



THE INACTION OF THE ASSEMBLY VIOLATES THE RIGHTS OF 90,696 PUBLIC OFFICIALS AND ENDANGERS THE STATE BUDGET



VIII. TË URDHËROJË, në pajtim me paragrafin 1 të nenit 116 [Efekti Juridik i Vendimeve] të Kushtetutës, Kuvendin e Republikës së Kosovës, që brenda gjashtë (6) muajve nga hyrja në fuqi e këtij Aktgjykimi, të ndërmarre veprimet e nevojshme për plotësimin dhe ndryshimin e paragrafit 2 të nenit 2 (Fushëveprimi) dhe paragrafit 6 të nenit 6 (Paga bazë) të Ligjit nr. 08/L-196 për Pagat në Sektorin Publik, në pajtim me Kushtetutën dhe këtë Aktgjykim;

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Author: Gzim Shala and Naim Jakaj

Editors: Ehat Miftaraj dhe Betim Musliu

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Address: Str. Ilaz Agushi, no. 146
Pristina
E: info@kli-ks.org
www.kli-ks.org

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Content

07	Executive summary	12	Socio-economic consequences
08	Payment for work experience	13	Judicial protection of rights
08	What did the Constitutional Court decide?	15	Annex 1: Lawsuit against the Assembly
09	Failure of the Assembly		
10	Collective vs. Individual realization of rights	16	Instructions for completing a lawsuit form
11	Institutional and budgetary damages in case of inaction	17	Lawsuit form

Executive summary

On February 5, 2023, Law No.08/L-196 on Salaries in the Public Sector entered into force reducing the percentage of the work experience supplement for the first 15 years from 0.5% to 0.25%. This change negatively affected over 90,000 public officials.

In decision KO79/23, the Constitutional Court found that the reduction of the payment for work experience was in contradiction with the Constitution and the European Convention on Human Rights. The Court did not annul the provision but obliged the Assembly to restore the work experience payment to at least 0.5% within six months (by August 1, 2024), with this adjustment to take effect from February 1, 2024.

Despite this clear constitutional obligation to amend and supplement Law No.08/L-196 regarding the percentage of payment for work experience by August 1, 2024, the Assembly of the Republic of Kosovo failed to comply. Constitutional Court judgements, by their very nature, carry the same legal force as constitutional norms. Therefore, the Assembly's inaction in fulfilling the obligation set by the Court constitutes a violation of the Constitution of the Republic of Kosovo.

This failure of the Assembly to act upon a constitutional obligation, which in turn undermines the rights of all public officials, represents an extremely negative precedent. Beyond the constitutional breach and violation of public officials' rights, given the current socio-economic challenges, the reduction of the work experience supplement from 0.5% to 0.25% had tangible consequences on the livelihood of 90,696 public officials and their families.

As a result of this situation, public officials have already suffered harm. Should the Assembly continue to remain inactive, public officials are entitled to seek judicial protection, claiming compensation through the courts for damages caused by the Assembly's inaction. If no action is taken and public officials are forced to initiate lawsuits, the judiciary could be overwhelmed with around 90,000 new cases, each requiring individual processing.

In addition to the overburdening of the judiciary, which would undermine its overall efficiency, if public officials are compelled to realize their rights through court proceedings, the budget of the Republic of Kosovo would also bear the costs of court fees and statutory interest. Based on general calculation, 35,770,502 euros would be spent from the state budget on procedural costs alone, excluding legal interest and potential enforcement expenses.

If the Assembly continues to disregard its constitutional obligation, public officials will be left with no choice but to pursue judicial remedies to realize their rights. While strongly recommending that this matter be resolved collectively through the Assembly's compliance with the Constitutional Court's decision, KLI has prepared a lawsuit form for facilitate access to justice for public officials wishing to sue the Assembly for damages caused by inaction. This lawsuit form is included as part of this analysis.

2. Payment for work experience

Until February 5, 2023, when Law No.08/L-196 on Salaries in the Public Sector came into force, the salaries of employees in the public sector were regulated by Law No.03/L-147 on Salaries of Civil Servants.

