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Law on Salaries in the Public Sector, represents interference in justice, creates legal uncertainty and creates conglomerate in the system of salaries in the public sector

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ABOUT KLI

KLI, Kosovo Law Institute is non-governmental organization and non-profitable of public policy, and specialized ideal in the justice sector.

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KLI: Law on Salaries in the Public Sector, represents interference in justice, creates legal uncertainty and creates conglomerate in the system of salaries in the public sector

Pristina, 3 October 2018 - The executive power continues discriminate access to the judicial power in Kosovo. The Kosovo Government has approved the Draft Law on Salaries in the Public Sector through which it intervenes directly in the independence of the judiciary and creates inequalities of power and inequality between the justice system itself, ie judges and prosecutors.

The Government of Kosovo through this Draft Law, sponsored by the Ministry of Public Administration, definitely witnesses the bad practices of the executive, which have a clear intent, the degradation of the judicial power over the two other powers. The judicial and prosecutorial powers under this draft law will be ranked lower than executive and legislative powers. Moreover, in its content, this draft law creates an even bigger conglomerate in public sector salaries by building a salary system that will not be compensated in an equivalent way by merit as defined by the purpose of this law itself.

KLI has analyzed the content of this law, focusing on regulating the status of judges and prosecutors. International practices and standards for judges and prosecutors prohibit the game with the judicial certainty of judges and prosecutors, explicitly asking for their salaries to be

regulated exclusively by law and being equivalent to other powers. But the draft law on salaries in the public sector again reduces the salaries of judges and prosecutors, making them unequal to the executive power.

Powers in Kosovo are also equivalent to the Constitution of the Republic of Kosovo, which guarantees the principle of their separation. The principle of separation of powers also means guaranteeing the exercise of power independently and without interference, and that the restriction must be based on the balancing of powers only to the extent permitted by the Constitution and the powers of each power.

The game with judicial power and with the salaries of judges and prosecutors has a long history since the end of the war in Kosovo. The executive has consistently created dependence on judges and prosecutors over the executive, who have been largely influenced by politics. The latter, through the Assembly of Kosovo in 2010, adopted the Law on Courts and the Law on State Prosecutor by building a standard salary leveling for judges and prosecutors with salaries in the executive of the country, respectively salaries of the President of the Supreme Court and The Chief State Prosecutor were equaled with the salary of the Prime Minister of the country, while salaries of prosecutors and judges were leveled with the salaries of ministers in government. This is the first time that an equivalence in basic salaries has been created between executive power and the judicial power.

KLI, that systematically monitors the justice system, as well as other local and international organizations such as the European Commission Progress Report and the US State Department Report have raised concerns for the political influence in the justice system.

As a result of these political influences in the judicial and prosecutorial power, there was no response from the representatives of these powers on December 2017, when the Kosovo Government unlawfully through the decision has increased salaries for itself, consequently for judges and prosecutors.

Unlike the judicial and prosecutorial power, who have been beneficiaries of salary increases, the KLI has publicly responded to Decision no. 4/20, of the Government of Haradinaj adopted on 20 December 2017 for the increase of the salaries of the government officials, judges and prosecutors. The European Union Office in Pristina and other organizations reacted to this decision.

By this decision the salaries of the above-mentioned positions have almost doubled. The salary of the Prime Minister of Kosovo was increased to 2950 euros, while the salary of the Deputy

Prime Ministers was increased to 2500 euros. Salaries of Ministers with this decision have been increased to 2000 euros. Also, salaries of the President of the Supreme Court and Chief State Prosecutor were increased to 2950.

The Government's decision, according to the legal analysis of the KLI, had exceeded the competencies defined by the Law and the Rules of Work of the Government, which in none of its provisions does not specify the competences and responsibilities of the Government for determining salaries or compensation for the Prime Minister or ministers. Pursuant to the Constitution and applicable law in Kosovo, competent to decide regarding salaries of senior public officials in Kosovo, especially for the position of the Prime Minister and ministers is the Kosovo Assembly. Therefore, this decision by KLI is considered unlawful and direct arbitrary interference with the powers of the Assembly of Kosovo. The decision adopted by the Government of Haradinaj, except that it was done in violation of the applicable law, was done without proper legal analysis and without evaluation or consultation regarding the financial interference that this decision entails for the budget of the executive power and the judicial power.

