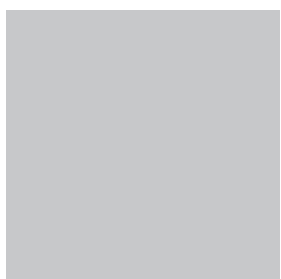


NOVEMBER 2017,
PRISHTINA

“EMPLOYEES WHO HAVE (NO) RIGHTS”







NOVEMBER 2017,
PRISHTINA

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EXECUTIVE SUMMARY

In 2015, Kosovo Democratic Institute, through the Service for Legal Advices for victims, witnesses and denunciators of corruption, published the report “Corruption: What is your story?”, whereby explicitly summarising cases which citizens reported related to non-efficiency of courts and delays in realising their requests. During 2016, KDI continued to receive new cases which also revealed the poor performance of the judiciary and failure to execute cases. These cases were published in the next report titled “Waiting for Justice.”

However, not all cases reported to KDI point towards the judiciary. In the last three years, the Service for Legal Advices for Rapporteurs and Victims of corruption received continuous complaints for problems the citizens have in their workplaces. However, violations and discriminations are not evident only in the workplace, but they begin in the very first steps of the job application process. While only 28 % of citizens able to work have a job, the number of those searching for a job is very large. In an effort to find a job, citizens face many injustices and violations. KDI received many complaints of citizens about manipulated vacancy announcements, uncompleted legal procedures, changing of the workplace only because of criticizing the management, work only during the night shift, on how rapporteur never received any response from the court despite complaints or submissions, how the rapporteur was dismissed from the job only with a simple notice, how the working hours or the payment for overtime work is not respected, reduction of salary without warning, paying a salary below the average salary level, delays in payment up to three months and many other cases.

The large number of cases and their relation to the labour rights encouraged KDI to seriously address the issue of employment, procedures applied in employment and intervention of corruption, especially nepotism as the most expressed form of corruption in employment.

Individual cases provided in this report served as “red flags” to examine the system in its entirety and to see whether these are as a consequence of legal or procedural gaps or even their implementation. KDI analyzed in this survey the Law on Labour and Law on Civil Service, as two basic laws establishing the employment relationship, setting the rules at work, and rights and obligations for both parties. Also, the institution of public vacancy (public competition) for civil servants, hospitals, family medicine centres or publicly-owned enterprises.

The report also describes the situation in the two institutions in charge for protecting the right of employees, namely Independent Oversight Board/ Council and Labour Inspectorate. Both independent institutions established to enable employees to address them every time there is a violation of their rights at work are quite effective in so far as the complaints they receive.

However, KDI, during the survey and reports of parties, was able to observe that many of rapporteurs did not even know that there is an independent institution that protects their rights. Many of rapporteurs directly addressed the court with their cases, without exhausting available legal remedies, but they received no response from the court and continue to wait for the conclusion of their judicial process. Some of the cases requested legal aid in KDI because they did not know where to address their complaints for non-implementation of their employment contract or non-implementation of public vacancy procedures.

Legal remedy provided by the KDI to parties includes technical compilation of submissions, complaints, indictments or notices for various institutions, for which parties received responses or are in process of receiving responses.



This report also shows the comparative aspect between institutions on statistics regarding their work, but also examples how different countries around the world act in cases of violations of labour rights.

Given that work is a very important part for the life of each citizen because it generates incomes for living, we consider that even the law, regulations and other bylaws should find implementation on practice by leaving no room for interpretation to the detriment of the employee.

If the employment of citizens in the public sector is impacted by favouritism, the conflict of interest and nepotism and not from merits, professionalism or principles provided for in the law, the citizens' distrust on the work of public sector will only increase further.

Public sector should be an example of good practices in relation to the fair and impartial employment. Reputation and performance of public sector depends a lot on the quality of persons employed therein and how they are employed. The failure to implement basic principles and legal acts in employment of civil servants implies consequences that are suffered by the citizen, and which are often translated into services without quality, mistakes at work, unnecessary expenditures, unlawful actions, non-efficiency, bureaucracy, etc. The violation of legal norms by public institutions when recruiting the staff, negatively reflects in the private sector, where violations are often of the same nature or even more severe.



**of citizens able to work
have a job, the number
of those searching for
a job is very large. In
an effort to find a job,
citizens face many
injustices and violations**



LIST OF ABBREVIATIONS

- KDI

– Kosovo Democratic Institute
- LI

– Labour Inspectorate of Kosovo
- IOB

– Independent Oversight Board
- LL

– Law on Labour
- KUCC

– Kosovo University Clinical Centre
- KUHCS

– Kosovo University Hospital and Clinical Service
- TI

– Transparency International
- CC

– Constitutional Court
- BC

– Basic Court

INTRODUCTION

Law on Labour and Law on Civil Servants are two basic laws governing labour issues in Kosovo. The difference between these two laws lies in the fact that the Law on Labour governs both the private sector and a part of the public sector, whereas the Law on Civil Service governs, among others, the employment relationship between the civil servant and public institutions of the country.

According to the Kosovo Agency of Statistics, in 2016, 81,629 persons were employed in the public sector, whereas the total number of employees in Kosovo based on the Statistical Yearbook in 2017 was 331,761 persons.¹

Employment contract is another part addressed in the report, and for which employees complain that it is not applied both by the private and public sector.

Based on the cases received in the Service for Legal Advices for Rapporteurs and Victims of Corruption, KDI drafted the report with violations observed during the review of reports and documents provided by parties.

The Report also makes an analysis of the Law on Labour and Law on Civil Service, thus conducting a descriptive analysis for all legal provisions relevant for the violations reported to KDI. The report uses as reference the reports of other NGOs and media too. It is aimed at pointing out violations of the rights of employees from employers, as well as denial of several basic rights, as that of non-discrimination at work, with a special focus on problems in relation to employment relationship, which citizens face almost every day.

331,761

employees in
the public sector

81,629

employees in
total

¹ Statistical Yearbook of the Republic of Kosovo, page 15



METHODOLOGY

This report is based on factual cases which citizens have reported to KDI during the period July 2015 to November 2017.

Citizens reported the violations either through the toll-free line 0800 77777 or directly visiting KDI offices. KDI legal expert analyzed documents that citizens individually brought to KDI, which are decisions of institutions of different instances.

Always referring to the concrete cases, KDI analyzed the Law on Labour, Law on Civil Service and many Regulations and Administrative Instruction related to the labour issues.

There are 33 complaints/reports submitted to KDI for violation of the rights of employees which have been addressed in this report with the initials of rapporteurs. This is because of protecting the identity of rapporteurs who have reported in the capacity of a victims or even witnesses of cases of violations of the rights in private or public institution where they used to be employed or are still employed.

Also, KDI during the drafting referred to the decisions of the Constitutional Court, which show the importance of the execution of ISC decisions and the legal obligation of the employer to execute these decisions. Decisions of the same type address the legality of decisions of courts which are part of the Kosovo judiciary and alleged violations of human rights and fundamental freedoms.

Beyond listening to protagonists of cases and analysing their files, KDI has also conducted additional qualitative research, interviewing the Labour Inspectorate and Independent Oversight Council to obtain their viewpoint in relation to the situation of the rights of employees, but also the work of these institutions. Thus, through these findings, KDI has presented the shortcomings of our system in implementing employment contracts, and the insecurity the citizens feel even after signing the employment contract, but also as regards the process of vacancy announcement and assessment after the completion of the vacancy and staff recruitment.

Based on these findings, we have foreseen recommendations which should be included in the employment relationship in the public and private sector. These recommendations would prevent the violation of the labour rights, whereas in case of violations, these measures would minimise their negative effect in society.





