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Justice Today Snapshot Analysis

“Pronto” Case in a Nutshell



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January 2020

The Project “Monitoring the Judicial and Prosecutorial System in Kosovo” is funded by the Foreign Commonwealth Office through the Embassy of the United Kingdom in Pristina.

The contents of this publication are the sole responsibility of the Group for Legal and Political Studies and do not necessarily reflect the views of the Foreign Commonwealth Office.

*Monitor of the Project “Monitoring the Judicial and Prosecutorial System in Kosovo”

Introduction

Fight against organized crime and corruption remains in line with European Union (EU) requirements for meeting visa liberalization criteria. This request is addressed to the institutions of the Republic of Kosovo (RKS) which have the legal powers to combat these negative phenomena as well as the protection of human rights and freedoms.

In Kosovo's society corruption is manifested in various forms, ranging from abuse of office, bribery and clientelism, etc. These forms of corruption undoubtedly affect the lives of the citizens of RKS and the building of its institutions. As a secondary form of corruption that is largely present in Kosovo is nepotism. This phenomenon is mainly due to the employment of relatives or close friends in high government positions, regardless of their merits and abilities.

We can say that this phenomenon has already become a practice for each political party taking power to appoint close persons who are loyal to party's policies on the boards of public enterprises. The appointment of party members to the boards of publicly owned enterprises in Kosovo is one of the processes that has been repeatedly criticized by civil society and the international community.

One such case, which has exposed the phenomenon of illegal employment in senior public enterprise positions, is the case analyzed by Justice Today, known in public as the "Pronto" affair.

The so-called "Pronto" case caused great public concern because for the first time in Kosovo, the actions and methods of employment of some individuals in state positions were discovered and publicized through the media, from the party interference of senior officials of Democratic Party of Kosovo (PDK). At the same time senior party officials such as its former chairman and at the same time Kosovo's Prime Minister Hashim Thaci at that time, the current PDK chairman Kadri Veseli and other responsible persons in the party were involved in this affair. Therefore, the fact that the current President Hashim Thaçi and former Parliament Speaker Kadri Veseli were involved in the wiretaps, displays a sufficient indicator that the Prosecutor's Office should have held them accountable and responsible for their actions, which has not happened. On this note, one can conclude that the approach used by the justice institutions on dealing with this case has been weak and presents a failure of the prosecution system to prosecute crime and corruption in the country.

Moreover, the Special Prosecution Office of the Republic of Kosovo (SPRK) did not even invite them in the quality of a witness in the criminal proceedings against other defendants in the case. These two initial actions of the prosecution, which are also considered as crucial actions in resolving the case, are considered sufficient indicators to assess that this institution, in the first steps of the development of this procedure, has substantially failed to handle it. Consequently, the Basic Court in Prishtina has failed to bring justice to the present case as the SPRK has failed to build and represent the state interest before this court.

Therefore, in order to analyze the manner in which SPRK and Basic Court in Prishtina handled this criminal case, this analysis will deal with the indictment and court proceedings until the acquittal judgement is reached. This is aimed at identifying the procedural and professional violations and errors caused by the institutions concerned which led to the conclusion of the case by acquittal.

Indictment- PPS.no.45/2016

EULEX Prosecution with Decision to Start the Investigation, PPS.no. 82/12, dated 03 August 2012, has conducted an investigation against Adem Grabovci for the criminal offenses: "Money Laundering" under Article 10 par. 2 (b) of UNMIK Regulation no. 2004/02, "Entering into a harmful contract" from Article 237 par.1 and 2 of the Provisional Criminal Code of Kosovo (CCK), "Organized crime" from Article 274 par.3 of the CCK, "Abuse of office official or authorization "from Article 339 par.1 and 3 of the CCK," Misappropriation in the exercise of official duty "from Article 340 par.1 and 3 of the CCK," Fraud in Article 341 par.1 and 3 of the CCK and "Bribery" under Article 343 par. 2 of the CCK. This investigation was conducted for the period 2008-2010, during the same time as he was the Deputy Minister in the Ministry of Transport and Telecommunication, regarding the tender number 009/004 / 511- Summer and Winter Maintenance of Regional Roads of Gjilan region , for the year 2009/2010.

