

## **DREJTËSIA SOT**

---

# **Justice Today Snapshot Analysis**

**(June 2019 – December 2019)**

## **FIGHT AGAINST MONEY LAUNDERING AND THE CONFISCATION OF ILLEGALLY OBTAINED ASSETS: A reflection on the current situation**



**DREJTËSIA SOT**



# **Justice Today Snapshot Analysis**

**(June 2019 – December 2019)**

## **FIGHT AGAINST MONEY LAUNDERING AND THE CONFISCATION OF ILLEGALLY OBTAINED ASSETS: A reflection on the current situation**

*The Project “Monitoring the Judicial and Prosecutorial System in Kosovo” is funded by the Foreign Commonwealth Office through the Embassy of the United Kingdom in Pristina.*

*The contents of this publication are the sole responsibility of the Group for Legal and Political Studies and do not necessarily reflect the views of the Foreign Commonwealth Office.*

# FIGHT AGAINST MONEY LAUNDERING AND THE CONFISCATION OF ILLEGALLY OBTAINED ASSETS: A reflection on the current situation

## Table of Contents

I.	METHODOLOGY.....	4
II.	INTRODUCTION .....	5
III.	THE LEGAL BASIS FOR ‘MONEY LAUNDERING’ PROSECUTION AND THE LEGAL BASIS TO CONFISCATE ILLEGALLY OBTAINED PROPERTY .....	7
	The legal basis for filing an indictment for the offense "Money Laundering" as a single criminal offense and as a consequence of another criminal activity .....	7
	The legal basis upon which the court may confiscate the property obtained through a criminal offense .....	8
IV.	THE FINDINGS OF THE ANALYSIS OF NINE CASES OF “MONEY LAUNDERING” IN KOSOVO....	8
V.	CONCLUSIONS .....	12
VI.	RECOMMENDATIONS.....	13

## I. METHODOLOGY

This analysis is based on the primary data gained through systematic monitoring of money laundering cases throughout the territory of the Republic of Kosovo, conducted during June - November 2019 by the platform "Justice Today", which is a platform created through the project "Monitoring the Judicial and Prosecutorial System of Kosovo", implemented by the Group for Legal and Political Studies (GLPS) and supported by the British Embassy in Pristina. There are nine (9) cases selected for this analysis, which based on the information collected by the Basic and Appeals courts of Kosovo are active cases, the indictments of which consist of the criminal offense of "Money Laundering". Moreover, the selection of the cases was done to enable the study of the two possibilities of charging a person with money laundering - by treating the criminal offense of "Money Laundering" as a stand-alone criminal offense, or as a consequence of another basic criminal offense. There are total five (5) cases taken as a sample to study the situation where the prosecution has filed an indictment where the criminal offense of "Money Laundering" was the consequence of another criminal offense. Whereas, four (4) of the other cases dealt with in this analysis represent cases where the prosecution has filed an indictment for Money Laundering as a stand-alone criminal offense.

To study the way, the Special Prosecution Office of the Republic (SPRK) of Kosovo and the courts handled these cases, public official case files were also analyzed, which were compiled even before the period of June 2019, during which GLPS did not systematically monitor these cases. These documents include: criminal reports filed by the Kosovo Police, indictments filed by special prosecutors and the decisions of the Basic Courts of Kosovo and the Court of Appeals. Consequently, based on these documents we came to the findings presented in this analysis.

## II. INTRODUCTION

In the context of the ongoing demands on combating the organized crime and corruption, the EU and other international factors have insisted that prosecutorial and judicial systems should take appropriate measures against money laundering, particularly those related to the effective implementation of the legal framework. Recognizing the fact that money laundering is the main core of the organized crime, the commitment and the focus of the relevant institutions should be on dealing with this phenomenon as effectively as possible. The lack of confiscation of illegally obtained assets, mainly through money laundering, indicates a lack of professionalism of the Special Prosecution Office of the Republic of Kosovo (SPRK) and the courts in Kosovo in handling these cases.

The legal field for combating money laundering and the confiscation of illegally obtained assets in the Republic of Kosovo is optimal and effortlessly enforceable, but its implementation in practice has largely stuck. The incompetence that accompanies the treatment of this phenomenon is highlighted through prosecutors' file indictments and final sentences issued by the courts. This is because the prosecution fails to sequester illegally obtained assets and submit a proposal for their confiscation, whereas the courts fail to confiscate these assets with final sentences. Consequently, the inappropriate handling of this issue impacts the life quality of the citizens of the Republic of Kosovo, but also affects the economy of the country as this phenomenon creates efficient space for the growth of corruption and organized crime at a very high level.

