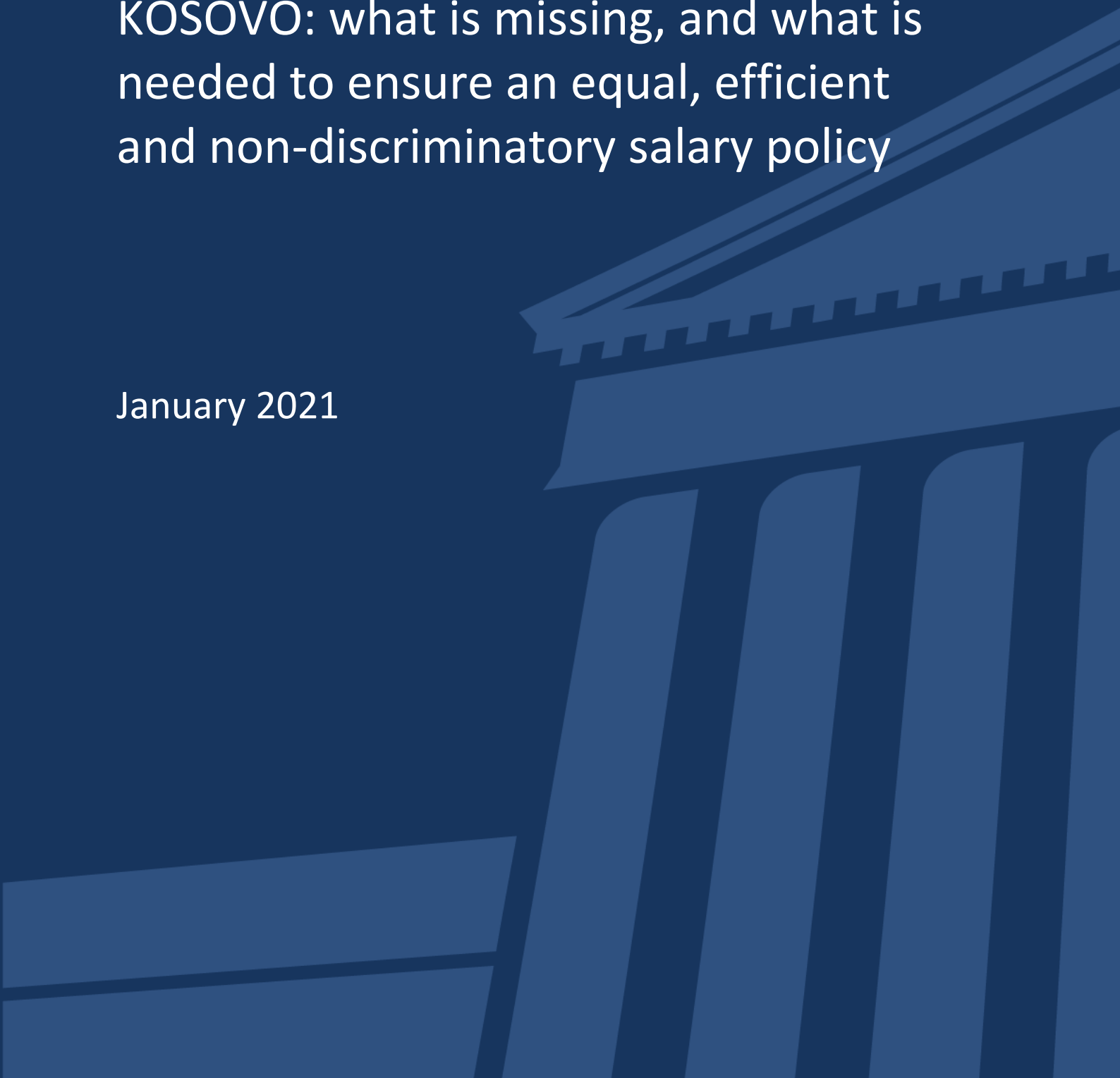


# THE NEW LAW ON SALARIES IN KOSOVO: what is missing, and what is needed to ensure an equal, efficient and non-discriminatory salary policy

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The new law on salaries in Kosovo: what is missing, and what is needed to ensure an equal, efficient and non-discriminatory salary policy

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# THE NEW LAW ON SALARIES IN KOSOVO: WHAT IS MISSING, AND WHAT IS NEEDED TO ENSURE AN EQUAL, EFFICIENT AND NON-DISCRIMINATORY SALARY POLICY

## I. INTRODUCTION

Wage, salary or pay is considered a significant reward to motivate workers and their behaviour towards the goals of employer.<sup>1</sup> The public sector's salary policy is crucial for achieving the government operational goals considering that pay is the most tangible reward for performance, productivity and proficiency.<sup>2</sup> The public sector is the part of a country's economy which is controlled or supported financially by the government.<sup>3</sup> If the government finds a way to ensure that government careers are an attractive employment alternative, if it offers stability and/or higher remuneration than other sectors, it can attract highly skilled workers and encourage those unemployed to aim for public sector jobs.<sup>4</sup> The government's failure to offer competitive remuneration, job security, etc., causes the steady fall in interest for public service careers. The way a country regulates public sector salaries is very important in many economic and professional aspects, and salary policies must always aim to ensure that public service careers are valued in society.

**Salary system regulation is an issue of concern in all market economies.** Salaries in the public sector can be regulated in several ways. The two most common are through a specific policy which would create a unified salary system and, second, through several legal acts, be it laws and sublegal acts, which would create a fragmented salary system. The unified model, depending on the national policy, would represent a salary scheme for the whole public sector - an example would be the Slovenian policy model. This model has established a unified salary scheme for the entire public sector of Slovenia, ranging from officials in higher state institutions (the President, parliamentarians, ministers, etc.) to the lower ranked public employees. Slovenian law defines the rules for determining, calculating and paying such salaries, as well as rules for determining the amount of funds for salaries. The law defines a common basis for the public sector payroll system, and aims to apply the principle of equal pay for work in comparable job positions, to achieve and ensure the transparency of the payroll system.<sup>5</sup>

On the other hand, a **fragmented model represents a system where public sector salaries would be regulated with different legal bases or no legal bases** at all, and not in a unified way. This model is best described as a hodgepodge of systems.<sup>6</sup> It is categorized as a system that does not ensure the principle of equal pay for equal work for all public sector employees due to being regulated with different legal acts and regulatory policies. This system is more common in federate countries such as the United States, but not only. Serbia has a fragmented model as well. Serbia's system is based on standard job classifications, but in practice it does not achieve equal pay for equal work across the whole spectrum of public sector. A performance bonus scheme allows some discretionary awards, which are not in line with a transparent and fair salary

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<sup>1</sup>Oshagbemi, T. (2000). "Gender Differences in the Job Satisfaction of University Teachers". *Women in Management Review*, Vol. 15 No. 7

<sup>2</sup> Public Service Salary Act 2013. "Report of the Public Service Salary Review Committee, available at: [http://dpa.gov.sc/sites/default/files/documents/Public\\_Service\\_Salary\\_Review\\_Report\\_2018\\_copy.pdf](http://dpa.gov.sc/sites/default/files/documents/Public_Service_Salary_Review_Report_2018_copy.pdf)

<sup>3</sup> 'The public sector' Def. The public sector is the part of a country's economy which is controlled or supported financially by the government. Cobuild Advanced Learner's Dictionary, 8<sup>th</sup> Edition. Available at: <https://www.collinsdictionary.com/dictionary/english/public-sector-wages>

<sup>4</sup>Oshagbemi, T. (2000). "Gender Differences in the Job Satisfaction of University Teachers". *Women in Management Review*, Vol. 15 No. 7

<sup>5</sup> OECD Public Governance Reviews. (2011). "The Public Sector Salary System in Slovenia". Available at: [https://ebrary.net/66138/economics/slovenia\\_s\\_public\\_sector\\_salary\\_system](https://ebrary.net/66138/economics/slovenia_s_public_sector_salary_system)

<sup>6</sup> Risher, H. (2019). "Government's Pay System is Badly Fragmented". Available at: <https://www.govexec.com/management/2019/11/governments-pay-system-badly-fragmented/161044/>

system.<sup>7</sup> There are unfounded salary differentials in the public sector in Serbia. In 2016, the country approved a new law on the public sector salary system which introduced the principle of equal pay for equal work for all public sector employees. Its implementation has however been postponed to 2020 and the fragmented model remains in force.<sup>8</sup>

**The fragmented model governs the salaries of public sector in Kosovo as well, wherein salary policy in the public administration is decentralized.** There is no horizontal law as a specific policy creating a unified salary system. The Law on the Budget authorizes the budget appropriations of the public sector in Kosovo as a lump sum.<sup>9</sup> Approximately 30% of Kosovo's budget is foreseen for public sector salaries.<sup>10</sup> Roughly EUR 50 million is the monthly bill of public sector salaries and around 600 million per year.<sup>11</sup> These amounts are foreseen for approximately 81,550 people who are employed in the public sector. Moreover, the average salary in the public sector according to the Kosovo Agency of Statistics in 2018 was EUR 573.<sup>12</sup> Each budgetary appropriation is proposed by the head of the public institution, and as such is approved. The Law on the Budget does not foresee the allocation and distribution manner of these funds. It is the legal acts of the institutions which define their dissemination, both on the horizontal and vertical levels. As a result of such regulatory policy, salaries are regulated differently in independent institutions and agencies, and there is no unique legal base for the salary scheme. The schemes are special and different from the coefficient salary determination in the civil service. In some institutions, the status of employees is that of a civil servant according to the legislation in force for the civil service.<sup>13</sup> The salary scheme is different so the employees are treated separately due to the characteristics of the institution or agency's work. In some other institutions, the salary is determined by a coefficient to which supplements are applied, but still differ in depending on the position and amount. Moreover, salary compensations during the exercise of duties or overtime work are ensured by several institutions.<sup>14</sup> The system as it stands now has been assessed to be in violation of the principle of fairness, equal pay and non- discrimination.<sup>15</sup>

**A standardized classification was made in 2010 when the Law on Salaries of Civil Servants (LSCS) was approved** and regulated the salaries of only one category of employees paid from the Kosovo budget (i.e. the civil service), and not the salaries of other public sector employees.<sup>16</sup> The latter were still subject to different salary systems, grades, coefficients and values determined by different legal bases - mainly of the organizational and functional type or sublegal acts. The LSCP provided that Public Administration Institutions of the Republic of Kosovo must pay the same salary for work of equal value, yet the law was never implemented

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<sup>7</sup> EU Country Report for Serbia (2015). Available at: [https://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/report\\_serbia\\_15.pdf](https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/report_serbia_15.pdf)

<sup>8</sup> Ibid.

