

LAW NO. 04/L-209 ON AMNESTY

Assembly of Republic of Kosovo,

Based on Article 65 (1 and 15) of the Constitution of the Republic of Kosovo,

Approves

LAW ON AMNESTY

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose and the scope**

This law regulates the conditions and the procedure under which amnesty can be granted for persons who have been convicted of certain specified criminal offences, who are under prosecution for such criminal offences, or could be subject to prosecution for such criminal offences committed prior to June 20, 2013 within the territory which now constitutes the Republic of Kosovo.

**Article 2
Amnesty**

1. All perpetrators of offenses listed in Article 3 of this Law that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offenses, in accordance with the terms and conditions of Article 3 of this law.
2. Amnesty may be provided under this law only in accordance with the procedures set in Chapter III of this law.

**CHAPTER II
CONDITIONS FOR AMNESTY**

**Article 3
Conditions on granting Amnesty from criminal prosecution and complete execution of the punishment**

1. The perpetrators of the following criminal offences are completely exempted from criminal prosecution or execution of punishment for the following criminal offences:

1.1. Criminal offences foreseen with the Criminal Code of the Republic of Kosovo (Official Gazette of the Republic of Kosovo no. 19/13 July 2012);

1.1.1. Assault on the Constitutional order of the Republic of Kosovo (Article 121), except in cases when committing this criminal offence has resulted in another criminal offence for which amnesty is not granted;

1.1.2. Armed rebellion (Article 122);

1.1.3. Endangering territorial integrity of the Republic of Kosovo (Article 125);

1.1.4. Endangering the constitutional order by destroying or damaging public installations and facilities (Article 129);

1.1.5. Espionage (Article 131);

1.1.6. Alliance for anti-constitutional actions (Article 134);

1.1.7. Unauthorized border or boundary crossing (Article 146, paragraphs 1, 2, 3.1 and 3.3);

1.1.8. Inciting national, racial, religious or ethnic hatred, discord or intolerance (Article 147);

1.1.9. Unlawful exercise of medical or pharmaceutical activity (Article 262, paragraph 1);

1.1.10. Unauthorized ownership, control or possession of weapons (Article 374);

1.1.11. Failure to report criminal offences or perpetrators (Article 386, only in relation to the failure to report the criminal offences for which the amnesty is granted under this Article);

1.1.12. Providing assistance to perpetrators after the commission of criminal offenses (Article 388, only in relation to providing assistance to perpetrators after the commission of the criminal offences for which the amnesty is granted under this Article);

1.1.13. Call for resistance (Article 411), except in cases when commission of this criminal offense has resulted in commission of another criminal offense. The perpetrators of the following criminal offenses committed with the aim of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution or execution of punishment:

1.1.13.1. Threat to a candidate (Article 211);

1.1.13.2. Preventing exercise of the right to vote (Article 212);

1.1.13.3. Misuse of economic authorizations (Article 290, subparagraphs 1.1, 1.2, 1.3 and 1.4 of paragraph 1.);

1.1.13.4. Prohibited trade (Article 305);

1.1.13.5. Tax evasion (Article 313);

1.1.13.6. Smuggling of goods (Article 317, paragraphs 1. and 2.);

1.1.13.7. Avoiding payment of mandatory custom fees (Article 318);

1.1.13.8. Destroying, damaging or removing public installations (Article 366, paragraphs 1. and 2.);

1.1.13.9. Endangering public traffic by dangerous acts or means (Article 380, paragraphs 1., 2. and 5.);

1.1.13.10. Obstructing official persons in performing official duties (Article 409, paragraphs 1., 2. and 3.);

1.1.13.11. Attacking official persons performing official duties (Article 410, paragraph 1.) except in cases when commission of this criminal offense has resulted in grievous bodily injury or death; and

1.1.13.12. Criminal provisions under the Customs and Excise Code of Kosovo, as follows:

1.1.13.12.1. Impeding movement of a Customs Vehicle (Article 296);

1.1.13.12.2. Making an Untrue Declaration (Article 297);

1.1.13.12.3. Fraudulent Evasion of Import Duty and Excise Tax (Article 298);

1.1.13.12.4. Fraudulent Evasion of Prohibitions and Restrictions on Goods (Article 299);

1.1.13.12.5. Criminal Offences in relation to Excise Products (Article 300).

1.1.14. Participating in a crowd committing criminal offense and hooliganism (Article 412), except in cases when commission of this criminal offense has resulted in grievous bodily injury or death.