Money laundering in the general sense implies putting or transferring money and property acquired through criminal activity but through lawful financial sources, thereby creating fictitious legalization in the future. With the domestic legislation the offense "Money Laundering" is defined in the provisions of the Law No. 05/L-096 on Prevention of Money Laundering and Combating the Financing of Terrorism, adopted by the Parliament of Kosovo on 13.06.2016.<sup>1</sup> The existing legal regulation in Kosovo is considered to be sufficient to secure the basis for confiscation of illegally acquired assets, but unfortunately the same regulation in practice does not have a satisfactory implementation.

Furthermore, SPRK, amongst these has the special authority to investigate and prosecute crimes, including those in the form of attempt, and various forms of cooperation in the offense of "Money Laundering".<sup>2</sup> This kind of regulation which concentrates the competence to investigate the money laundering offense solely in the SPRK is considered to have affected the number and quality of the indictments filed so far, taking into account the exclusive authority of the SPRK in pursuing other criminal offenses and the insufficient number of prosecutors in this office. Whereas, the Assembly of the Republic of Kosovo by Law no. 06 / L-054 on Courts has established the Special Department within the Basic Court in Pristina and the Court of Appeals with jurisdiction to adjudicate all cases falling under the jurisdiction of the SPRK.<sup>3</sup> Consequently, the Kosovo Judicial Council (KJC), on April 23, 2019, adopted Regulation 03/2019, which specifies how this Special Department will operate within the Basic Court in Prishtina and the Court of Appeal.<sup>4</sup> However, this department has recently

---

<sup>1</sup> Criminal Code of the Republic of Kosovo, Article 302.

<sup>3</sup> Regulation on the Organization and Functioning of the Special Department within the Basic Court in Prishtina and the Court of Appeal.

<sup>4</sup> Kosovo Judicial Council, Regulation on the Organization and Functioning of the Special Department within the Basic Court in Prishtina and the Court of Appeal, 23.04.2019, <https://www.judicial-rks.org/wp>

started with its work, thus it is thought that it will be overloaded due to the exclusivity it has in adjudicating other criminal offenses, i.e. all offenses that fall under the jurisdiction of the SPRK. Albeit, all these actions were taken with the sole purpose to combat the issue of corruption and organized crime that reigns in Kosovo, including the fight against money laundering and confiscation of illegally obtained assets, though the results still are not satisfactory. All this mainly because prosecutors and judges of these departments do not have the necessary training to deal with this criminal offense, consequently they are not yet profiled in prosecuting and adjudicating this offense. Moreover, this has led to the initial assumption that this criminal offense should be treated as a result of another criminal offense and has not been treated as a criminal offense itself. Thankfully, this practice has begun to change and there are some prosecution indictments filed for Money Laundering as a separate criminal offense and not as a consequence of another criminal offense.<sup>5</sup> At the same time, the fact that the prosecution of this criminal offense is the exclusive competence of the SPRK is considered to have affected the number and quality of these cases, given that this department has the exclusive competence to investigate a number of other offenses of high importance, which results in a large caseload for this department. In this regard it must be noted that SPRK does not have enough human capacity and infrastructure to cope with all this work

Consequently, for the purposes of this analyses, a total of nine (9) active cases have been analysed whereas the indictment pertains the offense of Money Laundering.<sup>6</sup> Whereas only six (6) of them contain all elements of the indictment when it comes to this type of offense.<sup>7</sup> Only in one of these cases was the first instance court procedure completed where the value of nine hundred and forty-six thousand and eight hundred and twenty-eighty-four cents (946,820.84) euros was confiscated.<sup>8</sup> However, as this case lays in the Court of Appeals, the decision is not final, thus the amount of money still remains sequestrated. Whereas, in the case of PKR.no. 623/2015, the Basic Court of Prishtina acquitted the two defendants, a decision to be annulled by the Court of Appeals and the case to be returned for retrial. The other cases analyzed in this report are still being tried in the first instance and there are no final court decisions yet.

