



Interference in the justice system through public statements



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ABOUT KLI

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

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LIST OF ACRONYMS

| | |
|---------------------|--------------------------------------------------------------|
| RK | Republic of Kosovo |
| Constitution | Constitution of the Republic of Kosovo |
| SPRK | Special Prosecution of Republic of Kosovo |
| MIET | Ministry of Industry, Enterprise and Trade |
| MFLT | Ministry of Finance, Labor and Transfers |
| MoJ | Ministry of Justice |
| ECHR | European Convention of Human Rights and Fundamental Freedoms |
| ECtHR | European Court of Human Rights and Fundamental Freedoms |
| CC | Constitutional Court |
| BCP | Basic Court of Pristina |
| ARK | Assembly of the Republic of Kosovo |
| GRK | Government of the Republic of Kosovo |
| SC | Supreme Court |
| IO | Institution of the Ombudsperson |

1. Executive summary

Respecting the independence of the judiciary, including the restraint of public authorities from unnecessary criticism of the justice system, is one of the last recommendations for Kosovo in the Report on the Conformity of the Legal System of Kosovo with the standards of the Council of Europe published on 27 November 2023 and made by eminent lawyers from the Bureau of the Assembly of the Council of Europe.[1] Such recommendation is also given based on the findings presented in this report.

KLI finds that the Prime Minister, ministers, deputy ministers, political advisers and deputies of the Assembly of Kosovo, especially in the VIII Legislature, have been involved in criticism and statements which directly or indirectly involved interference in the justice system. The interference have been evidenced on what the executive and legislative power has commented on the performance in the justice system, in commenting on the judgments of the regular courts and the Constitutional Court.

According to the Constitution of the Republic of Kosovo [hereinafter: Constitution], international practices and standards, the independence of the judiciary, as a separate power from the executive and legislative, constitutes one of the key components of the rule of law. First of all, Article 4 of the Constitution and Article 6 of the European Convention on Human Rights [hereinafter: ECHR] guarantee an independent court, thus prohibiting non-judicial entities from performing the judicial function. Consequently, this division of powers does not allow statements by public authorities that prejudice the assessment of facts by the judicial authority. The public judgment made by public officials further violates the principle of presumption of innocence, which is enshrined in Article 6 of the ECHR and Article 31 of the Constitution.

However, regardless to this, during 2022 and 2023 there were continuous interferences in the independence of the justice system, first by the executive through the government's decisions to reduce salaries and then by justifying this reduction through the Law on Salaries in the Public Sector and on the other hand, the other intervention that has been evidenced is that by not making adequate budget allocations in the annual budget allocations according to the requirements of the institutions of the justice system.

This opposite behavior of the executive and legislative power produces distrust of the citizens in the justice system. Since, the executive and legislative powers in relation to the justice bodies have the task of supporting the justice system, as far as these powers have the competence and to refrain from statements which, even in the absence of negative intent, may cause distrust of citizens in bodies of justice, especially in their personal cases before justice.

[1] *Report on the Conformity of Kosovo's Legal System with Council of Europe Standards*, Council of Europe, 2023. (https://rm.coe.int/application-for-membership-set-out-in-the-letter-of-12-may-2022-addres/1680ad7750?fbclid=IwAR1born6n9P0AgMTëVcZFwejaudc_YqGAlgn6FnDajioBc4uGf9aRhhGm5c). (Qasur për herë të fundit me 28 nëntor 2023).

The report “Interference in the Justice System through public statements” shows with concrete examples how some statements of the executive and the legislature represent interference in the justice system. Furthermore, international practices and standards are shown, on the basis of which unnecessary criticism, commenting on court decisions and attacks on leaders and individual judges/prosecutors are not allowed. The report shows the division of powers, the limits of the responsibility of the Government and the Assembly in the direction of the justice bodies, how interventions through statements weaken citizens' trust in the justice system, about the financial and functional independence of the justice system.

2. Context

Since 2018, the institutions of the justice system have been attacked by political power at the level of the Government and the deputies of the Assembly of Kosovo. Interventions have included statements from the Prime Minister, government officials, and deputies regarding the performance of the justice system, commenting on regular court decisions and those of the Constitutional Court. Other interventions have occurred through budgetary non-allocations, considered impure interference in the financial independence of justice system bodies. On the other hand, other interventions have included decisions to reduce salaries for judges and prosecutors.

In 2018, during the High-Level Rule of Law Summit, the former Prime Minister of Kosovo, Ramush Haradinaj, requested from the justice system to expedite and prioritize cases related to the visa liberalization process for a specific period (3 months).[2] Such a statement, was considered by civil society[3], an interference in the justice system.[4] For the same issue, the European Commission, in its annual progress report for 2018, emphasized that there were political interventions in the judiciary, especially concerning the pension schemes for veterans.[5]

Another case of deep interference in the justice system emerges from the public denunciation by prosecutor Elez Blakaj, who claimed that during his investigation into fraudulent veterans, he faced continuous threats related to the final results of the investigations. Moreover, with the request of former Prime Minister Haradinaj, Blakaj had been asked to report to the Prime Minister about the investigation of the veterans list.[6] In this case, former deputy Shkumbin Demaliaj, in an interview on public television (RTK), had threatened former prosecutor Elez Blakaj. In this interview, Demaliaj referred to Blakaj as a 'criminal,' 'deserter,' 'thug,' 'idiot,' and 'ruffian'.[7] Demaliaj was arrested on these charges by the Kosovo Police.