There are 33 complaints/reports submitted to KDI for violation of the rights of employees which have been addressed in this report with the initials of rapporteurs.



REPORTED CASES

osovo Democratic Institute, through the toll-free line and in direct contact with various citizens, received more than 33 complaints related to the violations they have suffered with regards to the work or application for a job in public institutions or publicly-owned enterprises. These different reports, ranging from the dismissal from the job without any preliminary warning, denying the job position because in that position should be employed someone on party basis, announcing the vacancy with discriminatory elements and in contradiction with the law, work only during the night shift, prolonged working hours without compensation, failure to pay salaries on time, payment lower than the minimum salary, injury at work and termination of contract, failure to provide assistance, etc.

The injustices made in the field of public sector by institutions and in the private sector, have been the reasons why many individuals and non-formal groups have chosen KDI as a helping hand in the course of realization of their rights. Law on Civil Service² and Code of Conduct of Civil Service³ determines work principles of civil servants, to be complied with when performing their duties. These principles include all required values and good practices to be implemented for performing the work in a professional manner. As a consequence, KDI received reports of violations committed from the very first phase of employment (vacancy announcement) and to the removal or dismissal from work. From the reports that were received in KDI, it was observed that the principles in recruiting civil servants, and in some cases even their basic rights, have been violated.

The chart below shows that the sector for which we received the most complaints was the sector of employment.

KDI has objectively examined all reports and provided legal aid to all in their issues.

2 (Law on Civil Service of the Republic of Kosovo, Chapter VII Principles and terms of civil servants' professional conduct, Article 51-62.)

3 (AI/Code of conduct in civil service, NO. 04/2015, Article 4 Basic Principles of Civil Service)



TOP 10 PRIMARY PROBLEM SECTOR

Labor and employment

33

Public Administration/ Services

10

Health

7

Environment

6

Judiciary

6

Construction

4

Education

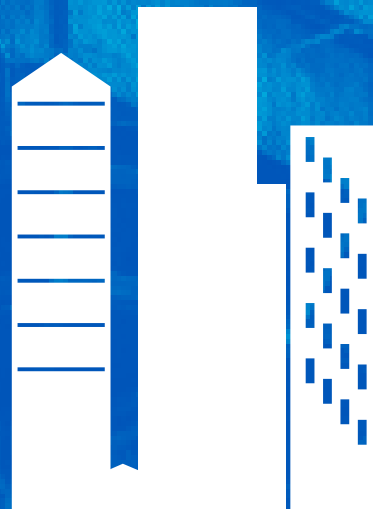
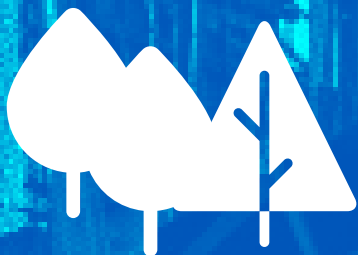
4

Land and Property

4


Agriculture

3



DISCRIMINATION IN VACANCY ANNOUNCEMENT

THE CASE OF MEDICAL SPECIALISTS

 In March 2016, a group of medical specialists addressed to the Center for Advocacy and Legal Advices within the Kosovo Democratic Institute (KDI), a branch of Transparency International Kosovo, the ongoing violations committed against them. They reported, among others, about legal violations the Kosovo University Hospital and Clinical Service (KUHCS) was committing when announcing the vacancy for medical specialists. This vacancy announcement was discriminatory towards these specialists because it set as a criterion that the candidate, in addition to the specialisation in the relevant fields of vacant position, be also assistant professor in the Faculty of Medicine.

Dr. B., thoracic surgery specialist, says that he can exercise his occupation only in KUCC because this specialisation belongs to tertiary occupations. He is among the 8 (eight) specialists Kosovo has in this field, and for him there is no work/job for three years now, despite the fact that this specialisation was enabled through the means allocated by the Ministry of Health and this is in contradiction with the Law on Labour, namely Article 5, paragraph 1 and 4 of this Law, where it is clearly foreseen the prohibition of discrimination at work through the vacancy announcement.⁴

Despite the fact that the law was not respected, on 31 March 2016, KUHCS announced the vacancy for filling 11 positions within KUCC. The discriminatory criterion was not removed from the vacancy. Director of KUHCS, Mr. Curr Gjocaj, stated that this criterion was compulsory based on the Law on Budget for 2016. He added that he had sent official submissions to the Ministry of Health, Assembly of Kosovo and Presidency requesting to not adopt the Law on Budget for 2016 with such a budget line, but that nobody had responded to his submissions. "It is impossible to admit all medical specialists in the system because we do not have a budget to do so" stated Dr. Gjocaj.⁵

Specialists who had been left unemployed for a long time after specialisation, even though most of them had specialised through the funds from the state budget and according to the Law on Health, they were supposed to be provided with a job by the state for a period of 3 years.⁶ However, despite the numerous requests filed by the group of specialists before the bodies of the Ministry of Health and Kosovo University Hospital and Clinical Service, they never received a response on what the law had enabled them. Ministry and KUHCS failed to ensure jobs for more than 100 medical specialists of different fields.

As a protest to this process, discriminated specialists, supported by KDI, organized a press conference on 27 April 2016 to raise the awareness of opinion and decision-makers. They requested from KUHCS to annul the vacancy for admitting of medical specialists, by alluding to the discriminatory crite-

⁴ Law No. 03/L-212 on Labour, Article 5, paragraph 1 and 4 reads: "1. Discrimination is prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment or other matters arising out of the employment relationship and regulated by Law and other Laws into force.

⁴ In the case of hiring new employees, employer is obliged to create equal opportunities and criteria to both male and female applicants.

⁵ Interview with Dr. Curr Gjocaj, Director of KUHCS, by KDI on 26.04.2016

⁶ Law No. 04/L-125 on Health, Article 72, paragraph 7 of the Law reads: "7. In order to improve the quality of work at the all three levels of healthcare, specialists, licensed specialists that have finished specialistic education based on the contract with the Ministry and has been licensed shall be employed through a special program of the Ministry for the period of three (3) years. Accessed in Official Gazette on 06.11.2017

tion, namely the violation of Article 5 of the Law on Labour. On the other hand, KUHCS took no action towards annulling the vacancy, thus accepted to work as specialists the whole group of regular assistant professors of the Faculty of Medicine.

The group of specialists continued protests and meetings with all health actors towards finding a response to their requests for work in the health sector.

KDI, on 28.06.2016, addressed a letter to all deputies of the Assembly of Kosovo for violations committed against this group of medical specialists, and requested from deputies to raise this issue at the level of discussion in order to find forms for funding their work. On the same day, each of Parliamentary Committees having competencies on the health sector, received a letter with specific requests for solving the problem of medical specialists.

Supported by KDI, the group of medical specialists continued with the public pressure and in June submitted a request to two Parliamentary Committees, the Committee on Budget and Finance and the Committee on Health, Labour and Social Welfare, requesting that in the review of budget for 2016 they approve the systematization of medical specialists. They continued meetings with deputies and Minister of Health, Mr. Imet Rrahmani. Both Committees of the Assembly of Kosovo, upon the KDI request, medical specialists and the Minister of Health, included in the agenda the request for budgeting and allocation of funds until the end of 2016 for all unemployed medical specialists.

Committee on Budget and Finance, as the last committee to make amendments to the Law on Budget, made a specific amendment for medical specialists, where the amount of 300 thousand Euros was allocated for salaries of medical specialists until the end of 2016, from different budget lines.

2016

2016 Assembly
by adopting
the budget
amendment
allocates **300
thousands Euros**
for specialists



Minister of Health, in Parliamentary Committees, but also in the session held on 14 July, where the amendment for allocating budget for medical specialists was adopted, publicly assumed the obligation to open job positions for all medical specialists for 2017 and the following years.

