



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

LAW NO. 2003/23

ON DISABILITY PENSIONS IN KOSOVO

The Assembly of Kosovo,

Pursuant to the authority given to it under United Nations Interim Administrative Mission in Kosovo (UNMIK) Regulation No. 2001/9 of 15th May 2001 'On the Constitutional Framework for Provisional Self-government'.

Taking into account Annex VII part (xi) of United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 2001/19 of 13 September 2001 on the Provisional Institutions of Self-Government.

For the purpose of providing a social safety net within the broader context of the social protection system in Kosovo and alleviating poverty by providing disability pensions to those who are unable to work and to provide for themselves.

Hereby promulgates the following law:

Section 1
Definitions

For the purposes of this law:

- 1.1. "Applicant" means a person who is applying for a Disability Pension in Kosovo.
- 1.2. "Designated Authority" means the Kosovo Pension Administration or such other body that the Ministry of Labour and Social Welfare may decide to make responsible for the administration of Disability Pensions.
- 1.3. "Disability Pension" means a benefit administered by the Ministry of Labour and Social Welfare (hereinafter referred to as the "Ministry") to provide financial support to adult persons who are habitual residents of Kosovo and who are totally and permanently disabled and incapable of any form of occupational activity.

- 1.4 “Doctor’s Commission” means a panel of medical experts established within Kosovo by the Ministry for the purpose of advising the Designated Authority in making its determination of the medical condition, including the severity and permanence of such a condition, of any person who applies for a Disability Pension pursuant to this Law.
- 1.5 A person will be considered to be permanently and totally disabled if he or she is aged over 18 years and less than 65 years and has a medically diagnosed physical, sensory or mental condition, disease or disability rendering him or her incapable of any work for remuneration and where the Ministry has assessed the person and subsequently decides that they fulfil the medical criteria set out in this Law. The condition, disease or disability must render the person totally incapable of any work for remuneration at the time of application and in the future. Onset of the condition, disease or disability must be no less than one year prior to the date of submitting a complete application to the Ministry.
- 1.6 A “qualified registered medical practitioner” means a medical practitioner who has successfully completed a full course in medicine, who is recognised as qualified by the appropriate statutory medical authorities in Kosovo and who has not been disqualified from such practice. Persons who qualified and registered in another jurisdiction to practice medicine and who have not been disqualified and who the Government of Kosovo, or the appropriate statutory medical authorities in Kosovo, recognises as being so qualified to practice in Kosovo may also be accepted as a qualified registered medical practitioner for the purposes of this Law.
- 1.7 “Monthly Rate” means the monthly amount of Disability Pension payable to an applicant who is qualified to receive a Disability Pension.

Section 2 Disability Pensions

- 2.1 Disability Pensions shall provide financial support to eligible persons in accordance with the criteria set forth in this Law and within the resources allocated for this purpose in the Kosovo Consolidated Budget.
- 2.2 The Ministry shall establish the Doctor’s Commissions to determine medical eligibility for Disability Pensions. The Ministry designates the Kosovo Pension Administration to administer the scheme of Disability Pensions to eligible persons. The Doctor’s Commissions will perform their work under the management and control of the Designated Authority. The Ministry may designate other bodies to determine eligibility and administer payments under the scheme and may also make provision for direct administration by the Ministry.

Section 3
Criteria for Disability Determinations

- 3.1 In order to be eligible for a Disability Pension, an Applicant must be habitually residing in Kosovo and must meet the Disability requirements of this Law.
- 3.2 Doctor's Commissions will assess the medical condition of Applicants for Disability Pensions. Disability assessments by Doctor's Commissions must be in writing and include the following:
- (a) A specific statement of the diagnosis of the physical, sensory or mental condition, disease or disability that the Applicant is suffering and the date of the condition, disease or disability onset; the diagnosis must describe the condition, disease or disability as well as the particular impact of the condition, disease or disability on employment, including a specific description of impaired functioning of the Applicant.
 - (b) An assessment of the Applicant's functioning with respect to daily living tasks and tasks associated with employment; this must include reference to Applicant's prior employment if any.
 - (c) A determination of whether or not the Applicant can be employed, in any capacity, given the total circumstances of the disease or disability.
 - (d) A determination of complete disability for a prior period of one year or longer, during which time the Applicant was medically incapable of employment for remuneration.
 - (e) Prognosis of the permanence of disability.
- 3.3 Persons who reside in, are confined in, or are financially supported by institutions caring for the disabled, including psychiatric or medical establishments, religious institutions caring for the infirm or disabled, residential schools and prisons, and other institutions receiving support from the Kosovo Consolidated Budget to care for the disabled, are not eligible for Disability Pension payments under this Law.
- 3.4 Persons capable of employment or actually employed in any manner, including any Self-employment as defined in the tax laws of Kosovo, shall not be eligible for Disability Pensions. Actual employment, including Self-employment, shall constitute presumptive proof of the cessation of Disability. Disability Pension payments will cease as of the first date of employment or Self-employment.
- 3.5 Persons who are in receipt of a Basic Pension or a Benefit under the scheme of "Benefits for the war invalids of Kosovo and for the next of kin of those who died as a result of the armed conflict in Kosovo" shall not be eligible for Disability Pensions.

