

KOSOVO LEGAL AID PRACTITIONER'S MANUAL

ADMINISTRATIVE CASES

MANUAL

Free Legal Aid Agency

Supported By:



USAID
FROM THE AMERICAN PEOPLE



REPUBLIKA E KOSOVËS
MINISTRIA E DREJTËSISË



May 2023

KOSOVO LEGAL AID PRACTITIONER'S MANUAL

ADMINISTRATIVE CASES

DISCLAIMER

This Manual was made possible with the support of the American people through the United States Agency for International Development (USAID). The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the Government of the United States of America.

All rights reserved.

The contents of this Guide belong to the Agency for Free Legal Aid and are distributed free of charge.

Table of Contents:

PART I: GENERAL INTRODUCTION:	6
PART II: UNDERSTANDING THE LAW OF GENERAL ADMINISTRATIVE PROCEDURES IN KOSOVO (LAW NO. 05/L-031)(LGAP)	6
PRINCIPLES	7
PARTIES	7
COMPETENCE	9
ADMINISTRATIVE ACTS	11
LEGAL EFFECTS OF THE ADMINISTRATIVE ACT	13
ANNULMENT AND REVOCATION OF THE ADMINISTRATIVE ACT	14
RULES ON THE ADMINISTRATIVE PROCEEDING	16
INSTITUTION OF THE ADMINISTRATIVE PROCEEDING	16
ADMINISTRATIVE INVESTIGATION PROCESS	17
EVIDENCE	19
PARTICIPATION OF THE PARTY IN THE PROCEEDING	19
TERMINATION OF THE ADMINISTRATIVE PROCEEDING	21
SILENT CONSENT RULE	22
DEATH OF A PARTY AND WITHDRAWAL OF THE CASE	23
NOTIFICATIONS	24
LEGAL REMEDIES	25
ADMINISTRATIVE APPEAL	25
ADMINISTRATIVE COMPLAINT	26
PART III: CONCEPTUAL AND PRACTICAL ASPECTS OF FAIR HEARINGS AND RESPECT FOR DUE PROCESS IN ADMINISTRATIVE PROCEDURES	28
TIPS FOR WELFARE RECIPIENTS IN KOSOVO REGARDING FAIR HEARINGS AND RIGHT TO BE HEARD:	33
REQUEST FOR FAIR HEARING/CONFERENCE EVIDENCE PACKET AND SPECIFICALLY IDENTIFIED DOCUMENTS	39
PART IV: UNDERSTANDING THE KOSOVO LAW ON ADMINISTRATIVE CONFLICTS (LAW NO. 03/L-202)(LAC)	40
INTRODUCTION	40
DEFINITIONS	40
ANALYSIS AND GUIDANCE:	41
1. INITIATION OF AN ADMINISTRATIVE CONFLICT (ARTICLE 13)	41
2. WHEN AN ADMINISTRATIVE CONFLICT CANNOT BE INITIATED?	41
3. OBJECTION TO THE FINAL ADMINISTRATIVE ACT	42
A. PLAINTIFFS IN THE ADMINISTRATIVE CONFLICT	44
B. ACCUSED PARTIES IN ADMINISTRATIVE CONFLICTS (ART. 20)	44
C. OTHER PARTIES IN THE ADMINISTRATIVE CONFLICT (ART. 21)	44
D. INDICTMENT AND EXECUTION OF AN ADMINISTRATIVE ACT DURING THE PROCEDURE	45
E. COMPETENCE AND LEGAL REDRESS (ART. 23)	47
F. EXTRAORDINARY REVIEW FOR MATERIAL RIGHT OR VIOLATION OF PROCEDURE PROVISIONS	48
G. ADMINISTRATIVE CONFLICT PROCEDURE BASED ON AN INDICTMENT	49
H. SUBMISSION OF THE INDICTMENT TO THE COURT	49
I. WAIVER OF THE INDICTMENT	50

J.	PRELIMINARY QUESTIONS:	50
K.	CORRECTION OF THE INDICTMENT	51
L.	DISAPPROVING THE INDICTMENT	52
M.	ANNULATION OF THE ADMINISTRATIVE ACT WITHOUT SENDING THE INDICTMENT FOR REPLY	52
N.	EMERGENT ADMINISTRATIVE ACT	53
O.	REPLY BY THE INDICTED PARTY	54
	P. NATURE OF THE SESSIONS	54
Q.	REVIEW AND ITS PROCEDURE:	55
R.	ESTABLISHMENT OF THE FACTS	56
S.	ANALYSIS OF THE LEGALITY OF THE ACT	57
T.	ADJUDICATION OF THE ADMINISTRATIVE CONFLICT	58
U.	APPEALS	59
V.	EXTRAORDINARY REVIEW	60
W.	REVIEWING OF THE DECISION:	61
	ARTICLE-BY-ARTICLE SUMMARY OF THE LAW ON ADMINISTRATIVE CONFLICTS:	62
	PART VI: STRATEGIC LITIGATION IN THE ADMINISTRATIVE LAW AREA	67
	PART VII: ORAL ADVOCACY SKILLS FOR USE UNDER BOTH THE LGAP AND LAC	69
	BE PREPARED	70
	BE FOCUSED	70
	BE CLEAR	71
	BE CANDID	73
	BE COURTEOUS	73
	BE RESOLUTE	73
	HAVE GOOD DEMEANOR	74
	GET THE EASY THINGS RIGHT:	74
	THREE KEY, POTENTIALLY CONTROVERSIAL PROPOSITIONS	74
	PART VIII: ADDITIONAL DISCUSSION REGARDING EVIDENCE IN SPECIFIC TYPES OF VERY COMMON ADMINISTRATIVE LAW CASES FOR LEGAL AID PRACTITIONERS	77
	1. DISABILITY PENSIONS	77
	MEDICAL HISTORY	79
	MEDICAL TREATMENT	79
	PHYSICAL ABILITIES	79
	MENTAL ABILITIES	79
	TRAINING AND EDUCATION	79
	WORK HISTORY	79
	DAILY ACTIVITIES	79
	DISABILITY PENSION TIPS FOR THE CLAIMANT TO REMEMBER	79
	“LISTINGS OF IMPAIRMENTS” FOR SOCIAL SECURITY AND SSI DISABILITY CLAIMS IN THE UNITED STATES:	80
#1.	MUSCULOSKELETAL SYSTEMS	81
#2.	SPECIAL SENSES AND SPEECH	81
#3.	RESPIRATORY DISORDERS IN THE LISTING OF IMPAIRMENTS	81
#4.	CARDIOVASCULAR SYSTEMS	81
#5.	DIGESTIVE SYSTEMS COVERED BY THE LISTING OF IMPAIRMENTS	81
#6.	GENITOURINARY DISORDERS	81
#7.	HEMATOLOGICAL DISORDERS	81
#8.	SKIN DISORDERS INCLUDED IN THE LISTING OF IMPAIRMENTS	82
#9.	ENDOCRINE DISORDERS	82
#10.	CONGENITAL DISORDERS	82

#11. NEUROLOGICAL DISORDERS IN THE LISTING OF IMPAIRMENTS	82
#12. MENTAL DISORDERS	82
#13. CANCER APPEARS ON THE LISTING OF IMPAIRMENTS	82
#14. IMMUNE SYSTEM DISORDERS	82
EVIDENCE CHECKLISTS TO HELP PROVE DISABILITY IN SPECIFIC TYPES OF CONDITIONS OR DISEASES:.....	83
A. DIABETES:	84
B. CORONARY HEART DISEASE:	84
C. HYPERTENSION:.....	84
D. STROKE:	85
E. LUNG CANCER, BREAST CANCER, COLON CANCER:	85
F. CHRONIC OBSTRUCTIVE PULMONARY DISEASE (COPD):	85
G. ASTHMA:.....	85
H. OSTEOARTHRITIS:	86
I. RHEUMATOID ARTHRITIS:	86
J. DEPRESSION AND ANXIETY:	86
K. SUBSTANCE USE DISORDERS:	86
L. OTHER HEART DISEASE:	86
M. VISUAL PROBLEMS/BLINDNESS:.....	87
N. PARAPLEGIA/TETRAPLEGIA:	87
O. OTHER PULMONARY DISORDERS:	87
P. AMPUTATIONS:	87
Q. KIDNEY PROBLEMS:	87
2. WELFARE AND OTHER PUBLIC BENEFITS:	88
PART IX: ADVOCACY IN THE ADMINISTRATIVE LAW AREA	89
ADVOCACY SHOULD BE PLANNED AND ORGANIZED IN “PROJECTS”	90
ANNEX TEMPLATES.....	92 - 124

List of Acronyms Used

African Charter on Human and Peoples' Rights	ACHPR
American Convention on Human Rights	ACHR
Centers for Social Work	CSWs
European Convention on Human Rights	ECHR
Family Assistance	FA
Home Energy Assistance Program	HEAP
International Covenant on Civil and Political Rights	ICCPR
Kosovo Pensions Savings Trust	KPST
Last-resort income support	LRIS
Law on Administrative Conflicts	LAC
Law on General Administrative Procedure	LGAP
Medicaid	MA
Ministry of Finance, Labor, and Transfers	MFLT
Non-governmental organization	NGO
Personal Care Services	PCS
Safety Net Assistance	SNA
Social Assistance Scheme	SAS
Temporary restraining order	TRO
Universal Declaration of Human Rights	UDHR

Dear reader,

The Constitution of the Republic of Kosovo defines legal aid as a constitutional category, and Article 31 paragraph 6 defines that "Free legal aid shall be provided to those who do not have sufficient financial resources, if such aid is necessary, to ensure effective access to justice."

The Free Legal Aid Agency is the most important institution in the integrated legal aid system in terms of providing free legal aid. The number and variety of requests for legal aid beneficiaries indicate the need and sustainability of this institution.

The Law on Free Legal Aid regulates the establishment of a functional system of free legal aid in civil, criminal, administrative and minor offenses proceedings, through which efficient access to justice is provided for citizens who do not have sufficient financial resources.

The Kosovo Legal Aid Practitioner's Manual – Administrative Law – Related Cases developed with the support of USAID's Justice Activity Project in Kosovo, is a practical tool which helps free legal aid providers to be more productive, to counter challenges in practice and inspires them to come up with the correct solutions. This Manual aims to facilitate the working process and to serve as a guide for free legal aid officers. Undoubtedly, these procedures and practices included in the Manual will evolve over time. The practices offered are not intended to serve as a legal authority.

We are privileged that you have chosen to use this Manual which aims to help you resolve challenging situations in your practice, believing that this Manual will contribute to keeping your work unified and your professionalism on a high standard.

The Manual was developed by a working group comprised of representatives from the Free Legal Aid Agency, civil society representatives and worked in close cooperation with the Kosovo Academy of Justice, where each of them contributed by offering their professional experiences.

Special thanks goes to USAID's Justice Activity in Kosovo for publishing this Manual, which will undoubtedly add value to all free legal aid providers, as well as to Mr. Mark Williams, international expert on legal aid, who provided best practices for the effective provision of free legal aid.

Therefore, we express our most sincere recognition and gratitude to all members of the working group who consistently showed a positive spirit of cooperation in finalizing the Manual.

Our joint path is long, but thanks to mutual commitment, moral and professional responsibility and uninterrupted cooperation, I am convinced that it will bring us all closer to the needs of citizens.

I wish you success in your work!

Flutura Berbat Zena
Deputy Executive Director
Free Legal Aid Agency

Part 1: General Introduction:

Administrative law is an important area as it covers the legality of government action that affects the lives of ordinary Kosovo inhabitants. Without an effective administrative law system, Kosovo inhabitants would suffer from arbitrary and illegal government action or inaction without legal redress. This Manual provides a description of the administrative law applicable in Kosovo and how it can best be applied by the legal aid practitioner in benefit of clients. As there are many legal instruments regulating administrative issues, the Manual focuses principally on the general administrative framework, including the Law on General Administrative Procedure (LGAP), which regulates the two-instance procedure before relevant and specifically charged administrative authorities, and the Law on Administrative Conflicts (LAC), which governs the procedure before the courts to challenge administrative determinations (i.e., acts).

The Kosovo Constitution and secondary laws address administrative justice through several key provisions. Article 32 of the Constitution guarantees the right to legal remedies against judicial and administrative decisions that violate citizens' rights or interests, including property rights. The provides the legal framework to ensure citizens' rights are protected against administrative actions or inactions.

The field of administrative law is one of the most important for legal aid practitioners as the vast majority of cases arise in this area, and particularly in the area of pensions. As such, it is critical that legal aid practitioners fully understand the administrative law system in Kosovo and its deficiencies so that they can continually advocate for improvements in the system. In the process of preparing this Manual it became clear very quickly that there are many serious problems in the administrative law system that seriously violate the rights of our clients. The right to be informed of actions against our clients is violated very frequently as most clients do not get adequate “notice” of termination of benefits or other administrative acts against their interests. The right to be heard, particularly at the administrative level (particularly at the second instance) is violated in the vast majority of cases, as decisions at the first instance are often “rubber-stamped” at the second instance without any right to be heard. Contrary to the systems in many other countries in the region and around the world, there is no “fair hearing” system at the second administrative instance to be able to give claimants a real possibility of challenging administrative decisions before having to take them to court via the delay-ridden and costly Law on Administrative Conflicts (LAC).

Part II: Understanding the Law of General Administrative Procedures in Kosovo (Law No. 05/L-031)(LGAP)

Principles

Administrative law in Kosovo is guided by several principles to ensure that the actions of the so-called public organs are fair, transparent, and consistent. These principles are significant for FLAA officers, paralegals, and legal aid lawyers to understand when representing clients in administrative proceedings.

- **Principle of Proportionality** (Article 5): Administrative actions that may restrict a person's rights or legitimate interests must be proportional to the public interest that they seek to produce. An action must be necessary, suitable, and not disproportionate to the purpose pursued to be considered proportionate.
- **Principle of Equality and Non-Discrimination** (Article 6): Public organs must treat persons in the same situation similarly. Objective differences in the relevant case must justify any differences in treatment. Furthermore, the public organ must avoid unjust discrimination as defined in the Law against Discrimination.
- **Principle of Objectivity and Impartiality** (Article 7): Public organs must act objectively and impartially. Public officials must not be guided by personal, amicable, or family interests or political pressure.
- **Principle of Legitimate and Reasonable Expectations** (Article 8): Public organs must act consistently and respect persons' legitimate and reasonable expectations. Administrative actions must not diverge without justifying reasons from previous administrative practice by the same public organ concerning similar situations.
- **Principle of Open Administration** (Article 9): Public organs must act transparently. Parties have the right to be informed on the progress of the administrative proceeding, access its files, and be notified of public organ actions. However, these rights can be limited by Law to protect classified information, personal data, and data relating to the business or professional activity of others as protected by Law.
- **Principle of Non-Formality and Efficiency of the Administrative Proceeding** (Article 10): Administrative proceedings are not tied to a specific form unless otherwise provided by Law. Public organs must conduct proceedings as fast and efficiently as possible while obtaining everything necessary for a lawful and effective outcome.
- **Principle of Information and Active Assistance** (Article 11): Public organs must ensure that parties know their rights and obligations in the administrative proceeding and the legal consequences of their actions or inactions. Public organs must also assist parties in protecting and fulfilling their rights and legitimate interests as quickly as possible without affecting the rights and legal interests of others.
- **Principle of Gratuity of the Proceeding** (Article 12): Administrative proceedings are free for parties unless otherwise provided by Law. If payment is required, it must not be higher than the average cost for that type of administrative proceeding. Public organs may exempt a party from paying the fee if they cannot afford it.
- **Principle of the Right to Legal Remedies** (Article 13): Except when explicitly excluded by Law, any person can use legal administrative and judicial remedies against any administrative action or omission that affects their subjective right or legitimate interests.

Parties

In administrative proceedings, as in judicial ones, parties obviously play a crucial role. Therefore, understanding the provisions related to the party and its representation is significant for paralegals and lawyers working on legal aid cases.

Article 14 of the Administrative Law of Kosovo defines who can be a party in an administrative proceeding. It can be any natural or legal person or a group of persons joined by a common interest. Therefore, it is essential to identify who the parties are and ensure that they are represented adequately.

Article 15 outlines the capacity and legal representation of natural and legal persons. Understanding the capacity requirements and the legal personality of the parties you represent is crucial. When representing a group of persons joined by a common interest with no legal personality, a representative among them should be appointed.

Article 16 provides for the appointment of an *ex-officio* representative by the public organ conducting an administrative proceeding. The public organ has the authority to appoint an ex-officio representative when no legal representative has been selected when the appointed legal representative has a conflict of interest or is not acting with due diligence. Paralegals and lawyers should ensure that the representative appointed by the public organ is competent and trustworthy to represent their clients' interests effectively.

Article 17 sets forth the conditions for authorized representation. A party may authorize a representative to act on their behalf for the entire administrative proceeding or only for specific procedural actions. Paralegals and lawyers should ensure that the representative's authorization is valid, issued in writing or registered in the records of a public organ, and signed by the party.

Article 18 allows two or more parties with “identical interests” to appear jointly in the same administrative proceeding. In such a case, they shall appoint one of them as their joint representative or appoint another joint representative as provided under Article 17.

Article 19 outlines the eligibility to be a representative. Any natural person with legal capacity under civil Law may act as a representative, except where otherwise provided by Law.

These provisions on parties orient the legal aid practitioner to:

- Identify parties: When working on administrative proceedings, ensure that you correctly identify the parties involved, including natural or legal persons or groups of persons joined by a common interest, as stated in Article 14.
- **Be aware of the capacity requirements and legal personality of the parties you represent**, as outlined in Article 15. When representing a group without legal personality, ensure a representative is appointed.

- Understand *ex-officio* representation: Remember that the public organ may appoint an *ex-officio* representative under Article 16. Ensure the appointed representative is competent and trustworthy to represent your client's interests effectively.
- Understand the authorization for representation: Verify the approval of any representative appointed on behalf of a party, as per Article 17. Ensure that the authorization is valid, in writing or registered in the records of the public organ and is signed by the party.
- Undertake joint representation, assuming there is no conflict of interest: When two or more parties with identical interests are involved in the same proceeding, be prepared to work with them to appoint a joint representative as stated in Article 18.
- Understand eligibility for representation: Remember that **any natural person with legal capacity under civil Law can act as a representative, except where otherwise provided by Law** (Article 19). Ensure the public organ selects an appropriate *ex-officio* representative to safeguard the represented party's rights and interests.

Competence

Competence is a crucial issue in administrative proceedings that legal aid practitioners should be familiar with. Articles 21, 22, 23, and 25 of the Administrative Law of Kosovo provide guidelines for subject-matter competence, territorial competence, determination of competence, and verification and conflict of competence.

According to Article 21, the subject-matter competence of the public organ (or administrative agency) is determined by law. Therefore, legal aid practitioners should be aware of the relevant laws to determine the subject-matter competence of the public organ in question. If there is not a law that regulates subject-matter competence, the public organ performing supervision over the implementation of the material law related to the matter shall be deemed competent in the subject matter.

Article 22 outlines the territorial competence of the public organ. Legal aid practitioners should be aware that the territorial competence of a public organ is determined based on the location of the property in matters relating to immovable property, the headquarters, or the place where the business is conducted in matters

relating to business or professional activities of the party, and the residence or temporary residence of the party in most other matters.

Legal aid practitioners should also be aware that “competence” is determined at the beginning of the administrative proceeding and is mandatory, as per Article 23. Any legal or factual changes that happen later have no effect except when the organ ceases to exist or ceases to be competent.

Legal aid practitioners should also be aware that any requests the resolution of the conflict of competencies of the organs involved upon taking cognizance of the latter, and the resolution of the conflict of competencies must be done within ten (10) days. Therefore, practitioners should advise their clients regarding what is the competent public organ and ensure that the proceedings are conducted before that competent public organ to ensure a fair and just resolution of the administrative matter.

These provisions orient legal aid practitioners in the following matters:

- **Subject-matter competence:** The legal aid practitioner should familiarize him or herself with the relevant administrative laws to determine the subject-matter competence of the public organ charged with the issue confronting the client, as specified in Article 21. If law does not regulate the competence, it is important to know that the public organ performing supervision over implementing the material Law related to the matter is deemed competent.
- **Territorial competence:** Understand the factors that determine the territorial competence of a public organ, as outlined in Article 22. Be aware of the specific criteria, such as the location of property, headquarters or place of business, and residence or temporary residence of the party.
- **Determination of competence:** **Competence is determined at the beginning of the administrative proceeding and is mandatory**, as stated in Article 23. Be prepared to handle legal or factual changes after the initial determination of competence.
- **Verification and conflict of competence:** Familiarize yourself with the guidelines for resolving conflicts of competence provided in Article 25. Understand the procedures for resolving conflicts through unanimous agreement, resolution by a superior public organ, or resolution by the Government of the Republic of Kosovo.
- **Resolution of conflict of competencies timeframe:** Be aware that **the resolution of conflicts of competencies must be done within ten (10) days**. Ensure you

advise your clients on the competent public organ and that the proceedings are conducted before the appropriate organ.

Administrative Acts

As a legal aid practitioner, it is crucial to understand the different types of administrative acts and their requirements. Article 44 of the Administrative Law of Kosovo defines administrative acts as any manifestation of will of a public organ that regulates a legal relationship under administrative law intended to produce legal effects.

Article 45 outlines the requirements for administrative acts subject to a term, condition, or obligation. It states that such acts must be permitted by law and necessary to fulfill legal requirements for issuance. The right or benefit granted by the act shall begin or end at a determined date or last for a specific period in the case of an administrative act subject to a term. An administrative act subject to a condition is dependent on a future and uncertain event, while an administrative act subject to an obligation requires the party to perform or bear a certain action.

Article 46 discusses the forms of administrative acts, stating that they may be issued in written, oral, or other appropriate forms, including electronic documents.

The written form of an administrative act must contain specific statutory elements, as outlined in Article 47. These include an introductory part, a decisional part, a reasoning part, and a concluding part. The decisional part indicates what was decided, while the reasoning part explains the factual situation and legal grounds for the decision. The concluding part outlines the legal remedies available to the party, including where they can be lodged and the deadline for lodging. These provisions are widely, widely violated in Kosovo and often clients do not even get written notice of administrative acts.

Article 48 emphasizes the importance of reasoning in a written administrative act, as it allows parties to understand the decision. The reasoning must include a short description of the request, an explanation of the factual situation, reasons for assessing evidence, legal grounds for the decision, reasons for denying party requests, and explanation of any discretionary power exercised.

Understanding the norms outlined in Article 48 of the Administrative Law of Kosovo is critical. Furthermore, the reasoning part of a written administrative act is crucial for ensuring that the party affected by the act can understand the decision and its legal basis and make a strategic decision on how to proceed to protect his or her rights.

When reviewing a written administrative act, the legal aid practitioner should carefully examine the reasoning provided. It should include a short description of the request made by the party, an explanation of the factual situation upon which the decision was made, and the reasons crucial to assessing the evidence. Additionally, the legal grounds for the decision should be clearly outlined and explained in relation to the specific case at hand.

If the reasoning provided is insufficient, inappropriate, contradictory, or incomprehensible, it may be deemed as having a lack of reasoning. In such cases, it is important to bring this to the attention of the relevant public organ and request a more detailed and clear explanation.

As a paralegal or lawyer, it is also important to ensure that the reasoning provided in the administrative act complies with the law and the relevant legal principles. If there are any legal issues or concerns regarding the reasoning, seeking legal advice or challenging the decision through an administrative appeal or other legal remedies may be necessary.

In summary, the strict reasoning norms outlined in Article 48 of the Administrative Law of Kosovo are important for ensuring transparency and fairness in administrative decision-making. Therefore, as a paralegal or lawyer, it is crucial to carefully examine the reasoning provided in written administrative acts and ensure that it meets the legal requirements and complies with the relevant legal principles.

Article 49 outlines when reasoning may be dispensed with, and Article 50 allows for correcting apparent errors in an administrative act. As a paralegal or lawyer, understanding these provisions is essential to represent clients in administrative proceedings effectively.

These provisions allow legal aid practitioners to understand the:

- **Requirements for administrative acts** subject to terms, conditions, or obligations: Know the requirements outlined in Article 45 for administrative acts subject to terms, conditions, or obligations. Ensure that the acts you deal with are permitted by Law and necessary for fulfilling legal requirements for issuance.
- **Forms of administrative acts:** Understand the various forms of administrative acts as mentioned in Article 46, including written, oral, and electronic forms.
- **Elements of a written administrative act:** Be familiar with the statutory elements of a written administrative act as described in Article 47, which include the introductory, decisional, reasoning, and concluding parts.

- **Importance of reasoning:** Recognize the significance of reasoning in written administrative acts as emphasized in Article 48. Carefully examine the reasoning provided in an act to ensure it is sufficient, appropriate, and comprehensible. If the reasoning is inadequate, bring this to the attention of the relevant public organ.

Legal Effects of the Administrative Act

As a legal aid practitioner, it's important to understand the legal effects of an administrative act as outlined in Article 51 of the Law on General Administrative Procedures. The legal consequences of an administrative act begin when the content of the act is notified to the party affected by it. It's important to note that fictitious administrative acts will begin producing legal effects upon the expiration of the time limit for notification.

An administrative act can also begin producing legal effects at a date explicitly defined in the act but never before notification to the party. The date the administrative act starts producing legal effects should be expressly included in the decisional part of the written administrative act.

An administrative act will continue to produce legal effects until it's annulled or revoked *ex officio* or as a result of an administrative or judicial legal remedy, expires because of time or achievement of its objective, or ceases to produce its effects for any other reason provided under the Law.

If an administrative act is unlawful, it may be subject to annulment or revocation. Article 52 outlines the circumstances in which an administrative act is considered “unlawful,” such as when it's issued without legal authorization, when it contradicts the provisions regulating the form or the statutory elements of the act, or when it violates substantive law.

As a FLAA officer, paralegal or legal aid lawyer, it's important to be aware of these legal effects and circumstances of unlawfulness when reviewing administrative acts and advising clients on their legal options.

