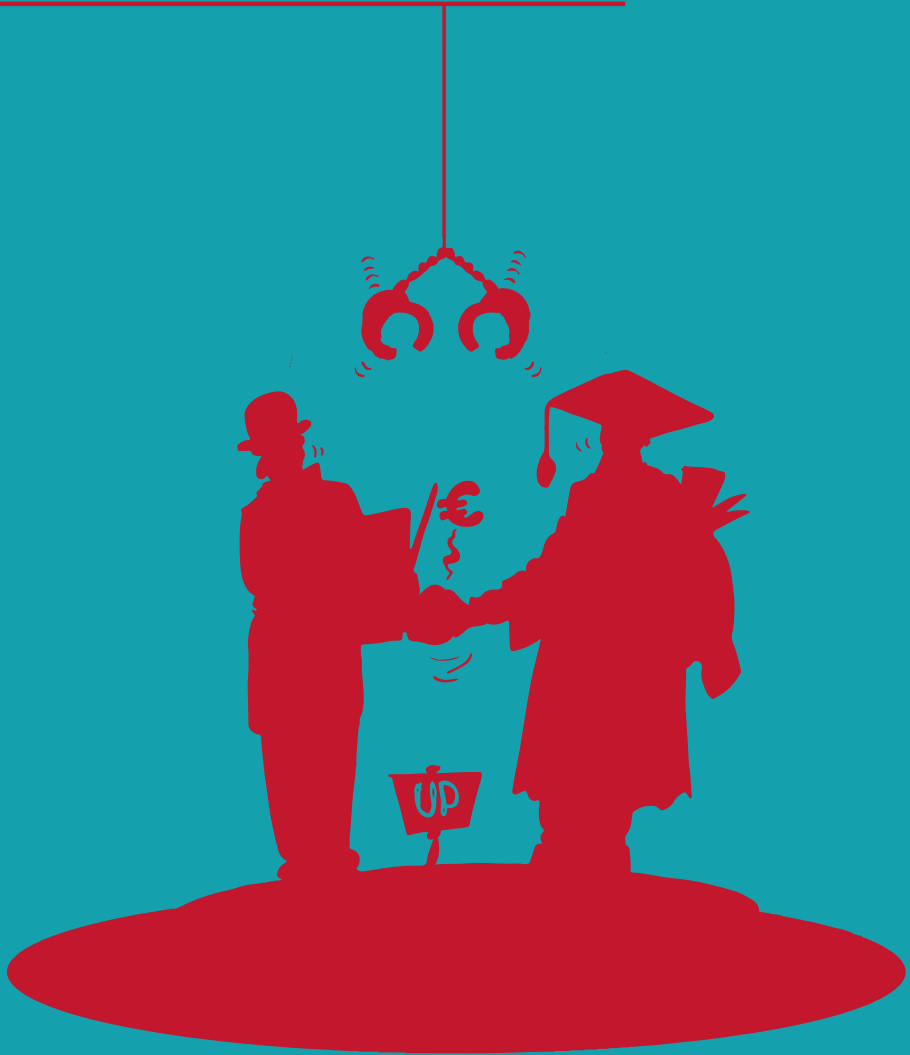


PARREGULLSITË NGA
PJESËTARËT E STAFIT
AKADEMIK TË UP-SË

PASTET E PROFESORËVE
ME KALLËZIME PENALE,
AKTAKUZA DHE DËNIME

MOSOFFRIMI I QASJES NË
INFORMATA SI SHKELQJE E
LIRISË SË SHPREHJES

PROFESSORS FACING THE LAW



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GLOSSARY

AKA	Kosovo Agency for Accreditation
AKK	Kosovo Cadastral Agency
AKK	Anti-Corruption Agency
BA	Bachelor
EU	European Union
FIEK	Faculty of Electrical and Computer Engineering
FIM	Faculty of Mechanical Engineering
FNA	Faculty of Civil Engineering and Architecture
FShMN	Faculty of Mathematics and Natural Sciences
ISN	Institute for International Studies
KITU	Coalition for Integrity and Transparency at the University
KGJK	Kosovo Judicial Council
KLI	Kosovo Law Institute
KPK	Kosovo Prosecutorial Council
KPRK	Criminal Procedure Code of Kosovo
LPP	Law on Execution Procedure
MA	Master of Arts
NGO	Non-governmental Organization
ORCA	Organization for Increasing Quality of Education
PhD	Doctor of Philosophy
SPRK	Special Prosecution of the Republic of Kosovo
KWN	Kosovo Women's Network
UP	University of Prishtina

■ E N T S



INTRODUCTION

The report “Professors facing the law” brings to the public’s attention the way in which justice is administered in those cases where the suspects, the accused and those sentenced are members of the academic staff of the University of Prishtina (UP), the largest public university in our country. To this end, the report focuses on concrete cases of various violations committed by the members of the academic staff, both within and outside of the university, to investigate whether they brought about any consequences for their academic engagement.

Bearing in mind that the university professors serve as role models for students, we believe that it is of enormous importance to generate a public debate on the subject matter. Since professors are perceived as members of the academic elite, they are often invited to share their thoughts and opinions through various debates and interviews, setting this way social standards for the wider public. Furthermore, since faculty members of public universities are paid by tax-payers money, they have both legal and moral responsibility for their actions.

In its first section, the report presents cases where members of the academic staff - whether they be regular professors, associate professors, assistant professors or assistants - are suspected of having violated the Code of Ethics in any way: not attending lectures and consultations; sexual harassment; counterfeits; corruption such as misuse of official position, noncommercial advances, nepotism, political affiliation, etc.

In the second part, the report presents cases of UP staff members’¹ confrontation with the law in Kosovo, resulting in criminal charges, indictments or sentences in justice institutions, even for actions that are not related to their work in the University, even though the Code of Ethics for the Academic Staff of the UP determines that the only relevant offenses are those that result with sentences by the court and that clearly demonstrate their unsuitability to continue working as part of the academic staff. -

¹ The Code of Ethics for UP Academic Staff, 19 July 2013, is available at: <https://www.uni-pr.edu/desk/inc/media/CFEBCD0D-8BC1-462A-8BF6-6C41152AD4B4.pdf>

To compile the first part of the report, we sent an official request for access to public records and documents to all deans of faculties of the University of Prishtina, the Rector and all the Vice-rectors, the Secretary General and the UP Council of Ethics, the Kosovo Accreditation Agency (AKK), and the Anti-Corruption Agency (AKA). ce Rectors of the University – we also requested to interview all the deans of the departments, the rectos and the. Vice Rectors of the University. We also met with representatives of relevant NGOs that have dealt with the developments in the UP: ÇOHU, Kosovo Women’s Network (KWN), Kosovo Law Institute (KLI), Organization for Increasing Quality of Education (ORCA), and even journalists from various media reporting on UP developments.

To present cases of confrontation with the law of members of the academic staff since the NATO bombing, we requested public documents from seven basic Kosovo courts in Prishtina, Mitrovica, Peja, Prizren, Ferizaj, Gjilan and Gjakova. We also contacted the Kosovo Prosecutorial Council (KPC) and the Kosovo Judicial Council (KJC).

Subsequently, we summed up all those cases of confrontation with the law of the academic staff, which were published in the media in this decade (newspapers,radio,televisionandportals).Indiscussingthemediareportingofcases,we discussed issues such as: why the staff members of the UP faced the law; how many of them were investigated, what were they charged with, how many were convicted and how many of them were released from the courts; on how many cases has the prosecution decided to stop or interrupt the investigation; how many cases are in the process of review; how many were prescribed; and what measures did the University take when justice institutions found legal violations on the part of members of its academic staff?

The main methodological limitation in this report was the hesitation and non-response of many of the relevant university and judicial institutions and bodies that made it impossible to conduct interviews of certain officials and directors, as well as access to public documents. Since the report also takes into account the legal implications of presenting such data, including the right of presumption of innocence for members of UP academic staff who have open, closed or already outdated cases in the courts or other justice institutions, we drafted a legal analysis that explains the arguments on the impact of thehesitation and non-response of relevant institutions to our official requests.

1.

VIOLATIONS BY THE MEMBERS OF ACADEMIC STAFF

The first aim of this report is to reveal cases in which members of the academic staff of the UP - full professors, associate professors, assistant professors and assistants - are suspected of having performed violations of the Code of Ethics, such as: unmeritorious academic advancement, lack of academic integrity, absence from lectures and consultations, sexual harassment, and so on. Since we did not receive an answer from the Ethics Council, we are referring to different research and reports by the civil society organizations.

In terms of **academic advancement**, Organization for Increasing Quality of Education (ORCA), had reported that nearly half of the University executives, including members of the Governing Council, the Rector and vice rectors, members of the Senate, deans and associate deans, did not justify their academic titles². These members of the academic staff had at least one paper listed as suspicious or had publications that do not meet the criteria for proper scientific journals³. Research from the same organization made by checking the CV's of the professors of the University brought results even that were much worse than the above ones⁴. The UP Statute and the Regulation on the Selection and Advancement of Academic Staff provide simple conditions regarding the academic advancements: "Works published in the relevant international or regional scientific journal as the first author or correspondent." The rules stipulate that the assistant professor should have at least one, associate professor at least three, while the regular professor at least five such papers⁵.

