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(VENICE COMMISSION)

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KOSOVO

DRAFT OPINION

ON THE DRAFT LAW N°08/L-121 ON THE STATE BUREAU FOR VERIFICATION AND CONFISCATION OF UNJUSTIFIED ASSETS

on the basis of comments by

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I. Introduction

1. By letter of 4 March 2022, Mr Glauk Konjufca, President of the Assembly of Kosovo (the national Parliament) requested an Opinion of the Venice Commission on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, (CDL-REF(2022)015; hereinafter “the draft law”).

2. Mr James Hamilton (Former Member for Ireland, Expert), Mr Dan Meridor (Member, Israel) and Ms Angelika Nussberger (Member, Germany) acted as rapporteurs for this Opinion.

3. On 10-11 May 2022, a delegation of the Commission composed of Mr James Hamilton and Mr Dan Meridor, accompanied by Mr Michael Janssen from the Secretariat of the Venice Commission held meetings in Pristina with the President of the Assembly of Kosovo and with representatives of the Legislation Committee of the Assembly, the Ministry of Justice, the Judiciary and the Prosecution Service, the Anti-Corruption Agency and Financial Intelligence Unit, civil society and international organisations represented in Pristina. The Commission is grateful to the Office of the Council of Europe in Pristina for the excellent organisation of this visit.

4. This Opinion was prepared in reliance on the English translation of the draft law provided by the authorities of Kosovo. The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings. [The draft opinion was examined at the meeting of the Sub-Commission on *** on *** 2022]. [Following an exchange of views with ***,] it was adopted by the Venice Commission at its *** Plenary Session (Venice, *** 2022).

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II. Background

6. According to the request letter for an Opinion submitted by the Speaker of Parliament, the draft law is an initiative of the Ministry of Justice for strengthening the rule of law and enhancing the system of confiscation in Kosovo. Given the trend of increasingly acquisitive criminality, the aim of this legal initiative is "to thwart criminality in instances where the traditional criminal confiscation system has been insufficient or unsuccessful." It introduces a new legal instrument, i.e. non-conviction based civil confiscation, as a complementary tool for fighting organised crime and corruption by targeting the financial motive for such actions.[1]

7. The draft law has been prepared on the basis of a Concept paper of the Ministry of Justice of April 2021. That document draws attention to the small number of confiscations executed in Kosovo[2] and notes that the "usual course of action", i.e. confiscation of assets based on a conviction for committing a criminal offence, is often not available to the state prosecutor's office, namely when the latter does not have enough evidence to link the assets of the convicted person to the criminal offence committed, or when the investigation is blocked and as a result the perpetrator manages to escape or distribute his or her assets.

8. It seems that part of the recommendations made by national and international stakeholders on previous versions of the draft law[3] have already been taken into account in the text submitted to the Venice Commission for review. This draft underwent the first hearing in the Assembly plenary and the Venice Commission was asked to assess its compliance with European and international standards.

III. Relevant standards and scope of the opinion

9. The present Opinion takes into account the relevant provisions of the Constitution of Kosovo, the human rights guaranteed in the European Convention on Human Rights (ECHR) and its additional protocols,[4] the rule of law standards developed by the Venice Commission as well as other relevant norms of international law (including those which are not technically binding on Kosovo) such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)[5] and the UN Convention against Corruption (UNCAC).[6] It is also worth having in mind the Financial Action Task Force's 2012 Recommendations (FATF Recommendations), the G8 Best Practice Principles on Tracing, Freezing and Confiscation of Assets (2004), the G8 Best Practices for the Administration of Seized Assets (2005), as well as relevant EU regulations, especially the EU Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property,[7] and Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. Previous Opinions issued by the Venice Commission are also referred to.[8]

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[1] The Law on Extended powers for Confiscation of Assets which entered into force in January 2019 already introduced, under certain conditions, confiscation of assets that are not related to a specific criminal offence for which the defendant has been found guilty. However, that law still requires the existence of a criminal judgment as precondition for such extended confiscation.
[2] According to the Concept paper, in the preceding six years the value of freezes and seizures reached the value of €180 million, while the value of final confiscations amounted to €3.5 million.
[3] In particular, previous versions have been reviewed in the framework of the EU's Legal Review Mechanism and of the EU-CoE Project against Economic Crime in Kosovo ("PECK III").
[4] According to Article 22 of the Kosovo Constitution, the human rights and fundamental freedoms as enshrined in the European Convention on Human Rights (ECHR) are directly applicable under the Constitution of Kosovo and have priority over provisions of domestic law.
[5] See Article 3 §1 and Article 1.d.
[6] See Article 54 §1c.
[7] OJEU, L 68/49, see Article 3 §4.
[8] In particular, the Venice Commission has published a series of Opinions on non-conviction based civil forfeiture in Bulgaria, see: Venice Commission, CDL-AD(2010)010, Interim Opinion on the Draft Act on Forfeiture in favour

10. Some of the provisions of the draft law raise doubts as to their compatibility with minimum standards of human rights and rule of law as will be explained below. It is, however, important to note that there might be relevant data protection problems as well as problems with the administration of the confiscated assets. Neither question is regulated in the draft law; it only contains references to the relevant provisions of other laws (see Articles 17, 61). These issues will thus not be commented upon.

11. This Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses rather on areas that require amendments or improvements than on the positive aspects of the draft law.

IV. Analysis

A. Overview of the contents of the draft law

12. The stated purpose of the draft law is twofold: (1) to establish, organise and determine the powers of the State Bureau for Verification and Confiscation of Unjustified Assets (hereinafter "the Bureau") and (2) to determine the procedure for verification and confiscation of unjustifiably acquired assets of official persons, their family members, politically exposed persons, and third parties (Article 1). The draft law applies to unjustifiably acquired assets for the period such persons exercised their functions on or after 17 February 2008 (the date of Kosovo's declaration of independence); and within ten (10) years from the period when the subjects ceased to exercise those functions (Article 2).

13. Under the draft law, the verification procedure is undertaken by the Bureau which will be established as an "independent and specialised body" (Article 4), with the power to initiate and conduct the procedure for the verification of assets. When the Bureau, during the verification procedure, notices a discrepancy between the incomes and assets exceeding the threshold value of €25.000, the Bureau initiates the court proceedings for civil confiscation, and the court[9] decides on the basis of the civil standard proof of the "balance of probabilities". Priority is however given to criminal confiscation proceedings should they be initiated against the same subject or object.