Further in the budget of 2017, specialists were included in the budget, but only in a limited number, leaving no opportunity for other health professionals who also complete their specialisation during and after this budget period to be systemised in the health system of Kosovo.

NON-PAYMENT OF SALARY AND PENSION CONTRIBUTIONS

CASE OF SECURITY WORKERS

✓ KDI received two different reports from the employees of the same private company. They submitted the case to KDI office because the Labour Inspectorate responded to their calls. The concerned company is a security company contracted by several municipal and central institutions in Kosovo to provide security services for buildings of these institutions. Both parties separately told the same story, which is related to the payment of salaries from the company where they are employed. Despite the fact that they have a valid work contract, they received no salary from July 2017 to November 2017.⁷ KDI examined the contract between SS and the company and noticed that the monthly salary, which the employee will receive as compensation, has not been defined in the contract. Despite the fact that the Law on Labour has clearly foreseen as a condition for employment contract the amount of basic salary, as well as other allowances that may derive from the employment relationship.⁸ During the meeting with parties, they stated that their monthly salary is 130.00 Euro for 8 hour work day, but that time after time they have to work overtime, especially during the weekend, and they are never compensated for overtime work. The amount of 130.00 Euro is under the minimum salary for employees above 35 years old, which according to the decision of the Government of Kosovo in 2011, Article 1, paragraph 1.2, should be 170.00 Euro in minimum, whereas for persons under 35 years, 130.00 Euro. Article 2 of this decisions states that this salary may be negotiated, but that it cannot be lower than the determined amount. The obligation to enforce this decision shall be vested on the Labour

Inspectorate, pursuant to the Article 3 of the same decision.⁹ Both cases presented, who receive the salary of 130.00 Euro per month by the company, are above 35 years old.

During the conversation with the parties, KDI also came to understand that the salaries except for not being paid on time are also under the minimum salary, and employees often cannot use the leaves stipulated by law. Parties stated themselves that they do not dare to file the case openly before the Labor Inspectorate, because they risk losing their job. According to them, any objection or question in relation to the working conditions or payment of salaries may result in the warning for dismissal from employment or termination of contract. In one of the cases, parties were obliged to submit their case to LI unanimously via email due to consequences they may suffer. However, they received no response to their request

ABOVE 35 YEARS OLD,
THE MINIMUM SALARY
IS 170 EUROS!

170 euro



130 euros

Several employees are paid 130 Euros even though they are above 35

⁷ Parties were met in different dates: 11.10.2017; 18.10.2017; 09.11.2017; 15.11.2017.

⁸ Law No. 03/L-212 on Labour, Article 11, paragraph 1, sub-paragraph 1.8 reads: the basic salary and any other allowance or income.

⁹ Decisions of 33rd meeting of the Government, p. 4, Article 1, paragraph 1.2, Article 2 and Article 3

CASE OF ASPHALT PAVING COMPANY EMPLOYEES

✓ Similar to the case mentioned above, again in the private sector, a group of employees of a private company for asphalt paving report that they received salaries through the bank only for the first three months, and then in the following months and years, they received all their salaries in cash. According to the Law on Pension Funds in Kosovo, Article 6, paragraph 1 stipulates that every employer shall be obligated to contribute on behalf of its Employees to the Savings Pension. Article 6, paragraph 2 of the same law stipulates that every employer pays an amount that is equal to five percent (5%) of total wages of all employees¹⁰, leaving thus a part of obligation to pay the pension trust to the employer, which in the present case is unlikely to be implemented as the employer never made payments to the pension trust on behalf of employees during this time period. The director of the company said to them that the contributions will be paid entirely to the trust for all employees, due to facilities the company benefits if it does so. The company in question has public contracts with different municipalities in Kosovo, and it has around 30 employees. According to the parties, salaries are often not paid on time.

KDI provided them with legal advices, showing them who to address for complaining about the violations made by the employer, whereas others who tried numerous times to access the Labour Inspectorate, were provided with legal aid, namely by compiling a complaint addressed to several institutions to identify and prevent these violations.



FISCAL EVASION

Fiscal evasion is non-payment or incomplete payment of taxes, usually making a false declaration intentionally or not declaring in the tax administration – declaring less income or gains than the current profit amount, or overstating deductions

¹⁰ (Law No. 04/L-101 on Pension Funds in Kosovo, Article 6, paragraph 1 and 2)

UNJUSTIFIED DISMISSAL FROM WORK AND DEGRADATION

CASE OF DEGRADATION AT WORK

✓ We received several reports with regards to unjustified dismissal from work and degradation from work in both sectors. The first case is related to the violation of the labour rights in public sector, namely non-renewal of contract for the position which the party held and degradation into a lower position, with the justification that the position for which the party had the contract until the new decision of the board, ceased to exist. Organogram of this public institution, which continues to be valid, still contains the job position the party had until the issuance of the new decision. Degradation of NN to a lower position is in contradiction with the Law on Labour, Regulation of the Institution in question and recommendation of Auditor General.

KDI encouraged the party to seek her rights, namely report the case to the Labour Inspectorate. Labour Inspectorate rejected the request of NN as legally ungrounded. NN, with the support of KDI, challenged LI decision, seeking her right.

DISMISSAL FROM WORK WITHOUT ANY WARNING

✓ In another case in public sector, GG worked as civil servant for a long time in one of the public institutions of Kosovo, namely in the position of senior officer. Due to family complications, the same had to take a leave, initially the medical leave, then the annual leave and finally the unpaid leave. GG followed all procedures according to rules foreseen according to bylaws in force. GG informed the em-

PUBLIC SECTOR

Government and decentralised units – including police, army, public roads, primary schools and health system – which use public funds and provide services with the will to improve the citizens' life and not for personal profit\.

ployer that he had no access to the official email, but only to the private email, since the official email could not be opened outside the building of the institution. As GG failed to appear in his workplace on the date foreseen in the decision of the institution, he was warned via an email in the official email – in which he had no access – giving him a time limit of 5 days for appearance, otherwise his employment contract would be terminated. GG did not know about such a deadline, but after the decision on the termination of contract was taken, the decision was also sent to his private email. In the following days, GG appeared before the employer and requested explanations in relation to the decision. He was provided with no explanation apart from the opportunity to appeal the decision taken by the disciplinary commission. GG appealed in every instance, but without success. Supported by KDI, GG filed the case to the court and is awaiting the decision.



TERMINATION OF CONTRACT AFTER SPECIALISATION

✓ The second case reported to KDI of unjustified termination of employment contract in the public institution is the case of the party who during his specialisation, worked and received a salary from the state, until the completion of specialisation in a more specific field. At the time when the party completed specialisation, the institution where he was employed terminated his employment contract without providing any reasons. Supported by KDI in compiling the requests, MM submitted several times to the public institution and municipal bodies the request to work, but as of November 2017 received no response to his requests.

DISMISSAL FROM WORK WITHOUT WARNING

✓ Another case in the private sector reported to KDI is the case of the FF employed in one of the networks of big supermarkets operating in Kosovo. This case is related to the arbitrary dismissal of employee from work without warning because of a dispute with work colleagues. The next day after the dispute, FF was called to be communicated the dismissal from work. FF alleges that until the day of notification, she had no decision, reprimand, verbal or written remark in relation to a violation during the working hours. FF tells that she had a managerial position and that she earned that position through her hardwork in the company. Despite the fact that FF received no decision by the employ-

PRIVATE SECTOR

Every company, household and institution not controlled from the public sector and operated for individual profit. Corruption in private sector is characterised with the impact of the groups of this sector on decisions and actions which result in abuse of vested power.

er on the day when it was communicated to her that her employment relationship was terminated, the decision was sent to her home in the written form through mail. FF initiated the legal procedure against the decision in court in order to be returned to work and the payment of salaries for the time she was dismissed from work; her request was rejected from the Basic Court and Court of Appeals, returning the case for readjudication to the Supreme Court. FF is awaiting the decision of the Basic Court regarding her case.

