



# Confiscated Assets in Kosovo Legal Framework

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# Legal Framework -current

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- Law on Managing Sequestrated or Confiscated Assets
- Criminal Code of Kosovo
- Criminal Procedure Code of Kosovo
- Customs and Excise Code of Kosovo
- UNMIK Regulation 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences
- Instruction of the MOJ on International Legal Cooperation in Criminal and Civil matters – 30.09.09

# Legal Framework – under review

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- Criminal Code of Kosovo
- Criminal Procedure Code of Kosovo
- Customs and Excise Code of Kosovo
- UNMIK Regulation 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences – new draft
- Anti-corruption package of laws
- Law on International Legal Cooperation

# Criminal Code

## Confiscation of objects -Art.60

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- Objects used or destined for use in the commission of a criminal offence; or
- derived from the commission of a criminal offence if they are property of the perpetrator.
- Objects may be confiscated even if they are not the property of the perpetrator if this is necessary for the interests of general security, but such confiscation does not adversely affect the rights of third parties to obtain compensation from the perpetrator for any damage.
- The law may provide for the mandatory confiscation of an object.

# Criminal Code

## Means of Confiscating Material Benefit/ Art. 83

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- All money, objects of value and any other material benefit acquired by the commission of a criminal offence shall be confiscated from the perpetrator or when confiscation is not possible, the perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired.
- Where appropriate, the court may allow the money to be paid in installments over a period not exceeding two years.

# Criminal Code

- Any material benefit acquired by the commission of a criminal offence may be confiscated from the person to whom it has been transferred without compensation or with a compensation that does not correspond to the real value, if such person knew or might have known that the material benefit has been acquired by the commission of a criminal offence.
- When the material benefit has been transferred to close relatives, it shall be confiscated from them unless they prove that they have given compensation for its entire value

# Criminal Code

## Confiscating Material Benefits from Legal Persons

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- When a business organization or legal person has acquired a material benefit by the commission of a criminal offence of a perpetrator, such material benefit shall be confiscated from the business organization or the legal person.

# Criminal Procedure Code

## Proceedings for Confiscation/Art. 489

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- Objects shall be confiscated even when criminal proceedings do not end in a judgment in which the accused is declared guilty if:
  - There is a danger that they might be used for a criminal offence;
  - When it is required by the interest of public safety or by moral considerations
- The court shall render a separate ruling at the end of proceedings.
- A certified copy of the decision for confiscation shall be served on the owner if known. The owner of the object is entitled to appeal.



# Criminal Procedure Code Proceedings for Confiscation

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- The material benefit acquired by the commission of a criminal offence or as a result thereof shall be determined in criminal proceedings;
- The court shall determine the amount of the material benefit by a free evaluation if an accurate determination would entail undue difficulties or the proceedings would be protracted;
- Where confiscation of the material benefit acquired as a result of the criminal offence is warranted, the court shall order the temporary securing of the claim;
- In the enacting clause of the judgment the court shall specify the object or sum of money to be confiscated.

# Criminal Procedure Code

## Proceedings for Confiscation /Art. 497

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- The court that ordered the storage of confiscated items or of property serving as temporary security for a request for the confiscation of the material benefit acquired by the commission of a criminal offence..., shall be obliged to proceed particularly quickly and to operate economically, rationally and as a good manager with the confiscated items serving as security;
- The procedure for managing confiscated items and property in these cases shall be prescribed by the competent public entity in the field of judicial affairs - MOJ

# Criminal Procedure Code

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- Objects that can be confiscated temporarily:
  - Which may prove to be evidence in criminal proceedings; or
  - Which constitute material benefit obtained from the commission of the criminal offence
- A pre-trial judge may order a search of a house and other premises and property of a person if there is a grounded suspicion that he/she has committed a crime and there is a sound probability of discovery and confiscation of evidence important for criminal proceedings;
- Objects shall be put into the custody and the control of the prosecutor;
- Objects shall be returned if proceedings are suspended or terminated.

# Criminal Procedure Code

## International Legal Assistance

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- In emergency cases and on the basis of reciprocity, petitions for legal assistance in cases of criminal offences of laundering proceeds of crime may be transmitted through the competent body responsible for the prevention of laundering proceeds of crime;
- A domestic court may grant a petition of a foreign authority to execute a judgment of conviction of a resident of Kosovo if so provided by international agreement or on the bases of reciprocity;
- The Court shall render a judgment in a 3 judge panel

# Customs and Excise Code of Kosovo – Confiscation of Goods/ art. 280

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- Goods that are brought in Kosovo or taken out of Kosovo without authorization;
- Hidden goods brought in Kosovo or taken out of Kosovo;
- Failure to present cultural or natural goods at entry or exit of Kosovo
- Any means of transport may be confiscated if it is used for unlawful introduction in Kosovo of goods subject to administrative customs offence
- Goods subject to confiscation shall be seized until the procedure is completed

# Law on Managing Sequestered or Confiscated Assets

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- Promulgated on 10 July 2009
- Will enter into force on 1 January 2010
- Within 6 months after entry into force the MOJ shall issue the sub-legal acts for its implementation.
- Establishes Agency for Management of Sequestered or Confiscated Assets as an Executive Agency under MOJ.

# Law on Managing Sequestrated or Confiscated Assets - definitions

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- **Confiscation** – permanent suspension of assets, ordered with a final decision of the competent court or another authority in accordance with the law.
- **Sequestration** – temporary suspension of assets ordered by a competent authority in accordance with the law.

## Agency for Management of Sequestered or Confiscated Assets - duties

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- Professionally manage such assets in cooperation with the court, prosecution or other competent body ( police, customs);
- Assist in the execution of the decisions for sequestration or confiscation as required by the competent authority;
- At the request of court or prosecutor provides logistical support for confiscation or sequestration;
- Enable the sale of sequestered or confiscated assets with authorization of the competent authority;



## Agency for Management of Sequestered or Confiscated Assets - duties

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- Based on needs engage experts to estimate the value of the assets and the manner of preserving them;
- Management of the data regarding such assets in a centralized database;
- Reports to the Minister of Justice at least 2 times per year.

## Agency for Management of Sequestered or Confiscated Assets - duties

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- Based on needs engage experts to estimate the value of the assets and the manner of preserving them;
- Management of the data regarding such assets in a centralized database – collects, manages, proceeds and preserves data including the decisions of the competent authority for a period of 10 years from the date of receiving the final decision;
- Reports to the Minister of Justice at least 2 times per year.

# Agency for Management of Sequestrated or Confiscated Assets

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- Competent authority is obliged to inform the Agency regarding the issued decision;
- The decisions of competent authority shall be executed within 15 days and the assets shall be delivered to the Agency;
- Within 10 days after receiving the assets the Agency shall inform the competent authority about the location, specifics, general condition and value of the asset;
- Agency shall take all necessary measures to preserve the value of the assets;
- If necessary shall sell the assets and keeps the monetary value and shall deposit the money in a bank account of the Agency in the Central bank.

## Agency for Management of Sequestrated or Confiscated Assets - sale of assets

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- On the proposal of the Agency the competent authority may request from the court to allow with a decision the sale of a replaceable asset that may loose its value or when the costs of the storage exceed the value of the asset;
- After the sale the Agency shall manage the monetary value and shall deposit the money in a bank account of the Agency in the Central bank.
- If court orders a sale of the asset with final decision the money shall be deposited in the Kosovo budget.

# Applicable Law - II

- UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59

1.1 The law applicable in Kosovo shall be:

- (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and
- (b) The law in force in Kosovo on 22 March 1989.

In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence.

1.2 If a court of competent jurisdiction or a body or person required to implement a provision of the law, determines that a subject matter or situation is not covered by the laws set out in section 1.1 of the present regulation but is covered by another law in force in Kosovo after 22 March 1989 which is not discriminatory and which complies with section 1.3 of the present regulation, the court, body or person shall, as an exception, apply that law.



# Constitution/Applicability of International Law

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- Article 19.1 International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo . They are directly applied except for cases when they are not self-applicable and the application requires promulgation of law.
- Article 19.2 Ratified international agreements and legally binding norms of international law **have superiority over the laws of the Republic of Kosovo.**

## Constitution/ Direct Applicability of International Agreements and Instruments

- Article 22 Human Rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, **are directly applicable** in the Republic of Kosovo and, **in the case of conflict, have priority over provisions of laws and other acts of public institutions:**
  1. Universal Declaration of Human Rights;
  2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
  3. International Covenant on Civil and Political Rights and its Protocols;
  4. Council of Europe Framework Convention for the Protection of National Minorities;
  5. Convention on the elimination of all forms of racial discrimination;
  6. Convention on the elimination of all forms of discrimination against women;
  7. Convention on the rights of child;
  8. Convention against torture and other cruel, inhumane or degrading treatment or punishment.

## Constitution/ Direct Applicability of International Agreements and Instruments

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- Article 20.1 The Republic of Kosovo may on the basis ratified international agreements delegate state powers for specific matters to international organizations.