



# Justice and Health: Compensation for Medical Treatment Outside Public Institutions

## Introduction

This marks the fifth consecutive report from Democracy Plus (D+) addressing the issue of compensating harm caused by public authorities. The main goal of this brief is to shed light on how the Department for Administrative Matters of the Basic Court in Prishtina handles such cases. D+ has been monitoring ten cases of administrative violations since May 2023 and will continue to cover an additional ten cases until May 2025. These randomly selected short reports specifically focus on the right to compensation in administrative procedures involving the state (public administration) and natural persons, excluding cases of compensation for state officials within the public administration.

The right to healthcare for citizens of the Republic of Kosovo is firmly established in the Constitution and international agreements, directly applicable in the country. The Law on Health<sup>1</sup>, the Law on Health Insurance<sup>2</sup>, and other legal and sub-legal acts ensure citizens' rights to equal treatment in healthcare services.

In situations where public health institutions in Kosovo cannot provide healthcare services, citizens are required to seek treatment in other health institutions, either domestically or internationally. The Government of Kosovo, facilitated by the Health Insurance Fund, provides financial support to citizens unable to cover the costs of treatment outside public health institutions.

The Health Insurance Fund, operating as a public institution under the Ministry of Health, is responsible for managing and administering the health insurance system in the country. Within the Fund, the Program for Treatment of Patients Outside Health Institutions offers financial sup-

1 Official Gazette of the Republic of Kosovo. Law No. 04/L-125 on Health <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8666> (last accessed January 10, 2024).

2 Official Gazette of the Republic of Kosovo. Law No. 04/L-125 on Health Insurance <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9450> (last accessed January 10, 2024).

port to citizens seeking health services outside these institutions. The Executive Board, the top body in this Fund, evaluates and approves patients' applications for treatment outside public health institutions.

The Administrative Instruction of the MoH has been updated to simplify application procedures for citizens and expand the range of services. Citizens are eligible for financial support of up to 30 thousand Euros per year for services not provided in public health institutions in Kosovo. Additionally, individuals with the status of war invalids, close family members of martyrs, civilian war victims, individuals up to 18 years old, persons with disabilities, and social assistance beneficiaries also receive reimbursement of 100% of the bill value<sup>3</sup>.

Despite efforts to establish a legal environment through law implementation and additional measures, not all citizens have been able to benefit from this Fund. Out of 1099 applications for financial support for medical treatment outside public health institutions, more than 400 patients have had their applications denied<sup>4</sup>. The selection process by the Executive Board, as highlighted in the National Audit Office report, does not treat all citizens equally. The report disclosed, among other things, that "out of 150 emergency health treatment letters of commitment, a significant 60 percent of them have not been treated in accordance with the law."<sup>5</sup>

For harm caused by this public authority, aggrieved parties have the option to initiate administrative proceedings through claims in the Department for Administrative Matters, which operates within the Basic Court of Prishtina. The court handles such cases based on the provisions outlined in the Law on Administrative Conflicts<sup>6</sup>.

## Court Cases

In both monitored cases, the Ministry of Health, specifically the Health Insurance Fund, is identified as the defendant. The concerns raised by the parties in both instances revolve around the rejection of applications for health treatment outside public health institutions.

The first case involves the claimant's request for financial support for medical therapy, specifically for medicines not covered by the list of essential medicines funded by the Kosovo budget. The Appeals Commission – MoH, did not respond to the claimant's request. Faced with this administrative inaction, the claimant resorted to filing a court claim, following the procedures outlined in the Law on General Administrative Procedure in cases of administrative silence<sup>7</sup>.

The second case centers around an application to reimburse medical treatment costs incurred abroad. In this case, the patient underwent the necessary surgical interventions in foreign institutions. However, since the patient commenced medical treatment before completing all necessary administrative procedures, the Board rejected the reimbursement application. The Board justified this decision citing adherence to the legal provisions of the Administrative Instruction for treatment abroad, which stipulate that treatment should only be initiated after the completion of administrative procedures, except in emergencies<sup>8</sup>.

