Organization for Democracy, Anti-corruption and Dignity - Wake up!

Input for Progress Report 2014

Fight against Corruption and Organized Crime

Authors: Lorik Bajrami and Arton Demhasaj

Initiated and supported by the Kosovo Foundation for Open Society within the project

"The Civil Society and the Progress Report 2014"

June 2014

Prishtina, Kosovo

This study has been developed byOrganization for Democracy, Anti-corruption and Dignity - Wake up! and supported by the Kosovo Foundation for Open Society (KFOS). The opinions expressed do not necessarily represent the opinions of the Foundation.

For more information:

www.cohu.org

www.kfos.org

Foreword

The Kosovo Foundation for Open Society has supported Kosovo's European integration process since 2006, when it founded the European Integration and Good Governance program. Since then, the Foundation has constantly supported the non-governmental organizations' engagement in the process with their analysis, monitoring of policy developments, public discussions, and advocacy processes. The support has resulted in numerous analyses through the years and acquisition of essential knowledge and expertise over the processes by Kosovo's civil society organizations. Hence, in joint effort with a number of organizations already active in certain segments of integration process, the Foundation initiated the project "Civil Society for the Progress Report 2014" through which it offered the organizations an opportunity to channel their contribution to the upcoming Progress Report and the current Stabilization and Association Process Dialogue through focused and well-informed analysis, built on their multi-year experience and engagement.

Each analysis produced within the project addresses a specific segment of the current dialogue between Kosovo and the European Union, informing about the current situation, from the civil society's point of view, followed by the recommendations on the needed improved performance.

We hope that this exercise has produced will be of value not only to Kosovo's civil society organizations for further amplification of their voice within the integration process, but also to the European Union and the Government of Republic of Kosovo towards building of a standing cooperation with this segment of the state-building process. Ultimately, we hope that as a result of all the stakeholders' engagement, Kosovo's European integration process will accelerate, overcoming all the political barriers that stand on our way to this destination.

Iliriana Kaçaniku

European Integration and Good Governance Program

Contents

Below, Organization for Democracy, Anti-corruption and Dignity – ÇOHU! will outline her contribution to the EC Progress Report for the year 2014. ÇOHU!'s contribution covers the developments within the reporting time frame, starting from October 2013 until the end of June 2014.

Our contribution will focus on improving anti-corruption and fight against organized crime legislation, with an exclusive emphasis on:

a) Declaration of assets;
b) Conflict of interest, and;
c) Asset confiscation.

Especially, ÇOHU!'s contribution is framed within sections of the Progress Report:

i) **Section: 2. Political criteria; 2.1 Democracy and rule of law; Fight against corruption, and;**
ii) **Section: 4.3. Justice, freedom and security; 4.3.5. Fighting organized crime and terrorism**

INTRODUCTION:

Anti-corruption and organized crime legislation has improved in considerable aspects in recent years. Nonetheless, ambiguities, loopholes but also challenges concerning the stipulated objectives in preventing and fighting corruption and organized crime still remain requiring prompt and thorough respond. Since 2013, several amendments were introduced in the Criminal Code of the Republic of Kosovo (CCRK), as regards some aspects of anti-corruption and organized crime legislation. In some respect, these changes to the CCRK have brought some improvements in preventing corruption, as is the case with substantial decrease of officials that refuse to declare assets, due to the penalization of this act. However, aspects related to the mandate and capacities of Anti-corruption Agency (ACA) as regards investigating *origin*of the wealth and possibilities for extensive verification of the *declared assets*, but also improvements within the sphere of conflict of interest and asset confiscation, require immediate improvements if any tangible and qualitative impact is to be noticed.

In general, three features have accompanied the overall process of anti-corruption institutional and legal building.[1]*First*, since the inception of anti-corruption institutional and legal building in 2004, until the recent initiatives in 2014, which were intend at amending asset declaration and conflict of interest laws aiming their alignment with the CCRK, the overall process has never been preceded by a preliminary comprehensive and in-depth analysis on the overall legal and institutional anti-corruption framework, but also on research on the dynamics and nature of corruption. *Second*, the overall process of anti-corruption legal and institutional framework building has never been revised in package, expect in 2010, when Kosovo's authorities undertook an initiative to amend three basic laws against corruption.[2]*Third*, as a consequence of the above stated errors in approach and methodology, several provisions in anti-corruption laws are in some respect in direct collision with Criminal Procedure Code (CPC), or lack systemization\harmonization or clarification with it.