There are other cases which are still being adjudicated or have been violated the rights in various forms by different institutions or have not been granted justice from the courts, ranking from the failure to compensate salaries of employees of a factory, failure to compensate for injuries at workplace, failure to provide 20% or non-inclusion in the lists of beneficiaries.

Legal aid provided to these parties includes the drafting of legal submissions, legal advices and requests for accelerating of these issues.

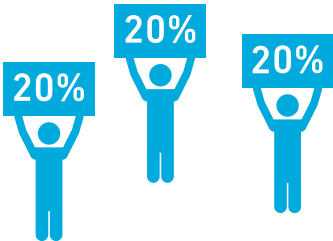




THE CASE OF ELIMINATION AND FRAUD WITH THE 20%

✓ The other case is that of the Socially Owned Enterprise "Ramiz Sadiku", which was privatized by the former Kosovo Trust Agency - KTA, and after the privatization of this enterprise, some of the employees remained outside the 20% payment list. According to the parties submitted to the KDI, they were not informed about the privatization process of the enterprise and consequently lost the right to seek the 20%. The parties claim to be a group of 450 people who have been denied the right to 20%. However, KDI has looked at the legal possibilities that exist to send the issue for the review of the lists but has failed to find a legal basis. Further, the parties have stated that the current lists include persons who have passed away or have been killed during the war, and also persons who have been retired at the time of privatization. The parties have also reported cases where certain persons benefited from the 20% of the former Ramiz Sadiku enterprise, only because they have known the group of persons who have functioned as a trade union of this enterprise. All the allegations of the parties are described in several claims, criminal charges and other legal documents that KDI has compiled on behalf of the group of former employees. With the help of KDI, they have submitted their case to the State Prosecution, criminally charging the persons involved in introducing people without criteria to the 20% list. The Basic Prosecution, through a notice addressed to the parties, shows that it has found insufficient evidence to conduct investigations regarding the allegations of the parties. KDI has helped the group to request the State Prosecution to take any action in terms of the Basic Prosecution's guidance regarding the commencement of investigations in their case. This is because the only possibility for these persons to receive the 20% or to re-evaluate the list is only if the Court finds the persons alleged who have compiled the list guilty.

450
PEOPLE
WHO HAVE BEEN DENIED
THE RIGHT TO 20% IN
PRIVATIZATION!



THE CASE OF KEK FORMER EMPLOYEES

53 **WORKERS**
LOST THEIR JOBS BECAUSE OF THE DECISION OF KEK TO SEPARATE THIS OPERATING UNIT!



✓ In another case submitted to KDI, the group of former employees of Kosovo Energy Corporation construction unit reported their experience on the detachment/separation of their unit by a KEK Board decision and the becoming of this unit independent. The construction unit has been an integral part of KEK for a very long time, until it became an independent enterprise by a KEK Board decision. After the detachment/separation, a number of 53 employees remained unemployed since KEK did not allow them to access the former unit's machineries or any other work materials. Consequently, the newly created enterprise, at the very beginning has failed to provide jobs and perform its function! The decision to detach/separate the unit also foresees the allocation of an amount of money and the contract for performing services for KEK, but in reality, none of these has been implemented. Employees have repeatedly demanded their return as a KEK unit and the abolishing of the established enterprise. KDI has assisted in drafting the claim to address to the KEK Board to return the unit to KEK.



LACK OF EFFICIENCY IN JUDGING THE CASES RELATED TO EMPLOYEES

THE CASE OF DELAY IN THE EXECUTION OF DECISION



✓ KDI has also received the case of the former Pipe Factory in Ferizaj, whose employees had won court disputes at all levels of courts but that their decision remains unenforceable by the justice system in the country due to lack of political will for completing this case. The Assembly of Kosovo took a decision on the case in question and even the Government of Kosovo also issued a decision but without any outcome in the payment of the wages owed to the former Pipe Factory. The problem of non-payment of wages owed remains unresolved to date.

✓ Another case relates to the ineffectiveness of the court in making a final decision related to an employee who

THE CASE OF DELAY IN THE FINAL DECISION

had suffered a traffic accident at workplace. The case was filed in the court in 2001 and the case was adjudicated several times, while the final decision was taken in 2014 but EE was not satisfied with the court's decision and sent the case to the Court of Appeal, where it is pending. The risk about this case is that the case may be returned to re-judgement and afterwards the judgement continues in the first instance and the epilogue of the case may be only be seen after many years. For the case in question, the court has failed to provide real-time judgement to the citizen, i.e to the employee that suffered the accident during the time that he was on work. The consequences of the accident are evident even today since EE was left incapable of working and with physical consequences.

Despite the above-mentioned reportings, the most frequent reports of violations of labour rights were violations in the recruitment phase, with particular emphasis on recruiting staff from the public sector.

2001 to 2017
without a final
decision

THE PUBLIC VACANCY (PUBLIC COMPETITION) AS AN OPPORTUNITY FOR PARTY-BASED EMPLOYMENT

THE CASE WITH PUBLIC INSTITUTIONS

✓ One of the cases reported in KDI is about a job vacancy in a local public institution, a position allegedly predetermined to be given to KK, who is an activist of one of the Kosovo parties. One of the main reasons that led to the suspicion of PP as regards this vacancy was the fact that other applicants were discouraged from applying for this position since the institution that had announced the vacancy would employ the above-mentioned person, and all this because of party interests. After the conclusion of the open vacancy, the rapporteur PP reported that the job position was taken exactly by the party person. In regard to this, with the legal assistance of KDI, PP has compiled the complaint which it has addressed to the internal appeals committee. This committee invited PP in the session to defend the complaint and then by a decision, it rejected the complaint as unfounded by giving PP the opportunity to file a complaint with the Independent Oversight Board (KPM) of Kosovo. KDI, together with the party have compiled the complaint and submitted it to the KPM, the latter in due time approved the complaint as grounded and annulled the decision of the local public institution. However, the accepted candidate has continued his work uninterruptedly, while the institutions have opened a new vacancy for a completely different position! PP who has submitted the case continues to pursue the issue until a response is received from the institution and until justice and fairness is applied in the case of recruiting staff

CORRUPTION

The abuse of entrusted power for personal gain.

POLITICAL CORRUPTION

Political corruption is the manipulation of policies, institutions and rules of procedures in resource allocation and funding by political decision-makers who abuse their position in order to increase their power, status and wealth.

THE CASE WITH MFMC

✓ KDI has received another report about a case similar to the above-mentioned case. TT stated that the MFMC of one of the municipalities announced the position for an ambulance driver. TT wanted to apply for this position, but after contacting persons who were already working at the MFMC,

was informed that a person was already working in the position that was announced for application and was told not to try because he would not be accepted. Despite this, TT had applied for this position and immediately reported the case to KDI by asking for help on how to act if he notes that the vacancy announcement is being announced in contradiction to the law. KDI encouraged him to continue with all the procedures required by the vacancy, and if he noticed a violation of the recruitment procedures and had evidence of that violation, to report the case to the Labor Inspectorate. KDI did not receive any further information about the case because TT wanted to remain anonymous during the reporting of the case.

THE WHISTLEBLOWER

An employee, director, or any external person who reports to the relevant authority, a case of neglect or misuse of official duty within the organization, public institution or company of which is a part.