By the ruling PSS 104/12, dated 18 June 2014, the EULEX Prosecutor, pursuant to Article 158 par.1 (1.1 and 1.6) of the Criminal Procedure Code of Kosovo, terminated the investigation against Adem Grabovci for the aforementioned criminal offenses.

The Special Prosecution Office of the Republic of Kosovo, based on the preliminary investigation and the publication of some wiretaps in the online newspaper "Insajderi", dated 05 August 2016, which in public opinion were known as "Pronto" affair, has rendered a ruling on the initiation of investigations against Adem Grabovci¹, in relation to the criminal offense of "Violation of the Equal Status of Citizens and Residents of the Republic of Kosovo" by Article 193 par. 4 regarding par. 1 of the Criminal Code of the Republic of Kosovo (hereinafter CCRK). According to the SPRK, the wiretaps resulted in the fact that the suspect Adem Grabovci contacted a certain number of officials regarding the unlawful employment of certain persons in Kosovo Government institutions and their selection as directors of the boards of public enterprises, since the Government of the RKS on 31 October 2011 had announced a call for directors of the boards of central publicly owned enterprises. Consequently, following the investigation of this case, the SPRK filed an indictment on the affair "Pronto", dated 06.04.2018, in relation to the criminal offense of "Violation of the Equal Status of Citizens and Residents of the Republic of Kosovo" by Article 193 par. . 4 regarding par. 1 in conjunction with Articles 28 and 31 of the CCRK.

The accused in the case are former MP and PDK parliamentary group leader Adem Grabovci, former Minister of Innovation Besim Beqaj, former MP Zenun Pajaziti, two former secretaries-general, Ilhami Gashi and Xhavit Dakaj Deputy Minister Fatmir Shurdhaj, Political Advisor at the Ministry of Internal Affairs (MIA) Sadat Gashi, Former Director of the Board of Public Enterprise "Radoniqi-Dukagjini" in Gjakova Ismet Neziraj, Former Director of Board of Public Enterprise "Hydro-Drini" in Peja Rexhe Abazi, former Prizren Municipal Assembly Speaker Nijazi Kryeziu and former Chief of Supply Unit at the Ministry of Health, Arbenita Pajaziti. Whereas, Hashim Thaçi as the Prime Minister of Kosovo at that time and Kadri Veseli as the current head of PDK, who are both part of the published conversations, were not part of the indictment filed either in the capacity of defendants or in the capacity of case witnesses.

According to the indictment, the defendants were accused of abusing their official positions by collaborating among themselves to grant unlawful privileges and advantages to persons who have competed in important functions, such as: Director for Central Publicly Owned Enterprises, Chief

¹ Indictment PPS.no.45/2016 dated 06.04.2018, the first paragraph of the reasoning , page 14.

Executive of the Agency Registration at the MIA, Chief of the Agency for Medicinal Products and Coordinator of the Civil Registration Center in the Municipality of Klina, denying and limiting the freedoms and rights of other candidates, guaranteed by law. Consequently, the indictment accuses the defendants of having attempted to establish privileges for certain people on the basis of their close personal relationship and political affiliation, as well as discriminating against and denying them, through their incriminating actions described in the indictment, the rights of other persons who have applied for the positions specified in the above vacancies. Thus, by this indictment the SPRK attempted to prove the criminal offense of “Exercising Political Influence by Defendants Acting Behind the Scenes” and not the crime of “Abusing Their Official Position or Authority While Performing Official Duty”, one that minimized the damage allegedly committed by all defendants and others. This action is counted as the third failure of the SPRK on handling this case and punishing the crime allegedly committed.

The progress of the litigation

This criminal case was initially tried by the trial panel of Presiding Judge Shashivar Hoti, Beqir Kalludra and Shadije Gerguri as members, but with the latter being promoted to the Special Department of the Basic Court in Pristina, instead of her the trial panel occasionally appointed Judge Lutfi Shala.