Law No. 03/L-147 on Salaries of Civil Servants regulated among other things, the work experience supplement. According to this law [Article 18.1], “[f]or each year of work experience in the civil service and outside of it, except for practical work experience, civil servants under this law are entitled to an additional 0.5% of the base salary.”

With the entry into force of Law No.08/L-196 on Salaries in the Public Sector on February 5, 2023, the percentage of the work experience supplement was amended. According to this law [Article 6.6]:

“Base salary increases based on work experience, at the rate of:

- 6.1. zero- p o i n t twenty-five percent (0.25%) for each full year of work, up to fifteen (15) years of work; and
- 6.2. zero-point five percent (0.5%) for each full year of work, over fifteen (15) years of work”.

Thus, the new Public Sector Salary Law maintained the work experience supplement only for periods over 15 years of work experience. For period up to 15 year of work experience, the new law reduced the supplement percentage from 0.5% to 0.25%.

3. What did the Constitutional Court decide?

At the request of the Kosovo Law Institute¹ and 104 complaints from public sector entities, including individual complaints and complaints from trade unions, the Ombudsperson requested to assess the constitutionality of Law.08/L-196 on Salaries in the Public Sector.² Among other issues, the Court examined the reduction of the work experience supplement for the first 15 years from 0.5% to 0.25%.

In its ruling regarding the constitutionality of Law No.08/L-196 on Salaries in the Public Sector, specifically in case KO79/23, the Constitutional Court concluded that reducing the supplement for public officials during the first fifteen years of their careers is not consistent with the law’s objective for creating a unified salary system in the public sector.

In this case, the Constitutional Court emphasized that this action was not supported by a “legitimate aim” and, as a result, there is no need to examine proportionality, since the absence of a legitimate aim constitutes a violation of the right to property. According to this

¹ The Kosovo Law Institute (KLI) submitted a request to the **Ombudsperson** to refer the **Public Sector Salary Law** to the **Constitutional Court**; Kosovo Law Institute; January 6, 2023; (See link: <https://kli-ks.org/ikd-ka-deponuar-kerkesen-tek-avokati-i-popullit-qe-ta-procedoje-ligjin-per-pagat-ne-sektorin-publik-ne-gjykaten-kushtetuese/>), (Last accessed February 20, 2025).

² **Ex-Officio Request 76/2023** for assessing the **constitutionality of Law No. 08/L-196 on Salaries in the Public Sector**; Office of the Ombudsperson; April 7, 2023; (See link: <https://oik-rks.org/2023/04/07/avokati-i-popullit-i-drejtohet-gjykates-kushtetuese-te-republikes-se-kosoves-me-kerkese-ex-officio-762023-per-vleresimin-e-perputhshmerise-me-kushtetuten-te-ligjit-nr-08l-196-per-pagat-ne-sektorin/>), (Last accessed February 20, 2025).

decision, the Court concluded that the reduction of the work experience supplement is not consistent with paragraphs 1 and 2 of Article 46 of the Constitution, in connection with Article 1 of Protocol No. 1 of the European Convention on Human Rights on the protection of property.³

Thus, the Constitutional Court found that Article 6.6 of Law No.08/L-196 on Salaries in the Public Sector, which reduces the work experience supplement for the first 15 years of a career from 0.5% to 0.25%, is not consistent with the Constitution of the Republic of Kosovo.

As highlighted in the reasoning of the decision, the Court did not annul the provision but obliged the Assembly to amend it within six months (by August 1, 2024) to restore the level of the work experience supplement. The Court did so because, if the provision were annulled, the issue of the work experience supplement would have entered a legal void, given that Law No.08/L-196 had repealed the provisions law that recognizes this right.⁴

Through this ruling, the Constitutional Court obliged the Assembly of the Republic of Kosovo to take the necessary steps within six (6) months from the entry into force of the Court's decision to amend and supplement paragraph 6 of Article 6 of Law No.08/L-196 on Salaries in the Public Sector, in accordance with the Constitution and Constitutional Court Decision KO79/23. According to the Court, the effect of the amendment should apply the date of the ruling, not the date of the law's adoption.⁵

In this way, the Constitutional Court required the Assembly of the Republic of Kosovo to restore the work experience supplement to at least 0.5% within six (6) months, with this payment to be implemented from the entry into force of the Court's ruling (February 1, 2024).