1.2. Criminal offences foreseen by Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of the date 6 July 2003, Official Gazette of Kosovo no. 2003/25) and the UNMIK Regulation nr. 2004/19 on Amending the Provisional Criminal Code of Kosovo, as follows:

1.2.1. Attack against Constitutional order of Kosovo (Article 108);

1.2.2. Unauthorized border or boundary crossing (Article 114 paragraphs 1. and 2., subparagraphs 3.1, 3.3 and paragraph 4.);

1.2.3. Inciting national, racial, religious or ethnic hatred, discord or intolerance (Article 115);

1.2.4. Unlawful exercise of medical activity (Article 221, paragraph 1.);

1.2.5. Unauthorized ownership, control or possession of weapons (Article 328, paragraph 2.); and ownership, control, possession or use of weapons if he or she is not the holder of a valid weapon authorization card", (Article 8.6 regarding the Article 8.2 of UNMIK Regulation no. 2001/7 of the date 21 February 2001, Official Gazette of Republic of Kosovo no.2003/7).

1.2.6. Failure to report a criminal offence or its perpetrator (Article 303, only in relation to the criminal offences granted amnesty for under this law);

1.2.7. Providing assistance to perpetrators after the commission of criminal offences (Article 305, only in relation to the criminal offences granted amnesty for under this law);

1.2.8. Call for resistance (Article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense. The perpetrators of the following criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution and execution of punishment:

1.2.8.1. Misuse of economic authorizations (Article 236, paragraph 1., subparagraphs 1.1; 1.2; 1.3 and 1.4);

1.2.8.2. Prohibited trade (Article 246);

1.2.8.3. Tax evasion (Article 249);

1.2.8.4. Smuggling of goods (Article 273);

1.2.8.5. Destroying, damaging or removing public installations (Article 292 paragraphs 1. and 2.);

1.2.8.6. Endangering public traffic by dangerous acts or means (Article 299 paragraphs 1. and 2.);

1.2.8.7. Obstructing official persons in performing official duties (Article 316);

1.2.8.8. Attacking official persons performing official duties (Article 317), except in cases when commission of this criminal offense has resulted in grievous bodily injury or death.

1.2.9. Participating in a crowd committing a criminal offence (Article 320), except in cases when commission of this criminal offense has resulted in grievous bodily injury or death.

1.3. Criminal offences foreseen with the Criminal Law of SAPK, Official Gazette nr. 20/77 regarding the UNMIK Regulations nr. 1999/24 and 2000/59 on the Applicable Law in Kosovo, as follows:

1.3.1. Unlawful possession of weapons or explosive substances (Article 199, paragraph 1.);

1.3.2. Failure to report on a criminal act or a perpetrator (Article 173, only in relation to the criminal offences granted amnesty for under this law);

1.3.3. Aiding a perpetrator after he has committed the criminal act (Article 174, only in relation to the criminal offences granted amnesty for under this law);

1.3.4. Inciting resistance (Article 186) except in cases when commission of this criminal offense has resulted in commission of another criminal for which amnesty is not granted under this law. The perpetrators of the following criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance, are also granted amnesty from criminal prosecution and execution of punishment:

1.3.4.1. Abuse of authorisations in economy (Article 108 paragraphs 1., 2., 3., 4., and 5.);

1.3.4.2. Prohibited trade (Article 116);

1.3.4.3. Tax evasion (Article 123);

1.3.4.4. Destruction or damage of communal infrastructure devices (Article 158);

1.3.4.5. Endangering the public traffic by a dangerous act or means (Article 167);

1.3.4.6. Obstructing official persons in performing official duties (Article 183);

1.3.4.7. Attacking official persons performing official duties (Article 184 paragraphs 1., 2. and 4.); except in cases when commission of this criminal offense has resulted in grievous bodily injury or death.

1.3.5. Participation in a group that commits a criminal act (Article 200, except in cases when commission of this criminal offense has resulted in grievous bodily injury or death).

1.4. Criminal offences foreseen with the Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette No. 44 dated October 8, 1976:

1.4.1. Endangering territorial integrity (Article 116);

1.4.2. Espionage (Article 129);

1.4.3. Inciting national, racial or religious hatred, discord or hostility (Article 134).

Article 4 Exceptions from Amnesty

1. Amnesty from any criminal offense within this law will not apply for:

1.1. acts against international actors and international security forces in Kosovo. Members of the international security forces are always under the jurisdiction of the sending state.

1.2. acts that constitute serious violations of international humanitarian law, including those offenses provided in Chapter XV of the Criminal Code of the Republic of Kosovo, Chapter XIV of the Provisional Criminal Code of Kosovo and Chapter XVI of the Criminal Code of the SFRY 1976.

1.3. criminal offense that resulted in grievous bodily injury or death.

Article 5

The granting of amnesty shall not affect the rights of third parties which are based upon a sentence or a judgment.

**CHAPTER III
PROCEDURES FOR GRANTING AMNESTY**

Article 6

Notifications on the condition of the convicted person covered by amnesty who is serving his punishment of imprisonment

1. Kosovo Correctional Service has the obligation to inform in a written form the court of first instance that has sentenced the convicted persons, who are serving a punishment of imprisonment covered by an amnesty, within seventy two (72) hours from the day this law comes into force.
2. Notification should include information about the start and end dates of their execution of the punishment of imprisonment.
3. The court *ex officio*, seven (7) days from receiving the above mentioned notification, shall issue a decision for execution of amnesty, whereas for the convicted person who has not started the execution of the punishment, the court shall decide for execution of amnesty in term of five (5) days from the day the request was received.
4. If a convicted person is serving his punishment in another country, the notification should be carried out through the Ministry of Justice.

Article 7

Decision for Granting Amnesty from execution of the punishment

1. The decision for granting amnesty shall be rendered, with EULEX assistance, by the first instance court, respectively the court that has subject matter and territorial jurisdiction to adjudicate the respective issue that is addressed to it:
 - 1.1 . *ex officio*; or
 - 1.2. requested by the convicted person, the perpetrator, the State Prosecutor or the persons who according to Criminal Procedure Code may appeal against the judicial decision.
2. The Court renders a decision where it determines the part of the punishment that shall be waived, unless otherwise provided by this law.

Article 8

Decision on granting amnesty from criminal prosecution

1. Where a criminal report has been filed, an investigation initiated, or an indictment filed, the competent prosecutor shall render a decision to grant amnesty from criminal prosecution in accordance with this law.
2. Within thirty (30) days from the entry into force of this law, the competent prosecutor shall take a decision *ex officio* in accordance with the Criminal Procedure Code of the Republic of Kosovo to dismiss the criminal reports or terminate investigation for the criminal offences provided in this law.

3. Within sixty (60) days of the entry into force of this law, any final convictions for which amnesty applies under Article 3 of this law shall be erased from the criminal records in accordance with relevant applicable law.

Article 9
Finality of Confiscations

Regardless of the application of amnesty under this law to any criminal offence, if an object has been confiscated in accordance with the law during the criminal proceedings based in whole or in part on that criminal offence, the person receiving amnesty does not have a right to ask for the return of that confiscated object.

Article 10
Appeals against decisions for Amnesty

1. Against a decision for amnesty an appeal may be initiated in the Court of Appeals within seven (7) days from the day the decision was rendered. The Court of Appeals shall render a decision for the appeal three (3) days from the day that it received the request for appeal.

2. An appeal shall cease the execution of a decision.

3. If a convicted person due to amnesty will be completely exempted from the execution of the punishment of imprisonment, the court shall render a decision waiving the punishment of the convict, and the same shall be sent immediately to the Kosovo Correctional Service.

CHAPTER IV
TRANSITIONAL AND FINAL PROVISIONS

Article 11
Subsidiary Application

For implementation of amnesty *mutatis mutandis* provisions of Criminal Procedure Code No. 04/L-123 shall apply, unless provided otherwise with this law.

Article 12
Entry into Force

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

Law No. 04/L-209
11 July 2013

Promulgated by Decree No.DL-051-2013, dated 17.09.2013, President of the Republic of Kosovo Atifete Jahjaga