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PROSECUTORS IN KOSOVO FILE INDICTMENTS AGAINST DEAD PEOPLE



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ABOUT KLI

KLI, Kosovo Law Institute, is a nongovernmental and non-profit organization of public policy, a think tank specialized in the justice sector.

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1. Executive summary

Kosovo Law Institute (KLI) systematically monitors court hearings in all departments of the Basic Courts and their branches all over Kosovo. Based on all this, in daily basis are published the reports of the monitoring of these court hearings¹, that are further analyzed one by one.

During their analysis, KLI has found that only during the last two years there have been several cases, regarding which in the initial hearing judges were forced to render ruling to dismiss criminal proceedings, because the defendants were dead prior to the indictment being filed by the prosecution.

So, in court, prosecutors had submitted indictments filed against dead people.

This shows that the investigations in our country by the prosecutors are not conducted in accordance with the positive legislation and the required standards. Furthermore, the indictments are filed without conducting any investigations and without giving the defendants a chance to be questioned regarding the suspicions alleged in the indictment.

The practice has shown that in cases of filing such (direct) indictments, violations of the rights of the defendants are found, as well as other consequences. Thus, in one case presented in this report, the order for arrest rendered by the court was enforced wrongfully and another individual was therefore arrested, who had the same name and surname with the dead defendant.

Whereas, in other cases, mainly similar with one another, are found the consequences that are caused by filing indictments in such a way, starting from the violation of the human rights and freedoms, causing legal uncertainty, damaging the image and credibility of the justice system, as well as lowering the trust of the public on the integrity and independence of the justice system in Kosovo.

In this report, KLI has treated individually some of the cases found as a result of the systematic monitoring process, then has analyzed these cases together and has presented findings on the handling of this phenomenon, has found consequences that are caused as a result of such indictments, has presented specific characteristics of each case, as well as in the end has issued specific recommendations on how to avoid this situation from happening in the future.

¹ The link where you can read all published reports from the court hearings monitored: www.betimiperdrejtesi.com

2. Violations as a result of the indictments filed against dead people

The practice has shown that prosecutors are accusing several individuals without any investigation. Such circumstances are unacceptable, since the aim of an investigation is to collect evidence and data necessary for deciding whether to file an indictment or to dismiss the proceedings.²

The Criminal Code of Procedure of the Republic of Kosovo (CCPRK) has provided that if the police or any other person reports to the state prosecutor a reasonable suspicion of a criminal offence or criminal offences, none of which are punishable by fine and/or imprisonment of more than three years, and the state prosecutor determines that a well-grounded suspicion exists to support an indictment, the state prosecutor may file an indictment.³

However this only an exception, it is not a rule, because even for criminal offences of which the law provides imprisonment of no more than three years, essentially investigations shall be conducted, and the indictment shall be a product of the investigations conducted.⁴

Even more when this exception is allowed to prosecutors only in cases when there is a well-grounded suspicion. The CCPRK has provided that the well-grounded suspicion means the possession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence.⁵

Therefore, one cannot allow filing direct indictments only because the defendant is accused of a criminal offence punishable up to three years of imprisonment, but must fulfill the other criteria too, the suspicion to be well grounded. The punishable up to three years is just a formal criterion, but the prosecutor must be careful to confirm if the other criterion has been fulfilled, the one of the well-grounded suspicion. All this in order to not allow any dilemma on what has happened and if the perpetrator is the defendant.

As for the well-grounded suspicion, it cannot exist when a criminal report is not complete. To have a well-grounded criminal report, one must identify well and right the perpetrator of the criminal offence, must be sure if there are enough evidence to argument what is being stated in the criminal report regarding the action or the failure to act. It should have undisputed facts to clearly asses that is not necessary to conduct investigations and that only in such circumstances the prosecutor may file a direct indictment.⁶

In this regard, all stakeholders that are part of the criminal proceedings must be careful to fulfill their obligations, as provided by the CPCRK. This Code has provided that the court,

² Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, Article 103, par. 1.

