa case refers to a special prosecution indictment accusing Uke Rugova, son of former President Rugova, of managing a criminal group during the period May 2011 to February 2014, supplying individuals with EU Schengen visas through the Embassy Italian in Pristina. All of these visas are suspected to have been obtained illegally through distortion and corruption. On 16.05.2016 the Special Prosecution filed an Indictment for Organized Crime (Participation or organization of a criminal group) with Article 283 par 1 of the CCK, in connection with the criminal offense of Smuggling of Migrants, with Article 170 par 1 of the CCK and the offense criminal Smuggling of Migrants (Fraudulent Travel Documents) Article 170 Paragraph 2 CCK and Unauthorized Ownership, Control or Possession of Weapons, Article 374 CCK against Defendants: Uke Rugova, Izet Beqiri, Florjan Petani, Kefser Baholli, Astrit Haraqiju, Fitim Beqiri, Azad Beqiraj, Liridona Beqiri, Kujtim Avdyllit, Ragip Gashi, Visar Beqiri, Hamza Beqiri, Azem Koskov, Edison Idrizaj, Beg Shaqiri, Hasan Shaqiri, Driton Vocas, Valon Selim, Valon Selim . The case was initially handled by EULEX prosecutor Allen Cansick, who noted that the Special Prosecution had received a copy of their visa file from the Italian Prosecutor's Office in Rome including the name of former Italian Ambassador to Kosovo Michael Giffoni. On January 2018 the case had been passed to local judges.

Like other high profile cases, this case is also characterized by a series of procedural violations. First, since the indictment was filed on 18.05.2016, pursuant to Article 242 point 4 of the Criminal Procedure Code of Kosovo, the single trial judge or presiding trial judge shall immediately determine the initial hearing, which shall be held within thirty (30) days after filing the indictment. This legal deadline has been repeatedly violated by a panel led by a EULEX judge. The first hearing in this case was scheduled on 25.08.2016, or over three months after the indictment was filed, which was then postponed several times.

Second, the last hearing in this case, following the confirmation of the indictment, was held on 22.11.2017. Until 14.06.2019, no further hearing was held, as according to the court, this case does not fall into the priority list of cases. On 14.06.2019, the main hearing against Uke Rugova and others is scheduled to take

place, but this hearing was not held because the accused Florjan Petani, Adem Koskoviku, Fadil Ahmeti, Hasan Shaqiri and Beg Shaqiri were absent. On 03.07.2019, a hearing was held on this case, where the proceedings against the first five (5) defendants in this case, Ukë Rugova, Izet Beqiri, Florjan Petani, Qefser Baholli, Astrit Haraqija was severed and the same indictment was read. Consequently, it can be concluded that the court has consistently overlooked the handling of this case, failing to consider the case as a priority for the court and failing to combat crime and corruption in Kosovo.

Land Case (PKR.nr.610/16).

This case addresses the Special Prosecution's claim that for the purpose of material gain, the accused persons have alienated socially owned lands in Veternik and Llapnasella. According to the indictment, they have corrupted people from the judiciary and municipal officials by making decisions on the basis of which they have forged documents by which they sold the plots to third parties.

On 24.10.2016 the SPRK filed an indictment against the defendants Azem Sylja, Shaban Sylja, Shpresim Uka, Fahredin Gashi, Ramadan Uka, Arton Vila, Avdyrrahim Brajshori, Gazmend Gashi, Sabedin Haxhiu, Nuhi Uka, Ilaz Sylja, Ljubisha Vujovic, Hajrullah Berisha for Participation in or organization of an organized criminal group from Article 283, par.1; Azem Sylja, Shaban Sylja, Shpresim Uka, Hajrullah Berisha, Ramadan Uka, Ljubisha Vujovic, Gazmend Gashi for Fraud from Article 335; Fahredin Gashi for Money laundering from Article 308, par.1; Azem Sylja, Shaban Sylja, Shpresim Uka, Hajrullah Berisha, Gazmend Gashi, Ramadan Uka for Issuing unlawful judicial decisions from Article 432, Abusing official position or authority from Article 422, par.1,; etc.²⁷

