

LAW No. 05/L-060

ON FORENSIC MEDICINE

The Assembly of the Republic of Kosovo;

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

Approves

LAW ON FORENSIC MEDICINE

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose**

The purpose of this Law is to regulate the procedure for performing the medico legal examinations, the establishment and activity of the Institute of Forensics Medicine (hereinafter: the Institute).

**Article 2
Definitions**

1. For the purpose of this law, the terms below shall have the following meaning:

1.1. **Medico Legal Examination** - a medico legal procedure that consists on the examination of the corpse, living persons, biological evidences and other medico legal examinations;

1.2. **Medico Legal Autopsy** - a medico legal procedure that consists in external and internal examination of the corps or mortal remains to determine the cause, mechanism, manner of death, and other circumstances that are related to death;

1.3. **Clinical Medico Legal Examination** - a medico legal procedure that consists in the clinical examination of the living persons in cases of physical injuries, sexual assault and other clinical medico legal examinations;

1.4. **Examination of Biological Evidences** - a medico legal procedure that consists in the examination of the blood, semen, hair, bones, teeth, tissue or parts of organs, saliva, sweat, urine and other body tissues for medico legal evidence purposes;

1.5. **Medico Legal Examination Report** - a medico legal report compiled by medico legal expert following the medico legal examination which includes the medico legal autopsy report, the clinical medico legal examination report, examination report of biological body samples, and the report of other medico legal examinations;

1.6. **Death Certificate** - a medico legal document which includes, among others, the time, location and cause of death for cases that are subject of medico legal autopsy;

1.7. **Medico Legal Expert** - a licensed specialist of forensic medicine who carries out medico legal examinations;

1.8. **Medical Servant** - the employee who participates directly in carrying out works and tasks regarding the medico legal examination in compliance to the legislation in force;

1.9. **Civil Servant** - the employee who indirectly participates in carrying out works and tasks regarding the medico legal examination in accordance with the legislation in force on civil services;

1.10. **Forensic Toxicology** - the examination or analysis of suspicious materials, respectively body samples found in cadaver and other cases of medico legal examinations in living persons;

1.11. **Forensic Histopathology** - the microscopic examination of samples taken from tissues or organs aiming to determine the cause of death;

1.12. **Forensic Biology** – the process of taking and analyzing biological samples during the medico legal examinations;

1.13. **Forensic Anthropology** - the application of standard physical anthropological techniques to analyze human remains in a medico legal and/or humanitarian aspect;

1.14. **Forensic Archeology** - the application of standard archaeological techniques in terms of a medico legal and/or humanitarian aspect;

1.15. **Forensic Odontology** - the application of dental knowledge techniques within a medico legal and/or humanitarian aspect.

CHAPTER II FORENSIC EXAMINATIONS

Article 3 Performing Medico Legal Examinations

1. Medico legal examinations such as: medico legal autopsy, clinical medico legal examination, biological sample examinations and other forensic examinations, foreseen by law are carried out by the medico legal experts of the Institute.

2. Medico legal experts shall perform their duties in an objective, independent, impartial manner and they must adhere to the principles of professional confidentiality concerning the collected information, analysis and other findings which they learn while performing their duties and non discriminating practices, pursuant to the law and respective sub-legal acts.

3. The medico legal expert carries out the expertise pursuant to the law, with an order issued by Court or State Prosecutor.

4. If there is no respective expertise within the Institute, the respective expert is hired and remunerated from public funds.

Article 4

Location for performing the Medico Legal Examinations

1. Medico legal examinations foreseen by Article 3 of this law are conducted in the respective premises of the Institute.

2. The Court or the State Prosecution Office may order the forensic examinations outside the premises of the Institute concerned once the appropriate conditions are provided for such a thing.

Article 5

Medico Legal Autopsy

1. The medico legal autopsy, pursuant to the law and relevant provisions, is conducted but not limited to the following cases:

- 1.1. homicide or suspicious homicide;
- 1.2. sudden death and in unpredictable circumstances, including sudden death of infants;
- 1.3. violation of human rights such as suspicion of torture or any other form of ill treatment;
- 1.4. suicide or suspicious suicide;
- 1.5. suspicion in medical malpractice;
- 1.6. accidents, whether transportation, occupational or domestic;
- 1.7. occupational disease;
- 1.8. technological or environmental disasters;
- 1.9. death in custody or death associated with police or military activities;
- 1.10. unidentified or skeletonized bodies.

