

LAW NO. 04/L-273

ON AMENDING AND SUPPLEMENTING THE LAWS RELATED TO THE MANDATE OF THE EUROPEAN UNION RULE OF LAW MISSION IN THE REPUBLIC OF KOSOVO

The Assembly of the Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON AMENDING AND SUPPLEMENTING THE LAWS RELATED TO THE MANDATE OF THE EUROPEAN UNION RULE OF LAW MISSION IN THE REPUBLIC OF KOSOVO

**Article 1
Purpose**

1. The purpose of this Law is to amend and supplement the following laws related to the mandate of the European Union Rule of Law Mission in Kosovo ("EULEX"):

- 1.1. Law No. 03/L-052 on Special Prosecution Office of the Republic of Kosovo;
- 1.2. Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo;
- 1.3. Criminal Code of Republic of Kosovo, No. 04-L/082;
- 1.4. Criminal Procedure Code of Kosovo, No. 04-L/123;
- 1.5. Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters;
- 1.6. Law No. 03/L-137 on the Department of Forensic Medicine;
- 1.7. Law No. 04/L-015 on Witness Protection;
- 1.8. Customs and Excise Code of Kosovo, No. 03/L-109.

**Article 2
Amending and Supplementing the Law No. 03/L-052 on Special Prosecution Office of the Republic of Kosovo (Law)**

1. Article 2 of the basic Law is deleted from the text of the Law.
2. Article 4 of the basic Law, paragraph 4.1, the designation "Special Prosecutors" is reworded as following: "Prosecutors with permanent mandate".
3. Article 4 of the basic Law, paragraph 4.2, the designation "Chief Public Prosecutor of Kosovo" is reworded as following: "Chief State Prosecutor of Kosovo".
4. Article 4 of the basic Law, paragraph 4.3 is deleted from the text of the Law.

5. Article 4 of the basic Law, paragraph 4.6, the designation “Chief Public Prosecutor of Kosovo” is reworded as following: “Chief State Prosecutor of Kosovo”

6. Article 15 of the basic Law is reworded as following:

Article 15
Transitional provisions

15.1. The SPRK will also be composed of EULEX Prosecutors, in addition to what has been envisaged in paragraph 1 of Article 3 of this Law, upon joint decision of the competent authorities within the EULEX KOSOVO and Kosovo Prosecutorial Council.

15.2. The number of the EULEX prosecutors assigned to the SPRK envisaged in paragraph 1 of this Article can be modified upon joint decision of the competent authorities within the EULEX KOSOVO and Kosovo Prosecutorial Council.

15.3. EULEX prosecutors are integrated into Kosovo Prosecutorial system and will discharge their functions in compliance with the applicable legislation in Kosovo

15.4. For the duration of EULEX KOSOVO, mandate the Deputy Chief Prosecutor of SPRK will be a EULEX Prosecutor assigned by EULEX KOSOVO.

15.5. The Deputy Chief Prosecutor will direct the activities of the EULEX Prosecutors on SPRK under the general supervision of the EULEX competent authority.

7. After Article 15 of the basic Law a new Article 15.A is added with the following text:

Article 15.A
SITF Provisions

1. As provided for in Law on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo (April 2014), within the SPRK, the Special Investigative Task Force (SITF) shall operate as a separate, independent investigative and prosecutorial function with all necessary powers and autonomy to do so.

2. The SITF shall not be subject to the direction or supervision of either the Chief Prosecutor or Deputy Chief Prosecutor of the SPRK nor the general supervision of the Chief State Prosecutor.

3. The SITF Prosecutors and investigators shall have the powers of the EULEX Prosecutors and EULEX police as provided for in the Law No. 03/L-053 on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo.

Article 3
Amending and Supplementing the Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo

1. The title of the basic Law is reworded as following:

“Law No. 03/L-053 on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo”.

