

**LAW No. 04/L-030
ON LIABILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES**

Assembly of Republic of Kosovo,

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

Approves:

LAW ON LIABILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose**

This law regulates the liability of legal persons for criminal offences; penal sanctions that may be imposed to legal persons and special provisions that regulate the applicable procedure against the legal person.

**Article 2
Definitions**

1. Terms used in this law shall have the following meanings:

1.1. **Responsible person** – natural person within the legal person, who is entrusted to perform the certain tasks, or is authorized to act on behalf of the legal person and there exists high validity that he/she is authorized to act on behalf of the legal person.

1.2. **Legal Person** - a legal or foreign legal person, who according to the Kosovo legislation is considered as a legal person.

1.3. **Penal sanctions** – the violence measures of a penal-legal character imposed to a legal person.

**Article 3
Implementation of the criminal legislation**

1. Unless this law expressly provides otherwise, the provisions of Criminal Code of Kosovo and Criminal Procedure Code of Kosovo shall be applicable against legal persons.

2. Legal persons may take liability for criminal offences provided for in special part of the Criminal Code of Kosovo and for other criminal offences, provided the conditions for the criminal liability of legal persons are met, as foreseen by this law.

**Article 4
Territorial jurisdiction of the law**

1. This law applies for:

1.1. national legal persons and foreign legal persons who are liable for criminal offences committed in the territory of the Republic of Kosova;

1.2. foreign legal person , who is liable for the criminal offence committed outside of the state, damaging the Republic of Kosovo , its citizens or causing damage to national legal persons;

1.3. national legal person , who is liable for having committed a criminal offence outside the state.

2. In case of paragraph 1., subparagraphs 1.2. and 1.3. of this Article, this law shall not apply if the special conditions for prosecution from the specific provisions of the Criminal Code of Kosova are met.

3. The Republic of Kosovo, state administrative and local governance bodies and foreign governance organizations acting in the Republic of Kosovo shall not be liable for criminal offence, however the responsible person shall be liable for criminal offence.

4. A legal person, to whom was trusted by law the exercise of legal authorizations shall not be liable for a criminal offence committed during the exercise of these authorizations.

CHAPTER II ASSUMPTIONS OF CULPABILITY

Article 5 Grounds and limit of liability of legal persons

1. A legal person is liable for the criminal offence of the responsible person, who has committed a criminal offence, acting on behalf of the legal person within his or her authorizations, with purpose to gain benefit or has caused damages for that legal person. The liability of legal person exists even when the actions of the legal person were in contradiction with the business policies or the orders of the legal person.

2. Under the conditions provided for in paragraph 1. of this Article, the legal person shall be liable for criminal offences also in cases if the responsible person, who has committed the criminal offence, was not sentenced for that criminal offence.

3. The liability of the legal person is based on the culpability of the responsible person.

4. The subjective element of the criminal offence, which exists only for the responsible person, shall be evaluated in relation with the legal person, if the basis for the liability provided for in paragraph 1. of this Article, was fulfilled.

Article 6 Liability in case of change of status and bankruptcy of the legal person

1. If the legal person ceases to exist before the criminal proceedings are concluded, the pecuniary punishment, security measures and confiscation of material benefit may be imposed to a legal person , provided the criminal liability of legal person, was established previously, who ceased to exist.

2. If the legal person ceases to exist after the criminal proceedings have ended, pecuniary measures, security measures and confiscation of material benefit shall be executed in accordance with paragraph 1. of this Article.

3. A legal person before bankruptcy shall be punished for criminal offences committed before the initiation or during the development of bankruptcy procedure.

Article 7
Attempt of the criminal offence

1. A legal person is responsible also for the criminal offence of attempt according to the conditions set out in paragraph 1. of Article 5 of this law, if the law provides for the attempt to be punishable.

2. A legal person (responsible person) for attempt shall be punished with the punishment provided for in this law for criminal offences, whereas he or she may be punished more leniently.

