



Legal Procedures and Compensation Claims Against Tax Administration in Kosovo and Kosovo Customs

Introduction

The right of citizens to challenge violations by public authorities is a fundamental principle guaranteed by the Constitution of the Republic of Kosovo, specifically Article 31: the right to legal remedies¹. This principle ensures that any judicial or administrative decision that infringes upon the rights or interests of citizens can be contested through legal mechanisms.

To provide the highest level of protection for fundamental rights and freedoms, the Constitution incorporates international human rights instruments into the legal system, granting them absolute precedence over other laws². Furthermore, it mandates that the interpretation of fundamental rights and freedoms must align with the rulings of the European Court of Human Rights (ECtHR), thereby obligating the judiciary and public institutions to apply its jurisprudence, including in administrative matters³.

To facilitate the realization of these rights, the Law on Courts of 2013 established the Department for Administrative Matters within the Basic Court in Prishtina, with jurisdiction over the entire territory of the Republic of Kosovo⁴. This department serves as the first instance for handling administrative cases, where citizens can file lawsuits against alleged violations by public authorities and seek compensation for damages incurred. If dissatisfied with the decisions of this instance, they may appeal to the Court of Appeals as the second instance and, if deemed necessary, to the Supreme Court or even the Constitutional Court to protect their rights⁵.

1 Official Gazette of the Republic of Kosovo. Constitution of the Republic of Kosovo. Article 32, Right to Legal Remedies. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

2 Ibid. Article 19, Implementation of International Law, paragraph 2.

3 Ibid. Article 22, Direct Implementation of International Agreements and Instruments.

4 Official Gazette of the Republic of Kosovo. Law No. 06/L-054 on Courts. Article 13, Internal Organization of the Basic Court, paragraph 1.3. Accessible at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

5 Official Gazette of the Republic of Kosovo. Constitution of the

* This fast reaction brief is written in Albanian. For any ambiguities in this translated and adapted version, please consult the original version: "Procedurat ligjore dhe kërkesat për kompensim ndaj Administratës Tatimore të Kosovës dhe Doganës së Kosovës".

This judicial procedure is regulated by the Law on Administrative Disputes (LAD), which ensures judicial protection of citizens' rights and interests against actions or omissions by public authorities by determining their legality⁶. Simultaneously, this procedure functions as a mechanism for overseeing the work of administrative bodies, from reviewing parties' claims to issuing final decisions, ensuring that their rights and interests are upheld by an independent judicial body.

This right can only be exercised after citizens have exhausted all legal remedies provided by the applicable legislation.

This brief report examines two monitored cases in the Department for Administrative Matters of the Basic Court, where the defendants are the Tax Administration of Kosovo (TAK) and Kosovo Customs. These cases highlight the legal and procedural challenges that citizens face in seeking their rights and claiming compensation for damages caused by public bodies⁷.

The report includes an introduction, a brief overview of the administrative and judicial complaint procedures, an illustration of the monitored court cases, and conclusions with key recommendations.

Administrative Complaint Procedure

To protect their rights, citizens who believe they have been harmed by a decision or action of a public authority and seek compensation must first follow an administrative procedure. This process always begins with the submission of a request by the citizen to the relevant administrative body and is regulated by the Law on General Administrative Procedure (LGAP)⁸. This law ensures that decisions affecting the rights and obligations of citizens comply with the Constitution, general legal principles, and specific sectoral regulations.

During this procedure, administrative bodies are required to issue decisions that contain all the mandatory elements stipulated by LGAP⁹. The decision must include a clear and detailed reasoning, explaining the legal and factual basis on which it was made¹⁰.

Republic of Kosovo. Article 113, Jurisdiction and Authorized Parties, paragraph 7. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

⁶ Official Gazette of the Republic of Kosovo. Law No. 08/L-182 on Administrative Conflicts. Article 1, Purpose. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=85181>

⁷ Clarification: This is the tenth report published by D+, which includes two monitored cases in court. So far, D+ has monitored a total of 20 cases, summarized in 10 published reports. Each report has included two cases, providing concrete examples that assist citizens in following administrative and judicial procedures to realize their rights.

