



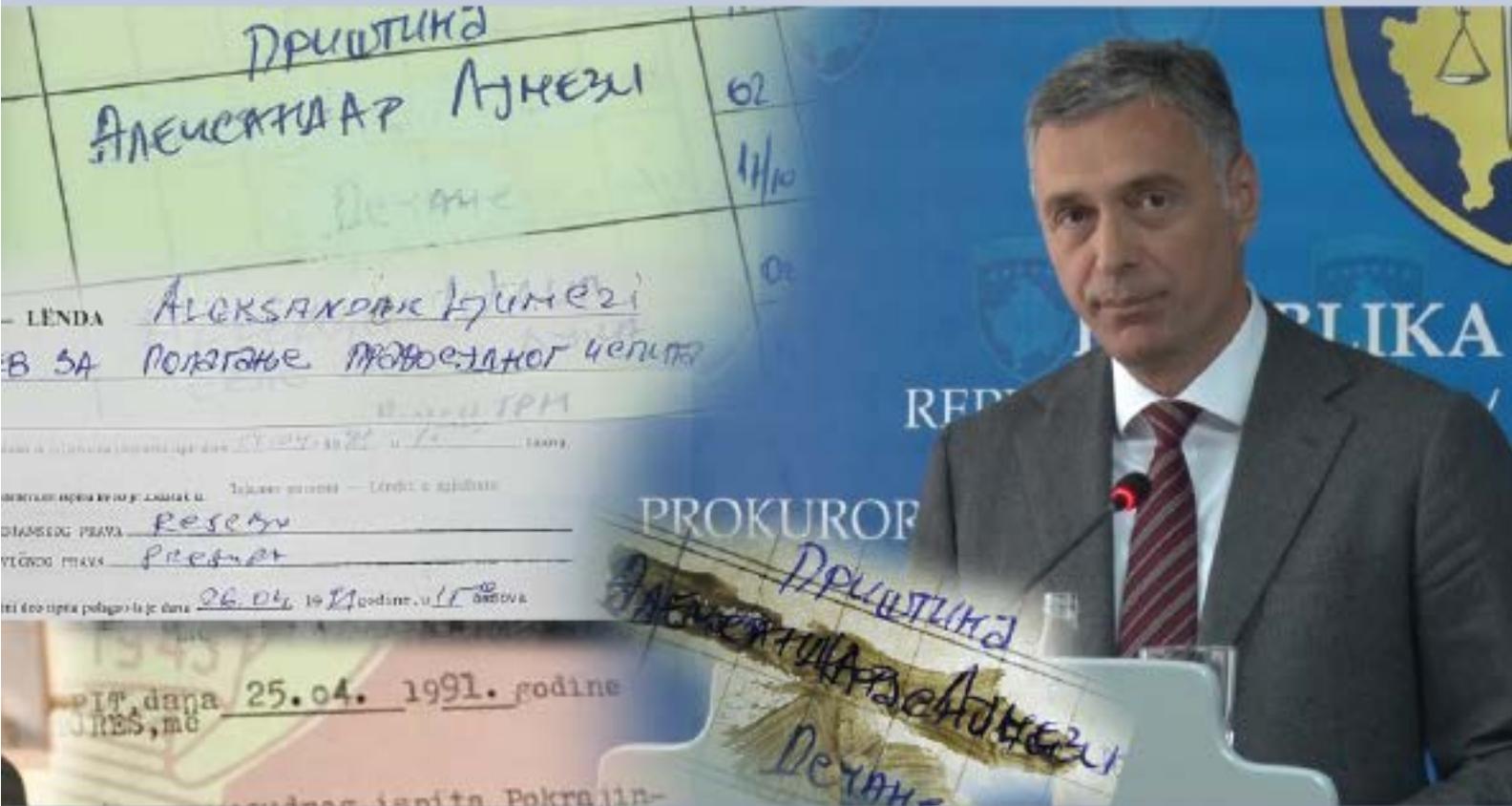
Instituti i Kosovës për Drejtësi
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Anti-Corruption

WEEK

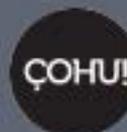
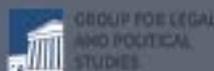
3-9 DECEMBER 2017

LUMEZI FILE



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ABOUT 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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I. Executive summary

The suspicions raised in public regarding the falsification of the State Prosecutor's Bar Examination (SP), Aleksander Lumezi, based on the applicable legislation in Kosovo, enters into high-profile cases. According to this legislation, high profile cases should be handled by the Special Prosecution Office of the Republic of Kosovo (SPRK), which in this case has not happened. SPRK during all the time the procedures have been conducted in this case has remained in complete silence. Such an approach to the public doubts the independence, impartiality and integrity of this prosecution. This case investigated and closed for 21 days in an unlawful manner, should be investigated by the SPRK. Otherwise, this case was led by the prosecutor Kujtim Munishi, also Chief of the Department for Serious Crimes in the Basic Prosecution in Pristina.

