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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**KOSOVO**

**EXCERPT**

**ARTICLES OF THE DRAFT CRIMINAL PROCEDURE CODE  
CONCERNING TRIAL IN ABSENTIA**

**AND**

**ARTICLES OF THE DRAFT CRIMINAL PROCEDURE  
CONCERNING SUSPENSION OF OFFICIALS FROM OFFICE\***

\* provided by the authorities

**Articles of the Draft Criminal Procedure Code of the Republic of Kosovo concerning Trial in Absentia:**

**Article 306**

***Trial in Absentia***

1. *The accused shall be present at:*

1.1. *the initial hearing; and*

1.2. *the main trial.*

2. *The accused waives the right to be present at the main trial in the following circumstances:*

2.1. *when the accused was present at the initial hearing and was informed of the trial date by the single trial judge or presiding trial judge pursuant to Articles 283 and 285 of this Code, or during another court hearing, and the accused was told of the requirement to be present for the trial and that the trial could proceed if the accused voluntarily fails to appear for trial; or*

2.2. *was present at the trial, but then failed to appear at subsequent trial sessions, and was informed pursuant to subparagraph 2.1 of this Article.*

3. *In the event the accused fails to appear in either circumstance in subparagraph 2.1 or 2.2 of this Article, the single trial judge or presiding trial judge shall determine if the accused is voluntarily absent after the hearing described in paragraph 5 of this Article and the accused shall be represented by a defense counsel.*

4. *If the accused waives the right to be present, the trial shall commence and proceed to completion during the accused's absence.*

5. *In deciding whether to hold a trial in the absence of the accused, the single trial judge or presiding trial judge shall hold a hearing to determine why the accused is absent and assess any explanation or evidence regarding whether the accused has voluntarily decided to be absent from the trial. During this hearing the single trial judge or presiding trial judge shall determine if the trial could soon take place with the accused's presence, against the undue inconvenience or prejudice caused by a slight delay or a rescheduling of the trial. In making this determination the single trial judge or presiding trial judge shall consider:*

5.1. *if reasonable efforts have been made to locate the accused;*

5.2. *the difficulty of rescheduling the trial, particularly in trials involving multiple accused;*

5.3. *the burden on the state prosecutor in having to undertake two trials involving evidence common to co-accused; and*

5.4. if a delay will place the prosecution witnesses in substantial jeopardy or inconvenience.

6. In the event of a trial held as provided in paragraph 2 of this Article, the court shall make reasonable efforts to inform the defendant regarding the judgement. However, if the court is not able to inform the defendant due to his or her absence, the defense counsel shall have the right to appeal the judgment on behalf of the defendant pursuant to Article 386 of this Code. The provisions of Article 383 of this Code regarding the deadline shall apply *mutatis mutandis*.

7. In cases of offenses in Article 104 of the Criminal Code, a trial in absentia may be conducted without meeting the criteria of ensuring the presence of the accused as set forth in this Article, if the single trial judge or presiding trial judge is satisfied that reasonable efforts have been made to notify the accused of the trial and ensure the presence of the accused. In this case, the accused shall be represented by a defense counsel throughout the criminal proceedings, until the judgment becomes final.

8. A person tried under paragraph 7 of this Article is entitled to have an automatic retrial upon request.

### **Articles of the Draft Criminal Procedure Code of the Republic of Kosovo concerning Suspension of officials from office:**

#### ***Article 177***

#### ***Suspension of Official Person from Duty***

1. The court shall suspend the defendant, who is an official person from his or her duty, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offense;  
and

1.2. one of the following conditions is met:

1.2.1. There are grounds to believe that, if remaining on his or her duty, an official person will destroy, hide, change or forge evidence of a criminal offense or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

1.2.2. The seriousness of the criminal offense, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that if remaining on his or her duty an official person will repeat the criminal offense, complete an attempted criminal offense or commit a criminal offense which he or she has threatened to commit.

2. The court shall decide on the measures under this Article with a reasoned decision. The ruling must contain the reasoning that stipulates that the conditions from paragraph 1 of this Article have been met and that the measure is necessary.

3. *The court determines in the ruling that during the suspension, the official person will not have access to the official premises of his or her office, he or she will not have the right to undertake official duty and will refrain from contacting employees in his or her office.*

4. *The ruling shall be delivered to the defendant and his or her direct supervisor.*

5. *The court shall order detention on remand if the defendant does not comply with the ruling. The defendant shall always be informed in advance of the consequences of non-compliance.*

6. *If the direct supervisor of the defendant does not take action in the execution of the ruling on the suspension, the court shall punish him by a fine as provided for in Article 446 of this Code.*

7. *Unless otherwise provided in this Article, the provisions of this Code regarding detention on remand shall apply mutatis mutandis to the ordering, duration, extension and termination of the measure under this Article.*

8. *For the duration of the measure under this Article before the indictment is filed, the pretrial judge decides ex officio or upon the request of the state prosecutor.*