³ Ibid, Article 101, par. 2.

⁴ Interview with former President of the Supreme Court of Kosovo, prof. Fejzullah Hasani, Pristina, October 3, 2018.

⁵ Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, Article 19, par. 1.13.

⁶ Interview with former President of the Supreme Court of Kosovo, prof. Fejzullah Hasani, Pristina, October 3, 2018.

the state prosecutor and the police participating in criminal proceedings must truthfully and completely establish the facts which are important to rendering a lawful decision.⁷

CPCRK consequently has built the standard through which it obliges the state prosecutor and the police participating in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in his or her favor, and to make available to the defense all the facts and pieces of evidence, which are in favor of the defendant, before the beginning of and during the proceedings.⁸

Cases further treated in the report (mainly regarding the criminal offence “theft of utility services”) show that they faced an indictment only because the electricity transmission was registered under their name.

Based on the CPCRK, the defendant and the prosecutor are equal in the criminal proceedings. The defendant has the right and shall be allowed to make a statement on all the facts and evidence which incriminate him or her and to state all facts and evidence favorable to him or her. He or she has the right to request the state prosecutor to summon witnesses on his or her behalf. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.⁹

In cases treated in this report, the defendants never had such a chance, thus disabling to attest the liability, knowing that for natural persons the principle of subjective liability applies and if an individual is guilty, then his or her guilt must be proven. If we speak specifically regarding cases treated in this report then we say that it shall be proven the certain individual is the one who has diverted the certain electricity transmission and it shouldn't be enough the fact that the electricity transmission was registered under his or her name.

It is simply the duty of every prosecutor to carry out the investigation with the utmost care and respecting the rights of the defendant, which means that their prosecution, and even more so, the indictment, should be filed only after there is evidence that justify the grounded suspicion, or after the defendant has the opportunity to plead, either directly – orally or in writing.

On the contrary we can say that we can also find violations of the law on State Prosecutor, which provides that the duties of the Prosecutor, expressively stating the duty to exercise the highest standards of care during the performance of official functions, as well as the duty to protect the legal rights of victims, witnesses, suspects, accused and convicted persons.¹⁰

Cases treated in the final part of this report show that prosecutors have not conducted investigations at all and have not even contacted the suspects, thus we have completely

⁷ Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, Article 7, par. 1.

⁸ Ibid, Article 7, par. 2.

⁹ Ibid, Article 9, par. 2.

¹⁰ Law no. 03/L-225 on State Prosecutor, Article 7, par. 1.2 and 1.5.

ungrounded (unstable) indictments, ones that disable even to start the trial, since the defendants are dead people.

On the other hand, CPCRK expressively has provided duties of the state prosecutor in case of the death of the defendants, where is provided that if in the course of criminal proceedings it is ascertained that the defendant has died, the state prosecutor shall render a ruling to dismiss criminal proceedings¹¹. Which means that in case of a proper investigation, none of the cases treated further by KLI, would be facing an indictment.

3. Specific cases of violations of the law when filing indictments against dead people

Based on the analysis of individual cases, it results that the filing of direct indictments is mainly related to the criminal offence “theft of utility services”. A criminal report, which was based on minutes compiled by KEDS employees was submitted prior to these indictments.

In this regard, concerning is the fact that in at least one case, in minutes, was written “party present”, even though the defendant was dead in the time when the minutes were compiled. This means that the minutes consist of fake data, which were used by the prosecution to file an indictment, that was later presented in court, but it resulted unstable.

In the first case treated in the next chapter, except the filing of the indictment against a dead person, the situation got more complicated, because in this case the court rendered an order for arrest and then this order was enforced against another person, who had the same name and surname with the late defendant, but completely different from him. Such a case shows the consequences caused because of the actions of specific institutions without the right level of care.

Whereas, in other cases, mainly similar to one another, it is shown the course of the proceedings of each case separately, where indictments have been filed against persons already deceased.

