

LAW No. 05/L –129

ON AMENDING AND SUPPLEMENTING THE LAW No. 04/L-149 ON THE EXECUTION OF PENAL SANCTIONS

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 LAW No. 04/L-149 ON THE EXECUTION OF PENAL SANCTIONS

Article 1

Article 12 of the Law No. 04/L-149 on Execution of Penal Sanctions (hereinafter: the Law) shall be reworded with the following text:

Article 12

Placement of sentenced persons to correctional facilities

1. Sentenced persons shall be placed to correctional facilities pursuant to a risk assessment, taking into consideration the length of the actual sentence imposed, age, sex, state of health and other characteristic features of the sentenced persons. If possible, sentenced persons shall be placed to a correctional facility, which is close to his/her permanent living place.

2. In correctional facilities, sentenced persons shall be placed in cells or rooms.

Article 2

Article 31 of the Law, after paragraph 2 there shall be added a new paragraph 2a with the following text:

2a. Sentenced persons upon admission to the correctional institution are allowed to have certain items of property in their cells. Any property not allowed in their cells will either be stored in secure storage by the Correctional Service until the sentenced person's release or can be given to an the third person at the sentenced person's request.

Article 3

Article 36 of the Law, paragraph 2 shall be reworded with the following:

2. The premises in which a convicted person lives and works must be of sufficient space for each convicted person to have at a minimum eight (8) square meters of space for single cells and four (4) square meters for the convicted persons in joint cells, and an adequate amount of natural and artificial lighting for work and reading, heating and ventilation.

Article 4

Article 43 of the Law shall be reworded with the following text:

Article 43 Health Care

1. The convicted person shall enjoy the same standards of health care available in the community.
2. The convicted person shall have access to the necessary health services free of charge.
3. Health care in a correctional institution is in accordance with the general rules for health care, health insurance, and medical and pharmaceutical services, unless otherwise provided by this Law.
4. The adequate health institution within the Ministry of Health (hereinafter: the health institution), provides conditions for basic medical services.
5. The health institution provides medical service, care service and pharmacy care in order to meet the needs of convicted persons for health care.
6. The convicted person who cannot be offered appropriate medical treatment in the correctional institution shall be sent to the hospital of correctional institution, to the adequate psychiatric institution, or to any other health care institution.

Article 5

After Article 43 of the Law, there shall be added Article 43/A with the following text:

Article 43/A Supervised release for medical care

1. All correctional institutions should provide quick access to emergency medical assistance.
2. Convicted persons who need specialized treatment or surgery shall be transferred to specialized institutions or civil hospitals.
3. Correctional institutions consider medical care plans that meet the appropriate requirements that will enable the convicted persons supervised release in order to have access in necessary health services in civil health institutions.
4. The convicted person is considered to be in a supervised release when the staff member of the correctional institution responsible for security accompanies, monitors and ensures the protection of the convicted person.
5. Measures will be taken in addressing the legitimate security requirements with the principle of medical confidentiality.

6. The medical staff takes the final decision on the use of handcuffs or other restraint device during the medical examination.

7. The medical examination and the medical examination room should be safe, preferably equipped in such a way as to limit the risk of escape.

8. The time spent receiving medical treatment outside the correctional institution is counted in the sentence of imprisonment or life imprisonment.

Article 6

Article 48 of the Law, the title of the Article shall be reworded with the following text: “**Consent to medical care**”.

Article 7

Article 50 of Law, paragraph 3, after the word “available”, there shall be added the words “according to community standards”.

Article 8

Article 66 of the Law shall be reworded with the following text:

Article 66

Receiving parcels

1. The convicted person has the right to receive parcels.

2. Parcels shall be inspected in the presence of the convicted person before delivery to him or her.

3. Notwithstanding paragraph 1, parcels coming from outside are not allowed to contain food, drinks and cigarettes. Weight and permissible content of parcels shall be regulated by the act on the house rules.

Article 9

In Article 70 of the Law, after paragraph 3 there shall be added eight (8) new paragraph, with the following text:

4. The correctional service should ensure, if possible, that a sentenced person is provided with work, considering the physical and mental abilities and skills of the sentenced person. If it is impossible to ensure that a sentenced person is provided with work, the sentenced person should be required, if possible, to participate in the maintenance of the correctional facility.

5. In order to ensure the sentenced persons with work, the correctional facility may build plants within or outside its territory, allow sentenced persons to work outside the correctional facility or require sentenced persons to participate in the maintenance of

the correctional facility.