4. Failure of the Assembly

Faced with the obligation to amend and supplement Law No. 08/L-196 on Salaries in the Public Sector regarding the percentage of the work experience supplement by August 1, 2024, the Assembly of the Republic of Kosovo failed to fulfill this constitutional duty. The demand from implementing such a ruling also came from civil society⁶ and trade unions representing public officials.⁷

According to Article 116 of the Constitution of the Republic of Kosovo, "Decisions of the Constitutional Court are binding for the judiciary and all persons and institutions of the Republic of Kosovo". By their very nature, Constitutional Court decisions carry the same authority as constitutional norms. Therefore, the Assembly's failure to act on the obligation set by the Constitutional Court constitutes a violation of the Constitution of the Republic of Kosovo.

Apart from the constitutional violation, through its inaction, The Assembly of the Republic of Kosovo has caused harm to 90,696 public officials.⁸ Since February 1, 2024, and continuing to

³ **Ruling in Case No. KO79/23**, paras. 362–372, **Assessment of the Constitutionality of Law No. 08/L-196 on Salaries in the Public Sector**; Constitutional Court of Kosovo; January 23, 2024; (See link: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=85575>), (Last accessed February 20, 2025).

⁴ *Ibid.*, paras. 380–388.

⁵ *Ibid.*, paras. 380–382.

⁶ **KLI: Government and Assembly Disregard the Constitutional Court, Violating the Rights of Thousands of Civil Servants in Kosovo**; Kosovo Law Institute; August 13, 2024; (See link: <https://kli-ks.org/ikd-qeveria-dhe-kuvendi-shperfillin-gjykaten-kushtetuese-cenohen-te-drejtat-e-mijera-sherbyesve-civile-ne-kosove/>), (Last accessed February 20, 2025).

⁷ **KLI: Government and Assembly Must Urgently Implement the Ruling on the Public Sector Salary Law**; Kosovo Law Institute; November 15, 2024; (See link: <https://kli-ks.org/ikd-qeveria-dhe-kuvendi-te-nisin-me-urgjence-zbatimin-e-aktgjykimit-per-ligjin-per-pagat-ne-sektorin-publik/>), (Last accessed February 20, 2025).

⁸ **Law No. 08/L-332 on Budget Allocations for the Year 2025**, p. 29; Official Gazette of the Republic of Kosovo; December 12, 2024; (See link: <https://gzk.rks->

the present, for the first 15 years of work experience, public officials are being paid 0.25% of their salary, whereas this payment should have been at least 0.5%.

This failure of the Assembly to act on its constitutional obligation, which undermines the rights of all public officials, represents an extremely negative precedent. Elected representatives should proactively protect the rights of all citizens rather than become violators of rights safeguarded by the Constitutional Court.

5. Collective vs. Individual Realization of Rights

Considering the protection of public officials' right to a 0.5% work experience supplement and the Assembly's inaction regarding the obligation set by the Constitutional Court, it is clear that public officials are being harmed every day by this inaction. In this context, public officials are naturally regarded as persons whose rights have been harmed by the Assembly of the Republic of Kosovo.

It is therefore crucial that the Assembly, upon the formation of the IXth Legislature, urgently address this issue by amending and supplementing Law No.08/L-196 on Salaries in the Public Sector to guarantee the work experience supplement at 0.5% as required by the Constitutional Court. The implementation of this payment should apply retroactively from February 1, 2024.

By amending and supplementing Law No. 08/L-196, the Assembly would enable a collective realization of public officials' rights. Through a single legislative action, all public officials would be compensated for the unpaid portion of their work experience from February 1, 2024, and future work experience payments would be restored to the 0.5% level.

However, if this does not occur, public officials already have the right to seek judicial protection, claiming compensation through the courts for the harm caused by Assembly's inaction. This approach, however, is individual rather than collective, meaning that each public official would need to pursue the legal process separately. If the Assembly fails to act in accordance with the Constitutional Court's ruling, individual legal actions remains the only option for public officials.

Compared to collective realization of rights, the procedure for individual realization has significant institutional and budgetary consequences, which will be discussed in the following chapter.

