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THEME:

**PROCEDURES REGARDS TO STRIKE TOOLS
IN THE SPECIAL ROOM OF SUPREME COURT**

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INTRODUCTION

This Master thesis was worked by using regulations of UNMIK released in a period of development in the after-war Kosovo, "implementing laws", latest laws released from the Parliament of Kosovo, other sources, such as, Constitution of Kosovo, different international conventions, scientific projects of different authors regards to this topic and reports of international institutions regards to the privatization process, but also different sources of scientific doctrine. The latter were mainly used for the aspect of the definition of social, public and state property that was and remains as an object of privatization in Kosovo, because the scientific doctrine, especially the socialist system one doesn't have any necessary data regards to privatization. In former Yugoslavia, in a phase of the development of socialist system, laws were released with the purpose of the transformation of this property as an experimental phase. Worth mentioning the Federative Law on Enterprises of 1989-90, so-called Law of Ante Marković.

At first, it was mirrored in the clearest form of understanding of property which is a main column of the primary jurisdiction establishment of the Special Room—social property, by connecting this with the transformation form, but even public property. In this direction, I have even done comparative explanations with Balkan societies and used methods to do the transformation – privatization of social and state property.

Because the judicial choices of contexts that establish as a result of this transformation – privatization of this property, in different countries have been made different forms, mainly from regular courts, the author has approached to this solution only in Kosovo, because in Kosovo the choice is *sui generis*, through a special court.

Then there were many necessary efforts, with a special focus to study deeper the implementation of strike tools in the Special Room, as a procedure, again *sui generis* in the judicial practice, respectively in the contestatory procedure.

As a very special "source" for providing with all the information, is exactly the professional practical work in the Special Room of the Supreme Court of Kosovo. In this theme, and in the research of necessary sources, I have done comparisons between laws and different regulations for the choices I have offered between laws and different regulations for the choices they have offered regards to the strike tools, these laws and the choices the scientific doctrine has offered, to achieve the choices that were done with the latest implementing laws in the Special Room. In this project, the author even gave personal points of views and professional ideas which deal with juridical analysis to any juridical choice, mirrored in juridical sources which were researched, respectively used.

Strike tools, not only in the Special Room, are defined with law because during the professional work, gownsman can make mistakes, concessions (in the majority of cases, not on purpose), especially from the courts of low scales. These tools everytime serve as a corrector of those

mistakes, during the contestimory procedure, respectively procedural decisions or in meritum, in a highr judicial grade. Despite the judicial commitment, care and preparation, during these procedures, they can do concessions and mistakes of different natures, just like in the appreciation of facts, so as in the case of implementing procedural or material norms. For the improvement and elimination of thee mistakes in judicial decisions, in all the juridical systems, it was enabled through strike tools, to review that issue from another court, of a higher grade. According to existing procedural laws, against the judgement from the court of first grade, pairs can complain within a defined legal term. The complaint within the defined term with law prevents the judgment of the sharp formulation in the part with complaint.

In the actual law of the Contestimory Procedure (LPK furthermore), there was foreseen the complaint against judgment decisions and complaints against them¹, as a usual tool of judgment decisions. Despite the complaint, as a usual tool of strike is the opposition which strikes the payment orders.

Except the usual strike tools, even in literature and in the actual law of the Contestimory Procedure, the procedure according yo extreme tools was foreseen, mainly against the second grade decisions, respectively the sharp formulation of judgment decisions.

With the rules of the Special Room, but also according to the actual law of the Special Room of the Supreme Court of Kosovo, there were implemented and still implement only regulated strike tools, maybe because the Special Room in previous judicial procedures, has judged in two or even three grades. Therefore, the process according to the complaint is done the same, or better said similar, as in the procedures of regular courts, just as foreseen with the Law of the Contestimory Procedure. Changes are evident only regards to defined terms with actual laws and legislation that was implemented by the Special Room, but also regards to the delivery of appeals in relation with the court and pairs, respectively communication of pairs.

¹

7. CONCLUSION

The Special Room, except for being “special”, has a part of label that shows that it’s a content of the Supreme Court of Kosovo. In reality, even with the judge status, but also with final decisions, in a form it’s a parallel court of the Supreme Court of Kosovo. However, procedural acts and juridical strike tools that are used towards the decisions of this court, aren’t fully conform the organization and decisions of the Supreme Court of Kosovo. This for the fact that, the Special Room decides according to lawsuits, respectively according to regular juridical-complaint tools, and in no way according to extreme tools.

