



Instituti i Kosovës për Drejtësi
Kosovo Law Institute
Kosovski Institut Pravde

Short analysis:
No. 04/2017 - KLI

UNLAWFUL GAME OF THE PRIME MINISTER ON SALARIES

**(Short analysis of unlawful decision of Haradinaj Government on salaries,
financial impacts and inequality of power)**

Pristina, December 2017

Kosovo Law Institute (KLI)

No part of this material cannot be printed, copied, amplified in any electronic or print form, or in any other form without the consent of the Kosovo Law Institute.

This report does not necessarily represent the views of the donor.

RRETH IKD

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

IKD

Str. Rrustem Statovci

Pristina

E: info@kli-ks.org

www.kli-ks.org

December 2017

Pristina, Republic of Kosovo

Supported by:



British Embassy
Pristina



**National Endowment
for Democracy**
Supporting freedom around the world

Content

I. Executive summary	4
II. Unlawful decision of the Haradinaj Government to increase the salary of executive power .	6
III. Financial impact of Decision of the Haradinaj Government on the judicial and prosecutorial system.....	8
IV. Recommendations.....	12

I. Executive summary

Kosovo Law Institute (KLI) reacts to Decision no. 4/20, of the Government of Haradinaj adopted on 20 December 2017 for the increase of the economic well-being of a category of government cabinet positions, including the salary increase of the Prime Minister, Deputy Prime Ministers, Ministers, Advisers, and a category of civil servants. By this decision almost doubled the salaries of the above-mentioned positions. 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.

Furthermore, the Government's decision exceeds the competences defined by the Law and the Rules of Procedure of the Government, which in none of its provision defines the competencies and responsibilities of the Government for the determination of salaries or compensation for the Prime Minister or ministers.

Pursuant to the Constitution and applicable law in Kosovo, competent to decide on salaries of senior public officials in Kosovo, especially for the position of the Prime Minister and Ministers is the Assembly of Kosovo. Therefore, this decision is unlawful and direct arbitrary interference with the competences 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 impact that this decision entails for the budget of the executive power and the judicial power. Moreover, the Decision on salary is contradictory to the Criminal Code of Kosovo, respectively article 424, which defines situations of conflict of interest in cases when high state officials take part in personally in an official matter in which he or any family member or any legal entity that has to do with it has financial interest.

The Assembly of Kosovo during 2010 adopted the Law on Courts and the Law on State Prosecutor by building a standard salary level for judges and prosecutors with salaries of the executive of the country, respectively the salaries of President of the Supreme Court and the Chief State Prosecutor were equalized with the salary of the country's prime minister.

Taking into account the current number and number of allowed positions for judges and prosecutors, and other positions in the judicial and prosecutorial system, whose salaries are directly related to the salaries of governmental cabinet, the number exceeds 650 positions, which within a calendar year has a huge financial impact that can be counted in several millions of euros.

The decision of the Government of Kosovo has raised concerns regarding the fact that the Government has not provided any clarification as to whether such a decision will be applied in

relation to the judicial and prosecutorial system as well, based on the legal obligations deriving from Article 29 The Law on Courts and Article 21 of the Law on State Prosecutor.

The silence of the Government and the Assembly of Kosovo, regarding legal certainty for judges and prosecutors, as a result of the government's decision to increase salaries for the government cabinet, in practice seriously affect the independence of the judicial and prosecutorial system.

Furthermore, such an approach contradicts international practices and standards, part of which is also the Republic of Kosovo. The KLI reminds that the salaries and compensation of judges and prosecutors are a legal category and for the same cannot be created illegal practices by the executive power where the increase of the revenues of judges and prosecutors is based on the will of the executive through ad hoc decisions.

The KLI recommends to the Haradinaj Government to annul the unlawful decision to increase the salaries of the executive power. It also recommends the drafting and adoption of the Law on Salaries of High State Officials, which should reflect the built-in Constitution on Equality of Powers and the provision of legal certainty for the holders of judicial and prosecutorial functions. The KLI recommends the Judicial Council and the Prosecutorial Council, to implement constitutional and legal obligations to protect the equality of powers by guaranteeing respect for the principles of rule of law and non-submission to other powers.

KLI recommends prosecution bodies that in accordance with the constitutional and legal obligations, undertake legal actions to investigate the unlawful decision of the Haradinaj Government.

