REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, 29 July 2024
Ref. no.: AGJ 2501/24

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JUDGMENT

in

case no. KO46/23

Applicant

Abelard Tahiri and 9 (nine) other deputies of the Assembly of the Republic of Kosovo

Constitutional review
of Law no. 08/L-121 on the State Bureau
for Verification and Confiscation of Unjustified Assets

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge
Nexhmi Rexhepi, Judge,
Enver Peci, Judge, and
Jeton Bytyqi, Judge

Applicants

1. Referral KO46/23 was submitted by Abelard Tahiri, Isak Shabani, Eliza Hoxha, Hajdar Beqa, Mërgim Lushtaku, Ferat Shala, Bekim Haxhiu, Enver Hoxhaj, Floretë Zejnullahu and Hisen Berisha, deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), of the parliamentary group of the Democratic Party of Kosovo (hereinafter: PDK), who are represented by Faton Fetahu, a lawyer from the Municipality of Prishtina (hereinafter: the Applicants).

Contested Law

2. The Applicants challenge the constitutionality of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets (hereinafter: contested Law), and specifically challenge the constitutionality of articles 2 (Scope), 4 (Establishment), 9 (Status and Independence), 15 (Procedure for the selection of the Director General), 19 (Collection of information for the purpose of verification) and 22 (Asset verification period) thereof, adopted by Decision [no. 08-V-478] of 9 February 2023 of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

Subject matter

3. The subject matter of the Referral is the constitutional review of abovementioned provisions of the contested Law, which according to the Applicants' allegations are not compatible with articles: 3 [Equality Before the Law] and 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with articles 2 and 7 of Universal Declaration of Human Rights and Article 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter: ECHR) and Article 1 (General prohibition of discrimination) of Protocol no. 1 of the ECHR, and articles 7 [Values], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 46 [Protection of Property], 55 [Limitations on Fundamental Rights and Freedoms] and 142 [Independent Agencies] of the Constitution.

4. In addition, the Applicants request the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure to suspend *ex lege* the entry into force and implementation of the contested Law, until the final decision on the referral by the Court.

Legal basis

5. The Referral is based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, Articles 22 (Processing Referrals), 27 (Interim Measures), 42 (Accuracy of the Referral) and 43 (Deadline) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 25 (Filing of Referrals and Replies] and 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) of the Rules of Procedure of the Court no. 01/2023 (hereinafter: the Rules of Procedure).

6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

Proceedings before the Court

7. On 20 February 2023, the Applicants submitted the Referral to the Court.

8. On 21 February 2023, the Court notified about the registration of the Referral: (i) the President of the Republic of Kosovo (hereinafter: the President); (ii) the President of the Assembly, who was asked to notify the deputies that they can submit their comments regarding the applicants' referral, if they have any, until 8 March 2023; (iii) The General Secretary of the Assembly, who was asked to take into account the requirements of paragraph 2 of Article 43 (Deadline) of the Law, which establishes: "*In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5 of the Constitution, such a law or decision 18 shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest*". The Court, based on the aforementioned provision of the Law and its case law, recalled that this provision means that the contested Law cannot be decreed, enter into force, or produce legal effects until the final decision of the Court, regarding the case raised before it. Also, on the same date, the Court notified about the registration of the referral: (i) the applicant; (ii) The Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (iii) the Institution of the Ombudsperson of the Republic of Kosovo (hereinafter: the Ombudsperson); and (iv) the Ministry of Justice of the Republic of Kosovo (hereinafter: the Ministry of Justice), who were requested to submit their comments regarding the applicants' referral, if any, by 8 March 2023.

9. On 22 February 2023, the President of the Court, by Decisions [No. GJR. KO46/23] and [No. KSH. KO 46/23] appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel, composed of: Selvete Gërxhaliu-Krasniqi (Presiding), Safet Hoxha and Remzije Istrefi-Peci (members).

10. On 3 March 2023, the Assembly submitted the following documents to the Court:

    (i) Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets proceeded by the Government of the Republic of Kosovo (hereinafter: the Government) on 17 January 2022 in the Assembly;
    (ii) Report of 3 February 2022 of the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, for review in principle of the Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets;
    (iii) The decision of 24 February 2023 of the Assembly on sending the Draft Law to the Venice Commission for opinion;
    (iv) Part of the transcript of the Plenary Session of the Assembly for the first review of the Draft Law no. 08/L-121 121 on the State Bureau for Verification and Confiscation of Unjustified Assets, held on 23 and 24 February 2022;
    (v) The opinion of the Venice Commission on the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets, adopted on 20 June 2022;
    (vi) Decision [no. 08- V-326] of 14 July 2022 of the Assembly on adoption in principle of Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets;
    (vii) Minutes of the plenary session of the Assembly, of 7 and 14 July 2022;

(viii) Excerpts from the transcript of the Plenary Session of the Assembly, of 14 July 2022, regarding the voting in principle of Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets;
(ix) Report of the functional Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, of 30 January 2023 regarding the second review of Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets;
(x) Decision of the Assembly of 9 February 2023 on adoption of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets;
(xi) Excerpts from the transcript of the Plenary Session of the Assembly, of 9 February 2023 regarding second review of the Draft Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets; and
(xii) Text of the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets (contested Law).

11. On 8 March 2023, the Ministry of Justice and the Ombudsperson submitted their comments regarding the contested Law.

12. On the same date, the Parliamentary Group of the Movement VETËVENDOSJE!, through deputy Adnan Rrustemi, submitted its comments regarding the contested Law.

13. On 24 March 2023, the Ministry of Justice submitted the follow-up Information of the European Commission for Democracy through Law (hereinafter: the Venice Commission), of 14 March 2023, regarding the Second Opinion.

14. On 28 March 2023, the Court notified: (i) the applicant; (ii) the President; (iii) the President of the Assembly; (iv) the Prime Minister; (v) the General Secretary of the Assembly; (vi) the Ombudsperson; and (vii) the Ministry of Justice regarding the receipt of comments on referral KO46/23, and the latter were requested to submit their responses regarding the received comments, if any, by 12 April 2023.

15. On 12 April 2023, the applicants requested from the Court an additional deadline for the submission of responses regarding the received comments.

16. On the same day, the Ministry of Justice submitted the response to the comments of the interested parties.

17. On 13 April 2023, the Court notified the applicants about the approval of the request for granting an additional deadline for the submission of responses to the comments, namely until 20 April 2023.

18. On 24 April 2023, the applicants submitted their responses regarding the comments received by the Ministry of Justice, the Ombudsperson and the Parliamentary Group of the VETËVENDOSJE! Movement.

19. On 27 April 2023, the Court notified (i) the applicant; (ii) the President; (iii) the President of the Assembly; (iv) the Prime Minister; (v) the General Secretary of the Assembly; (vi) the Ombudsperson; as well as (vii) the Ministry of Justice for receiving the responses from the Ministry of Justice, the Ombudsperson and the Parliamentary Group of the Movement VETËVENDOSJE! regarding the referral KO46/23, submitting to them a copy of these responses.

20. On 27 December 2023, the Court, after reviewing the Report of the Judge Rapporteur, unanimously decided on the admissibility of the referral.

21. On 11 March 2024, Judge Jeton Bytyqi took an oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.

22. On 17 April 2024, the Court, after considering the Report of the Judge Rapporteur, unanimously decided to postpone its consideration for the next session after additional supplementations.

23. On 20 June 2024, the Court (i) unanimously decided to: (i) declare the referral admissible; and (ii) to hold, by eight (8) votes for and one (1) vote against, that point 2.1 of paragraph 2 of article 2 (Scope) in conjunction with paragraph 2 of article 34 (Hearing in the first instance) of the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets is not in compliance with paragraph 1 of article 7 [Values] of the Constitution and paragraphs 1 and 2 of article 46 [Protection of Property] of the Constitution in conjunction with article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights; (iii) to hold, by eight (8) votes for and one (1) vote against, that point 2.2 of paragraph 2 of article 2 (Scope) in conjunction with paragraph 3 of article 22 (Period of asset verification) of the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets , is not in compliance with paragraph 1 of article 7 [Values] of the Constitution; (iv) to hold, by six (6) votes for and three (3) votes against, that point 1.1 of paragraph 1 of article 10 (Composition of the Oversight Committee and Compensation) of the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets , is not in compliance with article 106 [Incompatibility] of the Constitution; (v) to hold, by eight (8) votes for and one (1) vote against, that point 1.2 of paragraph 1 of article 10 (Composition of the Oversight Committee and Compensation) of Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of article 136 [Auditor-General of Kosovo] and paragraphs 1 and 2 of article 137 [Competencies of the Auditor-General of Kosovo] of the Constitution; (vi) to hold, by six (6) votes for and three (3) votes against, that point 1.4 of paragraph 1 of article 10 (Composition of the Oversight Committee and Compensation) of the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of article 132 [Role and Competencies of the Ombudsperson] and paragraph 3 of article 134 [Qualification, Election and Dismissal of the Ombudsperson] of the Constitution; (vii) to declare null and void, by five (5) votes for and four (4) votes against, in its entirety, the Law no. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets; as well as (viii) unanimously, to reject the request for interim measure.

Summary of facts

24. On 13 April 2021, based on the proposal of the Ministry of Justice, the Government by Decision [No. 01/06] approved the Concept-document on the confiscation of unjustified assets, through which it was proposed to issue a law on the confiscation of unjustifiably acquired assets.

25. On 29 December 2021, the Government by Decision [No. 06/52] approved the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets.

26. On 17 January 2021, the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets was distributed to the deputies of the Assembly for review.

27. On 2 February 2022, the Standing Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency (hereinafter: Committee on Legislation), approved its report regarding the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets, proposing to the Assembly its adoption in principle.

28. On 24 February 2022, the Assembly by Decision [No. 08-V-236], decided that the adoption in principle of the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets be postponed until the opinion of the Venice Commission is received.

29. On 4 March 2022, the President of the Assembly addressed the Venice Commission with a request for an opinion on whether the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets has been drafted in accordance with European and international standards. The Venice Commission registered the request for the Opinion with a number CDL-AD(2022)014.

30. On 20 June 2022, the Venice Commission at its 131st plenary session approved Opinion No. 1083/2022, CDL-AD(2022)014 on the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets (hereinafter: **First Opinion** of the Venice Commission).

31. The Venice Commission in **its first Opinion**, in principle, assessed that the Draft Law could result in the violation of fundamental rights guaranteed by the Constitution of Kosovo, which includes the direct application of the ECHR and takes into account European standards regarding rule of law and respect for human rights. Based on this evaluation, the Venice Commission offered its additional evaluations and recommendations regarding the Draft Law, among others, as follows:

(i) It is furthermore doubtful "*whether the establishment of a new body would make the fight against corruption indeed more effective – or whether it would rather complicate the whole system which already involves a number of bodies such as the police, the prosecution service, the tax and customs authorities and the Anti-Corruption Agency. In any case, it seems obvious that the new verification and confiscation system needs to be combined in some way with the already existing asset declaration system of senior public officials which is in the hands of the Anti Corruption Agency.*" (see paragraph 72 of first Opinion);
(ii) such a human-rights sensitive legislation as proposed in the draft law is only acceptable only *"if it is built on an independent mechanism with all the necessary powers and resources to fight effectively against high-level corruption and organised crime."* Following this, the Venice Commission found that the current draft provisions are *"insufficient in this regard"* (see paragraph 73 of first Opinion);
(iii) The draft law, in its current wording, presents a certain number of shortcomings and its implementation may result in infringements of fundamental rights guaranteed by the Constitution of Kosovo and the ECHR. The Venice Commission makes the following main recommendations:
1) formulating the general and public interests, the aim and purpose of the new law in a precise and exhaustive manner;

2) reconsidering the need and usefulness of establishing a new body, the Bureau, and in case this approach is maintained a) providing for strong guarantees of the Bureau's independence and b) providing the Bureau with a sufficient number of specialised staff and with adequate powers;
3) defining precisely a) under what conditions and according to what criteria the Bureau should collect information ex officio before starting the formal verification procedure; b) under what conditions the verification procedure can and must be initiated; and c) priorities for the Bureau's work, ensuring that the Bureau will focus on high-profile cases;
4) making it clear that the burden of proof shifts to the party to the procedure only after the competent authority (under the current draft law, the Bureau) has presented a reasoned proposal and evidence showing that there is at least a probability of illegal acquisition of assets, on the basis of the civil standard proof of the balance of probabilities; and defining more precisely the civil standard of proof of the "balance of probabilities" which, under the current draft law, is also to be applied by the court;
5) introducing stronger guarantees of the party's and other persons' human rights, *inter alia* by:
a) specifying that the decision on initiating the verification procedure is at least communicated to the party to the procedure and subject to legal remedy;
b) ensuring that the statements made and documents provided compulsorily by the party in civil proceedings cannot be used against him or her in a criminal proceeding;
c) making it clear that the party's family members are targeted only as "*third persons*";
d) reviewing the - 19 - CDL-AD(2022)014 provision that natural and legal persons may be compelled by court to cooperate with the Bureau;
e) regulating how "*third parties who have a legal interest*" are identified and what their rights are in the verification and confiscation procedure;
f) ensuring that the persons concerned by confiscation are not deprived of all assets; and
g) guaranteeing compensation of damages suffered by a party in case of an ultimately unsuccessful confiscation procedure;
6. introducing an adequate evidentiary threshold for interim security measures, and making it clear that such measures can be taken under the civil procedure even if criminal investigations have been initiated (see paragraph 74 of first Opinion).

32. On 14 July 2022, the Assembly, after the approval of the first Opinion of the Venice Commission and after the **first reading** procedure, in the presence of 61 (sixty-one) deputies, with 58 (fifty-eight) votes for, none against and 3 (three) abstentions, adopted, in principle, the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets. The Assembly, in accordance with the Rules of Procedure of the Assembly, sent the Draft Law for review to the Committee on Legislation. This committee established a working group, which was charged with the preparation of the new version of the Draft Law in cooperation with the Ministry of Justice and in accordance with the recommendations of the First Opinion of the Venice Commission, of 20 June 2022. Based on the documentation submitted by the Ministry of Justice, in the process of drafting the new version of the draft law, representatives of civil society, representatives of the European Union Office in Kosovo, the Council of Europe, OSCE, UNDP and other organizations were included.

33. On the same date, the Assembly charged the Committee on Legislation, the Committee on Budget and Finances, the Committee on European Integration and the Committee on the Rights and Interests of Communities and Return (hereinafter: the Standing Committees of the Assembly), that within the deadline set by the Rules of Procedure of the Assembly,

examine the Draft Law on the State Bureau and present the report with recommendations to the Assembly.

34. On 18 November 2022, after a process of revision of the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets by the Assembly, to address the findings, observations and recommendations of the first Opinion of the Venice Commission, the President of the Assembly, addressed again the Venice Commission, to obtain a follow-up opinion on whether the Draft Law in question was drafted in accordance with the first Opinion of the Venice Commission.

35. On 19 December 2022, the Venice Commission at its 133rd plenary session adopted Follow-up Opinion No. 1113/2022, , CDL-AD(2022)052 (hereinafter: **The second Opinion of the Venice Commission**) on the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets.

36. The Venice Commission came to the conclusion that the Draft Law revised by the Assembly presents *"a significant improvement compared to the previous draft."* According to Venice Commission: *"Most of the more serious problems identified in the opinion of the Venice Commission* [first Opinion] have been addressed, among others (i) provide for guarantees of the Bureau's independence, and provide the Bureau with a sufficient number of specialised staff and with adequate powers; (ii) precise definition of preconditions for initiating a verification procedure; (iii) clarification of provisions concerning the burden of proof; (iv) improvement of the human rights guarantees for those involved in the procedure; and (v) introduction of an adequate evidentiary threshold for interim security measures.

37. However, the Venice Commission **in its second Opinion**, pointed out that *"there is still some room for improvement"* and recommended to the authorities of the Republic of Kosovo to examine some specific issues during the drafting of the final version of this Draft Law. In its second Opinion, the Venice Commission offered the following recommendations:

a) To provide in the text that "unjustified assets" are those which are "not in accordance with the legal income and whose origin fails to be proven as legal"
b) To clarify whether "public institutions or enterprises" include also foreign or only Kosovar institutions and enterprises
c) To provide for an anti-deadlock mechanism for the election of the Director General of the Bureau
d) To establish an evidentiary standard to justify the beginning of proceedings
e) To clarify the mechanism ensuring that the statements made, and documents provided compulsorily by the party in civil proceedings cannot be used against them in criminal proceedings
f) To consider adding a provision that would cover situations when the proceedings by the Bureau prove to be unfounded, providing for a possibility to shorten matters by withdrawing the case (paragraph 34 of second Opinion).

38. On 23 December 2022, the Committee on Legislation of the Assembly approved its report regarding the Draft Law on the State Bureau, proposing to the Assembly and the Standing Committees 35 (thirty-five) amendments to the Draft Law on the State Bureau. The proposed amendments, among others, include the following changes:

(i) **Amendment** 1 (one) replaced the expression "*unjustifiably acquired assets*" with the term "*unjustified assets*";
(ii) **Amendment 2** (two) in Article 2 of the Draft Law on the State Bureau eliminated from the scope of the law "*politically exposed persons and their family members*";
(iii) **Amendment 3** (three) in Article 3 of the Draft Law on the State Bureau changed the definitions as follows:

a. *"Oversight Committee"* - from the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency of the Assembly, to the "*Relevant Committee established according to Article 10 of this Law*" which means the committee with the following composition: (i) a judge of the Supreme Court, in the capacity of chairman; (ii) a deputy of the Ombudsperson, appointed by him; (iii) Director of the Agency for the Prevention of Corruption; (iv) Auditor General; and (v) Director of the Financial Intelligence Unit;

b. *"Balance of probabilities"* from the definition as "*the standard of proof when something is probable, or more likely than not*" to the definition of "*the standard of proof when the court, based on the evidence, believes that something has more likely to be or to have happened than not*;

c. "*Official person*" – elimination of family members and politically exposed persons (**Amendment Twelfth** also eliminates the reference to family members in Article 17 of the Law on the State Bureau);

d. "*Third parties*" - from the definition "*persons to whom the person's assets have been transferred in any form*" to the definition "*any natural or legal person to whom the official person's assets have been transferred, or who has or may have a legal interest in the assets of the parties to the proceedings*";

(iv) **Amendment 4** (four) in Article 6 of the Draft Law on the State Bureau specified the organizational structure of the State Bureau, which by the preliminary version of the draft law was the subject of internal organization through a regulation approved by the Director General, through this amendment defined at least four (4) necessary units of the State Bureau, which organizational structure remained to be defined in more detail through the regulation approved by the Oversight Committee;
(v) **Amendment 5** (five) in Article 8 of the Draft Law on the State Bureau reworded some of the competences of the State Bureau, but in essence they remained the same, as well as the competence of cooperation with local and international institutions was added;
(vi) **Amendment 6** (six) amended Article 15 of the Draft Law on the State Bureau and renumbered it in Article 10, where it specified the composition of the Oversight Committee with members from 5 (five) state institutions, added its competencies and the way of decision-making and the quorum in this committee;
(vii) **Amendment 7** (seven) amended Article 10 of the Draft Law on the State Bureau by increasing the mandate of the General Director from 5 (five) to 7 (seven) years, but without the right to re-election, in relation to the previous version when there was the right to re-election for one term, as well as the following were added: (i) the ban on not freezing any position in the public sector; and (ii) the right to benefit from a salary equivalent to the last salary up to 2 (two) years after the end of the mandate provided that at the same time he does not receive a salary from the public or private sector;
(viii) **Amendment 8** (eight) amended Article 12 of the Draft Law on the State Bureau, which defines the procedure for the selection of the General Director, so that in case of failure of the procedure for the selection of this position by the Assembly in two consecutive rounds, then the Oversight Committee announces the vacancy and conducts the procedures according to this article with the only exception that the Oversight

Committee itself at the end of the process selects the candidate with the most points as General Director;
(ix) **Amendment 9** (nine) in Article 14 of the Draft Law on the State Bureau defined the competencies of the General Director;
(x**) Amendment 10** (ten) in Article 13 of the Draft Law on the State Bureau, in contrast to the previous version of the law where it was determined that the General Director can be dismissed with the majority of the votes of all deputies from the Assembly, this amendment specified the cases that the Oversight Committee can initiate the procedure of his dismissal, which happens the same as the previous proposal with the majority of votes of all deputies;
(xi) **Amendment 11** (eleven) in Article 16 of the Draft Law on the State Bureau specified the institutions but not limited to: Agency for Prevention of Corruption, Tax Agency of Kosovo, Customs of Kosovo, Central Bank of Kosovo, Financial Intelligence Unit, Notaries and Private Enforcement Agents, who are obliged to provide information to the State Bureau when the procedure is initiated, which was absent in the preliminary version of the law, and did not limit the receipt of information for the initiation of the property verification procedure only *ex officio* and information of natural and legal persons that exercise local and international public authorizations, but also enables the acceptance of information from natural and legal persons from different sources;
(xii) **Amendment 13** (thirteen) in Article 18 of the Draft Law on the State Bureau added that the obligation for cooperation of natural and legal persons extends to the extent that the right to privacy and the right not to be incriminated are not violated, a provision that was missing in the preliminary version of the draft law;
(xiii) **Amendment 14** (fourteen) in Article 19 of the Draft Law on the State Bureau removed the right of representation for third parties;
(xiv) **Amendment 15** (fifteen) after article 19 of the Draft Law on the State Bureau added a new article on the period of asset verification, which determines that the asset verification is done for the assets acquired during the period of exercise of the public function by the official person, and exceptionally this can be extended for the period that the official person does not exercise a public function, but a period which cannot be longer than 5 (five) years after the end of this function;
(xvi) **Amendment 16** (sixteen) in Article 20 of the Law on the State Bureau extended the time limit from 30 (thirty) to 60 (sixty) days when the party has the right, after listing the assets in the verification procedure, to provide data and evidence to justify the listed assets;
(xvi) **Amendment 17** (seventeen) in Article 21 of the Draft Law on the State Bureau added the standard for determining the security measure based on "*evidence collected in the verification procedure*", which was missing in the preliminary version of the draft law;
(xvii) **Amendment 18** (eighteen) to Article 22 of the Draft Law on the State Bureau extended the time limit from 24 (twenty-four) to 72 (seventy-two) hours for the court from the acceptance of the security measure proposal, as well as extended the time limit from 24 (twenty-four) to 48 (forty-eight) hours for the official of the State Bureau against the decision of the competent court for the rejection of the security measure;
(xviii) **Amendment 19** (nineteen) in Article 23 of the Draft Law on the State Bureau extended the time limit from 5 (five) to 15 (fifteen) days for opposing the interim measure to the person who has been assigned that measure;
(xix) **Amendment 20** (twenty) in Article 24 of the Draft Law on State Bureau replaces some words in the English language version;
(xx) **Amendment 21** (twenty one) in article 25 of the Draft Law on the State Bureau extended the time limits for submitting the appeal against the decision on the imposition

of an interim measure, respectively the submission of the response to the appeal, from 5 (five) to 15 (fifteen) days for the unsatisfied party, namely the opposing party, as well as the time limit of the first instance court for deciding on the appeal from 5 (five) to 7 (seven) days from the day of reaching the response to the appeal;
(xxi) **Amendment 22** (twenty-two) harmonized the language versions of Article 27 of the Draft Law on the State Bureau with the Albanian language;
(xxii) **Amendment 23** (twenty-three) to Article 28 of the Draft Law on the State Bureau extended the time limit for submitting an objection to the proposal for confiscation in the first instance court from 15 (fifteen) to 30 (thirty) days, as well as reworded but without limiting the reasons for submitting this proposal from 6 (six) reasons that were in the preliminary version to 3 (three). This amendment also extended the deadline for the State Bureau to respond to the objection in question from 3 (three) days to 7 (seven) days, which deadline was also changed for the submission of the response to the appeal against the decision on the proposed confiscation in the second instance court, as well as the time limit of the court itself to decide according to the aforementioned objection of 7 (seven) to 15 (fifteen) days;
(xxiii) **Amendment 24** (twenty-four) in article 30 of the Draft Law on the Bureau, changed the grounds for the exclusion of the public, which were limited only when the circumstances from the private intimate life of the parties are mentioned, to the following grounds: "*the special circumstances that include but are not limited to national security, private life, and when these circumstances are more important than the public interest*";
(xxiv) **Amendment 25** (twenty-five) in Article 31 of the Draft Law on the Bureau changed the standard of balance of probability from "*the standard that the person in the procedure must justify his assets after presenting the proposal to the court*" to "*the standard that first the Bureau of presents to the court the evidence for the fulfillment of the civil standard of balance of probability that the property that is the subject of the proposal has an unjustified origin and that after this proposal, the party in the procedure has the burden of proof to justify his property*";
(xxv) **Amendment 26** (twenty-six) in article 36 of the Draft Law on the Bureau, the paragraph where it was determined that an appeal is not allowed against the decision of the court on the withdrawal of the proposal, amended it by determining that in case of withdrawal from the proposal, the case is considered adjudicated case, and as a result, **amendment 27** (twenty-seven) deleted the legal provision (Article 37) which defined the only two circumstances that allowed the re-submission of the withdrawn proposal;
(xxvi) **Amendment 28** (twenty-eight) reworded some words in Article 39 of the Draft Law on the Bureau by determining not to limit the reasons for rejecting the proposal for confiscation;
(xxvii) **Amendment 29** (twenty-nine) in article 40 of the Draft Law on the Bureau addresses the issue of substitute property in cases where it is not possible to confiscate the property proposed for confiscation;
(xxviii) **Amendment 30** (thirty) to Article 43 of the Draft Law on the State Bureau extended the time limits for appeal against the judgment of the first instance court from 15 (fifteen) to 30 (thirty) days, respectively the response to the appeal of 7 (seven) to 15 (fifteen) days;
(xxix) **Amendment 31** (thirty-one) in article 45 of the Draft Law on the State Bureau adds the word "*relevant*" after the word "*law*";
(xxx) **Amendment 32** (thirty-two) in Article 58 of the Draft Law on the State Bureau addresses the rights of parties with a legal interest and specifies the procedure for their involvement in the case where they have such an interest;

(xxxi) **Amendment 33** (thirty-three) in Article 60 of the Draft Law on the State Bureau determines the effects of other procedures in the implementation of the provisions of this law, respectively clarifies the cases of suspension of the confiscation procedure by the court in case of a criminal procedure;
(xxxii) **Amendment 34** (thirty-four) in Article 61 of the Draft Law on the State Bureau clarifies that the issue of compensating the parties in case of unsuccessful suspension of the confiscation procedure, this is regulated by the relevant Law on Obligational Relationships;
(xxxiii) **Amendment 35** (thirty-five) after article 65 of the Draft Law on the State Bureau determines the transitional provisions for the functioning of this institution, where, among others, it determines that no later than 15 (fifteen) days after the entry into force of this law, the President of the Basic Court appoints one of the judges of this court as the head of the Oversight Committee, who within 30 (thirty) days from the entry into force of the law, constitutes the Committee, which then no later than 15 (fifteen) days from the constitution begins the selection procedure of the General Director, who within 6 (six) months from his election completes the staff and operationalizes the State Bureau, whose role will be exercised by the Agency for the Prevention of Corruption until its operationalization.

39. On the same date, the Committee on European Integration of the Assembly reviewed the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets and the proposed amendments and assessed that the latter "*are not contrary to the legislation of the European Union*".

40. On 27 January 2023, the Committee on Budget and Finance reviewed the Draft Law for the State Bureau for Verification and Confiscation of Unjustified Assets and assessed that (i) it contains additional budgetary costs but affordable for the Budget of the Republic of Kosovo; and that (ii) the proposed amendments do not contain additional budgetary implications.

41. On 31 January 2023, the final report of the Committee on Legislation, along with 35 (thirty-five) proposed amendments, was distributed to all deputies of the Assembly, with the recommendation to adopt the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets, with the proposed amendments.

42. The Assembly, after accepting the final report from the Functional Committee on Legislation, notified and invited the deputies for the next plenary session, where, among others, the second reading of the Draft Law on the State Bureau was on the agenda.

43. On 9 February 2023, the Assembly, after **the second reading**, with 66 (sixty-six) votes for, none against and no abstentions, adopted the Draft Law on the State Bureau for Verification and Confiscation of Unjustified Assets, namely, the contested Law.

44. On 14 March 2023, the Venice Commission published the Follow-up Information to the subsequent Opinion No. 1113/2022, CDL-AD(2022)052, approved at the 134th plenary meeting (hereinafter: Follow-up Information) regarding the contested Law.

45. In its aforementioned Follow-up Information, the Venice Commission assessed that the last version, supplemented and amended, addressed the recommendations of the Commission in its second Opinion, which include:

"(i) to provide in the text that "unjustified assets" are those which are "not in accordance with the legal income and whose origin fails to be proven as legal";
(ii) to clarify whether "public institutions or enterprises" include also foreign or only Kosovar institutions and enterprises;
(iii) to provide for an anti-deadlock mechanism for the election of the Director General of the Bureau;
(iv) to establish an evidentiary standard to justify the beginning of proceedings;
(v) to clarify the mechanism ensuring that the statements made, and documents provided compulsorily by the party in civil proceedings cannot be used against them in criminal proceedings; and
(vi) providing for a possibility to the Bureau to shorten matters by withdrawing the case in certain situations."

Applicants' allegations

46. The Applicants, challenge the contested Law and specifically, they allege that articles 2 (Scope), 4 (Establishment), 9 (Status and Independence), 15 (Procedure for the selection of the Director General), 18 (Initiation of the procedure) 19 (Collection of information for the purpose of verification) and 22 (Period of Verification of Assets) of the contested Law, are contrary to articles: 4 [Separation of Power]; 7 [Values], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 46 [Protection of Property], 55 [Limitations on Fundamental Rights and Freedoms] and 142 [Independent Agencies] of the Constitution; as well as Article 24 [Equality Before the Law] in conjunction with Article 14 of the ECHR and Article 1 of Protocol no. 12 of the ECHR and articles 2 and 7 of the Universal Declaration of Human Rights.

47. The Applicants essentially allege incompatibility:

(i) of articles 2 (Scope) and 22 (Asset verification period) of the contested Law with articles 3, 7 and 24 of the Constitution;
(ii) Articles 4 (Establishment) and 9 (Status and independence) of the contested Law with Article 142 of the Constitution;
(iii) Article 15 (Procedure for the selection of the Director General) of the contested Law with the principle of legal certainty and the rule of law guaranteed by Article 7 of the Constitution;
(iv) articles 18 (Initiation of the procedure), 19 (Collection of information for the purpose of verification) and 20 (Obligation to cooperate) of the contested Law with articles 21, 46 and 55 of the Constitution;
(v) of Article 69 (Bureau functionalization) of the contested Law that is related to the full functionalization of the State Bureau with Article 142 of the Constitution;

48. In what follows, the applicants provide their supporting arguments regarding the admissibility of the referral and request the imposition of an interim measure.

49. The Court will present in the following the applicants' allegations, which are related to the aforementioned provisions of the contested Law, which they claim are incompatible with the provisions of the Constitution, namely: (i) the allegation for incompatibility of Articles **2 and 22** of the contested Law with articles 3, 7 and 24 of the Constitution; (ii) the allegations for incompatibility of articles **4 and 9** of the contested Law with articles 4 and 142 of the Constitution; (iii) the allegations for incompatibility of Article 15 of the

contested Law with the principle of legal certainty and the rule of law; (iv) the allegations for incompatibility of articles **18, 19 and 20** of the contested Law with articles 21, 46 and 55 of the Constitution; and (v) other allegations related to the contested Law; (vi) allegations regarding the admissibility of the referral; and (vii) the request for interim measure.

*(i) Allegations for the incompatibility of articles **2 and 22** of the contested Law with articles 3 and 7 of the Constitution*

50. In relation to articles 2 (Scope) and 22 (Period of Verification of Assets) of the contested Law, the applicants raise claims related to (i) the principle of the rule of law, which include the issue of legality, legal certainty, prohibition of arbitrariness and non-discrimination; (ii) the issue of the burden of proof; (iii) the principle of non-retroactivity; (iv) legal collision; and (v) equality before the law.

51. Regarding the first, namely the claims related to **the principle of the rule of law** stipulated by Article 7 of the Constitution, the applicants emphasize that the principle of the rule of law and its constitutive elements are established in the Rule of Law Checklist , adopted by the Venice Commission (see, Venice Commission Rule of Law Checklist, CDL-AD (2016)007-e, adopted on 18 March 2016) and which include principles relating to (i) legality; (ii) legal certainty; (iii) prohibition of arbitrariness; (iv) access to justice before independent and impartial courts; (v) respecting human rights; and (vi) non-discrimination and equality before the law.

52. Regarding legality, the applicants emphasize that: *"[...] first, **element of legality** - which also includes the preliminary process of approving the law, in the circumstances of the present case, has not been implemented, for the reason that the procedure that preceded its adoption was non-transparent, irresponsible and non-democratic."*

53. The applicants relate their allegation for violation of legal certainty to Article 19 of the contested Law, specifying that: *"The contested law violates **legal certainty**, as one of the key elements of the rule of law because it does not provide for the concrete conditions for the initiation of the procedure (Article 19), a remark which was also given in the opinions of Venice and was not addressed."*

54. In the following, the applicants also point out that the contested Law*: "[...] legitimizes an **arbitrary procedure** which has the consequence of violating the fundamental constitutional rights of the subjects addressed, making it impossible for them to have access to justice - at the stage of the administrative review procedure (in the Bureau), since they have not been given any opportunity to appeal in this institution against its decisions and actions, which affect their legal interest*.

55. Regarding the second, namely their allegation related to the **burden of proof**, the applicants, among others, emphasize that: *"The contested Law, despite the title for "verification" essentially referring to the responsibilities of this institution, represents a law for "investigation" and confiscation of unjustified assets in civil proceedings and applies only to public officials and third parties (in relation to public officials)". In this context, the applicants point out that: "[...] the property which is subject to verification is unjustifiable until it is proven by the party that it is legal and the burden of proving the legality of the property's acquisition - subject of verification, belongs only to the party - the subject - against whom the procedure is conducted".*

56. Regarding the third, namely the claim related to the **principle of retroactivity**, the applicants claim that: *"The contested Law is applied retroactively, contradicting the practice of the Venice Opinion (par. 62 of the Checklist), according to which, in addition to the prohibition of the retroactivity of criminal legislation, also in the field of civil and administrative law, the retroactive effect of the law negatively affects the legal rights and interests of the subject in the procedure."*

57. Furthermore, the applicants claim that: "*[...] in the provisions of its article 2, in a completely arbitrary manner, it has decided the retroactive time action – 17 February 2008, as a time period from which the verification of the wealth of official persons will be applied, without defining any criteria as to why it is not applied to public officials who have served before this period, not establishing any legal clarity for the category of officials who worked before this period and continued to work after 17 February 2008, for the conditions and circumstances of how the assessment and verification of assets will be done, by not imposing any legal criteria as to why, on the one hand, confiscation will be applied in civil proceedings and on the other hand, the "balance of probabilities" will be applied as a standard of proof, which is not applicable in civil proceedings".*

58. In relation to the fourth, namely the claim related to the **legal collision**, the applicants emphasize that based on paragraph 2 of article 2 of the contested Law, this law applies to property acquired unjustifiably: (i) during the exercise period of the function of the subjects from paragraph 1 of this article, from 17 February 2008; and (ii) within ten (10) years from the moment when the entities from paragraph 1 of this article cease to exercise their function, while based on paragraph 3 of article 22 (Period of Verification of Assets) of the contested Law, the period of verification cannot be longer than five (5) years after the end of the public function of the official person, therefore, they claim that there is a legal collision between paragraph 2 of article 2 and paragraph 3 of article 22 of the contested Law, that *"[...] has as a consequence the violation of legal certainty and the violation of the principle of legality in the procedure".*

59. In relation to the fifth, namely the claim related to **equality before the law**, the applicants claim that Article 2 of the contested Law also contradicts Article 3 [Equality Before the Law] of the Constitution because: *"Applying only to a certain part of citizens (public officials), and not to all citizens without distinction, constitutes a violation of Article 24 (Equality Before the Law) of the Constitution and mandatory international instruments [...]",* namely, Articles 2 and 7 of the Universal Declaration of Human Rights, Article 14 of the ECHR and Article 1 of Protocol 12 of the ECHR, which provisions they cite in their referral.

60. The applicants also consider that: *"While the contested law "purports" to present a new tool in the "fight against organized crime and corruption", it is limited only to the level of public officials, presuming that these phenomena occur "only" by the latter and only in "the field of public functions", and not by other persons, thus enabling full amnesty to other non-official persons not to be subject to "asset verification", even if they find the same to be clearly unjustifiable, as well as to offer also, amnesty for [any] public official from its scope, if the discrepancy between his income and wealth does not exceed the value of twenty-five thousand (25,000) euro, without providing any legal standard on which scientific, professional and objective indicators, will be "measured" respectively the wealth of the subject under verification will be assessed."*

61. In this context, the applicants underline that: *"[...] the property of the subject in the procedure will be assessed based on the market value at the time of verification, regardless of whether the property of the subject is owned by him, from an earlier period in which its value was many times smaller. Such treatment is clearly unfounded, unacceptable and presents unlimited possibilities of arbitrariness for the institution that conducts this procedure."*

*(ii) Allegations for the incompatibility of articles **4 and 9** of the contested Law with articles 4 and 142 of the Constitution*

62. Regarding Article 4 (Establishment) of the contested Law, which provides for the establishment of the State Bureau for Confiscation of Unjustified Assets (hereinafter: the State Bureau), the applicants claim that: *"[...] this institution is established as an independent body (Article 4), public and specialized, but as such it does not adhere to the criteria of Article 142 of the Constitution"*. In addition, they consider that it contradicts Article 38 (Establishment of independent agencies) of Law No. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies (hereinafter: Law on State Administration and Independent Agencies) because, according to them*, "[...] Independent agencies are established by law on the basis of Article 142 of the Constitution and are not part of the competencies of the executive power of the Government and serve the Assembly for the exercise of specialized parliamentary supervision/control of legality and integrity in certain areas of administrative activity"*.

63. The applicants consider that the State Bureau *"[...] it is not an institution that serves the Assembly for the exercise of parliamentary supervision/control. As such, it cannot enter the framework of independent institutions from Article 142 of the Constitution, nor is it part of the institutions of justice from Chapter VII of the Constitution (The Justice System)"*. In this regard, the applicants note that the State Bureau *"[...] has a prosecutorial function because it investigates and verifies the assets of official persons"* and that despite the definition in Article 4 of the contested Law as one "*independent and specialized body*", in none of its provisions does it contain the conditions, criteria and qualifications of the officials working in it. In this regard, the applicants claim that the recommendation of the Venice Commission regarding the importance of regulating the status and qualifications of the personnel of this institution was not considered, which *"[...] must necessarily be specialized"*.

64. Regarding Article 9 (Status and Independence) of the contested Law, which stipulates that State Bureau officials are considered public officials in accordance with the Law on Public Officials, the applicants emphasize that: *"[...] this is the first and only definition related to the personnel of this institution, a definition which is clearly insufficient, leaving the possibility of arbitrariness in their employment and not defining any standard and minimum criteria of their professional qualification and experience"*.

65. As a result, the applicants consider that articles 4 and 9 of the contested Law also violate article 4 [Form of Government and Separation of Power] of the Constitution, since these officials according to paragraph 3 of article 9 of the contested Law *"[...] were granted (full independence and protection) during the exercise of official duties."* In this context, the applicants emphasize that according to the Constitution, only the holders of the central government institutions, members of the justice institutions and other constitutional institutions enjoy immunity, therefore, according to them*, "[...] non-fulfillment of the constitutional standards from Article 142 of the Constitution by this institution*

established by the contested law, means the constitutional and legal impossibility of offering functional immunity to the officials of this institution."

*(iii) Allegations for incompatibility of **Article 15** of the contested Law with the principle of legal certainty and the rule of law*

66. The applicants claim that the content of Article 15 (Procedure for the election of the Director General) of the contested Law, which defines the procedure for the election of the General Director of the State Bureau, is *"[...] contradictory and violates the constitutional guarantees of the Assembly"* because, on the one hand, it authorizes the Oversight Committee from Article 10 (Oversight Committee Composition and Compensation) of the contested Law to develop the recruitment procedure for the position of General Director and to propose the successful candidates to the Assembly, while on the other hand , in case of failure of this process, paragraph 16 of article 15 of the contested Law, authorizes the Committee to announce the vacancy and conduct the procedures, including the election of the candidate for the General Director.

67. The applicants also claim that this legal solution constitutes a violation of the principle of legal certainty, the rule of law and the electoral competence of the Assembly for this position. In this regard, they consider that *"[...] such a solution, in a hypothetical situation, represents an ideal opportunity to abuse and mock the legislative institution in the face of the Committee's proposal of non-serious, non-credible and non-professional candidacies, with the aim of failing the procedure in the Assembly and achieving the situation when the Committee recruits and finally decides on the election of the General Director."* In this context, the applicants emphasize that Article 17 (End of term of the Director General) of the contested Law, which provides for the dismissal procedure of General Director, does not at all provide for the possibility of dismissal in case of appointment in this type of procedure.