On January 3, 2020, "VETËVENDOSJE MOVEMENT", through a statement, criticized the verdict of the Basic Court in Pristina regarding the case known as the 'Pronto Affair'. According to them, the verdict of the Basic Court was scandalous, evidence that these courts are captured by the executive.[8]

[2] "Prime Minister Haradinaj: The Prosecutor's Office and the Courts must have a management plan in solving accumulated and targeted cases!". Prime Minister's Office, 2018. ([3] "Ndërhyrjet politike në sistemin e politizuar prokurorial, alarm për nevojën e vettingut në polici, prokurori dhe gjykata". IKD, 2018. (<https://kli-ks.org/15778/>). (Qasur për herë të fundit me 2 nëntor 2023). (Last accessed 2 November 2023).

[3] "Political interference in the politicized prosecutorial system, warning about the need for vetting in the police, prosecutor's office and courts". KLI, 2018. (<https://kli-ks.org/15778/>). (Last accessed 2 November 2023).

[4] "The prime minister's ultimatum for the judiciary, interference in justice". Koha, 2018. (<https://www.koha.net/arberi/107849/ultimatumi-i-kryeministrit-per-gjyqesorin-nderhyrje-ne-drejtesi/>). (Last accessed 2 November 2023).

[5] "Report of the European Commission on Kosovo for the year 2018, pg. 73.". (<https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20190529-kosovo-report.pdf>). (Last accessed 2 November 2023).

[6] "The document that proves Haradinaj's interference in the judiciary." Koha, 2018. (<https://www.koha.net/arberi/112828/dokumenti-ge-deshmon-nderhyrjen-e-haradinajt-ne-gjyqesor/>). (Last accessed 2 November 2023).

[7] "The impunity of corruption is a danger to society and the state, pg. 73." KLI, 2019. (<https://kli-ks.org/wp-content/uploads/2019/03/1.-Tri-vjet-kunder-korrupsionit-IKD-versioni-SHQIP.pdf?fbclid=IwARITt2l6KlgLxAëzZ5Bhc49HhH5aXBëgrK0dH4OXhËZ4iZryD8LMaTgmUA>). (Last accessed 2 November 2023).

[8] "Untitled communiqué post on the Facebook social network." VETËVENDOSJE! Movement, 2020. (<https://www.facebook.com/vetevendosje/posts/10156437229542000/>). (Last accessed 2 November 2023).

Although he declared that he does not comment on the judiciary's decisions, the Prime Minister of Kosovo noted on one occasion that when it comes to himself, the judiciary appears to be very efficient compared to other cases it has in process. According to him, their efficiency only demonstrate when they have a narrow interest.[9] Other statements interfering with the justice system include the declaration of the LVV deputy, Fjolla Ujkani, stating that the justice system is sabotaging the denunciations of "VETËVENDOSJE!".[10]

On May 17, 2022, the Basic Court in Prizren found two former officials of the Municipality of Prizren, Islam Thaqi, former director of the Inspectorate, and Jetmira Vrenezi, former head of the Construction sector and current deputy of LVV (VETËVENDOSJE!) in the Assembly of Kosovo, guilty of abuse of official duty for the demolition of the annex of "ABI Çarshia".[11] They were sentenced to three years in prison and fined 2,000 euros each. At the time of the verdict, Islam Thaqi was an assembly member from the LVV in the Prizren Municipal Assembly.

Regarding the decision made by the Basic Court in Prizren, Adnan Rrustemi, the Chair of the Legislation Commission, declared that Ms. Vrenezi and her colleagues did not violate the law but accused the Prizren Prosecutor's Office of acting unlawfully".[12] Regarding the Vrenezi case, Minister's Councilor Nazlie Bala reacted, stating that the decision against Jetmira Vrenezi is a defense of usurpers and punishment for those who defended the public interest. Her statement was commented on by the Chairperson of the Judicial Council of Kosovo, Albert Zogaj, who deemed it harmful.[13] Jetmira Vrenezi's case was retried by the Court of Appeals, requesting the Basic Court in Prizren to act according to the observations of this court, eliminate contradictions, reprocess all evidence for a fair and complete clarification of all facts. The appeal by the Prizren Prosecutor's Office is considered non-urgent.

Prime Minister Kurti has also commented on the proceedings at the Basic Court in Pristina regarding the case against the Public Housing Enterprise for a public property, which, according to the claims of LM (VETËVENDOSJE!) assembly members, involves the abuse of official duty by this enterprise. For this case, Prime Minister Kurti had posted a question on his Facebook social network: "Who leads with the independence of the judiciary?"[14]

[9] "Kurti reacts to the judiciary: It is becoming very efficient for itself." Koha, 2023. (<https://ëëë.koha.net/arberi/355268/kurti-i-reagon-gjyqesorit-po-dalin-shume-efikas-per-vetveten/>). (Last accessed 2 November 2023).

[10] "Deputy of VM: The justice system is sabotaging the denunciations of the government - Shala describes them as interference." Ekonomia Online, 2023. (<https://ekonomiaonline.com/deputetja-e-vv-se-sistemi-i-drejtësisë-po-i-saboton-denoncimet-e-pushtetit-shala-i-cileson-si-nderhyrje/>). (Last accessed 2 November 2023).

[11] "Six years of imprisonment for two Prizren officials for the demolition of the "Abi Qarshia" annex Koha, 2022. (<https://www.koha.net/kosove/325770/gjashte-vjet-burgim-per-dy-zyrtaret-e-prizrenit-per-rrenimin-e-aneksit-te-abi-qarshia/>). (Last accessed 2 November 2023).