- 3.6 Persons who are included as a family member for purposes of determining the amount of Social Assistance payment to a family shall not be eligible for Disability Pension.

Section 4
Application for Disability Pension

- 4.1 The Designated Authority shall accept applications from persons that consider themselves eligible for a Disability Pension pursuant to this Law. An Applicant must file an application for a Disability Pension based on his or her place of residence. An Applicant cannot submit an application for a Disability Pension to more than one office of the Designated Authority at any one time.
- 4.2 A Doctor's Commission must review the Applicant's medical condition. Each Doctor's Commission shall be composed of at least one member who is medically qualified as a doctor. One member will be a regular full time permanent employee of the Ministry, shall serve as Chairperson, and shall be responsible for maintaining records in accordance with the instructions of the Designated Authority. The Designated Authority shall refer applications to a Doctor's Commission after preliminary eligibility screening for non-medical requirements, such as habitual residency and age.
- 4.3 The Ministry shall establish a procedure for forming Doctor's Commissions composed of qualified medical practitioners to examine Applicants for Disability Pensions. Such procedure shall specify how the Doctor's Commissions will be composed, compensating members of Doctor's Commissions, preventing fraud and abuse, providing adequate record keeping and transparency, as well as a budget for the conduct of their business, including a budget for any necessary support staff, premises or technical equipment. The Ministry shall assure open and transparent procedures for selecting members of Doctor's Commissions, including advertising for such positions and considering the recommendations and considerations of the Ministry of Health. These procedures as well as work procedures for the Doctor's Commissions and the procedures, criteria and methodology for assessment and review of the level and type of disability shall be set out in an Administrative Instruction to be issued by the Ministry. When being assessed by a Doctor's Commission the Applicant must be afforded the opportunity to make a presentation in person or through a representative that accompanies the Applicant.
- 4.4 When submitting an application the Applicant must produce medical evidence from any qualified registered medical practitioner who has previously treated or assessed the applicant. This medical evidence must set out precisely the following:
- (a) a diagnosis of the physical, mental condition, disease or disability that the Applicant is suffering from;
 - (b) the impact of the health condition, disease or disability on employment, including a specific description of impaired functioning of the Applicant;

- (c) the date of onset of the condition, disease or disability;
 - (d) an assessment of the Applicant's work ability with respect to daily living tasks and tasks associated with employment; this must include reference to Applicant's prior employment if any;
 - (e) prognosis of the permanence of disability.
- 4.5 The Designated Authority shall require that all medical evidence to be submitted in accordance with sub-section 4.4 will be submitted on a form(s) supplied by the Ministry for this purpose.
- 4.6 The Doctor's Commission may base its decision as to the existence of total and permanent disability on evidence provided by the Applicant and/or on its own medical findings and examinations. All Applicants must undergo a medical examination arranged by the Doctor's Commission. The Doctor's Commission is not obliged to accept the medical evidence provided by the Applicant but may consider it in making its determination.
- 4.7 The Designated Authority or the Doctor's Commission may at its sole discretion require an Applicant to attend for a medical examination at a time and place decided on by the Designated Authority or the Doctor's Commission. This provision applies also to persons who are already in receipt of a Disability Pension and whose continuing Disability is being reviewed pursuant to this Law. Failure to attend such examination shall disqualify an Applicant from receipt of a Disability Pension exemption of excused reasonable cases.
- 4.8 The procedures for the submission of applications for Disability Pensions shall be set out in an Administrative Instruction to be issued by the Ministry.

Section 5

Expert Registry for Additional Evaluation of Disability Pension Applications

- 5.1. The Ministry shall maintain a registry of specialist experts in different medical fields who shall be available for consultation with Doctor's Commissions on an as-needed basis. The Ministry shall establish procedures for Doctor's Commissions to obtain such expertise. These procedures shall be set out in an Administrative Instruction issued by the Ministry.

Section 6

Disability Pension Payments

- 6.1. Subject to the provisions contained in sub-Section 11.3 of this Law, the Monthly Rate of Disability Pension shall be set at the same rate as the Monthly Rate for Basic Pension. The Monthly Rate shall not be adjusted during the course of the year.

- 6.2. Persons eligible for Disability Pension under this Law shall receive payment back-dated to the payment month in which a complete application was submitted to the designated authority, or the date that this Law becomes operable, whichever is the latest. The Ministry may make provision for a transition period after the Law becomes operable during which time Applicants will be deemed to have made application on the date the Law became operable.
- 6.3. The Designated Authority may require Disability Pension payments to be made to Applicant's bank accounts.
- 6.4. Whenever the Designated Authority determines that more or less than the correct amount of payment has been made to any person under this sub-section, proper adjustment or recovery shall be made pursuant to an Administrative Instruction issued by the Ministry, as follows:
- (a) Subject to the provisions of Section 9, with respect to payment to a person of more than the correct amount, the Designated Authority shall decrease any subsequent payments to which such overpaid person is entitled, by an equivalent amount. In cases where the person is no longer entitled to Disability Pension payments then the Designated Authority shall request such overpaid person or his estate to refund the amount in excess of the correct amount.
 - (b) With respect to payment to a person of less than the correct amount, the Designated Authority shall make payment of the balance of the amount due to such underpaid person, or, if such person dies before payments are completed, disposition of the amount due shall be made in accordance with subsection (c) of this section.
 - (c) If an eligible person dies before any payment due under this Law is completed, payment of the amount due shall be made -
 - (1) to the person, if any, who is determined by the Designated Authority to be the surviving spouse;
 - (2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due under this sub-section is completed, to the child or children, if any, of the deceased person;
 - (3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due under this sub-section is completed, to the parent or parents, if any, of the deceased person (and, in case there is more than one such parent, in equal parts to each such parent).
- 6.5. Provisions in sub-section 6.4 above are subject to the provisions set out in Section 9 below.

Section 7
Duty to Inform

- 7.1 The Designated Authority shall inform each Applicant in writing of the outcome of his or her application within three months of the submission of a completed application. This period may be extended to one year beginning with the date that the Disability Pension becomes operable. When this Law has been operable for one year this requirement to inform Applicants will revert to six months.
- 7.2 A person receiving a Disability Pension shall inform the Designated Authority immediately of any change in circumstances that may affect his or her entitlement to a Disability Pension.
- 7.3 The Ministry and/or the Designated Authority may authorise officers to carry out random or systematic checks on a person receiving a Disability Pension in order to verify the facts given in the application and continued eligibility for a Disability Pension. Notice of such checks need not be given, provided that they will be carried out at a reasonable time.
- 7.4 Authorised officers appointed in accordance with sub-section 7.3 shall be deemed to have prior authorisation to undertake verification of applications and, when so requested, shall produce proof of identity and shall at all times act within the limits of their authority.
- 7.5 The Ministry and/or the Designated Authority shall implement procedures for regular monitoring of persons receiving Disability Pensions to confirm continuing disability and to monitor any possibility of employment Self-employment, or actual employment or Self-employment. Persons receiving Disability Pensions shall be required to undergo medical examinations at a time and location decided on by the Ministry or the Designated Authority.

Section 8
Guardianship

- 8.1. The Doctor's Commission may determine that an Applicant is not medically competent to administer his or her own financial affairs. If a Guardian has already been appointed for the Applicant by a court, the Disability Pension may be paid to the appointed Guardian on behalf of the Applicant. If a Guardian has not been appointed by a court, the Designated Authority may appoint next-of-kin (spouse, parent, sibling, grand children, or other close relative) who is caring for the Applicant as a Guardian for the sole purpose of receiving and disbursing the Disability Pension, subject to review of this decision by a court of competent jurisdiction if the Applicant or another party objects to the appointment.

Section 9

Penalties for Misrepresentation and Obstruction

- 9.1 Any person who deliberately obstructs efforts lawfully made by the Designated Authority to verify facts presented in an application shall have his or her application terminated.
- 9.2 A recipient of a Disability Pension is liable to repay all Disability Pension payments received after beginning employment or Self-employment. The procedures for repayment will be set out in an Administrative Instruction to be issued by the Ministry.
- 9.3 Any person who knowingly makes a false statement or presents false documents in order to obtain Disability Pension payments under this Law, or who do not inform the Designated Authority of any change in circumstances that may affect their entitlement to a Disability Pension, shall be liable to repay any amount received. The procedures for repayment will be set out in an Administrative Instruction to be issued by the Ministry.