In the opening remarks, Special Prosecutor Drita Hajdari, dated 26 June, talked about the phenomenon of political employment and the degradation of the state building of the Republic of Kosovo. She also added that the defendants of the "Pronto" affair acting behind the scenes influenced the employment of persons close to the PDK in various institutions such as board members, directors of independent enterprises and agencies, but did not elaborate the evidence upon which her indictment was based.²The Criminal Procedure Code of the Republic of Kosovo (CPCRK), in Article 328 states that in the introductory speech the parties summarize the evidence supporting the case or claim of the one submitting the introductory speech.³In other words, the parties can state what decisive facts they intend to prove, to point out which evidence to be processed, which legal issues to be examined, etc. Therefore, taking into account the legal provisions, the Special Prosecutor had to elaborate on the evidence by which she would support her indictment, not to give political speeches during the opening speech.

Second, at the next hearing held on September 06, 2019, the presiding judge Shashivar Hoti considered all the evidence proposed by the prosecution in the indictment of this case as read.⁴Their decision was based on the fact that most of the evidences were the interception of telecommunications between the defendants and they would take time to listen to them all. This action undoubtedly puts a great deal of doubt in the procedure of administering the material evidence during the main trial, since according to the provisions of the CPCRK the material evidence must be examined and verified one by one and only after examination and verification the parties

² The prosecution does not propose any witnesses in the "Pronto" case, Justice Today, 2019, (see link:<http://www.rolpik.org/prokuroria-nuk-propozon-asnje-deshmitare-ne-rastin-pronto/>).

³ Assembly of the Republic of Kosovo, Code Nr. 04 / L-123 of the Criminal Procedure of the Republic of Kosovo, adopted on 13.12.2012 and entered into force on 01.01.2013, Article 328, source:<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>.

⁴ The Court does not allow hearings to be interviewed in Pronto Case, Justice Today, 2019, (see link:<http://www.rolpik.org/gjykata-nuk-lejon-degjimin-e-pergjimeve-ne-rastin-pronto/>).

would be able to challenge it directly during the main trial.⁵ This is because the examination and verification of the evidence in the main trial enables the application of the contradictory and equality of remedies principle, direct and publicity principle etc. which principles, with their presence, create an environment conducive to comprehensive analysis and fair and accurate evaluation of evidence. Consequently, following the completion of the procedure for administering the evidence and the closing arguments, the Basic Court in Pristina rendered an acquittal, citing lack of evidence pursuant to Article 364 paragraph 1 subparagraph 1.3. According to this Article, the Court, before rendering an acquittal under subparagraph 3 of this Article, must analyze and evaluate all the evidence presented at the main trial in relation to the particular criminal case. In obtaining the acquittal judgment under this subparagraph, the question of the existence of the offense is not disputed. The offense exists, but there is insufficient evidence that the accused committed it. In other words, according to the court's assessment of the present case, the offense was exhausted but the SPRK failed to prove the guilt of the defendants charged with the indictment, a decision that once again recognizes the failure of the SPRK to handle and represent this indictment before the court.

Procedural violations and irregularities identified by Justice Today

Like any other case of corruption and organized crime, which has been dealt with grave legal and procedural violations, the present case is characterized by numerous violations by institutions that are called upon to comply with the applicable legislation.

Initially we will focus on the inadequate treatment of this case by the SPRK, starting from the exclusion of two persons holding senior state and political positions, the lack of determination of the injured party, the failure of the witnesses to be heard for examination of the court, presentation of the opening statement contrary to the legal provisions and unprofessional representation of the indictment before the Court.