Although this decision was unlawful, there was no response from the prosecution body - the State Prosecutor. Unlike the State Prosecutor, there was a reaction from the Anti-Corruption Agency (ACA). The decision to increase salaries is in contradictory to the Criminal Code of Kosovo, respectively Article 424, which defines situations of conflict of interest in cases where senior state officials take part personally in an official issue in which he or a member of the family or any legal entity that has to do with him has a financial interest. For this situation of conflict of interest, the ACA has also implemented the mandate, which has informed the Government that the decision on salaries represents a conflict of interest and that the same can not be implemented, otherwise it constitutes a criminal offense. For the time being, ACA is investigating the case of conflict of interest for salaries, while for the same decision Levizja Vetevendosje has raised a criminal charge, which is still in the Prosecution's Office and is not being treated.

Finally, while the mentality of the executive power does not change, which through unlawful decisions creates privileges for the government officials and creates legal uncertainty in the public sector salary system, especially among judges and prosecutors, proves that the established logic of interfering and degrading the judicial power is continuing.

Therefore, the KLI requires that the Draft Law on Salaries in the Public Sector be finalized as soon as possible, in which the conglomerate with salaries should be regulated in all public institutions of the Republic of Kosovo. Within this law, should be regulated the issue of salaries of judicial and prosecutorial office holders, which should be done in merit, based on the principles of the Constitution of the Republic of Kosovo on equality of powers.

Draft - Law on Salaries in the Public Sector

On 3 September 2018, the Government of Kosovo approved the decision no. 08/63 regarding the Draft Law on Salaries in the Public Sector. This law defines the salary and reward system for public officials paid by the state budget, and the rules for determining the salaries of employees of public enterprises in Kosovo.

The draft law in question had defined the principles on which salaries in the public sector will be based, which are:

- a) Principle of legality that the salaries of the beneficiaries are determined only in accordance with this law and by sub laws, authorized and issued for its implementation.
- b) Principle of justice that the salary level should fairly reward the work complex and the individual's contribution to the work of the organization.
- c) Principle of equal salary that each salary beneficiary receives equal salary for work in the same or comparable function, position or rank.
- d) Principle of transparency that the procedure for determining the salary, its level and the administration of the salary system shall be transparent to the public, without contradiction to the protection of personal data under the legislation in force.
- e) Principle of non-discrimination that no salary beneficiary is discriminated on salary, as defined in the Law on Protection from Discrimination, etc.

The draft law approved by the Government Haradinaj seriously violates the principle built up by former governments on leveling and equaling of executive salaries with judicial power. As it is described in the table below no. 1, while the salary of the President of the Supreme Court and the Chief State Prosecutor under the Law on Courts and the Law on State Prosecutor was leveled with the salary of the Prime Minister of Kosovo, amounting to 1443 Euros bruto. Even according to the Haradinaj Government's decision to increase salaries, the salaries of the President of the Supreme Court and Chief State Prosecutor were at the same level as the salary of Prime Minister Haradinaj in the amount of 2950 euros bruto.

While, with the Draft Law on Salaries in the Public Sector, the salary of the Prime Minister of Kosovo is a coefficient higher than the salary of the President of the Supreme Court and Chief

State Prosecutor. The salary of the Prime Minister with this draft law has the coefficient¹ 11 at a amount of 2629 Euros, while the salaries of the President of the Supreme Court and the Chief State Prosecutor are reduced to coefficient 10, respectively in the amount of 2390 euros or their salary will be 239 euros less than the salary of the prime minister.

Article 27 of the Draft Law on Transitional Provisions has determined that if an individual, official or public official benefited before the entry into force of this law, a full salary (basic salary with all kinds of regular supplements), which is higher than the full salary foreseen by this law, will benefit the new salary under the provisions of this law and a special transitional supplement equal to the difference between the old salary and the new salary.

