



## The European Union's "IPA II" programme for "Kosovo"

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# Manual

### **"Moving Forward:**

Promoting Greater Efficiency and Effectiveness  
in the Fight against Trafficking in Human Beings  
in Kosovo"



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# Manual



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**“MOVING FORWARD: PROMOTING GREATER EFFICIENCY AND  
EFFECTIVENESS IN THE FIGHT AGAINST TRAFFICKING IN HUMAN  
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## LIST OF ABBREVIATIONS

List of Abbreviations	
AI (GRK) No 01/2017	Administrative Instruction (GRK) No 01/2017 on the Manner of Compensation Including the Calculation of the Compensation for Multiple Damages. Approved on 127 meeting of the Government of Kosovo, with the decision No. 01/127, date 13.01.2017.
AI (GRK) No 02/2017	Administrative Instruction (GRK) No 02/2017 On Registers For Applicants And Decisions Issued On Compensations. Approved on 127 meeting of the Government of Kosovo, with the decision No. 02/127, date 13.01.2017.
Criminal Code	Code No. 04/L-082 Criminal Code Of The Republic Of Kosovo Approved by Assembly, date 20.04.2012, and promulgated by the Decree of the President of the Republic of Kosovo No. 04-V-399, date 22.06.2012
Criminal Procedure Code	Code No. 04/L-123 Criminal Procedure Code Approved by Assembly, date 13.12.2012, and promulgated by the Decree of the President of the Republic of Kosovo No.DL-57-2012, date 21.12.2012
Law No. 03/L-006	Law No. 03/L-006 On contested procedure Approved by Assembly, date 30.06.2008 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-045-2008, date 29.07.2008.
Law No. 04/L-118	Law No. 04/L-118 On amending and supplementing the law no. 03-L-006 on contested procedure Approved by Assembly, date 13.09.2012, and promulgated by the Decree of the President of the Republic of Kosovo No.DL-045-2012, Date 28.09.2012
Law No. 04/L-218	Law No. 04/L-218 On preventing and combating trafficking in human beings and protecting victims of trafficking Approved by Assembly, date 31.07.2013, and promulgated by the Decree of the President of the Republic of Kosovo No.DL-43-2013, Date 19.08.2013
Law No. 05/L-036	Law No. 05/L-036 On Crime Victim Compensation Approved by Assembly, date 28.05.2015, and promulgated by the Decree of the President of the Republic of Kosovo No.DL-009-2015, Date 15.06.2015

## LIST OF DEFINITIONS

The definitions of the terms used in the current report are presented in the following table according to Art. 3, §1 of Law No. 05/L-036:

Definitions	
Crime Victim	a person whose personal or property rights are violated or endangered by a criminal offence (Art. 1, §1.7, Criminal Procedure Code). For the purpose of compensation this term may include family members or the dependents of the direct victim as appropriate;
Dependents	the persons maintained by the deceased and were entitled or required by law to be maintained by the deceased;
Family member	a spouse, parent, adoptive parent, child, adoptive child, sibling, blood relative living in the same home or a person with whom the perpetrator lives in an extra-marital communion Art. 120, §33, Criminal Code of the Republic of Kosovo);
Violent compensable crime	a violent criminal act, determined by this Law as compensable, which results in the death, serious bodily injury or serious damage to physical or mental health of the victim;
Child	a person who is under the age of eighteen (18) years (Art. 120, §20, Criminal Code of the Republic of Kosovo);
Damage	impairment resulting directly or indirectly from an action, including loss of property, loss of profit, deprivation of liberty, physical injuries and damages of mental health or loss of life of a spouse or member of a close family;
Disfigurement	deformities or disfigurement to the victim as a result of crime;
Applicant	an individual who submits an application for compensation with the allegation that he is a victim of crime. This term includes other persons who may file an application on behalf of the victim;
Beneficiary	the person who with the decision of the Committee benefits from the right to compensation according to this Law;
Committee	the Committee deciding on the compensation to victims of criminal acts;
Victim of trafficking	as defined by the Criminal Code of Republic of Kosovo article 171 §6.1 -6.4: A victim of trafficking is the victim of the following actions: the recruitment, transportation, transfer, harboring or receipt of persons, by threat or the use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or the abuse of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for



	<p>the purpose of exploitation.</p> <p>However, a child shall be considered a "victim of trafficking" when it has been recruited, transported, transferred, harboured or received for the purposes of exploitation, regardless of the means deployed or used to that end.</p> <p>For the purposes of this provision the term "exploitation" includes, but is not limited to prostitution of others, pornography or other forms of sexual exploitation, begging, forced or compulsory labour or services, slavery or practices similar to slavery, servitude or the removal of organs or tissue.</p> <p>The consent of the victim to the exploitation as described above is irrelevant.</p>
Vulnerable victim	a child, a physically or mentally handicapped person, a person suffering from diminished capacity, a pregnant woman, or a domestic partner (Art. 120, §37, Criminal Code of the Republic of Kosovo);
Reciprocity	with another state means that citizens of Republic of Kosovo have equal access to compensation under the victim compensation system of that other state;
Territory of Republic of Kosovo	the land surface and water space within its borders and boundaries, as well as the air space above the Republic of Kosovo (Art. 120, §25, Criminal Code of the Republic of Kosovo).

## Introduction

The purpose of this Manual is to provide an overall and comprehensive analysis on the operational and procedural aspects of the Crime Victim Compensation Committee, hereafter referred to as the 'Committee'<sup>1</sup>, which has been recently established for the examination of compensation claims in the context of Crime Victim Compensation Program in Kosovo.

This report has been developed within the framework of the EU funded project "Moving Forward – Promoting Greater Efficiency and Effectiveness in the Fight against Trafficking in Human Beings in Kosovo" implemented by Family and Childcare Centre (KMOP) in cooperation with European Public Law Organization EPLO (GR) and Centre for Protection of Victims and Prevention of Trafficking in Human Beings (PVPT) in Kosovo (funded by the EU Office in Kosovo). The Project commenced in January 2017 and will last until January 2020 with the overall objective to increase the efficiency and effectiveness of the fight against Trafficking in Human Beings (THB) in Kosovo by increasing the ability of the Kosovo institutions to effectively coordinate and implement all anti-THB efforts, in line with EU Acquis best practices and Kosovo's overall development priorities.

This report constitutes part of the activities supporting the enhancement of an integrated victim compensation system in Kosovo, developed in the context of the technical assistant actions of the project. Although, the Victim Compensation Program foresees the compensation of victims of violent crimes including, but not limited to, victims of trafficking, the latter are expected to be one of the main beneficiaries of the Program. In line with the provisions of the Law No.04/L-218 "On preventing and combating trafficking in human beings and protecting victims of trafficking", victims of trafficking have the right to state compensation in cases where compensation from the perpetrators is feasible or the perpetrators are not identified, prosecuted or convicted. Ensuring therefore, an otherwise attainable right of such victims.

## Background Information

The framework for Victim Compensation in Kosovo has been gradually developing over the few past years. Initially, the right of victims to compensation was established in the Criminal Procedure Code of 2013. Law No. 05/L-036 On Crime Victim Compensation, establishing and detailing the functioning of the Crime Victim Compensation Program, was adopted on May 2015 and the articles regulating the compensation of victims entered into force one year later, on May 2016.

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<sup>1</sup> The terms 'Committee' and 'Commission' have been used interchangeably when referring to the Victim Compensation Program. For example, Law No. 05/L-036 On Crime Victim Compensation refers to a 'Committee', whereas AI (GRK) No 01/2017 and AI (GRK) No 02/2017 refer to the same institution as 'Commission'. The term 'Committee' was adopted and used throughout this report, in line with the relevant definition in the official English translation of Law No. 05/L-036 establishing the operation of the Victim Compensation Program.

The law regulates the right of victims of violent crimes, including victims of trafficking, and their dependents to receive financial compensation by the state in cases where restitution directly from the perpetrator is not possible. It also establishes the competent decision-making authority, namely the Committee, which is responsible for examining the claims for compensations, as well as the procedures according to which the right to compensation is implemented in national and cross border situations.

Following the adoption of Law No. 05/L-036 the Members of the Committee examining the compensation claims were appointed on August 10, 2016 and two Administrative Instructions (AI) further detailing its operations were issued on January 2017. AI (GRK) No 01/2017 determines the manner in which the compensation is awarded, including the application, calculation and decision-making processes, and AI (GRK) No 02/2017 regulates the form and manner of the record keeping of all applications and decisions on compensation.

