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The law prohibits the “flying of supermen” with many leading positions and prohibits the great benefits of public officials from additions

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ABOUT KLI

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

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I. Executive summary

Kosovo Law Institute (KLI) has analyzed the process of drafting and approving the Law on Prevention of Conflict of Interest in Exercising Public Functions, for which it has drafted a parliamentary research for the deputies of the Assembly of the Republic of Kosovo.

The adoption of this law enhances the regulation of the area of prevention and fighting the conflict of interest in the exercise of public functions by public officials, who while exercising their functions in many positions, have been large beneficiaries from the state budget.

The Law on the Prevention of Conflict of Interest in the Exercise of Public Functions has finally addressed the issue of "supermen" in public institutions, which at the same time hold some leading positions. The practice of "supermen" is explicitly prohibited in Article 13, paragraph 2 of this law, which stipulates that "a high official may not be a member of more than one governing body of a publicly owned enterprise, a public limited company as well as the bodies of other public institutions, unless otherwise expressly provided by law. "

The KLI estimates that the example of respecting the rule of law enforcement, respectively the implementation of this law should come from the highest state institutions. In this regard, the most called institution for building this example is the State Prosecutor. For now, the head of this institution, Chief State Prosecutor Aleksander Lumezi, is one of the "supermen" in public institutions, because he exercises three leadership positions in public institutions. At the same time he is Chief State Prosecutor, Chairman of the Board of Directors of the Academy of Justice and Chairman of the Bar Examination Commission. Other non-executive positions are also excluded, including the position of the Chief State Prosecutor as a member of the Kosovo Prosecutorial Council and a member of the Kosovo Academy for Public Safety Board, for which he is also compensated as a member.

According to Article 13 (2) of the Law on Prevention of Conflict of Interest in the Exercise of Public Functions, a high official is forbidden to be the leader of more than one governing body of a public institution *unless otherwise expressly provided by law*. The Chief State Prosecutor in either of the two other managerial positions is not legally defined as the head of the institution. Therefore, the exercise of these leadership positions consumes the criminal offense of conflict of interest, which should be prosecuted precisely by the State Prosecutor.

One of the biggest problems, and consequently the biggest benefits for public officials, are the additions to the work they do within regular working hours.

The practice of paying additions to public officials has been interrupted by the Law on Prevention of Conflict of Interest during Public Exercise. The practice of additions is explicitly prohibited in Article 13, paragraph 2 of this law, which stipulates that "a high official, in the

capacity of a member of the bodies referred to in this paragraph, shall not be entitled to a remuneration other than the right to compensation for travel expenses and other related expenses."

To elaborate this situation, KLI brings an example of additions to the Judicial Council and Prosecutorial Council. KLI systematically monitors the justice system and finds that most of the members of the Kosovo Judicial Council and Kosovo Prosecutorial Council, apart from the basic salary they receive as judges or prosecutors delegated by the court and prosecution according to legal rules and procedures, based on internal rules approved by the Kosovo Judicial Council and the Kosovo Prosecutorial Council, before the entry into force of this law, receive additional compensation for the work they do as members of two councils. Such a practice conflicts with the spirit and purpose of the law on conflict of interest.

In this regard, it is imperative that the Councils, other public institutions and the Anti-Corruption Agency take urgent measures to clarify these situations and take urgent action to prevent actions that could potentially enter the criminal sphere.

The issue of paying additions to public officials has already been clarified through law and the Anti-Corruption Agency should notify the institutions of the new provisions of this law and require public officials to enforce the law regarding the payment of additions.

II. Kosovo meets EU criteria in the Law on Conflict of Interest

The European Commission's Progress Report for 2016 for Kosovo had required that during 2017 Kosovo should in particular change the legal framework on conflict of interest, adapting it to European standards.

