

Challenges of Juridical System in Kosovo

FLORIM SALIHU
PhD Candidate
European University of Tirana
Albania

Abstract:

In the development of this matter will be dealt with basic problems, which are challenging system of justice in Kosovo. So, starting from the lack of confidence of citizens in the justice system, none readiness of the witnesses to serve justice, the lack of professionalism and the will of the police to investigate, none professionalism of the prosecution and the judiciary and interfering in their selection, the lack of prosecutors and judges, the lack of safety at work and on the work of the judiciary, the impact of nepotism and corruption system. Also, concerned elements, which has accompanied many countries in transition, and which are associated with the justice system in Kosovo, intervention and political spirit influence judicial decisions. Just as we cannot overtake the fact that Kosovo in 1999 emerged from a difficult social situation, economic, legal, etc, but it cannot justify the real situation in which the justice system in Kosovo is. The key problem of the justice system in Kosovo will be linked not at least with the lack of laws, as linked with the lack of practical infrastructure of the implementation of these laws. So, the rhythm of adoption of laws, is in great disproportion to the pace of the implementation of these laws, and that in of itself is a problem, because the adoption of a law that does not apply, in principle creates injustice. So, are these and other problems, which today travel together and live together with the justice system in Kosovo, where without fighting and disseminating them, cannot be claimed for a promising system of justice.

Key words: Justice system, interventions in the justice system, nepotism, corruption, lack of security.

Introduction

It is very well known the history of Kosovo and its population, the road through which they went throughout during the centuries, the traces of such experiences like in the social, moral, juridical and political aspect.

Whereby, Kosovo which declared its independence, only five years ago, today is situating with the bitter past and challenges for building of the present and the future in all aspects of the life.

Kosovo after the Second World War, remained under the former Yugoslavia, despite against the majority Albanian nationality will, where the rights of the Albanian people were permanent attack target by the Yugoslavian Federation.

So in this artificial creature which was called Yugoslavia, the majority Albanian people of Kosovo was discriminated in all segments of the life like in the political, juridical and social economic aspect.

In the political aspect Kosovo was a province in the frame of the Yugoslavia despite fulfilled all criteria to become a Republic, in juridical aspect, Kosovo didn't have the equalized status with other federal units, exclusion on the Constitution of the 1974 where a step ahead was done, but also Kosovo along with that was not in equalized status with other federal units.

Kosovo in the economical aspect was in the second row and this can be verified with the fact that remained the poorest country in Yugoslavia. Abrogation of the Kosovo autonomy in 1989 by Millosheviq was the final act that Kosovo already has finally to go head on its way towards liberation.

At the beginning people of Kosovo responded in a peaceful resistance, while in other side the Yugoslavian occupier didn't stop murdering and torturing the Albanians of

Kosovo, forced by this situation, and appeared the Kosovo Liberation Army, supported by population conducted a very serious struggle in the history of the Albanian people.

In 1999, the NATO, attacks Yugoslavia and finally in June of this year after 78 days of NATO striking, the war of KLA and the sacrifice of all people of Kosovo, Kosovo got liberated.

1. Building a juridical system in Kosovo after the war, UNMIK-EULEX model

In 1999, Kosovo was placed under UN administration, and in the frame of this organization in Kosovo comes UNMIK. Life challenges were great, as was the challenge of building of the justice system, to a destroyed country. There was a lack of the legislation, the courts did not exist, and then they were dissolved all human and material resources. Initially it was decided that the justice system works on the basis of laws adopted by the Former Yugoslavia until 1989, who had no discriminatory character of the people of Kosovo and also the regulations issued by UNMIK. There were a range of factors that aggravated the situation in the justice system in Kosovo, the situation of the war, the lack of adequate laws to the circumstances created, the human factor, ie UNMIK judges who come from different cultures social, moral, political and legal many countries of the world etc. Acceleration of the UNMIK administration, to activate the judicial system, lack of information for socio-legal mentality, inadequate selection and appointment of judicial personnel, the dualism of the legislative, political interference in the justice system, were key factors which damaged system Justice in Kosovo.

New legal system of Kosovo began to build immediately after the war. After four years of intensive work, and Kosovar experts, along with about thirty international experts of the Council of Europe, UNMIK, ABA / CEL, the OSCE, UNICEF

and individual British and American experts, on July 6, 2003 was approved Criminal Code of Kosovo¹.