"VACANT" POSITIONS

✓ Reports from public enterprises continue to be equally interesting in the issue of public vacancy. A report by an anonymous whistleblower within the institution shows how an enterprise had announced the vacancy for 6 vacant positions and then all vacancies were filled by people close to the public enterprise management board and chief executive officer. The whistleblower XX reports that due to the mismanagement of this company and misuse of official duty, this company is on the verge of bankruptcy. Through communication, XX was encouraged to submit the case to the prosecution authorities and we have informed him about the Law on Protection of Informants and the possibilities offered by this law since his allegations of abuse were of a large scale. KDI has not received any other information about the case.

Also, another case related to recruitment procedures at a public-central institution has been reported to KDI. UU stated that there was injustice towards him in a vacancy in which he applied because the vacancy was cancelled with the argument that there was no candidate who had met all the criteria. After cancellation, a new vacancy was announced, which according to the UU, the criteria were tailored to suit the person who was favoured and who academically was qualified for something else whereas the position in which he applied and was accepted was of a completely different field from that of this accepted candidate.

ALLEGATION FOR FALSIFICATION OF RESULTS

✓ The other case is related to the recruitment of a person through falsification of documents by the central institution. DD who reported the case had applied for the position announced by this institution. After the application, the party was invited for the test, and after passing the test was invited for an oral interview. After the interview, the party had received the notification that he/she had not passed that stage. However, the party had learned that this institution had falsified documents when appointing another person to the position for which DD had applied. For this reason, DD had requested access to vacancy/competition documents in this institution. In response, the party only received personal results, but not those of other candidates, with the justification that the data of other candidates are personal data. Meanwhile, the party reported the case to KDI, the institution has cancelled the competition without any reason.

ACCESS TO PUBLIC DOCUMENTS

The legal right - under the Law on Access to Public Documents - of any natural and legal person, to have access, upon request, to documents held, drafted or received by public institutions.

NEPOTISM AS AN OPPORTUNITY FOR EMPLOYMENT

✓ The other case is related to the suspicions of nepotism when selecting a candidate for administrative assistant in one of the municipal public institutions. According to the party, the child of the senior official of this municipal public institution, DD, had not yet been graduated although officially the reason for hiring this person at this institution was that the school staff had to be engaged before September. JJ has shown how the entire process has been manipulated in order to appoint this person. The announcement of the vacancy was done in an unprofessional manner and was not made public on other sites except on the site of this institution. Also, the test date was secretly published, thus reducing the number of applicants from 68 to 43 participants in the test. Also, testing had been predetermined to specifically suit the aforementioned person, while the questions in the test covered the same subject as the DD occupation. When the list of people who passed the test was announced, DD was second on the list, with a margin of only 0.5 points from the first place.

We had similar reporting on nepotism from another party, and this time involving a University institution. The party reported that BB, who was the spouse of one the candidates for per diem staff, was part of the committee for employing per diem staff.

NEPOTISM

A form of favoring based on family relations where someone in an official position uses his / her power and authority to offer a job or favor to a family member or friend even though he or she can not qualify based on merit

UNQUALIFIED, BUT GETS THE JOB

CONFLICT OF INTEREST

The situation when an individual employed in the public sector, business, media or civil society organization is faced with the choice between doing his job properly or in his personal interest

✓ The other case also relates to the recruitment stage in a primary school. The vacancy was announced for the position of the teacher. According to VV who reported the case to KDI, the person who was accepted in this position did not have the appropriate qualification, while the daughter of VV, who was one of the candidates, had the appropriate qualification for that position. The teacher, who had been employed at that school in the same position, had also complained about this vacancy. The Ministry of Education had cancelled the vacancy and also the selection made and decided that the procedure be repeated again from the beginning. VV stated that his daughter will apply again and will follow all possible procedures if the vacancy is again not properly conducted.

In all cases reported to KDI, depending on the case and the reported situation, the legal officer provided the necessary assistance including legal advice, and drafting of documents as a complaint, claim, for the parties wishing to follow the procedures for bringing light into the cases for which they claimed injustice was done towards them. If favouritism, conflict of interest, nepotism play a role in employment of citizens in the public sector, instead of professionalism, merit or other principles, then citizens' lack of trust in the work of public sector increases, while this sector should indeed be a good example of good practices as regards fair and impartial employment. The reputation and performance of the public sector depend on the quality of education of persons employed therein as well as the manner of employment. Failure to implement the fundamental principles and legal acts in the employment of civil servants implies consequences to be suffered by the citizen

NIGHT SHIFT

65 DOCTORS AND NURSES WORK ONLY AT NIGHT TIME

HH and a group of 65 doctors and nurses addressed KDI to report their case that the MFMC and the Health Directorate does not offer them any other option than that of the night shift. They have complained that their employment contracts provide that they have to work 40 hours a week and do not foresee that they only work in the night shift. According to this group, injustice was being done to them because they were not given the opportunity to work in the normal shift, but only at night. Through KDI, they requested that a letter be compiled which was sent to the Health Directorate in the respective municipality and the MFMC with a request to find a solution to their case. Their main claim was that they be paid in accordance to what the Law on Labor provides for night work cases.

KDI has assisted HH and the group in drafting the paper and advised them on how to best address their claims to relevant institutions.



65
DOCTORS AND
NURSES
WORK ONLY NIGHT
SHIFT!

CONCLUSIONS

KDI, as part of Transparency International, for a long time now, has been providing legal advice to victims, whistle-blowers and witnesses of corruption. Within the services that the KDI provides through the legal advisor, from everyday work and continuous contact with the parties, it has observed various violations from state institutions or private companies committed towards citizens.

Cases reported to KDI are real cases revealing the current situation on the ground, how employees are treated in Kosovo, whether by the private or public sector



Discriminatory criteria outlined in public competition/vacancies are among the most common forms that citizens reported to KDI. Based on what the KDI was able to notice, discrimination occurs due to nepotism, conflict of interest or other corruption practices. As regards discrimination cases that the KDI witnessed, discriminating institutions were not punished by the authorities overseeing employees' rights.



Some reports stated that employees are not paid regularly and on time by various private companies. In addition, their wages were lower than the average wage in Kosovo. These private companies managed to win public tenders and provide services with the very employees whose rights are violated. Even in such cases and despite reporting of violations to the institution overseeing law enforcement, KDI did not notice any action being undertaken to improve the situation. The institution which awarded the public tender to the company that has violated employees' rights did not set criteria on employee payment, thus leaving additional space for the company to abuse with the employee's status.



Non-payment of pension contributions or trust is another form often reported to KDI. Despite their legal obligations, private companies find a way to not pay pension contributions on behalf of their employees since the payment of salaries is not performed through banks (but in cash). Employees of such companies point out to the lack of visits from the Labour Inspectorate or non-responses of the Labour Inspectorate in cases reported anonymously. Such companies continue to work unhindered, even though they make law violations constantly.



Despite the criteria on termination and degradation at work foreseen by the Law on Labour or the Law on Civil Service, both the private and public sectors often fail to respect the laws. There are cases when the employment relationship of an employee was terminated due to arguments with colleagues about banal issues, without considering the respective procedures foreseen by the Law on Labour. There are also cases where an employee is served with the decision that the job position has ceased to exist and therefore the employee is transferred to a lower job position, even when that job position has not ceased to exist. Employment relationship was terminated without a prior notice to the employee who was on unpaid leave. Such cases are numerous and are also mentioned in the report, indicating that the private sector almost completely neglects the employees' rights, thus their job is never safe. Based on the contact with employees of the private sector, one gains the impression that in case of objection related to violations of their right, they automatically lose their jobs even if they have valid employment contracts.