The following section of this report presents only nine of the recent cases where prosecution offices have filed such indictments, which are cases identified by KLI as a result of the monitoring process. Each of these cases, individually, accurately indicates the course of the proceedings, starting with the indictment filing by the prosecution offices, further development of the case and finally the termination of the proceedings by the court.

¹¹ Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, Article 160.

3.1. Case 1 – The indictment filed 15 years after the death of the defendant and the arrest of the wrong person¹²

Basic Court in Peja

Case number: P.nr.783/17

Criminal offence: Unauthorized connection to utilities

The date when the indictment was filed: July 28, 2017

The date of the defendant's death: in the year 2002¹³

The Basic Prosecution in Peja filed an indictment against T.S. on July 28, 2018, charging him for the criminal offence “unauthorized connection to utilities”.

Regarding this case, the court hearings failed several times to be held, therefore in order to make sure that the defendant will be present in the court hearings, the Basic Court in Peja, on August 17, 2019 issued an order for arrest against T.S.

After this, another person with the name T.S., same as the one in the indictment, was arrested after coming to Kosovo from Switzerland. He was present on the court hearing of the August 19, 2019 and declared that he is not the person that is accused by the Basic Prosecution in Peja. Also, he stated that he does not live in Peja, but in a village in Gjakova Municipality, and then it was proven that his name and surname was the same as the defendant's but is completely another person.

In the court hearing of the August 19, 2019, was present also the son of the accused T.S., who stated that his father has died 17 years ago in Switzerland.

After gathering these information, judge Florije Zatriqi, dismissed the indictment in this case, since prior to this the prosecutor Ardiana Veseli withdrew from prosecution and stated that the indictment was filed based on the criminal report submitted by KEDS.

Based on the indictment, T.S. is accused that on May 5, 2015, in his house, in Peja, without the supplier's authorization was connected directly to the electrical network, in a way that by KEDS commission was found that he is unlawfully being supplied with electrical energy. Thus, it is alleged that he has caused damage to KEDS, in an amount of 564.44 euros.

¹² “Next “failure”, the indictment is dismissed after being confirmed that the person against whom it was filed has died 17 years ago, another person with the same name is arrested”. Betimi për Drejtësi. August 19, 2019. (Follow link: <https://betimiperdrejtesi.com/huqja-e-radhes-hudhet-poshte-aktakuza-pasi-vertetohet-se-ishte-ngritur-ndaj-personit-qe-ka-vdekur-para-17-vjetesh-u-arrestua-personi-me-emrin-e-njejte/>).

¹³ Clarification: The exact time of death is not known, since in the case file is not found any death certificate. But, based on the statements of the hearing of August 19, 2019, it results that the accused has died 17 years ago. Whereas, his son stated that the death certificate of his father will be scanned and sent to the Basic Prosecution in Peja, after he returns to Switzerland, where his father has passed away.

3.2. Case 2 – The indictment filed 13 years after the death of the defendant¹⁴

Basic Court in Pristina –Branch in Podujeva

Case number: P.nr.681/2018

Criminal offence: Theft of utility services

The date when the indictment was filed: November 1, 2018

The date of the defendant's death: in the year 2005¹⁵

The Basic Prosecution in Pristina, on November 1, 2018 filed an indictment against F.B. for the criminal offence “theft of utility services”. This prosecution office accused him that in March 2018 was illegally connected to the electrical network, thus alleging that it has caused damage to KEDS, in an amount of 57.24 euro.

Regarding this indictment, the Basic Court in Pristina, Branch in Podujeva, on May 31, 2019 the initial hearing was scheduled, but the accused was absent. Because, of his absence, this court issued an order to forcibly bring the accused to court, but the Police Station in Podujeva informed the court that they found that the accused had died 14 years ago.

After this information, judge Elheme Jashari, rendered a decision to terminate this criminal proceeding. In the decision it is stated that KEDS, as an injured party is guided to submit a legal property claim, whereas the costs of criminal proceedings shall be paid from budgetary resources of the court.