⁸ 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>

⁹ Ibid. Article 47, Structure and mandatory elements of the written administrative act.

¹⁰ Ibid. Article 48, Reasoning of a written administrative act.

If citizens are dissatisfied with an administrative decision, they must file an appeal with the second-instance body of the public authority. If the second-instance administrative body rejects the party's request, the party has the right to file a lawsuit in court. Such a lawsuit can also be initiated following first-instance decisions if the administrative procedure does not allow for an appeal. The Law on General Administrative Procedure also regulates cases where a public authority fails to act (remains silent) and does not respond to a party's request within the legally prescribed deadlines. In such cases, the decision is automatically considered negative, allowing the citizen to take further legal action¹¹.

Judicial Procedure

Once all legal remedies within the administrative procedure have been exhausted and final decisions have been issued by public authorities, citizens have the right to initiate an administrative dispute by filing a lawsuit in court.

The lawsuit aims to review the legality of administrative decisions and ensure the protection of citizens' rights, in accordance with the provisions of the Law on Administrative Disputes (LAD). This law clearly defines the procedure for challenging decisions of state authorities, providing a structured mechanism for the effective realization of citizens' rights through judicial protection.

The lawsuit must be submitted to the Basic Court of Prishtina – Department for Administrative Matters, within the legally prescribed deadlines. During this process, the citizen also has the right to seek compensation for damages suffered. According to LAD, in cases where reinstating the previous situation is not possible or would be excessively disproportionate, the court may award monetary compensation and determine the amount of damages¹².

Additionally, the claimant may request the application of an 8% penalty interest, based on the Law on Obligations, which stipulates: "The obligation for damage compensation is considered due for payment from the moment the damage occurs,"¹³ and "The penalty interest rate is 8% per year, unless otherwise specified by a special law"¹⁴.

These procedures are essential to ensuring an effective mechanism for the protection of citizens' rights and the challenge of unjust decisions by public authorities. For a successful process, citizens must act within the legal deadlines and prepare the necessary documentation, relying on the Law on General Administrative Procedure (LGAP), the Law on Administrative Disputes, and relevant legislation for specific cases.

¹¹ Official Gazette of the Republic of Kosovo. Law No. 05/L-031 on General Administrative Procedure. Article 125. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>

¹² Official Gazette of the Republic of Kosovo. Law No. 08/L-182 on Administrative Conflicts. Article 65, paragraph 5. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=85181>

¹³ Official Gazette of the Republic of Kosovo. Law No. 04/L-077 on Obligations Relations. Article 170. Accessible at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2828>

¹⁴ Ibid. Article 382, Late Payment Interest.

Cases at the Basic Court of Prishtina – Department for Administrative Matters¹⁵

In the first case, the claimant R.S. challenged the final decision of the Appeals Division of the Tax Administration of Kosovo (TAK), which functions as the second-instance body within this institution, by filing a lawsuit in the Department for Administrative Matters of the Basic Court of Prishtina. The claimant argued that TAK had wrongly classified him as a business entity and imposed a tax burden on a specific amount, despite him being a private individual with no business activity. The claimant alleged that the decision contained serious procedural and legal violations and requested the court to annul it and oblige TAK to reimburse the unjustly paid funds.

In the second case, the claimant G.D. challenged the final decision of the Kosovo Customs Decision Review Sector, which acts as the second-instance body within this institution. After the rejection of his appeal by this body, the claimant filed a lawsuit in the Department for Administrative Matters of the Basic Court of Prishtina. Kosovo Customs had imposed an unjustified customs duty on an imported vehicle, causing financial damage to the claimant. Moreover, the contested decision contained serious procedural and legal violations. Therefore, the claimant requested the court to annul the decision and order the reimbursement of the paid amount, including legal interest of 8% from the date of payment.