6. Institutional and budgetary damages in case of inaction

As previously noted, if the Assembly of the Republic of Kosovo does not act in accordance with its constitutional obligation, public officials will be forced to individually seek compensation through the courts for the harm caused and continuing to be caused by the Assembly's inaction. This obligation for public officials to realize their rights in such a manner has broad institutional and budgetary consequences.⁹ Currently, there are 90.696 public

gov.net/ActDocumentDetail.aspx?ActID=99639), (Last accessed February 20, 2025)

⁹ **Law No. 08/L-332 on Budget Allocations for the Year 2025**, p. 29; Official Gazette of the Republic of Kosovo; December 12, 2024; (See link: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=99639>), (Last accessed February 20, 2025).

officials in Kosovo, all of whom are negatively affected by the Assembly's inaction regarding the constitutional obligation to amend and supplement Law No.08/L-196 on Salaries in the Public Sector.

It should first be emphasized that, due to the failure of public administration institutions to fulfill their obligations, the judiciary is already overloaded with cases. Non-compliance with obligations derived from collective agreements and the non-recognition of double pensions has forced public officials to turn to the judiciary to realize their rights. As a result, the number of cases in the judiciary has increased dramatically.¹⁰ While in 2018¹¹ the number of unresolved cases was 44,213, by the end of 2024¹² this number reached 121,324 cases. This situation floods the judiciary with cases, reducing the system's capacity to deliver justice to citizens within a reasonable timeframe.

If a similar situation arises due to the Assembly's inaction regarding the work experience supplement, the judiciary risks being overwhelmed again. The potential in this case is that courts could face approximately 90,000 new cases, which would have to be handled individually. This situation would seriously strain the resources of Kosovo's judicial system, while the duration of cases processing would increase significantly.

On the other hand, beyond harming the judiciary, such an approach would also severely affect the budget of the Republic of Kosovo. If the Assembly acts in accordance with the Constitutional Court's ruling, the budget would only need to cover the unpaid portion of the work experience supplement, retroactively from February 1, 2024.

However, if this does not occur and public officials are forced to pursue their rights case by case, the budget would also need to cover procedural costs and statutory interest. To estimate the approximate financial impact on the Kosovo budget if this individual approach is taken, a general calculation of procedural costs per case is presented.

For the handling of a single case, it is necessary to file the lawsuit, hold a preparatory session, and conduct the main hearing. These procedural steps are calculated at a minimal level, considering that additional procedural actions may occur, resulting in higher costs. According to the Regulations on Lawyer Fees,¹³ drafting the lawsuit costs €104, while lawyer representation at a hearing costs €135.20. The minimum court fee is €20.¹⁴ Taken together, the total cost per case—including drafting the lawsuit, court fees, representation at the preparatory session, and representation at the main hearing—amounts to €394.40. This value is minimal, considering the possibility of additional procedural actions, which would further increase procedural costs.

If this amount is multiplied by the number of public officials, it means that the budget of the Republic of Kosovo would potentially be affected by at least €35,700,502. This estimate does not include statutory interest or possibility that these cases may generate additional costs in enforcement proceedings.

¹⁰ **Gzim Shala; *Trial Within a Reasonable Time***, pp. 11–12; Kosovo Law Institute; (See link: <https://kli-ks.org/wp-content/uploads/2024/07/Gjykimi-brenda-afatit-te-arsyeshem-1.pdf>), (Last accessed October 10, 2025).

¹¹ **Annual Statistical Report for 2018 on Court Work**; Kosovo Judicial Council; December 12, 2024; (See link: https://www.gjyqesori-rks.org/wp-content/uploads/reports/Raporti_vjetor_statistikor_per_vitin_2018_mbi_punen_gjykatave_Shq.pdf), (Last accessed February 20, 2025).

¹² **Statistical Report of the Courts, Annual Report 2024**; Kosovo Judicial Council; December 12, 2024; (See link: https://www.gjyqesori-rks.org/wp-content/uploads/reports/59474_KGJK_RAPORTI_PERGJITHSHEM_VJETOR_2024.pdf), (Last accessed February 20, 2025).

¹³ **Regulations on Lawyer Fees**; Kosovo Bar Association; (See link: https://www.oak-ks.org/assets/cms/uploads/files/Tarifat/Tarifa_e_Avokateve_e_dates_18_mars_2017_271533.pdf), (Last accessed February 20, 2025).

