



Violations of Administrative Procedures: Cases of Farmers' Grants

Introduction

The allocation of grants and subsidies remains a delicate issue, especially since the establishment of support mechanisms for the agricultural sector in 2009, evidenced by the Law on Agriculture and Rural Development, ratified by the Assembly of the Republic of Kosovo.¹ This legislation, which has since been repealed, signified a pivotal advancement in the institutionalization of financial assistance for agricultural producers and the advancement of rural development. Presently, the agricultural sector is subject to governance by the newly implemented Law on Agriculture², in conjunction with a comprehensive legal and regulatory framework designed to enhance the efficacy of these processes.

Nevertheless, the system has frequently been confronted with entrenched challenges and notable scandals. A notable example is the “Subsidies 2021” case, in which 78 senior officials from the Agency for Agricultural Development were apprehended on charges of funds misuse, thus reaching a point of heightened suspicion concerning the management of public funds and their potential misuse.³ Reports issued by the National Audit Office (NAO) have repeatedly drawn attention to the challenges encountered in the administration of grants and subsidies, identifying ineffective practices and a lack of respect for established procedures.⁴

1 The Official Gazette of the Republic of Kosovo. Law No. 03/L-098 on Agriculture and Rural Development. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=71733>

2 The Official Gazette of the Republic of Kosovo. Law No. 08/L-072 on Agriculture and Rural Development. Available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=71733>

3 Paparaci.com. The action, „Subsidies“, resulted in the imprisonment of 78 individuals. December 3rd, 2021. Available at: <https://paparaci.com/32143/aksioni-subvencionet-vuri-ne-pranga-78-persona/>

4 National Audit Office. Performance audit report: “the process of managing grants and subsidies in the Agriculture sector”, May 2019. Available at : https://eëë.zka-rks.org/cms/uploads/2019/05/2019_05_07_Procesi_i_menaxhimit_te_granteve_dhe_subvencioneve_ne_bujqesi.pdf

*This fast reaction brief is written in Albanian. For any ambiguities in this translated and adapted version, please consult the original, S hkeljet e procedurave administrative: Rastet me grantet e fermerëve

Contrary to the publicly exposed cases previously mentioned, this brief report deals with two administrative cases monitored in the Basic Court in Pristina. In these cases, farmers contested administrative decisions of the Ministry of Agriculture, Forestry and Rural Development (hereinafter: the Ministry of Agriculture) and the Agency for the Development of Agriculture (AAD). While these cases do not involve allegations of misuse of funds or corruption, they do highlight other significant issues, such as non-compliance with legal procedures and a lack of transparency. Consequently, these administrative authorities have caused considerable damage to farmers, compelling them to seek redress through legal channels. These cases mirror the ongoing challenges confronted by farmers in their applications for financial support and underscore claims of injustice and a paucity of transparency in the decision-making processes of public institutions.

The purpose of this report is to emphasize the significance of adhering to legal procedures by encouraging citizens to utilize the available legal channels in instances where their rights have been violated by public bodies. The report provides a concise overview of the legal framework governing the allocation of grants and subsidies, and the administrative procedures to be followed by the affected parties until the cases are adjudicated in a court of law. It also offers an illustration of two cases that have been monitored in a court of law. The report concludes with a series of recommendations designed to enhance administrative processes and to ensure the effective protection of citizens' rights.

Legal Framework and Administrative Procedure

The Government of Kosovo provides financial assistance to the agricultural sector through direct funding in the form of subsidies and grants, as outlined in the Law on Agriculture and Rural Development.⁵ The administration of these funds is overseen by the Ministry of Agriculture, Forestry and Rural Development. The Ministry's remit includes the design of short-term, medium-term and long-term development programmes, the implementation of which is intended to provide support for agricultural projects.

A pivotal institution within the ambit of the Ministry of Agriculture is the Agency for Agricultural Development (AAD), which bears the responsibility of implementing measures for agriculture and rural development. Moreover, the Ministry of Agriculture approves Administrative Instructions for direct payments on an annual basis, thereby establishing the rules, eligibility criteria and procedures for the financial support of applicant farmers.

In both of the cases under scrutiny, the plaintiffs had adhered to all the stipulated legal procedures prior to the initiation of legal proceedings. Following the notification of the decisions issued by the Ministry of Agriculture and the AAD, the plaintiffs submitted complaints to the Appeals Committee of the aforementioned ministry. In the absence of the implementation of the decisions of this commission by the ministry, the plaintiffs then turned to the Administrative Department at the Basic Court in Pristina, as provided by the Law on Administrative Conflicts.