*(iv) Allegations for incompatibility of articles **18, 19 and 20** of the contested Law with articles 21, 46 and 55 of the Constitution*

68. The applicants claim that articles 18 (Initiation of the procedure), 19 (Collection of information for the purpose of verification) and 20 (Obligation to cooperate) of the contested Law, which provides for the collection of information for the purpose of verification, did not determine the method of collecting this information despite the repeated remarks of the Venice Commission, and that the information from subparagraph 1.1 to paragraph 1.12 of paragraph 1 of article 19 of the contested Law directly violates the right to property, guaranteed by Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 (Protection of property) of Protocol 1 of the ECHR.

69. The applicants emphasize that article 46 of the Constitution, respectively, the right to property can be subject to limitation in accordance with article 55 of the Constitution, and to clarify the limitation according to this article, the applicants cite the Court's Judgment in case KO54/20 regarding the four conditions under which fundamental rights and freedoms can be limited (see, the case of the Court, KO54/20, applicant *President of the Republic of Kosovo,* Constitutional review of Decision no. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020, Judgment of 6 April 2020, paragraphs 191-192). In this context, the applicants repeat the test of Article 55 of the Constitution, namely, the conditions which, according to the aforementioned Judgment of the Court, must answer the following questions: *"(i) Was the limitation of a right or freedom guaranteed by the*

Constitution "prescribed by law"?; (ii) Has the limitation of a certain right or freedom followed a legitimate aim, namely through the limitation in question, is the purpose for which the limitation is permitted fulfilled?; (iii) Was the limitation of a certain right or freedom proportional, namely was the limitation made only to the extent necessary?; and (iv) Is the limitation made necessary in an open and democratic society? (See case of the Court KO54/20, cited above, paragraph 197)". Consequently, the applicants claim that the contested Law arbitrarily limits the right to property, guaranteed by Article 46 of the Constitution, because according to them, *"[...]although this restriction is done by law, it is not necessary, it is not proportionate and it is not necessary in the democratic society in which our society is organized and functions".*

70. Regarding Article 18 (Initiation of the procedure) and Article 19 (Collection of information for the purpose of verification) in conjunction with Article 20 (Obligation to cooperate) of the contested Law, the applicants consider that these provisions not only arbitrarily violate the right to property from Article 46 of the Constitution, but in essence, also Article 31 [Right to Fair and Impartial Trial] of the Constitution, because it deprives the subject of verification of the right to timely access to documents and the relevant file , deprives him of the right to be heard, as well as deprives him of the right to remain silent and not to incriminate himself and family members. In this regard, the applicants add that these rights: *"[...] are also violated in relation to representatives of the institutions that are obliged to cooperate with the Bureau, as well as other natural and legal persons against whom the Bureau, based on par. 5 of Article 20, submits a criminal report to the State Prosecutor for the criminal offense of "non-execution of court decisions", if they have chosen the right to remain silent even if there is a court decision to obtain certain information or document".*

(v) Other allegations for incompatibility of the Contested Law with the Constitution

71. Furthermore, the applicants claim that the contested Law contradicts the concept document that preceded its adoption, because: *"[...] it has not taken into consideration the practices of democratic countries, most of which do not apply "civil confiscation" at all, and on the contrary, they do this between justice institutions such as the Prosecutor's Office and law enforcement institutions, but no institution outside the orbit of ordinary institutions tasked with investigating phenomena such as organized crime, corruption, money laundering, etc."* The latter also emphasize that the Republic of Kosovo cannot be compared to the countries that have embraced the civil confiscation system due to problems with the informal economy, access to property, namely, the lack of definition of ownership, large remittances of emigrants and the impossibility of their registration, the wide practice of informal contracts in economic relations, and that in this sense, the issuance of the contested Law constitutes a disproportionate and unnecessary measure, and would result in the violation of fundamental human rights in the spirit of Article 21 of the Constitution and constitutional guarantees for a fair trial.

72. The applicants also clarify before the Court that "*are aware that it is not the duty of the Court to assess whether a certain law contains a good public policy or not, but they welcome its role to assess in detail whether it violated constitutional rights and freedoms, the principles of the organization of the separation and mutual control of powers and to assess whether the legal procedure proposed by it ensures the guarantees embodied in Article 31 of the Constitution, including but not limited to the assessment of whether the "balance of probability" standard is sufficient and acceptable to justify the initiation and conduct of the confiscation procedure."*

73. The applicants also request the Court's assessment regarding the incompatibility of paragraph 13 of Article 23 (Procedure before the Bureau) of the contested Law with the Constitution in the case of civil confiscation - through civil procedure and in contradiction with the principles of the contested procedure, as well as the incompatibility of paragraph 7 of article 69 (Bureau functionalization) of the contested Law with article 142 of the Constitution because it is proposed that *"[...] until the operationalization of the Bureau, the administrative function is performed by the Agency for the Prevention of Corruption, which is allocated additional budget funds for the performance of this function"*.

74. In the end, the applicants request the Court as follows:

"57. For the above, in the light of the facts and the protection of the constitutional guarantees, the guarantees violated by the contested law, we request from the Court, as a constitutional and independent institution for the protection of the constitutionality that makes the final interpretation of the Constitution, to assess the constitutionality of the contested law and to repeal it in its entirety, as incompatible with the Constitution.
58. As applicants, we are convinced that the contested law has no constitutional and legal basis, is contrary to the principles of the democratic order, of the state of the Republic of Kosovo, violates human rights, violates and undermines the independence of independent institutions of justice and it is also contrary to the two opinions of the Venice Commission, regarding the issues raised in this referral."

(vi) Regarding admissibility of the referral

75. Regarding the admissibility of the referral, the applicants emphasize that the latter was submitted in accordance with Article 112 and paragraph 5 of Article 113 of the Constitution, within the regular time limit and in this regard express the following: *"[...] we welcome the active role of this Court in protecting the constitutional guarantees set forth in Article 7 [Values], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 55 [Limitations on Fundamental Rights and Freedoms], Article 142 [Independent Agencies] of the Constitution violated by the contested law of the Assembly, and admit this referral for consideration and decision on merits."*

(vii) Request for interim measure

76. In the context of the interim measure, the applicants request the Court*: [...] that without prejudice to the admissibility or merits of the referral, to inform the involved parties that the contested law adopted by the Assembly of the Republic of Kosovo and challenged pursuant to Article 113, paragraph 5 of the Constitution, is suspended ex-lege so that it is not sent for decree and publication in the Official Gazette until the final decision of the Constitutional Court on the contested case."*

77. Finally, the applicants request the Court to declare the provisions of the contested Law, in entirety, contrary to the Constitution of the Republic of Kosovo.

Comments and responses to comments related to the referral

78. As specified in the part of the proceedings before the Court of this Judgment, comments on the referral were submitted by: (i) the Ombudsperson; (ii) Ministry of Justice; and (iii) the deputy of the Assembly, Mr. Adnan Rrustemi on behalf of the parliamentary group of the VETËVENDOSJE! Movement, whereas the Ministry of Justice and the applicants submitted responses to the comments. The comments and responses to the comments of interested parties referring to the contested Law, which is the subject of the constitutional review by the Court, will be presented below.

(i) Comments of Ombudsperson, submitted on 8 March 2023

79. On 8 March 2023, the Ombudsperson submitted his comments to the claims of the applicants, where he initially emphasized that he analyzed the contested Law in the light of "*Opinion no. 1083/2022 of the Venice Commission, of 20 June 2022" and "Opinion no. 1113/2022 of the Venice Commission of 19 December 2022"*, regarding the case in question.

80. The Ombudsperson considers that the Court should assess whether the provisions of the contested Law: *"[...] violate the right to property, legal certainty, the right to legal remedies and the right to fair and impartial trial, guaranteed by the Constitution of the Republic of Kosovo"*.

81. In relation to subparagraph 4 of paragraph 1 of article 10 (Oversight Committee Composition and Compensation) of the contested Law, where it is determined that in the Oversight Committee for the election procedure of the General Director of the State Bureau, one of the members shall be appointed from the deputies of the Ombudsperson, the Ombudsperson requests the Court to assess the compatibility of this provision with the provisions that guarantee the independence of the Ombudsperson according to Article 132 of the Constitution. In this regard, the Ombudsperson considers that: *"[...] neither the Constitution of the Republic of Kosovo nor Law no. 05/L-0 19 on the Ombudsperson do not give such competence to the Ombudsperson, according to which, the Ombudsperson can appoint a member of the independent authorities*", and as a result of these determinations the Ombudsperson assesses as very important for the Constitutional Court to assess the constitutionality of determining the competence of the Ombudsperson in appointing a deputy of the Ombudsperson as a member of the Bureau's Oversight Committee, in terms of the violation of his independence, which is guaranteed by the Constitution of the Republic of Kosovo.

82. Regarding the election procedure of the General Director of the State Bureau, established in paragraph 16 of Article 15 (Procedure for the election of the Director General) of the contested Law, the Ombudsperson requests the Court to assess whether the competence of the Oversight Committee after the failure of the procedure of election by the Assembly of the candidate for this position, is contrary to the constitutional provisions that define the competencies of the Assembly, namely Article 65 [Competencies of the Assembly] of the Constitution. The Ombudsperson considers that according to the provisions of Article 65 of the Constitution and Article 45 (Establishment of the Ad hoc Committee) of the Rules of Procedure of the Assembly of the Republic of Kosovo, *"[...] neither the Constitution of the Republic of Kosovo nor the Rules of Procedure of the Assembly of the Republic of Kosovo give competencies to the committees of the Assembly to render a decision by which they would be able to choose the Director General of the independent authorities established by law"*. Moreover, the Ombudsperson compares the election procedure of the Director of the Agency for the Prevention of Corruption, who according

to the respective law, is elected with the majority of votes of the deputies present and voting, which procedure he considers that *"[...] should also be applied to the case of electing the Bureau"*.

(ii) Comments submitted by the Ministry of Justice on 8 March 2023

83. On 8 March 2023, the Ministry of Justice submitted to the Court its comments to the allegations of the applicants, as well as attached the following documents in English and Albanian: (i) The first opinion of the Venice Commission; and (ii) Second Opinion of the Venice Commission. On 24 March 2023, the Ministry of Justice also submitted the Follow-up Information of the Venice Commission regarding the contested Law.

84. Initially, in its comments, the Ministry of Justice described the procedural steps for the adoption of the contested Law, including the development phase of the concept document, which preceded the drafting of the law. The latter emphasized the composition of the working group for the drafting of the contested Law and the approval procedure in the Government and Assembly, as well as the procedure for receiving the opinions of the Venice Commission and addressing their recommendations.

85. In the following, the Court will summarize the comments of the Ministry of Justice regarding the allegations of the applicants and the contested Law, including those related to (i) articles 2 and 22 of the contested Law; (ii) articles 4 and 9 of the contested Law; (iii) Article 15 of the contested Law; and (iv) Article 19 of the contested Law.

(i) Regarding the allegations for articles 2 and 22 of the contested Law

86. In relation to the applicants' allegations that articles 2 and 22 of the contested Law contradict the principle of the rule of law based on the Checklist of the Venice Commission, specifically, legality as its element, the Ministry of Justice, among others, emphasizes that: *"Regarding the element of legality, the challenging is based on the preliminary adoption process, describing it as non-transparent, irresponsible and non-democratic, however, at no point has it been elaborated on what made this process such. However, we will provide arguments and evidence that prove that the law-making procedure according to the Venice Commission has been fully implemented. During the drafting period of the draft law by the Ministry of Justice and the Assembly of the Republic of Kosovo, the entire process was transparent, comprehensive and in accordance with the applicable legislation regarding the drafting and consultations of legal acts. In addition to respecting the legal procedure, the working groups at the level of the Ministry and the Assembly have included representatives from the justice system (judges from the Supreme and Appeal Courts, prosecutors from the Office of the Chief State Prosecutor), international partners (the European Union Office, the US Embassy, OPDAT, OSCE, UNDP), independent international experts as well as representatives from civil society organizations. The Ministry of Justice has conducted preliminary and public consultations, while the Assembly has also organized a public hearing on 23.09.2022 in order to inform interested parties about the content of the draft law."*

87. Regarding the applicants' allegation of the retroactivity of the law, the Ministry of Justice, among others, emphasizes that: *"[...] retroactivity is allowed in the civil and administrative field",* and for this it cites the standards established by the Venice Commission as follows*: "[...] a retroactivity of the rights of individuals or the imposition of new duties may be allowed, but only if it is in the public interest and in accordance*

with the principle of proportionality". In this regard, the Ministry of Justice also emphasizes: *"[...] the fact that the draft law as a whole has been subject to two checks by the Venice Commission and in both opinions issued for this Law, no flaws have been found as far as it belongs to retroactivity. Furthermore, Law no. 06/L-087 on Extended Powers on Confiscation of Assets provides for the possibility of retroactivity in a period of ten (10) years".*

88. Regarding the applicants' allegation of a legal conflict between paragraph 2 of article 2 and paragraph 3 of article 22 of the contested Law, the Ministry of Justice clarifies that: *"[...] Article 2 (2) of the Law establishes the scope of the Law regarding which of the official persons is subject to its provisions, respectively the time limit within which i) the subject to verification has started exercising the public function (sub-paragraph 2.1) and ii) the period after which the entity subject to verification has ceased to exercise public function (sub-paragraph 2.2). Whereas, according to Article 22, the period of verification of the assets of the subject to verification is determined, which is limited to the period that he/she exercised a public function. This article also specifies an exception to this rule, which is when the Bureau assesses or finds that the property of the official person acquired after the period of exercising the public function is to a large extent higher than the legal income or the property acquired during the exercise of the public function by the official person, the asset verification can be done even after the end of the public function in a period not longer than five (5) years. Therefore, these two articles do not conflict with each other, and therefore, it does not constitute a violation of the principle of legal certainty."*

89. In relation to the applicants' allegation that Article 2 of the contested Law contradicts Article 24 of the Constitution, because the latter applies only to public officials and not to all citizens without distinction, and therefore, it constitutes a violation of the principle of equality before the law, the Ministry of Justice emphasizes that the applicants use the term "*public officials*", although the subjects of this law are official persons and that *"[...] similar legal solutions have passed the test of non-violability of the rights of official persons in relation to other citizens through established international standards. Furthermore, starting from the other fact that official persons, based on the responsibilities that have had the opportunity to exercise their influence to illegally benefit from the public budget of the state, the Law aims to protect its citizens by re-taking the property alienated from the state budget and returning that property to them for the benefit of citizens. Among others, as it is known from recognized legal concepts, laws affect certain social relations and this Law constitutes one such law".*

90. In relation to the claim of the applicants who consider as "*arbitrary*" the decision of 17 February 2008 for the development of the verification procedure, the Ministry of Justice underlines that: *"[...] based on the principle of legal certainty, a deadline for the implementation of laws must be determined, and if otherwise, when such a deadline would not be established, it would clearly constitute arbitrariness. In the present case, the date specified in the Law, in addition to being related to the symbolism of the formalization of the statehood of the Republic of Kosovo, is also related to the fact that from that time the requirement that any legal transfer of property be made through bank transactions has been materialized, and that for the purposes of this law is seen as decisive evidence for the purpose of property verification."*

91. Likewise, regarding the contestation of the standard of "*balance of probability*" on the part of the applicants, the Ministry of Justice emphasized that: *"This standard has also*

been confirmed by the Venice Commission as a standard of proof in civil proceedings in paragraphs 13 and 57 of the first Opinion on the Draft Law on the Bureau. Meanwhile, even in the second Opinion of the Venice Commission on the Draft Law on the Bureau, in paragraph 11, the standard of balance of probability is reconfirmed […]", respectively, the latter cites paragraph 25 of the Second Opinion as follows*: "In the view of the Venice Commission the question of burden of proof has thus been regulated in a satisfactory way in the new version of the Draft Law".*

92. Whereas, regarding the contestation of the constitutionality of the value established in Article 2 of the contested Law by the applicants, the Ministry of Justice considers that: *"[…] The Law must define a value on which the asset verification must be done, and the value established in the law is defined as an indicative value of the annual income of official persons. Otherwise, not setting a monetary value on the basis of which the asset verification would be done, could be qualified as a possibility of arbitrariness and violation of legal certainty. In addition, during the drafting of the policy on confiscation and seizure of justified assets, a large number of practices of other countries have been taken into consideration, which in their relevant confiscation laws have provided for the monetary value on the basis of which the verification of the property has been done".*

(ii) Regarding the allegations of articles 4 and 9 of the contested Law

93. Regarding the claim of the applicants for the incompatibility of articles 4 and 9 of the contested Law with article 142 of the Constitution, the Ministry of Justice states that the contested Law: *"[…] establishes the Bureau as an independent and specialized body for verification of unjustified assets. The Bureau as a body established by the Assembly in Articles 4 and 9 does not violate Article 142 of the Constitution since the four (4) basic elements of this article are fulfilled, which are: i) establishment by Law by the Assembly, ii) exercise of the function of their independence and without influence, iii) the guarantee of their independence through the special budget, and iv) the constitutional guarantee that other state bodies must cooperate and respond to the demands of these institutions*." This, according to the Ministry of Justice, was also accepted in paragraph 20 of the second Opinion of the Venice Commission.

94. As regards the claim of the applicants that the recommendation of the first Opinion of the Venice Commission was not addressed regarding the regulation of the status and qualifications of the officials who will work in the State Bureau, the Ministry of Justice cites the second Opinion of the Venice Commission, which according to them, *"[…] regarding the institutional capacity of the Bureau to adequately fulfill its task, the Venice Commission takes note that the Bureau now contains at least four units […]".*

95. Regarding the claim of the applicants that the State Bureau in terms of competencies has a prosecutorial function, the Ministry of Justice considers that: *"[…] it is ungrounded due to the fact that the institution of the State Prosecutor has the constitutional competencies to investigate criminal offenses and perpetrators of criminal offenses, as established in Article 109 of the Constitution. Whereas, the Bureau does the verification of assets in the civil aspect, without interfering in the aspect of the criminal investigation. Also, according to the Law on the Bureau, in case the Bureau has information regarding the property that is being verified that criminal proceedings are pending, then the Bureau suspends the verification until end of the procedure".*

(iii) Regarding the allegations of Article 15 (Procedure for the selection of the Director General) of the contested Law

96. In relation to the claim of the applicants of violation of the constitutional guarantees of the Assembly at the time of the election of the Director General, which according to them violates the principle of the rule of law, legal certainty and electoral competence of the Assembly, the Ministry of Justice considers that: *"[...] it was a special recommendation of the Venice Commission regarding the method of selecting the General Director. According to the recommendations, the depoliticization of the selection process would be guaranteed by an external committee and not by a parliamentary committee, in the composition of which would be the deputies of the power and the opposition. The independence of the Bureau's oversight committee also ensures the independence of the Bureau. The Oversight Committee has the competence to select candidates and propose them to the Assembly of Kosovo. The Assembly will then have the opportunity to vote for a candidate for General Director. The Venice Commission in the second opinion has recommended an unblocking situation for the selection of the Director General. Thus, the Law has provided an additional competence to the Oversight Committee in case the Assembly fails twice in the selection of the General Director, such competence passes to the Oversight Committee. This clearly clarifies that by this legal provision the Constitutional electoral competence of the Assembly of Kosovo has not been violated due to the fact that the Constitution does not provide for the election of the Director of any Agency. In addition, there has been no violation of the rule of law and legal certainty, since the electoral competence of the Assembly has been established by the law, and the legal competence of the Assembly to elect the General Director has not been violated, since the Law has foreseen that the Assembly in two rounds with the majority provided for in Article 80 of the Constitution to select the General Director."*

(iv) Regarding the allegations of Article 19 of the contested Law

97. Regarding the applicants' allegations for the incompatibility of Article 19 (Collection of information for the purpose of verification) of the contested Law with Article 46 of the Constitution, the Ministry of Justice states that: "*The information collected by the Bureau cannot be considered an interference with the right to property, since the Bureau only collects information for the purpose of verification, while according to the Law only the court is the only authority that finally decides on the right to property according to certain procedures and in accordance with the Law and the Constitution*". Moreover, the Ministry of Justice refers to the case law of the European Court of Human Rights (hereinafter: ECtHR), where it is emphasized that *"[...] measures that constitute interference with property can be initiated, a notion that in itself includes verification and proposal for confiscation, even by authorities that are not judicial or prosecutorial"*. In this context, the Ministry of Justice mentions the case of the ECtHR, *Air Canada v. the United Kingdom,* no. 18465/91, Judgment of 5 May 1995, where *"[...] all measures relating to verification, warning, investigation, and in that case seizure of property (company aircraft), were carried out by UK Customs and Excise Officers."* In this context, the Ministry of Justice also refers to the cases of the ECtHR, *AGOSI v. the United Kingdom*, no. 9118/80, Judgment of 24 October 1986 and *Karahasanoglu v. Turkey*, no. 21392/08, Judgment of 16 June 2021.

98. The Ministry of Justice also emphasizes that: *"In the cases mentioned in the point above, non-judicial and non-prosecutorial institutions have collected evidence and confiscated assets, while in the case of the Bureau it only collects and verifies information according*

to the procedure provided by the Law. The collection and verification of data related to assets is not contrary to Article 46 of the Constitution, since in the Republic of Kosovo there are other institutions such as the Agency for the Prevention of Corruption, the Customs of Kosovo, the Financial Intelligence Unit and the Tax Administration of Kosovo and others which, based on the information and other data they collect during their work, initiate and/or temporarily seize assets. Whereas, in the present case, the Bureau only verifies and collects information regarding the assets of the entities that are parties to the proceedings, and the final decision regarding the assets is taken by the court".

99. Regarding the claim that the right to property is limited contrary to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, the Ministry of Justice underlines that *"[...] the right to property is not limited according to this Law which is the subject of dispute, since the Court has the final role in relation to the decision on property and procedural rights for the parties [...] Furthermore, even the Venice Commission has not contested the right of the Bureau in collecting information or verification, not contesting that such a Law violates the right to property".*

100. Regarding the claim of the applicants that by Articles 18 and 19 in conjunction with Article 20 of the contested Law, not only Article 46 [Protection of Property] of the Constitution is violated but also the guarantees of Article 31 of the Constitution are essentially violated, as the subject is deprived from timely access to documents, the right to be heard as well as the right to remain silent and not to incriminate oneself and family members, the Ministry of Justice, expresses as follows: *"Such a claim of the applicant is ungrounded and legally unsustainable because Article 18, paragraph 18 [of the contested Law] correctly states that "All information received and processed by the Bureau will be accessible to the party who is subject to the verification procedure, except in cases where this information would endanger the verification procedure, would damage the evidence, and may violate the public interest. The Bureau shall officially request the restriction of documents at the Court, where the Court shall issue a decision in writing for such request."* In this regard, the Ministry of Justice emphasizes that even paragraph 5 of Article 62 of the contested Law determines that: *"[...] statements given as well as the documents provided by the party in the procedure according to this Law cannot be used as evidence in criminal proceedings".*

101. Furthermore, the Ministry of Justice considers that the applicants' referral for assessment of the contested Law with other legal acts (horizontal control of laws) is *"[...] unprecedented and contrary to the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Constitutional Court*", while the claim that Article 142 of the Constitution was violated by paragraph 7 of Article 69 of the contested Law without providing arguments as to how it was violated, notes that in accordance with the Court's case KI168/21, Applicant *Petrit Dushi*, Judgment of 7 February 2022, "[...] *raising the claim in itself is not sufficient to establish a violation of the constitutional articles*".

102. Regarding the request for the interim measure, the Ministry of Justice states that: *"[...] based on Article 43 of the Law on the Constitutional Court, it makes unnecessary the request for the interim measure filed by the applicant, since the Law cannot be promulgated by the President and published in the Official Gazette and as a result will not be able to be implemented until the final decision by the Constitutional Court."*

103. In the end, the Ministry of Justice emphasizes in its comments that the contested Law is in full compliance with the Constitution and international standards, including the ECHR, and they propose to the Court to render a Judgment that finds that this law is in compliance with the Constitution.

(iii) Comments submitted by the deputy of the Assembly, Mr. Adnan Rrustemi, submitted on 8 March 2023

104. On 8 March 2023, Mr. Adnan Rrustemi, in his capacity as a deputy of the Assembly of the Republic of Kosovo, from the Parliamentary Group of the VETEVENDOSJE! Movement, submitted to the Court his comments regarding case KO46/23.

105. In what follows, the Court will summarize the comments of deputy Adnan Rrustemi regarding the allegations of the applicants and the contested Law, including those related to: (i) Articles 2 and 22 of the contested Law; (ii) Article 15 of the contested Law; and (iii) articles 18, 19 and 20 of the contested Law.

(i) Regarding the claims for articles 2 and 22 of the contested Law

106. Regarding the claims of the applicants for the incompatibility of articles 2 and 22 of the contested Law with article 7 of the Constitution, which guarantees the principle of the rule of law, respectively its elements, including that of legality, which includes the preliminary approval process of the law with a procedure as described by the applicants as "*non-transparent, irresponsible and non-democratic*", the deputy Adnan Rrustemi notifies the Court that *"[...] As the Chairman of the working group formed within the Committee on Legislation of Assembly of the Republic of Kosovo, [...], this working group was composed of deputies of the Republic of Kosovo, representatives from the justice system (judges and prosecutors), international partners, independent international experts as well as representatives from civil society organizations. At the same time, this working group organized a public hearing on 23.09.2022 with all interested parties, and also held 4 workshops (supported by UNDP, the Council of Europe and KDI) and until the finalization of the Draft Law, the Venice Commission was consulted two times"*. In these circumstances, deputy Adnan Rrustemi specifies that all parties have been regularly invited to the meetings of the working groups and have also had various platforms available for addressing their opinions and recommendations.

107. Whereas, regarding the claim of the applicants that the threshold of €25,000 (twenty-five thousand euro) offers amnesty for any public official from its scope if the value of the discrepancy is lower, deputy Adnan Rrustemi clarifies that it was an agreement of the working group that public officials facing higher discrepancies have priority and this is reflected in paragraph 6 of Article 18 of the contested Law, and that: "*The Law defines a minimum threshold, but the focus is on high-profile cases and that this provision receives positive assessment with recommendation no. 21 of the Venice Opinion no. 1113/2022 of 19 December 2022"*.

(ii) Regarding the claims for Article 15 of the contested Law

108. Regarding the claims of the applicants for the contestation of Article 15 (Procedure for the election of the Director General) of the contested Law, which regulates the election procedure of General Director of the State Bureau, the deputy Adnan Rrustemi emphasizes that this article has fully addressed two the aforementioned opinions of the

Venice Commission, namely, the first Opinion had recommended in its paragraph 39 *"[...] strong guarantees of independence will be necessary to enable the Bureau to resist any possible political pressure, a qualified majority for the election of the Director General by the Assembly (with an anti-deadlock mechanism) would clearly be preferable",* and in this context this position should be elected by an external Commission, composed of independent experts, or that the candidates be elected by this commission and proposed to the Assembly for voting, while the second Opinion, in its paragraph 34, requires the legislator to *"[...] provide an anti-deadlock mechanism for the election of the Director General of the Bureau*".

109. Moreover, deputy Adnan Rrustemi claims that the anti-blocking mechanism for the election of the General Director of the State Bureau, *"[...] is intended to ensure strong guarantees about the independence of the Bureau in order to resist any potential political pressure."*

(iii) Regarding claims for articles 18, 19 and 20 of the contested Law

110. Regarding the claims about the incompatibility of Article 19 (Collection of information for the purpose of verification) of the contested Law with Article 46 [Protection of Property] of the Constitution, respectively, that the collection of information for the purpose of verification directly violates the right to property, deputy Adnan Rrustemi emphasizes that the contested Law and the relevant legislation in force, provide sufficient guarantees for the protection of property, and that law-enforcement institutions such as the Agency for the Prevention of Corruption, the Tax Administration of Kosovo, the Central Bank of Kosovo, the Financial Intelligence Unit, Notaries and Private Enforcement Agents, are obliged to actively, without delay, provide the requested information, which serves only for the purpose of verification, and that it is the court, the final authority that decides on the right to property, at the request from the State Bureau according to the established procedures and in accordance with the Law and the Constitution.

111. In this regard, deputy Adnan Rrustemi claims that: "*The Bureau in no way has the legal competencies to confiscate and deny the right to property. The latter is an institution with a mandate of verification of assets, and the information gathered from this procedure is sent to the court to be further assessed in a legal procedure, established by law*", therefore, according to him, the assessment that Article 19 of the contested Law violates directly the right to property, is ungrounded.

112. Finally, deputy Adnan Rrustemi highlights the assessment of the second Opinion of the Venice Commission, which states that: "*The new Draft Law represents a workable system of non-conviction-based asset forfeiture in Kosovo",* and that the Committee on Legislation, after acceptance of this opinion has also addressed his last three remarks. The latter assesses that*: "[...] the review process of Law no. 08/L—121 on the State Bureau for Verification and Confiscation of Unjustified Assets is the best example in the parliamentary procedures of how all the remarks addressed by the Venice Commission are addressed one by one, serving as a guide in the process of changes."*

(iv) Response of the Ministry of Justice to the comments, submitted on 12 April 2023

113. On 12 April 2023, the Ministry of Justice submitted to the Court its response to the comments of the Parliamentary Group of the VETEVENDOSJE Movement! and the

Ombudsperson regarding the constitutional review of the contested Law, as well as attached the accompanying Information of the second Opinion of the Venice Commission regarding the contested Law, in English and French.

114. In relation to the comments of deputy Adnan Rrustemi of the Parliamentary Group of Movement VETËVENDOSJE!, the Ministry of Justice specified that: "*1. […] We consider that the latter have correctly responded to the claims of the applicant for the assessment of the Law and therefore we support them.*"

115. Regarding the comments of the Ombudsperson, the Ministry of Justice emphasized that:

"[…] we note that three (3) main issues have been raised for assessment by the Constitutional Court: a) the competence of the Ombudsperson for the appointment of a deputy as a member of the Oversight Committee of the Bureau; b) the competence of the Committee for the conduct of procedures and the selection of the Director in case of failure to select the Director of the Bureau by the Assembly; and c) violation of the right to property, legal certainty, the right to legal remedies and the right to a fair and impartial trial.
3. First of all, it should be noted that the first two issues commented by the Ombudsperson related to the competence of the Ombudsperson to appoint a deputy as a member of the Oversight Committee of the Bureau and the competence of the Committee to develop procedures and select the Director in case of failure for the selection of the Director of the Bureau by the Assembly are outside the scope of the request for the constitutional review of the Law on the State Bureau submitted by [the applicants]. However, the Ministry of Justice, as the proposer of the Law, will offer its views on these comments and the purpose of these provisions of the Law.
4. In line with the first issue raised by the Ombudsperson regarding the competence of the Ombudsperson to appoint a deputy as a member of the Oversight Committee of the Bureau, we must necessarily refer to the constitutional and legal provisions that govern the competencies of the Ombudsperson in the Republic of Kosovo.
5. As it is known, the Constitution defines the role of the Ombudsperson that […] monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities". In addition, the Constitution defines several other regulations related to the Ombudsperson such as the election, qualification, dismissal, budget and reporting of the Ombudsperson. Following is the Law on the Ombudsperson which has further defined the role and competencies of the Ombudsperson further breaking down the provisions of what is regulated by the Constitution.
6. In this way, the Law on the Ombudsperson defines a number of competencies for the Ombudsperson, which include the investigation of complaints from natural or legal persons regarding the claims of violation of human rights provided for by the constitution, laws and other acts; appearing as amicus curiae of the court, and exercising mediation and conciliation powers, among others. In addition to these competencies, according to paragraph 13 of Article 16, "The Ombudsperson performs other work defined by the Law on protection from discrimination, Law on Gender Equality, and other legislation in force."
7. In particular, paragraph 13 of article 16 provides a clear legal basis for the application of article 10 of the Law on the Bureau because according to the Law on the Ombudsperson, the Ombudsperson also performs other tasks that are defined by law, which in this particular case we have the law on the Bureau.

8. In the current legal regulation, the Ombudsperson is represented ex-officio in other state bodies as well. A specific case is the special Committee for the examination of candidates for appointment to the Constitutional Court. In this case, the Ombudsperson is a member of this Committee ex-officio which prepares and presents to the Assembly the shortlist of candidates for judges of the Constitutional Court.
9. It should also be noted that regarding the deputies of the Ombudsperson, the Constitution concisely regulates the issues as follows: "The Ombudsperson has one (1) or more deputies. Their number, method of selection and mandate are determined by the Law on Ombudsperson." It is important to note that the deputies of the Ombudsperson are elected by the Assembly of the Republic of Kosovo, therefore the appointment of a deputy in this Oversight Committee gives even more legitimacy and reason to Article 10 of the Law on the Bureau and the involvement of the Ombudsperson in this Committee. The appointment of a deputy by the Ombudsperson should be understood as an exercise of the activity of the institution of the Ombudsperson because the deputy will serve ex-officio in this Oversight Committee.
10. Thus, all the members appointed by the respective institutions of the Republic of Kosovo, including the deputy of the Ombudsperson, serve ex-officio as members of the Oversight Committee that functions within the Bureau and we are not dealing with direct elections of any member in institutions that are constitutional categories and are elected based on constitutional provisions. There are even cases of the ex-officio service of the Ombudsperson in other countries, such as in Estonia where the Ombudsperson (in Estonia it is called the Chancellor of Justice) is an ex-officio member of the Judicial Council of Estonia.
11. The Constitution of Kosovo stipulates in Article 134 (3) that "The Ombudsperson and Deputy Ombudspersons shall not be members of any political party, exercise any political, state or professional private activity, or participate in the management of civil, economic or trade organizations". This ban has to do with the personal work and activities of the Ombudsperson or his deputies and not with the ex-officio service in another institution. This is also confirmed by the Commentary of the Constitution of Kosovo for Article 134 (3): "First, according to the paragraph in question, the effect of the rules of incompatibility takes effect from the moment of the official acceptance of the function of the Ombudsperson and/or the deputy/s of and it ends/is terminated after the end of the latter's constitutional or legal mandate. Secondly, the constitutional norm in question determines the incompatibility of the function of the Ombudsperson and his deputies with other personal and political functions. In short, the rules of incompatibility determine the nature of jobs and personal activities that are forbidden to be exercised during the entire period of time of the mandate of the Ombudsperson and/or his/her deputies.
12. Also, the principles of the Venice Commission for the protection and promotion of the institution of the Ombudsperson state that "the Ombudsperson must not, during his/her mandate, engage in political, administrative or professional activities inconsistent with his/her independence and impartiality". Thus, the essential element in this regard, according to the Venice Commission, is the preservation of the independence and impartiality of the Ombudsperson and his/her deputies, namely, by prohibiting activities that may violate the independence or impartiality of the institution.
13. In any case, this should be seen in the spectrum of personal activity and not in the ex-officio service in another institution. For example: a situation which may compromise the independence or impartiality of the Ombudsperson is the conflict of interest. According to the Law on the Prevention of Conflict of Interest in Discharge of a Public Function, the conflict of interest is defined as follows: "A conflict of interest may result from circumstances in which an official has a private interests, which influences, might

influence or seems to influence the impartial and objective performance of official duties". The conflict of interest is therefore a conflict of private and public interest. The service of the Ombudsperson in the Oversight Committee is not his private or personal activity, but an ex-officio service as mentioned above. in terms of exercising the constitutional and legal competencies of the Ombudsperson.

14. As a result, it cannot be concluded in general, without examining the personal actions related to the private interest of individuals, that serving in the position of deputy of the Ombudsperson but also in the role of a member of the Bureau's Oversight Committee is a conflict of interest which would violate the independence and impartiality of the Ombudsperson. In cases where the deputy of the Ombudsperson may have a conflict of private interest with the public one, then there are all legal guarantees to eliminate this conflict of interest or to take other adequate measures. Also, it should be appreciated that one of the five deputies of the Ombudsperson according to the law, who serves as a member of the Oversight Committee, is not an individual decision-making authority within the institution of the Ombudsperson and therefore cannot make decisions or directly influence in the exercise of the competence of the Ombudsperson for the protection and oversight of human rights.

15. The court should also take into account the assessment of the composition of the Oversight Committee of the Bureau by the Venice Commission, which, reflecting on this composition, concludes that:

"In the view of the Venice Commission, the new body proposed in the draft law provides a better guarantee for independence as all Committee members come from outside the political sphere".

16. Therefore, based on this systematic approach of legal norms, there is no violation of the constitutional provisions in the case of appointing a deputy of the Ombudsperson as a member of the Bureau's Oversight Committee.

17. Regarding the second issue raised by the Ombudsperson, which is related to the competence of the Committee for the conduct of procedures and the selection of the Director in case of failure to select the Director of the Bureau by the Assembly, it is noted that there may have been a misunderstanding of the provisions of the Law of the Bureau. From the comments of the Ombudsperson, it is understood that this Committee that conducts the selection procedures of the Director of the Bureau and exceptionally also selects the Director in the case where after two votes and a repetition of the vacancy, it has been interpreted as an ad-hoc Committee of the Assembly. The Law on the Bureau has determined the competence of the Oversight Committee of the Bureau and not an ad-hoc Committee of the Assembly, as it is presented in paragraphs 13 and 14 of the comments of the Ombudsperson.

18. However, to accurately clarify, we emphasize that the establishment of this anti-blocking mechanism for the election of the General Director derives as a recommendation from the Opinion of the Venice Commission, which in its conclusions recommended that the Law, among others: "provide for an anti-deadlock mechanism for the election of the Director General of the Bureau."

19. In the Opinion of the Venice Commission it is also emphasized that: "In any case, the Commission recommends introducing mandatory consultation of independent experts in this process. It would be advisable that the Director General either be elected by an external commission composed of independent institutions and experts, or that candidates be selected and proposed by such an independent commission to the Assembly for vote. The establishment of a collegiate and pluralistic governing body of the Bureau, whose members could be delegated from independent institutions, might be another option", the Venice Commission has emphasized that the members of the committee can be appointed, e.g. by the President of the Constitutional Court, the Chief State Prosecutor,

the President of the Committee on Legislation of the Assembly, the Ombudsperson, the Dean of the Faculty of Law, etc.
20. Such an anti-blocking procedure for the selection of the General Director of the Bureau does not violate the competencies of the Assembly according to Article 65 of the Constitution due to the fact that this procedure can only be used in exceptional cases after the failure to select the Director in two rounds and repeating the competition with two more rounds.
Based on the role and importance of the Bureau's authority in such cases of non-selection of Director, they could damage and endanger the good functioning of the Bureau.
21. Referring to the analogy used with the selection procedure of the Director of the Agency for the Prevention of Corruption in points 15-18 of the comments of the Ombudsperson, they confirm that such a procedure was also applied in the case of the selection of the General Director of the Bureau, added here also the anti-blocking mechanism as a fulfillment of the recommendations from the Opinion of the Venice Commission.
22. In relation to the third issue raised by the Ombudsperson regarding the assessment of the violation of the right to property, legal certainty, the right to legal remedies and the right to a fair and impartial trial, the latter have not been elaborated in the comments. on the part of the Ombudsperson, how they could have been violated, but he only raised it as a matter for the attention of the Court.
23. The Ministry of Justice has clarified in detail how the Law on the Bureau has not violated any of the constitutional rights highlighted above in our response of 08.03.2023 to the request for the constitutional review by the applicants and for the purpose of non-repetition, we refer to the arguments in our response of 08.03.2023.
24. In fact, the Venice Commission, through a follow-up opinion on 14.03.2023, concluded that the Law on the Bureau has improved the guarantees of human rights for the subjects in the procedure, which include here the right to property, legal certainty, the right to legal remedies and the right to a fair and impartial trial.
25. In this follow-up Opinion, the Venice Commission has also emphasized that the Law on the State Bureau for Confiscation of Unjustified Asset adopted by the Assembly has addressed all the comments of the Committee, including among others: guarantees for the independence of the Bureau, the precise definition of the verification procedure, and the improvement of human rights guarantees for the subjects in the procedure.
26. Finally, as argued above, the Ministry of Justice assesses that the Law on the Bureau for the Verification and Confiscation of Unjustified Assets is in full compliance with the Constitution of Kosovo and international standards.
27. Therefore, based on the arguments provided by the Ministry of Justice, we propose to the Constitutional Court to render a JUDGMENT which holds that the Law on the Bureau for Verification and Confiscation of Unjustified Assets is in compliance with the Constitution of Kosovo.