The whole process of preliminary investigations by prosecutor Kujtim Munishi is unlawful. Prosecutor Munishi has been privileged since the arrival of Aleksander Lumezi at the head of the State Prosecution (SP). Munishi, from the first instance prosecutor, has advanced in the third level with specific duties and direct responsibility of Chief Prosecutor Lumezi within the Office of the CSO. All this upsurge was done illegally, as Munishi was advanced at the time when it was only with an initial mandate.

Although this case, according to legal competencies, should have been investigated by the SPRK, Prosecutor Kujtim Munishi has decided to investigate the file of his chief, Chief Prosecutor Lumezi. But any action taken by Munishi is in violation of the law. He has authorized police investigators to gather information in the preliminary procedure, question witnesses inside and outside the Republic of Kosovo, and seize files without a court decision and all this for a criminal offense, which according to the law applicable in Kosovo had long since reached the statute of limitation of criminal prosecution. This is prohibited by applicable law in Kosovo, but Munishi has made preliminary investigations for a prescribed offense, for which action itself it should become part of the disciplinary investigative procedures.

The Prosecutor Kujtim Munishi, in the present case, never conducted criminal proceedings regarding suspicions of falsification of the bar exam of the Chief State Prosecutor Aleksander Lumezi, respectively did not undertake investigative actions regarding the suspicion of committing the criminal offense set forth in paragraph 2 of Article 434, which allegedly publicly denounced the State Chief Prosecutor, Aleksander Lumezi. So, prosecutor Munishi, unlawfully investigated a criminal offense, for which he himself should be subject to investigation, while fully has annested any opportunity to investigate his chief, Chief Prosecutor Lumezi. The latter was publicly denounced as suspected of falsifying the bar examination, so prosecutor Munishi clearly noted that he had made the amnesty of the chief, for reasons that only he could know but which were in violation of the law.

In the preliminary investigation, prosecutor Munishi a priori has annested the suspicions that Aleksander Lumezi has falsified the bar exam. The whole investigation was based on the evidence of witnesses unlawfully; his investigation had no suspect, seized files without a court

order and did not have any graphology expertise as well as other documentary expertise which would substantiate suspicions of forgery in manipulated documents: Closure of the case is based entirely on the testimonies of former Serbian officials assigned to positions at the time of violent measures in the 1990s, after the abolition of Kosovo's autonomy, while the testimony of lawyer Betim Shala proves nothing because it is an assumption, which is not considered a criminal offense in criminal proceedings.

Prosecutor Munishi did not conduct the administration evidence provided by witness Adil Fetahu. He was a member of the Legal Advisory Committee, who interviewed Aleksander Lumezi in 2000 when he had been competing for a judge and a prosecutor. In the record is written that Aleksander Lumezi did not have the bar exam. Another record of this Commission points out that in 2000, former UNMIK chief Bernard Kouchner had decreed 31 candidates outside the Commission's proposals, even if candidates were without bar exam, so they did not have the exam. None of this evidence, which is the record of 2000, was not administered by the Prosecution.

Moreover, it remains unclear how prosecutor Munishi hastened to close the case without providing UNMIK and OSCE files, which could clarify whether Aleksander Lumezi had a bar examination in 2000, and whether Aleksander Lumezi is one of the 31 candidates decreed without bar exam or if he had it at that critical time. This in court practice is unprecedented, leaving space to raise doubts that the purpose in this case was the quick closure of the case and not the clearing of the truth.

In this preliminary investigation Munishi did not have any suspects, but only witnesses. In Kosovo as a witness were interrogated: Sahit Shala, Radislav Dimitrijevic, Aleksander Lumezi, Riza Smaka, Adil Fetahu, Enver Hasani, Betim Shala and Zymer Krasniqi.

Meanwhile, without a decision to initiate investigations and contradict the Law on International Legal Co-operation, it has received evidence and witnesses outside the official legal path. In this regard, he has taken as evidence a notarized act of Djordje Aksic, who appears as a former member of the Jurisprudence Examination Commission in 1991 and as a former Provincial Secretary at the time of violent measures in Kosovo. Meanwhile, he questioned Miladin Kostic, also a former member of the Commission for the Bar Examination in 1991.

