



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

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Prishtina, on 19 December 2019  
Ref. no.: VMP 1492/19

*This translation is unofficial and serves for informational purposes only.*

## **DECISION ON INTERIM MEASURE**

in

**Case No. KO219/19**

Applicant

**The Ombudsperson**

**Constitutional review of Law No. 06/L-111 on Salaries in Public Sector**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

### **Applicant**

1. The Referral was submitted by the Ombudsperson Institution of the Republic of Kosovo (hereinafter: the Applicant).

## **Challenged law**

2. The Applicant challenges the constitutionality of Law No. 06/L-111 on Salaries in Public Sector (hereinafter: Law on Salaries or Challenged Law), published in the Official Gazette of the Republic of Kosovo (hereinafter: Official Gazette), on 1 March 2019, which entered into force nine (9) months after its publication in the Official Gazette, namely on 1 December 2019.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the Law on Salaries, in its entirety, which the Applicant claims to be incompatible with paragraph 2 of Article 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], paragraph 1 of Article 7 [Values], 10 [Economy], 21 [General Principles], paragraph 1 of Article 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality before the Law], 46 [Protection of Property], 55 [Limitations on Fundamental Rights and Freedoms], paragraphs 3 and 7 of Article 58 [Responsibilities of the State], paragraph 2 of Article 102 [General Principles of the Judicial System], paragraph 1 of Article 109 [State Prosecutor], 119 [General Principles] paragraphs 1 and 2 of Article 142 [Independent Agencies], 130 [Civilian Aviation Authority] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 1 of Protocol No. 1 of the European Convention on Human Rights (hereinafter: the ECHR), and paragraph 2 of Article 23 of the Universal Declaration of Human Rights (hereinafter: the UDHR).
4. The Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure with immediate suspension of the challenged Law.

## **Legal basis**

5. The Referral is based on paragraph 2, sub-paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution; Articles 22, 27, 29 and 30 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law); and Rules 32, 56, and 57 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

6. On 5 December 2019, the Applicant submitted the Referral to the Court.
7. On 6 December 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.
8. On 10 December 2019, the Applicant was notified about the registration of the Referral.

9. On the same date, the Referral was communicated to the President of the Republic of Kosovo, and the Acting Prime Minister of the Republic of Kosovo, with instructions to submit eventual comments to the Court, by 24 December 2019. The Referral was also communicated to the Secretary of the Assembly of the Republic of Kosovo (hereinafter: the Assembly) who was requested to submit to the Court all relevant documents on the challenged Law.
10. On 12 December 2019, the Judge Rapporteur recommended to the Court the approval of interim measure. On the same date, the Court decided with majority of votes to approve the interim measure until 30 March 2020. Judge Bekim Sejdiu voted against imposition of the interim measure.
11. On 12 December 2019, the Court also approved the proposal of the Judge Rapporteur that, based on Rule 55 [*Amicus Curiae*] of the Rules of Procedure of the Court, to invite the Venice Commission to submit an Opinion regarding the challenged Law.

### **Summary of facts**

12. On 2 February 2019, the Assembly, by Decision [No. 06-V-310], adopted the challenged Law.
13. The challenged Law governs and determines the salary and remuneration system for public officials and functionaries paid by the state budget, the rules for determining the salaries of employees of publicly owned enterprises in Kosovo, and the criteria for transitional salary and other benefits after the end of the function of public functionary and public functionary with special status, as well as for former high official that is exercising the rights according to the relevant Law.
14. On 1 March 2019, the challenged Law was published in the Official Gazette.
15. Article 34 [Entry in to Force] of the challenged Law foresees that “*This Law shall enter into force nine (9) months after its publication in the Official Gazette of the Republic of Kosovo*”.

### **Applicant's allegations**

16. The Applicant challenges the challenged Law (Law No. 06/L-111 on Salaries in Public Sector) in entirety.
17. The Applicant alleges that the challenged Law and Annex one (1) to it have failed to carry the constitutional spirit as to the guarantee of: (A) *separation of powers*, (B) *equality before the law* and (C) *the property right*. The Applicant also considers that the challenged Law is incompatible with (D) *the principles of the rule of law*.
18. As to the first allegation (A) *separation of powers*, the Applicant alleges that the challenged Law does not adequately provide for the separation of powers as set out in Article 4 of the Constitution, therefore, it is necessary for them to

ensure the principle of separation of powers both hierarchically and operatively in the matter of salaries.

19. Further, the Applicant states that the challenged Law giving the right to issue sub-legal acts only to the Government and in certain cases to the Assembly does not take into account the constitutional requirement to respect the principle of separation of powers set out in Article 4 of the Constitution. This determination as such has an impact on (i) organizational, functional and financial independence, and also interferes with (ii) the control and balancing mechanism that guarantees the democratic functioning of the state. The Applicant therefore claims that the specifics of the constitutional status of the institutions should be respected in their entirety, including the issuance of the sub-legal acts set forth in this Law, and their independence should be preserved and secured. In relation to this allegation, the Applicant challenges certain provisions of the challenged Law as follows: Article 4 paragraph 4, Article 5 paragraph 5, Article 6 paragraph 4, Article 7 paragraph 5, Article 8 paragraph 3, Article 9 paragraph 5, Article 14 paragraph 4, Article 15 paragraph 4, Article 17 paragraph 4, Article 18 paragraph 2, Article 19 paragraph 4, Article 20 paragraph 5, Article 21 paragraph 5, Article 22 paragraph 5, Article 23 paragraph 5, Article 25 paragraph 3 and Article 26 paragraph 2.
20. The Applicant considers that the challenged Law applies the same criteria to authorities, institutions and bodies in the Republic of Kosovo, without regard to the order and separation of powers in accordance with the Constitution and the specificity of the constitutional status of public sector entities.
21. The Applicant states, *inter alia*, that the challenged Law infringes the principle of separation and balancing of powers without regard to the fact that many of these institutions have specific laws, which specifically govern the rights and obligations of the employees of these institutions. According to the Applicant, the challenged Law violates the principle of justice *lex specialis derogat legi generalis*, which stipulates that when a given factual situation falls within the scope of two normative acts, priority is given to the special act over the general act (the challenged Law is general act).
22. The Applicant also states that as regards the independent institutions set out in Chapter XII of the Constitution and the Constitutional Court as established in Chapter VIII of the Constitution, the Constitutional Court's views expressed by Judgment KO73/16 have not been taken into account, in particular paragraphs 88, 97, 98 and 100 of that Judgment. The Applicant also states that he has repeatedly requested the Government as well as the Assembly to consider the Judgment of the Constitutional Court in the course of the review and adoption of laws constituting the package of laws on administrative reform, including the challenged Law in case KO73/16, which was not taken into account.
23. As to the second allegation (B) *for violating the principle of equality before the law*, the Applicant states that the challenged Law, adopted with amendments in the Assembly, failed to provide *equal salary for equal work*, in the entire public sector. Consequently, according to the Applicant, the challenged Law has created a divergent situation for equivalent positions, because in different institutions the same or comparable positions have been assessed with

- different salary levels. In this respect, the challenged Law is incompatible with Articles: 3 paragraphs (2), 21, 22 and 24 paragraph (1) of the Constitution, which establish equality before the law and general principles of fundamental rights and freedoms, as well as Article 7 paragraph (1) of the Constitution, which establishes the values of the constitutional order of the Republic of Kosovo.
24. The Applicant also alleges that the challenged Law is not in compliance with Article 23 paragraph (2) of the UDHR, which stipulates that: *“Everyone, without any discrimination, has the right to equal pay for equal work”*. Accordingly, the Applicant refers to paragraph (1) of Article 22 of the Constitution, which stipulates that the UDHR is applied directly to the Republic of Kosovo and the human rights and freedoms guaranteed by this Declaration take precedence over the provisions in the event of a conflict of laws and other acts of public institutions.
  25. The Applicant states that taking into account that human rights and fundamental freedoms are inseparable, inalienable and inviolable and as such are at the core of the legal order of the Republic of Kosovo, consequently any distinction, exception, limitation or preference in any ground, intended or effected to invalidate or impair the recognition, enjoyment or exercise, in the same way as others, of the fundamental rights and freedoms set forth in the Constitution and the laws applicable in the Republic of Kosovo, present discrimination.
  26. As to the third allegation (C) *guarantee of the property right*, the Applicant also alleges that the challenged Law violates the property rights of individuals or groups of the public sector. The Applicant refers to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution to assess the proportionality of reduction of salaries in the public sector, thus stating: *“In the present case, the Constitutional Court should assess whether the reduction of salaries in a number of entities in the public sector has been made in accordance with Article 55 of the Constitution, which provides for the limitation of fundamental rights and freedoms, the essence of the limited right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and the goal to be achieved, as well as the possibility of achieving that goal with less limitation”*.
  27. The Applicant also alleges that the salary is a “goods” from the point of view of Article 1 of Protocol no. 1 of the ECHR, because the employees have legitimate expectations of *“materializing”* their salaries. The Applicant adds that the reduction of salaries is the main complaint addressed to him and that, in his view, the challenged Law in many sectors *“has reduced salaries”*. Based on the case law of the ECtHR, the Applicant considers that the challenged Law has not found a fair balance between the public interest and the fundamental rights and freedoms of the individual. In this regard, the Applicant alleges: *“The ECtHR emphasizes the obligation of public authorities to maintain a fair balance necessary for the public interest and for the protection of the fundamental rights of citizens. This balance is not reached when citizens have to bear a large and disproportionate burden, with a direct impact on the reduction of economic rights. In these circumstances, there is a violation of*

*Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR), due to a breach of the rationality and proportionality of the reduction in property rights [...] It is clear that budgetary issues impose heavy burdens and disproportionate to employees paid from the budget, without maintaining a fair balance between the public interest and the necessary protection of fundamental human rights. Moreover, in the case of Kjartan Asmundsson v. Iceland, if the amount of benefits has been reduced or stopped, this is a restriction on property rights and this should be justified by the general interest. In essence, the ECtHR considers that a restriction is justified (even where applicants should be in possession of assets) in circumstances where the legitimate aim pursued (balancing the state budget in economic crises) is proportionate, considering the wide margin of appreciation of the state in the economic and social policies and the balance struck by the application of such measures (Hasani vs. Croatia)”.*

28. As regards the last allegation (D) *Principles of Rule of Law*, the Applicant states that the Constitution of the Republic of Kosovo defines the rule of law as one of the values of the constitutional order in the country. In this respect, the Applicant emphasizes the principles of the rule of law, according to the Report of the Venice Commission on the Rule of Law (Adopted by the Venice Commission at the 86th Plenary Session, 25-26 March 2011). In this context, the Applicant highlights some of the principles that are considered relevant in the present case, such as: (i) *Legal certainty* - that requires that legal rules be clear and precise, the purpose of which is to ensure that legal situations and relationships are predictable. Consequently, according to the Applicant, the Assembly is not allowed to ignore the fundamental rights by ambiguous laws. Therefore, it provides legal protection to individuals *vis-a-vis* the state, its organs and agents; (ii) *Respect for human rights* - Respect for the rule of law and respect for human rights are not necessarily synonymous. However, these two concepts largely overlap and many of the rights enshrined in the European Convention on Human Rights refer directly or indirectly to the rule of law; (iii) *Prohibition of discrimination and equality before the law* - in addition to presenting fundamental human rights, they also present concepts of the rule of law.
29. Consequently, the Applicant alleges that the challenged Law contains provisions which are not sufficiently clear and precise, then the Assembly with its approval has circumvented the right not to discriminate and the right to property, which along with other constitutional violations urged the Applicant to refer the challenged Law to the Constitutional Court for assessment.
30. Finally, the Applicant also states that they have received 35 individual complaints from various public sector entities which they consider to be affected by the challenged Law, namely by: 1. Central Election Commission; 2. Kosovo Judicial Council; 3. Kosovo Prosecutorial Council; 4. Association of Kosovo Prosecutors; 5. Anti-corruption experts from the Special Prosecution Office of the Republic of Kosovo; 6. Police of Kosovo; 7. Kosovo Police Inspectorate; 8. Kosovo Forensic Agency; 9. Anti-Corruption Agency; 10. Energy Regulatory Office; 11. Civil Registration Agency; 12. Kosovo Civil Aviation Authority; 13. Agency for Air Navigation Service; 14. Independent Judicial Union; 15. The Kosovo Civil Service Trade Union and the Independent

Trade Union Administration of Kosovo; 16. Kosovo Academy of Sciences and Arts; 17. Institute of Forensic Medicine; 18. University Clinical Center Administration; 19. Chamber of Nurses, Midwives and other health professionals; 20. Trade Union of Nurses, Midwives and other health professionals; 21. Teacher Initiative Council for grades 1-5; 22. Radio and Television of Kosovo; 23. New Trade Union of Kosovo Energy Corporation; 24. System, Transmission and Market Operator; 25. KOSTT Independent Trade Union; 26. Independent Trade Union of Post and Telecommunication of Kosovo; 27. Information Society Agency within the Ministry of Public Administration (TIK); 28. Veton Çoçaj – certifier; 29. Pajtim Zogaj – inspector in the Inspectorate of Cultural Heritage; 30. School psychologists and pedagogues; 31. Central Harmonization Unit for Internal Audit at the Ministry of Finance and Internal Auditors from central and local level; 32. Health professionals / doctors employed in the Ministry of Health; 33. RAEPC engineers staff; 34. Water Services Regulatory Authority and 35. University of Prishtina Trade Union.

31. Allegations of interested entities, institutions:

**1. Complaint by the Central Election Commission (CEC)**

The CEC alleges that the challenged Law has inadequately categorized the CEC towards constitutional responsibility of this institution. The complainant states that according to Chapter XII of the Constitution of the Republic of Kosovo, the independent institutions have been established as: the Ombudsperson, the Auditor General, Central Bank of Kosovo, Central Election Commission and Independent Media Commission. The complainant further alleges that the CEC has never been treated in the same way as other institutions which have the same constitutional basis, although the nature of their responsibilities is not the same as that of the CEC. The CEC, pursuant to Law No. 03/L-073 on General Elections in the Republic of Kosovo; pursuant to Judgment KO 73/16 of the Constitutional Court and pursuant to Article 17 of the Rules of Procedure of the Central Election Commission, has issued its internal rules of procedure. As a result, the CEC assigned grades and coefficients to its employees on the basis of job specifics. In this regard, the CEC requests that the Law on Salaries in Public Sector respects the constitutional independence of the CEC, as an independent institution and maintain current salaries and grades according to the CEC internal regulations (Regulation No. 02/2017 on Job Descriptions and Classification of Jobs in the Central Election Commission Secretariat).

**2. Complaint by the Kosovo Judicial Council (KJC)**

The KJC alleges that the adoption of the challenged Law inevitably renders inapplicable in practice the constitutional principles of the Constitution of the Republic of Kosovo and consequently of the international agreements that the Republic of Kosovo has concluded with the European Union, more specifically, Stabilization and Association Agreement, which is concluded in the spirit of respecting the criteria for separation of powers. The complainant states that this law is in violation of the Constitution of the Republic of Kosovo because it violates the principle of equality of powers and consequently violates the rights of KJC employees. The complainant alleges that, according to Article 4 of the

Constitution of the Republic of Kosovo, the judicial power is unique, independent and exercised by the courts, which results in the judicial power being equal to the legislative and executive power, therefore, under this rule, employees should be treated equally, in particular the salaries of civil servants at all three levels (powers). The complainant also states that, given the fact that the judiciary is independent, the salaries should also be determined in accordance with the role and weight of the judicial system and, consequently, its administration within the constitutional system of the Republic of Kosovo. The complainant further alleges that the challenged Law did not include some of the existing positions of the judiciary, which is due to the fact that the Government and the Assembly did not take into account the comments and proposals submitted by the KJC. The complainant also refers to and considers as part of this referral the request from the Independent Trade Union of Judiciary of the Republic of Kosovo. In view of all the abovementioned circumstances, the complainant requests the Ombudsperson to refer the case to the Constitutional Court for the purpose of assessing the constitutionality of the challenged Law.

### **3. Complaint by the Kosovo Prosecutorial Council (KPC)**

KPC alleges that the challenged Law is not in accordance with the Constitution of the Republic of Kosovo and violates the principle of equality of powers and consequently violates the rights of employees in the Kosovo prosecutorial system. The complainant requested the compensation of salaries in accordance with the principle of separation and equality of powers, as provided by the Constitution, namely that the judiciary should be equal to the legislative and the executive in terms of salaries. In this respect, the complainant requested that the challenged Law be harmonized in Annex 1 so that the position of Chairperson of the Council and of the Chief State Prosecutor could be transferred to the subgroup of A2 positions, with a coefficient 10. The complainant requests that the Deputy State Prosecutor receive 95% of the salary of the Chief State Prosecutor. The complainant further alleges that according to the amendments made to Law No. 05/L-032 on Courts, the prosecutors of the Office of the Chief State Prosecutor, the Special Prosecution Office of Kosovo and the Chief Prosecutor of the Appellate Prosecution Office receive 90% of the salary of the President of the Supreme Court. Prosecutors of the Appellate Prosecution receive 90% of the salary of the Chief Prosecutor of the Appellate Prosecution. Also, 90% of the salary of the Chief Prosecutor of the Appellate Prosecution Office is received by the Chief Prosecutors of Basic Prosecutions. Prosecutors of Serious Crimes Department receive 90% of salary of Chief Prosecutor of Basic Prosecution, while the General Department prosecutors receive 85% of the salary of the Chief Prosecutor of the Basic Prosecution. The salary scheme explained above is considered by the Prosecutorial Council in accordance with the Constitution of the Republic of Kosovo, namely in accordance with Article 21, paragraph 1, item 10 of the Law on State Prosecution. The complainant announced that it would not accept that the salary of the Chairperson of the Council and the Chief State Prosecutor be equal to the executive power and that the salary of basic level prosecutors be in the A9 position group, with a coefficient of 5.5, as this violates Article 4 of the Constitution and contradicts the basic laws that regulate the courts and the prosecutorial system.