(v) Applicants' responses to the comments of the Ombudsperson, the Ministry of Justice and the deputy of the Assembly

116. On 24 April 2023, as a result of the comments submitted by the Ombudsperson, deputy Adnan Rrustemi and the Ministry of Justice, respectively, the applicants in their response to the comments of the above-mentioned parties responded as follows:

117. Regarding the comments of deputy Adnan Rrustemi from the Parliamentary Group of the Movement VETËVENDOSJE!, the applicants specify that:

"1. Even as expected, these comments do not at all address our claims regarding the violation of the right to property, the absurd and unprecedented way of electing the General Director of the Bureau, the unequal and discriminatory treatment that the contested law has established in relation to public officials, including the possibility of their exclusion as subjects in this procedure if the incompatibility of their property is below 25,000 euro.
2. Also, these comments do not address our claim for the unconstitutional regulation of the issue of the exercise of the Bureau's function - until its operationalization (1 year) - by the Agency for the Prevention of Corruption.
3. The submitters of the comments have also failed to respond to our claims regarding the violation of privacy - as a constitutional right, in the case of receiving/gathering information for the purpose of verifying wealth, assets, income, expenses, obligations, etc.
4. For the above, we consider that these comments do not deserve special attention, for the reason that they basically represent an unsubstantiated attempt to justify the establishment of a dual system of asset confiscation by an institution outside the institutions defined in chapter VII of the Constitution."

118. Regarding the comments of the Ombudsperson, the representative of the applicants specifies that:

"5. In general, we consider that all the comments submitted by the Ombudsperson Institution are grounded and deserve serious evaluation of the effects that can be produced. Add here the fact that now, after the publication of the Judgment (24 March 2023, published on 5 April 2023) KO 100/22, with applicants: Abelard Tahiri and ten (10) other deputies and KO 101/22, with applicants: Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo, regarding the constitutional review of Law no. 08/L-136 on Amending and Supplementing Law no. 06/L-056 on the Prosecutorial Council of Kosovo, in the enacting clause II of which the proposal that a member of the KPC be appointed by the Ombudsperson is expressly found to be unconstitutional, we assess that the contested law should be declared null, in addition, among others, also for the roughly similar determination that, in the composition of the Oversight Committee of the Bureau, a deputy of the Ombudsperson appointed by the Ombudsperson should be a member.
6. For the above, please refer to article 10, paragraph 1.4 of the contested law.
Whereas, the reasoning that such a proposal is contrary to Article 132 of the Constitution is easily argued through the reasoning of the judgment KO 100/22, and KO 101/22, respectively from points 239 to 267."

119. Regarding the comments of the Ministry of Justice, the applicant's representative specifies that:

"7. Regarding the comments of the Ministry of Justice, we consider that they have failed to argue our claims presented in the referral, especially regarding the scope of the temporal application of the law, the scope of the application of the law against senior officials, trying to justify that the contested law will be applied exclusively to high-level officials such as: politicians, holders of high public functions, including judges, prosecutors, etc., without arguing on what legal premise these officials should be treated unequally and discriminatory in relation to other public officials on the one hand, and other citizens on the other.

8. The submitter of the comments has failed to counter-argue our claim regarding the objective and legal impossibility of implementing the confiscation system proposed in the law, due to the circumstances of the operation of the Kosovar economy, which is officially characterized to a large extent by the informal economy on the one hand and large remittances on the other. Consequently, the legal registration of economic circulation in Kosovo faces elementary challenges, which, as such, make the system of civil confiscation of property completely inapplicable even under assumptions that the latter would be implemented by the competent institutions of justice (State Prosecutor's Office).
9. Regarding the other issues raised in the form of claims in our referral before this court, we consider that the submitter of comments has again failed to argue the basic unconstitutional elements of the law, such as: failure to apply the standards and principles of proof in civil procedure, which are applied on the basis of the applicable Law on Contested Procedure, etc., as well as failed to provide an answer to the claim that the determination of the exercise of the Bureau's function - until its operationalization (1 year) - by the Agency for the Prevention of Corruption, is unconstitutional, and has failed to counter-argue on what basis it is proposed that the director of the Bureau be elected by the Oversight Committee in case of failure of the Assembly to elect the latter.
10. Regarding the above, the comments given by [the applicants], we assess that they cannot justify such a confiscation system, nor do they argue why our claims are ungrounded."

Constitutional and legal provisions and relevant documents

120. In what follows, the Court will present: (I) Relevant provisions of the Constitution of the Republic of Kosovo; (II) Relevant provisions of the Universal Declaration of Human Rights and the European Convention on Human Rights; (III) Relevant provisions of the applicable laws of the Republic of Kosovo, which include the provisions of Law no. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies; Law no. 05/L -019 on the Ombudsperson; Law no. 05/L-055 for the Auditor General and the National Audit Office of the Republic of Kosovo; Law no. 05/L -096 on Prevention of Money Laundering and Combating the Terrorist Financing; Criminal Code no. 06/L-074 of the Republic of Kosovo; Law No. 05/L-049 on the Management of Sequestrated and Confiscated Assets; Law No. 08/L-017 on the Agency for the Prevention of Corruption; (IV) Opinions and *Amicus Curiae* of the Venice Commission relating to asset forfeiture; and (V) Opinions of the Venice Commission on Kosovo; and (VI) The contested and relevant provisions of the contested Law.

I. RELEVANT CONSTITUTIONAL PROVISIONS

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 3
[Equality Before the Law]

"1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.
[…]"

Article 4
[Form of Government and Separation of Power]

"1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.
2. The Assembly of the Republic of Kosovo exercises the legislative power.
3. The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and - 2 - externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.
4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control.
5. The judicial power is unique and independent and is exercised by courts.
6. The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution.
7. The Republic of Kosovo has institutions for the protection of the constitutional order and territorial integrity, public order and safety, which operate under the constitutional authority of the democratic institutions of the Republic of Kosovo."

Article 7
[Values]

"1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.
[…]"

Article 21
[General Principles]

"1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.
3. Everyone must respect the human rights and fundamental freedoms of others.
4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

Article 22
[Direct Applicability of International Agreements and Instrument]

"Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:
(1) Universal Declaration of Human Rights;
(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
[…]"

Article 24
[Equality Before the Law]

"1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled."

Article 31
[Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.
5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.
6. Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.
7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles."

Article 32
[Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."

Article 46
[Protection of Property]

"1. The right to own property is guaranteed.
*2. Use of property is regulated by law in accordance with the public interest. *
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court. 5. Intellectual property is protected by law."

Article 55
[Limitations on Fundamental Rights and Freedoms]

"1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.
2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.
3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.
4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.
5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right".

Article 65
[Competencies of the Assembly]

The Assembly of the Republic of Kosovo:
(1) adopts laws, resolutions and other general acts;
[...]
(9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;
[...]
(14) decides in regard to general interest issues as set forth by law.
[...]"

Article 102
[General Principles of the Judicial System]

"1. Judicial power in the Republic of Kosovo is exercised by the courts.
2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.
3. Courts shall adjudicate based on the Constitution and the law.
4. Judges shall be independent and impartial in exercising their functions.
5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal."

Article 103
[Organization and Jurisdiction of Courts]

"[…]
2. The Supreme Court of Kosovo is the highest judicial authority."

Article 106
[Incompatibility]

"1. A judge may not perform any function in any state institution outside of the judiciary, become involved in any political activity, or be involved in any other activity prohibited by law.
2. Judges are not permitted to assume any responsibilities or take on any functions that would in any way be inconsistent with the principles of independence and impartiality of the role of a judge."

Chapter XII
[Independent Institutions]

Article 132
[Role and Competencies of the Ombudsperson]

"1. The Ombudsperson monitors, defends and protects the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities.
2. The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo.
3. Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law."

Article 133
[Office of Ombudsperson]

"1. The Office of the Ombudsperson shall be an independent office and shall propose and administer its budget in a manner provided by law.

2. The Ombudsperson has one (1) or more deputies. Their number, method of selection and mandate are determined by the Law on Ombudsperson. At least one (1) Deputy Ombudsperson shall be a member of a Community not in the majority in Kosovo."

Article 134
[Qualification, Election and Dismissal of the Ombudsperson]

"1. The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term.
2. Any citizen of the Republic of Kosovo, who has a university degree, high moral and honest character, distinguished experience and knowledge in the area of human rights and freedoms, is eligible to be elected as Ombudsperson.
3. The Ombudsperson and Deputy Ombudspersons shall not be members of any political party, exercise any political, state or professional private activity, or participate in the management of civil, economic or trade organizations.
[…]"

Article 135
[Ombudsperson Reporting]

"[…]
3. The Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.
"[…]

Article 136
[Auditor-General of Kosovo]

"1. The Auditor-General of the Republic of Kosovo is the highest institution of economic and financial control.
2. Organization, operation and competencies of the Auditor-General of the Republic of Kosovo shall be determined by the Constitution and law.
3. The Auditor-General of the Republic of Kosovo is elected and dismissed by the Assembly by a majority vote of all its deputies on the proposal of the President of the Republic of Kosovo.
4. The Assembly decides on the dismissal of the Auditor-General of the Republic of Kosovo by a two thirds (2/3) majority of all its deputies upon the proposal of the President of the Republic of Kosovo or upon the proposal of one third (1/3) of all its deputies.
5. The mandate of the Auditor-General of the Republic of Kosovo is five (5) years with the possibility of re-election to only one additional mandate"

Article 137
[Competencies of the Auditor-General of Kosovo]

"Auditor-General of the Republic of Kosovo audits:
(1) the economic activity of public institutions and other state legal persons;
(2) the use and safeguarding of public funds by central and local authorities;
(3) the economic activity of public enterprises and other legal persons in which the State has shares or the loans, credits and liabilities of which are guaranteed by the State."

Article 142
[Independent Agencies]

"1. Independent agencies of the Republic of Kosovo are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies. Independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo.
2. Independent agencies have their own budget that shall be administered independently in accordance with the law.
3. Every organ, institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to the requests of the independent agencies during the exercise of their legal competencies in a manner provided by law."

II. RELEVANT PROVISIONS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 2
(no title)

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Article 7
(no title)

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6
(Right to a fair trial)

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

Article 8
(Right to respect for private and family life)

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13
(Right to an effective remedy)

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14
(Prohibition of discrimination)

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.."

PROTOCOL NO. 1 OF ECHR

Article 1
(Protection of property)

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

PROTOCOL NO. 12 OF ECHR

Article 1
(General prohibition of discrimination)

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

III. Relevant provisions of the Legislation in force

LAW NO. 06/L -113 ON ORGANIZATION AND FUNCTIONING OF STATE ADMINISTRATION AND INDEPENDENT AGENCIES

(published in the Official Gazette on 1 March 2019)

CHAPTER III
INDEPENDENT AGENCIES

SUB-CHAPTER 1
ESTABLISHMENT AND STATUS OF INDEPENDENT AGENCIES

Article 38
(Establishment of independent agencies)

"1. Independent Agencies are established by law pursuant to Article 142 of the Constitution.
2. An independent Agency may be established according to paragraph 1. of this Article, to exercise following competences, which meet the following conditions:
2.1. they are not part of competences of the executive powers of the Government according to the Constitution; and
2.2. serve to Assembly for exercising specialized parliamentary oversight/control of lawfulness and integrity in specific areas of administrative activity.
3. A law establishing an independent Agency shall regulate organization, functioning and competencies of such independent Agency."

Article 39
(Legal initiative for establishment of an independent Agency)

"1. Proposal of a draft law for establishing an independent Agency is submitted in accordance with the Constitution.
2. The sponsor, along with the draft law and other statements as required by law, shall submit to the Assembly a declaration justifying conditions as provided by paragraphs 1. and 3. of Article 51 of this Law and the opinion of Auditor General.
3. If such proposed draft law is not submitted by the Government, the Assembly shall necessarily require the opinion of the Government.
4. Chapter IV of this Law is implemented adjusting to the content of the draft law and explanatory memorandum.

5. The Assembly shall refrain from reviewing any proposal that is not in accordance with paragraphs 2. to 4. of this Article, unless otherwise provided in the Constitution."

Article 40
(Independence and status of independent agencies)

"1. Independent agencies enjoy independence in exercising their functions and their functional competencies, organizational and financial administration in accordance with the law.
2. Independent agencies enjoy legal personality."

SUB-CHAPTER 3
INTERNAL ORGANIZATION OF STATE ADMINISTRATION

Article 43
(Supervision and performance of independent agencies)

"1. Unless otherwise provided by the law, independent agencies shall report to the Kosovo Assembly.
2. Activities of independent agency is subject of permanent oversight by an Assembly committee that covers the relevant area of responsibility (hereinafter: responsible committee).
3. Every independent Agency drafts and proposes the annual performance plan to the responsible committee by 30 November. Provisions of Article 30 of this law on contents of annual performance plan apply also in this case.
4. Annual performance plan is adopted in a dialog process by the responsible committee till 31 December.
5. Every Agency presents the annual performance report to the responsible committee by 31 March of the subsequent year. Annual performance report includes detailed information on the achievement of objectives, outputs and results defined in the annual performance plan.
6. In addition to annual report under paragraph 5. of this Article, Agency also submits reports for shorter term periods or reports on special topics if so required by the responsible committee.
7. Annual performance report is reviewed by the responsible commission in dialog with respective Agency. The responsible committee, based on outcomes of permanent oversight and review of submitted report, shall prepare a performance evaluation report and a draft resolution, which include performance evaluation of the Agency.
8. A summary of performance report of the Agency is presented at the Assembly session by its head or a representative of a collegiate managing body. In the same meeting there is presented the performance evaluation report of the responsible committee.
9. After presentation in the Assembly session, performance evaluation report and draft resolution drafted by the responsible committee shall be put to vote.
10. Annual performance plan, annual performance report and performance evaluation report and resolution adopted by the Assembly shall be made public by the Assembly administration with appropriate means."

SUB-CHAPTER 4
APPOINTMENT AND DISMISSAL OF THE HEAD OR MEMBER OF MANAGING BODY OF INDEPENDENT AGENCY

Article 46
(Conditions and procedure for appointment of the head or member of managing body)

"1. Conditions for appointment of the head or member of the managing body of an independent Agency shall be determined by the law on establishment of the Agency.
2. Procedure for election, approval or granting the consent for the head and member of the managing body shall be defined by the law on establishment and the Rules of Procedure of the Assembly."

Article 47
(Procedure of discharging the head and member of the governing body)

"The procedure for discharge of the head and member of the managing body shall be defined by the Law on establishment and Rulers of Procedure of the Assembly."

RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF KOSOVO
(Published in the Official Gazette on 9 August 2022)

Article 98
(Special proceedings for reporting of independent bodies)

"1. The Assembly, in accordance with special laws and the relevant law on the organization and functioning of the state administration and independent agencies, oversees the work of independent bodies.
2. Annual working report of an independent body shall be reviewed by the responsible reporting Committee.
3. The responsible-reporting Committee shall review annual reports of independent bodies and present the Assembly a report of recommendations, upon having the financial and audit reports of such body reviewed by relevant committees, and upon proceeding to the responsible reporting Committee.
4. The report with recommendations shall contain:
4.1. Performance Appraisal of the independent body's work;
4.2. Appraisal of the annual report; and
4.3. Recommendations.
5. The reading of the annual report in the plenary session of the Assembly shall begin with the presentation of the report by the responsible-reporting Committee. Upon presentation of such report, the order of speech is given to representatives of parliamentary groups and MPs.
6. If the report is not adopted by the Assembly, the responsible-reporting Committee may recommend measures of liability for the senior officer of the independent body pursuant to applicable legislation.
7. Notwithstanding the paragraph 5 of the present Article, upon a request by the Presidency of the Assembly, the plenary session may give the floor also to a senior officer of the independent body.

8. The annual work report and the financial report of the independent constitutional institution are discussed in the plenary session, and are subject to voting, with the exception of the recommendations given by these institutions to other public institutions."

LAW No. 06/L - 054 ON COURTS
(published in the Official Gazette on 18 December 2018)

Article 4
(Independence and Impartiality of the Courts)

"1. The Courts established by this Law shall adjudicate in accordance with the Constitution of the Republic of Kosovo and the applicable Laws in the Republic of Kosovo.
2. Judges while exercising their function and taking decisions shall be independent, impartial, uninfluenced in any way by any natural or legal person, including public bodies."

Article 38
(Professional Activities)

"1. Judges may, upon prior approval by the Council, take part in professional organizations, scientific meetings that promote independence and protection of professional interests of Judges.
2. Judges may, upon approval by the Presidents of the Courts and the Presidents upon approval by the Council, only outside the working hours, engage in activities that are in line with the Code of Ethics and Professional Conduct of Judges.
3. In accordance to the provisions of the Code of Ethics and Professional Conduct of Judges, judges may engage in professional and scientific writing, but may not publish the substance of court deliberations gathered during or after the end of judicial process, unless expressively permitted by law or sub-legal act, issued by the Council.
4. Judges shall, for activities foreseen in this Article, receive a remuneration, which cannot exceed the value of twenty five percent (25%) of the basic salary, and for this award the Judges shall notify the President of the Court whereas the Presidents of the Court shall notify the Council."

LAW No. 05/L -019 ON OMBUDSPERSON
(published in the Official Gazette on 26 June 2015)

CHAPTER I
GENERAL PROVISIONS

Article 1
(Purpose)

"1. This Law aims to establish legal mechanism for protection, supervision and promotion of fundamental rights and freedoms of natural and legal persons from illegal actions or failures to act and improper actions of public authorities, institutions and persons or other bodies and organizations exercising public authorizations in the Republic of Kosovo (further in the text: public authorities), and the establishment of the

National Preventive Mechanism against torture and other cruel, inhuman and degrading treatments and punishments.
2. The Ombudsperson is a mechanism of equality for promoting, monitoring and supporting equal treatment without discrimination on grounds protected by the Law on Gender Equality and the Anti-Discrimination Law."

CHAPTER III
POWERS AND RESPONSIBILITIES OF THE OMBUDSPERSON

Article 16
(Powers)

"1. The Ombudsperson has the power to investigate complaints received from any natural or legal person related to assertions for violation of human rights envisaged by the Constitution, Laws and other acts, as well as international instruments of human rights, particularly the European Convention on Human Rights, including actions or failure to act which present abuse of authority.
2. The competences of the Ombudsperson extend to the entire territory of the Republic of Kosovo.
3. In exercising his/her functions, the Ombudsperson can provide good services to the residents of the Republic of Kosovo and other persons who are outside the territory of the Republic of Kosovo.
4. The Ombudsperson has the power to investigate, either to respond to complaint filed or on its own initiative (ex officio), if from findings, testimonies and evidence presented by submission or by knowledge gained in any other way, there is a base resulting that the authorities have violated human rights and freedoms stipulated by the Constitution, laws and other acts, as well as international instruments on human rights.
5. If the Ombudsperson during the investigation conducted observes the presence of criminal offence, than he/she informs competent body for initiation of investigation.
6. If the Ombudsperson starts procedure on his/her own initiative or if any other person on behalf of the damaged person with the submission addresses to the Ombudsperson for initiating of the procedure, the consent from the person whose rights and freedoms have been violated is necessary. Exceptionally, in case the damaged party has died or cannot provide his/ her consent due to any other reason, it should be required from the most close relatives to him/her and in case none of them exists or contact is impossible, consent is not needed.
7. When the Ombudsperson initiates procedure on his own initiative regarding the violation of rights and freedoms to a greater number of citizens, children or persons with lost abilities for action, consent required by paragraph 6 of this Article is not necessary.
8. The Ombudsperson may provide general recommendations on the functioning of the judicial system. The Ombudsperson will not intervene in the cases and other legal procedures that are taking place before the courts, except in case of delays of procedures.
9. The Ombudsperson may appear in the capacity of the friend of the court (amicus curiae) in judicial processes dealing with human rights, equality and protection from discrimination.
10. The Ombudsperson may initiate matters to the Constitutional Court in accordance with the Constitution and Law on the Constitutional Court.
11. The Ombudsperson shall also exercise his/her competences through mediation and conciliation.

12. Services offered by the Institution of the Ombudsperson are free of charge.
13. The Ombudsperson performs other work defined by the Law on protection from discrimination, Law on Gender Equality, and other legislation in force.
14. Collects statistical data regarding the issues of discrimination and equality presented to the Ombudsperson, and publishes them.
15. Publishes reports and makes recommendations on policies and practices on combating discrimination and promoting equality.
16. Cooperates with social partners and non-governmental organizations dealing with issues of equality and non-discrimination, as well as similar international bodies like the Ombudsperson."

Article 18
(Responsibilities)

"1. The Ombudsperson has the following responsibilities:
1.1. to investigate alleged violations of human rights and acts of discrimination, and be committed to eliminate them
1.2. to draw attention to cases when the institutions violate human rights and to make recommendation to stop such cases and when necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases;
1.3. to draft and adopt specific procedures for receiving and handling complaints from children, and the creation of a specialized team for children's rights and a permanent program for children to become aware of their rights and the role of Ombudsperson institution in their protection;
1.4. to inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media;
1.5. to make recommendations to the Government, the Assembly and other competent institutions of the Republic of Kosovo on matters relating to promotion and protection of human rights and freedoms, equality and non-discrimination;
1.6. to publish notifications, opinions, recommendations, proposals and his/her own reports;
1.7. to recommend promulgation of new Laws in the Assembly, amendments of the Laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of the Republic of Kosovo;
1.8. to prepare annual, periodical and other reports on the situation of human rights and freedoms, equality and discrimination and conduct research on the issue of human rights and fundamental freedoms, equality and discrimination in the Republic of Kosovo;
1.9. to recommend to the Assembly the harmonization of legislation with International Standards for Human Rights and Freedoms and their effective implementation;
1.10. to cooperate, in accordance with the Constitution and legislation in force, with all organizations, local and international institutions dealing with protection of human rights and freedoms;
1.11. the Ombudsperson, his deputies and staff must keep-safe the confidentiality of all information and data they receive, paying special attention to safety of complainants, damaged parties and witnesses, in accordance with the Law on personal data protection; 1.12. obligation for official confidentiality is also valid after ending of mandate or termination of their employment.

2. The Ombudsperson can provide advice and give recommendations to any natural or legal person concerning compliance of Laws and sub-legal acts with internationally accepted standards for human rights and freedoms.
3. The Ombudsperson can advise and recommend to the institutions of the Republic of Kosovo for their programs and policies to ensure the protection and advancement of human rights and freedoms in the Republic of Kosovo.
4. The Ombudsperson undertakes all necessary measures and actions to review complaints submitted under paragraph 1 of Article 16 of this Law, including direct intervention to the competent authorities, which will be required to respond within the time period reasonable as determined by the Ombudsperson. If severe damage continues as a consequence of the complaint under paragraph 1 of Article 16 of this Law, the competent authorities are required to respond promptly.
5. If during the investigation, the Ombudsperson finds that the execution of an administrative decision may have irreversible consequences for the natural or legal person, he/she can recommend to competent authority to suspend execution of the decision until completion of investigations relating to this issue by the Ombudsperson.
6. The Ombudsperson has access to files and documents of each authority of the Republic of Kosovo, including medical files of the people deprived from liberty, in accordance with the law and can review them regarding the cases under its review and according this Law, may require any authority of the Republic of Kosovo and their staff to cooperate with the Ombudsperson, providing relevant information, including full or partial file copy and documents upon request of the Ombudsperson.
7. Officials of the Ombudsperson Institution may, at any time and without notice, enter and inspect any place where persons deprived of their liberty are placed and other institutions with limited freedom of movement as well as can be present at meetings or hearing sessions where such persons are involved. Officials of the Ombudsperson Institution may hold meetings with such persons without the presence of officials of respective institution. Any kind of correspondence of these persons with the Ombudsperson Institution is not prevented nor controlled.
8. Ombudsperson or his/her representatives, upon official duty, can enter all official premises of all authorities."

LAW NO. 05/L-055 ON THE AUDITOR GENERAL AND THE NATIONAL AUDIT OF THE REPUBLIC OF KOSOVO
(published in the Official Gazette on 10 June 2016)

Article 4
(The Auditor General)

"[…]
6. The position of the Auditor General shall be a full-time basis and shall not hold other paid employment in any other organisation while serving as Auditor General.
[…]"

Article 9
(Management)

"[…]
5. The Auditor General and the Deputy Auditor General cannot participate in, or make decisions about, audit of the institutions in which they were members of the management in the previous three (3) years.
[…]"

Article 17
(Incompatibilities)

"1. An employee shall not exercise a function, an activity or hold a position, which constitutes conflicts of interest with his/her official duties and shall not:
1.1. hold any other function at any level within the public sector;
1.2. be a member of governing or others boards of public or private enterprises;
1.3 hold a function in a political party and not follow instructions from political parties; and
1.4. exercise any additional remunerated activity unless previously authorised by the Auditor General."

CODE NO 08/L-032 CRIMINAL PROCEDURE CODE
(published in the Official Gazette on 17 August2022)

Article 269
(Confiscation)

"1. Following the conviction of a defendant for a criminal offense, the court confiscates all specified property detailed in the indictment or in the notification pursuant to Article 278 paragraph 5 of this Code.
2. If any specified property, in whole or in part, is not available to be confiscated for any reason, the court determines the monetary value of such specified property and complies with the provisions of Article 273 of this Code.
3. The monetary value of the specified property is the greater value as determined either at the time of conviction or when first obtained by the defendant or third party."

Article 274
(Confiscation Procedure During Main Trial)

"1. The state prosecutor, defendant, and any third party asserting a legal interest in any specified property have the opportunity at the main trial to:
1.1. make submissions and present evidence to the court;
1.2. question witnesses and submit evidence to support or contest any application that may be made under this Chapter; and
1.3. submit evidence to the court from a qualified financial expert regarding any factual determination that must be made by the court under this Chapter.
2. The judgment contains reasoning as to whether the state prosecutor has proved that each item of property detailed in the indictment or in the notification pursuant to Article 278 paragraph 5 of this Code is specified property subject to confiscation.
3. If the court has made a determination pursuant to Article 273 of this Code, the judgement also contains reasoning as to whether it was proven that::
3.1. he specified property, in whole or in part, is not available for confiscation in whole or in part for any reason; and 3.2. the defendant and/or third party have other property of equivalent value to the monetary value amount determined in Article 269 of this Code.
4. Each item of specified property detailed in the indictment or in the notification pursuant to Article 278 paragraph 5 of this Code as subject to confiscation, is considered separately in the judgment of the court.
5. In determining any factual issue raised in this Chapter the court may appoint an expert witness."

Article 275
(Confiscation of Additional Property after the Judgment is final)

"1. This Article applies if the following conditions are fulfilled:
1.1. the court has convicted the defendant of a criminal offense;
1.2. the court has determined that the defendant obtained a material benefit from the offense or has made a tainted gift;
1.3. the material benefit or tainted gift, in whole or in part, is not available to be confiscated for any reason.
2. If the conditions in paragraph 1 of this Article are satisfied, the state prosecutor can, at any time after the judgment is final apply to the court which passed the final judgment to confiscate any additional property of the defendant or of the third party, up to the monetary value of the material benefit or tainted gift determined by the court pursuant to Article 269 of this Code."

Article 278
(Confiscation Investigation)

"1. If the state prosecutor has reasonable suspicion that an application may be made for confiscation, the state prosecutor may initiate a confiscation investigation:
1.1. at any stage of the criminal investigation;
1.2. after an indictment is filed;
1.3. before the main trial;
1.4. during the main trial; and
1.5. after the conclusion of the main trial, if an application is to be made pursuant to Article 275 of this Code.
2. A confiscation investigation is an investigation into specified property that may be subject to a confiscation application pursuant to Article 269 of this Code.
3. For the purpose of paragraphs 1 and 2 of this Article, the state prosecutor may use all the investigative powers and actions detailed in this Code for the pre-investigative and investigative stages.
4. The competent Basic Court assigns a judge to the confiscation investigation proceedings if this Code requires that a decision be issued by the court.
5. If the confiscation investigation results in the discovery of any new specified property not known at the time of the filing of the indictment, the state prosecutor notifies in writing the court and the parties thereof."

LAW NO. 06/L-087 OF EXTENDED POWERS ON CONFISCATION OF ASSETS
(Published in the Official Gazette on 16 December 2018)

Article 1
(Purpose)

"1. This Law specifies extended powers for confiscation of property when the procedures detailed in the Criminal Procedure Code of the Republic of Kosovo are not sufficient.
2. This law also implements Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union."

Article 2
(Scope)

"1. The extended confiscation as foreseen in this Law applies to the assets of persons who have been convicted of a criminal offence as prescribed by the Criminal Code of the Republic of Kosovo or other laws, as follows

1.1. Criminal offences against the organized crime;
1.2. Criminal offences of official corruption and criminal offences related to official duty;
1.3. Criminal offences against public health;
1.4. Criminal offences of human trafficking, slavery and kidnap;
1.5. Sexual criminal offences;
1.6. Criminal offences relating to armed conflicts outside state territory;
1.7. Criminal offences of money laundering and terrorist financing;
1.8. Criminal offences relating to terrorism;
1.9. Criminal offences relating to narcotics;
1.10. *Criminal offences relating to weapons;*
1.11. Cyber criminal offences;
1.12. Criminal offences against the economy;
1.13. Criminal offences against property;
1.14. Criminal offences against the environment;
1.15. The attempt, the incitement, the assistance and the agreement to commit any of the criminal offences listed in sub-paragraphs 1.1. to 1.14. of this Article; or
1.16. Any criminal offence that generated a material benefit exceeding ten thousand (10,000) EUR.

2. In addition to paragraph 1. of this Article, the scope of this Law also includes confiscation of material benefit or instrumentality of a criminal offence as detailed in Chapter IV (Provisions related to Confiscation of Material Benefit or Instrumentality of a Criminal Offence) of this Law)."

Article 3
(Definitions)

"1. Terms used in this Law shall have the following meaning:

1.1. ***Confiscation*** *– the permanent forfeiture of property, ordered by a final decision of the competent court in accordance with this Law.*

1.2. ***Extended powers of confiscation*** *– measures to confiscate property under the procedures set forth in this Law.*

1.3. ***Defendant*** *– a person, including a legal person, as defined in the Criminal Procedure Code of the Republic of Kosovo. For the purpose of the present Law this term also includes a convicted person.*

1.4. ***Bona fide purchaser*** *– a person who has purchased the property of the defendant after having paid price that is not significantly lower than market price for that property. Irrespective of the price paid, a person is not bona fide purchaser if he or she knew or ought to have suspected that the purpose of the transfer or acquisition was to avoid confiscation or that the property transferred or acquired was the benefit from a criminal offence.*

1.5. ***Property of the defendant*** *– property of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments, as provided for in paragraph 2. and sub-paragraphs 2.1. and 2.2. of Article 8 of this Law evidencing title to or interest in such assets, which:*

1.5.1. the defendant acquired within ten (10) years prior to the day when an investigative stage was initiated for a criminal offence defined in Article 2 of this Law; or

1.5.2. are owned or possessed by a third party on behalf of, or to the advantage of, the defendant; or

1.5.3 the defendant transferred to a third party who was not a bona fide purchaser, or successively transferred to other third parties who were not bona fide purchases, within ten (10) years prior to the day when an investigative stage was initiated for a criminal offence defined in Article 2 of this Law (hereinafter, "transferred property).

[…]"

CHAPTER II
EXTENDED POWERS OF CONFISCATION

Article 4
(Application for Property Verification of the Convicted Defendant)

"1. After a defendant is found guilty of a criminal offence as provided in Article 2, paragraph 1. of this Law, the State Prosecutor may, in a separate application (hereinafter: property verification application) to the court that passed that judgment, request a verification of property within five (5) years after the judgment becomes final, as defined in the Criminal Code of the Republic of Kosovo.

2.In the property verification application, the State Prosecutor shall:

2.1. specify all the property that is subject to property verification;

2.2. clearly identify each property; 2.3. provide evidence that each item of property is property of the defendant as defined in Article 3 sub-paragraph 1.5. of this Law.

3. The State Prosecutor shall serve a copy of the property verification application upon the defendant and all known third parties that could have a legal interest in the property subject to the application.

[…]"

Article 17
(Confiscation Investigation)

"1. If a State Prosecutor has reasonable suspicion that an application can be made for property verification under Article 4 of this Law, may initiate a confiscation investigation:

1.1. at any stage of the criminal investigation;

1.2. after an indictment is filed;

1.3. before the main trial;

1.4. during the main trial; and

1.5. after the conclusion of the main trial, and within the time limit described in Article 4 of this Law.

2. A confiscation investigation is an investigation into property that may be subject to a property verification application under Article 4 of this Law.

3. For the purpose of paragraphs 1. and 2. of this Article, the State Prosecutor may use all the investigative powers and actions detailed in the Criminal Procedure Code of the Republic of Kosovo for the pre-investigative and investigative stages.

4. The competent Basic Court shall assign a judge to the confiscation investigation proceedings if the Criminal Procedure Code of the Republic of Kosovo requires that a decision be issued by the Court."

Article 18
(Disclosure Order)

"1. A State Prosecutor may apply for a disclosure order, as a part of seizure investigation.
2. A disclosure order is an order authorising the State Prosecutor to give to any person he/ she has reasonable suspicion to have relevant information for the confiscation investigation, a notice in writing requiring him/her to do any, or all, of the following:
2.1. . answer questions, either immediately or at a time specified in the notice at a place so specified;
2.2. provide information specified in the notice, by a time and in a manner so specified;
2.3. produce documents, or documents of a description specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
3. Relevant information is information (whether or not contained in a document) in relation to which the State Prosecutor has reasonable suspicion to be relevant to the confiscation investigation.
4. The application for a disclosure order, among others, must state that:
4.1. a person specified in the application is subject to a confiscation investigation which is being carried out by the State Prosecutor;
4.2. the order is sought for the purposes of the investigation; and
4.3. information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
5. A person commits an offence if without reasonable excuse he or she fails to comply with a requirement imposed on him/her under a disclosure order.
6. A person guilty of an offence under paragraph 5. of this Article is liable on conviction to: 6.1. imprisonment for a term of three (3) to twelve (12) months;
6.2. a fine of five thousand (5,000) euro; or
6.3. both.
7. A person commits an offence if, in purported compliance with a requirement imposed on him or her under a disclosure order, he or she makes a statement which he or she knows, or has a reason to suspect, to be false or misleading in a material particular.
8. A person guilty of an offence under paragraph 7. of this Article is liable on conviction to: 8.1. imprisonment for a term of six (6) months to two (2) years;
8.2. a fine of fifty thousand (50,000) euro; or
8.3. both.
9. A person cannot refuse to execute an order for disclosure of explanatory information, on the grounds that the compliance would incriminate that person in committing a criminal offence. Any information or material provided by a person, in compliance with an order for provision of information, shall not be admissible in any criminal proceedings against that person, unless the provided information exceeds the purpose of the order for disclosure of information.
[…]
18. A copy of a disclosure order made by the Court shall be served on the defendant and any named party in the order.
19. An application to discharge or vary a disclosure order may be made to the Court by the State Prosecutor, or any person affected by the order.
20. The judge may discharge or vary the order."

LAW No. 05/L -096 ON THE PREVENTION OF MONEY LAUNDERING AND COMBATING TERRORIST FINANCING

(published in the Official Gazette on 15 June 2016)

Article 1
(Purpose and Scope)

"1. This Law stipulates measures, competent authorities and procedures for detecting and preventing money laundering and combating terrorist financing.
2. Provisions of this Law shall be obligatory to all institutions and their respective units, and to all non-public entities subject to activities that may relate to money laundering and terrorist financing, according to the provisions of this Law.
3. This law aims to implement the EU Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on prevention of the use of the financial system for money laundering and terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council, and repealing Directive 2005/60/EC of the European Parliament and the Council and the Commission Directive 2006/70 /EC."

Article 4
(Status of the Financial Intelligence Unit)

"1. FIU-K is a central independent national institution within Ministry of Finance, responsible for requesting, receiving, analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering and terrorist financing.
2. The FIU-K has autonomous budget provided by the Budget of the Republic of Kosovo in accordance with the Annual Budget Law. FIU-K shall independently decide on the use of budget, in accordance with Law on Public Financial Management and Accountability.
3. The FIU-K professional staff are not civil servants. However, legislation governing civil service issues shall apply to the staff of the FIU-K, unless otherwise regulated by this law and other sublegal acts which will be in accordance with the basic principles of civil service law.
4. The sub-legal acts on internal administrative organization and other administrative issues of FIU-K shall be proposed by the director of FIU-K and shall be approved by the Board of FIU-K."

Article 14
(Duties and Competencies of FIU-K)

"1. The FIU is authorised to:
1.1. made or kept under Articles 16 to 33 of this law;
1.1.2. provided to the FIU-K by bodies from FIU of foreign countries with similar functions, from courts or responsible authorities for implementation of the Law including intergovernmental and international organizations, the public or governmental bodies; and
1.1.3. voluntarily provided to the FIU-K concerning suspicions of money laundering or predicate criminal offences and/or of the terrorist financing.
1.2. collect information that is relevant to money laundering activities and associated predicate offences or the financing of terrorist activities and that is publicly available, including through commercially available databases;

1.3.conduct strategic analysis of the information it collects and receives, to prevent and combat money laundering, predicate offences and terrorist financing;
1.4. request from reporting subjects any data, documents or information needed to undertake its functions under this Law. The data, documents or information shall be provided within the timeframe established by FIU-K;
1.5. request from public or government bodies data, documents and information it needs for the purpose of exercising its functions under this Law and have access to the databases maintained by those bodies. Such information shall be provided without delay;
1.6. create and maintain a database of all information collected or received relating to suspected money laundering, predicate offences or terrorist financing and such other similar materials as are relevant to the work of the FIU-K; 1.7. compile information, statistics and reports and based thereon make recommendations to the Ministry of Finance, Ministry of Justice, Kosovo Police, the Kosovo Customs and/or other relevant persons or bodies regarding measures which may be taken and legislation which may be adopted to combat money laundering, predicate offences and the terrorist financing;
1.8. make such reports public as will be helpful in carrying out its functions;
1.9. organize and/or conduct regular training, including awareness and outreach regarding the prevention of money laundering, predicate offences, terrorist financing and the obligations of reporting subjects;
1.10. disseminate, in accordance with provisions of this Law the outcome of its analysis and any necessary report or information to the relevant authorities;
1.11. adopt sub-legal acts, issue directives and instructions on the matter related to ensuring or promoting compliance with this Law, including but not limited to:
1.11.1. . the use of standardized reporting forms;
1.11.2. suspicious acts or transactions, including the nature of suspicious acts or transactions for the purposes of this Law, and compiling the lists of indicators of such acts and transactions;
1.11.3. the exemption of persons or entities or categories of persons or entities from reporting obligations under this Law and the methods of reporting such exemptions.
1.12. issue orders to not execute the transactions in compliance with this Law, or demand from the reporting subjects to monitor accounts or the business relationship for a period of time up to three (3) months; or for an additional period as defined by FIU-K;
1.13 supervise and monitor reporting subjects on compliance with this law, sub-legal acts, directives and orders issued there under as provided for in this Law both on an on-site and off-site basis;
1.14. participate in events for international cooperation in the area of detection and prevention of money laundering, predicate offences and terrorism financing;
1.15. perform other functions in accordance with this Law.
2. The staff of the FIU-K shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the FIU-K. Such information may only be used for the purposes provided for in accordance with this law.
3. The FIU-K and other bodies and institutions in Kosovo shall be obliged to mutually cooperate and assist one another in performing their duties and shall coordinate activities within their competence, consistent with the applicable laws. For this purpose FIU-K may enter into agreements or memoranda of understanding."

Article 16
(Reporting Entities)

"1. Reporting entities for the purposes of this law shall mean:
1.1. banks;
1.2. financial institutions;
1.3. casinos, including internet casinos and licensed objects of the games of chance;
1.4. real estate agents and real estate brokers;
1.5. natural or legal persons trading in goods when receiving payment in cash in an amount of ten thousand (10.000) Euros or more;
1.6. lawyers and notaries when they prepare for carrying out or engage in transactions for their client concerning the following activities;
1.6.1. buying and selling of real estate;
1.6.2. managing of client money, securities or other client assets;
1.6.3. management of bank, savings or securities accounts;
1.6.4.organisation of contributions necessary for the creation, operation or management of companies; and
1.6.5. creation, operation or management of legal persons or arrangements, and buying and selling of business entities.
1.7. accountants, auditors and tax advisers;
1.8. trust and company service providers that are not covered elsewhere in this law, providing the following services to third parties on a commercial basis:
1.8.1. acting as a formation agent of legal persons;
1.8.2. acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
1.8.3. providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
1.8.4. acting as, or arranging for another person to act as, a trustee of an express trust;
1.8.5. acting as, or arranging for another person to act as, a nominee shareholder for another person;
1.9. NGOS; and
1.10. sellers of precious metals and precious stone traders."