In November 2016, Kosovo and the European Union (EU) through a high-level dialogue agreed on key priorities of the Agenda for European Reform (ARE), in implementing priority actions by institutions in Kosovo, for the purpose of implementing of the Stabilization and Association Agreement in the direction of advancing Kosovo on its European path. Kosovo, within the framework of criteria set out in the ARE, within the framework of good governance and rule of law, had undertaken to amend the law on conflict of interest and respective regulations, bringing them in line with European standards and determination of the precise circumstances when public officials can engage in additional work and be appointed. Upon the request of ARE, the Law on Prevention of Conflict of Interest in the Exercise of Public Functions should be amended in line with EU recommendations, as follows:

- a) *To clearly highlight categories of public officials;
To clearly highlight the activities that officials are allowed and are forbidden to perform while holding the post;*
- b) *To clearly highlight the activities that officials have forbidden to exercise after the end of their mandate;*
- c) *To clearly highlight the obligations of their officials and superiors in situations of conflict of interest; and*
- d) *To clearly highlight the procedures to be applied after the appearance of a conflict of interest.*

Kosovo Law Institute (KLI) has analyzed the process of drafting and approving the Law on Prevention of Conflict of Interest in Exercising Public Functions, for which it has drafted a parliamentary research for the deputies of the Assembly of the Republic of Kosovo. The latter, in accordance with the obligations under the ARE, had adopted the Law on Prevention of Conflict of Interest in the Exercise of Public Function, which was decreed on 20 April 2018 by the President of the Republic of Kosovo.

This law was published in the official gazette of the Republic of Kosovo on 27 April 2018, and entered into force 15 days after the publication, respectively on 12 May 2018.

The purpose of this law is to strengthen public sector integrity and ensure the performance of public duties in an objective, impartial and transparent manner in the service of the public

interest through the identification, prevention, management and resolution of officials' conflict of interests.

The law has determined the principle that the public official should perform his work with honesty, conscience, impartiality, preserve the authority of the official and the institution and with his work to strengthen the trust of citizens in the institutions.

Article 13 of this Law, incompatibility with the exercise of public function also determines situations when a public official is prohibited to exercise more than one position in governing bodies or institutions. Paragraph 2 of this Article stipulates that *"High Official shall not be a member of more than one governing body of a publicly owned enterprise, publicly-owned joint-stock company and bodies of other public institutions, unless otherwise expressly provided by law. The high official, in the capacity of a member of the bodies referred to in this paragraph, shall not be entitled to a remuneration other than the right to reimbursement of travel expenses and other related expenses. "*

KLI as a result of systematic monitoring of justice institutions has identified a large number of cases where certain individuals within the justice institutions may be in conflict of interest, respectively may conflict with the Law on Prevention of Conflict of Interest in Exercising Public function, if the same or the Anti-Corruption Agency does not take urgent steps in identifying and preventing conflict of interest situations.

The State Prosecutor as a constitutional category has the competence and responsibility to investigate and prosecute perpetrators of criminal offenses, including the investigation and prosecution of public officials that potentially by their action or non-action may be in contradiction with the principles and provisions of the Law on Prevention of Conflict of Interest in Exercising Public Function.

The effective implementation of this law by the State Prosecutor requires that this institution and the main bearers of this institution to act in harmony and compliance with the law, and to serve as a guide to the fulfillment of the obligations arising from this law.

KLI during research and legal analysis, and impact on practice has identified two main areas that may create circumstances and situations of conflict of interest if the respective institutions fail to take measures to prevent and fight conflict of interest situations.

III. The Law prohibits the practice of “supermen” with many leading positions

The Law on the Prevention of Conflict of Interest in the Exercise of Public Functions has finally addressed the issue of "supermen" in public institutions, which at the same time hold some leading positions. The practice of "supermen" is explicitly prohibited in Article 13, paragraph 2 of this law, which stipulates that:

"A high official may not be a member of more than one governing body of a public-owned enterprise, publicly-owned joint-stock company with public property and other public institution bodies, unless expressly provided otherwise by law."

The KLI estimates that the example of respecting the rule of law enforcement, respectively the implementation of this law should come from the highest state institutions. In this regard, the most called institution for building this example is the State Prosecutor.