14. The comprehensive draft law comprising 13 chapters describes the confiscation procedure in detail. It first sets out the legal definitions, defines the organisational structure of the confiscation system with the Bureau and the Oversight Committee and lays out the course of the procedure from the initiation *ex officio* or based on information from outside until the end of the procedure with a judgment to be executed by the court itself. It fixes the powers and responsibilities of the Bureau and its Director General, the preparation of the confiscation procedure and defines the cooperation obligations and the verification procedure. It also sets out in detail the organisation of the hearing before the court as well as ordinary and extraordinary legal remedies. The last chapters of the draft law explain the relationship of the confiscation procedure to criminal procedures and establishes the rules for international legal cooperation.

B. General remarks

15. The Venice Commission notes that the introduction of non-conviction based civil confiscation is meant to be an important measure for fighting organised crime and corruption which is deemed

of the State of illegally acquired Assets of Bulgaria; CDL-AD(2010)019, Second Interim Opinion on the Draft Act on Forfeiture in favour of the State of Criminal Assets of Bulgaria; CDL-AD(2010)030, Final opinion on the third revised draft act on forfeiture in favour of the state of assets acquired through illegal activity of Bulgaria; CDL-AD(2011)023; Opinion on the sixth revised draft act on forfeiture of assets acquired through criminal activity or administrative violations of Bulgaria.

[9] According to Article 3, paragraph 1.3 the first instance court competent to deal with proposals for confiscation submitted by the Bureau is the Basic Court in Pristina, General Department, Civil Division.

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necessary by the authorities under the present circumstances in Kosovo. At the same time, the Commission draws attention to the fact that under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terror, "confiscation" means a "penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property" (Article 1.d). Thus, as a rule, confiscation measures are linked to criminal procedures. In an Opinion on Bulgaria[10] the Venice Commission has, however, observed that there is a recent trend to use non-conviction based civil confiscation proceedings as a means of recovering the proceeds of crime. This is most frequently, although not exclusively, found in common law countries. States with non-conviction based asset seizure include Australia, Ireland, Italy, United States, UK and South Africa. Such systems are in line with recent international standards.[11]

16. The draft law proposes a similar model of civil confiscation for Kosovo: Without having to prove that the acquisition of specific assets is based on criminal activity, it is possible to confiscate them in case the owner is not able to prove their legal origins. In the draft law, confiscation is thus defined as "permanent acquisition of assets ordered by a final decision of the competent court in accordance with the applicable legislation." A link to a criminal procedure is not necessary; on the contrary, the introduction of a criminal procedure is a reason for suspension of the confiscation procedure under the draft law.

17. The European Court of Human Rights (ECtHR) approves confiscation in principle, including non-conviction based confiscation where the general interest is strong enough and where the rights guaranteed under the ECHR are respected.[12] Confiscation is an interference with the right to peaceful enjoyment of possessions (Article 1, Protocol 1 to the ECHR). As long as this measure is preventive in the sense that it prevents the affected party using its property, the Court applies Article 1 §2, Protocol 1 ECHR: The measure will be regarded as justified if it a) is provided by law; b) serves the general interest and c) is proportionate to the aim pursued. In the relevant cases, however, the confiscation was only available for alleged proceeds of criminal activity.

18. In the case of Bulgaria, the Venice Commission has in principle accepted an approach that includes legislation referring to "illegal (i.e. not only criminal) activities", on the condition that the guarantees provided in the ECHR and in the national Constitution were carefully respected.[13] Such an approach may be a valid means to combat organised crime and corruption, to prevent the exploitation of illegally acquired funds and to prevent the use of such funds for further criminal activity. In the context of Kosovo, such a measure might be important for securing the basis for economic development in the country.

19. Yet, the Venice Commission stresses that such a confiscation will, as a rule, create the risk of an infringement of human rights comparable to the one inherent in a criminal trial potentially leading to a punishment. Therefore, the procedural safeguards in civil confiscation procedures are as essential as those in a criminal procedure. Furthermore, the confiscation must be in

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[10] Venice Commission, CDL-AD(2010)010, Interim Opinion on the Draft Act on Forfeiture in favour of the State of Illegally acquired Assets of Bulgaria.

[11] The Fourth FATF Recommendation (2012) calls on states to "consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation […]". See also relevant EU regulations, including Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union: According to Article 4(2), at least where confiscation of instrumentalities and proceeds is not possible due to illness or absconding of the suspected or accused person, "Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial."

[12] See e.g. ECtHR, *Arcuri v. Italy*, Decision of 5 July 2001; ECtHR, *Butler v. UK*, Decision of 27 June 2002.

[13] See Venice Commission, CDL-AD(2010)010, Interim Opinion on the Draft Act on Forfeiture in favour of the State of Illegally acquired Assets of Bulgaria, paragraph 99.

compliance with human rights guarantees such as the right to property (Article 1, Protocol 1 to the ECHR),[14] and with fair trial requirements guaranteed under Article 6§1 of the ECHR.[15] The procedure of confiscation must also be in line with basic rule of law principles.

20. During the meetings in Pristina, practically all the rapporteurs' interlocutors confirmed that corruption is a significant and systemic problem in Kosovo, that the fight against it needs to be enhanced and that the introduction of civil confiscation might be a useful tool for this. However, the rapporteurs gained the clear impression that such a tool alone would not be sufficient to achieve significant progress. Several interlocutors in Pristina argued that the low number of confiscations effected so far under the existing procedures for confiscation following criminal conviction could mainly be explained by defective implementation of the law, rather than deficiencies in the legislation itself. They suggested that measures such as conducting systematic financial investigations, better co-operation and co-ordination between institutions, specific training and improved supervision of the police and prosecution service, prioritising confiscation cases etc. were necessary. The Venice Commission stresses that the proposed new legislation alone cannot be expected to resolve all the problems linked to corruption and needs to be embedded in a broader approach which would include such measures as mentioned above and aimed at enhancing the law enforcement system.

21. It is furthermore questionable whether the establishment of a new body, the Bureau as foreseen in the draft law, would make the fight against corruption indeed more effective – or whether it would rather complicate the whole system which already involves a number of bodies such as the police, the prosecution service, the tax and customs authorities and the Anti-Corruption Agency. Opinions of various stakeholders diverge on that question and the Venice Commission does not have all the information necessary to take a clear position in this respect. That said, it seems obvious that the new verification and confiscation system needs to be combined in some way with the already existing asset declaration system of senior public officials which is in the hands of the Anti-Corruption Agency; it would be most logical to entrust these closely related tools to one single body.[16] There can be no justification for subjecting officials to two different procedures of verification of the same assets,[17] especially in a state the size of Kosovo. As the draft law stands it makes no reference to the Anti-Corruption Agency even though the Agency will be in possession of information vital to the Bureau's work. Either the Bureau will have to duplicate work already done by the Agency or it will have to use the fruits of work for which it has had no responsibility and over which it has had no control. This will create a potential for confusion, unnecessary legal complexity and undoubtedly successful legal challenges. If both bodies are to exist, the functions of the two bodies will have to be dovetailed to avoid duplication and the precise relationship of the two bodies clearly defined.

22. Moreover, it needs to be stressed that such a human-rights sensitive legislation as proposed in the draft law is only acceptable if it is built on an independent mechanism with all the necessary powers and resources to fight effectively against high-level corruption and organised crime. The current draft provisions are insufficient in this regard, as will be detailed further below in the more specific comments.

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[14] See also Article 46 of the Constitution of Kosovo.
[15] See also Article 31 of the Constitution of Kosovo.
[16] Interestingly, the rapporteurs heard during the meetings in Pristina that it was apparently originally intended that the powers and functions contained in the draft law were to have been conferred on the Agency rather than a new Bureau.
[17] The scope of the two asset declaration/verification regimes would not be exactly the same, but in any case all the senior public officials who are already obliged to regularly declare their assets would also be covered by the verification procedure under the draft law. Under the already existing legislation, the Anti-Corruption Agency obtains all the asset declarations of ca. 5000 senior public officials and each year carries out verification of 20% of them on a random basis.

23. The Commission also reiterates the statements made on previous occasions about the importance of formulating the general and public interests, the aim and purpose of such legislation in a precise and exhaustive manner – which would serve as a basis for the proportionality-test to be undertaken by the national courts dealing with cases of confiscation.[18] There are no such provisions in the draft law, which should be complemented accordingly.

24. Another general remark concerns the legislative technique. The draft law contains many details which are not specific to a confiscation procedure, but form part of general procedural law (e.g. assessment of evidence; duty to serve documents on the opposing parties; duty to serve written judgments on the parties). If general procedural norms exist in Kosovo, the Venice Commission recommends referring to them and not repeating all the details in the present special law.

25. Last but not least it might be mentioned that the deadlines fixed in the draft law generally seem to be very short, both for the Bureau and the court,[19] and especially also for the person whose assets are proposed to be seized, as well as the third persons required to provide information. It should be ensured that those deadlines are realistic. This is questionable for example with respect to Article 20.6 according to which the party to the procedure shall be invited to provide evidence and data to justify the origin of the listed assets within thirty days. Another example is Article 43.1 which allows for fifteen days for filing an appeal.

C. Comments on specific provisions of the draft law

1. Chapter I – General provisions

26. Article 3 contains a number of important definitions, some of which would need to be amended.

27. The "first instance court" competent to deal with proposals for confiscation submitted by the Bureau is the Basic Court in Pristina, General Department, Civil Division (paragraph 1.3). It is not clear why all these cases should be concentrated in one single court which is not particularly specialised in these matters. If concentration is deemed indispensable, a specialised court unit in the Basic Court in Pristina should be established to deal with such cases.

28. "Declaration of assets" is defined as a "declaration regarding the status of assets of declaring officers obliged to declare assets and their family members, in accordance with the applicable law on the declaration of assets" (paragraph 1.5). Elsewhere in the draft law there are references to "official persons" rather than "declaring officers" and there appears to be an overlap between these two classes of persons and a third class of "politically exposed persons". It was explained to the rapporteurs that only senior public officials were obliged to submit asset declarations,[20] and the current draft law was meant to cover a broader scope of persons. However, the use of various, partly overlapping concepts should be reconsidered and streamlined.

29. In the definition of "balance of probability" two expressions are used, "possible" and "more likely than not" (paragraph 1.8). The first is a much lower threshold than the latter. It is not desirable to include two differing definitions especially when they mean different things.

[18] See Venice Commission, CDL-AD(2010)010, Interim Opinion on the Draft Act on Forfeiture in favour of the State of Illegally acquired Assets of Bulgaria, paragraph 40.

[19] According to Article 3, the first instance court competent to deal with proposals for confiscation submitted by the Bureau is the Basic Court in Pristina, General Department, Civil Division (paragraph 1.3); the second instance court is the Court of Appeals, General Department, Civil Division (paragraph 1.4).

[20] In accordance with Law no. 04 / I-050 on the declaration, origin and control of assets of senior public officials and the declaration, origin and control of gifts for all officials, amended and supplemented by Law no. 04 / I-228 on amending and supplementing law no. 04 / I-050 on the declaration, origin and control of assets of senior public officials and the declaration, origin and control of gifts for all officials.

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Moreover, the current wording is rather vague and does not seem very helpful for the courts that have to apply the law in concrete cases. The Venice Commission therefore recommends that the standard of proof for confiscation be clearly specified.[21]

30. As for the definition of "assets", it needs to be clarified in the law whether it only covers assets within the territory of Kosovo or whether it also includes assets abroad (paragraph 1.9).

31. "Unjustified assets" are defined as "assets that are not in line with legal income or assets the legal origin of which fails to be established, which the person to the procedure owns, possesses, over which he/she exercises another form of control or which he/she has any benefit of" (paragraph 1.10). The relation between the two parts of that definition is unclear, and the first part ("assets that are not in line with legal income") seems to overlook other possible sources of wealth such as previously owned wealth, inheritance or presents. Moreover, the second part of the definition takes together three alternatives ("owns, possesses, over which he/she exercises another form of control ..."), although they are very different. While property is an absolute and exclusive right, the two other categories are not. That means that in the case of "possession" or "other form of control" there will always also be an owner of the asset. The confiscation thus unavoidably infringes the rights of this third person without an adequate legal regulation. The definition of "unjustified assets" thus needs to be clarified and thoroughly revised.

32. Similarly, the definitions of the various groups to which confiscation measures apply (paragraphs 1.12ff.) are unclear and problematic for several reasons. First, as mentioned above, the difference between "official persons" and "politically exposed persons" is unclear; the definitions seem to largely overlap. Moreover, the definition of "politically exposed persons" is rather vague, as it refers to the concept of "senior public functions" and then lists more precise examples which do not seem to be exclusive.[22] It is also noteworthy that this definition extends to foreign natural persons entrusted with senior public functions. Is it intended to include only foreign persons entrusted by Kosovo with "senior public functions" in the scope of the law or does the definition mean also to include persons entrusted with such functions by another state or international organisation? That would need to be examined in in the light of agreements with the country or international organisation. What is meant by a political entity? Does it include foreign states or entities? Do the references to directors etc. only refer to directors of Kosovo state boards or publicly owned companies? It is also unclear whether foreigners are only covered by the concept of "politically exposed persons" or also by the other categories (e.g. "official persons"), which do not mention them explicitly.

33. Furthermore, the question arises why "family members" (paragraph 1.14) are not considered as "third parties" (paragraph 1.17). If they are targeted only because they might have received assets from the "official persons", they would logically also be "third persons", i.e. "persons to whom the assets of the person who is a party to the procedure have been transferred." If family members are, however, targeted by the law in the same way as the officials, that might be difficult to justify. While a special duty of transparency can be expected from "officials", the same is not true for their family members. Being treated in the same way as the "officials" might be a disproportionate interference with the family members' right to privacy. Thus, the Venice Commission recommends including family members as a subcategory to "third parties." It should also be clarified what exactly is meant by the terms "extramatrimonial spouse" and whether the various terms used in the definition cover natural as well as legal relationships.

[21] For example, the threshold could be defined by reference to a reasonably cautious person having enough elements to believe that the assets in question derive from illegal activities, cf. Venice Commission, CDL-AD(2010)019, Second Interim Opinion on the Draft Act on Forfeiture in favour of the State of Criminal Assets of Bulgaria, paragraph 32.

[22] It was explained to the rapporteurs that the concept of "politically exposed persons" referred to Article 3 of Administrative Instruction MoF (FIU-K) No. 02/2018 on Politically Exposed Persons, which was meant to implement the FATF Recommendations (2012). That said, the definition in the draft law is apparently much shorter and less precise.

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34. The regulation on the "third parties" is vague. They are defined as "persons to whom the assets of the person who is a party to the procedure have been transferred in any form" (paragraph 1.17). It might, however, make a difference whether the third party has acquired property or only possession. The question of *bona fides* might arise. It might be worth differentiating between these two scenarios.

2. Chapters II to IV – the State Bureau for Verification and Confiscation of Unjustified Assets, its Director General and the Oversight Committee

35. Chapter II establishes and provides for the status of the Bureau as an "independent and specialised body" (see Article 4). Chapter III deals with the selection, mandate and responsibilities of the Director General of the Bureau and Chapter IV with oversight of the Bureau. As mentioned above in the general remarks, it is questionable whether the creation of such a new body will resolve existing problems in the fight against corruption. If this approach is kept in the draft law, some of the relevant provisions need to be clarified or amended, as described below.

36. Under Article 7 the Bureau is to "decide independently on the use of the budget, in accordance with the relevant applicable legislation." This raises the question whether the Bureau is to be subject to the control of the public auditor. That should be the case.

37. Under Article 8 the powers of the Bureau include, *inter alia*, the power to initiate and conduct the procedure for verification of assets (paragraph 1.1), to submit proposals for confiscation of assets to the court (paragraph 1.2) and to request assistance and information (paragraph 1.3). There is no definition either here or in the Chapters dealing with verification and confiscation (Chapters V and VII) of what is meant by verification. Some definition along the lines of "determining whether in the opinion of the Bureau the assets of any official person are unjustifiable assets" might be appropriate. Moreover, the whole concept of when verification begins is elusive and not well-defined in the draft law. This question is further discussed in the following section on verification of unjustified assets (see section 3. below).

38. Article 10 provides for the Bureau to be headed by the Director General. The powers and responsibilities of the Director General are set out in Article 14 and effectively include responsibility for every decision which the Bureau may make (paragraph 1.5). Essentially, the Director General has the right to control all the Bureau's activities. Article 12 provides for a substantial role for the Oversight Committee (a committee of the Assembly composed of elected members)[23] in the Director General's appointment. This Committee interviews the candidates for the office and nominates two candidates from whom the Assembly then elects the Director General, by a majority vote of deputies present and voting.

39. These procedures therefore provide for a highly politicised system of appointment without even any outside technical input being necessary. The Venice Commission stresses that the Bureau will be tasked with fighting high-level corruption, which is a politically sensitive matter. Strong guarantees of independence will be necessary to enable the Bureau to resist any possible political pressure. While the requirement of a qualified (two-thirds) majority for the election of the Director General by the Assembly (with an anti-deadlock mechanism) would clearly be preferable, the Venice Commission notes that this might require constitutional amendments[24] and might be difficult to achieve, at least in the short term. Moreover, even in the case of a requirement for a qualified majority the risk of a merely political choice would remain – for example, if the political majority and the opposition were to combine to choose a weak Director

[23] Full title: Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency of the Assembly of Kosovo.
[24] Cf. Venice Commission, CDL-AD(2021)051, Opinion on the draft amendments to the Law on the prosecutorial Council of Kosovo, paragraph 30.

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General. That said, there are other options to ensure the Bureau's independence. In any case, the Commission recommends introducing mandatory consultation of independent experts in this process. It would be advisable that the Director General either be elected by an external commission composed of independent institutions and experts[25] or that candidates be selected and proposed by such an independent commission to the Assembly for vote. The establishment of a collegiate and pluralistic governing body of the Bureau, whose members could be delegated from independent institutions, might be another option. The Commission also notes that under the current draft law, the successful candidate can be re-elected once (Article 15.2.5) which potentially compromises his or her independence. Provision for service for one term only, possibly of a longer duration, could provide a better guarantee of independence from political control.

40. Article 13 determines the reasons for the end of term of the Director General, including dismissal by the Assembly by a majority vote of all members, following a proposal by the Oversight Committee, due to failure to fulfil the legal mandate. Article 15.5 makes it clear that for these purposes, failure to fulfil a legal mandate is expressed to mean "only serious failures in the form of actions or omissions or unreasonable absence from work for more than fifteen (15) days". This concept of "serious failures" is too broad and lacks the necessary precision. Among the other reasons for the end of term of the Director General is the loss of high professional reputation or loss of personal integrity (Art. 13.1.8 read together with Article 11.1.3.). It is not clear from the text whether this implies the imposition of a disciplinary measure (which is also mentioned in Article 11.1.3). If the loss of reputation or of personal integrity as such would be sufficient even without any disciplinary procedure proving the misbehaviour of the Director General, it would be too vague and open to abuse. This needs to be clarified and amended. The Venice Commission stresses that a very narrow and close definition of reasons for the end of term of the Director General and a clear procedure are crucial for guaranteeing his or her independence. As for the election of the Director General, the Venice Commission recommends the involvement of an independent expert commission in the dismissal procedure (instead of, or in addition to, the Oversight Committee).

41. Article 15.2 gives rather large powers to the Oversight Committee. In addition to those already mentioned in relation to the Director General's election and dismissal, they include for example the power to review Bureau reports,[26] to periodically evaluate the Director General's performance and to carry out a special performance review six months before the end of his or her term of office. If this evaluation is positive the Committee must recommend his or her re-appointment to the Assembly. An important limitation on the Oversight Committee's power is that it has no right to intervene in cases which are under the verification procedure before the Bureau (Article 15.3). However, this limitation leaves open the possibility that the Committee may regard any other matters as constituting a failure to fulfil the Director General's legal mandate thereby justifying an intervention.

42. While appropriate oversight of the Bureau is clearly necessary, given that the Oversight Committee is a body of the Assembly itself the draft law represents a strong degree of political control by politicians over the Bureau. The Venice Commission is concerned that under these circumstances the Bureau will unlikely be able to deal with serious cases of corruption involving senior politicians who enjoy – and may use – strong political influence (regardless of whether they are from the political majority of the day or not). It is also questionable whether the important role of the Oversight Committee is compatible with the definition of the Bureau as an "independent" body (Article 4). The Venice Commission recommends that this institutional set-

[25] The commission's members could be appointed e.g. by the President of the Constitutional Court, the Chief State Prosecutor, the Head of the Legislation Committee of the Assembly, the Ombudsperson, the Dean of the Faculty of Law etc. The Venice Commission recommended such a procedure in its Opinion on the Regulatory concept of the Constitution of the Republic of Hungary, CDL(1995)073rev, pages 6-7.

[26] Under Article 8.1.6. the Bureau is required to report to the Assembly once a year on the work of the Bureau. The Assembly may request even more frequent reports from the Bureau.

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up be reconsidered. The Commission understands that in the legal framework of Kosovo the Bureau must be answerable to the Assembly to a certain extent. That said, it should be clearly defined that this is limited to the reporting. Performance evaluation, with possible consequences for the Director General's career, should be excluded; if deemed necessary, such an evaluation should be entrusted to an independent expert commission.

3. Chapter V – Verification of unjustified assets

43. One of the most important questions concerning the functioning of the law is the precondition for opening a verification and, subsequently, confiscation procedure. These preconditions are, however, unclear. Article 16 provides for two alternatives, initiation based on collection of information collected *ex officio* and on information received from outside.

44. In so far as the initiation of the procedure can be based on information from outside (Article 16.1.2),[27] it is unclear if the Bureau must or can start working. It seems necessary to distinguish between unfounded denunciations and real reasons for scrutinising the property rights of a person. Moreover, it is noteworthy that such information from outside is to be "treated on condition of anonymity at the request of the party providing this information" (Article 16.2). It is not convincing that the providers of such information should necessarily in all cases have a veto over disclosure of its source, especially where information is held pursuant to an official duty. Failure to disclose may impede the affected party from effectively challenging its veracity and should not be allowed without a good reason.

45. It is also unclear under what conditions information should be collected *ex officio* (Article 16.1.1). Article 17 specifies the collection of data for the purpose of verification, but it seems that Article 16 concerns the preceding stage – i.e. the collection and analysis of information enabling the Bureau (the Director General) to decide on whether or not to initiate the verification procedure. Yet, it is unclear what this information should consist of, and whether this collection and analysis of information is intended to be a routine part of the process. As the draft stands it may be questionable whether the Bureau would have the power to carry out preliminary routine or random checks in the absence of a basis for suspicion that particular assets were unjustifiable. Either checks are carried out on a random basis, or systematically for all or certain categories of officials, or on the basis of some reason to believe that matters are irregular. This methodology is not made clear in the draft law which needs to be amended accordingly.

46. This is one of the decisive points in the law. If the far-reaching and human rights sensitive procedure can be started in an arbitrary manner, it will not be a good means to combat corruption but may lead to even more corruption. It is crucial that the Bureau acts on a clear legal basis and according to established criteria (e.g. verified random checks, systematic checks of certain categories of officials etc.), in order to prevent arbitrary practices, possible challenges by the persons concerned and pressure by politicians or by the public. The Venice Commission also recommends defining clear priorities for the Bureau's work: it should prioritise the more important cases rather than being overloaded by high numbers of low-level cases.

47. Article 16.4 stipulates that the Director General shall issue a reasoned decision to initiate or not to initiate the verification procedure, but it does not make it clear enough under what conditions a procedure can and under what conditions it must be initiated.[28] For example, it might be necessary to require a "reasonable suspicion" or a "strong reasonable suspicion" that the assets in question are unjustified. Moreover, Article 16.4 does not specify that the decision is to be communicated to the person concerned and subject to possible legal remedy. Nevertheless,

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[27] I.e. "from all Kosovo and foreign institutions, natural or legal persons exercising public authority, as well as from other natural and legal persons, both local and foreign".
[28] According to that provision, the procedure shall be initiated "when it is determined that the information refers to an entity and/or asset, which falls within the scope of Article 2 of this Law".

the initiation of the procedure leads to cooperation duties not only of the person concerned, but also of other persons. Therefore, the decision should be public or at least communicated to the person concerned unless there is justified reason to fear that the procedure would thus be obstructed.

48. Article 18 requires all institutions of Kosovo, local natural or legal persons exercising public authority, as well as other local natural and legal persons, to cooperate with the Bureau in order to collect information under Article 17. In so far as the obligation to cooperate concerns state entities, this is not problematic. In contrast, when it comes to "local natural and legal persons", their human rights, especially the right to privacy and the right not to be forced to self-incrimination, are relevant in this context. These human rights do not seem to be adequately addressed. As in the criminal procedure, there might also be the right not to testify, e.g. against family members. The regulation under paragraph 7, according to which in cases of non-cooperation by natural or legal persons the Bureau may apply to the court to compel them, might not be compatible with these requirements and should be revised accordingly.

49. Article 20 describes the verification procedure. The role of the Bureau in the whole process is not entirely clear. Is it meant to be mainly a coordinating body between already existing specialised bodies such as the police, the prosecution service, the tax and customs authorities, the Anti-Corruption Agency and the Financial Intelligence Unit? Or is it a new investigative body which carries out the collection and the verification of information itself? The latter seems more likely, since the long description of the verification procedure in this Article is centered on the Bureau, and Article 8 gives it the responsibility of "initiating and conducting the procedure for verification of assets". If this is so, questions of duplicity and of available staff (are there in Kosovo well trained, experienced professional investigators on top of those who already do that work in the existing agencies?) will arise. In this scenario, it will be crucial that the Bureau is provided with a) a sufficient number of highly specialised staff who are able to deal with complex and high-profile cases of corruption and unexplained wealth, and b) with strong investigative competences enabling it to collect information and secure evidence in a swift and secret manner. This could be achieved, for example, by integrating seconded law enforcement officers with the necessary competencies in the Bureau, or by providing it with large powers: it will need the power to compel the provision of all relevant information from other state bodies, not merely to request it.

50. The draft law in its present form does not seem to ensure that these requirements are met and should be amended accordingly, both as regards specialised staff and adequate powers. It does not appear to confer any power on the Bureau to investigate; its only power is to request information. Nor does it require any other body to investigate on the Bureau's behalf. Other bodies must provide information in their possession, but if they have no such information, they do not appear to be under any obligation to obtain it. The police and prosecutors will not be under any duty to collect information required for the purposes of civil proceedings in the absence of such a duty being imposed on them. The relationship between the Bureau and the Financial Intelligence Unit – as well as the Anti-Corruption Agency, if it is maintained as the body responsible for checking officials' asset declarations[29] – should also be defined.

51. Article 20.17 provides that "the procedure for verification of unjustifiable assets shall be determined by a bylaw approved by the Director General." It is not clear what further matters of procedure not already specified in the draft law are referred to; the scope of this provision should be clarified. This should refer only to matters of internal procedure, as such bylaws cannot create obligations for private persons.

[29] In this respect, cf. the general comments above.

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4. Chapters VI to XIII – Court proceedings, confiscation, execution, final provisions

52. Chapter VI permits the Bureau to seek from the competent court[30] an interim security measure on assets at any time before or after a proposal for confiscation. The measure may be sought *ex parte*. Chapter VII provides for the initiation of civil proceedings for confiscation of the assets by the Bureau against the owner (or the person being in possession of the property). Chapter VIII provides for the hearing on examination of the proposal for confiscation of assets, Chapter IX deals with appellate proceedings, and Chapter X deals with the procedure concerning extraordinary legal remedies. Finally, Chapters XI to XIII deal with the relationship with other legal proceedings, including criminal proceedings, with execution of decisions and priority of claims, with international legal cooperation and with transitional and final provisions. As a general remark, the provisions of these Chapters – especially those concerning court procedures – are extremely detailed with many provisions one would generally expect to find in a general law on civil court procedure and evidence. Moreover, some specific provisions call for the following comments.

53. In Chapter VI dealing with interim security measures, Article 22 stipulates that the court shall impose the proposed temporary security measure on assets when it finds that the temporary security measure on the assets is "grounded and urgent and that by acting differently, the assets can be alienated, disposed of or otherwise will not be available to that person" (paragraph 1.1). Moreover, the court may reject the proposal only in case it has not made "credible the claim that the assets can be alienated, disposed of or otherwise will not be available to that person" (paragraph 1.2). This seems to suggest that proposed interim measures must be imposed even if there is no evidence or reasonable suspicion of unjustified assets. Such a regulation might constitute an unjustified interference with the right to peaceful enjoyment of possessions (Article 1, Protocol 1 to the ECHR) and should be amended by introducing an adequate evidentiary threshold.

54. As already mentioned, the draft law uses the concept of "third parties" as one of the categories of persons who may be the addressees of the confiscation measures if they have received "unjustifiable assets". Apart from that, there are also third parties in the sense of those having rights to the assets concerned, e.g. those who have received them *bona fide* or those who are the owners of assets possessed or used by the person concerned. They are called "any third party who has a legal interest". In Article 23.4. it is mentioned that they shall be summoned to the hearing if they are known to the Court. According to Article 27.3 they shall get a copy of the proposal for the confiscation procedure. It is, however, unclear if the Court is obliged to find out itself who might have a "legal interest". Similarly, in Chapter X dealing with extraordinary legal remedies, Article 58 which provides a certain summary of third parties' rights is based on the assumption that a person finds out him- or herself that he or she might have an interest. This leaves open the question of the Bureau's or court's responsibility to identify such persons. As these persons' rights will be unavoidably affected by the procedure it should be made clear how they are identified and what rights they have in general. It would be good to regulate this in a specific provision. It is, for example, unclear if such a party with a legal interest can be an "aggrieved party" in the sense of Articles 25 and 28 and have an autonomous right to appeal.

55. According to Article 28, objections against the proposal for confiscation can be filed on the basis of five grounds. It is unclear if this is meant to be an exhaustive list. If this is the case, it might cause problems. For example, the procedure might have an ulterior purpose in the sense of Article 18 of the ECHR. Such an argument should also be allowed as an objection. There might be still more arguments. Therefore, it would be recommendable to introduce a general opening clause in Article 28 of the draft law.

[30] I.e. the Basic Court in Pristina, General Department, Civil Division.

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56. Furthermore, Article 28 includes a provision which mentions that for some assets the verification is not allowed by law (paragraph 2.2). It is, however, unclear, to what kind of assets this applies. More generally, it would again be advisable to introduce measures securing that the person concerned by the confiscation is not deprived of all assets, in order to allow him or her a minimum amount for survival. Similar provisions are usually an essential part of regulations on enforcement proceedings.

57. According to Article 31 the "party to the procedure in the hearing session must prove that the assets subject to the proposal have a justified origin." Such a shift of the burden of proof to the defendant is not uncommon in civil forfeiture systems. That said, in order not to violate fair trial guarantees, the Bureau as state representative should at least have to prove that there is a strong reasonable suspicion that the assets were not acquired legally. At the same time, if the burden on the person concerned for proving the justifiability of his or her assets is too high, the confiscation might also be seen as a disproportionate interference into property rights.

58. In this connection, attention is drawn to Article 20, paragraph 8: The Bureau's Director General shall submit to court a request for confiscation[31] upon a reasoned proposal by the competent Bureau officer, if the latter "notices" a discrepancy between income and assets exceeding €25.000, on the basis of the data collected in the verification procedure and the data, evidence and testimony provided by the party to the procedure. Article 31 appears to suggest that once the request for confiscation is submitted to the court the onus shifts to the defendant. The mechanism prescribed in Article 20, paragraph 8 is therefore of crucial importance and needs to be regulated with much precision. It would be helpful if this paragraph were to state clearly what the reasoned proposal must contain and the basis for the Bureau officer's conclusions. Moreover, in the view of the Venice Commission it is not sufficient that the Bureau officer merely notices a discrepancy between assets and income: It should also be clear that the officer found no way to explain this discrepancy by any other legitimate reasons.

59. Finally, the Commission is concerned about the provision in Article 20, paragraph 9 according to which the Bureau shall also request the confiscation in case the defendant has not followed the Bureau's invitation to provide evidence and data to justify his or her assets. In this case, it is assumed that the listed assets have been acquired unjustifiably. This seems to suggest that the onus shifts to the defendant already during the procedure before the Bureau. This cannot be right; the onus should not shift until the Bureau has proved the truth of its assertions in the reasoned proposal to the court. This does not mean that the defendant can avert confiscation by simply not replying but the absence of a reply alone cannot be the basis for the reasoned conclusion that the assets were acquired illegally.

60. According to Article 36 the Bureau shall have the right to withdraw from the proposal for confiscation of assets until the end of the hearing. This is a problematic approach. With the commencement of the procedure before the court, the court should become the master of the procedure. If the suspicion of the acquisition of unjustified assets does not prove to be true, the party concerned should be "cleared" on the basis of a judgment entering into force so that the principle *ne bis in idem* applies in later procedures except in exceptional cases where new evidence comes to light. Allowing the Bureau to withdraw its proposal at any stage of the proceedings might open the door for exerting undue influence on the Bureau to decide in this way. In order to avoid corruption, this provision should be removed. Article 37.1.1 makes it clear that even the legislator is afraid of undue influence on the Bureau by allowing a re-submission of the proposal in case the Bureau officer is convicted of abuse of official position or authority.

61. Article 39 regulates the types of decisions the court may take on the proposal for confiscation, depending on whether it finds that the proposal is founded, partially founded or not founded,

[31] The necessary elements of the proposal for confiscation, including any evidence examined by the Bureau, are defined in detail in Article 27.

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according to the balance of probabilities. Paragraph 6 includes a list of reasons for rejecting the proposal, e.g. the proposal was submitted after the expiration of the legal deadline, the evidence examined justifies the origin of the assets, the assets were acquired *bona fide* by a third party, etc. Comparable to the enumeration of objections in Article 28 (see above) the list of decisions seems to be exhaustive. Here, as well, it would be advisable to introduce an opening clause as there might be other reasons for rejecting the proposal. Moreover, it would be recommendable to regulate the "balance of probability" more precisely (see the recommendation made above with respect to the definition of "balance of probability" in Article 3.1.8).

62. According to Article 40 the assets to be confiscated can be replaced by their value. It is, however, unclear how the value is determined. There might be important controversies on this point which should be regulated precisely.

63. In Chapter IX dealing with appellate proceedings, Article 44 determines the grounds for appeal against the judgment on confiscation. The first of those grounds, "essential violations of procedural provisions", is defined in Article 45. Paragraph 2 contains a list of such violations which, again, seems to be exhaustive and should be opened for other possible violations. Among the enumerated essential violations there is one concerning the composition of the court as defined "in this Law", but there does not seem to be such a definition in the draft law. This needs to be remedied. The second ground for appeal mentioned in Article 44, "erroneous or incomplete determination of the factual situation", is regulated in Article 46, but it remains unclear when the facts have to be determined. Thus, the question arises whether facts revealed after the hearing might be used in order to come to the conclusion of erroneously established facts in the sense of Article 46. Finally, the definition of the third ground for appeal, i.e. "erroneous application of substantive law", seems quite limitative as it only covers non-consideration of certain provisions such as those relating to ownership and other property rights etc. The above regulations should be reviewed, as should also Article 51 on "Appeal against the Ruling" whose systematic presentation is unclear.

64. Chapter XI dealing with the relationship with other legal proceedings and administration makes it clear that the civil confiscation procedure and a possible criminal procedure are considered to be complementary. Pursuant to Article 60, when the court or the Bureau is informed that criminal investigations have been initiated concerning the assets considered in the verification or confiscation procedure, the latter is suspended. The question is whether in practice this will be the exception or the rule. It may be assumed that the fact of not being able to justify one's assets' origin gives rise to the suspicion of a crime. Probably the civil confiscation procedure will mostly be used when a crime cannot be proved but the origin of certain assets remains unclear. Thus, it seems that in general criminal investigations are expected to be dominant and the advantages of non-conviction based civil confiscation risk being limited.[32] The Venice Commission therefore recommends reconsidering the automatic suspension of the civil procedure in case of criminal proceedings. In any case, it should be explicitly made clear that assets can be frozen under the civil procedure even if criminal investigations have been initiated.

65. The current proposal also risks infringing the privilege against self-incrimination guaranteed by Article 6§1 of the ECHR and Article 31 of the Constitution of Kosovo; to prevent this, it should be ensured that the statements given and the documents provided (compulsorily) by the party in civil proceedings, both before the Bureau and before the court, cannot be used against him or her in a criminal proceeding.[33]

[32] Cf. Venice Commission, CDL-AD(2010)010, Interim Opinion on the Draft Act on Forfeiture in favour of the State of Illegally acquired Assets of Bulgaria, paragraph 52.
[33] Cf. ECtHR, *Saunders v. UK*, Decision of 17 December 1996; Venice Commission, CDL-AD(2010)019, Second Interim Opinion on the Draft Act on Forfeiture in favour of the State of Criminal Assets of Bulgaria, paragraph 26.

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66. As regards the administration of confiscated assets, Article 61 stipulates that this is the responsibility of the relevant Agency for the Administration of Confiscated Assets, in accordance with the applicable legislation. This legislation is not in the scope of the present Opinion. The Venice Commission stresses, however, the importance of an organisational infrastructure to cope with the many practical issues that occur when handling seized and forfeited property, including the custody, safe storage, management, and disposition of such property, in line with the relevant international standards.[34]

67. In Chapter XII dealing with execution of decisions and priority of claims, Article 62 states that the judgment on confiscation of assets shall be executed by the court that has decided on the proposal for confiscation. This is rather surprising; as a rule, judgments are not executed by courts, but by the executive (e.g. bailiffs).

68. The draft law does not regulate compensation of damages suffered by a party to confiscation procedures as a result of interim measures such as inability to dispose of frozen assets and loss of value of property. The Venice Commission recommends making it clear that such compensation can be sought in case of ultimately unsuccessful confiscation procedures, and there should be provisions setting out the process for compensation applications.

V. Conclusion

69. The Venice Commission has been asked by the President of the Assembly of Kosovo to provide an opinion on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets. The draft law is an initiative of the Ministry of Justice aimed at strengthening the rule of law and enhancing the system of confiscation in Kosovo. It introduces a new legal instrument, i.e. non-conviction based civil confiscation of assets acquired by certain categories of officials and other persons, as a complementary tool for fighting organised crime and corruption by targeting the financial motive for such actions. It also establishes a new body, the Bureau, competent for initiating and conducting verification procedures and submitting confiscation proposals to the court.

70. Such an approach may be a valid means to combat organised crime and corruption, to prevent the exploitation of illegally acquired funds and to prevent the use of such funds for further criminal activity. In the context of Kosovo, such a measure might be important for securing the basis for economic development in the country. At the same time, the Venice Commission recalls however that, despite their justified purpose, non-conviction based civil confiscation proceedings must be designed and implemented in compliance with the national Constitution, which includes the direct application of the European Convention on Human rights, and taking into account European standards concerning the rule of law and respect for human rights.

71. Several interlocutors of the rapporteurs argued that the low number of confiscations effected so far in Kosovo could mainly be explained with defective implementation of the current law, rather than deficiencies in the legislation itself. The Venice Commission stresses that the proposed new legislation alone cannot be expected to resolve all the problems of corruption and needs to be embedded in a broader approach which would include a range of practical measures aimed at enhancing the effectiveness of the law enforcement system.

72. It is furthermore doubtful whether the establishment of a new body would make the fight against corruption indeed more effective – or whether it would rather complicate the whole system which already involves a number of bodies such as the police, the prosecution service, the tax and customs authorities and the Anti-Corruption Agency. In any case, it seems obvious that the new verification and confiscation system needs to be combined in some way with the already

[34] See e.g. the G8 "Best Practices for the Administration of Seized Assets", G8 Lyon/Roma Group, Criminal Legal Affairs Subgroup, 27 April 2005, page 2.

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existing asset declaration system of senior public officials which is in the hands of the Anti-Corruption Agency.
73. Moreover, it needs to be stressed that such a human-rights sensitive legislation as proposed in the draft law is only acceptable if it is built on an independent mechanism with all the necessary powers and resources to fight effectively against high-level corruption and organised crime. The current draft provisions are insufficient in this regard.

74. The draft law, in its current wording, presents a certain number of shortcomings and its implementation may result in infringements of fundamental rights guaranteed by the Constitution of Kosovo and the ECHR. The Venice Commission makes the following main recommendations:

1. formulating the general and public interests, the aim and purpose of the new law in a precise and exhaustive manner;
2. reconsidering the need and usefulness of establishing a new body, the Bureau, and in case this approach is maintained a) providing for strong guarantees of the Bureau's independence and b) providing the Bureau with a sufficient number of specialised staff and with adequate powers;
3. defining precisely a) under what conditions and according to what criteria the Bureau should collect information *ex officio* before starting the formal verification procedure; b) under what conditions the verification procedure can and must be initiated; and c) priorities for the Bureau's work, ensuring that the Bureau will focus on high-profile cases;
4. making it clear that the burden of proof shifts to the party to the procedure only after the competent authority (under the current draft law, the Bureau) has presented a reasoned proposal and evidence showing that there is at least a strong reasonable suspicion that the party's assets have not been acquired legally, and defining more precisely the civil standard of proof of the "balance of probabilities" to be applied by the court;
5. introducing stronger guarantees of the party's and other persons' human rights, *inter alia* by a) specifying that the decision on initiating the verification procedure is at least communicated to the party to the procedure and subject to legal remedy; b) ensuring that the statements made and documents provided compulsorily by the party in civil proceedings cannot be used against him or her in a criminal proceeding; c) making it clear that the party's family members are targeted only as "third persons"; d) reviewing the provision that natural and legal persons may be compelled by court to cooperate with the Bureau; e) regulating how "third parties who have a legal interest" are identified and what their rights are in the verification and confiscation procedure; f) ensuring that the persons concerned by confiscation are not deprived of all assets; and g) guaranteeing compensation of damages suffered by a party in case of an ultimately unsuccessful confiscation procedure;
6. introducing an adequate evidentiary threshold for interim security measures, and making it clear that such measures can be taken under the civil procedure even if criminal investigations have been initiated.

75. Other recommendations may be found in the body of the text.

76. The Venice Commission remains at the disposal of the authorities of Kosovo for further assistance in this matter.

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