None of these evidences do not confirm the passing of the bar exam, as long as the file is completely manipulated with a white spray on Zymer Krasniqi's file and does not have a graphology expertise (and other relevant expertise) for it.

Doubts raised in the public that Aleksander Lumezi forged the bar exam and the process of preliminary investigations conducted by prosecutor Kujtim Munishi was overwhelmed with prejudices and interference from politics, the government and the prosecutorial system itself. Justice Minister Abelard Tahiri has made several statements, prejudging the prosecution's investigation that they will end in the short term. This constitutes interference with the country's politics and executive over the prosecutorial system and investigations that were underway in this case.

On the other hand, Kosovo Prosecutorial Council has completely prejudged any suspicion raised about the forged file of Aleksander Lumezi's bar exam, requesting the withdrawal of charges and writings on the subject. Similarly, the Kosovo Prosecutors Association (KPA) has

also defended their supervisor, which has completely prejudiced the allegations raised about the Lumezi's bar exam.

This case is said to be monitored by EULEX, who stated that EULEX prosecutor Eva Korpi, who has monitored the case, is satisfied with the independent and impartial investigation. However, the EULEX Mission does not declare whether this is the official position of this mission, or only the position and opinion of the prosecutor Corpi. In addition, most of the interviewed witnesses stated that during the interrogation, they had no English translation and that this role was occasionally played by the prosecutor Munishi himself.

The current investigation into criminal proceeding turns out to be null and void. In this regard, in order to clarify the truth and the development of an independent, impartial, fair and professional investigation process, it is recommended that in accordance with the constitutional and legal obligations these public suspicions be investigated by the Special Prosecution of the Republic (PSRKS). All legal conditions for investigating this case by EULEX are met and it is recommended that the investigation be conducted through the establishment of a team of EULEX prosecutors with US, British and German prosecutors.

The KLI recommends that the SPRK demand expertise on all manipulated sprayed documents and others suspected of being forged. As far as this case is concerned, the KPC should, in accordance with the applicable law, take measures regarding the suspension of the Chief State Prosecutor Aleksander Lumezi, while the SPRK and the Office of the Disciplinary Prosecutor should analyze the ruling for the dismissal of the criminal report by the prosecutor Munishi, and to investigate whether the law and procedures under the legislation in force have been applied during the handling of this case.

II. Case description

Aleksander Lumezi's bar exam file appeared on 18 October 2017, the day that was sentenced to one year conditional imprisonment former rector of the University of Pristina, Enver Hasani, for the criminal offense of Fraud on Duty. Shortly before the announcement of the verdict, Hasani by electronic mail accused State Chief Prosecutor Aleksander Lumezi of having forged the bar exam. This charge claimed he had relied on a research he himself made in April 2017 in the Lumezi's bar file in the Kosovo Archives.

The Chief of the Serious Crimes Department in the Basic Prosecution Office of Pristina, Kujtim Munishi, also a member of the Committee¹ for tracking media daily and verifying allegations of reports on organized crime and corruption cases, had authorized the Kosovo Police to gather information regarding the suspicion that the criminal offense "forging the official document" was committed by Article 434, paragraph 1 of the Criminal Code of the Republic of Kosovo (CCRK).

Prosecutor Munishi had conducted preliminary investigations and after 21 days made a decision to dismiss the criminal report on the grounds that after analyzing case files, material evidence, hearing witnesses and evaluating all evidence that are integral part of the investigation, it results that the file, which was suspected of being manipulated and forged, with no evidence has been verified such a thing.

Up to this decision, Prosecutor Munishi has come after seizing files in the Kosovo Archives, Ministry of Justice and questioning witnesses Sahit Shala, Radislav Dimitrijevic, Aleksander Lumezi, Riza Smaka, Adil Fetahu, Enver Hasani, Betim Shala and Zymer Krasniqi. In addition, Munishi has taken as evidence a notarized act of Djordje Aksic, who appears as a former member of the Bar Examination Commission in 1991 and as a former Provincial Secretary at the time of violent measures in Kosovo and has questioned Miladin Kostic, also a former member of the Committee for the Bar Examination in 1991.

