



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

Law No. 03/L-066

ON ASYLUM

Assembly of Republic of Kosovo,

On the basis Article 65(1) of the Constitution of the Republic of Kosovo, with the purpose of establishing legal rules for asylum,

Approved:

LAW ON ASYLUM

CHAPTER I

General Provisions and Fundamental Principles

Article 1

Goal of the Law

This law regulates the conditions and procedures for the recognition, termination, status, rights and obligations of asylum seekers, asylums as well as for persons granted Complementary Protection or Temporary Protection.

Article 2

Definitions

For the purpose of this law, expressions used in this law have the following meaning:

2.1 “Asylum” is the protection that Kosovo offers to refugees. Asylum includes the right to reside in the Republic of Kosovo, as well other rights and obligations as provided for in this law.

2.2 “Asylum seeker” is a Foreigner, who has submitted his or her request for asylum or Complementary Protection he/she is considered as such from the time of his/her submission of a request for asylum until receipt of a final decision.

2.3 “Asylee” is a Foreigner who has been granted asylum status in the Republic of Kosovo.

2.4 “Foreigner” under this law refers to all persons present in the Republic of Kosovo who are not citizens of Kosovo.

2.5 “Request for asylum” is a request submitted orally or in writing in which a foreigner requests protection, either Asylum or Complementary Protection, in compliance with article 4 of this law.

2.6 “Competent Body” means the body within the structure of the Ministry of Internal Affairs responsible for making determinations on applications for Asylum, Complementary Protection and related applications and decisions on the termination of Asylum and Complementary Protection.

2.7 “Complementary Protection” is protection provided outside of the definition of a refugee for a Foreigner who can not be determined to be a refugee, but for whom a serious possibility exists to believe that this person, if returned to his or her country of origin (or in the case of a person without citizenship, his or her former habitual residence), would confront serious harm as defined in article 2.7.1 of this Law and is unable due to such danger to return to that country.

2.7.1 “Serious Harm” is:

(i) Death sentence or threat of execution;

(ii) Torture, inhuman or degrading treatment of a person;

(iii) When any person who is compelled to leave and seek refuge in another country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality.

2.8 “Refugee” is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable, or owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality the term “the country of his or her nationality” shall mean each of the countries of which he or she is a national and a person shall not be deemed to be lacking the protection of the country of his or her nationality if, without any valid reason based on a well-founded fear of persecution, he or she has not availed himself or herself of the protection of one of the countries of which he or she is a national.

2.8.1 “Actors of Persecution” for the purpose of the definition of Refugee or for use in determining eligibility for Complementary Protection include: the state; parties or organizations controlling the State or a substantial part of the territory of the State; or non-state actors, if it can be demonstrated that the aforementioned actors are unable or unwilling to provide protection against persecution or serious harm as defined in 2.7.1 of this Law.

2.9 "Country of Origin” is the country of which a a Foreigner is a national, or the country of which a person without nationality was a habitual resident.

2.10. “Temporary Protection” is the protection provided to Foreigners in the situation of a mass influx of persons seeking refuge in the Republic of Kosovo from the indiscriminate effects of armed conflict and generalized violence or persons whose life, personal integrity or freedom is at risk as a result of widespread human rights violations. Temporary Protection may be used as a provisional measure, not to exceed two years, when the individual asylum procedures as provided within this law are determined by the Ministry of Internal Affairs to be impractical due to the volume of possible requests for asylum.

Article 3 Protection of Family Integrity

3.1 According to this law, Asylum and Complementary Protection shall be granted to recognised members of the Asylee’s close family

Article 4 Recognition of Asylum and Complementary Protection

4.1 Kosovo shall grant asylum to a Foreigner who is determined to meet the criteria in the definition of Refugee as provided in article 2.8 of this Law, and who is not excludable as provided in article 5 of this law.

4.2 Kosovo shall provide Complementary Protection to a Foreigner who does not meet the criteria set forth in the definition of Refugee but meets the criteria set forth in the definition of Complementary Protection in Article 2.7 of this Law. If the Foreigner is found to be excludable pursuant to Article 5 of this Law, than he or she shall not receive Complementary Protection pursuant to 2.7.1.iii of this Law. If the grant of Complementary Protection is pursuant to either article 2.7.1.i or 2.7.1.ii of this Law, then grounds of exclusion provided in Article 5 of this Law are not applicable.

4.3 Determinations with respect to both Asylum and Complementary Protection shall be decided within one single procedure as set forth in this law. Individuals shall be considered for Asylum first.

Article 5

Exclusion from Asylum

5.1 A person shall not be entitled to asylum where there are serious reasons for considering that he or she has:

(i) committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(ii) committed a serious non political crime outside Kosovo prior to his admission to Kosovo.

(iii) he has been guilty of acts contrary to the purposes and principles of the United Nations.

5.2 Asylum shall not be granted to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to apply for the benefits of this law.

5.3 Asylum shall not be granted to persons for whom similar rights and obligations as citizens of Kosovo are recognised by the State of Kosovo.

Article 6

Cessation and Cancellation of Asylum and Complementary Protection

6.1 Asylum may be terminated through cessation of status by the Competant Body for a person to whom Asylum in the Republic of Kosovo was granted, if:

(i) he or she has voluntarily re-availed himself or herself of the protection of the country of his or her nationality;

(ii) he or she, after losing his or her citizenship, has voluntarily reacquired it;

(iii) he or she acquired a new nationality and enjoys the protection of his or her country of nationality;

(iv) he or she has voluntarily re-established himself or herself in the country which he or she or remained outside owing to a fear of persecution;

(v) he or she can no longer, because the circumstances in connection which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

(vi) for persons, without nationality, if he or she can no longer, because the circumstances in connection which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her habitual residence.

(vii) asylum may be cancelled where the Foreigner should have been excluded from eligibility for such status by reasons specified in Article 5 of this Law, where applicable, or due to a misrepresentation or omission of facts, including the use of false documents, where material for the determination of Asylum.

6.2 An exception to subparagraphs 6.1(v) and 6.1 (vi) of the paragraph 1 of this article will be in the case of a person granted Asylum where he or she is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality, where the Asylee is stateless or where he or she is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his or her former habitual residence.