[12] "The deputy of the VM comes to the side of the colleague who was sentenced to three years in prison" Koha, 2022. (<https://staging.koha.net/arberi/325808/deputeti-i-vv-se-i-del-ne-krah-koleges-qe-u-denua-me-tri-vjet-burgim/>). (Last accessed 2 November 2023).

[13] "Zogaj: Harmful comment that the adviser of the Ministry of Education made on the punishment of MP Vrenezi" Betimi për Drejtësi, 2022. (<https://betimiperdrejtësi.com/zogaj-thote-se-eshte-i-demshem-dhe-i-papranueshem-komentimi-i-keshilltares-se-md-se-per-vendimin-ne-rastin-e-deputetes-vrenezi/>). (Last accessed 2 November 2023).

[14] "Prime minister Kurti: Who leads the independence of the judiciary?" Koha, 2022. (<https://www.koha.net/arberi/342793/kryeministri-kurti-kush-udheheq-me-pavaresine-e-gjyqesorit/>). (Last accessed 2 November 2023).

Statements about the inefficiency of the justice system in handling cases have made also the deputy ministers in the Kurti 2 government. Deputy Minister of the Ministry of Infrastructure, Hysen Durmishi, criticized the Special Prosecutor's Office of the Republic of Kosovo (SPRK), stating that more than two years have passed without any action being taken regarding the maintenance of bridges.[15]

Deputy Minister of the Ministry of Justice, on August 20, 2023, contested the actions of the SPRK through his Facebook social network regarding the case related to state reserves. According to him, a completely civil matter is being attempted to be turned into a criminal issue as a form of revenge against the government[16]. For the case of state reserves, the Minister of Justice and the Minister of Finance, Labor, and Transfers also reacted.[17] They accused the SPRK of negligence in cases where they claim there have been abuses, but the SPRK has not taken any specific action so far.

The contestation of the actions of the SPRK has also been contested by the Chair of the Budget and Finance, Labor, and Transfers Committee, Armend Muja. He stated that the prosecutor's file has elementary mistakes.[18]. On the other hand, even the Prime Minister, contesting the actions of the PSRK, declared that as long as there is no corruption and abuse, he has confidence in Minister Rozeta Hajdari. According to him, the investigations against the minister are more related to changing the political elite than legal issues. He believes that his policy is good and responsible and a winner, but "the losers are found in the old and corrupt political elite, in its judiciary and prosecutors, in the media misused to support crime.[19]

The Minister of Justice addressed citizens on the Facebook social network, casting doubt on the SPRK with the question of what and for whom does the PSRK work? Haxhiu said that they have submitted many other complaints to the prosecution and the police, but no action has been taken so far.[20] Also, the Minister of Industry, Entrepreneurship, and Trade, Rozeta Hajdari, on August 21, 2023, through a video on her Facebook social network, criticized the justice system for not reacting to the case of the signing of an administrative directive by former Minister Vesel Krasniqi. According to her, despite filing a criminal complaint with the police and the prosecutor's office, these institutions have not reacted.[21]

[15] "Durmishi criticizes SPRK: For over two years, there has been no action on the subject of bridge maintenance." Betimi për Drejtësi, 2023. (<https://betimiperdrejtesi.com/durmishi-kritikon-psrk-ne-mbi-dy-vjet-ska-asnje-veprim-per-lenden-e-mirembajtjes-se-urave/>). (Last accessed 2 November 2023).

[16] "Post on social media platform Facebook, 2023.. (https://www.facebook.com/blerim.sallahu/posts/10226794755188065?ref=embed_post). (Last accessed 2 November 2023).

[17] "Murati e Haxhiu with charges against the Special Prosecutor's Office, 2023 Betimi për Drejtësi.. (<https://betimiperdrejtesi.com/edhe-murati-e-haxhiu-me-akuza-ndaj-prokurorise-speciale/>). (Last accessed 2 November 2023).

[18] "Reserves and Prosecution File, 2023. (https://www.facebook.com/armendmuja13/posts/631990698914553?ref=embed_post). (Last accessed 2 November 2023).

[19] "Kurti says that there is no corruption and misuse of the reserves, he mentions the prosecutors of the old corrupt elite, 2023 Betimi për Drejtësi. (<https://betimiperdrejtesi.com/kurti-thote-se-ska-korrupsion-e-keqperdorime-me-rezervat-permend-prokuroret-e-elites-se-vjeter-te-korruptuar/>). (Last accessed 2 November 2023).

[20] "Post by the Minister of Justice on her Facebook social network, 2023. (<https://www.facebook.com/albulenaa.haxhiuu/videos/605545918328162/>). (Last accessed 2 November 2023).

[21] "It has been more than two years since we prevented a misuse of multimillions and submitted the criminal report." Facebook, 2023. (<https://shorturl.at/FHNX>). (Last accessed 2 November 2023).