Article 6

Clinical Medico Legal Examination

1. Clinical medico legal examination is performed, but not limited, in:

- 1.1. determination of the means, scale of body injuries, loss of capacity to work, health condition, simulation, self-injury;

- 1.2. in the criminal cases against the sexual integrity pursuant to the relevant legislation in force;
 - 1.3. estimation of the age and identity of a person, the level of alcoholic intoxication and narcotic intoxication;
 - 1.4. cases of illegal transplantation of organs, tissues and human cells.
2. Clinical medico legal examination should be performed on the victim and on the suspected perpetrator.
 3. The clinical medico legal examination should be carried out only after the examinee is informed about the nature of the examination which should be carried out and after obtaining the voluntary consent from the examinee.
 4. In case of refusal to grant the consent from paragraph 3. of this Article, the relevant provisions of the Criminal Procedure Code shall apply.

Article 7

Timeframe for performing medico legal examinations and completion of the medico legal report

1. Medico legal examinations, should be carried out within the reasonable timeframe, as following:
 - 1.1. medico legal autopsy shall not commence earlier than six (6) hours from the moment of ascertainment of the death;
 - 1.2. toxicological analyses or other analyses should be completed within thirty (30) days or at latest sixty (60) days from the day when the request for these analyses was received;
 - 1.3. in exceptional cases, the timeframe specified in sub-paragraph 1.2 of this Article may be extended following the written approval by the General Director of the Institute.
2. The medico legal report, for the findings under paragraph 1. of this Article, pursuant to relevant provisions of the Criminal Procedure Code, shall be finalized within fifteen (15) days upon receiving the analyses results.

Article 8

Burial, release of the dead body and personal belongings

1. Once the autopsy is carried out, the dead body, parts of the body and identified mortal remains shall be handed over to family members if there is no need for further forensic examinations.
2. In the following exceptional cases, the Institute based on order issued by the Court or State Prosecutor, shall request from the competent authorities to perform the burial ceremony if:
 - 2.1. the corpse or parts of the body are not identified after the autopsy is carried out and after all other identification procedures are carried out;

- 2.2. there are no family members to claim the corpse or body parts;
 - 2.3. the family members are refusing to take the identified dead body or body parts;
 - 2.4. for any other reason, it is not possible to hand over the dead body or body parts to family members for burial.
3. The Institute shall submit to the Police any belongings found on the body, including clothes and personal items, which were not previously collected by the police at the crime scene.

Article 9

Medico legal examination procedure

Medico legal examination is performed according to the procedures described in sub-legal acts issued by the Minister of Justice, pursuant to the Criminal Procedure Code.

Article 10

Medico legal examination costs

Costs of medico legal examinations shall be covered by the entity on whose order the examination is carried out.

Article 11

Confidentiality of Information

1. Information collected during the medico legal examinations is confidential for the public.
2. Disclosure of information foreseen in paragraph 1. of this Article may be open to public once an order by the court or State Prosecutor is issued.
3. All data collected by the Institute shall be used pursuant to the Law on the Protection of Personal Data and the Law on the Classification of Information.

Article 12

Obligations of investigative and judicial bodies for medico legal examinations

1. When the court or State Prosecutor issues a decision to hire a respective expert within the Institute, pursuant to the provisions of the Criminal Procedure Code, should provide respectively offer to the expert of the Institute access to all the necessary evidence for the proper professional or technical expertise.
2. Institute shall preserve the dead body, clothes, biological samples and all the evidence related to the medico-legal expertise, except for the other forensic evidences which is an obligation of other competent bodies.

Article 13
Hazard and working hours

1. Institute employees who either directly or indirectly participate in medico legal examinations, due to the nature of the work, are entitled to additional personal income, pursuant to the applicable legislation.
2. Institute employees from paragraph 1. of this Article, who directly participate in the medico legal examinations, shall work with the schedule of six (6) hours per day.
3. Institute employees are obliged to perform on-call duties and for this they are entitled to compensation pursuant to the respective sub-legal act.