6.3 Cessation and cancellation of Asylum, as well as any other determinations of refugee status pursuant to Article 6 of the present law, shall be conducted in a manner consistent with procedures established for the determination of Asylum.

6.4 Complementary Protection granted under article 2.7.1(i) of this Law may be terminated by a decision of the Competent Body when it is satisfied that the Foreigner will not be subject to the death penalty upon return to his or her country of origin or, in the case of a Foreigner without citizenship, his country of habitual residence. Where this status has been terminated the Foreigner shall be entitled to apply for consideration pursuant to Article 6.2 of this law.

6.5 Complementary Protection granted under article 2.7.1. ii of this Law may be terminated by a decision of the Competent Body when it is satisfied that the Foreigner will no longer face a risk of torture, or inhuman or degrading treatment or punishment upon their return to his or her country of origin or, in the case of a Foreigner without citizenship, to his or her country of habitual residence. Where this status has been terminated a Foreigner in this category shall be entitled to apply for consideration pursuant to Article 6.2 of this law.

Article 7

Prohibition of return or forcible deportation

7.1 No one shall expel or return (“refouler”) an Asylum-Seeker or Asylee or in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

7.2 The benefit of Article 7.1 may not, however, be claimed by a Refugee or an individual granted Complementary Protection under 2.7.1.iii of this Law for whom there are reasonable grounds for regarding as a danger to the security of the Republic of Kosovo or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the population of the Republic of Kosovo.

7.3 No one shall expel or return (“refouler”) an individual by any manner whatsoever to territories where there are substantial grounds for believing that her or she would be subject to Serious Harm as defined in Article 2.7.1.i or 2.7.1.ii of the present Law.

7.4 The Competent Body shall afford the Foreigner the opportunity to challenge evidence that his or her deportation under article 7.2 is lawful.

Article 8 **Entrance in the territory of Kosovo**

8.1 A foreigner who declares his or her intention to apply for asylum in the Republic of Kosovo shall be treated as an Asylum Seeker in compliance with this Law and, accordingly, he or she shall be allowed to enter the territory of the Republic of Kosovo.

8.2 The Ministry of Internal Affairs (hereafter: the Ministry) shall set forth in secondary legislation standards and procedures for the treatment of Asylum-Seekers consistent with the provisions and principles enshrined in the international human rights instruments directly applicable in the Republic of Kosovo and the 1951 Convention Relating to the Status of Refugees and international law applicable to it. The secondary legislation shall require the border police to provide information about applying for asylum to Foreigners entering the Republic of Kosovo.

8.3 The protection of individual rights guaranteed by international human rights standards and by the 1951 Convention Relating to the Status of Refugees shall constitute the minimum standard of protection to be granted to Asylum Seekers. The applicable law shall always be interpreted in light of the aforementioned minimum standards of protection.

Article 9 **Illegal entry into the territory of the Republic of Kosovo**

9.1 A Foreigner who illegally enters Kosovo with the intention of seeking Asylum should submit to the Competent Body the request for Asylum without delay.

9.2 Asylum seekers shall not be punished for illegal entry, either due to avoiding customs/immigration inspection or through the use of improper and/or forged travel documents when entering the country or for remaining illegally in the territory of the state.

Article 10 **Assistance for Asylum seeker**

10.1 An Asylum seeker may request asylum in a language that he or she understands and is not required to request asylum in any official language of the Republic of Kosovo.

10.2 An Asylum seeker shall be informed as to the procedures for the determination and recognition of asylum, his or her rights and obligations during these procedures, as well as to their right to contact the United Nations High Commissioner for Refugees (hereafter UNHCR) and any Non Governmental Organizations (hereafter: “NGO”) which provides assistance to Asylum seekers.

10.3 An Asylum seeker has the right to select a legal representative to assist and represent him or her during the asylum-determination procedures at the expense of the Asylum seeker.

10.4 The legal representative of the Asylum seeker, as well as the representatives of the UNHCR, has the right to contact an Asylum seeker at any time, and at any phase of the Asylum determination procedure.

10.5 The asylum seeker has the right to speak with his or her legal representative or a representative of the UNHCR at any time and to be informed of this right.

Article 11

Restriction of movement

11.1 As a general principle, Asylum seekers should not be detained during the determination of their application for Asylum. Restriction of movement may be ordered by the decision of the Competent Body.

11.2 If it is necessary, the movement of an Asylum seeker may be temporarily restricted in the following situations:

- (i) in order to determine the identity of an Asylum seeker;
- (ii) to prevent the spread of infectious disease;
- (iii) reasons defined according to Article 28 of this law.
- (iv) in the case of a Foreigner for whom there are reasonable grounds for regarding as a threat to national security or as a danger to public order.

11.3 Movement can be restricted pursuant to Article 11.2 of this law:

- (i) by prohibition of movement outside a specified Asylum reception centre;
- (ii) by prohibition of movement outside a specified geographic area;
- (iii) by prohibition of movement from a specified address for no more than 12 hours each day.
- (iv) in the case of a Foreigner for whom there are reasonable grounds for regarding as a threat to national security or as a danger to the community, the Foreigner may also be detained in a manner consistent with international standards.

11.4 Restriction of movement pursuant to Article 11.2 of the present law may be ordered by a decision of the Ministry. An order restricting the movement of an Asylum seeker may be in force until the reasons for it cease, but in no case may be in force for more than one month. If the reasons for the restriction of movement exist after that period, restrictions may be extended for a period of one further month. An order restricting the movement of an Asylum seeker in order to prevent the spread of an infectious disease may remain in force until the risk of infection ceases.

11.5 An Asylum seeker may submit an appeal at anytime, against the decision of the Ministry restricting their movement to the competent court.

Article 12

Cooperation of state bodies with UNHCR Office

12.1 With respect to Asylum-seekers, Asylees, and those who have been granted Complementary Protection and Temporary Protection, the state bodies of Kosovo will assist the UNHCR in the performance of its duties, in particular concerning the application of the 1951 Convention Relating to the Status of Refugees and other international instruments that deal with Refugees and the 1954 Convention Relating to the Status of Stateless Persons.