In another case, Minister of Justice Albulena Haxhiu criticized the justice system, stating that this system is not fulfilling its duties because, according to her, this system is facing a patriarchal mentality where they prejudice and neglect cases of domestic violence.[22]

On December 28, 2022, the Prime Minister of Kosovo commented on the proposal of the Prosecutor of PSRK, Afrim Shefkiu, and the decision of the Judge of GjThP, Mentor Bajraktari, to change the security measure for former Serbian policeman Dejan Pantiq, who was transferred from pretrial detention to house arrest. Prime Minister Kurti expressed his desire to know 'which prosecutor makes this request, and which judge approves it.[23] On the same day, several citizens, mostly young people, put up posters against the judge and prosecutor in this case. These posters accused the justice system officials as pillars of shame. [24] Recently, SPRK filed an indictment in the Basic Court in Pristina against the spokesman of LVV, Arlind Manxhuka, and the advisor to the Ministry of Health, a part of LVV, Egzon Azemi, as well as individuals with initials Q.E. and E.Z. for the criminal offense 'Kanosja' under Article 181, paragraph 3, related to paragraph 1 of the CPC, as they deliberately slandered the injured parties Afrim Shefkiu and Mentor Bajraktari. According to PSRK, the defendants Manxhuka and Azemi, 'by abusing their official positions through the social network 'Facebook,' deliberately spread and incited hatred and intolerance towards the injured parties, prosecutor A.Sh. and judge M.B., regarding a decision to change the pretrial detention measure against the suspect D.P.[25]

After the decision of the Constitutional Court (CC), which completely overturned the Law on the Prosecutorial Council, Minister of Justice Albulena Haxhiu held a press conference stating that the CC sees the individual interests of the members of the Prosecutorial Council of Kosovo as more important than the general interest.[26] On the other hand, there was also inadequate criticism of the Constitutional Court. The Minister of Justice assessed that the Constitutional Court has become an ally of the opposition.[27] She made this statement in connection with the laws submitted by the parliamentary opposition to the Constitutional Court.

[22] "Haxhiu warns: the justice system is not fulfilling its duties, it is boycotting the state." Gazeta Blic, 2023. (<https://gazetablic.com/alarmon-haxhiu-sistemi-i-drejtise-spo-i-kryen-detyrat-po-e-bojkoton-shtetin/>). (Last accessed 2 November 2023).

[23] "Kurti after the decision to send Pantiq to house arrest: I'm curious, who is the prosecutor who requested and which judge approved it." Betimi për Drejtësi, 2022. (<https://betimiperdrejttesi.com/kurti-pas-vendimit-per-dergimin-e-pantiqit-ne-arrest-shtepiak-jam-kurreshtar-kush-eshte-prokurori-qe-kerkoi-e-cili-gjyqtar-e-aprovoi/>). (Last accessed 2 November 2023).

[24] "Graffiti against the judge and the prosecutor in the case of the former police officer Pantiq." Koha, 2022. (<https://www.koha.net/arberi/359040/grafite-ndaj-gjyqtarit-dhe-prokurorit-ne-rastin-e-ish-policit-pantiq/>). (Last accessed 2 November 2023).

[25] "Exclusive: What is said in the indictment for inciting sedition and threatening the judge and the special prosecutor" Betimi për Drejtësi, 2023. (<https://betimiperdrejttesi.com/ekskluzivecka-thuhet-ne-aktakuzen-per-nxitje-te-percarjes-dhe-kanosjen-e-gjykatesit-dhe-prokurorit-special/>). (Last accessed 2 November 2023).

[26] Minister of Justice: For the Constitutional Court, the interest of some members of the KPC is more important than the general interest." Betimi për Drejtësi, 2023. (<https://betimiperdrejttesi.com/ministrja-e-drejtise-per-gjykatën-kushtetuese-me-i-rendeshem-interesi-i-disa-anetareve-te-kpk-se-se-sa-interesi-i-pergjithshem/>). (Last accessed 2 November 2023).

[27] "Haxhiu: The constitutionalist has become an ally with the opposition." Koha, 2023. (<https://www.koha.net/arberi/396518/haxhiu-kushtetuesja-eshte-bere-aleate-me-opoziten/>). (Last accessed 2 November 2023)

3. Separation of powers

“Kosovo is a democratic Republic based on the principle of separation of powers and control and balance between them [...]”[28]

Separation of powers remains a vital principle in the functioning of democratic societies, serving as a bulwark against authoritarianism and abuse of power. This essential principle of the highest constitutional level, apart from a constitutional norm, is embodied in the spirit of the country's Constitution and as such is indisputable. The Constitution has dedicated a separate chapter to the three branches of power: executive, legislative and judicial.[29] Thus, this division is based on principles, duties and responsibilities, including mechanisms of control and balance without creating "interference", "dependency" and "subordination", which affects the independence of one or the other power.[30]

In this regard, the three aforementioned powers are exercised by the respective institutions of each power according to the institutional, organizational and functional way, maintaining the constitutional balance in every interactive instance between these powers.

Pursuant to the Constitution, ‘The Assembly of the Republic of Kosovo exercises legislative power’ and within this power exercises a number of powers, including but not limited to normative, law-making, electoral and supervisory powers. Thus, as the bearer of constitutional and legal power, the Assembly also controls or supervises the work of the executive and other public institutions that respond to it, in accordance with the Constitution and the law. Whereas, “The Government of Kosovo exercises executive power” and “is responsible for the implementation of laws and state policies and is subject to parliamentary control”.[31]

Considering the above divisions, paragraph 5 of Article 4 of the Constitution foresees the independence of the third power, the judicial power, which “is unique, independent and exercised by the courts”. This definition prohibits non-judicial entities from performing the judicial function. Thus, such a prohibition promotes legal certainty and allows final interpretation by the courts, outside the influence of other powers. In this form, the explicit determination that the exercise of judicial power is exercised by the courts is related to the principle of the separation of powers, namely the prohibition of the legislative and executive powers in the intervention of judicial powers.[32]

The Constitutional Court of the Republic of Kosovo had in some cases abolished certain legal provisions, on the grounds that they violate the independence of the justice system. One of these cases is Law no. 06/L-114 for Public Officials, for which Law this Court underlined that “...[g]overnment, respectively the Executive will not have “interfering” powers in the management of the employees of the Assembly, respectively the Legislature; whereas no guarantee has been provided for the power of the Judiciary and the Independent Institutions...”.