The relevant application forms and instructions for the applicants for compensation were released by the Ministry of Justice on May 11, 2017, followed by an official launching ceremony organized by the Ministry of Justice and supported by the United States Embassy in Kosovo on May 22. Subsequently, a Secretariat providing the necessary administrative and technical support to the operations of the Committee was established on May 24, 2017.

Taking into consideration the short period of time since the launch of the Program, at the time of the writing of this report in July 2017, no application for compensation has been yet submitted to or reviewed by the Committee.

For the purposes of the current report, desk research and legal analysis of the relevant legislative documents were conducted during May and June 2017. Additionally, the contents of the report have been developed based on and in line with the input of the relevant authorities on the current status of operations of the Victim Compensation Program provided in July 2017 by the Ministry of Justice.

## Purpose and Contents of the Manual

This report takes the form of a Manual: it aspires to gather all provisions relevant to the function of the Committee and relate them with each other, but most importantly present them in an operational context. What is envisaged as a final result is a comprehensive guide based on a more operational approach and analysis of the existing legislation, which would be useful for all parties involved in Crime Victim Compensation processes, including potential beneficiaries and non-legal professionals, public servants and officials.

Initially, the Committee, its mandate, its establishment and functioning details and its guiding principles are briefly discussed. Next to follow are a collective presentation of provisions regarding victim's rights, an analysis of applicable deadlines, a checklist of all documentation required to

support an application and the procedural steps to obtain additional information which might prove necessary or crucial for an application to be considered as successful or even admissible.

The main part of this Manual is Chapter 1.7, which aspires to be a step to step presentation of all processes applicable. All procedural aspects of an application, from its reception, to its assessment and notification of the applicant regarding its results, are classified in 9 consecutive steps, accompanied by a flowchart providing visual context in the overall procedure.

For its final chapters, the Manual addresses more specialized or technical topics, such as Cross Border Situations, Data Protection, Record Keeping and Financing Aspects of the Committee's operations.

The development of this manual was also able to provide a different context in the view of the existing legislation, while also taking into consideration the lack of available empirical evidence on the examination of applications due to the rather short time-frame of operation of the Committee. Examining the legal framework from an operational standpoint provided useful insight in order to critically assess a newly found institution, i.e. the Committee, and its particulars. Reviewing all procedural aspects from the scope of a potential applicant or a member of the Committee, potential issues that might arise, possible shortcomings and bottlenecks, and sectors where room for further rationalization might exist were identified and will be detailed in an Analysis & Recommendations Report following and complementing this Manual.

# 1. The Crime Victim Compensation Committee

## 1.1 Composition of the Committee and Secretariat

The members of the Committee were appointed on August 10, 2016, by the Government Decision No 10/104<sup>2</sup>. The Committee consists of seven members with the following status (Art. 23, §1, Law No. 05/L-036):

1. one Supreme Court Judge, as a Chairperson, proposed by the Kosovo Judicial Council;
2. one Prosecutor of the State Prosecution Office, proposed by Prosecutorial Council;
3. one member of the Assembly of Republic of Kosovo, proposed from among members of the respective Committee for Legislation;
4. one representative of the Ministry of Justice, proposed by the Minister of Justice;
5. two medicinal expert members licensed in the field of traumatology and psychiatry, proposed by the Kosovo Chamber of Doctors;
6. one representative from civil society, with experience in the field of human rights or victim services, proposed by the civil society organization.

Thus, according to the relevant law provisions, following the proposals from the relevant institutions, the selection of the members of the Committee lies with the Government of Kosovo. The law does not entail any standards for selection, other than experience in the field of human rights or victim services and license in the field of traumatology and psychiatry for the representatives from the civil society and the medicinal experts respectively.

Based on Art. 27 of the Law No. 05/L-036 regarding the provision of support to the Committee by the Ministry of Justice, a Secretariat was established on May 24, 2017 per the Ministry's Decision No 70 and is currently composed by three staff members. The purpose of the Secretariat is to provide technical and administrative support to the members of the Committee.

## 1.2 Duration of Appointment

The members of the Committee serve for a term of three years and the Chairperson for a four-year term (Art. 23, §2, Law No. 05/L-036). Termination of a Committee member can take place according to Art. 24 §1, Law No. 05/L-036, in the following cases:

- when deceased;

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<sup>2</sup> The members of the Committee are: Nesrin Lushta, Judge of the Supreme Court, Chairperson; Bahri Hyseni, Prosecutor of the State Prosecution, Member; Nezir Cocaj, Assembly of the Republic of Kosovo, member; Mentor Borovci, Ministry of Justice, Member (replacing Mentor Borovci, per Government Decision No 05/145, 15.05.2017); Nazmie Ibishi, Chamber of Doctors of Kosovo, Member; Xhevat Gashi, Chamber of Doctors of Kosovo, Member; Behxhet Shala, KMDLNJ, Member.

- upon loss of ability to act for more than three (3) months due to certified medical reasons;
- upon consistent failure to attend to Committee activities for more than three (3) months;
- upon cessation of the status upon which the appointment is based;
- upon expiration of the mandate;
- upon resignation, with thirty (30) days prior notice to the Committee”.

A Committee member can be dismissed before the expiration of the term if their conduct deems them unworthy to perform their function, and in cases where they perform their duties in a negligent manner, and if convicted of a criminal offence (Art. 24 §2, Law No. 05/L-036).

The rules of Law on Contested Procedure regarding Judge Recusal (Art. 67-72, Law No. 03/L-006, & Law No. 04/L-118) are also applicable for the Members of the Committee.

### 1.3 Decision Making Process

The Committee approves the rules of procedure for its functioning (Art. 25 §4, Law No. 05/L-036). The decisions on the applications for compensation are taken with a majority of votes (Art. 34 §1, Law No. 05/L-036) during meetings convened by the Chairperson (Art. 25 §1, Law No. 05/L-036) with at least 2/3 of the members present (Art. 34 §3, Law No. 05/L-036).

The Committee decides on a claim within 90 days from the receipt of the complete application (Art. 34 §4, Law No. 05/L-036), which can be accepted, wholly or partially, or rejected as unfounded (Art. 34 §2, Law No. 05/L-036).

The applications are assessed on the basis of the reasonable doubt standard. The Law further explains this standard as follows: an application shall be approved if the authenticity of the information and facts required and considered would be considered sufficient to convince an objective observer. (Art. 13, AI (GRK) No 01/2017).

## 2. Guiding Principles

All relevant authorities should ensure that the victims are treated with (Art. 4, §1 & 2, Law No. 05/L-036):

- Professionalism
- Respect to their right to security
- Respect to their right to dignity
- Respect to their right to private and family life
- Recognition of the negative impact the crime has on the victim
- Respect of their rights in a non-discriminatory manner, including irrespective of their resident status.

### 3. Victim's Rights

The following constitute an overview of the main rights of the victims pertinent to the compensation procedure, established through the relevant legislative documents.

- The victim shall be notified on all their rights, the review procedures and review process, any restrictions and criteria necessary for applying. The victim shall be provided with reliable information at all times (Art. 10, §1, AI (GRK) No 01/2017).
- Institutions in contact with victims have the obligation to inform them of their right to compensation. Moreover, health and social institutions, the police, prosecution and the courts must post the relevant information in a public space (Art. 28, §1, Law No. 05/L-036).
- The Ministry of Justice, if needed, shall provide general guidance to the applicant, including information on how to complete the application and the relevant supporting documentation (Art. 28, §3, Law No. 05/L-036).
- The Committee is obliged to provide access to the evidence to all the parties and participants in compensation process, pursuant to the applicable legislation for access to public documents and taking into consideration the applicable legislation on protection of personal data (Art. 7, §1, AI (GRK) No 02/2017)
- The victim retains the right to file for compensation from the defendant in a civil-legal dispute, pursuant to the applicable legislation, and the compensation awarded by the court shall not be considered as double compensation for the same damage (Art. 8, §4, & Art. 10, §3, AI (GRK) No 01/2017)
- An unsatisfied applicant has the right to initiate an administrative dispute against the decision of the Committee, pursuant to the applicable legislation (Art. 34, §7, Law No. 05/L-036).

### 4. Application Form and Supporting Documentation

Table 1 below details the information and relevant supporting documentation requirements to be provided during the application process according to the relevant application form and instructions for applicants issued by the Ministry of Justice on May 11, 2017.