<sup>9</sup> Assembly of Kosovo. (2020). 'Law No.07/L-001 on the Budget Appropriations of the Republic of Kosovo'. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=27690>

<sup>10</sup> Ibid.

<sup>11</sup> Draft concept document on the salaries that are paid by the Budget of the Republic of Kosovo. Accessed on November 2020 at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40275>

<sup>12</sup> Gazeta Blic (2019). "Jo të gjithë i gëzohen Ligjit për pagat/ Not everyone is happy about the Law on Salaries". Available at: <https://gazetablic.com/jo-te-gjithe-i-gezohen-ligjit-per-pagat/>

<sup>13</sup> GAP (2016). "Intitucionet dhe Agjencite e Pavarura: Marrëdhënia e Punes, Sistemi I Pgate, Organizimi I Brendshem dhe Llogaridhënia/ Independant Institutions and Agencies: Employment, Payroll System, Internal Orgnization and Accountability". Available at: [https://www.institutigap.org/documents/77948\\_Agencionet%20e%20Pavarura.pdf](https://www.institutigap.org/documents/77948_Agencionet%20e%20Pavarura.pdf)

<sup>14</sup> Ibid.

<sup>15</sup> Draft concept document on the salaries that are paid by the Budget of the Republic of Kosovo. Accessed on November 2020 at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40275>

<sup>16</sup> Assembly of Kosovo. (2010), "Law No. 03/L-147 on Salaries of Civil Servants". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2678>

due to lacking budget.<sup>17</sup> This unfortunate situation has certainly further deepened wage inequality given that the current policies do not provide equal pay for equal work in the country.<sup>18</sup>

**All the trouble and controversy caused by the current system created the necessity to design a new policy to address existing gaps** and create a lawful, fair, equal and non-discriminatory system. In early 2019, the Assembly of Kosovo passed the Law on Salaries in Public Sector (LSPS) as the first attempt to establish a uniform salary system in the country.<sup>19</sup> Sixteen months later, the law was found to be unconstitutional by the Constitutional Court.<sup>20</sup>

This policy analysis aims to examine the salary system in general, the Law on Salaries in Public Sector's purpose and scope, and potential ways to address the Constitutional Court's findings on this matter. First, the analysis provides an overview of the current system and its main shortcomings, namely the Constitutional Court unconstitutionality decision. Second, the analysis will focus on how to address and avoid the constitutional problems identified regarding the Law on Salaries by the Constitutional Court, and the proper way forward. It ends by offering a number of policy recommendations to make the salary policy in Kosovo more equal, efficient and non-discriminatory.

## II. ON SALARY SYSTEM IN GENERAL: KOSOVO AS A CASE

### *a) What is the basis for the current system?*

A key moment in analysing the issue of Kosovo's salary system involves taking a look at the year 2015. In that year, the Stabilization and Association Agreement (SAA) between the European Union and Kosovo was signed in Strasbourg.<sup>21</sup> The SAA established a contractual relationship that entails mutual rights and obligations and covers a wide variety of sectors. The SAA focuses on respect for key democratic principles and core elements that are at the heart of the EU's single market. Amongst others, the SAA will also help the implementation of reforms designed to achieve the adoption of European standards by Kosovo. Article 120 of the SAA required a consolidated legal framework for Public Administration Reform (PAR). The National Program for the Implementation of the SAA (NPISAA), approved by the Assembly of Kosovo on March 2016, emphasised the full consolidation of the legal framework, and implementation of policies and legislation as a whole in the public administration, in order to create an apolitical, professional and merit-based civil service.<sup>22</sup>

The main issues identified by the European Commission's enlargement strategy, presented in detail by the OECD/SIGMA through the public administration principles, were used in designing the approach of the reform. Precisely, the government of Kosovo committed to functioning on the basis of the SIGMA principle, such as the strategic framework on public

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<sup>17</sup> Loxha, A. (2019). "New Law on Salaries: An examination of Potential Socio-Economic Effects". Group for Legal and Political Studies. Policy Analysis 08/2019. Available at: <http://www.legalpoliticalstudies.org/new-law-on-salaries-an-examination-of-potential-socio-economic-effects/>

<sup>18</sup> Draft concept document on the salaries that are paid by the Budget of the Republic of Kosovo. Accessed on November 2020 at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40275>

<sup>19</sup> Assembly of Kosovo. (2019). "Law No. 06/L-111 on Salaries in Public Sector". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18683>

<sup>20</sup> Constitutional Court of Kosovo. (2020). "Constitutional review of Law No. 06/L-111 on Salaries in Public Sector". Case No. KO 219/19. Available at: <https://gjk-ks.org/en/decision/vleresim-i-kushtetutshmerise-se-ligjit-nr-06-l-111-per-pagat-ne-sektorin-publik-3/>

<sup>21</sup> EC Press Release. (2015). "Stabilization and Association Agreement (SAA) between the European Union and Kosovo signed". Available at: <https://www.consilium.europa.eu/en/press/press-releases/2015/10/27/kosovo-eu-stabilisation-association-agreement/>

<sup>22</sup> Ministry of European Integration. (2016). "Programi Kombetar per Zbatimin e Marreveshjes se Stabilizim-Asociimit (PKZMSA)/ National Program for the Implementation of the Stabilization and Association Agreement (NPISAA)". Available at: [https://www.mei-ks.net/repository/docs/1\\_pkzmsa\\_miratur nga kuvendi final .pdf](https://www.mei-ks.net/repository/docs/1_pkzmsa_miratur nga kuvendi final .pdf)

administration reform, policy development and coordination, public services and management of human resources, accountability, service provision and management of public finance.<sup>23</sup>

Kosovo's government, based on the NPISAA program, vowed to **finalise the legal framework through the completion and amendments** of the: 1) Civil Service Legislation; 2) Public Administration legislation, and 3) Law on Salaries, as a package. These laws were considered interrelated since they would guarantee such important items such as complete the horizontal legal framework for public administration, ensure the implementation of the legal framework and proper performance assessment. The package of laws would also ensure a job classification system in the civil service, and the new system of salaries for all employees in the public sector, and finally involve all key institutions in the horizontal scope of the civil service.<sup>24</sup>

These three laws were considered as means to resolve salary issues based on the principle of equal pay for equal work. The Law on Salaries was specifically supposed to create a unified salary system for all salaries paid by the Kosovo budget. The SAA requirement and the public administration reform in general received high-level political support and commitment across all political parties in Kosovo.<sup>25</sup>

#### *b) A statement about the problem in practice*

The existing fragmented salary system was created in 2000 through the Administrative Instruction JIAS / PS / AI / 2000/2 of the United Nations Mission in Kosovo (UNMIK). The system has been based in coefficients from less qualified jobs to management positions, following a ten-point grade scale. The instruction, however, did not offer a genuine job qualification allowing many institutions to allocate coefficients without using same criteria for the same jobs. Additionally, some independent institutions and agencies have applied coefficients outside the ten-point grade system established by UNMIK. This practice has created unfavourable situations for equivalent positions in different public institutions and has not guaranteed equal pay for equal positions. Hence, public sector employees are paid differently for the same or comparable positions in public institutions and the current salaries are not regulated according to the principle 'equal pay for equal job'. As the 2017 SIGMA monitoring report emphasised: *"significant differences in total salaries for similar positions persist, especially between ministries and agencies and independent institutions"*.<sup>26</sup>

The LSCS, as explained above, regulates only the salaries of around 18,000 civil servants employees in total, and it does so by including all the components from the basic salary, allowances and compensation.<sup>27</sup> **The basic salary is determined by a job classification process.**<sup>28</sup> The regulation on job classification defines its criteria and procedure, as well as ranks and rank steps for civil servants.<sup>29</sup> The regulation foresees 14 grades in total, and for each classified salary grade the regulation has determined a coefficient.<sup>30</sup> The ratio of the coefficients is 1 to 5.<sup>31</sup> The basic salary is determined by multiplying the coefficient by the value of the coefficient,

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<sup>23</sup> Ibid. page 28.

<sup>24</sup> Ibid. Page 29.

