



Damages by Public Authorities: Cases of Paraplegics and Tetraplegics in Court

Introduction

The right of citizens to seek compensation for damages caused by public authorities is crucial for ensuring justice and upholding human rights, especially for vulnerable groups in society, including people with disabilities. This report, based on the monitoring of two cases involving paraplegic and tetraplegic individuals in the Department for Administrative Matters of the Basic Court in Prishtina, addresses the challenges faced by vulnerable groups in realizing their rights. This brief report is structured as follows: first, it discusses the judicial procedure for damages by public authorities, addresses the two monitored cases, and finally presents some concrete policy recommendations based on the findings of judicial monitoring.

Paraplegic and tetraplegic individuals are beneficiaries of pensions and benefits based on current legislation. The Law on the Status and the Rights of Persons with Paraplegia and Tetraplegia regulates the status and rights of individuals who, due to illness or injury, have permanently lost the ability to move 1) the lower extremities or 2) both the lower and upper extremities¹. The Evaluation Commission, comprised of medical experts based on the Regulation on the Composition, Functioning, Responsibilities of the Evaluation Commission, and Determination of Procedures for Recognizing the Status and Rights of Paraplegic and Tetraplegic Persons (hereinafter: the Regulation) within the Ministry of Finance, Labor, and Transfers (MFLT), reviews the applications of beneficiaries of this law, then determines the status, categorization, and other benefits according to the law and regulation².

¹ Official Gazette of the Republic of Kosovo. Law No. 05/L-067 on the Status and the Rights of Persons with Paraplegia and Tetraplegia. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12554>.

² Official Gazette of the Republic of Kosovo. Regulation (ORK) No. 07/2017 on the Composition, Functioning, Responsibilities of the Evaluation Commission, and Determination of Procedures for Recognizing the Status and Rights of Paraplegic and Tetraplegic Persons. Accessible at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=15161>.

According to the Regulation, beneficiaries of the first group are individuals with permanent and complete consequences, including incontinence and complete loss of sensation in the extremities. Beneficiaries of the second group are individuals without have permanent and complete consequences, including incontinence and complete loss of sensation in the extremities. Individuals categorized in the first group receive up to 375 euros per month: 150 euros for themselves, 150 euros for their caregiver, and an additional 75 euros for sanitary packages. Those in the second group receive only 150 euros per month, as it is assumed they do not need a caregiver and sanitary packages.

Although paraplegia and tetraplegia in the first group are recognized as permanent conditions, these individuals are required to undergo a reevaluation process by the MFLT Medical Commission, which, according to the Regulation, is conducted every five years for the first group and every three years for the second group. Based on two monitored cases, individuals with paraplegia and tetraplegia were initially recognized as having the rights of the first group. However, after reevaluation, they lost this right. In the first case, the person was completely removed from the list of beneficiaries, while in the second case, the person was re-categorized from the first to the second group. This highlights the problems created by these evaluations made by the Medical Commission within the MFLT, as well as the inadequate quality of the evaluations. Democracy Plus (D+) raised this issue last year in the report “Compensation for Paraplegic and Tetraplegic Persons by Public Authorities,” which is based on the monitoring of two cases in the Basic Court in Prishtina³.

Judicial Procedure for Damages by Public Authorities

Citizens who claim that the law has been violated to their detriment by final decisions of public authorities have the opportunity to seek their rights through lawsuits in the Department for Administrative Matters of the Basic Court in Prishtina, which has jurisdiction over the entire territory of Kosovo.

These cases are handled according to the Law on Administrative Conflicts (LAC), which determines the competence, procedural rules, and composition of the courts in its three-tier system (Basic Court, Court of Appeals, and Supreme Court) to assess the legality of administrative actions. This judicial procedure serves not only to assess the legality of administrative decisions but also to oversee the work of administrative bodies as they make decisions regarding applications and complaints of parties. In this way the procedure, aims to protect the judicial rights and interests of citizens, whose rights and interests have been violated by the decisions and actions of public administration bodies.