[28] Article 4 Constitution of the Republic of Kosovo.

[29] Ibid.

[30] Judgment of the Constitutional Court on the evaluation of the constitutionality of Law no. 06/L-111 on Wages in the Public Sector, ([30] Aktgjykim i Gjykatës Kushtetuese mbi vlerësimin e kushtetueshmërisë së Ligjit nr.06/L-111 për Pagat në Sektorin Publik, (<https://gjk-ks.org/decision/vleresim-i-kushtetutshmerise-se-ligjit-nr-06-l-111-per-pagat-ne-sektorin-publik-3/>).

[31] Article 4 of the Constitution of the Republic of Kosovo.

[32] Ibid.,

On this and other grounds, the Constitutional Court abolished the implementation of this Law in relation to the justice system and independent constitutional institutions[33]. Whereas, in the case of Law NO. 06/L-III on Salaries in the Public Sector, the Constitutional Court underlined that "...[the] disputed law, in the final decision-making chain, has left the Government as the power that must "approve" every proposal of the Judiciary. The court found that, without a single doubt, this legal regulation goes, in a flagrant manner, against the notion of "institutional, functional and organizational" independence of the Judiciary and of Independent Institutions..."[34].

3.1 The limits of the responsibility of the Government and the Assembly towards justice bodies

According to the Constitution, the Assembly and the Government have no single competence to demand accountability from the justice system, where the latter is self-administered and is not accountable to any other power. The authorizations that the Constitution and the law have given to the government extend to the proposal of legislation and on the other hand to the Assembly for the approval of budget allocations and the approval of relevant legislation in accordance with the Constitution.

Regarding the proposal of budget allocations by the Government and the approval of these allocations by the Assembly of Kosovo, their only responsibility in the sense that the financial means that are allocated are citizens' taxes for which the justice bodies are accountable to the society in general and in no way about these two institutions. In relation to budget allocations, the Venice Commission mentions the state's obligation to provide sufficient financial resources for the judicial system.[35] Moreover, according to the VC, despite the possible crises, it should not come to the point of jeopardizing the proper functioning and independence of the judiciary.

Judiciary bodies under no circumstances can be the object of funding from ad-hoc decisions, but based on decisions based on objectivity and transparency.

4. Interferences through statements: International practices and standards

The independence of the judiciary is one of the key components of the rule of law. The right to an independent and impartial court is guaranteed first of all by Article 6 of the European Convention on Human Rights (Hereinafter: ECHR), this Convention is directly implemented in the Kosovar legal system[36]. This independence of the court, in accordance with Article 6 of the ECHR, the Court pointed out in particular in relation to

[33] Judgment of the Constitutional Court on the evaluation of the constitutionality of certain articles of Law NR.06/L-III on Officials, par. 205 and the provision, [33]Po aty, fq. 473, Last accessed 21 November 2023.

[34] Judgment of the Constitutional Court on the evaluation of the constitutionality of Law 06/L-III on Salaries in the Public Sector, par. 317, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=29924>, last accessed 21 November 2023.

[35] "Draft Report on the Independence of The Judicial System: Part I: The Independence of Judges". CDL(2010)006, 10 December 2010, Venice Commission. ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)006-e#:~:text=%E2%80%9CThe%20authority%20taking%20the%20decision,decides%20on%20its%20procedural%20rules](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)006-e#:~:text=%E2%80%9CThe%20authority%20taking%20the%20decision,decides%20on%20its%20procedural%20rules)). (Last accessed 2 November 2023).

[36] Constitution of the Republic of Kosovo, article 22 (1).

the principle of separation of powers between the executive and the judiciary, expressing the increasing importance in its practice. [37] According to the European Court of Human Rights (hereinafter: ECtHR), the term "independent" includes two elements, which are divided into the independence of the courts from the executive and the independence of the courts from the parties.[38]

The Council of Europe's Recommendation on the Independence, Efficiency and Responsibilities of Judges states that the independence of the judiciary is broad enough to prevent criticism of the executive and the legislature on the decisions made. Exceptionally, the two powers can comment on court decisions, adhering to criticism that may affect the independence or public confidence in the judiciary. Also, these two powers should refrain from actions that call into question their willingness to respect court decisions.[39]

Avoiding critical comments from politicians is also required by the Consultative Council of European judges, adding that the executive power should not encourage disobedience to court decisions or violence against judges. Such actions may cause undue influence, pressure, inducement or direct or indirect interference.[40] Simply put, judicial independence means freedom from outside pressure and the absence of political influence or manipulation, especially by the executive.[41]

In this regard, judicial decisions also in the international aspect allow comments of clarifying meaning, but not evaluative ones. Such comments from the executive and the legislature, which show a real situation to improve judicial efficiency, such as raising human resources, additional training, or cooperation within the competences, are welcome. But not the situations when the comment has an evaluative character of the judicial decision. This is because the unwillingness to respect court decisions and criticisms on merits clearly undermines independence and lowers public trust.