<sup>25</sup> EU Country Report for Kosovo\*(2015). Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2015/20151110\\_report\\_kosovo.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_kosovo.pdf)

<sup>26</sup> SIGMA, "The Principles of Public Administration", Kosovo\*, November 2017, Page 53. Available at: <http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf>

<sup>27</sup> Assembly of Kosovo. (2010), "Law No. 03/L-147 on Salaries of Civil Servants". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2678>

<sup>28</sup> Ibid. Article 6.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid. Article 11.

which in turn is determined by the annual budget law on the proposal of the government.<sup>32</sup> Salary grades, in addition to the initial coefficient, also contain other coefficients which are set as steps.<sup>33</sup> Grade 1 to 14 has 5 steps and grade 2 to 13 has 12 steps.<sup>34</sup> A civil servant is foreseen to move up along the steps depending on their performance. The law has also adjusted allowances for civil servants including those for shift work and overtime, those for specific work conditions and allowances for market conditions.<sup>35</sup> Another problem identified by the 2017 SIGMA monitoring report was the remaining problem of the job classification and some aspects of career development in the civil service which continued to be regulated in parallel by the Civil Service Law, the Law on Salaries of the Civil Servants and other by-laws.<sup>36</sup> According to this report, all three regulations include partially overlapping provisions on the procedures for proposing and approving the grades of the positions and the calculation of the basic salary. Those regulations are: 1) Regulation No. 03/2010, Article 9, and Regulation No. 05/2012, Articles 28-29, 2) Regulation No. 05/2012 on the Classification of Jobs, and 3) Regulation No. 06/2012 on Senior Management Positions, and Regulation No. 06/2010 on the Procedures for Appointments to Senior Management Positions in the Civil Service. The last regulation is laid out in two different by-laws that also include overlapping articles.<sup>37</sup>

Other categories of **employees paid from the Kosovo budget**, around 63,550 employees, did not have any centralized method of regulating salaries. Around 58 legal documents regulate the remuneration system in individual institutions.<sup>38</sup> The salaries of some of these categories are regulated by the laws establishing the institutions where they are engaged in. Regular courts judges, Constitutional Court judges and state prosecutors belong to this category. Specific laws, such as the Law on Courts and the Law on the State Prosecutor, regulate the salaries of judges and prosecutors by referring to positions held by the executive branch.<sup>39</sup> An illustrative example is Article 35 of the Law on Courts specifying that the President of the Supreme Court shall receive a salary not less than that of the Prime Minister of the Republic of Kosovo.<sup>40</sup> The salary of the Prime Minister of Kosovo is not defined by any law or legal document but rather on case bases with decisions from the Prime Minister's Office.<sup>41</sup> The same applies to Constitutional Court judges. The law on the Constitutional Court regulates the salaries of Constitutional Court judges.<sup>42</sup> More specifically, the law provides that the remuneration of Constitutional Court judges shall be 1.3 times the salary of judges of the Supreme Court of the Republic of Kosovo.<sup>43</sup>

On the other hand, **salaries of certain public sector categories are determined by sub-legal acts**. An example to consider is the salary of the Auditor General of the Republic of Kosovo. The Law on the Auditor General and the National Audit Office of the Republic of Kosovo, through

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<sup>32</sup> Ibid. Article 5.

<sup>33</sup> Ibid. Article 6.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. Article 14.

<sup>36</sup> SIGMA, "The Principles of Public Administration", Kosovo\*, November 2017, Page 60. Available at: <http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf>

<sup>37</sup> Ibid. footnote 257.

<sup>38</sup> Loxha, A. (2019). "New Law on Salaries: An examination of Potential Socio-Economic Effects". Group for Legal and Political Studies. Policy Analysis 08/2019. Available at: <http://www.legalpoliticalstudies.org/new-law-on-salaries-an-examination-of-potential-socio-economic-effects/>

<sup>39</sup> Assembly of Kosovo. (2018). "Law No. 06/L-054 on Courts". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302> and the "Law No. 03/L-225 on State Prosecutor". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2710>

<sup>40</sup> Assembly of Kosovo. (2018). "Law No. 06/L-054 on Courts", Article 35. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>

<sup>41</sup> Government Decision No. 04/20, December 20, 2017. Available at: [http://www.kryeminsitri-ks.net/repositoty/docs/Vendimet\\_e\\_mbedhjes\\_20.pdf](http://www.kryeminsitri-ks.net/repositoty/docs/Vendimet_e_mbedhjes_20.pdf)

<sup>42</sup> Assembly of Kosovo. (2009). "Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo". Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2614>

<sup>43</sup> Ibid. Article 15.

Article 4, have that the salary level of the Auditor General is determined by the respective law regulating salaries of senior public officials.<sup>44</sup> Until the adaptation of respective law regulating the salaries of public officials, the salary of the Auditor General shall be assigned by the Assembly.<sup>45</sup> There is no law on senior public officials adopted in Kosovo, and currently the salary of the Auditor General is defined by the Assembly by a sub-legal act, as specified by law. Another example is the salaries of Constitutional Court legal advisers.<sup>46</sup> Article 13 of the Law on Constitutional Court specifies that legal advisors' salaries shall be defined in accordance with applicable legislation.<sup>47</sup> The law does not specify concrete legislation to be applied in this case. Professional collaborators, interns, translators, interpreters and judicial experts of regular courts in Kosovo belong to this category as well.<sup>48</sup> The Law on Courts provides, in Article 38, that the Kosovo Judicial Council defines by a sub-legal act the remuneration amount of their work, amongst others.<sup>49</sup> The Law on Ombudsperson offers another way to regulate the salaries of their employees. Article 34 of the law foresees that salaries of the Ombudsperson Institution shall be regulated under the applicable Law on Salaries from the budget of the Republic of Kosovo.<sup>50</sup> Currently there is no applicable Law on Salaries in Kosovo. Remaining salaries of other public sector employees, which are not regulated by the LSC, nor the laws establishing the institutions where they are engaged in, nor by sub-legal acts, are still regulated by the Administrative Instruction JIAS / PS / AI / 2000/2, approved by UNMIK in 2000.<sup>51</sup>

As explained above, **the current system allows for asymmetric salaries.** As such, it allows for huge amounts for some public institutions employees. It entirely violates the principle of equal pay for equal work and is discriminatory in its essence. Such a conclusion can be better understood with concrete examples where equal positions are paid differently in different public institutions, and examples on how independent institutions have exceeded logical ceilings for public sector salaries in Kosovo. One must consider the report of the Kosovo Agency Statistics for social statistics and the wage level in 2012-2018, where it stated that the average salary of public sector employees in 2018 was EUR 573 (gross).<sup>52</sup> With this in mind, one cannot ignore the fact that there are public sector officials working for independent institutions which are paid EUR 6000 per month. Such salaries also exceed the salaries of the Prime Minister and President of Kosovo.

Currently the **highest salaries provided by the Kosovo budget are the ones for the Kosovo Pensions Savings Trust Institution (Trust), a trustee institution of the Central Bank of Kosovo (CBK).**<sup>53</sup> The CBK is one of the independent institutions established by Chapter XII of the Kosovo Constitution.<sup>54</sup> The salary of the managing director of the Trust, together with additions and

<sup>44</sup> Assembly of Kosovo. (2016). "Law No. 05/L-055 on the Auditor General and the National Audit Office of the Republic of Kosovo", Article 4. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12517>

<sup>45</sup> Ibid.

<sup>46</sup> Assembly of Kosovo. (2009). "Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo", Article 13. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2614>

<sup>47</sup> Ibid.

<sup>48</sup> Assembly of Kosovo. (2018). "Law No. 06/L-054 on Courts". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>

<sup>49</sup> Ibid. Article 38.

<sup>50</sup> Assembly of Kosovo. (2015). "Law No. 05/L-019 on the Ombudsperson", Article 34. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10922>

<sup>51</sup> Draft concept document on the salaries that are paid by the Budget of the Republic of Kosovo. Accessed on November 2020 at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40275>

<sup>52</sup> Kosovo Agency of Statistics (2018). "Niveli i pagave ne Kosove 2012-2018/ Salary level in Kosovo 2012-2018". Available at: <https://ask.rks-gov.net/media/5118/niveli-i-pagave-n%C3%AB-kosov%C3%AB-2012-2018.pdf?fbclid=IwAR2io7Psg9PoQ5AclZqDzY95UVcMYgFwXqBTcUbxlna2OPgsMXTuHKV8ZXa>

<sup>53</sup> Zeri. (2018). "Kerkohet ulja e rrogave te drejtuesve te Trustit/ A reduction in the salaries of Trust executives is required". Available at: <https://zeri.info/ekonomia/190559/kerkohet-ulje-e-rrogave-te-drejtuesve-te-trustit/>

<sup>54</sup> Assembly of Kosovo. (2008). "Constitution of the Republic of Kosovo", Chapter XII. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702>

bonuses, reaches EUR 6000 per month, with the fixed salary for this position foreseen at EUR 4980 per month.<sup>55</sup> On the other hand, the salaries foreseen for the CBK as the overseeing body of the Trust are lower than those the Trust. The salary of the governor of CBK amounts to EUR 4120 per month. What is more, salaries for these two institutions are disproportionate to other public sector salaries.<sup>56</sup> One can draw a parallel by comparing same-position salaries of different institutions and understand the imbalance and existing inequality among public sector employees. In 2016, the monthly base/position salary of a senior legal officer varied from EUR 465 in a Ministry, rising to EUR 863 for the Ombudsperson and even more to EUR 1046 in the Privatization Agency.<sup>57</sup> Another example is be the salary of the Procurement Officer, which in a Ministry would be EUR 423, in the Kosovo Juridical Council EUR 453, for the Ombudsman EUR 585, and for the Constitutional Court EUR 786. All of the above in principle have the same responsibility and competence. Furthermore, the Independent Oversight Board (IOB)'s 2016 annual report cited in the 2017 SIGMA monitoring report, concluded that in certain cases civil servants receive additional supplements of over 50% of their base salaries. This is in contravention of Regulation No. 33/2012. Labour market supplements are also sometimes awarded to civil servants not employed in the jobs for which the supplement was created, such as information technology, engineers, etc.<sup>58</sup>

Due to the aforementioned reasons, drafting and adopting a general law which sets principles and general standards of a homogeneous framework in the field of public sector salaries in Kosovo has been very necessary. At first, such a regulation might seem like an over-regulatory instrument, especially with the independent institutions included. Yet, as noted above, these institutions have for years overpassed any framework and limit, exceeding the salary of every branch in Kosovo, including high profile positions, managing positions and executive ones. It passes all logical ceilings for public sector salaries in the country. Hence, a regulatory policy for this matter is necessary to address the raising concerns.