However, a noteworthy characteristics such as the lack of political will and genuine domestic engagement of political spectrum combined with the lack of

[1] Organization for Democracy, Anti-corruption and Dignity, ÇOHU!; Policy Analysis – Legal Framework against Corruption - Drawbacks and the need to review; page 2-3. December 2011. http://www.cohu.org/repository/docs/Anti-corruption_Legal_Framework-English_818330.pdf

[2] Ibid; page 1.

institutional capacities have distinguished the overall endeavor as regards building effective anti-corruption institutions and enacting adequate laws against corruption and organized crime.[3]

1) Section 2. Political criteria; 2.1 Democracy and rule of law; Fight against corruption:

a) Law On Declaration, Origin And Control Of Property Of Senior Public Officials And On Declaration, Origin And Control Of Gifts Of All Public Officials (No. 04/L-050) (herein, Law on Declaration of Assets)

Current state:

The obligation to declare assets by higher public official was for the first time introduced in 2010. As of January 2013, "failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations", according to the CCRK, is considered a penal act. The decision to criminalize 'failure to report', and 'falsely reporting' assets in general, is one of the most essential progresses in the anti-corruption legislation.

As a direct result of penalizing 'failure to report' assets by higher public officials, the number of those that refuse to abide by the rule has decreased substantially. In 2012, when refusal to report assets by higher public officials was not a criminal act, the number of those that refused to comply with the obligation was 261, whereas in 2013 and 2014, the number decreased substantially in 35, respectively in 2 official that recused to declare assets.

The requirement derived from the conclusions of 28-30 January of Stabilization and Association Process Dialogue (SAPD), as regards adopting amendments to the Law on Declaration of Assets, aiming at aligning the law with changes in CCRK, have been approved by the Assembly.[4]

[3] Kosovo Foundation for Open Society – KFOS; and Organization for Democracy, Anti-corruption and Dignity, ÇOHU!; "Culture of Impunity"; page 27. http://kfos.org/wp-content/uploads/2014/04/Culture-of-Impunity-in-Kosovo-ENG.pdf

[4] See amendments under article 17 in the Law Declaration of Assets and Gifts of Public Officialsapproved by Kosovo Assembly on March 20 2014. http://www.assembly-kosova.org/common/docs/ligjet/04-L-228%20a.pdf

Challenges:

According to the conclusions of SAPD process, in the section 2: Fight against corruption, ACA is called forth to audit the declared wealth.

Despite the fact that the number of higher official that refuse to report assets has decreased in the last two years, verification of the **a)** origin of the declared assets; and **b)** genuineness of the declared content(assets), is impossible due to the constrained mandate of the Anti-corruption Agency (ACA), but also the lack of mechanisms in its disposal.

Based on the mandate on the ACA, that stems from the Law on Anti-corruption Agency,[5] dispositions of the Law on Declaration of Assets and Gifts of Public Officials, but also dispositions in the Criminal Code, Anti-Corruption Agency has no legal power to conduct thorough and meaningful investigations neither on the origin of the assets, nor to undertakeextensive verification of the accuracy of information provided in the asset register.

For instance, in one aspect, article 16, section 2 and 3,[6] of the Law on Declaration of Assets, obliges natural and legal persons and specifically, obliges banks and other institutions exercising banking and financial activities in Kosovo, to provide data ACA related to deposits, accounts and other transactions carried out by persons, who according to this Law, are obliged to declare their property. However, this article is in direct conflict with the article 84[7] and 91[8] of CPC, which annuls the right of the ACA to ask information from banks and other institutions exercising banking and financial activities.

