

Espresso.Insight

No. 07/2022

May 11, 2022

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FOLLOW UP ON THE LATEST WIRETAPS SCANDAL: WILL THERE BE AN INDICTMENT OR NOT?

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Not very long ago, a judge and a prosecutor were involved in a wiretaps scandal, as presented on the previous [Espresso.Insight](#). They were heard implicating themselves on helping others through their connections to the Chief State Prosecutor, discussing their plans on how to exert undue influence. Although the prosecution has chosen snail's pace to shed light on the allegations raised, the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) were unprecedentedly reactive on imposing disciplinary measures upon those involved in the scandal. More concretely, both, the KJC and the KPC have imposed disciplinary measures of demotion applying the Law on Disciplinary Measures, finding that both, the judge and the prosecutor have been involved in behaviors that damage the reputation of the justice sector or which may undermine public confidence in its impartiality and credibility, already scarce. As a result, both, the judge and the prosecutor resigned from their positions. On the other hand, there is no information if there is an ongoing investigation in regards to clarifying the raised allegations.

Before analyzing the '*lack of reaction*' from the prosecution, more concretely the Special Prosecution of the Republic of Kosovo (SPRK), one should acknowledge the actions taken by both councils in disciplining and demoting those involved in these wiretaps. Undoubtedly, both councils have shown maturity and independence in their approach in this particular case. This is a novelty, unfortunately, not seen so far. Nevertheless, let's not increase our hopes up. The involvement of judges and prosecutors in corruption affairs and scandals should not end only with a disciplinary measure. They should be subject to a thorough, independent and professional investigation. But, this does not seem to be the case.

When faced with such situation, one should remember that the main principle of criminal justice in Kosovo is that of presumption of innocence of defendants, meaning that any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court. Hence, a person cannot be considered guilty of something if there is no final court decision stating that. But, in order to have a final court decision, there should be a proper investigation conducted and followed by a proper court procedure. Ignoring the mandate provided to the SPRK and not taking the necessary efforts to shed light on a situation, does not mean that one is respecting the principle of presumption of innocence. Moreover, the lack of institutional procedures actually makes it harder for such a principle to be respected. On the eyes and ears of the public, both the judge and the prosecutor are guilty; and the lack of concrete actions by SPRK is not helping the case.

In addition, taking into account that there are already two disciplinary decisions in place, one could expect a faster reaction from the SPRK to either start an investigation, or, if there is one being conducted, one expects results which would either clear their name or file an indictment. Let us recall that the wiretaps are public and it is in the best interest of all to have an institutional reaction clarifying the situation. Moreover, the reputation of the entire system is in question. One would expect a more serious approach from the SPRK considering that there are two disciplinary procedures resulting with disciplinary sanctions in place. And moreover, both decisions have been supported by the Supreme Court as well, finding that the disciplinary panels evaluated the situation properly, and the involvement of the judge and the prosecutor has damaged the reputation of the entire system.

If there is no serious reaction from the SPRK, one can easily conclude that there's room for more disciplinary actions within the SPRK for neglecting to fulfill their mandate. Although the Law on Disciplinary Procedure against Judges and Prosecutors requires for someone to fail a claim against a prosecutor to start a case, the KPC should be reminded that in the hierarchal level, the KPC has a managerial role and should live up on it. Such behaviors cannot go unpunished. The reputation of the entire system is at risk, and for once, can one imagine a situation where an independent prosecutor fulfills its mandate and fights crime and corruption in the country? To add more, if hopefully there will be a well written, based on evidence indictment, the role of the court will be crucial to avoid the repetition of the epilogues of other cases such as the Pronto Case.

Concluding on all of the above, one can congratulate the KPC and KJC for the fast reaction on undertaking the disciplinary procedures while it is very disappointing to see the SPRK approach shown so far. Wiretaps scandals are not unusual in Kosovo, same as it is not unusual for the public officials to be involved. What is more disappointing is the lack of professional approach on investigating and trying these cases by the justice sector entirely. Nevertheless, one can still remain hopeful that this case can be a turning point and even show that the justice sector in Kosovo has independent judges and prosecutors ready to fight corruption in the country. On the other hand, it is expected that both councils will ensure consistent approach when it comes to disciplinary procedures and decisions. No judge nor prosecutor should be left unpunished for further damaging the reputation of the justice sector.

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