Article 49
(Procedure for Administrative Sanctions)

"1. The FIU-K, CBK and other sectoral supervisors shall, upon determining the existence of a failure to comply with obligation under this law, make a decision on imposing an administrative sanction for the violations for which a competence was given in accordance with this law.
2. In determining the administrative sanction under this law, all the relevant circumstances shall be taken into account, including the gravity and duration of the non-compliance, the degree of responsibility, the financial strength of the reporting entity, the losses caused as a consequence of non compliance, previous violations and the level of cooperation of the reporting entity.
3. The FIU-K, CBK and other sectoral supervisors, shall notify the failure to comply with the provisions of this law the reporting entity concerned, by submitting the decision on imposing the administrative sanction. Notice on imposing the

administrative sanction shall be made, through the submission of a decision, in a manner which is verifiable, to the reporting entity in accordance with the requirements of the Law on Administrative Procedure.
4. Immediately upon the receipt of the decision for imposing administrative sanction, the reporting entity shall undertake actions to ensure compliance with this Law. The reporting entity shall undertake these measures within the period set forth in the decision.
5. Compliance of the reporting entity with the provisions of this Law shall be verified and for this purpose, FIU-K, CBK and other sectorial supervisors may conduct on site inspections during the period of time set out in the decision for administrative sanction or based on the requirements of the reporting entity.
6. If the reporting entity, to which an administrative sanction was imposed in accordance with this Article, has not undertaken compliance actions within a period of time specified in the decision for administrative sanction, then FIU-K, CBK and other sectorial supervisors may impose a monetary daily fine, for each day of non compliance, until the compliance required achieved is set. Same administrative sanction procedure and notices defined under this Article shall be applied in this case.
7. For every day of non-compliance, from the time period defined in the decision of FIU-K, CBK and other sectorial supervisors, the reporting entity shall be subject to a daily fine of five hundred (500) Euro.
8. The FIU-K, CBK and other sectorial supervisors for the administrative sanction issued in accordance with paragraph 6. of this Article, for which the daily monetary fine shall be imposed shall take a decision which shall define the number of days during which the reporting entity was not in compliance with the Law, within the time period defined in the decision, as defined in paragraph 4. of this Article. The written decision on daily monetary fine shall determine the existence of failure to undertake compliance actions in accordance with the decision and provisions of this Law, and on imposing of this fine according to the number of days of noncompliance.
9. FIU-K, CBK and other sectorial supervisors shall not take decisions for administrative sanction for the same non-compliances of the reporting entities, since the violation repeated is preceded as defined under Article 41 and Article 43 of this Law.
10. The reporting entities which act based on a licence, certificate or another authorisation, FIU-K shall inform the competent licensing or authorisation authority on the failure to comply with the Law as defined in Article 42 of this Law. FIU-K may also recommend the licensing or authorisation authority to start with the process for determining whether to suspend or revoke the licence or authorisation."

Article 51
(Administrative Appeal to CBK and Other Sectorial Supervisors)

"1. The reporting entity may appeal against the decision on administrative sanction set forth in accordance with this law, from CBK or other sectorial supervisors for decisions issued by the under the competences given in accordance with this Law, thereby filing a complaint within thirty (30) days from the day of the receipt of the decision on administrative sanction from CBK or other sectorial supervisors, due to non-compliance with provisions of this Law.

2. CBK or other sectorial supervisors shall issue sub-legal acts for the sectors which are under their remit of supervision in accordance with paragraph 2. of Article 66 of this Law, in relation to the procedure of for handling appeals in accordance with this Law."

Article 55
(Publication of Decisions on Administrative Sanctions)

"1. FIU-K, CBK or other sectoral supervisors shall publish in the official web page, the final executable decisions related to administrative sanctions by stating the type and nature of noncompliance, identity of the reporting entity and administrative sanction. 2. FIU-K, CBK or other sectoral supervisor may decide to not publish the administrative sanction, delay its publication or publish the administrative sanction so that the sanctioned reporting entity or natural person cannot be identified, if the publication specified under paragraph 1. of this Law:
2.1. is not proportional to the gravity of the failure to comply;
2.2. may threaten the stability of the financial market; or
2.3. may threaten ongoing criminal investigations.
3. FIU-K, CBK and other sectoral supervisors, shall keep the published information pursuant to paragraph 1. Of this Article for a minimum of five (5) years."

LAW No. 05/L-049 ON THE MANAGEMENT OF SEQUESTRATED AND CONFISCATED ASSETS
(published in the Official Gazette on 14 April 2016, while it was amended and supplemented by LAW NO.08/L-034, which was published in the Official Gazette on 22 March 2022)

Article 4
(Agency's Functions)

"1. Within the rights and obligations foreseen by law, the Agency exercises the following functions:
1.1. manages sequestrated and confiscated assets used in or benefited from the criminal offence including terrorist property, except assets confiscated for the realization of collection of tax obligations;
1.2. executes the court order for the temporary measure of securing the asset, according to the legislation in force;
1.3. executes the final court decision, according to the legislation in force, may sell the assets by disbursing the funds collected from the sale into the budget of Kosovo or submitting them for utilization by the Government;
1.4. evaluates the value of the sequestrated and confiscated asset and also determines the manner of preserving this asset;
1.5. preserves the evidence chain for the asset it manages and for court decisions which contain the decision for the sequestrated and confiscated asset;
1.6. determines the manner of preserving the value of the asset under management;
1.7. participates in providing international legal assistance in all cases that involve sequestrated and confiscated assets by managing the sequestrated and confiscated asset pursuant to a request made by another state;
1.8. participates in drafting the state employee training program in relation to sequestration and confiscation of assets obtained through criminal offence;

1.9. as needed, assists in executing court decisions for the sequestration and confiscation of assets;
1.10. enables the sale of sequestrated and confiscated assets according to the decision of the competent court;
1.11. manages the data pertaining to the sequestrated and confiscated assets in a centralized computer system; 1
.12. provides advices for the Prosecutor`s Office, Court and other institutions on the specific nature of the management process of the sequestrated and confiscated assets, in order to provide support in the pre-sequestration planning or potential confiscation;
1.13. enters into Memoranda of Understanding with relevant partner bodies and institutions to agree relationships and responsibilities, and to enhance performance, in compliance with the provisions set out by this law; 1.14. performs other tasks as determined by law."

LAW NO. 08/L-017 ON THE AGENCY FOR PREVENTION OF CORRUPTION

(published in the Official Gazette on 21 July 2022)

Article 2
(Scope)

"1. This law foresees the status and competencies of the Agency for the Prevention of Corruption, in relation to the imposition of the measures and sanctions, aimed at preventing corruption, strengthening the institutional integrity and transparency in the Republic of Kosovo, as well as monitoring the implementation of the state strategy.
2. Provisions of this law shall apply to public and private persons, in prevention of corruption, conflict of interest, protection of whistleblowers as well as the origin and control of wealth and gifts."

Article 17
(Initiation of administrative investigations)

"1. The Agency may conduct an administrative investigation in cases that fall within its mandate:
2. An administrative investigation may be initiated:
2.1. ex-officio;
2.2. based on information received from natural or legal persons;
2.2.1. based on anonymous information;
2.2.2. based on public information;
2.2.3. the failure of a person to comply with any of the legal requirements set forth in the laws within the scope of the Agency.
3. The administrative investigation file must contain*:*
3.1. the reasoning for initiating the investigation;
3.2. the date the administrative investigation was initiated;
3.3. detailed summary of all actions and investigation gathered during the administrative investigation; and
3.4. the results of the administrative investigation, including the date when the administrative investigation was concluded.

4. During the administrative investigation, the Agency may undertake the following actions*:*

4.1. requests, collects, investigates and analyzes the documentation and other relevant information related to the case;

4.2. requests relevant information from any relevant persons or institutions;

4.3. conducts interviews with any persons who may have information relevant to the administrative investigation; and

4.4. examines any circumstances related to the case.

5. If during the administrative investigation lead to a reasonable suspicion that the individuals subject to the administrative investigation have committed a criminal offense, the Agency shall immediately cease all investigation steps and completes a criminal report for referral to the relevant prosecution office.

6. In the event the administrative investigation according to the provisions of this Article, lead to a suspicion that the individuals subject to the investigation have committed disciplinary offense or misconduct, the Agency shall forward the case to the competent administrative body with the request for the initiation of the disciplinary procedure.

7. In the event that the administrative investigation lead to a suspicion that a minor offence has been committed, the agency initiates and conducts a minor offense procedure itself or refers it to the competent court in accordance with the relevant legislation in force.

8. The referral of cases from paragraphs 5-7 of this Article shall suspend any applicable statute of limitations set forth in Article 22 of this law.

9. The Agency shall adopt the Regulation on Administrative Investigation Procedure. This Regulation shall set the rules of procedures setting the manner of receiving and registering cases, internal distribution and reporting, managing the case, and archiving. The Regulation shall be widely accessible in the Official Gazette of the Republic of Kosovo and in the Agency's website."

Article 18
(Cases of investigations referring to other bodies)

"1. The prosecution is at least obliged to notify the Agency if:

1.1. the criminal report has been dismissed;

1.2. the case has been successfully prosecuted; and

1.3. the case has not been successfully prosecuted.

2. In case of dismissal of the criminal report, termination of the investigation or unsuccessful prosecution of the case, the Agency reopens and terminates the administrative investigation procedure.

3. Any institution accepting the case referred by the Agency is required to notify the agency of the termination of the administrative investigation by them and any action taken as a result of that investigation.

4. In case an institution does not take any action as a result of the case referred by the Agency, the latter reopens it and terminates the administrative investigation procedure itself."

Article 19
(Reporting of cases)

"1. Whoever suspects there has been a violation of the laws falling within the competencies of the Agency may report such a case to the Agency. Reporting can, also, be done anonymously.
2. Paragraph 1. of this Article does not exclude the possibility of a person to report cases directly to other competent institutions."

IV. Relevant documents of international organizations

A. At the level of the United Nations

- United Nations Convention Against Corruption (UNCAC);
- Recommendations of 2012 Financial Action Task Force (FATF Recommendations)

B. At the level of the European Union

- EU Council Framework Decision [2005/212/JHA], of 24 February 2005, on Confiscation of Crime-Related Proceeds, Instrumentalities and Property;
- Directive [2014/42/BE] of the European Parliament and of the Council, of 3 April 2014, on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

B. At the level of the Council of Europe

(i) Conventions

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198);

(iv) Opinions, *Amicus Curiae* and Reports of the Venice Commission

(a) The case of Bulgaria (Four Opinions)

Interim Opinion [CDL-AD[2010]010] of the Venice Commission on the Draft Act on Forfeiture in Favour of the State of Illegally Acquired Assets of Bulgaria, adopted on 12-14 March 2010;

Second Interim Opinion no. 563/2009 on the Draft Act on the Forfeiture in favour of the State of Criminal Assets of Bulgaria adopted by the Venice Commission, 4 June 2010 [CDL-AD[2010]019;

Final Opinion [CDL-AD[2010]030] of the Venice Commission on the third revised act on forfeiture in favour of the state of assets acquired through illegal activity of Bulgaria, adopted on 15-16 October 2010;

Opinion [CDL-AD[2011]0123 of the Venice Commission on the sixth draft act on forfeiture of assets acquired through criminal activity or administrative violations of Bulgaria, adopted on 17-18 June 2011.

(b) Case of Moldova

Joint *Amicus Curiae Brief* [CDL-AD(2022)029] of the Venice Commission, European Commission for Democracy Through Law and OSCE Office Relating to the Offence of Illicit Enrichment, adopted on 21-22 October 2022;

(c) Case of Armenia

Amicus Curiae Brief CDL-AD(2022)048 of the Venice Commission for the Constitutional Court of Armenia on certain questions relating to the law on forfeiture of assets of illicit origin [Opinion no. 1108/2022], adopted on 16-17 December 2022;

(d) Case of Montenegro

Urgent Opinion[CDL-PI](2024)010 of the Venice Commission on the Draft Amendments to the Law On Seizure And Confiscation Of Material Benefit derived from Criminal Activity, Issued on 22 May 2024 pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure.

III. Opinions of the Venice Commission on Kosovo regarding the contested Law

First Opinion: Opinion [CDL-AD(2022)014] of the Venice Commission on the Draft Law no. 08/l-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, adopted on 17-18 June 2022;

Second Opinion: Follow-up Opinion CDL-AD(2022)052 of the Venice Commission on the Draft Law n[.08/l-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, adopted on 16-17 December 2022;

Information on the Follow-up to Kosovo of the Venice Commission on the Draft Law N°08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets presented at 134th Plenary Session (on 10-11 March 2023);

V. CONTESTED AND RELEVANT PROVISIONS OF THE LAW NO. 08/L-121 ON THE STATE BUREAU FOR VERIFICATION AND CONFISCATION OF UNJUSTIFIED ASSETS (CONTESTED LAW)

Article 1
(Purpose)

"The purpose of this Law is to establish, organize and determine the powers of the State Bureau for Verification and Confiscation of Unjustifiable Assets, as well as to determine the procedure for verification and confiscation of unjustifiable assets."

Article 2
(Scope)

"1. This Law shall apply to assets acquired unjustifiably, whether directly or indirectly by official persons and third parties.
2.This Law shall apply to unjustifiably acquired assets:

2.1.for the period of exercising the function of entities from paragraph 1 of this Article, from 17 February 2008; and
2.2. within ten (10) years from the period when the entities from paragraph 1 of this Article cease to exercise their function."

Article 3
(Definitions)

"1. .For the purposes of this law, the terms used herein shall have the following meaning:
1.1. ***Bureau*** *- State Bureau for Verification and Confiscation of Unjustified Assets;*
1.2. ***Court/The first-instance court*** *- Division for Civil Confiscation within the General Department of the Basic Court of Prishtina, with jurisdiction over the entire territory of Kosovo;*
1.3. ***The second-instance court*** *- Court of Appeals, General Department, Civil Division;*
1.4. ***Oversight Committee*** *– the relevant committee established according to Article 10 of this Law;*
1.5. ***Declaration of assets*** *- declaration regarding the status of assets of public officials obliged to declare assets and their family members, in accordance with the relevant law on the declaration of assets;*
1.6. ***Confiscation*** *- permanent acquisition of assets ordered by a final decision of the competent court in accordance with the legislation into force;*
1.7. ***Asset verification*** *- assessment of the amount of assets in relation to the legal income;*
1.8. ***Balance of probabilities*** *- standard of proof when the court, based on the evidence, believes that something is more likely to be, or to have happened than not;*
1.9. ***Asset*** *- refers to anything of value, of any form, whether tangible or intangible, movable or immovable, wherever located, including but not limited to:*
1.9.1. land, buildings, apartments, houses, currency, cryptocurrency, ornaments, precious metals, bank accounts, vehicles of any form, aircraft, stocks, shares, securities, bonds, debts, intellectual property of any form, monetary instruments including cash, traveller's checks, personal checks, bank loans, money order bank checks, payment orders, cash orders, cashier's checks of any description, letters of credit, and/or investment securities or negotiable instruments, in the form of a title holder or otherwise in such a form that the person becomes a title holder at the time of delivery, any interest, dividend or other income from the assets or value derived or generated from such assets;
1.9.2. legal instruments evidencing an interest in any property, including but not limited to title, deed of ownership, mortgage, servitude or interest in a property and the right to use socially owned, public and state-owned assets;
1.10. ***Unjustifiable asset*** *- the part of the asset of the person in the procedure, which is not in accordance with the legal income and the origin of which fails to be proven as legal; 1.11.* ***Substitute value*** *- replacing asset value corresponding to the value of unjustifiable asset which is not available for confiscation;*
1.12. ***Official person*** *- the person selected or appointed, who for his work, activity or engagement, has received or receives income in the form of salary or any kind of compensation from the budget of Kosovo or in other forms from public institutions or enterprises of the Republic of Kosovo. An official person is also considered a person who carries public authorizations as well as an appointed person, regardless of whether or not he has received compensation for his work;*

*1.13. **Bona fide purchaser** - a person who has purchased the assets from the entities under Article 2 of this Law and has paid the price for such assets, which is not significantly lower or higher than the market price. A bona fide buyer is not considered a person who, regardless of the price paid, knew or should have known that the purchased assets are unjustifiable;*
*1.14. **A party in procedure** - an official person or third party, whose assets are under verification by the Bureau during the procedure before the Bureau, namely a person whose assets are proposed to be confiscated during the court proceedings;*
*1.15. **Third parties** - Any natural or legal person to whom the assets of the official person have been transferred, or who has or may have a legal interest in the assets of the parties in the procedure."*

Article 4
(Establishment)

"This Law establishes the Bureau for Verification and Confiscation of Unjustifiable Assets as an independent and specialized body for verification of unjustifiable assets."

Article 6
(Legal status and organizational structure)

"1. The Bureau is an independent public institution having the status of a legal entity with headquarters in Prishtina.
2. The organizational structure of the Bureau is determined by the internal organization regulation, which is approved by the Oversight Committee and contains at least the following units:
2.1. Legal Department;
2.2. Risk Analysis Department;
2.3. Department of Verification and Forensic Accounting; and
2.4. Department for Finance and General Services."

Article 7
(Budget)

"1. The Bureau prepares the annual budget in accordance with the relevant Law on Public Financial Management and Accountability.
2. The Bureau decides independently on the use of the budget, in accordance with the relevant applicable legislation."

Article 8
(Powers and responsibilities of the Bureau)

1. The Bureau has the following powers and responsibilities:
1.1. initiates and conducts the procedure for verification of assets for determining whether the assets of official person are unjustifiable assets;
1.2. submits proposals for confiscation of assets to the court;
1.3. requests assistance, information and relevant documents from all the institutions in the Republic of Kosovo and foreign institutions, natural or legal persons exercising public authority, as well as from other natural and legal persons, both local and foreign;
1.4. analyses and evaluates information and material received;

1.5. publishes on the official Bureau website all judgments and rulings related to court proceedings pursuant to this Law, without being limited to their finality, in accordance with the rules of their publication;
1.6. collects, analyzes and publishes statistical data or other data related to the confiscation of unjustifiably acquired assets;
1.7. once a year reports to the Assembly of the Republic of Kosovo on the work of the Bureau. The Assembly may request more frequent reports from the Bureau;
1.8. cooperates with local and international institutions.
1.9. performs other duties defined by the legislation into force.

Article 9
(Status and independence)

"1. The Bureau officials shall be considered public officials in accordance with the relevant Law on Public Officials.
2. A special code of conduct is drafted for the Bureau officials, which shall be approved by the Director General.
3. The Bureau officials enjoy full independence and protection during the exercise of official duty, and no external pressure shall be imposed on them due to their duty, or when they undertake certain concrete actions in accordance with this Law or other applicable legislation."

Article 10
(Oversight Committee Composition and Compensation)

"1. Bureau Oversight Committee (hereinafter: The Committee) consists of five (5) members with the following composition:
1.1. A Judge of the Supreme Court of Kosovo nominated by the President of the Supreme Court, who is also the chairman of the Committee;
1.2. General Auditor, member;
1.3. Director of the Corruption Prevention Agency, member;
1.4. A deputy of the Ombudsperson nominated by the Ombudsperson, member;
1.5. Director of the Financial Intelligence Unit, member.
2. Committee members have the right to compensation for their monthly commitment, the amount of which is determined by internal regulations, but the amount of compensation cannot exceed the threshold of five percent (5%) of the basic salary of the Chairman of the Committee."

Article 11
(Meeting, quorum and decision-making in the Committee)

"1. The Chairman of the Committee convenes and presides over the meeting. In the absence of the Chairman or refusal to convene the meeting, the meeting may be convened by three (3) members of the Committee.
2. The quorum needed for holding the meeting is four (4) members.
3. The Committee takes its decision with the majority of all the members of the Committee.
4. Other procedural issues for convening and smooth running of the work of the Committee are regulated by a sub-legal act."

Article 12
(Competences of Committee)

"1. The competences of the Oversight Committee are as follows:
1.1. supervises the work and activity of the Bureau;
1.2. develops the procedure and proposes to the Assembly the appointment and dismissal of the Director General;
1.3. evaluates the performance of the Director General;
1.4. approves sub-legal acts defined by this law, at the proposal of the Director General;
1.5. reviews the work reports of the Director General;
1.6. performs other duties defined by the legislation into force.
2. The Committee shall have no right to intervene in cases which are under the verification procedure at the Bureau."

CHAPTER IV
SELECTION, MANDATE AND RESPONSIBILITIES OF THE DIRECTOR GENERAL OF THE BUREAU

Article 13
(Director General)

"1. The Bureau shall be headed by the Director General.
2. The Director General shall be appointed for a term of seven (7) years, without the right to re-election. 3. The Director General cannot hold a position in the public sector, nor does he exercise
e any other function.
4. After the regular end of the mandate, the Director General enjoys the right to a salary equivalent to the last salary, in a period of two (2) years, provided that he does not receive a salary either from the public sector or from the private sector."

Article 15
(Procedure for the election of the Director General)

"1. The procedure for the selection of the Director General is based on the principles of competition, nondiscrimination, transparency, integrity and objectivity.
2. The procedure for the selection of the Director General shall commence six (6) months before the expiration of the regular mandate of the General Director.
3. Notwithstanding paragraph 2 of this Article, when there is an early termination, as defined by this Law, the procedure for the selection of the Director General shall commence within thirty (30) days from the day the position remains vacant.
4. The Committee shall publish a vacancy announcement for the selection of the Director General, in print and electronic media in the official languages. The duration of the vacancy announcement shall not be shorter than fifteen (15) days nor longer than twenty (20) days.
. After the expiration of the term provided for under paragraph 4 of this Article, the Committee shall, within a period of fifteen (15) days, assess whether the candidates meet the requirements for appointment. 6. The Committee conducts interviews with each candidate who meets the requirements to be selected a General Director.
7. The integrity, competency, vision and managerial skills of the candidates to be Director General are evaluated during the interview. For this purpose, each candidate

prepares a concept with data and practical examples, according to the structure of the concept that is published together with the competition, to demonstrate the fulfilment of these requirements. This concept is submitted to the Committee together with the application to become Director General. Candidates' concepts are published on the Bureau's official website.
8. The procedure is valid only if no less than the majority of the members of the Committee participate. Committee members who begin interviewing candidates cannot be changed during the process.
9. The Committee members who participate in the interview evaluate the interviewed candidate with points allocated for integrity up to ten (10) points, competence up to ten (10) points, and the candidate's managerial ability up to ten (10) points.
10. The points from each member of the Committee are collected and divided by the number of Committee members who participated in the interview, from which the final result of the candidates comes out. Candidates who pass the threshold of at least fifty percent (50%) of the points from each field that is evaluated in paragraph 9 of this Article, are placed on the short list as a proposal for the Assembly.
11. The short list from paragraph 10 of this Article cannot contain less than two (2) and more than five (5) candidates for the position, in which case the candidates who are ranked with the highest points are placed on the list.
12. The Committee's proposal contains justification for why Committee has given priority to some candidates compared to other candidates.
13. The Assembly by secret ballot, with the majority of votes of all Assembly members present and voting, elects the Director General.
14. If in the first round, the Assembly does not elect the Director General, then the second round of voting takes place, with the two (2) candidates who have received the most votes.
15. If the Director General is not elected even in the second round of voting by the Assembly, the competition for General Director is repeated. The Committee shall within seven (7) days publish the new vacancy announcement. The process of selection and procedures shall be developed according to this Article.
16. In case even after the repetition of the vacancy announcement, the Assembly fails to elect the Director General in two (2) rounds, then the Committee shall publish the vacancy announcement and develop the procedures according to this Article with the sole exception that the Committee shall, at the end of the process, select as a Director General the candidate with the most number of points."

Article 16
(Powers and responsibilities of the Director General)

"1. The Director General shall have the following powers and responsibilities:
1.1. leads and organizes the work of the Bureau;
1.2. oversees the work of Bureau employees;
1.3. represents the Bureau at home and abroad;
1.4. manages the Bureau's budget and is responsible for its expenditure in accordance with the relevant legislation;
1.5. issues decisions in accordance with the Bureau's mandate and powers;
1.6. drafts the annual work plan within the mandate of the Bureau;
1.7. enters into cooperation agreements with other local and international institutions, in accordance with applicable legislation;
1.8. for specific cases and when there is a lack of expertise within the Bureau, decides on the engagement of external experts, in accordance with applicable legislation;

1.9. performs other duties defined by the applicable legislation.
2. The Director General may delegate certain tasks to his direct subordinates. In such cases, he remains responsible for supervising the delegated tasks.
3. The Director General authorizes in writing one of the direct subordinates to replace him/her in case of temporary absence. The authorized person shall perform all the functions of the Director General for the period he/she is authorized."

Article 17
(End of mandate of the Director General)

"1. The term of the Director General shall end:
1.1. upon the end of the term provided for by this Law;
1.2. upon resignation;
1.3. upon permanent loss of the ability to perform his/her function;
1.4. if he/she has been convicted of a criminal offence by a final court decision, other than a criminal offence committed by negligence;
1.5. if he/she exercises functions that are incompatible with his/her function according to the legislation into force;
1.6. upon dismissal from the Assembly according to the proposal of the Committee; 1.7. upon death.
2. If an indictment is filed against the Director General, he is suspended as provided by the legislation into force. One of the Directors of the Departments is appointed by the Committee as a substitute until the end of the process. The substitute shall perform all the functions of the Director General.
3. The Committee may initiate the procedure of dismissal of the Director General according to subparagraph 1.6 of this Article, for the following reasons:
3.1. due to non-fulfilment of duties and responsibilities defined by legislation;
3.2. due to poor performance evaluation;
3.3. due to serious violation of work duties, as foreseen by the legislation into force; or
3.4. due to the violation of personal or institutional integrity.
4. After the proposal by the Committee, the Director General is dismissed by the Assembly with the majority of votes of all the Assembly members present and voting.
5. In any case when the position of the Director General remains vacant, one of the Department Directors is appointed by the Committee as a substitute, for a period not longer than six (6) months. The substitute performs all the functions of the Director General."

Article 18
(Initiation of the procedure)

"1. The Bureau initiates the verification procedure on the basis of credible and reliable information regarding unjustifiable assets in cases where it:
1.1. . accepts information, documents, evidence, testimonies or data from various sources, including natural and legal persons;
1.2. accepts information, documents, evidence, testimonies or data from the institutions of the Republic of Kosovo or abroad, as well as
1.3. has information, documents, evidence or data not received officially and the same are public or accessible in any form.
2. The following institutions including but not limited to: The Agency for Prevention of Corruption, Tax Administration of Kosovo, Kosovo Customs, Central Bank of Kosovo,

Financial Intelligence Unit, Notaries and Private Enforcement Agents, as requested by the Bureau, are actively obliged to provide the requested information without delay.
3. Where an institution of the Republic of Kosovo is in possession or comes into possession of information, documents, evidence, testimonies or data that contains credible and reliable information regarding unjustifiable wealth, it shall, without delay, spontaneously provide such information to the Bureau. This information shall serve the Bureau in fulfilling the standard of the probabilities based on which the procedure shall be initiated.
4. The Bureau examines the information from paragraph 1 of this Article to determine if this information refers to the official person who is subject to this Law and if the information is reliable.
5. For the purposes of this Article, credible and reliable information means any information, document, evidence, testimony or data, which suggests that there is a discrepancy between the legal income and the assets created.
6. The Director General assesses at first sight the height of the discrepancy between the assets and the legal income, giving priority to the cases with the highest value of the discrepancy as per the threshold determined by this Law.
7. After the review from paragraphs 3 and 4 of this Article, the Director General issues a reasoned decision for the initiation of the verification procedure.
8. In each case when the Director General finds that the conditions from paragraphs 3 or 4 of this Article have not been met, then he decides not to initiate the procedure.
9. Notwithstanding paragraph 7 of this Article, if later the Bureau comes to new information on that entity and/or asset, the Director General decides according to the procedure of this Article.
10. All information received and processed by the Bureau will be accessible to the party who is subject to the verification procedure, except in cases where this information would endanger the verification procedure, would damage the evidence, and may violate the public interest. The Bureau shall officially request the restriction of documents at the Court, where the Court shall issue a decision in writing for such request."

Article 19
(Collection of information for the purpose of verification)

"1. The Bureau shall collect, without being limited, the following information:
1.1. . assets, location of assets and value;
1.2. the value of assets at the time of the benefit;
1.3. the value gained from the assets at the time of the transaction;
1.4. asset transformation;
1.5. regular and irregular income of the party to the procedure;
1.6. living expenses for the natural person and family members of the party in the procedure;
1.7. other expenses;
1.8. monetary liabilities;
1.9. asset transactions with natural or legal persons;
1.10. asset transactions of the party to procedure;
1.11. costs for travels abroad from the assets of the party to the procedure;
1.12. interim measures and charges imposed on the assets, as well as the obligations assumed of a civil-legal nature by the party to the procedure.
2. Personal data shall be treated and processed in accordance with the legislation into force."

Article 20
(Obligation to cooperate)

"1. Institutions of the Republic of Kosovo, domestic natural or legal persons exercising public authority, as well as other domestic natural and legal persons, shall be obliged to cooperate with the Bureau for the purpose of collecting information from Article 19 of this Law. The obligation to cooperate for domestic natural and legal persons extends to the extent that the right to privacy and the right not to be incriminated are not violated. 2. The entities from paragraph 1 of this Article shall provide the Bureau with the assistance, information and documents required as soon as possible, but not later than thirty (30) days from the date of the request, except for information provided under a special procedure.
3. Should the entities referred to in paragraph 1 of this Article fail to respond to the request of the Bureau, the Bureau may request the court to issue a ruling to that entity to submit information and documents as requested by the Bureau.
4. In case the court finds from the entity's response that the requested information or documents are not available to any other institution, it shall issue a ruling on the issuance of information and documents to the extent that they do not violate the security of the country or directly violate a constitutional human right, in order to enable the verification of assets. By this ruling, the Bureau shall be obliged not to publish such information and documents and no one shall have access to them in any way, except in court proceedings.
5. The head of the entity from paragraph 1 of this Article shall be obliged to implement the ruling taken by the court according to paragraph 3 and 4 of this Article no later than five (5) days from the receipt of the ruling. In case of non-implementation of the ruling by the head, the Bureau shall file a criminal report to the State Prosecutor for the criminal offence of non-execution of court decisions.
6. The court shall not render the issuance of information and documents at the request of the Bureau, when such request has been sent to the State Prosecutor and when the State Prosecutor announces that the provision of such information and documents would affect the investigation of ongoing criminal proceedings.
7. In cases when other domestic natural and legal persons do not respond to the request of the Bureau within the deadline set forth in paragraph 2 of this Article, the Bureau may request the Court to render a ruling ordering the entity to submit information and documents at the request of the Bureau.
8. The court renders a ruling for submission of the document and information if it assesses that the request of the Bureau is grounded and justified.
9. The person from paragraph 7 of this Article is obligated to comply with the Court ruling according to paragraph 8 of the present Article, not later than five (5) days from the receipt of the ruling. In case of noncompliance with the court ruling by the person against whom it was rendered, the Bureau submits a criminal report to the State Prosecutor for the criminal offense of non-execution of court decisions.
10. Classified information shall be ensured in accordance with the relevant law on classification of information and security clearance. 11. Personal data shall be treated and processed in accordance with the relevant law on protection of personal data."

Article 22
(Asset verification period)

"1. Verification of assets is done for the assets acquired during the period of exercising the public function by the official.

2. Exceptionally, when the Bureau assesses or finds that the assets of the official person acquired after the period of exercising the public function are to a large extent higher than the legal income or the assets acquired during the period of the exercise of the public function by the official person, the Bureau could extend the verification also for the period after the public official no longer exercises the public function.
3. The period mentioned in paragraph 2 of this Article cannot be longer than five (5) years after the end of the public function of the official person.
4. In cases where the official person has had a time break in the exercise of the public function, the verification period includes the time from the first appointment to the termination of the last public function."

Article 23
(Procedure before the Bureau)

"1. When the General Director decides to initiate a procedure according to Article 18 of this Law, the Bureau shall initiate the verification procedure and:
1.1. request, collect, research and analyze the documentation and other relevant information for the case, pursuant to Article 19 of this Law and during the undertaking of such actions or whenever necessary, request assistance from the institutions of the Republic of Kosovo in accordance with the legislation into force;
1.2. request information from the party to procedure and the entities from Article 20 of this Law;
1.3. examine the circumstances relevant to the case;
1.4. may invite the party to the procedure to give testimony, in order to identify other assets or clarify doubts about the assets under verification.
2. The verification procedure shall be conducted by the Bureau official to whom the case is assigned by the decision of the General Director.
3. All information, documents, facts, evidence, testimonies collected by the Bureau officer must be collected in accordance with the legislation into force.
4. If, during the verification procedure, it is noticed that the assets have been transferred to a third party, then the Bureau official will ask the General Director that the decision to verify the assets be extended to those third parties as well.
5. From the data collected under paragraph 1 of this Article, the Bureau shall list the assets of the party to the procedure.
6. After listing the assets, the party to procedure shall be invited to provide evidence and data to justify the origin of the listed assets within sixty (60) days.
7. If from the data collected through the verification procedure and the data, evidence and testimony provided by the party to procedure, the Bureau official notices that there is no discrepancy between income and assets, or discrepancy between income and assets does not exceed the value of twenty-five thousand (25.000) Euro, the Bureau officer shall propose to close the case. The reasoned proposal for closing the case shall be submitted to the General Director, who then shall issue a decision to close the case.
8. If from the data collected from the verification procedure and the data, evidence and testimony provided by the party to procedure, the Bureau official assesses that the civil standard of the balance of probabilities is met and there is a discrepancy between income and assets exceeding twenty-five thousand (25.000) Euro, then the Bureau official shall propose to send the case to the court for confiscation. The reasoned proposal to refer the case to the Court for confiscation shall be submitted to the Director General, who shall then submit a proposal for confiscation.
9. In case the party to procedure fails to respond to the Bureau invitation and the value of the listed assets is higher than twenty-five thousand (25.000) Euro, and the standard

according to paragraph 8 of this Article is met, then it is assumed that the listed assets have been acquired unjustifiably. The Bureau officer shall propose referring the case to the Court for confiscation. The reasoned proposal to refer the case to the Court for confiscation shall be submitted to the Director General, who shall then submit a proposal for confiscation.
10. The Bureau shall, along with the proposal for confiscation, forward to the court a list of assets, the material evidence in the case file and the evidence provided by the party to procedure, if any.
11. At any time during the verification period, the Bureau may submit to the court a request for imposing an interim security measure on the assets under verification, in accordance with Article 24 of this Law.
12. Where the Bureau decides to close the case and terminate the verification procedure, it shall immediately notify the court when there is an interim security measure on the assets under verification.
13. If at any time during the verification procedure, the party in the procedure loses the capacity to act or dies, the Bureau requests the Court to appoint a temporary representative of the party's assets.
14. The Bureau must conduct the verification procedure of assets within ninety (90) days from the day of issuing the decision from paragraph 2 of this Article.
15. In case the matter is complex, the Bureau official must request from the General Director to have the deadline from paragraph 14 of this Article extended for an additional period not longer than forty-five (45) days. The Director General shall decide to grant or reject the request, after analysing the complexity of the case. Rejection of the request for an additional deadline shall mean for the Bureau officer the completion of the verification procedure within the deadline from paragraph 14 of this Article.
16. Notwithstanding paragraphs 14 and 15 of this Article, the asset verification procedure may take up to one (1) year when the procedure depends on the request for international legal cooperation.
17. The procedure for verification of unjustifiable assets shall be determined by a sub-legal act."

CHAPTER VI
INTERIM SECURITY MEASURE

Article 24
(Interim security measure on the assets)

"1. Whenever before or after the presentation of the proposal for confiscation, upon the proposal of the Bureau official, the Court may set the temporary measure of securing the asset, without prior notification and hearing of the party in the procedure, if the Bureau makes a credible claim for the existence of unjustifiable assets and that the temporary measure is based on evidence collected in the verification procedure and is urgent and that if acted otherwise, the assets can be alienated, destroyed or in any form will not be available to that person.
2. Interim security measures on the assets that may be imposed by the court shall be, but not limited to:
2.1. prohibition on alienation of assets;
2.2. prohibition on the use of the consumable item;

2.3. prohibition on disposing of funds held in a bank account or in cash. When funds are available in cash, the court shall order that such funds be deposited in a bank account managed by the Bureau, without the right to be used.

3. The proposal for imposing an interim measure must contain:

3.1. . the Bureau data;

3.2. data of the court to which it is addressed;

3.3. identification of the party to the procedure;

3.4. specification of the assets for which the issuance of the interim measure is requested;

3.5. justification of the circumstances that make the claim credible that such assets may be alienated, disposed of or otherwise will not be available to that person."

Article 25
(Decision on the interim security measure on the assets)

"1. The court shall decide on the proposal for imposing an interim security measure on the assets within seventy-two (72) hours from the receipt of the proposal:

1.1. the Court shall approve the proposal for imposing the temporary measure and shall impose the temporary security measure on assets by a ruling when it finds that the temporary security measure on the assets is grounded and urgent and that by acting differently, the assets can be alienated, disposed of or otherwise will not be available to that person;

1.2. the Court shall, by a ruling, reject the proposal for imposing an interim measure when it finds that the circumstances presented in the proposal for imposing an interim measure do not make credible claim that the assets can be alienated, disposed of or otherwise will not be available to that person.

2. The Bureau officer shall be entitled to file an appeal against the ruling from paragraph 1, sub-paragraph 1.2 of this Article, within fourty-eight (48) hours from the receipt of the ruling. The appeal shall be filed with the second instance court through the first instance court. The appeal shall not stay the execution. The second instance court shall rule on the appeal within twenty-four (24) hours from the receipt of the appeal.

3. The second instance court shall, when ruling on the appeal, have the right to reject the appeal or amend the ruling of the first instance court. In case it amends the ruling of the first instance court, the second instance court shall order the security measure on the assets, issuing a ruling according to paragraph 1, subparagraph 1.2 of this Article.

4. The decision issued by the first instance court or the second instance court under paragraphs 1 and 3 of this Article shall be promptly sent to the competent body that maintains the relevant register for that asset, such as the Cadastral Agency, Notary Chamber, Chamber of Enforcement Agents, Vehicle Registration Centre, Central Bank of Kosovo, or any other competent institution, which are obliged to implement such an order.

5. The ruling from paragraph 1 of this Article shall be promptly sent by the court to the person against whose assets the interim security measure has been imposed."

Article 26
(Objection to the interim security measure on the assets)

"1. The person against whose assets the interim security measure on the assets has been imposed, may object to the imposition of such measure within fifteen (15) days from the receipt of the decision. The objection must be reasoned.

2. When the person against whose assets the interim security measure is imposed has not objected to the imposition of such measure, the order to impose the interim security measure on the assets shall remain in force until another decision on the assets is rendered.
3. When an objection is filed, the court shall schedule a hearing within seven (7) days from the receipt of the objection.
4. In the hearing to decide on the objection, the court invites: The Bureau officer, the opponent of the temporary measure and the third parties. The parties may be invited in person or through their representatives.
5. In the hearing to decide on the objection, the applicant for the interim measure, as well as the third party, shall initially be asked to argue the allegations presented in the objection, by presenting evidence regarding the credibility and lack of risk for assets.
6. The Bureau may provide additional evidence and arguments to make it credible that the interim security measure on the assets is reasonable and urgent and that by acting otherwise, the assets may be alienated, disposed of or otherwise will not be available to that person."

Article 34
(Hearing in the first instance)

"1. According to Article 30 of this Law, the Bureau presents the evidence before the Court regarding the fulfilment of the civil standard of assessing the balance of probabilities that the asset that is the subject of examination is unjustifiable.
2. After submitting the proposal to the Court, the party to the procedure in the hearing session, must prove that the assets subject to the proposal have a justifiable origin."

Article 35
(Hearing session)

"[...]
2. When a Bureau officer fails to appear at the hearing even though he/she has been duly summoned, and he/she has not justified the absence in any way, he/she shall be considered to have withdrawn the proposal for confiscation.
3. If the person whose assets are proposed for confiscation fails not appear at the hearing, even though it has been duly summoned, the hearing shall be held without his/her presence.
[...]"

Article 36
(Evidentiary proceedings)

"[...]
2. The evidence proposed by Bureau shall be initially processed, where the person whose assets are proposed to be confiscated or his/her representative shall have the right to challenge any evidence processed, regarding:
2.1. the authenticity of the evidence;
2.2. the admissibility of the evidence; or
2.3. reliability of the evidence.
[...]
6. Initially, the party proposing to hear the witness shall ask questions and seek clarification from the witness, and then the other party shall ask questions and seek clarification from the witness. When the parties state that they have no further

questions for the witness, the presiding judge may ask questions and seek clarification from the witness.
7. The witness may invoke his/her right to reject to testify in accordance with the relevant law on contested procedure.
[...]"

Article 37
(Examination of the party whose assets are proposed to be confiscated)

"[...]
2. The party, whose assets are proposed to be confiscated, shall have the right not to answer the questions posed. If he/she chooses to answer the questions, then he/she may give his/her testimony about the assets subject of the hearing on the proposal for confiscation.
[...]"