---

[5] Law on the Anti-corruption Agency http://gzk.rks-gov.net/ActDetail.aspx?ActID=2662

[6] Law on Declaration of Assets; Article 16; Obligation to provide data;

2) While controlling and verifying data contained in property declaration forms, Agency may request or use data from all natural and legal persons, in compliance with the Law on Protection of Personal Data.

3) Upon the request of Agency, Banks and other institutions exercising banking and financial activities in Kosovo, are obliged to provide data related to deposits, accounts and other transactions carried out by persons, who according to this Law, are obliged to declare their property.

4) Institutions mentioned under paragraphs 1 and 2 of this Article, are obliged to make available all requested data within fifteen (15) days from day when written request of Agency is submitted.

http://gzk.rks-gov.net/ActDetail.aspx?ActID=2767

[7] Criminal Procedure Code (CPC); 3. GATHERING OF INFORMATION; Article 84; Measures Taken Prior to Criminal Proceedings

Having in mind that ACA is powerless in obliging banks and other financial institutions in providing information related to deposits, accounts and other transactions, significantly constrains Agency's capacity to thoroughly verify\audit the declared wealth.

Especially, the problem of comprehensive investigation as regards the origin of the declared wealth aggravates when it comes to investigatingit. Although the Law on Declaration of Assets provides ACA with the mandate to carry out controls in order to verify the origin of the declared wealth,[9] and asset register contains a column where officials are obliged to provide information on the origin of the declared wealth, nonetheless, there have been no single evidence

---

1) If the state prosecutor has grounded suspicion that a criminal offence listed in Article 90 of this Code has been committed, is being committed or will soon be committed, the state prosecutor may authorize or request the pretrial judge to authorize covert or technical investigative measures in accordance with Articles 86-100 of this Code.
2) The state prosecutor or pretrial judge does not need to have a reasonable suspicion of the identity of the suspect or suspects who committed, are committing or will soon commit the criminal offence in order to authorize covert or technical investigative measures in accordance with paragraph 1 of this Article.
3) If the authorization for covert or technical investigative measures is based, in whole or in part, on grounded suspicion provided by information from an informant, witness or cooperative witness, the state prosecutor may interview the informant, witness or cooperative witness.
4) A criminal proceeding does not need to have been initiated for the state prosecutor or pretrial judge to authorize covert or technical investigative measures in accordance with paragraph 1 of this Article; however, a criminal proceeding shall be initiated as soon as the state prosecutor has a reasonable suspicion of the identity of the suspect or suspects who committed the criminal offence.
5) If covert or technical investigative measures are authorized in accordance with paragraph 1 of this Article, the state prosecutor shall take reasonable precautions to preserve the privacy of people who are not involved with the criminal offence.
6) If a criminal proceeding is authorized after covert or technical investigative measures were taken under paragraph 1 of this Article, the state prosecutor shall include the orders for the covert or technical investigative measures and the resulting evidence in the file for the criminal proceeding.
7)If a state prosecutor does not authorize a criminal proceeding after covert or technical investigative measures were taken under paragraph 1 of this Article, the state prosecutor shall report the measures taken to the pre-trial judge.
[8] Ibid; Article 91; Persons Competent to Apply for and Order Covert and Technical Measures of Surveillance and Investigation.
[9] Law on Declaration of Assets; Article 16; Obligation to provide data;
1) Agency requests the declaration of property and of the property origin and may carry out controls in order to verify the accuracy of such declarations.

that ACA has undertaken any investigation concerning the origin of declared wealth.[10] In some respect, ACA is legally constrained, but also lack institutional capacities to conduct a wholesome investigation in the origin of the declared wealth.

Recommendations:

- Conduct a thorough and detailed analysis on the loopholes and ambiguities on the Law on Declaration of Assets.
- Amend the CCRK, CPC, and Law on Declaration of Assets as regards the mandate of ACA to investigate the o*rigin of declared wealth;* and extend competencies of ACA as regards *verifying correctness of the information* provided in the asset declaration.
- Clearly define the ***role*** and ***mandate*** of ACA, as regards its competencies in investigating the wealth of higher public officials.

b) Law On Prevention Of Conflict Of Interest In Discharge Of Public Functions (No. 04/L-051) (herein, Law on Prevention of Conflict of Interest)

Current state:

Regulation of the conflict of interest with reference to discharging public functions is the most complex and least regulated aspect in the overall efforts against corruption. European Commission in SAPD's conclusions of the dates 28-30 January 2014, requires from the Assembly to adopt amendments to the Law on Prevention of Conflict of Interest, which aim to ensure alignment with the Criminal Code. Nevertheless, several problematic aspects of conflict of interest that have occurred during law implementation have not been addressed neither in the Progress Report of 2013, nor in the conclusions of SAPD.

