



Instituti i Kosovës për Drejtësi

Kosovo Law Institute

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**ILLEGAL DECISIONS OF THE CHIEF STATE PROSECUTOR AND
THE KOSOVO PROSECUTORIAL COUNCIL ON THE TRANSFER
OF PROSECUTORS TO THE SPECIAL PROSECUTION OFFICE OF
THE REPUBLIC OF KOSOVO**

Pristina, February 2017

Kosovo Law Institute (KLI)

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ABOUT KLI

KLI, Kosovo Law Institute (KLI), is non-governmental organization and non-profit of public policy, and specialized ideal in the justice sector.

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Table of Contents

1. ILLEGAL DECISIONS OF THE CHIEF STATE PROSECUTOR AND THE KOSOVO PROSECUTORIAL COUNCIL	4
2. Recommendation	6

1. ILLEGAL DECISIONS OF THE CHIEF STATE PROSECUTOR AND THE KOSOVO PROSECUTORIAL COUNCIL

The Kosovo Law Institute (KLI) reacts against the illegal decision of the Chief State Prosecutor, Mr. Aleksander Lumezi and the Kosovo Prosecutorial Council (KPC), regarding the 'transfer' practices for state prosecutors in violation with the adopted law and regulations deriving from the KPC.

On 6th January 2017, the Chief State Prosecutor rendered a decision upon the request from the Chief Prosecutor of the Special Prosecution of the Republic of Kosovo (SPRK) to 'temporarily transfer' Mr. Syle Hoxha a prosecutor from the Serious Crime Department of Basic Prosecution Office in Prizren, to the SPRK.

The decision rendered by the Chief State Prosecutor, Mr. Lumezi establishes that prosecutor Hoxha has the right to the benefits that derive from the function of a prosecutor of the SPRK.

Furthermore, the KPC on the meeting held on 1st February 2017, rendered a decision for the 'transfer' of prosecutor Syle Hoxha to the SPRK.

At the KPC meeting, regarding the item on the transfer of Prosecutor Hoxha, the KPC members expressed their concerns regarding the legality of transferring prosecutors, including the 'transfer' of prosecutor Hoxha without going through the competition process.

The decision from the Chief State Prosecutor and the KPC are in violation of the Law on the Prosecutorial Council and the Regulation for the Transfer and Promotion of State Prosecutors.

The KPC adopted the said regulation on 31st March 2016. The Regulation for Transfer and Promotion of State Prosecutors has clearly determined the procedures and criteria for transfer and promotion of state prosecutors. Implementation of this regulation would abolish the bad practices installed by the KPC since 2011, of transferring and promoting prosecutors without a fair process and based on merit by disregarding the competition process.

Violating the law has become a standard practice for the Chief State Prosecutor and KPC in governing the prosecutorial system. Pursuant to this standard, the law is interpreted and implemented for narrow interests of certain persons within the prosecutorial system.

Decisions rendered by the Chief State Prosecutor and the KPC for the 'transfer' of prosecutor Hoxha to the SPRK is in conflict with the policies of the Council. According to the definition of transfers regarding the transfer of state prosecutors, it is clear to see that the transfer must be to the same level and upon the request of the prosecutor himself, this also applies to lower levels.

Article 2 of the regulation defines and distinguishes between the transfer and promotion of prosecutors. This regulation has determined that the transfer can be temporary and permanent, as follows:

Temporary transfer means the transfer of a fixed-term prosecutor. Permanent transfer means the transfer of a prosecutor from one Basic Prosecution Office to another Basic Prosecution Office or from one department to another department of the same level and under the same conditions. Transfer implies the transfer to a Department of a lower level upon the request of the prosecutor.

The transfer of a prosecutor from the lower level (Basic Prosecutor Office) to a higher level such as the SPRK according to the abovementioned regulation means promotion.

The promotion of prosecutor Hoxha from the Basic Prosecutors Office in Prizren to the SPRK is in violation of article 3 of the Regulation which defines the basic principles that should be conducted during the KPC transfer process for the promotion of prosecutors. This article stipulates that career development, promotion and transfer must be based on objective criteria such as: professional skills, merits and professional experience and that the promotion and transfer must be based solely on the law, said regulation and consent of the prosecutors.

The criteria that define why the Basic Prosecutions Offices are of a lower level than the SPRK are:

Compensation of State Prosecutors:

1. During the period of service, state prosecutors will be entitled to the following basic salaries:

1.1. The Chief State Prosecutor shall receive a salary equivalent to that of the President of the Supreme Court.

1.2. Prosecutors permanently appointed to the Office of the Chief State Prosecutor shall receive a salary equivalent to ninety percent (90%) of the salary of the Chief State Prosecutor.

1.3. The Chief Prosecutor of the Special Prosecution Office shall receive a salary equivalent to ninety-five percent (95%) of the salary of the Chief State Prosecutor.

1.4. Prosecutors permanently appointed to the Special Prosecution Office shall receive a salary equivalent to the salary of the prosecutors in the Office of Chief State Prosecutor.

1.5. The Chief Prosecutor of the Appellate Prosecution Office shall receive a salary equivalent to that of the president of the Court of Appeals.

1.6. Prosecutors permanently appointed to the Appellate Prosecution Office shall receive a salary equivalent to ninety percent (90%) of the salary of the Chief Prosecutor of the Appellate Prosecution Office.

1.7. The Chief Prosecutors of Basic Prosecution Offices shall receive a salary equivalent to the salary of presidents of the Basic Courts.

1.8. Each prosecutor permanently appointed to the Basic Prosecution Office shall receive a base salary of not less than seventy percent (70%) of the salary of the Chief Prosecutor of a Basic Prosecution Office.

The Council shall promulgate a schedule for additional compensation that recognizes the unique responsibilities of prosecutors appearing before the Serious Crimes Department of the Basic Court; but in no case shall the sum of the base salary and the additional compensation exceed ninety per cent (90%) of the salary of the Chief Prosecutor of a Basic Prosecution Office.

Criteria for prosecutors in the Basic Prosecutors' Offices and the SPRK

In order to carry out the function of a prosecutor in the Serious Crime Department or the Department for Juveniles in the Basic Prosecution, the prosecutor must have at least three (3) **years of experience as a prosecutor or a judge in the criminal field and based on performance evaluation.**

In order to carry out the function of a prosecutor of the Special Prosecution Office, the prosecutor must have at least **six (6) years of experience as prosecutor, of which four (4) years' experience as a prosecutor in the Serious Crime Department at the Basic Prosecution Office.**

KLI appreciates the KPC's need in fulfilling the positions allowed for prosecutors, has advocated and continues to advocate on a daily basis in all its public activities. KLI has continuously requested from the KPC to fulfil the vacant positions for prosecutors of the SPRK, where out of 18 allowed positions, only 9 are fulfilled. However, KLI expects the KPC that during the process of fulfilling these vacant positions, to strictly implement the Law on KPC, Law on the State Prosecutor, regulations and other internal acts adopted by the Council,

Prior to Mr. Syle Hoxha, the same practice was used for prosecutor Mr. Abdurrahim Islami, whom was transferred from the Basic Prosecution Office in Prishtina to the SPRK illegally and in contradiction to the law and the Regulation on Transfer and Promotion of Prosecutors, regarding this violation KLI has publically reacted on 12th December 2016.

The installed practices by the Chief State Prosecutor and KPC, regarding the violation of the law and other internal acts during the it's functioning and responsibilities, through the adoption of the illegal decisions reduces the trust of the public, citizens and the prosecutorial system in having built an impartial, fair, independent and professional system.

2. Recommendation

KLI recommend to the KPC to re-evaluate its decisions and to render decisions based on the law and other internal acts of the Kosovo Prosecutorial Council.