Justice Today based on its systematic monitoring of the procedural developments and decisions of the authorities responsible for these criminal cases, with this analysis aims to reflect thoroughly the content and deficiencies of the cases identified during this time period. More precisely, this analysis addresses the stage of investigation, namely the manner of prosecution, including how the investigation in these cases was initiated, whether the indictments contained the legal requirements set out in the applicable provisions, and the management of these processed cases in the courts. This analysis also addresses the centralization of the responsibility of SPRK to investigate these cases and the fact that in this regard only the Kosovo Police can take investigative steps. Furthermore, it is addressed the possibility of distribution of this responsibility at the level of basic prosecution offices, also the involvement of the Kosovo Tax Administration and Kosovo Customs, as agencies with the possibility of providing professional expertise and information/data that may help

---

content/uploads/Agsl/57641\_Regular\_Nr.03\_2019\_per\_Organizimin\_Funksionalizimin\_Departamentit\_Special\_Kuader\_Gjykates\_Themelore\_Prishtine\_Gjykates\_Apelit.pdf;

<sup>5</sup> Cases: PKR.nr.66 / 2018, PS.nr.13 / 2019, PS.nr.32 / 2019 and PS.nr.37 / 2019;

<sup>6</sup> Cases: PS.nr. 35/2019, PS.nr. 37/2019, PS.nr. 30/2019, PKR.nr. 398/17, PS.nr.13 / 2019, PKR.nr. 66/2018, PS.nr.32 / 2019, PS.nr.16 / 2019, PKR.nr.623 / 2015. These cases have been monitored by Justice Today since June 2019. Also these are the official data obtained from all Basic Courts of the Republic of Kosovo.

<sup>7</sup> Cases: PS.nr. 35/2019,PKR.nr. 398/17, PS.nr.13/2019, PKR.nr. 66/2018, PS.nr.32/2019, PS.nr.16/2019

<sup>8</sup> Basic Court of Prishtina – The Department for Serious Crimes, Judgment PKR.no. 623/15, dated 30.11.2016.

more specifically the criminal procedure.. Finally, this analysis offers a set of recommendations that seek to improve the situation of money laundering handled by justice institutions in Kosovo.

### **III. THE LEGAL BASIS FOR 'MONEY LAUNDERING' PROSECUTION AND THE LEGAL BASIS TO CONFISCATE ILLEGALLY OBTAINED PROPERTY**

#### **The legal basis for filing an indictment for the offense "Money Laundering" as a single criminal offense and as a consequence of another criminal activity**

The Criminal Code of the Republic of Kosovo (hereinafter CCRK), Article 308 provides that: "Whoever commits a criminal offense of Money Laundering shall be punished under the Law on Prevention of Money Laundering and Financing of Terrorism". Thus, CCRK has established money laundering as a criminal offense on the territory of the Republic of Kosovo, but for its regulation has established a special law which provides in detail the regulation of the prosecution of this offense, which in this case is known as *lex specialis*. Law no. 05 / L – 096 on the prevention of money laundering and combating of the terrorism finance, Article 56 provides the circumstances in which the offense of money laundering may be consumed.

Paragraph 1 of this Article enables prosecution of a money laundering offense as a consequence of another criminal activity. Thus, an ordinary indictment based on this paragraph of this article would also contain another criminal offense as a basic offense. Whereas, the criminal offense of money laundering would be a consequent act of the first offense and would be tried as such.<sup>9</sup> On the other hand, paragraph 3 of this Article enables the prosecution of persons considered to have committed the criminal offense of money laundering even in such cases in which this person has never been convicted of a linked criminal offense from which the properties have been obtained; or when the same person has not been tried in the same procedures for the prior offense, as well as in cases where the Kosovo courts have no territorial jurisdiction over the linked offenses from which the properties of money laundering have been derived.<sup>10</sup> By virtue of this paragraph, the legislator has created the possibility of prosecution of persons who have consumed only the criminal offense of money laundering or at least has not been proved to have committed another criminal offense. Thus, according to this Article the SPRK may indict anyone who has a well-founded suspicion that these persons have committed money laundering and therefore it is needed to be convicted for a predicate offense; there is no need for the person to have been convicted for the predicate offense in the same criminal proceedings or for the Kosovo courts to have jurisdiction to adjudicate the predicate offense, so that person can be exclusively judged for his money laundering activity.

Consequently, the SPRK has two options for prosecuting perpetrators of money laundering. First, the SPRK may rely on Article 56, paragraphs 1 and 2, in filing an indictment involving a predicate offense of money laundering. Secondly, the SPRK can rely on Article 56, paragraph 3, in filing an indictment for the offense of money laundering as a basic offense, without the need of any prior offense. Hence, it can be concluded that Kosovo's legislation offers enough opportunities to prosecute this criminal offense.