¹⁴ **Administrative Instruction No. 01/2017 on the Standardization of Court Fees**; Kosovo Judicial Council; (See link: <https://www.gjyqesori-rks.org/wp-content/uploads/Igsl/Udhezimi%20administrativ%20nr.%20012017%20per%20unifikimin%20e%20taksave%20gjyqesore%20shqip.pdf>), (Last accessed February 20, 2025).

Thus, if the Assembly of the Republic of Kosovo fails to act in accordance with the obligation set by the Constitutional Court, forcing public officials to pursue claims individually through the courts, the damage to the Kosovo budget caused by this inaction would be at least €35 million.

7. Socio-Economic Consequences

In the context of current socio-economic challenges, the reduction of the work experience supplement from 0.5% to 0.25% has significant consequences for the families of 90,696 public officials. This reduction, which results in an average loss of approximately 12.5 to 40 euro per month per public official, directly impacts the additional income these families rely on to cover daily expenses.

Although the initial amount may seem minimal, for families with limited income, such a financial loss affects their standard of living. Every lost euro can impact these families' ability to invest in children's education, healthcare, and basic living needs.

Various reports, including those from UNDP, highlight that small income losses, when accumulated over time, can have serious social effects. According to these analyses, from 2019 to 2024, one of the top three concerns of Kosovar citizens has been the process of essential goods.¹⁵

All of this compounded by the annual inflation rate, which was 3.4% in 2021, 11.6% in 2022, 11.9% in January 2023, 4.9 in December 2023, and 1.6% in 2024 according to the Kosovo Agency of Statistics.¹⁶ In many cases, reduced income can lead to lower spending on food, healthcare and education, thereby increasing the risk that families fall into more severe situations of poverty and economic inequality.

For public officials, the loss of the work experience supplement is not only financial issue, but also affects motivation and professional performance. When additional income decreased, the sense of recognition and motivation may decline, which can further negatively impact the quality of public services provided to citizens.

8. Judicial protection of rights

As noted, public officials have already suffered and continue to suffer harm due to the inaction of the Assembly of the Republic of Kosovo. Because of this institution's failure to act in accordance with the Constitutional Court's ruling within the deadlines set by the Court, public officials have already acquired the right to initiate judicial proceedings to enforce their rights.

Article 136 of Law NO. 04/L-077 on Obligational Relationships stipulates that "Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former. The LOR commentary correctly emphasizes that: "The harmful act may be active or passive... it is passive if the responsible person has failed to take a specific action which they were legally obliged to undertake."

¹⁵ **Public Pulse Brief XXVI**; UNDP; (See link: <https://www.undp.org/kosovo/publications/public-pulse-brief-xxvi#>), (Last accessed February 20, 2025).

¹⁶ **Harmonized Consumer Price Index**; Kosovo Agency of Statistics; (See link: <https://askapi.rks-gov.net/Custom/972b64b8-75b2-4816-af65-340940a5ea88.pdf>), (Last accessed February 20, 2025).

The commentary further clarifies that: "For the liability of the responsible person for the damage caused to exist, it must result from an unlawful action or inaction. A person acts unlawfully when their action or inaction violates a specific legal norm." ¹⁷

In accordance with the provisions of Law NO. 04/L-077 on Obligational Relationship and the Supreme Courts practice,¹⁸, the following preconditions must be met for the obligation to compensate damage:

- a) The damage must have occurred;
- b) The damage must have been caused by an unlawful act or omission;
- c) Fault must exist on the part of the injurer;
- d) The injurer must have delictual capacity; and
- e) There must be a causal link between the unlawful act/omission and the damage.

In the case of the Assembly's inaction, all legal condition for the existence of an obligation to compensate damage are fulfilled.

Considering the institutional and budgetary damages caused by the Assembly's failure to fulfill its constitutional obligation regarding the work experience supplement, and the harm that has been and continues to be inflicted on public officials, KLI requests that the Assembly not force public officials to resort to the courts, but instead fulfill its constitutional obligation. Nevertheless, KLI recognizes that if the Assembly fails to act, as it did not within the deadline set by the Constitutional Court, public officials have no alternative but to seek judicial protection to realize their rights.

To facilitate this process, and in anticipation of the Assembly's potential implementation of the Court ruling, KLI has already drafted a lawsuit template for compensation related to the work experience supplement. This template is comprehensively justified and structured to be easily applicable by any public official. The lawsuit template is included in Annex 1 to this analysis.

¹⁷ **Commentary of the LMD, Book I**; Ministry of Justice, 2013, pp. 158, 160; See also case law of the Supreme Court: **Supreme Court, Rev. No. 283/24, 22.07.2024, p. 4**; **Supreme Court, Rev. E. No. 37/2024, 22.10.2024, p. 5**, etc.

¹⁸ **Supreme Court, Rev. No. 283/24, 22.07.2024, p. 4**.

Annex 1: Lawsuit against the Assembly

KLI has assessed that this situation constitutes a strategic case, involving a significant number of the country's citizens. Decisions in such cases influence institutional practices and state policies, leading to sustainable and positive societal changes. KLI has also considered the fundamental principles of contentious procedures and the legal provisions stipulating that courts decide within the limits of the parties' claims, ensuring that submissions are accurately presented and that court decisions provide broad protection of citizens' rights. Accordingly, KLI has decided to include, as part of this report, a lawsuit template that can be used to initiate judicial proceedings in these cases. This allows for the full exercise of rights by trade unions and any other interested parties, enabling them to use this form to effectively enforce and protect the rights of public officials

1.1 Instructions for completing a lawsuit form

Step 1 – Verify Your Position under Law No. 08/L-196 on Public Sector Salaries and Work Experience

Each public official must first verify their classification under the Public Sector Salaries Law and calculate their years of work experience, which can be confirmed either through a report from the Kosovo Pension Savings Fund or through the respective employer.

Next, the public official must verify how much they have been paid for work experience (0.25% per year for up to 15 years) and how much should have been paid for these years (0.5%). Then, calculate the damage caused (the unpaid difference) for the period from 1 February 2024 until the date of submitting the lawsuit.

Step 2 – Fill in the Information on the Lawsuit Form

Enter your personal data, together with employment and payment information related to work experience, in the appropriate sections of the lawsuit form where spaces are provided “ ”.

Please ensure that you enter accurate information: your first and last name, your position, your total work experience, and calculate the damage incurred from 1 February 2024 until the date of filing the lawsuit.

Step 3 – Sign and Submit the Lawsuit

After completing the information, sign the lawsuit form in three copies and submit them to the Basic Court in Pristina.

1.2 Lawsuit form

BASIC COURT IN PRISTINA

General Department – Civil Division

PLAINTIFF:_____.

DEFENDANT: Assembly of the Republic of Kosovo, Ibrahim Rugova Square, No. 5, Pristina (10000)

Pursuant to Law No. 03/L-212 on Obligational Relationships, the plaintiffs submit this lawsuit against the defendant as follows:

LAWSUIT

For compensation of damages

The plaintiff is employed at _____ in the following positions:

Name and surname – Position – Years of experience

Evidence: Appointment
decision/Employment contract

Currently, the plaintiffs, depending on their positions, receive their salaries in accordance with Law No. 08/L-196 on Salaries in the Public Sector. Under this law, specifically Article 6(6), the base salary of the plaintiffs increases according to years of work experience, in the following amounts:

1. zero point twenty-five percent (0.25%) for each full year of work, up to fifteen (15) years; and
2. zero point five percent (0.5%) for each full year of work beyond fifteen (15) years.

Through Law No. 08/L-196 on Salaries in the Public Sector, the plaintiffs' compensation for work experience was reduced. The Law No. 03/L-147 on the Salaries of Civil Servants, which has since been repealed by Article 45 of Law No. 08/L-196, had previously stipulated that for each year of work experience accumulated within or outside the civil service—except for time spent in practical work—the civil servant was entitled to a supplement to the base salary amounting to zero point five percent (0.5%) per year.

However, Article 6(6) of Law No. 08/L-196 on Salaries in the Public Sector reduced this percentage to 0.25% for the first fifteen years of work experience.

