



Compensation for Paraplegic and Tetraplegic Persons by Public Authorities

Introduction

The Constitution of the Republic of Kosovo is founded on the principles of equality before the law for all individuals, full respect for internationally accepted human rights and fundamental freedoms, and the protection and participation of all communities and their members¹. The fundamental rights of persons with disabilities are guaranteed not only by the Constitution but also by numerous international acts applicable in Kosovo, which protect them from all types and forms of discrimination.

In 2016, Kosovo adopted Law No. 05/L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia, along with other legal and bylaw acts. This law provides for compensation from the budget of the Republic of Kosovo for these individuals. Under this law, a “Paraplegic” is defined as a person who has permanently lost the ability to move the lower extremities [1] due to disease or damage to the nervous system, and a ‘Tetraplegic’ as a person who has permanently lost the ability to move both the lower and upper extremities.

Beneficiaries of this law are protected from all forms of discrimination, exploitation, abuse, and insult. They enjoy their rights and freedoms on an equal basis with others under the Constitution, applicable laws, and international human rights standards recognized by the International Convention on Human Rights. This is particularly emphasized in the standards and principles set out in the International Convention on the Rights of Persons with Disabilities². Among other things, paraplegic and tetraplegic persons are recognized the right to a personal guardian, tax

1 Official Gazette of the Republic of Kosovo. Constitution of the Republic of Kosovo, Article 3 (Equality before the Law), point 2, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (last accessed January 9, 2024).

2 Official Gazette of the Republic of Kosovo. Law no. No.05/L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia, Article 4: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12554> (last accessed on January 9, 2024).

exemptions, housing care, health care, free education, reduction in electricity expense charges, and free travel in urban traffic.

However, the Law for Persons with Paraplegia and Tetraplegia does not include the category of persons with Hemiplegia (Hemiplegia – partial paralysis in the left or right half of the body), which is equally incapacitated. The numerous court treatment applications from this category present a challenge for fair treatment and trial, as there are no specific legal provisions dealing with this category.

The Evaluation Commission, comprised of medical experts appointed by the Ministry of Finance, Labor and Transfers (MFLT), assesses the grouping, status, and other benefits guaranteed by law for the beneficiaries.

In cases of aggrieved parties with the commission's final decisions, judicial proceedings are conducted through claims in the Department of Administrative Matters operating within the Basic Court in Pristina, which has jurisdiction over the entire territory of Kosovo. This administrative procedure is regulated by the Law on Administrative Conflicts. According to this law, an administrative conflict can only be initiated against the administrative act issued in the second instance administrative procedure. Also, an administrative conflict may be initiated against the first instance administrative act, against which no appeal was allowed in the administrative procedure³.

This is the fourth consecutive report, which includes two monitored cases related to the right to compensation of persons with paraplegia and tetraplegia. The main highlight of this brief report is to understand how these cases are handled in the Department for Administrative Matters of the Basic Court in Prishtina.

Democracy Plus (D+) has monitored ten cases of administrative violations since May 2023 and will continue to cover ten more cases until May 2025. These brief reports, selected by a random method, specifically address the monitoring of the right to compensation in administrative procedures within the relations between the state (public administration) and natural persons, excluding the cases of compensation for state officials within the public administration.

An in-depth examination of two legal cases involving individuals with paraplegia and tetraplegia

The monitored cases revolve around the legality of administrative acts (final decisions of the MFLT Appeals Panel). These cases were brought to the basic court under a special procedure known as the administrative judicial procedure, with main reviews conducted in accordance with Article 41 of the Law on Administrative Conflicts.

In both cases, the Ministry of Finance, Labor and Transfers is the public authority that has been sued. The claimants argue that the final decisions of the state bodies, namely the Ministry of Finance and Transfers and the Appeals Panel within the MFLT, violated the law to their detriment.

The claimants sought recognition of the status of persons with paraplegia and tetraplegia in the first group. According to the Regulation for the Composition, Functions, Responsibilities of

³ Official Gazette of the Republic of Kosovo. Law no. 03/L-202 on Administrative Conflicts, Article 13: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707> (last access on 9 January, 2024).

Assessment Commission and Determination of Procedures for Recognition of Status and Rights of Paraplegic and Tetraplegic Persons, the beneficiaries of the first group are individuals with permanent and complete including incontinence and loss of extremity sensitivity. The beneficiaries of the second group are individuals who do not have permanent and complete including, loss of extremity sensitivity (...)⁴.

Both paraplegic and tetraplegic individuals have been subjected to re-evaluation procedures according to the Regulation. This re-evaluation is conducted every five years, despite these conditions being permanent.

Case 1

Claim of F.C. v. MFPT decision

Claimant: F.C. natural person

Respondent: Ministry of Labor and Social Welfare – now Ministry of Finance, Labor and Transfers (MFLT) – Pensions Department

Name of the judge: Vjollca Limani

Hearing date: 12.07.2023

This case provides an overview of the judicial process related to a claim initiated by F.C., a paraplegic and tetraplegic individual, against the decision of the Ministry of Labor and Social Welfare – now the Ministry of Finance, Labor and Transfers (MFLT) – Department of Pensions. The claimant has requested the court to approve the application for the recognition of pension rights for paraplegic and tetraplegic individuals in the first group, the appointment of a personal custodian, and retroactive compensation from the time of the application's submission.

F.C.'s claim for compensation was initially rejected by the Ministry of Finance, Labor and Transfers in 2020. This application was also rejected by the second body, the Appeals Panel at this ministry. Consequently, in January 2021, the claimant continued to pursue legal recourse by filing a claim in court.

The case hearing was scheduled after two years. The first hearing was held on 25 April 2023, followed by two other hearings. Notably, in the absence of a lawyer, the claimant was represented by parent S.C. throughout the litigation.

On the other hand, the respondent, the Ministry of Finance, Labor and Transfers, which had been absent from all three court hearings, contested this claim in full in their written response to the court. Despite the Agency for Free Legal Aid providing support to the claimant in this legal process, they were not present in the courtroom to provide legal representation to the claimant during the hearings.

⁴ Official Gazette of the Republic of Kosovo. Regulation (ORK) no. Regulation No. 07/2017 for the Composition, Functions, Responsibilities of Assessment Commission and Determination of Procedures for Recognition of Status and Rights of Paraplegic and Tetraplegic Persons, approved at the 146th meeting of the Government of the Republic of Kosovo with Decision no. 02/146 of the dated 26.05.2017, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15161>, (last access on 10 January, 2024).

During these hearings, the court noted that the contested decision contained flaws that called its legality into question. The court also evaluated the medical commission's assessments of the respondent. However, due to the lack of clarifications and justifications regarding the rejection of the claimant's application, the court approved the proposal of the claimant F.C.'s legal representative for the extraction of evidence with court-assigned medical expertise. This was done to reach a fair conclusion of the factual situation.

In this case, medical experts from the University Clinical Center of Kosovo concluded that the patient F.C. belongs to the first group of individuals with paraplegia and tetraplegia and requires the constant care of a custodian. This conclusion was also supported by three doctors at the last hearing on 12.07.2023.

Conclusion: In this case, the Basic Court, in its judgment dated 20.07.2023, ruled in favor of the claimant F.C., recognizing the right to compensation for individuals with paraplegia and tetraplegia in the first group, along with the appointment of a personal guardian, for a duration of 5 years from the date of the medical examination.⁵ The judgment's reasoning is that the decision of the MFLT violated the provisions of the Law on General Administrative Procedure, especially Article 48, and contains such shortcomings that its legality is questionable. The decision of the second instance (Appeals Panel – MFPT) is legally vague and contradictory to its reasoning. The court further states that the reasoning of this decision was given in a general and abstract wording, and no reason was provided on the crucial facts that conditioned the decision being taken.

Case 2

Claim of I.T. v. MFLT

Claimant: I.T. natural person

Respondent: Ministry of Labor and Social Welfare – now Ministry of Finance, Labor and Transfers (MFPT) – Pensions Department

Name of the judge: Kreshnik Kaçiu

Date of session: 20.11.2023

Similar to the first case, the claimant, I.T., requested the court to annul the decision made by the second-instance body, namely the Appeals Panel of the Ministry of Labor and Social Welfare – now the Ministry of Finance, Labor and Transfers (MFLT). I.T. claimed that this body violated the law and regulations concerning compensation for paraplegic and tetraplegic persons by not upholding the application and assigning the person in the first group.

Initially, I.T. applied to the Ministry of Finance, Labor and Transfers for recognition of pension entitlement for paraplegic and tetraplegic persons in the first group. However, this application was rejected by this body. With the decision dated 07.12.2022, this application was also rejected by the second-instance body, the Appeals Panel. Following these rejections, I.T. filed a claim against this public body.

⁵ The Basic Court Decision A.nr 198/21, dated: 20.07.2023

The claim was initiated in January 2023 at the Basic Court in Prishtina, and the hearing was scheduled for 20.11.2023. Unlike other cases that last for years until examination, this is one of the rare cases where the case was addressed within the year of its filing in court.

At the main trial, the representative of the claimant contended that the decision made by the respondent was not lawful, was inconsistent with the substantial evidence, and was in contradiction with the actual health status of the claimant. Consequently, the court was urged to invalidate this decision or refer the issue back to the relevant administrative body for reconsideration.

On the other hand, no one from the respondent, the Ministry of Labor, Finance and Transfers, attended the trial. However, in their response to the claim dated 30.06.2023, this body fully contested the claimant's claim as unfounded, asserting that the decision was taken in accordance with the law.

Conclusion: In this case, the Basic Court, with a judgment dated 20.12.2023, decided to annul the decision of MFLT and return the case for review and reconsideration to the respondent⁶. In this judgment, the court emphasized that the contested decision contains violations of the essential provisions of the Law on Administrative Procedure⁷ and the Regulation on Paraplegic and Tetraplegic Persons⁸, as well as other shortcomings that prevent the review of the legality of this act. The court further stated that the contested decision should contain a summary of factual findings, a declaration of the legal basis on which the administrative act is based, and the act must be justified.

Therefore, with this judgment, the court has obliged the respondent body to act according to the remarks given in the judgment in a re-procedure within a period of thirty (30) days. After rectifying the mentioned flaws, it should make a fair decision based on the law. The court also stressed that the remarks mentioned are obligatory for the respondent body, based on Article 65 of the Law on Administrative Conflicts.

⁶ The Basic Court Decision A.nr 131/2023, dated: 20.12.2023

⁷ Official Gazette of the Republic of Kosovo. Law no. 05/L-067 on the Status and Rights of Persons with Paraplegia and Tetraplegia, Article 8: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12554> (last accessed on 10 January, 2023)

⁸ Official Gazette of the Republic of Kosovo. Regulation [GoRK] no. Regulation no. 07/2017 for the Composition, Functions, Responsibilities of Assessment Commission and Determination of Procedures for Recognition of Status and Rights of Paraplegic and Tetraplegic Persons, Article 5, paragraph 1.2 and 1.3 and Article 6, paragraph 1.2 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15702> (last accessed on 10 January, 2024).

CONCLUSIONS AND RECOMMENDATIONSE

- The laws pertaining to paraplegic and tetraplegic individuals exclude an equally disable category – hemiplegics. Fair handling and trial of these cases pose a challenge for judges due to the absence of specific legal provisions providing for this category. It is recommended that this law be expanded to include hemiplegic individuals.
- It is recommended that Regulation No. 07/2017 on the Composition, Functioning, and Responsibilities of the Evaluation Commission, which provides for the periodic re-evaluation of individuals with paraplegia and tetraplegia every five years, be amended, taking into account the chronic nature of these conditions.
- In both monitored cases, the court identified shortcomings and violations of the provisions of Law No.05/L-031 on General Administrative Procedure in the decisions of the second-instance body, the Appeals Panel of the Ministry of Finance, Labor, and Transfers. The decisions of this public body have been legally vague and self-contradictory. It is recommended that second-instance bodies issue decisions in accordance with the Law on Administrative Procedures to prevent overburdening the courts.
- In the absence of legal representation for the claimants during the court sessions, the claimant's parent acted as the legal representative in the first case, while in the second case, the claimant represented himself. Although the Agency for Free Legal Aid provides valuable support to citizens, the need for legal representation during court sessions is particularly crucial for paraplegics and tetraplegics. Therefore, it is necessary for state institutions to enhance legal aid services, providing legal representation during court hearings, especially for individuals who cannot afford such representation, particularly those belonging to sensitive societal categories.