Also, it approved the Criminal Procedure Code of Kosovo, which entered into force in 2004. The drafting of these codes is done in harmony with the spirit of Western laws, by incorporating most important acts of freedoms and human rights. But, influenced by political interferences in particular several international mechanisms, remained outside the criminal law, the institution of the trial and conviction in absentia, and on this occasion, the new system was damaged justice, because in one way or another, intentionally or unintentionally "amnestied" many war criminals. So today with hundreds and thousands of people who are best identified during the war in Kosovo, committed atrocities against the Albanian population and other mainly civil innocent, and those due to the absence of this legal mechanism, enjoy freedom undeserved. If anyone wants to express doubts about this conclusion by arguing that war crimes are not prescribed, it has its own base, at least formally. But, in this dimension, added another question: Did possibility Hague Tribunal for war crimes in former Yugoslavia, and whether there was a formal and material capacity to handle all the crimes that occurred in Kosovo and had a chance to handle and to punish all those who committed crimes? The answer in this case, absolutely, would, NO! Therefore we consider that the lack of institute of judgment and punishment in absentia, was a mistake, which being "pardoned" many war criminals, serious standing on the values of democracy and justice.

Model of the justice by UNMIK and EULEX for which expectations were very large, got stuck very badly on the main challenges of justice in Kosovo. None political readiness and legal inability of UNMIK and EULEX to prosecute and convict all those who committed war crimes in Kosovo, on innocent civilians, mostly charging bias victims instead of criminals, the

¹ Prof.dr.Ismet Salihu, Criminal Law, Prishtinë, 2003, pg.19.

most this should not failure to adjudicate meaning those persons who have committed crimes against the Serb civilian population in Kosovo and others, but in the indictment only the vast majority of Albanians and the aggressor was widely known that the Milosevic regime, these Missions lose objective justice. On the other hand, total failure detection authors postwar killings in Kosovo, qualified as political murder, installation of corruption in the system, these and other image fade UNMIK and EULEX missions right now called failed , in particular in the fight against corruption. So are now UNMIK and EULEX who failed to result in the application of law in Kosovo, because their main focus was and is the indictment of some KLA leaders for war crimes, and in fact many people better identify the measures popular things in different parts of Kosovo, who have committed war crimes against the Kosovo Albanian civilian population, are free today! On the other hand, today in Kosovo organized crime it thrives, economic crime and crimes of all nature and EULEX did stand with some cases which do not show any concern for justice and the people of Kosovo.

So UNMIK and EULEX as organizations which had the main role of control upon enforcement of the law in Kosovo, are responsible regarding installation of the not efficient system of the justice in Kosovo. In the fourteen years period post war time in Kosovo, we had many huge events of the organized ordinary crime, political and economical ones, groundless enrichment, fiscal evasion, expropriation of the property, privatization without criteria, and in other side we had a silence and the none action of the juridical authorities in particular by UNMIK and EULEX, so their silence and non action of them, it seems to be and are the main award for huge salaries that they are getting by the taxpayers' of the UN and EU. But the evil doesn't stop here, because this situation is getting stucked as the virus at the local juridical institutions in Kosovo, for which we will speak below.

2. Adopting and the enforcement of the laws in the Republic of Kosovo, local justice.

The fact that we have taught to blame others, perhaps sometimes also with our right, further cannot be justification for failure of our institutions. Kosovo in December of 2001² for the first time in its history, forms free assembly, which was established after held elections in November 2001. Kosovo Assembly since its establishment and until now has passed many laws to the most important areas of life, including the highest legal act, the Constitution of the Republic of Kosovo, issued laws these contemporary spirit of justice. Kosovo Assembly supported by the competent international mechanisms, local and international experts managed to do a very good job in passing laws. So Kosovo in completing the formal aspect of justice has made very good steps, but the pace of legislation, could not follow the pace of their implementation. Although there are basic laws that are missing very important for the life and health of citizens, such as the law on health insurance, but the Achilles heel in the Kosovo justice system, there is the absence of any law as is the implementation of laws. The question addressed by a journalist by the radio, to a common citizen, for which the law requires most Kosovo after the prohibition on smoking in public places? The resident responded that Kosovo needs law enforcement. This answer will be not commented, because the thing that most needs this society, is precisely the rule of law. The worst example of this situation and done by the members of the Assembly, for example just a day after the approval to prohibit smoking in public facilities by the Memembers of the Parliament , the same people the next day in the lobby did smoking illegally by themself, such a situation transmits worst message to the possible ordinary citizen. But, we also have a priori laws which have seen the impact those certain interest groups on their

² www.bbc.uk/albanian/011210123129.shtml

content, for example. The law on declaration, origin and control of property of senior public officials and declare the origin and control of gifts for all the officials. In Article 17 of this law provided for fines of 1,000 to 2,500 for those officials who do not declare their wealth. This provision can not give effect deserved and it is not consistent with the reality created in Kosovo, because in our society we have senior officials who are became rich within short period of time, that the payment of such a fine will not provide the effect, though being paid each week.