Right now, the head of this institution, Chief State Prosecutor, Aleksander Lumezi, is one from "supermen" to public institutions, because it exercises three leadership positions in public institutions. Other non-executive positions are also excluded, including the position of a member of the Kosovo Prosecutorial Council and a member of the Board of the Kosovo Academy for Public Safety, for which he is also compensated as a member.

a. Chief Prosecutor “supermen” holds three leading positions in violation of the law

Chief State Prosecutor, In addition to exercising the senior leadership position of the State Prosecutor's Office, Aleksander Lumezi exercises two other high leadership positions, such as the position of the Chairman of the Board of Directors of the Academy of Justice and the Chair of the Committee on Bar Examination.

1. High leading position - Aleksander Lumezi, Chief State Prosecutor

a) Aleksander Lumezi, on 21 April 2015, according to the proposal of the Kosovo Prosecutorial Council, was appointed Chief State Prosecutor by the former President of the Republic, Atifete Jahjaga. According to the Law applicable to the State Prosecutor, the Chief State Prosecutor is the head of the State Prosecutor, responsible for the management and representation of the State Prosecutor and the structures of the prosecutor's offices, consisting of the State Prosecutor.

b) According to the applicable Law on the Kosovo Prosecutorial Council, the Chief State Prosecutor ex officio is a member of the Kosovo Prosecutorial Council.

2. High leading position - Aleksander Lumezi, Chairman of the Academy of Justice

On 3 April 2017, the Steering Council elected Chief State Prosecutor Aleksander Lumezi, Head of the Steering Council of the Academy of Justice. By law, the Chairperson of the Steering Council represents the Council, calls and leads the meetings of the Council and carries out other responsibilities defined by law and the Rules of Procedure issued by the Steering Council.

According to Article 8 of the Law on the Academy of Justice, the Steering Council of the Academy of Justice, as a high governing body, manages the Academy and consists of nine members, of whom the President of the Supreme Court and the Chief State Prosecutor are ex officio members. According to this Law, the Steering Council from among its members elects the Chairperson and the Deputy Chairperson by a majority of votes with four (4) year mandate.

3. High leading position - Aleksander Lumezi, Chairman of the Committee on Bar Examination

On April 15, 2018, upon the proposal of the Minister of Justice sent through the Government, the Assembly of Kosovo voted the Bar Examination Commission, whereby the Chairman of this Commission was appointed Aleksander Lumezi, Chief State Prosecutor.

According to the Law on Bar Examination, the Bar Examination Commission is an independent professional body which organizes exams for the qualification of judges, prosecutors, lawyers and other graduate lawyers who are required to have passed the bar exam for the exercise of the profession.

The Committee on Bar Examination consists of the chairman of the commission, the members of the commission and their deputies. The chairman, members of the commission and their deputies shall be nominated by the Minister of Justice and appointed by the Assembly of Kosovo for a mandate of two (2) years, with the possibility of reappointment. The Commission is appointed from the ranks of graduate lawyers who have passed the Bar Examination, who are experts in justice and have at least twelve (12) years of experience in the justice system. The Committee for its work reports to the Assembly at least once a year.

b. Assessment of the incompatibility of the Chief State Prosecutor, Mr. Aleksander Lumezi

According to Article 13 (2) of the Law on Prevention of Conflict of Interest in the Exercise of Public Functions, a senior official is forbidden to be the leader of more than one governing body of a public institution *unless otherwise expressly provided by law*. The high official, in the

capacity of a member of the bodies referred to in this paragraph, shall not be entitled to a paid remuneration other than the right to reimbursement of travel expenses and other related expenses. "

While the Law on the Academy of Justice expressly states that the Chief State Prosecutor is a member of the Steering Council of the Academy of Justice, according to the Law on Prevention of Conflict of Interest, holding the position of the Chairperson of the Steering Council, as high leading position puts the Chief State Prosecutor contrary to Article 13 (2) of this Law.

Whilst the Law on Bar Examination does not have a legal provision that stipulates that the Chief State Prosecutor should be a member or chair of the Bar Examination Commission. The law delegated this competence to the Minister of Justice to propose the members and the chairman of this Commission, according to the terms and procedures established by law, and the approval of this proposal by the Assembly of Kosovo.

Holding the position of the Chairperson of the Commission for Bar Examination by the Chief State Prosecutor puts the same in violation of Article 13 (2) of the Law on Prevention of Conflict of Interest during the Exercise of Public Functions.