According to this Article, an individual, official or public official, in accordance with paragraph 1 of this Article, will benefit from the new salary in:

- a) 100% of the special transitional supplement, according to paragraph 1, during the first year after the entry into force of this law;
- b) 75% of the special transitional supplement, according to paragraph 1, during the second year after the entry into force of this law;
- c) 50% of the special transitional supplement, according to paragraph 1, during the third year after the entry into force of this law;
- d) 25% of the special transitional supplement, according to paragraph 1, during the fourth year after the entry into force of this law. 3. Officials and public officials engaged / recruited after the adoption of this law benefit the salary according to this law.

Through this provision of the draft law, the Government has made efforts not to reduce the salaries of officials only in the first year, thus enabling them to receive transitional supplements which would ensure that public officials and officials receive salaries at the same amount , as before the eventual entry into force of this law. While the same law stipulates that the transitional supplements will vary from year to year starting from the second year, which will be reduced to 75%, in the third year 50% and in the fourth year 25%. Consequently, this means that judges and prosecutors, in the case of entry into force of this law, only in the first year, would receive salaries without deduction, and then every year, they will receive salaries with deduction.

KLI has consistently requested from the executive and legislature to preserve and respect the independence of the judicial and prosecutorial system. The Government and the Assembly of Kosovo, when drafting policies related to judicial power, should ensure that they apply

¹ According to Article 22 paragraph 1 of the Draft Law on Public Sector Salaries, a coefficient is set at the value of 239 Euros. See the link: <http://kryeministri-ks.net/wp-content/uploads/2018/09/PROJEKTLIGJI-P%C3%8BR-PAGAT-N%C3%8B-SEKTORIN-PUBLIK.pdf>

international standards and practices that promote the independence and integrity of the judicial power.

In this regard, KLI through this analysis requested from the executive and legislative power in Kosovo that the Venice Commission shares the opinion that salaries for judges should correspond to the dignity of the judge profession and that adequate salary is of particular importance to protect judge of external interference. The salary level should be decided on the basis of social conditions by comparing the salary level of the highest officials. Appointment of a salary should be based on a general standard and defined in objective and transparent criteria.

Position:	Salary before decision of December 2017	Salary according to decision on increase of salaries	Salaries according to Draft Law on Salaries	Difference
Prime Minister	1443	2950	2629	321
President of the Supreme Court	1443	2950	2390	560
Chief State Prosecutor	1443	2950	2390	560

The characteristic of this draft law on salaries is that despite the fact that it has established the principle of equal salary that each salary beneficiary receives equal salary for work in the same or comparable position, or rank, the same principle is violated when determining the coefficients for prosecutors and judges of the same levels.

With the draft law in question, the salary of the prosecutor in the Office of the Chief State Prosecutor has a coefficient 9, or a monthly salary of 2151 Euro, while the salary of the judge at the Supreme Court has a coefficient of 8.5 or a monthly salary of 2031 Euros. Such an approach puts it in an unequal position and degrades the position of a judge at the Supreme Court in relation to the position of the prosecutor in the Office of the Chief State Prosecutor. Despite the fact that the Law on Courts and the Law on State Prosecutor has defined the equivalent structure of courts and prosecution offices, they through this draft law are placed in an equal situation, by humbling the judiciary towards the prosecution.

The same approach, this draft law also has in relation to other positions in the judicial and prosecutorial system. While, with this draft law, the salary of the Chief Prosecutor of Appeal was

set at 2151 euros, the salary of the President of the Appeal Court was set at 2031 euros. The difference in salary is also in relation to judges and prosecutors in the Appeal Court and Appeal Prosecution. Prosecutors in the Appeal under this draft law will have 1912 euros, while judges 1553 euros, or difference of 359 euros.