Table 1: Checklist	
Application Information	Supporting Documents
Information about the victim	Identification document or evidence of citizenship or permanent residence;
Information about the applicant	Identification document or evidence of citizenship or permanent residence.
Description of the criminal offense	1. Police document or confirmation that shows that the criminal offence has been reported; 2. Final court decision;

	3. Evidence that the execution of the decision of the court was not successful or that the execution of the decision was not possible.
Type and amount of requested compensation	--
Information on impairment to health, disturbance to mental health and medical expenses	<p>Compensation for serious physical injuries or impairment of health</p> <ol style="list-style-type: none"> <li>1. Medical reports and diagnosis for the physical injury caused as a result of the criminal offence.</li> <li>2. Any other document that proves the injury or the impairment, the duration and the degree of the injury.</li> <li>3. Medical report on the required treatment for the victim, which specifies the duration and the total amount of the expected cost of the medical treatment.</li> <li>4. Invoices for medical treatment, medical examinations, surgeries, medications, hospitalization, etc.</li> </ol>
	<p>Compensation for serious disturbance to mental health</p> <ol style="list-style-type: none"> <li>1. Psychiatrist or psychologist reports.</li> <li>2. Psychiatrist or psychologist diagnosis that attests to serious disturbance to mental health.</li> <li>3. Psychiatrist or psychologist report on the required treatment for the victim, which specifies the duration and the number of required therapeutic sessions as well as the expected cost of the treatment.</li> <li>4. Invoices for medical treatment and necessary medication for recovery.</li> <li>5. Pictures in cases when the disturbance to mental health came as a result of disfigurement.</li> <li>6. Other relevant documents.</li> </ol>
	<p>Compensation of damages for destroyed medical devices</p> <ol style="list-style-type: none"> <li>1. Evidence of payment (invoice) of the purchased medical device that was destroyed as a result of the criminal offence.</li> <li>2. Picture of the device or evidence of the type of device.</li> </ol>
Information about loss of capacity to work or the right to maintenance	<ol style="list-style-type: none"> <li>1. Medical report on the injury that resulted from the criminal offence and the degree and duration of the loss of capacity.</li> <li>2. Evidence of the number of days of absence from work and loss of wages.</li> <li>3. Letter from employer that confirms your absence from work because of serious injuries as a result of the criminal offence.</li> </ol>



	<p>4. Details on business if self-employed.</p> <p>5. Bank statement or other credible evidence which shows that wages were obtained.</p> <p>6. Document that shows how long you will be missing from work because of loss of capacity to work as a result of the criminal offence.</p> <p>7. Documents that show that you are the main provider for the family and a certificate of family household.</p> <p>8. Identification documents of dependents.</p>
Information on dependents	Family union certificate and/or any documents proving their dependent position
Funeral expenses	<p>1. Invoices/attestations of payments made for funeral expenses.</p> <p>2. Death certificate.</p>
Procedural expenses	Invoices/attestations of payments made to obtain documents to file an application for compensation.
Compensation ensured in other proceedings	Evidence of compensation obtained from other sources, such as courts/defendant, health insurance, or other.
Declarations and remarks	--
Signature	--
Additional documents	In addition to the required application and supporting documentation, the applicant can enclose any other documents which they consider relevant in supporting the application (Art. 4, §6, AI (GRK) No 01/2017).
<b>Important Notes – Exceptions</b>	
Language of the application	<p>Applications of national victims can be filled in Albanian or Serbian.</p> <p>Applications of victims in cross-border situations can also be filled in English (Art. 30, §7, Law No. 05/L-036).</p>
Supporting documentation in other languages	The documents in a foreign language other than English need to be accompanied by a certified translation into Albanian, Serbian or English (Art. 32, §4, Law No. 05/L-036).
Supporting documentation in other languages in cases of victims of trafficking	In cases of a foreign victim of trafficking, the documents are acceptable in any language. In these cases, the Ministry of Justice assumes the obligation of translating the documents (Art. 24, §3, AI (GRK) No 01/2017).
Documents transmitted between authorities in cross border situations	All applications and documents transmitted between the authorities in cross border situations are exempted from authentication or any equivalent formality (Art. 32, §5, Law No. 05/L-036).

Identification document or evidence of citizenship or permanent residence	For victims of trafficking that do not possess identification documents with evidence of citizenship, this prerequisite is satisfied when the police report identifies the applicant as having been trafficked, his or her citizenship, and that he or she does not have identification documents. (Art. 32, §2, Law No. 05/L-036)
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## 5. Requests for Additional Information

The provision of additional information and supporting documentation in support of the claim shall be requested, if necessary, in the following cases:

- Incomplete or incomprehensible applications:
  - In cases of incomplete or incomprehensible applications, the applicant has the right to remedy the deficiency within a fixed deadline by the Committee, which cannot be shorter than thirty (30) days. (Art. 33, §2 & 3, Law No. 05/L-036)
- Referral of the application from the Court:
  - In case of referral of the application from the Court, the Committee may request from the applicant additional information, which was not submitted by the court. (Art. 5, §3, AI (GRK) No 01/2017)
- Additional documents not available at the time of the application:
  - The applicant shall be granted the opportunity to supplement the application with additional documents in support of the application, which were not available when the application was submitted, until a final decision is rendered. (Art. 6, §2, AI (GRK) No 01/2017)
- Interviews or written reports from officials:
  - When necessary, the Committee may interview or request a written report from the respective officials involved in the criminal process in a specific case and who may have knowledge on the impact of crime on the victim. (Art. 25, §2, Law No. 05/L-036)
- Exchange of information with the competent authorities of other countries:
  - The Ministry of Justice, whenever necessary, shall provide for exchange of information with the competent authorities of other countries, according to the regulations of the respective countries competent for performance of tasks in compensation claim proceedings. The Ministry of Justice shall give assistance and seek adequate solutions concerning the implementation of the provisions hereof in cross– border situations. (Art. 28, §4, Law No. 05/L-036)
- Information from the Police:
  - Upon request of the Committee, the Police shall provide the Committee with information on violent criminal acts from which the victim has suffered. (Art. 28, §5, Law No. 05/L-036)
- Data from authorities and public bodies:

- Administrators of databases of personal information, state authorities, authorities of self-governing local communities and bodies exercising public powers in possession of data on circumstances and facts important for decision-making, must transfer the aforementioned data to the Committee upon its written request. (Art. 35, §1, Law No. 05/L-036)
- Data from individuals:
  - Upon a written request from the Committee, the data on circumstances and facts important for decision-making may also be voluntarily submitted to the Committee by individuals in possession of the data. (Art. 35, §2, Law No. 05/L-036)

## 6. Deadlines for the Submission of the Application

The timeframe for the application submission in all applicable cases is presented in the table below (Table 2). The starting date for the following deadlines has been set as the date when the Crime Victims Compensation Program became functional, namely May 11, 2017.

Table 2: Deadlines for submission of the application	
Case	Deadline
Child victim of trafficking and the perpetrator is unknown 3 months after the crime was discovered or reported	No later than six (6) months from the date the last criminal act, which caused the claim for compensation, was reported. (Art. 31, §1, Law No. 05/L-036)
Foreign victim of trafficking and the perpetrator is unknown 3 months after the crime was discovered or reported	No later than six (6) months from the date the last criminal act, which caused the claim for compensation, was reported. (Art. 31, §1, Law No. 05/L-036)
The defendant has only provided partial restitution	Within six (6) months of receipt of the final decision. (Art. 31, §2, Law No. 05/L-036)
Two (2) years have passed since the discovery of the offense and there was no file of indictment;	The six (6) month time limit starts from the expiration of the two-year timeframe. (Art. 31, §3, Law No. 05/L-036)
The defendant is acquitted as he was the wrong person, while the perpetrator remains unknown;	Within six (6) months of receipt of the final decision. (Art. 31, §2, Law No. 05/L-036)
The Court has determined that the defendant in the criminal matter is not criminally liable	Within six (6) months of receipt of the final decision. (Art. 31, §2, Law No. 05/L-036)
The defendant in that criminal case is deceased	Within six (6) months of receipt of the final decision. (Art. 31, §2, Law No. 05/L-036)
The execution of the court procedure	Within six (6) months of receipt of the final decision. (Art. 31, §2, Law No. 05/L-036)

foreseen for the defendant to pay restitution is not possible or when for other reasons foreseen by the legislation in force, the same cannot be executed	§2, Law No. 05/L-036)
A victim due to his/her bodily injuries, or any other justified reasons which do not allow him to file and application, fails to submit his application by the deadline invoked in §2 (partial restitution) and 3 (no file of indictment after two years)	No later than three (3) months from the day when the reasons for which he was unable to submit the application ceased to exist. (Art. 31, §4, Law No. 05/L-036)
The crime victim whom due to his/her bodily injuries, or any other justified reasons which do not allow him to file and application, is under eighteen (18) years	No later than three (3) months from the day when the victim turns eighteen (18) years. (Art. 31, §5, Law No. 05/L-036)

## 7. Procedural Steps for Claim Assessment

### Step 1. Receipt of the application

The application and relevant documentation can be received in one of the following ways:

- directly (Art. 5, §1, AI (GRK) No 01/2017)
- by mail (Art. 5, §1, AI (GRK) No 01/2017)
- via e-mail (Art. 5, §1, AI, (GRK) No 01/2017)
- referred claims by the Court (Art. 29, §4, Law No. 05/L-036)

### Step 2. Application registration

Upon receipt of the application and supporting to documentation all relevant data is registered in the special registry (Art. 7, §1, AI (GRK) No 01/2017) (for more information see section 1.11).