Article 38
(Closing statement)

"1. After examining the party whose assets are proposed to be confiscated, the court shall proceed with the closing statements of the parties, in the following order:
1.1. initially, the closing statement shall be given by the Bureau officer, who argues that according to the balance of probabilities, the assets should be confiscated;
1.2. the closing statement shall then be given by the representative of the person whose assets are proposed to be confiscated, who argues that the proposal for confiscation is unfounded;
1.3. the closing statement shall then be given by the third party, if any, who argues that he/she has come into possession or ownership of the assets that are proposed to be confiscated in good faith and that this has been verified at the hearing.
1.4. then, the closing statement shall be given by the person whose assets are proposed to be confiscated, who argues that the assets are justified and that the same has no grounds to be confiscated;;
2. In the closing statements, the parties may refer to the legal aspects, the evidence that has been examined in court and other circumstances proving the unjustifiability or justifiability of the assets.
3. In the closing statements, the parties may refer to the evidence administered during the trial proceedings."

Article 41
(Types of decisions)

"1. The court shall render a judgment on the proposal for confiscation of assets. The court shall decide on all cases by ruling.
2. When the court, according to the balance of probabilities, finds that the proposal for confiscation of assets is founded and that the assets are unjustifiable, it shall render a judgment finding that the assets are not justified and shall order confiscation.
3. When the court, according to the balance of probabilities, finds that the proposal for confiscation of assets is partially founded, it shall partially grant the proposal by a judgment, finding that a part of the assets is not justified and shall order its confiscation, and it shall reject the proposal as unfounded for the rest of the assets and

shall find the assets justified. For the rest of assets, it rejects the proposal as unfounded and finds that that part of assets is justifiable.
4. When the court, according to the balance of probabilities, finds that the proposal for confiscation of assets is not founded, it shall reject the proposal for confiscation by a judgment and shall find that the assets are justified.
5. When the Court finds that the proposal for confiscation is belated, the court shall dismiss the proposal as inadmissible.
6. Reasons for rejecting the proposal for confiscation include but are not limited to:
6.1. the proposal for confiscation includes the assets whose verification is not allowed by law;
6.2. the proposal was submitted after the expiration of the legal deadline, when the provisions provide for the legal deadline.
6.3. the assets that do not exceed the value determined under Article 23, paragraphs 8 and 9 of this Law;
6.4. the evidence examined at the hearing justifies the origin of the assets;
6.5. the evidence was examined at the hearing prove that the assets were acquired in good faith by a third party;
6.6. unjustifiable assets for confiscation shall include assets owned, possessed, or over which the party to the procedure exercises another form of control, or from which the party to the procedure has any benefit.
6.7. the assets specified in the proposal for confiscation was not owned, possessed or otherwise controlled by the party to the procedure."

Article 53
(Appeal against the Ruling)

"1. An appeal shall be permitted against the ruling of the first instance court if this Law does not stipulate that the appeal shall not be permitted.
[...]"

Article 61
(Application of other legal provisions)

"The provisions of the relevant law on contested procedure shall apply mutatis mutandis for judicial procedural matters which are not regulated by this Law."

Article 62
(Effect of other procedures in implementation of provisions of this Law)

"[...]
5. The statements given as well as the documents provided by the party in the procedure according to this Law cannot be used as evidence in criminal proceedings.
[...]"

Article 69
(Bureau functionalization)

"1. The President of the Supreme Court appoints a judge from among the ranks of the Supreme Court as a member of the Bureau Committee, no later than fifteen (15) days from the entry into force of this Law.

2. The constitution of the Committee takes place no later than thirty (30) days after the entry into force of this Law.
3. The Committee starts the selection procedure of the Director General not later than fifteen (15) days from the day of constitution.
4. After the constitution and until the Bureau is fully functionalized, the Committee meets regularly and approves the necessary sub-legal acts for the Bureau's full functioning.
5. Only after the full functionalization of the Bureau, but no later than one (1) year after the entry into force of this Law, the Bureau begins to implement the provisions of this Law in the function of verification of unjustifiable assets.
6. The functionalization of the Bureau according to paragraph 5 of this Article, means the appointment of the Director General, the recruitment of staff and the equipping of the office with the necessary resources for work.
7. Until the functionalization of the Bureau, the administrative function is performed by the Corruption Prevention Agency, which is allocated additional budget funds to perform such function.
8. The General Director is obliged to complete the staff and make the Bureau functional within six (6) months from his election."

Assessment of the admissibility of referral

121. The Court must first assess whether the referrals submitted before the Court have met the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure.

122. In this respect, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes that: *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

123. The Court notes that the applicants have filed their referrals based on paragraph 5 of Article 113 of the Constitution, which stipulates:

> *"5. Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed."*

124. Therefore, based on the above, a referral submitted to the Court according to paragraph 5 of Article 113 of the Constitution, must (i) be submitted by at least 10 (ten) deputies of the Assembly; (ii) that challenge the constitutionality of a law or decision adopted by the Assembly, for the content and/or for the procedure followed; and (iii) the referral must be submitted within a period of 8 (eight) days from the day of adoption of the contested act.

125. The Court, in assessing the fulfillment of the first criterion, namely the necessary number of deputies of the Assembly to submit a referral, notes that the referral KI46/23 was submitted by ten (10) deputies, a sufficient number to fulfill the criterion defined by the first sentence of paragraph 5 of article 113 of the Constitution to set the Court in motion.

126. The Court also in assessing the fulfillment of the second criterion, notes that the applicants challenge Law No. 08/L-121 on the State Bureau for Verification and Confiscation of Unjustified Assets, adopted in the Assembly.

127. Whereas, regarding the third criterion, namely the time limit within which the relevant referral must be submitted to the Court, the Court notes that the referral was submitted on 20 February 2023, while the contested Law was adopted by the Assembly on 9 February 2023, which means that the referral was submitted to the Court within the deadline set by paragraph 5 of Article 113 of the Constitution.

128. Therefore, the Court assesses that the applicants are legitimized as authorized parties in the sense of paragraph 5 of article 113 of the Constitution, to challenge the constitutionality of the contested act before the Court, both as regards the content and the procedure followed, as in the present case, the applicants all of whom are deputies of the VIII legislature of the Assembly, therefore the latter are considered an authorized party and, consequently, have the right to challenge the constitutionality of the contested Law adopted by the Assembly.

129. In addition to the aforementioned constitutional criteria, the Court also takes into account Article 42 (Accuracy of the Referral) of the Law, which specifies filing of the referral, based on paragraph 5 of Article 113 of the Constitution, which establishes as follows:

Article 42
(Accuracy of the Referral)

"1. In a referral made pursuant to Article 113, paragraph 6 of the Constitution, the following information shall, inter alia, be submitted:
1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;
1.2. provisions of the Constitution or other act or legislation relevant to this referral; and
1.3. presentation of evidence that supports the contest."

130. The Court, also, also refers to Rule 72 (Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law) of the Rules of Procedure, which establishes that:

Rule 72
(Referral Pursuant to Paragraph 5 of Article 113 of the Constitution and Articles 42 and 43 of the Law)

"[...]
(3) A referral filed under this Rule must, inter alia, contain the following information:

(a) Names and signatures of all the members of the Assembly challenging the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;
(b) Provisions of the Constitution or other act or legislation relevant to this referral; and
(c)Presentation of evidence that supports the contest.
(4) The applicants shall attach to the referral a copy of the law or the challenged decision adopted by the Assembly, the register and personal signatures of the

members of the Assembly submitting the referral and the authorization of the person representing them before the Court."

131. In the context of the provisions of the contested Law, the Court notes that the applicants (i) wrote their names and signatures in their respective referral; (ii) specified the contested Law of the Assembly of 9 February 2023; (iii) referred to specific articles of the Constitution, which they claim that the provisions of the contested Law are not compatible with; and (iv) submitted evidence in support of their allegations.

132. Therefore, taking into account the fulfillment of the constitutional and legal criteria regarding the admissibility of the referral, the Court declares the referral of the applicants admissible and in the following, will examine its merits.

Merits of the Referral

I. Introduction

133. The Court initially recalls that the Applicants, namely ten (10) deputies of the Assembly of the Republic of Kosovo, based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, challenge the contested Law in its entirety. More specifically, they claim that Articles 2 (Scope), 4 (Establishment), 9 (Status and independence), 10 (Oversight Committee Composition and Compensation), 15 (Procedure for the selection of the Director General), 19 (Collection of information for the purpose of verification), 22 (Asset verification period), and 34 (Hearing in the first instance) of the contested Law are in contradiction with Articles 7 [Values], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instrument], 24 [Equality Before the Law], 46 [Protection of Property], 55 [Limitations on Fundamental Rights and Freedoms], and 142 [Independent Agencies] of the Constitution.

134. As clarified under the section of this Judgment dealing with the relevant claims and counter-arguments, the Applicants essentially argue that the contested Law is in violation of (i) the principles of the rule of law and legal certainty as fundamental values of the constitutional order; and (ii) the fundamental rights and freedoms guaranteed by the Constitution, including applicable international instruments. Specifically, the applicants claim that: (i) in terms of its scope, the contested Law, through Articles 2 (Scope) and 22 (Asset verification period), infringes the rule of law principle embodied in Articles 3 [Equality Before the Law] and 7 [Values] of the Constitution, including the principle of equality before the law, guaranteed by Article 24 [Equality Before the Law] of the Constitution, as well as violates the right to property, guaranteed by Article 46 [Protection of Property] of the Constitution; (ii) the establishment and status of the Bureau, as stipulated by Articles 4 (Establishment), 9 (Status and independence), and 10 (Composition of the Oversight Committee and Compensation) of the contested Law, are also in contradiction with Articles 4 [Form of Government and Separation of Power] and 142 [Independent Agencies] of the Constitution because they undermine the supervisory authority of the Assembly of Kosovo; (iii) the procedure for electing the Director General of the Bureau, as stipulated by Article 15 (Procedure for the selection of the Director General) of the contested Law "*constitutes a breach of the principle of legal certainty, the rule of law, and the Assembly's electoral competence for this position*"; (iv) Articles 18 (Initiation of the procedure)and 19 (Collection of information for the purpose of verification) in relation to Article 20 (Obligation to cooperate) of the contested Law, arbitrarily infringe the right to property guaranteed by Article 46 [Protection of Property]

of the Constitution, as well as the right to a fair and impartial trial, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, among other reasons, "*because they deprive the verification subject of the right to timely access to relevant documents and files, and the right to be heard*".

135. In principle, the Ombudsperson supports the core claims of the applicants and through comments submitted to the Court, essentially requests that the Court assess the constitutionality of the contested Law in terms of "*the right to property, legal certainty, the right to legal remedies, and the right to a fair and impartial trial, as guaranteed by the Constitution*". Specifically, the Ombudsperson challenges the appointment of a Deputy Ombudsperson as a member of the Oversight Committee for the Bureau, through subparagraph 4 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of the contested Law, which, according to the Ombudsperson, is contrary to the independence of the Ombudsperson, as stipulated by Article 132 [Role and Competencies of the Ombudsperson] of the Constitution.

136. The aforementioned claims of the Applicants are opposed by the Ministry of Justice and the deputy of the Assembly of the Republic of Kosovo, Mr. Adnan Rrustemi, from the Parliamentary Group of the VETËVENDOSJE! Movement, emphasizing that (i) the contested Law contains sufficient procedural guarantees for the protection of fundamental rights and freedoms and its content has been positively evaluated by the Opinions of the Venice Commission; (ii) the distinction between official persons and other citizens of the Republic of Kosovo pursues a legitimate aim of combating corruption in the public sector, furthermore, that the retroactive application of the law is not in contradiction with the principle of legal certainty; while (iii) they clarify that the date 17 February 2008 is also related to "*the legal circulation of property through bank transactions*", which for the purposes of this law constitutes decisive evidence regarding asset verification; and (iv) the establishment of the Oversight Committee does not undermine the supervisory competence of the Assembly, moreover, that the transfer of the competence for the election of the Director General from the Assembly to the Oversight Committee, as a de-blocking mechanism in case the election procedure for the Director fails in the Assembly, is a solution in accordance with the recommendations of the Venice Commission.

137. The Court, based on the aforementioned claims of the applicants, but also the relevant counter-arguments, notes that the essence of the constitutionality assessment of the contested Law is related to: (i) the scope of the contested Law, as determined by its Article 2 (Scope) and related to Article 22 (Asset verification period) but also the burden of proof clarified through Article 34 (Hearing in the first instance) of the contested Law, referring to (a) the equality of official persons and third parties; (b) the standard of balance of probabilities; (c) the proportionality of the retroactive application of the contested Law; and (d) the legal collision in the contested Law; (ii) the procedure conducted by the Bureau, as determined by Articles 18 (Initiation of Procedure), 19 (Collection of information for the purpose of verification), 20 (Obligation to cooperate), and 23 (Procedure at the Bureau) of the contested Law, referring to (a) the obligation to cooperate in relation to the right not to incriminate oneself; (b) equality of arms; (c) legal remedies/judicial protection and (d) legal certainty; (iii) the status of the Bureau, as determined by Articles 4 (Establishment) and 9 (Status and independence) of the contested Law, but also referring to (a) the composition of the Oversight Committee determined in Article 10 (Oversight Committee Composition and Compensation) of the contested Law; and (b) the election of the Director General, as determined in Article 15 (Procedure for the selection of the Director General); and (iv) the operationalization of the

Bureau, as determined by paragraph 7 of Article 69 (Bureau functionalization) of the contested Law.

138. Considering the arguments and counter-arguments presented before the Court, the latter, in order to assess the constitutionality of the above-mentioned provisions of the contested Law, will first summarize: (i) the general principles related to the concept of civil confiscation of unjustified assets according to international practice; (ii) the case-law of the ECtHR related to asset confiscation, interference with the right to property, equality before the law, and the right to privacy; (iii) relevant documents adopted at the level of the United Nations, the European Union, and the Council of Europe, including the Opinions of the Venice Commission and the Amicus Curiae brief related to civil asset confiscation in the cases of Bulgaria and Armenia, respectively; (iv) the two (2) Opinions of the Venice Commission on Kosovo regarding the contested Law; (v) the urgent opinion of the Venice Commission on Montenegro regarding the draft amendments to the Law on Seizure and Confiscation of Material Benefits Derived from Criminal Activity; (vi) the purpose and scope of the contested Law, including its relationship with other applicable laws in the Republic of Kosovo; and finally (vi) will subject the contested Law to a constitutionality assessment based on the applicants' claims and the arguments and counter-arguments of the parties before the Court, applying the aforementioned general principles throughout this assessment.

II. General Principles

1. General principles of civil confiscation of unjustified assets according to international instruments, recommendations, and opinions of international organizations

139. In terms of general principles for civil confiscation of unjustified assets, the Court will also refer to international instruments, recommendations, and opinions of international organizations, which, as far as they relate to the concept of civil confiscation, will serve as a source of interpretation of constitutional provisions while reviewing the claims of the applicants. In this regard, the Court will refer to: (i) international instruments approved at the United Nations level; (ii) instruments approved at the European Union level; (iii) instruments and recommendations approved at the Council of Europe level; (iv) the case-law of the ECtHR; and (v) Opinions and *Amicus Curiae* responses of the Venice Commission.

140. The Court first notes that asset confiscation is regulated both at the United Nations level, as well as at the Council of Europe and European Union levels, and is also addressed through the case-law of the ECtHR and the European Court of Justice (hereinafter: ECJ). At the United Nations level, the United Nations Convention against Corruption, adopted by the General Assembly on 31 October 2003, is the only legally binding universal instrument against corruption, covering five (5) main areas, namely (i) preventive measures; (ii) criminalization and law enforcement; (iii) international legal cooperation; (iv) asset recovery; and (v) technical assistance and information exchange.

141. Secondly, at the European Union level, the Court refers to the Council Framework Decision [2005/212/JHA] on Confiscation of Crime-Related Proceeds, Instrumentalities, and Property, adopted on 24 February 2005, which sets international standards for confiscation of unlawfully acquired assets. The Court notes that under this decision, each member state shall take necessary measures to enable the confiscation, in whole or in part,

of instrumentalities and proceeds from criminal offenses punishable by deprivation of liberty for more than one (1) year, or property whose value corresponds to these proceeds. Furthermore, Directive [2014/42/EU] of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, adopted on 3 April 2014, establishes minimum standards for the freezing and confiscation of instrumentalities and proceeds of crime in criminal proceedings in the European Union, including extended confiscation and third-party confiscation, and introduces a limited form of non-conviction-based confiscation in criminal proceedings in cases "*where the suspect is permanently ill or has absconded*". The above-mentioned Directive covers '*Eurocrimes*' defined in Article 83 of the Treaty on the Functioning of the European Union (hereinafter: TFEU), however, confiscation has a broader scope for all offenses punishable by imprisonment of at least one (1) year. More precisely, concerning freezing and confiscation, this Directive provides that National Asset Recovery Offices, established by Council Decision 2007/845/JHA on Asset Recovery Offices, can take urgent temporary freezing measures until a freezing order is issued. The proposal provides for standard and value-based confiscation, following a final criminal conviction, including third-party confiscation, extended confiscation, and expands the possibilities for non-conviction-based confiscation, in situations such as the suspect or accused's death, immunity or amnesty, or expired statute of limitations in national legislation (for offenses punishable by at least four (4) years of imprisonment). The above-mentioned Directive also allows the confiscation of frozen assets when the court is convinced that they are derived from criminal activity, considering all circumstances, including unjustifiable wealth, for offenses punishable by four (4) years of imprisonment (Article 5 of the Directive).

142. Thirdly, at the Council of Europe level, the Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, adopted on 16 May 2005, covers both the prevention and control of money laundering and the financing of terrorism. Point (d) of Article 1 (Use of terms) of this Convention defines confiscation as follows: "*a penalty or measure, ordered by a court following proceedings in relation to one or more criminal offenses, resulting in the permanent deprivation of property*". Additionally, at the Council of Europe level, in 1989, the Financial Action Task Force (hereinafter: FATF) was established by the Ministers of the member states of the Council of Europe, whose mandate is to set standards and promote effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, and other related threats to the integrity of the international financial system. In 2012, this Task Force adopted 40 (forty) recommendations divided into 7 (seven) areas as follows: (i) policies and coordination to combat money laundering and terrorist financing; (ii) money laundering and confiscation; (iii) terrorist financing and proliferation financing; (iv) preventive measures; (v) transparency and beneficial ownership of legal persons and arrangements; (vi) powers and responsibilities of competent authorities and other institutional measures; and (vii) international cooperation. The Court notes that the latest version of the FATF recommendations related to confiscation, updated in February 2023, stipulate as follows: "*Countries should adopt measures similar to those set out in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate, without prejudice to the rights of bona fide third parties: (a) property laundered; (b) proceeds from, or instrumentalities used or intended for use in money laundering or predicate offenses; (c) property that is the proceeds of, or used in, or intended or allocated for use*

in, financing of terrorism, acts of terrorism, or terrorist organizations; or (d) property of corresponding value".

143. On the other hand, and in the context of models of civil confiscation of unjustified assets, the Court notes that traditionally, in the field of confiscation of unlawfully acquired assets, the focus has been on "*confiscation following a final conviction for a criminal offense*" through a court order, once the criminal offense itself has been proven in court according to criminal procedure standards. However, over the years, the system of confiscation of assets not related to criminal proceedings has started to emerge in several states, namely, as (i) confiscation of assets linked to criminal proceedings but not dependent on a conviction in those proceedings; and (ii) lawsuits filed against the property itself, regardless of any criminal proceedings.

144. The Court emphasizes that the first model of civil confiscation targets assets originating from illegal activities, a model known in legal terminology as "*in rem*" confiscation. According to this model, in cases where the prosecutor or other authorized bodies suspect that the assets of certain persons were acquired through illegal activities, they may request the confiscation of the assets even if there is no conviction against those persons. Thus, according to this model, the confiscation of unlawfully acquired assets is allowed even if it has not been previously proven that the criminal offense through which the assets in question were acquired has been committed. The scope of this model generally extends to all citizens, without restrictions to specific categories. States that have included this confiscation model in their legal systems include Italy, the United States of America, the United Kingdom, the Philippines, Australia, Canada, and Colombia. On the other hand, the Court also notes the second model of civil confiscation, which compares the actual assets of certain persons/officials with declared income to identify discrepancies between them. For this confiscation model as well, to pave the way for civil confiscation, it is not necessary to prove that the unjustified assets were acquired through the commission of a criminal offense. States that have included this confiscation model in their legal system include Bulgaria and Georgia.

145. While, as explained above, the number of legal systems applying the concept of civil confiscation of unjustified assets is limited and consequently, applicable standards in this context are not consolidated, the case-law of the ECtHR and relevant Opinions of the Venice Commission establish some of the applicable principles in this context, with an emphasis on balancing mechanisms related to civil confiscation of unjustified assets and fundamental rights and freedoms. Consequently, the Court will present: (i) relevant case-law of the ECtHR; (ii) findings arising from the Council of Europe analysis related to the civil confiscation system of assets; (iii) relevant Opinions of the Venice Commission related to the civil confiscation system of assets; and (iv) the Venice Commission Opinions for Kosovo, related to the contested Law.

(i) Relevant Case-Law of the ECtHR

146. The Court first emphasizes that, based on the case-law of the ECtHR, the latter initially in terms of the applicability of Article 1 of Protocol No. 1 of the ECHR, stated that when a confiscation measure is imposed independently of the existence of a criminal conviction, as a result of a separate "*civil*" procedure, aiming at the recovery of assets considered to have been unlawfully acquired, it constitutes "*control of the use of property*" within the meaning of the second paragraph of Article 1 of Protocol No. 1 of the ECHR (see the case of Gogitidze and Others v. Georgia, no. 36862/05, Judgment of 12 August 2015, paragraph

94). Following this finding, it must be assessed whether the "*interference*" with the right to property (i) is "*prescribed by law*"; (ii) pursues a "*legitimate aim"*; and (iii) is "*proportionate*" to the aim pursued, including in the context of Article 55 [Limitation of Fundamental Rights and Freedoms] of the Constitution.

147. That said and more precisely, in the context of assessing the "*interference*" with property rights as a result of asset confiscation in civil proceedings, the Court refers to the case-law of the ECtHR, in the cases of (i*) Gogitidze and Others v. Georgia*; (ii) *Todorov and Others v. Bulgaria;* (iii) *Yordanov and Others v. Bulgaria*; and (iv) *Bozadzhieva and Others v. Bulgaria.* In the first two cases, the ECtHR had not found a violation of Article 1 (Protection of Property) of Protocol No. 1 of the ECHR, while in the last two, it had found the respective violation.

148. More precisely, the case of *Gogitidze and Others v. Georgia,* is related to an applicant who, in 2004, as a former minister of the Government, was accused of abuse of office. The Public Prosecutor's Office of Georgia initiated proceedings for the confiscation of his and other applicants' assets, all of whom were his relatives, due to the illegal and unjustifiable acquisition of property, based on the relevant criminal code and the Administrative Procedure Code, amended on 13 February 2004. In September 2004, the Supreme Court, in administrative proceedings and based on the Administrative Procedure Code, amended on 13 February 2004, ordered the confiscation of six (6) properties. In January 2005, following an appeal filed by the applicants, the Supreme Court of Georgia annulled the confiscation of one of the properties and upheld the confiscation orders for the other properties. The first applicant had lodged a complaint with the Constitutional Court of Georgia, challenging the constitutionality of the provisions regulating administrative confiscation procedures under the Administrative Procedure Code. The Constitutional Court of Georgia upheld the decisions of the lower courts, finding that the legislation in force, adopted in February 2004, providing for civil confiscation, served the public interest, namely intensifying the fight against corruption. The applicants before the ECtHR claimed, inter alia, that: (i) the confiscation of their property constituted a violation of Article 1 (Protection of Property) of Protocol No. 1 of the ECHR; (ii) the confiscation of their properties had been arbitrary, and the authorities had claimed that the properties were acquired as a result of the first applicant's criminal activity, without a final conviction against him; (iii) the burden of proof in the confiscation procedure had shifted to them, arguing that according to general principles of criminal procedure, the prosecutor should bear the burden of proving that a defendant is guilty beyond reasonable doubt; (iv) the confiscation of their properties was not a temporary measure but rather an irreversible act that could not be characterized as control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 of the ECHR but should be treated as *de facto* expropriation of their property; (v) the Administrative Procedure Code, amended on 13 February 2004, had been applied retroactively in their case, as their property had been acquired between November 1997 and May 2004.

149. In addressing this case, the ECtHR, initially in terms of the applicability of Article 1 of Protocol No. 1 of the ECHR, emphasized that when a confiscation measure is imposed independently of the existence of a criminal conviction, as a result of a separate "*civil*" procedure aiming at the recovery of assets considered to have been unlawfully acquired, it constitutes "*control of the use of property*" within the meaning of the second paragraph of Article 1 of Protocol No. 1 of the ECHR (paragraph 94 of the Judgment). Following its finding that the confiscation of the applicants' property constituted "*interference*", the ECtHR continued to assess whether the "*interference*" with the applicants' right (i) was

"*prescribed by law*"; (ii) pursued a "*legitimate aim*"; and (iii) was "*proportionate*" to the aim pursued.

150. The ECtHR, (i) in terms of the legality of the "*interference*" with the right to property, initially emphasized that the law applied in the specific case was not the first legislation in the country requiring public officials to be held accountable for the unjustifiable origin of their assets and that since 1997, the Law on Conflict of Interest and Corruption in Public Service had already addressed such issues as criminal offenses of corruption and the obligation of public officials to declare and justify the source of their assets and those of their close circle, thus making them subject to possible criminal, administrative, or disciplinary liability, the exact nature of which would be regulated by specific laws governing violations of these anti-corruption requirements. Accordingly, the ECtHR found that the amendment of 13 February 2004, merely regulated anew the monetary aspects of existing anti-corruption legal standards and therefore, the ECtHR considered that the requirement of "legality" included in Article 1 of Protocol No. 1 of the ECHR, as a rule, cannot be interpreted as an obstacle to the legislative power to control the use of property or to "*interfere*" with property rights through new retroactive provisions regulating factual situations or legal relationships. Consequently, the ECtHR found that: (i) the confiscation of the respective applicant's property was carried out in accordance with the "*legality*" criterion within the meaning of Article 1 of Protocol No. 1 of the ECHR (see, paragraphs 98-100 of the Judgment); (ii) in terms of "*legitimate aim*," the ECtHR, inter alia, noted that the confiscation was an essential part of a broader legislative package against corruption in public service and that based on the domestic legal framework, it was evident that the justification for the aim of confiscating unlawfully and unjustifiably acquired assets of persons accused of serious offenses committed during public functions, by their family members and close relatives was twofold, namely had a compensatory and preventive aim. In this context, the ECtHR found that the confiscation measure was carried out in accordance with the public interest to ensure that the use of the property in question did not result in an advantage for the applicant to the detriment of the community (paragraphs 102 and 103 of the Judgment); while (iii) in terms of whether the "*interference*" was "*proportionate*" to the "*legitimate aim*," the ECtHR, *inter alia*, found that the *in rem* procedure could not be considered arbitrary because it was reasonable to expect that the three applicants, one of whom was directly accused of corruption in a specific set of criminal proceedings, while the other two were presumed to be relatives of the accused, had unfairly benefited from the proceeds of his crime. Therefore, the burden of proof to prove the origin of their assets as lawful had shifted to the prosecutor. Moreover, the civil confiscation procedure was clearly part of a policy aimed at preventing and eradicating corruption in public service. Therefore, in implementing such policies, states should be given a wide margin of appreciation regarding what constitutes an appropriate means to implement measures to control the use of property such as the confiscation of all types of criminal proceeds (see, paragraph 108 of the Judgment). Furthermore, the ECtHR emphasized that the in rem civil confiscation procedure of the applicants' property was not contrary to the necessary fair balance and consequently found that there had been no violation of Article 1 of Protocol No. 1 of the ECHR (paragraphs 111-115 of the Judgment).

151. Similarly, in the case of *Todorov and Others v. Bulgaria* [no. 50705/11, Judgment of 13 October 2021], all applicants had their properties confiscated as proceeds of crime based on the 2005 Law on Confiscation of Proceeds of Crime. The seven (7) applications related to the circumstances of asset confiscation based on the aforementioned Bulgarian law, the ECtHR had joined and through its Judgment of 13 October 2021, (i) in relation to four (4)

of the applications, namely application no. 50705/11, (*Todorov v. Bulgaria*); application no. 11340/12 (*Gaich v. Bulgaria*); application no. 26221/12 (*Barov v. Bulgaria);* application no. 71694/12 (*Zhekovi v. Bulgaria*), had found a violation of Article 1 of Protocol No. 1 of the ECHR; (ii) whereas in relation to the other three (3) applications, namely application no. 44845/15 (*Rusev v. Bulgaria*); application no. *17238/16* (*Katsarov v. Bulgaria*); and application no. 63214/16 (*Dimitrov v. Bulgaria*), had found that the confiscation of the applicants' assets did not constitute a violation of Article 1 of Protocol No. 1 of the ECHR.

152. More precisely, the case of *Todorov and Others* [no. 50705/11], was related to the fact that the first applicant, in 2004, was convicted, *inter alia*, of attempted extortion committed in 1993, and based on this, in 2007, the relevant Commission in Bulgaria had initiated confiscation proceedings of his and the second applicant's assets. The proceedings resulted in the confiscation of the assets of four (4) applicants amounting to EUR 896,300 (eight hundred and ninety-six thousand and three hundred), most of which were acquired between 2000 and 2005. The ECtHR found that the "*interference*" with the applicants' rights under Article 1 of Protocol No. 1 of the ECHR, was "*prescribed by law*" and that the 2005 law pursued "*legitimate aims*" of public interest. However, in terms of assessing whether the "*interference*" with property was "*proportionate*" to the legitimate aim, the ECtHR emphasized that the first applicant was convicted of attempted extortion committed in 1993. Therefore, according to the ECtHR, it was not entirely clear how for a criminal offense, remaining in attempt and committed in 1993, in circumstances where this applicant was not involved in any other criminal activity, he had his assets confiscated in a significant amount, which moreover, were acquired in a period after the 1993 criminal conviction. The ECtHR, inter alia, emphasized that "*even though according to the facts of the case, the existence of a causal link between the 1993 criminal offense committed by the first applicant and the assets acquired by the applicants, usually much later, was not at all evident, as elaborated above, the domestic courts considering the confiscation request made no effort to justify such a link. The domestic courts emphasized the discrepancy, as found by them, between the income and expenditures of the first and second applicants, without giving any other reason and dismissed the objections of the first and second applicants in this regard. Moreover, they failed to show whether the value of the assets to be confiscated was equal to the discrepancy found between the applicants' income and expenditures. The domestic courts, as mentioned, did not attempt to justify that the first applicant was involved in any other criminal activity*" (see, paragraph 221 of the Judgment). Consequently, the ECtHR found that it was not proven that the "*interference*" with the applicants' rights under Article 1 of Protocol No. 1 of the ECHR was *"proportionate*" and therefore, found a violation of the right to property under Article 1 of Protocol No. 1 of the ECHR (paragraphs 222 and 223 of the Judgment).

153. Through the same Judgment in these consolidated applications, referring to application no. 63214/16 *Dimitrov v. Bulgaria*, the ECtHR found that the "*interference*" with the property rights of one of the applicants was not disproportionate to the legitimate aims of the Law on Confiscation of Proceeds of Crime (see, paragraphs 262-267 of the Judgment). In this context, the ECtHR found that the "*interference*" with the applicant's rights was "*prescribed by law*" and pursued a "*legitimate aim*", namely that of public interest (see, paragraphs 273-275 of the Judgment). Furthermore, the ECtHR found that the domestic court which ordered the confiscation of the applicant's assets, had explained in detail why it considered them as proceeds of crime, and concluded that there was a causal link between the crimes committed by the applicant and the confiscated assets, findings which the ECtHR did not consider arbitrary or clearly unreasonable. Consequently, the ECtHR

found that the "*interference*" with the applicant's property was not disproportionate to the legitimate aim pursued and therefore, concluded that there had been no violation of Article 1 of Protocol No. 1 of the ECHR (see paragraphs 273-280 of the Judgment).

154. Finally, the case of the ECtHR, *Yordanov and Others v. Bulgaria* [no. 265/17 and no. 26473/18, Judgment of 26 September 2023, paragraph 132], is related to the application of the legislation adopted in 2012, which provided for the confiscation by the state of assets "*unlawfully acquired*". The assets of all applicants were confiscated as a result of criminal and administrative convictions, although no causal link was established between the offense(s) and the assets in question.

155. More precisely, in the case of *Yordanov and Others v. Bulgaria*, the first applicant was convicted of a criminal offense, namely tax evasion, where the offense itself did not bring any financial benefit, although the tax was paid late. In this case, although the domestic courts before them had information that he was involved in criminal activities, they decided not to use the same, considering that in their knowledge, the applicant was neither accused nor convicted. The government, in 2008, presented the argument regarding the applicant's conviction in Belgium, claiming that he was involved in criminal activity. Apart from this conviction, the domestic courts had no further information about any criminal activity. However, they found that the applicant, in the circumstances of the specific case, had failed to prove the existence of any lawful income to justify the purchase of the assets for which confiscation was sought. The ECtHR, applying the principles established through the above-mentioned case of *Todorov and Others v. Bulgaria*, found that the fair balance required under Article 1 of Protocol No. 1 of the ECHR was not achieved and that the "*interference*" with the applicant's "*assets*" was not proportionate to any legitimate aim. Consequently, the ECtHR found that there had been a violation of Article 1 of Protocol No. 1 of the ECHR (see, paragraph 132 of the Judgment in the case of Todorov and Others v. Bulgaria). More precisely, the ECtHR found that there was no reason to doubt that the conclusion of the domestic courts was arbitrary or unfounded, as these courts had given sufficient reasons when rejecting the claim that the applicant and his wife had acquired lawful income from various sources. However, the ECtHR found that such a conclusion was insufficient to justify the confiscation of the applicant's assets, as based on Article 1 of Protocol No. 1 of the ECHR, the domestic authorities had to provide some details regarding the criminal or administrative offenses allegedly resulting in the acquisition of the contested assets, and to show a link between any such activity and the assets in question. According to the ECtHR, the offense for which the applicant was convicted, besides serving as a basis allowing the initiation of the confiscation procedure by the relevant Commission in Bulgaria, had not resulted in financial gain, therefore it was not at all relevant regarding the decisions of the courts to order the confiscation (see, paragraphs 126-130 of the Judgment). Consequently, the Court found that in the case of applicant *Yordanov*, there had been a violation of Article 1 of Protocol No. 1 of the ECHR.

156. Furthermore, the case of *Bozadzhieva and Others v. Bulgaria* [application no. 26473/18], the ECtHR had joined with the above-mentioned case, namely *Yordanov and Others v. Bulgaria*, which case was related to the fact that the first applicant in this case, was convicted of tax evasion and unlawful receipt of child assistance. The ECtHR, through the same Judgment, also found that there had been a violation of Article 1 of Protocol No. 1 of the ECHR. The ECtHR, inter alia, found that it was never alleged that the offenses committed by the first applicant – the only prohibited activity for which the domestic courts had decided – had been the source of the assets subject to confiscation. According to the ECtHR, the domestic courts that ordered the confiscation had failed to establish a

link between the assets and the main criminal offenses, finding that such a link was not a requirement of the 2012 Law. According to the ECtHR, it was not proven whether the "*interference"* with the applicants' property, even if pursuing a legitimate aim in the public interest, was "*proportionate*" to the aim pursued (see, paragraphs 136-139 of the Judgment) and consequently, found that there had been a violation of Article 1 of Protocol No. 1 of the ECHR.

(ii) Analysis of the Council of Europe on Civil Confiscation

157. The Court will refer to the analysis supported by the Council of Europe regarding the system of confiscation of assets without a criminal conviction, otherwise known as civil confiscation or *in rem* confiscation (see, for more, the Council of Europe Study on Civil Confiscation, Council of Europe, 2013).

158. According to this analysis, in rem civil confiscation is an action against the property and not the person, and it is the mechanism by which, in the absence of criminal proceedings, the proceeds of criminal activity can be confiscated to deprive a person of unlawful benefits (see, pp. 13-15 of the Study on Civil Confiscation). Based on this analysis, the Court notes that there are two fundamental reasons for pursuing public policies on civil confiscation: (i) first, the benefits of illegal activity should not fall into the hands of those who commit illegal activities; and (ii) second, the state aims to discourage conditions that lead to illegal activity. Examples of in rem legislation can be found in various jurisdictions such as Italy, the United States of America, the United Kingdom, the Philippines, Australia, Canada, and Colombia. Although most of the aforementioned states have a common law tradition, it should be noted that civil confiscation has proven to be equally effective in civil law jurisdictions (see pp. 15-16 of the Study on Civil Confiscation). Despite this, the Court emphasizes the findings of the above analysis according to which, civil confiscation should not be used as a primary tool when there is clear evidence of criminality and when the suspect can be prosecuted criminally (see, pp. 17-18 and 30 of the Study).

159. In this regard, the Court, based on the above-mentioned report, will elaborate on some of the advantages of this type of confiscation, including the fact that (i) a criminal conviction is not a prerequisite for asset confiscation; (ii) it is not hindered by immunities; (iii) it functions even in the absence of extradition or when the suspect is unreachable and the evidence is insufficient to meet the criminal procedure standard of proof; (iv) asset confiscation can occur even in the event of the suspect's death or absence; (v) it applies even when the suspect is acquitted due to insufficient evidence in criminal proceedings; and (vi) it functions in countries where there is political interference or a high level of corruption in the criminal justice system due to the difficulty of sabotaging the lower civil standard of proof. On the other hand, the Court will also elaborate on some of the shortcomings of this system, including the fact that: (i) it may conflict with the principle of presumption of innocence; and (ii) the person whose assets are confiscated may be perceived as a criminal and consequently, his fundamental rights and freedoms may be affected. From this latter, it results that constitutional challenges arise regarding whether the civil confiscation procedure: (a) is, in fact, a criminal procedure due to its punitive nature; and (b) violates the constitutional right to property protection.

160. Regarding the dilemma (a), namely whether the civil confiscation procedure is, in fact, a criminal procedure, the Court notes the above analysis, which cites the case-law of some countries such as Ireland and Canada. From this case-law, it follows that if the legislation

regulating this field were criminal and imposed punishment, in fact, those competencies would be "*ultra vires*" and such a procedure, in reality, should be civil and not provide for punishment. In this context, moreover, the case-law of the USA has clarified that the civil confiscation procedure does not conflict with the principle of "*ne bis in idem*," because it does not imply a second prosecution and that civil confiscation does not imply punishment, as it deprives one of a right that does not belong to him. However, in this aspect, as mentioned above, the dilemma of the presumption of innocence principle, guaranteed in paragraph 2 of Article 6 (Right to a Fair Trial) of the ECHR, is raised. This dilemma has been clarified by the case-law of the ECtHR, *inter alia*, in the case of *Butler v. the United Kingdom* [no. 41661/98, Decision on Admissibility of 27 June 2002], where it found that in the relevant case, confiscation had a preventive and not a punitive nature and did not constitute a criminal sanction. Consequently, this criminal procedure principle cannot be applied in civil proceedings. The ECtHR has more specifically clarified in its case-law that if the nature of the procedure is not determinative and there is no close link between the criminal and civil procedure, but when the decision of the domestic court has the effect of "*determining the criminal responsibility of [the applicant], it will be sufficient in itself to create the necessary link for Article 6 (2) of the Convention to apply to these procedures*" (see, Study on Civil Confiscation, pp. 30-31 and 35-41).

161. Regarding the dilemma (b), namely whether civil confiscation constitutes a violation of the right to property guaranteed under Article 1 of Protocol No. 1 of the ECHR, the above analysis mentions that the case-law of the ECtHR, as elaborated above, has clarified that the right to property is not an absolute right and that it can be restricted if the measure of "*interference*": (i) is "*prescribed by law*"; (ii) pursues a "*legitimate aim*"; and (iii) is "*proportionate*" to the aforementioned aim. As a general rule, confiscation laws are generally considered proportionate, but when they impose an excessive burden of proof on the citizen or when high-value assets are subject to an order that has even a weak connection with criminal conduct, courts have found that such confiscation is disproportionate and consequently, constitutes a violation of the respective rights. In terms of the retroactive effect of civil confiscation, the case-law of the ECtHR in the case of *Walsh v. the United Kingdom* [no. 43384/05, Decision on Admissibility of 21 November 2006], has clarified that the principle of non-retroactivity is violated when civil confiscation occurs for acts that did not constitute a criminal offense at the time the property was acquired. However, if the act is considered criminal at the time the property is acquired, but there is no enforcement authority to carry out the confiscation, then when the state creates such an authority or authorizes an authority to undertake such an action, it is merely a procedural matter and no longer serves as a justification that execution cannot occur (see pp. 32-34 and 41-44 of the Study).

