

The emergency package benefits for the workers

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Adresa: Rr. Bajram Kelmendi, Nr. 45,
10 000, Prishtinë, Kosovë.
Tel.: +383 (0)38 248 038
E-mail: info@kdi-kosova.org
Web: www.kdi-kosova.org

Author: Florent Spahija *Legal Advisor*

Government's emergency fiscal package and measures for workers without an employment contract

The declaration of COVID-19 virus a global pandemic has also affected Kosovo, stopping the regular functioning of many social sectors, especially the economic one. Private business sector is almost paralyzed due to the decisions of the Government of the Republic of Kosovo in order to protect the population from the spread of the virus. As a result of these measures, the pandemic has affected the incomes of many private businesses, a very sensitive and fragile sector which depends almost entirely on domestic purchases and very little on exports.

Exports of goods in February 2020 amounted to 35.9 million Euros, while imports 263.3 million Euros [...].¹According to the Kosovo Agency of Statistics, the economic sectors that led with employment continue to be: trade with 16.0%; construction with 11.8%; manufacturing with 11.7%; and education with 10.2%. Other sectors have a lower share of employment.²KAS Yearbook for Kosovo officially shows that 345,131 people were employed in both sectors during 2018, while unemployment for the active population reached 144,972 people. 81,884 people were employed in the public sector, while there is no exact official figure for the private sector.³

The day the first cases of people infected with COVID-19 were confirmed in Kosovo, the Government banned, through a decision⁴, the activities of some businesses such as cafés, pubs, bars, restaurants, shopping malls, animal and automotive markets, for the sole purpose of preventing the spread of the virus amongst the citizens. Government decisions even banned the movement of citizens in municipalities with people infected in order to prevent the spread of the virus to other municipalities.

On 15 March 2020, the Government declared a public health state of emergency and transferred the management of the emergency situation to the Ministry of Health.⁵ A few days

¹Kosovo Agency of Statistics, International Trade Statistics, February 2020, dated 23.03.2020, available at: <https://ask.rks-gov.net/sq/agjencia-e-statistikave-te-kosoves/add-news/statistikat-e-tregtise-se-jashtme-stj-shkurt-2020>, accessed by KDI on 22.04.2020.

²Kosovo Agency of Statistics, Labour Force Survey Q4 2019 dated 19.03.2020, available at: <https://ask.rks-gov.net/sq/agjencia-e-statistikave-te-kosoves/add-news/anketa-e-fuqise-punetore-afp-tm4-2019>, accessed by KDI on 22.04.2020.

³Kosovo Agency of Statistics, Statistical Yearbook of the Republic of Kosovo 2019, pages 14 and 15, available at: <https://ask.rks-gov.net/sq/agjencia-e-statistikave-te-kosoves/add-news/vjetari-statistikor-i-republikes-se-kosoves-2019>, accessed by KDI on 22.04.2020.

⁴Decision No. 01/09 dated 13.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Scan-14-Mar-2020.pdf>

⁵Decision No. 01/11 dated 15.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-nr.01-11.pdf>.



later, the Government restricted the freedom of movement of citizens during certain hours⁶, excluding from this restriction the businesses for free movement of goods and services under the codes set by the Ministry of Economy, Employment, Trade, Industry, Entrepreneurship and Strategic Investments. However, this restrictive measure continued to affect businesses that operate even in times of pandemic, as restricting the freedom of movement of citizens during certain times almost completely paralyzed these businesses.⁷

Seeing the aggravated situation, civil society organizations and chambers of commerce in Kosovo reacted by demanding a Government emergency plan to rescue the businesses⁸. On 30.03.2020, the Government approved the emergency package⁹ consisting of 15 measures and amounting to 170 million Euros for overcoming the crisis. Such package included both the public and private sectors.

The Government of Kosovo, namely the Ministry of Finance and Transfers, included in the emergency package¹⁰, section on businesses, three categories of workers who have been affected or damaged by the closure of businesses or the lack of income for those businesses.

The categories of workers receiving assistance under the government package are:

Category A) Regular workers who will be supported with 170 Euros for two months;

Category B) Regular workers who were fired during pandemics and will be supported with 130 Euros for three months;

Category C) Workers who were paid in cash and who will be declared as new employees by the private business will be supported with 130 Euros for two months after registration.

⁶ Decision No. 01/15 dated 23.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimet-e-Mbledhjes-s%C3%AB-15-t%C3%AB-t%C3%AB-Qeveris%C3%AB-s%C3%AB-Republik%C3%ABs-s%C3%AB-Kosov%C3%ABs.pdf>.