### Step 3. Notification of the applicant

When an application is received the applicant is notified and provided with the corresponding reference number (Art. 7, §2, AI (GRK) No 01/2017). In cases where the application is submitted via e-mail, the receipt confirmation is provided via an automatic e-mail notification, which confirms the receipt of the e-mail indicating the date and hour as well. (Art. 7, §3, AI (GRK) No 01/2017).

### Step 4. Preliminary review

The preliminary review of the application is based on the following criteria:

1. Is the application complete and comprehensive?
  - If the application is incomplete or incomprehensive a request for additional information or remediation of the deficiencies within a fixed timeframe (no less than 30 days) shall be made (see also section 1.5) (Art. 33, §2 & 3, Law No. 05/L-036).
  - If the applicant fails to provide the information or remedy the deficiency within the fixed deadline, the application shall be refused (Art. 33, §2, Law No. 05/L-036).
  - However, the applicant shall be granted the opportunity to supplement additional documents in support of the application, which were not available when the application was submitted, until a final decision is rendered. (Art. 6, §2, AI (GRK) No 01/2017).
2. Is more information, data or documentation from other sources needed?
  - In cases where more information, data or documents are necessary for the assessment of an application, relevant requests to the appropriate individuals or authorities can be made (see also section 1.5).
3. Does the submission of the application comply with relevant deadlines?
  - Applications that are not submitted in time according to the relevant provisions shall be rejected (Art. 33, §1, Law No. 05/L-036) (see also section 1.6).

## Step 5. Main assessment

The main assessment of the compensation claims is performed against the following eligibility criteria:

1. Is the applicant a beneficiary of compensation?
  - The following have the right to compensation (Art. 12, §1, AI (GRK) No 01/2017):
    - Victim of criminal offences compensated under the Law (see also point 2 below);
    - Dependent of the victim.
2. Is the crime a violent compensable crime? (Art. 6 Law No. 05/L-036)
  - murder;
  - trafficking in Persons;
  - rape;
  - sexual abuse of children;
  - criminal offences which fall within the definition of domestic violence under the Law on Protection Against Domestic Violence.
  - Exception: Except for the aforementioned crimes, the Committee can review and decide on other applications by individuals who claim to have been victims of other violent crimes, which due to their nature and the consequence caused may justify the compensation according to this Law, especially if the victim is a vulnerable victim.
3. Is the victim entitled to immediate access to compensation? (Art. 9 Law No. 05/L-036)

- The person is a child or a foreign victim of trafficking and the perpetrator remains unknown for three (3) months from the detection or reporting of the crime.
  - The foreign victim of trafficking must reasonably cooperate with the authorities in the investigation and prosecution of the perpetrator of the crime.
  - If within the timeframe foreseen for filling the application, the foreign victim of trafficking is within the territory of the Republic of Kosovo, the same may file an application directly to the Committee just like other domestic victims.
4. Does the applicant fulfil the formal conditions? (Art. 7 Law No. 05/L-036)
- citizen or permanent resident of the Republic of Kosovo;
  - citizen of any country with which the Republic of Kosovo has reciprocity; or
  - citizen of a Member State of the European Union.
  - Exception: Foreign citizens, except for victims entitled to immediate access to compensation (see also point 3 above and Art. 9 Law No. 05/L-036), may file the application for compensation through their local authorities (AI (GRK) No 01/2017).
5. Does the crime meet the material conditions? (Art. 8 Law No. 05/L-036)
- is punishable with minimum one year of imprisonment;
  - was committed within the territory of the Republic of Kosovo;
  - was detected and reported to the competent authority and dealt with as a criminal offence;
  - was not committed negligently;
  - resulted in death of the victim, serious bodily injury, serious impairment of health or serious disturbance to mental health of the victim;
  - the victim incurred damage recognized by this law as a consequence of the crime; and
  - the applicant is unable to obtain compensation through health insurance or other resources.
6. Has the applicant initially requested restitution from the defendant?
- Before applying for compensation under this Law, the applicant is obliged to request initially compensation from the defendant in accordance with the Criminal Procedure Code, except for in the cases below (Art. 10, §1, Law No. 05/L-036).
    - Exceptions: the person is a child or a foreign victim of trafficking and the perpetrator remains unknown for three (3) months from the detection or reporting of the crime (Art. 9, §1, Law No. 05/L-036).
  - In cases when the defendant provides only partial restitution to the victim, the victim is entitled to file a request for additional compensation from the crime victim compensation program (Art. 10, §2, Law No. 05/L-036)
7. Is there an inability to get restitution from the defendant?
- The applicant is eligible to apply for compensation, if they demonstrate that the compensation could not be obtained due to the following circumstances (Art. 11, Law No. 05/L-036):
    - if a person was a victim but two (2) years have passed since the discovery of the offense and there was no file of indictment;

- if determined that the person was a victim, but the defendant is acquitted as he was the wrong person, while the perpetrator remains unknown;
  - if the Court has determined that the defendant in the criminal matter is not criminally liable;
  - if the defendant in that criminal case is deceased;
  - if the of the court procedure for the defendant to pay restitution is not possible or when for other reasons foreseen by the legislation in force, the same cannot be executed.
8. Does the victim or dependent seek compensation for the proper types according to the relevant law provisions?
- Victims may require compensation on injuries, damages and expenses, as follows (Art. 12, §2, AI (GRK) No 01/2017):
    - serious physical injuries or impairment of health;
    - serious disturbance to mental health;
    - loss of capacity to work and loss of maintenance.
    - medical and hospitalization expenses;
    - damages from destroying medical equipment;
    - procedural expenses for filling an application for compensation.
  - Dependents may require compensation for the following expenditures (Art. 12, §3, AI (GRK) No 01/2017):
    - compensation for suffering the loss of a family member;
    - loss of the right to maintenance;
    - medical and hospitalization expenses;
    - funeral expenses;
    - procedural expenses for submitting an application for compensation.
    - compensation in situations pursuant to Art. 22, §2 of the Law when the Committee has already decided to compensate the victim and the transfer was not executed. More specifically (Art. 22, Law No. 05/L-036):
      1. In cases when an applicant dies from causes not related to the violent compensable crime after filing the application, the family member of the deceased is entitled to compensation if the following conditions have been cumulatively met:
        - 1.1. if before the person died, the Committee issued a decision awarding compensation, but the compensation award was not transferred yet to the victims' account and;
        - 1.2. if the family member was financially dependent on the deceased and has no other sources of maintenance.
9. Has the victim or the dependent received compensation for the same damage?
- Victims and their dependents cannot receive double compensation for the same damage (Art. 4, §4, Law No. 05/L-036; Art. 8, §1, AI (GRK) No 01/2017).

## Step 6. Assessment per type of damages

Following the verification of the main eligibility criteria, the application is assessed against the relevant criteria per type of requested damages based on the reasonable doubt standard (Art. 13, AI (GRK) No 01/2017):

- an application shall be approved if the authenticity of the information and facts required and considered would be considered sufficient to convince an objective observer.

In the process of calculating the amount for compensation, waivers from medical fees for certain categories of victims as defined by the protocols adopted by the Ministry of Health, shall be considered (Art. 12, §3, Law No. 05/L-036).

### (A) Compensation for serious physical injuries or impairment of health

Eligible cases:

- Compensation for serious injuries and the associated pain (Art. 13, §1, Law No. 05/L-036). As serious injuries are considered the following (Art. 13, §2, Law No. 05/L-036):
  - injuries lasting more than six (6) weeks, which result in incapacity to work or to perform daily tasks;
  - injuries with long-term or permanent visible or functional consequences;
  - injuries which were objectively life-threatening.

