



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Kuvendi - Skupština - Assembly

Law No. 03/L-003

**ON AMENDMENT AND SUPPLEMENTATION OF THE KOSOVO
PROVISIONAL CODE OF CRIMINAL PROCEDURE NO. 2003/26**

Assembly of Republic of Kosovo,

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

With the aim to establish more favorable conditions and increase of work efficiency in Courts and Prosecution in Kosovo, in accordance with European and international standards, hereby,

Approves:

**LAW ON SUPPLEMENTATION AND AMENDMENT OF THE KOSOVO
PROVISIONAL CODE OF CRIMINAL PROCEDURE NO. 2003/26**

Article 1

The title of the Kosovo Provisional Code of Criminal Procedure and in the entire text of this Code the sentence Provisional Code of Criminal Procedure is replaced by sentence Kosovo Code of Criminal Procedure.

Article 2

Article 62 of this Code will be supplemented with a new paragraph as follows:

(7) The rights of an injured party to seek the materialization of the juridical-property request from a defendant who has entered a guilty plea agreement with the public prosecutor shall not be prejudiced in any way as the result of a defendant's agreement to enter a plea agreement.

Article 3

Article 73 paragraph (1), will be supplemented with a new subparagraph as follows:

(5) In all cases when a defendant seeks to enter an agreement to plead guilty to a crime that carries a punishment of one year or more of long period imprisonment or long term imprisonment, the defendant must be represented by counsel.

Article 4

In article 212, paragraph 1 sub-paragraph 4 of the Code of Criminal Procedure, words “seventy two(72)” are deleted and replaced by words “forty-eight(48)”

Article 5

Article 301, will be supplemented with a new paragraph as follows:

(3) Upon application by the public prosecutor, the court may revoke an order authorizing a defendant to act as a cooperative witness under Articles 298 - 300 of this Code, pursuant to a plea agreement, if the defendant has materially breached the agreement.

Article 6

CHAPTER XXXII, will be supplemented with another subchapter after article 308, as following:

2. Guilty plea agreements

Article 308A

(1) At any time following the filing of the indictment and before the completion of the court trial, the public prosecutor and the defense counsel may negotiate the terms of a written plea agreement under which the defendant agrees to plead guilty in return for:

- (i) the public prosecutor’s agreement to recommend a more lenient punishment to the court, but not under one below the minimum provided for by law; or
- (ii) other consideration in the interests of justice, such as the wavier of the punishment as foreseen by article 303 of this Code.

(2) In cases when the defendant wishes to enter into a guilty plea agreement, the defendant’s counsel, or the defendant if not represented by counsel, shall request the prosecutor for a preliminary meeting to commence negotiations for a plea agreement. At all such negotiations, a defendant must be represented by counsel, in accordance with paragraph 1 of this Article.

(3) Upon receiving a request for a preliminary meeting, the prosecutor shall inform the chief of his or her respective office, who shall give written authorization for such meeting for plea agreement discussions, at which the defendant's statements will be given limited immunity as provided in paragraph 7 of this article. All plea agreements must be in writing and cleared by the Chief of the respective public prosecutor's office before being formally offered to the defendant.

(4) The written plea agreement may include a provision that the public prosecutor will make an application under Article 299 of this Code, to the court to issue an order declaring the defendant be a "co-operative witness" as defined in Article 298 of this Code. If such defendant provides assistance, as a co-operative witness, the public prosecutor shall recommend to the court more lenient punishment that reflects the extent of the assistance and cooperation provided by the defendant, while taking into account the severity of the criminal charges.

(5) The defendant and the defense counsel shall be present during the plea negotiations and must agree to the terms of any written plea agreement before it may be presented to the court. The public prosecutor shall inform the injured party of the negotiated plea agreement, once the agreement reaches its final form. When the injured party has a claim for damages arising from the criminal conduct that is charged in the indictment, the plea agreement must address the injured party's claim, and the public prosecutor must inform the injured party that the defendant is seeking to negotiate a plea agreement. The injured party must be given an opportunity to present a statement to the court regarding such property claim prior to the court's acceptance of the plea agreement.

(6) The court shall not participate in the plea negotiations, but may set a reasonable deadline not longer than three (3) months for the conclusion of the negotiations to prevent delay of the procedure.

