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## **INFORMATION FOR U.S. CITIZENS DETAINED IN KOSOVO**

The U.S. Embassy Consular Section in Pristina has learned of your arrest and/or detention by the Kosovo authorities. We have prepared the following materials to help you understand the judicial process in Kosovo. We strongly advise you to retain the services of an attorney (see legal assistance). Consular officers are prohibited by regulation from offering you legal advice.

U.S. laws do not apply in the case of an arrest in Kosovo for violation of Kosovo laws. A U.S. citizen who has been arrested here is subject to the same treatment as any other individual in similar circumstances. The role of the U.S. Embassy Consular Section is to ensure that you receive fair treatment, and provide you with a list of possible attorneys. The Consular Section will also contact your family or friends if you provide written authorization. The Consular Section cannot provide funds for legal fees or other expenses related to your defense. If after you have read the following you have any questions, do not hesitate to contact the U.S. Embassy Consular Section.

**\*Privacy Act - Under the U.S. Privacy Act of 1974, consular officers may not reveal information regarding an individual U.S. citizen's location, welfare, intentions, or problems to anyone, including family members and Congressional representatives, without the expressed written consent of that individual. Although sympathetic to the distress this can cause concerned families, consular officers must comply with the provisions of the Privacy Act.**

### **LEGAL ASSISTANCE**

According to local law, Kosovo authorities will provide you with an attorney and translator if you cannot afford one.

However, if you have the funds to pay for an attorney of your choice and wish to exercise this option, we suggest that you retain one as quickly as possible so the attorney can participate in the early stages of your case. Included in this package is a list of law firms practicing in Pristina, ready to assist U.S. citizens. A list of English-speaking attorneys can be found on the Embassy's

web site at [http://pristina.usembassy.gov/attorney\\_information.html](http://pristina.usembassy.gov/attorney_information.html). The Embassy will also print copies for those without access to the Internet. The U.S. Embassy assumes no responsibility for any dealings you may have with attorneys on the list, nor does it recommend any one attorney or firm in particular; the list is provided as a convenience to you.

## **GENERAL LEGAL OVERVIEW**

Before a criminal proceeding is initiated by the State Prosecutor, the police may take initial steps to investigate a criminal act. These initial steps may be followed by a report to the state prosecutor, who may initiate the investigation stage. The investigation stage is then followed by the indictment and plea stage. After this, the proceeding enters the main trial stage and then finally the legal remedy stage. Legal remedies, or appeals, can be sought after the final judgment or during the criminal proceedings, as the law allows.

The current penal code entered into force on January 1, 2013. A Guide to the Criminal Code of Kosovo and the full Criminal Code of Kosovo is available in English at: [http://www.kgjk-ks.org/repository/docs/Udhezuesi-dhe-kodi-i-procedures\\_anglisht\\_225215.pdf](http://www.kgjk-ks.org/repository/docs/Udhezuesi-dhe-kodi-i-procedures_anglisht_225215.pdf). The full criminal code is available at: <http://www.kuvendikosoves.org/?cid=2,191,914>. The Criminal Code outlines crimes and their potential punishments. The Criminal Procedure Code outlines the implementation of the criminal justice system.

## **INITIAL ARREST**

Local police may only apprehend persons using warrants based on evidence and issued by a judge or prosecutor, except when encountering a crime in progress. Kosovo law requires prosecutors to charge persons they arrest within six hours in a language they understand. Authorities must bring arrestees before a judge within 48 hours or release them. The law requires authorities to ensure detainees prompt access to a lawyer of their choice or one provided by the state. It also allows suspects to remain silent and to refuse to answer any questions except those concerning their identity, to obtain the free assistance of an interpreter, and to receive medical and psychiatric treatment.