According to the indictment, FB is accused that in the Bellopoja village of Podujeva, on March 8, 2018, after a search by KEDS employees, it was found that after being disconnected from the electricity transmission, he was connected to the electricity network outside the transmission, unlawfully. In the indictment is stated that KEDS suffered material damage in the amount of EUR 57.24 euro.

Prior to filing this indictment, on 12 June 2018, the prosecution had received a criminal report from KEDS regarding this case.

¹⁴ “Last year the prosecution has filed an indictment against the person who had died 14 years ago, against him was issued an arrest warrant”. Betimi për Drejtësi. July 8, 2019. (Follow link: <https://betimiperdrejtesi.com/prokuroria-vitin-e-kaluar-kishte-ngritur-aktakuze-ndaj-personit-qe-kishte-vdekur-para-14-vjetesh-ndaj-tij-ishte-leshuar-edhe-urdherarrest/>).

¹⁵ *Clarification:* The exact time of death is not known, since in the case file is not found any death certificate. However, the Court has informed us that they have received the information from the Kosovo Police, where it is said that the accused had died 14 years ago and based on this information the court rendered the decision to terminate the proceedings.

3.3. Case 3 – The indictment filed 13 years after the death of the defendant¹⁶

Basic Court in Mitrovica

Case number: P.nr.331/18

Criminal offence: Theft of utility services

The date when the indictment was filed: April 25, 2018

The date of the defendant's death: May 17, 2005

The Basic Prosecution in Mitrovica, on April 25, 2018, filed an indictment against B.F. accusing him for the criminal offence “theft of utility services”. The indictment accuses him of having committed the offence in June 2017.

But official documents show that the person against whom this indictment was filed had died in 2005. Kosovo Police, through a letter of notification, informed the Basic Court in Mitrovica that the accused had died on May 17, 2005, and the death certificate was attached to the notification.

After receiving this information, the judge Bekim Veliqi, terminated the criminal proceedings in this case.

Another characteristic in this case is the fact that the personal data of the accused written in the indictment of the Basic Prosecution in Mitrovica only mentions that the accused is B.F. from the Broboniq village, Mitrovica Municipality, his personal number and citizenship, while does not specify other personal details such as date and place of birth, occupation, education, his economic status and other details usually written in the Prosecution indictments.

Prior to this indictment there was a criminal report submitted by KEDS, which was based in minutes of a report ascertaining the theft of electricity, where, on July 15, 2017, as a consumer was written the name of B.F. and in the end of minutes was written “party present, refuses”.

The criminal report dated December 12, 2017, submitted against the defendant B.F has been filed on suspicion of committing the crime “theft of utility services”.

¹⁶ “Exclusive: Prosecution in Mitrovica files an indictment against the person who has died 13 years ago”. Betimi për Drejtësi. October 25, 2018. (Follow link: <https://betimiperdrejtesi.com/ekskluzive-prokuroria-ne-mitrovice-ngrite-aktakuze-ndaj-personit-qe-ka-vdekur-para-13-vjetesh/>).

3.4. Case 4 – The indictment filed 10 years after the death of the defendant¹⁷

Basic Court in Pristina

Case number: P.nr.5436/16

Criminal offence: Theft of utility services

The date when the indictment was filed: December 22, 2016

The date of the defendant's death: January 18, 2007

The Basic Prosecution in Pristina, in December 2016, filed an indictment against A.G. for the criminal offence of “theft of utility services”, since according to the indictment, he used the electricity unauthorized, connecting directly outside the metering point, thus causing damage to KEDS in the amount of over 452 euros.

However, the Kosovo Police, through a submission, informed the court that the accused had died. The same confirmation had been sent to the court by the Civil Registry Service, who had attached the death certificate of the accused A.G to the letter sent to the court, stating that he had passed away on January 18, 2007.

In such circumstances, the judge Kushtrim Shyti, had terminated the criminal proceedings against the accused A.G.