2. In Article 1 of the basic Law, the Definitions are reworded as following:

Definitions

For the purpose of this Law:

- **“EULEX KOSOVO”**- means the Common Security and Defense Policy Mission established in Kosovo by the European Union;

-**“Head of the EULEX KOSOVO”**- means an individual, belonging to the EULEX KOSOVO, who has been selected and appointed by the competent authority to work in Kosovo in this specific position;

-**“Head of Executive Division”**- means an individual, belonging to the EULEX KOSOVO, who has been selected and appointed by the competent authority to work in Kosovo in this specific position;

-**“EULEX judge”**- means a judge, belonging to the EULEX KOSOVO, who has been selected and appointed by the competent authority to work in Kosovo in this specific position;

-**“EULEX prosecutor”**- means a prosecutor, belonging to the EULEX KOSOVO, who has been selected and appointed by the competent authority to work in Kosovo in this specific position;

-**“EULEX police officer”**- means an individual, belonging to the EULEX KOSOVO, who has been selected and appointed by the competent authority to work in Kosovo in this specific position;

-**“Kosovo police officer”**- means a member of the staff of the Kosovo Police, as defined by the applicable law;

-**“State Prosecutor”**- means the independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law and includes the following: the Basic Prosecution Offices; the Appellate Prosecution Office; the Special Prosecution Office; the Office of the Chief State Prosecutor; and any other organizational unit that may be created to carry out prosecutorial functions;

-**“Chief State Prosecutor of Kosovo”**- means the Chief State Prosecutor of the Republic of Kosovo and the management and supervisory head of the State Prosecutor;

-**“Kosovo prosecutor”**- means a resident of Kosovo appointed as prosecutor according to the applicable law;

-**“Kosovo judge”**- means a resident of Kosovo appointed as judge according to the applicable law;

-**“Special Prosecution Office of Republic of Kosovo” or “SPRK”**- means the permanent and specialized prosecutorial office operating within the Office of the State Prosecutor of Kosovo;

-**“Law Enforcement Agency”**- means the Kosovo Police and any other authority or agency established in Kosovo that can legitimately exercise comparable powers and typical functions of the Kosovo Police according to the applicable law; this definition includes the EULEX Police;

-**“Applicable Law”**- means the law applicable in Kosovo in compliance with the Constitution of the Republic of Kosovo;

-**“SITF”** means the Special Investigative Task Force established by EULEX to investigate allegations arising from the Council of Europe Parliamentary Assembly Document 12462 of 7 January 2011.

3. After Article 1 of the basic Law, a new article 1.A is added with the following text:

Article 1.A Ongoing cases

For purpose of this law an ongoing case means:

1. Cases for which the decision to initiate investigations has been filed before 15 April 2014 by EULEX prosecutors in accordance with the law;

2. Cases that are assigned to EULEX judges before 15 April 2014.

4. Article 2 of the basic Law is reworded as following:

Article 2
General authority of EULEX judges

2.1. A EULEX judge will have the authority and responsibility to perform the functions for cases falling within the jurisdiction of the court to which he or she is assigned to by EULEX KOSOVO in agreement with Kosovo Judicial Council.

2.2. EULEX judges will cooperate with the Kosovo Judges working at the different courts to which they are assigned to, in accordance with paragraph 1 of this article.

2.3. Where required, the relevant aspects of the activity and cooperation of EULEX judges with the Kosovo judges working in the local courts will be further outlined, to the necessary extent, in a separate Arrangement between the Head of the EULEX KOSOVO and the Kosovo Judicial Council.

2.4. EULEX judges will be independent in the discharge of their functions.

5. Article 3 of the basic Law is reworded as following:

Article 3
Jurisdiction and competences of EULEX judges for criminal proceedings

3.1. EULEX judges assigned to criminal proceedings will have jurisdiction and competence over ongoing cases as stipulated in Article 1.A sub-paragraph 1.2 of this Law.

3.2. A EULEX judge can be assigned to the respective stage of the criminal proceedings, on the ongoing cases as stipulated in Article 1.A sub-paragraph 1.1 of this Law in compliance with the KJC internal regulation.

3.3. Panels in which EULEX judges exercise their jurisdiction in criminal proceedings will be composed of a majority of local judges and presided by a local judge. Upon the reasoned request of the EULEX competent authority Kosovo Judicial Council will decide that the panel to be composed of majority of EULEX judges.

3.4. EULEX Kosovo will appoint judges to assist in the implementation, according to the agreement, of the EU-facilitated Dialogue between Kosovo and Serbia.

6. Article 4 of the basic Law is reworded as following:

Article 4
Competent authority in cases of existence of procedures for disqualification

If, according to the applicable law, a EULEX judge is subject to a procedure for disqualification, or if there is a petition for disqualification of a EULEX judge, the President of the court will have the authority to decide over the disqualification, in accordance with the applicable law.

7. Article 5 of the basic Law is reworded as following:

Article 5
Jurisdiction of EULEX/international judges for civil cases

5.1. EULEX/international judges assigned to civil proceedings will have the competence to adjudicate on the ongoing cases as stipulated in Article 1.A sub-paragraph 1.2 of this Law, over:

a) Cases falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency related matters;

b) Cases falling within the jurisdiction of the Appeals Panels on decisions of the Kosovo Property Claims Commission according to the applicable law;

5.2. Panels in which EULEX/international judges exercise their jurisdiction in civil proceedings will be composed of a majority of local judges and presided by a local judge. Upon the reasoned request of the EULEX competent authority Kosovo Judicial Council will decide that the panel to be composed of majority of EULEX judges.

8. Article 6 of the basic Law is deleted from the text of the Law.

9. Article 7 of the basic Law is reworded as following:

Article 7
General authority and competences of EULEX prosecutors

7.1. EULEX prosecutors will have the authority and responsibility to perform their functions, including the authority to conduct criminal investigations as stipulated in Article 1.A sub-paragraph 1.1 of this Law, unless foreseen different by this Law.

7.2. The EULEX prosecutors will be competent to investigate and prosecute the crimes that fall under the competence of the SPRK in accordance with the law on SPRK.

7.3. EULEX prosecutors are integrated into Kosovo Prosecutorial system and will discharge their functions in compliance with the applicable legislation in Kosovo.

7.4. Cases conducted by EULEX prosecutors as stipulated in Article 1.A sub-paragraph 1.1 of this Law will continue to be managed in accordance with relevant provisions of the Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (2008) and Law on SPRK (2008).

7.5. EULEX KOSOVO will appoint prosecutors to assist in the implementation, according to the agreement, of the EU-facilitated Dialogue between Kosovo and Serbia.

7.6. In carrying out their functions, EULEX prosecutors will closely consult and coordinate their activities with the Chief Prosecutor in charge of the office, where they are assigned.

7.7. As provided for in Law on Ratification of the International Agreement Between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo (April 2014), EULEX Prosecutors working within the SITF shall have all the competency and autonomy necessary to continue the SITF investigation and to pursue any resultant criminal proceedings independently without interference or interruption. Paragraph 7.6 does not apply to EULEX Prosecutors working within SITF.

10. After Article 7 of the basic Law, two new Articles 7.A and 7.B are added with the following text:

Article 7.A
Authority of EULEX prosecutors in extraordinary circumstances

In Extraordinary circumstances a case will be assigned to a EULEX prosecutor by a joint decision of the Chief State Prosecutor and EULEX KOSOVO competent authority.

Article 7.B
Transfer of cases

Subject to mutual consent between EULEX KOSOVO and the competent Kosovo institutions cases falling within the scope of this law carried by EULEX may be transferred to the local institutions when the circumstances permit.

11. Articles 8,9,10, 11,12, 13, 14 and 15 of the basic Law are deleted from the text of the Law.

12. Article 17 of the basic Law is reworded as following:

Article 17

17.1. For the duration of the EULEX KOSOVO in Kosovo, the EULEX police will have the authority to exercise the powers as recognized by the applicable law to the Kosovo Police and in close coordination and consultation with the Director General of the Kosovo Police.

17.2. Where required, the relevant aspects of the activities and cooperation of the EULEX police with the Kosovo Police may be further outlined, to the necessary extent, in an Arrangement between the Head of the EULEX KOSOVO and the competent authorities of the Kosovo Police.

17.3. As provided for in Law On Ratification Of The International Agreement Between The Republic Of Kosovo And The European Union on the European Union Rule Of Law Mission in Kosovo (April 2014), SITF investigators, who shall be considered EULEX police, shall have the authority to exercise the powers as recognized by the applicable law to the Kosovo Police. The SITF investigators shall be subject to the oversight and direction of SITF Prosecutors, and shall not be required to consult or co-ordinate with the Director General of the Kosovo Police.