## **REMAND PROCEDURE**

The court may order detention on remand against a person only after it explicitly finds that there is a grounded suspicion that such person has committed a criminal offence. If the state prosecutor files an indictment and the defendant is held in detention on remand, the initial hearing should be held within 15 days. In that initial hearing, the judge will provide the defendant with copies of the indictment and shall rule on any motions to extend or implement measures to ensure the presence of the defendant. The judge will ensure that the defendant has defense counsel, understands the charges in the indictment, and will allow him to plead guilty or not guilty.

If ordered by a judge, the law allows house arrest, confiscation of travel documents, and the expanded use of bail as alternatives to pretrial detention. Defendants can also appeal their detention, and the new criminal and criminal procedure codes permit detainees to file petitions challenging the legality or conditions of their detention. Unlawfully detained defendants may also file claims for compensation.

## **Detention on remand prior to indictment**

After the arrest, the detainee may be held in detention on remand for a maximum period of one month from the date of arrest. After that date, the detainee may be held only upon a ruling by the appropriate judge. The judge has discretion about the amount of time for detention on remand based on findings. If the criminal offence being investigated is punished by less than five years imprisonment, the judge may not order detention on remand that exceeds four months. This means that if the detainee has been in detention for the initial one month, the judge may not extend the detention by more than three additional months. Decisions of the judge can be appealed to the Court of Appeals. For more serious crimes, longer detentions on remand are possible. However, unless an indictment is filed, the law does not allow detention on remand to exceed 18 months from the day of arrest. If the indictment is not filed within this window, the defendant must be released.

## **Detention on remand after the indictment**

Kosovo law does not set a maximum timing of detention on remand after the indictment is filed. Instead, the detention is limited by the timeline for the trial. The judge should work diligently to hold the trial as quickly and fairly as possible. It is difficult to predict pretrial detention times. Pretrial detention times may be significantly longer than in the United States. The U.S. Embassy does not have any authority to influence the speed of the trial or detention on remand decisions.

## **TRIAL PROCEDURE**

Trials are public, and the law entitles defendants to the following rights:

- To presumption of innocence
- To be informed promptly and in detail of charges
- To be present at their trials
- To remain silent and not to be compelled to testify or confess guilt
- To confront adverse witnesses
- To see evidence
- To have legal representation
- To appeal

Kosovo does not use jury trials. These rights extend to all accused without exception.

## **APPEAL PROCESS**

Either party may seek legal remedies for decisions by the basic court with the Court of Appeals. The Court of Appeals serves as the second-instance court for the basic courts on all decisions. Above the Court of Appeals is the Supreme Court of Kosovo. An appeal against a judgment by the Basic Court must be filed within 15 days of the judgment being served. If the appeal contains new evidence and facts, the appellant must give reasons for failing to present them previously. Likewise, the appellant cannot assert grounds for appeal not raised in the Basic Court, unless he/she asserts an extraordinary reason or new evidence.

There are limited times when a Court of Appeals decision can be appealed to the Supreme Court: 1) if the Court of Appeals has modified a judgment of acquittal by the Basic Court and rendered a judgment of conviction instead; 2) if either the Basic Court or Court of Appeals has imposed a sentence of life-long imprisonment.

Most rulings are appealable unless specifically prohibited by law. Rulings rendered by a pretrial review panel or in connection with the preparation for the main trial can only be challenged in an appeal against the judgment. Like an appeal against a judgment, an appeal against a ruling must be filed with the court that made the ruling within three days. The ruling is stayed pending the appeal. The Basic Court then transmits the appeal to the Court of Appeals.

The law empowers the Supreme Court to hear Requests for Extraordinary Legal Remedies. These remedies include the reopening of criminal proceedings within two years of the final judgment or ruling, extraordinary mitigation of punishment while imprisoned, or protection of legality within three months of the final judgment or ruling.

## **PENAL CONDITIONS AND RULES**

Prison and detention-center conditions generally meet international standards, but significant problems persist in some establishments. The government generally permits visits by independent human rights observers. Rules vary by establishment.

The Human Rights Report notes that the constitution provides for an independent judiciary, but the judiciary has at times exhibited bias, been subject to external and political influences, and has not always provided due process. Lengthy detention, both before and during judicial proceedings, remains a problem. Judicial inefficiency and corruption have been among the factors that caused trial delays.