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Court delays on resolving cases of different natures have resulted in delays of employees' cases that are under court proceedings. The law prioritizes such cases, but in practice, not every work-related case has priority. Cases such as the one outlined above are numerous, where employees have to wait for years for a final decision. Expenditures incurred to employees, as well as expenditures incurred to public institutions or private companies due to delays of the Court are often ignored from the latter.



A frequent form of violations in employment procedures is tailoring vacancy announcements (public competitions) to favor people tied with political entities in power. There are cases when institutions overseeing law enforcement cancelled the vacancies, but, however, there are still cases where public institutions continue to favor their people, despite the vacancies being cancelled, by adjusting the next vacancy to the CV of their favourite person without considering the principle of merit and professionalism.



Based on the reports received, KDI also noticed a bad practice such as that of announcing of vacancies only so as to meet the legal criteria, while particular people are already working on the announced position in the institution and the same get the job. Other people who apply are excluded in advance, regardless of their experience, education and professional achievement.

KDI will continue with its program of providing free legal advice to all victims, whistle-blowers and witnesses of corruption. KDI will continue to accept new cases, but will also deal with cases under procedures before different instances.

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RECOMMENDATIONS



1 Assembly of Kosovo and Government of Kosovo/Ministry of Labour and Social Welfare, through the budget, shall envisage an increased number of Labour Inspectors;

2 Labour Inspectorate shall increase the number of on-site inspections;

3 Labour Inspectorate shall continue with awareness campaigns on employee rights and possible breaches for employers and employees;

4 Labour Inspectorate shall provide opportunities for employees to submit their complaints anonymously and the same complaints to be taken into account.

5 Labour Inspectorate shall increase the level of transparency by making public all the decisions on website;

6 Independent Oversight Board/Council shall increase transparency by making public all the decisions on website;

7 Independent Oversight Council and Labour Inspectorate shall unify their decisions on issues they deal with in the same cases;

8 Independent Oversight Council shall provide opportunities for employees of civil service to submit their complaints not only to the centre in Prishtina, but to the larger regions as well;

9 Government of Kosovo, along with the Employee Unions and the private sector shall draft a collective contract and sign it;

10 Ministry of Labour and Ministry of Social Welfare shall establish mechanisms that oblige private companies to have syndicate bodies.

11 Courts shall comply with legal deadlines and address work-related issues with efficiency and priority;



ANNEX → MANUAL ON EMPLOYEES' RIGHTS

This brief manual provides a descriptive analysis of the two laws in force regulating labour relations. The Law on Labour and the Law on Civil Service of Kosovo are the two basic domestic laws, which have been analysed for purposes of this report. Normally, both laws derive from the highest legal act in the country, the Constitution of the Republic of Kosovo, which guarantees the rights of employees.

→ CIVIL SERVANTS

Civil servants are: Assembly Administration, Presidency Administration, Office of the Prime Minister and Ministries, executive agencies, independent agencies, regulatory agencies and municipal administration, civilian personnel of Police, Security Forces, Customs, Correctional Service, administrative staff of Courts and Prosecutions, employment relationship of which is regulated by the Law on Civil Service. The civil service of Kosovo is defined in details in Article 3.

→ CIVIL SERVICE PRINCIPLES

Pursuant to its general principles set out in Article 5, the Law on Civil Service defines the basis for establishing an employment relationship between the state administration and employee. Principle of Legality is the first principle implying that all functions and duties of civil servants shall be exercised in accordance with the Constitution, applicable international instruments and legislation in force. Given that a legal state means respecting the rules laid down by law for everyone without any distinction or discrimination. Likewise, the principle of legality somehow ensures the principle of non-discrimination, which principle is mentioned in the Law on Civil Service. Principle of non-discrimination provides that there shall not be discrimination against any person based on race, colour, gender, language, religion, property, economic status, social status, sexual orientation,

birth, disability or other personal status, since different ethnicity is diversity and in the present case belonging to one of the above mentioned groups is not an indicator of the professional achievement of the employee. Likewise, principle of impartiality and professional independence means that a civil servant shall not give priority to selected candidates or evaluate a situation in a subjective manner, causing unjustified harm to the general interest and equality of interested parties and thus violating their rights. Meanwhile, civil servants shall be independent in exercising their occupation in whatever function or action they undertake. Civil servants shall also respond and react quickly to requests of citizens, private organizations or other public administration bodies and therefore this is related to the principle of effectiveness and efficiency, principle which ensures the simple and economical implementation of administrative rules and procedures for meeting the goals of administration in the general social interest. Law on Civil Servants also foresees the principle of providing equal opportunities for people of vulnerable communities and gender, a principle that proclaims equal opportunities for participation in civil service and which is largely related to the principle of non-discrimination on gender and ethnic basis.

Principles ensuring that the work of civil servants is at the right level and protecting the function of this category against abuse of official duty and corruption is the principle of responsibility which obliges civil servants to report, explain and be accountable for the consequences of their decisions, actions and omissions in administration. Likewise, the principle of transparency obliges civil servants to maintain confidentiality of information they possess, without prejudicing the enforcement of obligations arising from the legislation pertaining to access to public documents. Civil service processes are open for publication, so that all stakeholders in these processes have access to them. The principle of transparency enables citizens to seek accountability and engage more in processes



that relate to their daily lives. According to Transparency International, transparency ensures that public officials, civil servants, managers, board members and business people act in a visible and understandable way, and report about their activities. This implies that the general public can demand accountability from them, and this is the safest way for protection against corruption, helping to increase the confidence in people and institutions on which our future depends.

¹¹Transparency is about shedding light on rules, plans, processes and actions. It is the knowledge on answering questions such as why, how, what, and how much regarding state budget.

Another principle set forth in the Law on Civil Service¹² is the principle of avoiding conflict of interest, a principle which prohibits civil servants from using their private interest to interfere with their public position, to abstain from performing any private or public activities and generate conflict of interest. Civil service shall act in accordance with provisions of the aforementioned law to avoid conflict of interest since the misuse of the official position for private interests by the civil servant is contrary not only to the principles of the Law on Civil Service but also to the Criminal Code of Kosovo, whereby pursuant to Article 424 on Conflict of Interest it is punishable by a fine or imprisonment of up to three years.¹³ On the other hand, in the Transparency International¹⁴ anti-corruption glossary is given a definition of what is the conflict of interest, which is defined as follows: Situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests.

➔ CATEGORIES OF CIVIL SERVANTS

The Civil Service of Kosovo has two (2) categories of employees: career Civil Servant positions – that exercise functions on a permanent basis, for the achievement of general institutional objectives and non-career Civil

Servant positions – that exercise functions of a limited duration up to two (2) years, for the implementation of specific projects, temporary replacement of permanent Civil Servants and in cases of work overload.

Citizens of the Republic of Kosovo who have reached the mature age, who have full capacity to act, who are in possession of their civil and political rights, who have the educational background and professional competence required to carry out executive, managerial or implementation administrative functions and who meet the physical conditions required for the concerned position have the right for employment in the Civil Service of Kosovo.