Non-eligible cases:

- Physical injuries that resulted only in temporary impairment (Art. 13, §1, Law No. 05/L-036)
- Physical injuries for which the victim's health is temporarily impaired to a lesser degree (Art. 13, §1, Law No. 05/L-036)

Determination of compensation:

- The level of pain, based on the documentation provided, is determined by taking into consideration (Art. 13, §3, Law No. 05/L-036):
  - The circumstances of the case;
  - The level of pain caused by the injury or impairment of health;
  - The duration of the pain;
  - And according to the principle of fair monetary compensation.

Amount of compensation:

- Based on the above the rate of compensation is determined as (Art. 13, §3, Law No. 05/L-036):
  - Up to a thousand and five hundred (1500) Euros for moderately serious cases;
  - Up to three thousand (3,000) Euros for serious cases;
  - Up to seven thousand (7,000) Euros for extremely serious cases.

Maximum amount:

- Seven thousand (7,000) Euros.



## (B) Compensation for serious disturbance to mental health

Eligible cases:

- Psychological injuries caused by an aggravated violent offence which can be medically ascertained by a psychiatrist or psychologist (Art. 14, §1, Law No. 05/L-036).
- The disturbance is at such scale that impacts the regular activities of the victim or their psychological state for an extended period (Art. 14, §2, Law No. 05/L-036).
- Compensation for serious disturbance to mental health under this Law, does not replace non-material damage compensation that the victim may realize in civil – legal procedures (Art. 15, §1, AI (GRK) No 01/2017).

Non-eligible cases:

- Temporary incapacity or disturbance or other similar situations (Art. 14, §2, Law No. 05/L-036).

Determination of compensation:

- The compensation for serious disturbance to mental health is determined by taking into consideration the following criteria (Art. 14, §3, Law No. 05/L-036):
  - The circumstances of the case;
  - The level and duration of the anguish and the type of injuries and
  - Any other relevant factors.
  - Exception: Victims of domestic violence, children abused sexually and victims of trafficking in human beings are considered to have fulfilled the above criteria for being eligible for compensation (Art. 16, §1, AI (GRK) No 01/2017).
- The disturbance of mental health is considered as serious when it was caused as a consequence of (Art. 14, §4, Law No. 05/L-036):
  - Impairment of freedom
  - Violation of sexual integrity
  - Disfigurement
  - Continuous torture
  - Other injuries which may have an impact on the condition, behavior and personality of the victim.
- The applicant provides:
  - Documentation ascertaining that the cause of disturbance is a consequence of actions provided above in paragraph 4 of Article 14 of the Law (Art. 15, §3.1, AI (GRK) No 01/2017).
  - The diagnosis of specialist doctor and relevant receipts for medical treatment and medicines necessary for remedying the disturbance under this Article (Art. 15, §3.2, AI (GRK) No 01/2017).
  - In cases when the disturbance resulted as a consequence of disfigurement, the applicant, in addition to the above, may also provide a photo of the victim taken before the submission of the application for compensation (Art. 15, §4, AI (GRK) No 01/2017).
  - Exception: Victims of domestic violence, children abused sexually and victims of trafficking in human beings are compensated based on the level of damage caused up to the maximum

allowed amount, without being required to provide evidence in any case, only evidence for current expenses of services (Art. 16, §2, AI (GRK) No 01/2017).

Compensable expenses:

- Only current expenses documented by the applicant for remedying aggravated state of mental health (Art. 15, §2, AI (GRK) No 01/2017).

Calculation of compensation:

- The compensable amount is calculated according to the price list for medical services under the public health care system issued by the Ministry of Health (Art. 14, §5, Law No. 05/L-036).
- In cases when the victim is treated in private health institutions, the price list of the Ministry of Health may serve as a guide in deciding on the amount of compensation, allowed up to the maximum amount foreseen by the Law (Art. 15, §5, AI (GRK) No 01/2017).

Maximum amount:

- Five thousand (5,000) Euros (Art. 14, §5, Law No. 05/L-036).

### (C) Compensation for the loss of a close relative

Eligible cases:

- Serious disturbance of mental health due to the loss of a close relative (Art. 14, §6, Law No. 05/L-036).

The processes for the determination of compensation, the compensable expenses and the calculation of compensation are those that apply for the compensation for serious disturbance to mental health described above in section B (Art. 20, AI (GRK) No 01/2017).

Maximum Amount:

- Three thousand (3,000) Euros (Art. 14, §6, Law No. 05/L-036).

### (D) Compensation for loss of capacity to work and loss of maintenance

Eligible cases:

- Loss of capacity to work: A *victim* seeking compensation for loss of wages due to loss of the ability to work as a result of the injuries caused by the crime (Art. 15, §1, Law No. 05/L-036).
- Loss of maintenance: A *dependent* seeking compensation for loss of maintenance in cases where the deceased victim was the main caregiver of the applicant (Art. 15, §2, Law No. 05/L-036).
- Special cases:
  - Compensation under this type of damages does not disqualify an applicant from compensation under other type of damages (Art. 15, §5, Law No. 05/L-036).
  - If a victim was previously compensated by the Committee for loss of capacity to work dies, their dependents can only apply for compensation for loss of maintenance if the amount awarded in

both cases does not exceed the maximum amount foreseen by the Law (Art. 21, §3, AI (GRK) No 01/2017).

- More than one financial dependents of a victim can be compensated, as long as the amount of cumulative compensation for all the dependents shall not exceed the total amount foreseen by the Law (Art. 21, §3, AI (GRK) No 01/2017).

Determination of compensation:

- The injury was so serious that it caused the loss of capacity to work (Art. 17, §1, AI (GRK) No 01/2017), as proven by the following documentation (Art. 17, §2, AI (GRK) No 01/2017):
  - The doctor's report on the impairment resulting from the criminal offence and the level and duration of the incapacity;
  - The history background of the victim's work;
    - In case this cannot be provided by the victim, bank statement or other reliable evidence indicating salaries received by the victim may be provided instead.
  - If the victim was self-employed, details on the business.
- The dependent provides sufficient evidence proving the financial dependency from the victim in line with the above (Art. 21, §2, AI (GRK) No 01/2017).

Calculation of compensation:

- The compensable amount is calculated as a single amount of no more than one hundred and fifty (150) Euros per month, with a starting date the day that said damage was caused and multiplied by the number of months that the applicant is expected to remain unable to work (Art. 15, §3, Law No. 05/L-036).

Maximum amount:

- Three thousand (3,000) Euros (Art. 15, §4, Law No. 05/L-036).

## (E) Compensation for medical and hospitalization expenses

Eligible cases:

- Dependents shall also apply for compensation for medical and hospitalization expenses if the victim dies before the submission of the application and when the dependent himself/herself has paid for these expenses (Art. 23, §2, AI (GRK) No 01/2017).

Determination of compensation:

- The right to this type of compensation is determined based on the price list for medical services under the public health care system issued by the Ministry of Health (Art. 16, §1, Law No. 05/L-036).

Compensable expenses:

- Only expenses documented by the applicant for medical services, hospitalization and medicines (Art. 18, §1, AI (GRK) No 01/2017) which are not provided for free of charge by the health institutions (Art. 18, §2, AI (GRK) No 01/2017)

Calculation of compensation:

- The amount of compensation is calculated according to the price list for medical services under the public health care system issued by the Ministry of Health (Art. 16, §1, Law No. 05/L-036).
- In cases when the victim is treated in private health institutions, the price list of the Ministry of Health may serve as a guide in deciding on the amount of compensation, allowed up to the maximum amount foreseen by the Law (Art. 18, §2, AI (GRK) No 01/2017; Art. 15, §5, AI (GRK) No 01/2017).

Maximum amount:

- Five thousand (5,000) Euros (Art. 16, §2, Law No. 05/L-036).
- Exception: in cases of unanimous votes by the members of the Committee, the maximum amount shall not exceed Ten thousand (10,000) Euros (Art. 16, §2, Law No. 05/L-036).

## (F) Compensation on damages for the destruction of medical devices

Eligible cases:

- Reimbursement for any medical devices which are necessary for the health or quality of life (Art. 19, §1, AI (GRK) No 01/2017) and which were damaged by the violent intentional crime that resulted in the injury of the victim (Art. 18, §1, Law No. 05/L-036).

Compensable expenses include, but are not limited to (Art. 19, §2, AI (GRK) No 01/2017):

- hearing devices
- wheelchairs
- dioptré glasses
- orthopaedic prostheses
- dental prostheses
- other devices deemed necessary by the Committee.

