



Group for Legal  
and Political  
Studies

COMMENTS ON:

# DRAFT LAW ON SALARIES ON PUBLIC SECTOR

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Group for Legal and Political Studies (GLPS) has analyzed the e latest Draft-law on Salaries in Public Sector (hereafter: DLSPS) and is offering the following remarks and solutions:

First and foremost, GLPS is highly concern about the lack of inclusiveness from the institutional side during the amendment and drafting process, as civil society organizations such as ours that have significant expertise in this field were not consulted during the process. This should not be the approach that the institutions should employ during legislative or policy processes, as it does not serve the greatest good, and it negatively affects the role and relevance of civil society and other third parties that could significantly contribute in such important reform processes.

To give a bit of context, in 2019, the Assembly of Kosovo adopted a Law on Salaries in Public Sector which was later declared unconstitutional by the Constitutional Court, for numerous reasons. The Decision of the Constitutional Court issued at that time should have served as the basis under which key principles of a public salary system is designed. GLPS consider that any diversion from this Decision will lead to additional obstacles and pave the way for this new draftlaw to end at the Constitutional Court once again.

Considering the new draftlaw as well as the remarks provided above, GLPS provides the following inputs:

**Scope of the law and institutions included.**

The newest version of the draftlaw does not include the Kosovo Intelligence Agency, a category that has been already addressed with the Constitutional Court Decision No. K0219/19 submitted at that time by the Ombudsperson Institution (Requests for assessment of the constitutionality of the Law nr. 06/L-111 for Salaries ON Public Sector – hereinafter: CCJ-LSPS). The request of CCJ-LPSP is that ensuring the independence of these institutions should be significant at the decision-making level for self-regulation of salaries, which is not addressed by the recently made public DLSPS.

**Lack of transparency.** Although this draftlaw relies on transparency as one of its main principles, it actually has fundamental problems when it comes to transparency, in particular. One of the key elements that this draftlaw regulates is the basic salary. To achieve this, there is a need for a clear determination of a coefficient and its value. The draftlaw does not address this aspect under the justification that the coefficient should be determined with the annual Law on Budget. This approach seriously undermines the principles of legal certainty and legality, both of them part of the rule of law principles emphasized in the Constitutional Court Decision issued at that time, as well. Furthermore, such an approach will lead to more difficulties in analyzing modalities and real options for the determination of salaries in the public sector, considering that the main element of the salary is not determined with this draftlaw.



Similar approach has been applied in a number of allowance types that are foreseen with this draftlaw, as the subject, ratio and approval procedures for these particular allowance types are not defined

**Inequality.** Ensuring equality among the public sector employees is among the key principles upon which this draftlaw was considered necessary, by ensuring equal pay for the same positions/levels. Besides this, the draftlaw foresees other additional elements of this principle such as: types of job, institutions and qualifications. These elements should be considered by all means; however, they are key indicators for job classification and should not be automatically used as indicators for determining the basic salary, and in ensuring wage equality. Even if that would be the case, then a legitimate question arises on how these criteria will be applied (job type, institution, and necessary qualifications). It is unclear and unjustifiable that identical positions to be determined by different salary coefficients, considering the fact that the main criteria determining this is the type of the institution.

**Incorrect determination of the salary coefficient.** The determination of salary levels is reflected in the annexes of the draftlaw. After analyzing these annexes, GLPS has identified several shortcomings, mistakes and inaccuracies. Firstly, the scope of implementation under these annexes – as it is – creates a dual salary system and determines parallel positions and functions.

For example, Annex 10 which regulates the salaries of employees under category ‘mid-level manager 1’ that is a unique kind within the civil service, with the newest draftlaw, includes 5 other positions with different coefficient levels, while the job category remains the same. This approach hinders the job classification process, and it also paves the way for another constitutional discussion, since identical positions are determined with different salary coefficient (e.g., a head of a ministerial department has a higher salary compared to a head of a department within an independent institution).

Determining a salary coefficient on the basis of the volume/weight of a specific position is another shortcoming, and a dangerous precedent. This becomes more particular when it comes to the local level where the sole criteria/determinant is the number of population, which applies from the mayor do the heads of departments at the local level. This approach is debatable when it comes to other local level positions (head of a sector and professional level) in accordance with the same principle, so on the basis on the number of population and not that of the classification system which aims to regulate and determine categories and types for each position on the basis of significance, complexity and compatibility which are all elements that should be considered when determining a salary level.

In DLSPS, the salary ratio is at 1:18, while in the annexes they start from coefficient 2.



