



Compensation from Public Authorities: Monitoring Legal Challenges in Disability Pension Cases

Introduction

The Constitution of the Republic of Kosovo guarantees individuals the right to claim compensation from public authorities for any harm caused. It also ensures citizens the right to petition against judicial decisions, including seeking compensation for unjust harm. Both rights are equally vital in upholding fairness and justice for all. The right to seek compensation in cases of damage caused by public bodies to private individuals is recognized by the Law on Obligational Relationships¹.

The Basic Court of Pristina still struggles with a large backlog of administrative cases. Fragmented legislation affects the liability of public authorities in cases of wrongdoing and the right to seek compensation.² Since there is no Administrative Court, administrative cases are handled by the administrative department within the Prishtina Basic Court.

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 non-classification of cases according to certain types within the type of case has also been confirmed by the Basic Court in Pristina.³

These brief reports specifically address monitoring the right to compensation in administrative proceedings within the relationship between the state (public administration) and natural persons. The focus is solely on the right to compensation for individuals in their capacity as natural persons, excluding cases of compensation for state officials within the public administration.

¹ Official Gazette of the Republic of Kosovo. Law No. 04/L-077 on Obligational Relationships, Article 153: [LAW NO. 04/L-077 ON OBLIGATIONAL RELATIONSHIPS](http://www.rks-gov.net/LAW_NO_04/L-077_ON_OBLIGATIONAL_RELATIONSHIPS) (rks-gov.net) (last accessed on August 15, 2023).

² European Commission Report for Kosovo, 2022, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf> (accessed on August 16, 2023).

³ Meeting with Shaban Gërxhaliu, Administrator in the Basic Court of Prishtina, May 2, 2023.

According to D+ survey (June, 2023), 60.2% of citizens in Kosovo were unaware of their right to seek compensation for any wrongdoings caused by public authorities. Furthermore, 91.7% of them did not exercise this right, even when they faced misconduct from these authorities.⁴ This highlights the need for better awareness and education about citizens' rights, ensuring that everyone has access to justice.

Democracy Plus (D+) has monitored ten cases of administrative wrongdoings since May 2023 and will continue this oversight, covering ten additional cases until May 2025. The primary objective is to acquire firsthand information on how these cases are handled from the Basic Court of Prishtina and the Court of Appeals. Cases selected for monitoring purposes are chosen at random to ensure a representative sample. These cases serve as illustrative examples and inspiration for other citizens to seek their rights in the future, as well as for raising awareness.

The first brief report focuses on two specific cases involving individuals with disabilities. In the realm of safeguarding individuals with disabilities, Kosovo has enacted Law no. 04/I-131 on Pension Schemes Financed by the State⁵, Law no. 03/I-019 on Rehabilitation, Professional Retraining, and Employment of People with Limited Abilities⁶, Law no. 2003/23 on Disability Pensions in Kosovo⁷ along with other legal acts and bylaws. These legislative measures comprehensively define the rights of individuals with disabilities and outline the corresponding obligations of institutions in supporting this societal category.

Session 1

Subject: N.M.'s Disability Pension Lawsuit Against MFLT

Plaintiff: N.M.

Defendant: Ministry of Labor and Social Welfare – now Ministry of Finance, Labor and Transfers (MFLT)

Judge name: Arjeta Sadiku

Date: 20.07.2023

The initial monitored session provides an overview of a legal case initiated by N.M., an individual with disabilities, against the Ministry of Labor and Social Welfare – now Ministry of Finance,

⁴ UBO Consulting. "OMNIBUS Survey with about 1200 citizens on their knowledge on the right to seek compensation." June 2023. (Interim survey).

⁵ Official Gazette of the Republic of Kosovo. Law No. 04/I-131 on Law on Pension Schemes Financed by the State, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9517>, (last accessed on September 15, 2023).

⁶ Official Gazette of the Republic of Kosovo. Law No. 03/I-019 on Rehabilitation, Professional Retraining, and Employment of People with Limited Abilities, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2620>, (last accessed on September 15, 2023).

⁷ Official Gazette of the Republic of Kosovo. Law No. 2003/23 on Disability Pensions in Kosovo, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2486> (last accessed on September 15, 2023).

Labor and Transfers (MFLT). The aim of this lawsuit is to dispute a 2014 decision made by the Ministry of Labor and Social Welfare, and to secure recognition of N.M.'s entitlement to a Disability Pension, alongside retroactive financial compensation starting from the initial request in 2014.

For more than a decade, N.M. had been a recipient of a full disability pension under the law for persons with disabilities. Unfortunately, her pension was canceled by the MFLT's Pension Department in 2014, and her subsequent appeal to the Expert Commission within this ministry was rejected.

As we observed in the lawsuit's history, subsequent to an unfavorable second-level decision (the Experts Commission at the MFLT-Department of Pensions), N.M. took legal action by initiating a lawsuit in the Basic Court of Pristina in 2018. This case was initially handled by the Basic Court in 2014, which decided that the matter should be sent back for reassessment and review to the Ministry of Finance, Labor, and Transfers. However, despite the court's remarks regarding the plaintiff's case, the request of the plaintiff N.M. was again rejected by the Pension Department within the MFPT.