3. A legal person who voluntarily has omitted the realization of the criminal offence, his punishment may be waived.

CHAPTER III
PUNISHMENTS AND OTHER CRIMINAL LEGAL SANCTIONS

Article 8
Types of sanctions

1. For criminal offence may be imposed the following punishments: suspended sentence and security measure.

2. Types of punishments that may be imposed for criminal offence of legal persons are: fines and termination of work.

Article 9
Punishment by fine

1. For criminal offences of legal persons, the foreseen punishment by fine may not be less than one thousand (1.000) Euros and more than one hundred thousand (100.000) Euros.

2. The punishment by fine is imposed with the following amounts:

2.1. for criminal offences where the punishment provided for is by imprisonment from fifteen (15) days to three (3) years, the court may impose the punishment by fine, from one thousand (1.000) to five thousand (5000) Euros;

2.2. for criminal offences where the punishment provided for is imprisonment from three (3) to eight (8) years, the court may impose the punishment by fine from five thousand (5000) to fifteen thousand (15.000) Euros;

2.3. for criminal offences where the punishment provided for is by imprisonment from eight (8) to twenty (20) years, the court may impose a punishment by fine from fifteen thousand (15.000) to thirty five thousand (35.000) Euros;

2.4. for criminal offences where the punishment provided for is by long term imprisonment, the court may impose a punishment by fine, from thirty five thousand (35.000) Euros to one hundred thousand (100.000) Euros.

Article 10
Evaluation of the punishment by fine

1. The court shall evaluate the punishment by fine of the legal person within the limits of the punishment provided for by law for that criminal offence, by considering all the circumstances that affect for the punishment to be more severe or lenient (aggravating circumstances or mitigating circumstances), especially :

1.1. the gravity of the committed criminal offence ;

1.2. the consequences that have occurred or could have occurred ;

1.3. the circumstances under which the criminal offence was committed ;

1.4. the economic power and the competencies of the legal person ;

1.5. the function and the number of responsible persons in a legal person, who have committed a criminal offence;

1.6. the conduct of a legal person after the committal of the criminal offence ;

1.7. the measures that were taken by the legal person with the purpose to omit and report the criminal offence ;

1.8. rapport with the victim of the criminal offence ;

1.9. The conduct of the legal person for the criminal offence, including the acceptance of responsibility for the committed criminal offence.

2. During the imposition of the punishment, the court shall consider especially the fact whether the legal person has any previous record for a criminal offence, the type of the criminal offence committed previously , is it the same as the new criminal offence and how much time has passed since the first punishment.

3. The court may impose a punishment under the provided measures for the criminal offence (a more lenient punishment) when this is provided for by law or provisions under which the criminal offence is established or if there are any mitigating circumstances. The punishment may be mitigated up the lightest measure, provided for by Article 12, paragraph 1. of this law.

4. The court may impose a more severe punishment to the legal person or responsible person, as provided for the criminal offence that was committed, up to the double amount of measure for the highest punishment, if the perpetrator is a multiple recidivist.

5. A multiple recidivism for the legal person, under paragraph 4. of this Article, shall exist if:

5.1. the legal person was convicted at least twice for a similar criminal offence by more than thirty five thousand (35.000)Euros and if since the termination of the last punishment , have not elapsed more than five (5) years;

5.2. for similar criminal offences has been sentenced to imprisonment at least two times or punished by fine of fifteen thousand (15.000) Euros, if from the last punishment by imprisonment that was imposed to that person, have not elapsed more than five (5) years and if the perpetrator has an affinity to commit such criminal offences.

Article 11

Cessation of work of the legal person

1. The punishment by cessation of work may be imposed, if the legal person was established for the purpose of committing criminal offences or has used its activities mainly for the committal of criminal offences.
2. The punishment of cessation of work may not be imposed on units of local self-governance and political parties.
3. Following the final decision on the cessation or work of the legal person, shall be implemented the liquidation of the legal entity in accordance with the law.