Restrictions to the appointment of public officials to civil servant positions are regulated by Article 14 of this law, stipulating that Public Officials may not be appointed by means of Government executive decision to positions that the law reserves for career Civil Servants and the Civil Service shall not reserve any positions to be assigned to Public Officials. Public Officials may compete as external candidates for vacant position in the Civil Service without any preferential treatment during the recruitment process. Public officials who successfully pass the screening and testing of the recruitment phase shall acquire the status of Civil Servants with all rights and obligations and relinquish their status of Public Officials and consequent rights, obligations and entitlements

➔ CRITERIA FOR ADMISSION AND ENTITLEMENTS

The main criteria for admission to the civil service, which should be upheld by the public institution, are the principle of merit, the public announcement of vacancies, the transparency of the process, the objectivity and impartiality of the testing committee, non-discrimination of candidates and the right to appeal at the end of the procedure. Institutions are also obligated to prepare institutional human resources admission plans. Admission to the Civil Service for career positions is open for

¹¹ (Transparency International, What we do, What is corruption)
¹² (Law on Civil Service No. 03/L-149, Chapter I, Article 5 - Basic Principles of the Civil Service)
¹³ (Criminal Code No. 04/L-082, Chapter XXXIV - Official Corruption and Criminal Offenses against Official Duty, Article 424 - Conflict of Interest)
¹⁴ (Transparency International, What we do-Anti-corruption glossary-Conflict of Interests)



all candidates and for all non-management positions in all institutions. Career advancement is ensured by means of rising from lower to higher functional category, within the same functional category. Likewise, recruitment advancement shall be based on the basic principles of Civil Service functioning. Any admission, advancement, employment which is inconsistent with the provisions of the Law on Civil Service is not allowed.

Each central and municipal administration institution shall periodically at the end of each year, conduct a performance appraisal of Civil Servants. The results of performance appraisal shall be placed in the register of human resources management and in personnel's register, which shall be taken into account during the disciplinary procedures.

Meanwhile, working conditions that determine working hours and leaves of Civil Service are regulated in the fifth chapter of the Law on Civil Service of Kosovo. These issues are similarly regulated as in the Law on Labour, analysis of which is written below.

In case of violation of the rights of employees, in the present case the Civil Servants, the Civil Servants shall have the right for appeal against an administrative decision or issuance of general administrative rules or procedures affecting their employment relation.

Whereas, the seventh chapter defines the principles and conditions of the professional conduct of Civil Servants, which criteria are determined based on the general principles we mentioned at the beginning of the legal analysis.

Disciplinary measures that may be applied for minor violation of Civil Servants duties start with a verbal warning and then a written notification issued by the immediate supervisor. Other measure taken in cases of non-improvement after the two above mentioned measures is a written remark that is placed in personal file of Civil Servant by the body responsible for management of personnel in the institution. For serious violations disciplinary measures are applied such as a preventive suspension with salary up to three months, pending an investigation proposed by the immediate

supervisor and approved by the body responsible for management of personnel in the respective institution, suspension of duties and withholding of 1/3 of salary for a period from up to two (2) months issued by the disciplinary commission upon request from the immediate supervisor, removal from office and transfer to other location with similar duties and interdiction to promotion up to five years issued by the disciplinary commission, termination of the working relationship in Civil Service by the disciplinary commission, without damaging or reducing the right to retirement and early retirement for Civil Servants who have two more years remaining.

Special bodies for settlement of employment disputes and grievances in the Civil Service exist within each institution of the central and municipal administration with civil servants, will be established within each institution of central and municipal administration. Whereas, procedures for settlement of disputes and grievances are developed by these bodies: Disputes and Grievances Appeal Committees within the public institution and Independent Oversight Board.

→ INDEPENDENT OVERSIGHT BOARD

IOB reviews civil service employment disputes and renders mandatory decisions to be executed by the employer.¹⁵ Pursuant to Article 82, Disputes and Grievances Appeal Committees are the first instance where Civil Service employees can complain. Whereas, the second instance where they can complain about Commission's decisions related to dispute and grievances settlement is the Independent Oversight Board. This Council is foreseen by Article 101.2 of the Constitution of Kosovo, which stipulates that an Independent Oversight Board for Civil Service shall ensure the compliance of rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo¹⁶

¹⁵ (Constitutional Court, Judgment in the case KI33/16, Court Assessment, point 77.)

¹⁶ (Constitution of the Republic of Kosovo, Article 101, paragraph 2)



Functions of the Council are focused on reviewing complaints of Civil Servants and applicants for employment in the Kosovo Civil Service, overseeing implementation of Civil Service legislation and observing the appointment of Civil Servants of the management level and the same levels in the Kosovo Institutions¹⁷

Chapter nine of the Law on Civil Service of Kosovo regulates the suspension, termination and end of the employment relationship with the Civil Service. Due to the similarity of regulating these issues with the Law on Labour, KDI does not see the need to retrieve or revise the same Articles as the analysis of these legal provisions is elaborated in the part of the Law on Labour.

→ OTHER SERVANTS

Article 4 of the Law on Civil Service has defined the categories of public employees who are not part of the Kosovo Civil Service starting from the teaching staff of the education system, the medical staff of the health service, creators and art performers, Police Officers, Customs Officers, Officers of the Correctional Service and Members of the Kosovo Security Force, political appointees and all the persons appointed in positions by the political appointees and members of their cabinets, starting from the cabinet of the President, President of the Assembly, Prime Minister and cabinets of the Ministers. Officials elected to elected positions in the institutions of the public administration and officials appointed by elected officials to specific positions are not Civil Servants, as well as the personnel employed in the cabinets of public officials and the personnel employed by the institutions of the public administration in the central and municipal level responsible to carry out support and maintenance work are not Civil Servants. Their employment relationship shall be regulated in accordance with the Law on Labour, special laws, collective agreements or with sector regulations.

→ PUBLIC COMPETITION

Public competition is applicable in public institutions when there is a vacant position and there is a need to hire a person in that position. The vacancy must be equal without any type of discrimination, through which all citizens will be informed about the vacancy; it should have clearly defined conditions and criteria, and description of the duties for that position. All interested parties should have equal access to vacant positions, a condition that is set out in Article 8 of the Law on Labour.¹⁸

→ EMPLOYMENT CONTRACT

Once the testing or recruitment period ends, the parties, i.e. the employer and the employee, sign the employment contract. Article 10 of the Law on Labour¹⁹ stipulates that the employment contract must be concluded in written form and signed by the employer and the employee. This law also defines the types of employment contract, thus envisaging a contract for an indefinite period, a contract with a fixed period, and a contract for specific tasks and duties. Article 11 of the same law defines the mandatory content of the Employment Contract, starting from the data on the employer such as designation, residence and business register number, data on the employee such as name, surname, qualification and dwelling, designation of the position where the employee is being hired, nature and the type/form of labour, and services and the job description. Also in the employment contract must be written the place of work or a notice that work shall be performed at various locations if the position of the employee and his function is aimed at field work, working hours and working schedule, the date of commencement of work, the duration of the employment contract, the basic salary and any other allowance or income, the period of vacations, and the time of the termination of employment relationship.

Generally, when we look at the Law on Labour, we note that the employment contract with all its component parts signed by both parties has much authority to

17 [\(Independent Oversight Board for Civil Service of Kosovo, - History and mandate of Counseling\)](#)

18 [\(Law on Labour No.03/L-212, p 4, Article 8 Public Competition\)](#)

19 [\(Law on Labour No.03/L-212, Article 10 – Employment Contract\)](#)



regulate most of the procedures from the beginning of the employment relationship to its termination.

In the third chapter of the Law on Labour, it is regulated the systematization of employee in work position, respectively Article 17 regulates the appointment of the employee in the work position. Therefore, the employee is assigned to the work position for which he has contracted an employment contract, and in case of the need for restructuring or new organization of work, the employee in accordance with the employment contract may be systematized in another work position that corresponds to the professional preparation of the employee and the same level of salary, always in accordance with the employment contract. Depending on the need, an employee can be systematized at work from one position to another, at the same employer in accordance with the Employment Contract, the Employer's Internal Act and the Collective Contract in force.

Whereas, in the fourth chapter of the Law on Labour, working hours are defined, which according to this law, implies a period of time during which an employee performs work or services for the benefit of the employer. Full working hours are 40 hours a week, while for people under the age of 18 working hours can be no more than 30 hours per week. Article 23 of the same law establishes longer working hours which may last only for as long as necessary and no more than eight hours. When overtime work exceeds the eight hour limit, it may only be performed in case of urgencies to prevent accidents and the unforeseen force majeure. While extended working hours are prohibited for employees that are under eighteen years of age, until the obligation to keep accurate records of overtime falls to the employer and depending on the request of the Labour Inspectorate to present these data.

Meanwhile, Article 27 sets the night shifts, which is calculated to be between 22:00 and 06:00. If the work is organised in shifts, it is necessary to organize shifts in such a form in order to prevent an employee from working a consecutive one week in night shifts without a day off. If the health of the employee worsens as a result of the night shift, the employer is obliged to find an appropriate job for that employee during the day.

The employee is entitled to a break during the day, within the working hours of at least 30 minutes. According to the fifth chapter of the Law on Labour, Article 28-31, an employee is entitled to a day of rest between two continuous days of labour lasting for at least twelve non-stop hours. As far as weekly rest is concerned, an employee is entitled to a weekly rest for at least twenty- four continuous hours. However, if an employee must work on the day of weekly rest, than a day off shall be given to the employee in the following week. Whereas, annual leave is allowed for the employee, and it shall be defined on the basis of work experience, whereby one day shall be added for every five (5) years of service. Whereas the categories of employees which despite the application of protective measures contain their harmful effect are entitled to an annual leave of at least thirty working days during a calendar year. Two days of additional annual leave are allowed for mothers with children up to three years old, single parent and persons with disabilities. Unused annual leave shall not be compensated in money, unless the employment relationship of an employee is about to expire. Whereas an employee that is hired for the first time cannot get an annual leave without spending six months of consecutive work. The employee cannot revoke the right to use the annual leave and must notify the employer at least fifteen days before commencing the use of the annual leave.

While Article 38 of the Law on Labour states that employees cannot be denied the right to use the annual leave, if the employee has not used an annual leave because of the fault of the employer, is entitled to use that leave during the following period which suits the employee, or be compensated in money.

Whereas in Chapter VI of the Law on Labour, it is stipulated that the employee is entitled to safety at work, health protection and the appropriate working environment, in accordance with this law and the Law on Occupational Safety, Health and the Working Environment. Obligations deriving from the law on employers are: to provide the necessary conditions for protection at work, to inform the employee in writing before his engagement on the risks at work and on the protective measures which he is obliged to take. Also the employer is obliged to apply general rules and procedures for protection and safety at work,



as defined by other relevant legislation. While the employee is obliged to adhere to the rules on safety and health protection at work, so as not to endanger his or her health and safety and other employees. In the work where there is an increased risk of injury, occupational disease or other diseases, an employee who meets the special conditions of work may be appointed, based on health skills, professional qualifications, experience gained at work and age. The categories of employees under the age of eighteen, employed women and persons with disabilities enjoy special protection in accordance with the Law on Labour.

Chapter six of the Law on Labour regulates a very important part of the employment relationship, salaries and benefits of employees. The salary of the employee is determined by the contract of employment, which means that the basic salary, overtime and other income are realized according to the agreement reached with the employer for the work performed and the time spent at work. The employer shall issue a salary statement for each salary payment and any other remuneration paid to the employees. Salary payments can be made in two ways based on the Law on Labour, through bank transfers or in cash payments for which the employer shall keep a register. Salary in Kosovo is paid in Euro currency on a monthly basis or as foreseen by law, at least once a month. Regarding extended working hours / overtime, night shifts, and work during national holidays, the employee is entitled to allowances due to overtime. The employee should be paid 20 % per hour for extra shifts, 30% per hour for night shifts, and 50% per hour for work in national holidays and for work in weekends. Allowances for work in weekends, holidays and other days off based on the Law shall exclude each other. An employee may ask from the employer to be compensated in days off instead of allowances.

Also with the Law on Labour, it is regulated the compensation for occupational injuries. The employer is obliged that in the event of the injuries and occupational diseases of the employee, that are sustained during the performance of the work, provide the insurance for the compensation of the expenses. Vice versa, if the employee has caused damage to the employer with intent or full negligence, he is obliged to compensate the damage.

Meanwhile, the termination of employment relationship is regulated with Chapter VII of the Law on Labour. Based on the law, employment contract may be terminated upon the death of the employee, death of the employer, when the work performed or services provided by the employee are of personal nature and the contract cannot be extended to the successors of employer, with the expiration of contract, when an employee reaches the pension age, on the day of the submission of plenipotentiary proof of the loss of labour competencies, if an employee shall serve a sentence which will last longer than six months, with the decision of the competent court, upon the bankruptcy or liquidation of the enterprise.

It is foreseen by law that the contract may be terminated through written agreement between the employer and the employee. In cases of termination of employment contract with agreement, the employer is obliged to execute the salary to the employee for the days until the termination. An employee is entitled to the unilateral termination of the employment contract. The time limit to notify the termination of the employment contract is fifteen days for a fixed term contract employee and thirty days for an indefinite term contract employee. The employee may terminate the employment contract without prior written notice in cases where he or she is guilty of failing to comply with the obligations deriving from the employment contract. While the employer may terminate the employee's employment contract with a notice period, when the termination is done for economic, technical or organizational reasons, the employee is no longer able to perform the assigned contract duties, serious cases of misconduct of the employee or because of dissatisfactory performance of work duties. However, the employer may terminate the employee's employment contract without the required period of notice for termination of employment, when the employee is guilty of repeating a less serious misconduct or breach of obligations, and when the employee's performance remains dissatisfactory in spite of the written warning. In the aforementioned cases, the employer may terminate the employment contract only when after the employee has been issued previous written description of unsatisfactory performance with a specified period of time within which they must improve on their performance as well as a statement that the failure to improve the





performance shall result with dismissal from work without any other written notice. The employer is obliged to pay the salary and other income until the day of termination of the employment relationship, and the employer may also prohibit access to the enterprise facility during the notice period, i.e. prior to termination of the employment contract.

→ THE RIGHTS FROM THE EMPLOYMENT RELATIONSHIP

Chapter IX of the Law on Labour shows the procedures for the realization of rights in employment relationship, thus starting from the protection of the rights of the employee. An employee who assesses that an employer has violated the right to employment relationship may submit a request for exercising the rights that are violated, to the employer or the relevant body of the employer if it exists, while the employer is obliged to decide upon the request of the employee within the deadline of fifteen days from the date of receipt of the request. The decision on the request of the employee is submitted to him in written form by the employer within eight days. If the employee is not satisfied with the employer's decision or does not receive a response within the deadline, an employment dispute may be initiated at the competent court. If the court finds that the employer's termination of the employment contract is unlawful, it shall order the employer to do one of the following, to pay the employee compensation in the amounts that the court considers fair and adequate but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal or reinstate the employee in his or her previous employment and order compensation of all salaries and other benefits lost during the time of unlawful dismissal from work. The employer is obliged, that within the defined term, to implement the decision of competent court.

Another important body is the Labour Inspectorate, which is an independent body of the State Administration which operates within the executive power of the Republic of Kosovo, and monitors and enforces

legislation in the field of employment relationship and security and health at work.²⁰ Whereas, according to the Law on Labour, an employee may submit an appeal to the Labour Inspectorate at any time for issues falling under the competencies of this body. Labour Inspectorate is obliged to issue a decision regarding the appeal of the employee within thirty days or inform the submitter of the appeal regarding the extension of the term when the decision shall be reached; the LI will impose disciplinary measures based on the Law on Labour Inspectorate.²¹

²⁰ (Ministry of Labour and Social Welfare - Labour Inspectorate - for the Inspectorate)

²¹ (Law No. 2002/9 on Labour Inspectorate)



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