The legislation stipulates the potential for initiating an administrative dispute concerning:

- the administrative act issued in the second instance of the administrative procedure.
- the administrative act of the first degree, which is not subject to appeal within the framework of the administrative procedure.⁶

⁵ The Official Gazette of the Republic of Kosovo. Law No. 08/L-072 on Agriculture and Rural Development. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=71733>

⁶ The Official Gazette of the Republic of Kosovo. Law No. 03/L-202 on Administrative Disputes. Article 13. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=85181>

Furthermore, the administrative conflict may commence even in the absence of a relevant administrative act being issued by the competent body in response to a party's request or complaint, within the parameters established by the provisions of this law.⁷

The first case: The Appeals Committee approved the claimant's request and returned the case to the first instance body, the Ministry of Agriculture, for reconsideration. However, the Ministry of Agriculture declined to implement the Commission's decision, disregarding its recommendations. Consequently, the plaintiff elected to contest the Ministry of Agriculture's decision through legal channels.

The second case: Following repeated rejections by the administrative bodies, the Ministry of Agriculture - AAD and the Appeals Committee, this plaintiff also appealed to the court through the administrative procedure, as provided by the Law on Administrative Conflicts (LAD).

As stated by LAD *"In the administrative conflict procedure, the return of the items that have been taken and the compensation of the damage caused to the plaintiff upon the execution of the contested act can also be requested."*⁸

In both cases, the plaintiffs also requested the implementation of late interest at a rate of 8%, in accordance with the Law on Obligational Relationships, which stipulates: "The obligation to compensate for damages is considered to have arrived, for payment from the moment of causing the damage"⁹. "The amount of late interest is 8% per year, unless otherwise provided by a special law."¹⁰

Case 1

An instance of legal action initiated by L.S.A. against AAD at the Ministry of Agriculture, pertaining to the refusal of financial assistance subsequent to the second field inspection.

In this matter of administrative conflict, the Basic Court in Pristina has ruled in favour of the farmer L.S.A., thereby annulling the decision of the Ministry of Agriculture, Forestry and Rural Development and the Agency for Agricultural Development to reject financial support, as initially agreed upon by the parties concerned.

A farmer had submitted an application for financial support for Agriculture and Rural Development in 2020, for measure 101, under measure 101.2.1: Investments in Vegetables and Greenhouses for the project "Building a 0.21ha greenhouse and irrigation". Following administrative control, assessment and the first field control, the project was approved by AAD at the Ministry of Agriculture. According to the terms of the contract, the Ministry of Agriculture agreed to provide financial backing amounting to 65% of the project's value, which equates to a sum of 29,646 euros. Pursuant to this agreement, the farmer was given an advance of 9,634.95 euros for the construction of a greenhouse according to the business plan.

⁷ Ibid., Article 14.

⁸ Ibid., Article 17.

⁹ The Official Gazette of the Republic of Kosovo. Law No. 04/L-077 on Obligational Relationships, article 170. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2828>

¹⁰ Ibid., Article 382.

However, following a second field inspection by AAD, the relevant inspectors found that the metal framework of the greenhouse had been used, which led to the refusal of further payment. This rejection decision was subsequently upheld by the Ministry's Appeals Committee in September 2021, which referred the case for reconsideration and reinstatement to the AAD. Nevertheless, AAD disregarded this decision and once again rejected the farmer's request.

Consequently, the farmer, expressing dissatisfaction, initiated legal proceedings in the Basic Court, asserting that AAD had contravened legal provisions and erroneously evaluated the factual situation during the second inspection. The farmer presented a private expertise, which confirmed that the material used for the greenhouse was new. This report was accepted without objection by the Appeals Committee of the Ministry of Agriculture. Furthermore, the ministry did not provide additional evidence, such as photographs from the field, to challenge the conclusions of the expert.

Following a thorough review of the available evidence, the court concluded that the Ministry of Agriculture had committed procedural errors and had not provided sufficient evidence to support its decision. The report of the construction expert, submitted by the farmer, proved that the metal frame was new and that the color change was a consequence of atmospheric conditions. The expert concluded that the material was not old, but had merely undergone a change in color due to the influence of natural elements. The field assessment confirmed that the structure had been built a year prior and had a durability of 20 to 40 years, depending on the thickness of the galvanization.