II. Unlawful decision of the Haradinaj Government to increase the salary of executive power

The Government of Kosovo on 20 December 2017 adopted a series of decisions, including the Decision on the Approval of the 100 Day Work Report of the Government of Kosovo. This report summarizes the results of the work of the Haradinaj Government during the first 100 days. In addition to adopting this decision, the Government of Haradinaj has also adopted a decision to increase the economic well-being of a category of government cabinet positions, including increasing the salary of the Prime Minister, Deputy Prime Ministers, Ministers, Advisers, and a category of civil servants.

The Government through Decision 4/20 adopted on 20 December 2017 almost doubled the salaries of the above-mentioned positions. According to this decision, 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.¹

Pursuant to the Constitution and applicable law in Kosovo, competent to decide on salaries of high public officials in Kosovo, especially for the position of the Prime Minister and Ministers is the Assembly of Kosovo.

In accordance with this mandate, during 2012, the Government of Kosovo initiated the Draft Law on Salaries of Public Officials, the purpose of which was to determine the level of basic salary, and the rules for additions and other compensation to public officials. According to this draft law were proposed coefficients for each high public position, such as the President, President of the Assembly, Prime Minister, positions in the judiciary, prosecution, police and other high positions in the Republic of Kosovo. Such a draft law would have to be submitted to the Assembly for review and approval, which never happened.²

The decision adopted by the Haradinaj Government, except that it was done in contradiction of the applicable law, was done without proper legal analysis and without evaluation or consultation regarding the financial impact that this decision entails for the budget of the executive power and the judiciary. Moreover, the decision on salary increases is contradictory to the Criminal Code of

¹ Government Decisions adopted on 20 December 2017. See at:
http://www.kryeministriks.net/repository/docs/Vendimet_e_summary_se_20.pdf

² Draft Law on Salaries of Public Functions, at:
http://www.kryeministriks.net/repository/docs/Projektligji__per_Pagat_e_Funkcionareve__Publik.pdf

Kosovo, respectively article 424, which defines situations of conflict of interest in cases where high state officials take part in personally in an official matter in which he or any family member or any legal entity that has to do with it has a financial interest.³

The decision of the Haradinaj Government also contradicts the policies of this Government, regarding the fulfillment of the criteria approved by the same Government and the Assembly of Kosovo, regarding the European Agenda Reform.

While Kosovo in 2015 signed the Stabilization and Association Agreement with the European Union, in November 2016, Kosovo and the European Union had started the dialogue on the European Agenda Reform, where were foreseen 22 priorities and 130 actions Kosovo had to meet in the road to European integration. The reform of the European Agenda was approved by the Kosovo Assembly. One of Kosovo's priorities to meet these criteria was the amendment to the Law on Prevention of Conflict of Interest in exercising public function.

Completing the amendment of the draft law was the request of the European Union in areas related to the clear categorization of public officials in the law, the clear definition of activities that high public officials are allowed or not allowed to exercise while exercising the public function, including the activities and situations that former high public officials are forbidden to exercise after the end of their official mandate.

According to the requirements of the European Union, the law should clarify the obligations of public officials and their supervisors in situations of conflict of interest, including determination and initiation of procedures in cases of conflict of interest.

The decision of the Haradinaj Government of contradicts with the purpose of the Draft Law on Prevention of Conflict of Interest in the exercise of public function adopted by the Haradinaj Government and which law was sent to the Assembly of Kosovo.

Article 1 of this law stipulates that "the purpose of this law is to strengthen the integrity of the public sector and to guarantee the performance of public duties in an objective, impartial and transparent manner in the service of the public interest through the identification, prevention, management and resolving conflicts of interests of officials."⁴

Furthermore, the Government's decision exceeds the competences defined by the Law and the Rules of Procedure of the Government, which in none of its provisions stipulate the competences

³ Article 424 of the Criminal Code of Kosovo stipulates that: 1. An official person who personally takes part in any official matter in which he or any member of the family or any legal person concerned has a financial interest, shall be punished by a fine or by imprisonment of up to three (3) years. 2. If the official matter is a procurement activity or a public auction, the perpetrator shall be punished by imprisonment of one (1) to five (5) years. 3. For the purposes of this article, the expression "participates" means the exercise of official authority by decision, approval, disapproval, recommendation, counseling, investigation or in any other way of exerting influence on an official matter.