This provision of Law No. 08/L-196 on Salaries in the Public Sector was found unconstitutional by the Constitutional Court. In its judgment in case KO79/23, the Constitutional Court concluded that the reduction of salaries for public officials during the first fifteen years of their careers is not consistent with the purpose of the law, which is to establish a unified salary system in the public sector.

The Court emphasized that this action was not supported by a "*legitimate aim*" and, consequently, there was no need to examine the proportionality test, since the absence of a legitimate aim implies a violation of the right to property. According to this decision, the Court concluded that this reduction in the payment for work experience is not in harmony with paragraphs 1 and 2 of Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1 to the European Convention on Human Rights on the protection of property. (See: Constitutional Court, Judgment in case no. KO79/23, Applicant: Ombudsperson, *Assessment of the constitutionality of Law No. 08/L-196 on Salaries in the Public Sector*, 23 January 2024, paragraphs 362–372).

Accordingly, the Constitutional Court found that Article 6(6) of Law No. 08/L-196 on Salaries in the Public Sector is not in compliance with the Constitution of the Republic of Kosovo. However, as can be seen from the cited reasoning, the Court did not annul the provision in question; instead, it obliged the Assembly to amend this provision within six months (by 1 August 2024), ensuring the protection of the payment level related to work experience. The Constitutional Court decided this way because if the provision were annulled, the issue of compensation for work experience would fall into a legal vacuum, since Law No. 08/L-196 repealed the previous law that had recognized this right. (See: Constitutional Court, Judgment in case no. KO79/23, Applicant: Ombudsperson, *Assessment of the constitutionality of Law No. 08/L-196 on Salaries in the Public Sector*, 23 January 2024, paragraphs 380–388)

Through this judgment, the Constitutional Court obligated the respondent — the Assembly of the Republic of Kosovo — to undertake the necessary measures within six (6) months from the date of entry into force of the judgment to amend and/or supplement paragraph 6 of Article 6 of Law No. 08/L-196 on Salaries in the Public Sector, in accordance with the Constitution and the findings of Judgment No. KO79/23. According to the Court, the effect of the amendment to the Law should apply from the date of the issuance of the judgment, not from the date of its adoption: balancing the principle of legal certainty and fundamental rights and freedoms, the Court decided to keep paragraph 6 of Article 6 in force during the six-month period after the entry into force of this Judgment, while obliging the Assembly to amend and/or supplement it within that period in line with the Court's findings. In amending and/or supplementing paragraph 6 of Article 6 of the contested Law, the Assembly must consider that the effects of the amendment concerning the level of the supplement for work experience derive from the date of entry into force of this Judgment. (See: Constitutional Court, Judgment in case no. KO79/23, Applicant: Ombudsperson, *Assessment of the constitutionality of Law No. 08/L-196 on Salaries in the Public Sector*, 23 January 2024, paragraphs 380–382).

In conclusion, the Constitutional Court obligated the respondent to, within six (6) months, restore the provision regarding the payment for work experience to at least 0.5%, and such payment should take effect from the date of entry into force of the Constitutional Court's

Judgment (1 February 2024).

To date, the respondent has failed to act in accordance with the obligation set out in the above-mentioned judgment of the Constitutional Court. This has caused damage to the plaintiffs, as from 1 February 2024 until today, for the first 15 years of work experience, they continue to receive only 0.25% of the salary, whereas the payment should have been at least 0.5% of the salary.

Article 136 of Law No. 04/L-077 on Obligational Relationships stipulates that “Whoever causes damage to another is obliged to compensate it, unless it is proven that the damage was caused without his fault.” The commentary on the Law of Obligational Relationships (LOR) rightly emphasizes that “[t]he harmful act may be active or passive... It is passive if the responsible person has failed to perform a specific action which by law he was obliged to perform.” Furthermore, the commentary notes that “for liability to exist for the damage caused, it must result from an unlawful act or omission. A person acts unlawfully when, through action or omission, they violate a specific legal norm” (See: *Commentary on the LOR, Book I, Ministry of Justice, 2013, pp. 158,160; see also the Supreme Court’s practice: Supreme Court, Rev. no. 283/24, 22.07.2024, p.4; Supreme Court, Rev.E.no.37/2024, 22.10.2024 p.5, etc.*).