After more than two years of failed hearings, the first court hearing was held on June 2019 where the introductory speech of the prosecution and defendants were presented.²⁸ During this hearing, the state prosecutor mentioned the names of two witnesses, for whom there is no concrete decision or interpretation by the prosecution and the court as to whether they are protected or cooperative witnesses. At various stages of the proceedings as well as at various hearings held, these witnesses were addressed either as protected witnesses or as cooperative witnesses, which has created a great deal of confusion for both the public and the parties. Unfortunately, their names are already known to the public. Their publication is estimated to have seriously damaged the case even if they are protected witnesses. At the same time it has managed to prove the lack of coordination and preparation of the prosecution in dealing with the most important cases in Kosovo.

The next court hearing was then held in September 2019, but failed again, due to the absence of the lawyer of the defendant Gazmend Gashi. Whereas the hearing of 11.09.2019 was proceeded behind closed doors. The judge of the case, Beqir Kalludra, did not justify the closing of the hearing with a written ruling. It has only ordered that the room be vacated by all but the parties to the proceedings. The reason

²⁷ Justice Today, "Rasti Toka del para gjykates/ Land case is presented before the court", (25.06.2019), available at: <http://www.rolpik.org/rasti-toka-del-para-gjykates/>

²⁸ Id.

for the closure was cited only by the testimony of one of the key witnesses, for whom neither the court nor the prosecution clarified whether he is a protected witness or a cooperative witness.

Such practices created by the court on the one hand by closing hearings without a written ruling, and by the prosecution and lawyers on the other hand by publishing the names of cooperative witnesses, respectively by their non-presence at the hearings, completely degrade the justice system in Kosovo and violates any rule set for the protection of human rights in the country.

War Veterans case.

The details of this case have been explained above in the analysis, and what is worth analyzing is the fact that on 24.06.2019, the Special Prosecution Office proposed to suspend the payment of illegally obtained pensions until the end of the criminal proceedings. The Basic Court in Prishtina, by Ruling PKR.no.230 / 18, dated 26.03.2019, rejected this measure, thus demonstrating a lack of courage to deal with the prevention of damage to the Budget of the Republic of Kosovo, especially when it is related with powerful figures in the current context of Kosovo.

Curri case.

The suspects, Ismet Osmani 'Curri', Ilir Bojku, Mentor Maqani, Fadil Thaqi and Rrahim Hashimi known as "Curri" group, are still under investigation for the notorious case of operation "Dallga" which the defendants are suspected for usury, fraud and coercing. Besides their operation in Kosovo, this group is suspected to be involved in organized crime in Czech Republic as well. "Curri" case has caught the attention of the public provided the fact that members of this group are suspected of having strong links with Kosovo senior political figures. However, no indictment has been filed yet by the prosecution. The prosecutor of the case Mr. Armend Hamiti has requested from the Basic Court of Prishtina a pre-trial detention for the suspects, on the grounds that the suspects will destroy, hide, change or forge evidence of a criminal offence or specific circumstances by influencing witnesses, injured parties or accomplices. Consequently, on May 2019 the pre-trial judge of the Basic Court of Prishtina has ordered the detention for the period of one (1) month for the first four suspects and has denied the request for detention for the suspect Rrahim Hashimi.²⁹ However, on July 2019, The Basic Court in Pristina extended the detention for another two (2) months to the suspects Ismet Osmani "Curri", Ilir Bojku, Mentor Maqani and Adil Thaqi. On July 2019, the Court of Appeal of Kosovo decided upon the request of the defense counsels, by annulling and returning for consideration the decisions of the Basic Court of Prishtina for the continuance of the detention of the suspects dated on 17.07.2019 and 19. 07 2019, due to essential violations of the provisions of criminal procedure. According to the Court of Appeals' decision, the Basic Court did not pass legal threshold of sufficient reasons for the legality of the continuation and detention. According to the above, it still remains questionable on how the institutions will proceed to handle this case.

