



Republika e Kosovës
Republika Kosovo-Republic of Kosovo
Kuvendi - Skupština – Assembly

Law No.04/L – 028

ON INDUSTRIAL DESIGN

The Assembly of Republic of Kosovo,

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

Adopts:

LAW ON INDUSTRIAL DESIGN

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

By this Law shall be provided the requirements and procedures for registration of the industrial design, the rights deriving from registration and implementation of such rights and community design.

Article 2
Scope of implementation

This law is implemented for all industrial designs, subject to the procedure of registration at the Office for Industrial Property, including the community design and international registration which are valid in the Republic of Kosovo.

Article 3 **Definitions**

1. The terms used in this Law shall have the following meanings:

1.1. **Ministry** - the Ministry of Trade and Industry;

1.2. **Minister** - the Minister of Trade and Industry;

1.3. **Office of Industrial Property (OIP)** – the independent Industrial Property Office of the Republic of Kosovo within the Ministry of Trade and Industry;

1.4. **Design** - the outer appearance of the whole or of a part of product resulting from features of, shape, form, color, lines, contours, texture or materials of the product itself or its ornaments;

1.5. **Product** - any industrial or handicraft item, including the parts intended to be assembled into a complex product, packaging, equipment for books, graphic symbols and typographic typefaces, but excluding the computer programs;

1.6. **Complex product** - a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product;

1.7. **The Paris Convention** - Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Brussels on 14 December, 1900, at Washington on June 2, 1911, at the Hague on 6 November, 1925, at London on 2 June, 1934, at Lisbon on 31 October, 1958, and at Stockholm on 14 July, 1967, and as amended on 28 September, 1979;

1.8. **The Locarno Agreement** - Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968 as amended on 28 September 1979;

1.9. **International Classification** - the international classification for industrial designs, established through the Locarno Agreement;

1.10. **The Hague Agreement** - Hague Agreement Concerning the International Deposit of Industrial Designs of 6 November 1925, as revised in the Hague on 28 November 1960 (1960 Act), as complemented in Stockholm on 14 July 1967, with the amendments of 28 September 1979 (Complementary Act of 1967), and the Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, adopted in Geneva on 2 July 1999 (the Geneva Act of 1999) and the provisions of implementing regulations to the Hague Agreement;

1.11. **International Bureau** - the International Bureau of the World Intellectual Property Organization;

1.12. **Regulation for Community Design** - the Council Regulation (EC) No 6/2002 on Community Designs and its amendments;

1.13. **Community Design** - the registered and unregistered design as defined in Regulation for Community Designs;

1.14. **Application for Community Design** - the procedure for registration of the Community Design pursuant to provisions of the Regulation on Community Designs;

1.15. **National Design** - the industrial design acquired in the Office of Industrial Property, according to procedure and pursuant to the provisions of this Law;

1.16. **Application for National Design** - the procedure for registration of the national design in the Office for Industrial Property, pursuant to the provisions of this Law.

1.17. **Exclusive Right from Design** – the right of the owner of industrial design for use of registered design and obstacle of other persons in using the design without his/her permission.

1.18. **Exclusive License** – license issued by the owner of the design by which shall be carried out the exclusive rights from industrial design.

1.19. **Non-exclusive License** - license issued by the owner of the design by which shall be carried out only the rights defined by the owner of the design.

1.20. **Sub-License** – license issued by the winner of a license as foreseen by the license of contract.

1.21. **Priority Certificate** – certificate by which is verified the priority right of application for design.

Article 4 Industrial Property Office

Industrial Property Office (hereinafter the Office) is competent for the registration procedure and protection of the industrial design pursuant to this law.

CHAPTER II REQUIREMENTS FOR PROTECTION OF INDUSTRIAL DESIGN

Article 5 Protection of Industrial Design

1. By industrial design right is protected the design to the extent that is new and has individual character.
2. A design applied to product or incorporated in a product which constitutes a component part of complex product shall only be considered to be new and to have individual character in following cases:
 - 2.1. if the component part, once it has been incorporated into the complex product, remains visible during normal use of product;
 - 2.2. when to the extent that those visible features of the component part fulfill in themselves the requirements as to novelty and individual character.
3. According to paragraph 2. sub-paragraph 2.1. of this Article shall mean use by the end user, excluding maintenance, servicing or repair of the product.

Article 6 Design novelty

1. A design shall be considered new if no identical design has been made available to the public before the date of filing of the application for registration or, if priority right is claimed, prior recognition of priority right.
2. Designs shall be considered to be identical if their features differ only in immaterial details.

Article 7 Individual character of the design

1. It is considered that the design has individual character if the common impression created to the informed consumer differs from the impression that was left to the consumer by any other design, that has been available to the public before the date of the submission of application for the design, or if the right of priority was required before the date of recognition of the priority right.
2. In assessing individual character of the design, the degree of the freedom of designer in developing the design shall be taken into consideration.

Article 8

Design disclosure

1. For the purpose of applying Articles 6 and 7 of this Law, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialized in the sector concerned, operating within the territory of the Republic of Kosovo, before the date of filing of the application for registration or, if priority right is claimed, prior recognition of priority right.
2. The design shall not, however, be considered to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality
3. Disclosure of the design according paragraph 1. of this Article shall not be considered if design, which protection is claimed, has been made available to public and if:
 - 3.1. by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer, or his successor in title;
 - 3.2. during the twelve (12) month period preceding the date of filing of the application or, if priority right is claimed, from the date of priority.
4. The provisions of paragraph 3. of this Article shall also apply in cases when the design has been available to the public as a consequence of abuse in relation to the designer or his successor.