(iii) The Venice Commission Opinions

162. Over the years, the Venice Commission has adopted opinions at the request of its member states regarding the review of legal initiatives related to the civil confiscation of unjustified assets and in this regard four (4) opinions have been published concerning various versions of the relevant draft law of Bulgaria for the confiscation of unlawfully acquired assets, namely: (i) Interim Opinion No. 563/2009 on the Draft Act on Forfeiture in Favor of the State of Illegally Acquired Assets in Bulgaria, adopted by the Venice Commission, on 12-14 March 2010 [CDL-AD(2010)010]; (ii) Second Interim Opinion No. 563/2009 on the Draft Act on Forfeiture in Favor of the State of Criminal Assets in Bulgaria, adopted by the Venice Commission, on 4 June 2010 [CDL-AD(2010)019]; (iii) Final Opinion No. 563/2009 on the Third Revised Draft Act on Forfeiture in Favor of the State of Illegally

Acquired Assets in Bulgaria, adopted by the Venice Commission, on 15-16 October 2010 [CDL-AD(2010)030]; and (iv) Opinion No. 563/2009 on the Sixth Revised Draft Act on the Forfeiture of Criminally Acquired Assets or Administrative Violations in Bulgaria, adopted by the Venice Commission, on 17-18 June 2011 [CDL-AD(2011)023].

163. Furthermore, regarding the confiscation of unjustified assets in civil proceedings, the Venice Commission also adopted: (i) *Amicus Curiae* brief for the Constitutional Court of Armenia on certain issues related to the Law on Confiscation of Assets of Illegal Origin, adopted on 16-17 December 2022, [CDL-AD(2022)048]; (ii) Joint *Amicus Curiae* brief with the OSCE Office for Democratic Institutions and Human Rights on the offence of illicit enrichment in the case of Moldova, adopted on 21-22 October 2022 [CDL-AD(2022)029]; and (iii) in the case of Montenegro, the Urgent Opinion on the Draft Amendments to the Law on the Seizure and Confiscation of the Material Benefits Derived from Criminal Activity, issued on 22 May 2024, pursuant to Article 14a of the Revised Rules of Procedure of the Venice Commission, [CDL-PI(2024)010]; and (iv) in the case of Kosovo, two (2) consecutive opinions on the assessment of the Draft Law on the State Bureau for Confiscation of Unjustified Assets.

164. The aforementioned Venice Commission opinions regarding other states, always in the context and specifics of the respective countries and laws analyzed, have addressed several aspects relevant to the circumstances of the present case. The key and relevant findings stemming from the Venice Commission Opinions will be presented in the following, relating to (i) institutional arrangements and guarantees for the responsible Commissions/Agencies for the civil confiscation of unjustified assets; (ii) issues related to the burden of proof; and (iii) retroactivity.

165. First, in the context of structure, namely **institutional arrangements and guarantees**, including the procedure for electing members of the respective Commission, in the fourth opinion for Bulgaria, the Venice Commission, among others, addressed issues such as: (i) the necessary majority for the election of the members of that Commission; and (ii) supervisory mechanisms. In the context of the first issue, the Venice Commission, among others, counter-argued the Bulgarian authorities' claim that it is not possible to require that the Deputy Chairperson and two other members be elected by a qualified majority, namely by two-thirds (2/3) of the National Assembly, as the Constitution stipulates that decisions of the National Assembly need only "*a majority of more than half of the members of parliament present, except in cases where a qualified majority is required by the Constitution*" and that consequently, there was a possibility that the Constitutional Court could declare the qualified majority of two-thirds (2/3) as unconstitutional. The Venice Commission, in fact, emphasized that a national Constitutional Court generally intervenes where there is a lack of guarantee and not when ordinary law presents a stricter guarantee such as this in the specific case, which would strengthen the independence and representative character of the Commission, where it was requested that the requirement for voting by a qualified majority be foreseen, adding that it is important that in its activity, the Commission is and is seen as impartial (see, paragraphs 16-19 of the Opinion). On the other hand, in the context of the second issue, the Venice Commission had assessed that the activities of the respective Commission should be overseen by the National Assembly (see, paragraphs 21-22 of the Opinion).

166. Secondly, in the context of the **burden of proof**, the Venice Commission, in its joint Amicus Curiae brief on the offence of illicit enrichment [CDL-AD(2022)029] in the case of Armenia, but also in the fourth opinion for Bulgaria, as well as the Urgent Opinion for

Montenegro [CDL-PI(2024)010], has expressed relevant positions. Through the aforementioned opinions, the Venice Commission, among others, has held the position that "*International and European standards suggest that civil forfeiture may be an effective tool to fight public corruption and prevent illicit acquisition of assets. This constitutes a public interest, which may justify the application of a presumption of illicit origin of certain property. Such a presumption shifts the burden of proof to the owner of assets: the competent authority has a duty to demonstrate that the assets may be of illegal origin, while the respondent may refute these allegations by presenting evidence to the contrary*" (see, paragraph 60 of the Amicus Curiae brief for Armenia and paragraph 25 of the Urgent Opinion for Montenegro).

167. In this regard, concerning the issue of the standard of proof, the Venice Commission also emphasized that civil confiscation systems not based on criminal convictions are designed to ensure that the central issue, namely whether the assets originate from criminal activity or administrative violations, should be proven according to the civil standard of proof of "*balance of probabilities*" rather than the criminal standard of "*beyond reasonable doubt*". This is because a lower standard of proof should enable the state to more easily confiscate the relevant assets and thereby limit the financing of criminal activities (see, the fourth opinion CDL-AD(2011)023 of the Venice Commission for Bulgaria on the Sixth Revised Draft Act on the Confiscation of Criminally Acquired Assets or Administrative Violations in Bulgaria, adopted by the Venice Commission).

168. According to the respective opinion, to clearly distinguish the two different phases concerning the burden of proof, namely the phase where the burden lies with the state agency/commission and the subject undergoing control, it should be specified that once the Commission has made a *prima facie* case, the burden of proof shifts to the subject, who can respond with a credible explanation of how he or she came into lawful possession or control of the property in question (see, paragraph 56 of the fourth opinion for Bulgaria). According to the Venice Commission, the level at which the threshold concerning evidence is set is crucial, because if it is set too high, the state agency/commission may have difficulty obtaining the confiscation order and seizing the property, while if it is set too low, it may lead to "*interference*" with the fundamental rights of the defendant (see, paragraph 57 of the fourth opinion for Bulgaria).

169. In this opinion, it is also explained in principle that (i) if a party cannot provide evidence through the required written document, because it has been lost or destroyed without the fault of the party, or if (ii) the authorities have notified that the mandatory retention period for the document in question has already passed and the document is no longer kept, the party will not need to provide "*proof*" that the document is lost or destroyed, as long as it can argue the "*non-existence*" of the respective document. The Venice Commission considered this as a good example, given the need for courts to be allowed to evaluate the evidence presented by the parties based on free conviction (see, paragraph 58 of the fourth opinion for Bulgaria).

170. In the case of Armenia, the Venice Commission emphasized that "*however, this tool should be applied within reasonable limits and accompanied by effective procedural guarantees. As long as the owner of the property has a real chance to refute the presumption, and may forward the "inaccessible evidence" or bona fide ownership defence, the solution appears proportionate*". (see, paragraph 61 of the Amicus Curiae brief for Armenia).

171. Whereas in the case of Montenegro, the Venice Commission specified that the draft amendments to the Law on the Seizure and Confiscation of Material Benefits Derived from Criminal Activity "*do not contain any provision regarding the standard of proof by which courts should be informed about their final decision on the confiscation of assets. Since this issue is strictly related to the requirement to establish a substantial link between the assets for which confiscation is sought and the criminal offense, the Venice Commission will formulate its views and recommendations in the following section*". (see, paragraph 26 of the Urgent Opinion for Montenegro). This law contained two categories of confiscation, namely "*extended confiscation*" against a person who has been convicted of a criminal offense specified in Article 2 of this law and who fails to present the lawful origin of his/her assets; and (ii) *in rem* confiscation or without conviction, namely confiscation in the absence of a conviction and directed against the property of a person of unlawful origin. The Venice Commission, in balancing the public interest of preventing the unlawful acquisition of assets through criminal activity and the use of such assets and the protection of property based on Article 1 of Protocol No. 1 of the ECHR, assessed that two important factors must be taken into account, namely: (i) the existence of a substantial link between the crime and the assets for which confiscation is sought; and (ii) time limits in terms of the retroactive assessment of the lawfulness of the enrichment (see, paragraph 27 of the Opinion). In assessing the first factor, the Venice Commission found that the relevant provisions of this law: *"[…] which respectively regulate the presentation of evidence in court proceedings and the final decision on the confiscation of assets, are silent on the standard of proof which serves as information for the courts deciding on the confiscation of assets*". (see, paragraph 31 of the Opinion) and consequently, the Venice Commission recommended that the relevant provisions of the law be amended to clearly identify the "*standard of proof*".

172. Thirdly, in the context of **retroactivity**, in the *Amicus Curiae* brief for Armenia, the Venice Commission, among others, emphasized that "As regards the retroactive effect of the Law, it is generally accepted that the fight against corruption makes it necessary to act not only pro futuro, but also with a view to illicit acquisition of property in the past. Retroactive application of the Law can generally be considered proportionate and compatible with the Armenian Constitution which affords protection of property only when it has been acquired lawfully. That being said, the duty to give explanations about the origins of the property should remain reasonable. Furthermore, the timeframe for the forfeiture of property should be reasonable and it should be applied equally to all cases, and not left to the discretion of the authorities". (see, paragraph 48 of the *Amicus Curiae* brief for Armenia).

173. Furthermore, in the Amicus Curiae brief for Armenia, the Venice Commission emphasized that: (i)*"[…] it may be recommendable to distinguish between different types of retroactivity: laws that interfere with past events and laws that interfere with continuous situations that started in the past but are still ongoing. While in the first scenario the prohibition of retroactivity is more rigorous, in the second scenario a more flexible approach should be possible as long as the interference is not excessive*". (paragraph 45); and (ii) *"[…] the retroactive effects of the Law are not incompatible with international standards, provided that the defendants' duty to give explanations about the origins of the property remains reasonable, and the defence's arguments in this regard are thoroughly addressed by the courts"* (paragraph 50).

174. Moreover, in the fourth opinion for Bulgaria, the Venice Commission also emphasized that "*the period subject to review*" should be determined by the Commission regarding assets

acquired through criminal activity and administrative violations, while emphasizing that the review period for fifteen (15) years, "*remains a rather long period for this kind of retroactive legislation*". Consequently, the aforementioned Bulgarian commission should limit its review to a shorter period, considering the necessary efficiency and proportionality (see, paragraph 47 of the fourth opinion for Bulgaria).

175. The aforementioned Venice Commission opinions also address two relevant issues for the circumstances of the present case, always in the context of the respective states' draft laws, namely (i) the threshold value subject to control for unjustified assets; and (ii) the duty of the subjects under control to cooperate.

176. Regarding the threshold value, in the fourth opinion for Bulgaria, the Venice Commission, among others, emphasized that a threshold value of 150,000 (one hundred fifty thousand) BGN for the amount of income from an administrative violation, which corresponds to about 75,000 (seventy-five thousand) euros, is required to be reached before proceedings can be initiated, considering this threshold as very high, especially when no threshold is foreseen for any of the other categories of violations under which the procedure can be initiated (see, paragraph 32 of the fourth opinion for Bulgaria). Meanwhile, regarding the second issue, the Venice Commission, among others, emphasized that while state authorities will "*invite*" the interested person to submit a written statement, in view of counteracting the evidence presented in the Commission's request for an order, the subject is not obliged to submit such a statement and will not bear any responsibility if he or she decides not to submit it and that the non-submission of a statement by the subject, "*may not be grounds for drawing conclusions against the person and his or her family members*" (see, paragraph 44 of the fourth opinion for Bulgaria). Moreover, the Venice Commission recommended specifying that this provision also applies to prohibit the use of statements given as evidence during the criminal proceedings against the person in question, as the statements can be used as evidence in other civil proceedings. Such a clarification would contribute to better protection of the right not to self-incriminate, as guaranteed by the case-law of the ECtHR. According to the Venice Commission, this principle should also apply to the procedure "*against the spouse of the person in question*" (see, paragraph 46 of the fourth opinion for Bulgaria).

177. Finally, in the case of Montenegro, the Venice Commission in its urgent opinion for Montenegro, among others, emphasized that: "*Article 8 of the Law does not specify a time limit but assigns the task of proving "a temporal connection" to the domestic courts. Allowing a margin of appreciation in this regard for the courts may be an acceptable option, provided that the courts take into account the real possibilities of the person in question to prove the origin of the assets after a long period, as well as the stability of the economic order. However, for the sake of clarity and legal certainty, more specific time limits are required, which would ease the burden of proof on the person in question regarding the lawfulness of the acquisition and prevent disproportionate interference with someone's property rights".* (see, paragraph 34 of the Opinion).

(iv) The Venice Commission Opinions for Kosovo

178. The Court recalls that on 20 June 2022, the Venice Commission adopted its **First Opinion** [No. 1083/2022, CDL-AD(2022)014] on the Draft Law on the Bureau, in principle, assessing that the draft law was not in compliance with applicable standards in the context of the confiscation of unjustified assets. As explained above, the relevant Opinion, among others, emphasized that (i) the Venice Commission is not sure whether

"*the establishment of a new body would make the fight against corruption indeed more effective – or whether it would rather complicate the whole system which already involves a number of bodies such as the police, the prosecution service, the tax and customs authorities and the Anti-Corruption Agency. In any case, it seems obvious that the new verification and confiscation system needs to be combined in some way with the already existing asset declaration system of senior public officials which is in the hands of the AntiCorruption Agency".* (see, paragraph 72 of the first Opinion); and (ii) such sensitive human rights legislation, as proposed in the draft law, is acceptable only *"if it is built on an independent mechanism with all the necessary powers and resources to fight effectively against high-level corruption and organised crime*," also emphasizing that the current provisions of this draft law "*are insufficient in this regard*" (see, paragraph 73 of the first Opinion).

179. Furthermore, regarding the Oversight Committee, proposed in the draft law on the Bureau, which according to the version of the draft law subjected to analysis by the Venice Commission at the time of the first Opinion, was proposed to be the Commission of the Assembly itself, namely the Commission for Legislation, Mandates, Immunities, the Rules of Procedure of the Assembly, and the Oversight of the Anti-Corruption Agency, the Venice Commission, among others, emphasized that (i) " *the draft law represents a strong degree of political control by politicians over the Bureau. The Venice Commission is concerned that under these circumstances the Bureau*". (ii) *"[…] the Bureau will unlikely be able to deal with serious cases of corruption involving senior politicians who enjoy – and may use – strong political influence*"; and (iii) *"[…] it is also questionable whether the important role of the Oversight Committee is compatible with the definition of the Bureau as an "independent" body".* Following this, the Venice Commission, through its first Opinion, recommended that "*this institutional structure be reviewed*", recommending that the Bureau, however, should respond to the Assembly to some extent. Meanwhile, regarding the performance evaluation of the Director General, the Venice Commission recommended that the Assembly Commission should be excluded from his evaluation and that "*if such an evaluation is considered necessary, it should be entrusted to an independent commission of experts*". (see, paragraph 42 of the first Opinion).

180. Moreover, according to the relevant Opinion of the Venice Commission, among others, it should (i) precisely and exhaustively formulate the general and public interests, aim, and purpose of the new law; (ii) reconsider the need and usefulness of establishing a new body, namely the Bureau, and if this approach continues, (a) establish strong guarantees for the independence of the Bureau; and (b) provide the Bureau with a sufficient number of specialized personnel with adequate competencies; (iii) precisely determine (a) under which conditions and based on which criteria the Bureau should collect information ex officio before initiating the official verification procedure; (b) under which conditions the verification procedure can and should be initiated; and (c) the priorities for the Bureau's work, ensuring that the Bureau focuses on high-profile cases; (iv) clarify that the burden of proof shifts to the party in the proceedings only after the competent authority, namely the Bureau, has presented a reasoned proposal and evidence showing that there is at least a likelihood of illegal acquisition of property, based on the civil standard of proof of "*balance of probabilities*" and more precisely define the civil standard of proof of "*balance of probabilities,*" which according to the current draft law should be applied by the court; (v) establish stronger guarantees for the human rights of the party and other persons, among others, (a) specifying that the decision to initiate the verification procedure, at least, be communicated to the party in the proceedings and be subject to a legal remedy; (b) ensuring that statements made and mandatory documents provided by the party in civil

proceedings cannot be used against him or her in criminal proceedings; (c) clarifying that the family members of the party are targeted only as "*third persons*"; (d) reconsidering the provision that natural and legal persons can be required by the court to cooperate with the Bureau; (e) regulating how the identification of "*third parties with a legal interest*" is made and what their rights are in the verification and confiscation procedure; (f) ensuring that the persons involved in the confiscation are not deprived of all their property; and (g) guaranteeing compensation for damages suffered by the party if the confiscation procedure ultimately proves unsuccessful; and (vi) establish an adequate threshold of evidence for issuing interim security measures, making it clear that such measures can be taken in civil proceedings even if a criminal investigation has been initiated (see, paragraph 74 of the first Opinion).

181. The subsequent Opinion No. 1113/2022, CDL-AD (2022)052, namely the **second Opinion**, in principle, assessed that following the recommendations of the first Opinion, "*the definitions contained in the draft law have been substantially revised*", and the verification of assets is defined as "*the assessment of the amount of assets in relation to the legal income",* and unjustified assets are defined accordingly.

182. Regarding the role and composition of the Oversight Committee, amended following the recommendations of the first Opinion, and which consists of *ex officio* members, the Venice Commission considered it as "*an appropriate solution*," emphasizing that it provides "*a better guarantee for independence as all Committee members come from outside the political sphere*". More specifically, in the context of (i) the participation of the Auditor General, as a member of this Commission, it is considered that "*this responds to the Venice Commission's remark that the General Auditor should be implied in the control of the budget of the Bureau*" (see, paragraph 15 of the Opinion); (ii) the proposal for the appointment and dismissal of the Director General of the Bureau, the seven (7) year term without the right to re-election and the prohibition from holding any other public function, the Venice Commission sees these as very positive steps, also emphasizing that regarding the election of the Director General, "*a better solution might be to provide for a more detailed anti-deadlock mechanism,*" also emphasizing that "*a qualified majority could be a possible solution, however, as indicated in previous opinions of the Venice Commission,6 the number of cases in which the Assembly may vote by qualified majority is very limited based on Article 65 of the Constitution*" (see, paragraph 16 of the Opinion); and (iii) the institutional capacity of the Bureau to adequately fulfill its duty, the Venice Commission notes that "*the Bureau now contains at least four units*", adding that this responds to their recommendation (see, paragraph 19 of the Opinion).

183. Furthermore, the second Opinion also emphasizes that (i) the draft law still does not provide for a threshold, whether the evidence should lead to the probability that the property is unjustifiable or if any test such as reasonable suspicion is sufficient, adding that this issue should be further examined during the preparation of the final version of the draft law (see, paragraph 22 of the Opinion); (ii) the issue of the burden of proof has been satisfactorily regulated in the new version of the draft law (see, paragraph 25 of the Opinion); (iii) the rights of third parties and their involvement in the procedure have been clarified and no longer present major concerns (see, paragraph 27 of the Opinion); and (iv) the extension of the verification period up to five (5) years after the completion of the duty must have a reasonable basis for suspicion, and that such an extension must be decided by the court (see, paragraph 28 of the Opinion).

184. Finally, the second Opinion also presents additional recommendations as follows: (i) to include in the text that "*unjustified assets*" are those assets that "*are not in accordance with the legal income and whose origin fails to be proven as legal"*; (ii) to clarify whether "*public institutions or enterprises"* include foreign institutions and enterprises or only those of Kosovo; (iii) to ensure a de-deadlock mechanism for the election of the Director General of the Bureau; (iv) to ensure an evidentiary standard to justify the initiation of the procedure; (v) to clarify the mechanism that ensures that statements made and mandatory documents provided by the party in civil proceedings cannot be used against them in criminal proceedings; and (vi) to consider adding a provision covering situations where the proceedings by the Bureau prove unfounded, providing the possibility of shortening the case by withdrawing it.

185. The Court recalls that following the second Opinion, on 23 December 2022, the Assembly's Committee on Legislation approved its report concerning the Draft Law on the Bureau, proposing thirty-five (35) amendments to the Draft Law on the State Bureau. Consequently, after the passage of the draft law in the respective Commissions, the Assembly, on 9 February 2023, in its second reading, adopted the contested Law. Subsequently, the Court recalls that on 14 March 2023, the Venice Commission published the Follow-up Information to the subsequent Opinion No. 1113/2022, CDL-AD(2022)052, in which it assessed that the latest, amended and supplemented version, in principle, addressed the recommendations of the Commission in its second Opinion: (i) by defining that *"unjustified assets"* are those that *"are not in accordance with the legal income and whose origin fails to be proven as legal"*; (ii) clarifying that "*public institutions or enterprises*" include only Kosovo institutions and enterprises; (iii) providing an anti-deadlock mechanism for the election of the Director General of the Bureau; (iv) establishing an evidentiary standard to justify the initiation of the procedure; (v) clarifying the mechanism that ensures that statements given and documents mandatorily provided by the party in civil proceedings cannot be used against them in criminal proceedings; and (vi) providing the Bureau with the possibility to shorten the judicial procedure by withdrawing the case in certain situations.

III. Assessment of the Constitutionality of the contested Law

186. Following the aforementioned clarifications and taking into account the claims of the applicants and the responses and counter-arguments of the parties presented before the Court, in the circumstances of this case, the Court will assess the constitutionality of the provisions of the contested Law related to: (i) the scope of the contested Law, as determined by Article 2 (Scope) and related to Articles 22 (Asset verification period) and 34 (First Instance Review) of the contested Law; (ii) the procedure conducted by the Bureau, as determined by Articles 18 (Initiation of the procedure), 19 (Collection of information for the purpose of verification), 20 (Obligation to cooperate), and 23 (Procedure before the Bureau) of the contested Law; (iii) the status of the Bureau, as determined by Articles 4 (Establishment) and 9 (Status and independence), which also refer to (a) the composition of the Oversight Committee as determined by Article 10 (Oversight Committee Composition and Compensation) of the contested Law; and (b) the election of the Director-General, as determined by Article 15 (Procedure for the selection of the Director General) of the contested Law; and (iv) the functionalization of the Bureau, as determined by paragraph 7 of Article 69 (Bureau functionalization) of the contested Law.

187. The Court initially recalls that the contested Law establishes the State Bureau for Verification and Confiscation of Unjustified Assets, introducing the concept of civil confiscation of unjustified assets into the legal order of the Republic of Kosovo.

188. This Law is divided into fourteen (14) chapters, namely: (i) Chapter I (General Provisions); (ii) Chapter II (Establishment, Legal Status, Powers, and Organization of the State Bureau for Verification and Confiscation of Unjustifiable Assets); (iii) Chapter III (Oversight of the Bureau); (iv) Chapter IV (Selection, Mandate, and Responsibilities of the Director-General of the Bureau); (v) Chapter V (Verification of Unjustifiable Assets); (vi) Chapter VI (Interim Security Measures); (vii) Chapter VII (Proposal for Confiscation); (viii) Chapter VIII (Hearing on Examination of the Proposal for Confiscation); (ix) Chapter IX (Appellate Proceedings); (x) Chapter X (Procedure according to Extraordinary Legal Remedies); (xi) Chapter XI (Relationship with Other Procedures and Administration); (xii) Chapter XII (Execution of Decisions and Priority in Satisfying the Claims); (xiii) Chapter XIII (International Legal Cooperation); and (xiv) Chapter XIV (Transitional and Final Provisions).

189. According to Article 1 (Purpose) of the contested Law, its purpose is (i) to establish, organize, and determine the competencies of the Bureau; and (ii) to establish the procedure for the verification and confiscation of assets acquired in an unjustifiable manner by public officials and third parties, within the framework of civil proceedings. Whereas, according to Article 2 (Scope) of the contested Law, it applies to "*to assets acquired unjustifiably, whether directly or indirectly by official persons and third parties*". The aforementioned Article determines the temporal scope of the Law, stating that it applies "*for the period of exercising the function of entities from paragraph 1 of this Article, from 17 February 2008; and within ten (10) years from the period when the entities from paragraph 1 of this Article cease to exercise their function*". The asset verification period is further clarified through Article 22 (Asset verification period) of the contested Law, according to which: (i) verification of assets is done for the assets acquired during the period of exercising the public function by the official; however, (ii) the verification can also be extended for the period after the public official ceases to hold public office, if the Bureau assesses or finds that the assets of the public official acquired after the period of holding public office are significantly higher than the lawful income or assets acquired during the period of holding public office by the public official in question. This extended verification "*cannot be longer than five (5) years after the end of the public function of the official person*".

190. Article 3 (Definitions) of the contested Law is relevant as it, among others, defines the terms of (i) asset confiscation, which refers to *"permanent acquisition of assets ordered by a final decision of the competent court in accordance with the legislation into force*"; (ii) balance of probabilities, which refers to "*standard of proof when the court, based on the evidence, believes that something is more likely to be, or to have happened than not";* (iii) unjustified assets, which refers to "*the part of the asset of the person in the procedure, which is not in accordance with the legal income and the origin of which fails to be proven as legal*"; and (iv) third parties, which refers to "*any natural or legal person to whom the assets of the official person have been transferred, or who has or may have a legal interest in the assets of the parties in the procedure*".

191. Within Chapter II (Establishment, Legal Status, Competencies, and Organization of the State Bureau for Verification and Confiscation of Unjustified Assets) of the contested Law, specifically according to Articles 4 (Establishment), 6 (Legal Status and Organizational

Structure), 8 (Competencies and Responsibilities of the Bureau), and 9 (Status and Independence), among others, the establishment, legal status, organizational structure, and competencies of the Bureau are determined. Specifically: (i) the Bureau is established as an "*as an independent and specialized body for verification of unjustifiable assets"*; (ii) it is an independent public institution with the status of a legal person; and (iii) exercises competencies that, among others, include: (a) initiating and conducting the asset verification procedure; (b) submitting the proposal for asset confiscation to the court; (c) seeking assistance, information, and relevant documents from all institutions of the Republic of Kosovo and foreign institutions, natural or legal persons exercising public authorizations, as well as from other domestic and foreign natural and legal persons; (d) analyzing and assessing the received information and material; (e) publishing on the Bureau's official website all judgments and decisions related to judicial procedures under this law, without being limited to their finality, in accordance with publication rules; (f) publishing statistical data or other data related to the confiscation of assets acquired unjustifiably; (g) reporting to the Assembly of the Republic of Kosovo; and (h) cooperating with domestic and international institutions.

192. On the other hand, within Chapter III (Supervision of the Bureau) of the contested Law, through Article 10 (Oversight Committee Composition and Compensation), the composition of the Oversight Committee of the Bureau is determined. According to this Article, this Commission consists of five (5) members with the following composition: (i) one (1) judge of the Supreme Court of Kosovo, appointed by the President of the Supreme Court, who is also the chairperson of the Commission; (ii) the Auditor General; (iii) the Director of the Anti-Corruption Agency; (iv) a deputy Ombudsperson, appointed by the Ombudsperson; and (v) the Director of the Financial Intelligence Unit. According to the provisions of Article 11 (Meetings, Quorum, and Decision-Making in the Commission) of the contested Law, the required quorum is four (4) members, while decisions are made by a majority of all Commission members.

193. According to the provisions of Article 12 (Competencies of the Commission) of the contested Law, the Oversight Committee, (i) supervises the work and activities of the Bureau; (ii) conducts the procedure and proposes to the Assembly the appointment and dismissal of the Director-General of the Bureau; (iii) evaluates the performance of the Director-General; (iv) adopts sub-legal acts; and (v) reviews the work report of the Director-General. Additionally, based on Article 6 (Legal Status and Organizational Structure) of the contested Law, it approves the organizational structure of the Bureau.

194. Within Chapter IV (Election, Mandate, and Responsibilities of the Director-General of the Bureau) of the contested Law, among others, the (i) mandate of the Director-General; (ii) criteria and procedure for the election of the Director-General; (iii) competencies and responsibilities of the Director-General; and (iv) termination of the mandate of the Director-General are determined.

195. The procedure for the election of the Director-General is led by the Oversight Committee, which proposes the respective candidacies to the Assembly. The Assembly elects the Director-General by secret ballot, with a majority of the votes of all present and voting deputies. If none of the proposed candidates receives the necessary votes in two (2) rounds of voting, then the competition is repeated and the competence for the election of the Director-General passes to the Oversight Committee itself. The Director-General can be dismissed by the Assembly upon the proposal of the Oversight Committee, under the

conditions specified in the contested Law, with a majority of the votes of all present and voting deputies.

196. According to the provisions of Article 16 (Powers and responsibilities of the Director General) of the contested Law, the Director-General, among others, (i) leads and organizes the work of the Bureau; (ii) supervises the work of the Bureau's officials; (iii) represents the Bureau domestically and internationally; (iv) manages the Bureau's budget and is responsible for its expenditure, in accordance with the relevant legislation; (v) issues decisions within the mandate and competencies of the Bureau; (vi) drafts and approves the annual work plan within the mandate of the Bureau; (vii) concludes cooperation agreements with other domestic and international institutions, in accordance with the applicable legislation; and (viii) for specific cases and when there is a lack of expertise within the Bureau, decides on the engagement of external experts, in accordance with the applicable legislation.

197. The procedure for the verification of unjustified assets is detailed in Chapter V (Verification of Unjustifiable Assets) of the contested Law. This chapter, among others, specifies (i) the manner of initiating the asset verification procedure; (ii) the manner of collecting information for verification purposes; (iii) the obligation to cooperate and related consequences; and (iv) the procedure conducted in the State Bureau.

198. Furthermore, through the subsequent chapters, specifically Chapters VI-XIV of the contested Law, among others, the following are determined: (i) the procedure related to interim and security measures regarding, among others, the prohibition of the alienation and use of assets; (ii) the proposal for the confiscation of assets; (iii) the conduct of the asset confiscation procedure and the respective legal remedies; (iv) the execution of decisions, including against assets outside the territory of the Republic of Kosovo, according to the provisions of the contested Law; and (v) the functionalization of the State Bureau. In the context of the latter, Article 69 (Bureau functionalization) of the contested Law, among others, specifies that (i) only after the full functionalization of the Bureau, but no later than one (1) year after the entry into force of this Law, the Bureau begins to implement the provisions of this Law for the verification of unjustified assets; while (ii) until the functionalization of the Bureau, the administrative function is exercised by the Anti-Corruption Agency, which is allocated additional budgetary resources for the performance of this function.

199. Beyond the clarifications given regarding the main provisions of the contested Law, the Court also notes that administrative investigations related to assets and the confiscation of assets are also regulated by a number of other applicable laws in the Republic of Kosovo. In the following and in a summarized manner, the applicable laws in the context of (i) the investigative competencies of public institutions related to assets; and (ii) the procedure for the confiscation of unjustified assets will be presented.

(i) Investigative Competencies of Public Institutions Related to Assets

200. The Court recalls that the laws related to the investigative competencies of responsible institutions in the field of unjustified assets include: (i) Law No.05/L-096 on the Prevention of Money Laundering and Combating the Financing of Terrorism (hereinafter: the Law on the Prevention of Money Laundering and Combating the Financing of Terrorism); (ii) Law No.08/L-257 on the Administration of Tax Procedures (hereinafter: the Law on the Administration of Tax Procedures); (iii) Law No. 08/L-017 on the Agency

for the Prevention of Corruption (hereinafter: the Law on APC); and (iv) Law No. 08/L-108 on the Declaration, Origin, and Control of the Property of Senior Public Officials and the Declaration, Origin, and Control of Gifts for all Public Officials (hereinafter: the Law on the Declaration of Property).

201. The Court further recalls that in 2010, the Assembly adopted Law No. 03/L-159 on the Anti-Corruption Agency (hereinafter: the Law on ACA), through which, among others, in Article 5 (Competencies of the Agency), it defined the investigative competencies of the ACA, granting it the competence to "*initiate and undertake the detection and preliminary investigation procedure of corruption, and forward criminal charges if ,for the suspected cases of corruption in competent public prosecutors office, if for the same case the criminal procedure has not been undertaken; […]*". On the other hand, in 2022, the Assembly adopted the Law on APC, changing some of the Agency's competencies, including changing its name from "*Anti-Corruption Agency*" to "*Agency for the Prevention of Corruption",* and renaming "*preliminary investigations*" to "*administrative investigations*". This law sets out the status and competencies of the Agency concerning the imposition of measures and sanctions aimed at preventing corruption, strengthening institutional integrity and transparency, and monitoring the implementation of the state strategy for combating corruption. The provisions of this law apply to public and private persons in preventing corruption, conflict of interest, protecting whistleblowers, as well as regarding the origin and control of assets and gifts.

202. Moreover, Article 5 (Responsibilities of the Agency) of the Law on APC defines that it is responsible for implementing the Law on the Prevention of Conflict of Interest in the Exercise of Public Function, the Law on the Declaration, Origin, and Control of Assets and Gifts, and the Law on the Protection of Whistleblowers, which, among others, include: (i) overseeing and preventing conflict of interest cases and taking measures provided by the specific law; (ii) overseeing the declaration of assets as provided by law; (iii) overseeing the acceptance of gifts related to the performance of official duties and taking measures provided by law; (iv) giving opinions regarding conflict of interest and overseeing gifts related to the performance of official duties; and (v) overseeing and taking necessary measures for the protection of whistleblowers.

203. Regarding the investigative competence of this institution, the Law on APC, in sub-paragraph 3 of paragraph 1 of Article 5 (Responsibilities of the Agency), specifies, among others, that: "*1. The Agency is responsible for: 1.3. Conducting administrative investigation and undertaking actions on cases which fall within the competencies of the Agency; […]*". In this context, the Law on APC, unlike the previous one, provides more detailed provisions for administrative investigations, where in Chapter IV [The Administrative Investigation Procedure], it determines: (i) the initiation of this procedure; (ii) cases of investigations referred to other bodies; (iii) reporting of cases; (iv) the obligation to send information and documents to the APC; (v) seeking information from individuals; (vi) the conclusion of the administrative investigation; and (vii) the measures and sanctions that the APC, according to Article 23 (Measures and Sanctions) of the applicable law, has the competence to impose against natural and legal persons as well as institutions in accordance with the relevant legislation, such as: (a) fines; (b) non-public reprimand; (c) public reprimand; and (d) publication of opinions. In this context, the Court also refers to paragraph 3 of Article 22 (Conclusion of the administrative investigation) of the Law on APC, which states that: "*3. Upon conclusion of the administrative investigation, the Agency shall issue a decision on closure of the case and shall impose measures or sanctions within the scope of the Agency".*

204. Regarding the legal consequences of the administrative investigation procedure, the Court notes that the legal provisions remain essentially the same concerning (i) referring cases to the prosecutor in case of suspicion that the persons who were subjects of the administrative investigation have committed a criminal offense; and (ii) referring cases to the administrative body in case of suspicion that the persons who were subjects of the administrative investigation have committed a disciplinary offense or improper conduct; while through the new legal provision, it is foreseen that (iii) if during the administrative investigation it is suspected of a misdemeanor, then the APC initiates and conducts the misdemeanor procedure itself or refers it to the competent court in accordance with the applicable legislation.

(ii) Applicable Legislation Related to the Procedure for the Confiscation of Unjustified Assets

205. The Court further recalls that the relevant provisions related to the confiscation of unjustified assets are specified in: (i) Criminal Code No. 06/L-074 of the Republic of Kosovo (hereinafter: the Criminal Code); (ii) Code No. 08/L-032 of Criminal Procedure (hereinafter: the Criminal Procedure Code); (iii) Law No. 06/L-087 on Extended Powers for Confiscation of Assets; and (iv) Law No. 03/L-141 on Managing Sequestrated or Confiscated Assets.

206. In the context of the aforementioned laws, the Court firstly notes that the Criminal Code, through Article 92 (Confiscation of means and material benefits of criminal offences), regulates the confiscation of instruments and proceeds obtained through criminal offenses in Chapter VII (Confiscation of Instrumentality and Material Benefits of Criminal Offenses). More specifically, according to this provision, it is determined that instruments and proceeds obtained through criminal offenses are confiscated, and if this is not possible, an equivalent amount is paid or any other property of the accused of equal value is confiscated. Furthermore, the Criminal Procedure Code, in Chapter XVIII (Restraint of Property Subject to Confiscation), regulates the procedures for confiscation of property. More specifically, based on Article 269 (Confiscation) of the Criminal Procedure Code: (i) after the conviction of the accused for a criminal offense, the court confiscates all specified assets determined in the indictment or notice according to paragraph 5 of Article 278 (Confiscation Investigation) of the Code; (ii) if any specified asset, entirely or partially, is not available for confiscation for any reason, the court determines the monetary value of such specified asset and acts in accordance with the provisions of Article 273 (Value Substitution of Property) of the Code; and (iii) the monetary value of the specified asset is the highest value determined either at the time of conviction or when it was first acquired by the accused or third party. According to Article 270 (Confiscation of the Instrument) of the Criminal Procedure Code: (i) before the court can order the confiscation of property that was an instrument of the criminal offense, the state prosecutor proves in the main trial that the property was an instrument of the criminal offense for which the accused is convicted; and (ii) if the property that is an instrument of the criminal offense belongs to a third party, the property is confiscated if: (a) the property was a tainted gift; or (b) the third party knew or could reasonably suspect that the property is used as an instrument.

207. On the other hand, the Law on Extended Powers for Confiscation of Assets, in Article 1 (Purpose), specifies that this "*This Law specifies extended powers for confiscation of assets acquired by the persons who have committed a criminal offence, when the procedures foreseen in the Criminal Procedure Code are not sufficient*". This law, which

also implements Directive 2014/42/EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union of 3 April 2014, was adopted and entered into force before the entry into force of the new Criminal Procedure Code. The latter, unlike the previous Criminal Procedure Code, also implements the aforementioned EU Directive and includes provisions that are also defined by the Law on Extended Powers for Confiscation of Assets.

208. The Law on Extended Powers for Confiscation of Assets regulates quasi-criminal confiscation of assets. More specifically, according to Article 2 (Scope) of this law: (i) "*extended confiscation as provided by this Law is applicable for the assets acquired by persons who have committed a criminal offence as prescribed by the Criminal Code of the Republic of Kosovo. and other laws […]*"; and (ii) includes the confiscation of material benefits or instruments for committing a criminal offense, as defined in Chapter IV (Provisions Related to Confiscation of Material Benefits or Instruments for Committing a Criminal Offense) of this law. Pursuant to Article 4 (Application for Property Verification of the Convicted Defendant) of this Law: "*the State Prosecutor may, in a separate application to the court that passed that judgment, request a verification of property within five (5) years after the judgment becomes final, as defined in the Criminal Code of the Republic of Kosovo*". According to the latter, as a precondition for initiating asset confiscation, there is a final convicting judgment, while the request for verification of the convicted person's assets, according to Article 3 (Definitions) of the aforementioned Law, includes any type of property: (i) that the accused acquired within ten (10) years prior to the initiation of the investigative phase for a criminal offense; or that (ii) is owned or possessed by a third party for the benefit or advantage of the accused; or that (iii) the accused transferred to a third party who was not a *bona fide* purchaser, or subsequently transferred to other third parties who were not *bona fide* purchasers, within ten (10) years prior to the initiation of the investigative phase for a criminal offense according to the provisions of the law. Furthermore, the State Prosecutor, with a separate request to the court that issued the judgment, may request the verification of assets within a five (5) year period after the judgment becomes final, as specified in the Criminal Code.

209. The burden of proof then falls on the accused, who must prove the legitimate origin of the assets, and also on third parties regarding their claims. The court may issue a confiscation order if the accused fails to prove that the assets were acquired by him/her from legitimate sources he/she had at the time of acquiring the property and/or if the third party, presented as a purchaser, is not *bona fide*. The scope of this law also includes the confiscation of material benefits or instruments for committing a criminal offense in cases where the criminal procedure cannot continue due to the death of the accused, absence, disorder or mental incapacity, but the court based on Article 20 (Conditions for Property Subject to Confiscation in Cases of Death, Absence, Disorder or Mental Incapacity of the Accused) of this Law must continue the criminal procedure with the aim of confiscation in cases where the value of the property that is subject to extended confiscation exceeds the value of 10,000 (ten thousand) euros and when it is in the interest of justice to continue the procedures, appointing a lawyer to represent the interests of the party.

210. In the context of the above explanations, the Court notes that unlike: (i) the provisions related to the Criminal Code, the Criminal Procedure Code, and the Law on Extended Powers for Confiscation of Assets which, in principle, tie the confiscation of illegal assets to the confirmation of a criminal offense through a final judgment; and (ii) the provisions related to the competencies of the APC, including the possibility of the latter to refer cases to the prosecutor in case of suspicion that the persons who were subjects of the

administrative investigation have committed a criminal offense, (iii) the contested Law allows the confiscation of unjustified assets following the decision of the competent court, but without a judicial decision confirming the commission of a criminal offense, based on the standard of "*balance of probabilities*" and not the "*well-founded suspicion*" applicable in criminal procedure, respectively the " *standard of proof when the court, based on the evidence, believes that something is more likely to be, or to have happened than not*", according to the provisions of the contested Law.