12.2 Upon request of the UNHCR, relevant state bodies of the Republic of Kosovo will provide information with statistical data regarding:

- (i) the situation of Asylum seekers, Asylees, those with Complementary or Temporary Protection;
- (ii) application of the 1951 Convention Relating to the Status of Refugees and other Refugee-related international documents;
- (iii) laws and other secondary legislation in force or still in preparation related to Asylum, Citizenship, Civil Status and Civil Registration.

Article 13

Protection of Data

13.1 Personal data collected during the asylum procedure by the Competent Body and other state bodies are protected in compliance with the applicable law on protection of personal data.

13.2 All declarations, evidences and data presented to the Competent Body by an Asylum seeker in the course of the Asylum procedure, is confidential.

13.3 Information obtained in the course of an Asylum procedure shall not be communicated to the state of origin of the Asylum seeker or Asylee or individual granted Complementary or Temporary Protection, except as provided in Article 67 of this Law.

CHAPTER II

Article 14 Application of the Law on Administrative Procedure

14.1 Where not otherwise provided for in this law, the Asylum procedure shall be consistent with the Law on Administrative Procedures.

Article 15 Responsible Bodies for Asylum

15.1 The Competent Body for the determination of Asylum shall be comprised of officers of the Department for Borders, Asylum and Migration (hereinafter “DBAM”), who will determine Asylum requests in the first instance.

15.2 An appeal against the decision of the Competent Body of first instance shall be decided by the National Commission for Refugees, (hereafter “Commission”).

15.3 Judicial review may be sought against a final decision of the Commission according to the procedures set forth in the law relating to judicial review of administrative decisions.

Article 16 Submission of Request for Asylum

16.1 A request for Asylum from a Foreigner may be submitted orally or in written form during the control at any port of entry, at any police station or at any DBAM office.

16.2 Registration of an Asylum seeker is made by the completion of a registration questionnaire.

16.3 The Police shall notify DBAM of any requests for Asylum received and DBAM shall establish procedures to properly notify the UNHCR of the receipt of an Asylum request.

16.4 During the registration procedure, the Asylum seeker shall be provided with interpretation in a language that he or she understands.

16.5 The authorized body which conducts the registration is obliged to take fingerprints and a photograph of the Asylum seeker.

16.6 Where registration of an Asylum seeker is made at a port of entry or at a police station, the registration form shall be transferred to DBAM for completion of the Asylum procedure.

16.7 The registration form shall be signed by the Asylum seeker to confirm accuracy after a translation is provided to the Asylum seeker in a language he or she understands.

16.8 The Ministry shall issue secondary legislation that specifies forms to be used and procedures regarding registration.

Article 17

Principles of the Asylum Procedure

17.1 The Asylum procedure begins when a request for protection is made by a Foreigner.

17.2 The Competent Body will enable the Asylum seeker to present and explain all facts and circumstances that are relevant to his or her claim for Asylum.

17.3 The Asylum seeker should fully cooperate in an active manner with the Competent Body during the procedure. The Asylum seeker shall present and explain all facts and circumstances known to him or her, so as to facilitate the Competent Body's consideration of the relevant evidence at the disposal of the Asylum seeker. He or she will present all documents in his or her possession that are relevant for the determination of Asylum.

17.4 The Competent Body will review background information concerning the current situation in the country from where the person has fled and will attempt to verify the facts and circumstances as related by the Asylum seeker in conjunction with any evidence provided by him or her. The Competent Body may also consider any additional evidence at its disposal material for the determination of Asylum.

17.5 Decisions of the Competent Body to grant or deny Asylum shall not be made solely on the basis of formal documentation and other such evidence. A decision should be based on an assessment of all the evidence that is available, including the statements of the Asylum seeker.

17.6 During the Asylum procedure, the Competent Body will make all reasonable efforts to ensure that the procedure is non-adversarial and to the extent possible, the Asylum seeker should be assisted in presenting his or her claim when necessary. The officers charged with interviewing Asylum seekers are responsible to prevent prejudice to the rights of an Asylum seeker due to ignorance of the law on the part of the Asylum seeker.

Article 18

The Right to an Interpreter during the Asylum Procedure

18.1 An Asylum seeker is entitled to understand and participate in the Asylum procedure in a language that he or she understands. If the Asylum seeker does not understand the official language of the procedure, he or she shall be provided with an interpreter throughout the procedure.

18.2 The interpreter for the Asylum seeker should be licensed by the court. If this is not possible, interpretation should be accomplished by a reliable person able to translate into a language that the Asylum seeker understands. The translator shall agree to the confidentiality requirements provided under this law. Further, to the extent possible, the selection of the interpreter should be sensitive to the gender and the background of the Asylum Seeker.

18.3 The interpreter enjoys the right to reimbursement paid according to the rates determined by the Competent Body.

18.4 The Asylum seeker shall present for review by the Competent Body all relevant original and copies of documents available in his or her possession relevant for the determination of Asylum. The Competent Body shall provide for the translation of these documents into the Albanian language and other official languages in Kosovo if deemed necessary to make an Asylum decision.

Article 19 Female Asylum Seekers

19.1 A female Asylum Seeker shall be entitled to have a female official conduct the Asylum procedure if possible.

19.2 A female asylum seeker shall be entitled to have a female interpreter if possible.

Article 20 Unaccompanied Minor

20.1 An unaccompanied minor is a Foreigner under the age of 18 who is unescorted by his or her parents or other person responsible by law.

20.2 Prior to the commencement of the Asylum procedure a guardian shall be assigned to the unaccompanied minor according to laws regarding the appointment of guardians for minors. Notwithstanding the appointment of a guardian the child, to the extent possible, shall be able to make his or her views made known to the Competent Body or other body reviewing the request for Asylum. All government officers shall take into account the age and mental abilities of the minor when evaluating and deciding the case.

20.3 A request for Asylum submitted by an unaccompanied minor has priority in relation to other requests for Asylum and it shall be resolved in the shortest period of time possible.

20.4 The Competent body shall confirm the identity of the minor and shall verify whether he or she is unaccompanied. This determination shall be made in the shortest period of time possible.

20.5 The best interests of the child shall be a primary consideration in all decisions regarding the custody and care of an unaccompanied minor throughout the Asylum procedure.