Case with the Tax Administration of Kosovo (TAK): Plaintiff R.S. Challenges Classification as a Business Entity

In this administrative dispute, the plaintiff, R.S., challenged the decision of the Tax Administration of Kosovo (TAK), arguing that it was unfair and contrary to the legal framework. TAK had imposed a tax of €131,000, treating the plaintiff as a business entity, even though he is a private individual with no registered business activity.

On June 22, 2023, R.S. filed a lawsuit in court seeking the annulment of TAK's decision, which he considered unlawful. The first court hearing took place on July 1, 2024, where the plaintiff argued that, according to the law, as a private individual without business activity, he is not required to pay tax on capital gains. He emphasized that TAK's decision contained multiple procedural and legal violations.

Additionally, the plaintiff highlighted a violation of the Law on Personal Income Tax¹⁶, which states that a private individual without a registered business activity cannot be taxed on capital gains without a bylaw issued by the minister to regulate the treatment of such gains or losses¹⁷.

R.S. pointed out that TAK's own audit report confirmed he was registered as a private individual with no business or other economic activity. Furthermore, during the audit process, he was issued a fiscal number for the year 2021. Despite this, TAK imposed a tax on an alleged turnover

¹⁵ Clarification: The cases monitored in court are handled according to the provisions of the old Law on Administrative Conflicts, as the new law came into effect in January of this year, while the monitoring of these cases was done prior to this time.

¹⁶ Official Gazette of the Republic of Kosovo. Law No. 05/L-028 on Personal Income Tax. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11014>

¹⁷ Official Gazette of the Republic of Kosovo. Law No. 05/L-028 on Personal Income Tax. Article 31, Capital Gains and Losses. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11014>

of €772,841.37, treating this amount as capital gain and unfairly classifying him as a business entity.

On the other hand, TAK's legal representative opposed the lawsuit, requesting the court to dismiss it as unfounded. He argued that the plaintiff had not complied with tax legislation and had not provided evidence to prove otherwise.

After reviewing the evidence and analyzing the applicable legislation, the court found that TAK's decision had no legal basis and violated Articles 47 and 48 of the Law on General Administrative Procedures (LPPA), as it lacked the necessary structure and required elements of a written administrative act, including reasoning based on legal grounds and facts leading to the decision. The court also noted the absence of a mandatory bylaw regulating the taxation of capital gains for private individuals.

In its ruling, the court referred to the Law on Personal Income Tax, which states: "The method of treating capital gains/losses for individuals (private individuals without business activity) shall be determined by a bylaw issued by the minister"¹⁸. Since no such bylaw had been issued, the court concluded that the plaintiff had been wrongfully subjected to tax obligations. Additionally, the court found that TAK had misapplied substantive law by treating R.S. as a business entity, even though he had never been registered in the Kosovo Business Registration Agency, which operates within the framework of the Ministry of Industry, Entrepreneurship, and Trade.

As a result, based on these findings, the Basic Court ruled to annul TAK's decision and ordered TAK to refund the plaintiff, R.S., the amount of €73,336, which he had already paid. The case has been appealed by TAK and is still pending review by the Court of Appeals¹⁹.

Case with Kosovo Customs: Plaintiff G.D. Challenges Procedural Violations in Vehicle Customs Clearance

This administrative case concerns the valuation of the transaction price for an imported vehicle, in which the plaintiff, G.D., claims that Kosovo Customs violated administrative procedure rules and misapplied substantive law provisions. As a result of these violations, he was required to pay an additional amount of €3,040.85 in customs duties.

Initially, the plaintiff filed an appeal with the Kosovo Customs Decision Review Sector, but his appeal was rejected. Consequently, he initiated legal proceedings on August 3, 2022, seeking the annulment of the Customs decision, which had refused to recognize the declared value of the vehicle for customs clearance. He argued that he had submitted all necessary documents, including invoices and bank payment details, which he claimed were sufficient to prove the transaction price.

