

WHEN INSTITUTIONS REMAIN SILENT AND JUSTICE IS DELAYED

December 2024





Kosovo Democratic Institute is a branch of
Transparency International for Kosovo

KDI's mission is to support development
of participatory democracy and fight
against corruption through promoting
transparency, accountability and integrity
in all levels and sectors of society

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Layout and design: Envinion

Note: This report was developed under the project "Youth and Civil Society for Integrity", which is funded by the Swedish International Development Cooperation Agency (SIDA), in Prishtina. The content of this report is in the sole responsibility of the Kosovo Democratic Institute, and does not necessarily reflect the views of the Swedish International Development Cooperation Agency (SIDA)



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List of abbreviations

- ALAC** Advocacy and Legal Advice Center
- ECHR** European Court of Human Rights
- KDI** Kosova Democratic Institute
- MFLT** Ministry of Finance, Labor and Transfers



01

Denial of the Right to Basic Pension for War-Affected Categories



More than 50 beneficiaries of pension schemes for war-related categories, from December 2023 and throughout 2024, have turned to the Advocacy and Legal Advice Center (ALAC) under the Kosovo Democratic Institute (KDI) to exercise their right to a basic or old-age pension.

These citizens, all beneficiaries of one of the pension categories included in the war-related pension schemes, despite having reached the retirement age and meeting the criteria to receive a basic pension, have been forced to forgo this right.

The denial of the right to a basic/old-age pension for this category of citizens has been justified under the pretext that they are already beneficiaries of one of the state-funded pension schemes and, as such, cannot also receive the old-age pension. For the limitation of this right, the Ministry of Finance, Labor, and Transfers (MFLT) cites the current law on pension schemes, which restricts an individual's right to benefit from both the basic pension scheme and any other special pension scheme managed by the ministry.¹ The official stance of the MFLT in this regard is that a citizen cannot claim two rights/pensions from the state budget, but the more favorable right/pension remains valid, allowing the individual to choose which pension they wish to claim.

However, this interpretation and implementation of the law is problematic and disputable. The specific law regulating pension rights for war-related categories, in Article 23, clearly stipulates that beneficiaries of the basic pension are also entitled to receive benefits from the pensions designated for war-related categories.² This law, which holds the status of a special law – *lex specialis* – in relation to the general law on pension schemes, grants beneficiaries the right to receive both pensions simultaneously.

Moreover, no provision of the Law on State-Funded Pension Schemes, which was enacted later than the law on war-related categories, nor any other legal act, has repealed Article 23 of this specific law. Therefore, from a legal perspective, both rights should be enjoyed simultaneously, and there is no legal basis for denying one of them.

The incorrect implementation and interpretation of legal provisions by the Pension Departments within the MFLT has also been subject to review by regular courts in Kosovo³, including the Supreme Court. Judicial decisions including those of the Supreme Court as the highest ju-



dicial authority, have confirmed that this interpretation is in conflict with the fundamental rights of citizens and the applicable legal framework.⁴

The Supreme Court has emphasized in its decisions that the right to a basic or old-age pension is a fundamental right, which cannot be separated from other pensions. According to the court, this right is guaranteed not only by domestic legislation but also by international judicial practice, including the decisions of the European Court of Human Rights (ECHR).

In its decision, the Supreme Court clearly explains that when a citizen meets the conditions to be a beneficiary of the basic pension scheme and simultaneously a beneficiary of another pension scheme (such as a war veteran, disabled person, or civilian war victim), Article 16 of the Law on Pension Schemes cannot be used as a legal basis to deny the right to the basic pension. This provision cannot override the legal right of citizens to receive both the basic pension and the other pension, especially when these rights stem from different laws that clearly define the benefits and conditions for them.⁵

Despite this clear stance from the judiciary, the MFLT has continued to interpret and apply the law incorrectly and arbitrarily, mistakenly citing Article 16 of the Law on Pension Schemes. This interpretation has led to the denial of citizens' right to receive the basic pension, an action that is not only in conflict with the applicable legislation but also contradicts established judicial practice.

In 2024, the Advocacy and Legal Advice Center (ALAC) handled a large number of citizen complaints related to the denial of the right to receive the basic pension. Based on the high volume of complaints with the same subject of review, KDI-ALAC has taken significant steps to identify and address this situation. After thoroughly examining each case, it has become evident that the Pension Departments in the Ministry of Finance, Labor and Transfers (MFLT) are applying the applicable legislation incorrectly and arbitrarily, denying citizens their right to the guaranteed basic pension.

In response to this issue, KDI-ALAC has prepared a collective letter addressed to the responsible minister of the MFLT, requesting the recognition of this right for all citizens who have approached the center and met the conditions according to the legislation. However, despite continuous efforts and communications, the MFLT has not provided any response regarding the handling of these cases.⁶

In the absence of institutional response and to initiate an administrative dispute in order to claim the right through legal means, KDI-ALAC prepared and submitted 38 applications for the basic pension on behalf of citizens, which were delivered to the Pension Departments in the respective regions. As expected based on previous practices, all applications were rejected by the MFLT Pension Departments, with the reasoning that the citizens were already beneficiaries of another pension scheme and, therefore, could not receive the basic pension. For each case, KDI-ALAC assisted citizens in preparing complaints against the decisions to deny the basic pension. After MFLT definitively rejected these complaints, including decisions from the second instance in the administrative procedure, the only legal recourse was to address the issue in court.

Between March and June 2024, the Advocacy and Legal Advice Center (ALAC) prepared and submitted 32 lawsuits⁷ to the Administrative Department of the Basic Court in Prishtina, assisting citizens whose right to receive the basic pension was unjustly denied. However, by the end of 2024, none of these lawsuits had been processed in court. This situation has created legal uncertainty for citizens and highlighted the structural weaknesses of administrative justice in Kosovo.

According to data confirmed by the Administrative Department of the Basic Court in Prishtina, by the month of October 2024, 1,829 similar cases have been registered, primarily related to the issue of two pensions.⁸ This extraordinary influx has critically overloaded the capacity of this department, causing significant delays and hindering the efficient review of cases. The situation is further worsened by the fact that the Administrative Department is cur-

1 Article 16 of Law no. 04/L-131 on Pension Schemes Funded by the State

2 Article 23, paragraph 2, of Law no. 04/L-054 on the Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civil Victims, and Their Families.

3 Judgment of the Basic Court in Prishtina, Case No. A.nr.280/17, dated 04.02.2020.

4 Aktgjykimi i Gjykatës Supreme ARJ nr. 77/2021 i datës 17.08.2021. Judgment of the Supreme Court, Case No. ARJ No. 77/2021, dated 17.08.2021.

5 Ibid.

6 Request for recognition of the right to basic pension for beneficiaries of pension schemes for categories of war veterans, Kosovo Democratic Institute (KDI) to the Ministry of Finance, Labor and Transfers, submitted in February 2024.

7 KDI-ALAC case database.

8 Request for access to public documents for the Basic Court in Prishtina, dated 11.11.2024.





rently operating with only 7 judges, a number that is highly insufficient to handle the heavy workload.⁹

In this context, it is evident that the court's overload is not an isolated problem, but a symptom of a deeper lack of administrative efficiency. The Ministry of Finance, Labor, and Transfers (MFLT), instead of addressing these issues effectively and applying the law in accordance with court interpretations, has transferred these cases to the judicial system, further increasing the burden on an already overloaded system. The ministry's continued refusal to address these matters at the administrative level has severely harmed the interests of citizens and undermined trust in public institutions.

Furthermore, the MFLT has adopted a stance of deliberate silence when confronted with questions or requests from citizens and civil society¹⁰ organizations regarding the denial of the right to dual pensions. This stance reflects a lack of transparency and accountability, creating a situation of frustration and uncertainty for affected citizens. Repeatedly, the MFLT has ignored raised concerns and failed to provide solutions to the issues arising from the incorrect implementation of Article 16 of the Law on Pension Schemes.

The deliberate silence of the MFLT is particularly concerning considering the fact that these issues affect some of the most vulnerable groups in society, including veterans, persons with disabilities, and other categories of war veterans, who rely on these pensions for their survival. The denial of the right to benefit from both the basic and specific pensions has created a heavy economic and social burden for these individuals and their families, undermining the principles of social justice and equality that the state claims to promote.

This stance of the MFLT also reflects a lack of institutional responsibility to consider and implement consolidated judicial practice, which is binding on all public institutions. Therefore, practices like these highlight the urgent need for institutional reforms and the establishment of mechanisms that ensure accountability and transparency. Only through such actions can it be ensured that citizens no longer face violations of their rights and delayed justice.

⁹ The Government of Kosovo is violating the rights of pensioners to receive a dual pension, Kosovo Law Institute. <https://kli->

¹⁰ Request for access to public documents for the Ministry of Finance, Labor and Transfers, dated 15.11.2024.



02

Recruitment without merit in the public sector



In 2024, the Advocacy and Legal Advice Center (KDI-ALAC) has handled a significant number of complaints from citizens regarding recruitment processes and the management of employment relationships in the public sector. Throughout this year, more than 25 citizens¹¹ have approached ALAC with complaints primarily related to the competition phase, where violations of procedures, lack of transparency, and discriminatory practices were identified. Such situations have raised serious concerns about integrity and equality in employment opportunities within the public administration in the country.

Recruitment in the public administration is a crucial issue, as it has a direct impact on the quality of public services and on citizens' trust in state institutions. Although recruitment procedures are designed to ensure that individuals hired for public positions have the necessary qualifications and merits, irregularities and violations that damage the integrity and efficiency of this process have often been identified. Despite the reform of the recruitment process, the implementation of the new centralized recruitment model, and recruitment through the electronic portal, cases reported to ALAC have shown that irregularities and violations of procedures still persist. One of the most common violations has been the failure to adhere to the competition criteria, including the selection of candidates who did not meet the required conditions, or the bypassing of candidates with better qualifications in favor of those with weaker qualifications. Additionally, several complaints have been raised regarding political interference and favoritism, which have influenced the final decisions of the recruitment process.

A success case handled in 2024 by the Free Legal Aid Center (KDI-ALAC) concerns reported violations related to

a public competition organized by a municipality for the recruitment of teaching staff in one of its public schools. This case began with a complaint from a citizen, who was an applicant in the competition and reported that the selection process had not been fair, merit-based, and objective. According to the citizen, the evaluation commission showed favoritism towards another candidate due to family connections that the candidate had with the mayor of the municipality.

After receiving the report, ALAC carefully examined all relevant documents related to the competition, including the evaluation criteria and the candidates' files. Through a request for access to public documents,¹² ALAC secured and analyzed the evaluation forms and application files for each candidate and verified that the selection and recruitment process for this competition had identified several irregularities. It was clear that the citizen who made the report had been deliberately ignored in several evaluation categories, while the commission had favored the other candidate, scoring them with points or even awarding higher points in some categories – in order to enable their selection as the winner, despite not meeting the required criteria.

¹¹ KDI-ALAC case database
¹² Request for access to public documents dated November 15, 2024.



In accordance with legal deadlines, ALAC prepared and submitted a formal complaint against the decision of the municipality's Evaluation Commission. Despite the violations outlined in the complaint and the attached evidence, the municipality's evaluation commission dismissed the complaint, deeming it unfounded, and upheld the decision to select the candidate. Since this decision of the commission could only be appealed through judicial means, ALAC, within the legal deadlines, gathered all relevant facts and evidence proving procedural violations and abuses during the competition, and referred the case through a lawsuit to court.

The court, regarding the raised issue, approved the lawsuit and made a decision in which it ordered the institution, specifically the municipality, to annul the decision for selecting the candidate in this competition. Furthermore, the municipality was obliged to review all applications again and the evaluations made, within a period of 7 days. After this, based on the points accumulated, the commission was obliged to determine the candidate who achieved the highest points and met the competition criteria.¹³ This new evaluation process enabled the citizen who had reported to ALAC to be declared the winner and selected for the position in question, in accordance with their merits and qualifications.

Another case that reached a resolution in 2024 involved a report concerning another competition announced by a public institution. The case was initiated by a citizen at the end of 2023 regarding several violations in the recruitment procedure according to an internal public competition. After receiving the report, the center contacted the institution and, through a request for access to public documents, sought access to the competition file and applicants' documents. It was found that the competition and the entire evaluation and recruitment procedure contained several violations and irregularities in relation to the regulations in force that govern the establishment and advancement of employment relationships in the public sector.

One of the main findings was that the competition announced by this institution was open for only 14 days, violating the legal requirement that public position competitions must be open for 15 days.¹⁴ Furthermore, the

application files revealed that three applications had been submitted after the official closing deadline for the competition, and the candidate selected for this position was one of them.

Based on the numerous violations and evidence that proved the competition was in contradiction with the applicable legislation, the center appealed the decision of the evaluation commission while simultaneously submitting a complaint to the Labor Inspectorate. Although the institution dismissed the KDI-ALAC's complaint as unfounded, the Labor Inspectorate conducted a thorough investigation, confirming our findings. The final report of the Labor Inspectorate verified the violations in the competition, and the institution was ordered to correct the violations under the threat of financial sanctions. As a result, due to the numerous violations, the public institution was forced to annul the entire competition and re-advertise the position in question.

These cases provide a clear example of the importance of transparency and integrity in public sector recruitment processes, while emphasizing the need for more oversight mechanisms and institutional commitment to ensuring that competitive processes are fair, transparent, and merit-based. Through these cases, KDI-ALAC has contributed to strengthening citizens' trust in recruitment processes within the public administration, ensuring that this system becomes fairer, more accountable, and more reliable for all.

¹³ Judgment of the Basic Court in Gjakova, March 2024.
¹⁴ Article 6 of Administrative Instruction (MPMS) No. 07/2017 on regulating competition procedures in the public sector.



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**KORRUPSIONI
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KDI është Organizatë Joqeveritare (OJQ) e angazhuar të mbështesë zhvillimin e demokracisë përmes përfshirjes së qytetarëve në bërjen e politikave publike dhe fuqizimin e sektorit të shoqërisë civile me synimin për të ndikuar në rritjen e transparencës dhe llogaridhënies nga ana e institucioneve publike.

Për më shumë informata rreth KDI-së, ju lutem vizitoni:
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