Article 12 **Suspended sentence**

1. The court may impose to a legal person a suspended sentence for criminal offence.
2. In a suspended sentence, the court may impose to a legal person a punishment up to fifty thousand (50.000) Euros, but that punishment shall not be executed provided the legal person sentenced for that time as imposed by court, which can not be less than one and not even longer than two (2) years (validation period) does not commit any new offence which contains elements of the criminal offence provided for in Article 5 of this law.
3. In a suspended sentence the court may impose the punishment to be executed even if the legal person who is sentenced for a certain time does not return the material benefit gained through the committal of the criminal offence, does not compensate the damage that was caused by the committal of the criminal offence or does not fulfil its obligations provided for in penal provisions. The time limit for the fulfilment of these obligations is determined by court within the set time limit or validation.
4. From the side of the imposition of the suspended sentence, conditions for the imposition of sentences, its effect and revocation of the punishment are implemented in accordance with the provisions from Articles 42 to 48 of Criminal Code of Kosovo.

Article 13 **Security measures**

1. Legal persons, who are liable for criminal offences, may be imposed the following security measures:
 - 1.1. prohibition of work or certain functions;
 - 1.2. confiscation of assets;
 - 1.3. confiscation of material benefit;
 - 1.4. publication of the judgment .
2. Prohibition to conduct activities and certain works may be imposed:
 - 2.1.in connection to one or more activities and duties during the performance of which was committed the criminal offence;
 - 2.2. the legal person in a time limit up to three (3) years, calculating from the imposition of the punishment with a final decision, if the continuation of the activities and responsibilities would endanger the life , health and security of the people or property , or if the legal person has been previously convicted for the same or similar criminal offence.

3. Security measures of confiscation of assets has to deal with assets that were used or served for purpose to commit a criminal offence, which may be confiscated from the legal person , if he or she is the owner of these assets.

4. Assets provided from paragraph 1. of this Article may be confiscated also in cases when they are not owned by a legal person- the perpetrator of the criminal offence, if it is required by the interest to protect the life and body of persons, security of movement, other economic interests or for moral reasons, provided if the rights of the third person for the compensation of damage are not damaged.

5. The law may necessarily impose a protection measure of confiscation of assets.

6. Security measures – confiscation of proceeds of crime may be implemented as follows:

6.1. the legal person can not keep for himself the material benefit which was gained through the committal of a criminal offence;

6.2. material benefit shall be acquired with the court decision by which was found the committal of a criminal offence;

6.3. if the legal person, to whom was imposed the measure of confiscation of material benefit since the final decision was taken, has ceased to exist, the material benefit shall be confiscated from the legal person to whom the property was transferred- up to the valued amount of this property;

6.4. when it is found that the confiscation of material benefit consisted of money, rights or assets, can not be confiscated, the court may oblige the legal person to pay the counter value in Euros, whereas in the case of determination of a value shall be considered the value of the assets in market and rights at the time when the decision was taken.

7. The court may impose the security measure of publication of the judgment, if it considers that it would be useful for the public to know what the judgment is, especially if the publication of the judgment would contribute to the elimination of the endangerment to life or the health of persons or to protect the security of movement or any other economic interest.

8. The court shall decide according to the gravity of the criminal offence and the need to inform the public, if the judgment is publicized in press, television or radio or through information means also if the reasoning of the judgment shall be publicized fully or in extracts, provided if the manner of publication shall enable the notification of all persons that have an interest in the publication of the judgment.

Article 14 Statutory Limitation

1. The statutory limitation of criminal proceedings of legal persons is calculated according to the punishment provided for the legal person who has committed the criminal offence.

2. The criminal proceedings may not be commenced if the time provided for in Article 90 of Criminal Code of Kosovo has elapsed.

3. The statutory limitation on the sentence for criminal offence commences if three (3) years have elapsed since the final decision was taken.

