



Compensation from Public Authorities: Monitoring War Invalid and Family 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.

Within the legal landscape, the Basic Court of Pristina struggles with a substantial backlog of administrative cases, managed primarily by the administrative department. This brief report delves into monitoring the right to compensation in administrative proceedings, spotlighting the nuanced relationship between the state (public administration) and natural persons. The focus in these cases is exclusively on the right to compensation for individuals, excluding cases of compensation for state officials within the public administration.

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 by the Kosovo Courts, specifically the Basic Court of Prishtina and the Court of Appeals. Cases chosen for monitoring are selected randomly, ensuring a representative sample. These cases serve as illustrative examples and inspiration for citizens to assert their rights in the future and contribute to raising awareness.

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 \[rks-gov.net\]](http://LAW.NO.04/L-077.ON.OBLIGATIONAL.RELATIONSHIPS[rks-gov.net]) (last accessed on August 15, 2023).

In this second brief encompassing two specific cases, the first case involves entitlement to a war invalid pension, while the second case revolves around the right to a family pension.

Law No. 04/L-054 addresses the Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army (KLA), Civilian Victims, and their Families. Invalids of KLA, under the conditions and criteria determined in this Law, realize the right to the personal invalid pension². With the purpose of realizing rights and benefits in accordance with the degree of disability and determining the percentage of physical damage, KLA invalids are categorized into eight groups³.

In the second case, this matter is governed by Law No. 04/L-131 on Pension Schemes Financed by the State⁴. According to this law, the right to a family pension is granted to all former recipients of a family pension under the age of sixty-five (65) who can prove their entitlement through a decision or pension checks demonstrating that they were beneficiaries of a family pension before January 1, 1999, under the provisions of the Law on Pension and Disability Insurance No. 011-24/83 (Official Gazette of KSAK No. 26/83), now incorporated into the Law on Pension Schemes Financed by the State.

Session 1

Subject: N.L.'s Legal Case Against MFLT - Department for Families of Martyrs, War Invalids, and Civilian Victims

Plaintiff: N.L

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

Judge name: Kreshnik Kaçiu

Date: 15.06.2023

In this monitored case, the plaintiff, N.L., initiated legal proceedings in the Basic Court against the defendant Ministry of Finance, Labor and Transfers - Department for Families of Martyrs, War Invalids, and Civilian Victims, seeking recognition of the right to a War Invalid pension.

Initially, the claimant N.L. faced rejection from the first body, the MFLT - Department for Families of Martyrs, War Invalids, and Civilian Victims. Following an appeal to the Appeals Commission in January 2019, the appeal was again rejected as unfounded. The reasoning behind this rejection emphasized that the plaintiff did not meet the criteria outlined in Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of KLA.

Subsequently, in February 2019, N.L. initiated a lawsuit against the MFLT in the Basic Court. After four years, in September 2023, the case came up for adjudication in a court hearing. During both the preparatory and main sessions, N.L. was represented by the lawyer R.S., while no representative from the defendant was present.

² Official Gazette of the Republic of Kosovo. Law No. 04/L-054 on the status and the rights of the martyrs, invalids, veterans, members of Kosova Liberation Army, civilian victims of war and their families, Article 9, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2793> (last accessed on November 16, 2023).

³ Ibid, Article 10

⁴ Official Gazette of the Republic of Kosovo. Law No. 04/L-131 on Pension Schemes Financed by the State, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9517>. (last accessed on November 17, 2023).

During the main session hearing, the plaintiff's legal representative cited medical expertise findings, confirming that the plaintiff, "Due to injuries sustained in the Kosovo Liberation Army (KLA) war, experienced a disability of 30%". Additionally, a financial expertise report was presented, calculating the period and amount of monetary compensation owed to the plaintiff.

Conclusion: In relation to this case, on 11 September 2023, the Basic Court ruled in favor of the plaintiff N.L., annulling the decision of the second instance of MFLT. The court recognized N.L.'s right to a War Invalid Pension at the disability level in group VII5, and ordered the corresponding compensation. The court mentioned that its decision was based on the conviction of experts at the University Clinical Center of Kosovo (UCCK) who confirmed the plaintiff's health status⁶.

Furthermore, the court evaluated the legality of the decision appealed by lawsuit. However, it found legal flaws, stating that the decision was unclear, self-contradictory, and failed to adhere to the Law on General Administrative Procedures. The court emphasized that decisions should include a summary of factual findings based on presented evidence and require clear justifications, which were lacking in this case.

Session 2

Subject: H.D.'s Family Pension Recognition Against MFLT - Department of Pensions

Plaintiff: H.D.

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

Judge name: Kreshnik Kaçiu

Date: 10.07.2023

Based on the monitoring conducted thus far, it has been a commonplace occurrence for defendants to be absent from court sessions, while the plaintiff's nonappearance was rare. In this monitored session, the plaintiff, H.D., did not personally attend and was not represented by anyone. Despite the simultaneous absence of both parties, the session proceeded as schedule.

In a manner similar to the aforementioned session, legal proceedings were also initiated against the public authority—the Ministry of Finance, Labor and Transfers, specifically the Department for Pensions. The process commenced on May 20, 2022, when H.D. initiated legal proceedings against the MFLT, which had rejected the plaintiff's request for the recognition of a family pension under the Law on State-Funded Pension Schemes in January 2022. H.D. was contesting this decision, which had also been overturned by the Appeals Commission at MFPT.

In the core of H.D.'s legal pursuit stood a compelling process of evidence—employment cards and work experience certificates—depicting her late husband, A.D., with 15 years and 6 months of work experience. In her legal pursuit against the MFLT, H.D. sought the annulment of the decision, the acknowledgment of her right to a family pension, or a return to the administrative body (the Appeal Commission at MFLT) for reconsideration.

⁵ Ibid, Article 10, point 1.7. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2793> (last accessed on November 16, 2023).

⁶ Basic Court's Decision, A.no. 448/2019, Date: 13.09.2023

On the opposing front, the defendant intensely denies the plaintiff's allegations, contending that H.D. does not meet the legal conditions and criteria for the recognition of the family pension, as outlined in the Law on Pension Schemes Funded by the State.

Conclusion: After thorough consideration of this case, the Basic Court decided to remand the matter for reconsideration and reinstatement to the defendant, the Ministry of Finance, Labor, and Transfers⁷. The court's rationale sheds light on a critical flaw in the second instance decision, particularly at the hands of the Appeals Commission in the pension department of the MFLT. Significantly, the court underscores the absence of a summary of findings of fact of the LGAP⁸ and emphasizes the imperative for the administrative act—in this instance, the second instance decision—to be rationally justified, in accordance with the LGAP law⁹. As per Article 132 of the LGAP, the second instance body is now obligated to address all remarks from the court within a thirty-day timeframe during the re-procedure.

RECOMMENDATION

- To avoid reconsideration and reinstallation of cases from the Basic Court to other instances, as well as to influence the increase of efficiency in resolving legal cases, especially those involving public authorities such as the Ministry of Finance, Labor, and Transfers, it is advised that the relevant authorities, particularly the Appeals Commission, make decisions in accordance with the Law on Administrative Procedures.

⁷ Basic Court's Decision, A.no. 1233/2022, Date: 25.07.2023

⁸ Official Gazette of the Republic of Kosovo. Law No. 05/L-031 on the General Administrative Procedure, Art 47, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559> (last accessed on October 15, 2023).

⁹ Ibid, Art 48