6. A sentenced person may be suspended from work or released from mandatory work if the sentenced person is unable to perform the mandatory work or if the working endangers the security of the sentenced person or the correctional facility or if the working poses a threat to the discipline in the correctional facility. The Minister of Justice shall, with sub-legal act, determine the procedure for employment of sentenced persons, suspension and release of sentenced persons from work.

7. In order to ensure sentenced persons with work, permission to build plants may be also granted within the territory of a correctional facility to natural persons or companies if such persons or companies enter into a respective contract with the state or with a legal person for obligational relationships, carrying out administrative duties of the state. The Minister of Justice shall establish the requirements for such contracts.

8. Sentenced persons' working conditions should comply with the requirements established by labour protection law. The correctional service is required to ensure that sentenced persons are guaranteed with working conditions which are safe to life and health.

9. Sentenced persons may be required to work overtime, on their days off and on official holidays only with the consent of the sentenced persons.

10. Sentenced persons participating in the maintenance of the correctional facility are required to work according to the nature of the work at the discretion of the correctional service.

11. On the order of the correctional institution service officer, sentenced persons shall be required to participate in the prevention of a natural disaster, epidemic, accident or catastrophes or the elimination of the effects thereof and in case of other emergencies. In such case, the correctional facility shall ensure the security and safety of the sentenced person.

Article 10

Article 72 of the Law, after paragraph 2 there shall be added three (3) new paragraph with the following text:

3. The specific conditions and procedure for granting permission to sentenced persons for working outside a correctional facility and the procedure for sentenced persons' working outside a correctional facility shall be established by a sub-legal act of the Minister of Justice.

4. Provisions of labour laws, including provisions concerning entry into employment contracts, remuneration and holidays, shall apply to unsupervised work of sentenced persons outside correctional institutions. An employment contract entered into with a sentenced person should not indicate that he or she is serving a sentence.

5. An employer shall transfer the wages of a sentenced person who is working outside a correctional facility to the bank account of the correctional service.

Article 11

In Article 92 of the Law, the sub-paragraphs 1.4 1.5, 1.6 and 1.9 shall be deleted.

Article 12

Article 94 of the Law shall be reworded with the following text:

Article 94

Temporary suspension of execution of sentence

1. Temporary suspension of the execution of any sentence shall mean any release of a convicted person from the correctional facility, during which the time of serving the sentence of imprisonment is not counted.

2. Upon the request of a convicted person or a member of his or her immediate family or upon the proposal of the Director of the Correctional Institution and with the recommendation of the General Director of the Correctional Service supporting, opposing or abstaining from the request, the president of the competent Basic Court may permit a temporary suspension of a sentence of imprisonment, it is established that:

2.1. the convicted person suffers from a serious life-threatening disease;

2.2. medical treatment, which otherwise is not available at the correctional service or public health institutions of Kosovo, is available to the convicted person if released; and

2.3. there is no serious risk of flight or repetition of the criminal offence that cannot be mitigated with conditions of such suspension.

3. The ruling for temporary suspension of the execution of a sentence of imprisonment for reasons referred to in paragraph 2 should be based on the medical assessment of a commission consisting of three (3) doctors appointed by the president of the competent basic court. The treating doctor should not be part of this commission; however his/her medical report should be taken into consideration by the commission.

4. Where the medical treatment is only available outside the country, the request for suspension can be permitted only if there is:

4.1. if there is an international agreement or bilateral agreement with this country under the terms of which investigation can be carried out to verify the implementation of the measure; and

4.2. if there is no legal impediment for the person to be arrested and extradited in case of revocation of the suspension.

5. Before rendering the ruling, the President of the competent Basic Court may conduct hearings, in order to confirm the facts and circumstances indicated in the request.

6. Suspension of the execution of a sentence should not last longer than the minimum period necessary for the completion of the medical treatment.

7. Ruling on the suspension should include reasoning and indicate the duration of the suspension, reporting and other obligations of the convicted person as well as responsibilities for regular review of the persistence of the grounds referred to in paragraph 2 of this Article. The ruling should be served on the applicant and the competent state prosecutor both of whom may file an appeal against a first instance ruling under this Article to the president of the Court of Appeals within three (3) days of the receipt of the ruling.
8. The President of the Court of Appeals shall decide on the appeal within three (3) days of its receipt unless there is a need for an additional medical opinion of a second commission appointed pursuant to paragraph 3. The doctors that have participated in the first commission cannot be part of the second commission.
9. The appeal shall cease the execution of the ruling.
10. The duration of suspension shall not be counted towards the length of the sentence.

Article 13

Article 97 of the Law shall be reworded with the following text:

Article 97

Monitoring and revocation of temporary suspension of execution of sentence

1. The president of the competent basic court shall hold regular hearings to monitor and verify, at any time, the implementation of the ruling on suspension of the execution of a sentence and whether reasons supporting the suspension still exist, either directly, through the police or through the correctional service. The president may appoint doctors to examine the convicted persons. The president may modify the conditions imposed on the convicted persons in the ruling of suspension. The police, correctional service and doctors shall inform the president without any delay of any possible reason to revoke the suspension.
2. The competent state prosecutor may request the president of the competent basic court to exercise the powers under paragraph 1 of this Article.
3. Ex officio or upon request of the competent state prosecutor, the president of the competent basic court shall revoke the suspension of the execution of a sentence if it is established that reasons supporting this suspension cease to exist or that the convicted person does not apply the conditions of the ruling on suspension of the execution of a sentence.
4. The convicted person and the competent state prosecutor may file an appeal against a first instance ruling under this Article to the President of the Court of Appeals within three (3) days of receipt of the ruling.
5. The President of the Court of Appeal shall decide on the appeal within three (3) days of its receipt unless there is a need for an additional medical opinion of a second commission appointed pursuant to paragraph 3 of Article 94. The doctors that have participated in the first commission cannot be part of the second commission.
6. The appeal shall not cease the execution of the ruling.
7. If a convicted person does not report to the correctional service, after the suspension

of the execution of the sentence lapses or is revoked, the correctional service shall immediately inform the police who shall bring the convicted person for further service of sentence.

Article 14

In paragraph 2 of Article 110 of the Law, after the words “The director of the correctional facility” the word “shall terminate” is replaced with the word “may terminate”.

Article 15

In Article 111 of the Law, paragraph 2, after the words “of at least” the words “ten (10) cubic meters” shall be replaced by “eight (8) square meters”.

Article 16

In Article 117 of the Law, paragraph 1 after the words “such equipment” there shall be added the following sentence: “The list of the allowed restraint equipment will be determined with sub-legal act.”

Article 17

Article 118 of the Law, after paragraph 8 there shall be added a new paragraph 9 with the following text:

9. After use of direct restraint equipment with regard to a sentenced person, a health care professional should examine the state of health of the sentenced person as soon as possible. The circumstances of use of direct restraint equipment and the results of health examination shall be recorded.

Article 18

Article 122 of the Law, paragraph 2 shall be reworded with the following text:

2. The parole panel is comprised of three (3) members: one (1) judge from Supreme Court delegated by the President of the Supreme Court; one (1) judge from the Court of Appeals, delegated by the President of the Court of Appeals, and one (1) judge from the Basic Court in Prishtina, delegated by the President of the Basic Court. On cases where with the Law there is foreseen exclusion of the panel member in certain matter or replacement in absence of another member, the heads of these institutions shall delegate another person.

Article 19

Article 127 of the Law shall be reworded with the following text:

Article 127

Early release

1. Upon the request of the convicted person, the competent Court may release a convicted person before the completion of his or her service of the sentence of imprisonment if he or she has demonstrated good behaviour, success in his or her work and other activities.
2. The competent Court may grant early release under paragraph 1 of this Article, if the sentenced person has served at least three-quarters (3/4) of the sentence of imprisonment and if not more than three (3) months of his or her sentence have remained.
3. In cases when detention is imposed against the convicted in another case, early release can be granted only when detention on remand in another case is replaced with more lenient measure by the competent court.
4. If a disciplinary punishment of solitary confinement is imposed on the convicted person between the date of issuance of the ruling on early release and the date of early release from service of the sentence, the competent court shall reconsider the ruling.
5. The ruling on early release under this Article shall be delivered to the convicted person within three (3) days of its issuance.

Article 20

In Article 201 of the Law, paragraph 1 shall be reworded with the following text:

1. If during the execution of the measure, the detainee commits a disciplinary violation or any other minor offence, the director of the correctional institution shall lead the disciplinary procedure and inform the court about it.

Article 21

In Article 211 of the Law after the words “established” there shall be added the words “closed or reclassified”.

Article 22

In Article 219 of the Law, paragraph 2 shall be reworded with the following text:

2. With the sub-legal act issued by the Minister there shall be determined the ranks of correctional of correctional officers, their background checks, probation period and promotion.

- 2.1. With the sub-legal act issued by the Government there shall be regulated the salaries and other benefits.

Article 23

Article 252 of Law shall be deleted.

Article 24

1. Chapter XIX of the Law shall be deleted.
2. The term “imprisonment sentence for minor offences” shall be deleted from the entire text of the Law.

Article 25

Entry into force

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

Law No.05/L - 129

18 April 2017

Promulgated by Decree No.DL-024-2017, dated 04.05.2017, President of the Republic of Kosovo Hashim Thaçi