Article 9

Designs dictated by their technical function and designs of interconnections

1. External features of the product shall not be protected with industrial design:
 - 1.1. which are dictated by technical functions;
 - 1.2. to which the reproduction is necessary for the same shape and dimension, in order that the product in its composition the design may be mechanically assemble with another product and may be placed on, or together with the other product around it, in order that both products may perform their functions.
2. Notwithstanding of provisions of paragraph 1., subparagraph 1.2. of this Article, the design shall exist, pursuant to Articles 6 and 7 of this Law, in the designing dedication which will enable the connection of the interchangeable parts of a product.

Article 10
Design contrary to public policy morality

The design which is contrary to public policy and moral principles shall not be protected.

CHAPTER III
THE RIGHT ON INDUSTRIAL DESIGN

Article 11
Designer

1. A designer is the natural person who created the industrial design.
2. A person who has only provided technical assistance in the creation of the design shall not be considered a designer.

Article 12
Right to the industrial design and the right of the assumed holder

1. A designer or his successor has the right to initiate acquiring procedure of the industrial design pursuant to this Law.
2. If the designer is not the applicant, the applicant shall be deemed to have right to the initiate acquiring procedure of the industrial design in accordance with paragraph 1. of this Article, until proven the contrary.
3. If the design was created on the basis of a commission contract, the right to the design shall vest in the commissioner of the design, unless otherwise specified by the contract.
4. If the design was created be the designer while execution of his duties as employee or following instructions given by his employer, the employer has the right to initiate the procedures for acquiring the industrial design, unless otherwise specified by the contract.
5. Person on whose name the industrial design is registered or the person on whose name the application is submitted before registration, is considered to be the person who is entitled for all the proceedings developed at the Office in regard to the design.

Article 13
Joint creation of an industrial design

1. If the design was created by the joint efforts of several designers, the right to that industrial design shall vest in them, their successors in title, jointly, and they shall all be deemed entitled to the industrial design in accordance with this Law.
2. The share of the designer in a jointly created design shall be determined in proportion to each of the designers' actual contribution in creating the design, unless otherwise specified by contract.
3. If the shares of the designers are not specified in the contract and cannot be determined in proportion to each of the designers' actual contribution in creating the design, they shall be deemed equal.

Article 14
Moral rights of the designer

1. The designer has moral right in his designs, notwithstanding whether he is the applicant or the right holder of a registered industrial design.
2. The moral right of the designer cannot be transferred.
3. If several designers participated in the creation of the design, the right under paragraph 1. of this Article belongs to all designers notwithstanding contribution in the design creation.

Article 15
Equality on the right of industrial design

Legal and natural persons, local or foreigners, have the equal rights for acquiring and protection of the design pursuant this Law.

CHAPTER IV
EFFECTS OF A REGISTERED INDUSTRIAL DESIGN

Article 16
Acquisition of an industrial design

1. The industrial design is acquired by decision of the registration and the registering of the design in the register.

2. The date of entry in the register shall be the same as the date of the decision on granting the registration of an industrial design.

Article 17

The exclusive rights granted by the industrial design

1. The holder of the industrial design has the exclusive right for use of the registered design, and prevents third parties from using the design without his permission.

2. Usage, pursuant to paragraph 1. of this Article, includes the processing, offer, circulation, import, export, transit or the use of the product in composition of which the design or the commercialization of product for these purposes is included.

3. If the publication of a registered industrial design is deferred within the meaning of Article 45 of this Law, for the duration of the deferment, the holder of the industrial design shall have the right to prevent third parties from taking the actions referred to in paragraph 2. of this Article, only if such use results from copying of the registered design.

Article 18

Limitation of exclusive rights

1. The exclusive right shall not be exercised in respect of:

1.1. acts done privately and for non-commercial purposes;

1.2. acts done for experimental purposes;

1.3. acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

2. The acts mentioned in paragraph 1 of this Article, the rights conferred by an industrial design upon registration shall not be exercised in respect of:

2.1. the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Republic of Kosovo;

2.2. the importation in the Republic of Kosovo of spare parts for the purpose of repairing such aircraft;

2.3. the execution of repairs on such aircraft.

Article 19
The right of prior use of design

1. A right of prior use shall exist for any third person who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, he has in good faith commenced use within the territory of the Republic of Kosovo, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design, which has not been copied from the latter.
2. The third person, upon prior use, has the right to use the design for the purpose of use prior to the date of submitting application for design or before the date of the recognition of priority right, if the priority has been claimed.
3. The person, who has the right on the design on the basis of earlier use, cannot give a license to third parties for the use of the design.
4. The right of prior use cannot be transferred except, where the third person is a business and design is transferred along the part of the business in the course of which acts of use or implementation were done pursuant to paragraph 1. of this Article.

Article 20
Cessation of the right for prohibition of design use

1. The right for prohibition of the use of the product which contains the industrial design ceases upon placement into market in the Republic of Kosovo by the holder of the design or due permission of the holder.
2. Cessation of the right from paragraph 1. of this Article may be also extended outside the territory of the Kosovo, if such is defined by international agreements mandatory to Republic of Kosovo.

CHAPTER V
INDUSTRIAL DESIGN AS THE OBJECT OF PROPERTY

Article 21
Transfer

1. An industrial design can be transferred to another person.
2. The transfer shall, at the request of one of the parties according to their prior agreement, be registered in the register and published in the Office bulletin.

3. The transfer shall only have effect to third parties after the entry in the register. Before registration, the transfer has effect on the third parties which have been aware for such act.

Article 22 **License**

1. The holder of industrial design may issue exclusive and non-exclusive license for using of the right of the design fully or partially, which may be valid for the whole territory of the Republic of Kosovo or a part of it.

2. The right for usage of the industrial design is acquired based on the licensing contract and has effect on third parties after the registration of the license in the Register.