In accordance with the provisions of Law No. 04/L-077 on Obligational Relationships and the practice of the Supreme Court (*Rev.no.283/24, 22.07.2024, p.4*), the following preconditions must be met for an obligation to compensate damage to exist:

1. The damage must have occurred;
2. The damage must have been caused by an unlawful act or omission;
3. Fault must exist on the part of the injurer;
4. The injurer must have delictual capacity; and
5. A causal link must exist between the unlawful act/omission and the damage.

In the present case, all these legal conditions are fulfilled, giving rise to the defendant’s obligation to compensate the plaintiffs for the damage caused.

Regarding the first condition — the occurrence of damage, Article 137 of the same Law provides that “Damage is the reduction of someone’s property (actual damage) and the prevention of its increase (lost profit)...” In this case, with respect to years of work experience, the plaintiffs, from 1 February 2024 to date, have been paid only 0.25% of the base salary instead of 0.5%, thereby preventing the increase of their earnings.

As to the second condition — the unlawful act or omission, the damage in this case results from the *omission* of the defendant. Under Article 116 of the Constitution, the defendant was obliged to amend and supplement Law No. 08/L-196 on Salaries in the Public Sector by 1 August 2024, in order to restore the work experience allowance to 0.5% of the base salary. Furthermore, the Constitutional Court determined that the effect of this amendment should apply retroactively from 1 February 2024. Therefore, the defendant was legally required to act by that date but failed to do so. Consequently, the damage resulted from the defendant’s omission.

Regarding fault, Article 140 of Law No. 04/L-077 provides that “Fault exists when the injurer causes the damage intentionally or through negligence.” In this case, there is no basis to exclude the

existence of fault for the omission.

Under Article 153 of Law No. 04/L-077, which stipulates that "A legal person is liable for damage caused to a third party by its organ during or in connection with the exercise of its functions," the defendant bears full delictual liability.

The final condition is the causal link between the omission and the damage. Here, the plaintiffs continue to receive 0.25% compensation solely because the Law No. 08/L-196 on Salaries in the Public Sector was not amended in accordance with the defendant's constitutional obligation, deriving from Article 116 of the Constitution and the Constitutional Court Judgment KO79/23. Had the defendant acted as required, the plaintiffs would have received at least 0.5% of their base salary.

For these reasons, all legal conditions are met to conclude that the defendant, by failing to comply with the constitutional obligation set by the Constitutional Court Judgment KO79/23, has caused damage to the plaintiffs.

Regarding the extent of the damage, as elaborated above, starting from 1 February 2024, the plaintiffs should have received 0.5% of their base salary for the first 15 years of work experience. Due to the defendant's omission, they have only received 0.25%. Accordingly, through its omission, the defendant has caused material damage to the plaintiffs in the amounts set out below:

The plaintiff, based on the coefficient determined by Law No. 08/L-196 on Salaries in the Public Sector, receives a salary of _____ euros and has _____ years of work experience. From 1 February 2024 to 1 March 2025, for the first 15 years of work experience, they have been paid _____ euros per month, totaling _____ euros for this period. They should have been paid _____ euros per month, totaling _____ euros for the same period. Therefore, the defendant has caused damage to the plaintiff in the amount of _____ euros.

Therefore, based on the above constitutional, legal, evidentiary, and factual grounds, the plaintiffs respectfully request the Court, after reviewing this lawsuit, to issue the following:

DECISION

I. APPROVED fully as well-grounded in favor of plaintiff.

II. OBLIGATES the respondent to compensate the plaintiffs for the unpaid difference in the name of work experience compensation, for the period from 1 February 2024 until the final resolution of the dispute, in the amount of _____ euros, together with legal interest of 8%, within 15 days from the date of the finality of this judgment, under the threat of compulsory enforcement.

III. OBLIGATES the respondent to pay the litigation costs within 15 days after this judgement becomes final.

Pristina,

Representative of the plaintiffs

__ . __ . 2025

The report **“The Inaction of the Assembly Violates the Rights of 90,696 Public Officials and Endangers the State Budget”** was prepared by the **Kosovo Law Institute (KLI)** with the support of the National Endowment for Democracy and Rockefeller Brothers Fund.



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