² Organization for Increasing Quality of Education (ORCA) "Academic Integrity of the Directors of the University of Prishtina", Prishtina, 2017, can be found at: http://orca-ks.org/wp-content/uploads/2017/02/ORCA-_Raporti-Komplet_Print.pdf

³ Ibid

⁴ Organization for Increasing Quality of Education (ORCA) «Academic Integrity of Professors of the University of Prishtina», Prishtina, 2017, can be found at: <http://orca-ks.org/wp-content/uploads/2017/12/Integriteti-akademik-i-profesor-eve-ne-Universitetin-e-Prishtines.pdf>

⁵ Statute of the University of Prishtina, available at: <https://www.uni-pr.edu/inc/doc/statuti1.pdf> ; Regulation for the Selection and Advancement of Academic Personnel.

Another aspect that relates to the lack of academic qualifications of the staff in the public University is the plagiarism prevalent amongst this staff. There are indications that plagiarism is wide-spread both among the academic staff, as well as amongst the students in the UP. Very often, the graduation papers are plagiarisms of papers written earlier, and there are also instances, such as those reported by the organization ÇOHU, when papers are written for a fee by individuals who offer such services via the social networks and announcements that appear even in the University spaces⁶. Even in cases when such works are detected, resignations do not follow, nor are there measures taken against such action by the competent authorities. Last year ADMOVERE published 16 plagiarism cases by members of UP academic staff, which were reported by the media over the years⁷.

In addition, many UP professors hold public and government posts and are employed in various institutions, so in their place, **lectures and examinations** are held by the assistants⁸. ORCA monitored these consultations according to their official schedules in three faculties of the University, with the largest number of students: the Faculty of Philosophy, Economics and Law. This monitoring showed that many professors were missing the consultations they had to keep during the working hours. According to the findings of ORCA, out of 1177 lectures monitored altogether at the Faculty of Economics, Philosophy and Law, 218 or 18.5% of them were not held due to the lack of professors⁹. However, there is no imposition of measures or financial penalties for professors who do not hold lectures and examinations as provided for in the Regulation on Disciplinary Measures against UP Personnel¹⁰.

6 "Bazaar with Diploma Themes", Prishtina, 2018, is available at: <http://preportr.cohu.org/sq/hulumtime/Pazari-me-tema-te-diplomes-224>

7 ADMOVERE "Academic Staff of UP - Studies, Other Commitments, Plagiarisms, Assessments and Student Associations", Prishtina, 2018,

available at: http://admovere.org/wp-content/uploads/2018/11/admovere_plagjiaturaUP_ALB_web-2.pdf

8 Organization for Increasing Quality of Education (ORCA) "Lazy Hasan Prishtina I", Prishtina, 2017, is located at: <http://orca-ks.org/wp-content/uploads/2017/05/Raporti-i-Monitoring-Interactive.pdf>; and the Organization for Increasing Quality of Education (ORCA) "The Lazy ones of Hasan Prishtina II", Prishtina, 2017, can be found at: http://orca-ks.org/wp-content/uploads/2017/07/Demblies-eH.P.2_Final_Shqip.pdf

9 Ibid

10 Ibid

The most worrying issue is **sexual harassment**. According to a publication by the Center for Art and Community «Artpolis», which places great emphasis on the University of Prishtina as the country's largest public university, sexual harassment is widespread but is hardly reported. Even when a case is reported, no action is taken. According to the publication, students do not report cases of sexual harassment unless they believe that measures shall be taken, or they are afraid of possible consequences, but also of public confusion¹¹. The UP has defined a set of rules in the Code of Ethics for Academic Personnel, which also foresees cases of sexual harassment, but there are still no specifically designed policies to encourage students to report such cases, nor is there a definition of procedures to be followed by academic and administrative staff after reporting cases and initiating procedures.

ADMOVERE sent interview requests on the above issues to deans of all faculties, the Rectorate (Rector and Vice-Rectors), the Secretary-General of the University, as well as to the Ethics Council. We wanted to learn from them how many of the staff members of each of the faculties have committed one of these violations: academic non-merited advances, non-attendance of lectures and consultations, abuse of official position, sexual harassment or any other violations.

Five deans did not respond to the interview requests, either by e-mail or by phone. These are Lindita Sejdiu-Rugova from the Faculty of Philology, Ethem Çeku from the Faculty of Education, Enver Hamiti from the Faculty of Electrical Engineering and Computer Science, Musa Selimi from the Faculty of Physical Education and Sports, and Haxhi Gashi from the Faculty of Law. Four deans, namely But Dedaj from the Faculty of Economics, Bujar Dugolli from the Faculty of Philosophy, Tahir Arbneshi from the Faculty of Mathematics and Natural Sciences, and Agim Selimi from the Faculty of Arts, told us that the Collegium of Deans had decided that Deans do not have the right to answer our questions and that the answers can

¹¹ Center for Art and Community - Artpolis "Treatment of Sexual Harassment in Public Universities", Prishtina, 2017.

obtained from the UP Secretary General. On the other hand, Dean Abdullah Zejnullahu from the Faculty of Architecture and Civil Engineering met us and informed us that he did not possess official data on the violations in question. Vice dean Gloria Staka, on behalf of the Dean, Suzana Manxhuka-Kërliu of the Medical Faculty, told us that she would answer our questions during the coming days but failed to provide us with a response until the publication of this report.

Only two deans, Skender Kaçiu from the Faculty of Agriculture and Veterinary¹² and Ahmet Shala from the Faculty of Mechanical Engineering¹³, agreed to conduct interviews. When asked how many members of the academic staff of the faculty they lead committed any of the above mentioned violations, both stated that they had no such documented cases.

Apart from these two, nobody from the Rectorate, including the rector and the vice-rectors, replied to the questions we sent in order to understand more about the cases in which members of the academic staff violated the Statute, the Code of Ethics or other regulations. Equally, the Secretary General of UP, who under Article 233 of the Statute is responsible for granting the right to access to a specific database, did not answer questions that we sent. In the end, we submitted to the Ethics Council's a formal request to obtain information on violations of the Code of Ethics by members of the regular teaching staff. The Ethic's Council is responsible for monitoring the implementation of the Code of Ethics and for developing disciplinary procedures, but we did not receive a response from its officials either.

12 Interview with the Dean of the Faculty of Agriculture and Veterinary, Skender Kaçiu, 7 May 2019, Prishtina.

13 Interview with the Dean of the Faculty of Mechanical Engineering, Ahmet Shala, May 6, 2019, Prishtina.

2

THE CASES OF PROFESSORS WITH CRIMINAL CHARGES, INDICTMENTS AND SENTENCES

The report aims to generate public debate on the administration of cases when the suspects, the accused and those sentenced are members of the academic staff. To this end, we requested information on criminal charges, indictments and sentences in seven basic Kosovo courts - Prishtina, Mitrovica, Peja, Prizren, Ferizaj, Gjilan and Gjakova, as well as the Kosovo Prosecutorial Council (KPK) and the Kosovo Judicial Council (KGjK).

The main limitation in implementing this part of the research was noticed after the reluctance and unresponsiveness of some of the institutions to our requests for access to public documents. Three of the seven basic courts – the ones in Peja, Prizren and Gjakova answered that there are no members of the academic staff of the UP that had cases in courts, whereas the courts in Ferizaj, Mitrovica and Prishtina, despite expressing their readiness to help us, did nothing to respond to our specific requests. The lack of response from the Basic Court in Prishtina affected our report most grievously, given that the evidence of violations of the law by UP professors is mainly found in this court. Likewise, neither the KGjK nor the KPK responded to requests to provide access to criminal reports, indictments and sentences. It should be noted that the Basic Court in Gjilan responded to our request and was extremely cooperative, for which we are very grateful.

In the continuation of this chapter, we summarize the cases of criminal reports, indictments and various sentences given to members of the regular UP staff in their chronological order, as they were published over the years in various media.

Disclaimer: None of the members of the academic staff referred to in this chapter are found guilty by a final verdict for offenses they were charged with. Therefore, all members of the academic staff listed here are presumed innocent under Article 3 of the KPPK.

FACULTY OF ARTS

Valton Beqiri a regular professor at UP Faculty of Arts

In April 2012, the Basic Prosecution Office in Prishtina filed an indictment for a misuse of official position against two former Ministers of Culture of the Republic of Kosovo, Valton Beqiri (2008-2010) and Astrit Haraqija (2004-2007). Both had signed contracts totaling 570,000 Euro, which according to the indictment, was in violation of the Law on Public Procurement and the Law on Cinematography¹⁴. According to the indictment, Valton Beqiri, during his time as Minister of Culture, signed an annex to the contract with “Morina Films” company, by a transfer of 100,000 Euro subsidies for the realization of the film “Guest Mahogany”¹⁵. His predecessor, Astrit Haraqija, had signed a contract worth 220,000 Euro with Nehat Fejza, owner of the company “Concordia Pictures”, and another contract with Armond Morina, owner of Morina Films, in the amount of 350.000 euro.