3 Official Gazette of the Republic of Kosovo. Administrative Instruction Nr. 03/2023 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=81033> (last accessed on 10 January, 2024).

4 Health Insurance Fund. Annual Work Report 2022. <https://fshh.rks-gov.net/desk/inc/media/359C6F04-7BB8-4FDB-97F8-1BE1ADB-B3A64.pdf> (last accessed January 12, 2024).

5 National Audit Office. Performance Audit Report, August 2023 [https://zka-rks.com/wp-content/uploads/2023/08/Raporti\\_Auditimit\\_PT MJShP\\_shqip-1.pdf](https://zka-rks.com/wp-content/uploads/2023/08/Raporti_Auditimit_PT MJShP_shqip-1.pdf) (last accessed January 12, 2024).

6 Official Gazette of the Republic of Kosovo. Law on Administrative Conflicts <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707> (\*now repealed. Last access: 12 January 2024).

7 Official Gazette of the Republic of Kosovo. Law on General Administrative Procedure, chapter 2, article 125, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>, (last accessed January 14, 2024).

8 Official Gazette of the Republic of Kosovo. Administrative Instruction Nr. 03/2023 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=81033> (last accessed on 15 January, 2024).

## Case 1

# Claim of Dh.A. against the Ministry of Health – Health Insurance Fund

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**Claimant:** DH.A. natural person

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**Respondent:** Ministry of Health, MoH

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**Name of the judge:** Arjeta Sadiku

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**Hearing date:** 05.09.2023

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In this monitored case, the claimant, DH.A., filed a claim against the Ministry of Health (MoH) in the Department for Administrative Matters of the Basic Court in Prishtina on July 3, 2018. The claim sought approval for financial support for medical therapy, specifically medicines not included in the list of essential medicines funded by the Kosovo budget.

The court addressed this case five years later. At the main trial on September 5, 2023, the claimant's legal representative, A.H., emphasized that DH.A. suffers from a rare disease according to the international classification, also based on the legal provisions set out in the Administrative Instruction for Medical Treatment Outside Public Health Institutions. As such, it is necessary to provide continuous material support for this medical therapy.

Initially, approved in 2016 by the Executive Board for the implementation of the Medical Treatment Program Outside Public Health Institutions of MoH, DH.A.' application for medical therapy faced discontinuation of financial support in subsequent years. This occurred despite MoH's obligation to provide the therapy. Consequently, the claimant had to self-finance the necessary medications for the next six years.

Regarding DH.A.'s claims, the defendant MoH never responded, leading the aggrieved party to file a lawsuit against the public body for administrative silence. In subsequent court hearings, the claimant's authorized representative stated that the claimant's health status was proven through judicial expertise and direct clinical examination. Consequently, the court requested the Ministry of Health to retroactively compensate DH.A. for the purchase of medical therapy.

On the other hand, the defendant MoH who did not participate in any of the called sessions, proposed in their response to the claim that the court reject the claimant's claim and statement of claim as unfounded.

**Conclusion:** In this case, the Basic Court, by judgment of September 5, 2023, upheld DH.A.'s claim for financial support for medical therapy drugs in a meritorious manner<sup>9</sup>. According to this judgment, the respondent, the Ministry of Health, is obliged to retroactively reimburse the claimant for specific services – medicines, and continue with the allocation of these funds until there is a need for this therapy. This decision was based on the medical expertise that the claimant had requested in one of the hearings to prove the claimant's actual health condition. The reasoning for this judgment states that the basis of the claim was established due to administrative silence, and the fact that the respondent, the Ministry of Health, did not contest the basis of the claim, and did not submit any remarks on the medical expertise upon which the court based its decision.

The court also reviewed the claims of the respondent in their response to the claim, considering them as unfounded and contrary to the evidence in the case files and the factual situation confirmed by medical experts.

## Case 2

### Claim of N.B. against the Ministry of Health - Health Insurance Fund

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**Claimant:** N.B. natural person

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**Respondent:** Ministry of Health - MoH, Health Insurance Fund

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**Name of the judge:** Kreshnik Kaçiu

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**Hearing date:** 29.08.2023

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The second case involves a claim filed by the claimant, N.B., on July 22, 2022, against the decision of the Ministry of Health (MoH). The claimant sought reimbursement for recovery costs incurred outside public health institutions, but the Board handling these cases rejected the application.

During the main trial on August 29, 2023, the parent and representative, V.B., of the minor claimant N.B., informed the court that medical surgery for his child could not be performed in Kosovo, necessitating treatment abroad, specifically in Croatia and Germany. According to him, the decisions of the first and second-degree bodies were unfounded, not argued, and illegal.

The claimant's representative highlighted during the main trial, that the primary reason for refusing the reimbursement application, as per the first-instance decision, was the limited budget. The court was requested to uphold this claim for reimbursement of the recovery expenses abroad and to annul the decision challenged by this claim.

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<sup>9</sup> The Basic Court Decision A.nr. 1644/18, dated: 05.09.2023

The defendant - MoH, absent from this trial, disputed the claim and the statement of claim in their response. They argued that the respondent correctly applied the legal provisions and assessed all the circumstances and evidence that led to the issuance of the correct legal decision. The defendant emphasized that in their decision, they had recommended the claimant for free recovery in Turkey under the bilateral agreement between the two countries, but this was not considered by the claimant.

**Conclusion:** After reviewing all the evidence, the court found that the respondent body correctly established the factual situation and justly applied the substantive right in the case of reviewing the claimant's complaint. Therefore, the court rejected the claim and the statement claim of the minor claimant as unfounded<sup>10</sup>. The judgment stated that the Medical Evaluation Commission correctly decided on the rejection of the claimant's application in compliance with Article 132 of the Law on General Administrative Procedure, and the Administrative Instruction for medical treatment abroad. The court concluded that the patient had started treatment without completing the administrative procedures<sup>11</sup>.

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<sup>10</sup> The Basic Court Decision, A.nr .nr.1851/2022, dated: 06.09.2023

<sup>11</sup> Official Gazette of the Republic of Kosovo. Administrative Instruction Nr. 03/2023, Article 5, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=81033> (last accessed on 15 January, 2024).

## CONCLUSIONS AND RECOMMENDATIONS

The monitoring of two court cases illuminates the complexities involved in securing reimbursement of medical treatment outside public health institutions in Kosovo. The cases of Dh.A. and N.B. highlight the challenges faced by citizens who encounter numerous obstacles in their efforts to obtain financial support for health services not provided by public institutions.

In Dh.A.'s case, the court recognized the claimant's right to financial support for medical therapy - medicines, not included in Kosovo's budget for the list of essential medicines. The court's decision underscored the importance of continuous financial support for a rare disease, obligating the Ministry of Health to provide this therapy. The court made a meritorious decision in favor of the citizen, relying on the medical expertise that confirmed the claimant's actual health condition and the administrative silence of the defendant.

Conversely, N.B.'s case presented a different scenario. The court rejected a claim seeking reimbursement of recovery costs outside public health institutions, upholding the decision of the contested authority. The court found that the refusal was in accordance with the law, emphasizing the correct application of the law and respect for administrative procedures.

- Although many procedures have been simplified with the new Administrative Institution for Treatment Outside Public Health Institutions, practical challenges persist. The court's decision to dismiss in the second case, due to a lack of knowledge about administrative procedures, underscores the importance of further educating citizens about application and deadlines when seeking financial assistance for medical treatment outside public health institutions.
- The Health Insurance Fund should consider a comprehensive review and update of its policies, taking into account court decisions that emphasize the importance of continuous access to health services, especially for individuals with rare diseases who require ongoing therapy. This would ensure that citizens in these circumstances receive the necessary support without interruption and that all patients are treated equally.