Determination of compensation:

- For the purposes of compensation 'the term "quality of life" means the standard of an individual's health welfare' (Art. 19, §3, AI (GRK) No 01/2017).
- If said device(s) was purchased by the applicant the relevant proof of payment should be provided (Art. 19, §4, AI (GRK) No 01/2017).

Calculation of compensation:

- The compensable amount is based on the reasonable price for the damaged device (Art. 19, §4, AI (GRK) No 01/2017).

Maximum amount:

- Three thousand (3,000) Euros (Art. 18, §2, Law No. 05/L-036)

### (G) Compensation for funeral expenses

Eligible cases:

- The victim's death resulted from a compensable crime (see Art. 6, Law No. 05/L-036) (Art. 22, §1, AI (GRK) No 01/2017).
- The funeral expenses are compensated to the applicant family member who paid for the funeral (Art. 17, §1, Law No. 05/L-036; Art. 22, §1, AI (GRK) No 01/2017).
- Applicable also in cases of cross-border victims (Art. 22, §5, AI (GRK) No 01/2017).

Non-eligible cases:

- Compensation cannot be granted to the person responsible for the victim's death (Art. 22, §2, AI (GRK) No 01/2017).
- Cases where the funeral expenditures were covered by public funds (Art. 22, §4, AI (GRK) No 01/2017).

Compensable expenses include, but are not limited to (Art. 22, §3, AI (GRK) No 01/2017):

- funeral expenses;
- commemorative plaque;
- funeral wreaths;
- coffin;
- expenses related to the burial location;
- expenses for victim's death notice;
- transportation expenses;

Maximum amount:

- Three thousand (3,000) Euros (Art. 17, §2, Law No. 05/L-036)

### (H) Procedural expenses for filing the application for compensation

Eligible cases:

- The Committee may consider covering the costs for the issuance of documents, if the Committee determines that such documents are significant for the process of assessing the level and type of damage or injury caused by the offence (Art. 24, §1, AI (GRK) No 01/2017).
- In all the cases that the Committee requires additional documentation from the applicant, the expenses for the issuance of said documents is covered by the Ministry of Justice (Art. 24, §2, AI (GRK) No 01/2017).

Non-eligible cases:

- Private attorney fees for assistance in the completion and filling of the application (Art. 29, §3, Law No. 05/L-036; Art. 24, §4, AI (GRK) No 01/2017).

Compensable expenses:

- Expenditures for the issuance of documents that are ascertained by the Committee as significant for the determination of the type and level of damages (Art. 24, §1, AI (GRK) No 01/2017).
- Expenditures for the issuance of additional documentation required by the Committee (Art. 24, §2, AI (GRK) No 01/2017).

Maximum amount:

- No maximum amount is specified by the law.

### (I) Transfer of compensation claim

Eligible cases:

- The applicant has the right to request the transfer of the right to compensation in cases where the victim dies from causes unrelated to the compensable crime after filling the application, and family members are entitled to compensation only if the following conditions have been cumulatively met (Art. 22, §2, Law No. 05/L-036):
  - if before the person died, the Committee issued a decision awarding compensation, but the compensation award was not transferred yet to the victims' account and;
  - if the family member was financially dependent on the deceased and has no other sources of maintenance.

Non-eligible cases:

- In all other cases where the applicant dies after filing the application the right to compensation is not transferable to any dependents (Art. 22, §1, Law No. 05/L-036).

## Step 7. Final calculation

Before the rendering of the decision and the final calculation of the compensation (A) potential compensations from other sources and (B) other influential circumstances shall be taken into consideration.

### (A) Compensation from other sources

During the process of deciding on the compensation, any other form of compensation received by the victim is taken into account. More specifically:

- The compensable amount for any type of damages is reduced based on the damages covered for the same type of damage by any other sources (Art. 21, §1, Law No. 05/L-036)

- Any restitution awarded by the court in the criminal case for which compensation is requested, unless it has not been paid, is also taken into consideration by the Committee (Art. 21, §2, Law No. 05/L-036).

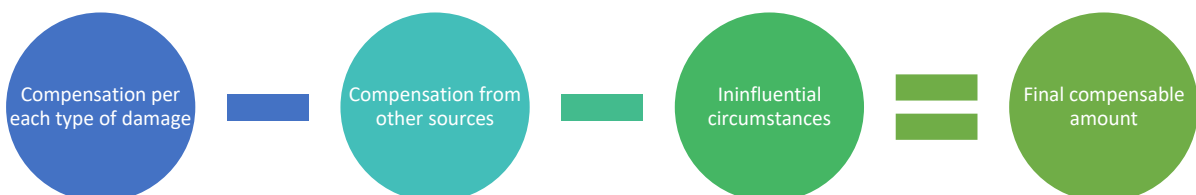
## (B) Circumstances influencing the compensation

An application for compensation may be refused or the compensable amount may be reduced on the following grounds (Art. 20, §1, Law No. 05/L-036) (see also section 2.1.6):

- "on account of the victim's contribution in causing the damage or to the deterioration of the damage caused;
- on account of the victim's conduct before, during or after the crime;
- on account of the victim's involvement in organized crime or his membership of an organization which engages in crimes of violence.
- if an award or full award would be contrary to a sense of justice or to public order."

The criminal past of a deceased victim is considered only in cases where the victim was involved in serious criminal offences, which would render the compensation a breach of the sense of justice or public order, or the compensation would constitute an unfair use of the public funds (Art. 11, §3, AI (GRK) No 01/2017).

*Equation 1: Final calculation formula*



## Step 8. Decision

The Committee decides to either refuse the application as unfounded or accept it wholly or partially and establish the awarded level of compensation (Art. 34 §2, Law No. 05/L-036). The Committee decides the type of services which will be reimbursed and in its final decision is also included the amount of the compensable expenses (Art. 19, §2 & 3, Law No. 05/L-036).

Decision making process:

- The Chairperson of the Committee conveys a meeting for deciding on an application (Art. 25, §1, Law No. 05/L-036).
- The decisions on the applications for compensation are taken with a majority of votes (Art. 34, §1, Law No. 05/L-036).
- At least 2/3 of the members of the Committee need to be present during each meeting (Art. 34, §3, Law No. 05/L-036).

- The deadline for rendering a decision on a claim is 90 days from the receipt of the complete application (Art. 34, §4, Law No. 05/L-036).

## Step 9. Notification of the decision

Upon the final decision of the Committee, a copy of the decision is provided to the applicant and the incumbent court (Art. 34, §5, Law No. 05/L-036). In cases where the applicant is an individual lacking the capacity to act or a child, the legal guardian is provided with the copy of the decision (Art. 34, §6, Law No. 05/L-036).

With the rendering of the final decision to the incumbent Court, the Committee shall also notify the Court on the its obligation to transfer to Kosovo Budget the amount of compensation towards the victim, which has already been awarded to the victim via its decision (Art. 18, §5, AI (GRK) No 01/2017).

With the notification of the final decision to the applicant the following take effect:

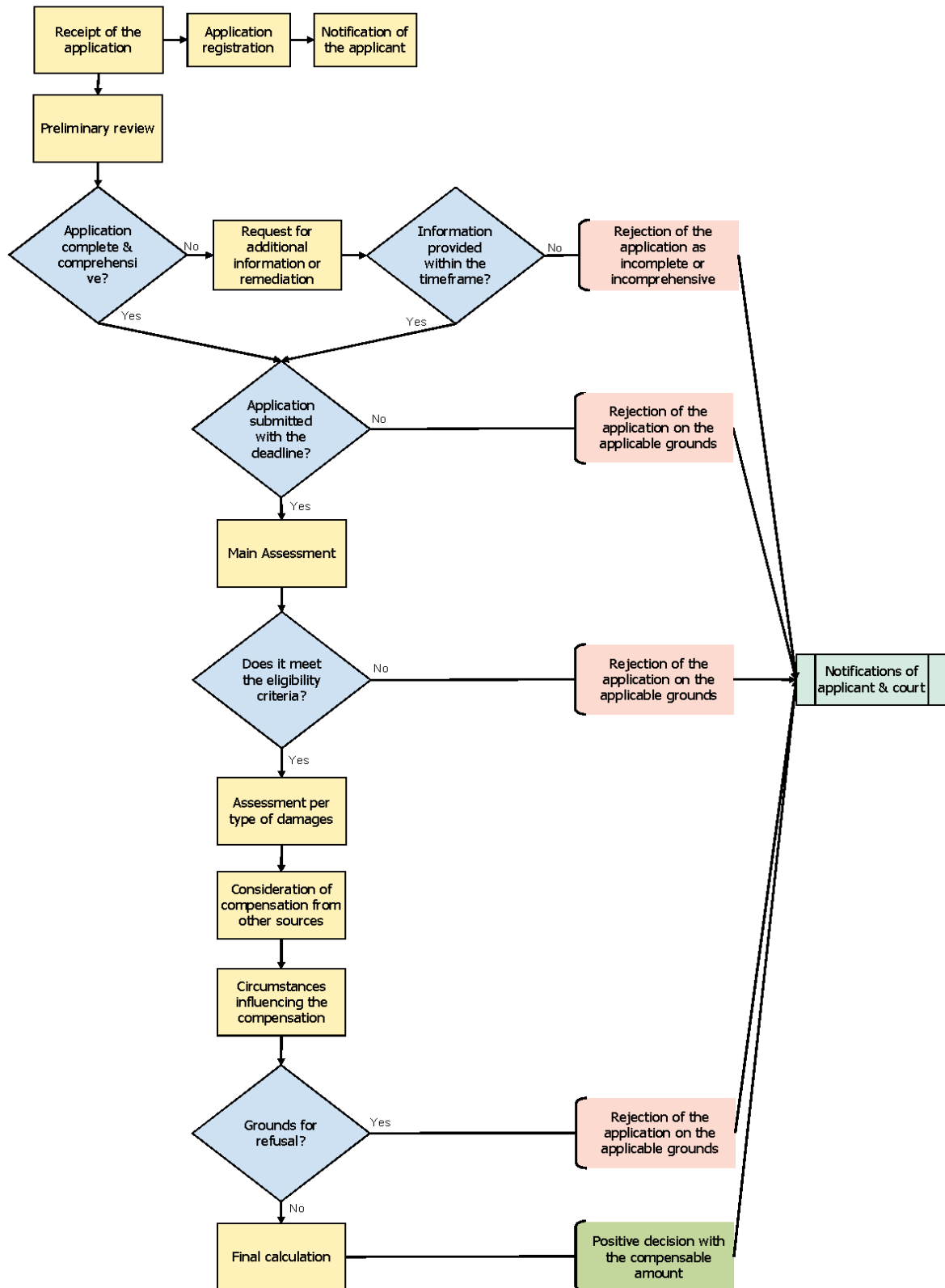
- A clause for transferring of the claim against the perpetrator from the beneficiary to the budget of the Republic of Kosovo shall be included in the final decision granting the compensation (Art. 34, §8, Law No. 05/L-036).
- On the day of execution of the decision recognizing the beneficiary's right to compensation, the beneficiary's claim against the perpetrator shall pass to the Government of Kosovo, up to the amount of the awarded compensation (Art. 43, §1, Law No. 05/L-036) and the Government of Kosovo now acts as the beneficiary against the perpetrator (Art. 43, §2, Law No. 05/L-036). The amount of compensation ordered against the defendant, already awarded to the victim via a decision of the Committee, shall be transferred to the state. In such cases, the Ministry of Justice is responsible for initiating all official actions to realize the restitution of the amount awarded upon the decision of the Committee (Art. 43, §3, Law No. 05/L-036). The transfer of claim does not constitute a reason to dismiss a pending claim in civil courts against the perpetrator. As the victim retains the right to file for compensation from the defendant in a civil-legal dispute pursuant to the applicable legislation and the compensation awarded by the court shall not be considered as double compensation for the same damage (Art. 8, §4, & Art. 10, §3, AI (GRK) No 01/2017).
- The beneficiary has the obligation to inform the Committee if restitution is obtained from other sources, either after the receiving compensation or until the execution of the Committee's decision (Art. 44, §2, Law No. 05/L-036).
- The applicant has the right to initiate an administrative dispute against the decision of the Committee, pursuant to the applicable legislation (Art. 34, §7, Law No. 05/L-036).

## Flowchart



The chart below (see also Annex 1 of the current report) summarizes the procedural steps for the assessment of the claims for compensation.

Figure 1: Claim Assessment Flowchart



## 8. Unjustly Acquired Funds

The Committee and any other interested party may inform the State prosecutor for cases where information is received indicating that the beneficiary's claim was awarded on the grounds of false or forged date or any other fraud (Art. 44, §1, Law No. 05/L-036).

Additionally, in cases where restitution is obtained from other sources, either after receiving compensation or until execution of the Committee's decision, the beneficiary has the obligation to inform the Committee (Art. 44, §2, Law No. 05/L-036).

## 9. Cross Border Situations

Art. 36, §1, of Law No. 05/L-036 distinguishes between two types of cross-border situations:

- A national cross-border situation occurs when a crime is committed in the territory of the Republic of Kosovo and the victim is a foreign citizen. In this case, the Committee is the decision-making authority and the application is forwarded by an assisting authority of the country whose citizenship the victim holds. However, if the victim has the right to apply for immediate access to victim Compensation (as envisaged in Art 9 of Law No. 05/L-036) and is still within the territory of the Republic of Kosovo, the victim may also file the application directly to the Committee, like a domestic victim (Art 9, §3, Law No. 05/L-036). The victim is, however, entitled to the right to access to compensation only if the Republic of Kosovo undertakes such responsibility via an international agreement. In the case that the Republic of Kosovo joins EU, the same rights will also be automatically applicable to EU countries citizens (Art 45, Law No. 05/L-036).
- A foreign cross-border situation occurs when the crime is committed on foreign soil, yet the victim potentially entitled to compensation holds a citizenship of the Republic of Kosovo. In this case eligibility for compensation is decided by the incumbent authority of the country where the crime occurred and the Ministry of Justice of the Republic of Kosovo acts as an assisting authority, being responsible for the transmission of the application.

### 9.1 National cross-border situations (Art 37, Law No. 05/L-036)

Receipt of the application:

Upon receipt of an application by an assisting foreign authority the Ministry of Justice within 30 days shall provide the competent foreign authority with the following information:

- a. An acknowledgment of receipt
- b. Information of the contact person or department responsible
- c. An indication of the approximate time by which a decision on the application will have been reached, if this approximation is feasible.

Application form and supporting documentation:

- The assisting authority is obliged to use the standard form application by the Ministry of Justice, and the application and all accompanying documents should be in Albanian, Serbian or English.
- In case the application and/or accompanying documents are submitted in English, if needed, translation into the official languages of the Republic of Kosovo for the Members of the Committee will be provided at the expense of the Ministry of Justice (Art. 26, §6, AI (GRK) No 01/2017).
- If the aforementioned preconditions are not met or the application is not complete, the Ministry of Justice will return the application to the assisting authority (Art 37, §2 & 3, Law No. 05/L-036).

Committee's decision:

Accordingly, the Ministry of Justice shall submit the application and all accompanying documentation to the Committee as soon as possible (Art 37, §4, Law No. 05/L-036). Art. 26, § 1 of AI (GRK) No 01/2017 sets the respective timeframe to 7 days. The Committee subsequently is obliged to perform a review (Art. 26, §2 of AI (GRK) No 01/2017), primarily to decide whether the conditions of article 45 of Law No. 05/L-036, which specify whether the applicant has indeed the right to request to compensation, are met. The conclusion of the Committee's review is then forwarded to the Ministry of Justice, which in return shall, within 60 days, notify the victim via the assisting foreign authority (Art. 26, §3, AI (GRK) No 01/2017)

Particular procedures:

In case where particular procedures, such as hearing of an applicant, expert or witness, are deemed necessary, the Committee may ask the foreign assisting authority to carry out the respective proceedings, which might also be carried out via video-conference or other means of telecommunication. In both cases proceedings shall be carried out only if the person to be heard agrees (Art 37, §5 & 6, Law No. 05/L-036). If a hearing via video conference or telecommunication means is due, then it shall be carried out by the Chairman of the Committee or by a Member of the Committee authorized by the Chairman (Art 37§, 7, Law No. 05/L-036). The Ministry of Justice shall facilitate the hearing by coordinating with the foreign assisting authority to ensure that translation for the Members of the Committee is provided, if necessary (Art. 26, §7, AI (GRK) No 01/2017).

Final decision:

When the Committee reaches a decision, the Ministry of Justice shall forward the decision to the assisting foreign authority within 60 days of its issuing. If needed, the Ministry of Justice makes sure that the decision is translated in the language acceptable under the laws of the foreign country (Art. 26, §8 & 9, AI (GRK) No 01/2017).

## 9.2 Foreign cross-border situations (Art 38, Law No. 05/L-036)

In the case of a foreign cross-border situation the Committee has minimal active involvement. However, it shall be continuously informed for any possible requests and communications by foreign authorities (Art. 27, §7, AI (GRK) No 01/2017).