In December 2016, the Basic Court in Prishtina declared a judgment against Astrit Haraqija and Valton Beqiri¹⁶. Both were sentenced to a conditional one-year jail term, with the order that the sentence should not be executed if they did not commit another criminal offense over the next two years. The defendants filed an appeal against the conviction judgment at the Court of Appeal, which brought the matter back to the Basic Court for revision due to an essential violation of the criminal procedure¹⁷. The Basic Court again pronounced a sentencing judgment, while the defendants again filed a complaint with the Court of Appeals. In April 2017, the Appeals Court acquitted Valton Beqiri of charges of “misuse of office or official authority,” as “the first instance court did not provide decisive evidence of the incriminating actions of the defendant in relation to the intent as a subjective element of offense”. Astrit Haraqija was also released¹⁸.

We requested a statement regarding this case from professor Valton Beqiri, but until the publication of this report, we received no response from him.

¹⁴ Skender Govori “Appeal for the case former Ministers of Culture” Kallxo, April 1, 2016, available at: <https://kallxo.com/prokuroria-ankese-per-rastin-e-ish-ministrave-te-kultures/>

¹⁵ Skender Govori “The Court of Appeal frees former Minister of Culture, Valton Beqiri,” Oath Justice, June 2, 2016, available at: <https://betimiperdrejtesi.com/gjykata-e-apelit-e-liron-ish-The-Minister-e-culture-valton-beqiri/>

¹⁶ Ibid

¹⁷ Essential violation of the provisions of criminal procedure constitutes the basis for contesting the verdict of the first instance court with an appeal under Articles 393 and 384 of the PCCK. For example, violation of the criminal procedure represents the case where the setting of the decision taken by the judge who was not present at trial or the judge should have excluded from the judicial review; the case when the public is excluded from the judicial review in violation of the law; the case when the verdict is based on inadmissible evidence, and so on. During the examination of the appeal, the Court of Appeal ex officio examines each time that during the decision of the first instance there was a substantial violation of the criminal procedure under Article 393 paragraph 1 of the KPRK.

¹⁸ Ibid

FACULTY OF MEDICINE

Esat Belaj Gazmend Maliqaj and Rajan Zeneli,

assistant in the Faculty of Medicine, UP

On December 5, 2014, the Serious Crimes Prosecution Department of the Basic Prosecution Office in Prishtina filed an indictment against 13 persons, assistants and student senators from the University of Prishtina, on suspicion of having committed the following criminal offenses: exercise of influence, giving and receiving bribes and misuse of official duty¹⁹. The accused were Esat Belaj, Rajan Zeneli, Kemajl Gashi, Arian Janova, Leonard Bytyqi, Kushtrim Morina, Mevlyn Beqiri, Gazmend Maliqaj, Arton Hoti, Albion Haxhijaha, Muhamed Maliqi, Shaqir Reqica and Amonda Orllati²⁰. According to the Prosecution, from 2009 to 2012, the accused had taken bribes for various favors such as illegal entry of students to the faculty of Medicine without an entrance examination and filling up their examinations²¹. No one from the Dean Office of the Faculty of Medicine or from the UP Rectorate was included in this indictment.

On 6 July 2017, nearly three years after the indictment was filed, 12 out of the 13 accused were convicted by the Basic Court in Prishtina for taking and giving bribe, exercising influence and misusing the position or official authority²². The indictment for assistance in exercising influence on assistant Rajan Zeneli was prescribed²³, and was therefore rejected by the Basic Court²⁴. The sentences imposed on 12 other defendants ranged from 3 to 32 months imprisonment, while the fines imposed amounted to 10,000 Euro²⁵.

The defendants filed an appeal with the Appeals Court, which on 27 October 2017 approved them as grounded and acquitted them of all charges, due to the absolute prescription of criminal prosecution²⁶. We requested a statement from the Dean of the Faculty of Medicine, but got no response.

19 "The Prosecution of the Faculty of Medicine, indictment against 13 persons," KALLXO.com, December 5, 2014, can be found at: <https://kallxo.com/prokuroria-godet-fakultetin-e-mjekesise-aktakuze-ndaj-13-personave/>

20 "A court session is adjourned for the 13 accused of corruption in the UP", the oath for justice, 9 February 2016, can be found at: <https://betimiperdrejtesi.com/shtyhet-seanca-gjyqitare-ndaj-13-te-accused-per-corruption-ne-up/>; "From the Session where the 12 persons involved in the scandal with UP registrations were convicted," KOHA.net, July 6, 2017, can be found at: <https://www.koha.net/video/29962/nga-seanca-ku-u-denuan-12-people-of-involved-in-scandal-the-records-we-up/>

21 Ibid

22 "12 UP students and assistants are sentenced with imprisonment and fines for bribes", KOHA.net, July 6, 2017, can be found at: www.koha.net/kronike/29829/12-asistente-e-studente-up-to-the-sentenced-to-jail-the-fine-for-bribe

23 Prescription of criminal prosecution is filed when the statutory deadline passes within which the state prosecutor can prosecute the suspected person for committing the criminal offense. Upon expiration of the statutory limitation period, the state prosecutor cannot continue prosecution (Articles 99-104 KCCP). For example, criminal offenses punishable by up to 1 year of imprisonment may be prosecuted within the 4 - year term from the day of committing the offense (Article 101, paragraph 1, item 6 KCPC). The limitation period does not apply to the offense of, criminal acts of genocide, war crimes, crimes against humanity or acts of others which under international law are not subject (Article 104 PCCK).

24 Ibid

25 Ibid

26 "The Appeal Releases 12 Students and Assistants of the UP from the Accusation", The Oath of Justice, 21 November 2017, can be found at: <https://betimiperdrejtesi.com/apeli-i-liron-nga-akuzat-12-students-and-assistants-of-up/>

CASES

CASE 1

Enver Hasani regular professor of Law Faculty

On July 31, 2015, the Special Prosecution of the Republic of Kosovo (SPRK) filed an indictment in the Prishtina Basic Court for criminal fraud offense against former UP Rector Enver Hasani, former chief of the procurement office in the UP, Hakif Veliu, and the director of the Institute for International Studies (ISN) in Tirana, Albert Ragipi²⁷. According to the indictment, the accused had forged the original contract “Translating books from English into Albanian for the needs of the University of Prishtina” for the purpose of obtaining unlawful material benefit for the ISN²⁸. The indictment stated that Article 17 of the contract in question had been amended. The original contract stated that the price for translation work was 12.65 Euro per 1000 words, but Enver Hasani and the other accused changed it to in 1000 to 12.65 Euro per 1000 characters, which took the initial prize to 60 Euro per 1000 words²⁹. This change of measurement unit from “word” to “characters” was said to have enabled the ISN to unlawfully gain an amount of 70,426.90 Euro³⁰.

On 18 October 2017, Enver Hasani and the other two defendants were found guilty by the Basic Court in Prishtina for committing the criminal offense of fraud under the Criminal Code of Kosovo³¹. Enver Hasani was sentenced to a one year suspended jail sentence while Albert Rakipi and Veli Hakifi to six months in prison, a measure which was replaced with a fine of 10,000 Euro. Also, the Basic Court obliged Enver Hasani and the other accused to compensate the damage in the amount of EUR 70,131 compensated the UP jointly³².

On 17 May 2018, the Court of Appeals issued a decision approving Enver Hasani’s appeal and acquitted him of the charge, but upheld the conviction judgment for the other two accused and aggravated the sentence from 6 months to 1 year imprisonment acting on the appeal of the Prosecution³³. The judgment stated that it was not proven that Enver Hasani had committed the criminal offense of fraud during the time he was the rector of the University of Prishtina and that the Basic Court had made a wrong assessment of the factual situation³⁴. The Court of Appeal also held that it was not established that Enver Hasani had prior agreement with the other defendants in order to obtain unlawful material benefit for the ISN³⁵.

27 Indictment PPS no.145 / 2014, Special Prosecution of the Republic of Kosovo, Serious Crimes Department for Basic Court in Prishtina, Serious Crimes Department, 31 July 2015, Prishtina.

28 Ibid

29 Ibid

30 Ibid

31 PAKR Judgment . n r. 432/15, Basic Court in Prishtina, Department of Serious Crimes, 4 December 2017, Prishtina.

32 Ibid

33 The PAKR Judgment. no. 27/2018, Court of Appeal, Serious Crimes Department, May 17, 2018, Prishtina.

34 Ibid

35 Ibid

After the acquittal by the Court of Appeals, Enver Hasani reacted through a letter to the senators and the Steering Council of UP, in which he claimed that this was a commissioned case and implicated the UP Rector Marjan Dema³⁶ . On September 19, 2018, Hasani filed criminal charges against Rector Dema, accusing him, among other things, for the criminal offense of false declaration under oath³⁷ .

The State Prosecution filed a request for protection of legality in the Supreme Court of Kosovo for the part of the Judgment of the Court of Appeal with which Enver Hasani was released³⁸ . The defense of both accused from the Basic Court and the Court of Appeal also challenged the sentencing judgment before the Supreme Court, filing a request for protection of legality³⁹ . The Supreme Court on 2 November 2018 issued a judgment refusing the State Prosecution's motion against the acquittal of the Judgment of the Court of Appeal as unfounded and, approved as grounded the request for protection of the legality of the two sentenced, returning the case to the Court of Appeals for resettlement⁴⁰ . The Court of Appeal acquitted Enver Hasani of the charge, while aggravating the sentences for the other two accused, Albert Rakipi and Hakif Veliu, raising them to 1 year of effective jail⁴¹ .