Key points for legal aid practitioners to note include:

- **Legal effects commencement:** Understand that the legal effects of an administrative act begin when the content of the act is notified to the affected party or when the time limit for notification expires for fictitious administrative acts, as per Article 51.

- **Legal effects starting date:** An administrative act can start producing legal effects at a date explicitly defined in the act but never before notification to the party. Ensure that the starting date is included in the decisional part of the written administrative act.
- **Duration of legal effects:** Recognize that an administrative act will continue to produce legal effects until it is annulled or revoked, expires due to time or achievement of its objective, or ceases to have effects for any other reason provided under the Law.
- **Unlawful administrative acts:** Familiarize yourself with the circumstances outlined in Article 52 that may render an administrative act unlawful, such as lack of legal authorization, a contradiction of provisions regulating the form or statutory elements of the act, or violation of substantive Law.

Annulment and Revocation of the Administrative Act

Annulment and revocation are important legal remedies for parties affected by administrative acts.

An administrative act may be annulled or revoked *ex officio* by the public organ with the competence to issue the act, by its superior organ, or by another organ explicitly determined by law. The “annulment” of an administrative act has a retroactive legal effect, whereas a “revocation” only produces legal effects for the future only. Both the annulment and revocation may be either total or partial (Article 53).

An unlawful administrative act shall be annulled if it: was issued under coercion, extortion, blackmail, fraud, threat, bribery, or other criminal acts; its object is legally or materially “impossible;” or its enforcement would result in a criminal offense. (Article 54)

An administrative act which is unlawful on grounds other than those provided under Article 54, may be annulled or revoked so that it aligns with the law. An unlawful beneficial administrative act may not be annulled but only revoked if the beneficiary party was in good faith. However, the beneficiary party shall not be deemed in good faith when it was aware of the grounds of the unlawfulness of the act or was unaware thereof due to gross negligence, or the act is issued based on substantially incorrect or incomplete information provided by the party. (Article 55)

A lawful administrative act may be annulled only if the annulment is beneficial to all parties, if it is partial and it only affects a part of the act that is not beneficial to the party, or if the party in an administrative act subject to an obligation, as provided by

paragraph 4 of Article 45, has not met the obligation fully or has not done so within the given time limit. (Article 56)

A lawful administrative act may be revoked because of a change of factual or legal situation or circumstances, or other reasons provided by law without prejudice to paragraph 2 of this Article. Unless otherwise provided by law, a lawful beneficial administrative act may be revoked only if it is necessary to prevent a serious danger to the life and health of people or to public safety, and this could not be done by other means which would interfere less with the acquired subjective rights or legitimate interests of the party. The beneficiary party, in the case of revocation referred to under paragraph 2, shall be entitled to monetary compensation when it has made financial arrangements which he can no longer cancel or can cancel only by suffering a disadvantage that cannot reasonably be asked of him. The compensation shall be to an amount not to exceed the interest of the party on the continuation of the revoked act. The party cannot benefit from compensation for the lost profit. (Article 57)

The annulment pursuant to Article 55, as well as revocation in accordance with paragraph 1 of Article 57, may be done at any time. The revocation or annulment in any other case other than the one referred to under paragraph 1 of Article 53 may be made within thirty (30) days from the date the public organs gain knowledge of facts that justify the annulment or revocation, or at the latest five (5) years after the notification of the administrative act. (Article 58)

In case of annulment, any payments or contributions made either by the party and/or by the public organ based on an annulled act shall be returned to the party. The amount of reimbursement shall be included in the act of annulment based on relevant provisions of Civil Law on surrendering of undue enrichment and shall be stipulated in the annulment act. (Article 59).

Key points for the legal aid practitioner to note include:

- Differentiate between annulment and revocation: Understand that **annulment has a retroactive legal effect, whereas revocation produces legal effects for the future only. Both remedies may be total or partial** (Article 53).
- **Grounds for annulment:** Be aware that an unlawful administrative act may be annulled under certain conditions, such as issuance under coercion, extortion, blackmail, fraud, threat, bribery, or other criminal acts; having a legally or materially impossible object; or having enforcement that would result in a criminal offense (Article 54).
- **Annulment and revocation of unlawful administrative acts:** Recognize that an unlawful administrative act, on grounds other than those provided in Article

54, may be either annulled or revoked (Article 55). Unlawful beneficial acts may only be revoked if the beneficiary is in good faith (Article 55).

- **Annulment of lawful administrative acts:** Know that a lawful administrative act may be annulled only under specific conditions, as outlined in Article 56.
- **Revocation of lawful administrative acts:** Understand the circumstances under which a lawful administrative act may be revoked, as provided in Article 57.
- **Time limits for annulment and revocation:** Be aware of the time limits for annulment and revocation, as stated in Article 58.
- **Reimbursement upon annulment:** In the case of annulment, any payments or contributions made by the party or the public organ must be returned to the party (Article 59). The amount of reimbursement should be included in the act of annulment and stipulated based on relevant provisions of the Civil Law on surrendering undue enrichment (Article 59).

Rules on the Administrative Proceeding

Institution of the Administrative Proceeding

The institution of the administrative proceeding (Article 83) can either be at the request of the parties or *ex officio*. It is crucial for lawyers and paralegals to understand the circumstances under which the public organ may institute an administrative proceeding *ex officio*. They must be aware of the cases in which the law establishes the obligation to initiate a proceeding or when the public organ becomes aware of facts requiring administrative initiative in order to protect public interests.

The competent public organ may join administrative proceedings into one single proceeding (Article 84) if the rights and obligations of the parties are based on the “same or similar state facts” or legal grounds. Lawyers and paralegals should be vigilant in recognizing such cases where the joining of the proceedings can be beneficial to their clients or to larger groups of clients. The joining of proceedings does not affect the right of the party to submit different requests, and this should be taken into account while advising clients. The ability to join parties in administrative proceedings could be an important tool in pursuing strategic or public interest litigation for legal aid practitioners.

When the resolution of a matter is dependent on the resolution of a preliminary issue (article 85), the public organ conducting the administrative proceeding shall stay the proceeding until the preliminary issue is decided upon/resolved. Lawyers and paralegals

should recognize such situations and advise their clients accordingly. If the resolution of a preliminary issue requires the *ex officio* initiative of another public organ, the organ conducting the proceeding shall request the other organ to initiate the proceeding for resolution of a preliminary issue. This is an essential aspect to be considered while advising clients on the potential timelines of the administrative proceeding.

Key points for the legal aid practitioner to note include:

- **Institution of administrative proceedings:** Be aware that administrative proceedings can be instituted either at the request of the parties or *ex officio* (Article 83). Understand the circumstances under which the public organ may initiate a proceeding *ex officio*, such as when the Law establishes an obligation to initiate a proceeding or when the public organ becomes aware of facts requiring administrative initiative to protect public interests.
- **Joining administrative proceedings:** Recognize when the joining of proceedings may be beneficial to your client (Article 84). Be mindful that the joining of proceedings does not affect the party's right to submit different requests and consider this when advising clients.
- **Staying proceedings due to preliminary issues:** Understand that when the resolution of a matter depends on the resolution of a preliminary issue, the public organ conducting the administrative proceeding shall stay the proceeding until the preliminary issue is decided upon (Article 85). Be prepared to recognize such situations and advise clients accordingly.
- **Initiating proceedings for the resolution of preliminary issues:** When the resolution of a preliminary issue requires the *ex officio* initiative of another public organ, be aware that the organ conducting the proceeding shall request the other organ to initiate the proceeding for the resolution of the preliminary issue. Keep this in mind when advising clients on potential timelines of the administrative proceeding.

Administrative Investigation Process

In administrative investigations, the public organ has the responsibility to investigate all facts and assess all circumstances necessary for resolving the administrative case *ex officio*. The public organ independently determines the type and scope of the administrative investigation and considers whether a fact or circumstance is relevant to the solution of the case. It is essential for lawyers and paralegals to recognize the importance of obtaining documents *ex officio* by the public organ conducting the administrative proceeding whenever they are in its possession or in possession of other organs. The public organ may

request from parties only the necessary elements for the identification of documents, except when provided otherwise by a legal provision.

The parties shall cooperate with the public organ in establishing facts and circumstances necessary for the resolution of the case, which is known as the “duty of general cooperation.” The party shall be obliged to supply evidence, provide information and written statements, and appear personally to make statements before the public organ only where this is explicitly required by law, which is known as the duty of delivering evidence. It is usually in the best interests of the client to actively participate in the administrative investigation process as in this way he or she can ensure that all the key evidence (and particularly the evidence that favors his or her claim) is taken into consideration.

Lawyers and paralegals should advise their clients to actively cooperate with the public organ during the administrative investigation process. The duty of general cooperation is essential, and parties must ensure that they provide all relevant information to the public organ to assist in the resolution of the case. The duty of delivering evidence should only be fulfilled when explicitly required by Law. Parties must be aware of the importance of complying with these obligations and should not underestimate their significance. In cases of non-compliance, the public organ can freely assess the situation and should not be exempt from its duty to ascertain facts and issue a final decision. Additionally, lawyers and paralegals should be aware of the circumstances under which the public organ can obtain documents *ex officio* and should ensure that all necessary documents are obtained during the investigation process.

Key points for the legal aid practitioner should note and apply include:

- **Public organ's responsibility:** Recognize that the public organ is responsible for investigating all facts and assessing all circumstances necessary for resolving the administrative case *ex officio*. Understand that they independently determine the type and scope of the administrative investigation and assess the relevance of facts and circumstances for the case's resolution.
- **Obtaining documents *ex officio*:** Be aware that the public organ may obtain documents *ex officio* when they are in its possession or even in possession of other organs. Ensure that all necessary documents are obtained during the investigation process.
- **Duty of general cooperation:** Advise clients to cooperate with the public organ during the administrative investigation process. Emphasize the importance of providing all relevant information to assist in the resolution of the case.
- **Duty of delivering evidence:** Inform clients that they are obliged to supply evidence, provide information, and make statements before the public organ **only**

when explicitly required by Law. Ensure clients understand the significance of complying with this obligation.

- **Non-compliance consequences:** Make clients aware that non-compliance with the duty of general cooperation or the duty of delivering evidence may be freely assessed by the public organ. However, this should not exempt the public organ from its duty to ascertain facts and issue a final decision.

Evidence

Legal aid practitioners should be aware that the public organ can use any means of evidence recognized by the Law on Contested Procedures in Kosovo to establish relevant facts and circumstances. It is important to assess which means of evidence would be most effective in any particular case (Article 88).

The public organ must assess the evidence presented and decide which facts shall be taken as proved (Article 89) or not. Lawyers and paralegals should emphasize the importance of presenting strong and relevant evidence in administrative proceedings in favor of their clients.

If there is a reasonable concern that specific pieces of evidence may not be presented at a later time or that its administration might be difficult or impossible, the public organ may proceed in securing the evidence (Article 90). As such, legal aid lawyers and paralegals should advise their clients to take measures to secure evidence as soon as possible to ensure its availability during the proceeding.

If presenting necessary evidence by the public organ is difficult, requires time, or has a high cost, the evidence or some pieces of evidence may be presented before another public organ (Article 91). Lawyers and paralegals should be familiar with the provisions of the Law on administrative assistance between public organs and be prepared to request such assistance when necessary.

Participation of the Party in the Proceeding

Parties have the right to inspect the file of the administrative proceeding and take copies of the documents at any phase of the proceeding (Article 92). The public organ conducting the proceeding shall provide the conditions for the party to inspect the files and take copies of the documents within five (5) days of the request. If it is more appropriate for the party, documents may also be inspected at the facilities of another organ or in diplomatic or consular offices of the Republic of Kosovo. When the documentation is administered electronically, the public organ shall provide the necessary technical means for the inspection of documents, which may be accessible on the internet. The party also has the right to request and receive information on the status and progress of the administrative

proceeding and for any procedural action carried out by the public organ during such a proceeding.

Lawyers and paralegals should advise their clients about the importance of the right to inspect files and receive information at any phase of the proceeding. They must also ensure that their clients make requests in a timely manner so that there is no delay in the inspection of documents. The right to inspect files and receive information is limited only if and for as long as the documents or information are classified under the legislation for the protection of classified information, contain personal data, or when contain data related to business or professional secrets protected under the applicable legislation.

Parties have the right to amend the submitted request provided that the object of the amended request is based on essentially the same factual situation as that of the initial request or may even wholly withdraw it until the decision has been issued. The other parties, if any, shall be notified thereof (Article 93).

Lawyers and paralegals should advise their clients about their right to amend or withdraw their request until the decision has been issued. This is particularly relevant in cases where new evidence or circumstances come to light, and the client wants to amend their request or withdraw it altogether.

Parties have the right to submit opinions or explanations on facts, circumstances, or legal issues related to respective proceedings, together with material evidence and documents supporting them, and to submit proposals on the resolution of the case (Article 94).

Lawyers and paralegals should advise their clients about their right to submit opinions, explanations, and evidence to support their cases. They should ensure that their clients submit any relevant material evidence and documents in a timely manner, as this may impact the outcome of the case.

Before a final decision is taken, the public organ conducting the administrative proceeding shall notify the party about their right to be heard (Article 95). This is a critical right and unfortunately one that is violated very frequently. The notification shall include an indication of the results of the administrative investigation, of the expected results of the proceeding, as well as information on how to exercise the right to be heard. The right to be heard may be exercised in writing or verbally to be recorded by the public organ. When hearing each of the involved parties, according to paragraph 3 of this Article, is impractical because of their large number, the hearings shall be conducted through “any adequate means of public consultation.”

Lawyers and paralegals should advise their clients about their right to be heard before a final decision is taken and should actively help their clients to exercise this right. They must ensure that their clients exercise this right effectively, either in writing or verbally,

depending on the circumstances of the case. See section below on “Fair Hearings” and the characteristics that these should have to comply with due process rights related to property concerns, which are prioritized by Article XX of the Kosovo Constitution.

A decision may be rendered without granting the party the right to be heard only when it is evident that the decision shall be in favor of the party or shall constitute a complete endorsement of their request (Article 96).

Key points that the legal aid practitioner should note and apply include:

- **Right to inspect files and receive information:** Inform clients of their right to inspect the files and take copies of them at any phase of the proceeding (Article 92). Ensure that clients make requests in a timely manner to avoid delays in the inspection of documents. Note the limitations of this right when documents or information are classified, contain personal data, or are related to protected business or professional secrets.
- **Right to amend or withdraw requests:** Advise clients of their right to amend or withdraw their submitted request until the decision has been issued (Article 93). This may be particularly important when new evidence or circumstances come to light that could affect the case.
- **Right to submit opinions, explanations, and evidence:** Inform clients of their right to submit opinions, explanations, and evidence related to their case (Article 94). Ensure that clients submit any relevant material evidence and documents in a timely manner.
- **Right to be heard:** Advise clients of their right to be heard before a final decision is taken (Article 95). This is one of the most important aspects of the administrative procedure. Ensure that clients exercise this right effectively, either in writing or verbally, depending on the circumstances of the case. If the hearing of each involved party is impractical, the hearing shall be conducted through any adequate means of public consultation.
- **Decision without granting the right to be heard:** Be aware that a decision may be rendered without granting the party the right to be heard only when it is evident that the decision shall be in favor of the party or shall constitute a complete endorsement of their request (Article 96).

Termination of the Administrative Proceeding

An administrative proceeding instituted upon request shall be terminated by notification of an administrative act or conclusion of an administrative contract (Article 97). The termination of an administrative proceeding instituted *ex officio* is under the discretion of the public organ, except when provided otherwise by law, and shall be done by administrative act.

An administrative proceeding instituted upon request shall be terminated as soon as possible but no later than within the deadline established by law for that type of proceeding (Article 98). In case the special law provides no deadline, the general deadline applicable to the conclusion of administrative proceedings shall be forty-five days from the date of its institution. If the law establishes the obligation of a party to submit a document or perform a procedural action as a part or together with the submission of an initial request, the deadline determined in accordance with this Article shall start running from the complete filing of the initial request.

If it is required because of the complexity of the administrative case, the public organ may extend the original deadline for the conclusion of the administrative proceeding only once (Article 99). The extension shall be introduced for the period necessary to conclude the proceeding, considering the complexity of each concrete case, but never longer than the original deadline. Within the original deadline, the party shall be notified of the decision to extend the deadline, with the indication of the new expiration date, as well as of the reasons for the extension.

A public organ shall declare the termination of an administrative proceeding, in any phase, if it finds out that within less than two (2) years prior to the date of submission of the request, it has ruled on the same request made by the same party with the same object and based on the same grounds, or if a previously filed request bearing the similarities referred to under the previous paragraph is still being dealt with in another unfinished proceeding (Article 101).

Silent Consent Rule

If the party has expressly requested the issuance of a written administrative act and the public organ does not notify the party of its administrative activities within the original deadline and fails to notify of the extension or fails to notify the act within the extended deadline, the request made by the party shall be considered to be fully granted, and this is referred to as a “fictitious administrative act” (as per Article 100) or administrative silence.

Key points that the legal aid practitioner should note and apply include:

- **Understand the concept of Silent Consent Rule:** Familiarize yourself with the concept of silent consent or fictitious administrative act under Article 100. This occurs when a public organ does not notify the party of its administrative act within

the original deadline, fails to notify of the extension, or fails to notify the act within the extended deadline. In such cases, the request made by the party is considered to be fully granted.

- **Identify applicable cases:** Be vigilant in identifying cases where the silent consent rule may apply. This rule can be beneficial to your clients, as it implies that their request has been granted due to the inaction of the public organ.
- **Monitor deadlines:** Keep track of the original and extended deadlines, if applicable, for each case. This will help you determine when the silent consent rule comes into play and ensure that your client's rights are protected.
- **Communicate with the public organ:** Maintain regular communication with the public organ to check the status of the administrative proceeding. This will help you understand the progress of the case and detect any potential delays that may trigger the silent consent rule.
- **Inform and advise clients:** Keep your clients informed about the silent consent rule and its implications for their case. Advise them on how the rule can potentially impact the outcome of their case and any necessary steps they need to take to benefit from it.
- **Preserve evidence:** Maintain proper documentation of all communications, deadlines, and notifications related to the case. This will be crucial in proving that the silent consent rule applies to your client's case should any disputes arise.
- **Prepare for potential disputes:** Be prepared to defend your client's rights in case the public organ disputes the application of the silent consent rule. Develop strong legal arguments based on the facts of the case and the relevant provisions of the Law.

Death of a Party and Withdrawal of the Case

Should a natural person die in the course of the administrative proceeding dealing with matters personally related to him ("*intuitu personae*") the public organ shall close the file and terminate the proceeding by a decision (Article 102). In any other case than the one provided under paragraph 1, when a natural person dies in the course of an administrative proceeding to which he is a party if the public organ considers the participation of the party as necessary, it shall temporarily suspend the proceeding until the legal successor is appointed. In case of the extinction of a legal person who is a party to the proceeding, the public organ shall continue the proceeding with the latter or close the file and declare the termination of the proceeding.

If the party who initiated the request decides to withdraw it, the proceeding shall be declared terminated (Article 103). Additionally, if it becomes evident that the party has no further interest in continuing the proceeding, it shall also be terminated. However, the withdrawal or abandonment of the request does not necessarily affect the continuation of the proceeding if the public organ determines that it is still in the public interest to continue it.

Article 104 provides for the termination of an administrative proceeding when the competent public organ assesses that the objective or goal for which the proceeding was initiated has become impossible or useless. In other words, if the original purpose of the proceeding is no longer achievable or serves no purpose, then the proceeding shall be terminated.

Lawyers and paralegals should carefully consider the provisions set forth in Articles 103 and 104 when advising their clients in administrative proceedings. If a party wishes to withdraw or abandon their request, they should do so in writing to ensure that the public organ is aware of their decision. Additionally, if it becomes evident that the party has lost interest in the proceeding, they should inform the public organ. However, it is important to note that the public organ may still decide to continue with the proceeding if it is in the public interest to do so.

In cases where the objective or goal of the proceeding is no longer achievable or serves no purpose, lawyers and paralegals should advise their clients on the best course of action. If it is clear that the proceeding is no longer viable, the party may wish to consider withdrawing their request or abandoning the proceeding. Alternatively, they may wish to work with the public organ to find an alternative solution to the issue at hand.

Notifications

There are three main forms of notification in administrative proceedings which can be used and be valid under certain circumstances (Article 109):

- **Orally:** The notification to a party present can be done orally or in any other appropriate form of communication.
- **By Mail:** A written document can be notified (hereinafter: the document) by sending it by mail, electronically, or by formal notification under this Law.
- **By Phone:** Exceptionally short and urgent notifications may also be done by phone.

Article 121 of the Law establishes the conditions and procedures for notification by electronic retrieval. It provides that the notification of an electronic document can be done by downloading from a server closed to the public only if the addressee has guaranteed access through authenticated electronic means and is preliminarily notified about the date or period of stockage in that server. The notification shall be deemed to be effectuated at the moment of its download from the server.

However, if the document is not downloaded on the specified date or period, the public organ shall send a second notice to the party. If the document is still not downloaded on the date or period specified in the second notice, it will be notified of the decision by other appropriate means.

Legal Remedies

Any party who claims that their rights or legitimate interests have been infringed by an administrative action or inaction has the right to seek a legal remedy against it.

Unless otherwise provided by Law, administrative remedy may be filed on the grounds of the unlawfulness of the action. The ordinary administrative remedies available to parties are administrative appeals and administrative complaints. The reopening of the proceeding is an exceptional administrative remedy.

It is important to note that a party is not entitled to a second ordinary administrative remedy in the same case. The exhaustion of respective ordinary administrative remedies is a preliminary requirement for any dispute before a competent court for administrative disputes. However, there are exceptions where direct access to the court without preceded administrative remedy is allowed, such as when a superior organ or second administrative instance does not exist, a third party claims that its rights or legitimate interests are infringed by an administrative act resolving an administrative remedy, or it is explicitly provided by law.

Lawyers and paralegals should be familiar with the available administrative remedies and the grounds for seeking them in order to protect their clients' rights and legitimate interests. They should also advise their clients on the importance of exhausting administrative remedies before seeking legal action in court, except in cases where direct access to the court is allowed by Law.

Administrative Appeal

An administrative appeal can be submitted against an administrative act, including administrative inaction or silence. It also notes that procedural actions can only be challenged if explicitly provided by law (Article 105).

The deadline to present an appeal is within 30 days of notification of the administrative act. Third parties can challenge it within six (6) months of the act's issuance.

An administrative appeal against the administrative silence shall be filed not earlier than seven (7) days and not later than two (2) months upon expiry of the deadline for issuance and notification of the administrative act.

The appeal can be submitted to the competent organ, superior organ, or another public organ provided by Law. Article 129 outlines the admissibility conditions for administrative appeal, which include *locus standi*, submission within the deadline, and any other conditions explicitly provided by Law.

Content and form of the administrative appeal:

- The appeal should specify the administrative act or administrative silence that is challenged, the grounds of the appeal, and the public organ competent for the act; and
- Any request, even if not explicitly labeled as an appeal, shall be deemed as such if the intention of the party to challenge or attain an administrative act or administrative silence is sufficiently clear.

The decision on the appeal must be made and notified to the party within thirty (30) days from the filing of the appeal unless the Law specifies a different deadline. However, if additional investigation is needed, the deadline may be extended, and Article 99 of this law applies to the extension of the deadline.

Administrative Complaint

An administrative complaint can be submitted against a real act or omission of a real act requested by a party, and the party may request ceasing the performance of a real act, revocation or correction of a public declaration, declaration of the unlawfulness of a real act, and elimination of its consequences, or performance of a real act, which the party is entitled to and has unsuccessfully applied for. A member of a collegial public organ may also submit an administrative complaint to challenge the procedural action or inaction.

The provisions of the Law on the form and content of the administrative appeal apply *mutatis mutandis* for administrative complaints, and the complaint shall be submitted within 15 days from the date the party had the opportunity to become aware of the disputed matter but no later than six (6) months from its performance, or respectively within the

period of two (2) months from the submission of a request for performance of a real act, in case of inaction by the public organ.

If the complaint is resolved in favor of the party, the competent public organ shall implement the administrative act issued, and the regulatory body reviewing the complaint in the case of a public service of general interest shall take necessary measures to ensure all requirements of the service are met within its competence.

Key points that the legal aid practitioner should note and apply include:

- **Understand available legal remedies:** Understand the different types of legal remedies available, including administrative appeal, administrative complaint, and the reopening of the proceeding. Be aware of the grounds for seeking each remedy, as well as the relevant procedures and deadlines.
- **Identify appropriate legal remedies:** Evaluate your client's situation and determine which legal remedy is most appropriate for their specific case. Consider the type of administrative action or inaction at issue, the grounds for challenging it, and the potential outcomes of each remedy.
- **Advise clients on exhaustion of remedies:** Inform your clients about the importance of exhausting available administrative remedies before seeking legal action in court. However, be aware of exceptions where direct access to the court is allowed by law and advise your clients accordingly.
- **Track deadlines:** Keep track of relevant deadlines for filing administrative appeals, administrative complaints, and other legal remedies. Ensure your clients submit their requests within the specified timeframes.
- **Prepare submissions:** Assist your clients in preparing well-drafted, comprehensive, and legally sound submissions for each legal remedy. Ensure the content and form of the submission meet the requirements outlined in the Law.
- **Monitor progress:** Stay informed about the progress of your client's legal remedy and communicate regularly with the relevant public organs. Keep your clients updated on any developments or decisions

Part III: Conceptual and Practical Aspects of Fair Hearings and Respect for Due Process in Administrative Procedures

One of the areas where the administrative law system in Kosovo seems to fail on a frequent basis is regarding the respect for due process when the State is in effect taking away or reducing property interests (such as in public benefits) with very little respect for due process. Stories abound about pensions being reduced or eliminated with no notice and with no right to be heard. Lawyers complain about requesting public hearings in administrative procedure (before administrative bodies) or administrative conflicts (before the Administrative Department of the Basic Court) and not receiving them, with everything being decided on the dossier without an effective right to be heard on the part of the claimant.

As stated above, in practice, the right to receive notice in cases involving the loss of property rights (which can include on-going pension and similar benefits) and the right to be heard through a fair hearing are two of the most violated rights in Kosovo in the administrative law area, particularly, but not limited to the process at administrative agencies under the LGAP. Legal aid practitioners need to zealously and continually at all stages of the administrative and administrative conflict states advocate for the rights of their clients in these areas. To the extent that right to notice and the right to be heard are violated, winning administrative law cases becomes more and more difficult as a practical manner. While both fair hearings (although not specifically called by this name) and the right to notice are set forth in Kosovo law, they are widely violated and not usually given.

The purpose of this section is to give legal aid practitioners solid arguments based on the Kosovo Constitution, international laws and treaties, and secondary laws to fight more for due process (notices and hearings), including the right to be heard (via a “Fair Hearing” as many countries call them in the administrative agency context at the first and second instances) or a public (or closed, if the circumstances warrant) hearing in court to give the plaintiff/claimant to be heard by the trier of fact.

The following principles about notice and fair hearing rights, based largely on international and comparative law, can be used by legal aid practitioners to make strong arguments to oblige administrative agencies and courts to better protect these critical rights.

To ensure a fair and just legal system, it is crucial to uphold human rights during the trial and throughout the entire judicial process. One of the fundamental human rights is the right to be tried by a competent, independent, and impartial tribunal. This right is enshrined in various international human rights agreements, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), the American Convention on Human Rights (ACHR), and the European Convention on Human Rights (ECHR).

Article 6.1. of the European Convention on Human Rights establishes that: "In the determination of their civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Accordingly, judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order, or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice,"

In France, hearing both sides before deciding is recognized as part of its administrative law, and a decision-maker must comply with statutory and regulatory procedural requirements.¹ The duty to give reasons is also required by law. Italy recognizes procedural protections through sound administrative governance and impartiality² principles, while Germany codifies the right to a fair hearing in its Administrative Procedures Act.³ The Netherlands has codified its administrative law in the General Administrative Law Act,⁴

¹ "The right to a fair hearing is also widely recognized in civil law systems. The need to hear both sides before making a decision is recognized in France as part of its *droit administratif* (Ministre du Budget v SARL Auto-Industrie Meric (31 March 1995) (Fr). Under French *droit administratif* a decision-maker must comply with statutory and regulatory procedural requirements. A decision will also be annulled by the Conseil d'Etat if a party has not been given notice of the case against them and provided an opportunity to present their case (SA Cooperative D'Habitation a Bon Marche de Vichy-Cusset-Bellerive (24 April 1964) (Fr); Trompier-Gravier (5 May 1944) (Fr); Société des établissements Cruse (9 May 1980) (Fr). The duty to give reasons is a statutory requirement set out in the Law of 11 July 1979 (Art. 1)". Jhaveri, Swati. "Right to a Fair Hearing in Administrative Law Cases". *Max Planck Encyclopedia of Comparative Constitutional Law*.

² "The explicit recognition of a specific right to a fair hearing is less common in other civil law jurisdictions. This is the case in Italy. Under its *diritto amministrativo* any procedural protections take the form of the principles of sound administrative governance and the principle of impartiality. These are constitutionalized in provisions such as Art. 97 of the Constitution of Italy which sets out that: 'Public offices are organized according to the provisions of law, so as to ensure the efficiency and impartiality of administration'. As with the French systems, an applicant can challenge a breach of these principles if it affects their legitimate interests: if it affects a private right then the applicant has to commence proceedings in the ordinary courts". Jhaveri, Swati. "Right to a Fair Hearing in Administrative Law Cases". *Max Planck Encyclopedia of Comparative Constitutional Law*.

³ "The German context differs in its codification of the right to a fair hearing in the *Verwaltungsverfahrensgesetz* (the Administrative Procedures Act enacted in 1976) administrative procedures). Section 28 is the key provision setting out the procedural conditions for an administrative decision. An oral hearing is not mandatory but can be grounds for nullity where a hearing was required by the factual circumstances of the case (Decision of 2 September 1963 (Ger)). Similarly, notice of the case has been held to be mandatory in some situations and have served as grounds for the invalidation of the administrative decisions (Decisions of 10 April 1968 (Ger)) (see also Singh). Section 46 further spells out however that an act shall not be invalidated if the procedural irregularity would have no impact on the final decision". Jhaveri, Swati. "Right to a Fair Hearing in Administrative Law Cases". *Max Planck Encyclopedia of Comparative Constitutional Law*.

⁴ "The Netherlands similarly has codified, in large part, its administrative law in its General Administrative Law Act (or Algemene wet bestuursrecht). Although heavily influenced by French Administrative Law, the Netherlands differs in its institutional design from France, Germany and Italy. There is no special administrative court: instead the ordinary courts have a special administrative section that deal with administrative law cases. Section 2:4 deals with the need for impartiality and the absence of bias. Paragraph 3.5.4 sets out the specific procedural requirements for administrative decisions. However, beyond the design differences in administrative law between France and the Netherlands (in terms of institutional design and codification), the Netherlands continues to be heavily influenced by France in the development of its administrative law principles, including the right to a fair hearing". Jhaveri, Swati. "Right to a Fair Hearing in Administrative Law Cases". *Max Planck Encyclopedia of Comparative Constitutional Law*.

which is heavily influenced by French administrative law principles. In addition, it has special administrative sections in ordinary courts.

The right to a fair hearing is equally essential, which includes due guarantees and safeguarding of victims and witnesses. This right is recognized in human rights treaties such as the ICCPR, the ECHR, and the ACHR. It comprises several key principles, such as:

- **Presumption of innocence:** The principle of the presumption of innocence states that every person accused of a crime is considered innocent until proven guilty according to the law. This means that the burden of proof lies with the prosecution to demonstrate the accused's guilt and that the accused does not have to prove their innocence.
- **Equality of arms:** The principle of equality of arms requires that both the prosecution and the defense have an equal opportunity to present their case and challenge the evidence presented by the other party. This principle ensures that both sides have a fair and equal chance to argue their case and that the outcome is based on the merits of the evidence presented.
- **Public hearings:** Public hearings are considered essential to ensure transparency and accountability in the trial process. Public access to court proceedings can help to promote public confidence in the justice system and allow for public scrutiny of the proceedings.
- **Right to counsel:** The right to counsel, particularly in criminal cases, is a fundamental right that guarantees defendants the right to be represented by a lawyer. If a defendant cannot afford a lawyer, the state should provide legal assistance to ensure that the defendant is not disadvantaged in the legal process.
- **Right to a prompt and fair trial:** Defendants have the right to a prompt and fair trial. This means that trials should be conducted without undue delay and in accordance with fair trial standards. Delays in the trial process can cause undue stress and anxiety for the defendant and can also undermine the fairness of the trial.
- **Right to present evidence and examine witnesses:** Defendants have the right to present their evidence and examine witnesses against them. This right ensures that the defendant has a fair and equal opportunity to argue their case and that the evidence presented is reliable and relevant.

- **Right to appeal:** Defendants have the right to appeal their conviction and sentence to a higher court. This right ensures that the legal process is subject to review and that errors or miscarriages of justice can be corrected.
- **Right to interpretation and translation:** Defendants who do not understand the language of the trial should be provided with an interpreter and translated documents. This right ensures that the defendant is able to fully participate in the trial process and understand the proceedings against them.
- **Rights of victims and witnesses:** The legal system should ensure the protection and support of victims and witnesses during the trial process, including measures to prevent intimidation, harassment, or retaliation. This ensures that victims and witnesses can participate in the trial process without fear of retribution or harm.
- **Non-retroactivity of criminal laws:** The principle of non-retroactivity of criminal laws states that no one should be held criminally responsible for an act that was not a criminal offense when it was committed. This principle ensures that individuals are not punished for legal actions at the time they were committed and that the law cannot be used retrospectively to punish individuals.

These principles are not only essential for ensuring a fair and just legal system but also help maintain public confidence in the judiciary and the rule of law. It is the responsibility of states, legal practitioners, and judicial institutions to protect and promote these rights throughout the entire judicial process. This includes implementing national legislation, providing adequate resources and training, and fostering a culture of respect for human rights within the legal profession and the judiciary.

The right to a fair hearing applies not only in criminal proceedings but also to administrative processes, which often involve decisions that can significantly affect an individual's rights, interests, or liberties. In such cases, the principles of natural justice and procedural fairness come into play to ensure that administrative decisions are made fairly, transparently, and impartially.

The right to a fair hearing in administrative processes can be analyzed through the following key components:

- **Notice:** Individuals who are subject to administrative proceedings must be given adequate and timely notice of the charges or claims against them, as well as the nature of the proceedings, the possible consequences, and their rights during the process. This enables them to prepare their defense and make informed decisions about their participation. This right to notice and to be heard is set forth in Articles 118 to 123 of the LGAP and in Article 38 of the LAC, but is widely not respected in practice;

- **Right to be heard:** Affected individuals should have the opportunity to present their case, submit evidence, and make arguments in their favor. This may include the right to submit written submissions, attend a hearing, or participate in other forms of dispute resolution, such as mediation. Again, this right is set forth in Article 38 of the LAC, but is often not respected;
- **Impartial decision-maker:** Administrative decision-makers should be unbiased and free from any conflicts of interest that might influence their judgment. This includes ensuring that the decision-maker has not been involved in any prior stages of the case or has any personal interest in the outcome;
- **Right to representation:** Although the right to counsel may not be as robust in administrative proceedings as it is in criminal trials, affected individuals should still have the option to seek legal advice and representation, either through a lawyer or another qualified representative;
- **Reasoned decision:** Administrative decisions should be based on the evidence presented and the applicable laws and regulations. Decision-makers must provide a clear and comprehensive explanation of their reasoning, addressing the arguments and evidence submitted by the parties. This enables the affected individuals to understand the basis of the decision and facilitates the possibility of judicial review;
- **Right to review or appeal:** Individuals should have the right to challenge administrative decisions through a review or appeal process, either internally (within the administrative agency) or externally (through a court or an independent tribunal). This helps ensure that errors or unfair decisions can be corrected and promotes accountability within the administrative system; and
- **Proportionality:** The consequences of administrative decisions should be proportionate to the objectives pursued by the administrative agency and the harm or risk posed by the individual's actions. This principle helps prevent arbitrary or overly severe measures that may infringe on individual rights.

If a client does not receive a notice about a pension reduction, administrative law practitioners should act promptly and assertively to safeguard their client's legal rights. Below are some specific measures that litigation-focused practitioners can take:

- **Conduct a comprehensive investigation:** Administrative law practitioners should investigate the circumstances surrounding the client's failure to receive a notice, which may involve interviewing the client, reviewing the client's file, and researching relevant laws and regulations;

- **Identify possible courses of action:** Based on the investigation, practitioners should determine potential legal actions that could be taken against the administrator, such as claims of administrative law infringement based on administrative silence;
- **Initiate legal proceedings as necessary:** If the administrator does not respond to the refusal to offer a requested relief, the practitioner should commence legal proceedings on behalf of the client, such as filing a complaint in court, seeking redress to prevent the pension reduction from taking place or appealing the decision through the administrative process;
- **Conduct discovery:** After legal proceedings have been initiated, the practitioner should collect evidence to support the client's claim. This may entail requesting documents and other evidence from the pension plan administrator or taking depositions of key witnesses; and
- **Prepare for hearing or trial:** As the case proceeds, the legal aid practitioner should prepare for the hearing/trial, including drafting legal pleadings, preparing witnesses, and developing legal arguments.

Tips for Welfare Recipients in Kosovo regarding Fair Hearings and Right to be Heard:

If and when your client gets a “Notice of Intent” or “Notice of Decision” from an administrative agency (most likely the MFLT) changing, suspending, or denying his or her benefits, remember these two important rules:

Rule #1

Your client (with your assistance) should ask for a fair hearing and ask for “**aid continuing**” in writing before the date the Notice says his or her benefits will change. An example of a form to do so is attached hereto. The sooner the better. Requesting “aid continuing” is making the argument that your client’s benefits should not be changed unless he or she loses his or her fair hearing or opportunity to be heard at the second instance. If the administrative agency does not respond to the request for aid continuing (which is by far the most likely scenario based upon past experience and the almost complete lack of an effective second administrative instance in Kosovo), you can make the argument that by administrative silence, the agency has granted your client’s request. You can use this in court, as set forth below, to ask the court for a temporary restraining order (TRO) to not reduce your benefits (i.e., a “postponement” of the execution of the

administrative decision in the terms of the ACL). Do not wait until your client's benefits are cut off before asking for "aid continuing," as it will be harder (if not impossible) to get the postponement or TRO in court. You can ask for a fair hearing or for the opportunity to be heard, even if you did not get a written notice, but you must do this as soon as you find out that something may be wrong with your benefits. Do not wait until they are cut off if at all possible.

Rule #2

Save the Notice together with the envelope and the postmark. If the Notice takes too long to reach you or your client and you miss the deadline for requesting a fair hearing, you can still request aid continuing. The date on the envelope may help you prove that you received your Notice late.

Rule #3

After you ask for your fair hearing, you can try to solve your problem at your CSW or welfare center. Ask for a **conference**. Do not, however, withdraw your fair hearing request at your conference unless you get proof in writing that all problems with your case have been fixed by your CSW.

How Can I Win a Fair Hearing? You can win your fair hearing/conference (second administrative instance) by being prepared and knowing your rights.

How can I get ready for my fair hearing or conference? Here is a check list for claimants and/or advocates to get ready for any hearing or conference at the administrative level (if and when they are given):

Get evidence: Evidence is everything that supports your story. Evidence includes: doctor's letters, receipts, court papers, rent receipts, and welfare papers. Think about the evidence you need after you ask for your fair hearing. Write down dates and names of people you spoke to about your problem. Make sure you bring copies of your evidence to the hearing. Keep the originals for your own records. Ask for a free copy of the evidence packet for your case. The evidence packet has all the papers that your welfare center will talk about at your hearing. To get the evidence packet, call or write to the CWS or other agency that sent you the Notice of Intent, Notice of Decision, or notice denying you benefits. If you did not get a notice, write to your welfare center. Keep a copy of the letter you sent. Write down the name of the person you spoke to on the phone and the date. If you tell the judge you asked for the evidence packet and did not get it, you should win your hearing.

To get evidence, you can also look at your welfare file or case record at your welfare center. Your case record may have the evidence that supports your story. Tell the agency if your welfare center refuses to let you see your case record. The judge will let you see your case record at the hearing or will change the date of the hearing, so you have time to see your case record later. I asked my welfare center to send me papers from my case record. They didn't. Does this matter at the hearing? Yes! You should win. You must ask for the evidence packet and papers from your case record before any hearing or conference. If you do not receive anything within 3 days after the request was received, you should that the Notice of Intent, Notice of Decision, or notice denying you benefits should be withdrawn by the agency.

Get witnesses: Often it is helpful to bring witnesses to the hearing or conference. A witness can be anyone who can support your story. You will need to ask your witness questions at the fair hearing. Write down questions and practice the questions and answers with your witness. The judge/officer and the welfare center representative can also ask your witness questions at the fair hearing. Get organized Your hearing may be very short and you may not get a chance to say everything you want. Plan what you want to say before your hearing. Write down: What you want to say. Which papers you want to show the judge. Questions to ask the welfare center representative. Questions to ask your witness. It can be easy to lose track of things at the hearing. Don't let anyone rush you. Relax and follow your plan!

Get organized: What should I do when I get to my fair hearing? Check in with the receptionist. Ask to look at your case record before the hearing, even if you have seen it before. You may have to wait for a while. When the judge is ready to hear your case, you will be sent to a hearing room. A hearing room is not a courtroom. It is an office with a table and chairs. Who will be at my fair hearing? What is a case record? Your case record should have all of the papers about your welfare case. It should include more papers than the evidence packet. The judge and a welfare worker will be there. The welfare worker is called the agency representative. He or she will try to show the judge that the city is right and you are wrong. The agency representative is usually not a lawyer and has never worked on your welfare problem. Ask for an official interpreter if you do not speak English. It is best to bring an advocate to help you win your fair hearing. Check with your local community center, hospital, school, legal services or FLAA office to find someone who can be your advocate. If you can't find an advocate, you can bring a family member or friend to help. What is an advocate? An advocate is a person who speaks for you at your hearing. This person should know your case and know how the welfare system works. An advocate can be a counselor, social worker, or legal worker.

What does the judge/officer do at the fair hearing? What is "On the Record?" Your hearing/conference may be recorded. Everything recorded at the hearing and all evidence given to the judge is on the record. Make sure everything said is recorded. The recording may help you if you lose and appeal. The judge runs the hearing. The judge should start the hearing by using the telephone to turn on the recording equipment. This is called going

on the record. The judge must record everything that is said when you are in the room. The judge will explain the reason for the hearing. Tell the judge if you asked for a fair hearing for a different reason.

How does the welfare center tell its side of the story? The agency representative explains the welfare center's side of the story first. He or she will try to show the judge that the city is right and will give the judge/officer evidence. This proof should all be in the evidence packet. Remember that the agency representative may not be from your welfare center and may never have worked on your problem. Don't be afraid to ask questions and tell the judge/officer if you disagree. For example, ask the judge/officer to explain any papers or anything the agency representative says that you don't understand. The agency representative can later ask you and your witnesses questions. Can I change the issue at my fair hearing? No. The judge/officer will hold the hearing only on the reason you gave when you asked for the hearing. If there is a new problem, ask for another fair hearing.

What are my rights at the fair hearing? Your fair hearing should be run fairly. Tell the judge/officer if you think it is not. You have a right to speak up if your fair hearing seems unfair or if it is hard for you to represent yourself. You have a right to make objections. An objection is when you tell the judge/officer that you disagree with something that was said or done. For example, you should object if you are not allowed to show evidence to the judge/officer. You have a right to see your case record at the hearing. If your welfare center wants to change your benefits and doesn't bring your case record to the hearing, you should win your fair hearing. The case record is all of the documents about your case from the center, not just the evidence packet. You have the right to see all papers the agency representative gives to the judge/officer. You have the right to question the agency representative and any witnesses. Tell the judge/officer if you think the agency representative or city witness says something untrue.

FAIR HEARING REQUEST FORM – FAX OR MAIL

Please Print Information Clearly. Correct and Complete Information will Permit us to Promptly Schedule a Fair Hearing/Conference

CASE NAME _____ (LAST)
(FIRST) (MI)

STREET ADDRESS _____ APT. #:

CITY: _____ POSTAL CODE _____

DATE OF AGENCY CHALLENGED ACTION: _____

PHONE #: () BIRTHDAY : ID #:

MALE / FEMALE

CASE #: CIN #: LOCAL
AGENCY/CENTER #:

INTERPRETER NEEDED? YES NO IF YES, IN WHAT LANGUAGE?:

Is appellant homebound? Yes/No If yes, provide medical documentation. Do not delay request to obtain medical. A phone number for representative or requester is required if you don't have a phone:

Representative Requester

NAME:

ADDRESS

CITY:

PHONE #: ()

DID APPELLANT RECEIVE A NOTICE FROM THE LOCAL SOCIAL SERVICES DEPARTMENT? YES/NO (*** PLEASE ATTACH A COPY OF THE NOTICE WITH THIS FORM *****)**

If Yes: Date of Notice: Effective Date of Receiving Notice:

NOTICE #:

Brief description of the reason for requesting hearing (indicating time frames):

TODAY'S DATE _____

Request For Fair Hearing/Conference Evidence Packet and Specifically Identified Documents

Date: _____ Fair Hearing Number:

My Name: _____ My Case Number:

My Mailing Address:

Fax is the best way to send your request.

Try to keep a copy of your request and your fax receipt.

Where to send this request by mail:

Try to get a Certificate of Mailing from the Kosovo Post Office, which will prove that you sent the request.

Dear Ministry:

I am exercising my right to be heard, to be informed, and to be provided by mail at a reasonable time from the date of this request, with: (1) a copy of all documents the Ministry will present at the fair hearing/conference in support of its determination; and (2) the following specifically identifiable documents:

Check or list all other documents you need to help you get ready for your fair hearing.

___ 1) An exact copy of each and every notice, letter, and writing issued to me that will be or might be an issue at the fair hearing or that the ministry or administrative agency intends to introduce into evidence at the fair hearing;

___ 2) Any and all medical reports from or used by the MFLT Medical Commission in making its determination;

___ 3) My welfare/public assistance time records, assessments, and employability plans, and any Notices of Employability;

___ 4) Any drug and alcohol screening, assessments, and referrals;

___ 5) Print-out showing a list of all my benefits from ___/___/20__ to the present;

- ___ 6) Print-out showing the persons who are on my budget;
 - ___ 7) Current budget printout;
 - ___ 8) Address history;
 - ___ 9) Sanction and infraction history showing all activity including deletions of void or completed sanctions;

 - ___ 10) Any other notices provided in my case and proof of service;
 - ___ 11) Other documents (please list in as much detail as possible):
-
-

Part IV: Understanding the Kosovo Law on Administrative Conflicts (Law No. 03/L-202)(LAC)

Introduction

It is often not possible to fully resolve all administrative issues before the pertinent public organ or administrative agency charged with particular functions and it will be necessary to go to court, via the mechanism of an “administrative conflict” to challenge the decision or any part of the decision of the administrative agency and its second administrative instance, if there is one. This section will discuss in detail how legal aid practitioners, using the LAC and its provisions, work to protect the rights of their clients in the administrative law area. Key to advocacy under the LAC is to try to avoid what is known as the “ping-pong” effect, where courts tend to remand cases back to the administrative agency for action that never happens, resulting in the case returning to the court.

It should be noted that there are some very important reforms pending to the LAC and that these have passed the first reading in the Assembly of Kosovo. These will be briefly discussed at the end of this section. They are very extensive reforms, providing substantially more details about many of the issues discussed below. All in all, the reforms should be viewed as positive towards the clients of legal aid practitioners.

Definitions

Some of the key definitions under the LAC that the legal aid practitioner should be very familiar with include the following:

1. **Body:** public administration bodies, central government bodies and other bodies on their dependence, local government bodies and bodies on their dependence, when during exercising public authorizations decide on administrative issues;
2. **Administrative act:** every decision of the body foreseen in sub-paragraph 1.1 of this paragraph, which shall be taken in the end of the administrative procedure on exercising public authorizations and which effects, in favor or not favor manner legally recognized rights, freedoms or interests of natural or legal persons, respectively other party in deciding the administrative issues; and
3. **Administrative issue:** according to the LAC this is a special uncontested situation and with public interest, in which directly from legal provisions, results in the need to define the behavior of the next party in a legal and authoritative manner.

Analysis and Guidance:

1. Initiation of an Administrative Conflict (Article 13)

Article 13 of the LAC provides the following rules regarding when an administrative conflict can be initiated in court, generally after the exhaustion of administrative remedies:

- a. An administrative conflict case can only be initiated against administrative acts issued in the administrative procedure of the second administrative instance;
- b. Can start against the administrative act of the first instance when a complaint is not allowed in the second instance of the administrative procedure; and
- c. Can start when a competent body has not issued the relevant administrative act according to the request or complaint of the party.

Article 14 provides that an administrative conflict can also start when a competent body has not issued the relevant administrative act according to the request or complaint of the party, under the conditions foreseen by the ACL. This is also known as administrative silence and could be a very useful strategic tool for the legal aid practitioner as discussed below in section III.

2. When an administrative conflict cannot be initiated?

According to the ACL, an administrative conflict cannot be initiated in the following circumstances (Art. 15):

- a. Against acts on issues where legal defense outside the administrative conflict has been provided;
- b. Against acts on issues where the law prohibits initiating an administrative conflict;
- c. Against administrative acts comprising a general obligation, except when they violate legal rights of the parties; or
- d. When a body issues an administrative act exceeding its competency limits in cases mentioned in point b.

The above sections are relevant to FLAA legal officers and legal aid lawyers for the following:

- Understanding the grounds for initiating an administrative conflict allows paralegals and lawyers to accurately assess the potential success of a client's case and advise them accordingly;
- Identifying when an administrative conflict cannot be initiated helps prevent the filing of unnecessary legal actions and saves time and resources for both the client and legal professionals;
- Paralegals can use this information to draft pleadings and other legal documents, ensuring that they are properly addressing the necessary elements for initiating an administrative conflict;
- Lawyers can use these key points in developing their litigation strategy and presenting arguments before the court or during negotiations with opposing counsel; and
- Familiarity with the legal provisions governing administrative conflicts assists in identifying cases where an administrative conflict may be initiated despite initial limitations, such as when a body exceeds its competency limits.

3. Objection to the Final Administrative Act

According to Article 16, a “final administrative act” can be objected to in court when:

- i. The law has not been applied at all, or legal provisions have not been correctly applied;

- ii. The act has been issued by a non-competent body;
- iii. The preceding procedure was not followed according to current procedural rules (such as those in the Law on General Administrative Procedures - see Part I above), the factual situation was not correctly verified, or incorrect conclusions were made based on verified facts;
- iv. The final administrative act exceeded the limits of legal authorization or was not issued in compliance with the purpose of the law, when based on a free evaluation; or
- v. The accused party has issued again their earlier act, which was annulled before with the final decision of the competent court.

The administrative act cannot be rejected for incorrect implementation of provisions when a competent body has decided according to free assessment based on authorizations and within the limits given by legal provisions, in accordance with the aim for which the authorization was given.

This article of the ACL is relevant to legal aid practitioners for the following reasons:

- Understanding the grounds for objecting to a final administrative act allows FLAA officers, paralegals and lawyers to provide appropriate advice to clients and ensure that they pursue valid objections in court and that the complaint will not be dismissed on technical or formal grounds;
- Familiarity with the limitations on rejecting administrative acts for incorrect implementation of provisions helps legal professionals manage client expectations and develop appropriate legal strategies;
- Paralegals and FLAA officers can use these key points to draft legal documents and briefs outlining the specific grounds for objecting to a final administrative act, ensuring they present a strong case;
- Lawyers can use this information to formulate arguments in court or during negotiations, focusing on the grounds for objection as outlined in the law; and
- Recognizing the circumstances under which a final administrative act can be objected to also helps legal professionals identify potential flaws in the opposition's case and develop counterarguments.

Legal aid practitioners should be careful to ensure that there was indeed a second instance decision at the administrative level (as required by the Law on General Administrative Procedures – see above), as many administrative agencies, according to several advocates consulted during the preparation of this Manual, do not have or do not utilize real second instances and the same person that issues the decision in the first administrative instance issues the second instance one as well.

a. Plaintiffs in the Administrative Conflict

“Standing” in administrative conflicts in Kosovo is quite broad, in light of the fact that “indirect” injury is permitted to give standing and that NGOs can also have standing to protect the public interest. This allows legal aid lawyers and legal aid NGOs ample possibilities to extensively participate in public interest and similar litigation to represent the interests of large groups of clients. For example, plaintiffs in administrative conflicts can include, according to Article 18 of the LAC:

- a. A natural person, legal entity, Ombudsperson, other associations, and organizations acting to protect the public interest may be the plaintiff if they believe an administrative act violated their direct or indirect interest according to the law;

According to Article 19, when a natural person, who is a member of a non-governmental organization, which according to its rules is obliged to protect certain rights and interests of its members:

- a. The organization can submit the indictment and develop an administrative conflict against an administrative act on behalf of its member if the member's rights or interests have been violated by the act and the member approves; and
- b. The organization can enter an ongoing conflict in favor of its member and undertake all actions and use all available legal remedies if it doesn't contradict the declarations and actions of the party.

b. Accused Parties in Administrative Conflicts (Art. 20)

The accused party to an administrative conflict is the body whose act has been contested or the body that does not issue the act upon the request of the party or its claim within the legal term and does not send it to the party (i.e., in administrative silence situations).

c. Other Parties in the Administrative Conflict (Art. 21)

Other parties in administrative conflicts could be persons who would suffer direct or indirect damages from the annulment of the contested administrative act has the position of a party in the administrative conflict.

The above sections are important for the legal aid practitioner because they allow/convey the following:

- Understanding who can be a plaintiff, accused party, or other parties in an administrative conflict allows legal professionals to identify and advise potential clients correctly;
- FLAA legal officers/paralegals can use this information to draft appropriate legal documents, including pleadings and briefs, to ensure that the right parties are involved in the administrative conflict case;
- Lawyers can use this information to assess the strength of a client's case, develop legal strategies, and present compelling arguments in court or during negotiations;
- Recognizing the role of non-governmental organizations (NGOs) in administrative conflicts helps legal professionals collaborate effectively with these organizations and more effectively represent their clients' interests; and
- Familiarity with the different parties in an administrative conflict assists legal professionals in understanding the dynamics of the conflict, anticipating potential counterarguments, and developing appropriate responses.

It should be noted that the fact that the ACL allows plaintiffs that suffer only “indirect” injuries to be involved in administrative conflicts facilitates the carrying out of strategic or public interest litigation on behalf of larger classes of injured persons.

d. Indictment and Execution of an Administrative Act during the Procedure

The following rules set forth in Article 22 determine the effect of the filing of an administrative conflict in court on the administrative procedure in the administrative agency:

- a. An indictment filed in court does not automatically stop an administrative act execution unless law states otherwise;
- b. Plaintiff can request postponement under specific conditions, namely that the execution would “damage” the plaintiff, would not “in contradiction of public interest” (which is not defined in the ACL); or “postponing would not bring any huge damage to the contested party, respectively the interested person” (which is also not defined by the ACL);

- c. Plaintiff must provide proof of submitted indictment with his/her request for postponement;
- d. The competent body (i.e. the administrative agency) must decide on the postponement request within three days;
- e. Execution may be postponed for other “reasonable” grounds (which gives the legal aid practitioner some flexibility in making his or her request for postponement);
- f. Plaintiff can also request court to postpone execution (on the same grounds set forth in section b above); and
- g. The Court should decide on the postponement within three days.

With regard to these key sections of the ACL, legal aid practitioners should note that it is important to:

- Advise clients on potential impacts of execution during the court procedure and what is likely to happen to their administrative case during the pendency of the court proceeding;
- Draft legal documents for postponement requests that are fully substantiated with required proof of “damage” to the plaintiff, not being “in contradiction of public interest” and not a “huge” burden to the opposing party;
- Strategize arguments for or against execution postponement;
- Manage client expectations with decision-making timelines; and
- Protect clients' interests and navigate procedural complexities.

Another frequently used term for a postponement order by the court is a temporary restraining order or TRO. Given that administrative decisions, such as to cut off pension benefits, often are “life and death” situations, particularly for marginalized populations, legal aid practitioners should seek TROs or postponement orders when possible and/or create conditions that would procedurally permit a Basic Court judge to actually “postpone” the cutting off or reduction of public benefits.

Strategically and practically speaking, it is rather unlikely that the same administrative body that made the challenged decision is going to be willing to postpone it. As such, it may be more likely that the court will be the most advantageous venue for making the postponement request, although this may vary from one administrative agency to another. Another strategy, given that the standards for postponement are the same for the competent

body and the court, would be to make the requests to both the competent body as well as to the court.

There are several ways that the legal aid practitioner can provide evidence of damage to the plaintiff as a result of failing to “postpone” the execution of the administrative decision. For example, in a disability pension case where the plaintiff is at risk of losing his or her benefits, practitioners could provide evidence from the plaintiff’s doctor (i.e., in a letter) that if the benefits are cut plaintiff would not be able to work or to take care of him or herself and as such his or health would be in danger. It should be noted that much of the evidence presented at this stage, could also be used as substantive evidence in proving the underlying administrative claim.

The legal aid practitioner will often get cases after the “administrative act” has already been executed, in which case there will effectively nothing to actually “postpone” by the court. For example, clients will frequently only come to see a legal aid lawyer after their benefits (i.e., disability or other pensions) have been reduced or suspended. To avoid this, the legal aid practitioner, to the best of his or her ability, should keep an on-going list of all clients with pensions that need to be renewed or recertified and the required time period of renewal or recertification (which, according to the Law on Pensions is at 1, 3, or 5 year intervals for disability pensions, for example). Approximately three months before the expiration date of the pension, the legal aid practitioner should send a letter to the administrative agency (i.e. the Ministry of Finance, Labor, and Transfers or MFLT) requesting re-certification as well as asking for a continuation of the benefits until such recertification process is completed. If the MFLT does not respond within a particular time period days, the request will consider to have been granted by administrative silence (which can then be used as a grounds to ask for postponement before the court if benefits are cut off before the recertification process can be completed).

e. Competence and Legal Redress (Art. 23)

Article 23 provides that the competent court for administrative matters in the first instance (i.e. the Administrative Department of the Basic Court in Pristina) decides on indictments against administrative acts of all bodies, unless other legal provisions state otherwise. It also provides that complaints against decisions on administrative conflicts can be submitted to the competent court for administrative matters of the second instance.

This provision helps the legal aid practitioner:

- Identify the appropriate courts for handling indictments against administrative acts and submitting complaints against decisions on administrative conflicts;
- Advise clients on the proper legal channels for pursuing redress in administrative matters;

- Draft legal documents, such as indictments and complaints, to be submitted to the relevant courts;
- Develop legal strategies and arguments for presenting cases before the appropriate courts; and
- Understand the hierarchy of courts in administrative matters to ensure clients' cases are handled correctly and efficiently;

f. Extraordinary Review for Material Right or Violation of Procedure Provisions

Articles 24 and 25 provide that parties may submit a request for extraordinary review of a legal decision to the Supreme Court of Kosovo against the final decision of the competent court for administrative matters of the second instance. These requests can be submitted only in cases of violations of “material rights” (which are not defined) or the violation of procedural provisions that may influence the issue's resolution. The Supreme Court of Kosovo decides on requests for extraordinary review.

As a part of this process, the Public Prosecutor may submit a request for protection of lawfulness to the Supreme Court of Kosovo against the final decision if the questioned decision violates the law, other provisions, or general acts of the country. Having the Public Prosecutor request protection of lawfulness can be a powerful factor in support of the plaintiff in an administrative conflict and should be advocated for by the legal aid practitioner if warranted by the facts of a particular case (i.e., if important constitutional or other rights are being or may be violated). Some important rights that the legal aid practitioner will want to think about, include the following: right to be heard, right to life, right to notice, and/or right to due process prior to taking property, among others. Only the Supreme Court of Kosovo decides on requests for lawfulness protection against the decision of the court.

These provisions allow the legal aid practitioner to:

- Understand the grounds for requesting an extraordinary review and submitting requests for “protection of lawfulness” (through the Public Prosecutor) to advise clients on available legal remedies in administrative law cases;
- Draft requests for extraordinary review or protection of lawfulness to be submitted to the Public Prosecutor and/or the Supreme Court of Kosovo, ensuring the necessary grounds are met;

- Develop legal strategies and arguments for presenting requests for extraordinary review or protection of lawfulness to the Public Prosecutor or before the Supreme Court of Kosovo;
- Advise clients on the potential outcomes and timelines associated with pursuing extraordinary reviews or petitions for protection of lawfulness; and
- Stay updated on the Supreme Court of Kosovo's decisions to understand how they may impact clients' cases and future legal strategies.

g. Administrative Conflict Procedure Based on an Indictment

In general, the administrative conflict begins with an indictment (Article 26). The indictment is required when the plaintiff is requesting the annulment or voiding of the contested administrative act, issuance of a new administrative act, or the return of things taken or removed and the provision of adequate compensation of the execution of the contested administrative act. A template for a typical indictment under Article 26 is attached hereto.

h. Submission of the Indictment to the Court

Article 27 provides that the indictment must be submitted to the court within 30 days from the delivery to the plaintiff of the final administrative act. Time limits vary for authorized bodies and undelivered administrative acts (i.e., 60 days for undelivered acts). The indictment can be delivered directly to the court, sent by recorded (certified) mail, or be done during a court hearing. Specific rules apply if the indictment is submitted to a non-competent body (including filing by honest mistake, even if non-timely, in that non-competent body).

Article 30 provides that the indictment must contain certain information and attachments, including:

- The name of the court where the indictment is submitted;
- The name, surname, and residence of the claimant/plaintiff; and
- The administrative act against which the indictment was addressed, and in which direction and volume in which the annulment of administrative act has been proposed. The original or a copy of the contested act must be attached to the indictment and be delivered to the indicted body and any other interested person, if any.

The above provisions are important for the legal aid practitioner because they facilitate:

- A full understanding the requirements for initiating an administrative conflict and drafting an indictment;
- Advising clients on the appropriate time limits and methods for submitting an indictment; and
- Ensuring that indictments contain all the necessary information and relevant attachments.

i. Waiver of the Indictment

Article 31 provides that a claimant or plaintiff may waive the indictment before a decision is made by the court, leading to suspension of the proceeding. This should be done in writing. The claimant/plaintiff may extend the request indictment until the review is completed or until the competent court issues a decision.

j. Preliminary Questions:

Some administrative conflicts may depend upon the decision (i.e. the legal validity of a procedure, etc.) or action of another competent body. If so, this is called a “preliminary question.” A court hearing a conflict that depends on a preliminary question, it may actually decide such a preliminary question itself, unless the law provides otherwise. Similarly, the court may also terminate the administrative conflict procedure until a decision on the preliminary question is issued by the other competent body. The court's decision on the preliminary question has legal effect only in the particular administrative conflict where the matter was resolved.

The legal aid practitioner may argue in favor of the court actually deciding the preliminary question, if he or she, after researching the issue, believes that the court hearing the administrative conflict is more likely to issue a favorable determination of the preliminary question. Note that the determination of the preliminary question will only have effect in the case at hand and not in other cases that depend upon the preliminary question. Legal aid practitioners can, however, use the favorable determination of a preliminary question in one case as a positive factor in requesting a court in a similar matter to decide the preliminary question similarly as a question of precedence.

This section is important as it helps the legal aid practitioner:

- Identify and address preliminary questions that may arise in administrative conflicts;

- Advise clients on the potential impact of preliminary questions on their cases and the possible outcomes;
- Develop legal strategies to address preliminary questions in the context of the overall administrative conflict;
- Understand the limited scope of the court's decision on preliminary questions to manage clients' expectations; and
- Monitor the progress of relevant preliminary questions decided by other courts or bodies to stay updated on potential implications for ongoing or future cases.

FLAA or other legal aid practitioners should closely monitor and disseminate to other practitioners basic court and other decisions involving the resolution of preliminary questions, as these can be positive factors (i.e. but without binding legal effect) in similarly situated cases.

k. Correction of the Indictment

Article 33 provides that if the indictment is incomplete, unclear, or has inaccuracies, the president of the jury will invite the claimant/plaintiff to correct the inaccuracies within eight (8) days. Instructions for correcting the inaccuracies and the consequences of not acting according to the court's request must be provided to the claimant by the court.

If the claimant fails to correct the inaccuracies within the deadline and this makes the proceeding “impossible” to continue, the court may dismiss the indictment if it does not deem that the contested administrative act invalid.

This article is important for the legal aid practitioner because it facilitates/helps:

- Ensure that indictments are complete, clear, and accurate to avoid delays or dismissal of the case;
- To assist clients in understanding and responding to the court's instructions for correcting inaccuracies in indictments;
- Clients to make necessary corrections within the specified timeline to avoid negative consequences or dismissal of the indictment;
- To advise clients on the potential outcomes if they fail to correct inaccuracies, such as disallowance of the indictment or invalidation of the contested administrative act; and

- To develop contingency plans and strategies in the event that the court disallows the indictment or declares the contested administrative act invalid.

l. Disapproving the Indictment

Article 34 provides that the court may “disapprove” (fail to accept) an indictment if:

- It is “untimely” or it is “premature;”
- If it decides that the act contested by the indictment is “not an administrative act;”
- If it is “clear” that the administrative act doesn't affect the “rights” or “direct interests” of the claimant based on the law (although the legal aid practitioner should note the Article 34 provides that claimants can have “indirect” harm from the administrative act and still have standing to be in the lawsuit);
- If a claim hasn't been filed or if it was filed late;
- If the issue isn't allowed in an administrative conflict under the law; or
- If a firm decision already exists on the same issue.

The court can disapprove the indictment at any phase of the proceeding for any one or more of the above stated reasons.

This article is important because it informs legal aid practitioners:

- How to submit indictments on time and ensure that they involve “administrative acts;”
- To carefully make sure and clearly plead that the contested act directly affects client's rights and interests;
- To be aware of legal provisions and other existing decisions that may affect the outcome of the indictment; and
- To prepare for the possibility of an indictment being disapproved at any phase.

m. Annulment of the Administrative Act without Sending the Indictment for Reply

If the court doesn't dismiss or disapprove the indictment based on Article 33 (paragraph 2) or Article 34 but finds that the contested administrative act contains essential inaccuracies that “interfere with the appraisal of the legality of the act,” the court can annul the administrative act with a judgment and without sending the indictment for reply to the competent authority (Article 35).

This article is critically important to the legal aid practitioner as it provides the court with the power to quickly and resolutely annul the administrative act based on “essential inaccuracies” of the same and based solely on the language and evidence set forth in the indictment itself. This is also a manner for the legal aid practitioner to avoid what is referred to above as the “ping-pong” effect whereby the claimant is bounced back from one agency or institution to another without any solution, resulting in very lengthy delays.

As such, the legal aid practitioner should:

- Be aware that the court can annul an administrative act without requiring a reply if “essential inaccuracies” are present in the contested act;
- Thoroughly analyze administrative acts to identify such inaccuracies, as they may provide grounds for a rapid annulment of the administrative act;
- Prepare very well-founded indictments alleging and documenting with evidence any “essential inaccuracies” that may have affected the issuance of the administrative act and make the argument in the indictment itself that the court can and should annul the administrative act without even sending the indictment for reply; and
- Advise clients on the possibility of “annulment” without reply and prepare accordingly.

n. Emergent Administrative Act

Article 36 provides that if the relevant administrative body issues a new act during the judicial proceeding that revokes or abrogates the contested act or later issues an administrative act, it must notify both the court and the claimant/plaintiff. The court, after asking for the plaintiff’s response (i.e., whether he or she is satisfied, does not abdicate from claim, partially abdicates from the claim, or extends the claim to another act) within 15 days, may cancel the proceeding or may continue it (based on plaintiff’s response). If the claimant is satisfied with the new act, the proceeding will be dismissed. If the claimant “is not satisfied” with the new act, the proceeding “will” be continued.

Based on this article, the legal aid practitioner should:

- Monitor the issuance of new administrative acts during proceedings that may impact the contested act;

- Advise clients on the implications of any new act and help them decide whether to declare their satisfaction, maintain the claim, partially abdicate the claim, or extend the claim to another act;
- Keep track of deadlines and ensure clients respond within the required 15-day period; and
- Be prepared to adjust strategies based on the plaintiff's response and the court's decision to cancel or continue the proceeding.

o. Reply by the Indicted Party

Article 37 provides that if the court does not disallow the indictment or annul the administrative act at the initial stage of the proceeding, it will send a copy of the indictment with attachments to the indicted party and any other interested parties. The indicted party has 30 days to reply to the indictment. The indicted party must send all case documents to the court within the deadline. If they fail to do so, the court may decide on the issue even without the documents from the indicted party.

Based on this article, the legal aid practitioner should:

- Ensure or confirm that the indicted party has received a copy of the indictment and the attachments thereto (so the indicted party cannot make the argument that it was not served, which could lead to delays);
- Move the court to decide the case on the merits after 30-days if the indicted party does not reply with documents; and
- Include as many relevant documents as possible in the indictment to make sure the court has sufficient grounds to rule without receiving a reply or relevant documents from the indicted party (so as to try to avoid a remand, which greatly extends the time to resolve the administrative conflict on behalf of the claimant/plaintiff).

p. Nature of the Sessions

According to Article 38, the court usually decides administrative conflicts in an open session or hearing. The court should decide the conflict based on the factual situation through verbal review and analysis of facts. Closed sessions may occur in cases involving sensitive information or privacy concerns, namely if the matter deals with the “private life of parties, state secrets, professional secrets, commercial secrets or adaptation.” Parties, experts, and interpreters may of course be present in a closed session if needed. The court may decide the issue without a hearing or verbal review if there are sufficient facts and the

parties provide written consent. The court decides on exclusion of the public from sessions with a procedural decision that is communicated to the parties.

This article is critically important for legal aid practitioners as it allows them to:

- Prepare clients for open sessions or hearings, while understanding that closed sessions may occur in specific circumstances;
- Assist in gathering and presenting factual information for the court's verbal review and analysis;
- Be prepared for closed sessions and ensure necessary experts and interpreters are present;
- Understand the conditions under which a court may decide the issue without verbal review and obtain written consent from parties if needed; and
- Be aware of the court's procedural decision on excluding the public from sessions and inform clients accordingly.

q. Review and its Procedure:

Articles 39 to 40 set forth the procedure for hearings on administrative conflicts. The supervising judge sets the review date and invites the plaintiff, the indicted party, and any other interested parties. The review or hearing may only be postponed for legitimate reasons, on which the jury will decide. The judge involved in the case leads the review and signs the minutes. The absence of a party does not cancel the court's work; submissions are still read into the record of the proceeding and it cannot be concluded by the court that absent parties have abandoned their claims or defenses. As such, the court can review the conflict even if both claimant and indicted party are absent. During the review, the reporting judge presents the “state and essence” of the conflict without personal opinion, followed by claimant, indicted party, and interested persons presenting their questions to the witnesses and their justifications.

This article of the ACL has a lot of consequences for the legal aid practitioner and it is important that the legal aid practitioner:

- Be prepared for the supervising judge to set the review date and ensure clients are informed and ready to attend;
- Understand that postponements of hearings/reviews will only be granted for legitimate reasons and inform clients accordingly;

- Prepare clients for the review/hearing process, including the judge's role and the importance of attendance. This also includes going over possible questions that the judge may ask the client during the hearing;
- Advise clients that their absence does not cancel the court's work and their submissions will still be considered, but that they are strongly, strongly encouraged to attend and if they do not, their case may be jeopardized; and
- Assist clients in presenting their interventions and justifications during the review/hearing, following the reporting judge's presentation.

Based on interviews with administrative law practitioners as well as administrative judges in the Pristina Basic Court, most “hearings” actually occur without either of the parties (i.e., neither the plaintiff nor the indicted party) being present in court. The judges do and will resolve the case, even if one or both of the parties are not present in court. As a general matter and as a good practice, the legal aid practitioner should always expressly ask for (in the indictment) and be present for the hearing of the administrative conflict. This allows for a much more individualized case determination and for the judge to hear and talk to the plaintiff. In light of the fact that the indicted parties do not show up for the hearings and that the court will proceed without them, it is even more critical that the legal aid practitioner be present.

r. Establishment of the Facts

According to Article 43, the court decides on administrative conflict based on facts from the administrative proceeding. If the court concludes that the administrative conflict cannot be reviewed based on the facts ascertained in the administrative proceedings as there are contradictions, inaccuracies, or procedural rules that were not followed, the court will annul the contested act and order the competent body to issue a new administrative act. If remanded, the competent body is obliged to act in the manner determined by the adjudication of the court and issue a new administrative act. If annulment and remand of the proceedings would cause “irreparable harm” to the plaintiff/claimant, or if the “factual state is clearly different from the administrative proceeding,” the court can ascertain the factual state itself (i.e., hear the case “on the merits”) or through another body and issue a decision based on the new certified factual situation.

This article is very important for the legal aid practitioner, as it sets forth the powers of the court and when the court can and should remand the case for further administrative action (which is part of the “ping-pong” process) or decide the case “on the merits.” As such, the exact language of the article should be noted. In particular, cases should not be remanded to the administrative agency if this remand:

“would cause any harm to the claimant, harm that is difficult to be repaired, or in case if based in official documents or other evidences in the documents of the case it is clear that the factual state differs from the state ascertained in the administrative proceeding, or if the administrative act has been once annulled in the similar administrative conflict, whereas the competent administrative body hasn’t acted according to the adjudication, the court itself can ascertain the factual state or by another body and based on certified factual situation issues the adjudication respectively decision.”

This article helps the legal aid practitioner to:

- Understand that the court's decision is based on facts from the administrative proceeding and to be prepared to address any contradictions or inaccuracies. This, however, does not necessarily mean that the legal aid practitioner cannot supplement the record during the administrative conflict process, particularly if the client was unrepresented at the administrative level, which is often the case;
- Inform clients that the court can annul the contested act and order the competent body to issue a new administrative act if procedural rules were not followed or there were inaccuracies;
- Advise clients that the court can ascertain the factual state itself or through another body to avoid causing irreparable harm to the claimant or if the factual state differs from the administrative proceeding; and
- Prepare relevant evidence and arguments to support the client's position and assist the court in ascertaining the factual state.

It should be noted that the legal aid representative, to the extent possible, should always argue that the case should be decided “on the merits” and not be remanded, as practice suggests that the administrative agencies often do not implement the judicial decision. To do this, the legal aid practitioner should argue (in the pleadings/indictment and at any hearing) that a remand would cause “irreparable harm” to the claimant (especially if the case involved needed benefits that could put the life or well-being of the claimant at risk, that the facts are “clearly different” than those set forth in the administrative process below (and show this with evidence attached to the indictment). Doing this in every case should convince more judges to rule on the merits and not remand cases, thus minimizing the ping-pong effect.

s. Analysis of the Legality of the Act

Article 44 provides that the court will review the legality of the contested administrative act within the limits of the indictment request, but that he or she is not bound by the causes expressly set forth in the indictment. The court is responsible for considering the nullity of the administrative act as part of its official duty.

This article is important for the legal aid practitioner who should:

- Be aware that the court reviews the legality of the contested administrative act within the limits of the indictment request, but that is not limited by the indictment causes;
- Prepare a comprehensive and clear indictment request to help guide the court's review of the legality of the contested administrative act, not leaving out causes or arguments to be reviewed;
- Understand that the court is responsible for considering the nullity of the administrative act and be prepared to address this issue in oral arguments and in evidence; and
- Inform clients about the court's role in reviewing the legality of the contested administrative act and considering its nullity, so they have a better understanding of the process.

t. Adjudication of the Administrative Conflict

Articles 45-48 provide that the court will then issue an adjudication, via a decision, in an administrative conflict “immediately” after the oral review/hearing is completed. In complicated cases, the judge may eliminate the verbal decision but must issue his or her decision within eight days of the end of the hearing. Consultations of the minutes of the process can be done without the presence of parties. In the adjudication, the court can approve or reject the indictment. If the indictment is approved, the court shall annul the contested administrative act.

The court can decide on the merits of the administrative issue in certain circumstances. When the court concludes that the contested administrative act is to be annulled, it may, if the nature of the issue allows or if the data and facts administered during the proceeding give a secure base for doing so, decide through adjudication on the administrative issue itself without any remand. Such adjudication wholly replaces the annulled act.

The court shall decide on any request of the claimant for the administrative agency to return any taken property and may decide on any claim for compensation for damages caused. On the contrary, the judge may also instruct the claimant to pursue a contentious procedure if

necessary. The adjudication or decision should include important details about the case and parties involved. Legal copies of the adjudication or decision must be provided to the parties.

When the indictment has been submitted based on Article 29 of the ACL, whilst the court concludes it is reasonable, the court shall approve the indictment through adjudication and shall appoint the competent body to issue an appropriate decision.

The decision must adjudication, respectively the decision, shall include:

- The name of the court;
- The name and surname of the judge that is involved, the minutes-holder, parties and their representatives,
- A summary of the conflict, the object and the date the decision is issued and announced; and
- The provision, justification, and any instructions to claimant, if allowed.

The adjudication, respectively decision, shall be signed by the judge that is involved in the case and the minutes-holder.

This article allows the legal aid practitioner to:

- Understand the adjudication and decision-making process in administrative conflicts;
- Prepare clients for the possible outcomes of the court's adjudication or decision;
- Be aware that the court may instruct claimants to pursue contentious procedures in certain cases;
- Familiarize him or herself with the specific details that must be included in an adjudication or decision to ensure compliance;
- Inform clients about the consultation process and its implications on their case; and
- Help clients comprehend the importance of an adjudication or decision and its potential consequences.

u. Appeals

Article 48 provides that an appeal against a court decision in an administrative conflict can be submitted to the competent court, following the procedure outlined in Article 28.

The appeal must be submitted within 15 days from the date of receipt of the court decision. Other issues related to the appeal must follow the provisions of the ACL. Requests for exceptional re-review and legality protection must be submitted according to Article 28, and the court will decide on such requests accordingly.

This article allows the legal aid practitioner to:

- Be aware of the appeal process and time limits for submitting appeals;
- Guide clients through the appeal process and ensure they understand the procedures and deadlines;
- Help clients prepare and submit appeals within the required time frame;
- Familiarize themselves with provisions related to exceptional re-review and legality protection requests; and
- Assist clients in submitting requests for exceptional re-review or legality protection when necessary.

v. Extraordinary Review

Articles 50-54 detail the rules regarding extraordinary reviews. They provide that a request for an “extraordinary review” of a court decision must be submitted within 30 days of receiving the decision. A request for legal defense to this review must be submitted within 90 days of receiving the decision. Requests must include the name of the court decision, reasons, and scope of the review or legal defense. If a request is incomplete or unclear, the court will act according to Article 33. Impermissible or late requests will be overruled by the court. A response to a request for extraordinary review must be submitted within 15 days by the contesting party. Courts will decide on requests for extraordinary review in closed, non-public sessions, reviewing only within the limits of the language of the request. The court will either refuse or approve the request by judgment.

If a request is approved, the court may annul or change the decision. If the decision is annulled, the case is returned to the original court, which must follow the instructions of the reviewing court.

These articles guide the legal aid practitioner so that he or she can:

- Understand the extraordinary review process and deadlines for submitting requests;

- Guide clients through the process, ensuring they understand the requirements and time limits;
- Assist clients in preparing and submitting requests for extraordinary review or legal defense;
- Be aware of the closed session nature of the review process and the limited scope of the review;
- Prepare clients for possible outcomes, including refusal, approval, annulment, or changes to the decision; and
- If a decision is annulled, guide clients through the next steps in the returned case, adhering to the reviewing court's instructions.

w. Reviewing of the Decision:

Grounds for requesting a review or appeal of a decision regarding the administrative conflict (Article 55): A decision can be “reviewed” if new facts or evidence are discovered, if the decision is a result of fraud or a criminal act, if it is based on a previously annulled decision, if the decision relies on falsified documents or false testimonies, if a previous decision in the same case is discovered, or if an interested person existed and was not allowed to participate in the conflict. On the grounds of new facts or evidence or previous decision, the party seeking the review was not able to raise the claims or find the evidence through no fault.

Time limits for requesting a review (Article 57): A review must be requested within 30 days of learning about the grounds for review or the delivery of the decision. Review requests cannot be submitted under any circumstance after three years from the date the decision became effective.

Submitting a request: The request should include the decision to be reviewed, legal grounds for review, evidence supporting the grounds, the time limit for submission, and the proposed modifications to the decision. The same court that issued the decision will decide on the request for review.

Court process: The court will decide on the review request in a closed session. If the review is granted, the previous decision may be wholly or partially annulled. The court will also decide on the main issues in the case.

Relevant provisions: Articles 55 to 61 of the ACL govern the review process, and other provisions in the law apply to the procedure according to the indictment and legal remedies.

With these provisions, the legal aid practitioner can:

- Identify the grounds for review, determining if any of the grounds listed in Article 55 apply to the client's case;
- Keep track of time limits and be aware of the 30-day deadline for submitting a review request, and remembering that reviews cannot be requested after three years from the original decision date; and
- Thoroughly prepare the request for review. Organize arguments, evidence, and proposed modifications for the decision, ensuring the request meets the requirements outlined in Article 59.

Article-by-Article Summary of the Law on Administrative Conflicts:

- Article 1: This law governs the competencies, court composition, and rules of procedure for determining the lawfulness of administrative acts and actions of administrative authorities.
- Article 2: The law aims to provide judicial protection for legal and natural persons and other parties whose rights and interests have been violated by decisions or actions of public administrative authorities.
- Article 3: Defines the terms "body," "administrative act," and "administrative issue" in the context of this law.
- Article 4: The competent court must decide on administrative conflicts based on the constitution and laws.
- Article 5: The court must allow parties to declare their stance on all requests, pretensions, facts, and legal issues before making a decision, except in cases provided for by law.
- Article 6: The court must decide on administrative conflicts through direct and public verbal review.
- Article 7: The court must resolve administrative conflicts quickly and efficiently, avoiding unnecessary actions, expenses, and delays.
- Article 8: The court must ensure uninformed parties and participants do not suffer infringement of their rights due to a lack of information.
- Article 9: The court decides on the lawfulness of final administrative acts regarding administrative conflicts.
- Article 10: Outlines the rights of various parties to initiate an administrative conflict.
- Article 11: The Supreme Court of the Republic of Kosovo resolves administrative conflicts based on the indictment.

- Article 12: Court decisions in administrative conflicts are mandatory.
- Article 13: Specifies when an administrative conflict can be started.
- Article 14: An administrative conflict can also be initiated when a competent body has not issued a relevant administrative act according to a request or complaint.
- Article 15: Administrative conflicts cannot be initiated in certain cases outlined in this article.
- Article 16: Lists reasons for which an administrative act can be rejected.
- Article 17: Allows for the return of taken items and compensation for damages caused to the plaintiff due to the contested act.
- Article 18: Identifies who can be a plaintiff in an administrative conflict.
- Article 19: Allows organizations to submit an indictment and develop an administrative conflict on behalf of their members in certain circumstances.
- Article 20: The accused party in an administrative conflict is the body whose act is contested or has failed to issue an act within a certain legal term.
- Article 21: Defines who can have the position of a party in an administrative conflict.
- Article 22: Addresses the execution of administrative acts, postponement of execution, and the decision-making process for such postponements.
- Article 23: This article states that the competent court for administrative matters will handle indictments against administrative acts. Appeals against decisions in administrative conflicts can be submitted to the second-instance court.
- Article 24: This article allows parties to request an extraordinary review of a legal decision by the Supreme Court of Kosovo in cases of violation of material right or procedural provisions. The Supreme Court of Kosovo will decide on the request.
- Article 25: The public prosecutor can submit a request for the protection of lawfulness to the Supreme Court of Kosovo if the law or other provisions have been violated. The Supreme Court will decide on the request.
- Article 26: Administrative conflicts begin with an indictment, which can demand the annulment or void publication of the contested act, issuance of an administrative act, or return of taken items and compensation for damages.
- Article 27: The indictment must be submitted within 30 days of delivering the final administrative act to the party. If the act has not been delivered, the indictment should be delivered within 60 days from the date of delivering the act to the party in favor of which the act was issued.
- Article 28: The indictment can be delivered directly to the court, by recorded mail, or during a hearing process in the court. If the indictment is delivered to an incompetent body, it will still be considered submitted on time if the submission to the incompetent body was due to a mistake by the submitter.
- Article 29: If the court of appeals fails to issue a decision within 30 days (or a shorter timeline), the party may initiate an administrative conflict. The same applies if the decision has not been issued by the court of first instance or the court of appeals.

- Article 30: The indictment must include details such as the name of the court, name and residence of the plaintiff, the contested administrative act, and the proposed annulment. The original or a copy of the contested act must be attached.
- Article 31: The claimant may waive the indictment before a decision has been made or extend the request until the completion of the review.
- Article 32: If the court's decision in an administrative conflict depends on a legal matter, the court may decide on the matter or postpone the procedure until a decision is made by the competent body.
- Article 33: The court may request the claimant to eliminate inaccuracies in the indictment within 8 days. If the claimant fails to do so, the court may disallow the indictment or conclude that the contested act is invalid.
- Article 34: The court can disprove the indictment at any stage of the proceeding for various reasons, such as late or premature submission, the act not being an administrative act, or the act not affecting the claimant's rights or interests.
- Article 35: If the court does not throw out the indictment and the contested act contains inaccuracies, the court may annul the act without sending the indictment for reply.
- Article 36: If the body issues another act during judicial proceedings or issues an administrative act after an administrative conflict has been raised, the court must be notified. The claimant may declare satisfaction or dissatisfaction with the new act, and the court will proceed accordingly.
- Article 37: The court sends a copy of the indictment to the indicted party and interested parties. The reply must be given within 30 days, and all relevant documents must be submitted to the court.
- Article 38: The court decides on administrative conflicts in an open session based on factual situations and analysis of facts. In certain cases, the court may decide in a closed session or without a verbal review.
- Article 39: The supervising judge determines the day of review and invites interested parties. The review may be postponed for legitimate reasons.
- Article 40: Reviews are led by the involved judge, and minutes are signed by the judge and minutes-holder.
- Article 41: The absence of a party does not cancel court proceedings, and the court can review conflicts even in the absence of both parties.
- Article 42: During the review, the reporting judge presents the state and essence of the conflict, followed by the claimant, the indicted party, and interested persons justifying their claims.
- Article 43: The court decides on the administrative conflict issue based on the facts ascertained in the administrative proceeding and may annul the contested act and issue a new administrative act if needed.
- Article 44: The court reviews the legality of the contested administrative act within the limits of the indictment request but is not obliged by the indictment causes.

- Article 45: The court issues the adjudication or decision, and consultations are conducted in the absence of parties.
- Article 46: The court decides on the administrative conflict through adjudication, approving or rejecting the indictment and annul the contested administrative act if needed.
- Article 47: The court issues the adjudication or decision immediately after the review and consultation or within eight days in complex cases.
- Article 48: The adjudication or decision includes relevant details and is signed by the judge and minutes-holder. Legal copies are given to the parties.
- Article 49: Appeal against the court decision is submitted within 15 days, and the court decides on the request for extraordinary review or legal defense.
- Article 50: Request for extraordinary review is delivered to the court within 30 days, and request for legal defense is submitted within 90 days.
- Article 51: Outlines the required contents for requests for extraordinary review and legal defense, which include the name of the court decision, reasons, and the extent of the proposed review or defense.
- Article 52: Describes the court's actions in response to a request, such as overruling impermissible requests or delivering requests to the contesting party. The court and the accused body must also provide all case documentation.
- Article 53: States that the court will decide on requests for extraordinary review or legal defense in a closed session, only reviewing the objected decision within the limits of the request.
- Article 54: Explains that the court may refuse or approve the request by judgment. If approved, the court can annul or change the decision, returning the case to the original court, which must address the issues raised by the reviewing court.
- Article 55: Lists the circumstances under which an interested party may request a review of a decision in effect, such as new facts, fraudulence, or annulment of a related judgment.
- Article 56: Specifies that reviewing decisions based on circumstances outlined in Article 55, sub-paragraphs 1.2 and 1.4, is allowed only when those circumstances have been verified by a competent court.
- Article 57: Sets the time limits for requesting a review, which is 30 days from when the party learns of the reason for the review or from when the decision was delivered.
- Article 58: States that the court that issued the decision will decide on the request for review.
- Article 59: Details the necessary contents of a request for review, including the decision or judgment, legal basis, proofs or circumstances, and the proposed changes to the decision or judgment.
- Article 60: Describes the court's actions in a closed session, such as overruling the request or delivering it to the contested party and interested persons for a response within 15 days.

- Article 61: Explains that after the response period, the court will decide on the request for review by judgment. If approved, the previous decision will be wholly or partly annulled, and only the procedural actions that do not influence the reasons for review will be repeated.
- Article 62: Specifies that the provisions of this law for the indictment and legal remedy procedures apply in the review procedure unless otherwise determined under Articles 55-61.
- Article 63: Indicates that if this law doesn't contain provisions for administrative conflict procedures, the provisions on civil procedures should be used.
- Article 64: States that in administrative conflicts, each party bears their own expenses.
- Article 65: Addresses the obligatory character of judgments. When a court annuls an act, the case is returned to its previous state before the annulled act was issued. The competent body must issue another act within 30 days, considering the court's legal point of view and remarks on the procedure.
- Article 66: States that court decisions can be executed when they become omnipotent and executable.
- Article 67: Explains that if the competent body issues an administrative act contradicting the court's aspects or remarks, the court can annul the contested act and decide on the matter by judgment. The court also informs the body that monitors the administrative body.
- Article 68: Outlines the procedure when the competent body doesn't issue a new administrative act or an act implementing the issued judgment within 30 days after annulment. The party may request the issuance of such an act from the court, and the court may issue a decision substituting the act of the competent body if necessary.
- Article 69: Allows reviewing of an administrative act if the reason for review was raised by the body that issued the administrative act, given that an administrative conflict judgment has been issued.
- Article 70: Clarifies that for indictments submitted before this law comes into force, the procedures will be implemented according to the current provisions only if this law is more favorable for the party.

Proposed Reforms to the LAC

The Law on Administrative Conflicts in Kosovo is the key legal instrument that regulates disputes between public authorities and individuals or entities affected by administrative decisions. The current law was enacted in 2015 and has been in force since then. There recently have been a series of extensive proposed reforms to the LAC, which passed a first reading by the Kosovo Assembly in 2022 but have yet to be enacted into law.

The main differences between the current version of the Law on Administrative Conflicts and the proposed reforms include:

1. **Jurisdiction:** The proposed reforms expand the jurisdiction of the administrative court, which will now have the power to review administrative decisions issued by local authorities and public enterprises. The current law only grants jurisdiction to the administrative court to review decisions issued by central government bodies.
2. **Simplified procedures:** The proposed reforms introduce simplified procedures for the resolution of minor administrative conflicts. This will enable the administrative court to resolve disputes more efficiently and cost-effectively.
3. **Mediation:** The proposed reforms introduce a mediation mechanism as an alternative dispute resolution mechanism for administrative conflicts. Parties to a dispute will have the option to seek a mediated settlement before taking the case to court.
4. **Digitalization:** The proposed reforms aim to digitalize the administrative court procedures and create a digital case management system. This will enable parties to submit documents and evidence online and access court decisions electronically.
5. **Timelines:** The proposed reforms introduce stricter timelines for the resolution of administrative conflicts. The administrative court will be required to issue a decision within six months of receiving a case, with a possible extension of two months in complex cases. The current law does not set any specific timeline for resolving disputes.
6. **Consolidation of similar cases:** Article 57 of the reformed LAC provides that judges may consolidate cases with similar facts (even dismissing some of them, if need be) and can issue a binding judgement for all these similar cases. This is close (but still not yet) to a sort of class action mechanism under Kosovo law (which does not exist in any other law). See section below on Strategic Litigation for more information.

In summary, the proposed reforms to the LAC in Kosovo aim to expand the jurisdiction of the administrative court, introduce simplified procedures, and digitalize the court process. The reforms also introduce a mediation mechanism and stricter timelines for the resolution of disputes.

Part VI: Strategic Litigation in the Administrative Law Area

As set forth in significant detail in the initial Legal Aid Practitioner's Manual, strategic litigation refers to the use of legal action to achieve social change beyond the resolution of a particular case. It involves selecting cases that have the potential to set legal precedents or have a broader impact on society.

In Kosovo, legal aid providers working in the administrative law area may engage in strategic litigation by taking on cases that have the potential to challenge government policies, practices or laws that are unconstitutional or violate human rights. This could involve cases related to discrimination, access to public services, or abuses of power by government officials.

Some potential areas of focus for strategic litigation in Kosovo include:

1. **Discrimination:** Kosovo has a complex social and political landscape that can lead to discrimination against marginalized groups. Legal aid providers could take on cases that challenge discriminatory practices in areas such as employment, education, healthcare, and housing.
2. **Access to public services:** Kosovo has a limited public service sector, and access to services such as healthcare and education can be restricted for certain groups. Legal aid providers could take on cases that challenge barriers to accessing these services, such as discriminatory policies or inadequate resources.
3. **Abuses of power:** Kosovo has a history of corruption and abuse of power by government officials. Legal aid providers could take on cases that challenge abuses of power, such as police brutality or unlawful detention.
4. **Access to pensions for marginalized populations with improved rights to be heard and to be advised of adverse decisions or actions action such pensions.** This includes the possibility of postponing the termination of pensions if adequate notice is not given and the real opportunity to be “heard” at a fair hearing or similar conference at the second administrative instance.

An interesting opportunity for legal aid practitioners in the administrative law area to undertake strategic litigation may be pursuant to the reformed Article 57 of the LAC (which has still not been approved to date, although it has passed the first reading in the Assembly of Kosovo).

This article provides that:

Reformed LAC Article 57

Procedure for adjudicating the same matters:

1. If the legality of the same act or other administrative action or the same matter of law is subject to more than ten (10) first instance proceedings, the court may, by a ruling, select one or more of those procedures as pilot proceedings and suspend the trial in other proceedings. No separate complaint may be filed against the ruling.

2. Once the decision on the proceedings or pilot procedures becomes final, the court may, having given to the parties to suspended proceedings the opportunity to express themselves and should it deem that those matters do not differ much, as matters of law and fact, from the case or pilot cases and if the facts of each case have been established, decide to adjudicate upon the suspended cases in a procedure in writing as per Article 49 of the present Law.

3. If the subject matter of the suspended cases is adjudicated according to this Law, by a panel of judges, the decision on the review in a written procedure is taken unanimously by all the judges of the panel.

4. The court may include in the adjudication of suspended cases the evidence obtained in the trial of the proceeding or pilot proceedings.

While Article 57 does not represent a true “class action” mechanism as not all members of the class would be bound by any resulting judgement unless they actually file a “related” claim, this article would give legal aid practitioners the option to file several cases that present the “same issue” and can a judgment effecting more than just the party in action in which the judgment was given. It is likely that these “consolidated” cases may have a more binding effect on other judges and could be used to influence similar cases before them. This article may also give legal aid practitioners the opportunity to bring several related cases before a number of different judges and then request that the judge constituting the most “favorable forum” for the resolution of the issue be the judge that decides the consolidated case, although it is still unsure how this article, if eventually becoming law, will be applied by the courts.

To engage in strategic litigation, legal aid providers should have a good understanding of Kosovo's legal system, including the constitution, laws, and regulations that apply to administrative law. They should also have a strong network of contacts in the legal and civil society communities to support their efforts.

Legal aid providers should also be prepared to invest significant time and resources in strategic litigation, as these cases can be complex and time-consuming. However, the potential impact of strategic litigation on social change makes it a powerful tool for legal aid providers in Kosovo.

Part VII: Oral Advocacy Skills for Use Under Both the LGAP and LAC

Excellent oral advocacy skills are critical for zealously representing the interests of legal aid clients, both at the administrative level as well as in court in administrative conflicts case. As such, some key concepts and some useful strategies to sharpen oral advocacy skills. While hearings at the administrative are few and far between (as is also the case in

fact at the administrative conflict in the court as well), legal aid practitioners should, as a regular practice ask for hearings in all cases (or insist that their clients ask for them and attend them). Not doing so would be a breach of duty to the client.

The many existing works on oral advocacy reveal some commonly repeated themes:

- Be Prepared;
- Be Focused;
- Be Clear;
- Be Candid ;
- Be Resolute;
- Have good demeanor; ad
- Get the easy things right.

BE PREPARED

We have all heard the stories about senior counsel who pick up the material for the first time the night before, and still manage to be brilliant during oral argument. True or not, this is not a good practice to adopt. The first and most important step toward effective oral advocacy is **thorough preparation**. You should know the evidence, the arguments, and the law on both sides of the case.

It is in preparation that a good legal aid practitioner should develop and refine the theme, and the theory of their case. The theory of the case (as set forth in the first volume of the Legal Aid Practitioner's Manual) should maximize the strong points and minimize or dispel the weak ones of the client's case. The theory of the case should identify for the court the patch of high moral ground that the legal aid practitioner seeks to stake out for his or her client.

Thorough preparation is not only a prerequisite to preparing an effective oral presentation, but it is also an important safety net when one is on one's feet in court. Even well-prepared, non-experienced lawyers can be nervous and ill-at-ease, and tripping over their words read from notes, still succeed in securing the attention of the Court as it becomes obvious that they are well-prepared. Judges can certainly pick out the unprepared counsel moments into that counsel, and the judicial interest-level in those submissions immediately starts to plummet. To achieve the credibility one needs with the Court, one must be well-prepared. This can not be overemphasized.

BE FOCUSED

It is often said that good lawyers should have no more than three points to make in oral arguments. In most cases, counsel should have no more than three or perhaps four main points. Why?

1. For effective oral advocacy, the legal aid practitioner distill his or her case down to only the key issues, and impress upon the Court that this has been done; and
2. If there are more than three or four points, the court will begin with the view, perhaps correctly, that counsel has not sufficiently focused on his or her case, and the Court is in for a protracted and unproductive oral argument.

We all know we should focus on only the important issues. The logic is inescapable. Otherwise, key points are diluted by being surrounded by weaker points. The impact of key points is similarly diluted. In turn, the ability of the Court to understand the argument is diminished with all the background noise.

Why, a judge might ask, does counsel not just focus on the key points and get on with it. There are at least two possible reasons:

1. Identifying those key issues can be hard; and
2. There is sometimes the tendency to think that there is a gem hidden somewhere in the rubble that the judge may seize on in your favor.

As counsel, we must abandon the faint hope exhibited by the second reason, above, and trust our own judgment. Accepting that it can be hard, force yourself to advance only the arguments that you believe, with conviction, are strongly in your favor. If you have more than a few main points, it is a signal that you may need more focus. Discuss your case with a colleague or a mentor for helpful input.

Where there is a factum, this focusing process ideally should have been done at the factum-writing stage, with the key issues clearly articulated in the factum. If, on reflection, there are too many issues in your factum, do not feel obliged to refer to all of them in your oral argument. One conventional wisdom is that one begins with the strongest point, and if all the points have merit, then one needn't be concerned about finishing with a weak one.

Remember that defining the issues can influence the outcome of the case. It is an opportunity, not a burden. Through the selection and articulation of the issues, one can set out a road map that compels the Court to follow the theory of the case, to one's desired outcome.

BE CLEAR

A common observation about the best lawyers is that they are often able to make even the most complicated case simple and easy to understand. To persuade, one must not only have a theme, and theory of your case; one must articulate it clearly.

Clear oral advocacy has many of the same hallmarks as clear written advocacy:

- Begin by telling the Court where you are going (i.e., the road map);
- Keep that road map as simple as possible (i.e., the easiest way to get there);
- Use overt structure as much as possible (i.e., describe your map); and
- Distill your argument into simple propositions that convey one's theory of the case.

The first three points deal with structure. In preparation, write out the structure of the main argument. Distill it. Then offer it up at the outset of the submissions as the roadmap for them. Tell the Court where you are on the road as one goes along it.

Use written material to convey structure. Tables of contents in factums, with the proper use of headings, will generate a good draft outline. If there is no factum, one can hand up an outline to the judge(s). Remember that even in a relatively straightforward motion, the judge would like to know what is on the agenda before the practitioner gets into it. Overt structure helps the listener (i.e., the judge) know what to do with the incoming information (i.e., the submissions). Overt structure makes one's argument more clear and therefore more persuasive.

In addition to structure, develop simple propositions that convey the theory of the case in terms that are easy to understand. This means dropping "legalese" where it is not absolutely needed. While it will often be necessary to descend into complex legal material, begin with a "sound bite" (i.e. a catchy theme) that says where one is going and why, using simple, persuasive terms. Break complex points down into sub-points, each with its own headline signaling where one is going and why.

Use the actual facts and familiar phrases. If the facts are obscure, look for a familiar analogy. Even if the Court has read the material, take the Court to the key evidence. Use the actual documents, rather than relying solely on submissions. This will help bring life to the case.

There are many different ways that documents can be used to assist in clear communications. Be creative. These tools can help simplify complex information and keep the Court from becoming overrun with detail. These tools can also be used to present complex information in a favorable way, while still being fair to the evidence.

Similarly, documents can be used to present the legal argument, even where no factum has been filed. A point form outline can be very helpful, or a simple extract from a statute on the same page as the key quote from a case. These devices help with clear communications, and in turn help persuade the Court to go down the road of the legal aid practitioner and his or her client.

BE CANDID

An advocate must display honesty and forthrightness in dealing with the court, other lawyers. In all advocacy, the advocate's credibility is his or her own calling card. Should the Court accept what the advocate says? To be effective, the answer must be yes.

It should go without saying that counsel should never overstate or misstate the evidence or the law. The benefits have been aptly stated as follows: Advocates are urged to always tell the truth: don't misstate it, don't hide it, don't shade it, don't bend it, don't distort it, just tell it. This is not only good and right, it is effective. It has been said that facts that are not frankly confronted have a habit of coming back and stabling us in the back.

Assuming that a lawyer does not set out to intentionally mislead, thorough preparation is the best insurance against misstatement. Be vigilant about accurately stating the law, and the facts as found in the record. If an error slips in, correct it.

What if you are asked a question by the judge, and do not know the answer? If the question relates to a central issue, this should not occur, given thorough preparation. However, unanticipated questions do often arise. Either way, tell the judge you would like to look the answer up on a break and then reply, or ask to take a moment to do so immediately if the material is on hand.

Another key element is an appreciation of the benefits of understatement. Nothing weakens trust more than overselling. Understatement works far better. Conversely, nothing instills trust more than facing up to your weaknesses.

BE COURTEOUS

Quarrelling with opposing counsel in the courtroom does not contribute to effective advocacy. At best, it distracts the court from one's argument. Nor do discourteous remarks contribute to effective advocacy. On the contrary, counsel who are candid and courteous will develop the credibility needed for effective oral advocacy.

BE RESOLUTE

An effective advocate must have confidence in his or her position. Even in difficult weather, the effective advocate remains resolute, with the conviction that there is a good argument to be made notwithstanding the direction the wind appears to be blowing. Careful preparation and focus go a long way to accomplishing the task of standing firm when the Court is plainly against you.

HAVE GOOD DEMEANOR

Body language can be important. Certainly, good counsel show their confidence in their submissions through their demeanor. An appropriate stance, tone and pace can convey that confidence, and assist in persuading the court. The contrary is also true.

Regarding demeanor, different lawyers have different styles, many of which are effective. However, advocacy skills training courses assist in improving in-court demeanor, since these courses give you the opportunity to view your performance on videotape with the benefit of a critique, and an opportunity to practice and refine your skills. For all counsel, even those who do get to court regularly, these courses can be an invaluable way to improve oral advocacy skills.

GET THE EASY THINGS RIGHT:

A legal aid practitioner may have prepared the best oral submissions possible, and still find the court distracted. Why? Because, often, some of the more mundane matters have not been properly attended to. Get the easy things right, including at least the following things:

- Make sure all the written material actually conforms with the relevant rules (including the relevant forms and practice directions);
- Pay attention to the required formatting, including the required font size, margins, etc.;
- Make sure that photocopies of cases are actually legible;
- Ensure that all materials are filed with the Court;
- Make a note of the name of the presiding judge or judges before you come into the courtroom, and ensure you know who is sitting where so that you can address them by name;
- Ascertain the proper manner of addressing the judge or judges, and use that manner of address;
- Be prompt;
- Have your materials organized before standing up;
- Tell the judge which court materials he or she needs to have handy at the outset of your oral submissions; and
- Ensure that there are no spelling errors, or grammatical errors, in your material.

THREE KEY, POTENTIALLY CONTROVERSIAL PROPOSITIONS

None of these propositions would be seen as controversial by judges. Some counsel, on the other hand, may be appalled by and not agree with these propositions. They will help you be a better oral advocate. They will help you win cases.

Proposition #1 - Time limits can actually be positive and contribute to better oral arguments

Courts frequently impose time limits on oral arguments and practitioners often do not even get the full time to their arguments or justifications, as judges may and often do interrupt with questions or other comments.

And as anyone who practices before an appeals court will know, one rarely gets the full allocated time to make submissions or justifications. Practitioners generally get about ten minutes to have a dialogue with the panel about the issues on their mind, during which they will be able to make some submissions.

It is often extremely difficult to meet these time limits. Yet time limits can be good. Absolutely. Time limits force counsel to focus their arguments, and anything that forces counsel to focus on only what is important is good.

Proposition #2 - Sound bites are good

Politicians have given sound bites a bad name. Sound bites are, in fact, a very useful tool in oral advocacy. They need not be an obfuscation. While there are less positive definitions available, I advance this definition of a sound bite: a short phrase or sentence that deftly captures the essence of what the speaker is trying to say.

As a legal aid practitioner in oral arguments, one should use sound bites. That is, in good oral advocacy, one should strive to find short, clear and memorable phrases or sentences that capture the essence of what one is trying to say. One can then move on in one's submissions to the more detailed articulation of the key points. One should begin with something that an educated bystander would understand. Often, it is enough to prepare a simple answer to these two questions:

1. What is the [trial][motion][appeal]about?
2. Why should one's client win?

It can be difficult to succinctly answer these questions. Preparing those short answers is a key part of the preparation of oral argument. Sound bites should be used at the beginning and then again at the end of the oral argument. They can be recurrent themes during the oral argument. They should reflect on the theory of the case. They should provide context for the overall argument, and help the court understand why one should win. If a practitioner's argument has a number of substantial points, he or she should extend the use of sound bites in order to distill each of the points into a simple proposition.

It can be difficult to find a good sound bite. Often, counsel is buried under the detail of the case, and attendant legalese, and their oral submissions are similarly buried under detail

and legalese. Here are some suggested ways of pulling oneself out of the detail, and finding good sound bites: one should ask oneself how one would describe the case:

- i. To one's colleague in the preparation room, who asked what one was doing in court that day; or
- ii. To a colleague, who was at the airport boarding a plane and needed to know the gist of the situation in two minutes; or
- iii. To one's neighbor, who asked what one was doing in court the next day.

It may seem artificial, but if one forces oneself to answer one of these questions out loud, one will be well on one's way to finding a good sound bite. In developing sound bites, it is important to remember that judges generally do not respond well to jury addresses made in motions court, or impassioned rhetoric on a straightforward breach of contract case. Memorable does not mean melodramatic. The objective is to advocate one's position in clear, simple, memorable terms. Use a simple, succinct message that sticks.

Proposition #3 - Judicial questioning (sometimes called interruptions) is good

The complaint is sometimes made by legal aid practitioners that the presiding judge did not even "let" counsel make their submissions or justifications during oral argument. So frequent were the interruptions from the bench that counsel could not get through their prepared notes. The judge peppered counsel with questions, including questions that may seem to have nothing to do with the key issues in the case. Et cetera.

Notwithstanding these inconveniences, judicial questioning can be good. Bring it on. The more the better. Why?

Because one can learn what is troubling the judge. That information is as good as gold. That information is not available in any other way unless one is able to read minds. Those judicial questions provide the legal aid practitioner to know what the judge or judges are thinking and the issues they have. If the legal aid practitioner does not address what is on the judge's mind, the judge will continue to ponder over it. If so, all the practitioner's brilliant, carefully prepared submissions will go unnoticed while the judge privately ponders that question.

Answer the question as soon as possible. If one had planned to address the point in one's submissions, one can suggest to the Court that one is about to address that question. But if the practitioner was not going to get to it very soon, he or she should either move to the point immediately, or give the Court a preview of your answer immediately. The practitioners can then continue with the submissions with more confidence that the judge is focused on these submissions rather than wondering what the practitioner's reply will be to that question. If the question is raised again, answer it immediately.

Prepare answers to key questions. Anticipate the hard questions, which usually correspond to the strong points in your opponent's case. In appeals, counsel should always have a prepared answer to the question: What do you have to say about the standard of review? or Why do you say we can interfere with the decision of the Court below?

Persuasively answer questions. Use the answers to move your argument forward. If the Court is stuck on a point, stay with that point until you are satisfied that you can move on.

Above all, listen; really listen to the judge. Stop and think about what the judge is saying before replying, and then reply to that, rather than sticking to your notes.

Part VIII: Additional Discussion regarding Evidence in Specific Types of Very Common Administrative Law Cases for Legal Aid Practitioners

1. Disability pensions

By far, the most common type of administrative law case handled by most legal aid practitioners are disability pension cases. As such, they will be addressed separately in this section of the Manual. Many of the general issues related to fair hearings and the right to be heard set forth in Part III above, apply to disability pensions as well (in particular, before the Medical Commissions that generally makes the determinations regarding disability).

When we refer to evidence involving disability pension cases, we are referring to medical evidence. The nature of injury is not as important as what evidence can be obtained to prove a disabled worker has limitations and impairments that prevent them from maintaining gainful employment, regardless of how the impairment occurred. The more medical evidence that shows a claimant has significant limitations to working past types of employment or any employment at all, the better for a disability pension case. As disability representatives we see all types of cases. Here is some insight into what sort of factors create a better disability pension case than others.

- **Age:** Specifically related to types of physical disabilities, age is a significant factor in a case. The main reason is that older individuals are not held to the same type of physical expectations as others. Claimants who have worked physically demanding jobs and are now in their mid- to late-50s are not necessarily expected to learn a new trade compared to claimants who are in their 40s, 30s or 20s;
- **Medical Records:** Medical records equals medical evidence. If someone who has applied for disability is claiming a certain condition or diagnosis that limits their ability to work they had better be seeking medical treatment for that condition. Without medical evidence basically a claimant is asking the

government to take their word that they are unable to maintain gainful employment due to disability, which will never happen; and

- **Medical Opinions:** In addition to medical records, medical opinions from a claimant's doctor are important to the success of a disability pension case. These specific opinions should not only indicate you have certain impairments, but also how these impairments specifically impact the ability to work. For a physical disability it would be things like weight restrictions, movement restriction and such. For mental health claims opinions about a claimant's inability to get along with co-workers or understand simple instructions can make a big difference.

In general terms, within these broad categories there are five types of particularly strong evidence in disability cases that legal aid practitioners should seek to include in all disability pension cases to the extent possible. These include:

- **Objective medical evidence**, including CT scan results, x-rays, MRI results, or lab test results, etc. as opposed to just a rather subjective letter from a doctor that a patient has a particularly serious disability;
- **Evidence of taking serious or strong medication** for the particular condition;
- **Evidence of surgeries for the particular condition**, given that surgeries generally indicate something more serious and is often only carried out after non-surgical efforts have been exhausted;
- **Evidence of in-patient hospital care for mental health conditions**, as this indicated for debilitating disabilities; and
- **Non-medical statements from former or current co-workers or supervisors** regarding the seriousness of medical conditions and how such conditions actually prevent the claimant from being able to perform the necessary tasks for the specific job of the claimant, using clear examples when the claimant was unable to do something. These are much stronger than letters from family members to the effect that someone is "disabled."

Tips regarding disability pension hearings:

A disability hearing, if it is allowed by the MFLT (and these currently are usually not given or are not allowed, which represents a violation of the right to be heard – see below), is not like a criminal hearing with a judge in a robe sitting in a courtroom. In most cases, the hearing will take place in a small conference room. The hearing typically lasts from 15 minutes to one hour and may include vocational experts or witnesses relevant to the case.

The questions asked will vary depending on the specifics of the case but should cover topics related to the claimant's:

Medical History

One can expect to be asked about specific symptoms associated with the allegedly disabling condition such as pain, dizziness, or headaches. The claimant should provide detailed answers that demonstrate one's specific limitations, but one shouldn't exaggerate the symptoms.

Medical Treatment

The claimant should be prepared to explain what medications are being taken for the condition, what side effects the medication has, other treatments that have been tried, and how often the claimant sees a doctor for his or her condition.

Physical Abilities

The claimant may be asked questions about how well he or she can sit, stand, bend, and lift.

Mental Abilities

The claimant may be asked questions about how easy it is for him or her to follow directions, remember new information, or concentrate on a task.

Training and Education

The hearing officer will want to know about the claimant's education and relevant on-the-job training or military service.

Work History

The claimant will be asked about the jobs he or she has had over recent years, including what the responsibilities were and what skills were required for each position.

Daily Activities

Questions about the claimant's daily activities will refer to hobbies, as well as household chores. Note what the claimant enjoyed before he or she became disabled versus what he or she is able to do presently.

Disability Pension Tips for the Claimant to Remember

It's normal to be nervous at the thought of having to testify. Here are some tips to help the claimant prepare:

- The claimant or his or her representative is allowed to request the entire case file before the hearing. Look for information that is missing or inaccurate.
- As soon as a claimant receives a Notice of Hearing (if he or she does actually receive one, which is not at all common), one should request the most recent medical records from all of his or her health care providers.
- The claimant should consider asking family members, friends, former employers, social workers, or others familiar with the condition to write statements detailing how his or her disability affects his or her employment and everyday life. These statements can be submitted to the judge in advance of any hearing date.
- At the hearing, the claimant will want to stress that he or she would rather be able to hold down a job than need to depend on disability benefits. Seeming overly eager to collect a benefit check will make the testimony appear unreliable.
- The claimant should do his or her best to remain calm and objective. He or she may feel as though the judge is questioning his or her honesty, but this is simply part of the process of determining whether he or she qualifies for benefits.
- The claimant should bring a copy of his or her most recent resume to the hearing, so he or she can refer to it for dates and employment descriptions.
- The claimant should keep a detailed diary of his or her daily activities for a few weeks before the hearing. He or she can refer to specific entries to support statements regarding any physical and mental limitations.
- A claimant does not need to wear an expensive suit or dress but should appear clean and well-groomed. Inappropriate clothing shows a lack of respect for the court's authority.

"Listings of Impairments" for Social Security and SSI Disability Claims in the United States:

A particularly useful, while in no way binding, resource for legal aid practitioners in Kosovo regarding disability pensions are the "listings" set forth in the Social Security Disability Regulations, also known as the "Blue Book" (see <https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>). The Blue Book is very voluminous and will not be reproduced in this Manual, but legal aid practitioners could refer to the Blue Book for ideas on what types of evidence can and should be produced for a whole series of medical conditions that are *per se* disabling if the criteria set forth in the Listings are met.

The Listing of Impairments describes, for each major body system, impairments considered severe enough to prevent an individual from doing any gainful activity (or in the case of children under age 18 applying for SSI, severe enough to cause marked

and severe functional limitations). Most of the listed impairments are permanent or expected to result in death, or the listing includes a specific statement of duration. For all other listings, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months. The criteria in the Listing of Impairments are applicable to evaluation of claims for disability benefits under the Social Security disability insurance program or payments under the SSI program.

The 14 main categories of “impairment” listings include:

#1. Musculoskeletal Systems

This category covers bones, muscles, tendons, nerves, and ligaments. The Listing of Impairments first notes that these disorders can be caused by “hereditary, congenital, or acquired pathologic processes.” Some things that could cause a person to be impaired include: “infectious, inflammatory, or degenerative processes, traumatic or developmental events.”

#2. Special Senses and Speech

Social Security might use this category if a claimant has had vision disorders, blindness, loss of speech, and hearing loss. Other disorders involve issues with maintaining one’s balance and tinnitus.

#3. Respiratory Disorders in the Listing of Impairments

This category covers conditions that affect one’s ability to move air in or out of one’s lungs. Some of the diseases covered include cystic fibrosis, asthma, chronic obstructive pulmonary disease, and lung transplants.

#4. Cardiovascular Systems

Cardiovascular disorders affect the heart and circulatory system, including arteries, veins, and lymph glands. This category of the Listing of Impairments covers a wide range of conditions, including chronic heart failure, myocardial ischemia, heart transplant, and aneurysms.

#5. Digestive Systems Covered by the Listing of Impairments

This system relates to the complete digestive system, including bowel diseases, malnutrition, and liver dysfunction.

#6. Genitourinary Disorders

This category primarily covers chronic kidney disease.

#7. Hematological Disorders

This section covers non-malignant disorders related to the blood, including hemolytic anemias, bone marrow failure, and leukemia.

#8. Skin Disorders Included in the Listing of Impairments

In addition to diseases of the skin, this category includes dermatitis and burns.

#9. Endocrine Disorders

This type of disorder relates to hormonal imbalances. For example, the endocrine system includes the following glands: pituitary, thyroid, parathyroid, adrenal, and pancreas.

#10. Congenital Disorders

Conditions listed in the section existed from birth (congenital). Many disorders affect multiple body systems, like non-mosaic Downs syndrome.

#11. Neurological Disorders in the Listing of Impairments

This category covers conditions related to the nervous system, including the brain and spinal cord. These conditions often limit people in both physical and mental ways.

#12. Mental Disorders

Within this category, there are 11 subcategories. However, the conditions all affect a person's mental abilities.

#13. Cancer Appears on the Listing of Impairments

Social Security also refers to cancer as "malignant neoplastic diseases." Some cancers are also evaluated under other sections of the Listing of Impairments.

#14. Immune System Disorders

These conditions relate to the body's immune system. There are three categories: 1) autoimmune disorders, 2) immune deficiency disorders, and HIV infections.

Part A of the Listing of Impairments contains medical criteria that apply to the evaluation of impairments in adults aged 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in children under age 18 if the disease processes have a similar effect on adults and younger children.

Part B of the Listing of Impairments contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; that is, when the disease process is generally found only in children or when the disease process differs in its effect on children and adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for child under age 18, part B will be used first. If the medical criteria in part B do not apply, then the medical criteria in part A will be used.

The criteria in the Listing of Impairments apply only to one step of the multi-step sequential evaluation process. At that step, the presence of an impairment that meets the criteria in the Listing of Impairments (or that is of equal severity) is usually sufficient to establish that an individual who is not working is *per se* disabled. However, the absence of a listing-level impairment does not mean the individual is not disabled. Rather, it merely requires the adjudicator to move on to the next step of the process and apply other rules in order to resolve the issue of disability.

Evidence checklists to help prove disability in specific types of conditions or diseases:

According to the World Health Organization (WHO), the most common causes of disability in Kosovo are non-communicable diseases (NCDs), which are chronic diseases that typically have a long-term and often slow progression. The most common NCDs in Kosovo are:

1. Cardiovascular diseases: including coronary artery disease, hypertension, and stroke;
2. Cancer: including lung cancer, breast cancer, and colon cancer;
3. Chronic respiratory diseases: including chronic obstructive pulmonary disease (COPD) and asthma;
4. Musculoskeletal disorders: including osteoarthritis, back pain, and rheumatoid arthritis; and
5. Mental health disorders: including depression, anxiety, and substance use disorders.

Other conditions that contribute to disability in Kosovo include diabetes, neurological disorders, and injuries caused by road accidents and violence.

It's worth noting that Kosovo has a relatively young population, with more than half of the population under the age of 30, which may affect the prevalence of certain conditions. Additionally, access to healthcare and other resources may also impact the prevalence and management of disability in Kosovo.

Evidentiary requirements to meet the Social Security disability listings in the Blue Book, described above, generally include the following. These are also very relevant and useful in the Kosovo context:

- **Objective medical evidence:** the SSA requires “objective medical evidence” such as medical imaging, laboratory test results, or other clinical findings that document the existence of the medical condition;
- **Duration:** Generally, the medical condition must have lasted or be expected to last for at least 12 months. This is not a requirement in Kosovo,

although the law generally requires re-certification after 1, 3, or 5 years depending on the disability;

- **Severity:** The medical condition must be severe enough to significantly limit the person's ability to perform basic work activities;
- **Treatment:** The person must provide evidence that they have followed prescribed treatment for the medical condition, or that they have a valid reason for not following treatment; and
- **Functional limitations:** The person must demonstrate that their medical condition results in functional limitations that prevent them from performing work activities, such as sitting, standing, walking, lifting, and carrying.

Below are checklists regarding possible evidence in proving some of the more common disabilities found in Kosovo and that more frequently come to the attention of legal aid practitioners. Legal aid practitioners can use these to help guide their plan to collect evidence to prove “disability” for the purposes of establishing the right to a pension:

a. Diabetes:

- Medical diagnosis of diabetes;
- Medical evidence of chronic complications, such as neuropathy, retinopathy, nephropathy, or cardiovascular disease;
- Blood glucose test results; and
- Medical history and treatment records, including medications, insulin use, and dietary restrictions.

b. Coronary Heart Disease:

- Documentation of clinical diagnosis by a qualified healthcare professional;
- Results of diagnostic tests, such as electrocardiogram (ECG), stress test, echocardiogram, or coronary angiography;
- Medical records showing evidence of ischemic heart disease, myocardial infarction (heart attack), or angina;
- Reports of cardiac catheterization or other invasive procedures, if applicable;
- Documentation of ongoing treatment, including medications, such as nitroglycerin or beta-blockers; and
- Description of functional limitations and restrictions due to the condition.

c. Hypertension:

- Medical records showing consistent elevated blood pressure readings;
- Documentation of repeated blood pressure measurements taken on different occasions;
- Evidence of ongoing treatment, including medications prescribed for hypertension;

- Reports of any complications related to hypertension, such as heart or kidney damage; and
- Description of the severity and impact of symptoms on daily activities.

d. Stroke:

- Documentation of clinical diagnosis of stroke by a qualified healthcare professional;
- Medical records indicating the type, location, and extent of the stroke;
- Imaging studies, such as CT scans or MRI scans, showing evidence of brain injury or infarction;
- Reports of neurological examinations and assessments;
- Documentation of any residual impairments or disabilities resulting from the stroke; and
- Description of functional limitations and restrictions due to the condition.

e. Lung Cancer, Breast Cancer, Colon Cancer:

- Pathology reports confirming the cancer diagnosis;
- Medical records documenting the stage and extent of the cancer;
- Imaging studies, such as CT scans, PET scans, or mammograms, showing tumor presence and progression;
- Surgical and treatment records, including chemotherapy, radiation therapy, or surgery;
- Reports of any complications, metastasis, or treatment side effects; and
- Description of functional limitations and restrictions due to the cancer or its treatment.

f. Chronic Obstructive Pulmonary Disease (COPD):

- Documentation of clinical diagnosis by a qualified healthcare professional;
- Results of pulmonary function tests (PFTs) demonstrating airflow limitations;
- Imaging studies, such as chest X-rays or CT scans, showing evidence of lung damage or emphysema;
- Reports of any hospitalizations or emergency room visits related to COPD exacerbations;
- Documentation of ongoing treatment, including medications like bronchodilators or corticosteroids; and
- Description of functional limitations and restrictions due to the condition.

g. Asthma:

- Medical records showing evidence of clinical diagnosis of asthma;
- Results of pulmonary function tests (spirometry) demonstrating airflow obstruction or bronchial hyperresponsiveness;
- Documentation of the frequency and severity of asthma attacks;
- Reports of emergency room visits or hospitalizations for asthma exacerbations;
- Documentation of ongoing treatment, including medications like bronchodilators or inhaled corticosteroids; and
- Description of functional limitations and restrictions due to the condition.

h. Osteoarthritis:

- Clinical documentation of osteoarthritis diagnosis by a qualified healthcare professional;
- Imaging studies, such as X-rays or MRI scans, showing joint degeneration or damage;
- Medical records documenting joint pain, stiffness, and functional limitations;
- Reports of any treatments received, such as physical therapy, medications, or joint injections; and
- Description of functional limitations and restrictions due to the condition.

i. Rheumatoid Arthritis:

- Medical records documenting the diagnosis, including results of blood tests and imaging studies;
- Reports of any joint stiffness, pain, or swelling, as well as any related complications such as osteoporosis or joint deformity;
- Documentation of treatment, including medications and any physical or occupational therapy; and
- Description of the individual's ability to perform activities of daily living, such as dressing, bathing, or using the restroom.

j. Depression and Anxiety:

- Medical records documenting the diagnosis, including results of any psychological testing;
- Reports of any hospitalizations or emergency room visits related to the condition;
- Documentation of treatment, including medications and any counseling or therapy; and
- Description of the individual's ability to perform activities of daily living, such as getting out of bed, showering, or leaving the house.

k. Substance Use Disorders:

- Medical records documenting the diagnosis, including results of any drug or alcohol testing;
- Reports of any hospitalizations or emergency room visits related to the substance use disorder or related complications such as liver damage or withdrawal;
- Documentation of treatment, including medications, detoxification, and any counseling or therapy; and
- Description of the individual's ability to perform activities of daily living, such as getting out of bed, showering, or leaving the house.

l. Other Heart Disease:

- Medical diagnosis of a cardiovascular impairment, such as coronary artery disease, heart failure, or arrhythmias;
- Medical evidence of the severity of the condition, such as diagnostic test results, hospitalization records, and treatment history; and
- Medical history and treatment records, including medications, cardiac interventions, and lifestyle modifications.

m. Visual Problems/Blindness:

- An ophthalmologist or optometrist's report of a comprehensive eye exam;
- Evidence of visual acuity, including distance, near, and intermediate vision;
- Reports of visual field tests;
- Results of electroretinography (ERG) and electrooculography (EOG) if applicable;
- Documentation of any surgical procedures performed on the eyes;
- Reports of any medications or treatments prescribed for the condition; and
- Description of the individual's ability to perform activities of daily living, such as reading, cooking, or using a computer.

n. Paraplegia/Tetraplegia:

- Medical records documenting the cause and severity of the spinal cord injury;
- Imaging studies, such as X-rays, CT scans, or MRI scans of the spinal cord;
- Documentation of muscle strength and sensation in the affected limbs;
- Reports of any surgical procedures performed on the spine;
- Reports of any medications or treatments prescribed for the condition; and
- Description of the individual's ability to perform activities of daily living, such as dressing, bathing, or using the restroom.

o. Other Pulmonary Disorders:

- Pulmonary function tests (PFTs) documenting lung capacity and function;
- Imaging studies, such as chest X-rays or CT scans;
- Arterial blood gas (ABG) tests measuring oxygen and carbon dioxide levels in the blood;
- Reports of any hospitalizations or emergency room visits for exacerbations of the condition;
- Reports of any medications or treatments prescribed for the condition; and
- Description of the individual's ability to perform activities of daily living, such as walking, climbing stairs, or carrying groceries.

p. Amputations:

- Medical records documenting the cause and extent of the amputation;
- Imaging studies, such as X-rays or CT scans of the affected limb;
- Reports of any surgical procedures performed for the amputation or any related complications;
- Documentation of any prosthetics or assistive devices used to aid mobility;
- Reports of any medications or treatments prescribed for the condition; and
- Description of the individual's ability to perform activities of daily living, such as walking, standing, or using the restroom.

q. Kidney Problems:

- Medical diagnosis of kidney impairment or chronic kidney disease (CKD);

- Medical evidence showing abnormal kidney function test results, such as blood and urine tests;
- Imaging studies, such as ultrasounds or CT scans, demonstrating structural abnormalities in the kidneys;
- Medical records documenting the severity of the kidney impairment and the impact on daily functioning; and
- Treatment records, including medications, dialysis, or kidney transplant.

2. Welfare and other public benefits:

Social Assistance Schemes are part of social protection systems that aim poverty alleviation. Social assistance benefits are designed with the purpose of providing the poor with minimum standards of living as means to escape from poverty. Different countries have implemented different provisions regarding the amount of social assistance benefits, the eligibility criteria, as well as the types of cash and in-kind benefits provided as part of social assistance schemes. These differences have been based on the conditions and instruments each country has used to target the marginalized groups.

The development of social protection schemes in Kosovo started in the beginning of 21st century with support and intervention of international organizations led by their priorities and interests. In the beginning, when UNMIK came to Kosovo in 1999 the main focus of the scheme was emergency relief; two years after the focus shifted to a social safety net where UNMIK was tasked with development of new social assistance scheme. In 2001, the MLSW and DSW established the social assistance scheme. The Law on Social Assistance Scheme in Kosovo was enacted in 2003 which regulates the monthly amount of benefits for families who fulfill the eligibility criteria. In January 2009, decentralization of current scheme occurred and the responsibility was passed to Centers for Social Work (CSWs). The Social Assistance Scheme in Kosovo is composed of three parts: last-resort income support (LRIS) scheme, war veteran benefits, and disability pensions. The LRIS component seeks to alleviate poverty.

The Government of Kosovo, largely through the MFLT, offers a wide range of social welfare payments through its Social Assistance Scheme (SAS) that provide financial and other support to needy individuals and families. To get a social welfare payment under the SAS, one must generally proactively apply for it. So, if a claimant thinks he or she may be entitled to a payment he or she should always apply unless he or she is certain they don't qualify.

The first step before applying, is to find out which payment one may be entitled to. In addition to the disability pensions referred to above, payments are available for unemployed people, for families and children, for widows, widowers and surviving civil partners, for guardians or orphans, for paraplegics and triplegics, for war victims

(basic pensions), and for older and retired people (age pensions). They are also available for those who have “contributed” to the pension systems through the Kosovo Pensions Savings Trust (KPST).

The next critical step is to gather and present the proper evidence to show that the claimant is actually eligible for the particular benefit and meets the criteria, which varies from benefit to benefit. Most of the eligibility criteria for key public benefits are set forth in the 2003 Law on Social Assistance Scheme and the Law on Pensions.

As with many other administrative issues, it is critical to do a good job at the administrative procedure stage and win the case there, rather than having to go to court, facing the possible ping-pong effect with court remands, etc. As such, the legal aid practitioner should make sure that the claimant fully prepares and documents his or her eligibility to welfare or other social assistance programs.

Part IX: Advocacy in the Administrative Law Area

The administrative law field is probably the most important area of advocacy and service provision for legal aid lawyers in Kosovo and is certainly the most important area in terms of statistics for FLAA. As such, it is important that legal aid providers, whether in NGOs or in FLAA, think about the broader rights of marginalized populations and not just provide legal information, legal representation, or advocacy in individual cases.

This can be done through annual work plans to effectively and efficiently conduct targeted advocacy on determined FLAA or legal aid NGO priorities. This will entail meeting at least annually to identify the most important issues on which its advocates will work in the coming year. The resulting work plan prioritizes the issues and advocacy efforts and identifies the goals the particular office hopes to achieve.

Such advocacy planning should follow the so-called **SMART** principles. This means that the advocacy goals must be:

- “**Specific**;”
- Have “**Measurable**” outcomes for gauging progress;
- “**Achievable**”
- Have identified advocate(s) that are “**Responsible**” for each part of the advocacy efforts;
- Have a finite “**Timetable**” for meeting the determined goals.

All advocacy undertaken by the office or unit – including impact litigation, policy advocacy, community education or outreach, or the operation of clinics – should be in accord with the general outlines of the work plan. Individual advocate professional

development plans (developed as part of the staff member's annual self-evaluation) should also be coordinated with unit, project or office priorities for the relevant period.

In the following year, a balance sheet should be drawn comparing the issues, projects and goals set forth in the previous year's work plan with the actual accomplishments during that year. This is taken into account in developing the work plan for the following year.

Advocacy should be Planned and Organized in "Projects"

Although lying within the substantive priorities adopted by the program, much of the work done in the advocacy area should not necessarily be done only on behalf of specific clients but nevertheless should address specific client needs. This non-case advocacy often leads to lasting results for the client community and causes a greater impact. To efficiently reach target objectives requires planning and organization, including creation of discrete advocacy "projects."

Any prolonged activity around related objectives should be organized as a formal "project." Using the "SMART" principles, each project should have articulated and achievable objectives, quantifiable outcome measures to indicate progress, a projected timeline for achieving the goals, and an identified advocate acting as the project's leader. Larger and longstanding projects may warrant appointment of a project coordinator who has more formal supervisory duties.

A project need not have more than one assigned advocate, or designated funding, or be projected to last for an extended period. The most important point is to be able to systematically identify and quantify the effectiveness of the advocacy work undertaken.

The key steps (which require a careful and strategic approach) that legal aid practitioners can take in each legal aid advocacy campaign or each particular advocacy project could be summarized as set forth below:

1. **Identify the issue:** The first step in legal aid advocacy is to identify the issue or problem that you want to address. This could be a specific policy, practice or law that is having a negative impact on access to justice or human rights in Kosovo. Legal aid providers should conduct research to identify the issue and gather evidence to support their advocacy efforts.
2. **Develop a strategy:** Once the issue has been identified, legal aid providers should develop a strategy for addressing it, using the SMART principles. This could involve a range of activities, such as lobbying government officials, raising public awareness through media campaigns, engaging with civil society organizations, or filing strategic litigation (see above). It could and usually involve a combination of

different activities. The strategy should be tailored to the specific issue and context in Kosovo.

3. **Build partnerships:** Legal aid providers should build partnerships with other organizations and individuals who share their advocacy goals. This could include other legal aid providers, civil society organizations, community groups, and the media. By building partnerships, legal aid providers can amplify their advocacy efforts and increase their impact.
4. **Develop a communications plan:** Effective communication is key to successful legal aid advocacy. Legal aid providers should develop a communications plan that includes messaging, target audiences, and tactics for reaching those audiences. This could involve media outreach, social media campaigns, and community engagement activities.
5. **Implement the plan:** Once the strategy, partnerships, and communications plan have been developed, legal aid providers should implement their advocacy plan. This could involve a range of activities, such as meetings with government officials, public events, media interviews, and legal actions.
6. **Monitor and evaluate:** Throughout the advocacy process, legal aid providers should monitor and evaluate their efforts to determine their impact. This could involve tracking media coverage, measuring public engagement, or assessing changes in policy or law. By monitoring and evaluating their efforts, legal aid providers can refine their strategies and improve their impact over time.

Legal aid and administrative law advocacy can be powerful tools for promoting access to justice and human rights in Kosovo as well as in the administrative law area. By following these key steps, legal aid providers can design and carry out effective advocacy campaigns that make a real difference in people's lives.



NDIHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice
Agjencia për Ndhimë Juridike Falas-Agencija za Besplatnu Pravnu Pomoc
Agency for Free Legal Aid

MINISTRY OF FINANCE, LABOR AND TRANSFERS
DEPARTMENT OF PENSIONS
Regional Office - Pristina

To: Complaints Council

From: (Name and Surname of Complainant) Str. _____ No. ____ City/Place _____, in the possession of an ID card of the Republic of Kosovo, Personal no. _____, with the assistance of an accompanying person (Name and Surname of accompanying person), within legal deadline, hereby files the following:

COMPLAINT

Against the Ministry of Finance, Labor and Transfers (hereafter MFPT) - Department of Pensions, no. XXXX, dated _____ received on date _____.

REASONING

On the date of _____ Mrs. (Name and Surname) has filed a motion prot. no. XXXX requiring recognition of her right to compensation for people with Paraplegia and Tetraplegia, first category.

Upon a review of the motion, MFPT - Department of Pensions, has on _____ rendered a decision **approving** the motion of Mrs. (Name and Surname) on recognition of the right to compensation for people with Paraplegia and Tetraplegia, but only for the second category, while the applicant has applied to the first category.

Proof: Decision no. XXXX of date _____

By rendering such a Decision, the first instance body has violated the legal provisions, namely Article 8 paragraphs 1 and 2 of Law 05/L-067, as well as Article 5, paragraphs 1.2 and 1.3, and Article 6, paragraph 1.2 of Regulation no. 07/2017 on the Recognition of the status and rights of Paraplegic and Tetraplegic persons. [...]

8. (1). Beneficiaries of this law are recognized their rights to a personal assistant, based on an examination by an evaluation committee, in order to provide care and necessary daily services, and such assistants are remunerated in the same amount as the beneficiaries of this law.

8. (2.) Beneficiaries of this law are entitled to choose their own assistant.

Pursuant to the Law on Persons with Paraplegia and Tetraplegia, Beneficiaries of this law are recognized their rights to a personal assistant, based on an examination by an evaluation committee, in order to provide care and necessary daily services, and such assistants are remunerated in the same amount as the beneficiaries of this law.

In rendering this decision, the first-instance body, namely the evaluation commission, has confirmed the situation of fact, which consists in the fact that, according to all medical reports, but also according to the real situation of fact, the applicant has been found to be a person with full and permanent consequences, complete loss of sensation of the extremities, which is in compliance with Law 05/L-067 and the Articles mentioned above, since she has been suffering from this disease for a long time and is immobile, cannot take care of her personal needs, and can clean after herself only with the assistance of an assistant - see medical reports in the case files, and those attached.

Proof: Medical reports

By this complaint, we hereby require for her sister (Name and Surname) be remunerated as a personal caregiver/assistant, to take care of necessary daily services such as clothing, medical visits, as well as accompanying her during various travels, or whatever the need arises in terms of follow-up.

Based on the items above, I hereby require from the second instance body to render any of the decisions as proposed below, upon their review of the present complaint:

DECISION

APPROVING Complaint as well-grounded.

AMENDING the Decision of the Department of Pensions Prot. no. XXXX of date ____, received on date ____, in this case, for Mrs. (Name and Surname), to be recognized her right to first category pension, and the right to a personal caregiver/assistant.

Prishtina,

For the complainant (Name and Surname)

Date:

Caregiver/assistant
(name and surname):

Phone:



**MINISTRY OF FINANCE, LABOR AND TRANSFERS
DEPARTMENT OF PENSIONS
REGIONAL OFFICE – FERIZAJ**

TO: Complaints Council

FROM: (Name and Surname of the complainant) Street: ____, no. ____, Municipality

Within the legal deadline, I hereby file the following:

COMPLAINT

Against the decision of Ministry of Finance. Labor and Transfers - Department of Pensions, no. XXXX, dated ____ received on ____, due to:

- Erroneous ascertainment of the situation of fact and
- Erroneous application of material law.

REASONING

By the Decision of the Department of Pensions, File no. XXXX, dated ____ received on date ____, on the pension of people with permanent disabilities, Mrs. (Name and Surname) was denied the right to pension, upon reviewing the complaint, and medical assessment, upon finding that she does not meet all the criteria set forth in Law 04/L-131.

Proof: Decision XXXX of date _____

The complainant is a person with permanent disabilities and multiple health conditions. In 2001, she had her uterus removed because of a cancerous pathology, while in 2017, she was diagnosed with an invasive tumor in her ovaries, she was subject to chemotherapy, and now uses therapy according to the oncologist's instructions. She also is subject to permanent bi-annual examinations.

The challenged decision came against the application and attached medical evidence, while such an institution found that the applicant did not meet the legal criteria, but the applicant's disability is permanent and full, and this can be established very easily, based on the medical reports. *(see reports in the submitted case file)*

Proof: Medical reports

The erroneous application of material law consists in the fact that, precisely because of the incorrect verification of the factual situation, the first instance body has incorrectly applied the legal provisions.

The Medical Commission ignored the provisions of Law No. 04/L-131 on state-funded pension schemes, respectively Article 9 on Conditions and criteria for recognition of the right to permanent disability pension, as well as violated basic human rights and freedoms guaranteed by the Constitution (Article 51, paragraph 2) since due to her health and physical condition, she is completely unable to work.

Also, the family has had, and continues to incur large costs related to the treatment of the disease, the conduct of medical examinations, and the supply of drugs, therefore it is very necessary for her to enjoy a pension for persons with permanent disabilities.

Therefore, upon reviewing this complaint and the medical reports, we hereby propose that you render one of the following decisions:

DECISION

APPROVING Complaint as well-grounded.

AMENDING the Decision of the Ministry of Finance, Labor and Transfers - Department of Pensions no. of file XXXX dated ____ received on ____ so that Mrs. (Name and surname), personal ID no: _____ is recognized her right to pension, as a person with permanent disability.

or

QUASHING the Decision of the Ministry of Finance, Labor and Transfers - Department of Pensions no. of file XXXX dated ____ received on ____, and remanding the case to repeated review.

Place:

Date:

**Complainant,
(Name and Surname)**

Phone no.



**MINISTRY OF FINANCE, LABOR AND TRANSFERS
DEPARTMENT OF PENSIONS
REGIONAL OFFICE – PRISHTINA**

TO: Complaints Council

FROM: (Name and Surname of the complainant) address st. ____, P. no. __ Municipality

Within the legal deadline, I hereby file the following:

COMPLAINT

Against the decision of Ministry of Finance. Labor and Transfers - Department of Pensions, no. XXXX, dated ____ received on ____, due to:

- Erroneous ascertainment of the situation of fact and
- Erroneous application of material law.

REASONING

By the Decision of the Department of Pensions no. of file XXXX dated ____ received on ____, the party (Name and Surname) was denied the right to pension for persons with permanent disabilities, upon reviewing the application, and following a medical reassessment procedure, thereby finding that she does not meet all the criteria as stipulated by Law 04/L-131.

Proof: Decision no. XXXX of date _____

The complainant has serious health problems; she is in an organic reactive state according to the specialists of Psychiatry, fractures in the lumbar vertebrae according to the specialists of Neurology, and has a constant need for physical therapy, according to the recommendations of the doctors of Orthopedics and Physiatry.

The challenged decision came against the application and attached medical evidence, while such an institution found that the applicant did not meet the legal criteria, but the applicant's disability is permanent and full, and this can be established very easily, based on the medical reports.

Proof: Medical reports

The erroneous application of the material right consists in the fact of the incorrect verification of the situation of fact, because the person *has been the beneficiary of this pension for 5 (five) years and her situation has only worsened* due to her age, therefore, the first instance body erroneously applied the legal provisions.

The Medical Commission ignored the provisions of Law No. 04/L-131 on state-funded pension schemes, respectively Article 9 on Conditions and criteria for recognition of the right to permanent disability pension, as well as violated basic human rights and freedoms guaranteed by the Constitution (Article 51, paragraph 2) since due to her health and physical condition, she is completely unable to work.

Also, the family incurs large costs related to the treatment of the disease, the conduct of medical examinations, and the supply of drugs, therefore it is very necessary for her to enjoy a pension for persons with permanent disabilities. He is also a member of the Handikos organization and his disability has been recognized by this organization.

Proof: Handikos notebook

Therefore, upon reviewing this complaint and the medical reports, we hereby propose that you render one of the following decisions:

DECISION

APPROVING Complaint as well-grounded.

AMENDING the decision of Ministry of Finance. Labor and Transfers - Department of Pensions, no. XXXX dated ____ received on ____ so that Mr. (name and surname), personal ID no. _____, is recognized his right to pension, as a person with permanent disability.

or

QUASHING the decision of Ministry of Finance. Labor and Transfers - Department of Pensions, no. XXXX dated ____ received on ____, and remanding the case to a repeated proceeding.

Place ____, Date:

Complainant,
(Name and Surname)

Telephone Number

TO THE BASIC COURT IN PRISHTINA
Department of Administrative Matters

CLAIMANT: (Name and Surname) address Street: _____, village ____, Municipality ____

RESPONDENT: Ministry of Finance, Labor and Transfers - Department of Social and Family Policies

CLAIM SUIT
for the annulment of the Decision Prot. No. XXXX, dated _____

Against the Decision of the Ministry of Finance, Labor and Transfers (hereinafter MFLT)
- Department of Social and Family Policies (hereafter DSFP) prot. no. XXXX dated
_____ received by the party on _____.

The claimant (Name and Surname) has been a beneficiary of social assistance for almost 18 years and has requested that her right to benefit from this assistance be extended, because her condition has not changed, but on _____ as a result of an assessment, her request was rejected on the grounds that she is able to work and does not meet the criteria according to the law for the Social Assistance Scheme.

Proof: Decision XXXX of date _____

Initially, the party (Name and Surname) dissatisfied with the decision of the Center for Social Work - in the Municipality of _____, no. XXXX of dt. _____ has filed a written complaint with the Second-instance Complaints Commission to extend this right, in accordance with the provisions of Article 4 of Law no. 2003/15 on Social Assistance, but the second-level body has rendered an arbitrary decision, without reviewing the merits in terms of ascertainment of the situation of fact, or evidence filed, and failed to consider that the claimant lives alone, and has no property of any kind, and is unemployed.

By the decision of the respondent Ministry, dated _____, received on _____, the claimant's complaint was rejected, because according to the medical evaluation, she was declared fit for work, though this claimant has since 2003 been suffering from health conditions related to vertebrae, and other diseases.

Proof: Decision, Prot. no. XXXX of date _____

The complainant enjoys the right to social assistance, therefore we consider that the challenged decision is senseless, because even in the social assistance card, it may follow that Mrs. (Name and Surname) had received an extension of such card, and the right to benefit from social assistance until date _____, therefore it is absurd to terminate this benefit in this manner.

Proof: Copy of social assistance card

With the extension of the card by the social assistance officer (NNS) at the CSW of the Municipality of ____, (Name and Surname) was convinced that by that date, he would benefit from social assistance, therefore building the hope that she would not be terminated until the aforementioned date.

Based on the above, it is manifestly clear that there is all valid evidence, facts and testimonies to recognize the right to use social assistance. The erroneous application of material law consists in the fact that, precisely because of the incorrect verification of the factual situation, the first instance body has incorrectly applied the legal provisions.

From all mentioned above, the decision challenged by this claim suit seriously violates the rights provided for by Law No. 2003/15 on Social Assistance, and other rights as stipulated by the Constitution of the Republic of Kosovo.

The second instance administrative body ignored all evidence and testimony, and failed to consider the facts and evidence in question, and in the decision rendered, it failed to provide any reasoning on why such evidence was not considered, and it gave a generic reasoning that the medical commission declared him fit for work and rejected the appeal.

Such flaws bring about an essential violation of the provisions of the Law on Social Assistance, due to the fact that Articles 4 and 2, item 7 of this Law provide that a family in which all members are dependent, pursuant to the stipulated definition, and no member is employed and has significant health problems, which in this case occurred with the challenged decision, must necessarily contain, among other things, a summary of the factual findings based on the evidence presented or the facts provided.

Proof: Medical reports

The claimant claims that the challenged decision of the responding Ministry was rendered on the basis of an erroneous ascertainment of the situation of fact and legal provisions in force, and pursuant to the Article 2.10 of the Law on Social Assistance, it clearly follows that this decision contains formal legal flaws, and therefore, the claimant proposes to this Court to render, upon review of the case itself and evidence attached, the following:

JUDGMENT

APPROVING the claim suit and claims of (Name and Surname), address Street: ____, village ____, Municipality of ____, as grounded.

QUASHING the Decision, Prot. no. XXXX dated ____ received by the party on ____, of the Ministry of Finance, Labor and Transfers - Department of Pensions in the Municipality of ____, as unlawful, and directing the Court **to review the merits** and consequently approve the claimant's claim for recognition of the right to social assistance, as of the date of filing of the application.

OR

QUASHING the Decision of the Ministry of Finance, Labor and Transfers - Department of Social and Family Policies prot. no. XXXX dated ____ received By the party on ____, and remanding the case to a repeated proceeding with the respondent.

All this within a period of 15 days from the date of finality of this Judgment, under the threat of forceful enforcement.

Place:

Date:

Claimant

Name and Surname

Telephone Number



NDIHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice
Agjencia për Ndhmë Juridike Falas-Agencija za Besplatnu Pravnu Pomoć
Agency for Free Legal Aid

TO THE BASIC COURT IN PRISHTINA
Department of Administrative Matters

CLAIMANT: (Name and Surname) with address Str. ____ no. __, place ____ and personal ID no. ____ as caregiver, spouse (Name and Surname of spouse)

RESPONDENT: Ministry of Finance, Labor and Transfers - Department of Pensions, Prishtina.

ADMINISTRATIVE CONFLICT

CLAIM SUIT

for the annulment of the Decision Prot. No. XXXX

Against the Decision of the Ministry of Finance, Labor and Transfers (hereafter MFLT) - Department of Pensions, no. ____ dated ____ received on ____.

The party (Name and Surname) has filed an application, protocol no. ____ for recognizing the right to compensation for People with Paraplegia and Tetraplegia, first category.

Upon review of such application, MFLT - Department of Pensions, rendered a Decision **rejecting** the application of (Name and Surname) on the recognition of the right to compensation for Persons with Paraplegia and Tetraplegia, pursuant to the Law 05/L-067, respectively the evaluation of the medical commission of date ____, according to which, they do not meet the legal criteria **for compensation of the First Group**.

Proof: Decision no. ____

As a party not satisfied with the aforementioned decision, the plaintiff has filed a complaint with the Complaints Council at the Department of Pensions in the Ministry of Finance, Labor and Transfers,

thereby requesting that the right to compensation be recognized for People with Paraplegia and Tetraplegia in the first category, thereby attaching medical reports proving that the person belongs to that category, and that he needs a personal caregiver, explaining the situation in detail.

In its review of the complaint dated _____, the MFLT PD Appeal Board did not reasonably review the documents in the complainant's file and without any research, in-depth examination, rejected the complaint with almost the same reasoning, thereby upholding the first instance body's decision, therefore, rejecting the complaint of the party (Name and Surname).

Proof: Decision no. _____ of date _____

By rendering such a Decision, the first instance body and the second instance body violated the legal provisions, namely Article 3, item 1.2, Article 7, paragraph 2, Article 8, paragraphs 1 and 2 of the Law 05/L-067, as well as the Regulation no. 07/2017, Article 5, paragraphs 1.2, 1.3 and Article 6, para 1.2 on the Recognition of the status and rights of People with Paraplegia and Tetraplegia. [....]

"... The beneficiaries of this law, based on the assessment by the evaluation committee, who continuously have permanent and full consequences, use medicaments on daily basis, have complete loss of sensitivity of extremities and in order to prevent decubital injuries receive an additional amount of fifty percent (50%) of compensation from paragraph 1 of this Article.

The beneficiaries of this law are entitled to have a personal guardian, based on the assessment by the evaluation committee, with the aim of providing the necessary care and daily services, and who shall be compensated in the same amount as the beneficiaries of this law.

8. (2). Beneficiaries of this law are entitled to choose their own assistant.

....Beneficiaries of the first group shall be people with permanent and complete consequences with incontinence, complete loss of sensation of the extremities and with the aim of preventing decubitus;

...in addition to the medical documentation, an opinion of the UCKK Consilium of the Neurology Clinic must also be attached to the application..."

The reasoning is contradictory to the Law on Persons with Paraplegia and Tetraplegia, which in its paragraph 1 of Article 8, it is explicitly provided that the Beneficiaries of this law are recognized their rights to a personal assistant, based on an examination by an evaluation committee, in order to provide care and necessary daily services, and such assistants are remunerated in the same amount as the beneficiaries of this law.

In rendering this decision, this body in question, namely the evaluation commission, erroneously ascertained the situation of fact, which consists in the fact that, according to all medical reports but also according to the real factual situation, permanent and full consequences were found in the applicant as a result of the disease, complete loss of sensation of the extremities, which is in compliance with Law 05/L-067 and the articles mentioned above. See attached medical reports.

Proof: Consilium Report and other medical reports

Therefore, it is difficult to comprehend the logical reasoning by which a person can be rejected by the PD commission of the MFPT, when he is immobile. As it seems, the DP Commission has not conducted any detailed analysis, and it had to examine his factual condition.

Based on the above, we require for his spouse (Name and Surname) be the accompanying caregiver, who will accompany him, take care of clothing, medical visits and everything else necessary, including accompanying in travels to various places.

The spouse/caregiver has already filed a motion with the Court to demand revocation of capacity to act.

As for the amount to be paid retroactively by the respondent, the Court is asked to make an assessment under its own competencies, or, in case of difficulty, appoint a financial expert.

The claimant considers that the challenged decision of the responding Ministry was also taken on the basis of an erroneous ascertainment of the situation of fact and applicable legal provisions, and in view of Article 10 of Law No. 03/L-202 on Administrative Conflicts, it is clear that this decision contains formal legal flaws, and therefore, the claimant hereby motions with the Court to review the case and the attached evidence, and render the following:

JUDGMENT

APPROVING as grounded the claim suit of the claimant (Name and Surname), address Str. ____ no. ___, place ____ and personal ID no. ____, thereby quashing the Decision no. ____, dated ____, received on ____ of the Ministry of Finance, Labor and Transfers - the Department of Pensions in Pristina as unlawful, and directing the Court **to review the merits** of the case, and approve the claimant's application for the recognition of the right to a Paraplegia and Tetraplegia pension in **the first group**, and the right to **a caregiver** from the day of filing of the application with the MFLT- PD.

DIRECTING - the defendant to pay the amount as determined by the Court, including the legal interest of 8%, as well as all the costs of the court proceedings related to this case, all within 15 days from the date of finality of this judgment, under the threat of execution by force.

Place ___,
on ____

For the Plaintiff: (Name and Surname)

Caregiver: (Name and Surname)

Telephone Number _____



NDIHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

**TO THE BASIC COURT IN PRISHTINA
Department of Administrative Matters**

CLAIMANT: (Name and Surname) address st. _____, No. __, Municipality _____

RESPONDENT: Ministry of Finance, Labor and Transfers - Department of Pensions,
Prishtina

CLAIM SUIT

FOR THE ANNULMENT OF THE DECISION NO. _____ of date: _____
received by the party on _____

Against the decision of Ministry of Finance, Labor and Transfers (hereinafter MFLT) -
Department of Pensions (PD), no. _____, dated _____ received by the party on date
_____.

The claimant has filed an application with the aforementioned body for a decision to recognize the right to pension as a person with permanent disability, since the Basic Court in Pristina - Department for Administrative Affairs has approved the claim suit as well-founded, thereby also quashing the decision no. _____ dated _____ of the Ministry of Labor and Social Welfare - Department of Pensions - MLSW/DP, and remanding the case to a repeated adjudication.

Proof: Judgment No : _____ of date: _____

Upon reviewing the application, the MFLT-PD, namely the Head of the Pension Scheme Division, pursuant to the authorization of the Director of DP, issued a Decision rejecting the complaint of Mr. (Name and Surname) for the recognition of the right to pension of persons with permanent disabilities.

Proof: Decision no. _____ of date _____

Discontented with this aforementioned decision, the claimant exercised his legal right and filed this lawsuit because the MFLT DP, acting pursuant to the Judgment of the Basic Court in Pristina A. no. _____ of dt: _____ has not reviewed thoroughly, again, the

documents in the plaintiff's file, and without any exploration, in-depth examination, it rejected it again, with almost the same reasoning, while upholding the original decision.

Therefore, the Ministry of Finance, Labor and Transfers (hereafter MFPT) - Department of Pensions, by decision no. _____, dated _____ received on date _____, rejected the complaint by Mr. (Name and Surname).

In the review of the medical commission of the MFLT, namely the DP, there was an erroneous ascertainment of the actual situation of fact with the plaintiff, thereby rejecting his right to the pension, despite his poor physical health, on the grounds that insufficient evidence was provided to assure his right to pension, or that he had failed to meet the criteria for the recognition of his rights, in accordance with Article 9 of Law 04/L-131.

Based on medical documentation, one may ascertain the plaintiff's serious health condition, since his birth, he has had anomalies in his lower extremities, which prevent him from performing all actions on his own, thus proving his incapacity for the necessary actions, and his need to benefit from the permanent disability pension. At the same time, he was a beneficiary of the pension for persons with disabilities.

Proof: Decision _____ of date _____ and Certificate no. _____ of dt. _____

The respondent erroneously ascertained the situation of fact of the plaintiff, several times in a row, making the same errors in its review, while the truth may be derived on the basis of medical reports. In the neurology clinic Consilium reports, it is clearly proven that this person has lost the ability to work, and was referred to the Medical Commission, therefore the decisions of MFLT-PD are considered absurd.

Proof: Consilium report dt. _____ and the Consilium Report of dt. _____ as well as other medical and specialist reports

The Medical Commission ignored the provisions of Law No. 04/L-131 on state-funded pension schemes, respectively Article 9 on Conditions and criteria for recognition of the right to permanent disability pension, as well as violated basic human rights and freedoms guaranteed by the Constitution (Article 51, paragraph 2) since due to her health and physical condition, she is completely unable to work.

Also, the family incurs large costs related to the treatment of the disease, the conduct of medical examinations, and continued physical therapy, therefore, it is very necessary for the claimant to enjoy a pension for persons with permanent disabilities.

The decision of MFLT - PD is flawed, due to the substantial violation of the provisions of Law No. 05/L -031 on the General Administrative Procedure. The substantial violations of these provisions consist in the fact that Article 48 of this Law stipulates that the reasoning in a written administrative act, which is the case in this challenged decision, must contain, among other things, an overview of the situation of facts, based on which the decision was rendered, as well as the reasons for rejecting any of the party's claims,

based on the evidence presented during the administrative proceeding or the facts provided by the administration, a reasoning that is obviously insufficient, unclear, contradictory or incomprehensible, is equal to its absence.

Legal Grounds:

Law no. 05/L -031 on the General Administrative Procedure, specifically Article 47 para 1, and Article 48.

Law no. 04/L-131 on Pension Schemes Financed by the State, specifically Article 9.

Law 03/L-202 on Administrative Conflicts, Articles 5, 6, 26, 38, 41, 43, 46, 65 and Article 67.

Based on the above, and **within the meaning of Articles 26 and 67 of the Law on Administrative Conflicts**, the claimant hereby proposes to the Basic Court in Pristina - Department for Administrative Affairs - to administer all evidence, and upon holding a main hearing, render the following:

JUDGMENT

APPROVING the claim suit and claims of (Name and Surname), address Street _____, no. _____, Municipality of _____, as grounded.

ANNULLING Decision no. _____ dated _____ received by the party on _____, of the Ministry of Finance, Labor and Transfers - Department of Pensions in Pristina, as unlawful, and directing the Court to **review the merits**, and further approve the plaintiff's application for recognition of the right as a beneficiary of permanent disability pension, from the date of his application, and to retroactively compensate such pension, including the legal interest rate of 8%. These funds shall be transferred to the claimant's bank account (Account No. _____) in the Bank (Bank Name).

ORDERING the respondent to pay the costs of the court proceedings.

All this within a period of 15 days from the date of finality of this Judgment, under the threat of forceful enforcement.

Place

Date:

Claimant

Name and Surname

Telephone Number



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

STATEMENT

I (First name, father's name and Surname) born on dt. _____, in _____ with permanent residence at Str. _____ no. _____, village _____ Municipality _____ with personal ID no. _____ issued by the Ministry of Internal Affairs, in my full moral and criminal liability hereby make this:

STATEMENT

That (Name and Surname) born on _____ residing in Str. _____, no. _____, village _____, Municipality _____ personal identification number _____, issued by the Ministry of Internal Affairs of the Republic of Kosovo, suffers from a condition of complete loss of sensation of the extremities (paraplegia and tetraplegia category), is unable to take care of himself, and therefore, is under my care and observation.

This statement is made to provide the Department of Pensions with evidence to regulate the matter of the pension for People with Paraplegia and Tetraplegia, pursuant to Law no. 05/L-067.

Place

Declarant: _____,

Date: _____



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice
Agjencia për Ndihmë Juridike Falas-Agencija za Besplatnu Pravnu Pomoc
Agency for Free Legal Aid

To the Ministry of Environment, Spatial Planning and Infrastructure

To: Department of Spatial Planning, Construction and Housing

From: (Name and Surname) with address Str. _____, No: __, Municipality _____

COMPLAINT

Against the municipal decision announcing beneficiary families of municipal housing

The complainant Ms. (Name and Surname) with the address Str. _____ has applied with the municipality of _____ for an housing accomodation, since she has been a single mother, and for quite a long time, has been living with her brother, with her children.

The Municipality of _____, upon the publication of the decision announcing beneficiary families of municipal housing, no. _____ of date _____ Mrs. (Name and Surname) does not appear in the list of beneficiaries.

The party claims that the relevant Committee has violated the legal provisions, namely Article 5 of Law No. 03/L-164 on the Financing of Special Housing Programs, Article 5 of AI no. 21/2010 determining the order of priority for categories of families that may benefit from special programs, Article 5 of AI 22/2010, Decision of the Municipal Assembly, 15 No. 360/01-52753 of date 28.09.2022.

The complainant is a single mother, living only off social assistance, at the amount of 110 euros, and that at the place of her residence, it is not possible to extend her stay, since the brother's family has expanded, and therefore, further stay of Mrs. (Name and Surname) and her family would burden his family situation even more.

The party (Name and Surname) born on _____ address _____, is a person under social assistance. She has been separated from her husband, and currently resides with her minor children: (Names and Surnames of children and their birthdays).

Proof: Social assistance card and Certificate of Family Union

Apart from living in poor economic and social conditions since 2019, the complainant was forced to leave her house, where she lived for three years - in the village of _____, which was built by the Ministry of Internal Affairs. She felt threatened by the villagers, as a single woman, because she was several times a victim of breaking and entry, with material damages.

Proof: Victim Card, issued by the Kosovo Police, case no. _____

She reported the cases to the police, but the situation went on further, and therefore, she was forced to leave the house and settle with her brother.

In addition to the danger, the area of her house built by the Ministry of Internal Affairs does not even have essential items for a normal livelihood, especially the lack of an access road, which renders the area difficult to live in. She declares that she is ready to give in such a house, because she is not using it. Her children were threatened several times by the villagers. Therefore, she should be provided a safer residence for her and her children.

Based on the situation described above, it is now required that based on duties and responsibilities and in accordance with social policies, applicable legislation, as well as international treaties, that the Municipality review its opportunities, and provide social housing for (Name and last name)

At the same time, based on the above, we currently ask the Department of Spatial Planning, Construction and Housing to render the following:

DECISION

ANNULLING the decision of the Municipality of _____ announcing beneficiary families of municipal housing no. _____ dated _____.

or

AMENDING the decision of the Municipality of _____ announcing beneficiary families of municipal housing, no. _____ dated _____ and Mrs. (Name and Surname) be listed amongst the beneficiaries, since this party has filed several applications for such housing, yet the Municipality never provided her with such shelter.

Place: _____,

Date: _____

Complainant:
(Name and surname)

Telephone Number



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

TO: The Complaints and Claims Commission, under the Ministry of Education, Science, Technology and Innovation

FROM: (name and surname), Personal no: _____

SUBJECT: Complaint

DATE: _____

Against Decision no. _____ dated: _____ of the Ministry of Education, Science, Technology and Innovation - Prishtina, the applicant (Name and Surname) with personal ID no. _____, within the legal deadline, hereby submits this:

COMPLAINT

Due to:

- *Erroneous ascertainment of the situation of fact and*
- *Erroneous application of material law.*

REASONING

The Applicant (Name and Surname) - student enrolled in the academic year _____ at the Faculty of Mathematics and Natural Sciences, Department _____ - currently attending _____ year of studies, has responded to a Call for Applications for financial support, for 2000 students in the fields of Science, Technology, Engineering and Mathematics (STEM) in higher education institutions in Kosovo, no. 01B/482, of 16.11.2022, by uploading through the E-Kosova platform the necessary application documents, pursuant to such a call.

Proof: Call no. 01B/482 and the attached documents (Registration sheet, student certificate, transcript of records, and CV)

She considers that she has met the necessary criteria and should have been one of the beneficiaries, but MESTI, without even reviewing the merits of the case, rendered its decision, announcing that this party does not appear in the final list of beneficiaries, where only 1,609 beneficiaries were listed, although the call states that 2,000 STEM students will be supported.

Proof: Decision no. _____ of date _____

The MESTI decision is unreasonable, since this applicant has met all the criteria as presented in the call, she has a satisfactory average grade, her family is not in good financial condition and she comes from the Municipality of _____

Proof: Identity card, Transcript of records

For the family, the costs of their daughter's attendance of studies are not affordable, and they have a rather small income that does not suffice to cover the costs of the studies, therefore it is very much needed for the applicant (Name and Surname) to take advantage of this scholarship, in order to be able to continue her education in the area of her choice.

We consider that this decision contains flaws, which stand in the erroneous application of the material law, since the applicant (Name and Surname) meets all the criteria as stated in the Call published by MESTI.

Therefore, we propose to the Complaints and Claims Committee to review this complaint, and all attached proof, and further render the following:

DECISION

APPROVING as well-grounded the Complaint, and listing the applicant (Name and Surname) with personal ID number: _____, a student enrolled in the academic year _____ in the Faculty of Mathematics and Natural Sciences, Department of _____, in the list of beneficiaries for financial support of 2000 students in the fields of Science, Technology, Engineering and Mathematics (or STEM) of higher education institutions in Kosovo.

Venue,

Date: _____

Complainant,
(Name and surname)

Telephone Number



NDHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

**MINISTRY OF INTERNAL AFFAIRS
CIVIL REGISTRATION AGENCY**

Through the
Civil Status Office in _____

To: Complaints Commission

From: (Name, (Parent's Name) and Surname), address Str. _____ village _____, Municipality of _____, in possession of an identity card of the Republic of Kosovo with Personal ID no. _____

Pursuant to Article 19 of Administrative Instruction no. 19/2015 - on the Requirements and Procedures for amending and rectification of Personal Names, within the legal deadline, hereby files the following:

COMPLAINT

Against the decision of the Personal Name Change Review Commission, No. _____, dated _____ received on date _____

REASONING

The party (First Name, (Parent's Name) and Surname), has filed an application to change the personal surname from _____ to _____ because his parent (Parent's Name) has such a surname, and therefore, it is illogical that a parent and a son have different last names.

Upon reviewing the request, the Personal Name Change Review Commission rendered a decision **rejecting** the application of (Name and Surname) for changing the personal surname, since he had submitted time-barred documents, documents older than 6 (six) months.

Proof: Decision no. _____

By rendering such a Decision, the first-instance body - the Personal Name Change Review Commission erroneously ascertained the situation of fact, since the party does not deny the fact that there may have been documents that were older, but that happened due to the negligence of the Municipality - because for some time, the Civil Registry Office in the Municipality had no manager, since the former head of the civil registry had passed away. Therefore, I hereby request, with the documents filed with this complaint, a new review, and allow the change of last name from _____ to _____ for the party _____.

Proof: Documents issued less than 6 (six) months earlier

In rendering such a decision, the first-instance body, namely the evaluation commission, erroneously ascertained the situation of fact, which consists in the fact that according to all the documents, the applicant has met all the criteria pursuant to Article 5 of the Administrative Instruction no. 19/2015 on the Requirements and Procedures for Amending and Rectifying Personal Names, and full documentation is attached here, as required by Articles 7 and 20 of such Administrative Instruction. (see documents attached to the case file).

Based on the items above, I hereby require from the second instance body to render any of the decisions as proposed below, upon their review of the present complaint:

DECISION

APPROVING Complaint as well-grounded.

AMENDING the Decision of the Personal Name Change Review Commission, No. _____, dated _____ received on date _____, for Mr. (Name and Surname) to be recognized the right to change the personal surname from _____ to _____.

OR

QUASHING the decision of the Personal Name Change Review Commission, No. _____ of dt. _____, received on dt. _____, and the matter is remanded to repeated review.

Place _____
Date: _____

**Complainant,
Name and Surname**

Telephone Number

TO THE BASIC COURT– PRISHTINA
Department of Administrative Matters

To:

COURTS OF APPEALS– PRISHTINA

CLAIMANT: (First Name, (Parent's Name) and Surname) Address: Street: _____, Place _____

RESPONDENT: Ministry of Labor and Social Welfare- Prishtina.
Administrative dispute - annulment of the decision.

The claimant (Name, (Parent's name) and Surname) from _____, with other personal records as shown in case files, in the matter of an administrative conflict of with the respondent Ministry of Labor and Social Welfare- Prishtina DP, pursuant to a Claim suit for the recognition of the right to pension for persons in need.

Against the judgment of the Basic Court in Pristina, the Department for Administrative Affairs A. no. _____ rendered on _____, the claimant, within the legal deadline, hereby files the following:

COMPLAINT

Due to:

- Due to material violation of procedural provisions
- Due to erroneous and incomplete ascertainment of the state of facts,
- Due to erroneous application of material law.

By this complaint, I hereby propose to the court of the second instance:

- to approve the complaint as well-founded
- annul the challenged judgment and remand the case to the court of first instance for a retrial,
- or amend the challenged judgment.

The claimant has a health disability, he requested that his right to pension as a disabled person be extended, by a decision of the respondent Ministry, dated _____, received on _____, his application was rejected, allegedly because the claimant plaintiff does not have a full and permanent disability.

- **Proof:** *Decision No.* _____ *dated* _____

Discontented with the first instance decision, the claimant filed a complaint with the second instance body, which rejected his appeal on the grounds that he does not meet the legal requirements to recognize this right, pursuant to the Article 3 of Law no. 2003/23 on pensions of persons with disabilities in Kosovo.

Therefore, the second-instance body rendered an arbitrary decision, without reviewing the merits of the state of fact, or the review of the attached evidence.

In this concrete case, the claimant filed a claim suit with the Basic Court - Department for Administrative matters, while the Court, in a prior case, approved the claimant's claim suit, by annulling the decision of the respondent MLSW in Pristina, No. _____, dated _____ and he was recognized the right to pension for persons with disabilities, as of the date of termination.

Proof: Judgment A. no. _____

Medical Reports, Certificate No. _____, dated _____ recognizing the right to pension for this category, UCK certificate, from the medical commission, dated _____.

From what we have highlighted, it is manifestly clear that there are all valid evidence, facts and testimonies to recognize the right to pension for persons with disabilities, since the same person, based on the medical diagnosis, is not able to cater to personal needs, and that his health condition has worsened even more, since he has been the beneficiary of this pension and is unable to cater to his personal needs.

The second instance administrative body, as well as the Basic Court in Pristina, by judgment A. no. _____ of _____, just ignored all the evidence and testimonies, and failed to examine the person entirely, while his health condition has worsened even more, while in the rendered decision, there was no reasoning on why such evidence was not considered at all, it only rendered a generic reasoning, that there is no evidence, thereby rejecting the claim suit.

Such failure to examine the party by the medical commission led to the establish an erroneous impression of the party (*erroneous ascertainment of the situation of fact*).

The erroneous application of material law consists in the fact that, precisely because of the incorrect verification of the factual situation, the first instance body has incorrectly applied the legal provisions. Based on all mentioned above, the decision challenged by this claim suit seriously violates the rights provided for by Law No. 2003/23, and Article 9 of the Law no. 04/L-131 on pension schemes financed by the state (Official Gazette of the Republic of Kosovo / No. 35/05 June 2014), on pensions of persons with disabilities in Kosovo, and other rights as enshrined in the Constitution of the Republic of Kosovo, since due to his health and physical condition, he is fully incapacitated to work.

Such flaws are reflected in the material violation of the provisions of the Law on Administrative Procedure, material violations of such provisions consist in the fact that Article 84, par. 2 of this Law stipulates that an administrative act, which in this case would be the challenged decision, must contain, among other things, a summary of factual findings based on the evidence presented during the administrative proceedings or on the facts provided by the administration, an unfounded statement by the respondent.

The Complainant considers that the challenged decision of the responding Ministry was also taken on the basis of an erroneous ascertainment of the situation of fact and applicable legal provisions, and in view of Article 10 of the Law on Administrative Conflicts, it is clear that this decision contains formal legal flaws.

Based on the above, I consider that this complaint is well-founded, and hereby propose that it is, as such, APPROVED, and decided pursuant to the proposals made at the onset.

Place

Date:

Complainant

Name and Surname

Telephone Number

TO: Office of the Mayor of the Municipality of: _____, Mr. : _____

FROM: (name and surname)- Personal ID no: _____

SUBJECT: Request for financial support

DATE: _____

Party (Name and Surname) from the village of _____, Municipality of _____, is a parent of 4 (four) children and also a person under social assistance.

Proof: Social Assistance Card

Being in this category, financial issues have become a daily concern, knowing that there are 6 (six) members in the family, and especially livelihood has become even more difficult, with the major health issues of the second child - the son (Name and Surname of son).

Proof: Extract of date: _____, Medical reports

Based on medical reports by neurology specialists, one may ascertain the serious health condition of the son (Name and Surname), who has been suffering from such issues since birth, which prevent him from taking any action for himself, which further proves that the family needs to incur large costs in terms of treatment of the disease, conduct of medical examinations, and the purchase of the necessary medications.

At the same time, the son's condition caused him to be treated as a person with disabilities, but the parent (Name and Surname of the parent) does not even have sufficient financial means to perform the appropriate analyses.

The treatment, analyzes and obtaining an accurate diagnosis would allow him to exercise certain rights pertaining to the aforementioned category of persons, all of this in accordance with the applicable legislation, as well as with international treaties.

Based on the situation described above, it is URGENTLY requested from the Mayor's Office to act on the basis of duties and responsibilities, and in accordance with social policies, and find an opportunity within municipal capacities to provide financial support for the family (Surname of family) and their son (Name and Surname of son) to be treated adequately as soon as possible.

Based on the above, I hereby plea for you to consider this request, as it is very sensitive and of high interest to the family and the applicant.

Please find attached the bank confirmation and bank account number.

Place: _____

Date: _____

**Applicant,
Name and Surname**

Telephone Number

TO: Department of Health and Social Care - Municipality of [REDACTED]

FROM: (First Name, (Parent's Name) and Surname) Personal ID no: [REDACTED]

SUBJECT: Application for social housing

This Party (First Name, (Parent's Name) and Last Name), born on _____ address Str. _____ village _____, Municipality of _____ is a person under social assistance. He lives together with his wife and 2 (two) minor children in his father's one-room house (Father's Name and Surname)

Proof: Social Assistance Card

The applicant (Name, (Parent's Name) and Surname) has separated and detached from the family union with his father (Name and Surname), and it is impossible for them to continue living together in one family union due to of the very small space of his father's house.

Proof: Contract for separation and detachment from the family union, dt. _____ (notarized) and
Certificate of Family Union

The family (Surname of the family) apart from living in severe economic and social conditions, they do not own any immovable property, neither he nor his wife work, and therefore, it is impossible for them to resolve the housing issue of their own family, and therefore, they are forced to seek provision of housing from the Municipality of _____.

Proof: Certificates of no possession of immovable property, Certificates of unemployment

The family's life has become even more difficult due to the circumstances arising as a result of the Covid-19 pandemic, as well as the price hikes, as a result of inflation around the world.

Therefore, based on the situation described above, it is now URGENTLY required from the Department of Health Care and Social Welfare - Municipality of _____, that based on duties and responsibilities and in accordance with social policies, applicable legislation, as well as

international treaties, that the Municipality review its opportunities, and provide social housing for (Name and last name).

Based on the above, I hereby plea for you to consider this application, as it is very sensitive and of high interest to the family and the applicant.

Place: _____,

Date: _____

Petitioner:
(Name and surname)

Telephone Number



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

A. no: _____

TO THE COURT OF APPEALS IN PRISHTINA

DEPARTMENT OF ADMINISTRATIVE MATTERS

By: (Name and Surname) address st. _____, Municipality _____

Subject: Motion for acceleration of matters

The Court has conducted an administrative procedure for case A. no. _____ which involves people with paraplegia and tetraplegia, belonging to the first group.

The claimant (Name and Surname) initiated a claim suit with the Basic Court in Pristina, which approved the claim suit and the claims of the claimant in a remanded proceeding, thereby approving her right to pension and, and directing the respondent MLSW-DPARK to compensate the claimant retroactively for all the payments of the pension for people with paraplegia and tetraplegia, first group, for the stated period, pursuant to the judgment of the Basic Court in Pristina.

Proof: Judgment A. no. _____ of date: _____

Against this Judgment, the respondent filed an Appeal within the legal deadline, therefore we require this Court to consider this case a priority, since it is not the first time that the case appears before this Court, the first time it was remanded to a repeated procedure, and also, it is the second time that the MLSW-DAPRK filed a complaint and the case appears before the Court of Appeals. Likewise, the subject of the matter is of an urgent nature.

The claimant is a disabled person, and belongs to the group of people with paraplegia and tetraplegia, and is in a bad state of health, also in a seriously poor economic condition, knowing that she has large expenses as a result of her condition, we kindly ask the Court of Appeals in Pristina to examine this case with priority and in a reasonable time frame.

Therefore, taking into account the nature of the problem as well as the long period of time since the claimant has filed the lawsuit in 2018, we find that this dispute must be resolved as soon as possible, and the claimant needs to enjoy her rights, because we consider that any further delay in this process could violate her basic rights based on the Constitution of Kosovo, and the applicable legislation.

At the same time, in relation to the complaint that the MLSW-DAPRK has filed with the Court of Appeals, we consider that it is not grounded, due to the fact that the party,(Name and Surname) , has exhibited all the medical reports, and continues to have regular medical examination with neuro-psychiatric specialists, so it has been proven, year after year, that this party belongs to the first category of people with paraplegia and tetraplegia.

Proof: Consilium and specialist reports

Based on the above, we ask this Court to consider this request and assign priority to this matter.

Place: _____,

Date:

On behalf of the Party urging emergency

Claimant Parent (First and Last Name)

Telephone Number



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

Republika e Kosovës
Republika Kosova - Republic of Kosovo
Qeveria - Vlada - Government

Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice
Agjencia për Ndhmë Juridike Falas-Agencija za Besplatnu Pravnu Pomoc
Agency for Free Legal Aid

TO THE BASIC COURT IN PRISHTINA
Department of Administrative Matters

CLAIMANT: (Name and Surname) address st. _____ no. ____ Place: _____

RESPONDENT: Ministry of Internal Affairs - General Directorate of Police -
Decision-making Commission

Against the decision of the Ministry of Internal Affairs, namely the General Police Directorate, case No.: _____ of _____, within the legal deadline, I hereby file the following:

CLAIM SUIT

initiating an administrative conflict

According to Claimant(Name and Surname) address str. _____ no. __ , from the place _____, dated _____ coming out of the ETC parking lot, he went to the scene of the accident, he was on the right side of the Mercedes driver, who hit him because he was on the side of the intersection without any signs, and according to the traffic rules, if there are no traffic lights and horizontal or vertical signage on the road, then the right of way is allowed on the right-hand side of the direction of movement, nevertheless, without any reason or expertise, he was found guilty by the Police Officers of the Regional Road Traffic Unit in Pristina, though the party did not sign the misdemeanor citation (decision).

Proof: Misdemeanor citation (decision) _____

Unsatisfied with the aforementioned decision, the claimant objected to the decision on such road traffic offense, yet again, without even reviewing the merits of the case, the Decision-making committee of the General Police Directorate, found such objection to be unfounded, and upheld the misdemeanor citation (decision) _____.

Proof: Objection of the party, titled Complaint, of dt. _____
The Decision-Making Commission's decision _____

The Panel of the Decision-making Commission rendered its decision by violation of Article 46 of Law no. 05/L-087 on Minor Offenses, thereby upholding the police report and the misdemeanor citation, in absolute contradiction to road traffic rules.

Proof: The Court to obtain, ex officio, all surveillance camera footage at the business premises

Since the claimant has not paid the amount of the ticket, and has not been compensated for the injuries caused to him by the driver of the Mercedes vehicle, the claimant hereby proposes to the Basic Court in Pristina to schedule a main hearing, and upon administering all the evidence, render the following:

JUDGMENT

APPROVING in its entirety the claim suit and claims of the claimant (Name and Surname) address Str. _____ no. _____, place _____.

ANNULLING the decision _____ dated _____ received by the party dated _____ of the Ministry of Internal Affairs - General Police Directorate - Decision-Making Commission, as unlawful, and the Court, **on the basis of merit**, finding the party not guilty of causing the accident.

or

ANNULLING the Decision _____ dated _____ received by the party on _____ of the Ministry of Internal Affairs - General Police Directorate - Decision-Making Commission, and remanding the case to reconsideration and retrial by the respondent.

Prishtinë,

Date:

Plaintiff,

Name and Surname