The court placed greater reliance on the expert opinion, considering it to be more reliable and professional than the report of the ministry inspectors. It was noted that the AAD inspectors had not conducted professional measurements of the thickness of the galvanization and had not documented the condition of the greenhouse with photographs or requested additional information from the farmer. These shortcomings were characterized as unprofessional and biased, falling short of the In its decision, the court made reference to the Law on Amending and Supplementing the Law on Agriculture and Rural Development¹¹ and the Administrative Instruction of the Ministry of Agriculture on Measures and Criteria of Support for Rural Development for the years 2020-2021.¹² According to this instruction, the expenses for used machinery and equipment are inadmissible. However, the court found that the ministry had not proved that the material used was such.¹³

The court then proceeded to examine the remaining material evidence, leading to the annulment of the Ministry's decision on the grounds of illegality. Consequently, the Ministry was compelled to pay the sum of 9,634.95 euros, along with legal interest at a rate of 8%, commencing from the date of the lawsuit's filing on 26 October 2021.¹⁴

11 The Official Gazette of the Republic of Kosovo. Law No. 04/L-090 on Amending and Supplementing the Law no. 03/L-098 on Agriculture and Rural Development. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=71733>

12 The Ministry of Agriculture, Forestry and Rural Development. Administrative Instruction (MAFRD) no.02/2020 on The Measures and Criteria of Support in Agriculture and Rural Development for 2020-2021. Available at: https://www.mbpzhr-ks.net/repository/docs/PDF_Nr_02_2020_UA_20072020.pdf

13 Ibid., Article 33.

14 The decision of the Basic Court of Pristina, A.no. 2536/2021 is hereby presented. Date 15.05.2024.

Case 2

The legal action initiated by E.V. against AAD at the Ministry of Agriculture, which resulted in the refusal of financial assistance. This refusal was attributed to a technical inaccuracy in the documentation submitted.

In this case, the judicial and administrative procedure for the farmer E.V. remains open, including an extended period of approximately seven years, during which the case has passed through the decisions of several judicial levels. Initially, the Basic Court in Pristina ruled in favour of the farmer, thereby cancelling the decisions of the Ministry of Agriculture, Forestry and Rural Development and the Agency for Agricultural Development regarding the rejection of financial support for his agricultural project. This ruling affirmed that the technical inaccuracy in the documentation did not provide a sufficient legal foundation for the rejection of his application.

The farmer had submitted an application for financial support for agricultural projects in 2017 and was ranked first on the list of grant beneficiaries. However, his application was rejected due to a technical error in the documentation. E.V. subsequently submitted a formal complaint to the Appeals Committee of the Ministry of Agriculture, which approved the complaint, ordering a re-evaluation and reinstatement. However, this decision was not taken into consideration by the initial body and the complaint was rejected once more.

Subsequently, E.V. initiated legal proceedings in a court of law, asserting that the rejection of his application lacked a legal foundation. The grounds for this assertion were that the plaintiff was listed first on the list of grant beneficiaries. However, it was noted that there was a technical error in the application, where A. was written instead of the surname V. The defendant contended that this error could not be considered sufficient grounds for rejecting the complaint. This was due to the fact that the plaintiff had never been notified by the defendant of the technical error, and therefore had no opportunity to correct it. It was further noted that the error was only on the first page of the application.

Conversely, the defendant has expressed opposition to the plaintiff's request for legal action, contending that the rejection of the plaintiff's application transpired during the administrative review stage, which represents the initial stage and a prerequisite for progression to subsequent stages. The defendant asserts that the claim for compensation and lost profit is legally inadmissible, as contractual relations have not been established as provided by law and the sub-legal basis for mandatory inspections at the scene.

In the session of the main review held on 15 March 2023, during the administration of the evidence, the court determined that the decisions of the Ministry of Agriculture and AAD were illegal. The court emphasized that the technical error did not constitute a sufficient basis for rejection and that the authorities had failed to meet the legal standards for administrative acts, as defined by the Law on General Administrative Procedure (LGAP), specifically articles 47 and 48, which define the mandatory elements which must contain an administrative act.¹⁵

In relation to the assertion by the Ministry of Agriculture that contractual relations were not initially established, the court, upon examination of the case documents, determined that this was the consequence of an erroneous evaluation of the factual circumstances by the defen-

¹⁵ The Official Gazette of the Republic of Kosovo. Law No. 05/L-031 on the General Administrative Procedure, articles 47 and 48. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>

dant. Furthermore, the court determined that the Appeals Committee within the ministry had initially determined the plaintiff's complaint to be well-founded and directed the case for reconsideration. However, the appeal was rejected on the second occasion without the provision of sufficient reasons.