⁴ Article 1 of the Draft Law on the Prevention of Conflict of Interest in the exercise of public function.

and responsibilities of the Government for the determination of salaries or compensation for the Prime Minister or Ministers.⁵

The Constitution of the Republic of Kosovo and the Rules of Procedure of the Assembly have determined that the Assembly of Kosovo is competent for the approval of the Budget of the Republic of Kosovo, therefore any Government action regarding the salaries and compensation of the Prime Minister and the Cabinet, through the decisions, enters in the context of arbitrary decisions that seriously affect the integrity of the country's executive and basic principles of good governance.

III. Financial impact of Decision of the Haradinaj Government on the judicial and prosecutorial system

The Assembly of Kosovo during 2010, adopted the Law on Courts and the Law on State Prosecutor. While these laws in principle had entered into force on 1 January 2013, Article 29 of the Law on Courts regarding Salaries and Judicial Compensation⁶ and Article 21 of the Law on State Prosecutor⁷ had entered into force on 1 January 2011. With these two laws, The Kosovo Assembly had built the salary-leveling standard for judges and prosecutors with salaries in the executive of the country, respectively the salaries of the President of the Supreme Court and the Chief State Prosecutor were equaled by the salary of the Prime Minister of the country.⁸

Through such a law, for the first time, state judges and prosecutors were compensated with a dignified salary from the state of Kosovo over their constitutional and legal work and responsibilities.

Article 29 of the Law on Courts defines that during their mandate on duty, judges will receive the following salaries:

- 1.1. The President of the Supreme Court shall receive a salary equivalent to that of the Prime Minister of the Republic of Kosovo.
- 1.2. all Supreme Court judges will receive a salary equivalent to that of a minister in the Government.
- 1.3. The President of the Appeal Court will receive a salary equivalent to that of judges of the Supreme Court of Kosovo.

⁵ Rules of Procedure of the Government of the Republic of Kosovo. See at: http://www.kryeministiks.net/repository/docs/RREGULLORE_E_PUNES_SE_QEVERISE_SE_REPUBLIKES_S E_KOSOVES_NR_09_2011.pdf

⁶ Article 29 of the Law on Courts, at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2700>

⁷ Article 21 of the Law on State Prosecutor, at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2710>

⁸ Adem Gashi and Betim Musliu, Justice System Reform in Kosovo, Kosovo Law Institute, December 2013. See on: http://kli-ks.org/wp-content/uploads/2015/05/Reform-of-system-TE-drejtewise_IKD_shqip.pdf

- 1.4. all Judges of the Appeal Court of will receive a salary equivalent of ninety (90) % of the President of the Appeal Court.
- 1.5. The President of the Basic Court will receive a salary equivalent to that of the Judge of the Appeal Court.
- 1.6. the supervising judge of a branch of the Basic Court shall receive a salary equivalent to ninety-five (95) % of the President of the Basic Court;
- 1.7. any Judge of the Basic Court shall receive a basic salary not less than seventy (70) % of the salary of the President of the Basic Court. The Kosovo Judicial Council will announce a plan for additional compensation recognizing the unique responsibility of judges who serve in the departments for serious crimes, Economic or Administrative Issues; but the amount of the basic salary and the additional compensations in no case shall not exceed ninety (90) % of the salary of the President of the Basic Court.

Article 21 of the Law on State Prosecutor also stipulates salary and compensation for prosecutor's equivalent as salaries and compensation for judges based on the degree of the State Prosecutor.

Currently in the Courts of Kosovo, the function of judge is practiced by about 400 judges, while in Kosovo currently there are approximately 180 prosecutors, not including over 60 positions for judges and prosecutors who are in the process of recruitment and are expected to start work during the beginning of 2018.

Within the judicial and prosecutorial system, there are also a number of managerial positions where salaries and compensation are defined or leveled with the positions of appeal judges or other courts, which in practice increases the number of positions or persons to whom salaries are increased automatically according to the decision of Haradinaj Government.

Taking into account the number of allowed positions for judges and prosecutors, and other positions in the judicial and prosecutorial system, whose salaries are directly related to the governmental cabinet's salaries, the number exceeds 650 positions that within a calendar year has a huge financial impact that can be counted in several million euros.

The decision of the Government of Kosovo has raised concerns regarding the fact that the Government has not provided any clarification as to whether such a decision will be applied in relation to the judicial and prosecutorial system as well, based on the legal obligations arising from Article 29 The Law on Courts and Article 21 of the Law on State Prosecutor.

The silence of the Government and the Assembly of Kosovo, regarding legal certainty for judges and prosecutors, as a result of the government's decision to increase salaries for the government cabinet, in practice seriously affect the independence of the judicial and prosecutorial system.

