

**LAW No. 04/L-140  
ON EXTENDED POWERS FOR CONFISCATION OF ASSETS ACQUIRED  
BY CRIMINAL OFFENCE**

**Assembly of Republic of Kosovo,**

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

Approves:

**LAW ON EXTENDED POWERS FOR CONFISCATION OF ASSETS ACQUIRED  
BY CRIMINAL OFFENCE**

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1  
Purpose**

This Law specifies extended powers for confiscation of assets acquired by the persons who have committed a criminal offence, when the procedures foreseen in the Criminal Procedure Code are not sufficient.

**Article 2  
Scope**

The provisions of this Law are applicable for the assets acquired by persons who have committed a criminal offence as prescribed by the Criminal Code of the Republic of Kosovo.

**Article 3  
Definitions**

1. Terms used in this Law shall have the following meaning:

- 1.1. **Agency** - the Agency for the Management of Sequestered and Confiscated Assets;
- 1.2. **Ministry** - the Ministry of Justice;
- 1.3. **Confiscation** - the permanent forfeiture of assets, ordered by a final decision of the competent court or another competent authority in accordance with the law in force;
- 1.4. **Extended powers of confiscation** - measures to confiscate assets under the procedures set forth in this Law;
- 1.5. **Assets subject to extended powers of confiscation** - assets which are owned by a defendant or on behalf of the defendant, which are subject to an Attachment Order under Article 265 of the Amended Criminal Procedure Code of Kosovo or which are subject to Temporary Confiscation under Article 267 of the Amended Criminal Procedure Code of Kosovo;

1.6. **Bone fide purchaser** - a person who has purchased an asset from a defendant or convicted person after having paid a reasonable market price for that asset, taking into consideration Article 97.2 of Criminal Code of the Republic of Kosovo.

#### **Article 4** **Court decision for application of this Law**

1. The state prosecutor shall request the court in a criminal proceeding to apply the extended powers of confiscation from this law only if he or she can demonstrate the conditions in Article 6, Article 7 or Article 8 of this Law.
2. The single trial judge or presiding trial judge shall determine whether the state prosecutor has proven that the conditions in Article 6, Article 7 and Article 8 of this Law are applicable.
3. The Court may apply the extended powers of confiscation only if the state prosecutor has proven the conditions in Article 6, Article 7 and Article 8 of this Law.
4. The state prosecutor's request must describe any asset subject to extended powers of confiscation with sufficient information to identify the asset clearly.

#### **Article 5** **Application of Extended Powers of Confiscation**

1. Assets subject to extended powers of confiscation which are not a material benefit of the criminal offence described in the indictment may be subject to confiscation under Article 6 of this Law.
2. Assets subject to extended powers of confiscation which were acquired by a defendant who has died may be subject to confiscation under Article 7 of this Law.
3. Assets subject to extended powers of confiscation which were acquired by a defendant who has left the Republic of Kosovo may be subject to confiscation under Article 8 of this Law.
4. Provisions of this law may be applied to assets which have been transferred to another party from a person who is or becomes a defendant or convicted person. That party shall have the right to demonstrate that he or she is a bone fide purchaser of the asset. An asset may not be confiscated from a bone fide purchaser of that asset.

### **CHAPTER II** **EXTENDED POWERS OF CONFISCATION**

#### **Article 6** **Conditions for confiscation of Assets Acquired from a Criminal Activity**

1. Within thirty (30) days after a final judgment that a defendant is guilty of a criminal offence under Chapters XV, XXIII, XXIV, XXV or XXXIV of the Criminal Code and if the state prosecutor may, in a separate request to the single trial judge or presiding trial judge, provide evidence that demonstrates the grounded cause that:
  - 1.1. the defendant has acquired other assets that have not been material benefits of those criminal offences, for which the defendant has been convicted;
  - 1.2. those other assets were obtained after December 31, 1999;
  - 1.3. the defendant's legitimate income was insufficient to enable the purchase of those other assets;
  - 1.4. the defendant was engaged in a pattern of activity similar to that with which he or she was convicted; and

1.5. the pattern of activity in sub-paragraph 1.4 of this paragraph would enable the purchase of those other assets.