CHAPTER III
THE INSTITUTE OF FORENSIC MEDICINE

Article 14
Establishment of the Institute

1. By this law shall be established the Institute of Forensic Medicine as the central body of the state administration, under the Minister of Justice.
2. The Institute has the status of legal entity.
3. The Institute has its own identification mark and is seated in Prishtina.

Article 15
Activity of the Institute

1. The Institute is responsible for the performance of the following activities:
 - 1.1. medico legal autopsy;
 - 1.2. clinical medico legal examination;
 - 1.3. examination of biological samples and other medico legal examinations foreseen by the applicable legislation;
 - 1.4. maintaining the records of all medico legal results based on the order issued by the court or State Prosecutor;
 - 1.5. searching, finding and exhumation and also determination of the fate, identification and handover of human remains of missing persons related to the war in Kosovo;
 - 1.6. professional, educational and scientific research pursuant to the law;
 - 1.7. maintaining contact with families of missing persons and cooperation with local and

international institutions and organizations involved in the process of clarifying the fate of the missing persons.

2. In accordance with paragraph 1. of this Article, in cases when the certain medico-legal examination, including the examination of DNA genetic profile, exceeds capacities of the Institute, such examinations, on State Prosecutor's or Court's order, shall be carried out in other institutions in accordance with the Law.

3. Institute of Forensics Medicine prepares an annual report that describes its work, including, inter alia, the number of examinations carried out and other respective data, in accordance with the Law on the Protection of Personal Data, and at the latest until March.

Article 16

Organizational Structure of the Institute

Internal organization and systematization of the Institute is regulated by a special act which is adopted by the Minister of Justice pursuant to the Law on State Administration. This act is stipulated as a separate chapter in the Regulation for the internal organization and systematization of job positions of the Ministry of Justice.

Article 17

General Director of the Institute

1. The Institute is headed by General Director (hereinafter: the Director).
2. The Director is appointed based on the manner, conditions and procedures stipulated by the provisions for nomination of senior management positions in the Civil Service of the Republic of Kosovo.
3. The Director leads and represents the Institute.
4. Director is held responsible for his work directly by the Minister of Justice.

CHAPTER IV

TRANSITIONAL PROVISIONS

Article 18

Transitional Provisions

1. The EULEX KOSOVO experts shall work closely with the local authorities to develop the local capacity and to ensure that the Institute 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, EULEX KOSOVO experts will provide expertise in any type of forensic examinations, including autopsies.
3. EULEX KOSOVO in Kosovo will nominate a Deputy Director of the Institute of Forensic Medicine, who will be responsible for the operational engagement of the EULEX experts.

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

5. With the entry into force of this Law, the employees at the Department of the Forensics Medicine, shall continue to work at the Institute of Forensics Medicine, in accordance with provisions of this Law.

6. With the entry into force of this Law, the Institute is legal successor of the Department of Forensics Medicine with all rights and obligations, in accordance with the legislation in force.

7. The term "Department of Forensic Medicine" mentioned in any Law or sub-legal act in force, shall be replaced with the term "Institute of Forensic Medicine".

Article 19

Issuance of sublegal acts

The sub-legal acts for the implementation of this Law shall be issued within six (6) months from the date of the entry into force of this Law.

Until the issuance of sub-legal acts according to paragraph 1. of this Article, the sub-legal acts that are in force shall be applicable if they are not in violation to the provisions of this law.

Article 20

Repeal

Upon entry into force of this law, the Law no. 03/L-137 on Forensic Medicine Department (Official Gazette of the Republic of Kosovo/Prishtina, year IV, No. 58/10 August 2009), with the exception of Article 8, and the Law No. 03/L-187 on Forensic Medicine (Official Gazette of the Republic of Kosovo/Prishtina, year V, No. 70/31 May 2010) shall be repealed.

Article 21

Entry into force

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

Law No. 05/L-060

10 March 2016

Promulgated by Decree No.DL-007-2016, dated 29.03.2016, President of the Republic of Kosovo Atifete Jahjaga