Otherwise, the Basic Prosecution in Pristina, on December 22, 2016, filed an indictment against A.G. for the criminal offence of “theft of utility services”, provided by the Article 320 of the CCRK.

According to the prosecution, on December 16, 2015, at his home in the Hajvali village, Municipality of Pristina, the accused unauthorizedly used electricity.

The prosecution alleged that it had bypassed the metering unit – electrical transmission, making direct connections outside the metering point without the authorization of the relevant supplier, KEDS, in order to avoid the electricity being recorded and billed at all, thereby the damage was caused to the injured party in the amount of EUR 452.36.

Prior to filing this indictment, KEDS filed a criminal report against A.G. on June 29, 2016.

¹⁷ “The prosecution files an indictment against the person who has died in the year 2007, the court terminates the criminal proceedings”. Betimi për Drejtësi. July 23, 2019. (Follow link: <https://betimiperdrejtesi.com/prokuroria-ngrit-aktakuze-ndaj-personit-qe-ka-vdekur-ne-vitin-2007-gjykata-pushon-proceduren-penale/>).

3.5. Case 5 – The indictment filed 9 years after the death of the defendant¹⁸

Basic Court in Pristina

Case number: P.nr.5458/16

Criminal offence: Theft of utility services

The date when the indictment was filed: December 23, 2016

The date of the defendant's death: May 27, 2007

The Basic Prosecution in Pristina on December 23, 2016, filed an indictment against I.I, accusing him of having committed the criminal offence “theft of utility services”. This prosecution office accused him that on January 29, 2016, at his home in Pristina, he was found using electricity illegally.

Regarding this indictment, the Basic Court in Pristina had scheduled the initial hearing on July 25, 2019, but the returned receipt indicated that the accused was unknown.

Subsequently, on August 7 of the same year, this court requested from the Kosovo Police to verify in the Civil Status Register the life status of accused I.I. After receiving an official confirmation, judge Alban Ajvazi, on August 16, 2019 decided to dismiss this indictment and terminate this criminal procedure.

According to the indictment, on January 29, 2016, on the street “Ramiz Sadiku” in Pristina, the accused I.I. was found using electricity unauthorized. The prosecution alleged that in order to unlawfully obtain material benefit, the accused I.I. bypassed the metering unit – electrical transmission, inserting tape on the right side, in order to obstruct the work of the disc, in order to prevent spent energy to be registered and billed at all, whereby to the injured party KEDS caused material damage in the amount of 206.86 euros.

Otherwise, this indictment was preceded by the criminal report filed by KEDS on June 13, 2016.

¹⁸ “Filing indictments against people who have died a long time ago continues, such an indictment is dismissed”. Betimi për Drejtësi. August 27, 2019. (Follow link: <https://betimiperdrejtesi.com/vazhdon-ngritja-e-aktakuzave-ndaj-personave-qe-kane-vdekur-shume-vite-me-pare-nje-e-tille-serish-hudhet-poshte/>).

3.6. Case 6 – The indictment filed 9 years after the death of the defendant¹⁹

Basic Court in Pristina

Case number: P.nr.2884/17

Criminal offence: Theft of utility services

The date when the indictment was filed: June 20, 2017

The date of the defendant's death: October 14, 2008

The Basic Prosecution in Pristina on June 20, 2017, filed an indictment against Sh.I. alleging that he had committed the criminal offence “theft of utility services”. This prosecution accused him of being supplied with electricity without the authorization and authorization of the authorized supplier, through an electrical cable located outside the electricity transmission.

Regarding this indictment, the Basic Court in Pristina had scheduled the initial hearing on June 24, 2019, when the wife of the now deceased had informed the court that the accused Sh.I. had died. Subsequently, Judge Fatime Dërmaku issued an order to the Municipality of Pristina to verify the life status of the accused Sh.I.

The Municipality of Pristina, acting on this order, had sent the death certificate of the accused Sh.I. to the court, thus testifying that he had passed away on October 14, 2008 and consequently Judge Dërmaku, on August 21, dropped the indictment and terminated criminal proceedings against Sh.I.