First, the indictment is subjectively deficient, since it did not include the then Prime Minister and current President of the Republic of Kosovo Hashim Thaçi and former Parliament Speaker Kadri Veseli, although the same are part of the same interception of telecommunications as the other accused in the case. But the SPRK has considered the part of the interceptions where these two persons are heard as irrelevant and for this institution, as according to the prosecution these parts of the interceptions have not provided sufficient grounds to initiate investigations against them. Based on the provisions of the Law on Publicly Owned Enterprises, the members of the boards of publicly owned enterprises are elected and appointed by the Government of the Republic of Kosovo and it follows that the Prime Minister of the Republic of Kosovo in this case, Hashim Thaçi, was aware or should have been aware of any form or attempt to unlawfully elect these board members.⁶ Whereas Kadri Veseli, a former Parliament Speaker in the previous mandate of the Government of the Republic of Kosovo, is suspected to have displayed his influence on PDK structures and on members of the Government to decide on the appointment of members of boards of public enterprises

Secondly, in this case the injured party has not been determined by the prosecution's allegation of committing this criminal offense. This is due to the fact that in order to fulfill the

⁵ Code Nr. 04 / L-123 of the Criminal Procedure of the Republic of Kosovo, approved on 13.12.2012 and entered into force on 01.01.2013, Article 8 par. 2: "The court shall render a decision on the basis of the evidence examined and verified in judicial review "

⁶ Assembly of the Republic of Kosovo, Law No. 03 / L-087 on Publicly Owned Enterprises, dated 15.06.2008, (source: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>).

elements of the offense of "Violation of the Equal Status of Citizens and Residents of the Republic of Kosovo" by Article 193 of the CCRK, the injured party must also exist, and it also should be proven to whom has been denied a right or given a privilege because of political affiliation. Failure to identify the injured party is one of the essential shortcomings of this indictment, as it does not specify precisely who the injured party is for each count.

According to the obligations arising from the provisions of the CPCRK, pursuant to Article 124 par. 2, the state prosecutor must ex-officio invite the injured party to examine him as a witness, since he is the eyewitness and from whom detailed knowledge of claims that a particular criminal offense has been committed may be obtained. During the interrogation, the prosecutor should obtain from the injured party, now invited as witnesses, information about the value of the damage allegedly caused, and as a result, pursuant to Article 136 of the PCPCK must determine experts profiled in the relevant field. Therefore, the Prosecution has not been able to determine the injured party in this criminal case and this indicates the lack of professionalism and inefficiency of the prosecution towards the verification of the offense mentioned above.

Thirdly, the witness also plays an important and obviously essential role in the proving procedure. In the this case, the SPRK did not propose any witnesses that would shed light on the criminal case as a whole. Therefore, in relation to this case, the Prosecution is noted an unwillingness to disclose the full circumstances of the allegation of committing the criminal offense.⁷

Fourthly, in the opening remarks of Special Prosecutor Drita Hajdari, we found a violation of the CPCRK, of Article 328 par. 1 and 2, since the prosecutor did not elaborate the evidence on which she supportet her indictment, but always while giving her speech she indicated on the phenomenon of political employment and the impact of the Pronto clan on those employments. In addition, this indicates the lack of professional preparation of the representation of the indictment in court and also the failure of the prosecution body to combat suspected crime.

Fifth, another shortcoming regarding the handling of this case is the legal and professional incapacity of Prosecutor to argue with valid and legal evidence that the accused of the Pronto affair, in co-perpetration from Article 31, have committed the criminal offense "Violation Equal Status of Citizens and Residents of the Republic of Kosovo " in Attempt by Article 193 par. 4 regarding par. 1 and Article 28 of the CCRK. This is because during all court hearings the prosecutor has disputed with the presiding judge and defense attornyes and has not professionally represented the indictment arguing the relevant evidence and facts. This undoubtedly calls into question the prosecution's intent in combating organized crime and corruption.

On the other hand, the Basic Court of Prishtina has also contributed on the inappropriate handling of this criminal procedure, whose actions have been followed with various deficiencies. These deficiencies relate to breach of the statutory deadline for scheduling court hearings, then errors in administering material evidence, the announcement of the judgment and failing to comply with the procedure required by legal provisions regarding the reasoning of the judgment.

Firstly, since the scheduling of the initial hearing, the court has delayed and scheduled this hearing five (5) months and 24 days after the indictment has been filed. This is because the indictment was filed on 06th of April 2018 and the initial hearing was scheduled to take place on 1st of October 2018.⁸ This is a violation of the CPCRK because Article 242 par. 4 of the Code states:

⁷ The prosecution does not propose any witnesses in the Pronto case, Justice Today, 2019, link below: <http://www.rolpik.org/prokuroria-nuk-propozon-asnje-deshmitare-ne-rastin-pronto/>).