2. If the request by the state prosecutor under paragraph 1 of this Article fails to establish grounded cause as to sub-paragraph 1.1, 1.2 or 1.3 of paragraph 1 of this Article, the Court shall issue a reasoned decision denying the request. Otherwise, the Court shall serve a copy of the request to the defendant.

3. The defendant shall have the right to a defense attorney during any proceedings under this Article.

4. The convicted person shall have thirty (30) days after he or she has been served with a copy of the state prosecutor's request to submit proof that the assets were purchased with legitimate income.

5. For any asset acquired by the convicted person prior to the period of time of the criminal offence for which he or she was convicted, the convicted person may submit evidence that cadastral records or other documents which might prove that the assets were purchased with legitimate income is not available or is not reliable.

6. The single trial judge or trial panel shall hold a hearing which:

6.1. allows the defendant to examine the evidence in support of the state prosecutor's request under paragraph 1 of this Article;

6.2. allows the state prosecutor to examine the evidence submitted by the defendant under paragraph 4 and 5 of this Article;

6.3. the other party shall have the right to demonstrate that he or she is a bone fide purchaser of the asset under Article 5 paragraph 4 of this Law.

7. If the court determines that the assets were acquired due to activity similar to the criminal acts for which the defendant was convicted, it shall render a reasoned judgment which:

7.1. determines that the assets were acquired within the same period of time as the criminal offences for which the defendant was convicted;

7.2. determines that the defendant's legitimate income was insufficient to purchase those assets;

7.3. determines that the defendant was engaged in a pattern of activity similar to that with which he or she was convicted;

7.4. determines that the pattern of activity would enable the purchase of those assets;

7.5. determines that the defendant had the opportunity to show that the assets were acquired due to legitimate income;

7.6. determines that the defendant has not shown that the assets were acquired due to legitimate income;

7.7. determines that confiscation of the asset would not cause an injustice;

7.8. specifies the type of the assets and its monetary value;

7.9. orders that the asset or property rights to be transferred to the ownership of the Republic of Kosovo or of the injured party, as is appropriate;

7.10. obliges other parties to hand over the assets to the Republic of Kosovo or to the injured party, as is appropriate, if they have not been transferred according to sub-paragraph 7.9 of this paragraph or to pay the monetary value of the asset within fifteen (15) days from the date when the judgment became final; and

7.11. orders that in public registers of the court or other body to be done the respective changes of the property right on behalf of the Republic of Kosovo or the injured party, as it is appropriate.

8. An appeal is permitted against the judgment in paragraph 7 of this Article.

#### **Article 7**

#### **Conditions when property owned by a deceased defendant may be confiscated**

1. When a criminal proceeding may not be continued due to the death of the defendant under Article 160 of the Amended Criminal Procedure Code, but assets are subject to an Attachment Order under Article 265 of the Amended Criminal Procedure Code, Temporary Confiscation under Article 267 of the Amended Criminal Procedure Code, or an indictment has been filed which lists assets subject to confiscation under Article 241, paragraph 1, sub-paragraph 9 of the Amended Criminal Procedure Code, the Court upon the proposal of the state prosecutor or the injured party may continue the confiscation proceeding under this Law if:

1.1. the value of the asset subject to confiscation exceeds one thousand (1000) €; and

1.2. it is in the interest of justice to continue the proceedings.

2. The court shall take a decision to continue the confiscation proceeding despite the death of the defendant and shall list the reasons why the criminal procedure against the defendant may not be initiated or continued, the value of the asset subject to confiscation and why it is in the interest of justice to continue the confiscation proceeding.

3. If an attorney has not been retained by the legal inheritors of the deceased defendant, the court shall appoint, or continue the appointment of a defense attorney to represent the interests of the deceased defendant. The attorney shall act in the best interests of the legal inheritors of the deceased defendant.