According to the LAC, an administrative conflict can only be initiated against an administrative act issued in the second instance administrative procedure. An administrative conflict can also be initiated against a first instance administrative act, against which an appeal is not allowed in the administrative procedure⁴. According to the Law on General Administrative Procedure (LGAP), parties can initiate a lawsuit in court even in cases where public authorities do not decide on the applications or complaints of the parties within a specified time frame, which the law has defined as “administrative silence.”⁵

³ Democracy Plus (2024). “Compensation for Paraplegic and Tetraplegic Persons by Public Authorities” Short Policy Report. Accessible at: https://dplus.org/wp-content/uploads/2024/01/29-01-24_Kompensimi-per-personat-paraplegjik-dhe-tetraplegjike-nga-autoritetet-publike-1.pdf.

⁴ Official Gazette of the Republic of Kosovo. Law No. 03/L-202 on Administrative Conflicts. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707>.

⁵ Official Gazette of the Republic of Kosovo. Law No. 05/L-031 on General Administrative Procedure. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>.

Court Cases

In both court cases involving paraplegic and tetraplegic individuals, the final decisions made by two levels of public authority—the Ministry of Finance, Labor, and Transfers (MFLT) and subsequently the Appeals Commission within the MFLT—were challenged by the affected parties. They claimed that the medical reevaluations conducted by the MFLT Commission did not fully and accurately assess their actual health conditions. Consequently, these decisions led the affected individuals to initiate legal proceedings against the MFLT, seeking compensation for the damage caused.

Case 1

N.S. vs. Ministry of Finance, Labor, and Transfers (MFLT), Pension Department

In this case, the court ruled in favor of the claimant, N.S., recognizing his status as a paraplegic and tetraplegic person in the first group and ordering the MFLT to compensate him for the damage caused.

N.S.'s legal battle began in 2020 when the Medical Commission within the MFLT reevaluated his condition, reclassifying him from the first group, as initially recognized, to the second group. After a year, his appeal was also rejected by the second-level body within the MFLT, the Appeals Commission.

Facing this situation, N.S. filed a lawsuit in 2021, contesting the MFLT's decisions and seeking recognition of his right to the full compensation of the first group, including retroactive payments for unpaid amounts.

After two years of waiting, the case finally came to a hearing in 2023. At this hearing, N.S.'s legal representative was present, while no one from the MFLT, which had previously opposed the lawsuit as unfounded, attended. The court noted that N.S.'s appeal had been rejected without any reasoning and had not considered the evidence presented by the appealing party. Consequently, the court upheld N.S.'s representative's proposal to obtain a medical expert's opinion to verify the factual condition.

The court case continued, with the main hearing taking place in January 2024. During this hearing, the court administered evidence, relying primarily on the medical expertise of doctors from the University Clinical Service of Kosovo. According to this expertise, N.S. belongs to the first group of paraplegic and tetraplegic persons and requires the care of a caregiver.

The court also reviewed the evaluations of the defendant's Medical Commission and found significant procedural deficiencies that rendered the contested decisions unlawful. These deficiencies were fundamental violations of the Law on General Administrative Procedure. Based on these findings and the medical expertise, the court concluded that the MFLT's decisions were unlawful.

In conclusion, the court, in its decision dated January 23, 2024⁶, annulled the MFLT's decisions, recognized the claimant's right to a pension in the first category, and ordered the public authority, the MFLT, to compensate the injured party, N.S., retroactively for all unpaid amounts, including legal interest of 8%.

⁶ Decision of the Basic Court in Prishtina, A.nr. 258/21, dated: 23.01.2024. Accessible at: https://pristine.gjyqesori-rks.org/wp-content/uploads/verdicts/PR_A_2021-022071_SQ.pdf.

Case 2

F.V. vs. Ministry of Finance, Labor, and Transfers (MFLT), Pension Department

In the second case, the court ruled in favor of the claimant, F.V., partially upholding the claimant's claim. The court recognized the claimant's status as a paraplegic and tetraplegic person in the second group and ordered the MFLT to compensate the claimant retroactively for unpaid payments since the date of the denial of this right.