211. That said, the Court recalls that considering the large number of applicable laws and/or institutions with competence to investigate and/or confiscate illegal/unjustified assets, in its first Opinion for Kosovo, the Venice Commission raised the question of the need to establish the Bureau as a new body. Specifically, according to the Venice Commission: (i)*"[…] it is questionable whether the creation of a new body – the Bureau – as envisaged in the draft law, would indeed make the fight against corruption more effective – or whether it would complicate the entire system which already includes a number of bodies such as the police, prosecution, tax and customs authorities and the Anti-Corruption Agency".; and (ii) "[…] it is clear that the new verification and confiscation system needs to be combined in some way with the already existing asset declaration system of senior public officials which is in the hands of the Anti Corruption Agency. it would be most logical to entrust these closely related tools to one single body.17 There can be no justification for subjecting officials to two different procedures of verification of the same assets, 18 especially in a state the size of Kosovo. As the draft law stands it makes no reference to the Anti-Corruption Agency even though the Agency will be in possession of information vital to the Bureau's work. Either the Bureau will have to duplicate work already done by the Agency or it will have to use the fruits of work for which it had no responsibility and over which it had no control. This will create room which it has had no responsibility and over which it has had no control. This will create a potential for confusion, unnecessary legal complexity and undoubtedly successful legal challenges. If both bodies are to exist, the functions of the two bodies will have to be dovetailed to avoid duplication and the precise relationship of the two bodies clearly defined*". (see, paragraph 21 of the first Opinion of the Venice Commission for Kosovo).

212. However, beyond the above clarifications, the essence of the challenge to the constitutionality of the contested Law before the Court relates to three (3) fundamental aspects of it, namely: (i) the legal status of the Bureau in the constitutional order of the Republic of Kosovo, with emphasis on its interaction with the Assembly as an Independent Agency according to the provisions of Article 142 [Independent Agencies] of the Constitution; (ii) the separation and interaction of powers in the Republic of Kosovo, considering the composition of the Oversight Committee of the Bureau and the representation of constitutional independent institutions defined in Chapter XII [Independent Institutions] of the Constitution; and (iii) the infringement of fundamental rights and freedoms, including in the context of equality before the law, fair and impartial trial, the right to privacy, and the right to peaceful enjoyment of property.

213. More specifically, the Court recalls that the applicants challenge the constitutionality of the contested Law in its entirety, but with emphasis on Articles 2 (Scope), 10 (Oversight Committee Composition and Compensation), 15 (Procedure for the selection of the Director General), 18 (Initiation of the procedure), 19 (Collection of information for the purpose of verification), 20 (Obligation to cooperate), 22 (Asset verification period), 34 (Hearing in the first instance), and 69 (Bureau functionalization) of the contested Law. That said, considering the claims of the applicants and the arguments presented before the

Court by the applicants and the responses of the interested parties, as well as the interrelation of the respective articles with each other, the Court, in the circumstances of this case, will assess the constitutionality of: (i) Article 2 (Scope) in conjunction with Article 22 (Asset verification period) and Article 34 (Hearing in the first instance) of the contested Law; (ii) Articles 18 (Initiation of the procedure), 19 (Collection of information for the purpose of verification), 20 (Obligation to cooperate), and 23 (Procedure before the Bureau) of the contested Law; (iii) Articles 10 (Oversight Committee Composition and Compensation), 15 (Procedure for the selection of the Director General), and 69 (Bureau functionalization) of the contested Law.

214. The Court will assess the aforementioned articles of the contested Law separately, by: (i) first summarizing the main claims of the applicants, the arguments, and counter-arguments of the parties before the Court; and (ii) applying the general principles outlined above, respectively the case law of the Court, the ECtHR, and the relevant principles deriving from the Reports and Opinions of the Venice Commission.

1. Assessment of the constitutionality of Article 2 (Scope) in conjunction with Article 22 (Asset verification period) and Article 34 (Hearing in the first instance) of the contested Law

A. Essence of the allegations/arguments and counter-arguments of the parties

215. As elaborated in the part of this Judgment related to the allegations of the applicants, they essentially claim that Articles 2 (Scope) and 22 (Asset Verification Period) of the contested Law are in contradiction with Articles 3 [Equality Before the Law], 7 [Values], and 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 1 (General prohibition of discrimination) of Protocol No. 12 of the ECHR. More specifically, the applicants, among others, claim: (i) the violation of the principle of equality before the law between public officials and third parties in relation to other citizens of the Republic of Kosovo, because only the former category is subject to the asset verification process through the Bureau, including the violation of this principle concerning officials who held functions before and after 17 February 2008; (ii) the retroactive application of the contested Law, contrary to the principle of legal certainty, namely from 17 February 2008, specifying that, besides the prohibition of retroactivity in criminal legislation, in the field of civil and administrative law, the retroactive effect of the law negatively affects the rights and legal interests of the subjects in the procedure; and (iii) that between the time periods specified in Articles 2 and 22 of the contested Law, regarding the periods during which the respective subjects may be subject to asset verification, there is a contradiction with the consequence of violating the principle of legal certainty. The applicants also claim that the standard of proof based on the "*balance of probabilities*" is not sufficient to justify the initiation and conduct of the asset verification and confiscation procedure, stressing that the procedure does not contain sufficient procedural guarantees, including those related to the principle of equality of arms.

216. The Ministry of Justice, on the other hand, counter-argues these claims, emphasizing, in essence, that: (i) the contested Law applies to public officials and third parties because public officials, based on the responsibilities they carry, unlike other citizens, have had the opportunity to exert their influence to unjustifiably benefit from the state's public budget; and (ii) retroactivity in the civil and administrative field is possible if it is in the public interest and in accordance with the principle of proportionality, while explaining that the

date of 17 February 2008, is also related to the legal circulation of property through bank transactions, which for the purposes of this law, constitutes decisive evidence regarding asset verification; and (iii) the distinction in the time periods specified in Articles 2 and 22 of the contested Law, respectively, is related to the difference in the nature of asset verification, namely acquired during and after the exercise of public office. In the context of the standard of proof, the Ministry of Justice, among others, emphasizes that the standard has also been confirmed by the Venice Commission in its Opinions as a standard of proof in civil proceedings, where it assessed the regulation of the issue of the burden of proof in a satisfactory manner.

B. Assessment of the Court

217. The Court initially recalls that Article 2 of the contested Law determines its scope, stating that (i) the law applies to assets acquired unjustifiably, either directly or indirectly by public officials and third parties; and (ii) to unjustified assets acquired during the exercise of functions by the respective subjects, starting from 17 February 2008, and within ten (10) years from the moment the respective subjects cease to exercise their function. On the other hand, Article 22 of the contested Law also clarifies the period for asset verification, stipulating that (i) asset verification is conducted for assets acquired during the period of exercising public functions by the public official; while (ii) exceptionally, even for the period after the public official no longer exercises public functions, if the Bureau evaluates or concludes that the public official's assets acquired after the period of exercising public functions are significantly higher than the lawful income or assets acquired during the period of exercising public functions by the public official, and that the period subject to asset verification in this context cannot exceed five (5) years after the termination of the public official's function. Additionally, the Court recalls that Article 34 (Hearing in the first instance) of the contested Law stipulates that (i) the Bureau presents evidence before the court regarding the fulfillment of the civil standard of balance of probabilities, that the assets under review are unjustifiable; and (ii) after the proposal is presented in court, the party in the proceeding at the hearing must prove that the assets under the proposal have a justifiable origin. The Court also emphasizes that the aforementioned articles should be interpreted in the context of Article 3 (Definitions) of the contested Law regarding definitions, which among others, clarify the definition of (i) third parties, including persons to whom the public official's assets have been transferred or who have or may have an interest in such assets; (ii) unjustified assets, specifically the portion of the person's assets in the procedure, which is not in accordance with lawful income and whose origin is not proven as lawful; and (iii) balance of probabilities, namely, the standard of proof when the court, based on evidence, believes that something is more likely to be or have occurred than not.

218. The Court recalls that the claims of the applicants in the context of the aforementioned articles, in principle, relate to (i) the principle of equality before the law, specifically the unequal treatment between public officials and third parties in relation to other citizens of the Republic regarding the verification of unjustified assets, as well as public officials who held functions before and after February 17, 2008; (ii) the violation of the principle of legal certainty as a result of the retroactive application of the law, including in the context of the burden of proof; and (iii) the violation of the principle of legal certainty as a result of the collision between the relevant provisions, claims which the Court will subject to its assessment in the following.

(i) unequal treatment between public officials and third parties in relation to other citizens of the republic regarding the verification of unjustified assets, including before and after 17 February 2008

219. In the aforementioned context, the Court, as it has determined through its case-law, initially recalls that Article 24 [Equality Before the Law] of the Constitution stipulates that everyone is equal before the law and that everyone enjoys the right to equal legal protection. The protection against discrimination defined in Article 14 (Prohibition of discrimination) and Article 1 (General prohibition of discrimination) of Protocol No. 12 of the ECHR prohibits discrimination not only against the rights defined by the ECHR but also against the rights defined through applicable laws. Furthermore, and within the meaning of Article 24 of the Constitution, the Court also notes that the scope of this article is broad and extends to guaranteeing the prohibition of discrimination not only concerning rights guaranteed by the Constitution but also those by law. Consequently, the assessment of claims for the violation of this article must go beyond the guarantees of Article 14 of the ECHR and include the guarantees defined through Article 1 of Protocol No. 12 of the ECHR (see, in relation to this, the case of the Court, KO93/21, applicants: *Blerta Deliu-Kodra and twelve (12) other deputies of the Assembly of the Republic of Kosovo*, Judgment of December 23, 2021, paragraphs 283-293; and the case of the Court KO79/23, with the applicant the *Ombudsperson*, Judgment, of December 26, 2023, paragraphs 353-354).

220. The Court further recalls that the principles regarding equality before the law and non-discrimination have been elaborated, among others, in three (3) cases of the Court, namely, (i) the Judgment KO93/21, regarding the constitutional review of the Recommendations of the Assembly of the Republic of Kosovo, no. 08-R-01, of May 6, 2021 (see, paragraphs 283-364 regarding general principles); (ii) the Judgment KO190/19 regarding the constitutional review of Article 8, paragraph 2, of Law No. 04/L-131 on State-Funded Pension Schemes regarding Articles 5 and 6 of the Administrative Instruction (MPMS) No. 09/2015 on categorization of beneficiaries of the contribute paying pensions according to the qualification structure and duration of payment of contributions-pension (see, paragraphs 180-230 regarding general principles); and (iii) the Judgment KO79/23 regarding the constitutional review of Law No. 08/L-196 on Salaries in the Public Sector (see, paragraphs 200-256 regarding general principles).

221. Based on the principles elaborated in the aforementioned Judgments, it has been clarified that Article 24 [Equality Before the Law] of the Constitution does not have an autonomous character and that the violation of its guarantees must be related to a right guaranteed by the Constitution and/or applicable laws. In the context of the claims of the applicants for the violation of equality before the law regarding the subjects subjected to asset verification, the rights guaranteed by Article 46 [Protection of Property] of the Constitution in connection with Article 1 (Protection of property) of Protocol No. 1 of the ECHR are applicable.

222. Regarding the rights guaranteed and protected by the aforementioned articles, the Court recalls that the ECtHR has found that the right to property consists of three (3) distinct rules. The first rule, specified in the first sentence of the first paragraph and which has a general nature, formulates the principle of peaceful enjoyment of property; the second rule, in the second sentence of the same paragraph, includes deprivation of property and subjects it to certain conditions; the third rule, included in the second paragraph of this article, recognizes the states, among others, the right to control the use of property in accordance with the general interest, by implementing those laws they consider necessary

for this purpose (see, among others, the case of the ECtHR, *Sporrong and Lonnrot v. Sweden*, no. 7151/75, 7152/75, Judgment of September 23, 1982, paragraph 61; the case of the Court, KI86/18, applicant *Slavica Đordević*, Judgment of February 3, 2021, paragraph 140; and KI185/21, applicant *LLC "Co Cocolina*", Judgment of 13 March 2023, paragraph 186).

223. Furthermore, in the context of asset confiscation, the Court refers to the jurisprudence of the ECtHR regarding the confiscation of property within the compliance of it with the right to property guaranteed by Article 1 of Protocol No. 1 of the ECHR. Based on this jurisprudence, the confiscation of property is generally considered a control of the use of property according to the second paragraph of Article 1 of Protocol No. 1 of the ECHR, despite the clear fact that it constitutes an interference with the right to property (see, ECtHR cases *Agosi v. the United Kingdom*, no. 91180/80, Judgment, October 24, 1986, paragraph 51; *Raimondo v. Italy*, no. 12954/87, Judgment, February 22, 1994, paragraph 29; *Riela and others v. Italy*, no. 52439/99, Decision, September 4, 2001; and *Imeri v. Croatia*,no. 77668/14, Judgment, June 24, 2021, paragraph 66). However, when the confiscation of a crime instrument involves the property of third parties and constitutes a permanent measure, the Court notes that the ECtHR has analyzed these measures in the context of "*interference*" with the peaceful enjoyment of property (see, among others, ECtHR cases Andonoski v. the former Yugoslav Republic of Macedonia, no. 16225/08, Judgment, September 17, 2015, paragraph 36 regarding the permanent confiscation of a car used by a third party for smuggling immigrants; B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia, no. 42079/12, Judgment, January 17, 2017, paragraph 48 regarding the permanent confiscation of a company's truck used by a third party for drug trafficking; and Yasar v. Romania, no. 64863/13, Judgment, November 26, 2019, paragraph 49, regarding the permanent confiscation of the applicant's boat used by a third party for illegal fishing).

224. That said, and as elaborated over the years through the aforementioned jurisprudence, the rights guaranteed by Article 46 of the Constitution in connection with Article 1 of Protocol No. 1 of the ECHR are not absolute and, based on Article 55 [Limitation of Fundamental Rights and Freedoms] of the Constitution and the jurisprudence of the ECtHR, may be subject to respective limitations, provided that they (i) are "*prescribed by law*"; (ii) pursue a "*legitimate aim*"; and (iii) are "*proportionate"* to the aim pursued. On the other hand, for an issue of unequal treatment to arise under the provisions of Article 24 of the Constitution, it must first be determined whether there has been a "*difference in treatment*" between persons or groups of persons who are in "*analogous or relatively similar situations*" (see, among others, the Court's cases KO93/21with applicants *Blerta Deliu-Kodra and 12 other deputies of the Assembly of the Republic of Kosovo*, Assessment of the constitutionality of the Recommendations of the Assembly of the Republic of Kosovo, No.08-R-01, of May 6, 2021, Judgment, of 28 December 2022, paragraphs 301-311; and KO01/17, with applicant *Aida Dërguti and 23 other deputies of the Assembly*, Assessment of the constitutionality of the Law on Amending and Supplementing Law No. 04/L-261 on War Veterans of the Kosovo Liberation Army, Judgment, of March 28, 2017, paragraph 74).

225. In the circumstances of the contested provisions of the contested Law and the claims of the applicants, it is contested whether there is a "*difference in treatment*" between (a) public officials and third parties, who are subject to verification and potentially confiscation of unjustified assets, and other citizens of the Republic, who are not subject to such verification; and (b) public officials and third parties before and after February 17, 2008,

only with the latter category required to undergo asset verification by the Bureau. The difference in treatment between the aforementioned categories will be addressed by the Court in the following.

(a) (in)equality between public officials and third parties and other citizens of the Republic

226. In the context of the first category, namely (i) public officials and third parties, i.e., persons to whom the public official's assets have been transferred or who have or may have an interest in such assets, who are subject to verification and potentially confiscation of unjustified assets; and (ii) other citizens of the Republic, who are not subject to such verification, the Court emphasizes that in relation to unjustified assets and the right to property according to the provisions of Article 46 [Protection of Property] of the Constitution in connection with Article 1 of Protocol No. 1 of the ECHR, the category of public officials stands in a "*similar and/or analogous*" position to all other categories, considering that, in principle, even citizens who have not exercised official functions, may have unjustified assets, as the purpose of the law is to confiscate the same. Given that only one category is subject to Bureau control, the Court assesses that there is a "*difference in treatment*" between these two categories and consequently, according to the above explanations, it must further assess whether the "*difference in treatment*" is (i) "*prescribed by law*"; (ii) pursues a "*legitimate aim";* and (iii) is "*proportionate*" to the aim pursued.

227. In the context of the first criterion, the Court emphasizes that it is not contested that the "*difference in treatment*" is "*prescribed by law*", namely Articles 2 and 22 and paragraphs 1.14 and 1.15 of Article 3 (Definitions) of the contested Law, which exclude from the scope persons who are not public officials or do not meet the conditions to be treated as third parties for the purpose of the contested Law.

228. In the context of the second criterion, namely "*legitimate aim*", the Court recalls that the Ministry of Justice argues that the contested Law applies to public officials and third parties because (i) public officials, based on the responsibilities they carry, unlike other citizens of the Republic, have had the opportunity to exert their influence to unjustifiably benefit from the state's public budget; and (ii) the contested Law aims to protect citizens by reclaiming the assets misappropriated from the state budget and returning them back to the benefit of the citizens. The Court assesses that this aim is legitimate, as public officials have had the opportunity to exert their influence to unjustifiably benefit from the state budget, i.e., the taxpayers of the Republic of Kosovo, hence, the return of the assets misappropriated from the state budget may constitute a "*legitimate aim*" that aligns with the public interest.

229. Finally, regarding the third criterion, the Court also assesses that this "*difference in treatment*" is "*proportionate*" to the aim pursued, among others, because (i) the exclusion of all other citizens is made in a way that the contested Law is as minimally restrictive as possible concerning the rights of citizens who have not managed or benefited from the state budget, thus having less likelihood of possessing unjustified assets that could result from the misuse of the state budget; and (ii) this aim, namely combating corruption through mechanisms of verification and/or confiscation of unjustified assets, which may be linked to the state budget of the Republic of Kosovo, could not be achieved with sufficient effectiveness through other measures, given that the Penal Code and the Law on

Extended Powers for Confiscation of Assets require prior conviction for criminal offenses according to the provisions of the aforementioned laws with a final judicial decision.

230. In the aforementioned context, the Court recalls that the Venice Commission has emphasized that the creation of a system of civil confiscation without a final criminal conviction, among others, aims (i) to be an effective tool for combating organized crime and corruption; (ii) can serve as a tool for the recovery of illicit proceeds (see, the first Opinion of the Venice Commission for Kosovo, paragraph 15); and (iii) constitutes a public interest, which can justify the application of the presumption of unlawful origin of certain assets (see, the Joint Amicus Curiae Brief of the Venice Commission with the OSCE Office for Democratic Institutions and Human Rights regarding the offense of illicit enrichment in the case of Moldova [CDL-AD(2022)029], paragraph 60).

(b)(in)equality between public officials and third parties before and after 17 February 2008

231. In the context of the second category, namely public officials who have exercised public functions before and after February 17, 2008, and third parties related to them, only the latter category is required to undergo asset verification by the Bureau. The Court emphasizes that in relation to unjustified assets and the peaceful enjoyment of property according to the provisions of Article 46 of the Constitution in connection with Article 1 of Protocol No. 1 of the ECHR, the category of public officials who have exercised functions before and after February 17, 2008, stand in an "*analogous or relatively similar situation*", considering that, in principle, all may have unjustified assets resulting from the exercise of public functions. Given that only one category is subject to Bureau control, the Court assesses that there is a "*difference in treatment*" between these two categories and consequently, according to the above explanations, it must further assess whether the "*difference in treatment*" is (i) "*prescribed by law*"; (ii) pursues a "*legitimate aim*"; and (iii) is "*proportionate*" to the aim pursued.

232. In the context of the first criterion, the Court emphasizes that it is uncontested that the "*difference in treatment*" is "*prescribed by law*", specifically by Article 2 (Scope) and Article 22 (Asset verification period) of the contested Law, which exclude from the scope public officials and third parties associated with them who exercised public functions before 17 February 2008.

233. In the context of the second criterion, namely "*legitimate aim*" the Court recalls that the Ministry of Justice asserts that besides the symbolic association with the formalization of the statehood of the Republic of Kosovo, the date of 17 February 2008, is also tied to the fact that from this time, "*the requirement that all legal transactions of property be conducted through bank transactions was materialized, which for the purpose of this law is considered as decisive evidence for asset verification purposes*". The Court finds this aim legitimate for the relevant difference in treatment, as the formalization of the legal circulation of property through bank transactions, in principle, serves as decisive evidence for asset verification purposes.

234. Finally, regarding the third criterion, the Court assesses that the "*difference in treatment*" between public officials who acquired assets before February 17, 2008, and those after February 17, 2008, is also proportionate, among others, because (i) it is less restrictive concerning the right to property; and (ii) the obligation to justify assets for public officials who acquired assets "*before the obligation for bank transactions was formalized*" would

be a disproportionate burden for public officials who may have acquired assets before February 17, 2008; furthermore, (iii) a period extending so far retroactively, as will be elaborated further, including based on the relevant Opinions of the Venice Commission, cannot be proportionate to the aim pursued. However, the Court clarifies that this assessment is made only in the context of equality before the law and the exclusion of those public officials who may have acquired unjustified assets before 17 February 2008, and not in the context of assessing the application of the principle of retroactivity in the context of the confiscation of unjustified assets, which also raises issues of the right to property guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR, which will be evaluated separately in the continuation of this Judgment.

Conclusion

235. Consequently, and based on the above explanations, the Court finds that the limitation of the scope of the contested Law (i) only to public officials and third parties, as opposed to other citizens of the Republic who are not subject to such verification; and (ii) only to public officials and third parties, respectively, the assets acquired after 17 February 2008, despite the fact that it constitutes a "*difference in treatment"* is "*prescribed by law*", pursues a "*legitimate aim*" and is "*proportionate*" to the aim pursued, and consequently is not in contradiction with paragraph 1 of Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 1 (General Prohibition of discrimination) of Protocol No. 12 of the ECHR.

(ii) Violation of the principle of legal certainty as a result of the retroactive application of the contested Law and the burden of proof, specified in point 2.1 of paragraph 2 of Article 2 and Article 34 of the contested Law

236. The Court initially emphasizes that, considering the interconnection of the claims of the applicants and the arguments and counter-arguments of the parties before the Court, the latter will also analyze the retroactive application of the contested Law starting from February 17, 2008, in the context of the burden of proof of the individual and the concept of "*reasonable and/or objective possibilities*" that the individual has the possibility to justify the legitimacy of the respective assets retroactively over a period of more than fifteen (15) years. For this purpose, the Court will first (a) analyze the aspects related to the retroactive application of the law; (b) the burden of proof according to the provisions of the contested Law; and finally (c) analyze the proportionality of the retroactive application of the law in the context of the burden of proof.

(a) retroactive applicability of the law, specified in point 2.1 of paragraph 2 of Article 2 of the contested Law

237. The Court in its case-law has emphasized that among the fundamental values embodied in the Constitution, on which the constitutional order of the Republic of Kosovo is based, among others, is also the "*rule of law*" (see, Articles 3 and 7 of the Constitution as well as the Court's Judgment in case KO219/19, cited above, paragraph 209). The Rule of Law Checklist, adopted by the Venice Commission in 2016, also specifies various aspects of the Rule of Law such as: (a) legality; (b) legal certainty; (c) prevention of abuse of power; (d) equality before the law and non-discrimination; and (e) access to justice (see, the Rule of Law Checklist of the Venice Commission, CDL-AD (2016)007-e, 18 March 2016, paragraph 6). Furthermore, this document also defines the elements of each of the aforementioned categories, where related to the principle of legal certainty, it provides that the same

consists of (i) accessibility of legislation and judicial decisions; (ii) predictability of laws; (iii) stability and consistency of laws; (iv) legitimate expectations; (v) prohibition of retroactivity; (vi) *the principle of nullum crimen nulla poena sine lege*; and (vii) the principle of *res judicata*.

238. More specifically, in the context of the retroactive effect of laws, the Court recalls that the Rule of Law Checklist of the Venice Commission, among others, explains that: "*62. People must be informed in advance of the consequences of their behaviour. This implies foreseeability (above II.B.3) and non-retroactivity especially of criminal legislation. In civil and administrative law, retroactivity may negatively affect rights and legal interests. 47 However, outside the criminal field, a retroactive limitation of the rights of individuals or imposition of new duties may be permissible, but only if in the public interest and in conformity with the principle of proportionality (including temporally). The legislator should not interfere with the application of existing legislation by courts*".

239. The Court also notes that issues related to the retroactive application of the law in civil and/or administrative matters have been specifically addressed by the Venice Commission in the *Amicus Curiae* response for the Constitutional Court of Armenia, specifically related to the Law on the Confiscation of Property of Illicit Origin. Moreover, the Court recalls that in the Armenian context, the Armenian Constitution in Article 73 also contains a specific prohibition on retroactive laws that worsen the legal situation of a person. The Venice Commission (i) characterized this constitutional rule as: *"[…] stricter than comparable rules in other legal systems"*; and (ii) among others, recommended that *"[…] distinguish between different types of retroactivity: laws that interfere with past events and laws that interfere with continuous situations that started in the past but are still ongoing. While in the first scenario the prohibition of retroactivity is more rigorous, in the second scenario a more flexible approach should be possible as long as the interference is not excessive"*. (see, *Amicus Curiae* of the Venice Commission for the Constitutional Court of Armenia on certain issues related to the Law on the Confiscation of Property of Illicit Origin, CDL-AD(2022)048, Opinion No. 1108/2022, adopted by the Venice Commission, 16-17 December 2022, paragraph 45).

240. Furthermore, the Venice Commission, in its response for the Constitutional Court of Armenia, also addressed two relevant issues, namely (i) the retroactive application of the law in the context of unjustifiable and/or illicit assets; and (ii) the burden of proof in this context. Regarding the first issue, the Venice Commission, among others, emphasized that "*concerning the confiscations, it is generally accepted that the fight against corruption makes it necessary to act not only pro futuro, but also with a view to illicit acquisition of property in the past. The Law at issue does not interfere exclusively with the past events, but with the on-going facts: the ownership of the illicit property has started in the past, but it still continues. The expectation to be able to keep illegally acquired assets does not weigh heavily in comparison to the interest of the public to "correct" unjust enrichment. Against this background retroactive application of the Law to property acquired in the past can be considered proportionate and compatible with the Armenian Constitution which affords protection of property only when it has been acquired lawfully (Article 60, para. 1 of the Constitution). It is arguable that there cannot be a genuine legitimate expectation that an unlawful possession would obtain constitutional protection. The Law at issue clarifies the procedure for implementing this constitutional principle"*. While, regarding the second issue, namely the burden of proof, among others, the Venice Commission emphasized that *(i) "this tool should be applied within reasonable limits and be accompanied by effective procedural guarantees. As long as the owner of the property*

has a real chance to refute the presumption, and may forward the "inaccessible evidence" or bona fide ownership defence, the solution appears proportionate".; and (ii) "[...] retroactive effects of the Law are not incompatible with international standards, provided that the defendants' duty to give explanations about the origins of the property remains reasonable, and the defence's arguments in this regard are thoroughly addressed by the courts" (see, Amicus Curiae of the Venice Commission for the Constitutional Court of Armenia, cited above, paragraphs 48, 50, and 61).

241. In the case of Montenegro, the Venice Commission emphasized in terms of retroactivity that: "*may be an acceptable option, provided that the courts take into account the real possibilities of the person in question to prove the origin of the assets after a long period, as well as the stability of the economic order. However, for the sake of clarity and legal certainty, more specific time limits are required, which would ease the burden of proof on the person in question regarding the lawfulness of the acquisition and prevent disproportionate interference with someone's property rights*". (see, paragraph 34 of the Urgent Opinion for Montenegro).

242. Furthermore, the Court also recalls that the issue of retroactive application of the law in the context of the verification of unjustifiable/illicit assets has also been addressed through the jurisprudence of the ECtHR and other Constitutional Courts.

243. More specifically, regarding the jurisprudence of the ECtHR concerning the permissibility of the principle of retroactivity, the Court notes that it has been evaluated by the ECtHR within the proportionality test for the right to property guaranteed by Article 1 of Protocol No. 1 of the ECHR, specifically its first criterion, "*prescription by law*" or "*lawfulness of the interference*". More specifically, in the case of *Gogitidze and Others v. Georgia*, mentioned above, concerning the applicants' argument that it was arbitrary to retroactively expand the object of the confiscation mechanism to property they had acquired before the entry into force of the amendment of 13 February 2004, the ECtHR, among others, found that (i) the law applied in the case was not the first legislation in the country requiring public officials to be held accountable for the unjustifiable origin of their property and that since 1997, the Law on Conflict of Interest and Corruption in Public Service had already addressed such issues as corruption offenses and the obligation of public officials to declare and justify the origin of their property and that of their close circle, thereby making them subject to possible criminal, administrative, or disciplinary liability, the exact nature of which would be regulated by specific laws governing violations of these anti-corruption requirements; and (ii) being thus, it is clear that the contested amendment of 13 February 2004, simply reorganized the monetary aspects of existing legal standards against corruption. Consequently, as explained above, the ECtHR found that the requirement of "*lawfulness*" included in Article 1 of Protocol No. 1 of the ECHR, that the confiscation of the applicants' property in the case was carried out in compliance with Article 1 of Protocol No. 1 of the ECHR (see, ECtHR case, *Gogitidze and Others v. Georgia*, no. 36862/05, Judgment of 12 May 2015, paragraphs 98-100).

244. A similar issue was addressed by the Constitutional Court of the Republic of Slovenia in cases U-I-64/22-21 and U-I-65/22-23 of November 17, 2022 (Official Gazette RS No. 38/2022 and No. 157/2022). Through this case, the aforementioned Court, among others, had determined that: (i) "*the first paragraph of Article 155 of the Constitution prohibits the retroactive effect of legal acts by stipulating that laws, other regulations, and general acts cannot have retroactive effect. The purpose of this constitutional prohibition is to ensure an essential element of the rule of law, i.e., legal certainty, by preserving and*

strengthening, in this way, trust in the law; however, (ii) "*the prohibition provided in the first paragraph of Article 155 of the Constitution is not absolute. An exception to it is provided in the second paragraph of Article 155 of the Constitution, according to which only the law can determine that some of its provisions have retroactive effect if such a thing is required by the public interest and provided that it does not violate any acquired rights*".

245. In the context of exceptions, the Constitutional Court of Slovenia, among others, had emphasized that: (i) retroactivity can be determined only by law; and (ii) only some of the legal provisions can have retroactive effect, but only if this is required by the public interest and provided that this does not result in the violation of acquired rights. According to the aforementioned Court, these two criteria must be cumulatively fulfilled (see, Decision of the Constitutional Court U-I-64/22-21 and U-I-65/22-23, paragraph 30). The Constitutional Court of Slovenia also, among others, had emphasized that "*further, regulations cannot cumulatively increase obligations or reformulate them (based on facts that occurred in the past) or, in general, make it more difficult for the users of legal rules to have a legal position based on facts that occurred in the past, when those to whom these legal rules are addressed could not have known that those facts (at a certain point in the future) would produce a legal effect – based on a regulation that did not exist at the time when those facts occurred*". (see, Decision of the Constitutional Court U-I-64/22-21 and U-I-65/22-23, paragraph 26).

246. Based on the principles elaborated above, it results that while the principle of prohibition of retroactive application of the law is a very important rule of the principle of legal certainty and the rule of law, in the civil and/or administrative field there can be exceptions to this principle, provided that such an exception is in the public interest. Moreover, in such circumstances, such an exception must be (i) "prescribed by law"; (ii) pursue a "*legitimate aim*" and in circumstances of laws that determine procedures related to the verification of unjustified assets, as a mechanism for combating corruption, such an exception, in principle, is considered to pursue the legitimate aim of the public interest; and (iii) must be "*proportionate*" balancing the public interest and interference with fundamental rights and freedoms, including in the context of principles related to "*predictability*" and "*clarity*" of the law.

247. According to the above explanations, in principle, the retroactive application of the law in the context of the public interest, including combating corruption, through laws that verify and/or confiscate unjustified assets, is possible, provided that the public interest is balanced with fundamental rights and freedoms. In the context of asset verification/confiscation, when the burden of proof shifts to the individual/official, the latter must have the opportunity to present evidence regarding the allegedly unjustified assets.

248. In this aspect, it is also important to emphasize that persons to whom the law is applied retroactively, (i) must have known or should have known that their assets need to be justified; or (ii) must have adequate mechanisms to legally prove such a thing, without placing an excessive and/or disproportionate burden on them. Fulfilling these two conditions may be sufficient for the obligation to justify assets to be applied retroactively, as (i) the persons in question knew or should have known that they need to declare or prove the origin of the assets in some way; or (ii) have sufficient mechanisms to prove their assets.

249. Consequently, in the circumstances of the present case, it is uncontested that the retroactive application of the law from February 17, 2008, in the context of the verification of unjustified assets constitutes an "*interference*" with the right to property guaranteed by Article 46 of the Constitution in connection with Article 1 of Protocol No. 1 of the ECHR. That said, it is also uncontested that such an "*interference*" (i) is "*prescribed by law*", namely by Article 2 (Scope) and Article 22 (Asset Verification Period) of the contested Law; and (ii) pursues a "*legitimate aim"* specifically that of the public interest and combating corruption in the Republic of Kosovo. That said, according to the explanations given above, in the context of balancing the public interest and the fundamental rights and freedoms of individuals who fall within the scope of the contested Law, it must also be assessed whether such an "*interference*" is proportionate. In the context of assessing whether the retroactive application of the contested Law is proportionate to the legitimate aim pursued, the Court considers it relevant first to assess the burden of proof according to the provisions of the contested Law, an issue that will be examined in the following.

(b) The burden of proof and the concept of "the balance of probabilities" as defined in article 34 of the contested law

250. In this context, the Court initially refers to the various provisions of the contested Law which regulate the standard of proof in the procedure for verifying unjustified assets. First, the Court recalls that the contested Law in (i) subparagraph 8 of paragraph 1 of Article 3 (Definitions) defines the term "*the balance of probabilities*" as "*standard of proof when the court, based on the evidence, believes that something is more likely to be, or to have happened than not*"; (ii) subparagraph 7 of paragraph 1 of the same Article, defines "*asset verification*" as "*assessment of the amount of assets in relation to the legal income*"; whereas (iii) subparagraph 10 defines "*unjustified assets*" as "*the part of the asset of the person in the procedure, which is not in accordance with the legal income and the origin of which fails to be proven as legal*".

251. The Court notes that this standard of proof is applied throughout the entire asset verification procedure, including the initiation phase, where the Bureau, upon receiving information from institutions of the Republic of Kosovo that possess information, documents, evidence, or data related to unjustified assets, initiates the verification procedure by fulfilling the balance of probabilities, as defined in paragraph 3 of Article 18 (Initiation of the procedure) of the contested Law. According to this Law, the Bureau also reviews the aforementioned information to determine whether it refers to an official who is subject to it and whether it is credible. Furthermore, paragraph 5 of this Article specifies that *"[...] credible and reliable information means any information, document, evidence, testimony or data, which suggests that there is a discrepancy between the legal income and the assets created*".

252. In the context of the burden of proof, the Court further refers to paragraph 1 of Article 34 (First Instance Review) of the contested Law, which stipulates that the State Bureau presents the evidence it has submitted according to Article 30 (Submission of the Confiscation Proposal) of the contested Law before the court regarding the fulfillment of the civil standard of the balance of probabilities, that the assets under review are unjustifiable. As will be further elaborated, based on Article 23 (Procedure in the Bureau) of the contested Law, the procedure for proposing the confiscation of assets begins if the relevant official in the Bureau assesses that there is a discrepancy between the income and the assets exceeding the value of 25,000 (twenty-five thousand) euros. Article 30 (Submission of the proposal for confiscation) of the contested Law specifies the data that

the confiscation proposal must contain, such as: (i) the name of the court; (ii) the data of the Bureau; (iii) the data of the person whose assets are proposed to be confiscated; (iv) the data of the third party when the verified assets have been transferred to that person; (v) the legal basis; (vi) the list of each asset proposed to be confiscated, specifying the exact type and amount of value; (vii) any data that served in the verification of the assets according to Article 19 (Data Collection for Verification Purposes) of this law; and (viii) the request for asset security measures, if necessary, and the proposal must be accompanied by all the evidence that it has reviewed for the assets subject to the confiscation proposal.

253. It is important to emphasize, then, based on paragraph 2 of Article 34 (Hearing in the first instance) of the contested Law, that the burden of proof shifts from the Bureau to the party in the procedure, specifically the individual, where it is precisely stated: "*2. After submitting the proposal to the Court, the party to the procedure in the hearing session, must prove that the assets subject to the proposal have a justifiable origin*". The contested Law further in paragraph 2 of Article 35 (Hearing session) provides that when the Bureau official does not appear at the review hearing without reason, it is considered that the proposal has been withdrawn, while paragraph 3 of the same Article specifies that if the person whose assets are proposed to be confiscated does not appear at the review hearing, even though duly summoned, the hearing will be held without them. Furthermore, this Article regulates the opening of the review hearing by the court if the conditions are met and after its opening, the procedure that follows, the judge first gives the floor to the State Bureau official, who reads the confiscation proposal and argues why the assets are unjustifiable, and then gives the floor to the person whose assets are proposed to be confiscated or their representative, to respond to the confiscation proposal, allowing them to present evidence.

254. The Court also emphasizes the provisions of the contested Law, specifically Article 36 (Administration of Evidence) of the contested Law, which initially regulates the administration of evidence proposed by the Bureau, and according to paragraph 2 of this Article can be challenged by the verification subject regarding (i) the truthfulness of the evidence; (ii) the admissibility of the evidence; and (iii) the reliability of the evidence. The same applies when the verification subject presents evidence, which can be challenged on the same grounds by the opposing party. The Court further, as previously elaborated, notes that paragraph 2 of Article 37 (Interrogation of the Party Whose Assets are Proposed for Confiscation) of the contested Law, specifies the possibility for the verification subject not to answer the questions posed. In this judicial procedure, after the administration of evidence, testimonies, and the interrogation of the verification subject, the final statement follows, which is regulated in Article 38 (Closing statement) of the contested Law, and is initially given by (i) the State Bureau official who argues according to the balance of probabilities that the assets have an unjustifiable origin, then (ii) the representative of the verification subject, followed by (iii) the third party; and finally, (iv) the verification subject themselves. The Court notes that the contested Law in Article 41 (Types of decisions) again refers to the standard of the balance of probabilities, when it decides by judgment whether the confiscation proposal is (i) justified; (ii) partially justified; or (iii) unjustified, determining whether the assets are (a) unjustifiable; (b) partially unjustifiable; or (c) justifiable.

255. Based on the aforementioned explanations and returning to the assessment of the Applicants' allegations regarding the aforementioned legal provisions regulating the standard of proof, the Court will now recall the general principles in this field derived from

international law, the case law of the ECtHR, as well as the opinions and responses of the Venice Commission.

256. First, the Court reiterates the specific chapter on asset confiscation in the UN Convention against Corruption, specifically paragraph 8 of Article 31 (Freezing, seizure, and confiscation) thereof, which stipulates that state parties to this convention should *"[…] consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings*". In this context, the Court also notes that the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism in paragraph 4 of Article 3 (Measures to Confiscate) thereof, stipulates that: "*Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law".* The Court notes also the latest version of the FATF recommendations, updated in February 2023, regarding confiscation, which among others, stipulate as follows: *"[…] Countries should consider adopting measures that allow confiscation of these proceeds or instrumentalities without requiring a criminal conviction (non-conviction-based confiscation), or that require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law*".

257. Secondly, the Court refers also to the opinions and responses of the Venice Commission on this issue, which essentially as emphasized above in the chapter on general principles of this Judgment, underline that the standard of proof in civil confiscation consists of "*the balance of probabilities*" and not the criminal standard of "*beyond reasonable doubt*", due to the fact that a lower standard of proof should enable the state to more easily obtain the confiscation of the relevant assets and thus limit the financing of criminal activities (see, Venice Commission, Opinion No. 563/2009 on the sixth revised draft act on the confiscation of assets acquired through criminal or administrative offences of Bulgaria, 17-18 June 2011, CDL-AD[2011]0123, paragraph 50). More specifically, the Venice Commission, relying on the case law of the ECtHR, considers that this standard of "*the balance of probabilities*", combined with the ability of the owner to prove the contrary, is sufficient for the purposes of the proportionality test according to Article 1 of Protocol No. 1 to the ECHR. (see, Venice Commission, Amicus Curiae Brief for the Constitutional Court of Armenia on certain questions relating to the law on the forfeiture of assets of illicit ORIGIN, Strasbourg, 16-17 December 2022, CDL-AD(2022)048, paragraph 23 as well as the case of the ECtHR, *Gogitidze and others v. Georgia,* cited above, paragraph 107).

258. Thirdly, the Court reiterates the case of the ECtHR, *Gogitidze and others v. Georgia*, where the ECtHR had assessed that the civil confiscation procedure clearly constitutes part of a policy aimed at preventing and eradicating corruption in the public sector and that state parties to the ECHR should be given a wider margin of appreciation regarding what constitutes the appropriate means of applying measures to control property, such as the confiscation of all types of proceeds from crime (see, the case of the ECtHR, *Gogitidze and others v. Georgia*, cited above, paragraphs 107-108).