### III. DRAFTING PROCESS OF THE LAW ON SALARIES

The process of drafting the Law on Salaries started when the Law on Salaries became part of the Government Annual Work Plan for 2017.<sup>59</sup> The development of the concept document and draft law has been concluded by the Ministry of Public Administration.<sup>60</sup> The draft has been consulted with the public via the Platform for Public Consultations and public debates with governmental and non-governmental stakeholders.<sup>61</sup> External experts from the EU Office in Kosovo and OECD/SIGMA experts have continuously contributed comments for drafting and finalising the draft law.<sup>62</sup>

On September 2018, the first draft of the law was delivered to the Assembly of Kosovo together with an explanatory memorandum on the draft-law, the financial declaration and the legal opinion on compliance with EU standards.<sup>63</sup> The draft regulated the salary and reward system for all employees paid by the state budget, including public officials and functionaries,

<sup>55</sup> Zeri. (2018). "A reduction in the salaries of Trust executives is required". Available at: <https://zeri.info/ekonomia/190559/kerkohet-ulje-e-rrogave-te-drejtuesve-te-trustit/>

<sup>56</sup> Ibid.

<sup>57</sup> SIGMA, "The Principles of Public Administration", Kosovo\*, November 2017, Page 73. Available at: <http://www.sigmaweb.org/publications/Monitoring-Report-2017-Kosovo.pdf>

<sup>58</sup> Ibid.

<sup>59</sup> Government of Kosovo, Annual Work Plan for 2017.

<sup>60</sup> Draft concept document on the salaries that are paid by the Budget of the Republic of Kosovo. Accessed on November 2020 at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40275>

<sup>61</sup> Available at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40275>

<sup>62</sup> Ibid.

<sup>63</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjnr06L-111\\_TgJBmC48t4.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjnr06L-111_TgJBmC48t4.pdf)

and it offered minimum rules for governing the salaries of publicly-owned enterprises employees. No public institution was excluded from the scope of the law.<sup>64</sup> The remuneration of functionaries who are engaged part-time in the governing bodies - such as councils, boards, commissions, constitutional institutions, independent agencies and justice system institutions - has been regulated as well.<sup>65</sup> Publicly-owned enterprises – for instance the CBK and the Trust - have not been included under the scope of the law since they are not directly financed by the Budget of the Republic of Kosovo and they do not have a clear defined status. In addition, Radio Television of Kosovo (RTK), which is directly financed by the state budget was excluded as well. This was heavily criticised by the Constitutional Court, an issue which will be further elaborated below. **Six principles governed devising the first draft:** 1) Lawfulness; 2) Equity; 3) Equal pay; 4) Transparency; 5) Non-discrimination and 6) Predictability.<sup>66</sup> The law specified that salaries and their components were to be regulated only by this law and its sublegal acts; they should represent a fair reward for the complexity of the work; equal pay would be paid for equal work; the salary, its level and administration would be transparent; no salary receipt shall be discriminated in salary; and the salary level determined by this law shall not be lowered except in extraordinary situations of financial difficulties.<sup>67</sup> **Six categories were identified by this law:** 1) civil servants; 2) public functionaries; 3) public functionaries with special status; 4) cabinet employee; 5) public service employee; and 6) publicly-owned enterprises employees. The first five categories were defined in the Law on Public Officials.<sup>68</sup> One must note that the draft foresaw the remuneration of the public functionaries with special status was to decrease three years after the law entered into force.<sup>69</sup> Judges and prosecutors of regular courts, Constitutional Court judges, chairs of the KJC and the KPC fall under the definition of public functionaries with special status.

The salaries of these categories increased accidentally in December 2017, given a decision taken by then-Prime Minister of Kosovo, Ramush Haradinaj, to increase the salaries of his cabinet by 100%.<sup>70</sup> The draft law provisions foresaw the opposite. As such, this issue presented one of the main points of debate by political parties and other stakeholders, as explained below.

On October 2018, the draft law was approved in principle by the Assembly.<sup>71</sup> On November 2018, the Parliamentary Committee on Local Governance, Public Administration, Regional Development and Media in Kosovo reviewed the draft and offered recommendations. Most recommendations were technical, focused on the structure of the draft, the definitions offered and, most importantly, on the transitional provisions recommending the draft enters into force six months after publication in the Official Gazette of the Republic of Kosovo.<sup>72</sup> The draft was reviewed by the Parliamentary Committee on Budget and Finances, the Committee on the Rights and Interests of Communities and Returns, the Committee on Legislation, Mandates,

<sup>64</sup> Government of Kosovo, Explanatory Memorandum on the Draft-Law on Salaries in Public Sector. Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/111memorandumishpjegues\\_bJB25RGde6.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/111memorandumishpjegues_bJB25RGde6.pdf)

<sup>65</sup> Government of Kosovo, "Draft Law on Salaries in Public Sector", Article 11. Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/111PLperpagat\\_h4K9apBaxG.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/111PLperpagat_h4K9apBaxG.pdf)

<sup>66</sup> Ibid. Article 3.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid. Article 2.

<sup>69</sup> Ibid. Article 28.

<sup>70</sup> Government Decision No. 04/20, December 20, 2017. Available at: [http://www.kryeminsitri-ks.net/repositoty/docs/Vendimet\\_e\\_mbedhies\\_20.pdf](http://www.kryeminsitri-ks.net/repositoty/docs/Vendimet_e_mbedhies_20.pdf) and PortalB. (2018). "Haradinaj: Nga rritja e pagave me se shumti fitojne gjyqtaret dhe prokuroret/ Haradinaj: Judges and prosecutors mostly benefit from the salary increase". Available at: <https://portalb.mk/533498-haradinaj-nga-rritja-e-pagave-me-se-shumti-fitojne-gjyqtaret-dhe-prokuroret/>

<sup>71</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/111Vendimpermiratimneparim\\_DwYYsTfqV4.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/111Vendimpermiratimneparim_DwYYsTfqV4.pdf)

<sup>72</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/RaportpreliminarperPLperpagatnesektorinpublik\\_bHU4cYdtWy.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/RaportpreliminarperPLperpagatnesektorinpublik_bHU4cYdtWy.pdf)

Immunities, and Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency and the Committee on European Integration. The Parliamentary Committee on Budget and Finances declared the draft law contained affordable costs for the Budget of the Republic of Kosovo.<sup>73</sup> The Committee on the Rights and Interests of Communities and Returns declared the draft law did not violate or affect the rights and interests of communities.<sup>74</sup> The Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency declared that the draft law is in accordance with the Constitution and the applicable laws.<sup>75</sup> Lastly, the Committee on European Integration declared that the scope of the law on salaries in the public sector is not regulated specifically by EU legislation.<sup>76</sup>

Later on, on January 2019, the Parliamentary Committee on Local Governance, Public Administration, Regional Development and Media in Kosovo **approved the draft law with a total of 77 amendments and forwarded it to the Assembly.**<sup>77</sup> The exclusion of the Kosovo Intelligence Agency (KIA) and the Kosovo Security Forces (KSC) from the scope of the law and the inclusion of the Radio Television of Kosovo and the Trust, were two of the amendments.<sup>78</sup> It was argued that the KSC has its own law regulating salaries, and the exclusion of the KIA was requested by the Parliamentary Commission for oversight of the KIA arguing that its inclusion would hurt the secrecy of its organization and internal structure.<sup>79</sup> As such, both created many clashes among political parties, MPs, and public institutions. The foreseen decreased remuneration for judges and prosecutors was another clashing point. It was objected by the AAK, the leading political party of the then governing coalition, under the argument it would hurt the independence of the judiciary.<sup>80</sup> It was heavily objected by the Kosovo Judicial Council and Kosovo Prosecutorial Council, and the entire system in general. The head of the Kosovo Civil Service Union declared that civil servants feel discriminated and are not treated equally by this law.<sup>81</sup> The inclusion of the RTK caused a lot of discussion as well. The RTK Workers' Union strongly opposed the inclusion of RTK in the law on salaries by the Committee on Public Administration, Local Government and Media. It was argued it would turn RTK into a state medium and compared journalists with civil servants in the Republic of Kosovo. The union argued that RTK has its own law and status as independent agency, and thus the commission has committed legal violations when including RTK in the payroll law.<sup>82</sup>