5. Interference through statements weaken citizens' trust in the justice system

In general, the separation of powers in Kosovo is publicly accepted by the political power that sits in the seats of the legislative power and the executive power. In spite of this, the daily politics of politics also includes interference towards the justice system through inadequate statements.

[37] *Stafford vs. United Kingdom*, No. 46295/99, para. 78, ECtHR 2002-IV; see, also *Incal vs Turkey*, judgement 9 June 1998, 1998-IV Reports.

[38] *Zand vs Austria*, *Ringeisen vs Austria*, 1971, para. 110.

[39] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities

[40] Recommendation (94)12 provides (Principle I.2.d) of the Consultative Council of European Judges.

[41] Venice Commission Rule of Law Checklist, 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e), para.74.

Statements by the Prime Minister, members of the government and deputies of the Assembly, about when the prosecution should be active, why in certain cases it does not initiate cases, why the courts give low sentences and why there are delays in the regular judicial system and about the delays in issuing judgments of the Constitutional Court are not their constitutional and legal responsibility. Moreover, when those statements are given from the position of a high public functionary won by the vote of the citizens, it also constitutes an undermining of the public in the bodies of the justice system. This is also confirmed by Opinion No. 18 (2015) of the Consultative Council of European Judges, where public criticism of court decisions by politicians undermines public confidence in the judiciary.[42]

The task of the executive and legislative power in relation to the justice bodies should be to support the justice system, as far as these powers have competence, and not the opposite, that through statements which, even in the absence of goals, can cause distrust of citizens in justice bodies. On the other hand, the use of simplified arguments by politicians without substantive analysis and the personal attack on prosecutors and individual judges can make citizens, for certain cases, not trust them in the handling of their cases. According to the Consultative Council of European Judges, analysis and comments on judicial decisions by the executive and legislative power are not excluded, but that this analysis and criticism should be done in conditions of mutual respect, balanced and responsible comments. Because on the contrary, in addition to the violation of public trust in the judiciary, in cases where there is daily and massive criticism, the consequences can go as far as the constitutional imbalance of democratic principles.[43]

As an illustrative case, but not the only one, of the violation of these principles is the statement of the Prime Minister of Kosovo, Albin Kurti to the Chief Prosecutor of the Special Prosecution, Blerim Isufaj, after the arrest of the director of the KEK, Nagip Krasniqi[44], which statement constitutes direct interference in justice. Prime Minister Kurti, in the plenary session on April 20, 2023, said that Prosecutor Blerim Isufaj wants to become the chief prosecutor, despite the will of the President, the Speaker of the Assembly and the Prime Minister. He continued by saying that the arrest of the Chief of KEC, has pleased the opposition and despite the sending of cases by the new management of KEC, the prosecution is not dealing with them but only with the new leadership in Kosovo. According to the Prime Minister, this comes from a negative political attitude from the State Prosecutor's Office towards his government and especially towards him.[45] This statement by the Prime Minister basically represents an interference in the justice system because he deals with commenting and contesting the criminal prosecution of the Chief Executive of the KEC, Nagip Krasniqi, which in states with consolidated democracy and the rule of law, this practice is not allowed.

[42] *"The position of the judiciary and its relation with the other powers of state in a modern democracy"*. Opinion No. 18 (2015), The Consultative Council of European Judges. (<https://rm.coe.int/16807481a1>). (Qasur për herë të fundit më 2 nëntor 2023).

[43] *Ibid.*

[44] "Kurti on the case of the director of KEC: His arrest made the opposition happy", *Betimi për Drejtësi*, 2022. (<https://betimiperdrejtesi.com/kurti-per-rastin-e-drejtorit-te-kek-ut-arrestimi-i-tij-e-gezoi-opoziten/>). (Last accessed 2 November 2023).

[45] "Transcript of the plenary session of the Assembly, p. 3 Assembly of the Republic of Kosovo, 20 April 2023. (see link https://www.kuvendikosoves.org/Uploads/Data/SessionFiles/2023_04_20_ts_Seanca_10.00_eeqKrjDquU.pdf). (Last accessed 2 November 2023).

6. Violation of the presumption of innocence

The principle of presumption of innocence is embodied in Article 6 of the ECHR, and in line with the legislation of advanced countries, it is also present in local legislation, namely Article 31 of the Constitution of the Republic of Kosovo, and Article 3 of the Criminal Procedure Code No. 08/L-032.

As a procedural guarantee of the criminal process, the presumption of innocence imposes its own requirements in cases where, among other things, premature statements about the guilt of the accused are included by public officials^[46], including only a reflection in the reasoning of the decision about whether the accused may be guilty.^[47]

According to the ECtHR, the principle of presumption of innocence does not allow statements by public authorities that may encourage the public to believe that the accused is guilty, or prejudice the evaluation of the facts by the judicial authority.^[48] In this regard, this principle can only be repealed by a final decision in accordance with the law.^[49] from which it should be noted that the presumption of innocence does not cease to apply in the procedure developed before the appeal, simply that the accused has been convicted in the first instance.^[50]

From what has been pointed out, we can see that the claims made in right regarding the matter within the punishment process, after the accused has been found guilty, are allowed since the presumption of innocence is excluded and cannot apply.^[51] However, this exception does not exist when the accused is found not guilty. This is because the presumption of innocence does not allow unfair treatment by public authorities towards persons who have been acquitted of criminal charges or when the criminal proceedings against them have been terminated. The protection that is guaranteed by the decision to release or suspend the procedure does not allow those individuals to feel guilty for the offense for which they have been accused, thus preventing the way it is perceived in the public in terms of not damaging the reputation.^[52]

Thus, the judicial practice of the ECtHR prohibits the public judgment made by public officials and authorities against individuals released according to a judicial procedure and the final judicial decision, regardless of the court's meritorious assessment of the specific case.