13. Article 18 of the basic Law is deleted from the text of the Law.

Article 4

Amending and Supplementing the Criminal Code of Republic of Kosovo, No. 04-L/082 (Code)

1. Article 442 of the Code is reworded as following:

Article 442

Transitional provisions for the jurisdiction of EULEX judges and prosecutors in criminal proceedings

EULEX Judges and Prosecutors will exercise their functions in accordance with EULEX KOSOVO mandate and applicable law in Kosovo.

Article 5

Amending and Supplementing the Criminal Procedure Code of Kosovo, No. 04-L/123 (Code)

In Article 19 of the Code, in paragraph 1, sub-paragraph 1.18, the words “**Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors**” are replaced with the words: “**Law No. 03/L-053 on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo**”.

Article 6

Amending and Supplementing the Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (Law)

1. Throughout the text of the law the words “**European Security and Defense Policy Mission**” are replaced with the words “**EULEX Kosovo**”.

2. In Article 3 of the basic Law, paragraph 1, the word “**international**” is replaced with the word “**EULEX/international**”.

3. In Article 3 of the basic Law, paragraph 3 is deleted from the text of the law.

4. In article 3 of the basic Law, paragraph 10 is reworded as following:

10. Each specialized panel shall be composed of one (1) EULEX/international judge and to (2) Kosovo judges presided by a Kosovo judge. The President of Kosovo Judicial Council shall appoint one judge to serve as its presiding judge. The presiding judge may, with the consent of the Presidium, temporarily delegate such function to another judge of the concerned specialized panel.

5. In article 3 of the basic Law, paragraph 12 is reworded as following:

12. The appellate panel shall be composed of five (5) judges, two (2) of whom shall be EULEX/international judges. Upon the reasoned request of the EULEX competent authority Kosovo Judicial Council will decide that the panel be composed of majority of EULEX/international judges. The President of the Special Chamber shall serve as the presiding judge of the appellate panel. The four (4) other members of the appellate panel shall be assigned by the President of the Special Chamber after consultation with the President of Kosovo Judicial Council.

6. In Article 10 of the Annex of the basic Law, in paragraph 1.1 the words "**Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors**" are replaced with the words: "**Law No. 03/L-053 on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo**".

Article 7

Amending and Supplementing the Law No. 03/L-137 on the Department of Forensic Medicine (Law)

Article 8 of the basic Law is reworded as following:

Article 8

EULEX Provisions

1. The EULEX experts shall work closely with the local authorities to develop the local capacity and to ensure that the Department of Forensic Medicine have enough well trained experts capable of providing forensic expertise meeting the international standards and European best practices.

2. Upon the request of the Director of the Department, EULEX experts will provide expertise in any type of forensic examinations, including autopsies.

3. EULEX Kosovo will nominate a Deputy Director of Department of Forensic Medicine, who will be responsible for the operational involvement of the EULEX experts.

4. The EULEX Mission staff members will be co-located within the premises of the Department of Forensic Medicine.

Article 8

Amending and Supplementing the Law No. 04/L-015 on Witness Protection (Law)

1. In Article 32 of the basic Law, paragraph 1 is reworded as following:

1. From the coming into force of this Law until the expiration of the mandate of the EULEX Mission in Kosovo, the Committee and the Directorate for Witness Protection of Kosovo Police have responsibility for witness protection in accordance with this Law except where a request for inclusion in a EULEX witness protection programme has been made under paragraphs 5 and 6 of this Article in accordance with Article 1. A sub-paragraph 1.1 of the Law on Jurisdiction and Competencies of the EULEX Judges and Prosecutors.

2. Article 32 of the basic Law, paragraph 8, after the words "**EULEX Witness Security Unit.**" the following words are added: "**the details of the technical assistance shall be regulated by a technical arrangement.**"

Article 9

Amending and Supplementing the Customs and Excise Code of Republic of Kosovo, No. 03/L-109 (Code)

1. Article 310 of the Code is reworded as following:

Article 310

EULEX Kosovo shall have such responsibilities in the field of customs to assist in the implementation, according to the agreement, of the EU-facilitated Dialogue between Kosovo and Serbia.

Article 10
Entry into force

This Law shall enter into force fifteen (15) days after publication on the Official Gazette of the Republic of Kosovo.

Law No. 04/L-273
23 April 2014

Promulgated by Decree No.DL-023-2014, dated 07.05.2014, President of the Republic of Kosovo Atifete Jahjaga.