⁸ Grabovci missing in the first hearing of 'Pronto' case, kallxo.com, 01.10.2018, link below: <https://kallxo.com/shkurt/grabovci-mungon-ne-seancen-e-pare-per-rastin-pronto/>).

"The single trial judge or presiding trial judge shall immediately schedule an initial hearing to be held within thirty (30) days of the indictment being filed". Thus in this case the initial hearing was held after the expiry of the statutory time limit set by the provisions of the CPCRK.

Secondly, the Court has also violated the legal deadlines for scheduling the second hearing, as the second hearing was held 4 months and 4 days after the initial hearing. The initial hearing in this case was held on the 1st of October 2018 and the second hearing was held on the 4th of February 2019.⁹ This situation is in violation of Article 245 par. of CPCRK, because this disposition states that: *"During the initial hearing, the single trial judge or presiding trial judge shall schedule a second hearing no less than thirty (30) days after the initial hearing, and no more than forty (40) days after the initial hearing. In the alternative, the single trial judge or presiding trial judge may only require the filing of motions by a date set no more than thirty (30) days after the initial hearing"*.

Thirdly, as another violation we can mention the prohibition of listening of the interception of telecommunications of the defendants conversations of the "Pronto" clan. This situation is in contradiction with Article 8 par.2 of the CPCRK, because the same provision states: *"The court renders its decision on the basis of the evidence examined and verified in the main trial."* Thus, the statutory requirement obliges the Court during the main trial after the material evidence has been examined and verified, to give the parties the opportunity to object directly to it during the main trial, on purpose of applying the conflicting principle and equality of instruments. of the parties in the proceedings.

Fourthly, when announcing the judgment Judge Shashivar Hoti did not justify the acquittal of the accused of the Pronto affair, but only read the enacting clause of this judgment. Whereas, according to Article 366 par.2 of the CPCRK, it is stated that: *"The single trial judge or presiding trial judge shall read the enacting clause of the judgment in open court and in the presence of the parties, their legal representatives and authorized representatives and defence counsel, after which he or she shall give a brief account of the grounds for the judgment"*. Therefore, in the present case, Judge Hoti has violated the above provisions as he did not give brief reasons for the acquittal.

Conclusion

During the analysis of the indictment and the procedural actions taken by the prosecution and the court, we note that this case has been dealt with numerous irregularities and legal and procedural violations. These formal and procedural deficiencies occurred due to the fact that the actions of the justice authorities did not meet the legal expectations for the development of criminal proceedings for this case, based on professional standards. This is particularly argued by the actions of the SPRK, starting from the failure of proper and complete prosecution to the lack of professionalism of the representation of the indictment in the main trial. All the aforementioned elements unequivocally indicate the lack of will and courage of this institution to perform its constitutional and legal duties when it comes to prosecuting senior heads of institutions of the Republic of Kosovo.

Another argument for non-compliance with the legal obligations is the violation of the CPCRK deadlines for scheduling court hearings by the Basic Court of Pristina itself. This represents the court's negligence in taking care of and respecting the legal provisions for successful criminal proceedings.

⁹ Defendants dispute allegations in 'Pronto' case, kallxo.com, 04.02.2019, link below: <https://kallxo.com/shkurt/te-akuzuarit-dhe-avokatet-kundershtojne-akuzat-ne-rastin-pronto/>).

Finally, international actors have consistently demanded from the institutions of the justice system concrete results in combating organized crime and corruption. These results consist in the development of criminal proceedings in accordance with legal provisions against any senior state official or political figure, if there is a well-founded suspicion that they have committed criminal offenses of this nature. Reports of the European Union and other international institutions alert the high level of corruption in public institutions, while our justice bodies show a poor result in combating this phenomenon. As a result of the impunity of high corruption, Kosovo continues to be a dysfunctional state until it lacks the will to fight this phenomenon effectively.



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