The Kosovo Correctional Service (KCS) manages daily operations at all correctional and detention centers. The ombudsperson, the KRCT, and the Council for the Defense of Human Rights and Freedoms jointly concluded that conditions remained substandard in some areas and in some facilities. Deficiencies included poor lighting or ventilation in some cells, dilapidated kitchens and toilets, lack of hot water, and inadequate or no bedding in some prison and detention facilities. Corrections officials described overcrowding as a minor seasonal problem that worsened during cold months because many individuals who committed minor crimes ask to serve their three- to six- month sentences during the winter, when time away from farming has a less negative impact on family incomes. Corrections authorities tried to accommodate such requests.

Authorities allow prisoners access to visitors and permit religious observance, including the right to request visits by clerics. Prisons and detention facilities offer modified menus for observance of holidays, including for religious fasting. Detainees can submit complaints and requests for investigations to judicial authorities and the Office of the Ombudsperson without censorship through anonymous boxes in most prison facilities.

Local security forces include the Kosovo Police (KP) and the Kosovo Security Forces (KSF). The law provides that police operate under the authority of the Ministry of Internal Affairs. EULEX

operates under a mandate to monitor, mentor, and advise local judicial and law enforcement institutions. EULEX police also have operational responsibilities and conduct policing operations under a defined mandate. EULEX possesses limited executive authority in some areas, including organized crime, corruption, war crimes, witness protection, money laundering, terrorist financing, and international police cooperation. The KSF is a lightly armed civil response force, mentored by KFOR, which functions under the civilian authority of the Ministry for the KSF.

Courts rarely use bail in practice. Police may be masked or undercover when enforcing arrest warrants.

The U.S. Human Rights Report provides additional information on prison conditions and is available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

## **CORRESPONDENCE**

Correspondence with members of the immediate family, defense attorney, U.S. Embassy, and others who may be presumed not to influence the prisoner adversely and/or to maintain or obtain one's legal rights is permitted. Mail is allowed. A letter or another postal item may only be opened if there is a reasonable suspicion that it contains an unauthorized object, or there is a reasonable suspicion that it contains evidence of an act that would endanger the security of the correctional facility or any person.

## **EMPLOYMENT**

Prisoners who are capable of working have the right and obligation to work and are paid every month. The purpose of such work is for a prisoner to gain, maintain, and develop his or her working capabilities, working practices, and professional knowledge in order to readjust in the society after serving the sentence.

## **CANTEEN**

An inmate has the right to purchase additional food products and personal items at shops located at the pre-trial detention/custodial area of the local jails. Spending personal money for purchase of food products and personal items is only allowed as permitted by order of the correctional service.

## **VISITING RIGHTS**

Prisoners are permitted to receive a visit at least once each month for a minimum of one hour by family members. They also have the right to spend time with their spouse and children at least once every three months for a minimum of three hours in special premises. A convicted person has the right to communicate confidentially with his or her authorized representative orally. Communications between a convicted person and his or her authorized representative may be within sight, but not within the hearing, of staff of the correctional facility. A consular or diplomatic representative of the Embassy is obliged to notify the director of the correctional facility prior to the visit. The duration of visits is at the discretion of the prison authorities.

## **TELEPHONE CALLS AND PARCELS**

Prisoners have the right to make phone calls after obtaining appropriate permissions. Once a month, they are also permitted to receive parcels containing items for personal use. All parcels are carefully examined before delivery in the presence of the prisoner.

### **MEDICAL FACILITIES**

Medical aid and hospital treatment are provided. A prisoner has the right to health care free of charge. If a prisoner cannot be offered appropriate medical treatment in the correctional facility, the prisoner is sent to a prison hospital, psychiatric institution, or another health care institution. Upon the request by the prisoner, the director of the correctional facility may also grant a medical examination at a private clinic without obtaining a formal recommendation by a medical officer. However, the prisoner shall bear the costs of such an examination unless the director of the correctional facility decides otherwise.