3. The licensing contract shall be in written form and signed by the contracting parties.

4. The holder of the design may implement the rights of the design against the licensed person who infringes some provision of the contract for licensing, and especially regarding to the validity period of the license and the usage limits of the design.

5. The licensed person may initiate court proceeding regarding to the infringement of the rights derived from industrial design, only if the holder of the industrial design does not agree with this.

6. The licensed person may issue sub-license only if it is defined by the contract.

7. The license is registered after the request for that is done by the owner of the design or of the person who received the industrial design license is delivered to the Office.

8. The registration of the license shall be published in the Office bulletin.

9. The form and request content for the registration of the license shall be defined by sub-legal act.

Article 23 **The right of pledge in industrial design**

1. An industrial design may be subject of pledge.

2. On request of one of the parties, the rights mentioned in paragraph 1. of this Article shall be registered in the register.

3. The registration of pledge is published in the Office bulletin.

4. The pledge creates legal consequences towards third parties after the registration in the register.

5. The form and the content of the request for the registration of the pledge shall be defined by sub-legal act.

Article 24 **The execution procedure**

1. An industrial design may be subject of execution.

2. On request of one of the parties, the rights mentioned in paragraph 1. of this Article shall be registered in the register and published.

3. The execution procedure creates legal consequences towards third parties after the registration in the register.

4. The form and the content of the request for the registration of the execution procedure shall be defined by sub-legal act.

Article 25 **Bankruptcy**

If the industrial design has been included in the bankruptcy procedure, by the request of the competent body, this fact is registered and published in the bulletin of the Office.

Article 26 **Application for the registration of the industrial design as an object of proprietary**

Provisions of Articles 21, 22, 23, 24 and 25 shall be implemented for the applications of registration of the industrial designs as an object of property.

CHAPTER VI **APPLICATION FOR REGISTRATION OF AN INDUSTRIAL DESIGN**

Article 27 **Initiation of the industrial design registration procedure**

The procedure for the registration of an industrial design shall be initiated by filing the application at the Office.

Article 28
Content of the application

1. Application for the industrial design shall contain:
 - 1.1. a request for registration of the industrial design;
 - 1.2. information identifying the applicant;
 - 1.3. a representation of the design suitable for reproduction. However, if the object of the application is a two-dimensional design and the application contains a request for deferment of publication in accordance with Article 45 of this law, the representation of the design may be replaced by a specimen.
2. The application of industrial design shall further contain:
 - 2.1. indication of the product in which the design is intended to be applied;
 - 2.2. information identifying the duly authorized representative if the applicant has appointed one;
 - 2.3. if there was a joint application, the information for the joint representative.
3. In addition, the application of industrial design may contain:
 - 3.1. a description explaining the representation or the specimen;
 - 3.2. a request for deferment of publication of the registered design in accordance with Article 45 of this Law;
 - 3.3. classification of the product, respectively inscription of the class, in which the product needs to be integral part or in which the design has to be implemented with the Locarno Agreement, based on the International Classification;
 - 3.4. information for the designer or the designers, or the statement that the designer or designers has waived the right to be cited;
 - 3.5. information and evidence of the priority referred to in Articles 33 or 34 of this Law.
4. The form and content of the application for industrial design and all the other constitutive parts of the application shall be defined by sub-legal act.
5. Data on the application for the industrial design stated in the paragraph 2 and paragraph 3, sub-paragraph 3.1 and 3.3 of this Article; shall not affect the volume of protection of the design.

6. The application shall evidence the payment of registration and publication fee, whereas if deferment has been required according to paragraph 3 and sub-paragraph 3.2 of this Article, shall contain the evidence of payment of deferment fee.

Article 29 **Industrial design multiple application**

1. If the application contains several designs, all the products on which the design is constitutive part, or on which the design shall be incorporated, shall be classified in one class based on international classification.
2. In the multiple applications, the number of the designs being requested for protection shall be noted.
3. For every design which is included in the multiple applications, may be acted separately with the purpose of implementation of provisions of this law. The design in such cases may be the subject of the rights from the license contract, mortgage or pledge, execution procedure, bankruptcy, transfer of the rights, publication deferment or invalidity of the design.
4. The multiple applications shall be subject of additional payment fee for registration and publication.

Article 30 **Division of the multiple application**

1. The application may divide the multiple applications into two or more applications that each refers to one or more product designs.
2. Each application separated from a multiple application shall retain the priority right of the multiple application.
3. The conditions for division of the multiple applications shall be defined by sub-legal act.

Article 31 **Application date**

The application date for the industrial design shall be the date when the documents, containing information as defined by Article 28 paragraph 1. of this law, submitted by applicant at the Office.

Article 32
The priority right acquired by application

1. If the application for registration of the industrial design has been submitted according to Articles 28 and 29 of this law, the applicant from the date of submitting application has the right of priority towards any other applicant, who may submit later the application for registration of the same industrial design.
2. Every application filed under an international agreement to which the Republic of Kosovo is a party shall also give rise to the priority of such an application according to the provisions of the agreement.
3. The right of priority invoked according to Articles 33 and 34 of this Law shall have the effect that the date of priority shall be deemed as the date of filing of the industrial design application for the purposes of establishing which rights take precedence in accordance with paragraph 1. of this Article.

Article 33
Priority right

1. If an applicant has duly filed a first application for industrial design right in any State member to the Paris Convention, or to the Agreement Establishing the World Trade Organization, in cases of application of the same industrial design in the Republic of Kosovo, may invoke the right of priority of the first application, under condition that he files the application within a period of six (6) months from this date.
2. The applicant invoking the right of priority from paragraph 1 of this Article shall indicate basic information pertaining to the application invoked as state, application date and number of application, within the period of three (3) months from the date of application at the Office, by presenting the description of the first application certified by the authorized body of the member state of the Paris Union, as well as the translation of the description.
3. If the applicant does not fulfill the requirements stated in paragraph 1. of this Article, shall be considered that the right of priority has not been claimed.