20.6 The government shall make reasonable efforts to trace the parents or other close relations of the unaccompanied minor in coordination with the International Committee for the Red Cross.

Article 21 Mentally Challenged Asylum Seekers

21.1A legal representative is to be assigned to assist any Asylum seeker with diminished mental capacities, prior to the commencement of the Asylum procedure.

Article 22 Notification of the Commencement of Proceedings to the UNHCR

22.1 The Competent Body shall notify the UNHCR of the commencement of the Asylum procedure without delay.

22.2 The UNHCR has the right to ask for information concerning any Asylum seeker as well as to copies of materials and documents maintained in the government file.

22.3 The UNHCR has a right to establish contact with any Asylum seeker in all phases of the procedure as well as Asylees and those granted Complementary or Temporary Protection.

Article 23 Participation of Third Parties in the Asylum Procedure

23.1 The Asylum procedure shall be closed to the public.

23.2 The following individuals may be present in the Asylum procedure:

- (i) the legal representative of the Asylum seeker;
- (ii) the legal guardian for an unaccompanied minor;
- (iii) a representative of the UNHCR; and
- (iv) an interpreter.

23.3 The Competent Body will notify all relevant actors of the date, place and time of the Asylum procedure.

Article 24
Interview of the Asylum Seeker

24.1 The Competent Body shall interview every Asylum seeker prior to granting asylum. If necessary, the Asylum seeker may be interviewed several times.

24.2 The competent Body shall seek to determine in its interview with the Asylum seeker, in particular, although not limited to, the following information:

(i) the identity of the Asylum seeker and any other members of his or her family that have accompanied him or her;

(ii) the basis of his or her claim for Asylum;

(iii) the manner of entry into Kosovo and whether he or she has previously applied for Asylum in any other state.

24.3 The Asylum seeker shall declare all of material facts and/or circumstances which support his or her claim for Asylum. Specifically, the Asylum Seeker shall declare the source of his or her fear of persecution and any reason why he or she should not be forcibly removed/deported to his or her country of origin and/or habitual residence. The Asylum Seeker shall submit to the Competent Body all available material evidence in support of his or her application for Asylum.

24.4 The Competent Body shall afford the Asylum Seeker sufficient time and/or opportunity to prepare for his or her interview and sufficient time to seek the advice and support of his or her legal representative.

Article 25
Certification of Relevant Facts

25.1 The Competent Body shall determine all relevant facts in order to take a decision with respect to Asylum. The Competent body, if it considers it necessary, may conduct supplementary interviews with the Asylum seeker in order to review evidence presented and/or to request additional evidence.

25.2 Where an officer authorised to conduct an asylum procedure requires an expert opinion to determine a fact material for the determination of Asylum the Competent Body is authorized to consult an expert in the relevant area. The expert shall be instructed as to the confidentiality of the proceeding and agree to the confidentiality requirements set forth in this Law.

25.3 The Competent Body is authorized to consult an expert on an issue material to the determination of Asylum upon the request of the Asylum seeker, his or her legal representative or a representative of the UNHCR, if it deems that such opinion may be material to the determination of Asylum.

Article 26
Decision of First Instance

26.1 The Competent Body shall issue a decision in the first instance by which it:

(i) recognizes Asylum or Complementary Protection when it finds that the Asylum Seeker fulfils the respective criteria;

(ii) rejects an application for Asylum when it is found to be without merit and sets a period of time within which the Asylum seeker shall leave the territory of Kosovo pursuant to Articles 27 or 28 of this Law.

26.2 Upon the approval of a request for asylum by the Competent Body, it shall issue a decision in accordance with this Law whereby Asylum shall be recognized in the Republic of Kosovo.

Article 27
Rejection of Request for Asylum and Complementary Protection

27.1 The Competent Body shall reject a request for Asylum if the Asylum Seeker does not meet the definition of a Refugee and/or is found to be ineligible for Asylum pursuant to Article 5 of this Law. The Competent Body shall refuse Complementary Protection to a Foreigner if he or she does not meet the criteria set forth for Complementary Protection or is found to be ineligible for this status pursuant to Articles 4 and 5 of this Law.

27.2 When an Asylum seeker is rejected for either Asylum or Complementary Protection the Competent Body shall give reasons for their decision in writing and furnish a copy of it to the Asylum seeker. The decision shall be explained to the Asylum seeker in a language that he or she understands. The applicant shall be given 15 days to appeal a decision refusing Asylum.

Article 28
Refusal in Cases of Fraud or Lack of Credibility

28.1 The Competent Body shall take into account any of the actions listed in this article and shall have the discretion to weigh these actions in deciding whether to grant or deny protection. However, none of the following acts may be used by the Competent Body to deny Complementary Protection under articles 2.7.1.i or 2.7.1.ii:

(i) the Asylum seeker has based his or her application for Asylum on a false identity or false documents that he or she has knowingly declared to be original and/or authentic during his or her interview with the competent body;

(ii) the Asylum seeker knowingly presents, either orally or in writing, a false statement material to the reason(s) that he or she is seeking asylum;

(iii) the Asylum Seeker intentionally and knowingly destroys or significantly alters his or her passport or any other official paper or document that is material to his or her

application for asylum and/or for the true determination of his or her identity by the Competent Body or that is otherwise intended, or has the effect of, otherwise hindering the Asylum determination procedure;

(iv) the Asylum seeker knowingly conceals that he or she has submitted a prior request for Asylum in another state, particularly when this has involved the use of a false identity; and

(v) the Asylum seeker abuses the Asylum process in order to delay deportation.

Article 29

Service of Process for the Asylum Procedure

29.1 Official papers, summons, decisions, ordinances and/or any other official document issued by the Competent Body shall be served on the Asylum seeker, his or her legal representative, or a person authorized to receive process by the Asylum seeker. Official papers shall be considered to be delivered when one of above-mentioned persons has acknowledged receipt with his/her signature. In the alternative, a sworn written statement of the process server shall also be deemed sufficient in order to prove proper service of official documents. Such statements verifying service shall comply with the requirements set forth for the service of court documents in the law relating to service of process.