### **RELIGIOUS SERVICES**

A prisoner has the right to take part in religious ceremonies and to read religious literature. Upon request a prisoner may be allowed a visit by a religious representative as determined by the director of the correctional service and if the number of prisoners belonging to the same religion is justifiable. Such ceremonies are held in special premises at the correctional institution.

### **CONSULAR FUNCTIONS**

One of the most important tasks of the Department of State and specifically of U.S. Embassies and Consulates abroad is to provide assistance to U.S. citizens incarcerated abroad. The State Department is committed to ensuring fair and humane treatment for U.S. citizens imprisoned overseas. We assist incarcerated citizens and their families within the limits of our authority in accordance with international, U.S., and Kosovo laws. We monitor conditions in foreign prisons and protest allegations of abuse against U.S. citizen prisoners. We work with prison officials to seek treatment consistent with internationally recognized standards of human rights and international due process.

While Kosovo is not formally a party to the Vienna Convention on Consular Relations, the provisions of the VCCR are applicable between the United States and Kosovo. An Embassy officer will visit a U.S. citizen incarcerated in Kosovo to ensure he/she is receiving appropriate treatment, to provide a list of local attorneys, and to provide information on the Kosovo judicial system.

While in Kosovo, a U.S. citizen is subject to Kosovo laws and regulations, which sometimes differ significantly from those in the United States. A citizen arrested in Kosovo must go through the Kosovo legal process to be charged or indicted, prosecuted, convicted and sentenced, and for any appeals. U.S. citizenship does not entitle one to special privileges in the Kosovo legal system. The U.S. Embassy does not have the authority to intervene in the Kosovo justice system and cannot act as a legal representative or provide legal advice to U.S. citizens.

While there are definite limits on the role they can play, consular officers can provide a wide variety of services to U.S. citizens who are incarcerated in Kosovo.

A consular officer may do the following:

- Visit an arrested U.S. citizen in jail after being notified of the arrest to check on the prisoner's treatment by law enforcement authorities and monitor the state of his/her health and well-being.
- Upon request of the prisoner and with a Privacy Act Waiver which authorizes consular officers to notify family and friends regarding the situation, and relay requests for financial or other aid.
- Provide information about judicial procedures in Kosovo.
- Provide a list of local attorneys. (Note: A consular officer cannot help to select an attorney from the list, nor can the officer provide legal advice.) The current list of attorneys is available at: [http://pristina.usembassy.gov/attorney\\_information.html](http://pristina.usembassy.gov/attorney_information.html)
- Work to facilitate communications with family, friends, and legal counsel subject to local law and regulations.
- Work to ensure that the individual's basic rights under local law are protected and that he/she is treated humanely in accordance with internationally accepted standards.
- Follow the progress of the individual's case in the judicial system.
- Visit an incarcerated U.S. citizen regularly and report on those visits to the Department of State.
- Provide dietary supplements (vitamins/minerals) if medically necessary.
- Arrange for medical and dental care, if not provided by prison, to be paid for from a prisoner's funds, funds provided by family, or, if applicable and subject to conditions, funds loaned to the prisoner by the U.S. government under the Emergency Medical/Dietary Assistance (EMDA) program for destitute U.S. Citizens incarcerated abroad.
- With concurrence from the State Department in Washington, D.C., protest any mistreatment by local officials while incarcerated.
- Facilitate any goods (holiday meals, reading materials, etc.) donated from the local community to prisoners subject to local laws and regulations.

**A consular officer cannot:**

- Demand the immediate release of a U.S. citizen arrested in Kosovo or otherwise cause the citizen to be released, including during pretrial detention periods.
- Represent a U.S. citizen at trial, give legal advice, or pay legal fees and/or fines with U.S. Government funds.
- Intervene in the Kosovo judicial system.
- Identify and/or contract an attorney to represent the individual before the court.