Article 34
Exhibition priority right

1. If an applicant has disclosed products in which the industrial design is incorporated, or to which it is applied, at an official or officially recognized international exhibition in the Republic of Kosovo or in the Member State of the Paris Union or the World Trade Organization, he may, if he files the application within a period of six (6) months from the date of the exhibition.

2. An applicant invoking the exhibition priority right based on the date of exposition of a product shall, alongside the application filed to the Office, file a certificate issued by the competent authority of the Member State of the Paris Union, containing information concerning the type of the exhibition, venue, dates of opening and closing of the exhibition and the first day of exhibiting the products cited in the application, and evidence that the product design which was exhibited is identical to the one cited in the application.

3. If the applicant does not meet the requirements set out in paragraph 2. of this Article, priority shall be deemed not to have been claimed.

Article 35 **Certificate of priority**

At the request of the industrial design applicant or the industrial design holder and upon payment of the required fee, the Office shall issue a certificate of priority right.

CHAPTER VII **REGISTRATION OF THE DESIGN**

Article 36 **Register**

1. The Office shall maintain a register in which applications for the registration of the industrial designs which comply with formal requirements from Article 28 of this Law and which have been accorded a filing date pursuant to Article 31 of this Law will be entered, as well as industrial designs for which registration was not refused pursuant to Article 42 of this Law.

2. The content of the register shall be regulated by sub-legal act.

3. The Register is public.

4. If the application contains the request for deferment of publication of the registration in accordance with Article 45 of this Law, the information on this application registration shall not be public before the publication of the registration pursuant to the Article 44 of this Law.

5. At the request of the interested party, and after the payment of the required fee, the Office shall issue an extract and a print out from the register.

Article 37
Office bulletin

The Office shall publish the bulletin with the information defined by this law and sub-legal acts.

Article 38
Fees

1. For all the procedures regulated by this law, the respective fees shall be paid.
2. Types and their amount of fees shall be defined by sub-legal act.
3. If the fees have not been paid, the application or the request is rejected; while in the case of non-payment of the tariffs for continuation of the protection of the industrial design, the industrial design shall lapse.

Article 39
Search on novelty of the design

At the request of an interested party and after the payment of the required fee, the Office shall provide the services comprising novelty search of the registered industrial designs, having effect in the Republic of Kosovo.

Article 40
Determination of the application date for industrial design

1. Upon receiving the industrial design application, the Office shall examine whether the application meets the requirements for according the filing date referred to in Article 28 paragraph 1. of this Law.
2. If the application does not meet the requirements for according to a filing date, the Office shall invite the applicant to remedy the found deficiencies, within sixty (60) days from the date of receipt of the notification.
3. If the deficiencies are remedied within the set time limit, in accordance with the invitation referred to in paragraph 2. of this Article, the Office shall accord, as the filing date, the date on which the deficiencies were remedied.
4. If the application, within the determined timeline does not act according to invitation of the Office, the application shall be rejected with a decision.

5. After according the filing date of the application, the Office shall invite the applicant who has not submitted evidence of having paid the prescribed fee, to do so within thirty (30) days from the day of receipt of the invitation.

6. After the filing date of the application may not be changed by extending the scope of protection of the design.

7. On the request of the applicant or the holder of the registered design, amendments of the name or the address of the applicant, shall be permitted or correction of any other technical error with a condition that the object of protection is not extended, and after the additional fee have been paid.

8. The content of the request for amendments in accordance to paragraph 7. of this Article shall be defined by sub-legal act.

Article 41

Formal examination of the application on industrial design

1. By a formal examination of an industrial design application, the Office shall establish whether the application complies with the requirements set out in Article 28 paragraph 1. of this law, respectively requirements set out in Article 29 the multiple application.

2. If the industrial design application does not comply with the requirements set out in paragraph 1. of this Article, the Office shall invite the applicant to remedy the application within sixty (60) days.

3. Upon request of the applicant, the timeline referred to in paragraph 2. of this Article may be extended for a maximum sixty (60) days under the condition of payment of additional fee.

4. If the applicant does not act according to the invitation of the Office, the application shall be rejected with a decision.

Article 42

Refusal of the registration of an industrial design

1. The office shall refuse the registration of the industrial design, if:

1.1. the design is not a design within the meaning of Article 3 paragraph 1 sub-paragraph 1.4 of this Law;

1.2. the design does not meet the requirements set out in Article 10 of this Law;

- 1.3. the design constitutes an unauthorized use of any of the items listed in Article 6b of the Paris Convention, or of badges, emblems and different escutcheons, which are of particular public interest in the Republic of Kosovo.
2. The Office may partly refuse the registration of an industrial design according to paragraph 1. sub-paragraphs 1.2 and 1.3 of this Article if the design meets the requirements for registration in that form and if the identity of the design is retained.
3. The refusal decision of the registration of the design may not be issued if the applicant has not been previously in writing regarding causes of refusal and has not been invited to withdraw the application or declare his observations in writing about causes of refusal.
4. The application for registration of the design has the right within sixty (60) days from the day of receiving written notification referred to in paragraph 3. of this Article, and submit the evidence of possible new facts, that could affect the final decision of the Office.
5. Upon request of the applicant, the timeline referred to in paragraph 4. of this Article may be extended for a maximum of sixty (60) days.

Article 43

Design registration

If the requirements that an application for a registration of an industrial design must satisfy have been fulfilled according to Article 41 of this Law and to the extent that the application has not been refused by virtue of Article 42 of this Law, the Office shall register the industrial design, under condition that the maintenance fee for the first five (5) year period of industrial design protection has been paid.