⁷The President of the Republic of Kosovo was against this government decision, sending it to the Constitutional Court to assess the its constitutionality, arguing that restricting freedom of movement cannot be done by a government decision and as such this decision is contrary to the Constitution. [On 24.03.2020, the President of Kosovo addresses the Constitutional Court <https://telegrafi.com/thaci-e-dergon-ne-kushtetuese-vendimin-e-qeverise-per-kufizim-te-levizjes-se-qytetareve/>]. Further, the Constitutional Court ruled that the Government's Decision No. 01/15 was inconsistent with the Constitution and found that only the Assembly could, by a law, restrict fundamental rights and freedoms. [Judgment with case number K054/20 dated 06.04.2020 https://gjk-ks.org/wp-content/uploads/2020/04/ko_54_20_agi_shq_.pdf].

⁸KDI's reaction dated 18.03.2020, available at: <http://kdi-kosova.org/aktivitetet/kdi-te-ruhet-stabiliteti-social-dhe-ekonomik-ne-kosove/>.

Request of the Chambers of Commerce dated 27.03.2020, available at: <https://oek-kcc.org/Al/aktivitete/212/qeveria-te-alokojte-se-paku-300-milione-eurove-per-fazen-emergjente-te-mbeshetjes-se-sektorit-privat/>, accessed by KDI on 22.04.2020.

⁹ Decision No. 01/19 dated 30.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-i-Qeveris%C3%AB-nga-Mbledhja-e-19.pdf>.

¹⁰ Decision No. 01/19 dated 30.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-i-Qeveris%C3%AB-nga-Mbledhja-e-19.pdf>



So, a special category is also the workers who, before the pandemics, were paid in cash and never paid pension or tax contributions. This category of workers who have worked without an employment contract have not had any opportunity to enjoy their labour rights.

However, in order to benefit from this assistance, the Government has foreseen special conditions which must be met by companies and workers if they wish to benefit from this package.¹¹

Category C or workers who have previously been paid in cash will receive financial support in the amount of 130 Euros per month and for a period of two months during pandemic time. According to the Government, the total cost of this support for businesses will be in the amount of 6 million Euros.

[Measure 14 – Financial support to business organizations registering employees with at least one (1) year employment contract during the period of public health emergency situation, with one hundred and thirty (€130) Euros for the following two months after registration, amounting up to six million (€6,000,000.00) Euros.]

The first condition for benefiting from the Government's emergency package is an employment contract of at least one year for these employees. So, each company must sign employment contracts of at least one year with their employees, so that the latter can directly benefit from the Government's emergency package. Such employment contract must have been signed at the time the pandemic began in Kosovo.

[The employer and employee must conclude the employment contract with duration of at least one (1) year] ... [The employment contract must be signed after the official date of promulgation of the pandemic in Kosovo].

The other condition is that the employer registers the employees in the electronic system in the Tax Administration of Kosovo using TAK's special forms. 15 May 2020 is the deadline for companies to register these employees in order to benefit from state aid.

[The employer, through the EDI electronic system, must complete and upload the form and list designed by TAK no later than 15 May 2020.]

In order to benefit from this payment from the Government, the employee must have a bank account in one of the commercial banks. According to the explanations from the MFT, the salaries will be paid directly to the employee's account and will not go through the companies' accounts at all. The state will also pay pension contributions for each employee.

[The employee must have a valid bank account in one of the banks licensed by the Central Bank of Kosovo.] ... [The pension contributions and personal income taxes of persons who benefit from this measure will be paid in the name of the employer so that the employee receives the monthly salary in the amount of 130.00 Euros.]

¹¹ DecisionNo. 01/19, **measure 14**, dated 30.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-i-Qeveris%C3%AB-nga-Mbledhja-e-19.pdf>

This point is favourable for many employees to start taking advantage of the opportunities provided for by the Law on Labour, but still it is up to companies to provide their employees with employment contracts. Fighting informality in pandemic times is not appropriate as it directly affects businesses which, after pandemics, may face major financial problems, and concluding one-year contracts with employees would be an additional burden on them.

As a precautionary measure for those benefiting from this point of assistance, it was stipulated that the company cannot terminate the one-year contract without any strong reason and that the termination will be evaluated by the state commission itself. This rule assures at least employees with employment contracts that the Law on Labour will be observed and that they will enjoy additional protection by the state. For businesses, in this case it is a kind of loss, as the burden on them becomes double if they fail to keep employees at work since dismissing employees will also result in the return of funds to the state budget for each employee dismissed.

[In cases where the contract is terminated arbitrarily and without any valid reason, the employer or the employee is obliged to return these funds, depending on the evaluation of the Commission.]

On the other hand, if workers fail to secure a one-year employment contract, they have another opportunity to benefit from the emergency package. The 15th¹² measure of this package foresees assistance to the citizens who live under poor social conditions and who do not benefit from any state aid or assistance. To receive the assistance in the amount of 130 Euros for three months, workers must report to employment agencies to register as unemployed.

KDI, through the reports "The rights on paper" and "Employees who have [no] rights"¹³, has recommended to state institutions to reduce the level of informality in the private sector, and we consider that the assistance package which includes the category of workers without employment contracts is a very good opportunity for the state to regulate the issue of informality of workers who work and are paid in cash.