4. The statutory limitation on the execution of protection measures commences:

4.1. if six (6) months have elapsed from the day the decision on imposing the security measure becomes final. In case the asset is found abroad, the limitation term is eighteen (18) months from the day the decision becomes final;

4.2. if three (3) years have elapsed from the day the judgment becomes final on the security measure;

4.3. if three (3) months have elapsed from the day the judgment becomes final, based on which was imposed the protection measure of the publication of the judgment.

Article 15

Record of imposed punishments

1. Record on punishments of legal persons for criminal offences are kept by the first instance court in the territory of which is the residence of the national legal person, respectively the residence of the representative office or the branch of the foreign legal person.

2. The record on punishments of legal persons for criminal offences contains the following data:

2.1 name, residence and activity of the legal person;

2.2 registration number and matrix number;

2.3 information on criminal offence, on punishment, suspended sentence, security measure;

2.4 information on responsible person, having committed the criminal offence for which was punished the legal person;

2.5 further amendments to data that are contained in the record of punishments;

2.6 information on the punishment that was executed and the annulment of the record on the wrong punishment.

3. Information on the criminal record of legal persons may be disclosed, upon the presentation of a justifiable request.

4. Information on the criminal record may be disclosed only to court, prosecution and police, in relation with criminal proceedings against the legal person, who has been punished previously, to the body for the execution of penal sanctions and the body in charge of pardon or takes decisions of legal consequences of the punishment, when it is necessary for the carrying of work within their competencies.

5. Upon the presentation of a justified request of the state body or a legal person, may be disclosed information from criminal record only if the legal consequences of the punishment are extended or the security measures and if there is a justifiable interest based on law.

6. Legal person, upon their request, may provide information on punishment or the non-punishment only if this information serves for the realization of their rights.

Article 16

Legal consequences of the punishment and their cessation

1. Legal consequences of the punishment for a legal person may commence where the perpetrator is imposed a fine. For a legal person may commence the following legal consequences:

- 1.1. prohibition of work based on license, authorization or concession issued by the state bodies;
 - 1.2. prohibition to acquire license, authorization or concession that are issued by the state bodies.
2. Legal consequences provided for in paragraph 1., subparagraph 1.2. of this Article may be foreseen not longer than five (5) years, starting from the day when the judgment becomes final.
 3. After three (3) years have elapsed from the day when the punishment was served or prescribed, the court, upon the request of the sentenced legal person, may decide to cease the legal consequences of the punishment that deal with the prohibition of acquiring certain rights.
 4. Based on the decision for the cessation of legal consequences of the punishment, the court shall consider the conduct of the sentenced legal person, whether the compensation of the damage that was caused was implemented and the material benefit from the criminal offence was returned as well as other circumstances that are related to the reasonability of the cessation of legal consequences of the punishment.

Article 17

The subsidiary implementation of the provisions in the general part of the Criminal Code

1. For legal persons shall apply accordingly the provisions of the General Part of the Criminal Code of Kosovo for :
 - 1.1. criminal offence;
 - 1.2. act of minor significance;
 - 1.3. extreme necessity;
 - 1.4. incitement;
 - 1.5. assistance;
 - 1.6. limits on criminal liability and punishment for collaboration;
 - 1.7. manner of commission of criminal offences;
 - 1.8. time of commission of criminal offences;
 - 1.9. location of commission of criminal offences;
 - 1.10. purpose of suspended sentence;
 - 1.11. revocation of suspended sentences due to previously committed criminal offences;
 - 1.12. revocation of suspended sentences due to failure to perform obligations;
 - 1.13. deadlines for revocation of suspended sentences;
 - 1.14. commencement and interruption of periods of statutory limitation on criminal prosecution;

1.15. commencement and interruption of periods of statutory limitation on the execution of punishments;

1.16. meaning of terms.

CHAPTER IV PROCEDURE

Article 18 Exclusive Procedure

1. For the criminal offence of a legal person and responsible person shall be filed and executed exclusive procedure and there shall be issued a judgment.