Article 44

Publication of the design

1. The registered design shall be published in the Office bulletin.
2. The content of information for the published design in the Office bulletin shall be defined by sub-legal act.

Article 45

Deferment of publication

1. The applicant may request, while filing the application, that the publication of the registered industrial design be deferred for a period of twelve (12) months from the date of filing the application or, if a priority is claimed, from the date of priority.

2. Upon such request, where the conditions set out in paragraph 1. are satisfied, the industrial design shall be registered, but information for the design or any data relating to the application shall not be open to public.

3. The Office shall publish in the official gazette a mention of the deferment of the publication of the registered industrial design. The mention shall be accompanied by information identifying the holder of the registered industrial design, the date of filing the application and other particulars defined by sub-legal act.

4. In the case referred to in paragraph 1. of this Article, the Office shall, at the expiry of the period of deferment or at any other prior date at the request of the right holder, invite him to provide, within thirty (30) days from the day of receiving invitation, a graphic or photographic reproduction of the design from the application as prescribed by Article 28 paragraph 1.3 of this Law.

5. If the holder of the industrial design fails to comply with the invitation referred to in paragraph 4. of this Article or if the maintenance fee for the first five (5) year period of industrial design protection has not been paid, the industrial design shall be deemed from the outset not to have had legal effects.

6. In the case of the multiple applications to Article 29 of this law, provisions referred to paragraph 1. and 3 of this Article may also apply only to some of the designs included in that application.

Article 46 **Certificate of the industrial design**

1. At the request of an industrial design holder and after the payment of the required fee, the Office shall issue a certificate to the industrial design holder.

2. Content of the certificate is defined by sub-legal act.

CHAPTER VIII **SCOPE AND TERM OF DESIGN PROTECTION**

Article 47 **Volume of protection**

1. The scope of protection conferred by an industrial design shall include any design which does not produce a different overall impression on the informed user.

2. In assessing the scope of the protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

Article 48 **Term of protection**

1. Protection of the industrial design lasts for five (5) years, counting from the date of the filing of the application for industrial design.

2. Protection of the industrial design may be extended for the additional period of five (5) years, for a total period of twenty-five (25) years, counting from the date of filing of the application.

Article 49 **Renewal of registration**

1. The holder of the industrial design claiming renewal of the protection, during last year of validity or latest six (6) months after the expiry of the period of validity, shall submit to the Office the renewal request for protection of the industrial design and pay the additional fee.

2. The new period of protection begins on the date of expiry of the previous period of protection.

3. The registration of renewal for protection of industrial design shall be published in the Office bulletin.

4. The contents of the request for renewal of industrial design shall be defined by sub-legal act.

Article 50 **Review of the Office decisions**

1. Complaint against office decision shall be permitted within the time limit of fifteen (15) days from the day of decision was received.

2. The complaint shall be address to the review commission which within the time limit of thirty days (30) from the receipt of the complaint shall decide concerning complaint and inform the party.

3. Commission for review of the complaints shall be established by the decision of the Minister.

4. Against decisions of the commission a sue may be submitted at competent court within the time limit of thirty days (30).
5. Competencies, mandate and work of the commission shall be regulated by bylaws.

CHAPTER IX

VALIDITY EXPIRATION AND ANNULMENT OF THE INDUSTRIAL DESIGN

Article 51

Validity expiration of the industrial design

1. Industrial design shall ceases being valid in the following cases:
 - 1.1. on expiry of the validity period of the industrial design as referred to in Article 49 of this Law;
 - 1.2. on the basis of the declaration by the holder on surrender of the design which shall not be valid from the date of filing written declaration of the surrender at the Office.
2. The cease of the validity of the design shall be registered in the register and published in the Office bulletin.

Article 52

Design surrender

1. The surrender of an industrial design shall be declared to the Office in writing by the right holder. The declaration shall not have legal effects after being registered in the register.
2. If an industrial design which is subject to deferment of publication is surrendered, it shall be deemed from the outset not to have had the effects specified in this Law.
3. An industrial design may be partially surrendered provided that its amended form complies with the requirements for protection and the identity of the design is retained.
4. If the license has been registered, surrender shall be entered in the register only if the right holder of the industrial design proves that he has informed the licensee of his intention to surrender.

5. If an action pursuant to Article 71 of this Law relating to the entitlement to an industrial design has been brought before a competent court, the Office shall not enter the surrender in the register without the agreement of the claimant.

Article 53

Full or partial annulment of the registered industrial design

1. The Office, through a decision, fully or partially annuls the registered industrial design if:

1.1. the design is not in accordance with Article 3, paragraph 1 and sub-paragraph 1.4 of this law;

1.2. the design does not meet the requirements under Articles 5, 6, 7, 8, 9 and 10 of this law;

1.3. the applicant or holder of the registered design is not its holder;

1.4. the design is in conflict with a prior design which was made available to public after the date of application or in cases when the priority is claimed, after the received priority date, the design shall be protected from the date which existed before the registration of design or before invoke for such a right;

1.5. any distinction sign is used in the next design, and the right holder of this distinctive sign has the right to prohibit such use;

1.6. if the design constitutes an unauthorized use of a work protected under the copyright law;

1.7. if the design constitutes an unauthorized use of any of the items listed in Article 6b of the Paris Convention, or of badges, emblems and escutcheons other than those covered by Article 6b of the said Convention which are of particular public interest in the Republic of Kosovo.

2. In cases when the industrial design is partially canceled, may be maintained in the amended form, if that form is in accordance with the requirements for protection and if design identity is retained.