In this regard, the KLI has elaborated only the position of the Chief State Prosecutor, which is in contravention of the Law on Prevention of Conflict of Interest in the Exercise of Public Function, with the sole purpose that respecting the provisions of this law be an example from the institution called for the implementation of this law, the violation of which should be prosecuted by the institution of state prosecutor's office.

The KLI estimates that the Anti-Corruption Agency has its mandate to implement this law in preventing and fighting the conflict of interest, starting from the position of the Director of the Agency, the Chief State Prosecutor, and all the positions of public officials who fall into contrary to this law. The Agency upon the entry into force of the applicable law was required to notify the institutions of the new provisions of the Law on Prevention of Conflict of Interest during the exercise of the Public Function and to require public officials to declare the conflict of interest and at the same time to request information if there are such situations that are not deposited in the Agency.

The Anti-Corruption Agency should act urgently in order to avoid major consequences that may arise as a result of conflict of interest.

KLI estimates that the adoption of the Law on Prevention of Conflict of Interest in the Exercise of Public Function, as a requirement of the European Union and the commitment of the Republic of Kosovo, on its European path by fulfilling the criteria set out in the ARE, within the

governance of good rule of law has built a new standard in line with European standards for preventing and fighting the conflict of interest of public officials, consequently for stopping the benefits of public officials in the capacity of "supermen" by exercising some leadership positions and by being compensated with additions within the scope of their activity on a regular working hours.

IV. Law prohibits great benefits of public officials through additions

One of the biggest problems, and consequently the biggest benefits for public officials, are the extras to the work they do within regular working hours.

The practice of paying extras to public officials has been interrupted by the Law on Prevention of Conflict of Interest during Public Exercise. The practice of extras is explicitly prohibited in Article 13, paragraph 2 of this law, which stipulates that:

"The High Official, in the capacity of a member of the bodies referred to in this paragraph, shall not be entitled to a paid remuneration other than the right to reimbursement of travel expenses and other related expenses."

To elaborate this situation, KLI brings an example of additions to the Judicial Council and Prosecutorial Council. KLI systematically monitors the justice system and finds that most of the members of the Kosovo Judicial Council and Kosovo Prosecutorial Council, apart from the basic salary they receive as judges or prosecutors delegated by the court and prosecution according to legal rules and procedures, based on internal rules approved by the Kosovo Judicial Council and the Kosovo Prosecutorial Council, before the entry into force of this law, receive additional compensation for the work they do as members of two councils.

Such practice conflicts with the spirit and purpose of the conflict of interest law, which stipulates that *"a high official, in the capacity of a member of a public body, has no right to a paid remuneration other than the right to travel expenses and other related expenses."*

In this regard, it is necessary that the Judicial Council, the Prosecutorial Council and the Anti-Corruption Agency take urgent measures to clarify these situations and take urgent action to prevent the actions that could potentially enter the criminal sphere.

The issue of paying additions to public officials has already been clarified in the Law on Prevention of Conflict of Interest during the Exercise of Public Functions and the Anti-Corruption Agency should notify the institutions for the new provisions of this law and require public officials to apply the law regarding the payment of additions.

V. Recommendation

1. The Ministry of Justice and the Anti-Corruption Agency to take urgent action that through awareness campaign to inform not only the justice institutions but also all public institutions and public officials about the impact that this law will have in practice.
2. The Assembly of Kosovo and the Government of Kosovo to take urgent action in preventing situations of conflict of interest of public officials in these two institutions.
3. All public institutions within their competences and responsibilities should take action to prevent situations of potential conflict of interest and to ensure that this law is implemented precisely.
4. The Kosovo Judicial Council and the Kosovo Prosecutorial Council to review the law in question and to ensure the prevention of any conflict of interest situation for members of both Councils and other staff.
5. The Chief State Prosecutor to review his positions as Chairman of the Steering Council of the Academy of Justice and the Chairman of the Committee on Bar Examination, and to act in accordance with the Law on Prevention of Conflict of Interest.
6. The Anti-Corruption Agency, in accordance with its mandate, to assess and prevent situations of conflict of interest of public officials after the entry into force of the new Law on Prevention of Conflict of Interest in Exercising Public Function.