The judgment of the Basic Court mandated that the Ministry of Agriculture remunerate the farmer to the tune of €98,200, encompassing material damage, foregone profit and legal interest at a rate of 8% for the four-year period from the date of filing the lawsuit on 28 December 2017 until the final payment.¹⁶ However, the case did not conclude there.

Farmer E.V. was dissatisfied with this decision and submitted an appeal to the Court of Appeal requesting a change of the decision to include an additional compensation of 71,575 euros (in total 134,300 euros). This additional compensation was based on the financial expertise determined by the party and approved by the court, which represented the financial assessment of his additional losses. The Court of Appeal deemed the appeal to be well-founded, concluding that the Basic Court had failed to provide sufficient justification for its decision not to approve the plaintiff's full request. The court determined that the Basic Court had committed a fundamental violation of the provisions of the Law on General Contested Procedure (LGCP), specifically articles 183 and 184, by failing to provide adequate justification for its decisions. Consequently, the case was remanded for retrial to the court of first instance.¹⁷

Presently, the case remains pending in the Basic Court, which is required to act in accordance with the directives issued by the Court of Appeal and to undertake a comprehensive examination of the claimant's request.

¹⁶ The Decision of the Basic Court in Prishtina, A. no. 2214/17 is hereby presented. Date: 15.05.2024.

¹⁷ The decision of Court of Appeals in Pristina AA.nr.442/2023 is hereby presented. Date: 13.06.2024

CONCLUSIONS AND RECOMMENDATIONS

In both of the cases under scrutiny, the decisions of the Ministry of Agriculture and AAD were annulled by the courts due to non-compliance with administrative procedures in accordance with the relevant legislation. This outcome demonstrates that a state administration that disregards legal procedures can inflict substantial harm on citizens and businesses, in this case farmers, as well as on the state itself, due to the compensation of legal interest at a rate of 8% as stipulated by the Law on Obligational Relationships.¹⁸ The aforementioned cases demonstrate a clear contravention of the Law on General Administrative Procedure by public authorities, particularly articles 47 and 48, which stipulate the mandatory inclusion of specific components in administrative acts.

The first case: On the basis of an erroneous assessment of the factual situation by the ministry's inspectors in the field, who failed to furnish any evidence to support this assessment, the decision of the administrative body was annulled by the Basic Court.

The second case: A technical error in the documentation resulted in the denial of financial support for agricultural projects to the plaintiff. Public authorities did not inform the party about the possibility of correcting this error, as stipulated in the administrative instructions. This series of events has culminated in a protracted legal dispute that has spanned approximately seven years and remains unresolved. This protracted nature of the proceedings can be attributed to the decisions of the Basic Court, which were found to lack sufficient reasoning, resulting in the case being referred to the Court of Appeal on two separate occasions. However, on both of these occasions, the Court of Appeal returned the case to the course of first instance for retrial.

It is recommended, based on the monitoring of these cases, that:

1. The Agency for the Development of Agriculture, a departmental body operating under the Ministry of Agriculture, is charged with the responsibility of ensuring that the stipulations enshrined within the Law on General Administrative Procedure, particularly Articles 47 and 48, are scrupulously observed, thus guaranteeing the rectitude and legitimacy of administrative actions.
2. It is imperative that the Agency for the Development of Agriculture, a division of the Ministry of Agriculture, adhere strictly to the administrative instructions it has formulated. These instructions are to be disseminated to relevant parties, thereby notifying them of the possibility of correcting technical errors, as stipulated by the by-laws, such as the Administrative Instructions for Measures and Support Criteria for Rural Development.
3. It is incumbent upon the Basic Court, Department for Administrative Affairs, to ensure that delays such as those experienced in the second case are avoided and that cases are not returned by higher instances. To this end, it is imperative that the court justifies its decisions with clarity, in accordance with the provisions of the Law on Contested Procedure, particularly articles 183 and 184.

¹⁸ The Official Gazette of the Republic of Kosovo. Law No. 04/L-077 on Obligational Relationships, article 382. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2828>