[10] See ACA Annual Reports. http://www.akk-ks.org/?cid=1,16

Since 2013, Kosovo authorities amended CCRK, which foresees penalization of the conflict of interest,[11] a notable and necessary improvement in anti-corruption legislation. Nonetheless, ambiguities and loopholes still persist and are ubiquitous.

Challenges:

The first challenge as regards alignment of the Law on Prevention of Conflict of Interest with the Criminal Code, correspondent with consolidation of the new Assembly and its capacities to approve changes in the draft law prior to the publication of the Progress Report.[12]

Law on Prevention of Conflict of Interest clearly states in article 1 that: "the purpose of this law is to prevent the conflict between **public interest** and **private interest** of senior officials in discharge of public functions".[13] During the course of law implementation, ACA has brought numerous decision to prevent conflict of interest not only in cases with clear delineation of public sphere and private one, but also for those cases involving public sphere only.[14] Expositions of the conflict of interest between public sphere and private one is more straightforward and rather effortlessly revealed and prevented however, such distinction, during the law implementation,has turned to be rather elusive when conflict of interest is confined strictly within the public sphere. The Law on Preventing Conflict of Interest does not stipulates cases when an official may be in conflict of interest when exercising two public functions, or in what situation(s) conflict of interest may occur within strictly public domain.

In line with the above mentioned argument, the Law on Prevention of Conflict of Interest does not foresees categorization of public functions in relation to the conflict of interest. The Law does not delineates what consist, for example, conflict of interest for a MP, for a minister, or for any other public official that

[11] Criminal Code of the Republic of Kosovo – CCRK; Article 424; Conflict of interest

[12] The overall adjustments in the Law on Prevention of Conflict of Interest as regards its alignment with the CCRK have been introduced by the previous Legislature. It fall upon the newly created Assembly to approve changes to the Law.

[13] Law on Prevention of Conflict of Interest; Article 1; Purpose;

[14] See Anti-corruption Agency decisions regarding prevention of conflict of interest. http://www.akk-ks.org/?cid=1,1170

falls within the scope of the law. In such cases, ACA is left with the possibility to interpret the law, rather than implement it, and in these cases, with the probability to bring different and contradictory decisions for apparently similar cases.[15]

Although CCRK stipulates penal sanctions when an official person participates personally in any official matter in which he or she, a member of the family, has interest(s), it does however not foresees any sanctions related to: 'concealing conflict of interest'; 'refusing to declare conflict of interest'; or, 'false declaration of the conflict of interest'. Moreover, there are different and contradicting definitions provided in the CCRP and in the Law on Prevention of Conflict of Interest when it comes to classifications of: 'members of the family', and 'related persons'. The CCRP clearly stipulates that conflict of interest occurs when: "an official person who participates personally in any official matter in which he or she, *a member of the family*, or any related legal person, has a financial interest', whereas the Law foresees conflict of interest also when involving 'related persons'.[16] The scope of 'members of the family',[17] according

[15] Organization for Democracy, Anti-corruption and Dignity, ÇOHU!; Contradictory verdicts of ACA on conflict of interest; http://www.cohu.org/sq/Reagime-i/Vendime-kontradiktore-t-AKK-s-mbi-konfliktin-e-interesit-120
Kosovo Center for Investigative Journalism – KCIJ; "AKK e zbaton ligjin sipas qejfit"; Besnik Boletini; October, 2012. http://www.preportr.com/sq/Re-publika/AKK-e-zbaton-ligjin-sipas-qejfit-220

[16] Law in Prevention of Conflict of interest in Discharge of Public Functions; Article 3; Definitions;
1.4. **Related person** - spouse, partner living in cohabitation, relatives in the direct blood line without limitations, whereas in the indirect blood line relatives up to the fourth grade, adoptive parents, adopted children, persons in affinity up to the second grade.