29.2 The pertinent facts of the application for Asylum as related by the Asylum seeker and memorialized in the notes of the interviewer shall be explained to the asylum seeker in a language that he or she understands prior to the determination of the Competent Body and to allow the Asylum seeker to correct any mistakes in understanding and/or recording of his or her statement.

Article 30

Appeal Against the First Instance Decision

30.1 An Asylum seeker has the right to file an appeal against the decision of the Competent Body to the Commission.

30.2 If a decision is taken pursuant to Article 27 an appeal may be submitted within 15 days after receipt of the decision. If decision is taken pursuant to Article 28 of this Law an appeal may be submitted within 7 days after receipt of the decision.

30.3 An Asylum seeker who for reasonable cause can not submit an appeal within the deadlines provided may be permitted to file the appeal and request nunc pro tunc treatment as set forth in this Article. A request for "nunc pro tunc" treatment should be submitted within a 3 days of the cessation of the cause of the delay. A request for nunc pro tunc treatment may be made within 3 months of the expiration of the deadline. The Competent Body will decide on the request for "nunc pro tunc" treatment within 3 days of its submission. During this period any order of expulsion and/or removal of the Asylum Seeker from the territory of Kosovo shall be stayed.

30.4 Any decision that an Asylee or an individual granted Complementary Protection is deportable in accordance with the procedures set forth in article 30 of this Law.

Article 31 **National Commission for Refugees**

31.1 The Commission is appointed by the Kosovo government on the nomination of the Ministry of Internal Affairs. Each appointee serves in a two (2)year term.

31.2 The Commission shall have a chairperson, a deputy chairperson and nine ordinary members.

31.3 The chairperson, deputy chairperson and ordinary members of the Commission are appointed from the ranks of lawyers employed in state administrative bodies or relevant NGOs and should have a minimum of 5 years experience of their profession.

31.4 The Commission shall be independent in its work.

31.5 The Commission shall decide cases in 3 member panels by simple majority.

31.6 The Ministry shall provide the Commission with space and technical support to execute its duties.

31.7 Members of the Commission are appointed according to the following composition:

- (i) representative of the Ministry of Internal Affairs;
- (ii) representative of the Office of the Prime Minister;
- (iii) representative of the Ministry of Labour and Social Welfare;
- (iv) representative of the Ministry of Local Government Administration;
- (v) representative of the Ministry of Justice;
- (vi) representative of the Ministry for Foreign Affairs;
- (vii) Representative of the Ministry of Economy and Finance;
- (viii) representative of the Ministry of Education, Science and Technology;
- (ix) representative of UNHCR and two other representatives appointed from NGOs which deal with human rights and/or refugee issues.

Article 32 **Procedure in the Second Instance**

32.1 The Commission shall decide appeals on the basis of evidence gathered during the course of the first instance Asylum determination.

32.2 If the Commission determines that the Competent Body at the first instance has based its decision denying either asylum or Complementary Protection on an erroneous application of law or of fact or an incorrect and/or unreasonable determination procedure or if there has been a material change in the Asylum Seeker's circumstances, the Commission shall either annul the decision and return it to the Competent Body for re-determination at first instance, provide for a supplemental procedure where the Commission shall strike from the record the aforementioned deficiencies and take its own decision on the revised record or, alter the decision of the first instance by taking its own decision on the same record.

32.3 The Commission shall decide all appeals within 30 days following the submission of the appeal.

Article 33 **Submission of New Request for Asylum**

33.1 An Asylum seeker whose application for Asylum has been rejected at first and second instance and, in the case of a judicial review, by the court, may only submit a request for reconsideration of his case where he or she presents evidence of a material change in circumstances which have served as a basis for the previous decision. If the facts as submitted by the Asylum seeker do not support his or her contention of a material change in circumstances the Competent Body may reject the request without commencing a new procedure.

Article 34 **Termination of the Procedure for Adjudicating Asylum**

34.1 The Asylum determination procedure may be concluded prior to a decision on the merits of the claim in the following circumstances:

- (i) when the Asylum Seeker withdraws his or her request for Asylum;
- (ii) when the Asylum Seeker, without reasonable excuse, fails to his or her appointment for interview by the Competent Body;
- (iii) when the Asylum Seeker does not inform DBAM with respect to a change of his or her address in a timely manner, or in some other way hinders the service of process;
- (iv) when the Asylum seeker does not cooperate with state bodies in ascertaining his or her identity;
- (v) when the Asylum seeker refuses to cooperate with officials in the collection of facts relevant for the determination of his or her claim for Asylum.
- (vi) when the Asylum seeker leaves Kosovo during the procedure without the consent of the Competent Body of first instance.
- (vii) the applicant may apply to the Competent Body for a re-opening of the asylum procedure which may be granted for good cause. A request for reopening the Asylum

procedure shall stay the removal of the Foreigner from Kosovo until it has been determined. There shall be no appeal against this decision.

Article 35 Forcible Expelling

35.1 An Asylum seeker whose request for Asylum and/or Complementary Protection is rejected and who does not leave the territory of Kosovo by the indicated deadline shall be subject to the immigration laws of Kosovo and may be expelled forcibly from the territory of the state.

35.2 Removal according to Article 35.1 of this article shall not be applied prior to the completion of the asylum procedure which requires a final decision. The Asylum procedure shall be considered pending if a proper application to a competent court in Kosovo has been made to review the decision and is pending. Procedure is considered finished if:

- (i) the deadline for an appeal against the decision of the first instance has expired and the appeal is not submitted. If the appeal is submitted after expiration of deadline but nunc pro tunc treatment is denied;
- (ii) a decision of Supreme Court is delivered by which claim is rejected.

CHAPTER III

Article 36 Rights and Duties of Asylum seekers

36.1 Asylum seeker shall have the right to:

- (i) reside in the Republic of Kosovo pending the completion of the asylum determination procedures;
- (ii) decent living conditions;
- (iii) basic health care;
- (iv) basic social assistance;
- (v) unpaid legal assistance;
- (vi) humanitarian assistance;
- (vii) right to education;
- (viii) right to employment

36.2 The Ministry shall issue secondary legislation with respect to the enforcement of the rights contained in Paragraph 1 of this Article, in cooperation with the Ministry of Labor and Social Welfare, the Ministry of Justice, the Ministry of Education, Science and Technology and the Ministry of Health.