---

<sup>9</sup> Assembly of the Republic of Kosovo, Law no. 05 / L – 096 on Prevention of Money Laundering and Combating Financing Terrorism, 15.06.2016, Article 56, par.1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12540>;

<sup>10</sup> Ibid. par.3

## **The legal basis upon which the court may confiscate the property obtained through a criminal offense**

The legal base for confiscation of the property acquired through a criminal offense is defined in the CCPRK and in the Criminal Procedure Code of the Republic of Kosovo (hereinafter CCPRK). The CCPRK explicitly states in Article 96 paragraph 1 that: *"No one can keep the property acquired through a criminal offense."* Paragraph 2 of this Article states that *"The illegally obtained property under paragraph 1 of this Article should be confiscated by the court which determines the existing of the criminal offense under the conditions provided by law"*. Thus, under this provision, the court is obliged to confiscate to everyone the obtained property resulting from the offense. Therefore, the confiscation of the property can only be executed after a final judgment which finds that the offense has been committed.

Also, the CCPRK states that the court can order the confiscation of property obtained through criminal offense, after the state prosecutor has determined in the indictment that the property is allegedly acquired through a criminal activity and the court has come to that conclusion. Article 115, paragraph 2 reads as follows: *"The single trial judge or trial panel should order the permanent confiscation of items in accordance with the law if the state prosecutor: a. Determines in the indictment those items, property, evidence or money that should be confiscated; b. If during the main trial it is established that the temporarily confiscated objects, property, evidence or money have enabled the commission of the offense or constitute a property acquired through a criminal offense; and c. The law permits their confiscation."* According to the CCPRK, the permanent confiscation of items in criminal proceedings can be ordered by the single trial judge or the trial panel.

However, in order to order a permanent confiscation, the judge needs the initiative of the state prosecutor who must specify in the indictment the items, property, evidence or money that are subject to the permanent confiscation. It should also be established in the main trial that the temporarily seized items, which are set forth in the indictment, enabled the commission of the offense or constituted a material benefit obtained through the offense and that there should be a legal basis for their confiscation.

In this case, respectively in these analyzed cases, in three of them, there was no proposal for a confiscation of property by the prosecution body. However, according to the CCRK in cases where the court finds that the criminal offense has brought material gain, it is obliged ex-officio to confiscate that even without the prosecution's proposal.<sup>11</sup> If that does not change, and the case prosecutor makes no proposal then the court is limited in its decision; mainly because the prosecution is the body that should specify in the indictment or during the main trial, assets that are the result of money laundering and are a subject of confiscation. Only in this case the court can decide to confiscate the illegally obtained assets.

## **IV. THE FINDINGS OF THE ANALYSIS OF NINE CASES OF "MONEY LAUNDERING" IN KOSOVO**

Based on the systematic monitoring of cases conducted by Justice Today, as well as the analysis of official public cases' files, which were compiled before June 2019, a period when GLPS did not systematically monitor these cases, we can conclude that there are major deficiencies in the prosecution conducted by the Prosecutorial and Judicial system. Initially, we will focus on the way how Prosecutor's Office initiates investigations because during cases monitoring, we have noticed a very passive role in their persecution of these criminal offenses.

---

<sup>11</sup> Cases: *PKR.nr.623/2015, PS.nr.30/2019, PS.nr.37/2019;*



First, out of nine cases, in seven of them, this institution started the investigation after receiving a criminal report from the Police of Kosovo.<sup>12</sup> The Police has a legal obligation to file a criminal report whether or not they have come to knowledge or informed through other means about it. However, although the police has a legal obligation to file a criminal report, the SPRK should have been more active in this regard, since it is a constitutional and legal institution, and should initiate them ex officio, and not only after parties file a criminal report.<sup>13</sup> According to the above, SPRK has not played an active role in this regard, which represents a negligence in their performance of their duties set forth by the Constitution and the Laws of the Republic of Kosovo.

Moreover, the fact that the only Kosovo Police has the right to investigate these cases and the SPRK, thus no other state agency, directly affects the low number of cases prosecuted and their low quality. The Kosovo Tax Administration (TAK) and the Kosovo Customs represent two state agencies that have special expertise in their fields which is considered that if used in investigating these cases, would increase the number and level of indictments, and consequently the final sentences of the courts. It should be noted that prior to the recent legal regulation, both agencies shared this power and the removal of this power is considered to have adversely affected the institutional treatment of this offense. If the same were involved in investigating money laundering cases, not only would we have a greater number of these cases but at the same time, the quality of the indictments, the evidence collected, and the treatment of the cases would be at a higher professional level. Moreover, these agencies provide relevant expertise in their field that would help in resolving suspected money laundering cases. In other words, since these agencies come first in contact with most money laundering cases, the prosecution should rely and base on the provided information from these agencies, during the investigation of the case, the filing of the indictment and its representation in court. They should supplement the prosecution with their expertise in certain areas that may not necessarily possess the relevant prosecutor or the judges of the case.

Secondly, during the analysis of these cases, the low level of confiscation of the assets acquired through the criminal offense of "Money Laundering" was noted. In this case it is not enough to analyze the activities of the relevant institutions on confiscation of the property obtained through this offense, but also the property acquired through other criminal offenses. An indication of stagnation in this respect is the extremely large disproportion between the sequestered and confiscated assets. According to published reports, the total value of the confiscated property is about 3.8 million Euros, while the value of the sequestered wealth in Kosovo is over 150 million Euros.<sup>14</sup> To clarify how a court decision ordering the confiscation of illegally acquired assets should be made, it is necessary to point out the distinction between temporary sequestration and permanent confiscation of property allegedly acquired through a criminal offense. Sequestration means the temporary seizure of the assets or property during the investigation phase by the prosecution, by the decision of the pre-trial judge, in certain cases where there is a well-grounded suspicion that such thing or property is acquired through the criminal offense. Whereas confiscation represents the permanent seizure of a property if it has

---

<sup>12</sup> Criminal report dated 30.09.2015 for the case PS.nr.35 / 2019. Criminal report dated... for PS.nr. 37/19, Criminal Report dated.... for the case PS.nr.30/19, Criminal Report dt. 01.08.2017 for the case PKR.nr. 398/17, Criminal Report dated... for the case PS.nr. 13/2019, Criminal Report dated. 29.08.2017 for the case PKR.nr. 66/2019, Criminal Report dated. 08.10.2018 for the case PS.nr. 16/2019, and the Criminal Report dated... for the case PKR.nr. 623/2015.

<sup>13</sup> Constitution of the Republic of Kosovo, Article 109 and Law on Special Prosecution of the Republic of Kosovo, Law no. 03 / L-052, Article 3.

<sup>14</sup> Money from confiscation of property may be transferred to security and justice bodies, 2019, (See link 2019: [https://www.evropaelire.org/a/konfiskim-pasuria-kosove-/30272239.html?fbclid=IëAR2vJT4TQRy3cm1LvqT-kjDiKDU9EqH1Czr9lrTëZcIy3ZXTU4K1\\_rëmp9c](https://www.evropaelire.org/a/konfiskim-pasuria-kosove-/30272239.html?fbclid=IëAR2vJT4TQRy3cm1LvqT-kjDiKDU9EqH1Czr9lrTëZcIy3ZXTU4K1_rëmp9c)).

been established, after criminal proceedings and the execution of criminal sanctions, that the object or the property has been acquired through the criminal offense. So, in both cases we are dealing with a seizure of the object, while the sequestration is a temporary seizure of the object, whereas the confiscation is a permanent seizure of the object by a final court sentence. Therefore, sequestration of illegally acquired assets alone is insufficient. They should be confiscated by a final court decision and then transferred to the state budget. The sequestered property, which is not confiscated by the court sentence, is returned to the defendants. Moreover, as judicial procedures are being prolonged, in many cases the confiscated assets may even lose their market value or be impaired while sequestered, as a result, the problem of their compensation arises. This is because the lack of a decision to confiscate them causes their sequestration to be terminated and the properties to be returned to their owners.<sup>15</sup> And when such assets are damaged, in these situations the state of Kosovo should make a compensation to the owner since it has failed to confiscate it.

Therefore, it is crucial that the case prosecutor in the indictment of the person accused for money laundering, to identify the property or assets that were acquired from the criminal offense or criminal activity and to request that they be confiscated. The failure to confiscate the assets of money laundering causes the loss of meaning of the purpose of punishing the person who was engaged in such activity or the person who has benefited from this situation. Only the conviction of a person for a criminal offense or criminal activity without confiscating his or her property or assets obtained through that offense or criminal activity does not fulfil the purpose of convicting the person charged with money laundering. Unlawfully obtained assets may be used again for the same purpose and may enable the development of other criminal activities, if not confiscated.

Thirdly, another finding of this analysis is the more frequent usage of only one of the legal possibilities of prosecuting money laundering. In this regard, we refer to the linkage of the offense of Money Laundering with any other criminal activity, where money laundering is treated as a consequence of another criminal offense. In five (5) of the cases analysed for this report, the prosecution has included in an indictment several offenses along with money laundering, so that money laundering was the consequence of another criminal offense. This highlights how money laundering has been recently handled in Kosovo, more precisely until 2018. The law provides the opportunity of indicting a person for money laundering as a main offense and as a consequence of another criminal offense such as the offense of fraud, etc.<sup>16</sup> As explained above, until 2018 in Kosovo have been filed only indictments that have dealt with money laundering as a consequence of another criminal offense. Only four (4) of the cases analysed have treated this case as a separate criminal offense, cases which have been handled in the last two years.<sup>17</sup> This practice demonstrates the lack of proper legal interpretation that has prevailed in Kosovo and the lack of profiling of SPRK prosecutors and judges in investigating money laundering as a standalone offense and its judicial treatment as such. Considering the fact that money laundering falls into the category of the high-risk criminal offenses compared to other offenses that fall under the jurisdiction of the Basic Prosecution, the SPRK should use all allowable legal possibilities for the investigation of the criminal offense of money laundering. Furthermore, since the law allows a person to be charged with money laundering which may be a consequence of a criminal activity, any criminal offense that might fall into economic crimes,

---

<sup>15</sup> Assembly of the Republic of Kosovo, Criminal No. 04/L-123 Procedure Code, 28.12.2012, Article 115, par.1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>;

<sup>16</sup> Assembly of the Republic of Kosovo, Law no. 05 / L – 096 on Prevention of Money Laundering and Combating Terrorist Financing, 15.06.2016, Article 56, par.1, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12540>;

<sup>17</sup> Cases: *PKR.nr.66/2018*, *PS.nr.13/2019*, *PS.nr.32/2019* and *PS.nr.37/2019*

thus involves money laundering. Therefore, any criminal offense which in itself generates money and any criminal offense involving money laundering or suspicious movements must be regarded a sufficient ground for the inclusion of a money laundering offense in the indictment, which in Kosovo exist to a satisfactory scale. However, as the right to investigate a money laundering offense falls solely under the SPRK, the possibility for this offense to be included in all indictments related to any economic crime, regardless of monetary value, is limited. As such, the illegally obtained assets in all cases would have to be transferred to SPRK, an institution that lacks human capacity and infrastructure to handle all these cases.

Fourth, during analyzation of cases it was noted that in some cases such as in case PS.no. 35/2019, the SPRK filed an indictment only one day before the expiry of the statutory deadline for the indictment or the termination of the investigation, with a possibility of six (6) months extension.<sup>18</sup> According to the provisions of the CCPRK, the investigation into the commission of a criminal offense should be completed within two years of the date of the ruling on the initiation of the investigation.<sup>19</sup> If within two years of the commencement of the preliminary investigation no indictment has been filed or the investigation has not been suspended, the investigation should be immediately terminated. In criminal cases involving money laundering, knowing that this offense gravely damages social and public values, the SPRK should prioritize investigation of this offense, rather than file the indictment at the last moment or a few days before the deadline of investigations.

However, since the SPRK currently has only fourteen (14) prosecutors and it is entitled to investigate certain criminal offenses such as war crimes, terrorist acts, and crimes against humanity, etc., it is considered not to have a sufficient human capacity in prosecuting all these crimes. At the same time, the lack of profiling severely affects the treatment of cases and their duration. Thus, the lack of expertise in understanding and investigating all types of economic crimes which in most cases are very complex, and the lack of authority of specialized state agencies such as TAK and Customs in Kosovo to investigate them, directly affects not only the number of crimes, but also the quality of money laundering cases, investigations, indictments and their representation in court. Therefore, the overload of cases, the lack of profiling of prosecutors and the wide competence in investigating and prosecuting a great number of serious criminal offenses established within Kosovo legislation, affects the poor performance of the prosecution as well.

Fifth, while examining the decisions of the Basic Court in Prishtina in the case PKR.no.398 / 17 where the court rendered a conviction judgment and confiscated the value of nine hundred sixty-four thousand eight hundred and twenty and forty-eight cents (946.820.84), the defendants were sentenced to two years of probation and a fine of five (5) thousand Euros each.<sup>20</sup> Such a decision has created a space to be challenged in the Court of Appeals, considering the height of the criminal sanction since it represents a minimum sentence and is not in accordance with the legal provisions. Bearing in mind the seriousness of the offense and the efforts to combat the organized crime, such a sanction corresponds no longer to the purpose of the sentence. At the same time, Article 56 of Law no. 05 / L-096 on the prevention of money laundering and combating the financing of terrorism specifies that: *“Anyone who, knows or has a reason to know that certain property derives from some form of criminal activity, a property which is actually obtained through a criminal offense, or anyone who believes that the particular property is obtained by some form of criminal activity based on*

---

<sup>18</sup> Assembly of the Republic of Kosovo, Criminal Procedure Code of the Republic of Kosovo, 28.12.2012, Article 159, par. 2, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>;

<sup>19</sup> *Ibid*, par.1

<sup>20</sup> Basic Court in Prishtina – Department for Serious Crimes, Judgment PKR.no.398 / 17, dated 28.03.2019;

representations made as part of an investigative investigation conducted pursuant to Chapter IX of the Code of Criminal Procedure of Kosovo, conducts the following acts: commits a criminal offense punishable by imprisonment of up to ten (10) years and a fine of up to three (3) times the value of the property which is the subject of the criminal offense.” Therefore, the sentence imposed by The Basic Court of Prishtina does not adhere to the standard set by law and it does not fulfil the purpose of sentencing that is attempted. It represents a minimum penalty considering the damage that was caused, and which was continuously attempting to cause.

Whereas, in the case of PKR.no. 623/15<sup>21</sup> where the Basic Court acquitted the defendants on the ground that there was insufficient evidence to prove their guilt, the Court of Appeals returned the case for retrial since in the sentence of the first instance court, substantive violations of criminal law were found, and the factual situation was incompletely verified. According to this ruling, during the retrial the first instance court must eliminate the violations found by the Court of Appeals, administer all the proposed evidence, and request from Swiss authorities accurate and precise information regarding the earnings of one of the witnesses, specifying for each calendar year the profit that he had.<sup>22</sup> Consequently, in the decision of the Court of Appeals are identified violations that may have also influenced the first instance court's decision, such as the lack of thorough administration of evidence and international co-operation, both very important factors in resolving a case. It is to be seen how the Basic Court in Pristina will address these findings and how it will proceed during the retrial.

## V. CONCLUSIONS

Despite sufficient legal infrastructure to combat the phenomenon of “money laundering”, the Prosecutorial and Judicial System are facing limited progress in the fight against it. The poor results of confiscation of assets continue to be indicators of the unwillingness of these institutions to prosecute and punish the perpetrators of this activity. Confiscation of illegally obtained wealth is one of the pillars of combating the organized crime, but Kosovo's justice institutions have shown minimal results in this regard. These institutions should not be satisfied only with the filing of indictments and the holdings of formal court proceedings but should substantially combat this phenomenon with concrete actions in the confiscation of illegally obtained properties/wealth.

Moreover, a key factor affecting the confiscation of illegally obtained assets is the lack of a proposal for confiscation in the indictment or during criminal proceedings as well as the lack of precise identification of the assets obtained through criminal offenses. These factors influence the final court decision regarding confiscation since, if no object for confiscation is identified, then the court cannot go beyond the prosecutor's proposal regarding the illegally obtained assets. At the same time, the lack of inter-institutional cooperation is a significant factor in the investigation process, the preparation quality of the indictment and its representation by prosecutors in the court. Similarly, the same issues are also present in court sentences that fail in many cases due to the lack of expertise in dealing with specific and complex economic crimes cases. Furthermore, the limitation of investigative power to only one agency, such as the Kosovo Police, and the lack or no authority of the Kosovo Tax Administration

---

<sup>21</sup> Basic Court in Prishtina – Department for Serious Crimes, Judgment PKR.no.623 / 15, dated 30.11.2016;

<sup>22</sup> Oath of Justice, *First instance court disregards Appeal's guidance to conduct investigation of witness, judge considers it illegal*, <https://betimiperdrejtesi.com/themelorja-nuk-e-merr-parasysh-udhezimin-e-apelit-qe-te-behet-nje-hetim-per-deshmitarin-gjykatesi-e-konsideron-antiligjor/>;

and Customs in providing the expertise and support for justice institutions in disclosing these crimes, continues to affect not only the quality of their treatment, but also the number of active cases in the courts. In addition, the lack of profiling of prosecutors and judges in money laundering cases and the overload of different types of serious criminal offenses' investigations, directly impact the performance of prosecutors and judges in these cases treatment.

Therefore, from the analysed cases it can be concluded that the total value of the property allegedly acquired by the offense of Money Laundering is around 12 million Euros, which means that if it proves to be obtained through criminal activities and if confiscated, it will consequently affect the budget increasement of the Republic of Kosovo. Therefore, combating the phenomenon of money laundering is an urgent need of institutions of the justice system in Kosovo, which subsequently would result in a better life for citizens through a regulated and legal economy. Moreover, as confiscated assets through final court decisions will be transferred in the budget of Kosovo, this would contribute in improvement of citizens living standards. At the same time, the combat of this phenomenon would reduce the likelihood of Kosovo citizens to be implicated in such criminal activities and as a result the crime rate would generally drop.

## **VI. RECOMMENDATIONS**

Justice Today has prepared some recommendations for the relevant institutions considering the complexity of the cases and the dangerousness of this criminal offense - "Money Laundering" as well as of the perpetrators, to assist them identify accurately and timely the perpetrators, origin and destination of the properties illegally obtained, and the active cases in the courts of the Republic of Kosovo to be treated accordingly with legal requirements.<sup>23</sup>

- We strongly recommend to SPRK to actively launch ex-officio investigations for the offense of "Money Laundering" and not rely only on criminal reports filed by the Kosovo Police.
- We strongly recommend to SPRK to consult the reports of all other agencies, such as that of Anti-Corruption Agency, which may report cases with circumstances implicating money laundering.
- We strongly recommend to SPRK to sequestrate all assets suspected of being subject of money laundering from the moment that the investigation for the offense of money laundering commences. Thus, the sequestrated assets cannot be used and become a further object of money laundering. Moreover, because of the sequestration, its later confiscation is also possible.
- The SPRK should make full use of the legal basis permitting the filing of "Money Laundering" indictments as a single standalone offense, regardless of whether it is related to any other criminal offense and the possibility that the "Money Laundering" offense is the result of another criminal offense. Thus, the SPRSK should make full use of the entire legal basis for the prosecution of money laundering.
- The SPRK should in every indictment also make a proposal for confiscation, as this facilitates the court to confiscate illegal property at the conclusion of criminal proceedings. Failure to

---

<sup>23</sup> Cases: PS.no. 35/2019, PS.no.37/2019, PS.no.30/2019, PKR.no.398/17, PS.no.13/2019, PKR.no.66/2018, PS.no.32/2019, PS.no.16/2019, PKR.no.623/2015;

propose confiscation of illegally obtained assets, limits the court's ability to confiscate those assets, and at the same time it loses the purpose of the conviction for money laundering.

- The Special Department of the Basic Court of Prishtina is invited to confiscate the property obtained by the criminal offense when during the main trial it is proved that it derives from various criminal activities.
- We strongly recommend to Special Department of the Basic Court in Prishtina and the Court of Appeals that without further delay correctly interpret the Law no. 05 / L-096 on Prevention of Money Laundering and Combating the Financing of Terrorism which provides the opportunity for a person to be charged with money laundering as a principal offense and allows the possibility to be charged with money laundering as a consequence of another criminal offense.
- The Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council and the State Prosecutor are invited to consider:
  - Increasement of the number of special prosecutors and judges who will adjudicate in the Special Department at the Basic Court in Pristina and the Court of Appeals, and to profile them to leverage the separation of prosecutors and judges who will handle exclusively economic crime offenses, or
  - Distribute the authority of handling money laundering offenses to the Kosovo Prosecutors and Basic Courts as well. This should be done by establishing criteria on the basis of which money laundering cases involving a certain monetary value and according to their complexity of disclosure should remain under the authority of the SPRK and the Special Department of the Basic Court of Prishtina and the Court of Appeals, whereas the lighter cases, and especially those resulting from a criminal activity or other criminal offenses, should be investigated by the Basic Prosecution. In this way, the number of cases investigated and tried for money laundering would increase and consequently the quality of their treatment would improve.
- The authority to investigate money laundering cases belongs solely to the SPRK and the Kosovo Police, while the Kosovo Tax Administration and Kosovo Customs do not have a share in this authority, according to recent legal regulation of these institutions. Such an arrangement needs to be modified so that administrative agencies are involved and provide professional expertise and data/information that may help criminal investigation authorities to better identify subjects and their culpability. This is because they share special expertise in their fields that would influence the level of investigations of these cases, their representation in the court as well as the final court sentences.



British Embassy  
Pristina



Group for Legal  
and Political  
Studies