[17] CCRP; CHAPTER XIII; MEANING OF TERMS IN THE CRIMINAL CODE; Article 120; Definitions;
23. Domestic relationship - the relationship between two (2) persons:
23.1. who are engaged or married to each other or are co-habiting with each other without marriage;
23.2. who share a primary household in common and who are related by blood, marriage, or adoption or are in
a guardian relationship, including parents, grandparents, children, grandchildren, siblings, aunts, uncles,
nieces, nephews, cousins; or

to the CCRP is rather narrow, compared to the scope of 'related persons', provided in the Law.

Article 8, point 1,[18] demands that the senior official is obliged to personally prevent and solve within legal terms and in a most possible effective way any situation of conflict of interest in which he/she may encounter. However, neither the abovementioned article, nor the law, outline the exact time frame within which senior official must resolve situations of his/her conflict of interest. Additionally, article 8, point 3, requires from each manager and managing institution to take the necessary measures to prevent and solve conflict of interest cases.[19]Again, the Law does not specifies any necessary measures that must be taken, nor the time frame within which these measures must be taken.

Article 15, point 5and 6,[20] prohibit senior official person to establish contracts with or gain assistance from central or local institutions where he/she holds a decision making posts, even in cases when his shares or parts of property are being managed by his/her trusted person, and provides the Agency with the right to request from the competent body to cancel the contract with the

---

23.3. who are the parents of a common child.

33. **Member of the family** - a spouse, parent, adoptive parent, child, adoptive child, sibling, blood relative living in the same home or a person with whom the perpetrator lives in an extra-marital communion.

[18] Law in Prevention of Conflict of interest in Discharge of Public Functions; Article 8; Official's obligation to prevent the conflict of interest;

1) Senior official is obliged to personally prevent and solve within legal terms and in a most possible effective way any situation of his/her conflict of interest.

[19] Ibid; Article 8; Official's obligation to prevent the conflict of interest;

3) Each manager and managing institution should take the necessary measures to prevent and solve conflict of interest cases.

[20] Ibid; Article 15; Incompatibility with the discharge of public functions;

5) Enterprises, where senior official person owns a share or parts of property, which are being managed by his/her trusted person, has no right to establish contracts with or gain assistance from central or local institutions where he/she holds a decision making posts.

6) If a senior official acts in contradiction with paragraph 5. of this Article, Agency should request from the competent body to cancel the contract with the enterprise and return any kind of material assistance gained from the institution where the official person has a decision making post.

enterprise and return any kind of material assistance gained from the institution where the official person has a decision making post. Nevertheless, what happens in those cases where the company, although transferred to a trusted person, gains a contract with the central or local institution where senior official is in decision making position and the contract is fulfilled, but institutions learn over this contract a year after, how can this situation be reversed in its initial stage?

Recommendations:

- A thorough and detailed analysis of the Law on Preventing Conflict of Interest, with a main focus on eliminating ambiguities and loopholes, and defining the scope of its outreach.
- Clarifying situations when conflict of interest can occur within public sector/sphere, but also in relation with private sphere.
- Categorizing\defining conflict of interest as regards positions\functions of senior public officials.
- Undertaking measures to penalize: 'refusal to declare conflict of interest'; 'falsely declaring conflict of interest'; or, 'concealing conflict of interest'.

2) Section 4.3. Justice, freedom and security; 4.3.5. Fighting organized crime and terrorism

a) Law on extended powers for confiscation of assets acquired by criminal offence (no. 04/l-140) (herein, law on asset confiscation)

Current state:

European Council on the conclusions of SAPD of 28-30 January, asks from various institutions (the KP, the KPC, the KJC, and the MoJ) to ensure a more proactive approach in *investigating*, *freezing* and *confiscating* assets. Moreover, conclusions require from the Judiciary to use the possibility to freeze assets in the course of judicial proceedings – well before a verdict is reached.[21]

[21] EU – SAPD conclusions, 28-30 January; 3.3 Confiscation of Assets.