Article 37
Right of Interim Residence for Asylum Seeker

37.1 An Asylum seeker who entered Kosovo in compliance with Article 8 of this Law and who has submitted a request for asylum shall be allowed to reside in the Republic of Kosovo pending the ultimate determination of his or her case.

37.2 Interim residence referred to in Paragraph 1 of this Article shall also be extended to a foreigner in the Republic of Kosovo without legal status and who has submitted an application for Asylum.

Article 38
Accommodation in the Asylum Centre

38.1 Appropriate Asylum facilities shall be established and managed by the Ministry. The said facilities may be used by the Ministry to accommodate Asylum seekers who have made an application for Asylum and are awaiting the determination of their application.

38.2 The Asylum facilities may accommodate Asylum seekers in compliance with Article 36 of this Law.

38.3 If Asylum seekers have the basic material requirements to provide for themselves or if accommodation and social assistance is provided to him or her in another way the Competent Body may order that the Asylum seeker shall reside outside of the Asylum facilities. The competent body may make reasonable proscriptions of the Asylum seeker's freedom of movement in compliance with this Law.

38.4 Juveniles, women, and other Asylum seekers with special needs shall be provided with assistance and support in accordance with their needs.

Article 39
Obligations of the Asylum Seeker

39.1 The Asylum seeker shall:

- (i) at all times comply with the laws and other secondary legislation of the Republic of Kosovo as well as with the orders of all state bodies;
- (ii) cooperate with DBAM and other relevant government bodies;

- (iii) comply with the summons of the Competent Body and other government offices and to cooperate in every phase of Asylum procedure;
- (iv) notify DBAM and other relevant Asylum bodies of any change of address within 7 days;
- (v) to comply with orders issued by the Competent Body, DBAM as well as any other government orders concerning the restriction of movement;
- (vi) not to leave the territory of Kosovo without the permission of the Competent Body until the Asylum determination procedure has been completed.

CHAPTER IV

Article 40

Rights of an Asylee or a Foreigner Granted Complementary Protection

40.1 Where Asylum or Complementary Protection has been granted, the Asylee or Foreigner granted Complementary Protection shall be entitled to the following rights:

- (i) residence in the Republic of Kosovo for the duration of their Asylum or Complementary Protection Status;
- (ii) basic social assistance;
- (iii) basic shelter;
- (iv) basic health care;
- (v) education;
- (vi) assistance for integration into the society;
- (vii) Right to freedom of thought and/or belief;
- (viii) right to employment including self-employment;
- (ix) unification with close family pursuant to Article 3 of this Law;
- (x) right to access courts and legal assistance;
- (xi) right to freedom of movement within Kosovo;
- (xii) right to own moveable and real property in Kosovo;
- (xiii) right to the protection of their intellectual property and
- (xiv) right of Association

40.2 An Asylee and a Foreigner granted Complementary Protection shall be entitled to enjoy the rights contained in Paragraph 1 of this Article to the same level of protection enjoyed by citizens of the Republic of Kosovo.

40.3 The ministry, in cooperation with the Prime Minister's Office and other competent Ministries shall issue secondary legislation concerning the enforcement of the rights contained in Article 40.1 of this Law.

Article 41

Permit for Permanent Residence

41.1. The final decision by which Asylum or Complementary Protection is granted to a Foreigner shall constitute evidence of their right of residence in the state of the Republic of Kosovo for the duration of their Asylum or Complementary Protection status.

Article 42

Right to Social Assistance

42.1 An Asylee or Foreigner granted Complementary Protection who has no income, no property and no assistance from other persons who are obliged or capable to assist him or her, shall be entitled to social assistance in compliance with the applicable legislation in the Republic of Kosovo.

42.2 An Asylee or Foreigner granted Complementary Protection who unreasonably declines to be employed in a job offered to him or her or refuses to enter into other forms of active employment shall be deemed to have forfeited his or her right to social assistance.

Article 43

Provision of Basic Shelter

43.1 Basic shelter shall be provided to an Asylee or Foreigner granted Complementary Protection.

43.2 If the Asylee or the Foreigner granted Complementary Protection unreasonably declines the provision of basic shelter referred to in Paragraph 1 of this Article, he or she shall be deemed to have forfeited his or her right to obtain assistance for shelter.

Article 44

Right to Health Care

44.1 The Asylee and a Foreigner granted Complementary Protection shall enjoy the right to health care to the same level provided to citizens of the Republic of Kosovo.

Article 45
Education

45.1 The Asylee and a Foreigner granted Complementary Protection shall receive equal treatment with citizens of the Republic of Kosovo with respect to the right to elementary, secondary and higher education.

Article 46
Assistance for the Asylee to Integrate Into Kosovo

46.1 The Ministry shall establish services for Asylees and Foreigners granted Complementary Protection to promote their integration into the economic, social and cultural life of the country. To achieve these goals special attention should be given to:

- (i) the provision of language courses to enable Asylees and Foreigners granted Complementary Protection to learn at least one of the official languages of the Republic of Kosovo;
- (ii) the provision of courses and other forms of professional education and training;
- (iii) information on the history, cultures and constitutional arrangements of the Republic of Kosovo.

Article 47
Employment

47.1 The Asylee and a Foreigner granted Complementary Protection shall have the right to obtain employment in compliance with the applicable legislation of the Republic of Kosovo.

Article 48
Legal Assistance

48.1 The Asylee and a Foreigner granted Complementary Protection shall be offered legal assistance on terms identical to those of citizens of the Republic of Kosovo.

Article 49
Obligations of the Asylee and the Foreigner granted Conditional Residence

49.1 The Asylee and a Foreigner granted Complementary Protection is obliged:

- (i) to act in accord with the constitutional order, laws and other secondary legislation of the Republic of Kosovo;
- (ii) to notify the Competent Body within 7 days with respect to his or her place of residence and for every subsequent change of address;

(iii) to notify Competent Body of the employment in which he or she is engaged.