Although F.V. was initially granted the right to compensation for paraplegic and tetraplegic persons, after reevaluation by the Medical Commission, he was completely removed from the list of pension and benefit recipients. In July 2022, the second-level decision of the MFLT rejected the claimant's appeal for compensation, stating that he did not meet the legal conditions for continuing this right.

On August 1, 2022, the claimant initiated a lawsuit in court, seeking the annulment of the contested decisions of the defendant, the MFLT, and recognition of his right to the pension scheme for paraplegic and tetraplegic persons of the first group, starting from the date of the application.

Two years after, the initiation of the lawsuit, the case was scheduled for a hearing. In January 2024, the first hearing was held, attended by the claimant's legal representative, F.V., while no one from the defendant, the MFLT, was present. The court upheld the claimant's proposal to appoint a new medical expert panel, comprised of certified doctors from the Kosovo Judicial Council to verify the claimant's actual health condition. During the analysis of the evidence, the court noted that the MFLT Commission's decisions had not provided sufficient reasons and had not considered any evidence from the claimant to prove that he did not meet the legal criteria to obtain the status of paraplegic and tetraplegic persons.

The Medical Commission appointed by the court, after directly examining the claimant, concluded that the claimant, F.V., fell into the second category of paraplegic and tetraplegic persons. This conclusion was also supported by their statement at the main hearing held on April 25, 2024.

At this hearing, the court administered evidence, basing its judgment primarily on the analysis of the medical expertise appointed by the court. Additionally, the court reviewed the defendant's Medical Commission's evaluation, but since it did not contain any explanation or justification for the claimant's health condition, the court could not trust the Commission's evaluation and conclusion.

Furthermore, the court also reviewed F.V.'s claim for recognition of the right to compensation for paraplegic and tetraplegic persons in the first group. However, since the claimant had not provided sufficient evidence to recognize this right in the first group and based on the relevant legal provisions, the court partially upheld his claim, recognizing his right to the pension of the second group.

In the reasoning of the judgment dated April 30, 2024⁷, the contested decisions of the MFLT contain defects that prevent the examination of their legality. These defects are fundamental violations of the provisions of the Law on General Administrative Procedure.

⁷ Decision of the Basic Court in Prishtina, A.n.r. 1929/2022, dated: 30.04.2024. Accessible at: https://prishtine.gjuqesori-rks.org/wp-content/uploads/verdicts/PR_A_2022_161339_SO.pdf.

CONCLUSIONS AND RECOMMENDATIONS

In both monitored cases, the issues were brought to court due to unlawful decisions made by the public authority MFLT, including the Appeals Commission. These decisions were based on the evaluations of the Medical Commission within the MFLT, which did not provide sufficient evidence, violating the provisions of the Law on General Administrative Procedure.

In the first case, the Medical Commission, during the reevaluation process, moved N.S. from the first to the second group of pension beneficiaries under the Law for Paraplegics and Tetraplegics. In the second case, F.V. was completely removed from the list. Based on general observations during the monitoring of court cases, the Appeals Commission of the MFLT, although constitutionally and legally mandated to correct potential errors of the first instance, mostly makes decisions that reflect those of the first instance. Consequently, citizens are forced to seek justice at a higher level, in court, where they must undergo additional medical examinations by another Medical Commission appointed by the court.

These unlawful decisions not only harm the parties but also further burden the already overloaded courts with additional cases. They also strain the public authority itself, as court decisions require the payment of 8% legal interest for financial compensation.

- The MFLT should amend the Regulation to prevent the recategorization of paraplegic and tetraplegic persons in the first group.
- Decisions of the Appeals Commission within the MFLT should include detailed explanations and reasoned justifications for rejecting applicants' requests.
- Relevant institutions should hold the MFLT's medical commissions accountable for violating legal procedures during reevaluations. The Law on General Administrative Procedure was violated in both cases, causing harm to the affected parties.