According to the provisions of the CCRK, confiscation of assets can occur only when the material benefit derives from a criminal offence. In such instance, the court can confiscate it only when it establishes a direct link between the committed criminal offence and the acquired wealth.[22]

A limited improvement has been made regarding confiscation of assets acquired through criminal offence by the Law on Extended Powers for Confiscation of Asset Acquired by Criminal Offence. Pertaining to new stipulations on the Law on Confiscation of Assets,[23] the right to initiate the

[22] CCRK; Article 96; Grounds for confiscating material benefits;
1) No person may retain a material benefit acquired by the criminal offense.
2) The material benefit provided for in paragraph 1 of this Article shall be confiscated by the court establishing the criminal offense, according to the terms provided for by law.
Article 97; Conditions and means of confiscating material benefits;
1) Material benefits shall be confiscated from the perpetrator or when confiscation is not possible, the perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired.
2) Material Benefits may be confiscated from the person to whom it has been transferred without compensation or with compensation that does not correspond to the real value, if such person knew or should have known that the material benefit was acquired by the commission of a criminal offense. When the material benefit has been transferred to a member of the family the benefits shall be confiscated from the member of the family unless such member of the family proves that he or she gave compensation for the entire value.

[23] Law on Extended Powers for Confiscation Acquired by Criminal Offence; Aticle 6; Conditions for confiscation of Assets Acquired from a Criminal Activity
1) Within thirty (30) days after a final judgment that a defendant is guilty of a criminal offence under
Chapters XV, XXIII, XXIV, XXV or XXXIV of the Criminal Code and if the state prosecutor may, in a separate request to the single trial judge or presiding trial judge, provide evidence that demonstrates
the grounded cause that:
1.1) the defendant has acquired other assets that have not been material benefits of those criminal offences, for which the defendant has been convicted;
1.2) those other assets were obtained after December 31, 1999;
1.3) the defendant's legitimate income was insufficient to enable the purchase of those other assets;
1.4) the defendant was engaged in a pattern of activity similar to that with which he or she was convicted; and

1.5) the pattern of activity in sub-paragraph 1.4 of this paragraph would enable the purchase of those other assets.
2) If the request by the state prosecutor under paragraph 1 of this Article fails to establish grounded cause as to sub-paragraph 1.1, 1.2 or 1.3 of paragraph 1 of this Article, the Court shall issue a reasoned decision denying the request. Otherwise, the Court shall serve a copy of the request to the defendant.
3) The defendant shall have the right to a defense attorney during any proceedings under this Article.
4) The convicted person shall have thirty (30) days after he or she has been served with a copy of the state prosecutor's request to submit proof that the assets were purchased with legitimate income.
5) For any asset acquired by the convicted person prior to the period of time of the criminal offence for which he or she was convicted, the convicted person may submit evidence that cadastral records or other documents which might prove that the assets were purchased with legitimate income is not available or is not reliable.
6) The single trial judge or trial panel shall hold a hearing which:
6.1) allows the defendant to examine the evidence in support of the state prosecutor's request under paragraph 1 of this Article;
6.2) allows the state prosecutor to examine the evidence submitted by the defendant under paragraph 4 and 5 of this Article;
6.3) the other party shall have the right to demonstrate that he or she is a bone fide purchaser of the asset under Article 5 paragraph 4 of this Law.
7) If the court determines that the assets were acquired due to activity similar to the criminal acts for
which the defendant was convicted, it shall render a reasoned judgment which:
7.1) determines that the assets were acquired within the same period of time as the criminal offences for which the defendant was convicted;
7.2) determines that the defendant's legitimate income was insufficient to purchase those assets;
7.3) determines that the defendant was engaged in a pattern of activity similar to that with which he or she was convicted;
7.4) determines that the pattern of activity would enable the purchase of those assets;
7.5) determines that the defendant had the opportunity to show that the assets were acquired due to legitimate income;
7.6) determines that the defendant has not shown that the assets were acquired due to legitimate income;
7.7) determines that confiscation of the asset would not cause an injustice;
7.8) specifies the type of the assets and its monetary value;
7.9) orders that the asset or property rights to be transferred to the ownership of the Republic of Kosovo or of the injured party, as is appropriate;