Even the salary of the Chief Prosecutor of the Basic Prosecution will be higher than the President of the Basic Court. Chief Prosecutors of the Basic Prosecution Offices will have a salary in the amount of 1912 Euro, while the Presidents of the Basic Courts will have the salary of 1553 Euro, or lower salary in the amount of 359 Euros.

Position	Salary before decision of month December 2017	Salary according to Governemnt's decision on salaries increase	Salaries according to Draft Law on Salaries	
Judge in the Supreme Court	1299	2655	2031	624
Prosecutor in the Office of the Chief State Prosecutor	1299	2655	2151	504
Chief Prosecutor of the SPRK	1377	2802	2270	532
Prosecutor in the SPRK	1305	2655	2151	504
President of the Appeal Court	1299	2655	2031	624
Chief Prosecutor of the Appeal Prosecution	1299	2655	2151	504
Judge in the Appeal	1170	2389	1553	836
Prosecutor in the Appeal	1170	2389	1912	477
President of the Basic Court	1174	2389	1553	836
Chief Prosecutor of the Basic Prosecution	1174	2389	1912	477

Position

Supervisory judge	1115	2269	1434	835
Judge for Serious Crimes in the BC	1057	2150	1434	716
Prosecutor for Serious Crimes in the BP	1057	2150	1434	716
Judge in the General Department	821	1672	1314	358
Prosecutor in the General Department	921	1672	1314	358
Judge for minor offense	821	1672	1195	477

The KLI estimates that the salaries of judges and prosecutors can not be changed primarily through Government decisions as it was the case with the decision approved by the Government of Haradinaj on December 2017, and can not reduce the salaries of judges and prosecutors even by law. Such an approach seriously violates the judicial and financial security of judges and prosecutors, and enters within the direct interference of executive or legislative power in the judicial power.

Moreover, for the first time, through this draft law apply different standards regarding the salary level for judges and prosecutors. The government through this, have foreseen higher salaries for prosecutors in relation to the judge, degrading the profession of judge in relation to the prosecutor.

The Constitution of the Republic of Kosovo guarantees the principle of separation of powers. The principle of separation of powers also means guaranteeing the exercise of power independently and without interference, and that the restriction should be based on the balancing of powers only to the measure allowed by the Constitution and the powers of each power. The Draft Law on Salaries in the Public Sector, and the reduction of salaries for judges and prosecutors, seriously violates the principle of separation of powers.

The same view with regard to the salaries of judges holds also the United Nations Human Rights Commission in comment no. 32 relating to the application of Article 14 of the Convention on Political and Civil Rights directly applicable in Kosovo. The Council of Ministers of the Council of Europe holds the same position through recommendation no. R (94) 12, Principle III, para, 1b. Also, article 13 of the Universal Charter of Judges defines that judges should receive sufficient salary to ensure real economic independence. The salary should not be based on the results of the judge, and should not be reduced during his service. Whilst protection of the independence of

judges is guaranteed by the Constitution, as is the case of Article 3, section of the US Constitution, which contains a direct prohibition on reducing the salary of a judge while exercising his function.

This form directly creates legal uncertainty for the salaries of judges and prosecutors, influencing and violating their independence in the independent, impartial and professional exercise of their function.

Another concern in the Draft Law on Salaries in the public sector is the inequality set between judges and prosecutors of the same level. In all democratic countries, states that have created legislation that regulates the field of the justice system, based on international standards, equally treat judges and prosecutors of the same level. Therefore, the KLI considers that through this draft law, is created inequality and discrimination of judges in relation to prosecutors.

KLI finally calls on the Government and the Assembly of the Republic of Kosovo to seriously address the equality of the judicial power with theirs, same as it is guaranteed by the Constitution of the Republic of Kosovo.

In this regard, it requires to finalize as soon as possible the Draft Law on Salaries in the Public Sector, in which should regulate the conglomerate with salaries in all public institutions of the Republic of Kosovo. Within this law, also the issue of salaries of judicial and prosecutorial office holders should be regulated, which should be done in merit, based on the principles of the Constitution of the Republic of Kosovo for the equality of powers.