2. If for legal reasons and other reasons the criminal proceedings can not be initiated or executed against the responsible person, the procedure shall be initiated and executed only against the legal person.

Article 19 Territorial jurisdiction

1. Territorial jurisdiction, according to law is within the territory of the court where the criminal offence was committed or attempted to be committed.

2. If the territory where the criminal offence was committed is unknown or that place is outside of the territory of the Republic of Kosovo, the court within whose territory the defendant legal person has a residence, shall have the jurisdiction. In case of suspicion, the residence shall be considered the place where the governing bodies of the legal person are located.

3. If a foreign legal person is trialed for a criminal offence, the court in whose territory is the representation office or branch of the legal person in the Republic of Kosovo, shall have the jurisdiction.

Article 20 Representative of the defendant legal person

1. In criminal proceedings the defendant legal person shall be represented by the representative of the legal person who is authorized to take all the actions that a defendant may undertake in criminal proceedings.

2. The representative of the legal person is the person who is authorized to represent this legal person according to law, act of the competent state body or statute, respectively another general act of the legal person.

3. The court shall verify the identity of the representative of the legal person and his or her authorization for representation in criminal proceedings.

4. The representative of the legal person is a person who runs the representative office, respectively the branch of this legal person in Republic of Kosovo.

5. A representative of the legal person may not be the person who was summoned by the court as a witness for the same case.

6. Representative of the legal person may not be the responsible person who is prosecuted for the same criminal offence of another criminal offence, except in the case if that person is the only member of that legal person.

7. The governing body or the managing body of the defendant legal person may appoint as a representative another person from its members.

Article 21

Appointment of a representative

1. The court that is conducting the criminal proceedings, in its first summon shall inform the defendant legal person whether they are obliged to appoint their representative within a time limit of eight (8) days from the day when the summon is served. If the legal person does not appoint a representative within the set time limit, the court shall appoint one of them as the representative.

2. If the defendant legal person ceases to exist before the end of criminal proceedings with a judgment which is final, its legal descendant shall appoint their representative in a time limit of eight (8) days from the day when the legal person ceased to exist; if not, the court conducting criminal proceedings shall appoint the representative.

3. The representative of the defendant legal person shall be appointed by the president of the court with a ruling that is given to the person who was appointed to be the representative of that legal person. An appeal is permitted against the decision, but an appeal shall not stay the execution of the ruling.

Article 22

Serving of decisions and legal documents to the legal person

All the decisions, communications, summons and other documents for the defendant legal person, shall be served to the address of the legal representative or to the residence of the legal person, respectively its branch.

Article 23

Conduct of the representative

If the duly summoned representative of the legal person fails to appear before court, the court conducting the proceedings may compel them to appear before court.

Article 24

Expenses of the representative

1. The expenses of the representative of the legal person shall be included in the costs of criminal proceedings.

2. The necessary expenses of the appointed representative in proceedings for criminal offences that are prosecuted ex-officio shall be paid previously from the means of the body that is conducting criminal proceedings, whereas the persons that are due to be compensated according to the Criminal Procedure Code of Kosovo shall be compensated later.

3. A defendant legal person shall cover for the expenses of proceedings that were caused by his/her fault to its representative.

Article 25

Defence counsel

1. A defendant legal person may engage a defence counsel.

2. A defendant legal person and the responsible person can not engage a joint defence counsel for the same offence.
3. The provisions in the Criminal Procedure Code of Kosovo of mandatory defence shall not apply for the defendant legal person.

Article 26 **Dismissal of criminal report**

1. The prosecutor, except for the grounds of the criminal report pursuant to Article 208, paragraph 1. of the Criminal Procedure Code of Kosovo, shall dismiss the criminal report also in the case when there are no grounds for the responsibility of the legal person, provided for by Article 5 of this law.
2. If the prosecutor finds that there are no grounds for initiation of criminal proceedings, he or she shall be obliged to notify the injured party within eight days on the dismissal or criminal report or may advise them to initiate proceedings themselves. The court shall act in the same way, even if it has taken a decision for the termination of proceedings because of waiver of prosecution.

