

The so far 'lost fight' against money laundering in Kosovo

Rreze Hoxha

—

January 21, 2020



GROUP FOR LEGAL
AND POLITICAL
STUDIES



GROUP FOR LEGAL
AND POLITICAL
STUDIES

Group for Legal and Political Studies

is an independent, non-partisan and non-profit public policy organization based in Prishtina, Kosovo.

Our mission is to conduct credible policy research in the fields of politics, law and economics and to push forward policy solutions that address the failures and/or tackle the problems in the said policy fields.

legalpoliticalstudies.org

THE SO FAR ‘LOST FIGHT’ AGAINST MONEY LAUNDERING IN KOSOVO

By Rreze Hoxha – Research Fellow, Group for Legal and Political Studies

Fight against money laundering and the confiscation of illegally obtained assets in Kosovo, is so far to be considered a lost fight for Kosovo. An indication of stagnation in this respect is the extremely large disproportion between the sequestered and confiscated assets that have been obtained illegally. 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.¹

Candidly, money laundering implies putting or transferring money and property acquired through criminal activity into lawful financial flows, so in the future, to create their fictitious legalization. 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. This is considered to be caused by the SPRK’s negligence on prosecuting money laundering cases and seizing illegally obtained assets and their reliance only on Kosovo’s Police criminal reports in order to initiate a criminal investigation, the lack of identification of the property or assets acquired illegally and the lack of requests for those assets to be permanently confiscated by the court together with the lack of profiling of SPRK prosecutors in investigating such cases.

Moreover, the lack of proper legal interpretation of the Law No. 05/L-096 on Prevention of Money Laundering and Combating the Financing of Terrorism, which offers two opportunities to prosecute this criminal offense (one by filing an indictment involving a predicate offense of money laundering; second, by filing an indictment for the offense of money laundering as a basic offense, without the need of any prior offense), not only by prosecutors but judges as well, have directly affected the number and the quality of the indictments and final court decisions on money laundering cases and confiscation of illegally obtained assets in the country. On the other hand, the low level of confiscation of illegally obtained assets by a final court decision that prevails in Kosovo and the lack of profiling judges in trying money laundering as a standalone offense and its judicial treatment as such, are to be recognized as the main issues identified in the judicial system.

However, from 2018 onwards progress has been made on fully using 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. So far, there are 4 indictments filed which have treated this criminal offense as a separated one.² Moreover, in 2019, the Basic Court of Prishtina rendered a conviction judgment and confiscated the

¹ 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-kjDiKDU9EqH1Czr9lrTëZcly3ZXTU4K1_rëmp9c).

² Cases: *PKR.nr.66/2018*, *PS.nr.13/2019*, *PS.nr.32/2019* and *PS.nr.37/2019*

value of nine hundred sixty-four thousand eight hundred and twenty and forty-eight cents (946.820.84).³ But, it is still not a permanent confiscation because the case is in the Appellate Court. These two undertakings represent a strong and clear indication that Kosovo's prosecutorial and judicial system have amplified their efforts on fighting this phenomenon in the country. More specifically, they show that there are prosecutors and judges willing to serve and implement the law properly.

Nevertheless, even though these are to be considered turning points, these two endeavors are not enough to recuperate from 'the ongoing defeat' of Kosovo on the fight against money laundering and the confiscation of illegally obtained assets. The SPRK should actively prosecute this offense and should the reports of all state agencies which may report cases with circumstances implicating money laundering. Moreover, the SPRK should sequester all assets suspected of being subject of money laundering from the moment that the investigation for the offense of money laundering commences and likewise, in every indictment should make a proposal for confiscation, as this facilitates the court to confiscate illegal property at the conclusion of criminal proceedings. And more importantly, together with the judges of the new established Special Department in Prishtina, should further increase the full use of the legal basis permitting the filing of "Money Laundering" indictments as a single standalone offense.

³ Basic Court in Pristina – Department for Serious Crimes, Judgment PKR.no.398 / 17, dated 28.03.2019;

Espresso.Insights

Espresso.Insights are aimed at decoding the policy research of our Fellows to a broader audience. Espresso.Insights present short summary of analysis and information that help readers and policy-makers in particular, to understand the relevant research, as they suggest possible policy options and argue for certain path of action. Aiming to intensify the debate about policy issues and general public concerns, Espresso.Insights will, in addition, serve as gears to aid an informed decision-making process.



GROUP FOR LEGAL
AND POLITICAL
STUDIES

legalpoliticalstudies.org