procedure of confiscation is given to the state prosecutor, but only after a condemnatory verdict is brought for the suspected person. This means that the wealth can be confiscated even if there is no direct link with the offence that the suspected has been convicted, but the criminal offence must have happened in similar circumstances, or in cases when the possessed wealth cannot be justified. However, the state prosecutor must provide evidence that demonstrate grounded evidences, or the request is denied by the court. Moreover, retroactivity was introduced in the new law, extending the time frame for asset confiscation.[24] Additionally, an instance of putting burden of proof to the convicted person was alike included in the Law on Extended Powers for Confiscation of the Assets.[25] However, the state prosecutor can submit a request for submitting proof(s) that the assets were purchased with legitimate income only after the person had been convicted for a criminal offence and that only under specific articles specified in the CCRP.[26]

7.10) obliges other parties to hand over the assets to the Republic of Kosovo or to the injured party, as is appropriate, if they have not been transferred according to sub-paragraph 7.9 of this paragraph or to pay the monetary value of the asset within fifteen (15) days from the date when the judgment became final; and

7.11) orders that in public registers of the court or other body to be done the respective changes of the property right on behalf of the Republic of Kosovo or the injured party, as it is appropriate.

8. An appeal is permitted against the judgment in paragraph 7 of this Article

[24] Ibid

1.2) those other assets were obtained after December 31, 1999.

[25] Ibid

4) The convicted person shall have thirty (30) days after he or she has been served with a copy of the state prosecutor's request to submit proof that the assets were purchased with legitimate income.

[26] Ibid

1) Within thirty (30) days after a final judgment that a defendant is guilty of a criminal offence under

Chapters XV, XXIII, XXIV, XXV or XXXIV of the Criminal Code and if the state prosecutor may, in a separate request to the single trial judge or presiding trial judge, provide evidence that demonstrates the grounded cause that.

Challenges:

Although the Law on Extended powers of Confiscation has delinked the acquired wealth with the committed offence, nonetheless, in practice, there is no a single case of asset confiscation that is nor intrinsically linked to a criminal offence. Moreover, the direct link between the committed criminal offence and asset confiscation puts burden of proof to the state prosecutor, making the overall endeavor of asset confiscation a rather challenging tasks.

Conclusions of SAPD require freezing of the assets during the course of judicial proceedings - well before a verdict is reached. However, the ground for asset confiscation is the CCRK, the CRC, and the Law on Extended Powers of Asset Confiscation, where in none of them, the term 'freezing of assets' is mentioned, but they refer only to asset confiscation. This means that Kosovo legal infrastructure does not acknowledge the legal institution of *freezing*, but only that of asset confiscation and that only after e final court verdict is brought through which, the defended is found guilty for a criminal offence. After the verdict is brought for a criminal offence, state prosecutor can, within 30 days, initiate a request over the doubtful wealth that the convicted person possesses. This means that no investigation, freezing or confiscation of asset(s) can occur devoid of a court verdict over a criminal offence.

Having in mind that the overall legal infrastructure related to asset confiscation is confined within the criminal spectrum of legislation, it is recommended that efforts to confiscate assets fall within civil proceedings. In this manner, also the burden of proof would fall in the hands of defendants and not on the state prosecutor.

Recommendations:

- Drafting and approving a new law on confiscation on illegal/inexplicable asset.
- Decriminalizing asset confiscation – the possibility that initiation of investigation, freezing and confiscation could be initiated within the civil proceedings without the prerequisite to be linked with criminal proceedings and criminal offence.
- The burden of proof must fall to the defendant(s) - the perpetrator(s) must be obliged to provide proofs on the origin of his\her wealth and all

that wealth that cannot be verified through legitimate means, must be confiscated.

- Introducing legal instruments on freezing, sequestrating and confiscating in the new legal infrastructure.
- Maintaining retroactivity.

