



Compensation from Public Authorities: Cases of Contributory Pension and Compensation for Education Workers in the 90s

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 brief report III, the focus is on two different cases. The first one is about a right for contributory pension, while the second case is about the right to additional compensation for former education workers in the Republic of Kosovo during the 90s.

In 2014, Kosovo introduced Law no. 04/L-131 on Pension Schemes financed by the State², covering various pension categories under State-finance, including basic old-age pensions, contributory old-age pensions, disability pensions, premature pensions, family pensions, and work disability pensions.

The specific entitlements for age contributors are outlined in Article 8. However, in December 2022, the Constitutional Court invalidated a discriminatory provision³ that denied contributory pensions to citizens lacking 15 years of pre-1999 work experience. This decision followed concerns raised by the Supreme Court about the provision's constitutionality.

To address this, the Assembly of Kosovo expedited the approval of amendments to the Law on Pension Schemes in July 2023. These changes aim to rectify the discriminatory provision and ensure equitable access to contributory pensions.

In the second case, it pertains to recognizing the contributions of education employees who served during the 90s. This case involves determining their professional status, acknowledging the value of their service, and providing financial support through pensions and special benefits. The regulatory framework for this matter is outlined in Law no. 06/L-073, addressing the status of Albanian Education Employees of the Republic of Kosovo from the Academic Year 1990/91 up to the Academic Year 1998/99. The purpose of this Law is to recognize the work experience and to determine the rights to additional compensation over the pension that the beneficiary realizes, for the Albanian education employees of the Republic of Kosovo who worked from the academic year 1990/91 up to the academic year 1998/99⁴.

² 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 October 14, 2023).

³ Decision of Constitutional Court of Kosovo, Article 8, paragraph 2, <https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=68957> (last accessed on October 15, 2023).

⁴ Official Gazette of the Republic of Kosovo. LAW No. 06/L-073, on the Status of Albanian Education Employees of the Republic of Kosovo from the Academic Year 1990/91 up to the Academic Year 1998/99, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18857> (last accessed on October 15, 2023).

Session 1

Subject: F.J.'s Legal Challenge Against MFLT Decision Regarding Contributory Pension

Plaintiff: F.J.

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

Judges name: Kreshnik Kaçiu

Date: 11.07.2023

The monitored case revolves around a legal dispute initiated by the plaintiff, F.J., against the Ministry of Finance, Labor and Transfers (MFLT), challenging their decision to deny his entitlement to a contributory pension. Filed on June 6, 2022, in the Basic Court in Prishtina, F.J. argues that his 17-year contribution to Kosovo Railways from 1981 to 1999 qualifies them for recognition of the pension under the Pension Schemes Law —a right denied by the MFLT's decision in April 2022.

During the main session, attended by F.J. and his legal representative, F.B., but not by any representative from the defendant Ministry of Finance, Labor and Transfers, the court asserted that the MFLT's decision is outlawed. While the plaintiff F.J. sought from the court the annulment of the decision, urging the MFLT to acknowledge F.J.'s right to an old-age contributory pension and seeking retroactive compensation for the damages caused from the termination of the pension in December 2021 until the last payment.

In a written response to the court, the defendant contested the entire lawsuit, citing insufficient evidence to prove work experience as per current legislation. However, after a comprehensive examination of evidence and claims, the court deemed the lawsuit well-founded. The court pointed out contradictions in the MFLT's reasoning, emphasizing the decision's lack of proper addressing of the party's complaints and failure to provide evidence for rejecting the plaintiff's complaint.

Conclusion: On July 25, 2023, the Basic Court ruled in favor of the plaintiff, approving the lawsuit and nullifying the MFLT's decision⁵. The case was remanded for reconsideration and reinstatement to the Ministry of Finance, Labor and Transfers, Department of Pensions. In this reconsideration, the defendant is mandated to thoroughly examine the plaintiff's complaint, adhere to legal procedures, justify the acceptance or rejection of every piece of evidence, and issue a new decision based on the Law on General Administrative Procedure⁶ and a comprehensive evaluation of the factual situation. Additionally, the respondent is instructed to assist the party in understanding administrative procedures as outlined in Article 11 of the Law on General Administrative Procedure [LGAP]⁷.

⁵ Basic Court's Decision, A.no. 1374/2022, Date: 25.07.2023

⁶ Official Gazette of the Republic of Kosovo. LAW No. 05/L-031 on General Administrative Procedure, Article 132, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=12559> (last accessed on October 14, 2023).

⁷ Ibid, Article 11

Session 2

Subject: F.F.'s Claim Against MFLT for Additional Compensation Regarding Rights of 90s Education Workers

Plaintiff: F.F.

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

Judges name: Kreshnik Kaçiu

Date: 20.07.2023

In another monitored case, where the Ministry of Finance, Labor and Transfers (MFLT) is the defendant on behalf of citizen F.F., the focus is on the request for the recognition of the right to additional compensation for former education workers in the Republic of Kosovo during the 1990s-1999. This request is grounded in the Law on the Status of Albanian Education Workers in the Republic of Kosovo.

In the lawsuit filed against the public body, Ministry of Finance, Labor and Transfers (MFLT), on June 7, 2021, the plaintiff contends that her status was initially acknowledged by the first entity (MFLT) in December 2019. However, this decision was reversed after three months by the same entity, which, with a new decision, nullified the initial ruling. According to the plaintiff, the first-instance body violated the procedural provisions defined by the Law on General Administrative Procedure and erroneously certified the factual situation.

In response to the lawsuit on October 17, 2022, the defendant, namely the Ministry of Finance, Labor and Transfers, Department of Pensions, contested the lawsuit and the plaintiff's claim as unfounded. The MFLT emphasized that the plaintiff had not substantiated her claims with a single piece of evidence. According to the MFLT's decision, it is stated that "F.F. has not been engaged in the Albanian education system of Kosovo in the capacity of an education worker but in the capacity of a Preschool Educator, while the legislator in Article 4 of this law did not foresee that the officials in question would be beneficiaries of the beneficiaries for education workers from 1990/91 to 1998/99."⁸

However, in response to this finding, the plaintiff F.F. and the legal representative K.B. emphasized that, according to this law, the beneficiaries are teachers, and the definition of 'teacher' also includes preschool educators. Although the plaintiff F.F. filed a complaint and a re-complaint with the second instance body, the plaintiff did not receive a response. Consequently, the case proceeded to court.

Conclusion: After reviewing the evidence in two hearings, during which the defendant MFLT did not participate in either, the Basic Court issued a verdict. In connection with this, the Court ruled that the defendant, MFLT, must decide within a period of 30 days regarding the plaintiff's repeated request. Additionally, the court found that the defendant body had fallen into administrative silence, thus obliging it to undergo a re-procedure, based on the article 132 of the LGAP, to re-examine the claimant's request and decide in accordance with this law⁹.

⁸ Ministry of Finance, Labor and Transfers, Department of Pensions, Decision nr.11071, date: 05.12.2019

⁹ Basic Court's Decision, A.no.1268/2021, date: 13.12.2022

RECOMMENDATION

- It is crucial for administrative authorities to ensure that administrative decisions are well-founded and comply with applicable procedural rules. By proactively addressing issues based on current laws and regulations, the Ministry of Finance, Labor, and Transfers can enhance citizen satisfaction and alleviate the burden on the judicial system. This approach promotes efficiency, correctness, and cooperative resolution of citizens' complaints.



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