#### **4. Complaint by Kosovo Prosecutors Association**

The complainant alleges that the challenged Law is in violation of the Constitution of the Republic of Kosovo. The complainant states that Article 4, paragraph 1, of the Constitution provides that Kosovo is a democratic republic, based on the principle of separation of powers, control and balance between them. According to the complainant, this means balancing the obligations, but also the rights of the three powers, which must also be balanced in terms of salaries. The complainant further alleges that, in accordance with Article 4 of the Constitution, there are five constitutional categories that should be treated equally and they are: the President, the Assembly, the Government, the judiciary and the Constitutional Court. In this regard, the complainant states that in the annex to the challenged Law, the President of the Supreme Court, the Chief State Prosecutor, the Chair of the Judicial Council, and the President of the Prosecutorial Council are listed in Class A4 with coefficient 8, which is two categories lower than the President of the Assembly, than the Prime Minister and than the President of the Constitutional Court, who are listed in Class A2, with coefficient 9. According to them, this difference is contrary to the provisions of Law No. 06/L-054 on Courts (Article 35, paragraph 1, subparagraph 1.1); of Law No. 03/L-225 on the State Prosecutor (Article 21, paragraph 1, subparagraph 1.1) and Law No. 03/L-001 on Benefits to Former High Officials (Article 3, as amended by Law No. 04/L-038, Article 3, paragraph 2), because, under these laws, the President of the Supreme Court and the Chief State Prosecutor are equal to the President of the Assembly and the Prime Minister. The other issue raised by the complainant is the provision of Article 13, paragraph 3, of the challenged law, which does not provide for any additional allowances on basic salary for special status functionaries, a category that includes both judges and prosecutors. Whereas, according to Article 12 of the same law, special allowances belong to certain categories of deputies of the Assembly of the Republic of Kosovo. The complainant also considers that the challenged Law not only violates the principle of balancing the three powers, but also discriminates between different positions within the judicial system. The complainant considers that this discrimination lies in the fact that Annex 1 of the challenged Law in Class A5, with a coefficient of 7.75, lists the judges of the Supreme Court of Kosovo, while in a category below, in Class A6, are listed Prosecutors of the Office of the Chief State Prosecutor, with the coefficient 7.5. According to the complainant, this provision only discriminates against Prosecutors of the Office of the Chief State Prosecutor and Prosecutors of the Special Prosecution Office of the Republic of Kosovo, because judges and prosecutors in other instances of the judicial and prosecutorial system are equal in terms of salaries. The complainant also considers that the Constitutional Court should address the provision of Article 28, paragraph 1, of the challenged Law. This provision provides that for the system of salaries, allowances, bonuses and Annex No. 1 shall not apply to a public functionary with special status: a judge of the Constitutional Court, a judge, a prosecutor, the President of the Judicial Council and the President of the Prosecutorial Council, until 31 December 2022. According to the Kosovo Prosecutors' Association, this provision allows for the reduction of salaries for judges and prosecutors from 1 January 2021, by approximately half, which is contrary to the principle of independence of the judicial power provided for in

Article 4, paragraph 5, Article 102, paragraph 2, and Article 109, paragraph 1, of the Constitution.

## **5. Complaint by experts on anticorruption from the Special Prosecution Office of the Republic of Kosovo**

The complainants allege that the challenged law violates the following constitutional provisions: The values on which the constitutional order of the Republic of Kosovo is based (Article 7), human dignity (Article 23), equality before the law and prohibition of discrimination (Article 24) and the right of property (Art 46). Anticorruption experts from the Special Prosecution Office of the Republic of Kosovo stated that their title under the appointment act is expert, while the current salary under the same act is 1,450.00 euro, including allowances. Whereas, according to Annex 1 of the challenged Law, the position of the expert on anticorruption, belonging to the category of expert in court and prosecution, is foreseen in Class L6, with a basic salary of 836.50 euro. Further, anti-corruption experts pointed out that the challenged Law divides Annex 1 into the ranking of positions, so that for experts in the State Prosecutor is provided number position 92, with coefficient 2.9, also the position number 93, with coefficient 2.65, but also the position 194, which includes experts in the prosecution, with a coefficient 3.5. This division is reflected in the respective salaries. The anti-corruption experts of the Special Prosecution regard this division as discriminatory, but also as confusing, as it is not known precisely in which position they should be categorized. This is due to the fact that 5 expert positions exist throughout the administration of the Kosovo Prosecutorial Council and the State Prosecutor's Office and actually work in the Special Prosecution Office while reporting directly to the Chief Prosecutor of the Special Prosecution Office. In this regard, the Applicants have emphasized the issue of the prohibition on retroactive effect of the law and emphasize that their case concerns property rights, as provided for in Article 46 of the Constitution, in conjunction with Article 1 of Protocol 1 to the ECHR. Also, anti-corruption experts challenge the disproportionality of the challenged Law, noting that some institutions are excluded from the categorization and have the right to set their own salary levels. In the challenged Law these institutions are listed before the Special Prosecutor's Office, which according to anti-corruption experts, represents discrimination. Furthermore, the Special Prosecutor's Office of the Republic of Kosovo, according to the experts on anticorruption, has been deprived of the right to benefit from risk allowances and other allowances. Further, anti-corruption experts point out that any legislation of the Assembly must take into account the Constitution and the Constitutional Court of Kosovo. In the request of anti-corruption experts from the Special Prosecution is further stated that the Special Prosecution Office of the Republic of Kosovo is a constitutional institution with specific specifications, and this should also be reflected in the reclassification of jobs. According to Annex 1, which presents the job catalog, the principle of equal pay for the same work has been violated because anti-corruption experts are listed together with professional associates and it is not known on what legal basis these experts were reclassified. According to them, the discrimination lies in the fact that the job of Expert in the Special Department for Anticorruption is equivalent to other positions in other institutions, because their job requires broader and specific legal knowledge,

and it cannot be compared with the work of experts in other institutions, nor with the work of professional associates. Anticorruption experts request that their position be categorized similar to legal advisors in the Constitutional Court, in category L4, with a coefficient 5.5. They also request to take into consideration the fact that all experts already have eight years of experience in the fight against corruption, organized crime, money laundering and other offenses being investigated by the Special Prosecution Office of the Republic of Kosovo. Anticorruption experts also refer to the case law of the Constitutional Court, namely Judgment no. KO 73/16, of 8 December 2016, where the constitutional review of Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo, upon the request of the Ombudsperson was made.

## **6. Complaint by the Police of Kosovo (PK)**

The PK alleged that the challenged Law does not provide that police officers are entitled to the allowance for market conditions (Article 6, paragraph 1). The PK alleges that the challenged Law, namely Article 6 [Allowance for market conditions], Section 13 [Salary of public functionary with special status], Article 14 [Special allowance for the public functionary with special status], are inconsistent with Law No. 04/L-076 on Police, namely Article 47. Concerning these uncertainties, the PK has commented earlier requesting that the police officers also be included and enjoy the right to market conditions allowance and taking of two (2) allowances not be restricted. The comments of the Police of Kosovo were not taken into consideration by the Ministry of Public Administration.

## **7. Complaint by Police Inspectorate of Kosovo (PIK)**

KPI claims that its employees are categorized as employees with special status under the Law on Public Officials, while in the challenged Law, in Annex No. 1 includes only the position of police inspector, but not other leadership positions according to the PIK hierarchy. PIK proposes to include other leading positions in Annex No.1, as follows: PIK Chief Executive, head of PIK Department, Head of Operational Division at PIK, and rank them in equivalence with positions in the Police of Kosovo, requesting that the level of salaries for PIK leadership positions be included in the Annex 1. According to the allegations, PIK enjoys the right to risk because of the nature of the work and proposes that Article 14 of the challenged Law, which regulates special allowances for public functionaries with special status, to include PIK operational staff in order for them to receive a special allowance for tasks they perform in the sector or in special operations with life-threatening effects, to treat PIK operating staff alongside Kosovo Police officers.

## **8. Complaint by Kosovo Forensic Agency (KFA)**

The KFA claims that the challenged law, the salaries of the KFA employees are reduced by about 20%. The KFA further claims that this law violates the principle "*same salary for same work*", because this agency has the same system of grades as the Police of Kosovo. This rank system according to the KFA is set out in Article 17 of Law 04/L-064 on the Kosovo Forensic Agency

and sub-legal acts. Given the job risks that employees of this agency carry out, as well as the fact that the qualification and promotion of the agency is based on work experience as well as on the various trainings carried out for a time relatively long and in countries such as the US, Switzerland, Turkey etc., the complainant alleges that the agency employees are the holders of professional and competency tests since the KFA have been verified at the secret level. The complainant alleges that their activities pose great risks because they are expert in the areas of ballistics, fingerprinting, narcotics, Serology and DNA, then confronting agency employees through court testimony and to the prosecution for the tests handled by them. Based on the above, the agency claims that they face the same risks and difficulties of work as the Police of Kosovo, such as the Police Inspectorate and the Intelligence Agency, because by Law No. 05/L- 022 on Weapons (Article 2, paragraph 1, sub-paragraph 1.1), by Law no. 05 / L-0 17 on Amending and Supplementing the Law no. 03/L-246 on Weapons, Ammunition and Relevant Security Equipment for Authorized State Security Institutions (Article 1), determine that the Kosovo Forensic Agency is part of the state security institutions as the Police of Kosovo, as the Police Inspectorate, and as the Kosovo Intelligence Agency.

#### **9. Complaint by Anti-Corruption Agency (ACK)**

The ACK claims that it has been discriminated against both at the level of the institution ranking, in determining the coefficients, as well as in terms of the percentage of the benefit of particular allowances. The ACK concerns mainly relate to the benefit of special allowances to civil servants, who in the ACK as a benefit on behalf of special allowances enjoy up to 20% on basic salary, according to Article 8 of Law no. 06/L-111. The ACK states that it is ranked at number 32 by importance level and considers this to be an impairment of its role and importance. Further, the ACK states that the level of salary or the determination of coefficients for its staff has not been made at all according to the duties, responsibilities or functions exercised by ACK officials. The salary of the Director of ACK has been reduced compared to the actual salary, which according to them, underestimates the role and level of responsibility of this position. This agency considers the reduction of the level of salaries of ACK employees as discrimination. For these reasons, the ACK addressed its concerns to the Ombudsperson, requesting that its complaint be examined and all presented facts and circumstances, so that the ACK, based on its role and importance, is listed as it was, in parallel with other law enforcement agencies (police, prosecution, customs, National Audit Office) and enjoy special allowances, just like other law enforcement agencies.

#### **10. Complaint by Energy Regulatory Office (ERO)**

ERO claims that the inclusion of ERO in the challenged Law and Law no. 06 / L-113 on the Organization and Functioning of State Administration is in violation of the Constitution, contrary to the relevant provisions of the European Directives (Package III, of the European Union energy legislation) and contrary to Law No. 05/L-084 to the Energy Regulator, in particular to the provisions relating to the financial independence of the Energy Regulator. ERO states that it is financed from own source revenues, namely from taxes collected from energy sector licensed companies and operators and not from

the budget of the Republic of Kosovo. ERO claims to have the status of an independent agency under the Constitution of the Republic of Kosovo, Article 142, paragraph 1, and has its own budget, which is administered independently, pursuant to Article 142, paragraph 2, of the Constitution. In addition, Law no. 05/L-084 on the Energy Regulator has established ERO as an independent agency, defining its duties and responsibilities. Further, ERO states that it is financed from own source revenues, while Articles 21 and 22 of Law no. 05/L-084 on the Energy Regulator emphasize ERO right to use its own revenue, thus setting its own budget according to specific needs. ERO also states that it is a contracting party to the Energy Community and is obliged to adopt and implement the Energy Community directives, including the Third Energy Package, which sets out strict requirements for energy regulator's decision-making and financial independence.

ERO further notes that Chapter IX of the Internal Market Directive (Directive 2009/72/EC) of the European Parliament and of the Council, in Article 35.5, requires *inter alia* that Member States ensure that the regulatory authority has separate allocation from the budget and autonomy in implementing its own budget. ERO also draws attention to Kosovo progress reports, which emphasize the need for independence of the ERO budget. ERO considers its staff to be one of the most important resources and considers that staff salaries should be in line with the level of regulated industry salaries, in order to avoid staff departures to industry and to enable ERO to maintain and attract qualified and sufficient human resources. Whereas according to the ERO, the challenged Law potentially endangers the departure of ERO staff. ERO announces that they have followed these requirements during the drafting period of these laws, but have not been considered.

#### **11. Complaint by the Civil Registration Agency (CRA)**

The CRA claims that staff in management and sub-management positions in the vehicle registration centers and in the supply documentation centers in the Civil Registration Agency are not satisfied with the coefficients set by the challenged Law, which, according to CRA- are in violation of Law No. 06/L-114 on Public Officials. The CRA stated that the new coefficients were not determined in accordance with the work nor with the responsibilities at the vehicle registration centers or at the supply documentation centers at the Civil Registration Agency, because these duties and responsibilities are much higher than those set by the coefficients and in this respect require that salaries be adjusted based on Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies and Law No. 06/L-114 on Public Officials (provisions for management level) and to be supplemented in Annex No.1 to the challenged Law, for management positions in the Civil Registration Agency. The CRA claims that its staff should be paid the same salary for the same job, pursuant to Article 3, paragraph 1, item 1.3, of the challenged Law, because it considers that they have been discriminated against because they have equal positions, duties and responsibilities the same as officials in ministries and other institutions provided by Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies.

## **12. Complaint by the Kosovo Civil Aviation Authority (CAA)**

The CAA claims to be a separate constitutional category, as provided by Article 130 of the Constitution of the Republic of Kosovo. According to the Constitution, the CAA regulates civil aviation activity in the Republic of Kosovo and is a provider of air navigation services. The complainant also states that, under Law No. 03/L-051 on Civil Aviation, the CAA is an independent regulatory agency that governs all aspects of civil aviation security and is responsible for the economic regulation of airports and of the air navigation service providers. Further, the CAA alleges that the salaries of its staff are set out in Article 24, paragraph 2, of Law No. 03/L-051 on Civil Aviation. According to this law, the Minister of Finance has adopted a salary scheme, which is competitive and has enabled the attraction of professional personnel in the field of aviation. In addition, the CAA states that it generates its own revenue for its operation, from security fees, from licensing fees, certification and supervision fees for civil aviation operators. The complainant notes that Annex 19 of the Convention on International Civil Aviation states that States must take the necessary measures, such as: setting remuneration and providing conditions of service to ensure the recruitment and retention of personnel qualified to perform civil aviation security oversight functions. In addition, the CAA states that the International Civil Aviation Organization (ICAO), in its safety oversight manual, stipulates that civil aviation staff must enjoy conditions of employment that are competitive with those provided by the civil aviation industry. The CAA also notes that in the private sector of the civil aviation industry in the Republic of Kosovo, the salaries are significantly higher than the level of pay under the challenged Law. Moreover, according to the CAA, there is a possibility for CAA professionals to find work in the international labor market. AAC, highlights personnel concerns due to a high reduction in salaries for professional aviation staff and draws attention to the pay difference caused by the different pay grades within the CAA.

## **13. Complaint by the Air Navigation Service Agency - ANSA**

ANSA claims that its inclusion in the challenged Law infringes its autonomy in applying the provisions of international agreements that are binding on the Republic of Kosovo.. ANSA states that the Agreement on the Establishment of the European Common Aviation Area (ECAA Agreement), in Article 13, and Annex 1, item B, envisages financing and setting fees for the use of air navigation services. This funding is based on the “user pays” principle, which, according to ANSA, was violated by its inclusion in the challenged law. Furthermore, ANSA states that the Stabilization and Association Agreement that the Republic of Kosovo has signed with the European Union, in Article 53, stipulates that the basis for the operation of civil aviation activity is in the ECAA Agreement. Also, ANSA emphasizes its role in the control of the airspace of the Republic of Kosovo, its importance as an agency for the alarm of the unauthorized violation of the airspace of the Republic of Kosovo and efforts to fully acquire airspace management competencies. According to the complainant, its main resource is staff consisting of specialized professionals in the field of air navigation. With the inclusion of ANSA staff in Law no. 06/L-111 on Salaries these professionals risk leaving Kosovo to pursue careers

elsewhere. The complainant also states that the allocation of salaries and other expenses of ANSA as a consequence of the signing of the ECAA agreement is based on European Union Regulation No. 1794/2006 transposed through Regulation 3/2016 of the Civil Aviation Authority of Kosovo, which sets the fee for aeronautical service users. The complainant finally considers that the treatment provided by Law no. 06/L-111 on Salaries in Public Sector will also have a direct impact on the trust built with stakeholder, with a particular emphasis on NATO, KFOR and airlines.

#### **14. Complaint by the Independent Judicial Trade Union of the Republic of Kosovo (IJTURK)**

The IJTURK alleges that the challenged Law made unfair, discriminatory, degrading treatment, which contradicts the basic principles of the Constitution, conflicts with the contractual relations and the challenged Law itself, due to the inequality of compensation "*same salary for same work*". The IJTURK bases this allegation on Article 4 of the Constitution, which deals with the separation of powers and clearly states that the judicial power is separate and equal to the legislative and executive power. Further, the Trade Union claims that this law preserves the salaries of prosecutors and judges in relation to their current salaries, but this has not happened with the rest of the judicial and prosecutorial support and management staff in relation to the salaries and coefficients of the management and support staff of the legislative power, thus directly affecting the reduction of basic salaries for almost all management and support positions, and this law also created a very high difference between the salaries of prosecutors and judges and the salaries of the support staff of both budget organizations..

#### **15. Complaint from the Kosovo Civil Service Trade Union and the Independent Trade Union of the Administration of Kosovo**

The Kosovo Civil Service Trade Union and the Independent Trade Union of Kosovo Administration claim that the challenged Law is discriminatory, unrealistic, partial and, above all, unconstitutional. According to the complainants, the challenged Law violates the provisions of Article 3, Article 21, paragraph 1, Article 24 and Article 58, paragraph 3 and paragraph 7 of the Constitution of the Republic of Kosovo. The complainants further allege that this law has seriously violated the principle of "*equal salary for the same or similar jobs*", the principle of non-discrimination of workers and the principle of legality. The complainants notify that this law infringes the exercise of the right to special allowances for management positions and for administrative-technical staff at both levels of the public administration of Kosovo. According to the complainants, this is infringed by the provision of Article 12, paragraph 4, of the challenged Law. According to the complainants, this law does not include fair, non-discriminatory, comprehensive, principled, realistic, objective and correct solutions, nor with regard to salary levels, neither in terms of fair and equal treatment of the same categories according to the principle of equal or similar work, same or similar salary. For this reason, according to the complainants, this law creates inequality and dissatisfaction, deepens differences and problems in the civil service and in the state administration of Kosovo.

## **16. Complaint by the Kosovo Academy of Sciences and Arts (ASAK)**

The KASA claims that its inclusion in the challenged Law undermines the status of a member of the academy. The KASA states that it is an institution established by the Assembly of the Republic of Kosovo and has a special law: Law no. 05/L-038 on the Kosovo Academy of Sciences and Arts (Article 2). The KASA maintains that it is an independent institution in the field of science and art, while the activity of the academy is an activity of special public interest in the Republic of Kosovo. Also, the issue of remuneration of the member of KASA is regulated by the Law on the Kosovo Academy of Sciences and Arts (Article 25). According to the KASA announcement, it is understood that its members receive no salary, but receive a remuneration, which is characteristic of all academies of sciences, and the current provisions of the challenged Law contradict this rule. The KASA claims that the challenged Law generally violates the Law on the Kosovo Academy of Sciences and Arts, which was not taken into account at the time of the adoption of the challenged Law.

## **17. Complaint from the Institute of Forensic Medicine (IFM)**

The IFM calls for the suspension of the application of Article 33, paragraph 1.8, of the challenged Law, for the IFM staff, and upholding the allowance on basic salary of 30%, for every hour of work as a hazard provided by Article 13, paragraph 1, of Law no. 05/L-060 on Forensic Medicine, pending the approval of the sub-legal acts provided for in Article 31 of the challenged Law and the meritorious assignment of the allowance for occupational hazard to the IFM staff. The IFM states that during the drafting of the challenged Law, the fact that the IFM is the only and specific body in the Republic of Kosovo was not taken into account, by the nature and specifics of the work carried out in this institute. For this reason, the IFM requires that the grades of its employees be allocated based on merits, taking into account the fact that IFM is the only and specific body in the Republic of Kosovo, and the role it has within the institutions of the Republic of Kosovo. Finally, the IFM requests its supportive staff has the same status at UCCK and other health institutes.

## **18. Complaint from University Clinical Center Administration**

The University Clinical Center Administration claims that the challenged law reduces the current administrative positions of the administrative staff of the UCCK-HUCSK. The complainants allege that pursuant to Law No. 04/L-125 on Health, Article 3, paragraph 1, subparagraph 1.28, defines the administrative organization within public health institutions defining the administration as a professional service. Also, Article 62, paragraph 6, of this law stipulates that all employees of HUCSK do not belong to the civil service, but are public servants. The complainants allege that the Law on Salaries in Public Sector violated the principle "same salary for same work", that resulted in a violation of the constitutional provision "Equality before the law". Finally, the complainants seek equal treatment in order not to be discriminated against in respect of the responsibility and work they perform in the Institution of the University Clinical Center of Kosovo and the HUCSK.

## **19. Complaints from the Chamber of Nurses, Midwives and Other Health Professionals**

The Chamber of Nurses, Midwives and Other Health Professionals (hereinafter: the Chamber) claims that this law (challenged Law) deepens the social gap in the Republic of Kosovo. Further, the Chamber notes that under the challenged Law, nurses, midwives and other health professionals are categorized by coefficient 2.2 without any analysis and without regard to any basic criteria for such categorization. According to Chamber, in this case the basic criterion, that of education, was not taken into account, when it is known that among these employees are those with doctoral degrees, master degrees, bachelor etc. The Chamber further notes that all employees are categorized with the same coefficient. According to Chamber, this law violates the universal values protected by the Constitution, which in Article 7 states that the constitutional order is based on the principle of freedom, peace, democracy, equality (emphasis added), respect for human rights and freedoms and the rule of law, non-discrimination; property rights, social justice. On this basis, this law seriously violates the principle of equality, is discriminatory and does not promote the principles of social justice, but deepens the social gap in our country.

## **20. Complaints from the Trade Union of Nurses, Midwives and Other Health Professionals**

The trade union of nurses, midwives and other health professionals claims that the challenged law has divided nurses into three groups: the first group with a coefficient of 2.2 for primary care; second group with a coefficient of 2.25 for secondary and tertiary services; and the third group of physiotherapists with coefficient 3.2, although they have the same work, function, position, or grade as nurses, midwives, and other health professionals. The trade union considers that this division is contrary to the principle of equal pay set forth in Article 3, item 1.3, of the challenged law, which implies that each salary beneficiary receives equal pay for work in the same function, position or grade, or comparable. Also, the trade union considers that the increase of the coefficient to 3.2 for all is important to avoid departure from Kosovo of nurses, given the large number of them who have applied for work visas in the European Union countries..

## **21. Complaint from the Teacher Initiative Council of Grades 1-5**

The Teacher Initiative Council of Grades 1-5 (hereinafter: the Council) claims that the challenged Law violates the principle "*same salary for same work*", because teachers of grades 1-5 are not treated the same as teachers of grades 6-9. The Council claims that, according to the Annex to the challenged Law, the teachers of lower secondary schools 6-9 are categorized with a coefficient of 2.45, while teachers of lower secondary schools are categorized with a coefficient of 1-5 are categorized with a coefficient of 2.3. The Council claims that the same criteria were not taken into account in this case and were treated differently from the teachers in grades 6-9. The Council finally expresses dissatisfaction about this treatment, and I also does not know what criteria the

Government and the Assembly have taken into account at the time they made this distinction in the regulation in the challenged Law.

## **22. Complaint from Radio Television of Kosovo (RTK)**

RTK claims that its inclusion in the challenged law has violated its institutional, editorial and public broadcasting status to RTK. RTK states that, pursuant to Law No. 04/L-046 on Radio and Television of Kosovo, RTK, in the capacity of a Kosovo public broadcaster, has the status of an independent public institution, which provides services in the field of media activity. RTK claims to have received feedback from the European Broadcasting Union, which states that RTK's inclusion in the challenged Law is in contradiction with the Constitution and Law No. 04/L-046 on Radio Television of Kosovo, encouraging Kosovo authorities to adopt the new RTK law to ensure institutional and editorial autonomy, including the autonomy of human resources. RTK mentions the supremacy of the Constitution over laws and the fact that international agreements ratified by the Republic of Kosovo become part of the domestic legal system. In this regard, RTK refers to the recommendation of the Council of Europe No. R(96)10 regarding the guarantee of the independence of the public service broadcaster. Furthermore, RTK also refers to other international instruments that protect the institutional independence of Public Broadcasters in Europe, such as: Amsterdam Protocol from 1997, Council of Europe Document CoE2012/1, EBU Values and Standards on the Institutional and Editorial Independence of the Public Broadcaster.

## **23. Complaint from New Trade Union of Kosovo Energy Corporation**

The New Trade Union of the Kosovo Energy Corporation claims that the work of KEK workers differs from that of civil servants because KEK workers work in very difficult conditions, which is reflected in their health condition and the fact that a considerable number of workers die without reaching retirement age. According to the KEK New Trade Union, the challenged law infringes on the free market economy and does not comply with the Law on Labor. KEK New Trade Union finally requests that the hazard of KEK activity be taken into account, and since KEK is the most profitable company in the country, it should be removed from the scope of the challenged Law and act independently.

## **24. Complaints from System, Transmission and Market Operator - KOSTT j.s.c.**

System, Transmission and Market Operator - KOSTT j.s.c., alleges that Article 27 of the challenged Law is not in accordance with the Constitution, requesting the exclusion of the publicly-owned enterprise System, Transmission and Market Operator -KOSTT KOSTT j.s.c. from the scope of this law. KOSTT also recalls the principle of a free market economy expressed in Article 10 and Article 119 of the Constitution, reflected in Law No. 03/L-048 on Publicly Owned Enterprises. KOSTT also recalls the principles of independence and autonomy of publicly owned enterprises in terms of legal organization,

decision-making, implementation of the principle of legality and the supervisory function of the activity of public enterprises by the relevant regulatory authorities, as expressed in Article 119 of the Constitution. KOSTT emphasizes that notions of independence of publicly owned enterprises, in accordance with the Constitution, are expressed in Law No. 03/L-048 on Public Financial Management, which distinguishes between autonomous publicly owned enterprises, such as KOSTT and other publicly owned enterprises and other agencies. KOSTT considers that limiting the salary (coefficient factors) for publicly owned enterprises, pursuant to Article 27 of the challenged law, limits and disables the provision of economic and motivational incentives for publicly owned employees in Kosovo, and as such is contrary to the Constitution. Furthermore, KOSTT claims that Article 27 of the challenged law directly infringes KOSTT financial independence in determining the salaries of its employees. In this way, KOSTT considers that the availability of its human resources is limited in order to fulfill its legal duties and obligations under Law No. 05/L-081 on Electricity and to implement the obligations of the Republic of Kosovo in accordance with international agreements. KOSTT expresses concern that with the entry into force of the challenged law it will face the departure of its staff, as the salaries of the KOSTT employees will be reduced by 47%, and KOSTT will not be able to provide motivated staff compensation. KOSTT emphasizes that there should be special staff to meet specific technical and operational requirements, and the personnel of this company should be more qualified than other companies in the energy sector. This is because there is a need for continuous interaction with transmission system operators in other countries and with regulators.

## **25. Complaint by the Independent Trade Union of KOSTT**

KOSTT Independent Trade Union claims to be the only company in Kosovo that deals with the management of high voltage lines, so its work is very specific and with great responsibility. To perform its job in the energy market, KOSTT needs trained and experienced staff. According to the Independent Trade Union of KOSTT, the inclusion of KOSTT in the challenged law infringes KOSTT financial independence and poses a risk of dismissal of KOSTT professional staff. KOSTT Independent Trade Union considers that KOSTT employees are not civil servants, since KOSTT has financial independence.

## **26. Complaint from the Independent Trade Union Federation of Post and Telecommunications of Kosovo**

Independent Trade Union Federation of Post and Telecommunications of Kosovo claims that Article 27 of the challenged Law will affect the Kosovo Telecom the most, consisting of engineers, lawyers, economists and specialist technicians. The complainant also alleges that Telecom of Kosovo is not financed by the budget of the Republic of Kosovo, but through a business plan that plans on an annual basis based on own source revenues and growth in the telecommunications market.

## **27. Complaint from the Information Society Agency within the Ministry of Public Administration (ICT)**

The complainant alleges that the Government has so far treated separately the positions in the field of ICT, but the challenged Law does not categorize the field of ICT. The complainant further states that this agency within the Ministry of Public Administration is a responsible institution in the field of Information and Communication Technology (ICT), which forms the basis of development for all other areas, e.g. education, health, economics, agriculture.

### **28. Complaint from Veton Çoçaj – certifier**

The complainant alleges that the challenged Law was not drafted based on principle “*same work, same salary*”. In this regard he points out that in the Assembly of the Republic of Kosovo the position of a certifier is treated as a separate position and is classified by the coefficient 4.2, while in other institutions, ministries and agencies, the position of certifier does not appear at all, but is categorized as a professional executive framework and classified by the coefficient 2.35. The complainant further alleges that the workloads are greater in the ministry than in the Assembly and, according to this reasoning, requests that there be equal treatment for all certifiers in the Republic of Kosovo.

### **29. Complaint by Pajtim Zogaj, inspector at the Cultural Heritage Inspectorate**

The complainant alleges that the challenged Law violates the principle “*same salary for same work*”, and Article 23 of the Universal Declaration of Human Rights has also been violated. Specifically, the complainant specifies that the challenged Law also regulates the issue of the allowances to the basic salary, which belongs to Kosovo Tax Administration officials, Kosovo Competition Authority investigators, Anti-Corruption Agency officials, but the same allowance is not foreseen for the inspectors of the Cultural Heritage Inspectorate, although the nature of the work is the same with the entities mentioned above. The complainant further alleges that on the basis of this determination the inspectors of the Cultural Heritage Inspectorate were discriminated against and were treated unequally by the provisions of the challenged Law.

### **30. Complaint by school psychologists and pedagogues**

The complainants allege that the challenged Law treats them in an unequal manner compared to special school teachers and psychologists. The complainants point out that this law does not respect the principle of “*equal salary for the same work*”. They claim that their positioning should be similar to those of upper secondary teachers, with a coefficient of 2.6, or of the teachers of special schools with a coefficient of 2.5. The complainants further state that clinical psychologists at UCCK clinic have the same qualification and are categorized by coefficient 3.5. They emphasize that, even in this case, the law has discriminated against complainants because they also provide the same psychosocial services to people in need. The complainants also allege that teachers of upper secondary education were categorized by coefficient 2.6 (master grade), special educators and teachers of special schools are qualified by a coefficient 2.5 (master grade), teacher at the grade level 6 - 9 are qualified

with a coefficient 2.45 (bachelor degree up to 240 credits), grade level teachers 1 - 5 are qualified with a coefficient 2.3 (bachelor degree up to 180 credits), while the school psychologist is qualified with a coefficient 2.3 (master grade). This designation, according to the complainants, clearly demonstrates the unequal treatment of psychologists and pedagogues in schools. Therefore, based on the arguments presented above, the complainants (psychologists and pedagogues) seek equal and non-discriminatory treatment with the challenged Law and respect the principle "*same salary for same work*", a principle that is not currently taken into account by this law.

### **31. Complaint from Central Harmonization Unit for Internal Audit at the Ministry of Finance and Internal Auditors from central and local level**

The Central Harmonization Unit for Internal Audit at the Ministry of Finance and the central and local Internal Auditors allege that they are not included in the challenged Law, however, the determination of their status and salaries is expected to be done by a sub-legal act, which will be approved by the Government in cooperation with the Ministry of Finance. The complainants express their concern that such an action would jeopardize their legal certainty and the financial viability of internal auditors. The complainants note that the fact that the challenged Law does not regulate the position and salary of internal auditors shows that this law did not respect equality before the law, as it left it open to some positions, such as the position of internal auditors, to be regulated by a sub-legal act, namely an administrative instruction which can be changed in a summary and quick procedure shows that the legal certainty of internal auditors is not the same as the legal certainty of the positions determined by the challenged Law. The complainants also allege that their positioning in the challenged Law will have a positive impact on determining their status and their salary at the law level. In this regard, the complainants point out that the challenged Law did not take into account the provisions of Law no. 06/L-021 on Public Internal Financial Control, which in Article 23, paragraph 2, clearly states: "*The salary for the staff of the Central Harmonization Unit and the Internal Audit Units shall be treated separately and should be harmonized with the salaries of the National Audit Office auditors.*" Therefore, in view of all this, the Applicants allege that it is essential for their functioning that their position be determined by the Law on Salaries in Public Sector, and that their positioning be made in full regard to Article 23, paragraph 2, of the Law no. 06/L-021 on Public Internal Financial Control, according to which the salaries of the staff of the Central Harmonization Unit and of the Internal Audit units are treated separately and should be in line with the salaries of the auditors of the National Audit Office..

### **32. Complaints from health professionals/doctors employed in the Ministry of Health**

The complainants explain that among the health professionals there are doctors, dentists employed in the Ministry of Health (MoH). According to their claims the current provisions in the challenged law put them in the same categorization as civil servants and do not recognize university and specialist education when calculating salary. The complainants consider that they are

discriminated against by the right to a dignified pay, according to the professional achievements and services they provide. The complainants further state that in order to be employed in the MoH, certain criteria had to be fulfilled, such as education in the field of medicine, and licensing as health workers and as a consequence, the same positions held by the MoH do not belong to civil servants under Law no. 03/L-149 on Civil Service (Article 4, paragraph 1), but are categorized as medical staff of the health system. The complainants allege that this spirit was not conveyed in the challenged Law because they were categorized as civil servants. The complainants further state that under Law No. 04/L-125 on Health, Article 69, a health professional is considered a doctor of medicine, a doctor of dentistry and a graduate pharmacist. The complainants base their claims on the opinions of the World Health Organization, according to which the health system is made up of organizations, people and actions whose primary purpose is to promote, recover and preserve health, and according to the World Bank, it is found that the health system consists not only of health institutions but also of the Ministry of Health, health funders and other organizations. The complainants eventually allege that the current provision in the challenged Law discriminates them from the right to salary as specialist doctors, with a coefficient of 5, because it ranks them as civil servants with a much lower coefficient, not counting university and specialized education.

### **33. Complaints from RAEPC engineers staff**

The complainants allege that, with the challenged Law, RAEPC staff are not treated equally as other institutions. In this regard, they point out that engineers in some other institutions, such as the Civil Aviation Authority (CAA), the Air Navigation Services Agency (ANSA), are categorized with a much higher coefficient than the RAEPC engineers. According to them, this form of categorization is unequal, because the engineers of these institutions are brought in unequal positions, when added to the fact that CAA and ANSA engineers are authorized by RAEPC to use the resources for electronic communications, which is very vital to the field of civil aviation and air navigation, and also conducts radio-monitoring measurements to identify interference, the occurrence of which may endanger communication security. For this reason they claim that they have to position themselves in the position “Expert 2”, with coefficient 5.5 and “Expert 3”, with coefficient 4.

### **34. Complaint from Water Services Regulation Authority (WSRA).**

Water Services Regulation Authority (WSRA), alleges that under the challenged Law, the professional staff and WSRA staff is categorized at the same level as the level of civil servants. They point out that, given the specific nature of the job and job descriptions, it cannot be harmonized with the same positions in the sector of public service. The complainant expresses his concern that with the current definition of the challenged Law, there is a risk that the professional staff may be removed from the WSRA and reflect harmful to the institution. The WSRA further states that currently, the WSRA staff salaries are lower than the salaries of equivalent service provider positions which are regulated and supervised by the WSRA. Therefore, the categorization of WSRA staff, according to the complainant at the level of civil servants, would further

deepen this distinction, which in turn impacts the devaluation of the work and authority of the WSRA staff towards service providers. Lastly, the complainant alleges that in all countries the salaries of the regulators are higher than the institutions they regulate, which is not the case in Kosovo and the difference with this law will be much greater.

### **35. Complaint from the Trade Union of the University of Prishtina**

The Trade Union of the University of Prishtina (UP), claims that the challenged Law is discriminatory and did not include the public promise of a linear increase of € 70 to all UP administration employees. According to the UP Trade Union, the challenged Law reduces the salaries of some key positions in the UP, for which the trade union considers to be unconstitutional and discriminatory as well, because a right acquired cannot be denied in this form. The UP Trade Union on this matter refers to Law No. 03/L-147 on Salaries of Civil Servants, namely Article 28, which states: *“Civil servants whose basic salary on implementation of this Law would be lower than their current basic salary as applicable prior to the entry into force of this Law, shall retain their current salary until their basic salary comes into compliance with the provisions of this Law, the provisions on the general classification of work positions in the Civil Service and the standards and procedures for the classification of each position in its relevant grade”*. Further, this trade union alleges that the challenged Law does not set the titles and coefficients for the UP administration and this may lead to discrimination in the event of the promotion of these coefficients and positions by the Government *ad-hoc* Committees. Also, the union states that this law does not specify the percentage of payment for fee (above the norm), which is specific in the case of universities. The UP trade union further claims that the main principles for adopting this law have been: principle of *“equality”*, principle of *“same salary for the same work”* and principle of *“non-discrimination”*. On this issue, the trade union of UP points out that none of these principles in the case of UP has been respected and taken into account. Furthermore, the UP union claims that this law has created inequality between the UP employees and other institutions. For this the later has taken as an example the case of the certifier in the Assembly of the Republic of Kosovo, which is determined by a coefficient 4.2, while in other institutions this position has been certified significantly lower, despite the fact that they have a much higher budget. Further, the UP trade union claims that inequality has arisen in cases such as the driver in the political cabinets is determined by a coefficient 2.2, while the administrative officers at UP (who may have a master or doctor degree), may have the highest coefficient 2.35. Further, the position of administrative assistant and technical assistant in the Assembly of the Republic of Kosovo has a coefficient 2.8, while equivalent to this position or coefficient in the public service administration is the position of a head of division. 2). This trade union, based on the arguments presented above, requested the Ombudsperson to initiate in the Constitutional Court an assessment of compliance of the challenged Law with the Constitution, because this law, according to it, is unequal, it did not achieve the purpose of the same salary for the same job and resulted in discrimination between employees in the institutions of the Republic of Kosovo..

32. With regard to the abovementioned individual requests which have been submitted to the Ombudsperson Institution, the Applicant considers that it is in the interest of the complainants and the public that the Court assesses whether the challenged Law affects the legitimate interests of these complainants. More specifically, the Applicant, with regard to the abovementioned complaints, considers that the Court should give an assessment of the following issues:
- *Whether the principle of separation of powers and the constitutional guarantee relating to equality before the law has been achieved by the challenged Law and its Annex 1;*
  - *Whether the challenged Law should include publicly-owned enterprises exercising public authority in the Republic of Kosovo and if their inclusion in the challenged Law violates the Constitution, namely the principle of free market economy, as expressed in Article 10 and Article 119 of the Constitution of the Republic of Kosovo, reflected in Law No. 03/L-087 on Publicly Owned Enterprises;*
  - *Whether the challenged Law should treat carefully the employees of institutions, bodies and authorities of particular importance and the employees in public sector, in whose specialization has been invested.*
33. Finally, the Applicant considers that the challenged Law, *inter alia*:
- 1) *Does not reflect the principle of separation of powers, control and balance between them, as provided by the Constitution;*
  - 2) *Does not provide equal salary for equal work for all employees in the public sector, according to the constitutional hierarchy, institutional responsibility and complexity at work;*
  - 3) *Infringes the right to property;*
  - 4) *Does not reflect the established principles of the challenged Law itself in all of its provisions and Annex 1.*
34. Therefore, for the aforementioned reasons, the Applicant requests the constitutional review of the challenged Law and its suspension until a final decision by the Court.

### **Regarding the request for interim measure**

35. The Applicant requests that on the basis of the aforementioned arguments, the Constitutional Court should impose an interim measure for the immediate suspension of the challenged Law. The Applicant refers to Rule 57 of the Rules of Procedure of the Court which sets out the requirements to be met for the imposition of interim measure, stating that the three requirements set out in this case are met.