3. After the endorsement of the annulment decision, the Office declares the industrial design invalid.

Article 54
Design annulment request

1. The request for annulment of the design according to Article 53 of this law may be submitted in written to the Office.
2. Request for annulment of the design may be submitted during the protection period. The request may be filed even after the termination of effect of the design, if the applicant evidences that the procedures for justification of the violation of the right of design have been initiated, or if applicant has initiated the court procedure to prove that he has not, in any case, infringed the rights of industrial design.
3. Application received according to paragraph 1. of this Article, shall not be reviewed until the respective fee has been paid.
4. Contents of the request for annulment shall be defined by sub-legal act.
5. Reasons for annulment of the industrial design, defined by Article 53 paragraph 1. sub-paragraph 1.3. and 1.5. of this law may be requested only by the owner of the design.
6. Causes for annulment of the industrial design, defined by Article 53 paragraph 1. sub-paragraph 1.4. of this law, may be invoked only by the applicant or the holder of the right of priority in the conflict.
7. Causes for annulment on of the industrial design, defined by Article 53 paragraph 1. sub-paragraph 1.6. of this law, may be invoked only by the person whose rights have been infringed.
8. Except cases defined in the provisions set out in paragraphs 5., 6., 7. of this Article, the request for the declaration of invalidity of an industrial design may be invoked by any natural or legal person.

Article 55
Review of the design annulment request

1. The Office reviews the application for annulment of the design.
2. If the Office finds that the application for a declaration of invalidity is admissible, the Office shall examine whether the causes for invalidity referred to in the application prejudice the maintenance of the industrial design.
3. In the examination of the application the Office shall invite the parties, to file information regarding the request within sixty (60) days from the day of receiving written invitation.

4. Upon request of the applicant, the time limit referred to in paragraph 3. of this Article may be extended for a maximum sixty (60) days, after payment of the respective fee.

5. In cases when the Office assesses that the requirements for annulment of the design are not met in accordance with Article 53 of this law, then the Office through a decision, rejects the request for annulment of the design.

Article 56

Joining the requests for the proceedings of design annulment

1. In the event of an application for a declaration of invalidity of a registered industrial design being filed during the protection period, and as long as no final decision has been taken by the Office, any third party who proves that proceedings for infringement of the same design have been instituted against him may be joined as a party in the invalidity proceedings on request submitted to the Office.

2. Joining of the parties in the procedure in accordance with paragraph 1 of this Article shall also apply in cases to any third party who proves that the right holder of the industrial design has requested that he cease an alleged infringement of the design and that he has instituted proceedings that he is not infringing the industrial design.

3. Joint request of the parties shall be submitted in written and shall include causes of the request. The request shall not be reviewed until the specified fee in Article 54 paragraph 3. of this law has been paid.

Article 57

Legal effects of the annulment

If the industrial design is annulled or is declared invalid, all legal effects of the registration of the design are invalid.

CHAPTER X

INTERNATIONAL REGISTRATION

Article 58

International registration of the industrial design

1. The international registration of industrial designs shall be carried out in accordance with the provisions of the Hague Agreement.

2. The applications for international registration of industrial designs shall be filed directly to the International Bureau.

3. All the fees payable for the international registration of industrial designs shall be paid directly to the International Bureau.

4. In accordance with the provisions of the Hague Agreement, the provisions of this Law shall apply to the requests for extension of the effects of the international registration to the Republic of Kosovo, with the exclusion of Articles 40 and 41 of this Law.

5. In respect to the requests for extensions from paragraph 4 of this Article, the term from Article 42 paragraph 4 of this law shall be replaced by the period of four (4) months.

CHAPTER XI COMMUNITY DESIGN

Article 59 Effects of community design

The effects of applications for Community Design filed and Community design acquired before the date of accession of the Republic of Kosovo to the European Union shall extend to the Republic of Kosovo.

Article 60 Community design as an earlier design

Within the meaning of Articles 6, 7, 8 and 53 of this Law, applications for the registration of Community Designs as well as Protected Community Designs shall be considered as earlier designs in relation to the national design applications filed, and national designs registered upon such applications after the accession of the Republic of Kosovo to the European Union.

Article 61 Forwarding an application for a community design

Application for community design shall be presented to the Office, in accordance with Article 32 paragraph 2. of the regulation for community design, after relevant fees are paid.

Article 62
Prohibition of usage of community design

If the use of a Community Design referred to in Article 59 of this Law conflicts with the use of a national design acquired before the accession of the Republic of Kosovo to the European Union, or of a national design application filed before the accession of the Republic of Kosovo to the European Union, the holder of such national design may institute a legal action, claiming prohibition of the use of the Community Design in the Republic of Kosovo and extended to the territory of the Republic of Kosovo. The plaintiff has to prove that the Community Design conflicts with his/her national design.

Article 63
Protection of Community design

1. In case of community design infringement of rights provisions for protection of national design will be applied.
2. For all cases of infringements of the rights for the community design the competent Court for national design shall decide.

CHAPTER XII
CIVIL-LEGAL DESIGN PROTECTION AND IMPLEMENTATION OF THE RIGHTS

Article 64
Competent court for industrial design

For all of the infringements cases of industrial design rights, the competent court shall decide in accordance with legal provisions in force.

Article 65
Persons who have the right to claim for design rights protection

In case of infringement of the design rights according to this law, the holder of the design and exclusive person or holder of the license has the right to proceed with the indictment according to the contract or holder of the design right.