During the main hearing on July 3, 2024, the plaintiff's legal representative argued that Customs had violated Article 33 of the Kosovo Customs and Excise Code (KDAK), which states: "The customs value of imported goods is the transaction value, which is the price actually paid or payable for the goods sold for export to Kosovo, adjusted as necessary in accordance with Articles

¹⁸ Ibid. Article 31, Capital Gains and Losses, paragraph 12.

¹⁹ Decision of the Basic Court in Prishtina, A.nr. 2017/2023. Date: 01.07.2024.

36 and 37²⁰. He also emphasized that Customs had breached Article 123 of Administrative Instruction 11/2009, which specifies the documents that must accompany a customs declaration²¹.

According to the plaintiff's legal representative, the plaintiff had submitted sufficient documents, including invoices and proof of payments, which should have been used as the basis for calculating customs duties. Customs' refusal, based on the absence of a sales contract, was considered unfounded, as such a document is not required by KDAK provisions. Furthermore, Customs had assessed the vehicle's price based on offers from online sources, which did not reflect the actual transaction price and failed to account for depreciation and mileage.

On the other hand, the legal representative of Kosovo Customs defended the decision, arguing that the ruling was in accordance with the law, as the value declared by the plaintiff was lower than the assessed real value. According to this ruling, the vehicle was re-evaluated based on the available data held by Kosovo Customs, specifically the internal customs valuation catalog. Additionally, Customs had used an online application to determine the average value of the vehicle, combining values from three different sources and deeming the submitted documentation insufficient.

Upon reviewing the case, the Basic Court found that the Customs decision lacked sufficient reasoning and violated principles of administrative procedure. The Court determined that the decision was unclear, contradictory, and failed to address the key facts and claims presented by the plaintiff, thus breaching Article 48 of the Law on General Administrative Procedure (LPPA). According to this article, "an insufficient, unclear, contradictory, or incomprehensible reasoning is equivalent to its absence"²².

The Court also referred to Article 134 of the LPPA, which states: "In addition to the requirements of Article 48 of this Law, the reasoning of an administrative act resolving an appeal shall also contain an assessment of all claims submitted by the party in the appeal"²³. Moreover, the Court found that the method used for customs valuation did not comply with Article 33 of the KDAK, which stipulates that customs value must be based on the transaction price, including direct and indirect payments as a condition of sale.

Regarding this case, the Basic Court ordered that the matter be sent back for reconsideration and reinstatement by Kosovo Customs. It instructed Customs to examine all evidence and claims of the plaintiff, including the actual condition of the vehicle, its age, and mileage, and to provide a clear and evidence-based reasoning for the future decision²⁴.

However, on September 30, 2024, the Decision Review Sector of Kosovo Customs once again rejected the plaintiff's appeal²⁵. For this reason, the plaintiff filed an appeal with the Appeals Board for Reviewing Decisions of Customs and the Tax Administration of Kosovo, an entity within the Ministry of Finance, Labour and Transfers. However, the Board failed to respond within the legal deadline. Due to administrative silence, the plaintiff filed a lawsuit with the Basic Court for the second time, seeking the annulment of the Customs decision as unlawful and the reimbursement of the overpaid customs duties. The case is pending review by the Court²⁶.

20 The Official Gazette of the Republic of Kosovo. Customs and Excise Code No. 08/L-247. Article 33, Retention of Documents and Other Information. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=89203>

21 The Official Gazette of the Republic of Kosovo. Administrative Instruction No. 11/2009 for the Implementation of the Customs and Excise Code. Article 123, Documents to be attached to the customs declaration. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=7746>

22 The Official Gazette of the Republic of Kosovo. Law No. 05/L-031 on General Administrative Procedure. Article 48, Reasoning of a written administrative act. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>

23 The Official Gazette of the Republic of Kosovo. Law No. 05/L-031 on General Administrative Procedure. Article 134, Content and consequences of the act resolving the complaint. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559>

24 The Decision of the Basic Court in Pristina, A.n.r. 1909/2022. Date: 03.07.2024.

25 Electronic communication with the Office for Communication and Access to Official Documents of the Kosovo Customs. Date: 11.02.2025.

26 Electronic communication with the legal representative of the plaintiff, K.B. Date: 24.02.2025.

CONCLUSIONS

The monitoring of these two cases was conducted at the Basic Court of Prishtina – Department for Administrative Matters, while their status was also tracked at the second-instance level in the Court of Appeals. The experience from these cases confirms similar issues encountered in previous monitoring efforts, highlighting recurring challenges that affect the effectiveness and fairness of judicial administrative procedures.

Citizens face prolonged court proceedings, where, on average, a first-instance court decision takes over two years to be issued²⁷. When cases are appealed to higher courts, the process extends even further, making the procedure even more time-consuming.

Delays in case processing not only impact citizens but also place a significant burden on the courts, which face a high workload. Currently, only ten judges are assigned to handle administrative cases at the Basic Court of Prishtina, indicating limited institutional capacity²⁸. In 2024 alone, there are a significant number of administrative cases—9,910 in total—yet there is a lack of statistical data specifically related to cases involving compensation claims, as this aspect is not monitored by state institutions²⁹.

When citizens win their lawsuits, they are entitled to compensation for the damages suffered, including the statutory interest of 8% as prescribed by law, which adds an additional financial burden on the state budget. For this reason, full compliance with and implementation of the applicable legislation remain essential to prevent unnecessary harm to citizens and avoid unjustified public expenditures.

In the two monitored cases, lawsuits initiated in 2021 and 2022 have yet to reach a conclusion, despite being addressed at the first-instance level. In the first case, the court rendered a substantive decision in favor of the plaintiff, but the defendant (TAK) appealed, further prolonging the process. In the second case, the first-instance court returned the matter for reconsideration and reinstatement to the initial authority, the Kosovo Customs, without issuing a final decision.

With the entry into force of the new Law on Administrative Disputes in January 2025, the protection of citizens' rights is expected to be strengthened, and the efficiency of administrative adjudications improved. This law will obligate courts to issue substantive rulings, avoiding the current practice of referring cases back to public authorities for reconsideration. The reform aims to accelerate case resolution and prevent unnecessary delays that burden both citizens and the state budget.

The decisions of public authorities, TAK and Customs, have been unprofessional and unlawful, as they failed to meet the mandatory elements of a written administrative act, including reasoning based on legal grounds and relevant facts. These decisions violated the provisions of the Law on General Administrative Procedure (LPPA), specifically Articles 47 and 48 in the first case involving TAK, and the same articles, along with Article 134, in the second case concerning Kosovo Customs. Additionally, the court identified violations of the Law on Personal Income Tax in the first case and of the Kosovo Customs and Excise Code in the second case.

27 OECD (2024). "Public administration in Kosovo* 2024: Assessment against the Principles of Public Administration" SIGMA Monitoring Report. Accessible at: https://www.oecd.org/en/publications/public-administration-in-kosovo-2024_a53fce6b-en.html

28 Electronic communication with the Information and Media Communication Office of the Basic Court in Pristina. Date: 06.02.2025.

29 Electronic communication with the Information and Media Communication Office of the Basic Court in Pristina. Date: 06.02.2025.

RECOMMENDATIONS

Based on the reviewed cases, D+ recommends:

- Public authorities, specifically TAK and Customs, ensure that their decisions are clearly reasoned and legally justified, strictly adhering to Articles 47 and 48 of the Law on General Administrative Procedure (LPPA).
- Second-instance bodies within these public authorities must conduct administrative reviews objectively and impartially to reduce the number of lawsuits filed in court. This would alleviate the burden on the judicial system and prevent unnecessary financial costs for the state.
- With the entry into force of the new Law on Administrative Disputes, state institutions, through IKAP and/or external donors, should organize training sessions for judges, lawyers, and legal professionals to ensure the effective and consistent implementation of this law.
- To manage the high caseload and ensure timely and fair case processing, the Kosovo Judicial Council should take measures to increase the number of judges and support staff in the Administrative Matters Department of the Basic Court of Prishtina.