Article 27 **Indictment**

The indictment against the defendant legal person, except for parts foreseen by the Criminal Procedure Code, shall contain the name of the defendant legal person, residence and activities of the legal person, the registration number of the legal person, name and surname of its representative, date of birth and the address of residence and citizenship, the state that issued the travel document and the number of travel document if the legal person if foreign.

Article 28 **Main trial**

1. At the main trial the defendant responsible person shall testify first and then the representative of the defendant legal person. At the hearing of the defendant legal person, the representative of the legal person who was never questioned shall not be able to participate.
2. The court may order the representative of the defendant legal person and the defendant responsible person to confront if their testimonies are not in accordance with the important facts.
3. Upon the termination of the preliminary session, after the word is given to the complainant and the injured party, the word shall be given to the defence counsel of the legal person and the representative of this person, then the word shall be given to the defence counsel of the responsible person and to the defendant responsible person.

Article 29 **The Content of the Judgment**

1. The judgment drawn up in writing, except for the parts as foreseen under Criminal Procedure Code, shall contain:
 - 1.1 in the introduction of the judgment, the name of the defendant legal person, residence and activity of the legal person, the registration number of the legal person, name and surname of its representative, date of birth and the address oh residence and citizenship, the state that issued the travel document and the number of travel document if the legal person if foreign;

1.2. in the enacting clause of the judgment , there should be written the name , residence and activity of the defendant legal person , registration number of the defendant legal person .

Article 30
Partial annulment of the judgment of the first instance court

A court of first instance may annul the judgment in the part related to defendant legal person, provided that part of the judgment may be extracted without causing any damage to the regular trial.

Article 31
Preventative Measures against legal person

1. If special circumstances justify the fear that the defendant legal person shall repeat the committal of the criminal offence or will finalize the committal of the criminal offence if it was attempted previously or shall commit the criminal offence of threat, the court shall impose the following preventative measures:

- 1.1. prohibition of carrying out of work or certain functions;
- 1.2. prohibition of conducting business with state and local;
- 1.3. prohibition of acquiring licences, authorizations, concessions and subsidies.

2. The court may impose the measure of prevention , provided for in paragraph 1., subparagraph 1.1 of this Article and if the further carrying out of work or certain functions would endanger the life, health or security of persons, property or economy. This measure may not be imposed to local bodies of self governance, political parties and trade unions.

3. If criminal proceeding were initiated against the legal person, the court may, upon the proposal of the state prosecutor or ex-officio, to prohibit statutory changes that would enable the termination of the work of defendant legal person. The prohibition shall be recorded in the court recordings or another register that is maintained by the competent state body.

4. Decision for the imposition of preventative measure shall be recorded according to ex-officio in the court records or another register that is maintained by the competent municipal body.

Article 32
Application the Criminal Procedure Code and Law on Execution of Penal Sanctions

Unless this law expressly provides otherwise, in the proceedings for the criminal liability of legal persons and the execution of penal sanctions, shall apply accordingly the provisions of Criminal Procedure Code and the provisions of the Law on Execution of Penal Sanctions.

CHAPTER V
TRANSITIONAL AND FINAL PROVISIONS

Article 33
Termination of cases

1. Economic crimes, provided for in special laws, with the entering into force of this law, shall become minor offences.

2. The proceedings for economic crimes, that were initiated until the entering into force of this law shall be conducted in the court where the proceedings have been initiated, according to the provisions based on which the charges were filed, latest until 31.12.2012.

Article 34
Repeal and Entry into Force

1. After entering into force of this law, the Law on Economic Crimes (Official Gazette of FSFRY no. 10/86.) shall be repealed.

2. This law enters into force on 1st of January 2013.

Law No. 04/L-030
31 August 2011

Promulgated by Decree No.DL-030-2011, dated 31.08.2011, President of the Republic of Kosovo Atifete Jahjaga.