Despite the many criticisms towards the draft, on February 2019 **the Assembly approved the draft law with the amendments** discussed above. With 63 votes in favour and 1 abstention,

<sup>73</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/71RaportmerekomandimeneProjektligjinnr06L-114perPagat.lek\\_TS3enWSGnT.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/71RaportmerekomandimeneProjektligjinnr06L-114perPagat.lek_TS3enWSGnT.pdf)

<sup>74</sup> Available at: <http://www.kuvendikosoves.org/shq/projektligjet/projektligji/?draftlaw=131&fbclid=IwAR3VjW0vzJwvVev67ARvgRsLNlIXGhmYPnIH567HBq1yTFB5U44cLZTR50k#info-div>

<sup>75</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/60-PLperpagat.shqip\\_W2heWdMjWM.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/60-PLperpagat.shqip_W2heWdMjWM.pdf)

<sup>76</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/RekomandimiperP-Lperpagatnesektorinpublik\\_Ae2HMny62G.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/RekomandimiperP-Lperpagatnesektorinpublik_Ae2HMny62G.pdf)

<sup>77</sup> Gazeta Express. (2019). "Miratohet projektligji per Pagat/ The draft Law on Salaries is approved". Available at: <https://www.gazetaexpress.com/lajme-miratohet-projektligji-per-pagat-620961/>

<sup>78</sup> Available at: [http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinnr06L-111\\_TgJBmC48t4.pdf](http://www.kuvendikosoves.org/Uploads/Data/Documents/Ligjinnr06L-111_TgJBmC48t4.pdf)

<sup>79</sup> Gazeta Express. (2018). "Pse AKI-ja po kerkon perjashtim nga Ligji per pagat/ Why KIA is seeking exemption from the Law on Wages". Available at: <https://www.gazetaexpress.com/lajme-pse-aki-ja-po-kerkon-perjashtim-nga-ligji-per-pagat-584040/>

<sup>80</sup> KOHA. (2018). "Haradinaj kunder vendimit te Komisionit parlamentar per pagat/ Haradinaj against the decision of the Parliamentary Commission for salaries". Available at: <https://www.koha.net/arberi/142392/haradinaj-kunder-vendimit-te-komisionit-te-parlamentar-per-pagat/>

<sup>81</sup> Gazeta Blic. (2019). "Jo te gjithë i gezohen Ligjit per Pagat/ Not everyone enjoys the Wages Act". Available at: <https://gazetablic.com/jo-te-gjithe-i-gezohen-ligjit-per-pagat/>

<sup>82</sup> Gazeta Express. (2019). "Sindikata e Punetoreve kundershton perfshirjen e RTK-se ne Ligjin e Pagave/ Workers' Union opposes RTK's inclusion in the Law on Salaries". Available at: <https://www.gazetaexpress.com/lajme-sindikata-e-punetoreve-kundershton-perfshirjen-e-rtk-se-ne-ligjin-per-pagat-619397/>

the law was published in the Official Gazette.<sup>83</sup> The President of Kosovo, Mr. Thaçi, did not decree the law.<sup>84</sup> He chose to neither return it nor decree it, but let it enter into force tacitly.<sup>85</sup>

#### IV. LAW ON SALARIES

##### *a) Scope of the law*

In order to create a **simple, homogeneous, fair and transparent regulation of the salary system in the entire public administration** by regulating salaries, allowances, bonuses and benefits, the LSPC approved by the Assembly defined the salary system and remuneration in the public sector.<sup>86</sup> The public sector represents the portion of the economy composed of all levels of government and government-controlled enterprises. It does not include private companies, voluntary organizations, and households.<sup>87</sup> The law defined the rules for determining salaries for employees of publicly-owned enterprises in Kosovo. It also defined the criteria of transitional salary and other benefits after the end of the function of public functionaries with special status, as well as for former high officials. The law excluded two agencies, the KIA and the KSC, from its scope.<sup>88</sup> Both of them are state agencies - the KIA is an agency defined in Article 65 (1) and Article 129 of the Constitution of Kosovo, and the KSF was established by the Assembly based on the competences in Article 65 (1) of the Constitution.<sup>89</sup>

The **six principles and six categories** as elaborated above governed the law. The lowest monthly salary foreseen by the law were of an amount of EUR 322. The salary of a high school teacher was foreseen to be of EUR 621, the salary of the chief prosecutors of EUR 1912 and that of the Prime Minister was foreseen to be of EUR 2751.<sup>90</sup> Additional compensations, such as overtime work or risk, were supposed to be given to certain categories. The basic salary reflects the part of the remuneration received for full-time work on a certain function, and its value is calculated by multiplying the coefficient of the salary class by the monetary value of the coefficient. The coefficient is a ratio of ten (1:10), distributed in sixty-nine (69) odds levels. The highest coefficient is 10, a position held only by the President of the Republic of Kosovo. Then level 9 includes the Chair of the Assembly, the Prime Minister and the President of the Constitutional Court of the Republic of Kosovo. Level 8.5 includes the Deputy Chair of the Assembly, the Deputy Prime Ministers, the Deputy Chair of the Constitutional Court, and Level 8 applies to Ministers, Mayors, and Members of the Parliament, Chair of the Supreme Court, Chair of KJC and KPC, Chief State Prosecutor, General Director of Police, President of the Academy of Science, Judges of the Constitutional Court, Chair of the Special Chamber, the Ombudsman, and Auditor General of Kosovo. In coefficients from 1.85 to 2.25 are different positions of civil

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<sup>83</sup> Kosovainfo. (2019). "Miratohet projektligji per zyrtaret publik/ The draft law on public officials is approved". Available at: <https://kosova.info/miratohet-projektligji-per-zyrtaret-publike/>

<sup>84</sup> Zeri. (2019). "Thaçi nuk e dekreton Ligjin per Pagat/ Thaçi does not decree the Law on Salaries". Available at: <https://zeri.info/aktuale/241885/thaci-nuk-e-dekreton-ligjin-per-pagat/>

<sup>85</sup> Ibid.

<sup>86</sup> Assembly of Kosovo. (2019). "Law No. 06/L-111 on Salaries in Public Sector". Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18683>

<sup>87</sup> J.-E. LANE. (2000). "The Public Sector: Concepts, Models, and Approaches " B. GUY PETERS. (2001). "The Politics of Bureaucracy ". Available at: <https://www.britannica.com/topic/public-sector>

<sup>88</sup> Assembly of Kosovo. (2019). "Law No. 06/L-111 on Salaries in Public Sector". Article 1. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18683>

<sup>89</sup> Assembly of Kosovo. (2008). "Constitution of the Republic of Kosovo", Article 65. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702> <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2538>

<sup>90</sup> Assembly of Kosovo. (2019). "Law No. 06/L-111 on Salaries in Public Sector". Annex 1. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18683>

servants. Meanwhile, positions from 1.7 to 2.5 include representatives of the education system together with kindergarten educators and high school directors.<sup>91</sup>

More concretely, the law specified that the salary of a civil servant, as the first category referred to in this law, consists of **basic salary and allowances**.<sup>92</sup> The basic salary of a civil servant shall be the part of the salary received for the work performed, and is defined by the salary class to which the respective job position belongs<sup>93</sup>. Classification of a specific position of civil service is done based on the rule for evaluation and classification of job positions in accordance with the legislation on public officials.<sup>94</sup> The class to which a position belongs is determined in the regulation on internal organization of the institution, adopted according to the Law on Organization and Functioning of State Administration and Independent Agencies.<sup>95</sup> In the case of **civil servants with special status**, the Government upon proposal of the Minister responsible for public administration and for employee category where personal grades apply, adopts the equivalence of the position with grade with a sub-legal act.<sup>96</sup> The second part of the salary, the allowances, are received for specific professions in specific key professional positions of civil service. The recruitment or retention of employees in these positions is objectively impossible because private market offers at least 50% higher salaries.<sup>97</sup> This allowance is dubbed the allowance for market conditions and it cannot be higher than 50% of the basic salary.<sup>98</sup> The second type of allowance is the performance allowance, which is received based on annual results of performance appraisal and cannot be higher than 50% of the basic month salary.<sup>99</sup> The other type of allowance is the special allowance, which is received only by officials of Tax Administration and investigation inspectors of the Kosovo Competition Authority, guardians at the correction service, fire-fighters in dangerous operations and civil servants working in the Anti-Corruption Agency.<sup>100</sup> This type of allowance cannot be higher than 40% of the basic salary, except for the civil servants who exercise functions at the Anti-Corruption Agency. In the latter, they may receive allowance up to 20% of the basic salary. The last type of allowance foreseen for civil servants is the overtime allowance. Overtime work is compensated with 50% time off and 50% salary allowance.<sup>101</sup> At the request of the employee, the civil servant may benefit compensatory time off above 50%.

The salaries of the second category referred in this law, the **public functionaries**, are regulated to be fixed salaries equal to basic salary for the function, defined by the salary class.<sup>102</sup> There are no allowances foreseen for public functionaries except for the allowances for deputies. Deputies include the President of the Assembly, Vice President of the Assembly, Chairperson of the parliamentary committee, deputy chairperson of the parliamentary committee and the head of the parliamentary group.<sup>103</sup> The deputies have the right to be compensated participating in the plenary session, for participating in parliamentary committee meetings, as well as for monthly expenditures. It cannot exceed 30% of the basic salary. The members of the Municipal Assembly, the ones participating in standing committees, may get a special allowance of 30% of the basic salary determined for member of the Assembly. An allowance is given once a month and is paid

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<sup>91</sup> Ibid.

<sup>92</sup> Ibid. Article 4.

<sup>93</sup> Ibid. Article 5.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid. Article 6.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid. Article 7.

<sup>100</sup> Ibid. Article 8.

<sup>101</sup> Ibid. Article 9.

<sup>102</sup> Ibid. Article 10.

<sup>103</sup> Ibid. Article 12.

only if members of the Municipal Assembly participate in meetings of Municipal Assembly, respectively in meetings of municipal standing committees. On the other hand, the law determines rewards for part-time functionaries such as members of collegial-type managing bodies (councils, boards, and committees), constitutional institutions, independent agencies and justice system institutions, established by law, who do not exercise a full-time mandate. They are rewarded with 20% of the salary of a full-time chairperson of the collegial body.<sup>104</sup> In the case when the chairperson of a managing body is also a part time worker, then their reward shall be 30% of the salary of the general secretary of the institution for the Chairperson, and 20% for members. The reward is not received every month, it is subject to participation in collegial body meetings, but not less than once a month.<sup>105</sup>

The salaries of **public functionaries with special status**, as the third category, are fixed salaries equal to the basic salary of the respective function, which is defined by salary class or grade.<sup>106</sup> Other functionaries with special status do not benefit any allowance over the basic salary, except for police officers performing tasks in the sectors or risk operations, police inspectorate, customs officers and Tax Administration officials.<sup>107</sup> The special allowance received by police officers cannot be higher than 40% of the basic salary. The special allowance received by the police inspectorate, customs officers and Tax Administration officials cannot be more than 20% of the basic salary.<sup>108</sup>

The salaries of the **cabinet employee**, as the fourth category regulated by law, are fixed salaries equal to the basic salary. Every title of a cabinet employee shall be defined by a salary class. In addition to basic salary, a cabinet employee, with the exception of political advisors, may benefit from a special allowance. This allowance cannot exceed 20% of the basic salary.

The fifth category of the public sector employees the salary law regulates is the **public service employee and administrative and supporting staff**.<sup>109</sup> Their salaries consist of a basic salary, determined according to the salary class, and allowances. The first type of allowance is the allowance for difficult and harmful working conditions. In order to qualify for this type of allowance, the public service employee and administrative and supporting staff shall meet certain criteria.<sup>110</sup> The first criteria to be met is that performance of normal work includes risk for injury, disease or immediate or later health problem, as result of exposure to a working environment where harmful chemical, physical, biological, psychological elements are present. The second criteria is the condition that the health risk is continuous, potential and serious, despite the institution taking steps to improve the situation. This type of allowance cannot be higher than 10% of the basic salary. The second type of allowance to be provided for the public service employee and administrative and supporting staff is the performance allowance for employee of the pre-university education system. This type of allowance is provided for those who show special results at work. The third type of allowance for this category is the special allowance for employees of university education.<sup>111</sup> University professors performing functions such as the function of a Rector, Vice-Rector, Dean and Vice-Dean as well as Head of the Department benefit a special allowance. The value of the allowance cannot exceed 20% of the basic salary. Secondly, university professors may benefit a 10% special allowance for mentoring graduation thesis for all study levels. Thirdly, academic personnel in university education who provide health services in UHCSK shall have a 30% allowance for the full-time job. The last type of allowance for this public

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<sup>104</sup> Ibid. Article 11.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid. Article 13.

<sup>107</sup> Ibid. Article 14.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid. Article 16.

<sup>110</sup> Ibid. Article 17.

<sup>111</sup> Ibid. Article 19.

sector category is the special allowance for employee of health system.<sup>112</sup> Health professionals in UHCSK and MFMC that exercise managing functions shall benefit a special 30% allowance for exercising the relevant function, where it is provided the employer must guarantee this relevant public service. Health system professional employees performing their duty in some specialized professions, in rare areas or in remote locations also benefit from a 20% special allowance over the basic salary.

The last category referred to by law, is the category of **publicly-owned enterprises** employees.<sup>113</sup> The law provides that collegial managing bodies of publicly-owned enterprises with over 50% of state capital shall adopt a salary level set by the Government, within the minimal coefficient 1 and maximal coefficient 7, according to the value of the coefficient determined by this law. On allowances, the collegial managing bodies of publicly-owned enterprises with over 50% of state capital shall adopt an amount of performance allowance, but not more than one annual salary a month, after the publication of positive annual financial results, and upon adoption by the inter-ministerial committee for publicly-owned enterprises. The law went further by providing that, for publicly-owned enterprises operating with losses or subsidised by the state, the Government, upon proposal of the inter-ministerial committee for publicly-owned enterprises, adopts the salary level and performance allowances for employees, by special acts. The Municipal Committee of Shareholders shall, for publicly-owned enterprises with over 50% of capital owned by municipalities, set the level of salaries of their employees. This is to be done within the minimal coefficient 1 and maximal coefficient 5, according to the value of the coefficient determined by this Law. In addition to specifying the salaries of the public sector in Kosovo, the law provides how the calculation and payment of the basic salary is conducted. The law provides the procedure of setting the coefficient value and the fund for allowances. Moreover, the law provides the procedure defining the compensation for travel costs and representation costs, and compensation for diplomatic service staff.

#### *b) Problematic aspects of the law*

As elaborated above, the Kosovo Intelligence Agency (KIA) and the Kosovo Security Forces (KSC) were excluded from the scope of the law. The salaries of public sector employees working in these institutions would be regulated by different public policies. The Central Bank of Kosovo (CBK) is an independent institution created by the Constitution and established by a special law. Contrary to CBK, other institutions such as the Constitutional Court, the Ombudsman, the Auditor General, the Central Election Commission, and the Independent Media Commission, **did not fall under the scope of the law**. The Law on Salaries in Public Sector (LSPS) had decreased the salaries of some public sector institutions and increased that of others.<sup>114</sup> Without the approval of sub-legal acts for which the law provided, it was impossible to identify changes regarding the civil servants. The Ministry of Finance and Transfers clarified that the salaries of about 42% of the positions paid from the state budget will be known only after the approval of sub-legal acts.

In addition, the LSPS determined that **no changes in the salary structure, components or levels and coefficients will be allowed**.<sup>115</sup> In the case a new position is created the entire process goes through the Public Administration Ministry and the Ministry of Finance.<sup>116</sup> These two ministries would determine the salary class applicable to that function, position or job title on the

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<sup>112</sup> Ibid. Article 20.

<sup>113</sup> Ibid. Article 27.

<sup>114</sup> Assembly of Kosovo. (2019). "Law No. 06/L-111 on Salaries in Public Sector". Annex 1. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18683>

<sup>115</sup> Ibid. Article 32.

<sup>116</sup> Ibid.

basis of equivalence. The law provided that the Public Administration Ministry and the Ministry of Finance, upon receiving a request from the institution, assess the equivalent function, position or title with the basic equivalence to the principles of the challenged Law. They then make the proposal for Government approval for the salary class to be applied.

The LSPC principles were contested by many national and international stakeholders. The Ombudsperson received a total of 35 individual complaints from various institutions and entities that the LSCP violates constitutional norms and certain rights and freedoms.<sup>117</sup> The **Central Election Commission (CEC)** maintained that the LSCP inadequately categorised their institution. The CEC argues that they are independent institutions created according to Chapter XII of the Constitution, along with the Ombudspersons, the Auditor General, the Central Bank of Kosovo and the Independent Media Commission. In this regard, the CEC argued the LSPC should respect the constitutional independence of the CEC and maintain current salaries and grades according to CEC internal regulations.<sup>118</sup>

The **Kosovo Judicial Council (KJC)** and the **Kosovo Prosecutorial Council (KPC)** argued that the law violates the constitutional principle of separation of powers and consequently violates the rights of KJC and KPC employees. The KJC also argued that, given the independence of the judiciary, salaries should be determined according to the role and weight of the judicial system. And, consequently, be administered within the constitutional system of the Republic of Kosovo.<sup>119</sup> The Kosovo Police argued the law does not provide that police officers are entitled to the allowance for market conditions.<sup>120</sup> The Kosovo Police Inspectorate (KPI) alleged that its employees are categorised as employees with special status under the Law on Public Officials, while the challenged Law includes only the position of police inspector and no leadership positions in KPI hierarchy.<sup>121</sup> Other complaints mostly related to the level of the institution ranking, determining the coefficients, and the percentage of particular allowances benefits, or the fact that they are independent agencies with their own budget<sup>122</sup>. Such complaints were later submitted to the Constitutional Court through the Ombudsperson, which requested a constitutional review of the law. This is expanded on below.

## V. THE CONSTITUTIONAL COURT DECISION ON THE CONSTITUTIONALITY OF THE LAW ON SALARIES IN THE PUBLIC SECTOR

### a) Ombudsperson's claim

On December 12, 2019, the Ombudsperson filed a claim before the Constitutional Court to assess the LSPS' constitutionality. It requested the Court impose an interim measure for '*immediate suspension*' of the challenged law. The Constitutional Court approved the and later extended it until the decision on the merits of the claim.<sup>123</sup>

The Ombudsperson requested the Court find that **the law, *inter alia* does not reflect the principle of: 1) separation of powers, 2) equality before the law, 3) guaranteeing property rights,**

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<sup>117</sup> Telgrafi.com. (2019), "Avokati i Popullit ende s'ka vendosur rreth Ligjit per Paga, pranon edhe tre ankesa/ The Ombudsman has not yet decided on the Law on Salaries, he also received three complaints ". Available at: <https://telegrafi.com/avokati-popullit-ende-ska-vendosur-rreth-ligjit-per-paga-pranon-edhe-tri-ankesa/>

<sup>118</sup> Constitutional Court of Kosovo. (2020). "Constitutional review of Law No. 06/L-111 on Salaries in Public Sector". Case No. KO 219/19. Para. 74. Available at: <https://gjk-ks.org/en/decision/vleresim-i-kushtetutshmerise-se-ligjit-nr-06-l-111-per-pagat-ne-sektorin-publik-3/>

<sup>119</sup> Ibid. para. 75 and 76.

<sup>120</sup> Ibid. para. 79.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid. para. 71 – 108.

<sup>123</sup> Ibid.

**4) rule of law, as defined by the Constitution.**<sup>124</sup> It considered that the violation of separation of powers is reflected on the missing clear distinction between the three powers, and between the independent institutions established by the Constitution.<sup>125</sup> The law has given “the right to issue sub-legal acts only to the Government and in certain cases to the Assembly” and, in this way, the law applied the same criteria for all public authorities, regardless of the order and separation of powers or constitutional status of public sector entities.<sup>126</sup> In particular, the law does not take into account that many institutions, especially independent institutions, have their own laws with specific provisions specifically regulating the rights and obligations of employees.<sup>127</sup>

The Ombudsperson argued that **the Constitution and relevant laws imply respect to independent branches of power, and require guarantees for institutional, organisational and financial independence of independent institutions** defined by Chapter XII of the Constitution, as well as for the Constitutional Court itself.<sup>128</sup> The Ombudsperson considered that the violation of the equality before the law principle was reflected on the failure of the law to provide ‘*equal salary for equal work*’ in the entire public sector. The law created a divergent situation for equivalent positions, since different institutions showcased different salary levels for same or comparable positions.<sup>129</sup> The Ombudsperson considered that the violation of the rule of law principle was reflected wherein Article 7 of the Constitution - defining the rule of law as one of the values of the constitutional order in the country - was violated.<sup>130</sup> In this context, the principle of legal certainty, the principle of respect for human rights and the prohibition of discrimination and equality before the law, were presented as concepts of the rule of law and argued to have been violated.<sup>131</sup> The final violation argued for was that of the principle of protection of property. It is reflected on the reduction of salaries in a number of entities in the public sector due to the provisions of the law.<sup>132</sup> The Ombudsperson argued that the law has not found a fair balance between public interest and fundamental rights and freedoms of the individual.<sup>133</sup>

#### ***b) The Ministry of Public Administration response***

In its response to the Ombudsperson claim related to the violation of the principle of **separation of powers**, the Ministry of Public Administration (MPA) argued the Ombudsperson did not disclose how the issue of salaries should be regulated based on the principle of separation of powers, and that it moreover did not indicate where the violation of the Constitution occurred.<sup>134</sup> The argument that the principle of checks and balances was violated because the latter did not consider special regulations by particular laws governing some institutions, especially independent institutions is too broad and not limited to the right to pay and, as such, is not true.<sup>135</sup> Many of the laws taken as examples not only do not have any specific provisions, but also note that salaries should be regulated by a law on salaries which, in turn, pertains the challenged Law was approved by the Assembly.<sup>136</sup> The MPA argued that “*The special law as the complainants claim, are not their own laws, because they regulate the establishment,*

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<sup>124</sup> Ibid. para. 57.

<sup>125</sup> Ibid. para 58 and 60.

<sup>126</sup> Ibid. para 59.

<sup>127</sup> Ibid. para 61.

<sup>128</sup> Ibid. para 62.

<sup>129</sup> Ibid. para 66.

<sup>130</sup> Ibid. para 63.

<sup>131</sup> Ibid. para 64.

<sup>132</sup> Ibid. para 68.

<sup>133</sup> Ibid. para. 69.

<sup>134</sup> Ibid. para 112.

<sup>135</sup> Ibid. para 113.

<sup>136</sup> Ibid.

*organization and functioning of their institutions as independent institutions. Law on salaries as a special law that regulates the salaries of employees in the institutions of the Republic of Kosovo, except Law no. 03/L-147 on salaries of civil servants - has not existed in the legal system of Kosovo. So, the challenged Law is the only special law that regulates the salaries of all employees in the institutions of the Republic of Kosovo.”*<sup>137</sup> With regard to separation of powers, the MPA maintained that the LSPS is a law adopted by the Assembly which “*homogeneously aims to establish rules for the management of public money regarding the salaries of the functionaries and public officials*”. Furthermore, it also notes that the Constitution foresees the Assembly exercises legislative powers so, paired with the issuance of the LSPS, the Assembly exercised its constitutional mandate.<sup>138</sup>

The MPA further claimed there are no constitutional or legal obstacles for the purpose of public interest to regulate public sector salaries’ legal environment via the new legislation. In accordance with the European Court of Human Rights case law, the principle of separation of powers obliges the Constitutional Court to respect setting policies by the legislator. Besides, due to the Assembly’s position and democratic legitimacy, it is in better positioned than the Court to determine and advance the socioeconomic policies of the country.<sup>139</sup> The MPA argued that the three branches must exercise their powers in a balanced way without violating and interfering with each other’s competencies.<sup>140</sup> The other argument of the MPA was that the Constitution does not determine how salaries will be set nor the elements that make it up. Yet the Assembly is obliged to respect Constitutional requirements when regulating these relations, especially those deriving from the principles of the rule of law and those protecting constitutional values.<sup>141</sup>

With regard to the **rule of law**, the MPA argued that equality is not merely a formal criterion but should result in equal treatment. To achieve this goal, differentiations may need to be tolerated and or even required.<sup>142</sup> On equality before the law, the MPA argued that legal differences and discrimination are established only to ensure salaries based on the separation of powers, and the law has actually addressed such situation. Discrimination existed until the adoption of the law, and it is argued that the same positions in different institutions, such as certification officers for finance and procurement, earn different salaries because they work in independent institutions - or “in their jargon, in specific institutions”.<sup>143</sup> With regard to the violation of property rights, the MPA argues that the Ombudsperson’s allegations focus entirely on the reduction of salaries paid to individuals and groups of individuals through the challenged law. On this point, the MPA argues it should be assessed whether salaries of those individuals are in line with the principle of equality and non-discrimination and are in reasonable proportion to the same or comparable positions.<sup>144</sup> Related to arguments on public enterprises, the MPA stated that it is worth recalling other countries’ practice, where the principles regarding salaries, benefits and other material rights of members of governing bodies are regulated by the same policy.<sup>145</sup>

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<sup>137</sup> Ibid. para 113.

<sup>138</sup> Ibid. para 114 and 115.

<sup>139</sup> Ibid. para 115.

<sup>140</sup> Ibid. para 116.

<sup>141</sup> Ibid. para 118.

<sup>142</sup> Ibid. para 121.

<sup>143</sup> Ibid. para 123.

<sup>144</sup> Ibid. para 125.

<sup>145</sup> Ibid. para 128.

### c) *The Constitutional Court decision*

On June 2020 the Constitutional Court determined that the **LSPS, in its entirety, is unconstitutional declared it invalid**. According to the Constitutional Court, the law violated basic provisions of the Constitution. Among which: 1) the form of government and separation of power, and the constitutional order values in conjunction with general principles of the judicial system; 2) the organization and jurisdiction of courts and the Kosovo Judicial and Prosecutorial Council; 3) the organization of the Constitutional Court; and 4) the entire chapter regulating independent institutions.<sup>146</sup> The Court found **nine problems in total**. The following problems include:

1. The legislator unreasonably and arbitrary made exceptions for some institutions, (i.e. KSC, KIA, Privatization Agency of Kosovo, Central Bank of Kosovo, and the Assembly) and it contradicted its purpose to harmonize salaries at the level of the entire public sector. It this created unreasonable, unproven and arbitrary differentiations;
2. The legislator omitted the independence of the judicial power and independent institution by not leaving any self-regulatory competence for issues related to the implementation of “functional, organizational and budgetary” independence;
3. The law, despite emphasising salaries are herein, reduced legal regulation on many issues at the level of sub-legal acts. Thus, giving the possibility of sub-legal regulation only to the Executive and the Legislative;
4. Out of a total of 18 competencies to issue sub-legal acts, 16 are for the Government and two for the Assembly, and no self-regulatory competence for the Judiciary or Independent Institutions is foreseen;
5. The Judiciary and independent institutions were not given self-regulatory competence to enjoy their “institutional, organizational, structural and budgetary” independence for internal organization and their staff. The situation created by the law dictates that, should the Judiciary and other independent institutions need to create new positions, they must ask the government for permission;
6. Only one of the sublegal acts to be approved within the 9-month period of *vacatio legis* was approved, namely on 1 December 2019;
7. The law did not foresee salaries for about 42% of positions, since these will ultimately be determined by the relevant classifications in sub-legal acts of the Government;
8. The “additional budget cost” of the challenged Law “is not part of the budget projections 2019-2021”;
9. Even if the challenged Law entered into force today, it could not be fully implemented in the absence of the sub-legal acts.<sup>147</sup>

According to the Court, **the law has undoubtedly created an imbalance in the separation of powers**, which the spirit and letter of the Constitution does not aspire to.<sup>148</sup> This was done given the exception provided to the Assembly that all matters of allowances or remunerations of employees, regular and political staff, and deputies are to be regulated by “special acts” approved by the Presidency of the Assembly. According to the Court, such regulation represents one of the most serious constitutional problems of the law in question. These exceptions are provided to only one branch and, as such, are unconstitutional. In this regard, the Court noted that the law provides that the only other branch authorised to regulate certain matters by sub-

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<sup>146</sup> Ibid. para 295.