So, Kosovo rule makers have in short period of time to review this law and sanctions to be in accordance with created situation.

3. Realization and enforcement of rule and law by the Kosovo Institutions

3.1. Kosovo Police and its challenges

As in any other country in the Kosovo justice system mechanism is built on the principle of gradualism, and the first door of justice or protection of order and justice, is the police. On 6 September 1999, the OSCE Mission in Kosovo, in accordance with Resolution 1244, opened a police school and started training of candidates for members of the Kosovo Police³. So, from this moment it began and continued to complete the Kosovo Police Service, which like any other institution that has faced even more major difficulties during its formation. Kosovo police have not lacked success since its foundation, but have been several factors that have influenced and negatively affect work and its image, and these factors are: political interferences in the selection and promotion of police, lack of professionalism nepotism, corruption etc. Cases which immensely damaged the image of the organization are: theft of exhibits (drug) room of a police station in Pristina, in April 2009 and the failure of the Kosovo Police and EULEX that

³ <http://kosovopolice.com>

connected the brightness of the case⁴. Ironically, in November of 2012, a similar situation occurred in the evidence room of the police station in Pec, where the gold was stolen worth up to 2 million euros⁵.

Another affair which struck the image of the state of Kosovo, was the scandal with biometric passports to the value of 1.4 million euros, which occurred between the officials of the Ministry of Internal Affairs and a representative of the Austrian company, which had won the tender for biometric passports, then known as Natali Veliaj case. Here as in other cases, the institutions responsible for the detection, investigation and adjudication of the crime, could not yet to reveal the truth. This exacerbates the fact that all these cases have occurred in the institution responsible for maintaining law and order, as the Kosovo Police.

One of the values is democracy, separation of powers and mutual control on the basis of law. Referring to this principle, we also control and supervision of the institutions. For the control and scope of the police is competent Kosovo Police Inspectorate, which is tasked to do the prevention, detection, documentation and investigation of criminal offenses committed by Kosovo Police employees, regardless of rank and position while on duty and off her⁶.

Police Inspectorate of Kosovo is in charge with liability in connection with any situation when the law is violated by the police, because it is the Inspectorate kometencë take preventive and repressive measures against shkelsëve law. The mission of the Police Inspectorate of Kosovo is that through the exercise of its activity, provide a police service accountable, democratic and transparent, in accordance with applicable legislation and standards required⁷. The crime rate in Kosovo has increased in all spheres of life as economic crime, organized crime,

⁴ <http://www.kohaditore.net>

⁵ <http://noa.al/news/artikull.php?>

⁶ Law for Kosovo Police Inspectorate, No.03/L-231, article 2

⁷ Law for Kosovo Police Inspectorate, Nr.03/L-231, article 3

corruption, murder, theft etc. While on the other hand, prevention, detection and bringing the perpetrators before criminal responsibility it is in great disproportion to the volume of crimes committed. Therefore, we consider as imperatives of time and increase the efficiency of professional police work, enhancing the image and its performance and that are direct and transparent it can not happen to shqiptmin of traffic tickets, but with tangible work citizenship which will be felt in his life, because the image and success of any organization, can not be recovered by commercials television advertisements and bloated statements, but only with work and with work.

3.2. Prosecutors Office of the Republic of Kosovo, its challenges

Prosecution is a public institution established by law, which, in its basic task is pursuing the investigation and indictment of persons suspected of violating the law. According to State Prosecutor law means competent and independent institution responsible for prosecuting persons charged with committing criminal acts and other activities as specified in the law and include the following: basic prosecution, the Prosecutor of Appeal, the Special Prosecutor, the Office of the Chief Prosecutor state, and any other organizational unit that can be created to exercise prosecutorial functions⁸. So, as defined by law, the burden of the prosecution to all those persons who are suspected of having violated the law, falls on the State Prosecutor. Reports of various local relief organizations and international civil society, as well as perceptions of the Kosovo citizens are a high-scale criminality. This situation directly attacks the institution of prosecution in the Republic of Kosovo. The main challenge of the Kosovo justice system, especially the institution of prosecution, today is the faith of citizens in the justice and security in particular that the co-operative witness. Although we witness protection law, which guarantees the