Article 66

Claim for declaration of and claim for termination of the infringement of design

1. The holder of an industrial design may institute a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Law.
2. The holder of an industrial design may institute a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Law, claiming termination of the infringement and prohibition of such and similar future infringements.
3. The holder of an industrial design may institute a legal action against a person who has by performing any of the acts without authorization, caused a serious threat that his industrial design might be infringed, claiming termination of the acts concerned and prohibition of the infringement of the industrial design.
4. The legal action referred to in paragraphs 1., 2. and 3. of this Article may also be instituted against a person who in the course of his/her business activity renders services used in the acts infringing an industrial design or from which infringement of an industrial design may follow.

Article 67

Claim for seizure and destruction of products

1. The holder of an industrial design may institute a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Law, claiming that the Articles infringing the industrial design be removed from the market, seized or destroyed at the expense of that person.
2. The court shall order the measures referred to in paragraph 1. of this Article at the expense of the defendant, unless there are special reasons for not deciding so.

Article 68

The claim for damage compensation

1. The holder of an industrial design may take a legal action against a person who has caused him damages by performing without authorization any of the acts referred to in Article 17 of this law, claiming compensation of damages.
2. The holder of an industrial design may institute a legal action against a person who has performed without authorization any of the acts referred to in Article 17 of this law,

claiming payment of remuneration in the amount that he/she would have claimed in the license agreement, if concluded.

3. The holder of an industrial design may take a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this law, without having basis for it in any legal transaction, claiming the return or compensation.

4. The claims referred to in paragraphs 1., 2. and 3. of this Article shall not be mutually excluding.

Article 69

Claim for publication of the judgment

1. The holder of the design may claim that the court decision which confirms complete or partial infringement of the design rights, to be published in public media, at the expense of the defendant.

2. The court shall decide, within the limits of the claim, on the means of the public communication where the judgment shall be published, and whether it shall be published entirely or partially.

Article 70

Claim for information

1. The owner of industrial design, who has begun proceedings to protect the design in cases of violation, may claim the provision of information on the origin and distribution channels of the goods infringing his/her industrial design.

2. The claim referred to in paragraph 1. of this Article may be submitted in the form of a legal action or a provisional measure against:

2.1. a person who has been sued in the civil proceedings referred to in paragraph 1. of this Article;

2.2. a person who is within her/his business activities in possession of the goods suspected of infringing an industrial design;

2.3. a person who provides within her/his business activities services suspected of infringing an industrial design;

2.4. persons who provide within their business activities services used in the activities suspected of infringing an industrial design;

- 2.5. a person who is indicated by any of the mentioned persons as being involved in the manufacture or distribution of the goods or the provision of the services suspected of infringing an industrial design.
3. The claim for information on the origin and distribution channels of the goods and services referred to in paragraph 1. of this Article may include in particular:
- 3.1. information on the names and addresses of the producers, distributors, suppliers and other previous holders of the goods and providers of the services, respectively, as well as the intended wholesalers and retailers;
- 3.2. information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services concerned;
4. If mentioned person refuses to provide information without convincing reason, he/ she is responsible for caused damage pursuant to legal provisions in force.
5. The provisions of this Article shall not apply for the use of confidential information.
6. The provisions of this Article shall not apply for preserving and providing evidences as referred to Articles 73 and 74 of this law.

Article 71

Request for transferring the design rights through the Court

1. If the design application is filed by an unauthorized person or is registered in the register on the name of the person in conflicting provisions in Articles 11, 12, 13 and 14 of this Law, the authorized person may institute at the court a claim for transfer of the industrial design, or to require registration of it in the register as designer in accordance with Article 15 of this Law.
2. A person authorized as referred in paragraph 1. of this Article may initiate the procedure at the court for transfer of design, throughout the duration of design protection.
3. The court informs the Office for decision of transfer, in order to enter it in the register and to publish it.
4. If the design is transferred through a court decision, license and other rights that are in favor of third parties cease on the day of entry of transfer in the register.
5. If before registration of transfer of design through a court, the holder of unauthorized design or licensees have used the design or made preparations to use it in good faith, the court may recognize them the right non exclusive use after the following request submitted to the court no later than three (3) months from the date of registration of transfer.

Article 72
Interim actions in case of violation of design

1. On request of the holder of design, who evidences that his design has been infringed or attempted to be infringed, the court may order temporary actions in order to stop or prevent infringements and, in particular:

1.1. to order the alleged infringer to terminate the actions of infringements of industrial design, to issue such orders against the infringer whose services used by a third parties may be infringing the design;

1.2. to order the seizure or removal from the market of products which infringe the design.

2. On request of holder of the design, who evidences that its design has been infringed in any business activities in order to gain material benefits and such infringements may have caused him irreparable damage or hard reparable, the court, except interim actions mentioned in paragraph 1. of this Article, shall order the confiscation of movable and immovable property of opposing party, which is not directly related to the infringement, including the blocking of his/her bank account.

3. For the purpose of assignment and execution of interim measures under paragraph 2. of this Article, the court requires from the opposing party or third parties, statement of banking information, financial and other economic information, or setting available information and other documents related to. The court provides protection of confidentiality of such information and prevents misuse.

4. Interim measures under paragraph 1. of this Article can be ordered without informing the opposing party if the claimant shows that other measures would not be effective, or there is a risk of causing irreparable damage or hard recoverable. Interim measures under paragraph 2. of this Article can be ordered without informing the opposing party, if the applicant for the measure, proves that it would not be effective or, given the circumstances of the case, it would be necessary.

5. In the decision on interim measure, the court determines the duration of such measure and a measure if ordered before starting the procedure, within the period where the applicant of the measure initiates proceedings to justify the measure, within twenty (20) working days and not longer than thirty one (31) calendar days from the date of pronouncement of the interim measure.

Article 73
Interim measures for preserving evidence

1. At the request of the owner of the design, who claims that it has been violated the right of design, or exists the threat to be broken and there is a possibility that evidence of such

violation or respective threat cannot be or become difficult to handle, the court orders to take temporary measures to preserve evidence.