On the other hand, the salary increases on the basis of experience obtained is also followed by some issues. Firstly, it has been proposed in an automatic manner and does not contain any indicators, nor limitations for the beneficiary, amounts are not determined and neither is the timeframe. In this regard, the draftlaw currently determines that this rule should apply to all beneficiaries of the public sector regardless of the fact that they might be in the sector only permanently or they do have a permanent mandate, a proposal that undermines the only significant indicator of this aspect which is the seniority on the basis of extensive experience. Not limiting the salary amounts is another unjustifiable issue, given that one category can have a higher salary compared to the other, irrelevant of the experience, so determining a salary limit (ceilings) for each category should be determined with this draftlaw (e.g., salaries up to 1000 Euro benefit up to 0.5%, and those above that amount 0.25%, etc.). Similarly, work experience in terms of years should also be determined, and if not, salary increase then would be done without any limitations whatsoever and would cause multiple harmful effects, including financial ones. Another problem identified is the salary increase proposed solely on the basis of work experience, without taking into account other criteria such as performance evaluations, trainings obtained, etc. These additional criteria should have been included as they provide with more tangible indicators whenever an increase is proposed. Finally, we recommend for the salary increases to be categorized as allowances and not

automatic increase in terms of amounts, and not in a linear method for all categories that are paid from the state budget.

**Unclear and unjustifiable allowances.** With this new draftlaw, a tendency to increase salary allowances is evident, and what is more, without clear legal criteria or indicators that provide for more discretion in this regard. GLPS' comments when it comes to the allowances are the following:

- **Special allowance for the nominees (Article 23).** Under this Article, members of the Municipal Assembly and MPs may receive a special allowance of thirty percent (30%) of their basic salary for participation in standing committees determined for the member of the Assembly. We consider this to be unnecessary and unjustifiable given that these categories have a basic salary that is assumed to cover all their expenses under their assigned functions, including the above.
- **Allowance for specific working conditions (Article 26).** As designed, this proposal is unclear in its concept and its scope as well. This Article states: "The allowance for specific working conditions is benefited by public officials and other employees who are exposed to danger in the workplace or have specific working conditions that endanger their life and/or health", the question is, who identifies as 'other employees'. It remains unclear. This regulation is confusing and unclear given that in its





first paragraph this allowance is dedicated to the nature of job, while in its fifth paragraph it refers to the type of profession, and in practice, it will remain unclear. One of the fundamental mistakes in this Article is the lack of ability to acknowledge the difference between position and profession.

- **Overtime allowance (Article 27).** This Article has an unclear scope. Who is considered a cabinet officer? In addition, it is unjustifiable given the fact that this allowance cannot be well-argued to why it is dedicated and what nature it is that cannot be included with the basic salary.
- **Workload allowance (Article 28).** This Article is unclear in its scope, and furthermore it is legally impossible to implement as it contradicts the Law on Public Finance Management and the Law on Budgetary Allocation (it is illegal for the funds that are allocated for regular positions within the public sector to be disbursed for such allowances). The division of jobs in the public sector is supposed to be done on the basis of mandatory rules that are also based on the workload that can be assigned to an employee during the regular working hours. For overtime work (always as a rule and not as an exception) Article 36 of this draftlaw can apply, namely, compensation for overtime work. Unlimited discretion in paragraph 3 is a real potential for misuse.

- **Allowance for the state exam for the pre-university education officer (Article 29).** This Article is pointless and unnecessary. Fulfilling mandatory obligations such as passing the state exam is a legal requirement for upholding a position and for exercising a certain regulated profession (if the case) but allowances should in no way be distributed for this purpose.
- **Allowance for the health system employee. (Article 30)** according to the formulation is dedicated toward keeping and encouraging the staff, therefore is not needed to be further regulated with allowances since is already regulated in Article 24 (Allowance for labour market criteria).

**Unlimited discretion in awarding compensation.** Although a legal limit has been set in paragraph 4 of Article 36 of this draftlaw, right after in paragraph 5 foresees exceptions which may occur in emergency situations (without giving any estimations as to what those may be). Exceeding the legal limit with an act of the Government or an independent institution is a discussion in itself and is against the principle of legality.

**Violation of the principles of legal certainty and predictability.** This has been shortly addressed above (see lack of transparency section), while in this part, GLPS mostly will focus on the salary reduction regulations proposed by this draftlaw.



More specifically, Article 40 provides for transitional allowances for persons, public officers or public functionaries that receive a salary greater than that provided by the coefficients set within the draftlaw. This specific allowance decreases annually for 25%, in a period of four consecutive years. This becomes quite an issue when even after these four years, the salary of some of the key positions within the public service is decreased, in specific to the judicial sector, air navigation specialist, IT experts, and similar categories that are vital for the state functioning and that are less common. Salary decreases through transitory allowances also contradicts Article 10 of this draftlaw itself, an article that foresees salary reduction in two cases: a. macroeconomic shocks as a result of reduced income, and b. natural disasters on the basis of Article 131 of the Constitution.

**Short time for preparation of entry into force (vocatio legis).** The DLSPS foresees an 8-month period to prepare all aspects for its enforcement. During this period (within 6 months) around 22 legal acts are expected to be drafted and approved, providing with only 2 additional months for its enforcement, GLPS considers this to be impossible considering that a process of classification of positions in the civil service is mandatory (not set yet) that is quite complex and which will take considerable time. Besides the need to extend this period for vocatio legis, the government should also seriously consider the gradual enforcement of this law.