(7) At any time prior to acceptance of the plea agreement by the court, either the public prosecutor or the defendant may reject a plea agreement and the court president shall schedule the court trial as provided for under Chapter XXXIV of this Code. If the public prosecutor and the defense counsel or defendant fails to reach a guilty plea agreement, or if the plea agreement is not accepted by the court, the statements of the defendant made during the plea negotiations (as provided in paragraph (2) and (3) above) shall be inadmissible as evidence in the court trial or other related proceeding.

(8) A written plea agreement must state every term of the agreement, must be signed by the chief public prosecutor of the respective office, the defense counsel and the defendant, and shall be binding on each party. At a minimum, the plea agreement must specify:

- (i) The charges to which the defendant will plead guilty;
- (ii) Whether the defendant agrees to cooperate;
- (iii) The rights that are waived;
- (iv) Defendant's liability for restitution to an injured party and confiscation of all material benefit pursuant to Articles 489-99 of the present Code.

(8.1) The plea agreement may also include a provision in which the parties agree on a range of punishment to be proposed by the prosecutor if the defendant cooperates substantially, whereas if the court imposes a sentence outside of this range to the detriment of one party, that party shall be entitled to appeal for the decision on the sentence.

(9) The written plea agreement must be presented to the court in a hearing open to the public, except as provided in paragraph (11) of this article.

(10) The court may officially accept or reject the plea agreement in accordance with the factors to be considered in paragraph 12 of this article. The guilty plea agreement shall enter into effect only after it is officially accepted by the court on the record.

(11) If the defendant agrees to be a co-operative witness and when the foreseen measures in Chapter XXI of KCCP are ensured to him/her, upon the request of either party, the court may order the hearing to consider the guilty plea agreement to be closed to the public and may order the written plea agreement to be sealed.

(12) In considering whether to accept the guilty plea agreement, the court must personally question the defendant, his or her defense counsel and the public prosecutor, and shall determine whether:

- (i) The defendant understands the nature and the consequences of the guilty plea;
- (ii) The guilty plea is voluntarily made by the defendant after sufficient consultation with defense counsel, if defendant has a defense counsel, and the defendant has not been forced to plead guilty or coerced in any way;
- (iii) The guilty plea is supported by the facts and material proves of the concrete case that are contained in the indictment, materials presented by the prosecutor to supplement the indictment and accepted by the defendant and any other evidence, such as the testimony of witnesses, presented by the prosecutor or defendant; and
- (iv) None of the circumstances under Article 316, paragraphs 1 to 3 of this Code exists.

(13) In considering the guilty plea agreement, the court must invite the views of the prosecutor, the defense counsel and the injured party. If the defendant's agreement to cooperate and plead guilty is under seal pursuant to paragraph 11 of this article, the court shall permit the injured party to make a statement at the end of defendant's cooperation, prior to sentencing.

(14) If the court is not satisfied that all of the conditions set forth in paragraph (12) of the present article are fulfilled, the court shall reject the guilty plea and the case shall proceed to trial as provided for by this Code.

(15) If the court is satisfied that all of the conditions in paragraph 12 of the present article are established, the court shall accept the guilty plea agreement and order that the agreement be filed with the court. The court shall set a date for the parties to make their statements regarding sentencing after which the Court shall impose the punishment. This date, however, may be deferred for the defendant to serve as a co-operative witness.

(16) After the court accepts the guilty plea and the written plea agreement, but before the punishment is imposed, the court may not permit defendant to withdraw the guilty plea or the prosecutor to rescind the plea agreement unless the court finds that any of the

conditions in paragraph 12 of this article are no longer satisfied. The party seeking to withdraw from the agreement bears the burden of proof in making such application to the court.

Article 7

Article 379, will be supplemented with a subparagraph as follows:

(2) In cases where the defendant who is a cooperative witness pleads guilty pursuant to a plea agreement, the prosecutor may recommend to the court a range of punishment, a judicial admonition or one of the alternative punishments under Article 41 of the Provisional Criminal Code.

Article 8

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

Law No. 03/L-003
6 November 2008

President of the Assembly of Republic of Kosovo

Jakup KRASNIQI