4. If an indictment has not been filed, the prosecutor shall have one hundred and eighty (180) days from the day of court's decision under paragraph 2 of this Article to file an indictment against the deceased defendant ex relatione for the assets subject to confiscation. The indictment shall be filed in accordance with Chapter XV of the Amended Criminal Procedure Code.

5. If the indictment has been filed prior to the defendant's death, or if the indictment is filed under paragraph 3 of this Article, the court shall conduct a main trial in accordance with Chapter XIX of the Amended Criminal Procedure Code.

6. The court shall only consider those counts in the indictment which support the confiscation of the asset.

7. The court shall consider the right of the other party to demonstrate that he or she is a bone fide purchaser of the asset under Article 5 paragraph 4 of this Law.

8. If the court determines that the defendant had committed the criminal offence and the assets subject to confiscation were material benefits of this criminal offence, it shall render a judgment which:

8.1. determines that the defendant has committed the criminal offence;

8.2. determines that the assets were acquired with the commission of the criminal offence from sub- paragraph 8.1 of this paragraph;

8.3. specify the type of the assets and its monetary value;

8.4. orders that this asset or property rights to be transferred to the ownership of the Republic of Kosovo or of the injured party, as is appropriate;

8.5. obliges other parties to hand over the assets to the Republic of Kosovo or to the injured party, as is appropriate, if they have not been transferred according to sub-paragraph 8.4 of this paragraph or to pay the monetary value of the asset within fifteen (15) days from the date when the judgment became final; and

8.6. orders that in public registers of the court or other body to be made the respective changes of the property right on behalf of the Republic of Kosovo or the injured party, as is appropriate.

9. An appeal is permitted against the judgment in paragraph 8 of this Article.

**Article 8**  
**Conditions when property owned by a fugitive defendant may be confiscated**

1. If the State Prosecutor can suspend the investigation under Article 157 of the Amended Criminal Procedure Code, but assets were attached by an Attachment Order under Article 265 of the Amended Criminal Procedure Code or were made subject to temporary confiscation under Article 267 of the Amended Criminal Procedure Code, the state prosecutor shall continue the criminal proceedings against the defendant if:

1.1. the state prosecutor has grounded suspicion that the defendant is a fugitive,

1.2. the value of the asset subject to confiscation exceeds five thousand (5.000) €, and

1.3. it is in the interest of justice to continue the proceedings.

2. If an indictment has been filed which lists assets subject to confiscation under Article 241, paragraph 1 sub-paragraph 9 of the Amended Criminal Procedure Code and the defendant according to this indictment is a fugitive or becomes a fugitive, the Court upon the proposal from the state prosecutor may continue the criminal procedure if:

2.1. the state prosecutor has grounded suspicion that the defendant is a fugitive;

2.2. the value of the asset subject to confiscation is more than five thousand (5.000) €; and

2.3. it is in the interest of justice to continue the proceedings.

3. The court shall take a decision to continue the criminal proceedings and shall describe the reasons for the grounded suspicion that the defendant is a fugitive, the value of the asset subject to confiscation and why it is in the interest of justice to continue the criminal proceeding.

4. The court shall appoint or continue the appointment of a defense attorney to represent the interests of the defendant.

5. If an indictment has not been filed, the prosecutor shall have one hundred and eighty (180) days from the day of court's decision under paragraph 3 of this Article to file an indictment against the fugitive defendant ex relatione the assets subject to confiscation. The indictment shall be filed in accordance, mutatis mutandis, with Chapter XV of the Amended Criminal Procedure Code.

6. If the indictment has been filed under paragraph 2 of this Article, the court shall conduct a main trial in accordance with Chapter XIX of the Amended Criminal Procedure Code.

7. The court shall only consider those counts in the indictment which support the confiscation of the asset.

8. The court shall consider the right of the other party to demonstrate that he or she is a bone fide purchaser of the asset under Article 5 paragraph 4 of this Law.

9. If the court determines that the defendant has committed the criminal offence and the assets subject to confiscation were material benefits of this criminal offence, it shall render a judgment which:

9.1. determines that the defendant has committed the criminal offence;

9.2 determines that the assets were acquired with the commission of the criminal offence from sub-paragraph 9.1 of this paragraph;

9.3. specifies the type of the assets and its monetary value;

9.4. orders that the asset or property rights to be transferred to the ownership of the Republic of Kosovo or of the injured party, as is appropriate;

9.5. obliges other parties to hand over the assets to the Republic of Kosovo or to the injured party, as is appropriate, if they have not been transferred according to sub--paragraph 9.4 of this paragraph, or to pay the monetary value of the asset within fifteen (15) days from the date when the judgment became final; and

9.6. orders that in public registers of the court or other body to be done the respective changes of the property right on behalf of the Republic of Kosovo or the injured party, as is appropriate.

10. An appeal is permitted against the judgment in paragraph 9 of this Article.

11. The defendant shall have the absolute right to be tried again by a different trial panel if he or she is no longer a fugitive; however, the judgment under paragraph 9 of this Article shall not be reopened once it is final. The decision in paragraph 9 of this Article shall not be admissible at the defendant's *in personam* trial.

## **Article 9**

### **Use of attachment order or temporary confiscation during suspension of investigation**

1. If the State Prosecutor renders a ruling to suspend the investigation under Article 157 of the Amended Criminal Procedure Code, but if during the criminal proceeding assets were attached by an Attachment Order under Article 265 of the Amended Criminal Procedure Code or were made subject to Temporary Confiscation under Article 267 of the Amended Criminal Procedure Code, the State Prosecutor shall ask the pretrial judge to continue or discontinue the Attachment Order or Temporary Confiscation. The pretrial judge shall authorize the Attachment Order or Temporary Confiscation against the defendant for six (6) months if:

1.1. the prosecutor has grounded cause that the defendant committed the criminal offence and that the asset was acquired by that criminal offence;

1.2. if the value of the asset subject to confiscation exceeds ten thousand (10.000) €; and

1.3. if it is in the interest of justice to continue the proceedings.

2. The state prosecutor may renew his or her request to the court once again for six (6) months.

3. If the state prosecutor has not resumed the investigation by the expiration of the court's authorization under paragraph 1 or 2 of this Article, the defendant's attorney may request the pretrial judge to terminate the Attachment Order or Temporary Confiscation.

**CHAPTER III  
EXECUTION AND MANAGEMENT OF CONFISCATED ASSETS**

**Article 10  
The execution of court decisions regarding the confiscated assets**

Assets that have been ordered to be confiscated by a written judgment by the court under Article 370 of the Amended Criminal Procedure Code or by a court decision under Article 6, 7 or 8 of this Law, shall be executed in accordance with Chapter XXVIII of the Amended Criminal Procedure Code.

**Article 11  
Procedural costs**

1. The procedural costs include the expenditures for the sequestration, confiscation, management, fee for the defense attorney and any other justified expenditure.
2. The expenditures for the sequestration, in accordance with this Law, are prepaid by the Government and are paid by the person against whom the sequestration of the assets has been ordered.
3. The court, with its final decision on the request for confiscation shall specify the obligation for payment of the expenditures prepaid by the Government.
4. The expenditures prepaid by the Government shall not be paid by the person from paragraph 2 of this Article, if the court imposes the confiscation measure.
5. The court which rendered the ruling shall decide on the appeals for the procedural costs.

**CHAPTER IV  
TRANSITIONAL PROVISIONS**

**Article 12  
Sub-legal acts**

Sub-legal acts for the implementation of this Law shall be approved within six (6) months from the entry in force of this Law.

**Article 13  
Repeal of the provisions**

With the entry in force of this Law, provisions which contradict this Law shall be repealed.

**Article 14  
Entry into Force**

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

**Law No. 04/L-140  
11 February 2013**

**Promulgated by Decree No.DL-002-2013, dated 26.02.2013, President of the Republic of Kosovo Atifete Jahjaga.**