36 "I was persecuted for the sake of Rector Marjan Dema - says Enver Hasani after the acquittal," Klan Kosova, May 16, 2018, can be found at: <https://klankosova.tv/u-persekutova-per-fajte-Rectormarjan-bulls-mean-post-release-of-charge-enver-hasani/>

37 "Enver Hasani Filing Criminal Charges Against UP Rector Marjan Dema", KOHA.net, 20 September 2018, is available at: www.koha.net/arberi/118229/enver-hasani-ngre-kallezim-penal-to-rector-to-be-se-marjan-bulls .

38 PML Judgment. no. 238/2018, Supreme Court of Kosovo, 2 November 2018.

39 Ibid

40 Ibid

41 Labinot Leposhtica « The convict for fraud on the job in the contract of UP is punished», October 15, 2018, can be found at: <https://kallxo.com/en-denuari-per-mashtrim-ne-detyre-ne -kontraten-of-that-goes-up-in-sorrow-of-sentence/>

CASE 2

On January 13, 2016, Kosovo Special Prosecution filed an indictment against Enver Hasani, in the capacity of the President of the Constitutional Court of Kosovo, for criminal offenses of falsifying an official document and misuse of official position or authority⁴². According to the Special Prosecutor, Enver Hasani had unlawfully used his official position and authority when he made the decision on the request of the President of the Republic of Kosovo for the appointment of three international judges to the Constitutional Court⁴³. According to the Prosecutor's Office, the Resolution on Inadmissibility of the President's Referral had provided additional mandates to international judges who had benefited from it in an unlawful manner⁴⁴. According to the Indictment, Enver Hasani had also entered invalid data in the Resolution on Inadmissibility, after having noted as a participant in the application a name of a judge who did not participate in the decision-making process⁴⁵.

A session of the main trial for this case was held on September 8, 2016, which is Hasani's declaration of innocence⁴⁶. In January 2017, the Court of Appeal made a decision to reject the indictment on the grounds that all actions taken by Enver Hasani were within his authority as President of the Constitutional Court and that the incriminating actions for which he was accused of did not constitute a criminal offense⁴⁷. This ruling was also verified by the Supreme Court, which rejected as unfounded the request for protection of legality filed by the Prosecution against the Appeal Decision⁴⁸.

ADMOVEERE requested a statement from Professor Enver Hasani, who declined to comment on either of the above cases, offering only irrelevant comments on our report.

42 "An indictment filed against Enver Hasani," Free Radio Free Europe, January 13, 2016, can be found at: <https://www.evropaelire.org/a/27485751.html> ;

43 Ibid

44 Ibid

45 Ibid

46 "The Spectacle and Failures of Indictments and Trials for Corruption during 2017," the Oath of Justice, January 6, 2018, can be found at: <https://betimiperdrejtesi.com/spektaklet-dhe-posts-dimensions-and-indications-per-year-corruption-term-2017/>

47 Ibid

48 Ibid

FACULTY OF SCIENCE

Ferdije Zhushi, associate professor at the Faculty of Mathematics and Natural Sciences

On November 25, 2014, on the request of the Prosecution and the order of the Basic Court in Prishtina, Kosovo Police conducted an operation in AKA offices in Prishtina, where they arrested Ferdije Zushi-Etemi and Armend Muja, and raided their homes⁴⁹. The Special Prosecution press release issued immediately after the arrest, stated: “There is a reasonable doubt that the defendants have misused their official position by using their official duty and authority in order to benefit directly and indirectly by seeking cash benefits from several private university owners”⁵⁰. The court imposed a security measure against Ferdije Zhushi-Etemi and Armend Muja, forcing them to report to the police station once a week during a 30 day period⁵¹.

On 31 August 2015, the SPRK filed an indictment against the defendants Basri Muja, Ferdije Zhushi-Etemi, Armend Muja and Naim Braha. On September 2015, Ferdije Zhushi-Etemi resigned from the position of the AKA Board Chairman. At the hearing in November 2015, all the accused opposed the indictment⁵². During the process in the court Basri Muja and Ferdije Zushi-Etemi were charged with misuse of official position or authority in cooperation, as well as of receiving bribery; Armend Muja was accused of bribery and complicity in the next, and Naim Braha was charged for bribery, but his case had expired.

49 Kreshnik Gashi and Mimoza Kqiku “Arrested Ferdije Zhushi-Etemi and Armend Muja,” Kallxo, November 25, 2014, is available at: <http://kallxo.com/arrestohen-ferdije-zhushi-etemi-dhe-armend-muja/>

50 Ibid

51 Labinot Leposhtica and Armend Zenelaj “The judge placed the security measure on Ferdije Zhushi- Etem and Armend Mujës”, Kallxo, 26 November 2014, can be found at: [https://kallxo.com/gjnk/judgjet-vendosi-masen-e -Safety-to-Ferdije-zhushi-Etemi-and-armend-Mujës-1 /](https://kallxo.com/gjnk/judgjet-vendosi-masen-e-Safety-to-Ferdije-zhushi-Etemi-and-armend-Mujës-1/)

52 Armend Zenelaj “Ferdije Zhushi and Others Plea Not Specified,” Kallxo, November 12, 2015, can be found at: <https://kallxo.com/arrestohen-ferdije-zhushi-etemi-dhe-armend-muja/>

Zhushi-Etemi described her indictment as “revenge and blackmail for non-accreditation of ISPE and Universum colleges”⁵³ . In January 2019, the Basic Court in Prishtina, regarding the charge of misusing official duty in co-perpetration, in the absence of evidence, declared Ferdije Zhushi-Etemi innocent. As for the charges made by the prosecution for criminal offenses of abuse of official position or authority as well as bribery in co-operation, the Court refused the appeal, since it was prescribed in an absolute manner⁵⁴. The same is true for Basri Muja⁵⁵ . The accused Armend Muja was acquitted of all charges, since the criminal offense for which he was accused had expired⁵⁶ .

We asked for a statement by Professor Ferdije Zhushi-Etemi, but we received no response.

53 Blerta Ibërdemaj “Zhushi: The indictment raised against me is revenge for non-accreditation of programs,” Kallxo, October 9, 2018, can be found at: <https://kallxo.com/zhushi-aktakuza-e-ngritur-ndaj-meje/>

54 Blerta Ibërdemaj “The court ruled for former Accreditation Agency officials,” Kallxo, January 29, 2019, can be found at: <https://kallxo.com/the-gency-vendosi-per-ish-syrtaret-e-agjencise-se-akreditimit/>

55 Absolute prescription of criminal prosecution occurs whenever the time limit of statutory limitation exceeds twice (Article 100, paragraph 8 KCCP). The statutory limitation period may be terminated by procedural actions which are undertaken for the purpose of criminal prosecution (Article 100, paragraph 5 KCCP). However, with the imposition of absolute prescription of criminal prosecution, criminal prosecution shall be prohibited, despite the interruption of the statutory limitation period that may have occurred during the conduct of criminal proceedings (Article 100, paragraph 8 KCCP).

56 <https://telegafi.com/gjykata-vendosi-per-ish-the-official-of-the-agency-that-accreditation/>

Gani Bajraktari, a regular professor, **Shpend Elezi**, an associate professor **Afrim Poniku**, **Arlind Batalli**, **Dardan Koçinaj**, **Edmond Haliti** and **Xhevdet Krasniqi**, assistants

On 15 June 2016, the Special Prosecution filed an indictment against 64 persons for six criminal offenses: misuse of official position or authority, receiving bribes, giving bribes, irresponsible medical treatment, unlawful exercise of medical and pharmaceutical activity and tax evasion⁵⁷. Given the large number of defendants, in order to facilitate the litigation, the Basic Court divided the indictment in three cases: ‘Stenta 1’, ‘Stenta 2’ and ‘Stenta 3’. Six out of these defendants are members of the academic staff of the Faculty of Medicine: Gani Bajraktari, professor, Shpend Elezi, an associate professor, and Afrim Poniku, Arlind Batali, Dardan Koçinaj, Edmond Haliti and Xhevdet Krasniqi, assistants⁵⁸. The kallxo.com web portal had published SMS’ by the doctors involved in the case, which show how they referred patients with heart problems from the QKUK to private hospitals⁵⁹.

So far, in the case of ‘Stenta 1’, the convicted are former minister of Health, Ferid Agani, who was sentenced with two years and six months of effective imprisonment and former Secretary General of the Ministry of Health, Gani Shabani, who was sentenced with two years of effective imprisonment⁶⁰. The ‘Stenta 2’ case is still in process, while ‘Stenta 3’ is in the indictment confirmation stage⁶¹.

On May 20, 2018 the Basic Court in Prishtina announced the decision to reject the request made by Gani Bajraktari and the other 38 accused in the ‘Stenta 2’ case for withdrawing the indictment and challenging the evidence. The Court of Appeal rejected Gani Bajraktari’s appeal as unfounded, confirming the decision of the Basic Court on the indictment⁶².

We asked for statements by professors Gani Bajraktari and Shpend Elezi, as well as assistants Afrim Poniku, Arlind Batalli, Dardan Koçinaj, Edmond Haliti and Xhevdet Krasniqi on the case. We received an answer only from Professor Bajraktari, who said that our approach to the presentation of this case is discriminatory and selective and gave us comments that are irrelevant for our report.

57 “Indictment confirmed against 46 Accused Physicians in Case Stenta”, The Insider, 21 June 2018, found in: case-stents /.

58 “Appeals rejects the objections of the defendants in the case ‘stents’” Kallxo, August 17, 2018, available at: <https://kallxo.com/apeli-refuzon-kundershtimet-e-te-akuzuarve- in-case-stent>

59 Paulina Nushi “Accused of Stents’ Academic Candidate,” Kallxo, 26 November 2016, can be found at: <https://kallxo.com/-akuzuari-i-stentave-kandidat-per-akademik/>

60 Lavdim Bajraktari “Stenta 2”, doctors charged with calling them an indictment as unfounded in evidence, and their actions as appropriate “, 1 April 2019, is available at:

1<https://betimiperdrejtesi.com/stenta-2-mjeket-e-akuzuar-e-quajne-aktakuzen-ndaj-tyre-si-te-pabazuar-ne-prova-kurse-ve-primet-e-tyre-si-te- right />

61 Ibid

62 “The Indictment Confirmed Against 46 Doctors in Case” Stenta “, June 21, 2018, is available at: www.koha.net/kronike/100622/confirmed-aktakuza-ndaj-46-mjekave-ne-rastin-stenta/.

On November 11, 2016, the Basic Prosecution Office in Prishtina filed an indictment against Murat Meha, General Officer of the Kosovo Cadastral Agency (AKK), Ismet Kryeziu, Head of the Legal Department of the AKK, and Nemanja Spasić, Chief of the Cadastral Office of the Municipality of Graçanica, for the misuse of official position or official authority⁶³. According to the indictment, since 26 September 2014 the three defendants had consistently misused their official duties, by not allowing the injured party “Marigona Residence” to exercise their activity, putting it in an unequal position in relation to the law applicable as regards the right to transfer ownership to the cadastral register⁶⁴. According to the indictment, the defendants Meha and Kryeziu forced the defendant Nemanja Spasić to act on the basis of a professional opinion, issued by Kosovo Cadastral Agency on January 21, 2015, in which the indictment is considered illegal since it prevented the injured party in the exercise of its economic activity, causing considerable financial damage. The injured party claimed damages in the amount of 5 million Euro⁶⁵.

On July 31, 2017, the Basic Court in Prishtina withdrew the indictment for the case in question, in accordance with the Criminal Procedure Code, and rested the case⁶⁶. The Basic Prosecution in Prishtina filed a complaint against this ruling⁶⁷. On 23 October 2017, the Court of Appeal dismissed the Basic Prosecution’s appeal, upholding the decision of the first instance court⁶⁸. According to the press release of the Court of Appeal, “the actions of the defendants do not show elements of the offense with which they are charged”, since misuse of official position is done in order to make profits or to cause harm to another person. The reason given here implies that there is no evidence that by their actions they have done so⁶⁹.

In this case, we requested a statement from Professor Murat Meha, who did not comment on the decisions of the Basic Court and the subsequent Appeals, but explained that during this time he was in regular employment with the Kosovo Cadastral Agency, while in the Faculty of Civil Engineering and of Architecture he only held part-time classes per semester.

63 “Confirms Appeal was ten or indictment Officer AKM, Murat Meha,” Oath of Justice, Kosovo Law Institute (KLI), October 23 2017, available at: betimiperdrejtesi.com/apeli-verteton-dismiss

64 “Murat Meha is accused of abusing official position,” Koha.net, 20 April 2017, is available at: www.koha.net/arberi/13316/murat-meha-akuzohen-per-keqperdorim-te-pozites-zyrtare

65 “Murat Meha in front of the Court”, INSAJDERI, May 17, 2017, can be found at: <https://insajderi.com/murat-meha-del-para-gjykates/>

66 “The Prosecution’s Appeal in Murat Meha’s Case and Two Defendants for Abuse of Official Position” is refused, “Koha.net, October 23, 2017, can be found at: <https://www.koha.net/arberi/52717/refused-the-appeal-e-prosecution-the-case-of-murat-Mehes-and-two-of-charged-per-misuse-of-position-official/>

67 <https://betimiperdrejtesi.com/apeli-verteton-hudhjen-e-aktakuzes-per-kryeshefin-e-akk-se-murat-meha/>

68 “Appeal Confirms the Lack of Indictment for AKM Chief Executive, Murat Meha,” The Oath of Justice, Kosovo Justice Institute (IKD), October 23, 2017, can be found at: <https://betimiperdrejtesi.com/apeli-proving-dumping-e-indictment-per-Chief-e-ACA-murat-meha/>

69 “Appeal Confirms the Lack of Indictment for AKM Chief Executive, Murat Meha,” The Oath of Justice, Kosovo Justice Institute (IKD), October 23, 2017, can be found at: <https://betimiperdrejtesi.com/apeli-proving-dumping-e-indictment-per-Chief-e-ACA-murat-meha/>

On 6 April 2018, the SPRK filed an indictment against 11 persons with high political functions involved in the 'Pronto' case: Adem Grabovci, Zenun Pajaziti, Ilhami Gashi, Xhavit Dakaj, Fatmir Shurdhaj, Sadat Gashi, Ismet Neziraj, Rexhë Abazi, Nijazi Kryeziu, Arbenita Pajaziti and Besim Beqaj⁷⁰. The surveillance of their phone calls made during 2011-2012 raised doubts that these people used their authority to employ people in public positions without merit. According to the indictment, the defendants are charged with the criminal offense of "Violating the Equal Status of Citizens and Residents of the Republic of Kosovo in Co-perpetration, based on Article 193, paragraph 4, in conjunction with paragraph 1 of the KPRK, in conjunction with Article 31 of the KPRK, meaning misuse of official positions and co-operation to give preference and privileges to certain persons"⁷¹.

On February 4, 2019 the accused in the 'Pronto' case demanded that the indictment be withdrawn, claiming that it was unfounded. After the indictment, Besim Beqaj said that he was convinced that he had conducted no violation or exceeded his authority, and added that he was a man who believed in institutions and therefore convinced that the responsible and professional institutions will treat the case in detail, adding that he was ready to clarify all his political and legal actions⁷². On 3 April 2019, the Basic Court in Prishtina rejected the request made by the defense of the defendants for dismissing the indictment in the 'Pronto' case, deciding to hold the trial on charges made by the KPRK⁷³.

We asked a statement from Professor Besim Beqaj on this case, but received no response from him.

70 "The Prosecution filed an indictment against the 11 persons involved in the" Chief of Files "interception scandal," The Insider, April 2018, can be found at <https://insajderi.com/prokuroria-ka-ngritur-aktakuzes-ne-case-of-pronto-called/>
71 "An Accusation Against the Pronto Clan" is launched, Koha.net, April 2018, located at: www.koha.net/arberi/85521/ngrihet-aktakuzes-kunder-klanit-pronto/

72 "Statement by the Minister following the Indictment in Pronto case", 6 April 2018, can be found at: <https://kallxo.com/deklarate-e-ministrit-pas-aktakuzes-ne-rastin-pronto/>

73 Blerita Iberdemaj "The Court was Appointed For Accusations 'Pronto'", KALLXO.com, April 2019, can be found at: <https://kallxo.com/gjykata-vendosi-per-aktakuzen-e-rastit-pronto/>

On July 2016, “Life in Kosovo” newspaper ⁷⁴ reported that the Head of Department of History in the Faculty of Philosophy, Selim Bezeraj, had copied his doctorate dissertation⁷⁵ defended at the University of Tirana in 2014, and his scientific work “Soziale Lage in Großbritannien Während der Regierung des Prinzen Wilhelm Wied nach Deutschen Reisenden”, submitted for publication in 2015 in the German academic journal “Zeitschrift für Balkanologie”, from the master thesis of Mr. Adam Christian, defended at the University of Vienna in 2010 ⁷⁶. Former rector Ramadan Zejnullahu, in an official letter to Bezeraj, claimed that the work had proven identical after comparison, and cited identical pages, and requested from him and from the Dean of the Faculty of Philosophy, Bujar Dugolli, “a full clarification in writing » on the matter ⁷⁷. In July 2016, the UP Senate advanced Bezeraj to the position of Assistant Professor in the Department of History’s in the Faculty of Philosophy, with no votes against.

On January 11, 2018 Organization for Increasing Quality of Education (ORCA) raised charges against Bezeraj on suspicion of having committed the criminal offenses of infringement of copyright and forgery of documents⁷⁸ . According to the charge, Bezeraj applied for advancement to the afore-mentioned position by presenting the contested scientific paper, which was copied from the work of Mr. Adam Christian for the University of Vienna⁷⁹ . The charge also accused him of counterfeit of the document of the German scientific journal “Zeitschrift für Balkanologie” on the publication of his paper in this magazine⁸⁰ . On January 22, 2018, Bezeraj told the daily newspaper “Koha Ditore” that in 2016 he was advanced after presenting the paper “Balkan Arastirmalari detgisi” published in Turkey, and not with the paper that ORCA put forward in the charges⁸¹ .

74 Rron Gjinovci “The Head of the Department of History suspected of plagiarism,” July 21, 2016, found at: <http://kallxo.com/gjnk/shefi->

75 Doctoral Study of Selim Bezeraj “Albanians and Austro-Hungaria during 1912-1914” , can be found at: <http://www.doktoratura.unitir.>

76 Mastering Adam Christian’s Master “Die Hesschaft des Prinzen zu Wied als Furst von Albanien unter besorenderer Berücksichtigung des ostereich-ungarichen diplomatischen Dienstes” found in: <http://othes.univie.ac.at/>

77 Rector Ramadan Zejnullahu’s letter to Professor Bezeraj and Dean Dugolli can be found at: <http://kallxo.com/gjnk/shefi-departmentite-historise-ne-dyshohet-per-plagjiature>

78 Limitation to the Criminal Selim Bezeraj to Basic Prosecution in Prishtina, January 11 2018.

79 Ibid

80 Ibid

81 Edona Kutleshi “Criminal charges against UP professor for plagiarism and forgery,” Koha Ditore, January 18, 2018.

On February 9, 2018 the prosecution requested information from ORCA to meet the criminal complaint, to which it responded on March 12, 2018 .

The Basic Prosecution in Prishtina responded to our request for information regarding the case in question and confirmed that “after analyzing all the findings, on 04.07.2018, the prosecutor of the case dismissed the above-mentioned charges, since the evidence collected verified that there is no reasonable suspicion that the above-mentioned criminal offenses foreseen by the Criminal Code of the Republic of Kosovo were committed”.

We asked for a statement by Selim Bezeraj on this case, who in his reply told us that the competent institutions dismissed the “defamations” in question, and also accused our organization.

It should be noted that despite of the fact that the Bezeraj case was reported by the media continually and that ORCA raised criminal charges, and despite of the fact that ADMOVERE published a summary of media reports where you can see part of the plagiarized work and has publicly asked the Rector of the UP Ethics Council to take measures in accordance with the applicable laws and regulations, we still have not received an answer nor were we notified whether any action was taken on the case.

In February 2018, Valbona Berisha, an assistant professor at the Faculty of Education, raised a charge against the Rector Marjan Dema, Esat Kelmendi, Secretary General of UP, Ethem Çeku, Dean of the Faculty of Education, and Milaim Mazreku, Secretary of the Faculty of Education. According to these charges, Ethem Çeku and Milaim Mazreku were accused for abuses of official position, while Marjan Dema and Esat Kelmendi were accused of keeping silent and not reporting these violations⁸². A student of the Faculty of Education was able to defend her thesis in front of Professor Myrvete Dreshaj on July 13, 2017, although she had not completed an examination by Professor Valbona Berisha in the subject of “Methodology of Knowledge of Mathematical Concepts”.

This irregularity was reported by Valbona Berisha, submitting a statement to the Commission on the Defense of Thesis and the Secretary of the Faculty of Education, Milaim Mazreku. The dubious thesis defense was annulled on the same day, but no other action was taken. Berisha also presented evidence that the student documentation was forged. According to the charges, Dean Çeku and his Secretary Mazreku, had an impact on not taking measures, since in the meeting in which the case was reviewed, Secretary Mazreku stated that he did not have the application with him, and Dean Çeku had responded to Valbona Berisha that there were “no findings with which to punish the student”⁸³.

We asked a statement from Rector Marjan Dema, who never gave a response, despite of promising us one. We also asked for a statement from the Dean, Ethem Çeku, but got no response from him either. In the end, we asked for a statement from Professor Valbona Berisha, who told us: “I have no information about the outcome in the case of student AR. No disciplinary measure has been taken against her. I have no information, nor an invitation from the prosecution of serious crimes for criminal charges filed in February 2018».

82 Eros Klaiqi “The suspicious student’s degree - the professor charges criminal charges against Rector Dema of Dean Ceku,” the Insider, August 2018, found in:

<https://insajderi.com/hulumtime/diplomimi-i-dyshimte-i-studentes-profesoresha-ben-kallezim-penal-ndaj-rektorit-dema-e-dekanit-cekul/?fbclid=IwAR1Qp6EXDYI8XI6dQq12kuwsrnRtupecXItiFG5bNVrrZ0Ba-RZo5VqUc-8>

83 Criminal Report on Basic Prosecution - Department of Serious Crimes - Prishtina by Professor Valbonë Berisha, February 23, 2018, against Marjan Dema, Rector of UP, Esat Kelmendi, UP Secretary General, Ethem Ceku, Dean of the Faculty of Education, Milaim Mazreku, Secretary of the Faculty of Education.

Shortly before the end of the report, we received a response from the Secretary General of the UP, Esat Kelmendi, which we are publishing in full:

“I inform you that regarding the case in question, made in January 12, 2018, I returned a response to professor Valbona as follows:

‘Based on the Law on Civil Service, your suspicions of violation should be presented to the Dean of the academic unit as a direct leader. If the dean finds that there are elements of serious disciplinary violation, he is competent to present the case to the Disciplinary Commission. I have discussed this very exact issue with the Dean of the Faculty. The case will be proceeded to him for review.’

We discussed this issue with the Rector as well, so together with him we asked the Dean to deal with the case at the Council of the Faculty and if the Council finds a violation, then the Dean should refer the case to the Disciplinary Commission.

Based on information from the faculty, this subject was subsequently reviewed within the Faculty Council. This issue has also been discussed in the Steering Council, namely the Dean of the Faculty has been invited to clarify the whole process of the case. The Steering Council in this meeting decided to appoint a commission of 3 members to verify the professor’s claims for the case in question.

The Commission has drafted a report on the case, which was subsequently approved by the Steering Council.

P.S. This answer also constitutes an answer by the Rector»

CONCLUSION

CONCLUSION

- Judicial and prosecutorial institutions do not provide information on cases in which the members of the academic staff faced the law, which means that they are kept in secret and out of the public eye. The University also shows no willingness to provide information on their academic staff facing the law. Furthermore, no professors were suspended due to confrontations with the law.

- In summing up cases where the defendants, the accused and the sentenced are members of the academic staff of the UP, we requested public documents from seven Kosovo Courts; Prishtina, Mitrovica, Peja, Prizren, Ferizaj, Gjilan and Gjakova, and we also contacted the Kosovo Prosecutorial Council (KPK) and the Kosovo Judicial Council (KGjK). Three of the seven basic courts - the ones in Peja, Prizren and Gjakova – told us they had no cases of academic members of the UP in their courts, whereas courts in Ferizaj, Mitrovica and Prishtina, despite expressing their willingness to assist, did not respond to any of our requests. The lack of response from the Basic Court in Prishtina affected us the most, given that the cases of encounters with the law of UP professors are mainly found in this court. Similarly, neither the KGjK nor the KPK responded to our requests for access to public documents. It should be singled out, however, that the Basic Court in Gjilan responded to our request and was very cooperative.

- As a result, the organization decided to chronologically present the cases published in the media during this decade, in which members of the regular academic staff were confronted with the law, meaning that they had or have cases such as criminal reports, indictments, convictions, and so on, in Kosovo courts.

1. There are a total of 8 indictments, which involve a total of 15 members of the academic staff, and two criminal charges, which involve a total of five members of the UP academic staff. So, according to Kosovo media reports, there are a total of 19 members of UP academic staff who have had and/or have cases in Kosovo courts.

2. Out of the 8 indictments, 5 are associated directly with professors in high public office such as Valton Beqiri, former Minister of Culture; Enver Hasani, former President of the Constitutional Court and former - UP Rector; Murat Meha, Chief Executive Officer of Kosovo Cadastral Agency; Besim Beqaj, former Minister of Economic Development; and Ferdije Zhushi, former President of the Board of the Kosovo Accreditation Agency. Of the 8 indictments, only 2 are linked to the UP, and 6 are linked to people outside of the UP. The Appeals Court dismissed 4 of the indictments, 1 was prescribed, and 3 are still in process. To date, no professor was sentenced by a final decision of the court.

- According to research from civil society organizations a large part of the members of the academic staff do not justify their academic titles ; Plagiarism is wide-spread among the academic staff as well as among the students; many professors do not keep regular lectures and tutorials due to other commitments whether in the public government positions, or in other higher education institutions, while burdening their assistants with these duties; sexual harassment, though widespread, is hardly reported, and in the few cases when it is reported, no further action is taken.
- No one from the UP Rector's Office, including the rector, vice-rectors, the Ethics Council and the UP Secretary-General, agreed to be interviewed on the results of violations mentioned earlier related to the academic staff.
- Five of the Deans, namely Lindita Sejdiu Rugova from the Faculty of Philology, Ethem Çeku from the Faculty of Education, Enver Hamiti from the Faculty of Electrical and Computer Engineering, Musa Selimi from the Faculty of Physical Education and Sports and Haxhi Gashi from the Faculty of Law, have not responded to the interview requests either by e-mail or by phone.
- Four of the deans, namely But Dedaj from the Faculty of Economics, Bujar Dugolli from the Faculty of Philosophy, Tahir Arbneshtari from the Faculty of Mathematics and Natural Sciences, and Agim Selimi from the Faculty of Arts, told us that the Collegium of Deans decided that individual deans should not answer questions from civil society and that the questions should be addressed to the Secretary General of the University, who also never responded to us.
- Dean Abdullah Zejnullahu of the Faculty of Architecture and Civil Engineering met us and informed us that he does not possess official records of the violations in question. Vice Dean Gloria Staka, on behalf of the Dean, Suzana Manxhuka-Kërliu from the Faculty of Medicine, promised to answer our questions in the coming days, but has not answered to the date when this report is published. Only two deans , Skender Kaçiu from the Faculty of Agriculture and Veterinary and Ahmet Shala from the Faculty of Mechanical Engineering agreed to conduct an interview and both stated that they had no documented cases for the violations mentioned above in the faculties they run.

APPENDIX

5.

DENIAL OF ACCESS TO INFORMATION, A VIOLATION OF FREEDOM OF EXPRESSION

Rina Kika

For the purposes of compiling this report, ADMOVEVERE submitted a number of requests for access to public documents to courts, prosecutor offices, the KGjK, KPK, AKA and the UP. We requested from these institutions accurate data on how the justice system administers cases in which those charged, indicted and sentenced are members of the academic staff and what measures are taken against them for these violations. Most institutions did not answer us at all or did not provide us with the information requested.

According to the Constitution of Kosovo, each person enjoys the right of access to public documents⁸⁴. The procedure of access to public documents⁸⁵ starts with the request for access, which is submitted to the respective institution by the organization or the ordinary citizen (hereinafter “The Party”)⁸⁶. The public institution is obliged to issue a decision to grant or refuse full or partial access to public documents within seven (7) days from the date of the registration of the request⁸⁷. In case of refusal of the request, the party has the right to file a petition for a review of the decision⁸⁸. If the public institution fails to respond within the legal deadline, it is then considered by the law that it has responded negatively to the claim⁸⁹.

84 Article 41, paragraph 1, Constitution of Kosovo.

85 “Public document” or “official document” according to Article 3, paragraph 1.3 of the Law No.03 / L-215 on Access to Public Documents (“Law on Access to Public Documents”) includes but is not limited to: “All information recorded in any form, compiled or received and held by public institutions. Official document is any official document that serves to testify or to prove something, regardless of its physical form or characteristics, written or printed text, maps, schemes, photographs, drawings, sketches, working materials, and recordings sound, sound, magnetic or electronic, optical recordings or video recordings in any type form, as well as carriers for automatic data processing with installed memory or data storage devices for digital data storage».

86 Article 4, paragraph 1, Law on Access to Public Documents.

87 Article 7, paragraph 8, Law on Access to Public Documents.

88 Article 7, paragraph 9, Law on Access to Public Documents.

89 Article 10, Law on Access to Public Documents.

In ADMOVEVERE's case, requests for access to public documents have been submitted to public institutions in accordance with the Law on Access to Public Documents. Most institutions have not responded at all. Failure to provide an official answer within the legal limit is considered a negative answer. A question then arises: **when do public institutions have the right to deny access to public documents and did they act correctly in the case of requests made by ADMOVEVERE?**

Documents held by public institutions and state bodies are in principle public, but access to them may be restricted by law due to privacy, business secrets or classified security information⁹⁰. Law on Access to Public Documents sets out 11 reasons⁹¹ for which public institutions may restrict the right of access to public documents, which also foresees the restriction of access for the purpose of “protecting privacy and other legitimate private interests”⁹². However, the same law provides that in cases when there is an “overriding public interest” to disclose the information requested, access to that document should be secured, regardless of the grounds for restricting the right of access to a public document⁹³. According to the Law on Protection of Personal Data, part of “sensitive personal data” is also “any involvement in or removal from criminal records or offenses that are kept in accordance with the law”⁹⁴. However, this law also provides that sensitive personal data may be processed⁹⁵ for reasons of “substantial public interest”⁹⁶. These two laws provide for the publication of data in the public interest as an exception to the general rule for the restriction of access to public documents for reasons of protection of sensitive personal data, but do not define the term “public interest”. Standards for assessing matters of public interest, in terms of access to data and their release, are found in the Case Law of the European Court of Human Rights (ECHR). Since according to Article 53 of the Constitution of Kosovo, human rights and fundamental freedoms in Kosovo shall be interpreted in accordance with the ECHR Case Law, below we outlined some of the key standards established by this court, that address the issue of access and publication of data and information in the public interest.

90 Article 41, paragraph 2, Constitution of Kosovo.

91 Article 12, paragraph 1, Law on Access to Public Documents.

92 Article 12, paragraph 1, point 6, Law on Access to Public Documents.

93 Article 12, paragraph 2, Law on Access to Public Documents.

94 Article 3, paragraph 1. 25, Law no. 06 / L-082 on the Protection of Personal Data.

95 According to article 3, paragraph 1.2, the Law on Protection of Personal Data, processing of personal data includes: “any operation or set of operations performed upon personal data or not by automatic means, such as collection, recording, organization, structuring, preservation, adaptation or modification, withdrawal, consultation, use, publication through transmission, distribution or provision, unification or combination, restriction, deletion or destruction.

96 Article 6, paragraph 1.8, Law on Protection of Personal Data.

Freedom of expression and access to information

Freedom of expression, according to the International Convention on Civil and Political Rights and the Universal Declaration of Human Rights includes the right to seek, receive and disseminate information and ideas via the media without intrusion⁹⁷. These two international agreements, together with the European Convention on Human Rights (ECHR), are directly applicable in Kosovo and prevail over domestic law in the event of a conflict⁹⁸. Unlike the International Convention on Civil and Political Rights and the Universal Declaration of Human Rights, the ECHR does not explicitly include the right to seek information in the context of the right to freedom of expression⁹⁹. Article 10 of the ECHR states: “Everyone has the right of freedom of expression. This right includes freedom of thought and the freedom to receive or to provide information and ideas without the intervention of public authorities and regardless of the boundaries. “

Despite this fact, the ECHR has held that in certain circumstances the denial of access to information may cause violation of the right to freedom of expression under the ECHR, although the right to request public information is not expressly foreseen in the context of guaranteeing freedom of expression¹⁰⁰. The obligation to interpret the request for access to information within the context of freedom of expression depends on a number of criteria established by the ECHR. Four main criteria for evaluating the circumstances of the individual cases are: a) the purpose of the request for information, b) the nature of the requested information, c) the role of applicant, and d) whether information is accessible and ready¹⁰¹.

P.S. Kjo përgjigje njëherësh është përgjigje edhe e Rektorit» -

97 Article 19, International Covenant on Civil and Political Rights and Article 19, Universal Declaration of Human Rights.

98 Article 22, paragraph 1, 2 and paragraph 3 of the Constitution of Kosovo.

99 The ECHR is also directly applicable to Kosovo's positive right under Article 22, paragraph 2 of the Kosovo Constitution and prevails over domestic law in the event of a conflict.

100 Magyar Helsinki Bizottag against Hungary, G j HRE, Nr. 18030/11, November 8, 2016, paragraphs 156 and references therein.

101 Magyar Helsinki Bizottag against Hungary, G j HRE, Nr. 18030/11, November 8, 2016, 158-169.

a) The purpose of the request for information

To meet this criterion, the purpose of the request for access to information to the public authority should be to enable the exercise of the right of freedom of expression to “receive and impart information and ideas” to others¹⁰². The ECHR has emphasized that it is important to determine whether the “gathering of information is an important preparatory step in the exercise of journalistic activities or other activities that create a forum or that are an integral part of a public debate.¹⁰³” When a civil society organization draws public attention to issues of public interest, it exerts a “supervisory social role”¹⁰⁴ of similar importance to that of the media¹⁰⁵, hence such an organization enjoys the same importance as the media when assessing whether access to information on the exercise of freedom of expression was necessary¹⁰⁶.

In the case of ADMOVEERE, access and collection of information about encounters with the law of the members of the academic staff of the UP was a crucial step in drafting the report “Professors facing the law.” As a consequence of not allowing access to information, ADMOVEERE was forced to report based mainly on secondary sources of information, such as through media reports and reports by other civil society organizations. This means that the report did not manage to present any of the cases of conflicts of the professors with the law, which were not reported previously by the media or by the civil society organizations. For the needs of ADMOVEERE, access to the requested information was an important preparatory step for the exercise of journalistic activity and presentation of data related to management of these cases by the judiciary.

102 Magyar Helsinki Bizottság against Hungary, G j HRE, Nr. 18030/11, November 8, 2016, paragraph 158 and references therein.

103 Ibid

104 Magyar Helsinki Bizottság against Hungary, G j HRE, no. 18030/11, 8 November 2016, paragraphs 159, 166, and references to t o . A n angol: «social watchdog».

105 Gra Stiftung Gegen Rassismus and 17 Antisemitismus against Switzerland, G j HRE, Nr. 18597/13, January 9, 2018, paragraph 57 and references therein.

106 Magyar Helsinki Bizottság against Hungary, G j HRE, Nr. 18030/11, 8 November 2016, paragraph 159.

b) The nature of the information requested

Regarding the second evaluation criterion, the ECHR has stressed that in order to qualify the denial of access to information as a violation of the right to freedom of expression, the nature of the information, the data and documents requested by the parties, must pass the public interest test¹⁰⁷. Among other things, the Court assessed that an information of public interest nature could be an information which when disclosed results in added transparency” in the manner of conducting affairs (public relations) for issues that are important to the public as a whole and thus allows for public participation in public governance¹⁰⁸.”

The main purpose of the report “Professors face the law” is to raise public debate on the methods of administration of cases by the justice system when those charged, indicted and sentenced are UP professors, as well as the (non) reaction of the UP and other public authorities against such cases. An information report on these issues would bring about increased transparency on how public authorities administer and deal with cases when professors who are perceived as individuals with a higher social status, face the law.

In evaluating the public interest, the ECHR has emphasized that “the public interest cannot be reduced to the public’s concern for information of the private life of others or the public’s desire for sensationalism.” Also, during this evaluation, the publications must be seen in their entirety, together with the context in which they appear¹⁰⁹.

Can it be considered that the provision of access to information regarding professors that face the law violates their right to privacy and protection of reputation?

107 Magyar Helsinki Bizottag against Hungary, G j HRE, Nr. 18030/11, November 8, 2016, paragraph 161.

108 Ibid

109 Magyar Helsinki Bizottag against Hungary, G j HRE, no. 18030/11, 8 November 2016, paragraph 162.

i) Public interest and protection of privacy

Regarding the context of the publication of the report, it is important to note that not all the information required by ADMOVEERE concerned the names of the professors who faced the law. ADMOVEERE also requested statistical information on cases of these professors, for example, data on how many members of the academic staff are investigated, or are charged or indicted and what has happened to their cases; namely, whether their cases were prescribed or the investigations have ceased, or what stage did these cases reach. Nevertheless, it would be very difficult for the professors facing the law to present persuasive arguments for the protection of their privacy and reputation.

The right to the protection of reputation provided under Article 8 of the ECHR is part of the right to privacy¹¹⁰: “Private life” is a broad term that has no exhaustive definition and covers the physical and psychological integrity of a person and may include multiple aspects of a person’s identity¹¹¹. Private life covers personal information that should not be published without their consent¹¹². In order for a person to invoke the protection of the right of privacy under Article 8 of the ECHR, the attack on that person’s reputation must attain a certain level of seriousness in such a way as to prejudice the enjoyment of his/her right to private life¹¹³. Furthermore, the right to such protection cannot be invoked, if such a loss to reputation comes from the actions of that person, as happens in cases when he/she loses reputation for the commission of any criminal offense¹¹⁴.

110 ECHR, *Axel Springer v. Germany*, paragraph 83 and references therein.

111 ECHR *Axel Springer v Germany*, paragraph 83 (unofficial translation).

112 *Ibid*

113 *Ibid*

114 ECHR, *Axel Springer v Germany*, paragraph 83; *G j EDN j Sida bras and Džiautas v. Lithuania*, no. 55480/00 and 59330/00, paragraph 49.

Consequently, members of the academic staff that were convicted of criminal offenses, cannot be considered to have their right to privacy violated in case data on their cases were to be published, since loss of their reputation comes as a predictable consequence of their actions. For this reason, they cannot expect legal protection in case such information is published without their consent.

In addition, all court hearings are open to the public, except when otherwise provided by law ¹¹⁵. In the proceedings in the criminal court hearings are closed to the public only in cases involving minors¹¹⁶ . However, according to KPP, sessions are closed to the public only in cases involving minors, except in the cases in which the court makes a decision to exclude the public ¹¹⁷. This decision can only be taken by the court in certain cases such as, for example, to preserve an official secret, to protect the defendants or the witnesses or the personal or family life of the accused, the victims and other participants in the proceedings¹¹⁸ . Thus, the court must make a decision on the exclusion of the public, otherwise the court sessions are open and anyone can attend the proceedings and hear all the information about the cases under review and be informed on who is a party in the process, i.e. know the last and the first name of the defendant, the charges against him/her, hear the witnesses and the evidence, and finally be present when the court announces the verdict on the case.

115 Article 7, paragraph 4 Law 06 / L - 054 on Courts.

116 Article 47, Code no. 06 / L-006 on Juvenile Justice.

117 Article 294, Code no. 04 / L-123 of the Criminal Procedure.

118 Ibid

ii) Protection of Privacy under the Administrative Instruction for secrecy and publishing of final judgments

According to Instruction Administration for Secrecy And Publication of Final Judgments, the issue of the Kosovo Judicial Council (KGjK) in 2016 (**Guidelines for secrecy of judgments**), the personal data of all final criminal judgments, be they civil, administrative or economic need made secret by removing, among other things, the name and surname of the party, place of birth, name and surname of the representatives of the parties, the lawyers, notaries, names of experts, witnesses, and so on. This Administrative Instruction has not yet been abrogated by KGjK and is likely to appear as an argument by the courts for non-access to judicial decisions. The main legal basis for issuing the instruction to the secrecy of judgments is Article 2 of Law No.05 / L-032 on amending and supplementing the Law No.03 / L-199 on Courts, is its publication in the Official Gazette on June 30, 2015, where it states as follows:

“Article 2 [of] Article 6 of the basic law, after paragraph 2, shall have another paragraph 3 added, with the following text: 3. The courts shall publish the final judgments on their official website within sixty (60) days from the date of the enactment of the judgment in force in accordance with the legislation in force and the rules of the Kosovo Judicial Council (hereinafter: the Council), **ensuring the protection of personal data.**”

However, in November 2018, the Assembly of Kosovo adopted the Law No.06 / L-054 on Courts (**the new Law on Courts**), which entered into force on January 2, 2019 and superseded the two previous laws. The new Law on Courts, regulating the publication of judgments, stipulates:

“The courts shall publish all judgments on their official website within sixty (60) days from the date of issuance of the judgment in accordance with the legislation in force. The Council shall issue sub-legal acts for the implementation of this Article.¹¹⁹”

So, the Assembly has deliberately decided to remove the definition of this provision which gives KGjK competence to issue an administrative instruction on the publishing of court decisions **that aim to ensure the protection of personal data**. This change in the law could be interpreted as a clear expression of the will of lawmakers to limit the power of the KGjK to issue administrative instruction for the publication of judgments. The KGjK can no longer support the Guidelines for the secrecy of judgments in the new Law on Courts. Therefore, it should abolish them because the main legal basis on which they rely is abolished by the Kosovo Assembly. Moreover, according to the Law on Courts, all judgments should be made public on the official web pages of the courts, which would facilitate the work of the media and civil society organizations, since information would be available online and there would be no need to put forward requests to secure judicial decisions. Consequently, any argument based on the protection of privacy under this administrative instruction cannot be considered compelling or grounded.

¹¹⁹ Article 6, paragraph 3 New Law on Courts.

c) The role of the complainant

Exercising the social watchdog role by civil society organizations that raise issues of public interest provides them with the same protection that the media enjoy under the ECHR¹²⁰. ECHR has assessed that “the way in which social supervisors shall conduct their activities has a major impact on the proper functioning of a democratic society.¹²¹” Therefore, “it is in the interest of a democratic society to enable the media to exercise the vital role of ‘social overseers’ by disseminating information that is in the public interest, as it is also important for civil society organizations to perform their role in reporting on issues of public interest». It is clear that this criterion set by the ECHR is also met in the case of ADMOVERE, which as a civil society organization aims to inform the public and generate public debate on the administration of justice in cases where professors face the law.

d) Accessible and Ready Information

Issues such as whether the information is accessible and ready or whether it should be collected from the beginning, and if such collection of information presents difficulties for the state, are considered by the ECHR in assessing whether the denial to access is contrary to Article 10 of the ECHR¹²². However, the Court has not accepted the claim of the state authorities that it was difficult to obtain information, if the difficulty is the fault of “practices of that state authority itself.”¹²³ In criminal procedure, the profession of a person accused or suspected of committing a criminal offense is always registered. Hence, the collection of data on professors facing the law should not pose difficulties.

120 Magyar Helsinki Bizarre against Hungary, ECtHR, No 18030/11, November 8, 2016, paragraph 166 and references therein.

121 Ibidw

122 Hungarian Helsinki Commission against Hungary, ECtHR, No 18030/11, November 8, 2016, paragraph 169 and references therein.

123 Ibid

ADMOVEVERE has requested access to information in order to summarize it in a report and present it to the public in order to start a debate on how the public authorities treat those that violate the law and who enjoy a higher social status, such as University professors.

Presentation of complete and accurate information on the management of the judiciary cases when the suspects, the indicted and those sentenced are members of the academic staff as well as the presentation of data on reactions and measures taken by the University staff and institutions related to them, is essential for the development of a genuine public debate on the issue.

As a consequence of not being allowed access to information, ADMOVERE has based the report mainly on data from secondary sources of information, such as media reporting and civil society organizations reporting. Because of this, the report contains only partial information and data due to the failure of the public authorities to respond. Denial of access to information prevented ADMOVERE from exercising its supervisory role and from enabling an informed debate on a matter of public interest. We can therefore conclude that public authorities that did not provide ADMOVERE with access to information, violated its right to freedom of expression, namely the right to disseminate information without the intervention of public authorities.

CONCLUSION

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