36. First, the Applicant considers that the arguments put forward in the Referral provide “*basis more than prima facie*” on the suspension of the challenged Law. In addition, the Applicant states that the challenged Law in paragraph 2 of Article 2 [Definitions], defines the expressions: “*public functionary*”, “*public functionary with special status*”, “*public official*”, “*civil servant*”, “*civil servant with special status*”, “*public service employee*”, “*cabinet employee*”, “*administrative and supporting staff*”, in this law have the same meaning as defined in the Law 06/L-114 on Public Officials”. The Applicant emphasizes the fact that the Constitutional Court, on 19 November 2019, granted the request for interim measure for Law No. 06/L-114 on Public Officials, suspending the latter until 28 February 2020. Therefore, according to the Applicant, as long as there is a connection between these two laws and that as long as the Court has suspended the Law on Public Officials, the same should apply to the Law on Salaries.
37. Secondly, the application of the challenged Law, according to the Applicant’s allegation, infringes the separation of powers and is contrary to the principles of non-discrimination, risks causing irreparable damage due to the violation of constitutional order and inequality among the public sector entities in the Republic of Kosovo.
38. Thirdly, the Applicant states that based on the fact that they have received a large number of complaints, many of them grounded, from almost every entity of the public sector, is indicative that the challenged Law is likely to cause irreparable consequences, due to unequal treatment. The implementation of the challenged Law would, according to the Applicant, legitimize unequal treatment for which the victims of the violation could not claim compensation, in the event that the Constitutional Court finds that the challenged Law is in violation of the Constitution. This is because the Constitutional Court, at least in its current practice, does not annul the laws adopted by the Assembly, but repeals them with *ex nunc* effect. Consequently, the imposition of interim measure is necessary and of public interest.

### **Assessment of the request for interim measure**

39. In order to assess the request for interim measure, the Court first examines whether the Referral has fulfilled the relevant admissibility requirements, established in the Constitution and further specified in the Law and the Rules of Procedure.
40. Initially, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides that “*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties*”.
41. In addition, the Court refers to paragraph 2, subparagraph 1 of Article 113 of the Constitution, which states that:

*“2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:*

*(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*

42. The Court also refers to paragraph 4 of Article 135 [Ombudsperson Reporting] of the Constitution, which provides that: *“The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution”*.
43. In addition, as regards the constitutional and legal regulative for dealing with the request for interim measure, the Court also refers to paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, which provides: *“[...] 2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages. [...]”*
44. The Court also refers to Article 27 [Interim Measures] of the Law, which provides for the legal requirements for the imposition of an interim measure, establishing that:

*“1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

*2. The duration of the interim measures shall be reasonable and proportionate”*.

45. Finally, the Court also refers to paragraphs (4) and (6) of Rule 57 [Decision on Interim Measure] of the Rules of Procedure, that specify:

*Rule 57 (4) of the Rules of Procedure*

*“[...] Before the Review Panel may recommend that the request for interim measures be granted, it must find that:*

*(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*

*(c) the interim measures are in the public interest.  
[...]*

*Rule 57 (6) of the Rules of Procedure*

*“[...] If the request for interim measures has made this necessary showing either in whole or in part, the Court shall grant the request, stating the facts and the legal reasons supporting the decision and the time during which the interim measures will be effective. No decision granting interim measures may be taken unless the expiration date is specified; however, expiration dates may be extended by further decision of the Court [...].”*

46. The Court notes that, in the light of the aforementioned provisions of the Constitution, the Law and the Rules of Procedure, to impose an interim measure, the Applicant is required, in this case the Ombudsperson, to show a *prima facie* case on the merits of the referral.
47. In the circumstances of the present case, the Court considers that the Applicant has shown the *prima facie* case and did this by: i) justifying the admissibility of the Referral; ii) the allegations filed regarding the alleged unconstitutionality of the challenged Law; iii) complaints of 35 various institutions/persons who consider themselves to be unconstitutionally and unfairly affected by the challenged Law and, iv) the case file itself he has submitted to the Court.
48. In addition to the first procedural criterion elaborated above, the Law and the Rules of Procedure also provide for two other, non-cumulative grounds on which interim measure may be imposed (that is if any of them exist). The first ground relates to the requirement that the party requesting the interim measure shows that interim measure is necessary “to avoid risks or irreparable damage”. The second ground relates to the argument, namely the finding that the interim measure is with “public interest.”
49. In this respect, the Court considers that the Applicant has shown that both of the abovementioned grounds for imposing an interim measure have been met, despite the fact that even the fulfillment of only one basis would be sufficient for the Court to impose an interim measure. Thus, the Applicant, for the reasons set out below, has succeeded in satisfying the Court that the imposition of interim measure is necessary to avoid the risk of “irreparable damage” and that the imposition of the latter is in the “public interest”.
50. The Court recalls that the present Referral was submitted to the Court by the Ombudsperson following a number of complaints with the latter concerning the unconstitutionality of the challenged Law. The Ombudsperson, in accordance with the aforementioned constitutional provisions, having examined the complaints filed with him, has decided to submit the referral in question on the grounds that the challenged Law, in its entirety, violates A) principle of separation of powers; B) equality of parties before the law; C) property rights of interested entities and D) principle of rule of law.
51. These four substantive allegations of the Applicant, raised on a level of principles, are of paramount importance and as such affect a large number of institutions and individuals directly affected by the challenged Law. It is in the public interest to assess, in the circumstances of the present case, whether there has been an infringement or violation of the principles in question or of

the rights and freedoms. Coming to such a final assessment requires a thorough constitutional analysis and specific expertise, which in itself takes time to be accomplished.

52. In this respect, the Court is aware of the impact that the challenged Law has on public sector employees, and not only, and on all institutions and individuals affected by this law. The Court also takes into account the fact that, in addition to the parties dissatisfied with the challenged Law, there are other parties who are satisfied with the same Law. In this respect, it is important to clarify that, despite the aforementioned considerations, only fair and correct application of the constitutional values and principles and correct interpretation of human rights and freedoms in the circumstances of the case are relevant to the final decision of the Court.
53. In addition, the Court notes that paragraph 2 of Article 2 of the challenged Law has direct connection with Law No. 06/L-114 on Public Officials, which law has already been suspended by the Court until 28 February 2020. Consequently, the Court considers that the Applicant has submitted a *prima facie* case on the merits of the Referral within the meaning of Rule 57, paragraph 4, item (a) of the Rules of Procedure.
54. The Court further notes that the implementation of the challenged Law, pertaining to allegation of violation of the separation of powers and violation of the principles of non-discrimination, may cause irreparable damage due to the violation of constitutional order and inequality between public sector entities in Kosovo. Accordingly, the Court considers that the Applicant has shown a risk of irreparable damage within the meaning of Article 116, paragraph 2 of the Constitution, Article 27 paragraph 1 of the Law and Rule 57, paragraph (4) item (b) of the Rules of Procedure.
55. The Court considers that the issues raised in the Referral are of such significance as to the respect and proper application of the constitutional provisions regarding to maintenance of the principle of separation and balance of powers and the principle of non-discrimination related to independent institutions and many other public sector entities established by the Constitution and specific laws, so that the suspension of the application of the challenged provisions of the challenged Law is in the public interest. Accordingly, the Court considers that there are substantial reasons of the nature of the public interest within the meaning of Article 116, paragraph 2 of the Constitution, Article 27 paragraph 1 of the Law and Rule 57, paragraph 4 item (c) of the Rules of Procedure, which justify the approval of an interim measure with respect to the challenged Law.
56. Therefore, the Court, without prejudice to the admissibility or the merits of the Referral, concludes that the Applicant's request for interim measure with regard to the challenged Law is to be approved in order to prevent irreparable damage that may be caused on other entities with interest and other institutions of public sector, and to protect the public interest.
57. In addition, the Court also notes that the Applicant raises issues related not only to the independence of the independent constitutional institutions, but

also in relation to some other state institutions. Therefore, the Court considers that the suspension of the challenged Law would have a direct impact on the application of the Law as a whole, in addition to the fact that this Court has already completely suspended the implementation of Law No. 06/L-114 on Public Officials, until 28 February 2020.

58. Accordingly, the Court finds it necessary and indispensable, the approval of the specific request of the Ombudsperson to suspend the implementation of all provisions of the challenged Law.

### **FOR THESE REASONS**

The Court, in accordance with Article 116.2 of the Constitution, Article 27 of the Law and Rule 57 of the Rules of Procedure, on 12 December 2019, by majority,

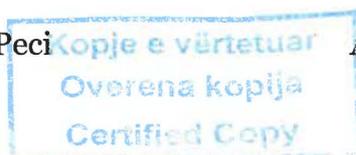
### **DECIDES**

- I. TO APPROVE the interim measure until 30 March 2020, from the date of adoption of this Decision;
- II. TO IMMEDIATELY SUSPEND the implementation in entirety of Law No. 06/L-111 on Salaries in Public Sector for the duration specified in item I;
- III. TO CONTINUE implementation of laws repealed by Article 33 of the challenged Law, until the case is decided on merits;
- IV. TO REQUEST Opinion in a capacity of *Amicus Curiae* from the Venice Commission on Law no. 06/L-111 on Salaries in Public Sector;
- V. This decision will be notified to the parties;
- VI. This decision will be published in accordance with Article 20.4 of the Law;
- VII. This decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Remzije Istrefi-Peci



Arta Rama-Hajrizi

*This translation is unofficial and serves for informational purposes only.*