Notably, during the monitoring, MFLT did not participate in any court session, offering no explanation for the absence. However, in a written reply, they contested the entire lawsuit, invoking adherence to current legislation and asserting that the medical commission had determined that N.M. had not provided sufficient evidence to qualify for the permanent and utterly disability pension.

It's important to note that due to N.M.'s inability to be present herself, she was consistently represented by her legal counsel, throughout the legal proceedings.

In one of the hearings, the legal representative of the N.M. requested a comprehensive medical examination to provide evidence of their condition. At the crucial hearing held on July 20, 2023, the court reviewed all the evidence and concluded that N.M.'s claim was substantiated by both medical reports and expert opinions, confirming their enduring and significant disability.

Conclusion: In accordance with the Law for Persons with Disabilities and the Law on Pension Schemes Financed by the State, the Basic Court ruled in favor of plaintiff, granting N.M. the right to a permanent disability pension. The Court decided that the claimant N.M. should be retroactively compensated from the date when this right was initially revoked. The court also declared the MFLT's decision to be unlawful and void. As a result of this decision, N.M. is eligible to receive her Disability Pension on a monthly basis, along with compensation for unpaid amounts, including legal interest at an 8% rate⁸.

⁸ Basic Court's Decision, A.no. 2114/18, Date: 18.09.2023

Session 2

Subject: Sh.Rr.'s Disability Pension Lawsuit Against MFLT

Plaintiff: Sh.Rr.

Defendant: Ministry of Labor and Social Welfare – now Ministry of Finance, Labor and Transfers (MFLT)

Judges name: Kreshnik Kaçiu

Date: 12.09.2023

In this monitored case, Sh.Rr. has taken legal action against the Ministry of Finance, Labor, and Transfers (MFLT), specifically its Pension Department, by filing a lawsuit in the court. The plaintiff, Sh.Rr., contested the MFLT decision regarding the denial of an appeal for a permanent disability pension, initially dated 03.10.2019, and sought comprehensive approval of the claim, emphasizing its fairness and validity. The primary request entails the annulment of the second-instance Appeals Council rejection decision, along with a demand for the MFLT to recognize the plaintiff Sh.Rr.'s right to a permanent disability pension from the initial request date.

The Appeals Council, a second-level body within the framework of MFLT, concluded that there was insufficient medical documentation to qualify Sh.Rr. as a beneficiary of the Pension for Persons with Permanent Disability. On the other hand, Sh.Rr. emphasized complete disability, severe illness, the need for physical assistance, and dire economic circumstances.

In the lawsuit prepared by the Agency for Free Legal Aid, Sh.Rr. requests the initiation of an administrative conflict, approval of the lawsuit, revocation of the decision, and the granting of a permanent disability pension. In this lawsuit, the plaintiff emphasizes unemployment and relies on the pension or financial support as the sole income, given Sh.Rr. inability to work due to illness. Additionally, the plaintiff requires ongoing medical consultations with specialist doctors for their condition, as well as the necessity of medications for recovery, supported by specialist reports.

The case was also forwarded to the Court of Appeals, which sided with the plaintiff's complaint, reversing the first-instance court's decision and remanding the case for further assessment. This Court emphasized the necessity of independent medical expertise to evaluate the plaintiff's health condition and pointed out that the defendant's decision was legally ambiguous and self-contradictory, and therefore requested the Basic Court to make an independent assessment based on the merits and to render a decision in accordance with the law.

To establish the factual situation, the Basic Court had required medical expertise by experts from the Clinical and University Hospital Service and financial expertise for exact compensation.

After a main hearing on September 12, 2023, the court found Sh.Rr.'s request well-founded, annulling the decision of the MFLT and granting the plaintiff the right to a permanent disability pension for the next five years with retroactive compensation for over four years.

In its decision justification, the court cited numerous laws and reasons related to compensation for the plaintiff's losses resulting from the contested decision. Meanwhile, the defendant from

MFPT did not provide counterarguments. The court's justification underscored that Sh.Rr. met all the legal requirements for the requested right to be recognized, in accordance with the Law on Administrative Conflicts.⁹

Conclusion: After four years since the initiation of Sh.Rr.'s lawsuit, this legal process concluded with the Basic Court issuing the verdict on merit, ruling in favor of Sh.Rr. and recognizing their right to a permanent disability pension for a five-year period. According to the Basic Court decision, the defendant (MFLT) is retroactively obligated to compensate plaintiff Sh.Rr. for unpaid pension payments from the day of the request for this pension, including an 8% interest rate as stipulated by the law.

RECOMMENDATION

- In both cases there was no representative from the defendant with no explanation for absence. As per Kosovo's jurisdiction's regulations, administrative hearings can proceed in the absence of the defendant. However, it is crucial for the defendant, in this instance, the Ministry of Finance, Labor, and Transfers, to be appropriately represented throughout all court sessions, adhering to the principles of justice, to ensure a process that is as equitable, transparent, and accurate as possible.

⁹ Official Gazette of the Republic of Kosovo. Law No. 03/L-202 on Administrative Conflicts, article 43.3 and 67, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2707> (last accessed on October 30, 2023).