Section 10

Reviews and Appeals

- 10.1 An Applicant who contends that a determination made by the designated authority is incorrect may appeal in writing to the Appeals Council of the Designated Authority according to Section 1.2. Such appeals shall be submitted no later than fourteen (14) days after the Applicant receives notification of the decision. In cases where the grounds for appeal relate to the medical condition of the Applicant, or in any case where the Appeals Council considers it necessary, the Appeals Council may require the Applicant to undergo further medical assessment. The Appeals Council may request the Designated Authority (including the Doctor's Commission) to review the Applicant's case with a view to confirming or revising the initial assessment and decision. The Appeals Council must consider appeals and notify the Applicant in writing of the decision and the grounds for this decision no later than sixty days after receiving the appeal. The Applicant or his or her representative must be allowed to be present at any hearing of the matter.
- 10.2 An applicant who remains dissatisfied with the decision of the Appeals Council under sub-section 10.1 may seek redress in a court of competent jurisdiction.
- 10.3 An Applicant adversely affected by an initial or review decision made by the Designated Authority and not reversed by the Appeals Council shall have the right to have such decision reviewed in a competent court.
- 10.4 Applicants must be apprised in writing of their rights to appeal when they receive a decision as to their application. Such notice must include the address for filing the request for appeal.

- 10.5 Applicants who, because of their disablement, are unable to make an appeal in their own right may have their appeal made by a representative on their behalf. However, the Applicant must personally attend for any medical assessment requested by the Appeals Council.

Section 11

Management and Financing of Disability Pensions

- 11.1 The Ministry of Labour and Social Welfare shall be ultimately responsible for managing and administering the Disability Pension determined by this Law. The Government shall, after receiving the advice of the Ministry of Finance and Economy and the Ministry of Labour and Social Welfare, adopt one or more administrative directions establishing the rules to be followed by the Ministry of Labour and Social Welfare in managing the Disability Pension established by this Law. Such administrative directions shall be consistent both with this Law and the Law on Public Financial Management and Accountability.
- 11.2 The Ministry of Labour and Social Welfare and the Ministry of Finance and Economy shall, in accordance with the Law on Public Financial Management and Accountability, establish the proposed annual budget for Disability Pensions.
- 11.3 The Ministry of Finance and Economy, in consultation with the Ministry of Labour and Social Welfare, shall certify annually the Disability Pension Payment Rates, on the basis of available data on potential beneficiaries and within the limits of the Kosovo Consolidated Budget.

Section 12

Confidentiality of Personal Information

- 12.1. The Ministry of Labour and Social Welfare and the Designated Authority may not share personal information collected from the Applicants for Disability Pensions with any other organisation or authority, except for the purposes of verifying application data or detecting fraud and corruption. In exceptional cases information may be given with other statutory-based public bodies for enabling grants, subsidies, payments or benefits-in-kind to be given to persons within the family. Such requests may only be considered where there is a specific statutory base for the particular grant, subsidy, payment or benefit-in-kind *and* where such grant, subsidy, payment or benefit-in-kind will not be contrary to the intent of this Disability Pension scheme *and* where the effect would not be to disqualify a person from continued eligibility for Disability Pension under this Law.

Section 13

Benefits of the permanent and utterly disability persons

- 13.1 For the permanent and utterly disability persons, travelling through urban traffic will be free in charge, while the inter urban traffic travelling will be charged 50% of the tickets value.
- 13.2 All the urban and inter urban travelling means of citizens shall provide special sets for the permanent and utterly disability persons.
- 13.3 For the permanent and utterly disability persons, the entrance ticket to the sportive manifestations , artistic performance, museums ,etc, etc, is 50% charge of ticket value.
- 13.4 In all public buildings (airports , train stations, stadiums, hotels, etc.) shall be provided access to moving ,standing and service for permanent and utterly disability persons.
- 13.5 All new constructions of public buildings build up after the Law comes into effect shall provide access and offer possibilities of use by the permanent and utterly disability persons.
- 13.6 All permanent and utterly disability persons shall be exempted from the Customs taxes on means which could help to their integration into life (moving equipments and different orthopaedic equipments of hearing and looking) including the adapted vehicles for their use.
- 13.7 All permanent and utterly disability persons shall be determined the taxes, which assist to the reduced charge of the electrical energy consumption.
- 13.8 For cases mentioned to the paragraphs 13.1 to 13.7 , authorised Ministries shall issue relevant provisions.

Section 14

Implementation

- 14.1. The Ministry of Labour and Social Welfare may issue Administrative Instructions for the purpose of implementing this Law. Such Administrative Instructions shall be consistent with this Law and with the Law on Public Financial Management and Accountability and with any administrative directions issued by the Government.

Section 15
Applicable Law

15.1. This Law shall supersede any provision in an applicable law that is inconsistent with this Law.

Section 16
Entry into Force

16.1. This Law shall enter into force from the approval date to the Assembly of Kosovo and the signature date of promulgation by SRSG.

LAW No. 2003/23
6 November 2003