[46] *Allenet de Ribemont*, 1995, para. 35–36, *Nešťák vs Slovakia*, 2007, para. 88).

[47] *Cleve vs Germany*, 2015, para. 41.

[48] *Allenet de Ribemont vs France*, 10 February 1995, para. 41.

[49] See, *Englert vs Germany*, no. 10282/83, Commission report 9 October 1985, Decisions and Reports (DR) 31, f. 11, para 49, and *Nölkenbockhoff vs Germany*, no. 10300 /83, Commission report 9 October 1985, DR 31, f. 12, § 45).

[50] *Konstas vs Greece*, 2011, Judgement no 53466/07, para. 36

[51] *Bikas vs Germany*, 2018, para. 57

[52] *Allen vs United Kingdom [GC]*, 2013, § 94

The ECtHR's guide on the right to a fair trial provides a special place for situations related to the statements of public officials, namely those of the executive and legislative powers[53] due to their high presence in the public, including situations such as the case of Kosovo (See Chapter II of this report).

Consequently, this principle, in accordance with judicial practice, allows the public to be informed about ongoing criminal investigations, but prohibits statements by public officials related to pending criminal investigations that prejudice the assessment of the facts by the courts.[54] The decisions of ECtHR emphasize the importance of the right words chosen by public officials regarding the cases that are in progress in the courts.[55]

Therefore, in every statement, public officials must respect court decisions and take into account the principle of presumption of innocence, especially in situations where certain persons are considered innocent according to a court decision. In public appearances, officials of public authorities must refrain from prejudicial words with a tendency to affect public confidence.

7. Financial and functional independence

7.1 Failure to meet the budget requirements

The non-fulfillment of the financial requirements of the institutions of the justice system (KGJK and KPK) as well as the Agency for the Prevention of Corruption and the Justice Academy occurred with the budget allocations for 2023. Initially, the Government and then the Assembly did not approve the requirements of these institutions.[56] According to these institutions, the fulfillment of these requirements would enable the fulfillment of their full mandate. As the reports of the VC also state, the states have the duty to provide financial support for the justice system in accordance with the needs of the justice system. [57] Moreover, according to these principles, the independence of the judiciary is protected only by having administrative and financial autonomy. The Venice Commission in its opinions mentions that the preservation of the independence of the judicial system is done only through the necessary allocation of the budget in order to maintain and promote public confidence in justice and the rule of law.[58]

[53] (Gutsanovi vs. Bullgarisë, 2013, §§ 194-198); Konstas vs. Greqisë, 2011, §§ 43 dhe 45; Butkevičius kundër Lituanisë, Udhëzues për nenin 6 të Konventës – E drejta për një gjykim të drejtë (gjykim penal) Gjykata Evropiane e të Drejtave të Njeriut 73/130 Përditësimi i fundit: 31.08.2022 2002, § 53

[54] (Ismoilov and other vs Russia, 2008, § 161; Butkevičius vs. Lithuania, 2002, § 53).

[55] (Daktaras vs. Lithuania, 2000, § 41; Arrigo and Vella v. Malta (dec.), 2005; Khuzhin and Others v. Russia, 2008, § 94). For instance, in Gutsanovi v. Bulgaria (2013, §§ 195-201).

[56] Justice in the Budget for 2023, after the entry into force of the Law on Budget Allocations for 2023, KLI, 2023. (<https://kli-ks.org/drejtesia-ne-buxhetin-per-vitin-2023-pas-hyrjes-ne-fuqi-te-ligjit-per-ndarjet-buxhetore-per-vitin-2023/>). (Last accessed 2 November 2023).

[57] Opinion No 2 (2001), par. 4, The Consultative Council of European Judges, 2001. (<https://rm.coe.int/1680747492>). (Last accessed 2 November 2023).

[58] "Report on the Independence of the Judicial System Part I: The Independence of Judges", par. 2. CDL-AD(2010)004, 16 March 2010, Venice Commission.

7.2 Salaries of judges and prosecutors

On December 20, 2017, the Government of Kosovo, led at that time by Prime Minister Ramush Haradinaj, issued Decision no. 04/20[59] according to which a certain category of government cabinet positions was increased in salary, including the Prime Minister, deputy prime ministers, ministers, advisers and a category of civil servants. Such a decision automatically increased the salaries of judges and prosecutors because according to Article 35 of the Law on Courts[60] and Article 21 of the Law on the State Prosecutor [61], their salaries were increased equivalently whenever there is an increase in the salaries of the executive power. Despite the contestation of legitimacy and legality by the civil society, such a decision had started to be applied to the government cabinet, therefore also to the justice system.