<sup>147</sup> Ibid. para 310.

<sup>148</sup> Ibid. para 315.

legal acts is the Government, namely the Executive. The Judiciary and the Independent Institutions have been completely dismissed by the law.<sup>149</sup>

The Court also **criticized the legislative process by declaring it careless**. It argues it leads to an unacceptable situation of legal uncertainty that can in no way be compatible with the Constitution and its values.<sup>150</sup> The Court referred to the fact that, without the approval of sub-legal acts, it is impossible to know the salaries for many positions currently paid from the state budget. For this reason, the law violates the constitutional principle of legal certainty. The Court noted that, if a new law is drafted on this matter, the legislator is obliged to take into account the principles emphasised in this judgment. The “institutional, functional, organizational and budgetary independence” of the Judiciary and Independent Institutions must be recognised, and any legal initiative must respect this independence.<sup>151</sup> The Court ultimately decided the law is unconstitutional.

## VI. WAY FORWARD: HOW TO ADDRESS THE CC FINDINGS IN A NEW LAW ON SALARIES

As examined throughout this paper, regulating all salaries in the entire public sector by one law is an **ambitious undertaking**. Lack of legal bases for paying salaries and different pay for the same work, remain crucial issues to address and problems in the public administration of Kosovo.

In order to address the Constitutional Court findings and recommendations, as well as the concerns raised by trade unions of teachers, health care staff and other affected groups, the Government must devise legislation which **addresses all points identified by all stakeholders**. There can be no simple, homogeneous, fair and transparent unified salary system if public institutions are excluded from the legislation.

Policy regulating public sector salaries must ensure the independence of the three branches in Kosovo, and moreover, **the independence of the independent institutions**. The “institutional, functional, organizational and budgetary independence” of the legislative, executive and judicial power must be recognised, and all legal initiatives must respect this. This principle should apply for the independent institutions as well. All six independent institutions have been created by the Constitution specifically with special regulations and guarantees. Hence, when legislative initiatives are created, they must take into account their independence in the exercise of their public duties, and ensure the legislation does not create “interference” within their independence at the constitutional level. Worth noting, however, is that budgetary independence cannot be interpreted as a never-ending authority for salary policy.

On the point of **separation of powers and general principles of the judicial system**, there are three alternatives to address the issue of ‘the unreasonable and arbitrary exception of some institutions, including the KSC, the KIA, and the Central Bank of Kosovo from the scope of the law’ and the postponement of the implementation of the law to the Privatization Agency of Kosovo. The same applies to the ‘omitted independence of the judicial power and independent institution’, as identified by the Court.

1. First, in order to harmonise all public sector salaries, the law can include all institutions considered as public sector, no exceptions. Instead of providing an exact salary, the law can set the minimum and maximum ceilings. In this way, constitutional independence is

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<sup>149</sup> Ibid. para 314.

<sup>150</sup> Ibid. para 316.

<sup>151</sup> Ibid. para 330.

provided while salaries would be authorised by a general policy adopted by the Assembly, as the legislative body of Kosovo.

2. The second alternative would be to exclude public sector institutions with a special status under the Constitution or which are indirectly financed from the state. This would exclude independent institutions from the scope of the law, for instance. One must recall that the first draft of the MPA did not include institutions such as the Radio Television of Kosovo (RTK) and the Kosovo Pensions Savings Trust Institution (Trust), since they are not financed directly from the state, yet this alternative would indeed encompass them as well. The amendment of the draft on exclusion the KIA and KSC and inclusion of RTK and Trust mixed up the categorisation already provided and changed the policy in its core. As such, the draft did not provide a non-discriminatory policy considering some public institutions of the same status were excluded from the law and some not, or *vice-versa*.
3. The third alternative consists on having separate laws for certain categories. All laws would be drafted based on the same principles and would regulate the issue of remuneration according to the constitutional status of a particular institution. The laws should set the minimum and maximum ceilings consistently for all public sector salaries in Kosovo. Notwithstanding, alternatives two and three go against the main aim of having a unified salary policy for the entire public administration to be drafted based on the principle of equal pay for equal work, since there would be more than one law regulating public sector employees' salaries.

On the point of the **organization and jurisdiction of the judiciary**, the Constitutional Court, independent institutions and the MPA must consider all alternatives to ensure their self-regulatory competence for issues related to the implementation of "functional, organizational and budgetary" independence. The regulation foreseen by the Law on Salaries shall in no way interfere in their function and organisation as institutions. The new law must provide self-regulatory competences for the independent institutions and the judiciary, just like it provided for the government in the discussed draft. This includes the competence to issue sub-legal acts to address organisational and functional issues of each institution under the conditions and limits set by law. As for the budgetary independence, as argued above, the new law should either foresee minimum rules for governing employee salaries, provide that each institution must adopt their sub-legal acts considering their constitutional independence, or the new law should regulate the remuneration system with no exceptions, which would be a less favourable option.

On the point of the **necessity of the legal certainty**, it is a very important principle in every legislative process, especially regulating salaries. Two alternatives exist on the drafting process of the new law.

1. The new law, only after providing self-regulatory competences to the judiciary and the independent institutions, must provide the period of *vacatio legis* (the time when the sub-legal acts must be approved for all the positions), which will not be possible to decipher the salary because the latter will finally be determined through the relevant classifications with sub-legal acts of the proper institution. If the salaries are decreased, the Government should be able to argue it was on the basis of an "extraordinary situation" or "financial difficulty". Otherwise a decrease should not happen. The law must set the minimum rules for governing salaries of employees in such institutions, and provide continuous pay before the law enters into force by means of transitional

provisions. If differences provided after the relevant classifications with sub-legal acts are in their favour, employees should be paid retroactively.

2. The Government, in cooperation with relevant institutions approving sub-legal acts on the classification of employees' positions, draft the law and the sub-legal acts simultaneously. This way, when the law enters into force, the all employees' salaries are easily determined and the principle of legal certainty is safeguarded. As such, the Government would be able to address the Court's concern on budgetary allocations projections for the current and upcoming year. The legislator would clearly specify the salaries of all public institutions employees, be that by using transitional provisions or by drafting sub-legal acts for all positions paid from the state budget, in parallel to the law. Every salary decrease would be justified on the basis of any "extraordinary situation" or "financial difficulty". Otherwise, such a decrease will be considered arbitrarily and without any justification.

By considering these alternatives, the Government would be creating a regulatory policy towards a unified salary system representing a salary scheme for the whole public sector. It therein would address the Constitutional Court concerns.

## VII. CONCLUSION AND RECOMMENDATIONS

### *a) All things considered, policy recommendations for the Government are as follows:*

The public administration reform, including the changes of the current salary system, must be designed based on the realities in Kosovo. This includes the working culture, the institutional set-up and the available capacities, a recommendation from the PAR special group 2018.<sup>152</sup> Most significantly, such a reform must ensure wide public consultation, including trade unions of teachers, health care staff and other affected groups. Such consultations should avoid the lack of the wider reform project.<sup>153</sup>

The new law should aim to set common principles for public sector salaries, a job classification process, implement the salary system across the public service system, and introduce corrective measures to ensure internal fairness and coherence - another recommendation from the PAR special group 2018.<sup>154</sup>

### *b) The new draft law should:*

- **Address all points raised by the Constitutional Court**, namely the unequivocal application of the principle of equality before the law, the principle of fairness, non- discrimination, predictability and lawfulness. This can be done by including all public sector institutions, without exceptions, in one regulatory policy.
- In order to more fundamentally respect the **principle of checks-and-balances on the separation of powers**, the new law should not exclude independent institutions' salary systems from regulation. However, it must ensure that basic principles applicable to those institutions are well-designed and their financial independence is adequately

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<sup>152</sup> PAR special group (2018). "Kosovo's progress on Public Administration Reform". Available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/44545/kosovos-progress-public-administration-reform\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/44545/kosovos-progress-public-administration-reform_en)

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

respected. This bypasses, for instance, fixed modes for setting salaries in independent institutions, general ceilings applicable to their staff, manners to ensure staff is treated equally with other public sector members (equality before the law), pay based on their work and competences equivalently with same positions in other public institutions (principle of fairness and non-discrimination), know the salary amount as set by law (principle of predictability), finally that there be a legal base for their salary (the principle of lawfulness).

- The draft law should **comply more stringently with the principle of legal certainty** to minimise government discretion in setting salary ceilings through sub-laws. The draft law should provide clear criteria for the government to abide when adopting sub-laws. Such criteria must eliminate concerns that government discretion is so high it renders the law itself irrelevant.
- The draft law should **equip independent institutions with regulatory competence on salary policy**, similar to the one of the government under the previous law. The draft law should however respect the government's authority to act as the treasury of the state, with the authority to tell independent institutions whether a certain request for a salary/position is acceptable according to the legal budget allocations. The draft law should also equip the judicial branch, the Assembly and the Constitutional Court with the same discretion on salary policy.
- The draft law should **designate the principle of the scope of public sector more clearly**. Marking the differences between sub-sectors – such as state administration and education, judiciary, etc. – is important to better respect the principle of equality before the law.

## **Policy Analysis**

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.



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