So far, neither pension contributions nor personal income taxes have been paid for these workers. Given that the state has no data on the number of these workers and the amount of their salary, it will be impossible for this category to benefit from measures within the government package. Moreover, this degree of informality has made it even more difficult to assess the economic damage that the private sector has suffered as a result of the pandemic.

¹² DecisionNo. 01/19, **measure 15**, dated 30.03.2020 <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-i-Qeveris%C3%AB-nga-Mbledhja-e-19.pdf>.

¹³KDI reports from 2018 and 2019, available at: <http://kdi-kosova.org/publikimet/punetoret-qe-skane-te-drejta/>
<http://kdi-kosova.org/publikimet/te-drejtat-ne-leter/>

Violation of workers' rights during the pandemic

KDI has continued for the last six years to provide free legal aid to all workers who have reported to have suffered in various ways in relation to the employment relationship. Over 200 cases of various violations of workers' rights in both private and public sectors have been reported from 1 May 2019 to 30 April 2020.

Based on their reports, issues that continue to be a challenge are the high number of workers not paid on time, those whose pension contributions are not paid despite the fact that the relevant amount is deducted from their salary, manipulated vacancies, extended working hours, dismissals without any justification and with no adequate compensation, failure to provide workers with annual sick leave, etc. Despite the fact that these problems have been repeated from year to year and that institutions have been constantly alerted thereupon, this practice has changed very little.

On 1, 2, and 3 May 2019, as part of the annual campaign to send SMS from the Vala operator on the International Workers' Day, KDI has received over 400 calls whereby it was reported of various violations of workers' rights or requested information on the rights a worker should enjoy from the work they perform. From these calls, 150 cases have received direct legal aid in the realization of their rights.

While since the beginning of the pandemic, KDI has received 19 cases where the employees of a media outlet, two of whom were pregnant (journalist, editor, other staff), have been violated their basic rights by being dismissed without any prior warning and in contradiction with the Law on Labour. KDI has assisted each case separately in filing complaints, initially to the employer. The reason for the contract termination in all these cases was the effect of pandemic on the business thus causing the closure of certain departments thereof. Each of these 19 workers employees signed an employment contract earlier this year, some of which were of an indefinite term.

Following the employees' complaints, the company has decided separately for each of the employees. Initially, in the case of pregnant women, the employer decided to return both of them to work, while the rest of the employees were compensated for the part of not being notified. At the request of the parties, the case will be forwarded to the Labour Inspectorate¹⁴ and the Basic Court of Pristina to prove the legality of the decisions of the employer, especially in times of pandemic, when the Government has, through the emergency package, provided for the possibility of paying employees from the state budget until the pandemic situation ends.

¹⁴The Labour Inspectorate is functioning normally during this time of pandemic in its seven centres (Prishtina, Peja, Mitrovica, Ferizaj, Prizren, Gjilan and Gjakova). After contacting the Labour Inspectorate via phone (28.04.2020), KDI learned that the number of workers' complaints received by the LI is higher and thus they are immediately treated by inspectors at all centres throughout the territory.



In another case during this time of pandemic, KDI helped an employee of a public institution, as the management had brought him/her before the disciplinary commission for committing serious violation at work, namely refusing to work. Together with the employee, KDI has assisted in writing the complaint and preparing the defence of the employee against the disciplinary commission. Following the submitted complaint and the evidence presented in relation to the work performed by the employee, the disciplinary commission has annulled the request of the management for the imposition of legal measures against this employee.

KDI expects from businesses and the Government to focus as much as possible on protecting workers' rights during this time of pandemic, as protecting the workers is also protecting the businesses.

Recommendations

KDI has some recommendations for the institutions of Kosovo, namely the Government, the Labour Inspectorate, the Tax Administration:

1. The Government of Kosovo should increase the number of labour inspectors in the Labour Inspectorate throughout the territory;
2. The cooperation between the Tax Administration of Kosovo and the Labour Inspectorate should be intensified in order to facilitate procedures for reporting of violations by workers during the pandemic;
3. The Labour Inspectorate should launch as soon as possible an awareness-raising campaign for private sector workers and businesses in order to inform them of their rights arising from the employment relationship in terms of protection of health at the workplace, especially now during the pandemic;
4. The Tax Administration of Kosovo and the Labour Inspectorate should provide workers with opportunities to report anonymously cases of contract violation, non-payment of contributions, health put at risk at the workplace, etc.;
5. Workers who are paid in cash should request from the business they work for the regular employment contracts, according to the requirements arising from the Government's emergency package;
6. In case their request for signing a regular contract is rejected by their employer, workers who are paid in cash should report their employer to the Labour Inspectorate and Tax Administration.
7. After being rejected by their employer to sign a regular contract, workers who are paid in cash should register in the Employment Agency as unemployed.

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