CHAPTER V

Article 50 Issuing of Documents

50.1 The Ministry shall issue the following documents to Asylum seekers within 7 days of the receipt of the application for Asylum:

- (i) certification of submission of request for asylum;
- (ii) identity card for Asylum seeker;

50.2 The Asylee and the Foreigner granted Conditional Protection shall be issued the following documents:

- (i) identity card;
- (ii) travel document;

50.3 Documents counted in paragraph 1, sub-paragraphs (i). (ii). and paragraph 2, sub-paragraphs (i). (ii). of this Article shall be issued by the Ministry in compliance with provisions of this Law.

Article 51 Asylum seeker's Identity Card

51.1 An Asylum seeker's identity card shall be considered as a provisional permit for residence in Kosovo.

51.2 Identity cards shall be issued to all dependent family members of the Asylum seeker.

51.3 Asylum Seeker's identity card is valid until the conclusion of the Asylum procedure.

Article 52 Identity Card for Asylees and Foreigners Granted Complementary Protection

52.1 Every Asylee and Foreigner granted Complementary Protection shall be issued an identity card. This includes Asylees granted protection on a derivative basis as well as beneficiaries of family reunification in the case of a Foreigner granted Complementary Protection.

Article 53

Travel Documents for Asylees and Foreigners Granted Complementary Protection

53.1 An Asylee or a Foreigner granted Complementary Protection shall be issued a travel document upon application to DBAM.

53.2 The request for a travel document may be submitted personally by the Asylee or Foreigner granted Complementary Protection, if he or she is 18 years of age and eligible to act, or by his or her legal representative.

53.3 When an Asylee or a Foreigner granted Complementary Protection is younger than 18 years of age, a request for a travel document may be submitted by his or her legal representative or guardian.

53.4 The Competent Body will confirm asylum status for purposes under this section.

53.5 The duration of the refugee travel document for Asylees or Foreigner granted Complementary Protection depends on the age of the person, as provided herein:

(i) a child up to 3 years of age shall be provided with a travel document which is valid for 3 years.

(ii) a child from 3 to 18 years of age shall be provided with a travel document valid for 5 years;

(iii) a person who is 18 years of age or older shall be provided with a travel document valid for 10 years.

53.6 In the case of the termination of Asylum or Complementary Protection pursuant to Article 6 of this Law the foreigner shall be required to return the travel document to the Competent Body.

CHAPTER VI

Article 54

Temporary Protection

54.1 Temporary Protection shall be granted to Foreigners that come to Kosovo in a large-scale population movement when, persons belonging to such a movement:

(i) have either fled the indiscriminate effects of armed conflict and generalized violence;

(ii) are in a situation where their life, personal integrity or freedom is at risk as a result of widespread human rights violations;

(iii) have fled areas of armed conflict or endemic violence;

(iv) are at serious risk of, or have been the victims of, systemic or generalized violations of their human rights while their country of origin is not capable to protect them.

54.2 Foreigners referred to in Article 54.1 of this Law who are citizens of the country from which they have fled, or are without citizenship, shall be afforded Temporary Protection in the Republic of Kosovo provided that:

- (i) prior to the occurrence of a situation referred to in Article 54.1 of this Law the Foreigner lived in that state and due to the situation came to the Republic of Kosovo;
- (ii) alternatively, a Foreigner has legally entered Kosovo and on the expiration of his or her status he or she was unable to return to his or her state of origin or habitual residence due to one of the circumstances listed in Article 54.1 of this Law;

54.3 The Ministry, in consultation with the Ministry of Foreign Affairs, shall conduct an evaluation of the situation in a country of origin when confronted with a situation of mass influx of individuals that appear to meet the definition provided in Article 54.1 of this Law to determine whether temporary protection treatment should be extended to a particular category of individuals from that country.

Article 55

Granting Temporary Protection and Duration

55.1 Temporary Protection for foreigners shall be granted by the Ministry for duration of 6 months in compliance with Article 54 of this Law.

55.2 Temporary Protection can be extended in 6 month increments if the conditions in the protected person's country of origin that formed the basis of the decision to grant Temporary Protection continue to apply.. Temporary Protection can be extended for a maximum of 2 years.

Article 56

Causes for Termination of Temporary Protection

56.1 The Ministry may terminate Temporary Protection if:

- (i) the situation in the country of origin has changed so fundamentally that it allows for the durable return of protected persons to their country of origin in safety and with due respect for their dignity;
- (ii) it appears that a foreigner may not be eligible for Asylum due to reasons set forth in Article 5 of this law;
- (iii) it appears either that the Foreigner with the status of Temporary Protection could be a danger to the security of the country or after having been convicted by a final judgement of a particularly serious crime, could constitute a danger to the community;
- (iv) his or her asylum request is granted or another more beneficial status has been granted to him or her in accordance with the Law of Kosovo;
- (v) he or she enjoys an alternative form of international protection or has arranged citizenship or residence of another country.

Article 57
Termination of Temporary Protection

57.1 Temporary Protection may be terminated for a Foreigner:

- (i) by the expiration of his or her permit deadline;
- (ii) by order of the Ministry served on the Foreigner.
- (iii) when he or she voluntary leaves Kosovo;

57.2 Upon the termination of temporary protection as provided for in this Law, a foreigner has the right to apply for asylum in accordance with Articles 4 and 62 of this Law;

Article 58
Duties and Obligations of Foreigners who have been Granted Temporary Protection

58.1 A Foreigner who has been granted Temporary Protection has the right to:

- (i) reside in the Republic of Kosovo on a temporary basis in compliance with Article 54 of this Law;
- (ii) basic conditions for accommodation and living;
- (iii) healthcare and access to elementary and secondary education on terms identical to those of citizens of the Republic of Kosovo;
- (iv) access to legal advice and assistance;
- (v) freedom of belief and/or religion;
- (vi) freedom to engage in employment or self-employment activities;
- (vii) necessary assistance with respect to his or her social welfare.

58.2 The duties enumerated in Article 49 of this Law shall apply equally to Foreigners who have been granted Temporary Protection.

Article 59
The right to Family Unification

59.1 Family reunification with dependents shall be permitted for persons granted Temporary Protection for family members as defined in Article 3 of this Law.