ANNEX 1: Comparative table on anti-corruption and organize crime measures

Field of research	Requirements of EU Feasibility Study; EU SAPD conclusions 28-30 January; Progress Report 2013	Measures taken from Kosovo authorities and challenges	Recommendations and measures to be taken.
Declaration of Asset	• ACA to audit the declared wealth.[27] • The Assembly to adopt the amendments to the Law on Declaration of Assets and Gifts of Public Officials, which aims to ensure alignment with the Criminal Code[28]	• Nothing • The amendments to the Law on Declaration of Assets and Giftsof Public Officials, which aims to ensure alignment with the Criminal Code, were adopted by the Assembly on 20 March 2014.	• Conduct a thorough and detailed analysis on the loopholes and ambiguities on the Law on Declaration of Assets. • Amend the Law on Anti-corruption Agency and the Law on Declaration of Assets as regards its mandate to investigate the o*rigin of declared wealth;* and extend competencies of ACA as regards *verifying correctness of the information* provided in the asset register. • Clearly define the ***role***, ***mandate*** and ***means*** of ACA, as regards its competencies in investigating the wealth of higher public officials.

[27] EU- Kosovo Stabilization Association Process Dialogue (SAPD), Conclusions Ref. Ares (2014)393846-18/02/2014.
[28] Ibid

Conflict of interest	• The law on the prevention of conflicts of interest needs relevant reporting obligations since currently conflict of interest cases continue to be largely un-reported[29]. • The Assembly to adopt the amendments to the Law on Prevention of Conflict of Interest, which aims to ensure alignment with the Criminal Code[30]	• Nothing • Nothing	• A thorough and detailed analysis of the Law on Preventing Conflict of Interest, with a main focus on eliminating ambiguities and loopholes, and defining the scope of its outreach. • Clarifying situations when conflict of interest can occur within public sector/sphere, but also in relation with private sphere. • Categorizing\defining conflict of interest as regards positions\functions of senior public officials. • Undertaking measures to penalize: 'refusal to declare conflict of interest'; 'falsely declaring conflict of interest'; or, 'concealing conflict of interest'.
Asset confiscation	• Conduct proactive investigations of inexplicable wealth; and develop and implement a solid system of asset confiscation and management.[31]	• Legal infrastructure to confiscate assets in based on: ➢ Criminal Code of the Republic of Kosovo; ➢ Criminal procedure Code, and;	• Drafting and approving a new law on confiscation on illegal/inexplicable asset. • Decriminalizing asset confiscation – the possibility that initiation of investigation, freezing and confiscation could be initiated within the civil proceedings without the

[29] COMMISSION STAFF WORKING DOCUMENT accompanying the document Commission Communication on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo.10 October 2012.
[30] EU- Kosovo Stabilization Association Process Dialogue (SAPD), Conclusions Ref. Ares (2014)393846-18/02/2014.
[31] Visa liberalization with Kosovo – Roadmap; page 11.

	• The KP, the KPC, the KJC, the MoJ and other relevant stakeholders to ensure a moreproactive approach in investigating, freezing confiscating assets.[32] • The Judiciary to use the possibility to freeze assets in the course of judicial proceedings - well before a verdict is reached.[33]	➢ Law on Extended powers for Confiscation of Assets Acquired by Criminal Offence. • Asset confiscation is intrinsically linked with a committed criminal offence. • In this regard, legal infrastructure does not foresees the judicial institution of '*freezing'.* • Thus, **nothing has been achieve, and can be achieved** as regards freezing of assets within the current legal infrastructure.	prerequisite to be linked with criminal proceedings and criminal offence. • The burden of proof must fall to the defendant(s) - the perpetrator(s) must be obliged to provide proofs on the origin of his\her wealth and all that wealth that cannot be verified through legitimate means, must be confiscated. • Introducing legal instruments on freezing, sequestrating and confiscating in the legal infrastructure. • Maintaining retroactivity.

[32] EU- Kosovo Stabilization Association Process Dialogue (SAPD), Conclusions Ref. Ares (2014)393846-18/02/2014

[33] EU- Kosovo Stabilization Association Process Dialogue (SAPD), Conclusions Ref. Ares (2014)393846-18/02/2014