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Bureau for
Confiscation of
Assets under the
magnifying glass
of the Venice
Commission

**BUREAU FOR CONFISCATION
OF ASSETS UNDER THE
MAGNIFYING GLASS OF
THE VENICE COMMISSION**

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1.INTRODUCTION

Starting from the premise of the effective fight against corruption and organized crime in the country, the Government of the Republic of Kosovo had initially approved the Concept-Document on the issue of assets acquired unjustifiably^[1], to proceed to the Assembly of the Republic of Kosovo for approval of the Draft Law for the State Bureau for Verification and Confiscation of Unjustified Assets.

With these steps taken, the Government of the Republic of Kosovo had assessed as necessary the investigation, verification and confiscation of unjustifiable assets of public officials and third parties, as a necessary and essential step for the general aim of fighting state officials who possess unjustifiable wealth. On the other hand, looking at it with confusion the general legal situation of the system of confiscation of unjustified assets through 'alleged deficiencies' in the Criminal Code, the Code of Criminal Procedure and the Law on Extended Powers for Confiscation of Assets, the Government of Kosovo had estimated that these shortcomings are causing delays in judicial processes, as well as simultaneously producing incomplete indictments and judgments related to confiscation of assets. Therefore, a new law that would enable the confiscation of unjustifiably acquired assets even in the absence of a conviction, it would be necessary to apply it in the case of official persons and any natural or legal person to whom the assets of the official person has been transferred, or who has or may have had a legal interest in the assets of the parties to the proceedings.

The initiative for the legal regulation of confiscation of assets without any criminal judgment was followed by criticism from various stakeholders of society. Political parties, non-governmental organizations and various experts had criticized the proposal of this legal regulation, estimating that the respect of the minimum standard of human rights is being overlooked. This draft law was followed by various debates, pro at contrary, wanting to dismantle the vicious circle, does Kosovo's legal system needs to have such a law all the way to the substantive (legal) issues of the draft law.

[1] Ministry of Justice, Concept Document on the Issue of Unjustified Assets, April 2021.

Therefore, since the Draft Law, in addition to the political context, was contested by legal- constitutional aspect, the Assembly of the Republic of Kosovo assessed that on the text of the same, the opinion of the Venice Commission should be heard. The Speaker of the Assembly of Kosovo Mr. Glauk Konjufca addressed to the Venice Commission on March 4, 2022, where he requested a professional opinion on Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets.

At the same time, a delegation of the Venice Commission had come to Prishtina on May 11-12, 2022, visiting the relevant public institutions and carried out consultation on various issues that were addressed to it. On June 20, 2022, the Venice Commission gave the First Opinion on The draft Law.[2] Whereas, after re-updating the text of the Draft Law according to the recommendations of the First Opinion, the Assembly of Kosovo on November 18, 2022 launched the second note together with the new version of the draft Law. Consequently, the Venice Commission on December 19, 2022 had declared on the updated version of the draft Law, where it had given new recommendations.[3] However, even after the Second Opinion, the mutual work with the institutions of the Republic of Kosovo had continued until the final approval of the draft Law by the Assembly of the Republic of Kosovo.

So, breaking down what the recommendations of the Venice Commission were about the Draft Law no. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets and what was taken into account in its final text, represents the determination of the lawmakers of the Assembly of Kosovo to preserve the constitutionality of the laws. Therefore, this report will present the marathon process of the regulation of the issue of confiscation of unjustified assets of public officials and third parties, as well as the narrative-legal elaboration and addressing of the recommendations of the Venice Commission by the lawmakers.

[2] *European Commission for Democracy Through Law (Venice Commission), Kosovo Opinion on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, Adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022).*

[3] *European Commission for Democracy Through Law (Venice Commission), Kosovo Follow-Up Opinion To The Opinion on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, Adopted by the Venice Commission at its 133rd Plenary Session (Venice, 16-17 December 2022)*

2. THE FLOW OF THE LEGISLATIVE PROCESS

The aim of the following text is to describe the entire progress of the legislative process of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, including the period of conception, drafting and approval of the draft law by the government, as well as the implementation by the Assembly of the Republic of Kosovo.

- On April 13, 2021, the Government of the Republic of Kosovo approved the Drafted Concept Document on the issue of unjustifiably acquired assets, proposed by the Ministry of Justice.
- Ministry of Justice, as the proposer of this draft Law, established the working group for drafting of the Draft Law on Confiscation of Unjustified Assets, composed of representatives of relevant public institutions, as well as representatives of civil society and international partners, such as the EU Office in Kosovo, the Council of Europe, OSCE, UNDP and other organizations. In May 2021, Ministry of Justice invited the first meeting of this working group.
- After drafting the Draft Law from the working group, the draft Law was sent for preliminary consultations in a shortened period of 5 working days, starting with December 3, 2021 until December 9, 2021.
- One day after the end of the preliminary consultations, on December 10, 2021, the draft law which was renamed as the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets was sent for public consultations. The same was also published on the online platform and comments could be accepted until December 20, 2021 (7 working days).
- On December 29, 2021, the Government of Kosovo approved the Draft Law on the State Bureau for the Verification and Confiscation of Unjustified Assets and the same, in January of the following year was processed for review to the Assembly of Kosovo.
- On March 4, 2022, the Assembly of Kosovo requested from Venice Commission an opinion regarding the provisions of the draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets.

- On May 11-12, 2022, the delegation of the Venice Commission visited Prishtina and met the Speaker of the Assembly of Kosovo, Glauk Konjufca, as well as other representatives of the Committee for Legislation of the Assembly of Kosovo, Ministry of Justice, judicial system and the Prosecutor's Office, Agency for Prevention of Corruption, Financial Intelligence Unit, civil society and representatives of international organizations in Prishtina.
- On June 20, 2022, the Venice Commission gave the First Opinion on the provisions of the Draft Law.
- On July 14, 2022, the Assembly of Kosovo approves in the first reading the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets. During this voting process, it received 58 votes in favour and three abstentions.
- On November 18, 2022, the Assembly of Kosovo requested a follow-up opinion from Venice Commission to finally review the provisions of the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets.
- The Venice Commission on December 19, 2022 had given the Second Opinion on updated provisions.
- On February 2, 2023, with 66 votes in favour, none against and no abstentions, the Assembly of the Republic of Kosovo approves the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets and the same was sent to the President of the Republic of Kosovo for decree.
- 11 days after the approval by the Assembly of Kosovo, the Democratic Party of Kosovo through their legal representative before the Constitutional Court had deposited the Request for the evaluation of the constitutionality of Law no. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustifiable Assets under the Constitution of the Republic of Kosovo, respectively the same was received by the Secretariat of the Constitutional Court of the Republic of Kosovo on 20.02.2023.

3.WHAT DID THE GOVERNMENT INITIALLY PROPOSE IN THE DRAFT LAW ON THE STATE BUREAU FOR THE VERIFICATION AND CONFISCATION OF UNJUSTIFIED ASSETS?!

The initial version of the Draft Law on the State Bureau aimed to regulate the issue of verification and confiscation of assets unjustifiably acquired by official persons, their family members, as well as politically exposed persons and third parties.

Through this draft law, the Bureau for Confiscation of Assets would be established as an independent institution which would be led by the Director General, who would be elected for a 5-year term. The same could be re-elected for an additional term. The proposal for the election of the director, according to the initial proposal, would be initiated by the Committee through a public competition, and would be voted by the Assembly of Kosovo with the majority of votes of all MP's. This vote would not be done in secret.

According to this draft law, the committee responsible for supervising the work of the Bureau, would be the Committee for Legislation, Mandates, Immunities, and Regulations of the Assembly and Supervision of the Anti-Corruption Agency of the Assembly of the Republic of Kosovo.

The Bureau would start the assets verification procedure on the basis of the information collected by ex officio; received information from the institutions of the Republic of Kosovo and abroad, as well as information received by natural or legal persons exercising public authorizations, as well as by other natural and legal persons, domestic and foreign.

Likewise, after acceptance of the proposal for confiscation by the court, the person in the proceedings or the third party, would be entitled to submit a written objection to the first instance court within 15 days from the day of acceptance of the proposal.

Thus, after submitting the proposal for confiscation to the court, the party on the hearing session, will have to prove that assets which are the object of the proposal, has justifiable origins. Any asset of the person in the proceeding is presumed to have been unjustifiably acquired until the person proves otherwise.

The Bureau would be entitled to withdraw from the hearing session until the end of asset confiscation proposal. The withdrawn proposal could be submitted again but under two circumstances: a) when the Bureau official who withdrew was convicted for the criminal offense of abuse of official position or authority and b) when new evidence is discovered about the unjustified assets, for which the Bureau has not been able know more before and did not propose it to the court.

Related to this, the court will decide with judgment related to the proposal for confiscation of assets, while for all other matters the court will decide by issuing a decision.

According to the draft law, in cases where it would not be possible to confiscate the assets proposed for confiscation, then the replacement value would be confiscated.

This draft law has undergone numerous essential changes, therefore the latest version of this draft law, respectively the Law on the State Bureau for the Verification and Confiscation of Unjustified Assets, approved by the Assembly, is elaborated in more details in the last chapter of this report.

4. RECOMMENDATIONS GIVEN IN THE FIRST OPINION OF THE VENICE COMMISSION

Considering the extraordinary importance of the legal regulation of this institute, obviously a specialized body composed of international experts would have to put "hands" on it. Therefore, followed with harsh criticism either from the aspect of policy-making or juridical-constitutional contestation of the law, the Assembly of Kosovo turned to the Venice Commission to provide its expertise on the legal provisions of the draft law which would regulate the procedure of verification and confiscation of unjustifiable assets of state officials and involved parties.

Thus, after the request of the Assembly of Kosovo for opinion and recommendations, on June 20, 2022, the Venice Commission gave the First Opinion on Draft Law no. O8/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets. Regarding the comments made in this opinion, the Venice Commission had decided about the draft law in its 131st plenary session, held on June 17-18, 2022.

Through the elaborations presented in its Opinion, the Venice Commission had raised serious doubts regarding the compatibility of the provisions of this draft law with the minimum standards of human rights and the rule of law.

Among other things, the Venice Commission in its opinion had viewed with reservations the establishment of the Bureau, namely it had raised "doubts" on the issue on whether its establishment would effectively affect the fight against corruption or would complicate the existing system, which in Kosovo is already carried out by other bodies, such as: the Police, the Prosecutor's Office, the Tax Administration, the Customs Authorities and the Agency for the Prevention of Corruption.

The commission stated that the provisions of the draft law may have relevant problems on personal data protection, as well as problems with the administration of confiscated assets, problems that are addressed in the draft law only through references to corresponding provisions of other laws.

Also, the Venice Commission specifically referred to a provision stating that the "Court of first instance" competent to deal with confiscation proposals presented by the Bureau is the Basic Court in Prishtina, General Department, Civil Division. According to the Commission, it was not clear why all these cases should be concentrated in a single court which is not particularly specialized in these cases. If concentration was deemed necessary, the Commission had proposed that a specialized judicial unit in the Basic Court in Prishtina should be established to deal with such cases.[4]

Then, the Commission mentions that the text of the draft law contains different names for the same meaning. In article 3, paragraph 1.5 mentions "declaring officials", while in other cases "official persons" and "politically exposed persons". Therefore, according to the commission, the use of different concepts in the draft law needs to be reviewed.[5]

Also, in the definition of "balance of probability" two expressions are used, "possible" and "more likely to be possible than not". According to the commission, this wording is rather vague and does not seem very useful to the courts that must apply the law in concrete cases. Consequently, the Venice Commission recommended that the standard of proof for confiscation should be clearly specified.[6]

In addition, the commission has recommended that the definition of the term "unjustifiable assets" be revised, because according to the definition given in the text of the draft law, it is unclear.[7]

Regarding the definition of what the term "asset" means, the Commission recommended that it should be clarified in the law whether it covers only assets within the territory of Kosovo or whether it also includes assets abroad.[8] Then, according to the opinion, the question that the Bureau should "decide independently on the use of the budget, in accordance with the relevant legislation in force" raises the question of whether the Bureau would be subject to the control of the Public Auditor.

[4] First Opinion of the European Commission for Democracy through Law (Venice Commission) No. 1083/2022 of April 14, 2022, on the Draft Law on the State Bureau for the Verification and Confiscation of Unjustified Assets, Item 27.

[5] Ibid, Item 28.

[6] First Opinion of the European Commission for Democracy through Law (Venice Commission) No. 1083/2022 of April 14, 2022, on the Draft Law on the State Bureau for the Verification and Confiscation of Unjustified Assets, Item 29.

[7] Ibid, Item 31.

[8] Ibid, Item 30.

The Commission also raised the issue of why "family members" are not included under "third parties". According to the draft law, if they are targeted because they may have received assets from "officials," they would logically also be "third parties." Therefore, to prevent possible disproportionate interference with family members' right to privacy, the Venice Commission recommended the inclusion of family members as a subcategory for "third parties".[9] Also, the Commission has stated that the definition of "third parties" should be reconsidered.[10]

Another general remark made by the Commission had to do with legislative technique. The Draft Law contains many details that are not specific to a confiscation procedure, but are part of general procedural law (e.g. assessment of evidence, duty to deliver documents to opposing parties, duty to deliver written judgments for the parties). Therefore, the Commission had recommended their reference and the non-repetition of all details in this special law.

The Commission had raised the concern that, according to the draft law, the commission responsible for the supervision of the State Bureau is the Legislation Committee of the Assembly of Kosovo. This, according to the commission, may result in the Bureau not being able to deal with serious corruption cases involving high-profile politicians who enjoy and may use strong political influence. The Commission also raised concerns about whether the role of the Oversight Committee is consistent with the definition of the Bureau as an "independent" body. Consequently, the Venice Commission recommended that this institutional structure be revised.[11]

In this opinion, the Commission also emphasized that it was necessary to determine exactly under what conditions and according to what criteria the Bureau should collect information ex-officio before the start of the official verification procedure, under what conditions the verification procedure can and should start, and what are the priorities for the Bureau's work, ensuring that the Bureau focuses on high-profile cases. [12]

[9]Ibid, Item 33.

[10] Ibid, Item 34.

[11] Ibid, Item 39.

[12] Ibid, Item 45.

The Venice Commission had also recommended setting clear priorities for the Bureau's work, saying it should prioritize high-profile cases, rather than being overwhelmed by a large number of low-level cases.[13]

The Commission considers the fact that until the end of the hearing session, the Bureau can withdraw from the proposal for the confiscation of the assets and that the withdrawn proposal can be submitted again in certain circumstances, as quite disturbing. According to the commission, in order to prevent corruption, this possibility should be removed.[14]

In the end, the Commission emphasized that stronger guarantees should be presented for the rights of the parties and other persons involved in the procedure, including the following elements:

- a) Specify that the decision to start the verification procedure should at least be communicated to the party in the procedure and be subject to the legal remedy;
- b) Ensure that the statements made and the documents provided by the parties in the civil procedure cannot be used against them in any criminal procedure;
- c) Make it clear that family members of the parties are considered only as "third parties";
- d) Regulate the issue of how "third parties who have a legal interest" are verified and what are their rights in the verification and confiscation procedure;
- e) Ensure that the persons affected by the confiscation are not deprived of all their assets, and
- f) Guarantee the compensation of damages suffered to a party, in case of an unsuccessful conclusion of the confiscation procedure.

[[13] Ibid, Item 46.

[14] Ibid, Item 60.

5.ADDRESSING THE FIRST RECOMMENDATIONS OF THE VENICE COMMISSION

After the first recommendations of the Venice Commission, the responsible committee of the Assembly proposed the amendment of the draft law in the relevant provisions in order to harmonize the legal provisions of the draft law with the recommendations and instructions given by the Venice Commission. Initially, in the new draft law, the organizational structure of the Bureau for Confiscation of Assets was reformatted with the following units: Legal Department, Risk Analysis Department, Forensic Verification and Accounting Department and the Department for Finance and General Services.

Furthermore, the composition of the Oversight Committee of the Bureau's work was changed, which previously consisted of members of the Committee for Legislation, Mandates, Immunities, the Regulation of the Assembly and the Supervision of Anti-Corruption Agency, i.e. MPs – members of the relevant committee. Whereas, with the changes made in the draft law, this committee will consist of 5 members, as follows: a Judge of the Supreme Court of Kosovo appointed by the President of the Supreme Court (Chairperson of the Committee); Auditor General (member of the Committee); Director of the Agency for the Prevention of Corruption (member of the Committee); a deputy of the Ombudsperson appointed by the Ombudsperson (member of the Committee); and the Director of the Financial Intelligence Unit (member of the Committee).

So, the main change in the new draft law was that of re-configuring the supervision of the work of the Bureau. According to the first draft, it consisted of elected members of the Assembly and was in danger of becoming politicized, while now the Bureau would be supervised by a new body, which will provide a better guarantee for the independence of this institution, since all the members of The Commission come from domains outside the political sphere. Also, the duration term of office of the Director General was changed from 5 years to 7 years. However, this time without the right to be re-elected.

Also, the duration term of office of the Director General was changed from 5 years to 7 years. However, this time without the right to be re-elected.

In addition to the duration of the mandate, changes have also been made in the method of electing the Director General. With the changes made, the Assembly will elect the Director General by secret ballot, with the majority of votes of all MP's present.

Also, in the new draft law, the issue when the director is not elected in the first round of voting in the Assembly was regulated in more detail. In this case, the second round of voting takes place, with the two candidates which received the most votes.

In the text of the new draft law, the previous deadlines were extended in relation to certain issues. One of these deadlines was the deadline of 15 days for filing an appeal against the judgment, which was extended to 30 days.

In addition, in the preliminary draft law, a deadline of 24 hours was provided for the Court to decide on the proposal for the assignment of the Interim security measure on the assets, while with the changes made, this deadline is extended to 72 hours. Also, the deadline of 24 hours to submit an appeal against the decision on the assignment of the Interim measure was extended to 48 hours, and the deadline for submitting an appeal against the decision on the security measure was changed from 7 days to 15 days.

Another very important issue that was changed in the draft law as a result of the recommendations of the Venice Commission, was the issue of the withdrawal of the Bureau from the proposal for the confiscation of assets.

According to what was foreseen in the initial version, the withdrawn proposal could be submitted again only in the circumstances when the Bureau official who was withdrawn was convicted for the criminal offense of abuse of official position or authority or when new evidence is discovered about the unjustified assets to which the Bureau could not be aware of before, and did not propose it to the Court. While with the changes made, in case of withdrawal from the proposal, the case is considered as a judged case (*res judicata*) and cannot be presented again.

A new provision has been added to the Draft Law according to which, for the compensation of the parties in the procedure, the provisions of the relevant legislation in force on the relations of obligations are appropriately applied.

In the following table, the list of the most essential recommendations of the Venice Commission proposed in its First Opinion, as well as their addressing by the lawmakers, is figuratively presented.

RECOMMENDATIONS OF THE VENICE COMMISSION IN THE FIRST OPINION	Addressing recommendations by the Assembly of Kosovo
The term "assets" should be defined more broadly, clarifying that it includes assets within the territory of Kosovo and abroad.	✓ ¹⁵
Create a specialized unit in the court that deals with asset confiscation cases.	✓ ¹⁶
Not to repeat all the details and to refer to the general procedural law	X ¹⁷
To review the composition of the Oversight Committee of the Bureau.	✓ ¹⁸
To determine according to what criteria the Bureau should collect information ex-officio before the start of the official verification procedure under what conditions the verification procedure can and should begin; and what are the priorities for the Bureau's work, ensuring that the Bureau focuses on high-profile cases.	X ¹⁹

Table 1. The recommendations of the Venice Commission given in the First Opinion as well as their addressing by the Assembly of Kosovo.

[15] In article 3 it was specified that "the term assets refers to anything of value, of any form, whether it is corporeal or non-corporeal, movable or immovable, regardless of where it is located, including but not limited to".

[16] In article 3 it is foreseen that the First Instance Court is: "Division for civil confiscation, within the General Department of the Basic Court of Prishtina, with jurisdiction over the entire territory of Kosovo".

[17] The draft law further elaborates on details that could easily be referred to in the general procedural law (evaluation of evidence, the duty to deliver the written judgment to the parties, etc.).

[18] According to Article 10 of the draft law, the composition of the Committee has been changed as follows: a Judge of the Supreme Court of Kosovo appointed by the President of the Supreme Court (Chairman of the Committee); Auditor General (Committee member); Director of the Agency for the Prevention of Corruption (member of the Committee); a deputy of the Ombudsperson's appointed by the Ombudsperson (Committee member); Director of the Financial Intelligence Unit (Committee member).

[19] The issue of the initiation of the verification procedure is elaborated in Article 18, where it is stated that: "The Bureau initiates the verification procedure on the basis of credible and reliable information related to unjustifiable assets in cases where: It accepts information, documents, proof, evidence or data from various sources, including natural and legal persons; Accepts information, documents, proof, evidence or data from the institutions of the Republic of Kosovo or abroad, as well as; There is information, document, proof, evidence or data that it does not officially accept, and the same are public or accessible in any form." However, this provision does not sufficiently clarify the issue of the beginning of the verification of the assets according to ex-officio by the Bureau.

RECOMMENDATIONS OF THE VENICE COMMISSION IN THE FIRST OPINION	Addressing recommendations by the Assembly of Kosovo
It should be specified that the decision to start the verification procedure must at least be communicated to the party in the procedure and be subject to the legal remedy.	X ²⁰
Ensure that statements made and documents provided by the parties in civil proceedings cannot be used against them in any criminal proceedings.	X ²¹
Harmonization of the terms "officials", "declaring officials" and "politically exposed persons"	✓ ²²
Make it clear that family members of the parties are considered only as "third parties".	✓ ²³
To regulate the issue of how "third parties who have a legal interest" will be verified.	X ²⁴

Table 1. The recommendations of the Venice Commission given in the First Opinion as well as their addressing by the Assembly of Kosovo.

[20] Article 18 of the draft law provides that "All information received and processed by the Bureau will be accessible to the party that is subject to the verification procedure, except in cases where this information would jeopardize the verification procedure, damaged the evidence, as well as could harm the public interest". However, this does not fully address the recommendation of the Venice Commission, which meant that the decision to initiate the verification procedure should be sent to the party who is the subject of the procedure. Likewise, the draft law does not elaborate on how the party is notified that it is subject to the verification procedure.

[21] It was not addressed at this stage of the draft law.

[22] The term "declaring officials" has been replaced by the term "Official person", while the term "politically exposed persons" has been removed from the definitions.

[23] In Article 3 of the draft law, the definition of "third parties" has been changed as follows: "Any natural or legal person to whom the assets of the official has been transferred, or who has or may have a legal interest in the assets of the parties in the procedure."

[24] The draft law regulates this issue only in paragraph 4 of article 23, where it is stated that: "If during the verification procedure, it is observed that the asset has been transferred to a third party, then the official of the Bureau will request from the Director General that the decision for verification of the assets to be extended to those third parties." So the draft law does not contain any provision that taxatively clarifies the way of verifying the assets for the third party.

RECOMMENDATIONS OF THE VENICE COMMISSION IN THE FIRST OPINION	Addressing recommendations by the Assembly of Kosovo
Ensure that persons affected by confiscation are not deprived of all their assets.	X ²⁵
To guarantee the compensation of the damages suffered by the party, in case of an unsuccessful conclusion of the confiscation procedure.	X ²⁶
Extension of time limits.	X ²⁷
The possibility of re-submission of the withdrawn proposal for confiscation by the Bureau shall be removed.	X ²⁸
Prioritize the Bureau's work by prioritizing high-profile cases, rather than being overwhelmed by a large number of low-level cases.	X ²⁹

Table 1. The recommendations of the Venice Commission given in the First Opinion as well as their addressing by the Assembly of Kosovo.

[25] The draft law does not contain any provision that clarifies which assets cannot be subject to the verification and confiscation procedure . Consequently, we can assume that the Venice Commission has given this recommendation so that the affected people are not left without the necessary financial means to cover the necessary living expenses.

[26] In the draft law Article 62 has been added, according to which: "For the compensation of the parties in the procedure, the provisions of the relevant legislation in force on the relations of obligations shall be applied appropriately".

[27] Some very short deadlines have been improved in the text of the draft law, such as appeal within 48 hours instead of 24 hours, opposition to the appointment of interim measures within 15 days instead of 5 days, etc.

[28] In the text of the draft law, the possibility of resubmitting the proposal was removed, adding a new paragraph: "In case of withdrawal from the proposal, the case is considered as a judged case".

[29] The text of the draft law does not contain any provision that prioritizes high-profile cases.

6. RECOMMENDATIONS GIVEN IN THE SECOND OPINION OF THE VENICE COMMISSION

After sending the second note from the Assembly of the Republic of Kosovo on November 18, 2022, where it had attached the updated version of the draft law, the Venice Commission, in the 133rd plenary session held on December 16–17, approved the follow-up second opinion regarding the provisions of the Draft Law on the State Bureau for the Verification and Confiscation of Unjustified Assets.

The Commission in this second opinion had welcomed the initiative of the authorities to seek means to fight organized crime and corruption, to prevent the exploitation of illegally acquired wealth and to prevent the use of such funds for further criminal activity. However, the Commission also emphasized that the proposed new law alone cannot solve all corruption problems and should be included in a broader approach which would include a wide range of measures aimed at increasing the effectiveness of law enforcement system.

In the second opinion, the Commission also evaluated some of the changes made in the draft law after the first opinion. Among other things, the Commission has emphasized that in the new draft law, all essential comments of the commission regarding the organization of the Bureau were addressed, firstly, it has achieved the provision of strong guarantees for the independence of the Bureau, and secondly, equipping the Bureau with a sufficient number of specialized personnel with appropriate competencies. [30]

But, in addition to the positive evaluations of the changes made in the draft law, the Second Opinion of the Venice Commission also contains some remarks. Among them, it should be mentioned that, it is still not clear if there is a mechanism to ensure that the statements made by the party in the civil procedure cannot be used in the criminal procedure.

The Commission has mentioned that the definition of the term "unjustifiable assets" should be revised. This definition should not only include the part of the assets of the person in the procedure, which is not in accordance with the legal income, but also that "the origin of which is not proven as legal". [31] Also, according to the commission, it should be mentioned that "public institutions and enterprises" include foreign ones as well or only Kosovar ones. [32]

[30] Second follow-up opinion of the European Commission for Democracy through Law (Venice Commission) No. 1013/2022 of November 19, 2022, on the Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets, Item 20.

[31] Ibid, Item 12.

[32] Ibid.

The Commission has referred to Article 21 of the draft law, which allows the extension of the verification period up to 5 years after the end of the mandate. However, in the case of an extension for a period of up to 5 years, there must be a reasonable basis for suspicion. In principle, the court must decide on such an extension. This may be reasonable, but there should be some time constraints, such as control by the court. According to the commission, these issues can still be considered by the drafters in the final version of the draft law.[33]

The Commission also referred to Article 22 paragraph 4, which deals with cases where assets have been transferred to a third party. According to the opinion of the Venice Commission, there must at least be a basis for a reasonable suspicion that this transfer was not made in good faith and that the initiation of an investigation must be preceded by a court order.[34]

Then, the Venice Commission notes that the recommendation to simplify the draft law by referring to the general procedural law in the relevant cases, has not been considered enough.

In the end, the Venice Commission has listed several recommendations in a taxing manner to be examined by the authorities during the preparation of the final version of the draft law.

a) Provide in the text that "unjustified assets" are those that "are not in accordance with legal income and whose origin is not proven legal";

b) Clarify whether "public institutions or enterprises" include foreign institutions or only Kosovar institutions and enterprises;

c) Provide an anti-blocking mechanism for the election of the Director General of the Bureau;

d) Establish a standard of evidence to justify the initiation of the procedure;

e) Clarify the mechanism by ensuring that the statements made and the documents provided by the party in the civil procedure cannot be used against them in the criminal procedure, as well as

f) Add a provision that would cover situations when the procedures from the Bureau turn out to be unfounded, providing for an opportunity to shorten the procedure by withdrawing the case.[35]

In the end, the Commission stated that, although there is still room for improvement, the new draft law represents a viable system of confiscation of assets in the absence of a criminal conviction in the Republic of Kosovo.

[33] Ibid, Item 28.

[34] The second follow-up opinion of the European Commission for Democracy through Law (Venice Commission) No. 1013/2022 of November 19, 2022, on the Draft Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets, Item 29.

[35] Ibid, Item 34.

7. ADDRESSING THE RECOMMENDATIONS OF THE VENICE COMMISSION IN THE APPROVED LAW ON THE BUREAU FOR VERIFICATION AND CONFISCATION OF ASSETS

The Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets during its "sailing" in the phases of conception, drafting and professional comments, underwent fundamental changes in terms of respect for constitutionality, effective regulation of the issue of confiscation of unjustifiable assets, respecting the rights of the parties in the procedure, as well as other follow-up issues.

Consequently, as expressed by the Venice Commission in its Second Opinion, the changes made in the draft law fully implement the recommendations in the opinion given. But in addition to these, in the second opinion the commission recommends that in the final version of the draft law some issues are also examined, which have been addressed to a large extent, with some exceptions.

The recommendation repeated in the second opinion, which had to do with emphasizing that the statements given during the verification and confiscation procedure will not be used in criminal proceedings, was addressed in the approved law. The Assembly added a new provision, which states that: "the statements given as well as the documents provided by anyone within the verification and confiscation procedure according to this law cannot be used as evidence in criminal proceedings."

The approved law has also regulated the issue when the Director General of the Bureau is not elected even in the second round of voting in the Assembly, as well as the cases when even after the announcement of the new advertisement, his election fails to take place. In this way, the Commission's recommendation given in the second opinion, to foresee a mechanism that does not block the election of the Director General, has been addressed.

On the other hand, the recommendation to expressly clarify in which cases the period of asset verification can be extended for 5 years after the end of the public function seems not to have been sufficiently clarified in accordance with the given recommendations. So, the discrepancy that must exist between income and assets is not defined in order for this provision to apply.

The Assembly also did not consider the recommendation of the Venice Commission given in its First and Second Opinion, regarding the handling of the case when the asset has been transferred to a third party. According to this provision, "If during the verification procedure, it is observed that the asset has been transferred to a third party, then the official of the Bureau will request from the Director General that the decision to verify the assets be extended to those third parties as well". According to what the commission had recommended, there should at least be a basis for a reasonable suspicion that this transfer was not carried out in good faith and that the initiation of an investigation should be preceded by a court order. But despite this, this provision had not changed.

Also, the Commission's recommendation to simplify the draft law by referring to the general procedural law in relevant cases, seems not to have been sufficiently implemented. The law elaborates several issues in detail, even though they are regulated similarly to the general procedural law.

In the table below, we can see the narrative presentation of the list of the most essential recommendations of the Venice Commission proposed in its Second Opinion, as well as their addressing by the lamakers.

RECOMMENDATIONS OF THE VENICE COMMISSION IN THE SECOND OPINION	Addressing recommendations by the Assembly of Kosovo
To foresee a mechanism that does not block the election of the Director General of the Bureau	✓ ³⁶
It should be expressly clarified in which cases the period of asset verification can be extended for 5 years after the end of the public function	X ³⁷
It should be noted that the statements made and the documents provided by the party in the civil procedure cannot be used against them in the criminal procedure	✓ ³⁸
The case of asset verification when the asset was transferred to a third party should be further dealt with.	X ³⁹
To simplify the draft law by referring to the general procedural law in relevant cases.	X ⁴⁰

Table 2. The recommendations of the Venice Commission given in the Second Opinion as well as their addressing by the Assembly of Kosovo

[36] In Article 15, a new paragraph has been added, according to which: "In the event that, even after the repetition of the competition, the Assembly fails to elect the Director General in two rounds, then the Commission shall announce the competition and conduct the procedures according to this article with the exception of only that the Commission at the end of the process chooses the candidate with the most points as Director General".

[37] This provision has not changed even after the Commission's recommendation; that is, it has not been determined what should be the discrepancy that should exist between income and assets, whether there should be any strong grounds for suspicion, or in which cases the asset verification period can be extended for 5 years after termination of the public function.

[38] A new provision has been added to Article 62 of the law, according to which: "Declarations given as well as documents provided by anyone within the verification and confiscation procedure according to this law cannot be used as evidence in criminal proceedings."

[39] The fact that there should be any reasonable basis to start the verification procedure with the third party has not been addressed, in addition to the fact that the third party also enters the umbrella of the definition of the party in the procedure. However, we cannot find a specific provision addressing this recommendation in the text of the Draft Law.

[40] The law still contains details that are regulated similarly to the general procedural law.

RECOMMENDATIONS OF THE VENICE COMMISSION IN THE SECOND OPINION	Addressing recommendations by the Assembly of Kosovo
To revise the definition of the term "unjustifiable assets".	✓ ⁴¹
To add a provision that would cover situations when the procedures from the Bureau turn out to be unfounded, providing for an opportunity to shorten the procedure by withdrawing the case	✓ ⁴²
Establish a standard of proof to justify the initiation of the procedure	X ⁴³
To provide in the text that "unjustified assets" are those that "are not in accordance with legal income and whose origin is not proven legal"	✓ ⁴⁴

[41] The term "unjustifiable assets" in the provisions of the draft law is defined in this way "the part of the asset of the person in the procedure, which is not in accordance with legal income and whose origin is not proven as legal".

[42] This issue was addressed after the First Opinion of the Venice Commission in article 39 of the draft law, with the provision entitled "withdrawal of the proposal".

[43] It was not addressed in the final version of the draft law.

[44] According to article 3, par. 1.10, the term "unjustifiable asset" is defined as follows: "the part of the asset of the person in the procedure, which is not in accordance with the legal income and whose origin is not proven as legal".

8. WHAT DOES THE LAW ON THE STATE BUREAU FOR THE VERIFICATION AND CONFISCATION OF UNJUSTIFIABLE ASSETS SPECIFY?

The Law on the State Bureau for the Verification and Confiscation of Unjustified Assets, consisting of 70 articles divided into 14 Chapters, regulates the creation of the civil mechanism of confiscation of assets, according to which, the assets of state officials can be confiscated without being preceded by any criminal offense if the same fail to justify it.

This law foresees the establishment of the State Bureau for the verification and confiscation of unjustifiable assets, as a competent institution for the verification of assets and the development of relevant procedures before the court.

This law applies to unjustifiably acquired assets, by official persons and third parties, acquired: during the period of exercising the function of these entities from February 17, 2008, as well as within 10 years from the moment when these entities cease to exercise their function.

8.1. WHAT WILL THE BUREAU'S COMPETENCES BE?

The Bureau, as a competent authority, initiates and develops the property verification procedure, submits the proposal for confiscation; requests assistance, information and relevant documents from all natural or legal persons exercising public, local and foreign authorizations; publishes on the Bureau's official website all judgments and decisions, as well as statistical data or other data related to the confiscation of property acquired in an unjustifiable manner. In addition to these powers, the Bureau reports to the Assembly of the Republic of Kosovo once a year on the work of the Bureau.

The Bureau is led by the Director General, who is elected for a 7-year term without the right to re-election, while it is supervised by the Oversight Committee, whose composition is detailed on page 13 of this report.

The powers of the Committee include the oversight of the work and activity of the Bureau, the development of the procedure and the proposal to the Assembly for the appointment and dismissal of the Director General; performance evaluation of the Director General; approval of by-laws defined by this law; reviewing the Director General's work reports; as well as perform other duties defined by the legislation in force.

8.2 WHAT IS THE PROCEDURE TO BE FOLLOWED FOR THE VERIFICATION AND CONFISCATION OF ASSETS?!

The Bureau begins the procedure for the verification of assets on the basis of credible and reliable information regarding unjustifiable assets, received by natural and legal persons, local and foreign, or on the basis of information it possesses based on documents accessible in whatever form.

When the Director General decides to start the procedure, the Bureau starts the verification procedure, requests, collects, researches and analyzes the documentation and other information relevant to the case; requests information from the party to the procedure and entities; examines the circumstances related to the case; and I can invite the party to the procedure to testify.

The verification procedure is carried out by the official of the Bureau, to whom the case is assigned by the decision of the Director General.

It is important to note that, in case the official of the Bureau notices that there is no discrepancy between income and assets, or the discrepancy between income and assets does **not exceed the value of twenty-five thousand (25,000) euros, then the official of the Bureau proposes closing the case.** The reasoned proposal for closing the case is submitted to the Director General, who then issues a decision to close the case.

Whereas, in the event that the official of the Bureau notices that the civil standard of assessing the likelihood is met and that there is a discrepancy between the income and the assets that **exceeds the value of twenty-five thousand (25,000) euros, then the official of the Bureau proposes to send the case to the Court for confiscation.** The reasoned proposal for sending the case to the Court for confiscation is submitted to the Director General, who then submits the proposal for confiscation.

The entire assets verification procedure must be carried out within 90 days from the day the decision is issued. Except for this, the verification procedure can be extended for 45 days when the procedure is complicated, and for one year when the procedure is dependent on the request for international cooperation.

After the submission of the proposal for confiscation, if the proposal is clear and complete, and after the acceptance of the objection by the party and the answer to the objection by the Bureau, the court by order sets the hearing for the examination of the proposal for confiscation. This session is public, except in special circumstances. In this hearing session, the party has the burden of proof to prove that the asset that is subject to confiscation has a justifiable origin.

In this hearing session, the party has the burden of proof to prove that the asset that is subject to confiscation has a justifiable origin.

According to the law, until the end of the hearing session, the bureau can withdraw from the proposal for confiscation of the assets, justifying before the court the reasons for the withdrawal. After withdrawal, this case is considered *res judicata*.

For the assets confiscation proposal, the court decides by judgment, while on other cases it decides by decision. Against this verdict, the parties can appeal within 30 days, and the Court of Appeal decides on the appeal. Meanwhile, against the judgment of the second instance, the aggrieved party can present: revision and request for repetition of the procedure.

The law is expected to enter into force 6 months after its publication in the Official Gazette of the Republic of Kosovo, while regarding the functionalization of the Bureau, the President of the Supreme Court 15 days after the entry into force of the law will appoint a judge from the ranks of the Supreme Court as a member of the Oversight Committee of the Bureau, and 30 days later the committee will be constituted.

9. CONCLUSION

The issue of the necessity of investigating, verifying and confiscating the unjustifiable assets of public official persons, through this established legal corridor, essentially constitutes the basic grounds of the pro and contra discussions against the Bureau as a reflection, representative of the "political and selective pursuit" of unjustifiable assets of public official persons and third parties or as an institution which will have the heavy burden of partial fight against corruption and organized crime.

In addition to the still unproven fact that the Bureau will be transformed into a political body that will carry out political hunting, or an institution that will successfully carry out certain legal objectives, it must be mentioned that the Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets, in terms of its type, rule and legal nature, constitutes an exception to the standards established in contemporary legal systems, because with it a "free athletic jump" of the material norms and procedures of criminal law is made. So, this competent authority will initiate civil confiscation without conducting a criminal proceeding before a competent court from which a criminal conviction would result. However, the efficiency and results of this overcoming of the conventional path until now (binomial: the prosecutor and the court) will be proven by time after the start of the institutional implementation of the provisions of the Law.

The marathon progress of the legal construction of the Bureau for the Verification and Confiscation of Unjustified Assets has been preceded at every moment by serious criticisms on politicization and the lack of independence in its work, the lack of legal guarantee on the minimum respect of the rights of the parties in the procedure, the lack of control over work and budget, as well as other substantive issues.

Consequently, considering the importance and great impact of this legal innovation that would be incorporated into the legal system of Kosovo, the Assembly of Kosovo had twice officially addressed the Venice Commission as an advisory body on constitutional issues. All this, with the aim of ensuring constitutionality and compliance with legal standards of efficient institutional functioning.

The professional expertise of the Venice Commission on the versions of the Draft Law has deeply raised the standard in terms of legal regulation, building the functional pillars of the Bureau's institution, the supervision of the Bureau's work, its independence, the creation of units within it, the method of electing the Director general; extension of appeal and objection deadlines, as well as other legal issues.

The burden of certifying the "marathon success" of the provisions of the Law on the State Bureau for the Verification and Confiscation of Unjustifiable Assets has been given to the Constitutional Court of the Republic of Kosovo, since the Democratic Party of Kosovo (PDK), only 11 days after its approval, has sent the same in the Constitutional Court for evaluation of the constitutionality of the provisions of the Constitution of the Republic of Kosovo. After the expertise provided by a specialized international forum, the Law must undoubtedly pass the last challenge before the final authority of the Republic of Kosovo for the interpretation of the Constitution and the compatibility of laws with the Constitution. Therefore, only the decision of the Constitutional Court would ensure the "athletic leap" of the law towards the decree by the President of the Republic of Kosovo.

In conclusion, it is obvious that the operation of the Bureau according to the provisions of the Constitution of the Republic of Kosovo and international standards for the respect of human rights will give tangible results and fruits in the fight against organized crime and corruption. However, the phrase "fighting organized crime and corruption" would only take colour in cases where the Bureau as a competent body for the investigation of the assets of public officials would be added to the effective cooperation of the institutions of the justice system.

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