⁸ Law for State Prosecutor, No.03./L-225

physical protection of witnesses, temporary relocation, change of residence, financial support etc.⁹, in practice it does not feel or felt little spirit of the implementation of this law, it reflects the refusal of witnesses to testify, even for security reasons. But this spirit of insecurity felt self prosecutors for not excluding- corruption, unprofessionalism, nepotism; political interference is exactly the element of uncertainty that affects the inefficiency of the prosecution. This was best demonstrated by the fact, when prosecutors refuse to apply to Kosovo Special Prosecution Office, which is responsible for the prosecution, investigation and indictment of serious crimes¹⁰. So even in the best case, when a prosecutor has the will to implement the law, can not guarantee success in the prosecution of crime, the prosecutor lacks security. Referring to the writing and electronic media, civil society, there can not be even a single day is not called upon the prosecutor, directly or indirectly, that we have to deal with suspected violations of the law. On the institution of prosecution in Kosovo crimes plaguing many free bleached, reflecting uncertainty civilians and lack of cooperation in the future with the justice system. Precedents have no negative cases in the prosecution's work, for example. a prosecutor from the Kosovo Special Prosecution, which for 24 months of work from the state budget gets nearly 50 thousand euros, in this period has raised only one indictment, and it was for having in a possession a gun without permission. So it is obvious that this institution is not consistent with the events taking place in society.

Among the weak points of the prosecutor office is cooperation with the competent anti-corruption mechanisms, such as the Anti-Corruption Agency. Director of Anti-Corruption Agency has consistently accused the prosecution for throwing criminal charges by this agency¹¹. We believe that the close cooperation between these institutions would yield

⁹ Law for Defence of the Witnessess, No.04/-L-015

¹⁰ Newspaper KOSOVA SOT, 29 may, 2013. pg.1.

¹¹ <http://koha.net/?page=1,13,147774>

positive results in the fight against corruption. There are three interlocking levers which should speed the prosecution office in Kosovo, the first of many lighting and placement unresolved crimes perpetrators to account, and secondly, cooperation between all competent bodies in the fight against corruption and the third, elimination of logic that serious crimes should only decide EULEX prosecutors. Because, one way this thinking and action, we can not guarantee that we can have an efficient system of justice sometimes.

3.3 Challenges of the Judiciary in Kosovo

The role of the courts in democratic countries, it is the final and decisive word of society. Kosovo society already known circumstances, there was a bitter experience with the judicial system in Kosovo last year, because in that system and let the justice never not given, but there were laboratories where servirë injustice. But today we have serious problems in the judiciary, even though a completely different nature. Factors that exacerbate and make inefficient judicial system in Kosovo are: corruption, political interference in the selection of staff and the decisions, nepotism, lack of professionalism, lack of courage and security to handle serious cases, the lack of an efficient mechanism ineffective punishment for personnel etc. Under the law, judges during the performance and decisions are independent, impartial, uninfluenced in any way from any natural or legal person, including public bodies¹². So, if we refer to the law on one hand, and practical situation on the other hand, it seems a long way up the objective of the law. In Kosovo courts are barred many cases, the justification has always been that we a lack of the staff This reasoning may have its basis up somewhere, but how can you explain the fact that some subjects receive answers in record time and some other dust covers oblivion? Another evil that accompanies this institution is non-enforcement of the court decisions and those in effect. During

¹² Law for Courts No. 03/OL-199

an interview on public television, the Head of the Basic Court of Pristina pretends that 200 persons had been convicted and were released on their way to prison¹³. This is a serious accusation, and here it comes to the challenge of the state and justice. Disrespect for the justice of this country have shown the presidents of the Republic, being curved by different mediums forgiven rather than ordinary criminals the right to pardon, which belongs to the President of the Republic. These events give a very negative image a country's judicial system, and remain under the shadow the work of many individuals who perform përgjegjshmëri and professionalism of their work in court. Therefore, it is imperative activation and operation of the court system, because only in this way can be accomplished the mission of the court, that is, the administration of justice.

The court's role is crucial in the life and development of society, because without an efficient, we can not have business development, therefore we do not have serious an investors so this absence are suffering at the expense of Kosovo. Therefore, we consider that it is last time the judicial system reflects positively and be the main dam where society seek and realize its right.

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¹³ KTV, News on 19-00,date 21.05.2013

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