Furthermore, such an approach contradicts international practices and standards, part of which is also the Republic of Kosovo. In this regard, 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 the judge from external influence. The level of salary should be decided on the basis of social conditions by comparing the **salary level of the highest officials**.

Assignment of a salary should be based on a general standard and determined on objective and transparent criteria, and not on the individual performance of the judge. Bonuses or additions include elements of discretion and should be excluded.

The same standing with regard to the salaries of judges holds also the United Nations Human Rights Commission in comment no. 32, related 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 takes the same position through recommendation no. R (94) 12, Principle III, para, 1b. Also, article 13 of the Universal Declaration of Judges stipulates that judges must receive sufficient salary to secure real economic independence.

The salary should not be based on the results of the judge, and must not be reduced during his service. Whilst protection of the independence of judges is guaranteed by the Constitution, as is the case with Article 3, section of the US Constitution, which contains a direct prohibition on reducing the salary of a judge while exercising his function. Of course, reducing the salary of judges or prosecutors can only be done when disciplinary measures are imposed against them by internal accountability mechanisms.

The Government's decision in this case exceeds the Assembly of Kosovo, taking competencies and responsibilities that by law belong to the legislature, in the concrete case to the Assembly of Kosovo. Rather, such a decision, and without separating the budget for the judicial and prosecutorial system for leveling salaries with the government cabinet, violates the standard built by the Kosovo Assembly in 2010, regarding the leveling of judges and prosecutors same as the executive.

The KLI estimates that the compensation and stimulation of judges and prosecutors, however, should not depend on the executive power in the form of ad hoc decisions. This form directly creates legal uncertainty for the salaries of judges and prosecutors, influencing and impairing their independence in the independent, impartial and professional exercise of their sacred function.

The KLI reminds that the salaries and compensation of judges and prosecutors are a legal category and for the same cannot be created illegal practices by the executive power, where the increase of the revenues of judges and prosecutors is based on the will of the executive through ad hoc decisions.

KLI, as has consistently expressed support for judges and prosecutors, requires that their financial support be increased as much as possible within the scope of the Budget of the Republic of Kosovo, but requires that this be done exclusively through legal amendments and not through ad-hoc decisions of executive power.

In all democratic countries, states that have established legislation regulating the area of the justice system, based on international standards, judges and prosecutors treat them equally with high public positions in a state that aims the rule of law. Therefore, KLI considers that through this selective decision creates inequality and discrimination of judges and prosecutors, who will again be unequal to the executive power in violation of established principles and legal guarantees and international standards.

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

In this regard, it requires that the Draft Law on Salaries of Public Functions be finalized as soon as possible, in which the conglomerate should be regulated with salaries in all public institutions of the Republic of Kosovo. Within this law, the issue of salaries of judicial and prosecutorial 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.

KLI also reminds that the executive power through this draft law had tried to degrade judicial power by reducing salaries significantly compared to two other powers. In 2011, with the entry into force of certain provisions of the Law on Courts and the Law on State Prosecutor, it was enabled to level the salaries of judges and prosecutors with those of the executive, marking a big step towards the equality of powers and the separation of powers as guaranteed by the Constitution of the Republic of Kosovo. In this regard, the draft law on salaries of public officials should be drafted as soon as possible and mark progress in advancing the position of judges and prosecutors, creating a balance between the powers in Kosovo.

Ultimately, the KLI has repeatedly received complaints and dissatisfaction of many employees within the judicial and prosecutorial system for unequal treatment of employees who carry out the same responsibilities but have different coefficients. This discrimination has also been noted within these systems and among the employees of the judicial and prosecutorial system. KLI invites the Judicial Council and the Prosecutorial Council within their legal competencies to undertake concrete actions towards the establishment of a system that enables equal access for all employees, by treating them in merit and non-discriminatory manner.

IV. Recommendations

- KLI recommends to the Haradinaj Government to urgently annul the unlawful decision to increase the salaries of the executive power.
- KLI recommends the drafting and adoption of the Law on Salaries of High State Officials, which should reflect the built standard in Constitution on Equality of Powers and the provision of legal certainty for the holders of judicial and prosecutorial functions.
- KLI recommends the Judicial Council and the Prosecutorial Council to implement constitutional and legal obligations to protect the equality of powers, by guaranteeing respect for the principles of rule of law and non-submission to other powers.
- KLI recommends prosecution bodies that, in accordance with the constitutional and legal obligations, undertake legal actions to investigate the unlawful decision of the Haradinaj Government.