From the analysis towards laws, previous regulations, but also of the New Law of Room, it’s obvious that if the pair has given up the term of strike of a decision of a Judging College, and there is no way strike with extreme tools, such decision.

Even though the legislator tried indirectly to give a chance to one pair to hand in the submission for “the evaluation of legality of a judgment or decision from another court of Kosovo...”, that means a kind of chance for allowing the the request for the protection of legality, a chance given only against decisions of regular courts, and not against decisions of specialized decisions, even though this strike tool, would be preferable to be in the law of the Room in the future.

Regards to the request for the repetition of procedure, as previously elaborated, there is no procedural problem to be in as an extreme tool for judicial procedures in the Special Room.

What there is to discuss for more in professional counties, is the choice given in the section 10.15 of the Law of Room, where it was foreseen that, “no provision of this law will be interpreted or implemented to limit or to try to limit the constitution right of each person to present a request near the Constitution Court of Kosovo, in accordance with the law and procedural rules for such request, for the review of constitutionality of any decision or judgment, released from the Special Room, or any other court in Kosovo.

This provision hints only in the decisions of the second grade which are final, because section 10 paragraph 14 says: “All the judgments and decisions of the Appeal College are final and don’t submit to any other appeal”. So, here isn’t defined exactly that we can’t use extreme tools, because it is said, “aren’t submitted to any other appeal”. In fact, because we have to deal with a latest grade in this court, I think that it’s understandable that you can’t strike a decision of this instance, but the legal formulation that the legislator has done, leaves a little chance of another interpretation.

An enough indicatory and contradictory choice is the one that is offered by the law of AKP, respectively the Law of Liquidation, with the choices of the work regulation of the Room regards to the terms of subject choices from the Special Room.

According to the Appendix of the Law of AKP, court will decide on such requests, no earlier than thirty (30) days and no later than forty five (45) days after the date of the request submission in front of the Court and delivery of a copy of it to the Liquidator Authority, Commission of Creditors (is there is any). Here it is seen that this appendix of the Law of AKP seems to be on the Law for the Special Room, because this defines the term when the court will decide (The Room).

According to the Law on the Special Room², “the judgment in a case is released and delivered to the pairs, in a written form, within 60 calendar days, after the date in which all the procedures are closed.”

From this it is seen that the law request of AKP for decision by the court within 30 days, is in contradiction with the Law of Room, but also absurd, non-coordinated and non-harmonized.

In this law, which is implementable since January of 2012, there is a professional and technical lack, but also others, which have to be avoided in as short as possible period in order not to have different attitudes and interpretation, by having the legal basis regards to the material that this court judges.

The aim and vision of sponsors of laws, but also of legislators, when they propose a law, it should've been the implementation of that law after coming into force. Before this, there had to be preparations for all the sections and paragraphs to be clear and easily interpreted and also implementable. In the concrete case, regards to the law of the Room, we're far away from these standards. In the moment when this law was approved which abrogated all the regulations of UNMIK, there were many euphoric voices for a big achievement. But if there is done a very sincere and professional analysis of this law, we will see that it didn't make any progress, but only steps back in the explanation, clarification and solution of many dilemmas. For this reason, this law once again should be back to the sponsors and relevant parliamentary commissions in order to totally change and progress, so that it can be brought back to the Special Room, an understandable and implementable law.

Duke pasur parasysh problemet që u pasqyruan më lartë lidhur me ligjin e ri, rekomandohet që:

- To change this law, especially in the part of competences of the Room, in the content of colleges, in order to finally have a Kosovarization of this judicial institution.*
 - To standardize the terminology used in this law, so that it won't be different from other basic laws of Kosovo.*
 - To accurately determine the strike tools, not only those regular, but possibly also the extreme elaborated tools in this paper work.*
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- *To clarify many sections and provisions that are unclear and very confusing.*
- *Law to be lectured by professionals of the field, that also know well the juridical terminology.*
- *In the draft of this law, to involve professionals (practitioners) who will implement this law.*
- To clearer determine the representation in the Room, the language which will be used and payments which have to be done for judicial expenses.
- To shorten procedural terms of complaints, as in the first grade, also in the second, in order to enable the economization of the judicial process in the Room.
- To clarify and harmonize with the other laws in the aspect of limitations of the activity of judges of the Room.
- To harmonize with the law on AKP and with the Law on the Contestimory Procedure.