

STATEMENT¹

Based on the constitutional amendment of 2015, the Republic of Kosovo have established the Kosovo Specialist Chambers and Specialist Prosecutor's Office as a part of its justice system. The organization, functions, and the jurisdiction of the Kosovo Specialist Chambers and Specialist Prosecutor's Office are set based on Kosovo Constitution and the special law, more precisely the law no 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, article 1, paragraph 2, which inter alia stipulates that:

“Specialist Chambers within the Kosovo justice system and the Specialist Prosecutor's Office are necessary to fulfil the international obligations undertaken in Law No. 04/L-274, to guarantee the protection of the fundamental rights and freedoms enshrined in the Constitution of the Republic of Kosovo...”

Since the specialist chambers are part of Kosovo's judicial system, the functions of the Specialist Chambers and Specialist Prosecutor's Office (here and after The specialist chambers) conduct their duties in compliance with the law 05/L-053 Specialist Chambers and Specialist Prosecutor's Office (here and after: the law), which in article 41 regulate the issue of custody as one of the ways to ensure the presence in the criminal proceedings.

Paragraph 1 of the article 41 stipulates that:

“No one shall be deprived of his or her liberty by or on behalf of the Specialist Chambers or Specialist Prosecutor, save in such circumstances and in accordance with such proceedings as are prescribed by this Law and the protections enshrined in Article 29 of the Constitution.”

While paragraph 12 of the article 41 of the law stipulates that:

“In addition to detention on remand, the following measures may be ordered by the Specialist Chambers to ensure the presence of the accused (including by video-conference “VTC”) during proceedings, to prevent reoffending or to ensure successful conduct of criminal proceedings: a. Summons; b. Order for arrest; c. Bail with release in Kosovo, if the accused consents to attend proceedings by VTC; d. House Detention in Kosovo, if the accused consents to attend proceedings by VTC; e. Promise not to leave his or her place of current residence in Kosovo, if the accused consents to attend proceedings by VTC; f. Prohibition on approaching specific places or persons; g. Attendance at police

¹ This declaration is issued in the form of the opinion as well as it aims to answer your question, heaving into the consideration the amendment no 24, section 162 of the Kosovo Constitution, paragraph 1 that inter alia states that: “the Republic of Kosovo may establish Specialist Chambers and a Specialist Prosecutor's Office within the justice system of Kosovo...” as well as in compliance with Regulation no 06/2020 on administrative duties and responsibilities of the office of the prime minister as amended with regulation no 07.2020, annex no 8 as well as the regulation no 13/2013 on legal support service of the government, as such, it aims to provide certain explanations, relevant to the matter raised by you, bases on applicable legislation and judicial practice related to custody as one of the measures to ensure the presence of the accused in the criminal proceedings.

station or other venue in Kosovo, if the accused consents to attend proceedings by VTC; and h. Diversion”

In reference to article 41 of the law, the law offers the possibility of ordering other mean, other than custody, also other alternative means of securing the presence in accordance with the law as well as the principles as set in the article 29 of the Constitution of Kosovo (the right of liberty and security).

With reference to the issue of setting and continuation of the custody, Kosovo Constitutional Court on case number Br.ref.:AGJ 1455/19, evaluating the Decision of the Kosovo Supreme Court no Pml. nr. 357/2017, of December 22, 2017 in the broader sense has offered broad interpretation of the custody in accordance with the article 29 of the Kosovo Constitution, as well as based on the practices of the European Court of Human Rights (ECHR).

In conjunction with this, the Kosovo Constitution in its decision, point no 117 of the decision inter alia stipulates:

“...However, the Court considers that it is very important that through this Judgment of the Constitutional Court will be set a new standard in the case law in the Republic of Kosovo and, **consequently, the regular courts will in future have to comply with the principles and standards elaborated in this Judgment, which have been interpreted in accordance with the ECtHR case law.**”

While with reference to ECHR, it is worth referring to points 67 and 68 of the constitutional court decision;

67. The ECtHR, in its case law, has identified three basic criteria to be examined to assess whether deprivation of liberty is lawful and non-arbitrary (see ECHR case, Merabishvili v. Georgia, [GC] application No. 72508/13, Judgment of 28 November 2017, paragraph 183).

68. First, there must exist a "reasonable suspicion" that the person deprived of liberty has committed the criminal offense (see ECHR case, Merabishvili v. Georgia, [GC] application No. 72508/13, Judgment of 28 November 2017, paragraph 184). Secondly, the purpose of deprivation of liberty "is that it should in principle be in the function of the conduct of criminal proceedings" (see, case of the Court KI63/17, Applicant Lutfi Dervishi, Resolution on Inadmissibility of 16 November 2017, paragraph 57, see also the case of the ECHR, Ostendorf v. Germany, No. 15598/08, Judgment of 7 March 2013, paragraph 68), and moreover, it must be proportionate in the sense that it should be necessary "to ensure the appearance of the person affected by the relevant competent authorities" (see, case of the Court KI63/17, Applicant Lutfi Dervishi, Resolution on Inadmissibility of 16 November 2017, paragraph 57, see also the abovementioned EDtHR case Merabishvili v. Georgia, paragraph 185). Third, the deprivation of liberty or the detention on remand must have been done

following the procedure prescribed by law (see the abovementioned ECtHR case *Merabishvili v. Georgia*, paragraph 186).

Moreover, referring to your question, on the capacity of the Kosovo Police to ensure the enforcement of other conditions in case of eventual court order to issue one of the other alternative measures pursuant to article 41 of the law, please be aware that such duty of the Police is a legal duty that is stipulated in the applicable legislation, and moreover, this practice is in place since 2004.

Furthermore, attached is the answer of the Acting General Head of the Kosovo Police, Mr. Samedin Mehmeti.

Attached you might find:

- *Kosovo Constitutional Court decision no. KIlo/1S applicant Mr. Fahri Deqani on Constitutional review of Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017*
- The answer of the Acting General Head of the Kosovo Police, Mr Samedin Mehmeti.

Thank you!