According to the prosecution, on December 8, 2016, when a KEDS authorized persons carried out a search, at the house of the accused Sh.I. it was found he without the permission or authorization of the authorized supplier, and for the purpose of obtaining unlawfully, was supplied with electricity, outside the electricity transmission through the cable located at the roof of the house and thus bypassed the transmission and was supplied without metering, as a result of which it caused material damage to the injured party – KEDS in the amount of 162.62 euros.

Prior to the prosecution's indictment, on January 17, 2017, KEDS filed a criminal report against the deceased.

¹⁹ “The prosecution files an indictment against the person who has died on the year 2008, the criminal proceedings against him is terminated”. Betimi për Drejtësi. August 26, 2019. (Follow link: <https://betimiperdrejtesi.com/prokuroria-ngrite-aktakuze-ndaj-personit-qe-ka-vdekur-me-2008-pushohet-procedura-ndaj-tij/>).

3.7. Case 7 – The indictment filed 8 years after the death of the defendant²⁰

Basic Court in Mitrovica – Branch in Vushtrri

Case number: P.nr.675/18

Criminal offence: Theft of utility services

The date when the indictment was filed: November 21, 2018

The date of the defendant's death: December 3, 2010

The Basic Prosecution in Mitrovica, on November 21, 2018, filed an indictment against J.D., alleging that during 2017, he committed the criminal offence “theft of utility services”.

But according to official civil records, it was found that he had died on December 3, 2010, about eight years before the indictment was filed.

Based on these documents, the case judge, Agron Maxhuni, then terminated the criminal proceedings against the accused J.D.

The late J.D. was accused of stealing electricity for an indefinite period of time until May 29, 2017, in Vushtrri. According to the indictment, defendant J.D., at his home in Vushtrri, had crossed the entrance and exit of the electric transmission and supplied the entire house outside the transmission, thus causing damage to the KEDS company in the amount of 276.13 euros.

Otherwise, prior to the filing of the indictment, KEDS on March 5, 2018, had filed a criminal report against J.D., to the Basic Prosecution in Mitrovica.

²⁰ “The prosecution in Mitrovica files an indictment against the person who has died in the year 2010, criminal proceedings against him is terminated”. Betimi për Drejtësi. April 12, 2019. (Follow link: <https://betimiperdrejtesi.com/prokuroria-ne-mitrovice-ngrite-aktakuze-ndaj-personit-qe-ka-vdekur-ne-vitin-2010-pushohet-procedura-ndaj-tij/>).

3.8. Case 8 – The indictment filed 7 years after the death of the defendant²¹

Basic Court in Gjilan – Branch in Kamenica

Case number: P.nr. 266/2017

Criminal offence: Theft of utility services

The date when the indictment was filed: October 6, 2017

The date of the defendant's death: November 26, 2010

The Basic Prosecution in Gjilan had filed an indictment against B.T. on October 6, 2017. He was charged to have continuously and unauthorizedly used the power grid in his home in the Bolec village, in Kamenica, from an unknown time until July 12, 2017.

Meanwhile, at the initial hearing of this case, which had failed to take place, his son had come to the courtroom, who had informed the court that his accused father had been dead for more than eight years. He had also brought the death certificate of his father, issued by the Novoberda municipality civil office, based on which it was proven that he died on November 26, 2010.

In the light of these circumstances, the judge Valbonë Dërvodeli, terminated the proceedings against the accused B.T.

The deceased was alleged to have continuously and unauthorizedly benefited from the municipal service – the KEDS electricity distribution network, from an unknown time until July 12, 2017. The indictment states that the accused was connected directly to the electricity grid outside the meter and had spent electricity without registering it as an expense, thus damaging KEDS company in the amount of 239.31 euros.

Prior to this indictment, a criminal report was submitted against the deceased, by KEDS – District of Gjilan, on September 11, 2017.

