

# The Unconstitutionality of the Government's Decision on Raising Salaries

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# THE UNCONSTITUTIONALITY OF THE GOVERNMENT'S DECISION ON RAISING SALARIES

*By: Rreze Hoxha*

Constitutionality is defined as the compliance of all legal acts with the constitution. As such, every legal act and decision of the three branches of the state must respect the articles of the constitution and, everyone must abide to it.

The latest developments of the new Government in Kosovo tried to swiftly change this doctrine. The Government's decision to increase the salaries of his entire cabinet is just one of the many acts undertaken contrary to this principle.

This note merely focuses on the constitutionality of the decision of the salary increases forasmuch as the same logic applies to the other decisions as well. One can conclude that the first breach of constitutionality was made when the exclusive competence of the Assembly on approving the Law on Kosovo Budget was denied; followed by a violation of the principle of separation of powers; and sealed with a decision with no legal basis which violated the principles of social justice.

As it is widely known, Kosovo is a Parliamentary Republic led by the principle of separation of powers between the three state branches. Every branch has their enumerated competences on the Constitution and is expected to not intrude into each other's. According to the Constitution, the Assembly has the power to decide and approve all the budgetary allocations when approving the Law on the Budget. Interestingly enough, the decision issued by Haradinaj's government disrupted the Assembly's budgetary allocation by disregarding it as such, and raised the salaries by an executive act with no legal basis. Such an act takes over the constitutional competence of the Assembly on designing the budget and conducts an absolute act of violating the Constitution.

In addition to bypassing the Assembly, the Government took a decision based on no existing law in Kosovo. Laws represent the Assembly's will on regulating public policies, a competence given by the people and sealed by the Constitution. By-laws represent the Government's duty on executing these laws, a competence also enumerated on the Constitution. Hence, as there is no law regulating the salaries of senior public officials, these salaries can only be established through the yearly budget and not by such a practice. Therefore, one can conclude that the Government took a decision based on no law exceeding its executive power.

Moreover, the Government by disregarding every principle of social justice set a new worrisome standard: the newly raised salaries are about six times higher than the average net salary in Kosovo. The oversight of this Constitutional principle went far beyond the practices followed (and allowed) so far. What is more, the Government's decision is in total contradiction to similar cases ruled by the Kosovo Constitutional Court deciding the fundamentals of this principle.

It is of note that these imperative norms violated by the Government are an essential benchmark for implementing parliamentary democracy, through which the government is subject to parliamentary scrutiny. Amongst other, all the decisions upon where the government is in direct conflict of interest are subject to such scrutiny.

In the light of all these actions, Haradinaj's government violated the essence of the constitutional hierarchy, the principle of separation of powers as well as the social justice doctrine. Hence, the

current practice followed by the Government does not comply with the fundamental standards of parliamentary democracy defined therein. At the moment of writing these lines, 30 deputies representing the Assembly have submitted a request for a constitutional review of this decision to the Constitutional Court. It is to be seen if the Constitutional Court will approve and change the doctrine of constitutionality or will take it back to its original interpretation.

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