Shukri Buja case (PKR. 206/19).

²⁹ Indeksonline, Press release, available at: <https://indeksonline.net/gjykata-konfirmon-vendimin-per-currin-dhe-te-tjeret/>

On 13.02.2017, the SPRK filed an indictment against Shukri Buja, Nebih Zeqiri, Halit Gashi, Magbule Sadiku, Fahri Retkoceri, Hasim Vishesella, Edmond Rexhepi, Driton Avdiu, Burim Kodra, Bajram Rizani.³⁰ The Basic Court of Prishtina, with its decision PKR.nr.53 / 17 of 05.11.2018 found the accused Shukri Buja, Nebih Zeqiri, guilty of the offense of abuse of official position or authority by Article 422 par. 1 connected with Article 31 of the CCRK, as in point 1.4.1 of the enacting clause of the indictment, the accused Shukri Buja and Nebih Zeqiri, were found guilty of the offense of abuse of official position or authority by Article 422 par. 1 connected with Article 31 of the CCRK, as in point 1.4.2 of the enacting clause of the indictment, the accused Shukri Buja and Nebih Zeqiri, for the offense of abuse of official position or authority by Article 422 par. 1 connected with Article 31 of the CCRK, as in point 1.4.3 of the CCRK, the accused Shukri Buja, Nebih Zeqiri and Halit Gashi, have been found guilty of the offense of abuse of official position or authority by Article 422 par. 1 related to Article 31 of the CCRK, as in point 1.5 of the enacting clause of the indictment, the accused Hasim Vishesella and Edmond Rexhepi have been found guilty of the offense of abuse of official position or authority by Article 422 par. 1 of the CCRK, the accused Hasim Vishesella also for the criminal offense of bribery under Article 343 par. 1 of the CCK, as in clause 2.4 of the indictment and the accused Bajram Rizani, was found guilty of the offense of abuse of official position or authority by Article 422 par. 1 of the CCRK, as in the enacting clause 2.6 of the indictment. The Basic Court of Prishtina sentenced Shukri Buja with 3 years in prison, Nebih Zeqiri with 2 years and 6 months, Halit Gashi with 6 months in prison or a fine of 3.500 Euro, Edmond Rexhepi with 6 months in prison or a fine of 3.500 Euro, Hasim Vishesella with 5 months in prison or a fine of 2.900 euro, Bajram Rizani with 6 months in prison or a fine of 3.500 Euro.³¹

On 26.08.2019, the Court of Appeal, having examined all the documents in this case, examined the appealed judgment in accordance with the provision of Article 394 par. 1 of the Kosovo CPC, and after assessing the allegations set forth in the appeals, found that: The judgment contains substantial violations of the provisions of criminal procedure which condition its annulment and remanded the case of Shukri Buja and others for the offense of “Abuse of official position or authority”. This case is one of the many cases where Kosovo’s justice system fails to punish and convict strong political figures.

The aforementioned cases represent only a few relevant cases relevant to the fight against corruption and organized crime in Kosovo. Moreover, these cases clearly reflect how the justice institutions handle cases of great importance to the Kosovo integration process, namely the visa liberalization process.

³⁰ Shukri Buja, Nebih Zeqiri, Halit Gashi and Magbule Sadiku, are charged with the offense of abuse of official position or authority under Article 422 par. 1 of the CCRK, Fahri Retkoceri, for the offense of unlawful construction works under Article 349 (294) par. 1 of the CCK, and bribery under Article 429(344) par. 1 of the CCK, Shukri Buja, Hasim Vishesella and Edmond Rexhepi, for the offense of abuse of office or official authority by Article 422 par. 1 in conjunction with Article 31 of the CCRK and receiving bribes (usury) under Article 343 par. 1 of the CCK, Shukri Buja because of the criminal offense of exercising influence under Article 431(345) par. 1 of CCK, Driton Avdi and Burim Kodra for the offense of abuse of official position or authority under Article 422 par. 1 in conjunction with Article 31 of the CCRK.

³¹ Justice Today, “Kthehet ne rigjykim rasti I Shukri Bujes, ish-kryetarit te komunes se Lipjanit/ (26.08.2019), available at: <http://www.rolpik.org/kthehet-ne-rigjykim-rasti-i-shukri-bujes-ish-kryetarit-te-komunes-se-lipjanit/>

4. FILED INDICTMENTS ON HIGH PROFILE CASES OF CORRUPTION AND ORGANIZED CRIME

Justice Today during June – August 2019, has monitored the filed indictments on high profile cases of corruption and organized crime. It has also monitored other cases that fall in the competence of the SPRK.

It should be noted that the Special Prosecution has not filed an indictment against President Thaçi, who was allegedly abused public money to write and promote his autobiographical book. According to the Chief State Prosecutor, Mr. Lumezi, this case was investigated and closed by the prosecution in the absence of evidence. Furthermore, it is unknown whether the criminal proceedings against Nazim Sahiti, who is suspected of being involved in the attack on the head of the Post and Telecommunications of Kosovo (Vala), are ongoing. These two cases are an example of how the State Prosecutor's Office is failing to prosecute high-level crimes in Kosovo.

Moreover, unsubstantial and unclear indictments remain an issue of concern. According to the jurisprudence and the laws in force, the indictment must be concise and allege clear facts. There have been many cases where the prosecution fails to support the indictment with clear evidence. We have the case of Pronto, one of the highest profile cases of corruption, where the prosecutor has failed to present relevant evidence against the defendant.³² Her lack of professionalism was pointed out by the presiding Judge, Shamsivar Hoti a fact which will easily affect the entire case.³³

A positive aspect of the work of the State Prosecutor has been the indictment filed for the criminal offense of money laundering where the indictment was filed on August from SPRK prosecutor, Atdhe Dema against the defendants Ramadan Mavraj, Muharrem Mavraj, Flamur Mavraj, Xhelal Kastrati, Valdet Muriqi, Rexhë Kastrati. There is yet to be seen how the court will try such a sensitive case where the accused are known as beneficiaries of public tenders/funds.³⁴

Moreover, during June, July and August 2019, the SPRK has filed only one indictment against 19 persons on organized crime and one indictment on money laundering against 6 persons. In addition, the Basic Prosecution of Prishtina during June, July and August 2019 has filed 2 indictments against 4 persons for abusing official position and authority from article 422 of CCRK, and one indictment for misappropriation in office from Article 418 of the new CCRK. Furthermore, the Basic Prosecution of Prizren during June, July and August 2019 has filed 5 indictments for abusing official position and authority from article 422 of CCRK. On the other hand, the Basic Prosecution of Gjiilan, the Basic Prosecution of Ferizaj, the Basic Prosecution of Gjakova and the Basic Prosecution of Peja have not filed any indictments regarding these criminal offenses for the reported period.

³² Justice Today, "Prokuroria nuk propozon asnje deshmitare ne rastin *Pronto*/ Prosecution does not propose any witness in the *Pronto* case", (26.06.2019), available at: <http://www.rolpik.org/prokuroria-nuk-propozon-asnje-deshmitare-ne-rastin-pronto/>

³³ Id.

³⁴ Koha.net, 'Te akuzuarit per shperlarje parash perfitues te tendereve publik', (22.08.2019), available at: <https://www.koha.net/kronike/180320/te-akuzuarit-per-shperlarje-parash-perfitues-te-tendereve-publik/>

Statistically speaking, according to the above, there is a small number of indictments on high profile cases and the filed indictments need to be of better quality and cases must be better presented before the court of law. A number of indictments against senior officials have been filed, however in the past it has been shown that many of these indictments are dismissed by the court, often due to lack of evidence or professional nature of the indictment.³⁵ In many instances, they do not include all the elements provided by the Code of Criminal Procedure by reflecting a lack of professionalism in elementary terms.

There are cases where the indictment goes to the first hearing, however in many high profile cases the prosecution after filing the indictments withdraws from it.³⁶ For instance in the case of the member of the parliament Mr. Pal Lekaj and the former head of Kosovo Intelligence Agency (KIA) Mr. Driton Gashi, the prosecution withdrew the indictment against the defendant without a valid reason, after the beginning of the trial. In order not to repeat the aforementioned cases, the prosecution should treat the high profile indictments with seriousness, impartiality and courage.

5. Legal and Technical Violations by the Courts during trials.

Justice Today has closely monitored court sessions in all basic courts of Kosovo and the Court of Appeals in Pristina for the purpose of identifying shortcomings in the justice system and call to attention the issues which are hampering the justice system. The list below shows identified technical and law violations by judicial actors within the Basic Court of Pristina, for the period June – August 2019, identified by Justice Today's field monitors.

Violations of the criminal procedure law by judges during court hearings: There are many cases of violations of criminal procedure law by judges during court trials. It has been reported that in many instances the indictment was not read to the accused, which is a flagrant violation of the law. In the high profile "Land" case, the special prosecutor Mr. Naim Abazi has conducted a blatant violation of the criminal procedure law, by mentioning the names of the two protected witnesses,³⁷ an error which can put the protected witnesses in danger and seriously hamper the progress of the case. Moreover, another problem is the lack of coordination between judges and prosecutors regarding a case. In some cases, the lack of coordination between the judge and the prosecutor of the case leads to a court hearing not being held. It is worth mentioning the case of the accused Aziz Tafaj, where for two consecutive times the court failed to hold a hearing due to the absence of the prosecutor as well as the absence of members of the panel.³⁸ Furthermore, we have the case of Milaim Zeka whereas one of the members of the judicial panel was missing, and therefore the session was postponed.³⁹

³⁵ Information gathered by field monitors of Justice Today.

³⁶ Id.

³⁷ Kallxo.com, 'Ne gjykim ndaj Azem Syles zbulohen emrat e deshmitareve te mbrojtur', (25.96.2019), available at: <https://kallxo.com/shkurt/skandal-ne-gjykimin-ndaj-azem-syles-zbulohen-emrat-e-deshmitareve-te-mbrojtur/>

³⁸ Justice Today, "Deshton gjykimi ndaj biznesmenit Aziz Tafaj/ the trial against Aziz Tafaj fails", (16.98.2019), available at: <http://www.rolpik.org/deshton-gjykimi-ndaj-biznesmenit-aziz-tafaj/>

³⁹ Justice Today, "Mungon anetarja e trupit gjykues, shtyhet seanca ndaj Milaim Zekes/ Member of the panel missing, the court session regarding Milaim Zeka is postponed", (10.07.2019), available at: <http://www.rolpik.org/mungon-anetarja-e-trupit-gjykues-shtyhet-seanca-ndaj-milaim-zekes/>

In addition, delays and irregularities in holding court hearings are prevalent in all courts of Kosovo. There are few cases when trials begin at the scheduled time. In many instances due to the delays of the trial panel, the state prosecutor and sometimes even the defendants held in detention centers, the court sessions start very late. For instance, we have the case of Enver Sekiraqa where the hearing was scheduled for 11th of June, 2019. However, the court forgot to report the prison transport to ensure the presence of defendant Enver Sekiraqa at the hearing. When the court appeared to remember, the prison transport was not able to bring the defendant, due to being informed late.

At last, we have the case of “Syri I Popullit”, where President Thaci was invited to testify on the case. He asked direct questions to the witnesses that were not allowed, and his behavior during the hearing was arrogant. He insulted the lawyers and other parties, but he was never corrected by presiding judge Naime Krasniqi Jashanica regarding such behavior. With the proposal of the President and Special Prosecutor the session continued with closed doors, where only the monitors were present at the session.

Violation of the principle of publicity: Principle of Publicity ensures the openness and transparency of the court towards promoting the confidence of the citizens participating in case to the trial. It has been reported that in many instances due to small courtrooms, the members of the family of the defendants were prohibited to participate in the court hearing due to limited seated. In this regard, we have the case of *Bujar Behrami*, where his family members were prohibited to attend the hearing due to limited seating. Furthermore, failure to publish hearing schedules on court's official website has been another problem threatening the principle of publicity. Given that the Basic Court of Prishtina has the largest influx of cases waiting for trial, it is of crucial importance to inform the public about the date and time of a hearing session. Only a small percentage of trial hearings are published in the court's official websites, and this depends on the judge. In most cases, the public is notified through court guards who keep records of the records of these hearings. There is a lack of coordination among judges regarding the reservation of the courtrooms. (Cases dated 23.08.2019 with Judge Valon Kurtaj and Lutfi Shala). Moreover, this problem is present on all other courts in Kosovo making it impossible for the public to be informed on the schedule of the hearings.

Moreover, it must be noted that the Basic Court of Mitrovica does not have an information officer that would be responsible for publishing the schedule of the court hearings. In addition, non- publication of verdicts issued by the court is a practice which must be abandoned by all courts in Kosovo. The publication of judgments on the courts' websites is a step forward in accessing information, raising public awareness and trust in the Kosovo judicial system. However, most of the final verdicts are not published in the Basic Courts websites. In conclusion, a very important issue is the difficulty in accessing official documents of the courts. In many instances, Justice Today has had difficulties to access official documents. Replies to these requests are not received on time and fail to answer all points of requests, such as emails sent to the information officer's address. The same concern applies to judges and prosecutors, as many refuse to provide information that are needed during the monitoring.

6. CONCLUDING REMARKS

In this report, we have analyzed the decision-making of Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC), as the two main judicial institutions that coordinate the work of courts and prosecution offices across Kosovo. For the period of June – September 2019, KJC has failed to ensure a transparent and lawful process of appointing judges in the Special Department's. Appointment of judges in the Special Department of the Basic Court in Pristina and Court of Appeals by KJC, via a process hidden away from public scrutiny, violates the constitutional principles of transparency and accountability. Secondly, KPC when appointing the Acting Chief Prosecutor of the Basic Prosecution of Pristina, violated the legal framework by overpassing the Regulation in force. Once again it has been concluded that KJC and KPC during appointment procedures tend to not comply with the legislation in force which is a practice that must be change in order to ensure fair, meritocratic, transparent appointment processes.

In addition, lack of measures undertaken by KJC against incompetent judges involved with violation of the law, are deteriorating the trust deficit that already exists between judiciary and the public. There are a number of cases which show that KJC has not taken any concrete steps towards guaranteeing that the judges violating the law are being discharged or even disciplined by the council. A situation like this not only affects the justice system by providing impunity for perpetrators of the law but, moreover, creates a system where judges allowing for such impunity are not disciplined according to their actions.

Furthermore, Justice Today has monitored closely the work of judges and prosecutor across Kosovo. The findings of the monitoring process consist of tremendous shortcomings in tackling targeted cases of corruption and organized crime, which resolution is pivotal toward the process of visa liberalization. Technical and legal violations of the laws in force happen in daily basis by judges and prosecutors during court proceedings, which shows once again that the judiciary is still crippling towards providing an independent, accountable and an efficient justice system to Kosovo.

Consequently, during the three month monitoring period, one can conclude that Kosovar justice institutions still fail to ensure accountable, transparent and merit based processes on appointing key actors on fighting corruption, organized crime and high level crime. In addition, all these institutions responsible to deliver justice fall short on abiding the law on access to public documents, ensuring that the publicity principle is respected and court procedures are followed as according to the law. In order to tackle the issues emphasized in this report, Justice Today provides these recommendations:

- 1) KJC as a constitutional institution should be an example of increasing the level of transparency and respect for the law during the process of appointment of persons in key positions in the judiciary. The appointment of judges in the Special and Appellate Courts of Appeal jurisdiction in the Special Department cases should have been organized in a more open manner, so that the public could be convinced that the importance and capacity of these judges was uncontested. Only in this form would the KJC guarantee its exercise of its mandate in a meritorious manner, and increase public support and confidence in the judicial branch. The consequences of this neglect will be seriously affect the rule of law sector as a whole.

- 2) KJC must disclose to civil society as the promoting mechanism of democracy, all the documents providing for the methodology, legal framework, the scoring mechanism, etc., of the process of appointment of judge in the Special Department. Furthermore, KJC must enable civil society access to official documents as according to the Law on Access to Official Documents.
- 3) KJC must abandon the practice of impunity by taking specific measures against judges involved with issuance of verdicts which contain violations of the law. More specifically KJC must take clear actions against the judges who issued unlawful verdicts in the case of Sali Mekaj and Emin Beqiri. In both cases, the composition of the panel was the same. The same composition of the panel in both cases raises doubts about the continued repetition of the same problem. In addition, the KJC should take the foreseen disciplinary measures for all judges who have been found to have correctly applied the applicable legislation. As in the cases:
 - a. Mentor Shamolli Case, Supreme Court decision (PML, no. 154/17)
 - b. The case of Berat Nika, Krenare Macula, Nehat Veliu and Xhelal Selimi, Supreme Court decision (PML.nr.99 / 2018)

All of these cases testify to the inability of the KJC and its disciplinary and enforcement bodies to guarantee the professional integrity of judges in cases where unlawfulness is evident and furthermore confirmed four times by a higher court. Nothing amnesties the KJC's tendency to remain silent about such a situation.

- 4) Delayed justice is denied justice, therefore the number of court activities in high profile cases of corruption and organized crime must be increased and sessions must be held more often. This recommendation applies to all cases dealt with in this analysis. Particular cases that fall into this category of judicial negligence are the Veterans Case, Pronto Case, Visa Case, Usage Case, Land Case, etc.
- 5) All information officers of all justice institutions should abide by Law no. 06 / L-081 on Access to Public Documents for all documents issued, received, maintained or controlled by these institutions. No exception to this principle is permitted, as the justice system should be an example of transparency and integrity in relation to openness to the public.
- 6) Judges must eliminate violations of the criminal procedure law during trials as well as technical violations, more specifically:
 - 6.1) The court administration should accurately publish the timing of the hearings. This is especially true for the administration of the Basic Court in Prishtina and Mitrovica. Such publication must be made online on the website of each court. Such a practice would significantly increase public oversight of judicial and prosecutorial performance.
 - 6.2) Judgments of the courts should be published on the KJC's official website in order to raise public awareness and enable citizens to evaluate the work of the courts. Although a large number of judgments are published, the KJC must ensure that their percentage is increased.
- 7) Prosecutors of the Special Prosecution Office of the Republic of Kosovo should clarify the allegations and allegations raised by Prosecutor Blakaj regarding the intervention of the Chief State Prosecutor, Mr. Aleksandar Lumezi and the Prime Minister of Kosovo, Mr. Ramush Haradinaj

in his investigation into the 'Veterans' case. Such an investigation should be an example of the courage of the state prosecution to prevent the interference and interference with the justice system of senior political figures.

- 8) In the Pronto case, as one of the largest cases involving the involvement of senior political figures in interfering with the work of the prosecution, the State Prosecutor should specify the indictment and identify the injured parties in that case, as well as provide a witness list for the case. The same should be done in the case of Veterans. As a comparative example for the purpose of technical recommendations, also in the case known as 'Visas', the court should take concrete procedural actions also against the persons for whom the indictment is set. The same recommendation applies to the 'Stenta 3' case. In addition, the basic courts should be aware that they cannot reject applications for interim measures when the damage to the public budget is fully evident. The refusal of the interim measure in the Veterans case is a flagrant violation, and evidence that the judicial branch does not have the courage to face such obvious abuse.



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