2. Through interim measures under paragraph 1. of this Article, the court orders:

2.1. a detailed description of products and services that may violate design with or without sampling;

2.2. seizure of products that threat to violate design;

2.3. confiscating the materials and tools used in production and distribution of products that may violate design and documentation that has to do with it.

3. Interim measures specified in paragraph 1. of this Article can be ordered without informing the opposing party, if the applicant for taking the measure states that there is a risk that the evidence may be destroyed or that can cause irreparable damage hard reparable.

4. In a decision ordering interim measure, the court determines the duration of the measure even if the procedure is not initiated, in condition that the request is submitted before the deadline less than twenty (20) days and not longer than thirty one (31) calendar days from filing the application.

Article 74

Providing evidence during the proceedings

1. When a party to the proceedings requires proof that belongs to the opposing party, the court invites the opposing party to submit such evidence within a specified time.

2. The owner of the design in a role of the plaintiff, who alleges the violation of design on business is conducted in order to profit and thus presents during the proceedings as evidence of bank documents, financial or commercial documents or other evidence to confirm that they belong opposing party, the court invites the opposing party to submit such evidence within a specified time.

3. If the party invited to present testimony, refuses that evidences belong to them or their control, the court may take the evidences to prove such a fact.

Article 75

Expeditious proceedings

1. A legal action concerning the infringement of an industrial design shall be subject to expeditious proceedings.

2. Upon the request of the court or any of the parties to the proceedings concerning the infringement of an industrial design, the Office shall subject a request for the declaration of invalidity of the industrial design, filed before or in the course of the civil action, to the expeditious proceedings. The court shall, taking into consideration the circumstances of the case, decide the termination of the proceedings up to the final decision.

CHAPTER XIII REPRESENTATION

Article 76 Representation by authorized representatives

1. Natural or legal persons who have residence or business headquarters in the Republic of Kosovo may apply their rights according to this law through authorized representatives who are registered in the register of representatives, maintained by the office.
2. Natural or legal persons who do not have permanent residency or business office in the Republic of Kosovo may apply their rights according to this Law through proceedings at the Office only by authorized representatives, registered in the representatives register maintained by the Office.

Article 77 Authorized Representatives

1. Representation of natural or legal persons at the Office may only be done by the authorized representative, registered in the register maintained by the Office.
2. The Office shall register and unregistered persons from the register of the Authorized Representatives if such persons meet or do not meet requirements defined by sub-legal act.

Article 78 Scope of authorized representatives

1. An authorized representative of industrial design may be represented natural or legal person at the Office based on authorization issued by natural or legal person.
2. Authorization may be issued for one or more, existing or future, applications or industrial design registered.

3. Authorization for all applications and industrial design registrations for a natural and legal person shall be considered as general authorization.

4. Authorization may be limited only for some defined actions undertaken at the office.

5. If cases of surrender from industrial design authorization shall contain clearly claims mentioned by the holder of the design.

Article 79 **Withdrawal of the authorization**

1. Holder of the design may withdraw the given authorization to design representative at any time.

2. After informing the Office about the change of representation, the Office shall continue to communicate with the new design representative or directly with holder of the design.

3. Holder of the design, who has issued two or more authorization to various representatives for the same design, the last authorization shall be valid.

Article 80 **Submitting the authorization**

1. An industrial design representative that claims to be authorized to represent a natural or legal person at the Office, but does not submit the authorization at the Office to document, shall be invited to submit a valid authorization within sixty (60) days from the date of the receipt of the invitation.

2. Upon request of the industrial design representative, the time limit may be extended for a maximum of sixty (60) days from the date of expiration of that time limit referred in paragraph 1 of this Article.

3. If industrial design representative does not submit valid authorization at the Office within time limit and acts in his name, the action undertaken by the representative shall be deemed not to be done at all.

CHAPTER XIV PENALTY PROVISIONS

Article 81 Penalty provisions

1. A fine from € five thousand (5,000) to € eight thousand (8,000) shall be applied to legal person, who during business activity in every form uses the products or services by infringing the rights defined in Article 17 of this law.
2. A fine of € two thousand (2,000) to € three thousand (3,000) shall be applied to responsible person of legal person according to paragraph 1 of this Article.
3. A fine of € three thousand (3,000) up to € four thousand (4,000) shall be applied to natural person who during business activity in every form uses the products or services by infringing the rights defined in Article 17 of this law.
4. In cases when the design is used conflicting provisions of this law, allegedly a criminal act has been committed, the provisions of the Criminal Code of Kosovo shall be applied.

CHAPTER XV FINAL AND TRANSITIONAL PROVISIONS

Article 82 Transitional provisions

1. Article 58 of this law shall apply from the date of signing Hague Agreement by the Republic of Kosovo, and as Republic of Kosovo enters European Union Article 59, 60, 61, 62 and 63 of this law shall apply from the date of accession.
2. For the whole registration procedures of industrial designs that have started before the day this law enters into force, for which the Office has not begun examination, procedures related to annulment or abrogation of design and procedures related to applications for registration of industrial designs revalidated provisions of this law are applied.
3. In Article 8 paragraph 1 of this Law, the words “territory of the Republic of Kosovo” shall be replaced by the words “European Union, on the day of the accession of the Republic of Kosovo in the European Union.

4. Ministry of Trade and Industry shall issue sub-legal acts for implementation of this law, in terms of twelve (12) months, from entrance into force of this law.

Article 83
Abolishment provisions

Upon entry into force of this Law, the law Nr.02/L-45 "On Industrial Design" and other acts in conflict with this law shall be abolished.

Article 84
Entry into force

This law enters into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

Law No. 04/L-028
29 July 2011

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI