



**Republika e Kosovës**  
**Republika Kosova - Republic of Kosovo**  
*Qeveria - Vlada - Government*

**MINISTRIA E DREJTËSISË**  
**MINISTARSTVO PRAVDE / MINISTRY OF JUSTICE**

**CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY  
ACQUIRED ASSETS**

*April 2021*

## Table of Contents

<b><u>SUMMARY OF CONCEPT PAPER.....</u></b>	<b><u>4</u></b>
<b><u>INTRODUCTION .....</u></b>	<b><u>6</u></b>
<b><u>CHAPTER 1: DEFINITION OF PROBLEM .....</u></b>	<b><u>7</u></b>
1.1 CONTEMPORARY INTERNATIONAL STANDARDS .....	9
1.2 KOSOVO’S INSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN THE FIELD OF ASSET CONFISCATION .....	12
1.3 MAIN PROBLEM.....	25
1.3.1 CAUSES .....	27
1.3.2 EFFECTS.....	32
1.5 STAKEHOLDERS BASED ON THE DEFINITION OF THE PROBLEM.....	32
<b><u>CHAPTER 2: OBJECTIVES.....</u></b>	<b><u>35</u></b>
<b><u>CHAPTER 3: OPTIONS .....</u></b>	<b><u>36</u></b>
3.1: THE <i>STATUS QUO</i> OPTION (WITHOUT ANY CHANGES) .....	36
3.2: THE OPTION TO IMPROVE THE IMPLEMENTATION OF THE CURRENT LEGAL FRAMEWORK WITHOUT LEGISLATIVE CHANGES .....	38
3.3 THE OPTION OF APPROVING A NEW LAW WHICH ENABLES THE CONFISCATION OF THE UNJUSTIFIABLY ACQUIRED ASSETS EVEN IN THE ABSENCE OF A CONVICTION .....	39
<b><u>CHAPTER 4: IDENTIFICATION AND ASSESSMENT OF FUTURE IMPACTS .....</u></b>	<b><u>52</u></b>
4.1 IDENTIFICATION AND ASSESSMENT OF IMPACT FOR THE THIRD OPTION .....	55
4.2 CHALLENGES IN DATA COLLECTION .....	59
<b><u>CHAPTER 5: COMMUNICATION AND CONSULTATIONS.....</u></b>	<b><u>59</u></b>
<b><u>CHAPTER 6: COMPARISON OF OPTIONS .....</u></b>	<b><u>62</u></b>
6.1 IMPLEMENTATION PLANS OF DIFFERENT OPTIONS .....	64
6.2 TABLE OF COMPARISON OF THE THIRD OPTIONS .....	64
<b><u>CHAPTER 7: CONCLUSION AND FOLLOW-UP STEPS.....</u></b>	<b><u>66</u></b>
7.1 PROVISIONS FOR SUPERVISION AND EVALUATION.....	67

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

**ANNEX 1: EVALUATION FORM ON THE ECONOMIC IMPACTS.....68**

**ANNEX 2: EVALUATION FORM ON THE SOCIAL IMPACTS .....71**

**ANNEX 3: EVALUATION FORM ON THE ENVIRONMENTAL IMPACTS.....76**

**ANNEX 4: EVALUATION FORM ON THE IMPACT ON FUNDAMENTAL RIGHTS.....79**

**ANNEX 5: EVALUATION OF GENDER RELEVANCE .....82**

## Summary of Concept Paper

<b>General information</b>	
Title	Concept Paper on the issue of unjustifiably acquired assets
Responsible Ministry	Ministry of Justice, Department for European Integration and Policy Coordination (DEIPC)
Contact person	Lulzim Beqiri, Director, Department for European Integration and Policy Coordination (DEIPC), Ministry of Justice
DWP	Objective 2 Rule of Law
Strategic priority	Government Program of the Republic of Kosovo 2020-2023 - Objective 2 (Rule of Law)

<b>Decision</b>	
Main issue	Confiscation of unjustifiably acquired assets
Summary of consultations	This Concept Paper has been launched on the online platform for public consultation from 27.05.2020 to 17.06.2020, through which we received comments. Comments were also received via e-mail.
Proposed option	Adoption of the new Law that would enable the confiscation of unjustifiably acquired assets in the absence of a conviction

<b>The main impacts expected</b>	
Budgetary impacts	This Concept Paper aims, if possible within the existing general budget, to have as few impacts as possible. Nevertheless, the budget cost will be specified when drafting the Draft Law.
Economic impacts	A positive economic impact is expected through the creation of a fund where the confiscated material goods would be collected.
Social impacts	A positive social impact is expected through a more efficient implementation of the confiscation system in the country and consequently a most successful fight against crime and overall greater security in the country.
Impacts on human rights	The most important interrelated influences relate to human rights and freedoms, namely the right of a person to property, the right to a fair trial - the procedures performed within a reasonable time and the protection of personal data.

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Environmental impact	No relevant impact.
Test of SMEs	Considering the subject matter of this Concept Paper, it is considered that there is no need to conduct the SMEs Test.

<b>Follow-up steps</b>	
Short-term	Drafting of Draft Law
Medium-term	Implementation of Draft Law

## Introduction

*Figure 1: Table with general information for the Concept Paper*

Title	Concept Paper on the issue of unjustifiably acquired assets
Responsible Ministry	Ministry of Justice, Department for European Integration and Policy Coordination (DEIPC)
Contact person	Lulzim Beqiri, Director, Department for European Integration and Policy Coordination (DEIPC), Ministry of Justice
GWP	Objective 2 Rule of Law
Strategic priority	Government Program of the Republic of Kosovo 2020-2023 – Objective 2 (Rule of Law)
Working group	<ol style="list-style-type: none"> <li>1. Lulzim Beqiri, Chair, Department for European Integration and Policy Coordination, Ministry of Justice;</li> <li>2. Blerim Sallahu, Chief of Cabinet of the Minister of Justice;</li> <li>3. Ardian Bajraktari, Legal Department, Ministry of Justice;</li> <li>4. Gentrita Bajrami, Department for European Integration and Policy Coordination, Ministry of Justice;</li> <li>5. Noliana Kusari, Legal Department, Ministry of Justice;</li> <li>6. Albina Shabani, Kosovo Judicial Council;</li> <li>7. Mustafë Tahiri, Kosovo Judicial Council;</li> <li>8. Besim Kelmendi, Kosovo Prosecutorial Council;</li> <li>9. Naim Abazi, Kosovo Prosecutorial Council;</li> <li>10. Fatmir Karaliti, Kosovo Police;</li> <li>11. Afrim Atashi, Anti-Corruption Agency;</li> <li>12. Flutra Blakçori, Kosovo Financial Intelligence Unit;</li> <li>13. Alba Boshnjaku, Government Coordinating Secretariat;</li> <li>14. Razije Murtezaj, Ministry of Finance and Transfers.</li> </ol>

## Chapter 1: Definition of problem

Assets acquired through the commission of criminal offenses is the main promoter of criminality. Such assets provide perpetrators with further sources to continue their illegal activities, especially when it comes to organized crime and corruption wherein a considerable economic background is essential to the functioning of criminal networks. Knowing this, many countries, including Kosovo, are making efforts to prevent such activities by ensuring that perpetrators do not take advantage of their illegal activities. Thus, by removing the main motive for undertaking these actions, states aim to prevent and impede the functioning of criminal groups.

There are three main mechanisms used by European countries and beyond to pursue this goal: criminal confiscation, administrative confiscation, and civil confiscation. Regardless of the basis of the confiscation process, whether it is criminal, administrative, or civil, it should be noted that the importance of confiscating material goods that derive from criminal activities is multidimensional. Not only does such a process prevent the repetition of illegal activities by removing their financial resources, but also the fact that this mechanism addresses concerns that high level of criminally acquired assets risk destabilizing a country's financial system and consequently corrupting the legitimate society.

In general, while different states can be divided on the basis of the type of confiscation procedure they practice, they nevertheless join in the recognition of confiscation as the key to the successful fight against organized crime and corruption and as supporters of the rule of law and the moral principle that no one should benefit from crime.

From the analysis conducted for the purposes of this Concept Paper it has been found that the most established and accepted mechanism for confiscation is the confiscation carried out through criminal proceedings or criminal confiscation wherein after the issuance of the sentencing judgment, the court, at the request of the prosecution office and depending on the facts and evidence, decides whether the assets of the convicted person should be confiscated or not. This procedure is in fact the usual course of action in all states, not excluding Kosovo, and is consequently considered the primary option when the conduct of criminal prosecution is possible.

However, there are cases when such a course of action may not be available to the state prosecutor's office. It often happens that the prosecution office does not have enough evidence to link the assets of the convicted person to the criminal offense committed, or it happens that the investigation is blocked and as a result the perpetrator manages to escape

or distribute his assets. It is not uncommon for certain people's lifestyles to not correspond to the declared incomes, and although there is a suspicion that the unjustified assets of these persons are linked to criminal offenses, it is extremely difficult to prove such a fact. All these cases and more, make it impossible to confiscate assets according to the usual criminal proceedings.

Having in mind such scenarios, during the last decades, considerable efforts have been made to draft fair and efficient rules, which enable state bodies to seize material goods which are suspected to have no legitimate origin. In pursuit of this goal, it has been observed that criminal confiscation actually represents only one side of the coin in a state's efforts to combat organized crime and corruption. The other side of the coin has to do with civil confiscation, a procedure that can be initiated even in the absence of a conviction.

While confiscation of assets based on a conviction for committing a criminal offense is well regulated in Kosovo, shifting the focus from the criminal aspect to the civil one has made the debate more controversial for two reasons.

Firstly, confiscation of assets, as a concept, is a practical activity that illustrates the willingness of a country's prosecuting authorities to fight corruption and organized crime in the country. At the same time, it serves as a guarantee for the citizens that all those who deal with illegal activities will not enjoy the material benefits that flow from these activities and will not use them to further increase the level of crime in country. From what we have seen so far, the small number of seizures executed in Kosovo has not done a good job in sending this message. This given the fact that in the last six years, the value of freezes and seizures reaches the value of 180,000,000.00 Euros, while the value of final confiscations falls to only 3.5 million Euros.

Secondly, given Kosovo's history as a country that has emerged from a war and being in transition, civil-based confiscation, i.e. its successful implementation, is considered as an extremely sensitive issue. In Kosovo, the issue of defining ownership or the origin of assets is very problematic. Among the main reasons for this are informality in terms of inherited property, diaspora remittances and informal sales contracts.

Therefore, this Concept Paper will pay special attention to these two issues. To do this, first, the Concept Paper will analyze the country's legislative framework in the field of confiscation of illegally acquired assets in order to identify problems in its successful implementation, and then proceed with the elaboration of options, through which their targeting and ultimate solution is intended.



## 1.1 Contemporary International Standards

In preparing this Concept Paper, the Ministry of Justice has taken into account a number of international instruments related to the field of confiscation of unjustifiably acquired wealth. This is because regardless of the option chosen, the main expectation and goal of this Concept Paper is that Kosovo's legal framework regarding the confiscation of unjustifiably acquired wealth be as close as possible to the contemporary international standards, especially those of the European Union, as well as the best practices of the Member States.

Before we move on with the elaboration of these standards, it is worth noting that despite the efforts and tendencies to build unique standards in the field of illegally acquired assets, a unique and standardized methodology has not yet been achieved at the international level in terms of legal procedures, as well as in terms of content structure and the nature of laws. However, this does not mean that there are no general principles that apply internationally in terms of confiscation of assets. On the contrary, while the approach may differ technically and procedurally from country to country, it is important that all international instruments in this area emphasize the importance of confiscation as the most effective legal instrument for combating crime.

In this regard, the first convention governing the confiscation of assets is the **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**, 1988 (Article 5)<sup>1</sup>. Another legal basis is found in the **United Nations Convention against Transnational Organized Crime**<sup>2</sup>, namely Articles 12-14 governing confiscation and seizure of assets, international co-operation in connection with confiscation, and matters of disposal of proceeds of crime or confiscated assets. Similar provisions are provided for in the **International Convention for the Suppression of the Financing of Terrorism** (Article 8)<sup>3</sup>.

Furthermore, the **United Nations Convention against Corruption**<sup>4</sup>, adopted by the United Nations General Assembly by Resolution 58/4, dated 31 October 2003, is the fundamental, global and most comprehensive instrument in the fight against corruption. This Convention is relevant to the purposes of this Concept Paper taking into account the fact that it is aimed at strengthening the fight against corruption, and encouraging the

---

<sup>1</sup> <https://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>

<sup>2</sup> <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

<sup>3</sup> <https://www.un.org/law/cod/finterr.htm>.

<sup>4</sup> <https://www.unodc.org/unodc/en/treaties/CAC/>.

emergence of institutional mechanisms that address the issue of confiscation of assets of illegal origin.

The United Nations Convention against Corruption calls on each State Party, to the greatest extent possible within the domestic legal system, to take whatever measures may be necessary to enable the confiscation of proceeds deriving from criminal offences, as well as assets, equipment or other means which may be used or are intended to be used for the commission of criminal offenses. The same Convention further urges States to consider the possibility that the perpetrator has to prove the origin of the proceeds of crime or any other assets subject to confiscation (Article 31, paragraph 8 of the Convention).

Similar provisions are contained in the **Forty Recommendations of the Financial Action Task Force**<sup>5</sup>. The Financial Action Task Force was established in 1989 during the G7 Summit in Paris as an intergovernmental body and international instrument in the fight against money laundering. This multi-disciplinary and fundamental body in the fight against money laundering, aims to harmonize the policies of member states in the field of money laundering. These forty recommendations form the basis of any attempt to combat money laundering and are accepted by more than one hundred and thirty countries around the world.

Important for the scope of this Concept Paper is the Fourth Recommendation of the Financial Action Task Force which calls on states to consider adopting measures that allow the confiscation of incomes or instruments, without seeking a criminal conviction, or which require by a perpetrator to demonstrate the lawful origin of the property, which is alleged to be subject to confiscation, to the extent that such a claim is in accordance with the principles of applicable laws in the respective countries.

At the level of the European Union, the policy of confiscation of assets of illegal origin has been gradually advanced over the last decades through a number of decisions, regulations and directives. The key goal of each of these instruments is to mobilize member states to set standards in the area of asset confiscation and material benefits gained through criminal activities, as well as the continued advancement of this agenda.

The forerunner in this regard is the **Joint Action 98/699/JHA of 1998**<sup>6</sup> on money laundering, the identification, tracing, freezing, seizing, and confiscation of the instrumentalities and the proceeds from crime. In an effort to improve co-operation between EU member states, this Joint Action Initiative provides preparation within the scope of European Judicial

---

<sup>5</sup> <https://www.oecd.org/newsroom/2789371.pdf>.

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998F0699&from=EN>.

Network operations of guidelines that are easily used to identify, track, freeze, seize and confiscate benefits and proceeds from crime.

Important is also the **2001/500/JHA: Council Framework Decision on money laundering, the identification, tracking, freezing, and confiscation of instrumentalities and proceeds of crime**<sup>7</sup>. Through this decision, the member states of the European Union are obliged to take the necessary steps in order to ensure the procedures for the confiscation of proceeds of crime. Referring to this decision, the European Union determined that the legal assets of the respective value can be confiscated if the illegal benefit cannot be confiscated, both in the proceedings taking place before the national bodies, as well as in proceedings at the request of another country.

Further, in 2003, the European Union adopted the **Framework Decision on the Execution in the European Union of orders freezing property or evidence (2003/577 / JHA)**<sup>8</sup>. Through the Framework Decision on the Execution in the European Union of orders freezing property or evidence (2003/577/JHA), the rules and procedures have been determined according to which the member states of the European Union will recognize and execute the orders for freezing assets or of evidence in their territory. This Decision determines the fast and efficient procedure of mutual execution of orders for freezing property or evidence, or alternatively determining the specific conditions for refusing to execute the orders in question.

This Framework Decision of the European Union is important for the purposes of this Concept Paper because it clearly defines that the order to freeze property or evidence refers to any measure taken by the competent judicial body of the issuing State for the purpose of temporary obstruction of destruction, transformation, movement, transfer or disposal of property which may be the object of permanent seizure or confiscation.

In 2005, after conducting an analysis of the implementation of the directives so far, and considering that certain sectors of organized crime were continuing to flourish, the European Union issued the **2005/212/JHA Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property**<sup>9</sup>. Through this Decision, the European Union set some well-defined standards on when a confiscation should take place.

This decision is important because for the first time it presents an exception to the principle that confiscation is possible only within the scope of the criminal procedure. Thus, Article

---

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0500&from=GA>.

<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0577&from=EN>.

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005F0212&from=EN>.

2 (2) and Article 3 of this Decision stipulate that Member States may use various procedures from criminal proceedings to deprive the perpetrator of the proceeds of this offense.

Framework Decision 2005/212/JHA provides for the first time the extended powers for confiscation or the so-called extended confiscation in cases expressly defined as serious offenses committed within a criminal organization covered by the Council Framework Decision 2002/475/JHA of 13 June 2002 on the fight against terrorism (Article 3).

A characteristic of this type of confiscation is that when such acts are committed, it is possible to confiscate property that has not been directly derived from the criminal activity in question, i.e. a connection between assets acquired through the criminal activities of the convicted person and the specific offence is not required. The decision provides for another exception to the above principle and allows Member States to use various procedures from criminal proceedings to deprive the perpetrator of the property in question. For the first time, Member States are given the discretion to confiscate property acquired not by the convicted person but by third parties. These include the closest relationship of the person in question, as well as legal persons for whom the interested person, whether single or in relation to his closest relationship, has a controlling influence.

Most recently, in 2014, the European Parliament adopted the **Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union**<sup>10</sup>, which summarizes the commitment of the European Union to make the issue of confiscation of property a higher priority and with demands to achieve concrete results in this regard. In this Directive, it is important to note that some aspects of confiscation are again attributed to member states.

Most recently, just days ago, on 19 March 2020, the European Court of Justice in a press release made it clear that the legal framework of the European Union does not prohibit EU member states from enacting laws by which they are allowed civil confiscation of property in the absence of a conviction<sup>11</sup>. The statement came after Bulgarian authorities appealed to the European Court of Justice, arguing that European Union member states could pass legislation to allow confiscation of property even in the absence of a conviction.

## **1.2 Kosovo's institutional and legislative framework in the field of asset confiscation**

---

<sup>10</sup> See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0042&from=EN>.

<sup>11</sup> See: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-03/cp200032en.pdf>.

Over the past two decades, criminal justice in Kosovo has undergone a series of institutional and legislative reforms, with a particular emphasis on the fight against organized crime, corruption and demands for the sequestration and confiscation of illegally acquired assets. While the international mechanisms such as UNMIK and EULEX played a crucial role in combating organized crime and corruption from 1999 to 2014, from 2014 these competencies began to be transferred to local authorities which would be equipped with competencies to prosecute crime.

Today, twelve years after the declaration of independence of Kosovo, the institutional framework of our country regarding the confiscation of illegally acquired property consists of the following institutions:

- *Kosovo Police*
- *State Prosecutor's Office*
- *Agency for Administration of Sequestered or Confiscated Assets*
- *Courts*
- *National Coordinator against Economic Crimes*

Each law enforcement institution has its own responsibility in the system of confiscation of illegal assets, as follows:

*Kosovo Police* pursues the perpetrators of criminal offenses, identifies and collects evidence, financial investigation, identification, tracking and seizure of assets, and implements the investigation under the direction of the prosecution office.

*The Prosecution Office* is responsible for identifying and tracking down illegal assets, restricting assets temporarily, filing a claim an order for temporary seizure, freezing assets temporarily, requesting a restraining order, requesting temporary measures to secure assets, including confiscated assets in the indictment, request for verification of the convict's assets, etc.

*The Agency for Administration of Sequestered or Confiscated Assets* preserves and administers the sequestered or confiscated assets in cooperation with the prosecution office, the court, or other competent bodies, in accordance with the law in force, with the exception of confiscated assets for the realization and collection of tax obligations. The same helps in the execution of decisions for sequestration or confiscation of assets, at the request of the competent authorities, enables the sale of sequestered or confiscated assets according to the authorization of the competent body, engages experts, as needed, to assess the value of assets and the manner of storing the seized or confiscated item, administers the data related to the seized or confiscated assets in a centralized computer system.

*The courts*, based on the Criminal Procedure Code of the Republic of Kosovo, review the requests of the prosecution office for ordering temporary sequestration and decide on those requests, review the requests for issuing temporary measures for securing property that is subject to sequestration according to the order and decide for temporary concrete security measures, examine the prosecution's requests for the issuance of a restrictive order consisting of the freezing of assets. They finally decide on the confiscation of property wherein, together with the judgment, they also order the confiscation. In addition, the court based on the Law on Extended Powers for Confiscation of Assets decides on the request for verification of property and may continue criminal proceedings and procedures for extended confiscation in cases of death, absence, or mental disorder or disability of the defendant and decide on the confiscation of property.

*The National Coordinator against Economic Crimes* has the responsibility to coordinate, harmonize, monitor and report on the implementation of activities and actions related to organized crime.

Each of these mechanisms performs its duties and competencies based on the applicable legal framework in the field of confiscation of unjustifiably acquired wealth. This framework consists of the following legal acts:

- *Criminal Code of the Republic of Kosovo no. 06/L-074 (CCRK);*
- *Criminal Procedure Code no. 04/L-123 (CPCRK)*
- *Law no. 06/L-087 on Extended Powers for Confiscation of Assets (LEPCA);*
- *Law no. 03/L-141 on Administration of Sequestered or Confiscated Assets (LASCA)*
- *Administrative Instruction MoJ No. 05/2017 on the Manner and Procedure of Selling Sequestered Movable Assets*
- *Administrative Instruction MoJ No. 04/2017 on the Manner of Determining Costs for Preserving and Storing Sequestered and Confiscated Assets*
- *National Strategy of the Republic of Kosovo for the Prevention and Combating of Informal Economy, Money Laundering, Financing of Terrorism and Financial Crime 2019-2023*

***The Criminal Code of the Republic of Kosovo*** regulates the issue of confiscation of the instrumentalities and material benefits of criminal offenses in Chapter VII. Article 92, as the sole article of this chapter, stipulates that instrumentalities and the proceeds obtained

through criminal offenses are confiscated, and when this is not possible, an equal amount is paid or any asset of the defendant of equal value is confiscated.

*The Criminal Procedure Code of the Republic of Kosovo* provides for a number of provisions which regulate issues related to and leading to confiscation of unlawful property. Initially, the Code foresees that in cases when the investigation is authorized for a criminal offense under Article 90 of this Code, the freezing of assets which have been used in the commission of a criminal offense under investigation, are evidence, or have been acquired from the criminal offense under investigation, may be done through *temporary freezing of assets*, as provided in article 264. Besides this, the freezing of assets that may undergo confiscation, may be proceeded through *temporary measures for securing property*, foreseen in article 268 of CPC. Further, the Criminal Procedure Code, regulates, as well, the *sequestration of assets*, in article 112 where it provides that, by the order of the court, sequestration may be performed for objects which might be evidence in the criminal proceedings, objects or property that facilitated the criminal offence, or which constitutes a material benefit obtained from the commission of a criminal offence. According to the Code, the sequestered objects and property, are placed under the supervision and control of the state prosecutor. Finally, the Code provides for the *confiscation of assets*, which is done by the court in the judgment, under the conditions that: the prosecutor has determined those items in the indictment; if during the main trial it is established that they have enabled the commission of the criminal offense or constitute a material benefit obtained from the commission of a criminal offence as well as if their confiscation is allowed by law.

Thus, CPCRK provides for the confiscation of assets related to the criminal offense for which the proceedings are conducted and does not extend further to the rest of the defendant's property. Work is currently underway on a new Criminal Procedure Code which is expected to be adopted during 2020, which is expected to provide for more advanced provisions addressing the confiscation of property.

*Law on Extended Powers for Confiscation of Assets* entered into force in January 2019 and applies the European Parliament and the Council's Directive 2014/42/EU, dated 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

This law defines the extended powers for confiscation of assets when the procedures according to the CPCRK are not sufficient. LEPCA, introduces a quasi-criminal confiscation and goes one step further than the CPCRK by accommodating under certain conditions the confiscation of assets that are not related to the specific criminal offense for which the defendant has been found guilty. The procedure for such confiscation may be initiated

within five years, after the judgment of conviction, for the below mentioned criminal offenses, has become final: criminal offenses of official corruption and criminal offenses related to official duty; criminal offences against public health, criminal offences of human trafficking, slavery and kidnap, sexual criminal offences, criminal offences relating to armed conflicts outside state territory, criminal offences of money laundering and terrorist financing, criminal offences relating to terrorism, criminal offences relating to narcotics, criminal offences relating to weapons, cyber-criminal offences, criminal offences against the economy, criminal offences against property, criminal offences against the environment, the attempt, the incitement, the assistance and the agreement to commit any of the criminal offences, and any criminal offence that generated a material benefit exceeding ten thousand (10,000) Euro.

In case of being found guilty for one of the mentioned criminal offenses, the State Prosecutor, based on Article 4 of this law, may submit a request for verification of the assets of the convicted defendant, including any kind of assets that the defendant acquired within ten (10) years before the initiation of the investigative phase; is owned or is in possession of a third party on behalf of the defendant; or the defendant transferred them to a third party who was not a *bona fide* buyer. The burden of proof is then placed with the defender, who needs to prove the legitimate origin of the property, as well as with the third parties in respect of their claims. The court may issue an order for confiscation if the defendant has failed to prove that the assets were acquired by him/her from sufficient legitimate sources at the time of acquiring the assets, and/or if the third party presented as the buyer is not *bona fide*.

The scope of this law also includes the confiscation of material benefits or instrumentalities of a criminal offense in cases where the criminal proceedings cannot be continued after the defendant has died, in case of absence, mental disorder or disability, however the court pursuant to Article 20 of this law must continue the criminal proceedings for the purpose of confiscation in cases where the value of the property subject to the extended confiscation exceeds ten thousand (10,000) Euro, and when it is in the interest of justice to continue with proceedings, and appoint a lawyer who would represent the interests of the party. Hence, based on this article, the place of the defendant in the proceedings is filled by its property, which is the target of confiscation.

While this law has undoubtedly extended the powers of the prosecuting authorities to confiscate illegally acquired assets and has introduced the confiscation of property regardless of causal linkage of the latter with the criminal offence, it still provides for the existence of judgment of conviction as a necessary element to pave the way for confiscation.



*The Law on the Administration of Sequestered or Confiscated Assets* entered into force in April 2016 and defines the functions and responsibilities of the Agency for Administration of Sequestered and Confiscated Assets.

Furthermore, in the Republic of Kosovo other legal acts are currently in force, which in one way or another are related to the sphere of confiscation of illegal assets, such as: *Law no. 05/L-096 on the Prevention of Money Laundering and Combating Financing of Terrorism, Law on Tax Administration and Procedures, Law on Anti-Corruption Agency, Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of All Public Officials, international conventions applicable in Kosovo, etc.*

Finally, the *National Strategy of the Republic of Kosovo for the Prevention and Combating of Informal Economy, Money Laundering, Financing of Terrorism and Financial Crime 2019-2023* is a document drafted by the Government of the Republic of Kosovo with the help of partners, which includes measures that the Government intends to undertake during the period 2019-2023 against the informal economy, money laundering, financing of terrorist and financial crime.

This strategy aims to achieve two strategic objectives:

- Improving the quality of governance in the economy through the identification, analysis, treatment and monitoring of the fight against the informal economy, money laundering and financing of terrorism;
- Increasing financial resources for public services as a result of additional tax revenues and from the confiscation of illegal assets.

The following table identifies the relevant strategic documents and the legal and sub-legal acts related to the issue addressed in this Concept Paper. Also, the institutions responsible for the implementation of these acts are specified, as well as the role and duties of law enforcement institutions.

*Figure 2: Relevant policy documents, laws and bylaws*

Policy paper, law or sub-legal act	Link to the policy or planning document via the Internet or the legal acts in the Official Gazette	State institution(s) responsible for implementation	Role and tasks of the Institution(s)



		<p>Kosovo Police</p>	<p>within the CPC is responsible for the identification and tracking of illegal property, temporary restriction of property, may issue an order for temporary freezing of property, respectively, prohibition of sale, exchange of ownership or withdrawal from the account of any item which is suspected to have been used in the criminal offense under investigation or acquired from the criminal offense under investigation, the request for an order for temporary sequestration, the request for a restraining order, the inclusion of confiscated property in the indictment, may request transfer to the Government of Kosovo for the use of vehicles or aircraft for which permanent seizure has been made, etc.</p> <p><b>Implementation of legislation:</b> the Police investigates if there is a reasonable doubt that a criminal offence that is prosecuted ex officio has been concluded, has been committed and report them to the state prosecutor. The authorized police officer may be delegated the supervision and control of items and</p>
--	--	----------------------	--

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

			property temporarily seized, etc.
LAW NO. 06/L-087 ON EXTENDED POWERS ON CONFISCATION OF ASSETS	<a href="https://gzk.rks.gov.net/ActDetail.aspx?ActID=18337">https://gzk.rks.gov.net/ActDetail.aspx?ActID=18337</a>	Ministry of Justice  Courts          Prosecution Offices	<p><b>Drafting legislation and overseeing implementation</b></p> <p><b>Implementation of legislation:</b> According to the LEPCA, the court, among other things, decides on the request for verification of property and other requests of the prosecutor, issues a final restrictive order, holds a hearing to verify the property and may continue criminal proceedings and procedures for extended confiscation in cases of death, absence, disorder or mental incapacity of the defendant, confiscation of the property of the defendant illegally acquired, etc.</p> <p><b>Implementation of legislation:</b> The state prosecutor is authorized through the LEPCA to make a request for verification of the convict's property, proves that the property presented in the request for verification of property is the property of the defendant, to issue a temporary restraining order that prohibits any person named in the order to carry out</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

		Kosovo Police	<p>transactions with certain property, submits a request for a final restrictive order, may initiate an investigation for confiscation, may request an order for disclosure of information, may propose to the court the continuation of criminal proceedings and proceedings for confiscation etc.</p> <p><b>Implementation of legislation:</b> Executes the temporary restrictive order issued by the State Prosecutor, takes care of the property and maintains the property, etc.</p>
LAW NO. 05/L-049 ON ADMINISTRATI ON OF SEQUESTRA TE D AND CONFISCATED ASSETS	<a href="https://gzk.rks-gov.net/ActDetail.aspx?ActID=12360">https://gzk.rks-gov.net/ActDetail.aspx?ActID=12360</a>	Ministry of Justice  AASCA	<p><b>Drafting legislation and overseeing implementation</b></p> <p><b>Implementation of legislation:</b> AASCA maintains and administers the seized or confiscated property in cooperation with the prosecution, the court, or other competent bodies, executes the court order for the temporary measure for securing the property, makes the assessment of the value of the seized and confiscated property, and determines the manner of preserving this property, etc.</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<p>ADMINISTRATIVE INSTRUCTION MoJ NO. 05/2017 ON THE MANNER AND PROCEDURE OF SELLING SEQUESTERED MOVABLE ASSETS</p>	<p><a href="https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=1544">https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=1544</a> <u>2</u></p>	<p>Ministry of Justice  AASCA</p>	<p><b>Drafting legislation and overseeing implementation</b>  <i>Implementation of legislation:</i> According to this Administrative Instruction, AASCA maintains the register of all assets taken into its care, registers the notification of all issues reported to it, assumes responsibility for the property and accepts the property, updates the value of the items and immediate removal of perishable goods, conducts special procedure to sell property, etc.</p>
<p>ADMINISTRATIVE INSTRUCTION MOJ / NO.04/2017 ON THE MANNER OF DETERMINING COSTS FOR PRESERVING AND STORING SEQUESTERED AND CONFISCATED ASSETS</p>	<p><a href="https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=1531">https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=1531</a> <u>7</u></p>	<p>Ministry of Justice  AASCA</p>	<p><b>Drafting legislation and overseeing implementation</b>  <b>Implementation of legislation:</b> It covers the costs for the administration of the seized property, provides security measures for the seized items, etc.</p>
<p>REGULATION FOR THE ESTABLISHMENT AND FUNCTIONALITY</p>	<p><a href="http://www.kpk-rks.org/assets/cms/uploads/files/Rregullore/2014/Nr.1511.2013-Rregullore_per_themeli">http://www.kpk-rks.org/assets/cms/uploads/files/Rregullore/2014/Nr.1511.2013-Rregullore_per_themeli</a></p>	<p>National Coordinator for Combating Economic Crime</p>	<p><b>Implementation of legislation:</b> Coordination of activities to increase awareness of the risks associated with failure and the benefits of the</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<p>ZATION OF THE NATIONAL COORDINATOR WITH THE PURPOSE OF ENHANCING THE EFFICIENCY IN THE ASSEMBLY OF THE MAINTENANCE OF THE OPPORTUNITY OF THE DEPARTMENT OF CRIMINAL OFFENSES, SECURITY</p>	<p><a href="#"><u>min_dhe_funksionalizimi_e_Koordinatorit_Kombetare.pdf</u></a></p>		<p>success of the fight against crimes that generate material benefits; overseeing the creation and implementation of action plans; gathering and analyzing information regarding the efficiency and effectiveness of the entities involved in combating crimes that generate property benefits and reporting this information to the appropriate authorities; providing administrative and functional support for achieving the objectives of national strategies for combating money laundering, terrorist financing and the informal economy; recommending modifications to national strategies or legislation regarding money laundering or increasing efficiency or program effectiveness, etc.</p>
<p>LAW NO. 04/L-050 ON DECLARATION , ORIGIN AND CONTROL OF PROPERTY OF SENIOR PUBLIC OFFICIALS AND ON DECLARATION</p>	<p><a href="https://gzk.rks.gov.net/ActDetail.aspx?ActID=2767/"><u>https://gzk.rks.gov.net/ActDetail.aspx?ActID=2767/</u></a></p>	<p>AAC</p>	<p><b>Implementation of legislation:</b> The agency oversees the assets of the senior public official based on the information submitted by the senior public official, may request the submission of this information, may allow the receipt of gifts upon request, checks the gift records, requires that disciplinary</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<p>, ORIGIN AND CONTROL OF GIFTS OF ALL PUBLIC OFFICIALS AMENDED AND SUPPLEMENTED BY LAW NO. 04 / L-228 ON CHANGE AND SUPPLEMENTATION OF LAW NO. 04 / L-050</p>	<p><a href="https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767">https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767</a></p>		<p>measures are taken against the violator, administers and maintains the register, can check the accuracy of the statements, requests the initiation of misdemeanor proceedings, in cases of suspicion of a criminal offense after investigations, submits criminal charges to the competent prosecution, etc.</p>
<p>LAW NO. 03/L-159 ON ANTI-CORRUPTION AGENCY</p>	<p><a href="https://gzk.rks-gov.net/ActDetail.aspx?ActID=2662">https://gzk.rks-gov.net/ActDetail.aspx?ActID=2662</a></p>	<p>Government of the Republic of Kosovo  ACC</p>	<p><b>Implementation of legislation:</b> in terms of establishing the ACC.  <b>Implementation of legislation:</b> is an independent and specialized body responsible for implementation of state policies for combating and preventing corruption in Kosovo.</p>
<p>LAW NO. 03/L-222 ON TAX ADMINISTRATION AND PROCEDURES amended and supplemented by LAW NO. 04/L-115, LAW</p>	<p><a href="https://gzk.rks-gov.net/ActDetail.aspx?ActID=2689">https://gzk.rks-gov.net/ActDetail.aspx?ActID=2689</a></p>	<p>Government of the Republic of Kosovo  TAK</p>	<p><b>Implementation of legislation:</b> in terms of establishing the TAK.  <b>Implementation of legislation:</b> charged with the duty to administer any type of taxes within the territory of the country, and other</p>



NO. 04/L-102 and LAW NO. 04/L-223			competence as provided by law.
NATIONAL STRATEGY OF THE REPUBLIC OF KOSOVO FOR THE PREVENTION AND COMBATING OF INFORMAL ECONOMY, MONEY LAUNDERING, FINANCING OF TERRORISM AND FINANCIAL CRIME 2019- 2023	<a href="https://mf.rks-gov.net/desk/inc/media/DBA6BCC4-B875-4A30-9FDB-C144736597B2.pdf">https://mf.rks-gov.net/desk/inc/media/DBA6BCC4-B875-4A30-9FDB-C144736597B2.pdf</a>	Government of the Republic of Kosovo	<b>Strategy Drafting</b>  <b>Implementing the strategy:</b> The government takes measures against the informal economy, money laundering, terrorist financing and financial crimes.

### 1.3 Main problem

This sub-chapter deals with the problem that this Concept Paper targets at the same time as the causes that are estimated to have influenced the creation or even nurtured the problem. Attention will be paid to the effects that have occurred and may continue to occur as a result of identified causes. Below is identified the tree of the problem that consists of the main problem, its causes and effects. The same are also analyzed in the narrative part as follows.

Figure 3: Problem tree, causes and effects

<b>EFFECTS</b>	1. <i>Non- satisfactory figures of confiscation</i>
	2. <i>Motivation of crime</i>
<b>MAIN PROBLEM</b>	<b>Inefficient system of confiscation of unjustifiably acquired property</b>
<b>CAUSES</b>	1. <i>Confusion regarding the overall spirit of the system</i>
	2. <i>Confiscation shortcomings under Criminal Code and Criminal Procedure Code</i>
	3. <i>Confiscation shortcomings under Law on Extended Powers for Confiscation of Assets</i>
	4. <i>Procrastination of court proceedings</i>
	5. <i>Lacking indictments and judgments with regards to confiscation of property</i>
	6. <i>Lack of specialization of judges and prosecutors in the field of confiscation.</i>
	7. <i>Lack of coordination between relevant actors</i>
	8. <i>Other: Informal economy; Hesitation to prosecute people with strong political connections.</i>

The critical analysis of Kosovo’s legislation on asset confiscation for the purposes of this Concept Paper has raised serious concerns about malfunction, respectively, lack of efficiency of sequestration and confiscation of illicitly acquired assets. Although at first glance one may get the impression that Kosovo has laid the groundwork for a genuine confiscation system through the revision of the Criminal Code, the Criminal Procedure Code and finally the adoption of the Law on Extended Powers on Confiscation of Assets, in a more detailed analysis, it turns out that in fact the confiscation system in our country faces obstacles both in terms of law enforcement and in terms of well-defined and clear principles regarding the confiscation of property.

The legislative infrastructure on asset confiscation has so far not been proven sufficient to build a successful state agenda in addressing this problem. Not only that, today in Kosovo there is a clear lack of substantive debate about the need to confiscate unjustified assets, especially when it comes to senior public officials.

### 1.3.1 CAUSES

Listed below are some of the causes that affect the inefficiency of the confiscation system of assets of illegal origin in Kosovo.

1. **Confusion regarding the overall spirit of the system:** Confiscation of illegally acquired property in Kosovo is regulated through three legislative pillars: the Criminal Code of the Republic of Kosovo, the Criminal Procedure Code of the Republic of Kosovo and the Law on Extended Powers for Confiscation of Assets. From the discussions held by the working group it has been emphasized that it is not uncommon for the prosecuting authorities to be unclear when the logic of the Criminal Code of the Republic of Kosovo, the Criminal Procedure Code of the Republic of Kosovo or the Law on Extended Powers for Confiscation of Assets should be applied. This confusion is present especially in terms of the interconnection of the procedures regulated by the Law on Extended Powers for Confiscation of Assets with those provided by the Code of Criminal Procedure. This is due to the fact that the drafting of the law and its entry into force was intended to happen parallel to the new Code of Criminal Procedure, which still is only a draft, so there is no full harmonization and consistency between the Criminal Procedure Code and the Law on Extended Powers for Confiscation of Assets. It is emphasized that this is the main reason why even today, one year after the entry into force of this law, there is not a single case initiated based on it. Besides this, the fact that the current Kosovo legislation in the field of confiscation is characterized to some extent by a non-unified language (use of a variety of terms that refer to the same legal institution - sequestration ", " temporary sequestration" and "temporary confiscation") further contributes to this problem.
2. Confiscation shortcomings under the Criminal Code and the Code of Criminal Procedure: Traditional criminal confiscation regulated by the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo does not provide law enforcement authorities with the necessary and effective means to confiscate a satisfactory percentage of property acquired through criminal offenses and that used for the commission of criminal offenses. There are several reasons that lead to such a conclusion. The Criminal Code of the Republic of Kosovo and the Criminal Procedure Code of the Republic of Kosovo allow the confiscation of property only in the presence of judgment on conviction. This means that if a person is not convicted of a criminal offense, his property cannot be confiscated even in cases

where there are reasonable suspicions that it has no legitimate origin. Such a situation in practice causes many difficulties for the fact that the issuance of a conviction is not always possible. There are cases when due to lack of evidence, prescription of the criminal offense, immunity of the perpetrator, death, illness or disappearance, the criminal procedure can either not be initiated at all, or cannot result in a conviction. Consequently, in the absence of such judgment, there is no path laid for initiation of the confiscation procedure. In addition, under the Criminal Procedure Code, the state prosecutor must prove in court that the building, immovable property, movable property or asset have been the proceeds of the criminal offense under investigation or have been used to commit the criminal offense under investigation. Such a determination, according to the members of the working group, places a heavy burden on the prosecution for the fact that it is legally very difficult to prove the cause-and-effect relationship which is needed to prove that a certain property was acquired through the criminal offense or that the property in question has been used for the commission of a criminal offense. Proving the connection of property with a criminal offense is especially difficult when it comes to sophisticated criminal groups which have abundant resources and experience to hide the traces of their criminal offenses and the wealth gained through them. The consequences of such a burden of proof are observed in the small numbers of final confiscations.

3. **Confiscation shortcomings under Law on Extended Powers for Confiscation of Assets:** From the outset it is worth noting that it is difficult to identify the shortcomings of the Law on Enhanced Competencies for Confiscation of Assets, given the fact that even after more than one year from the entry into force of this law, there is only one identified case of its implementation in practice. At the same time, there is no ex post assessment of the law in question which would demonstrate the pros and cons of the law. This implies that the fundamental problem in this regard, more than in concrete legislative shortcomings, lies in its implementation. In fact, it should be noted that the Law on Extended Powers for Confiscation of Assets largely addresses the shortcomings of traditional criminal confiscation under the Criminal Code and the Code of Criminal Procedure of the Republic of Kosovo. This is due to the fact that this law goes beyond the confiscation of the property gained by the criminal offense and that used to commit the criminal offense, thus enabling the confiscation of any property of the convicted person, the legitimate origin of which the latter fails to testify. So, the once heavy burden for the prosecution is now transferred to the accused who must prove the lawful origin of his property. However, despite the facilitation of the burden of proof provided by

this law, a prevalent concern remains the demand for conviction as *conditio sine qua non* for the confiscation of property. As elaborated above, the path to a conviction for committing criminal offenses is complex and the requirement of a conviction, without exception, as a necessary condition for confiscation, negatively affects the efficiency of the confiscation system in particular and combat successful crime in general. In addition, there are two other issues which, after the implementation of this law in practice, can be problematic. First, the Law on Extended Powers for Confiscation of Assets allows only the confiscation of property that the defendant has acquired within ten (10) years before the day when the investigation phase for the criminal offenses provided by law is initiated, thus enabling amnesty for the property acquired even a single day before that date. However, given the political and social changes that Kosovo has undergone since mid-1999 and 2000, it would not be wrong to assume that the foundations for greater illicit enrichment of certain criminal groups have been laid since this period. Therefore, the ten (10) year limitation that this law imposes can be problematic in the successful fight against crime. Second, the extended confiscation under the Law on Extended Powers for Confiscation of Assets can only be applied to the property of persons convicted of criminal offenses numbered under this law, which includes a number of serious criminal offenses and those that have resulting in property gain over 10,000 Euros. This means that for other criminal offenses, the principles of traditional confiscation will apply, according to which only the property which is proceed of the crime or the one which is used to commit the crime can be confiscated, and not the property which the defendant cannot justify. In other words, the advantages that extended confiscation brings are undeniable, however, its problem lies in its limited scope.

4. **Procrastination of court proceedings:** Procrastination of court proceedings is the factor that has influenced and continues to influence small confiscation numbers. Apart from the verbal statement, it has not happened so far that cases related to confiscation are treated with priority by the courts. Thus, as a result of delays in the procedure, the statute of limitations for the criminal offense and criminal prosecution may come, and as a result the loss of the possibility of confiscation. Also, procrastination of procedures for a long time can have the effect that the seized property not only loses value, but also becomes a burden on the state. While it is true that under the Law on the Administration of Seized and Confiscated Assets, the State Prosecutor or other competent body may require the court to decide on the sale of a property that may lose its value or in case of its storage exceeds its value, or when the storage costs are disproportionate to the value of the seized property, in practice there is a reluctance of the courts to allow such a sale. In addition, there

are such cases when the prosecution erroneously qualifies the property of the accused person as evidence, thus making it impossible to allow its sale. All this hinders the efficiency of confiscation of property and the proper fight against crime.

**5. Lacking indictments and judgments related to the confiscation of property:** The unsatisfactory quality of the indictments drafted by the prosecutors and the quality of judgments drafted by the court contributes greatly to the low numbers of confiscations. Regarding the indictments compiled by the prosecution, in practice there are two main problems: non-inclusion in the indictment of assets that may be subject to confiscation and lack of reasoning with regards to the need for confiscation. As for the first, the non-inclusion in the indictment of assets that may be subject to confiscation goes against the intention to effectively fight crime. This is due to the fact that according to our legislation, the court can order confiscation only for those assets which are mentioned in the indictment. With regard to the second issue, it is not uncommon for prosecutors to suffice with the determination of confiscation assets only in the enacting clause of the indictment, without elaborating at all on the reasonable suspicion that the property in question is the result of the criminal offense under investigation, or intended to be used in the commission of a criminal offense. Recalling that while the identification of the defendant's property is sufficient when it comes to extended confiscation, such a thing is not enough for traditional criminal confiscation under the Criminal Procedure Code of the Republic of Kosovo. Finally, the lack of reasoning for confiscation is also a shortcoming of the court in drafting judgments. In most cases, judges in their judgments, either when ruling on confiscation or when refusing, minimally elaborate on the reasons that led to the confiscation or its rejection, despite the fact that according to the Code of Criminal Procedure they must reason confiscation of every property separately. The lack of such reasoning has implications when the judgment is appealed at the second-instance.

**5. Lack of specialization of judges and prosecutors in the field of confiscation:** The root of a number of problems related to the inefficiency of the Kosovo illegal property confiscation system can be found in the lack of specialized judges and prosecutors in the field of property confiscation. So far, neither the Kosovo Judicial Council nor the Kosovo Prosecutorial Council has specialized judges and prosecutors who deal specifically with seizure cases and who are constantly trained in this field. While in recent years local institutes and international partners have provided a range of training to increase professional capacity in the fight against organized crime, corruption and, consequently, property confiscation, the

participation of judges and prosecutors in these trainings has not been consistent. Namely, the selection of judges and prosecutors who attended these trainings was done in a common manner and without any specific criteria, instead of selecting a number of judges and prosecutors who would follow these trainings on regular basis and who would then be appointed with cases of confiscation of property taking into account their specialization.

6. **Lack of coordination between relevant actors:** Confiscation is a very complex issue both in terms of dynamics and duration. For this reason, to ensure the proper functioning of confiscation in general, genuine inter-institutional coordination is essential. This inter-institutional coordination should at the stage of investigation and preliminary procedure when the State Prosecutor should have intensified cooperation with specialized state bodies such as NJIF, Kosovo Customs, TAK and AKM in order to justify as much as possible the indictment. Furthermore, proper coordination should continue after the seizure of property, especially between the prosecution, the Agency for the Administration of Seized and Confiscated Property and to some extent the court, in order to take preventive measures to avoid loss of the value of the seized assets. Discussions with members of the working group have emphasized a lack of such inter-institutional coordination between the relevant actors, which is reflected in the lack of proper functioning of the confiscation system in the country.
  
7. **Others:** The causes of the social and economic nature that lead to the unsatisfactory functioning of the confiscation of the unjustifiably acquired property have also been identified. Although these causes can hardly be addressed with the proposed options of this concept paper, due to their multidimensional importance, they cannot be ignored. Such as:
  - **(i) Informal economy:** Informal economy is a very crucial reason for the difficulties in proving ownership over the property that is presumed to be related to a criminal offense. Due to the informality regarding inherited property, sales contracts and diaspora remittances, proving the origin of the property is difficult for the prosecuting authorities when it comes to traditional criminal confiscation, as well as for the defendant when it comes to extended confiscation.
  - **(ii) Hesitation to prosecute people with strong political connections:** A number of reports from civil society organizations in the country have found that the State Prosecutor has ignored cases where the possibility of sequestration and confiscation of property acquired through a criminal

offense is very high. These reports emphasize that the State Prosecutor, during the targeting of serious cases, amnesties persons who come from politics or have strong political connections despite the serious nature of the criminal offenses for which they are accused.

### 1.3.2 Effects

In the context of the above, the causes of the main problem have affected the occurrence of two essential negative effects regarding the confiscation of unjustifiably acquired assets: i) non- satisfactory figures of confiscation and ii) motivation of crime.

Confusion regarding the general spirit of the confiscation system in the country, shortcomings of the legislative confiscation pillar, lack of inter-institutional coordination, lack of specialization of judges and prosecutors in the field of confiscation, poor reasoning of indictments and judgments regarding confiscation, the procrastination of litigation, the informal economy, and the reluctance to target people with strong political connections, directly affect the inefficiency of the country's confiscation system, resulting in small numbers of final confiscations. The same problems, at the same time, make it impossible to successfully fight crime in the country, thus motivating potential perpetrators for further generation of material goods through their illegal activities, given that the likelihood of confiscation, given the rooted problems in the current confiscation system, are slim. Thus, the state fails to prevent and stop the operation of criminal groups but also individual perpetrators and as a result deepens the loss of trust of citizens in state institutions.

### 1.4 Stakeholders based on the problem definition

The following table lists the identified stakeholders. It is also shown whether they are affected by the causes, effects or both. In addition, the last column in the summary clarifies how they are related to the causes or potential effects.

### 1.5 Stakeholders based on the definition of the problem

Figure 1: Stakeholders' opinion in relation to the definition of the problem

<i>Name of stakeholder</i>	<i>Cause(s) and/or effect(s) the party is concerned with</i>	<i>The way in which the party is concerned with the cause(s) or the effect(s)</i>
----------------------------	--	---



CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<p>Ministry of Justice</p>	<p>1. Confusion regarding the overall spirit of the system;                  2. Confiscation shortcomings under Criminal Code and Criminal Procedure Code;                  3. Confiscation shortcomings under Law on Extended Powers for Confiscation of Assets.</p>	<p>Policy-maker for unjustifiably acquired wealth confiscation.</p>
<p>Kosovo Judicial Council</p>	<p>1. Procrastination of court proceedings;                  2. Lacking indictments and judgments with regards to confiscation of property.</p>	<p>It is the administrator of justice in the country. It implements policies designed within the framework of constitutional and legal competencies.</p>
<p>Kosovo Prosecutorial Council</p>	<p>1. Lack of coordination between relevant actors;                  2. Lacking indictments and judgments with regards to confiscation of property;                  3. Procrastination of court proceedings;                  4. Hesitation to prosecute persons with strong political ties.</p>	<p>Decides on the organization, management, administration and supervision of the functioning of prosecution offices. Implements policies designed within the framework of constitutional and legal competencies.</p>
<p>State Prosecutor</p>	<p>1. Lacking indictments and judgments with regards to confiscation of property;                  2. Procrastination of court proceedings;</p>	<p>Implementing institution of asset confiscation legislation. Competent and responsible for prosecuting persons accused of committing criminal offenses and other offenses foreseen by law.</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>3.Hesitation to prosecute persons with strong political connections;</p> <p>4.Lack of coordination between relevant actors;</p> <p>5.Confiscation shortcomings under Criminal Code and Criminal Procedure Code;</p> <p>6.Confiscation shortcomings under Law on Extended Powers for Confiscation of Assets.</p>	
Kosovo Police - Investigation Department	Lack of coordination between relevant actors.	The Investigation Department within the Kosovo Police contributes to the prevention of crime, detection and investigation of perpetrators of criminal offenses.
Academy of Justice	Lack of specialization of judges and prosecutors in the field of confiscation.	Responsible for raising the professionalism of judges, prosecutors and support staff. Develops specific trainings in line with policy needs.
AASCA	Lack of coordination between relevant actors.	Administers with the sequestered and confiscated property used for, or benefited from the criminal offense. It keeps records of the property it administers and of the court decisions in which it is placed for the sequestered and confiscated assets.
Anti-Corruption Agency	Lack of coordination between relevant actors.	An independent and specialized body for the implementation of state policies for combating and preventing corruption in Kosovo. Supervises the assets of senior public officials and other persons.
Customs of the Republic of Kosovo	Lack of coordination between relevant actors.	Responsible for enforcing customs legislation. It has the capacity to contribute

		to the detection of serious fraud, smuggling, and organized crime.
Kosovo Tax Administration	Lack of coordination between relevant actors.	Executive Authority, which functions with full operational autonomy with the task of administering any type of tax in the Republic of Kosovo. It has the capacity to contribute to the detection of serious fraud in the country and unjustified assets.
Financial Intelligence Unit of the Republic of Kosovo	Lack of coordination between relevant actors.	The independent central national institution responsible for searching, receiving, analyzing and distributing to the competent authorities and making public information regarding the potential money laundering and terrorist financing. It has the capacity to contribute to the detection of serious fraud in the country and unjustified wealth, specifically money laundering activities. It has the capacity to contribute to the prevention of money laundering, related criminal offenses and the fight against terrorist financing.

## Chapter 2: Objectives

The objectives which are addressed with this Concept Paper are defined in the Government Program of the Republic of Kosovo 2020 - 2023 but are also specified specifically for the purposes of this Concept Paper, as follows.

Figure 3: Relevant Government objectives

Relevant objectives	Name of relevant planning document
<i>Strategic Objective 2, Rule of Law</i>	Program of the Government of the Republic of Kosovo 2020 - 2023.
<i>Specific objective: Strengthening the fight against organized crime and corruption</i>	This objective has been specified for the purposes of this Concept Paper.

## Chapter 3: Options

This Concept Paper has addressed all options that can be proceeded with in the field of confiscation of unjustifiably acquired wealth. As emphasized above, this has been done in order for the product that emerges from this Concept Paper to be as close as possible to contemporary international standards in this field, and consequently to improve the situation in the country.

In this regard, the Concept Paper addresses three main options: the *status quo* option (*without any changes*) according to which the current situation, and consequently the difficulties presented in practice, will continue to exist; the option of *improving the implementation of the current legal framework without legislative changes*, an option which although potentially addresses some of the problems identified in this Concept Paper, it is impossible to provide a new legal basis which would enable the confiscation of wealth even in the absence of a conviction; and finally the option of *legislative changes* which provides for the drafting of a new law on confiscation of unjustifiably acquired wealth through which it is intended to implement civil-based confiscation.

### 3.1: The *status quo* option (without any changes)

The first *status quo* option (without any change) provides for the continuation of the current situation in the area of asset confiscation. According to this option, the confiscation of assets acquired with illegal origin will continue to be done according to the three existing legislative pillars, namely the Criminal Code of the Republic of Kosovo, the Criminal Procedure Code of the Republic of Kosovo, and the Law on Extended Powers of Confiscation of Assets. This means that the problems that have already existed in this regard will most likely remain the same, or in the worst-case scenario, will intensify for several reasons.

Firstly, if this option is chosen, the preference of the prosecuting authorities for traditional criminal confiscation will continue to be prevalent and consequently the key element for confiscating the acquired assets will continue to be the existence of a conviction. This despite the fact that the experience so far has shown that such confiscation of assets is not bearing the desired fruits. The report on the activities and recommendations of the National Coordinator for Combating Economic Crime for 2019 shows that the number of final confiscations carried out based on the existing provisions is very small. While in 2019 we had freezing or sequestration of assets amounting to about € 8,800.00.00, the value of the confiscated property in the same year is rounded to € 1,000,000.00 and this, mainly, from a single case of successful confiscation. With the preservation of the status quo, the

number of confiscations will most likely remain small and there will be a risk that the perpetrators will be even more motivated to generate material goods through their illegal activities taking into account the problems that are rooted in the current confiscation system.

That the current situation in the field of asset confiscation of non-legitimate origin is not satisfactory is also emphasized in the European Commission Country Report 2019. In this Report, the European Commission has underlined that Kosovo has made very little progress in the field of final confiscations of assets, and the same must take measures to ensure rigorously that there is no political interference with the operational activities of law enforcement and prosecution bodies. If the *status quo* option is chosen, the recommendations given by the European Commission in the framework of the Country Report of 2019 will not be addressed, thus stagnating Kosovo's integration process into the European Union.

Secondly, the uprising trend in the field of asset confiscation, requires the establishment of incentive indicators or certain indications which justify the initiation of the confiscation process even in the absence of a conviction. In this regard, it is not uncommon for the lifestyle of certain persons not to correspond to the declared income and although there is a suspicion that the unjustified wealth of these persons is unlawful, the current legal framework makes it impossible to confiscate the assets of a non-convicted person. Therefore, if the *status quo* is maintained, i.e. if the confiscation system in Kosovo continues to be based only on criminal proceedings that results with the judgment on conviction, then no incentive indicators or indications can be obtained as long as their holders have not been convicted of a criminal offense in advance. Thus, as a result of the preservation of the status quo, Kosovo won't be joining this uprising trend which allows for non-conviction-based confiscation.

Finally, a fundamental problem with the status quo is the lack of specialized prosecutors and judges who deal with cases of confiscation. Based on the legislation in force, the request for verification of the property of a person convicted of a criminal offense is made by the State Prosecutor and the same is examined by the court which rendered the judgment. While the work of the State Prosecutor is somewhat more specialized given the latter's cooperation with the Anti-Corruption Agency and the Financial Intelligence Unit, the concern is more relevant especially in the case of judges who adjudicate cases of various natures without any specific specialization. Choosing this option will not address this issue.

### **3.2: The Option to improve the implementation of the current legal framework without legislative changes**

The second option examines the possibility of improving the implementation of the current legal framework without concrete legislative changes. This option, similar to the first option, would keep the Criminal Code of the Republic of Kosovo, the Criminal Procedure Code of the Republic of Kosovo and the Law on Extended Powers on Confiscation of Assets as basic pillars for the confiscation system in the country, although with some systematic changes which aim to improve their implementation.

As mentioned above in the chapter of the main problem, the three legislative pillars that regulate the issue of asset confiscation in Kosovo are not well harmonized, thus causing confusion about the overall logic of the system. As a result, it is often unclear when the logic of the Criminal Code of Kosovo, the Code of Criminal Procedure or the Law on Extended Powers on Confiscation of Assets should be operated on. Moreover, the fact that there is only a single identified case of implementation of the Law on Extended Powers on Confiscation of Assets further strengthens the argument that the prosecuting authorities are not clear on when this act should be implemented and what changes brought the latter to the confiscation basis already established by the Criminal Code and the Code of Criminal Procedure of the Republic of Kosovo. Meanwhile, regarding the courts, it cannot be assessed how they stand with the understanding regarding the application of the LEPCA, taking into account that until today one request has been submitted to the court for proceedings according to this law.

The option to improve the implementation of the current legal framework without legislative changes aims to address this problem through the provision of special trainings for both prosecutors and judges in the field of asset confiscation. The focus of trainings, according to this option, will be oriented especially towards judges because they have been less involved in trainings and meetings regarding the legislation on confiscation of property. The option at hand aims to provide consistent training of judges and prosecutors so that those judges and prosecutors who are specialized in with dealing with cases of confiscation, are assigned to do so, instead of specializing a group of judges and prosecutors and then assigning another group with the confiscation procedures. To this end, by increasing the professional capacity of the bodies that deal with the confiscation of property, this option's ultimate goal is to improve the overall implementation of the legal framework in the country.

In addition, this policy will also focus on raising the level of coordination and cooperation between implementing institutions through meetings, joint conferences, and discussions between all parties or other implementing tools that would contribute to this goal.

The option of improving the implementation of the current legal framework without legislative changes also provides for the recruitment of professional associates specializing in the area of confiscation of illegally acquired assets. However, given that the obligation to recruit professional associates has existed for some time and has not been realized, the likelihood that it will be realized now does not seem to be promising.

On the other hand, it is worth noting that this option, despite some positive effects it may bring, will continue to fail to address the main shortcoming of the system. In other words, despite the improvement in the implementation of the current legal framework that this option might bring, it will not pave the way for the realization of civil-based confiscation. This is due to the fact that neither the Criminal Code nor the Code of Criminal Procedure of the Republic of Kosovo, nor the Law on Extended Powers for Confiscation of Assets enable the confiscation of assets through civil proceedings.

Therefore, as a conclusion, it can be said that the option of improving the implementation of the current legal framework without legislative changes may be insufficient to improve the current situation in the country and eliminate the main problems identified above. This is due to the fact that these problems, more than the improper implementation of the Criminal Code of the Republic of Kosovo, the Criminal Procedure Code of the Republic of Kosovo and the Law on Extended powers of Confiscation of Assets, are related to the legal shortcomings of these acts in the area of allowing for confiscation even in the absence of a conviction.

### **3.3 The option of approving a new law which enables the confiscation of the unjustifiably acquired assets even in the absence of a conviction**

The third option will examine the possibility of legal changes through the adoption of a new law, which provides for the confiscation of unjustifiably acquired assets in civil proceedings. This would be done in addition to presenting a lower standard of proof in terms of confiscation of assets without a conviction.

From the outset, it is worth noting that should the third option be adopted and be proceeded with the adoption of a new law that enables the confiscation of unjustifiably acquired assets in the absence of a conviction, Kosovo would not be the first state neither in the region nor in Europe, to take such an action. On the other hand, when it comes to the dilemma of whether the LEPCA should be repealed with the adoption of the law in

question, it should be emphasized that these two laws would act separately and in parallel with each other. This will allow for civil confiscation to serve as means of last resort only and it will not, in principle, appropriate the primacy of traditional criminal confiscation.

From the research conducted for the purposes of this Concept Paper, two models of civil confiscation have been found, from which Kosovo can get inspiration during the drafting of the law on confiscation of unjustifiably acquired assets.

*The first model of civil confiscation* targets assets of illegal origin, a model known in the legal jargon as confiscation *in rem*. According to this model, in cases when the prosecutor or other authorized bodies have reasonable suspicions that the assets of certain persons has been acquired through illegal activity, they can make a request for confiscation of such assets even in cases when against such persons no conviction is rendered. Thus, according to this model, confiscation of wealth of illegal origin is allowed, although it has not been proven in advance that a criminal offense has been committed through which the wealth in question has been acquired. The scope of this model extends to all citizens, without restrictions to certain categories.

*The second model of civil confiscation* compares all assets of certain persons with the declared income in order to identify the discrepancy between them. Even for this confiscation model, proving that unjustified assets have been acquired through the commission of a criminal offense is not necessary to pave the way for civil confiscation.

In the following section, the Concept Paper shall give examples of states that have adopted the models in question.

The first confiscation model, or the *confiscation in rem*, has been embraced by a large number of states in Europe. **Ireland** is considered one of the most successful stories in this regard. Since the recognition of civil confiscation in the summer of 1996, the Irish state has taken the lead in apprehending illegal assets in the absence of a conviction. Civil confiscation in Ireland is regulated through the Proceeds of Crime Act. This act covers all those assets which in one way or another are related to the criminal behavior of certain persons. The procedure provided by this legal act operates outside the conventional criminal justice system. This means that it does not require a person to be convicted of a criminal offense in order to initiate a wealth confiscation procedure. In fact, not only no conviction is required, but initiation of criminal proceedings is not necessary. In other words, the Proceeds of Crime Act operates entirely in the civil sphere.

According to this legal act, the court, upon the request of the authorized officials, can first order the sequestration, and then the final confiscation of wealth if three conditions are



met: it is suspected that the wealth was obtained through a criminal offense, it is suspected that the wealth is related in one way or another with the wealth obtained by criminal offense, and the value of this wealth is not less than five thousand pounds. Since the procedure in question is essentially civil in nature, so is the standard of proof. After the court has approved the request of the authorized officials for sequestration of the assets, the burden of proof is transferred to the suspect who must then prove that his assets are of a legitimate origin. If the suspect fails to do so, then his assets are eventually confiscated and transferred to state property.

Similar to Ireland, the **United Kingdom** recognizes civil liability for unjustifiably acquired assets too. The fifth part of the 2002 Proceeds of Crime Act constitutes the legal basis for civil confiscation, which covers the so-called 'recoverable property' and 'cash'. 'Recoverable property' in the sense of this Act covers all direct proceeds of crime, whether these are converted or not. It is worth noting that the definition of wealth for the purposes of civil confiscation is intentionally broad and includes (a) money; (b) all forms of wealth, real or personal, inherited or movable; and (c) things in action and other immaterial or intangible property. 'Cash' on the other hand includes not only banknotes and coins, but also checks.

The confiscation model applied in the United Kingdom is characterized by two essential features: first, the *in rem* procedure targets assets that are believed to be the product of crime, and not the person who may not even be investigated at all; and secondly, since this model of confiscation is civil-based, the standard of proof is the same as in civil proceedings - '*balance of probabilities*' and not the standard '*beyond reasonable doubt*' which applies in criminal proceedings.

In short, the United Kingdom civil confiscation procedure can be initiated by one of the authorities authorized by the Proceeds of Crime Act (Prosecution Office, Serious Fraud Office, and Serious Crimes Agency) which may file a claim before The Supreme Court for confiscation of 'recoverable property' or 'cash' when the latter are suspected of having illegal origin.

The burden of proof that the assets in question are indeed acquired through illegal activity is not transferred to the suspect, since, as stated above, the civil confiscation procedure targets assets of illegal origin, not the person. Given that the standard of proof is the '*balance of probabilities*', this means that all the authorized authorities have to do is argue that it is *more likely than not* that the wealth is of illegal origin so that the Supreme Court can approve their request for confiscation.

In addition to Ireland and the United Kingdom, **Slovenia** adopts the first model of civil confiscation. In fact, the case of Slovenia is relevant to Kosovo given the similar challenges in fighting organized crime and corruption in the country. Civil confiscation in Slovenia is regulated by the Law on Confiscation of Assets of Illegal Origin. With the enactment of this law in 2011, Slovenia decided to prevent the acquisition and use of assets of illegal origin by confiscating assets of illegal origin directly from the owners of such assets, or on the occasion of its transfer, through confiscation of assets acquired free of charge or with compensation, which does not correspond to the actual value of the assets in question.

The confiscation of such assets of illegal origin in Slovenia does not depend on the existence of a conviction and is applicable to a number of criminal offenses set out in the law in question.

The civil confiscation procedure in **Slovenia** begins with the financial investigation conducted by the prosecution office. At this stage, the burden of proof that the targeted property is of illegal origin lies with the prosecution office. If the latter during this financial investigation finds discrepancies between the declared income and the general assets, then it is presumed that the assets in question have been acquired through illegal activity. In this case, the burden of proof is transferred to the suspect who has the opportunity to overturn the presumption of the illegal origin of his assets, proving that the property in question has been legally acquired. If they fail to do so, then the competent court orders the confiscation of the property.

Similarly, albeit with a more limited scope, is **Germany**. Germany, in cases of organized crime and terrorism, allows the confiscation of assets even in the absence of a conviction if the suspect fails to prove that his assets have a legal origin. Thus, in cases of corruption and terrorism, the burden of proof is transferred to the suspects.

Last but not least, one of the most popular models of civil confiscation in Europe is the **Italian** model. Civil confiscation in Italy has three basic characteristics. Firstly, this model envisages the confiscation of property which is suspected to have been acquired through illegal activities which pose a risk to society. Secondly, the prosecutor is not obliged to prove that the targeted property is indeed the derivative of a particular illegal activity. It is sufficient for the prosecutor to prove only the existence of a discrepancy between the property in question and the declared income of the suspect. After the prosecutor has managed to prove such inconsistency, the presumption is created that the targeted property has illegal origin and consequently the burden of proof is transferred to the suspect. If the latter fails to justify the lawful origin of his wealth, then the wealth is

confiscated from them, although the commission of any criminal offense has not been confirmed, nor has the connection of the property with such an offense been made.

It is obvious that each of the confiscation models discussed above differs from the other due to the special legal and institutional framework that each state has. Moreover, even more undeniable is the fact that just because a confiscation model has been successful in the states above does not guarantee its successful implementation in Kosovo as well. However, there are some elements of civil confiscation *in rem* which, since they have been fruitful in the countries mentioned above, have the potential to bear positive fruit in Kosovo, too.

However, in addition to the positive fruits that this model can produce, it is worth mentioning the hesitations that the working group has for the latter. According to the National Coordinator for Combating Economic Crimes, the fact that this model seeks to prove that assets have been acquired through illegal activities can be quite problematic for our country. According to him, the notion of illegal and criminal activities often causes confusion among judges and prosecutors. For instance, with regard to criminal offense of money laundering, there are prosecutors and judges who think that this criminal offense should be prosecuted only if it is followed by another basic criminal offense or a related criminal offense. Additionally, there is another category of judges and prosecutors who do not consider a necessity the existence of a linked criminal offense to initiate criminal prosecution. Therefore, in practice, it would be extremely difficult to enforce a law that requires the verification of criminal activities when judges and prosecutors have difficulty to fully understand the notion in question.

In any case, if Kosovo decides to adopt this model, then the new law on confiscation of unjustifiably acquired assets, which would reflect the best practices elaborated above, would apply to all citizens of the Republic of Kosovo. The new law would improve the overall functioning of the legal institution of confiscation of unjustified assets, *inter alia*, by ensuring that:

- The conditions for verifying the origin of property are based on the following indicators:
  - i. the suspect has fabricated the assets on the basis of any activity which is a circumstance contrary to the legislation in force;
  - ii. the suspect has transferred all his assets or a part of them to third parties without compensation or with compensation which is not equivalent to the value of the transferred assets;

- iii. the legitimate income of the suspect has been insufficient to enable the acquisition of the property;
- iv. from the activity exercised by the suspect results the possibility of committing a criminal offense that is related to the motive of material gain.

- In addition to the property that the suspect is the legal owner, the property in use by the suspect can also be subject to review. The suspect is presumed to be the owner of the property in use if he regularly pays for its maintenance, renovation, or other utility bills, even in cases where this property is hidden through corporations and other persons.

- The five phases of the process of confiscation as stipulated by the European Commission Working Paper of 2012<sup>12</sup>:

- i. Identification- through financial investigations that help finding assets that are of potential illegal origin;
- ii. Preservation- freezing or sequestration (request, legal mechanisms, and court order);
- iii. Confiscation- final confiscation by court order;
- iv. Enforcement- enforcing the order (followed by transferring the assets to the authorities);
- v. Redistribution- who and how will administer the property, when will it be sold and when not).

- Competent authorities regarding civil confiscation. Although according to the practices of many other countries, civil confiscation is initiated by the prosecution, such an option is hardly feasible in Kosovo. This is due to the fact that the legal framework of Kosovo seems to be more limited in this regard. Article 109 (1) of the Constitution of Kosovo stipulates that "*The State Prosecutor is an independent institution with the authority and responsibility to prosecute **persons** accused of committing criminal offenses **and other acts prescribed by law***". There are two elements that emerge from this article, the principle *in personam* and the request to prosecute *persons accused of committing criminal offenses*. If the civil confiscation is initiated by the State Prosecutor, then the same is required to initiate proceedings against the object (in rem) of persons who are not accused of committing a criminal offense. This would be in contradiction with the constitutional prerogatives of Article 109. While it is true that Article 109 further goes on to stipulate that the duties and competences of the State Prosecutor are determined by law, the concerns still remain as the criminal prosecution constitutes the fundamental competence of the State Prosecutor, and therefore

---

<sup>12</sup> See [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/pdf/1\\_en\\_impact\\_assesment\\_part1\\_v4\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/pdf/1_en_impact_assesment_part1_v4_en.pdf).

should the State Prosecutor be burdened with conducting civil confiscation as well, that we would run the inherent risk for a confusion between civil and criminal confiscation to be established. Therefore, in order to avoid a potential violation of the Constitution and the establishment of said confusion, we deem it more appropriate that the competence regarding civil confiscation lie with a non-prosecutorial agency.

As for determining the competent authority for civil confiscation, prosecution, it is planned to establish and strengthen a new mechanism (Agency or other) which would have such competence and which would approximately have 30 employees. Should we proceed with this option, the legal framework that regulates the activities should be amended to add civil confiscation to the competences and potentially provide for a special unit within the mechanism that would deal with the issue of civil confiscation specifically. Another alternative is to create a new independent agency (the case of Bulgaria), in accordance with Article 142 of the Constitution, with exclusive jurisdiction over civil confiscation.

- In cases when the authorized agencies for civil confiscation, based on the indicators determined by law, consider that the property has been acquired through illegal activity, it will notify the State Prosecutor of such findings. The State Prosecutor, will take all the necessary steps in accordance with the Criminal Code, the Criminal Procedure Code and the Law on Extended Powers for Asset Confiscation. If the latter is not successful in confiscating the property or if the alleged illegal activity is not considered to be a criminal offense, then the authorized agency may initiate proceedings for civil confiscation of the property. These layers ensure that civil confiscation is used as a last means and avoid the possibility of its arbitrary use.

- The agency submits a request for civil confiscation to the court within whose territory the assets that are subject for review. In case the assets are distributed in several different locations<sup>13</sup> which constitute the competence of the court or other basic courts, the court in whose territory the residence of the suspect is located will be competent for the verification of the assets. According to the balance of probabilities standard, the Agency must prove that the suspect's assets are of illegal origin. If the agency is successful in this regard, the court, on the Agency's request, will order the seizure of the disputed assets. In this case, the burden of proof will be transferred to the suspect who must prove that his assets are of legitimate origin. If the suspect fails to do so, then the assets will be confiscated and transferred to the state. If the suspect succeeds, the sequestered assets will be freed.

---

<sup>13</sup> This paragraph does not intend to regulate the competence of the court in cross border cases. The different locations that the Concept Note mentions, mean different places within the territory of Kosovo.

- The administration of sequestered or confiscated property shall be done by the Agency for Administration of Seized and Confiscated Property. The provisions of Law 05 / L-049 on the Administration of Sequestered and Confiscated Property shall apply *mutatis mutandis* for confiscation without a conviction as well.
- The civil confiscation procedure must be concluded within a reasonable time. In this regard, harmonization with Law No. 06 / L-087 on Extended Powers on Confiscation of Assets which provides that within 30 days after the submission of the asset verification application, the Court shall hold a hearing and the same shall issue a reasoned decision on the matter within 30 days after the hearing has been held.
- The operating procedures provided by Law No. 06- / L-087 on Extended Competencies for Confiscation of Assets in connection with restraining orders, disclosure orders and verification procedures may apply *mutatis mutandis* to civil confiscation as well.
- Cases of civil confiscation will be reviewed by the trial panel within the Serious Crimes Department at the Basic Court of Territorial Jurisdiction. This due to the experience and expertise that this department has in the field of asset confiscation. However, given the confusion that the competence of this department may cause between civil and criminal confiscation, it is extremely important that the new law clearly defines the duties and responsibilities that the Serious Crimes Department will have in relation to civil confiscation and accordingly emphasize that the competence of this department does not give civil confiscation a criminal nature.
- Determining the minimum monetary value which serves as a threshold for initiating the investigation for civil confiscation, taking into account the practices of other countries as defined in this concept paper. In this regard, harmonization with Law no. 05 / 1 -096 on the prevention of money laundering and combating the financing of terrorism which includes under its scope for reporting, verification and preventive measures, occasional transactions in cash in the amount of ten thousand (10,000) euros or more.
- The competence of the authorized mechanism with regards to civil confiscation, covers to the whole territory of the Republic of Kosovo.
- Trainings to be followed by judges, prosecutors, professional associates, officials of the authorized agency for civil confiscation and other law enforcement actors regarding the recognition and appropriation of the principles and procedure of civil confiscation and the differences with criminal confiscation.

- Retroactive application of this law from 1999 onwards (as a reference point of the change in the political situation in Kosovo).
- An appeal may be lodged with the Appellate Department for Serious Crimes against the decision of the Basic Court for confiscation.
- Allows for compensation to persons whose assets were frozen or confiscated erroneously. In principle, if the suspect manages to prove the lawful origin of the disputed property, whether in the first or second instance, then the seized or confiscated property will be returned to him. If the assets are no longer available for return, the suspect has the right to compensation for damages caused by unjustified confiscation or seizure and in this regard, the relevant provisions of the Criminal Procedure Code may apply *mutatis mutandis*.
- Better coordination between relevant actors.

In summary, the adoption of such a law could address a number of issues identified in Chapter 1 of this concept paper. First, the adoption of a new law that provides a new legal basis upon which confiscation can take place would directly affect the increase in the total number of confiscations. This is due to the fact that in addition to confiscation on criminal grounds, the relevant institutes could file a request for confiscation even in the absence of a conviction. In addition, by introducing a lower standard of proof in civil confiscation proceedings, this law would further increase the number of confiscations and the efficiency of the confiscation system in general in the country, thus enabling the justification of civil confiscation requests to be done with less difficulty. In addition, because the new law would only deal with civil confiscation, by leaving out of its scope the institute of criminal confiscation, which is already regulated by the Criminal Code, the Code of Criminal Procedure and the Law on Extended Competencies for Confiscation of Assets, there would be no confusion as to which logic of the legal act should be used when it comes to confiscation cases. In other words, the scope of these legal acts would be clearly distinguished. Also, the adoption of a new law on civil confiscation would contribute to a better coordination of stakeholders in the confiscation process by clearly defining the competencies and tasks of each separately. The new law, by providing for the specialization of judges, their professional associates, officials of the authorized mechanism for civil confiscation and all other relevant parties, has the potential to positively affect the efficiency of the confiscation system in the country. Not only by addressing the procrastination of confiscation procedures, but also by addressing the lack of full justification for requests and decisions for criminal confiscation.

Overall, the new confiscation law in the absence of a conviction would produce two major effects: an increase in the total number of confiscations and an increase in the efficiency of the confiscation system in the country.

In addition to this model, as mentioned above, there is a second model of civil confiscation which compares the property of certain persons with their declared income in order to identify a discrepancy between them.

A good study model in this regard is that of **Bulgaria**. In 2018 Bulgaria adopted the Law on Anti-corruption and Forfeiture of Illegally Acquired Assets. Through this law, Bulgaria established the Anti-corruption and Forfeiture of Illegally Acquired Assets Commission as an independent, specialized, permanently acting state body. According to this law, civil confiscation is intended to verify whether the property of certain persons corresponds to the declared income. The conviction is not a precondition for confiscating unjustified property.

The law in question is applicable only to those persons who hold high public positions and who are explicitly specified under Article 6 of this law. These persons, according to this law, are obligated to declare their assets. Once the assets have been declared, the Anti-corruption and Forfeiture of Illegally Acquired Assets Commission, as a measure to combat corruption, compares the declared assets of these persons with their total assets. If the Commission finds a discrepancy between the total assets and the declared income in the amount of about 10,000 Euros, then the presumption is created that the assets in question are of illegal origin and consequently their confiscation is carried out. This occurs if persons who hold high public positions fail to prove the lawful origin of their assets.

Civil confiscation is similarly regulated in **Romania**. Civil confiscation in Romania is regulated by Law no. 144/2007 on the establishment, organization and functioning of the National Agency for Integrity. Similar to Bulgaria, this law applies only to public officials in such cases when there is an unjustifiable discrepancy between their declared income and their total assets in the amount of 10,000 Euros.

Should Kosovo decide to adopt the second model of civil confiscation, then a myriad of crucial issues must be addressed with the new law.

First, the law must determine the basis upon which civil confiscation proceedings can be carried out. This option suggests that civil confiscation be carried out on the basis of identified discrepancies between the perceived wealth of the suspects and their legitimate the income. This process shall include both declared and undeclared property which does not correspond to the legitimate income of the suspects. This discrepancy must be no less



than 5,000 Euros in order for it to be used as an indicator for initiating civil confiscation proceedings.

Furthermore, the law must clearly define the category of persons to whom it will apply. This option suggests that the scope of the law extend to:

- i. Senior public officials and their family members; and
- ii. Politically exposed persons, their family members and close associates.

As an orientation regarding to who can be part of this category, we can use the Law no. 04 / 1-050 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 / 1-228 on amending and supplementing law no. 04 / 1-050 on the declaration, origin and control of assets of senior public officials and the declaration, origin and control of gifts for all officials. Thus, the definition of "senior public official" under Law no. 04 / 1-050 amended and supplemented by Law no. 04 / 1-228<sup>14</sup>, includes the following persons:

- The President of the Republic of Kosovo, members of the President's Cabinet, the Secretary as well as the Directors of the Professional Departments in the Office of the President of the Republic of Kosovo and any official appointed by him;
- Members of the Assembly, all persons elected or appointed by the Assembly, the Presidency of the Assembly, the President of the Assembly and the Cabinet of the President of the Assembly of the Republic of Kosovo;
- The Prime Minister, the Deputy Prime Minister, the Ministers, the Deputy Ministers, the Political Advisers, the Chiefs of Cabinets and all those appointed by them;
- The General Secretaries of the Government, the Chiefs of Agencies as soon as the equivalent positions established by law or any other act and their appointees, the Director and Deputy Director, the Regional Directors of the Tax Administration of Kosovo, the General Director and the Directors of the Departments Customs;
- Auditors in the Office of the Auditor General and all internal auditors of institutions;
- Members of the Boards of Public Enterprises, Chiefs, Deputy Chiefs, secretaries of public enterprises of central and local level, members of the Boards of Regulators, Commissions or other Agencies established by law or any other act;
- Board members, Director and Deputy Director of the Central Bank;
- Mayors and Deputy Mayors, Presidents, Deputy Presidents, Councilors of Municipal Assemblies and all Directors of Municipal Directorates;

---

<sup>14</sup> Following the approval of the Draft Law on Declaration, Origin and Control of Assets which is being drafted by the Ministry of Justice, the list of senior public officials that this Concept Document refers to, will be updated.

- Members of the Judicial Council and the Prosecutorial Council, Director of the Secretariat of the Judicial Council, Director of the Secretariat of the Prosecutorial Council, Judicial Auditor, Disciplinary Prosecutor;
- Judges and Prosecutors, Judges of the Constitutional Court and the Secretary of the Constitutional Court;
- Heads of all Departments, Directorate or equivalent units, Leaders of Finance and Public Procurement in all public institutions and enterprises;
- Ambassadors, Consuls, Deputy Consuls, Secretaries of Embassies or Consulates of the Republic of Kosovo;
- Rectors and Vice-Rectors of the Public Universities, members of the Steering Council of the Public Universities, Deans and Vice-Deans, as well as the Secretaries of the Public Universities and Academic Units;
- General Director, Deputy Directors and Regional Directors of the Kosovo Police, Chief of the Kosovo Police Inspectorate;
- Commander, Deputy Commander of the Kosovo Security Force;
- Director, Deputy Director and Inspector General of the Kosovo Intelligence Agency;
- The Ombudsperson and his Deputies;
- Chief Inspectors and Deputy Chief Inspectors of Central and Local Level Inspectorates;
- Chairman and members of the Central Election Commission;
- All acting officers in the above-mentioned positions who exercise the duty for more than three (3) months.

In parallel, according to the same law, family members of senior public officials are considered to be spouses, extramarital spouses, parents and children with whom he/she lives in a family communion. The same logic can be followed by the law that option 3.1 puts forward as well, thus ensuring allegiance between the two.

In addition to the first category, this option suggests for the new law to be applicable for politically exposed persons, their family members and close associates as defined by the Forty Recommendations of the Financial Action Task Force<sup>15</sup> and the Administrative Instruction MoF (FIU-K) No. 02/2018 on Politically Exposed Persons.<sup>16</sup>

Politically exposed persons, according to Article 3 of Administrative Instruction MoF (FIU-K) No. 02/2018 on Politically Exposed Persons, which is in line with the Forty Recommendations of the Financial Action Task Force, are domestic or foreign natural

---

<sup>15</sup> See <https://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

<sup>16</sup> See [http://fiu.rks-gov.net/ep-content/uploads/2018/09/UA\\_p%C3%ABr\\_Personat\\_e\\_Ekspozuar\\_Politikisht\\_dt\\_03-09-2018.pdf](http://fiu.rks-gov.net/ep-content/uploads/2018/09/UA_p%C3%ABr_Personat_e_Ekspozuar_Politikisht_dt_03-09-2018.pdf).

persons who are or have been entrusted with prominent public functions other than middle ranking or more junior officials, their immediate family members, or persons known to be close associates of such persons. Immediate family members are considered to be spouses or any person who is considered to be equivalent to spouse, children and spouses of children or persons considered to be equivalent to spouses and parents. Finally, the category of close associates includes any natural person who is known to be a joint beneficial owner of a legal arrangement or in any other close business relationship with a politically exposed person, and any natural person who is the sole beneficial owner of a legal person or legal arrangement which is known to have been established for the de facto benefit of a politically exposed person.

Finally, the law must define the competent authority for civil confiscation and the procedure that is to be followed in these cases. What has been said about the competent authority for civil confiscation in option 3.1, can be applied accordingly here as well.

Alternatively, taking into account the specifics of this model, option 3.2 suggests that the Anti-Corruption Agency monitor the lifestyle of senior public officials and politically exposed persons in order to establish conformity between their level of life and declared assets. The agency monitors the lifestyle on the basis of information received from natural and legal persons, as well as from the media and other open sources of information. The procedure for lifestyle monitoring of the declarants shall be determined by the Agency and it shall be carried out in compliance with the legislation on personal data protection. If the Agency manages to find a discrepancy between the lifestyle of senior public officials or politically exposed persons and their declared assets, then it will be presumed that the assets in question are of illegal origin. In this case, the Agency will inform the prosecution that the assets that are presumed to be proceeds of crime. If the prosecution fails in confiscating such assets, or if the alleged offence is not of criminal nature, then the Agency may initiate civil confiscation proceedings.

- Similar to option 3.1, the Agency submits a request for civil confiscation to the court within whose territory the assets that are subject of judicial review. In case the assets are distributed in several different countries which constitute the competence of the court or other basic courts, the court in whose territory the residence of the suspect is located will be competent for the verification of the assets. After the Agency has managed to establish a discrepancy between the perceived wealth and the legitimate income of senior public officials or politically exposed persons, than it will be presumed that such assets are of illegal origin and the court will sequester those assets. In this case, the burden of proof will be transferred to the suspect who must prove that his assets are of legitimate origin. If

the suspect fails to do so, then the assets will be confiscated and transferred to the state. The civil confiscation procedure must be concluded within a reasonable time.

In addition, what has been said above in option 3.1 regarding the competence of the Department for Serious Crimes within the competent court, the territorial competence of the authorized agency for civil confiscation, the provision of trainings for civil confiscation, the appeal against the decision of the court in relation to civil confiscation, compensation in case of wrongful seizure or confiscation, the coordination between relevant actors, and the temporal scope of the law, applies appropriately for this option as well.

Finally, here, too, we should emphasize that the adoption of the law on civil confiscation of unjustified assets of senior public officials, should not result with the abrogation of the LEPCA. On the contrary, such an action would aggravate the position and treatment of senior public officials compared to other social categories. In such a scenario, in the case of public officials, any assets acquired unjustifiably could be confiscated even without a conviction, while in other cases, in the absence of the LEPCA, the unjustified assets would be confiscated only in case of a concrete criminal offense for which the suspects have been found guilty, a situation which could result in unequal treatment among citizens.

**Last but not least, it is extremely important to note that due to the difficulties in proving the origin of property by the suspect in our country and the lack of experience of law enforcement agencies when it comes to civil confiscation, it is essential that the design of civil confiscation is done with the utmost care possible in order to avoid the possibility of the arbitrary use of this mechanism.**

## **Chapter 4: Identification and assessment of future impacts**

The following table lists the most important impacts identified for the first two options. The impacts of the third option will be treated separately, taking into account the preference of the working group for this option.

Annexes 1 to 4 show the assessment of all impacts in accordance with the means for identifying economic, social, environmental impacts as well as impacts on fundamental rights. These means are listed in the Guidelines of Concept Paper Development. The four annexes also show assessments of the importance of the various impacts and the preferred level of analysis.

*Figure 4: The most important impacts identified by impact category for the first two options*

Category of possible impacts	Option 1	Option 2
<b>Economic impacts</b>	N/A	N/A
<b>Social impacts</b>	<p><i>Crime and security</i></p> <p>Confiscation of unjustified assets is essential to the overall objective of fighting crime in every country in the world, and Kosovo is no exception.</p> <p>The continuation of the current situation does not reflect the need to improve and advance this field. As defined in the definition of the problem, many problems have been identified in practice, which make the current legal framework in the field of asset confiscation inefficient and non-functional.</p> <p>Of concern is not only the fact that the total number of final confiscations based on the Criminal Code and the Criminal Procedure Code of the Republic of Kosovo is extremely small, but especially the fact that there is not a single case of confiscation based on the Law on Extended Powers for Confiscation of Assets.</p> <p>Given this situation, it can be concluded that in the social aspect, the current legislative</p>	<p><i>Crime and security</i></p> <p>The measures proposed with the second option may have positive social impact, since all of them aim at a more efficient implementation of the confiscation system in the country and consequently a better fight against crime and greater security in the country.</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>scheme does not have any positive impact.</p> <p>On the contrary, the continuation of this situation means the continuation of unsuccessful fight against crime in the country, and which in fact translates as a negative social impact.</p>	
<b>Environmental impacts</b>	/	/
<b>Impacts on fundamental rights</b>	/	/
<b>Gender impact</b>	<p>Current legal infrastructure does not have any direct gender impact, as applicable laws address non-gender-specific issues.</p>	<p>The measures proposed under Option 2 do not have any direct gender impact, given that applicable laws do not address specific gender issues.</p>
<b>Social equality impact</b>	No impact	No impact
<b>Youth impact</b>	No impact	No impact
<b>Impact on administrative burden</b>	/	/
<b>SME impact</b>	/	/
<b>Budgetary impact</b>	<p>This option does not incur additional costs that would burden the Kosovo budget.</p> <p>The assessment of the budgetary impact is presented in the attached document.</p>	<p>This option has an additional nominal cost that burdens the Kosovo budget, taking into account the funds that need to be invested in building human resources and professional capacities.</p> <p>The assessment of the budgetary impact is presented in the attached document.</p>

#### 4.1 Identification and assessment of impact for the third option

Since the third option seems to be the most preferred option for the members of the working group, the impacts of this option deserve more detailed treatment and separately from the other two options.

Category of possible impacts	Option 3
Economic impact	<p style="text-align: center;"><i>Economic growth</i></p> <p>The proposed measures with the adoption of a new law which would enable the realization of confiscation in civil proceedings and in the absence of a sentencing judgment are expected to have positive economic impacts. This is due to the fact that all the material goods confiscated based on this new legislative framework, would be poured into the state budget, which could then be used either to compensate the victims, for social infrastructure or to finance other policies.</p>
Social impact	<p style="text-align: center;"><i>Crime and security</i></p> <p>The measures proposed in this option will have multiple positive social impacts.</p> <p>First, the legal measures proposed with this option aim to prevent the recurrence of criminal behavior through the removal of their financial source, namely through the confiscation of unjustified assets.</p> <p>Furthermore, the confiscation of unjustified assets addresses concerns that large criminal assets, generated mostly by various forms of corruption and organized crime, risk destabilizing the financial system and corrupting legitimate society.</p> <p>Finally, and most importantly, confiscation as the key to the successful fight against organized crime and corruption in each</p>

	country, supports the rule of law and the moral principle that no one should benefit from crime.
<b>Environmental impact</b>	N/A
<b>Impact on fundamental rights</b>	<p style="text-align: center;"><i>Property rights and good administration</i></p> <p>The measures proposed with option 3.1 could potentially have negative impacts on the property rights of Kosovo citizens. The Constitution of the Republic of Kosovo, as well as other relevant legal acts in this field, stipulate that the right to property is a guaranteed right and that no one can be arbitrarily deprived of his property. Similarly, Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, applicable in Kosovo under Article 22 of the Constitution, defines the right to property as an absolute right.</p> <p>It can be argued that asset confiscation in the absence of a conviction may constitute a violation of this absolute right. However, it is worth noting here that the jurisprudence of the European Court of Human Rights has not reached to such a conclusion.</p> <p>One of the first cases where the European Court of Human Rights has considered the compatibility of the institute of civil confiscation with Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms is <i>Engel vs The Netherlands</i><sup>17</sup>. In this case, the Court examined the objections to confiscation practices in civil proceedings, and in the absence of a conviction and the comprehensive consensus was that civil confiscation is compatible with the protection of property rights (as a right protected by international and regional instruments for human rights as well as local legislation), on the basis that this right is a limited and it is possible that it is subject to intervention, provided that such intervention is:</p> <ul style="list-style-type: none"> <li>• provided by law, based on the principle of legality;</li> <li>• pursues a legitimate goal; and</li> <li>• is proportionate.</li> </ul>

<sup>17</sup> [https://hudoc.echr.coe.int/tur#{"itemid":\["001-57479"\]}](https://hudoc.echr.coe.int/tur#{).



Similarly, in *Arcuri vs Italy*, Arcuri was suspected of being a member of a criminal organization involved in drug trafficking. The prosecutor sought preventive measures and demanded the confiscation of his assets on the basis of a discrepancy between his assets and financial income, when compared to his legitimate business/income. The European Court of Human Rights found no violation of property rights. Similarly, a violation of property rights was not found in *Raimondo vs Italy*<sup>18</sup>, where the confiscation of property, which was suspected to have been obtained illegally, was ordered in the absence of a conviction.

Furthermore, the measures proposed with option 3.1 may also have an impact on the good administration of justice (or, as specified in the Guidelines, on criminal law and the foreseen sanctions: whether the rights of the defendant are affected).

The right to presumption of innocence together with the duty of the prosecution to prove the guilt of the suspect constitute the basis of the right to a fair trial set forth in Article 6 of the European Convention on Human Rights and Fundamental Freedoms (*Saunders against United Kingdom*<sup>19</sup>).

In this regard, the proposal of this option for the suspected person to be obliged to prove the legal origin of his property can be argued that it is contrary to the right to due process (Article 6.1) and the right to presumption of innocence (Article 6.2).

However, even here it is worth noting that the European Court of Human Rights has given negative decisions.

Violation of the right to a fair trial has arisen in the *Phillips* case against the United Kingdom<sup>20</sup>. Phillips was sentenced to nine years in prison for importing a large amount of cannabis. As a result, the competent court, based on the 1994 Drug Law, had assumed that all

<sup>18</sup> <https://www.juridice.ro/wp-content/uploads/2015/08/ARCURI-OTHERS-v-ITALY-ECHR-Decision- English .pdf>.

<sup>19</sup>

[https://hudoc.echr.coe.int/eng#{"fulltext":\["saunders%20v%20united"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-58009"\]}](https://hudoc.echr.coe.int/eng#{).

<sup>20</sup> <https://rm.coe.int/09000016806e19>.

	<p>the assets held by Phillips over the past six years by the convict had been obtained through criminal offense. Phillips had appealed to the European Court of Human Rights arguing that this automatic presumption constituted a violation of his right to a fair trial and the presumption of innocence.</p> <p>However, the European Court of Justice did not agree. According to the latter, the right to a fair trial is not an absolute right and that states under certain circumstances may restrict it. In the present case, the United Kingdom had restricted this right by presuming that the assets held by Phillips during the last six years of the sentence, in order to assess the property which had been acquired from the commission of the criminal offense, not for the purpose to make easier the work of the prosecution to prove the guilt of Phillips.</p> <p>Further, the argument that the model in question may be in violation of the right to presumption of innocence was also raised in <i>Butler vs the United Kingdom</i><sup>21</sup>, which concerned the confiscation of a large sum of money (£239,010). Although the UK due to the lack of evidence failed to prove that Butler had made the money as a result of drug trafficking, it ordered their confiscation under civil procedure.</p> <p>Such an action was deemed to be in violation of Article 6 (2) of the Convention by the European Court of Human Rights. According to the latter, the confiscation of money as a preventive measure imposed in civil proceedings cannot be compared to a criminal sanction. Consequently, Article 6 of the European Convention on Human Rights regarding the presumption of innocence is not applicable to such proceedings. Therefore, there can be no violation of a right which is not guaranteed at all in civil proceedings.</p>
<b>Gender impact</b>	Current legal infrastructure does not have any direct gender impact, as applicable laws address non-gender-specific issues.
<b>Social equality impact</b>	No impact.

<sup>21</sup> Shih <https://www.juridice.ro/wp-content/uploads/2015/08/BUTLER-v-THE-UK-ECHR-Decision-English.pdf>.

<b>Youth impact</b>	No impact.
<b>Impact on administrative burden</b>	/
<b>SME impact</b>	/
<b>Budgetary impact</b>	<p>On the one hand, this policy is generally expected to have additional budgetary impacts; on the other hand, with the implementation of this policy, it is considered that there will be revenues for the state budget, therefore this initiative should be supported as it will significantly reduce abuse of public money and crime as well.</p> <p>Although there will be additional budgetary costs, the benefits of this new policy will be significantly higher. It is envisaged to establish a new mechanism which will approximately have 30 employees, for more details the budget impact assessment has been prepared</p>

## 4.2 Challenges in data collection

No specific challenges were encountered in the data collection when analysing the issues in this Concept Paper.

## Chapter 5: Communication and consultations

Throughout the drafting process, the Ministry of Justice has taken into account the proposals of various relevant actors, consultations with experts in the given field, as well as consultation with civil society. The forms of communication have been different, starting from meetings, working groups and publications on the official website of the Ministry of Justice and other relevant institutions, where communication is active, direct and constructive.

Below, in tabular form, are the steps that have been taken by the Ministry of Justice regarding the communication and consultation of this Concept Paper.

*Figure 5: Summary of communication and consulting activities developed for the Concept Paper*

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<i>The consultation process aimed to:</i>						
Obtain all opinions from the parties that have been and are involved in the implementation of the current law, from the problems, the effects caused in practice, to the changes that must be foreseen for the amendment and supplement of the law.						
Main purpose	Targeted group	Activity	Communication/Pu blication	Anticip ated deadlin e	Necess ary budget	Respons ible person
Meeting for the presentat ion of the contents to be included in the first draft	Working group members	Meeting	Invitation via E-mail			Lulzim Beqiri
Acceptan ce of comment s regardin g presentat ions at the previous worksho p	Working group members	Commen ting	Invitation via E-mail			Lulzim Beqiri
Prelimin ary consultat ion with stakehol ders to obtain potential	Chosen working group members	Meeting	Invitation via E-mail			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

comments regarding the first draft						
Draft finalization	Working group members		Circulation via e-mail			
Working group meeting to discuss the draft	Working group members	Workshop	Circulation of documents and comments			
Written public consultation	All stakeholders	Online consultation through the public consultation platform;	Online platform for consultations	15 working days		Lulzim Beqiri
Meetings with stakeholders	Representatives from the judiciary, the prosecution, the police and other institutions, as well as	Workshop	Invitation via E-mail			Lulzim Beqiri

	from civil society					
--	--------------------	--	--	--	--	--

During the public consultation process of the draft Concept Paper, comments have been received from: EU Office in Kosovo, Kosovo Law Institute, and individual citizens. The comments have been reviewed by the Ministry of Justice and some have been incorporated while the rest will be included, where appropriate, in the framework of the implementation of the recommended option of this Concept Paper, which is the drafting of the new Draft Law.

**Chapter 6: Comparison of options**

To address the problem posed in this analysis, third options were considered: the option with no changes, according to which the current situation and consequently the difficulties presented in practice would continue; option 2, to improve the implementation of the current legal framework without legislative changes; the option of amending and supplementing the existing legislation, including two possible sub-options on how the problem could be addressed; and option 3, which incorporates its two models, which contain legislative changes, namely, the adoption of a special law which regulates the issue of confiscation of unjustifiably acquired wealth.

*Option 1* - The option not to change the current state would result in the continuation of issues identified in this concept paper. At the present stage, in terms of confiscation of illegally acquired assets, the problems lie both in the shortcomings in the existing legal framework and in the non-proper and ineffective implementation of the provisions governing the confiscation of property. Thus, with the continuation of the *status quo* will continue the stagnation in the number of confiscations which will most likely remain small and there will be a risk that the perpetrators will be even more motivated to generate material goods through their illegal activities. Consequently, the perception on the unfair and unprofessional work of the institutions regarding the successful de-motivation of crime will deepen.

Consequently, by not improving the trend of confiscation of unjustified assets, proper de-motivation of criminality will not be achieved and the perception on the unfair and unprofessional work of institutions will deepen.

*Option 2* - Proceeding with the option of improving the implementation of the current legal framework without legislative changes could potentially result in more efficient

implementation and clarification in terms of current legislation and consequently raise the curve of asset confiscation cases. This would be achieved through the intensification of cooperation between law enforcement institutions which play a role in the process of confiscation of assets. In addition, improving the implementation of the current legal framework would be achieved by advancing the professional capacity of key actors in terms of confiscation through the organization of special training for both prosecutors and judges who deal with cases of confiscation of assets, well as the recruitment of specialized professional associates. However, when we talk about capacity advancement, it is worth noting that so far, many seminars, meetings and visits have been held and even exemplary papers have been drafted to facilitate their work, but despite all these efforts, there is still confusion among implementers of the law with regard to confiscation. It turns out that this option does not speak much about a real improvement of the current situation.

Moreover, even if better specialization and coordination of the responsible institutions for confiscation is achieved, the legislation in force, although advanced as a result of the entry into force of the LEPCA, still has limited scope in terms of confiscation of illegitimate property, and does not even pave the way for civil confiscation. Added to this is the fact that unified language and ambiguities between the relevant legal acts would still be present if this option is chosen. Therefore, it can be said that the option of improving the implementation of the current legal framework without legislative changes is likely to be insufficient to eliminate the problems identified in this Concept Paper.

*Option 3* - The option to adopt the Law on civil confiscation of unjustifiably acquired assets, aims to increase efforts to discourage corruption to the maximum. By adopting a special law, we have the opportunity to give to the judicial and prosecuting bodies, an instrument with which they will fight crime through sequestration and confiscation of assets and convey the message that crime is not repaid and that sooner or later all illegal assets will be confiscated. This option would not only improve the current legal framework by allowing for civil confiscation but would also put a focus on the confiscation of property through the appointment of specialized bodies with exclusive competence in connection with the confiscation of unjustifiable assets. This would enable major increase of the number and value of confiscated assets whose origin is not illegitimate and is associated with crime.

On the other side of the medal, the main concern in pursuing this option is the impact it may have on the potential violation of human rights, with an emphasis on property rights of Kosovo citizens. However, it is reemphasized that, if these barriers are overcome, given the additional benefits under option 3, it is considered the most optimal.

The first model of option 3 (3.1) is more exposed to issues that may arise with the adoption of civil confiscation. It leaves more room for arbitrariness and potential human rights violations. But from a comprehensive point of view, this alternative expressed in the first model will manage to improve the numbers of confiscation and the fight against crime.

The second model of option 3 (3.2) which invites to change the legal framework through the adoption of the law on civil confiscation of unjustifiably acquired assets of senior public officials and politically exposed persons, is considered appropriate and acceptable to achieve the goal of the final and stable solution of the main problem. This model would significantly pass, as no other option, the burden of proof to the suspect by facilitating as such the work of the competent authorities for civil confiscation. On the other hand, targeting only specific categories of people upon whom the new law would be applicable, would avoid to a large extent the risk of human rights violations that might occur by the potential arbitrary actions of law enforcement towards the civil confiscation of assets. Furthermore, these persons should not face significant difficulties in proving and declaring their wealth as they are already to some extent bound by the Law governing the declaration of assets.

In conclusion, considering the benefits and disadvantages that each elaborated option carries, the option for the adoption of the Law on Civil Confiscation of Unjustifiably Acquired Assets is considered more appropriate to address the problems identified in this Concept Paper, and as such it would enable the advancement of effective preventive and corrective crime fighting.

## 6.1 Implementation plans of different options

## 6.2 Table of comparison of the third options

Figure 8: Comparison of options

<b>Comparative method: Analysis of various criteria</b>			
	Option 1: <i>Status quo</i>	Option 2: <i>Improvement of the implementation of legislation without legislative changes</i>	Option 3: <i>Adoption of the special law</i>



CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<b>Relevant positive costs</b>	There are no relevant positive costs.	It will likely increase the curve of confiscation cases.	Confiscation numbers and values will increase.
		It may increase professional capacity within the respective institutions.	The number of subjects against whom the confiscation of unjustifiably acquired wealth can be undertaken is extended - beyond the convicted persons.
			Introduces a lower standard of proof.
			The state budget is increased.
<b>Relevant negative costs</b>	Challenges in the proper preventive and corrective fight against criminality.	Asset confiscation may only occur with conviction.	It may leave room for arbitrariness and misuse of civil confiscation.
	Discrepancy within existing legislation continues.	Optimal de-motivation of criminality will not be achieved.	There is a possibility that individual cases of civil confiscation will cause violation of human rights.
	Asset confiscation may only occur with conviction.	Discrepancy within existing legislation continues.	
	It contributes to the perception of unfair and unprofessional work of the institutions regarding the		

	confiscation of assets acquired through criminal offenses.		
	Failure to improve the curve of cases of confiscation of assets.		
<b>Relevant costs</b>	A financial impact assessment has been prepared. It is part of the documents with which this Concept Paper shall be proceeded to the Government for review and approval.		
<b>Evaluation of expected budgetary impact</b>			
<b>Conclusions</b>			

## Chapter 7: Conclusion and follow-up steps

The Ministry of Justice, as the sponsor of this Concept Paper, recommends to the Government of the Republic of Kosovo to approve Option 3, namely the adoption of the new law, which enables the realization of confiscation of unjustifiably acquired assets even in the absence of a conviction.

In any case, the Ministry of Justice believes that the adoption of option no. 3 that enables the realization of confiscation in civil proceedings and in the absence of a conviction, will contribute to a better functioning of the asset confiscation system and the de-motivation of crime in the country.

Following the approval of this concept paper, the Ministry of Justice will begin drafting the Draft Law, continuing to take into account the criteria set out herein.

## 7.1 Provisions for supervision and evaluation

The draft law is expected to be approved by the Assembly of the Republic of Kosovo during 2021 and enter into force after six months. *Vocatio legis* will enable the designated bodies to make the necessary preparations in order to enable the proper implementation of this law. Five years from the adoption and entry into force of the law recommended by this Concept Paper, its ex-post evaluation should be done.

Annex 1: Evaluation form on the economic impacts

Category of economic impacts	Main impact	Is this impact expected to happen?		Number of affected organizations, companies and / or individuals	Expected benefit or cost of impact	Preferred level of analysis
		Yes	No			
Jobs	Will the current number of jobs increase?		X			
	Will the current number of jobs decrease?		X			
	Are jobs in a particular business sector affected?		X			
	Will there be any impact on the amount of payment?		X			
Conducting business	Will it affect access to finance for business?		X			
	Will certain products be removed from the market?		X			
	Will certain products be allowed on the market?		X			
	Will businesses be forced to close?		X			
	Will new businesses be created?		X			
Administrative burden	Will businesses be obligated to meet their obligations to provide new information?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	Has the obligation to provide information been simplified for businesses?		X			
Commerce	Are current import flows expected to change?		X			
	Are current export flows expected to change?		X			
Transportation	Will it affect the way passengers and/or goods are transported?		X			
	Will there be any change in the time required to transport passengers and/or goods?		X			
Investments	Are companies expected to invest in new activities?		X			
	Are companies expected to cancel or postpone investments?		X			
	Will investment from the diaspora increase?		X			
	Will investment from the diaspora decrease?		X			
	Will foreign direct investment increase?		X			
	Will foreign direct investment decrease?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED WEALTH

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Competitiveness	Will the business price for products such as electricity increase?		X			
	Will the price of business inputs such as electricity decrease?		X			
	Is innovation and research likely to be promoted?		X			
	Is innovation and research likely to be hampered?		X			
Impact on SMEs	Are the companies affected mainly SMEs?		X			
Price and competition	Will the number of goods and services available to businesses or consumers increase?		X			
	Will the number of goods and services available to businesses or consumers decrease?		X			
	Will the price of existing goods and services increase?		X			
	Will the price of existing goods and services decrease?		X			
Regional economic impacts	Will any particular business sector be affected?		X			
	Is this sector concentrated in a certain region?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

General economic development	Will future economic growth be affected?	X				
	Could there be any effect on the inflation rate?		X			

Annex 2: Evaluation form on the social impacts

Category of social impacts	Main impact	Is this impact expected to happen?		Number of affected organizations, companies and / or individuals	Expected benefit or cost of impact	Preferred level of analysis
		Yes	No			
Jobs	Will the current number of jobs increase?		X			
	Will the current number of jobs decrease?		X			
	Are jobs in a particular business sector affected?		X			
	Will there be any impact on the amount of payment?		X			
	Will there be an impact on facilitating finding a job?		X			
Regional social impact	Is social impact concentrated in a particular region or city?		X			
	Are workers' rights affected?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Work conditions	Are the standards for working in hazardous conditions foreseen or repealed?		X			
	Will there be an impact on the way social dialogue is developed between employees and employers?		X			
Social inclusion	Will there be an impact on poverty?		X			
	Is access to social protection schemes affected?		X			
	Will the price of basic goods and services change?		X			
	Will there be an impact on the financing or organization of social protection schemes?		X			
Education	Will there be an impact on primary education?		X			
	Will there be an impact on secondary education?		X			
	Will there be an impact on higher education?		X			
	Will there be an impact on vocational training?		X			
	Will there be an impact on employee education and lifelong learning?		X			



CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	Will there be an impact on the organization or structure of the education system?		X			
	Will there be an impact on academic freedom and self-governance?		X			
Culture	Does the option affect cultural diversity?		X			
	Does the option affect the financing of cultural organizations?		X			
	Does the option affect the opportunities for people to benefit from or participate in cultural activities?		X			
	Does the option affect the preservation of cultural heritage?		X			
Governance	Does the option affect citizens' ability to participate in the democratic process?		X			
	Is every person treated equally?		X			
	Will the public be better informed about certain issues?	X				
	Does the option affect how political parties work?		X			
	Will there be any impact on civil society?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Health and public security	Will there be any impact on people's lives, such as life expectancy or mortality rate?		X			
	Will there be an impact on food quality?		X			
	Will health risk increase or decrease due to harmful substances?		X			
	Will there be health effects due to the changes in noise levels or air, water and/or soil quality?		X			
	Will there be health effects due to the changes in energy use?		X			
	Will there be health effects due to the changes in waste disposal?		X			
	Will there be an impact on people's lifestyle, such as levels of interest in sports, changes in nutrition, or changes in tobacco or alcohol use?		X			
	Are there specific groups that face much higher risks than others (determined by factors such as age, gender, disability, social group or region)?		X			
Crime and security	Are the probabilities of catching criminals affected?	X				

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	Are the potential proceeds of crime affected?	X				
	Are corruption levels affected?	X				
	Is the capacity to enforce the law affected?	X				

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED WEALTH

Annex 3: Evaluation form on the environmental impacts

Category of environmental impacts	Main impact	Is this impact expected to happen?		Number of affected organizations, companies and / or individuals	Expected benefit or cost of impact	Preferred level of analysis
		Yes	No			
Climate and sustainable environment	Will there be an impact on greenhouse gas emissions (carbon dioxide, methane, etc.)?		X			
	Will fuel consumption be affected?		X			
	Will the variety of resources used to generate energy change?		X			
	Will there be any price changes for environmentally friendly products?		X			
	Will certain activities become less polluting?		X			
Air quality	Will it have an impact on the emission of air pollutants?		X			
Water quality	Does the option affect freshwater quality?		X			
	Does the option affect groundwater quality?		X			
	Does the option affect drinking water sources?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Soil quality and land use	Will it affect soil quality (in terms of acidification, pollution, use of pesticides or herbicides)?		X			
	Will it affect soil erosion?		X			
	Will land be lost (through construction, etc.)?		X			
	Will land be acquired (through decontamination, etc.)?		X			
	Will there be any change in land use (eg from forest exploitation to agricultural or urban exploitation)?		X			
Waste and recycling	Will the amount of generated waste change?		X			
	Will the ways how waste is treated change?		X			
	Will there be an impact on waste recycling opportunities?		X			
Use of resources	Does the option affect the use of renewable resources (fish populations, hydro power plants, solar energy, etc.)?		X			
	Does the option affect the use of non-renewable resources (groundwater, minerals, coal, etc.)?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

The level of environmental hazards	Will there be any impact on the likelihood of hazards, such as fires, explosions or accidents?		X			
	Will it affect preparedness in the event of natural disasters?		X			
	Is the protection of society from natural disasters affected?		X			
Biodiversity, flora and fauna	Will there be an impact on protected or endangered species or in the areas where they live?		X			
	Will the size or connections between the nature areas be affected?		X			
	Will there be any impact on the number of species in a given area?		X			
Animal welfare	Will the treatment of animals be affected?		X			
	Will animal health be affected?		X			
	Will the quality and safety of animal feed be affected?		X			

Annex 4: Evaluation form on the impact on fundamental rights

Category of impact on fundamental rights	Main impact	Is this impact expected to happen?		Number of affected organizations, companies and/or individuals	Expected benefit or cost of impact	Preferred level of analysis
		Yes	No			
Dignity	Does the option affect people's dignity, their right to life or the integrity of a person?		X			
Freedom	Does the option affect people's right to freedom?		X			
	Does the option affect people's right to privacy?		X			
	Does the option affect the right to marry or to start a family?		X			
	Does the option affect the legal, economic or social protection of individuals or families?	X				
	Does the option affect freedom of thought, conscience or religion?		X			
	Does the option affect freedom of expression?		X			
	Does the option affect freedom of assembly or association?		X			

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Personal data	Does the option include personal data processing?	X				
	Are the individual's rights to access, correction and objection guaranteed?	X				
	Is the manner how personal data is processed clear and well protected?	X				
Asylum	Does this option affect the right to asylum?		X			
Property rights	Will property rights be affected?	X		L	L	
	Does the option affect the freedom to conduct business?	X		H	H	
Equal treatment	Does the option protect the principle of equality before the law?	X		H	L	
	Is it likely that certain groups will be directly or indirectly harmed through discrimination (e.g., discrimination based on gender, race, color, ethnicity, political or other opinion, age or sexual orientation)?		X			
Children's rights	Does the option affect the rights of children?		X			



CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

Good administration	Will administrative procedures become more burdensome?	X		H	H	
	Is the way in which the administration takes decisions affected (transparency, procedural time, right to access to a file etc.)?	X		H	H	
	For criminal law and envisioned sanctions: are the rights of the accused affected?	X				
	Is access to justice affected?					

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED WEALTH

## Annex 5: Evaluation of gender relevance

The first phase defines the purpose of the proposed policy, strategy, laws or program (Step 1 Defining the purpose of the policy) and shows how it relates to gender equality (Step 2 Gender Relevance Control).

### Step 1 Defining the purpose of the policy

DEFINING THE PURPOSE OF THE POLICY		
I. Gender relevance - Step 1	<b>Policy title or program name</b>	Concept paper on the issue of unjustifiably acquired assets
	<b>Name of Ministry/Institution</b>	Ministry of Justice
	<b>Name of Department/Unit</b>	Department for European Integration and Policy Coordination
	<b>Directorate or Agency</b>	
	<b>Legal framework</b>	Criminal Code of the Republic of Kosovo, Criminal Procedure Code of the Republic of Kosovo, Law on Extended Powers for Confiscation of Assets.
	<i>Checklist 1 - How is the current situation?</i>	
In the field of the policy in question, are there any gender-based differences between men and women in the <b><u>working organization?</u></b> ⇒ Are women's jobs grouped? ⇒ Do women get unequal salaries?	No. No. No. Yes.	

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>⇒ Is there a prejudice that people are free from caring responsibilities?</p> <p>⇒ Are the differences between women and men analyzed in different cultural groups/communities?</p>	<p>Yes.</p>
	<p>⇒ Are there significant differences in the <b><u>organization of personal relationships?</u></b></p> <p>⇒ Are mostly women responsible for family care?</p> <p>⇒ Does the policy in question mean the transformation of existing norms?</p>	<p>No.</p> <p>Yes, mostly women are responsible for family care.</p> <p>No.</p>
	<p>Is there an <b><u>unequal distribution of resources</u></b> between women and men?</p>	<p>No.</p>
	<p>What <b><u>gender rules</u></b> are there? (For example, are women's roles and activities less valuable?)</p>	<p>None.</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

<p>How would you <b>assess the current situation</b> in the field of the sector/policies in terms of:</p> <p>⇒ equality?</p> <p>⇒ autonomy?</p> <p>⇒ care/relationship?</p> <p>⇒ diversity?</p>	<p>The existing legal framework allows unequal treatment.</p>
<p>Do you have the information to answer these questions?*</p>	<p>No.</p>
<p><i>Checklist 2 - What the situation will be like?</i></p>	
<p>Is there a plan to create a new policy/program or to change a policy?</p>	<p>Yes</p>
<p><b>Brief description</b> of the proposed policy/program (or policy changes to be made)</p>	<p>The proposed policy is the approval of a new law which would enable the confiscation of unjustified wealth even in the absence of a conviction.</p>
<p>What <b>results</b> contribute to the proposed policy/program (or the policy changes to be made)?</p>	<p>Adoption of the law in question.</p>
<p>What does the proposed policy (or policy changes) aim to achieve? <b>(Objectives)</b></p>	<p>See Chapter 2 for a detailed description of the objectives.</p>
<p>Are the objectives and outcomes of the policy/program (or policy</p>	<p>Yes, the proposed changes are in line with the promotion of gender equality.</p>

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

I. Gender Relevance – Step 2	changes) in line with the <b>promotion of gender equality?</b>	
<i>Drafted by [name(s) and position(s)]</i>		

\* It may be necessary to collect existing statistics classified by gender, to use qualitative and quantitative measurements, and to consult with men and women who may be affected by the policy (working groups, contributions from external experts).

**Step 2 Gender relevance control**

GENDER RELEVANCE CONTROL		
I. Gender Relevance – Step 2	<b>Policy title or program name</b>	Document concept on the issue of unjustifiably acquired assets
	<b>Name of Ministry/ Institution</b>	Ministry of Justice
	<b>Name of Department/Unit</b>	Department for European Integration and Policy Coordination
	<b>Directorate or Agency</b>	
	<b>Legal framework</b>	Criminal Code of the Republic of Kosovo, The Criminal Procedure Code of the Republic of Kosovo, Law on Extended Powers for Confiscation of Assets.
	<i>Explanatory information</i>	
	<b><u>Describe</u></b> the proposed policy/program (or policy	The proposed policy is to approve a new law which will enable the confiscation of unjustified wealth even in the absence of a conviction.

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	changes to be made) and its objectives	
	Describe the <b>target group(s)</b> / of the proposed policy/program	All natural and legal persons; public courts and prosecution offices; the police, the agency for administration of sequestrated or confiscated assets.
	Information on who may potentially be affected by the proposed policy/ program.	The impact will extend to both genders (women and men).
<b><i>Direct beneficiaries</i></b>		
	Participation by gender	Participation by gender will be: women and men
	Sources by gender	Both genders
	Assessment and values by gender	-
	Rights by gender	-
<b><i>Indirect beneficiaries</i></b>		
	Are there indirect beneficiaries of the proposed policy/ program (eg relatives of the direct	General Administration of Justice.

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	beneficiary, neighboring cities, ...)?	
	How will each group of indirect beneficiaries of the proposed policy/program be affected? ⇒ Positive impact ⇒ Negative impact	The impact will be positive.
	<i>Assessment</i>	
	Are there indications or evidence of high or low participation or acceptance from different groups? ('high, low or medium rate of impact')	Low rate
	Are there any indications or evidence that different groups have different needs, experiences, issues and priorities regarding the proposed policy/program? ('high, low or medium rate of impact')	Low rate

	Have prior consultations with relevant groups, organizations or individuals indicated that certain policies create particular problems for them? ('high, low or medium rate of impact')	Medium rate
	Are there opportunities for better promotion of equal opportunities or good relations by changing the proposed policy/program?	Yes, there are opportunities to promote equal opportunities and good relations by changing the proposed policy/program.
<b>Conclusion</b>		
	What is the conclusion * ⇒ Reasoning ⇒ Main issues, if any ⇒ Focus groups, if any	There is gender relevance of the proposed policies.
<i>Drafted by [name(s) and position(s)]</i>		

\* Either there are no changes in policies, functions or services (eg 'information only' report), or IAG (E) has just been implemented; it is clear that there is no gender relevance; or a full assessment if the measure of impact is required

## II. Assessment of gender impact

This phase is necessary for achieving gender equality and equal development through the proposed policy/program (Step 3 Gender Sensitivity Analysis). Based on the findings collected from the previous phases, it also examines the various options and assesses the positive and negative impact on targeted groups (step 4 Gender measurement scale).

### Step 3 Gender sensitivity analysis



CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

GENDER SENSITIVITY ANALYSIS *		
<b>II. Assessment of gender impact – Step 3</b>	<b>Policy title or program name</b>	Concept paper on the issue of unjustifiably acquired assets
	<b>Name of Ministry/Institution</b>	Ministry of Justice
	<b>Name of Department/Unit</b>	Department for European Integration and Policy Coordination
	<b>Directorate or Agency</b>	
	<b>Legal Framework</b>	Criminal Code of the Republic of Kosovo, Criminal Procedure Code of the Republic of Kosovo, Law on Extended Powers for Confiscation of Assets.
	<b>Impact analysis**</b>	
	Is there evidence of the nature of the problem?	Yes, there is evidence of the nature of the problem.
	What is the potential impact of the policy? (Positive/Negative/Neutral)	The potential impact of the policy is of a positive nature.
	If there is impact: ⇒ How will the proposed policy/program affect men and women? (list the main impacts) ⇒ Who will be affected? (for each main impact) – directly	The proposed policy is the approval of a new law which would enable the confiscation of unjustified wealth even in the absence of a conviction.  The impact is expected to be equal in both genders.

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<ul style="list-style-type: none"> <li>- indirectly</li> <li>⇒ Overview of evidence (for each main impact)</li> </ul>		
	<i>Opportunities to promote positive impact</i>		
	<p>If there is no impact, are there opportunities for policy development in a way that promote positive impact or gender-transformative policies?</p>	No, there are not.	
	<i>Review of evidence</i>		
		<i>Brief summary</i>	<i>Supporting evidence (qualitative and quantitative) ***</i>
	<p>What are the gender differences in this matter? Consider the different/distinct impacts on women and men and identify the following consequences:</p> <ul style="list-style-type: none"> <li>⇒ Roles and responsibilities of women and men (within the sector)</li> <li>⇒ Assets and resources that women and men deal with</li> </ul>	There are no differences.	

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>(regarding proposed policies)</p> <p>⇒ Power and decision-making in which women and men participate at different levels such as family, community, career)</p> <p>⇒ The needs, priorities and perspective of women and men</p>		
	<p>What are the influential social, cultural, economic and political factors? Identify the differences between women and men in the field(s) of impact analysis in terms of:</p> <p>⇒ Participation (representation of women and men in decision-making positions, gender composition of targeted groups ...)</p> <p>⇒ Resources (time, place, information, political and economic power, education</p>	<p>They are not relevant to the policies we have addressed.</p>	

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>and training, work, new technologies, health services, housing, education, mobility, ...)</p> <p>⇒ Norms and values (roles, attitudes and behaviors of women and men, inequalities in the description of stereotypes of men and women, ...)</p> <ul style="list-style-type: none"> <li>- work distribution by gender</li> <li>- private life organization</li> <li>- civic organization</li> </ul> <p>⇒ Fundamental rights (human, civic, political rights, direct or indirect gender discrimination, access to justice, ...)</p>		
	<p>What policies/legislation are in place in this area? Do they reflect the gender evidence you have identified?</p>	<p>Criminal Code of the Republic of Kosovo, Criminal Procedure Code of the Republic of Kosovo, Law on Extended Powers for Confiscation of Assets.</p>	

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>Has there been any gender-reactive change in this area? If yes:</p> <ul style="list-style-type: none"> <li>⇒ What are they?</li> <li>⇒ How did these changes occur?</li> </ul>		
	<p>Have they caused any measurable changes in women's experiences to date?</p> <p>If not:</p> <ul style="list-style-type: none"> <li>⇒ Why not?</li> <li>⇒ Was there no lobbying?</li> <li>⇒ Have lobbying methods been ineffective?</li> <li>⇒ Are there any other identified obstacles?</li> </ul>		
	<p>Does the proposed policy address the needs of women and men, taking into account their different interests, roles and positions?</p> <p>Identify opportunities for supporting women's practical needs and strategic interests to contribute to the elimination of existing inequalities and to</p>		

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	<p>promote equality between women and men:</p> <p>⇒ In terms of participation</p> <p>⇒ In the distribution of resources, benefits, duties and responsibilities in private and public life</p> <p>⇒ In values and attention paid to the characteristics, behaviors, and priorities of men and women?</p>		
	<p>Will the proposed policy/program promote...?:</p> <p>⇒ Equal opportunities</p> <p>⇒ Good relationship ... between people of different genders?</p>		
	<p><i>Suggested improvements, review of mitigation measures and/or alternative policies</i></p>		
	<p>If any negative impact is identified, what measures can be taken to reduce the negative impact of the policy?</p>		
	<p>If any positive impact is identified, what measures can</p>	<p>The positive impact of the policy will be the overall improvement of the efficiency in the</p>	

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED ASSETS

	be taken to increase the positive impact of the policy?	collection, maintenance and distribution of criminal data.
<i>Drafted by [name(s) and position(s)]</i>		

CONCEPT PAPER ON THE ISSUE OF UNJUSTIFIABLY ACQUIRED WEALTH