The Ministry of Justice is the public authority responsible to facilitate the applicants and to communicate and offer assistance to the foreign deciding authorities. Contact with foreign authorities is maintained via the office for international legal cooperation (Art. 27, §5, AI (GRK) No 01/2017). More specifically:

- The Ministry of Justice facilitates hearings or interviews of applicants, witnesses, or experts carried out in the Republic of Kosovo by the Committee and forwards a report based on these proceedings to the deciding foreign authorities.
- It assists in the case that such proceedings are carried out via video-conference or other means of telecommunication (Art 38, §5 & 6, Law No. 05/L-036). The consent of the person to be heard, is, as per national cross-border situations, a precondition to the initiation of such proceedings.

However, the Ministry of Justice does not make any assessment on the application (Art 38, §7, Law No. 05/L-036). The actions of the Ministry of Justice cannot be appealed or give rise to claim for reimbursement of charges or costs from the applicant or from the foreign deciding authority (Art 38, §8, Law No. 05/L-036).

Application Procedure:

- The applicant may submit his/her application directly to the Ministry of Justice, using the standard application form envisaged (Art 27, §1, AI (GRK) No 01/2017).
- The Ministry of Justice will review the application and, within 60 days, inform the applicant on whether he his application is possible and acceptable under the laws of the state where the criminal of offence was committed (Art. 27, §2, AI (GRK) No 01/2017).
- If compensation is not possible under the laws of the said state, the applicant shall be informed accordingly within 30 days from the receipt of such information by the Ministry of Justice (Art. 27, §3, AI (GRK) No 01/2017).
- In the opposite occasion, the Ministry of Justice shall contact the incumbent foreign authorities as soon as possible (Art. 27, §4, AI (GRK) No 01/2017).
- The Ministry of Justice will then forward the application and all accompanying documents to the foreign deciding authority making sure that:
  - Its form abides to the one required by the incumbent state (Art. 27, §6, AI (GRK) No 01/2017).
  - It is sent in one of the official languages of the incumbent state or another official language of the EU that the receiving state has indicated that it shall accept (Art. 27, §6, AI (GRK) No 01/2017).The Ministry of Justice shall cover necessary translation costs (Art. 27, §8, AI (GRK) No 01/2017)

In the case that the applications are deemed unacceptable or additional information is required by foreign deciding authorities, the Ministry of Justice immediately informs the applicant. (Art 38, §2, Law No. 05/L-036).

Once a decision by the foreign deciding authority is reached and communicated to the Ministry of Justice, the Ministry should inform the applicant accordingly as soon as possible (Art. 27, §10, AI (GRK) No 01/2017). In the meantime, and in periodic times it shall contact the incumbent authorities making inquiries on the status of pending applications (Art. 27, §11, AI (GRK) No 01/2017).

## 10. Personal Data – Data Protection

### 10.1 Data requests

The Committee has the right to request information that may be regarded as personal data by public/state/self-governing authorities and bodies exercising public powers, as well as by individuals (Art. 35, Law No. 05/L-036) (see also section 1.5). It may be assumed that legal persons might also be included under the term "individuals", yet such interpretation should not be considered self-evident.

The data requested has to be important for the decision-making purposes (a rather vague term) and the request for their submitting should be in written form. Upon receipt of such request the transfer of the said data is obligatory for public bodies and voluntary for individuals (Art. 35, §2, Law No. 05/L-036).

### 10.2 Access to data

Access to the contents of a criminal charges, their enclosures, reports to the State Prosecutor's Office, criminal charges and court decisions that are in the possession of the Committee may only be made available to the members of the Committee, the victim or his legal representative, authorized representative and the competent state authorities (Art. 35, §3, Law No. 05/L-036). Accordingly, once the Committee is in possession of such documents, it should not disclose its contents to third parties, other than those that law already provides.

Parties and participants in the compensation procedure shall be given access to *evidence, pursuant to the applicable legislation for access to public documents and taking into consideration the applicable legislation on the protection of personal data* (Art. 7, AI (GRK) No 02/2017)

All data included in the application shall solely be used for the purpose of exercising the victim's right on financial compensation and not for other purposes (Art. 9, §3, AI (GRK) No 01/2017).

## 11. Record Keeping

Record keeping is kept on an individual case basis and each case is attributed a number upon the submission of an application. The form and content of the records and their manner of keeping are regulated by Administrative Instruction (GRK) NO 02/2017 "On registers for applicants and decisions issued on compensation" as directly envisaged by Article 41. The key aspects of the envisaged recordkeeping are described below.

### 11.1 Registry

All applications and relevant documents are kept in a hard copy register (Art. 2, AI (GRK) No 02/2017), in chronological order (Art. 3, §3, AI (GRK) No 02/2017), containing the following information for each case and applicant (Art. 3, §1, AI (GRK) No 02/2017):

1. name and surname (of applicant);
2. name and surname of one parent;
3. date of birth;
4. place of birth, municipality, and state;
5. current address;
6. dependent;
7. Committee's decision;
8. application for compensation;
9. types of compensation;
10. personal number of valid identification document;
11. gender;
12. civil status
13. ethnicity

In cases that several applicants initiate a common procedure, a single registration is created and the data of all applicants are kept together (Art. 3, §4, AI (GRK) No 02/2017).

The register is closed every year, after it is signed by the Committee (Art. 4, AI (GRK) No 02/2017).

## 11.2 Document of the Committee

The Document of the Committee consists of acts issued by the Committee, copies of relevant documents, submissions, authorizations, findings and other submissions. According to this record keeping scheme, a folder is created for each case, listing and enclosing all regular documents (Art. 5, AI(GRK) No 02/2017).

Following the completion of all relevant Committee actions and after the Committee confirms that the case is no longer pending, the Documents are archived (Art. 6, AI(GRK) No 02/2017).

## 11.3 Reissue of documents

In case any of the Documents is lost, damaged or destroyed, it will be reissued at the cost of Ministry of Justice. For the reissuing of documents of an on-going procedure, a decision of the Committee is presupposed (Art. 6, §4, 5, & 6 AI(GRK) NO 02/2017).

## 11.4 Access to records

Access to records is granted according to Article 7 of AI (GRK) No 02/2017): *"The Commission shall be obliged that, pursuant to the applicable legislation for access to public documents, provide access to evidence for the parties and participants in compensation procedure, taking into consideration the applicable legislation on the protection of personal data."*

## 11.5 Duration of storage

Article 41, §1 of Law No. 05/L-036 implies that all above mentioned files cannot be kept for an indefinite period. This is only reasonable considering applicable Privacy Law considerations and practical details (storage facilities capacity). However, AI(GRK) No 02/2017 does not make any remarks on the minimum or maximum duration of the storage of each file and/or category of data and thus the authorities would benefit from the guidance of the National Agency for the Protection of Personal Data on this issue.

## 12. Financing Aspects

The Crime Victim Compensation Program is financed through public funds comprising a part of the annual budget of the Republic of Kosovo Ministry of Justice and can also be financed through voluntary contributions and private donations, in compliance with the Rules of Financial Control and Management (Article 39, §1 & 2, Law No. 05/L-036). Part of the revenue may come from criminal sanctions specifically imposed by Courts in trafficking related cases as follows (Article 39, §3, Law No. 05/L-036):

- a. for criminal offences adjudicated by the General Department of Basic Courts the amount of thirty (30) Euro;
- b. for criminal offences adjudicated by the Serious Crimes Department of Basic Courts the amount of fifty (50) Euro.

The projected revenues from this source are taken into consideration before the Crime Victim Compensation Program budget request is finalized. Before the budget allocation is finalized other possible sources of revenue such as disposal of confiscated assets, revenues from confiscated bail etc. are taken into account (Article 39, §4 & 5, Law No. 05/L-036.)

According to information provided by the Ministry of Justice, for the year 2017, a fund of 100,000 Euros has been allocated to the Victim Compensation Program. The fund will be used for the compensation of victims and beneficiaries and the compensation of the Committee Members. Pursuant to Art. 25, §3, which foresees the compensation of the members of the Committee for their work, the relevant Government Decision No 05/145 has established the compensation of the Chairperson and the Members at three hundred (300) and two hundred and fifty (250) Euros per month respectively, starting from January 2017.



The Ministry of Justice shall also submit an annual report to the Ministry of Finance including (Article 40, Law No. 05/L-036):

1. the total number of applicants;
2. the number of applicants denied compensation;
3. the number of applicants granted compensation;
4. the amount of compensation granted to applicants and
5. the expenditures of the Committee.