On February 12, 2020, the Government of Kosovo under the leadership of the Prime Minister of Kosovo Albin Kurti made a decision to repeal a provision where the salaries of the government cabinet had been increased.[62] The decision did not reduce the increased salaries in the justice system according to a part of the abrogated decision, as long as on this issue another decision would be taken after the decision of the Constitutional Court on Law No. 06/L-111 on Salaries in the Public Sector. CC, on June 30, 2020 in Judgment No. KO219/19 repealed the Law on Salaries, where for the salaries in the justice system it was mentioned in a taxing manner that the salaries for the justice system could not be reduced arbitrarily, without genuine and unsustainable reasoning, and in case of taking a decision must respect human rights and freedoms and be in accordance with the principle of predictability, legal certainty and the rule of law.[63]

Despite the fact that it was aware of this judgment, the Government of Kosovo on November 23, 2022[64], through an arbitrary decision, without public consultation and in an illegal manner, decided to reduce salaries in the judicial and prosecutorial system. Such a decision was in contradiction with the answers of the VC in relation to the questions of the CC about the reduction of the salary for the judiciary. According to the VC, "The reduction of judicial salaries can only occur under conditions of a pronounced economic and financial crisis and which, moreover, must be officially recognized as such" and that "Judicial independence requires a basic degree of financial security from arbitrary interference from the executive or other branches of power".[65]

[59] Decision no. 04/20, 20.12.2017, Official Gazette of the Republic of Kosovo, 2017. ([Vendimi nr. 04/20, 20.12.2017, Official Gazette of the Republic of Kosovo, 2017. \(https://gzk.rks-gov.net/ActDetail.aspx?ActID=62460\).](#) (Last accessed 2 November 2023)). (Last accessed 2 November 2023).

[60] Law on Courts, accessible through: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>.

[61] Law. 03/L-225 on State Prosecutor (abolished). Accessible through <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2710>.

[62] Decision no. 01/02, 12.02.2020, Official Gazette of the Republic of Kosovo, 2020. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=71845>). (Last accessed 2 November 2023).

[63] Judgment in the case KO 219/19, par. 303, Constitutional Court. Official Gazette of the Republic of Kosovo, 2020. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=29924>). (Last accessed 2 November 2023).

[64] Decision no. 03/109, 23.11.2022, Official Gazette of the Republic of Kosovo, 2020. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=66799>). (Last accessed 2 November 2023).

[65] Judgment in the case KO 219/19, par. 328, Constitutional Court. Official Gazette of the Republic of Kosovo, 2020. (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=29924>). (Last accessed 2 November 2023).

7.3 Violation of functional independence

Salaries in the Public Sector, the Government and the Assembly violated the functional independence in the justice system, first by reducing the salaries of judges and prosecutors, then the impossibility of independent constitutional institutions to change the structure, components or levels of salary coefficients and in the other case that even in the event of the creation of new functions, positions or designations, "the institution in which the position is created requests from the ministry responsible for public administration the determination of the salary class that applies to that function, position or designation on the basis of equivalence ". Although paragraph 4 of the same article allows independent institutions to create new functions/positions/names through internal acts, the first three paragraphs of the article define general regulations, which limit independent institutions from have full functional autonomy. The three provisions of Article 42 of the Law on Wages place the justice system in obligations to the ministry responsible for public administration for matters which the Constitutional Court in Judgment No. KO219/19 in the preliminary salary law had described them as unconstitutional. According to the CC, since it is about the same content of the article of the law on salaries in the public sector passed with this current one, the CC mentions serious conceptual and practical problems of this article to the disadvantage of the Judiciary and Independent Institutions. It would be unconstitutional and contrary to international practice and standards that, through this provision, the bodies of the justice system would turn to the Government to request permission and approval for the creation of a new position and to request permission and approval for changing the structure internal organizational.[66]

8. Si duhet të jetë sjellja e organeve të drejtësisë përballë (tentim) ndërhyrjeve të Qeverisë dhe Kuvendit

According to the opinions of the Consultative Council of European Judges, the judiciary must be ready to accept criticism because this constitutes a dialogue between the three powers and a dialogue with society in general. In this dialogue, according to the CCEJ, criticism of the justice system bodies should be legitimate, there should be respect and there should be no pressure on the judiciary. The genuine dialogue between the three powers, to the extent that their functional independence is not violated, constitutes a practical example of the rule of law, an action that affects the strengthening of modern democracy.

The meaning of this criticism lies in the comments that aim to improve the judicial system, to resolve the best judicial practices. Therefore, this dialogue, as a cooperation between the authorities, must focus on the general public good and the best interest for the citizens of the Republic of Kosovo.

However, even in the case of the presentation of situations that prejudice and affect the judicial process, including situations where statements are addressed to the actors of the justice system and their institutions after receiving the meritorious decision, the justice bodies must refrain from events of such and do not allow external influences. Avoiding situations that may create interference can be achieved whenever the justice bodies act within their powers, according to the constitution and the law.

[66] Ibid, par. 317.

In cases where certain decisions attack the independence of the justice system, the reaction of the institutions of the justice system must be adequate.

A bad reaction situation was the path followed by KJC towards the Government's decision to reduce salaries. KJC boycotted the work in the judiciary, thus reducing the work in the courts. However, in the face of such a decision of the Government, an adequate example would be to follow legal paths and not to take actions that go to the detriment of the citizens of the Republic of Kosovo.

In this regard, the adequate path through filing a lawsuit in the Court was followed by the Association of Prosecutors, on November 29, where, in addition to the lawsuit, the appointment of a temporary measure was also requested to postpone the execution of the decision to reduce salaries.

Raporti "Ndërhyrjet në sistemin e drejtësisë përmes deklaratave publike" është realizuar nga Instituti i Kosovës për Drejtësi me mbështetjen e Byrosë së Narkotikëve Ndërkombëtar dhe Çështjeve të Zbatimit të Ligjit (INL) - Departamenti i Shtetit Amerikan apo te National Endowment for Democracy (NED).



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