59.2 Family members who are reunited pursuant to Article 59.1 of this Law shall be granted Temporary Protection.

Article 60
Accommodation of Foreigners granted Temporary Protection

60.1 Foreigners that are granted Temporary Protection shall be provided with accommodation in accordance with the economic capacities of the Republic of Kosovo.

Article 61
Identity Card for Foreigners granted Temporary Protection

61.1 The Ministry shall issue identity cards to foreigners granted Temporary Protection.

Article 62
Opportunity to Request Asylum

62.1 A Foreigner who has received Temporary Protection pursuant to this Law may submit a request for Asylum during or after the expiration of this status.

62.2 A request for Asylum that is submitted prior to the expiration of a Foreigner's Temporary Protection status shall be processed after the expiration of Temporary Protection. After the expiration of Temporary Protection and until a final determination on asylum is made, the foreigner shall not be removed from the Republic of Kosovo and shall be treated in accordance with the provisions set forth for Asylum seekers under this law.

CHAPTER VII

Article 63
Types of Information to be Collected

63.1 In order to provide required information for the exercise of duties envisaged in this law the following data shall be collected and maintained in a database:

- (i) requests submitted for asylum;
- (ii) asylum seekers under 18 years of age who are not accompanied by their parents;
- (iii) asylum seekers accommodated in Asylum facilities;
- (iv) asylum seekers residing outside of Asylum facilities;
- (v) persons who have been granted Asylum pursuant to Article 4 of this Law;
- (vi) persons whose asylum application has been rejected;
- (vii) persons whose Asylum determination procedure has been terminated;
- (viii) individuals that have submitted repeated requests for Asylum;

- (ix) identity cards issued to Asylum seekers;
- (x) identity cards issued to persons whose asylum is recognized or those with Complementary Protection;
- (xi) Travel documents issued to persons for whom Asylum has been recognized or those with Complementary Protection;
- (xii) Identity cards issued to Foreigners for Temporary protection.

Article 64

Required Data from Asylum seekers and Those Seeking Other Forms of Protection

64.1 Requests for Asylum, as well as requests for other forms of protection as provided for by this law shall be set forth in a form to be determined by the Ministry pursuant to Article 16 of this Law.

64.2 The Asylum seeker has a duty to deliver to the competent body the following information :

- (i) name and surname, date of birth and birthplace;
- (ii) names of parents;
- (iii) gender;
- (iv) marital status;
- (v) citizenship, nationality, religion;
- (vi) mother tongue and knowledge of languages;
- (vii) last address of residence;
- (viii) date of leaving his or her state of origin;
- (ix) states where he or she has resided;
- (x) full date, place and way of entering in Kosovo.
- (xi) identification document, type, number, date and place of issue;
- (xii) education and profession;
- (xiii) affiliation with political party or organizations;
- (xiv) previous requests made for asylum in the Republic of Kosovo or in any other state;
- (xv) the details of family of unescorted children;
- (xvi) close family members that have accompanied asylum seeker;
- (xvii) other relatives that have accompanied the asylum seeker;

- (xviii) the details of relatives that reside in the Republic of Kosovo;
- (xix) members of close family that reside in the state of origin;
- (xx) members of close family that live outside the state of origin;
- (xxi) evidence and declarations of asylum seeker;
- (xxii) any other requests as required by competent official.

64.3 The asylum seeker shall provide consent in writing giving the Ministry permission to process the application and the data contained therein. Prior to the completion of the application the asylum seeker shall be notified orally and in writing regarding the reasons for the collection, the period of time during which this information will be maintained, and the manner in which it will be used.

Article 65

Archives and Protection of personal data

65.1 Personal data collected pursuant to Article 64.2 of this Law shall be maintained by the competent body. Thirty years after the completion of the procedure, the data shall be placed in archives in accordance with applicable legislation.

CHAPTER VIII

Article 66

Collection, Processing and Communication of Data

66.1 The competent body as well as other governmental agencies charged with the collection and or maintenance of records are authorized to exercise their responsibilities with respect to the collection of data for asylum seekers and other persons applying for or receiving protection pursuant to this Law.

66.2 Data referred to in Article 66.1 of this Law shall be processed in accordance with applicable legislation on the protection of personal data.

66.3 Data collected through the taking of finger prints and photos of Asylum seeker shall be used for the review of his or her case for Asylum or other protection provided for in this law as well as for related immigration procedures.

Article 67

Communication of Information to State of Origin

67.1 Information collected pursuant to Article 66 of this Law shall not be communicated to the state of origin of a person except as provided for in Article 67.2 of this Law.

67.2 Where a person whose request for Asylum and/or other forms of protection have been rejected and for whom an order of deportation has been issued, the following data can be delivered to his or her state of origin:

- (i) name, surname and date of birth;
- (ii) gender and nationality;
- (iii) data for family members where necessary to determine personal identity and citizenship;
- (iv) information from documents issued by the state of origin to confirm personal identity and citizenship;
- (v) finger prints and photos if deemed necessary.

CHAPTER IX

Article 68 Requests Made Prior to this Law Entering Into Force

68.1 Requests for asylum that have been submitted to UNHCR prior to this Law having entered into force shall be treated according to this Law.

Article 69 Establishment of Asylum Facilities

69.1 Asylum Facilities shall be established six months after this Law enters into force.

Article 70 Modes of Arrangement for Permits, Documents and Evidence

70.1 The Ministry shall issue secondary legislation pursuant to Articles 50 and 63 of this Law.

Article 71 Documents Issued Prior to this Law Coming Into Force

71.1 The Competent Body shall ensure the continuity of the status of Refugees in Kosovo recognised by UNHCR and shall issue documents for them in compliance with this Law. UNHCR and the Competent Body shall exchange information on these cases as necessary.

Article 72
Effect of the Law

72.1 By the promulgation of this Law the provisions set forth in Articles 12-21 of UNMIK Regulation No. 2005/16 on The Movement of Persons into and out of Kosovo are hereby repealed.

Article 73
Entering into Force

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

73.2 The procedures initiated according to Articles 12-21 of UNMIK Regulation No. 2005/16 on The Movement of Persons Into and Out of Kosovo shall be terminated according to that procedure, when possible.

Law No. 03/L-066
21 May 2008

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI