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A review of the legislation regarding the right to compensation in cases of damage by public authorities in Kosovo

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List of abbreviations

CPP →	Code of Penal Procedure
EC →	European Council
EU →	European Union
FLAA →	Free Legal Aid Agency
IOBCS →	Independent Oversight Board for the Civil Service
JCK →	Judicial Council of Kosovo
LGAP →	Law on the General Administrative Procedure
LOR →	Law on Obligational Relationships
LPO →	Law on Public Officials
MJ →	Ministry of Justice

Introduction

The right to demand compensation (in case of damage) from public authorities is a fundamental right which originates in the Constitution. According to the general principles of the judicial system, as defined by the Constitution of the Republic of Kosovo, every citizen is guaranteed the right to petition against a judicial decision. Therefore, the right to compensation is part of the right to petition against a judicial decision, where the injured party seeks the right to compensation after the court declares him/her innocent, injured party with no reason or right irrespective of the penal, civil or administrative procedure.

The right to compensation in former Yugoslavian countries is usually part of the Law on Obligations or, in the case of Kosovo, the Law on Obligational Relationships. This right is regulated by the Law on Obligations in Montenegro, North Macedonia, Serbia and Bosnia & Herzegovina. As a result of a different political tradition, the right to compensation (in case of damage caused by public authorities in Albania is regulated in a different form, through the Law on Extracontractual Liability of State Administration Bodies in harmony with the Civil Code of Albania. Nevertheless, despite the laws on obligations, the right to compensation is guaranteed in these countries through other laws: The Penal Procedure Code and the Law on General Administrative Procedure, the Law on State Administration in Montenegro, the Law on General Administrative Procedure and the Law on Civil Service in North Macedonia.

Ensuring the right to compensation is equally important as guaranteeing the right to compensation. Currently, the institutions (the court, the government) do not possess final data regarding the number of initiated cases for compensation, their status, or types of compensations since they do not monitor the realization of such a right. The available data in Kosovo (for such a case) are incomplete, especially in the civil procedure or what are commonly referred to as civil cases as cases of damage compensation are usually known as civil cases. This is so since it is impossible to identify what the number of rights to compensation (in case of damage by public authorities) are being implemented in Kosovo.

The Ministry of Justice has drafted the concept document for the realization of civil rights including the party's right for judgement within a reasonable amount of time where the right to compensation is treated. However, the party's right to compensation is dealt from the aspect of the damage caused to the party due to the duration of the procedure (i.e. failure to judge within a reasonable time) and the right to compensation after the end of the procedure or after the court's decision is not dealt with when the party after proving innocence, can initiate a request for compensation of damage caused and proven through the court decision.

Methodology

The methodology employed for drafting this report comprises of online (desk) research, direct interviews and focus groups. As for the online research, we have analyzed the relevant laws in Kosovo in terms of the definition of the right to compensation to the person who has been harmed as a result of the action of public authorities. This way, research has been conducted on the Law on Obligational Relationships (relevant especially for the right to compensation in criminal proceedings), the Criminal Procedure Code (relevant especially for the right to compensation in criminal proceedings) and the Law on General Administrative Procedure (relevant especially for the right to compensation in administrative procedure).

We provide two examples from countries in the region (Albania and Montenegro) and one EU member state, Estonia, to show how other countries have regulated to right to compensation in cases of damage caused by public authorities. This report elaborates on the relevant laws and the achieved findings regarding the right to compensation.

In order to further analyze how the right to compensation is defined by legislation in Kosovo, we conducted interviews with the Ministry of Justice, the Judicial Council of Kosovo, the Institution of the People's Advocate, the Agency for Free Legal Aid, Kosovo Institute of Law and lawyers covering the field of administrative law.

Moreover, in order to discuss this right and the extent to which the legislation covering this right is clear and sufficient in Kosovo, a focus group was organized with citizens and other relevant parties. As for the latter, it is worth mentioning the Agency for Free Legal Aid, the Kosovo Institute for Law, and independent lawyers in various fields. After drafting the report, another focus group was organized in order to validate the findings of this report.

Summary of Findings

- There is a legal basis in Kosovo regarding the party's right to compensation in case of damage caused by public authorities, through, but not only: a) the Law on Obligations; b) the Criminal Procedure Code and c) the Law on General Administrative Procedure;
- The three aforementioned laws serve the legal basis for claiming the right to compensation in case of damage, in different procedures: the Law on Obligations in civil procedure, the Criminal Procedure Code in criminal procedure and the Law on General Administrative Procedure in administrative procedure;
- The complaint procedure, including the request for compensation in case of damage in the state – public official relationship, is regulated by Law on Public Officials. The public officials, who (with the status of civil servants) have as a first reference mechanism, the Independent Oversight Board for the Civil Service (IOBCS) and then the court. However, we have left aside this aspect since the focus is on the relationship between the state and the natural person in the sense of not working in the public administration;
- Although there is a legal basis on which compensation can be requested, some elements are not sufficiently clarified, especially those in the civil procedure, such as: the procedure to request compensation, including the reference mechanisms, the types of compensation, the budget and the deadline. Similarly, the issue of whether compensation can be requested in case of damage by public authorities; whether the intervention of the public authority was carried out intentionally or unintentionally; whether it is (or not) sufficiently addressed in the legislation;
- Even when cases are initiated for compensation in case of damage, the average duration of the judicial procedure is estimated to be eight (8) years. The Ministry of Justice has developed the concept document for the realization of civil rights, including the party's right to a trial within a reasonable time;
- Free Legal Aid Agency serves as a good reference mechanism for citizens seeking compensation in civil, administrative, and criminal procedures, but it has been estimated that the number of cases assisted by this agency is small, compared to the needs for addressing such requests;
- The right to compensation and the procedure for its realization is clearer in criminal and administrative proceedings than in civil ones. In the criminal procedure, the mechanism where the request is made, the fund, the duration and the reporting on the realization of this right has started to improve since 2022. However, in the criminal procedure, the monetary value of the compensation is estimated to be low in relation to the damage caused. This is because the parties are compensated for one day in prison 9 euros for material damage and 6 euros for non-material damage;
- Citizens are poorly informed regarding their right to seek compensation in case of damage by public authorities;
- The classification of cases and decisions in courts regarding compensation is not sufficient. This is because the subjects are classified according to large typologies: civil, criminal, administrative, and some others, but there are no sub-classifications within the subject as to how many of them are for compensation.

■ In Albania, the right to compensation is regulated by the Law on Foreign Contract Liability of State Administration bodies. The law regulates the types or circumstances in which state bodies are responsible towards natural and legal persons, determines the cases when public administration is exempted from responsibility, the deadline for the request for compensation and how the budget (fund) is provided by the institutions to realize the compensation of the party;

■ In Montenegro, the right to compensation is regulated by the Law on Obligations and the Law on State Administration. The law regulates the types or circumstances in which state bodies are liable to natural and legal persons, determines the cases when public administration is exempted from responsibility, and the time limit for claiming the right to compensation;

■ In Estonia, the right to compensation is regulated by the Law on State Liability. The right to compensation in Estonia is also expressly stated in the Constitution of this country. Even in this case, the law determines the circumstances or types of damage (property, non-property, to third parties), compensation procedures and the deadline for requesting compensation in case of damage by public authorities.

The right to compensation by public authorities in Kosovo

The right to compensation of the individuals (parties) in cases of damage by public authorities is regulated by legislation in Kosovo. In the civil procedure, this issue is regulated by the Law on Obligational Relationships (LOR), namely Article 153 guarantees the responsibility of the legal entity (in this case, the state) for the damage caused by its body. According to this provision¹:

1. The legal entity is responsible for the damage that its body may cause to a third exercising its functions;
2. If the law does not provide further specifications for the case in hand, the natural person has the right to compensation from the person who caused the damage intentionally or through gross negligence;
3. This right is prescribed within a six (6) months period from the day payment of compensation for damage is made.

According to this, the responsibility of the legal person for the damage caused to the natural person is guaranteed (point 1 of the article) and so is the right of the natural person to request compensation for the damage caused intentionally or due to gross negligence. This article is considered sufficient in terms of the legal basis on the basis of which the natural person (injured party) can request compensation in case of damage caused by public authorities. The existence of a sufficient legal basis in these cases has been confirmed in the focus group of Democracy Plus (D+) organized with citizens and other parties².

The right to seek compensation from the legal entity in case of damage caused by public authorities is also related to the fact of which procedure is involved, civil, criminal, or administrative. According to the organized focus group³, the LOR and Article 153 serve as the legal basis in the civil procedure, while the legal basis in the criminal procedure and the administrative procedure are related to the Criminal Procedure Code (CPC) for the criminal procedure and the Law on the General Administrative Procedure (LGAP) for administrative procedure. Even in these procedures, the participants in the focus group assessed that there is a sufficient legal basis for the right to compensation in case of damage caused by public authorities regardless of the procedure (criminal, administrative, or civil).

In criminal proceedings, the CPC in Article 15 defines the right to rehabilitation and compensation of the person against whom illegal action was taken in criminal proceedings. According to this provision⁴:



Any person who has been convicted, arrested, detained or illegally detained has the right to full rehabilitation, fair compensation from budget funds and other rights provided by law.

1 Official Gazette of the Republic of Kosovo. Law No. 04/L-077 on Obligational Relationships, Article 153: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2828> (last accessed on June, 2023).

2 Focus group organized on May 12, 2023.

3 Ibid.

4 Official Gazette of the Republic of Kosovo. Code no. 08/L-032 of Penal Procedure: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759> (last accessed on June, 2023).

This issue is regulated in detail in chapter XXXVI on the procedure for damage compensation, rehabilitation and for the exercise of other rights of persons convicted or arrested without reason. According to Article 526 of the relevant chapter, the request for compensation must be made within three (3) years after the final form of the judgment of the first instance by which the accused was acquitted of the charge. However, when the appeal is decided by the higher court, the right to compensation is prescribed after three (3) years from the date of the decision. Regarding the initiation of the procedure for damage compensation, according to Article 527 (point 3), the injured party first addresses his request to the competent public body in the field of court cases for reaching an agreement on the existence of damage, the type and amount of compensation.

In the administrative procedure, the party's right to compensation is recognized upon the annulment of the administrative actions, specifically the administrative act and the administrative contract according to the LGAP⁵. According to Article 57, point 3, in case of the annulment of the administrative act upon which the party benefited from the decision, then the party will have the right to monetary compensation if it has entered into a legal-civil relationship from which it can no longer be withdrawn, or from which can only be withdrawn by suffering damages, which it would not be reasonable to demand from her. Then, according to point 4 of the same article, the compensation measure must not exceed the reasonable interest of the party if the repealed act continued to produce legal consequences. The party does not receive compensation for the lost profit. Similarly, in case of unilateral termination of the administrative contract between the public body and the party (natural person), the latter has the right to compensation of damages.

As for the right to compensation in administrative proceedings, this report only deals with the right to compensation in the relationship between the state (public administration) and the party in the capacity of a natural person, but not the right to compensation

in the relationship between the state and public official employed in the public administration. The right of complaint and compensation in case of damage is regulated by the Law on public officials for all public officials⁶. In the case of a civil servant within the state administration, the complaint against the public body is initiated by the official first at the Independent Oversight Board for the Civil Service (IOBCS) and in case of non-compliance with the decision of the IOBCS, the parties can initiate an administrative conflict before the administrative court.

Practical Application

The right to compensation is implemented in Kosovo, but the data proving how much this right is being implemented are not clear and sufficient. Also, there is no sufficient data and categorized according to the type of procedure regarding the payments made by the public authorities to the injured parties in the cases of winning the right to compensation from the injured parties. In addition to the fact that there is no data on how much compensation was paid according to the types of procedures (with the exception of the criminal procedure), there is also no data on how many cases are for compensation of damage within the civil procedure.

In civil procedure, the LOR does not determine the mechanisms and procedure for claiming the right to compensation. For example, it is not determined to whom the complaint is submitted first, the institution that caused the damage according to the claim of the party, or the court? Then, in case of gaining the right to compensation, who compensated the injured party, the institution that caused the damage or is there another fund? The lack of clear mechanisms for the realization of this right (non-definition of responsibility), the problems regarding the duration of the procedure and the lack of funds for the compensation of the injured parties have been presented as one of the problems by the institution of the People's Advocate⁷.

5 Official Gazette of the Republic of Kosovo. Law no. 05/L-031 on the General Administrative Procedure: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=125559> (last accessed on June, 2023).

6 Official Gazette of the Republic of Kosovo. Law no. 06/L-114 on Public Officials: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839> (last accessed on June, 2023).

7 Interview with Naim Qelaj, Ombudsperson and Burim Tahiri, Senior Legal Advisor, date: 02.06.2023.

In criminal procedure, this issue is better regulated because there is a mechanism where the request for compensation is initiated, namely the Kosovo Judicial Council (KJC). The KJC has established the Commission for Compensation of Damage for Persons Convicted or Arrested Without Reason consisting of 5 members (3 regular members and 2 reserve members, including the chairman as a regular member). Also, according to data from the KJC, there is also a fund set aside for the compensation of victims who have been convicted or arrested without reason⁸. Current requests for compensation for criminal cases amount to 77 Million Euros, a relatively high figure for this institution. What is challenging in this respect, are the delays in with cases for which the Court can take up to 8 years, a long time to be considered successful and justice done. The situation will be further complicated in terms of compensation earned when Kosovo joins the European Council (EC) and where citizens can usually win cases of higher compensation. Currently, the parties are compensated with relatively low amounts in terms of wrongful imprisonment. The current regulation stipulates that the parties are compensated for one day in prison with €9 for material damage and €6 for non-material damage⁹.

With the change in the legislation, it is foreseen that these amounts will increase to a certain extent, but that the values are not yet definitive. The innovation in terms of compensation is also the fact that during the previous year, two cases were won in Court by the injured parties for moral compensation, which opens another dimension of eventual compensation, similar to other countries treated in this analysis¹⁰. According to the report of the relevant commission, in 2022 there were 104 cases where people who were arrested or detained without reason were compensated. According to the same report, the value of the compensation that was paid in total is 251,302.00 euros. The only public report of the commission in question is from 2022, therefore no comparisons can be drawn on the obtaining the right to compensation with other years.

In order to avoid as much as possible such situations of which the state bodies are aware, the Ministry of Justice (MOJ) has drawn up a concept document for the realization of Civil rights, including the Right of the Parties to a Trial within a reasonable time, a document which elaborates on the problem of delays in judgment and gives clear instructions for improving the situation¹¹. The document is in the stages of internal institutional discussion and will serve as a guide for eventual legislative and administrative interventions.

The contribution of the Free Legal Aid Agency in initiation of cases for compensation

The Free Legal Aid Agency (FLAA) is a mechanism that helps citizens have access to justice (free legal aid) in civil, criminal, administrative and misdemeanor proceedings, for citizens who do not have sufficient financial means.¹². Regarding the number of cases in general for free legal aid initiated with the help of FLAA, according to its annual report, in 2022 a total of 5,861 cases were initiated (civil, criminal, administrative and misdemeanor). However, only 294 of them have been initiated as requests for compensation of damage, and 247 of them have been completed, while another 47 are in the process in 2022.

8 Interview with Astrit Hoti, Coordinator of the Unit for Legal Affairs, Analysis and Research, Judicial Council of Kosovo, date: 7 June 2023.

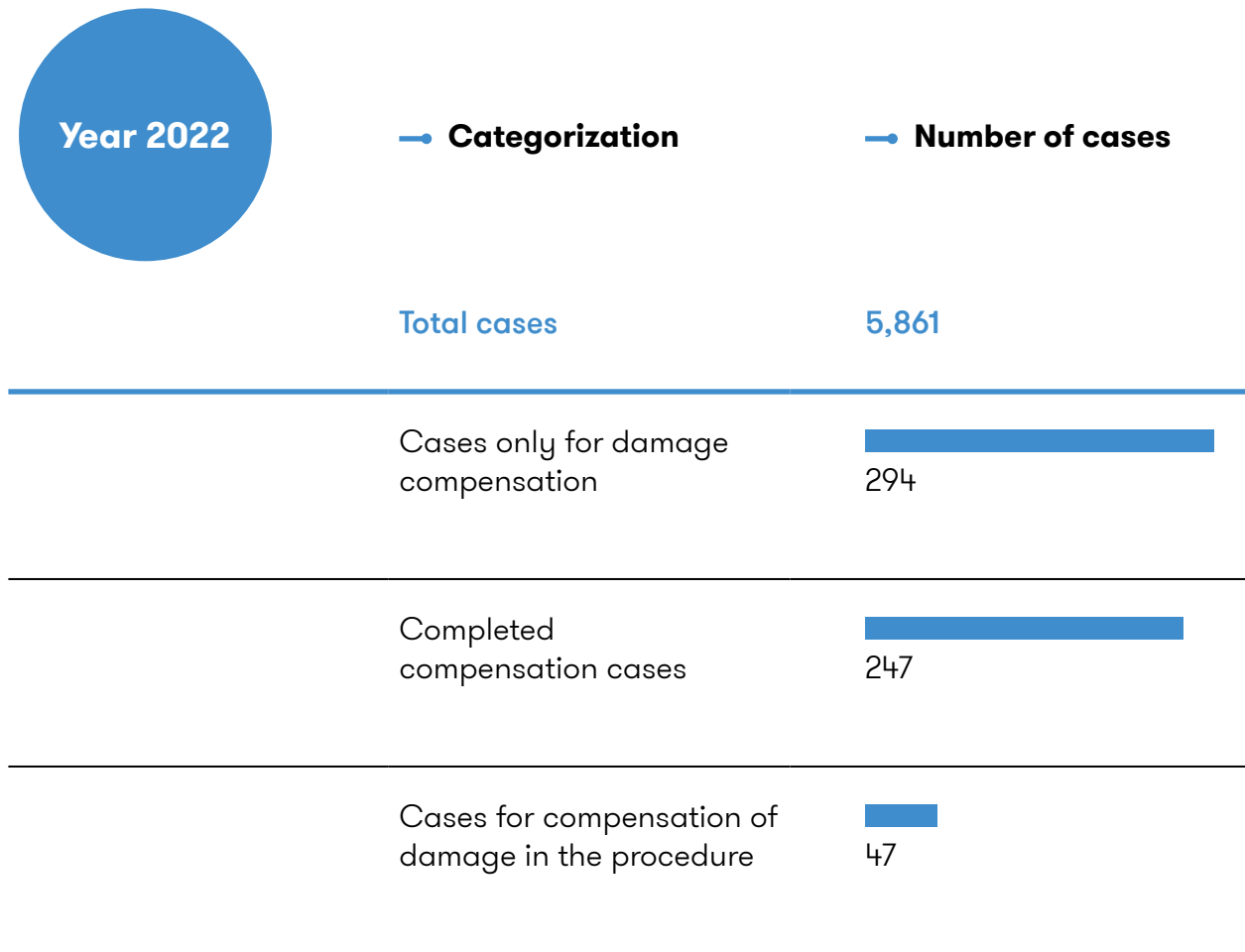
9 Ibid.

10 Ibid.

11 Interview with Genc Nimoni, Chief of Cabinet of the Minister of Justice, date: 25.05.2023.

12 Law no. 04/L-017 on free legal aid: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2803>

TABLE 1: Total cases, cases for compensation of damage, completed and still in the procedure according to FLAA



Source: FLAA

Case classification based on compensation

Basic courts in Kosovo publish judgments/decisions through their official websites and categorize them according to several types, such as: criminal, administrative, economic, civil, hereditary civil, various civil, and others. Each type includes a large number of

judgments/decisions, but there is no sub-classification within the case type that indicates which cases are judgments/decisions on the realization of the right to compensation. According to the annual report for 2022 of the KJC, the number of cases that the basic courts had at work during the year 2022 is 318,435 cases¹³. The non-classification of cases according to certain types within the type of case has also been confirmed by the Basic Court in Pristina¹⁴.

¹³ Kosovo's Legal Council, The statistical report of courts for 2022: https://www.gjuqesori-rks.org/wp-content/uploads/reports/45114_RAPORTI%20STATISTIKOR%20I%20G-JYKATAVE%20VJETOR%202022.pdf

¹⁴ Discussion with Shaban Gërzhaliu, Administrator in the Basic Court of Prishtina: 02.05.2023.

The right to compensation in case of damage by public authorities in Albania

The right to compensation in cases of damage by public authorities in Albania is regulated through the Law on Foreign Contract Liability of State Administration bodies. The law in question determines the circumstances and state responsibility towards the parties injured by the action or non-action of state bodies¹⁵.

Article 3 of this law stipulates that: “State administration bodies are responsible for the damages they cause to private physical or legal parties in the following cases:

- a) When they commit illegal actions or omissions;
- b) When they commit illegal actions or omissions, but which result in damage to the legal interests of private natural or legal persons;
- c) Although they perform legal actions or omissions, they cause an unequal damage to the subjects to whom this action or omission is directed;
- d) When, due to the malfunctioning of the technical means with which the state administration bodies exercise their activity, private natural or legal persons are infringed on their legal interests;
- e) When they cause a continuous risk to private natural or legal persons;
- f) When they commit a corrupt act while exercising their functions”.

The elements defined in this article provide a wide range of circumstances in which state bodies are liable to natural and legal persons. An important part of the law is the personal responsibility of employees of state administration bodies. The law (Article 4) defines the circumstanc-

es when state employees are exempted from personal liability when the elements are defined according to Article 3. An exception to this, employees are responsible for damages when they have acted in bad faith. In such cases, when the act in bad faith is proven, the state employing body, after compensating the injured party, has the right to demand from the guilty employee the return of the compensation he paid.

Such a provision puts the public employee in a situation of increased caution against (not) intentional actions, the payment of penalties can be considered an effective method to increase caution in public engagement.

The second chapter of the law defines the types of compensation and divides them into:

- Return, in the physical transfer sense of a thing or by the restoration of a right, the enjoyment of which was suspended due to the actions or inactions of state administration.
- Compensation – in the payment of an amount of money to compensate for a damage that cannot be directly remedied.
- Elimination of the causes that bring the damage - determining that the state bodies avoid the consequences from the change of a legal or factual situation, restoring the previous state, except in cases where the return to the previous state is impossible. In cases where property damage is caused, the administration accepts the injured party's request for compensation, in cases where returning to the previous state is impossible.

¹⁵ Law no. 8510, date 15.07.1999 for non-contractual liability of state administration bodies.

The law in question also defines the cases when the state administration is exempted from responsibility. In general, they are related to the damages caused which could not have been avoided even if due care had been taken while exercising state functions. The exception does not apply in cases of malfunction of technical means.

Cases where the damage was also caused by the actions or inactions of the injured party are also part of the treatment of this law. The compensated damage in such cases is also deducted from the measure which was caused by the injured party, damage which is assessed by experts, in accordance with the provisions of the Code of Administrative Procedures and the Code of Criminal Procedure.

The law also defines the form of compensation to the injured indirectly, which is mainly related to the case of death, violation of bodily integrity or health, as well as in the case of unjust deprivation of liberty. In such cases, compensation in money is made to third parties, at home or at work, to whom the injured party had obligations and to whom damages are caused by unrealized services. Special emphasis is given to cases where the injured party who died due to the action or lack of action of the state administration has obligations to support the family and as a result they are left without income. In such cases, the amount of pension is determined in cash as a form of compensation for the injured party.

The law also clearly defines the responsibility of the delegated power (when the entity that causes the damage is not a state administration body, but acts on the basis of authorization from the public power), where it is determined that the responsibility belongs to the public authority granting the authorization. In case it is proven that the damage was caused by the delegated power, the delegating authority can demand compensation.

The law has defined as a 3-year term the time within which the injured party can request compensation, from the period when the injured party is notified of the requested damage and the body that caused it. The most distant period for compensation for causing damage must be realized in the closest financial opportunity, otherwise they enter as a separate item in the law of the state budget in the following year.

According to Article 12, at the end of each financial year, the budget bodies submit to the Ministry of Finance, together with the request for funding from the state budget, the request for the provision of budget funds for their obligations to private persons.

In addition to the relevant law, a special article in the Civil Code of the Republic of Albania defines the cases where the person has the right to compensation. According to Article 625, on the responsibility for non-pecuniary damage, the person who suffers a non-pecuniary damage can request compensation for non-pecuniary damage.¹⁶

¹⁶ The Civil Code of the Republic of Albania, drafted with law no.785 0, date 29.7.1994; updated by laws no.8536, date 18.10.1999; no. 8781, date 3.5.2001 and no.17/2012, date 16.2.2012; 121/2013, date 18.4.2013.

The right to compensation in case of damage by public authorities in Montenegro

Montenegro has regulated the issue of the right to compensation within the Law on Obligations¹⁷ which defines (in a separate part) the right to compensation for damages (Part 2: Compensation for Damages (Civil Dissent) as well as through the Law on State Administration¹⁸.

As for the Law on Obligations, it is clearly defined in its general principles that anyone who causes injury or loss to another will be responsible for compensating him, unless he proves that the damage was not caused by his fault. The responsibility falls on the causer in cases where the activity or object causes damage to the other party. While Article 7 of the Law on State Administration specifies that the Republic is responsible for the damage caused by the illegal or incorrect work of the state administration body.

By damage or loss it is meant the reduction of one's property (simple loss) and the prevention of its increase (loss of profit), as well as causing another person physical or psychological pain or causing fear, as well as the violation of the person's rights and reputation of the legal entity. (no material damage). The definition of damage is considered the reduction of someone's property or the prohibition of profit, as well as causing physical and psychological violence, violation of personal rights and the reputation of the legal entity (non-material damage).

The law also defines the right of each party to ask the other to remove a source of danger that threatens him or a number of people, as well as to prevent activities that may cause certain risks or losses. The right to turn to the court or other competent bodies to request that a denied right be returned to the country, including the non-infringement of physical security, moral integrity and reputation. Meanwhile, the law on administration also defines the rules according to which citizens can complain about the violation of rights by (non) institutional action, clearly defining the form of the complaint (in writing, through the complaint box) and the legal deadline (within 15 days) in response to the complaint filed by the party.



The definition of damage is considered the reduction of someone's property or the prohibition of profit, as well as causing physical and psychological violence, violation of personal rights and the reputation of the legal entity (non-material damage).

¹⁷ Law on Obligations in Montenegro (Law on obligations) published on the Official Gazette 47/2008 on 7 August 2008.

¹⁸ Law on State Administration of Montenegro (the Law on Public Administration), published on 2 August 2003: <https://www.gov.me/en/documents/25c41b32-fca3-4c73-b561-fbc94af1f790>

Liability exists if one party has intentionally or unintentionally caused damage to the other party. The court then decides the measures depending on the level of damage caused but also on the responsibility and the possibility of the party to avoid that problem.

The law also defines the circumstances in which the party is exempted from responsibility and is similar to cases in other countries. The party can be exempted from responsibility in cases where it is proven that avoiding the case was impossible and unavoidable.

Among other things, the law also defines the cases when the state fails to react according to its functions. Article 87 of the Law on Obligations states that “the state whose agencies, in accordance with existing regulations, were obliged to prevent damage or loss, shall be liable for loss due to death, bodily injury or damage or destruction of property of an individual due to terrorist acts, as well as during public demonstrations and public events”. In cases where the damage is caused by third parties, the state has the right to demand compensation from the cause of the damage.

This law also defines the responsibilities of the organizers of protests, various manifestations through which citizens can be injured. Liability is clearly defined through the law defining all cases of eventual damages from such activities.

Even in the case of Montenegro, the period when the party can claim compensation is 3 years from the time when it is informed or should have been informed about the damage caused.

The right to compensation in case of damage by public authorities in Estonia

Estonia, as a member state of the EU since 2004, has regulated the right to compensation in cases of damage by state authorities through the Law on State Liability¹⁹, which is in force since January 1, 2002. In addition, the Constitution of the Republic of Estonia in Article 25 defines that: “Everyone has the right to compensation for intangible and tangible damage that he or she has suffered due to the illegal actions of any person”.²⁰

The law in question defines (in its general provisions) the bases of obligations by defining that:



The person whose rights have been violated by the illegal activities of a public authority in a relationship of public law (hereinafter the injuration for the damage caused to the person if the damage could not be prevented and it could not be eliminated by protecting or restoring rights”).²¹

The law determines the rates of compensation for property and non-property damages and for compensation to third parties. Property damages are compensated to an amount which the injured party would have benefited if the damage had not been caused. What is clearly defined here is the coverage of eventual medical services caused by the damage and the cases when the injured party loses the ability to work due to the specified injury.

Non-property damages are categorized as all damages caused by (in) actions taken which have degraded dignity, damaged health, deprived freedom, confidentiality and good reputation that the injured person had. The amount of compensation for such cases is determined in proportion to the amount of damage caused and by taking into account the form and size of the error.

The law has also clarified the procedures for requesting compensation from third parties for damages caused to the injured party. It foresees the possibility of compensation through confirmation of the loss of financial support that the injured party has provided and non-pecuniary damages based on private law. In certain cases, the parties may request that, instead of financial compensation, the public authorities adjust the legal basis through which they have been harmed by (in) actions by changing certain laws or acts that caused the damage.

¹⁹ Law on State Liability (State Liability Act): https://www.riigiteataja.ee/en/compare_original/507062016001

²⁰ The Constitution of the Republic of Estonia, Article 25, entered to power on 3 July 1992: <https://www.riigiteataja.ee/en/eli/521052015001/consolide>

²¹ Law on State Liability, Chapter 3, Damage compensation, General requisits: https://www.riigiteataja.ee/en/compare_original/507062016001

In the case of Estonia, responsibility is clearly defined when actions are carried out by third parties who receive authorization from state institutions. In such a case, the responsibility for the damage is on the delegating institution. However, the difference remains the fact that natural persons exercising public duties are not responsible in terms of compensation unless such a thing is regulated by other laws. Liability is also limited in cases of institutions if the damage caused was impossible to avoid even if all measures were undertaken.

A natural person, according to the said law, can claim compensation for the damage caused during the judicial process, including the damage caused by a court decision, only if a judge has committed a criminal offense during the judicial process. The law has also regulated the cases of damages caused by acts or administrative measures, defining the right to compensation for damages from such acts that limit the fundamental rights of the person in an extraordinary way. Exceptions to the right to compensation, in addition to other elements, are made in cases where the restriction of fundamental rights or freedoms was caused by the person or the restriction was in the interest of the person.

The law also defines the procedures for compensating damages by clearly defining the institutional obligations in such cases as well as the clear addresses where complaints should be directed. The request for compensation which is addressed to the administrative authority which caused the damage (or is responsible for the damage) must be addressed within 2 months from them. In the event that such a thing is delayed, the injured party can send the case to the Administrative Court within 30 days for assessment of the case or for an order to pay compensation.

Even in this law, the period defined for requesting compensation is 3 years from when the injured party is informed of the damage caused, but no later than 10 years from the period when the damage was caused, even if the injured party is not aware of the party that caused the case. The law is generally quite complete and covers a wide range of eventual compensation cases and can be taken as a basis for possible amendments by the authorities in Kosovo.

Recommendations

In general, Kosovo has a consolidated legal basis in terms of the right to compensation at all three levels: civil, criminal and administrative. The country aims for membership in the Council of Europe, an organization which gives access to the country's citizens to the European Court of Human Rights, a very efficient mechanism to deal with cases of human rights violations by member countries, a right denied so far for the citizens of Kosovo. The eventual membership in this mechanism is quite positive, but the institutions should be encouraged to react more strongly in the field of human rights protection that are in the domain of the court's work.

The empirical research on the topic, the interviews and the focus group have drawn the following recommendations for action in advancing the right to compensation in cases of damages caused by public authorities in Kosovo:

- 1** Kosovo should strengthen as soon as possible the mechanisms which ensure judgement in a reasonable time for the involved parties. As one of the fundamental rights, trial in a reasonable time is to respect the dignity of the involved parties and to reduce the scope and need for compensation of material and non-material damage.
- 2** In terms of civil law, the Primary Legislation (Law on Obligations, Article 153) should be supplemented with secondary legislation that clarifies further the procedures and possibilities for compensation in case of damage caused by public authorities, as regulated in the countries discussed in the present report.
- 3** In order to issue comprehensive secondary legislation, but also for better implementation of this existing one, it is necessary to deepen the institutional cooperation between the Ministry of Justice and the Judicial Council of Kosovo.
- 4** The respective courts must classify the cases in realizing the right to compensation. This way, it would be easier to address the cases and provide the analysis on the quantity and other elements of such cases in order to have strategies for their treatment.
- 5** Legislation related to the right to compensation should be further promoted to the citizens of Kosovo. Most of the citizens do not have knowledge about their rights in case of damages caused; therefore, information campaigns through discussions, tables, sensitization campaigns and other forms by civil society organizations are necessary to raise awareness in this aspect.