²¹ “Prosecution in Gjilan files an indictment against the person who has died in the year 2010, the court terminates criminal proceedings against him”. Betimi për Drejtësi. March 19, 2019. (Follow link: <https://betimiperdrejtesi.com/prokuroria-ne-gjilan-ngrite-aktakuze-ndaj-personit-qe-ka-vdekur-me-2010-gjykata-pushon-proceduren-ndaj-tij/>).

3.9. Case 9 – The indictment filed 6 years after the death of the defendant²²

Basic Court in Pristina

Case number: P.nr.4118/16

Criminal offence: Theft of utility services

The date when the indictment was filed: October 5, 2016

The date of the defendant's death: March 5, 2010

The Basic Prosecution in Pristina, on October 5, 2016, filed an indictment against A.SH, alleging that he had committed the criminal offence “theft of utility services”.

Regarding this indictment, it was announced at the initial hearing that the accused had passed away in 2010. In the court hearing was present the son of the accused, who informed the court that the accused had passed away 9 years ago and handed over to the court the original death certificate to the accused, which proved that he had passed away on March 5, 2010.

In these circumstances, Judge Adnan Isufi stated that the court would render a decision to terminate the criminal proceedings against the accused A.SH., after finding that he had passed away.

According to the prosecution, the accused, from an unknown time until January 27, 2014, at his home in Pristina, in order to hide abuses and the avoiding of payment of electricity he had spent without the authorization of the authorized supplier, manipulated the state seals as well as the meter counter, where traces of scratching the numbers on the counter were noticed, whereby it caused damage to KEDS in the amount of 162.93 euros.

Prior to filing the indictment of the Basic Prosecution in Pristina, KEDS on June 9, 2014 had filed a criminal report against the accused.

²² “The prosecution files an indictment for theft of utility services against the person who has died in the year 2010”. Betimi për Drejtësi. July 15, 2019. (Follow link: <https://betimiperdrejtesi.com/prokuroria-ngrite-aktakuze-per-vjedhje-te-sherbimeve-komunale-ndaj-personit-qe-ka-vdekur-ne-vitin-2010/>).

4. Consequences caused by filing direct indictments

Based on specific findings from the systematic monitoring process conducted by KLI, it is clear that state prosecutors are not applying the principles and standards guaranteed by the CPCRK, regarding equality of arms and respect of the procedural rights of defendants in criminal proceedings. In this way, human rights and freedoms for an impartial, fair and independent process are seriously being violated.

In addition to specific violations identified in the first part of this report, as a result of these actions, in these cases there are consequences for the state budget as well, because automatically the costs of the proceedings shall be paid by the respective court, pursuant to Article 454 of the CPCRK, stating that when criminal proceedings are terminated [...], the court shall state in the ruling or judgment that the costs of criminal proceedings [...], the necessary expenses of the defendant and the remuneration and necessary expenditures of defense counsel shall be paid from budgetary resources [...].²³

Apart from these expenses, the expenses that are incurred as a result of the representation of the case in the respective court branch by the respective prosecutor, shall be paid from budgetary resources. This is in cases when the trial is held in any of the branches of a court.

Above all, filing indictments in such a manner results in violating human rights and freedoms, it creates legal uncertainty, and it damages the image and credibility of the justice system, as well as it lowers public trust regarding the integrity and the independence of the justice system in Kosovo.

²³ Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, Article 454, par. 1.

5. Recommendations

1. Prosecutors should ensure that they do not violate the legal certainty of Kosovo's citizens and apply in practice the legal provisions that guarantee the rights of defendants in criminal proceedings;
2. Prosecutors shall avoid the practice of filing direct indictments without conducting investigations and interrogating the defendants, assessing that it's sufficient to be fulfilled only the formal criterion – the one of the punishments of the criminal offence up to three years of imprisonment;
3. The court shall return such indictments to the prosecution office to supplement them, and in case they are not supplemented within the legal time limit, then shall dismiss them as irregular.