During the time of preliminary investigations, the team of "Oath for Justice" and Kohavision researchers have conducted deep research into the manipulated file of Lumezi. In most cases, the researchers provided the files and interviewed witnesses before police investigators. Evidence and proves presented in the stories of

¹ Note: With the Decision of Chief State Prosecutor Aleksander Lumezi, A.No.208 / 2015 dated June 17, 2015, the Committee for monitoring and tracking daily and verifying allegations of assumed cases of organized crime and corruption, published through electronic and press tools, citizens' submissions and public appearances of officials of state and public bodies and organizations and non-governmental organizations.

Daily and weekly shows have witnessed manipulation and interventions in the Aleksander Lumezi's bar exam file, which turns out to be based on Zymer Krasniqi's file. Also, recorders and witnesses were provided, who in 2000, at the time Alexander Lumezi had applied for a court and a prosecutor, has stated that he did not have the bar exam.

The Prosecution Office, without providing additional relevant documentation on these arguments of the UNMIK Consultative Legal Commission and the OSCE, decided to close the preliminary investigation, finding that it did not provide evidence and proves that the examination was forged.

III. Concrete findings

- According to the applicable legislation and practice developed since 2013, it results that Basic Prosecution of Pristina was not competent to conduct high-profile investigation and prosecution, but only SPRKS. Consequently, the allegations raised by Enver Hasani that Aleksander Lumezi has forged the bar exam, which now exercises the position of SP, are high profile because such a thing is clearly defined in the Administrative Instruction issued by the CSP, Chief Prosecutor of SPRK and EULEX Chief Prosecutor. According to this instruction, high profiles, including the Chief State Prosecutor, are investigated and prosecuted by the SPRK.
- Based on the legal analysis of the ruling for dismissal of criminal report by Prosecutor Munishi, which is the subject of analysis of this report, it appears that all actions undertaken by the prosecutor Munishi in relation to the investigation of this criminal offense are in violation of the law, because that the criminal offense investigated has reached the statute of limitation of criminal prosecution. This has not happened because the prosecutor Kujtim Munishi, the preliminary investigation he has conducted, has exclusively limited the criminal offense of "forging the official document" from Article 434, paragraph 1 of the Criminal Code, which can only be performed by responsible persons who have been authorized as official persons in the Provincial Secretariat of Kosovo Judiciary.
- Prosecutor Munishi did not authorize investigations related to suspicions of the commission of the criminal offense set forth in paragraph 2 of Article 434 of the CCK², where, as a suspect in public, was the Chief State Prosecutor Aleksander Lumezi, an investigation which had to take place only by SPRK. Consequently, the object of the investigation would be the lawfulness of obtaining the certificate of Aleksander Lumezi's bar exam. These two circumstances, the absence of the suspect subject and the object of the investigation (verification of lawfulness of passing the bar exam) make all this investigation illegally and completely fictitious, carried out quickly, ignoring proves and relevant evidence that would reveal the reality of this case.
- KLI estimates that the actions taken by prosecutor Kujtim Munishi for investigating Aleksander Lumezi's manipulated file at each stage are unlawful, as he has made a

² Paragraph 2 of Article 434 of the Criminal Code of Kosovo stipulates that "an official person who uses the official document, register or false official document as true in his business activity or who annihilates, hides, damages or in any other way 156 renders unusable the official document, register or official document, is punishable by the sentence referred to in paragraph 1 of this Article. "Criminal Code of the Republic of Kosovo.

preliminary investigation for a statutory criminal offense, which is prohibited by law and as such all Munishi's actions and decisions have no legal value and in criminal justice are considered null, or entirely invalid, leaving the case open to a real criminal investigation into its entirety. The actions taken by the prosecutor Munishi have seriously violated the legal security, respectively violated the fundamental rights and freedoms guaranteed by the Kosovo Constitution, the European Convention on Human Rights and Freedoms (ECHR), the basic principles guaranteed by the CC and the Procedure Criminal Code (PCC) of persons called as witnesses.

- In a democratic and legal state, where the rule of law equally applies to all citizens, and where the culture of impunity is not implemented in practice, the prosecutor's unlawful actions would be subject to accountability mechanisms, both disciplinary and in that criminal.
- In the present case, the Prosecution never conducted criminal proceedings regarding suspicions of forging the Bar Examination File of the Chief State Prosecutor, respectively did not undertake investigative actions regarding the suspicion of committing the criminal offense established by paragraph 2 of Article 434 of Chief Prosecutor Lumezi, as it was raised in the public denunciation (*the lawfulness of obtaining the certificate for passing the bar exam by the Chief State Prosecutor Aleksander Lumezi*).
- Prosecutor Munishi, monitored by the EULEX prosecutor, despite the fact that he has developed a preliminary procedure, at the same time and contrary to the provisions of the CPC, has questioned witnesses from Kosovo and Serbia, seized files in the Kosovo Archives and in Ministry of Justice of Kosovo. The seizure according to the decision to dismiss the criminal report was made without a court order. The seizure according to the ruling to dismiss the criminal report was made without a court order. The seizure was committed unlawfully, making the gathered evidence unacceptable at any later stage in the court.
- Prosecutor Munishi, still not initiated the procedure related to this case, has directed the Kosovo Police to gather information only with regard to the criminal offense that according to the law has been prescribed.
- Despite the fact that in the public denouncement regarding the forged file of Chief Prosecutor Lumezi, there were raised doubts by Enver Hasani that Chief Prosecutor Lumezi has a forged bar examination; the Prosecutor Munishi has not directed any investigations into this matter with any action.
- Article 434 of the CC has two paragraphs. Paragraph 1 of this criminal offense can only be committed by the official persons who have worked in the Provincial Secretariat of Judiciary, a criminal offense prescribed and investigated by the Prosecutor Munishi. Paragraph 2 of Article 434 may only be carried out by an official person who, using a forged document, realizes certain rights, a criminal offense which, under Article 434, paragraph 2, is not prescribed but in practice never was investigated by the Prosecutor Munishi on the basis of analysis of the above-mentioned ruling for dismissal of criminal report.

- The way, in which this case was run, in the public raises many doubts and questions, to which the Prosecutor Munishi has not given any answer. Judicial practice proves that in such cases, when allegations of forged documents are suspected, in addition to evidences, records, decisive role in revealing the truth lies in the expertise of allegedly manipulated documents. The prosecutor ignored this legal obligation completely, prejudging the case. The same has never requested for expertise regarding doubts about manipulated files.
- Prosecutor Munishi in the ruling writes that they have submitted requests for access to documents regarding the appointment of prosecutors and judges to UNMIK and the OSCE. The same, without accepting any response, has issued the aforementioned ruling for the dismissal of the criminal report. This in court practice is unprecedented, leaving space to raise doubts that the purpose in this case was the quick closure of the case and not the clearing of the truth.
- Four of the living witnesses of the Legal Advisory Committee (Commission), who had assessed the candidates for judges and prosecutors in 1999/2000, stated that they fully confirm the veracity of the records, according to which Aleksander Lumezi did not have a bar examination in that time. Moreover, according to these records, former UNMIK SRSG Bernard Kouchner had decreed 31 candidates in violation of the law, including candidates without bar exam. Prosecutor Munishi has failed to wait for UNMIK and OSCE responses for providing these files to reveal the truth beyond any doubt.
- Prosecutor Munishi has given key importance to Serbian official's evidences who during the nineties were appointed through violent measures installed by the Yugoslav state apparatus.

IV. Public questions

- Why did Basic Prosecution Office of Pristina handle this case when the suspect in public was Aleksander Lumezi, who belongs to the high profile?
- Why did not the Special Prosecution Office of the Republic of Kosovo handle this case according to its competence?
- Why did prosecutor Kujtim Munishi limited the investigation to Article 434, paragraph 1 of the Criminal Code?
- Why prosecutor Kujtim Munishi did not authorize investigations related to the suspicions of committing the criminal offense set out in paragraph 2 of Article 434 of the CCK³, where Aleksander Lumezi appeared as a suspect in public?
- Why did the prosecutor Kujtim Munishi unlawfully investigated a criminal offense that by law has reached the statute of limitation of criminal prosecution?

³ Paragraph 2 of Article 434 of the Criminal Code of Kosovo stipulates that "an official person who uses the official document, register or false official document as true in his business activity or who annihilates, hides, damages or in any other way 156 renders unusable the official document, register or official document, is punishable by the sentence referred to in paragraph 1 of this Article. "Criminal Code of the Republic of Kosovo.

- Why did the prosecutor Kujtim Munishi seized files without the decision of the competent court?
- Why did the prosecutor Kujtim Munishi took evidences and witnesses from other states in contravention of the Law on International Legal Cooperation?
- Why did prosecutor Kujtim Munishi not wait for UNMIK and OSCE responses on the files of appointments of prosecutors and judges in 2000, where according to the records and members of the Commission, results that Aleksander Lumezi did not have a bar exam?
- Are there disciplinary investigations for this case by the Office of the Disciplinary Prosecutor?
- Is there a review of this ruling to close the case by prosecutor Kujtim Munishi from Special Prosecution Office of the Republic of Kosovo?