259. Fourthly and finally, the Court also recalls once again the earlier versions of the contested Law, respectively, referring to the recommendation of the Venice Commission in the first Opinion addressed to the Republic of Kosovo, where it had essentially requested that it be clarified that the burden of proof shifts to the party in the procedure only after the competent authority, namely the Bureau, has submitted a reasoned proposal and evidence indicating that there is at least a probability of illicit acquisition of assets, based on the civil standard of proof of the balance of probabilities (see, the first Opinion of the Venice Commission, CDL-AD(2022)014, cited above, paragraph 74). In this context, the Venice Commission also assessed that regarding the shift of the burden of proof to the party in the procedure, in order to avoid violation of the guarantees for a fair trial, the Bureau as a representative of the state must at least demonstrate the probability of illicit acquisition of assets, on the basis of the civil standard of proof of the balance of probabilities, because if the burden of proof is too high on the person who must prove the justification of his/her assets, the confiscation may also be seen as a disproportionate interference with the right to property. Regarding the specific standard of "*the balance of probabilities*", the Venice Commission in its first Opinion, criticized the relevant draft law because it had used two expressions, namely (i) "*possible*"; and (ii) "*more likely than not*", because the first expression is a much lower threshold than the second and this made the draft law for the State Bureau "*unclear*", giving the recommendation that this issue should be clarified (the first Opinion of the Venice Commission, CDL-AD(2022)014, cited above, paragraph 29). The Court, however, reiterates also the findings of the Venice Commission in the second Opinion, where it was found that the provisions defining the burden of proof and the definition of "*the balance of probabilities*" have been clarified in accordance with the recommendations of the first Opinion, stipulating that the State Bureau must present evidence before the court and prove, based on the balance of probabilities, that the ownership of the assets cannot be justified and the party to the procedeedings can then prove the contrary at the hearing (see, the second Opinion of the Venice Commission, CDL(202)053, cited above, paragraphs 11 and 25).

260. Based on the aforementioned principles and returning to the circumstances of the specific case, the Court recalls that the contested Law has initially placed the burden of proof on the State Bureau, which according to paragraph 1 of Article 34 (Hearing in the first instance) of the contested Law submits the confiscation proposal along with evidence to the court supporting this proposal based on the balance of probabilities that the assets under review are unjustifiable, while after this step, according to paragraph 2 of this Article, the burden of proof shifts from the Bureau to the party in the procedure, which at the review hearing, must prove that the assets under review have a justifiable origin. Moreover, the Court also reiterates the provisions of the contested Law such as Articles 35 (Hearing session), 36 (Evidentiary proceedings), 37 (Examination of the party whose assets are proposed to be confiscated) and 38 (Closing statement), which guarantee the right of the parties in the procedure to challenge the evidence and statements of each other, as well as the obligation of the court according to Article 40 (Conclusion of the hearing and decision making) of the contested Law, to decide by judgment regarding the confiscation proposal according to the balance of probabilities, which standard of proof the Venice Commission in its second Opinion considered as "*clear*". In this regard, the Court assesses that the legislator through the aforementioned provisions of the contested Law has given reasonable opportunities to the parties in the procedure to present their case and that this procedure is not characterized by evident arbitrariness, meaning that the shift of the burden of proof to the asset verification subject under the aforementioned conditions, in principle, is not in contradiction with the procedural guarantees for a fair trial.

261. That said, and according to the aforementioned explanations, the Court assesses that the burden of proof must be evaluated in the context of the retroactive application of the contested Law, and whether the contested Law provides the necessary guarantees so that the verification subjects, namely individuals, have a "*reasonable opportunity*" to counter-argue the state's claims, specifically the State Bureau's, regarding the unjustifiability of the relevant assets.

(c) Proportionality of the retroactive application of the law in the context of the burden of proof

262. The Court initially recalls that it has already clarified, that the retroactive application of the contested Law, follows a legitimate aim, namely that of the public interest to combat corruption in the Republic of Kosovo. That said, according to the aforementioned explanations, this legitimate aim must also be proportional to the fundamental rights and freedoms of the verification subjects. As explained above, it is not contested that the confiscation of assets constitutes an "*interference*" with the property rights guaranteed by Article 46 of the Constitution. Such "*interference*" must also be proportionate to the pursued aim. In this context, the Court assesses that while the retroactive application of the contested Law is possible for legitimate purposes of combating corruption in the public sector, the period during which the law is applied retroactively must also be reasonable to ensure that the verification subjects, among others, based on the guarantees related to the burden of proof, have a "*reasonable opportunity*" to counter-argue the claims of the State Bureau regarding the unjustifiability of the assets, namely the discrepancy between the income and the assets in the value of 25,000 (twenty-five thousand) euro, according to the provisions of the contested Law.

263. In the aforementioned context, the Court initially recalls that based on the relevant opinions of the Venice Commission for Bulgaria and Armenia, according to the explanations given in this Judgment, the Venice Commission has held the position, among others, that if a party cannot provide evidence through the required document because it has been lost or destroyed without the party's fault, or if the authorities have notified that the mandatory retention period for the document has expired and the document is no longer retained, the party will not need to provide "*evidence*" that the document has been lost or destroyed, provided that they can argue the "*non-existence*" of the relevant document. Moreover, as presented above, the Venice Commission has addressed the relevant Bulgarian law that established the system of administrative-civil asset confiscation on four (4) occasions. Among the procedural issues to which the Venice Commission has paid more attention in these opinions, has been the issue of the burden of proof, including in the context of the standard of proof, the threshold of proof, and the shift of the burden of proof during the procedure. As far as relevant, the Court recalls that (i) analyzing Article 53 of the relevant Bulgarian law, the Venice Commission reiterated the importance of judicial discretion, noting that the provision in question stipulated that if the investigation subject fails to prove the lawful origin of their assets, then the court should issue a confiscation order. The Commission noted that there could be a range of reasons why the subject is unable to provide the evidence and consequently, the court should have the necessary competence to refuse to issue the confiscation order if it is in the interest of justice. Referring to the ECtHR's judgment in the case of *Phillips v. the United Kingdom*, the Opinion emphasized that the ECtHR in this case emphasized the judge's competence to use discretion not to apply presumptions if their application would pose a serious risk of injustice (see, the Opinion for Bulgaria CDL-AD(2010)010, paragraph 76); (ii) the Commission positively assessed the new formulation of Article 70 of this law, which

clarified the standard of proof for the confiscation of assets acquired through criminal activity or administrative offences. The Commission also noted that "*the examination period*" would be determined by the Commission for the determination of assets acquired through criminal activity or administrative offences, noting that the limitation period was changed from 20 to 15 years and emphasizing that this remains a long period for such a retrospective law. The Venice Commission emphasized that the responsible Commission could be conditioned to limit the examination to shorter periods due to efficiency and proportionality reasons (see, the Opinion for Bulgaria CDL-AD(2011)023, paragraph 47); and (iii) positively assessed a new provision of the relevant law that, unlike previous versions, removed the requirement to draw conclusions in the case of a specific subject when he or she has not been able to provide a written document because the retention period for that document has expired. The new formulation of the provision in question stipulated that in circumstances where a written document is required as evidence, no conclusions will be drawn regarding the evidentiary stage if the document has been lost or destroyed without the subject's fault. Bulgarian authorities had clarified that this provision would apply in circumstances where the mandatory retention period for a document has expired and the document is no longer retained. The Venice Commission noted that this formulation did not impose an obligation on the subject to prove the loss or destruction of the document and that it sufficed for the subject to provide reasonable arguments that the document no longer exists. Such a legal regulation was positively evaluated by the Venice Commission in the context of the need to allow courts to freely assess the evidence presented by the parties.

264. Furthermore, the Court recalls that the ECtHR has addressed the issue of the burden of proof in the context of a civil procedure, among others, in two cases related to the transitional re-evaluation (vetting) of judges and prosecutors in Albania, namely in the cases of *Xhoxhaj v. Albania* [no. 15227/19, Judgment of 31 May 2021] and *Thanza v. Albania* [no. 41047/19, Judgment of 4 July 2023]. As far as relevant to the circumstances of the specific case, in *Xhoxhaj v. Albania*, the ECtHR did not find a violation of Article 6 (Right to a fair trial) of the Convention concerning the alleged violations of the principle of legal certainty, however, the ECtHR also examined the claims raised in light of Article 32 of Law no. 84/2016 on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania (hereinafter: "the Law on Transitional Re-evaluation"), which stipulated that:*"(i) the re-evaluation subject and related persons, along with the asset declaration, submit all documents justifying the accuracy of the declarations regarding the legality of the creation of the assets*; and (ii) *if the re-evaluation subject is objectively unable to possess the document justifying the legality of the creation of the assets, they must prove to the re-evaluation institution that the document has been lost, destroyed, cannot be reproduced, or obtained in any other way. The re-evaluation institutions decide whether the non-submission of the justifying documents is justified*". The ECtHR noted that this provision placed the applicant in a difficult position to prove the lawful origin of the assets due to the passage of time and the potential lack of supporting documents. However, the ECtHR observed that Article 32 of the Law on Transitional Re-evaluation offered sufficient procedural safeguards and in the case of the applicant, she had failed to provide supporting documents to prove the objective impossibility of possessing documents justifying the lawful origin of her partner's assets (see, the case of the ECtHR *Xhoxhaj v. Albania*, paragraphs 351 and 353). On the other hand, in the case of *Thanza v. Albania*, the ECtHR found a violation of paragraph 1 of Article 6 (Right to a fair trial) of the Convention, among others, related to the fact that the applicant was not given a reasonable opportunity to challenge the findings of the re-evaluation institutions and to effectively defend his case (see, the case of the ECtHR, *Thanza v. Albania*, paragraph 97).

As far as relevant to the circumstances of the specific case, the ECtHR noted that (i) limitation periods provide legal certainty; (ii) protect potential defendants from old claims that are difficult to counter; and (iii) prevent any injustice that might arise if courts were required to adjudicate events that occurred in the distant past based on evidence that may have become unreliable and incomplete due to the passage of time (ibid., paragraph 103). In this context, the ECtHR again emphasized Article 32 of the Law on Transitional Re-evaluation, which stipulated mitigating circumstances if the re-evaluation subject was objectively unable to provide supporting documents (ibid., paragraph 107).

265. Based on the aforementioned explanations, and in assessing the proportionality of the retroactive applicability of the contested Law since 17 February 2008, the Court must consider the applicable laws in the Republic of Kosovo, which enable the justification or otherwise of the assets subject to verification, the confiscation proposal, and confiscation. In this context, the Court assesses that relevant, among others, are the laws related to (i) personal income tax; (ii) the pension system; (iii) the obligation of money circulation through banking transactions; (iv) asset declaration; and (v) asset confiscation. In the following, and as far as relevant to the circumstances of the specific case, the Court will elaborate on the applicable laws related to each of the aforementioned categories, to further assess whether the relationship between the retroactive application of the law and the burden of proof is proportional and balances the right and obligation of the state to combat corruption, including through the confiscation of unjustified assets, and the fundamental rights and freedoms of the verification subjects.

- *Personal Income Tax*

266. The Court notes that the obligation to subject personal income to the tax system in the Republic of Kosovo has existed since 2002. In that year, Regulation no. 2002/4 on Personal Income in Kosovo came into force, which aimed to establish personal income tax on wages as a first step towards comprehensive personal income taxation covering all sources of income. Through this Regulation, Article 2 (Taxable Income) thereof, it was stipulated that taxable income is the total income of the taxpayer during the taxable period minus allowable deductions according to this Regulation. The aforementioned Regulation was amended by Regulation no. 2003/3, while in 2004, Regulation no. 2004/52 on Personal Income Tax was issued. Through Article 3 (Object of Tax) of the latter, it was stipulated that the object for the resident taxpayer is taxable income from income sources from Kosovo and income sources from abroad, while for the non-resident taxpayer, it is taxable income from income sources within Kosovo.

267. Furthermore, in 2008, Law No. 03/L-115 on Personal Income Tax was adopted, while the same was repealed in 2010, with the adoption of Law No. 03/L-161 on Personal Income Tax. As far as relevant to the circumstances of the specific case, the latter in (i) Article 4 (Object of Tax) thereof, specifies that the object of tax for the resident taxpayer is taxable income from income sources from Kosovo and income sources from abroad, while for the non-resident taxpayer it is taxable income from income sources within Kosovo; (ii) Article 5 (Taxable Income) thereof, specifies that taxable income for a taxable period means the difference between gross income received or accrued during the tax period and allowable deductions under this Law related to such gross income; while (iii) Article 6 (Tax Rates) thereof, specifies the tax rates starting from 1 January 2009. Furthermore, the aforementioned law also and among others, specifies (i) gross income in Article 7 (Gross Income); (ii) exempt income in Article 8 (Exempt Income); (iii) income from wages in Article 9 (Income from Wages); (iv) income from business activities in Article 10 (Income

from Business Activities); (v) income from rents in Article 11 (Income from Rents); (vi) income from immovable property in Article 12 (Income from Immovable Property); (vii) income from interest in Article 13 (Income from Interest); (viii) income from gifts in Article 14 (Other Income including Gifts); (ix) income from capital gains in Article 31 (Income from Capital Gains), according to the provisions of the aforementioned law. The Court notes that this law has been amended and supplemented by (i) Law No. 04/L-104 on Amending and Supplementing Law No. 03/L-161 on Personal Income Tax; and (ii) Law No. 05/L-028 on Personal Income Tax. The latter, (i) in Article 6 (Tax Rates) thereof, specifies the relevant tax rates; while (ii) in Article 7 (Gross Income) thereof, specifies all categories, respectively income sources subject to tax, including but not limited to wages, rents, the use of immovable property; interest, except for interest allowed under this law, substitute income, capital gains resulting from the sale of capital assets, including movable and immovable property and securities, pensions paid in accordance with the relevant legislation on Pensions in Kosovo, business activities that are subject to income taxation in actual income, and any other taxable income not included in this Article or any other income to be determined by sub-legal act issued by the relevant Minister.

268. As far as relevant to the circumstances of the specific case, the Court notes that Law No. 03/L-222 on Tax Administration and Procedures of 2010, more precisely, subparagraph 2.1 of paragraph 2 of Article 13 (Creating and Retaining Records) thereof, among others, stipulates that taxpayers are required to maintain books and records in accordance with tax legislation for a period of at least 6 (six) years after the end of the tax period when such a relevant tax obligation arose. Meanwhile, Law No. 08/L-257 on Tax Administration Procedures, in Article 6 (Creating and Retaining Records) thereof, specifies different periods for data retention, both for authorities and individuals, which include the period of 6 (six) to 10 (ten) years.

- *Pension System*

269. The Court notes that on 22 December 2001, UNMIK Regulation No. 2001/35 on Pensions in Kosovo was adopted. Based on the same regulation and as relevant to the circumstances of the current case, according to Article 7 (Collection of Contributions for the Financing of Individual Savings Pensions) thereof, every employer is obliged to contribute on behalf of their employees to the pension savings fund, and the obligations of the employer and the employee commence on the first day of employment for employees who have reached the age of 18 (eighteen) years. Furthermore, for the financing of pension savings, (a) each employer pays an amount equal to 5% (five percent) of the gross salaries of all employees; and (b) each employee pays an amount equal to 5% (five percent) of their total salary. The Court notes that the aforementioned regulation was further amended and repealed by (i) Law No. 03/L-084 on Amending UNMIK Regulation 2005/20 on Amending UNMIK Regulation 2001/35 on the Kosovo Pension Fund; (ii) Law No. 04/L-101 on Kosovo Pension Funds; (iii) Law No. 04/L-115 on Amending and Supplementing Laws Related to the Termination of International Supervision of Kosovo's Independence; (iv) Law No. 04/L-168 on Amending and Supplementing Law No. 04/L-101 on Kosovo Pension Funds; and (v) Law No. 05/L-116 on Amending and Supplementing Law No. 04/L-101 on Kosovo Pension Funds. The Court, as relevant, notes that based on Article 6 (Collection of Contributions for the Financing of Individual Savings Pensions) of Law No. 04/L-101 on Kosovo Pension Funds, as amended and supplemented by Laws: No. 04/L-115, No. 04/L-168, and No. 05/L-116, every employer is obliged to contribute on behalf of their employees to the pension savings fund, while employees are obliged to contribute on their own behalf to the pension savings, and the obligations of the employer and the employee

commence on the first day of employment for employees who have established an employment relationship and end when the employee reaches the retirement age. Furthermore, for the financing of pension savings, (a) each employer pays an amount equal to 5% (five percent) of the gross salaries of all employees; and (b) each employee pays an amount equal to 5% (five percent) of their total salary.

- *Circulation of money through banking transactions*

270. The Court emphasizes that based on UNMIK Regulation No. 2004/2 on the Prevention of Money Laundering and Related Criminal Offenses dated 4 February 2004, which came into force on 1 March 2004, except for some provisions that came into force on 1 July 2004, principles were established related to (i) the obligations of individuals and financial institutions regarding banking transactions exceeding certain amounts; and (ii) the obligation of authorities to retain relevant data for certain periods. As relevant to the circumstances of the current case, while individuals were not necessarily required to conduct all transactions through banks and/or financial institutions, (i) for each transaction over 10,000 (ten thousand) euros, the relevant bank was obliged to retain the necessary data for the respective person; whereas (ii) every transaction related to immovable property exceeding the value of 10,000 (ten thousand) euros was subject to the obligation to be conducted through a bank. Furthermore, based on the aforementioned regulation, banks and/or financial institutions were obliged to retain the relevant data for a period of at least five (5) years.

271. On the other hand, the Court also recalls that Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing came into force in November 2010. As relevant to the circumstances of the current case, based on Article 16 of the aforementioned law, reporting entities included (i) banks; (ii) financial institutions; (iii) real estate agents and real estate brokers; (iv) natural and legal persons trading goods when accepting cash payments of 10,000 (ten thousand) euros or more; (v) lawyers and notaries (accountants) when preparing, executing, or being involved in transactions for their clients as defined by law, including in relation to the purchase and sale of immovable property; and (vi) certified accountants, licensed auditors, and tax advisors, as defined by law. The Court also emphasizes that according to Article 29 (Movement of monetary instruments into and out of Kosovo - Obligation to declare) of the aforementioned law, among others, it was stipulated that (i) every person entering or leaving Kosovo and carrying monetary assets exceeding 10,000 (ten thousand) euros must declare in writing the amount of the monetary assets and their source in a form to be determined by Kosovo Customs; and (ii) every person sending from Kosovo to a country outside Kosovo or receiving in Kosovo from another country outside Kosovo, via mail or commercial courier, monetary assets exceeding 10,000 (ten thousand) euros must declare in writing the amount of the monetary assets and their source in a form to be determined by Kosovo Customs. On the other hand, the Court also notes that based on Article 40 (Transitional Provisions from EULEX to Kosovo), all data collected by the Financial Information Center, according to UNMIK Regulation 2004/02, will be transferred to the FIU-K.

272. Furthermore, the Court also notes that Law No. 05/L-096 on the Prevention of Money Laundering and Combating the Financing of Terrorism, dated 15 June 2016, currently in force, also stipulates the obligation that transactions of certain amounts of money must be conducted as banking transactions. Specifically, based on (i) paragraph 1 of Article 32 (Additional Obligations on Immovable Property Transactions) of this law, "*When conveyance of immovable property rights involves a transaction or transactions of a*

monetary value of ten thousand (10.000) Euros or more or equivalent value in foreign currency, unless otherwise specified by law, each transaction shall be made by payment order or bank transfer".; whereas, based on (ii) paragraph 2 of Article 20 (Record Keeping) of this law, "*In the case of wire transfers, banks and financial institutions carrying out this activity shall maintain a registry of all relevant information on the payer and that accompany a transfer, all information that is received on the payer and all other information that accompanies a transfer when they act as originator, intermediary or beneficiary institution respectively for a period of five (5) years from the date of execution of the transaction*".

273. It is also relevant to recall that the fiscalization process began with Law No. 2004/48 on Tax Administration and Procedures, adopted in 2007 by the Special Representative of the Secretary-General of the UN in Kosovo. This law, in Article 15 (untitled), stipulated the obligation for every person subject to any type of tax to submit to the Tax Administration or its agent a tax declaration, which includes: (i) the taxpayer identification number, (ii) the calculation of the tax liability, and (iii) all other information according to applicable legislation or administrative instructions issued in accordance with such legislation. As relevant to the circumstances of the current case, the acceptance of tax declarations by banks, according to Article 25 (untitled) of the same law, was conditional on the agreement of the Tax Administration with the Bank and other banks licensed by the Banking and Payments Authority (now the Central Bank of Kosovo), which had to be approved by the Treasury Department in the Ministry of Finance.

274. In 2008, this law was amended and supplemented by Law No. 03/L-071 on Amending and Supplementing Law No. 2004/48 on Tax Administration and Procedures, whereby, among others, in Article 7 (Fiscal Number and obtaining the Fiscal Certificate) amending paragraph 1 of the basic law, it was stipulated that: "*The Tax Administration may issue a tax identification number for any person subject to any type of tax administered in the Republic of Kosovo*". Furthermore, Article 9 (untitled) of the same law added the following paragraphs to Article 12 of the basic law: "*12.4. Each taxpayer, notwithstanding the annual turnover, in addition to keeping books and registers as set out by the Law, is also required to complete and maintain an inventory of goods in stock as of the end of the calendar year. Records provided under this paragraph must be ready on or before January 10 of the following year. The records provided by this paragraph must be ready on or before 10 January of the following year. […] 12.7. Any transaction in excess of five hundred (500) euro, made between taxable persons, after 1 January 2009 is required to be made through bank account*".

275. However, in 2010, the aforementioned law was repealed with the entry into force of Law No. 03/L-222 on Tax Administration and Procedures of 2010 and, based on Article 11 (Tax Identification Number and Issuance of a Fiscal Certificate) thereof, it was similarly stipulated, among others, that every person subject to any type of tax administered by the Tax Administration must be registered with the Tax Administration and receive a tax identification number before engaging in any economic activity. Furthermore, based on Article 13 (Creation and Maintenance of Records) thereof, among others, it was stipulated that: (i) taxpayers are required to keep books and records in accordance with the tax legislation in force; and (ii) every transaction over 500 (five hundred) euros, made between persons engaged in economic activity, after 1 January 2009, must be made through a bank account.

276. On the other hand, the current law in force, namely, Law No. 08/L-257 on the Administration of Tax Procedures, of 12 January 2024, in Article 4 (Fiscal Number and obtaining the Fiscal Certificate) thereof, stipulates that every person subject to any type of tax administered by the Tax Administration must be registered with the Tax Administration and provided with a tax identification number before engaging in any economic activity. Furthermore, according to the provisions of Article 6 (Creation and Maintenance of Records) thereof, among others, it is specified that (i) the taxpayer must keep books and records in accordance with the tax legislation in force; (ii) records related to electronic services must be kept for a period of at least 10 (ten) years after the end of the tax period when the electronic services were provided; (iii) every transaction over 300 (three hundred) euros made between persons engaged in economic activity must be made through a bank account and/or other forms of electronic payment; and (iv) every transaction exceeding the value determined by the Minister's decision, made between a person engaged in economic activity and a non-commercial natural person, must be made through a bank account and/or other forms of electronic payment.

- *Declaration of Assets*

277. The Court notes that on 12 May 2005, through Regulation No. 2005/26, Law No. 2004/34 Against Corruption was promulgated, establishing the Anti-Corruption Agency. This regulation, as relevant, (i) in Article 2 thereof, defined the officials subject to its provisions; (ii) in Chapter 4, stipulated the prohibition of accepting gifts exceeding the value specified by law and the obligation to declare them in a special register; and (iii) in Article 37, stipulated the Agency's competence to oversee the assets of senior officials. In 2010, Law No. 03/L-151 on Declaration and Origin of the Property and Gifts of Senior Public Officials was adopted. As relevant to the circumstances of the current case, (i) in Article 3 (Definitions) thereof, it defined the list of public officials, including family members, subject to the obligation to declare assets; (ii) in Article 5 (Types of property declaration) thereof, it stipulated the types of declarations, including regular annual, upon taking office of the senior public official, upon the request of the Agency, and upon leaving office; (iii) in Articles 10 (Reception of Gifts) and 11 (Registration of Gifts) thereof, it specified the declaration and registration of gifts; whereas (iv) in Article 13 (Competent Authority) thereof, it stipulated a 10 (ten) year period for archiving the information and declarations submitted to the Agency, from their submission and from the end of the work in public service. On the other hand, Law No. 04/L-050 on the Declaration, Origin, and Control of Assets of Senior Public Officials and the Declaration, Origin, and Control of Gifts for all Public Officials of 2011, as relevant to the circumstances of the current case, and beyond changes related to the expansion of the list of public officials required to declare assets, in Article 14 (Competent Authority) thereof, specified that the Agency archives the data of senior public officials for asset declaration for a period of 10 (ten) years from the time of termination or dismissal from office and that after this period, the Agency destroys these data.

278. Finally, Law No. 08/L-108 on the Declaration, Origin, and Control of Assets and Gifts of 2022, among others, (i) in Articles 3 (Definitions), 4 (Senior Officials), and 5 (Public Officials) thereof, stipulated the list of officials and their respective family members subject to the obligation to declare assets; (ii) in Article 7 (Occasions of Declaration of Assets) thereof, it stipulated the categories of declarations; (iii) in Article 25 (Registration of Gifts) thereof, it stipulated the manner of registering gifts according to the provisions of the law; whereas (iv) in Article 11 (Electronic Declaration) thereof, it stipulated the electronic declaration of assets. It is important to note that, unlike previous laws, the

aforementioned law, (i) in Article 12 (Publication of the declaration of assets of the declaring entities) thereof, stipulated that the data of the declarant subjects published on the online platform will remain published for 3 (three) years after the end of the legal obligation for declaration and then must be removed from the online platform; (ii) in Article 25 (Registration of Gifts) thereof, it stipulated that institutions have a legal obligation to keep gift registers for 10 (ten) years; whereas (iii) in Article 15 (Register of Declarations) thereof, it stipulated that the archiving of the data of declarant subjects is done in accordance with the applicable legislation in force for archives.

- *Confiscation of Assets Acquired through Criminal Activity*

279. The Court notes that Law No. 04/L-140 on Extended Powers for Confiscation of Assets Acquired through Criminal Activity of 2013, as relevant to the circumstances of the current case, in Article 1 (Purpose) and Article 2 (Scope) thereof, specified that this law defines the extended powers for the confiscation of assets acquired by persons who have committed a criminal offense when the procedures defined in the Criminal Procedure Code are not sufficient and that the provisions of this law apply to the assets acquired by persons who have committed a criminal offense as provided by the Criminal Code of the Republic of Kosovo. On the other hand, in Article 3 (Definitions) thereof, it specified that the assets subject to extended confiscation are assets owned by the accused or held in the name of the accused, which are subject to a restraining order from Article 265 (Attachment Order) of the Criminal Procedure Code No. 04/L-123 or which are subject to temporary confiscation from Article 267 (Temporary Confiscation) of the same code, as amended. On the other hand, Law No. 06/L-087 on Extended Powers for Confiscation of Assets of 2018, in (i) Article 1 (Purpose) thereof, specified that this law defines the extended powers for the confiscation of assets when the procedures detailed in the Criminal Procedure Code of the Republic of Kosovo are not sufficient; whereas (ii) in Article 3 (Definitions) thereof, it specified that the assets that may be subject to confiscation are the assets of the accused, namely any type of property, substantial or insubstantial, movable or immovable, tangible or intangible, as well as documents or legal instruments, as defined by the aforementioned law, but which "*the accused has acquired within ten (10) years before the date when the investigation phase was initiated*" for the relevant criminal offense.

280. Based on the above clarifications, related to the applicable laws relevant to justifying assets, namely the relationship between lawful income and the value of assets, the Court initially notes that the regulation of the pension system and personal income tax, despite changes over the years, dates back to 2001 and 2002, respectively, initially through UNMIK regulations and later through laws adopted by the Assembly of Kosovo. Based on the applicable regulations/laws as above, personal income can be documented through pension contributions and personal income tax over the years. Furthermore, starting from 2005, and despite changes over the years, with an emphasis on categories required to declare assets, certain categories of public officials have been required to declare assets at least on an annual basis according to the provisions of the Anti-Corruption Agency. On the other hand, the obligation for banking transactions exceeding 10,000 (ten thousand) euros and/or for declaring any circulation of monetary assets in this amount has existed since 2004, when UNMIK Regulation on the Prevention of Money Laundering and Related Criminal Offenses was adopted, which was later replaced by the laws of the Republic of Kosovo. It is worth noting that since 2009, based on the applicable Law on Tax Administration and Procedures, every transaction over 500 (five hundred) euros made between persons engaged in economic activity has been required to be made through a bank account. Finally, and importantly, since 2013, with the adoption of Law No. 04/L-

140 on Extended Powers for Confiscation of Assets Acquired through Criminal Activity, extended confiscation of assets has been enabled, beyond the provisions of the Criminal Procedure Code when the same have not been sufficient.

281. In this context, regarding the burden of proof on the individual to demonstrate the justification of the assets whose confiscation is proposed by the Bureau, namely the obligation to demonstrate the legality of these assets retroactively since 17 February 2008, the Court assesses that it is also relevant to analyze the relevant legal provisions that enable the individual to secure the necessary documentation to have a "*reasonable/objective possibility*" to justify the respective assets. In this context and based on the above clarifications, the Court first notes that in the context of personal income tax, (i) the relevant law of 2010 stipulated the obligation to retain these data for a period of at least 6 (six) years after the end of the tax period; whereas (ii) the relevant law of 2024 specified the obligation to retain the data for periods ranging from 6 (six) to 10 (ten) years, depending on the provisions of the law. Secondly, in the context of banking transactions, according to the above clarifications, the legal period based on which the relevant authorities are obliged to retain the data is 5 (five) years. Thirdly, the Court notes that data related to asset declaration, based (i) on the relevant law of 2010, are retained for a 10 (ten) year period from their submission and from the end of the work in public service; (ii) on the relevant law of 2011, are retained for a period of 10 (ten) years from the time of termination or dismissal from office, and the aforementioned law specifically stipulates that after this period, the Agency destroys these data; whereas (iii) only with the adoption of the relevant law of 2022, it is stipulated that the retention of these data is subject to the applicable legislation in force for archives. Fourthly and finally, the Court notes that in the context of the confiscation of assets acquired through criminal activity, Law No. 06/L-087 on Extended Powers for Confiscation of Assets limits the possibility of confiscation to a retroactive period of 10 (ten) years, namely, 10 (ten) years before the day when the investigation phase was initiated for the relevant criminal offense.

282. In the context of the retroactive applicability of the law since 17 February 2008 and the burden of proof based on the balance of probabilities, namely according to the definition of the law, in the belief that "*something is more likely to be or have happened than not*", the Court recalls that the initiation of the procedure is made by the Bureau, if the relevant official of the latter believes that there is a discrepancy between the income and the assets exceeding the value of 25,000 (twenty-five thousand) euros. The information for this verification purpose according to Article 19 (Collection of Information for Verification) of the contested Law, includes but is not limited to (i) the assets, the location of the assets, and the value; (ii) the value of the assets at the time of acquisition; (iii) the value derived from the assets during the transaction; (iv) the transformation of the assets; (v) the regular and irregular income of the party in the procedure; (vi) the expenses for maintaining the physical person and the family members of the party in the procedure; (vii) other expenses; (viii) monetary obligations; (ix) transactions with the assets to natural or legal persons; (x) transactions in the assets of the party in the procedure; (xi) expenses for traveling abroad from the assets of the party in the procedure; and (xii) temporary measures and charges imposed on the assets as well as obligations undertaken of a civil-legal nature by the party in the procedure.

283. The Court further emphasizes that in securing the above-mentioned information, the Bureau is supported by the entire state administration based on Article 20 (Obligation to cooperate) of the contested Law. In this regard, when the burden falls on the individual, namely the subject of verification, to prove the justification of the respective assets, this is

not the case, and based on paragraph 2 of Article 34 (Hearing in the first instance) of the contested Law, it is the individual who must counter-argue based on documents and evidence the categories of data according to Article 19 (Collection of information for the purpose of verification) of the contested Law, including but not limited to (i) the expenses for maintaining the physical person and the family members of the party in the procedure; (ii) other expenses; and (iii) expenses for traveling abroad from the assets of the party in the procedure, which data may be reasonably not easily possible to secure/argue in the form of evidence and/or documentation. Whereas, for the purpose of the burden of proof on the individual to justify the respective assets retroactively, securing data/evidence and/or documentation related to the other categories of data specified in Article 19 (Collection of information for the purpose of verification) of the contested Law, including (i) the assets, the location of the assets, and the value; (ii) the value of the assets at the time of acquisition; (iii) the value derived from the assets during the transaction; (iv) the transformation of the assets; (v) the regular and irregular income of the party in the procedure; (vi) monetary obligations; (vii) transactions with the assets to natural or legal persons; (viii) transactions in the assets of the party in the procedure; and (ix) temporary measures and charges imposed on the assets as well as obligations undertaken of a civil-legal nature by the party in the procedure, may be conditioned by the legal deadlines in the applicable laws clarified as above related to the obligations for keeping records and/or relevant data.

284. Based on the above clarifications, in principle, the applicable laws do not stipulate obligations for retaining data for a period longer than ten (10) years. On the other hand, the contested Law, in the context of the burden of proof, does not include any procedural guarantees, based on which "*objective impossibility*" to present documents and/or evidence could serve as a ground for the justification of the assets subject to verification. As explained above, based on the Opinions of the Venice Commission but also the case-law of the European Court of Human Rights (ECtHR), the burden of proof would be reasonable if the subject of verification had the opportunity to argue before the competent court about the objective impossibility to obtain and/or present a document in support of the justification of the respective assets, including in circumstances where the legal deadlines for retaining the same have expired.

285. Considering (i) that the contested Law does not include such a procedural guarantee in the context of the burden of proof; and (ii) the retroactive application of the contested Law since 17 February 2008, namely over a period that generally exceeds the legal deadlines related to the obligations of authorities, including individuals, to retain data relevant to proving the justification or lack of justification of assets, despite the fact that the retroactive application of the law follows a legitimate aim, namely that of public interest, the Court assesses that the contested Law does not achieve this aim through mechanisms proportional to fundamental rights and freedoms.

286. More precisely, in such circumstances, there is no reasonable balance between the state and the individual, because (i) the period of retroactive applicability of the law generally exceeds the legal deadlines in the relevant applicable laws in the context of keeping/preserving records and/or data; (ii) in circumstances where the entire state administration is obliged to cooperate with the Bureau, while the burden of proof regarding the justification of the contested assets falls on the individual; and (iii) who does not benefit from a reasonable procedural guarantee, based on which, they could argue before the court about the objective impossibility to secure and/or present evidence in favor of the justification of the assets subject to verification.

287. Consequently, based on the above clarifications, while the Court emphasizes that the retroactive application of the law in the context of the contested Law follows a "*legitimate aim*" of public interest, (i) the determination of the time period in the context of the retroactive application of the Law since 17 February 2008, namely for a period of over fifteen (15) years, which generally exceeds the obligations stipulated by the applicable laws for retaining/accessing data through which the origin of the justified assets could be demonstrated retroactively; and (ii) including in the absence of a procedural guarantee in the context of the burden of proof that would enable the subjects of verification to argue before the respective courts regarding the objective impossibility to obtain such data, in the Court's assessment, does not properly balance (i) the legitimate aim of public interest; and (ii) the fundamental rights and freedoms of the affected individuals.

Conclusion

288. Consequently, the Court finds that point 2.1 of paragraph 2 of Article 2 (Scope) in relation to Article 34 (Hearing in the first instance) of the contested Law violates the principle of legal certainty guaranteed through paragraph 1 of Article 7 [Values] of the Constitution and the right to property guaranteed through paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol No. 1 of the ECHR.

289. According to the clarifications given in this Judgment, in addressing the contested violation as mentioned above through amendments and/or supplementation of the aforementioned provision, the Assembly must ensure that the retroactive application of the law is balanced and/or proportional to the burden of proof, either (i) by determining reasonable retroactive periods based on the analysis and evaluation of the applicable laws of the Republic of Kosovo, including in the context of access to data that are relevant to proving the justification or lack of justification of assets; and/or (ii) by specifying procedural guarantees in the context of the burden of proof on the individual, which would enable the latter to argue before the respective courts regarding the objective impossibility of securing the relevant evidence.

(iii) violation of the principle of legal certainty as a result of the collision of legal provisions in the context of the duration of the application of the law after the termination of the official's function

290. The Court initially refers to the temporal scope of the contested Law, namely paragraph 2 of Article 2 (Scope) of the contested Law, which stipulates that it applies to unjustified assets acquired by officials and third parties (i) during the exercise of their function, but not for assets acquired before 17 February 2008; and (ii) within ten (10) years from the moment they cease exercising their functions. On the other hand, Article 22 (Asset verification period) of the contested Law stipulates the Asset verification period, specifying that the verification is done for assets acquired during (i) the period of exercising the public function, and may be extended for (ii) the period after the public official no longer exercises the public function, provided that the verification period cannot be longer than five (5) years after the public official has ceased exercising their public function.

291. Specifically, the Court notes that based on Article 2 (Scope) of the contested Law, this law applies to unjustified assets acquired during the exercise of the official function, from 17 February 2008, and within ten (10) years from the moment the respective subjects cease

exercising their function. Whereas, based on Article 22 (Asset verification period) of the contested Law, despite the fact that asset verification is done for assets acquired during the period of exercising the public function, exceptionally, when the Bureau assesses or determines that the assets of the public official, acquired after the period of exercising the public function, are significantly higher than the lawful income or the assets acquired during the period of exercising the public function by the public official, the Bureau may extend the verification for the period after the public official no longer exercises the public function, provided that the period cannot be longer than five (5) years after the termination of the public official's function.

292. In the context of the applicants' claims regarding the collision of legal provisions between the two aforementioned articles, the Court first recalls that the confiscation of assets constitutes "*interference*" with the right to property protection guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR. Legal norms that result in "*interference*" with the right to property, as a constitutional right, according to the above principles, must be "*prescribed by law*" and also that the relevant legal provisions must be "*clear*" and "*foreseeable*". In this context, the Court reiterates the general principles derived from the case-law of the ECtHR, its own case-law, and the Rule of Law Checklist of the Venice Commission, according to which the principle of legal certainty, embodied in the concept of the rule of law, guaranteed by Articles 3 and 7 of the Constitution, and in all articles of the ECHR, requires that rights and obligations be "prescribed by law" and also that the relevant legal provisions be "*clear, accessible, and foreseeable*" (see, in this context, the cases of the ECtHR, *Beyeler v. Italy*, no. 33202/96, Judgment of 5 January 2000, paragraph 109; *Hentrich v. France*, no. 1361/88, Judgment of 22 September 1994, paragraph 42; and *Lithgow and others v. the United Kingdom*, nos. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, Judgment of 8 July 1986, paragraph 110; and, inter alia, the case of the CourtKO100/22 and KO101/22, applicants: *Abelard Tahiri and ten (10) other deputies*, as well as *Arben Gashi and ten (10) other deputies of the Assembly of the Republic of Kosovo* regarding the assessment of the constitutionality of Law No. 08/L-136 on Amending and Supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council, Judgment of 24 March 2023, paragraph 347; and KO216/22 and KO220/22, applicants: KO216/22, *Isak Shabani and 10 (ten) other deputies of the Assembly of the Republic of Kosovo; KO220/22, Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Assessment of the constitutionality of Articles 9, 12, 46, and 99 of Law No. 08/L-197 on Public Officials, Judgment of 2 August 2023, paragraph 227).

293. Based on the two contested provisions and in connection with which the collision is claimed, the Court notes that (i) the contested Law applies to unjustifiably acquired assets, whether directly or indirectly, by officials and third parties; whereas (ii) the verification of assets is done for assets acquired during the period of exercising the public function by the official and exceptionally, also for the period after the public official no longer exercises the public function. While Article 2 of the contested Law stipulates the period during which the Bureau may verify the assets acquired during the exercise of the function, namely within ten (10) years after its termination, Article 22 of the contested Law stipulates the exception to this principle, enabling that exceptionally, the verification is also subject to assets acquired after the termination of the official's function. The exception is subject to the condition that the assets of the respective official, acquired after the period of exercising the public function, are significantly higher than the lawful income or the assets acquired during the period of exercising the public function by the official. The Court notes that this exception, namely "*interference*" with the property rights of the respective

subject, is "*prescribed by law*" and follows a "*legitimate aim*" of public interest. The aim of combating corruption in the public sector justifies subjecting public officials to the control of the State Bureau even after the termination of the public function, under the criteria defined by law. In balancing the legitimate aim and the necessary proportionality for the protection of fundamental rights and freedoms, the Court emphasizes the principles related to legal certainty, including in the context of the "*clarity and foreseeability*" necessary for the applicable law.

294. In the above context, the Court notes that paragraph 2 of Article 2 of the contested Law specifies that verification is subject to assets acquired during the exercise of the mandate and within 10 (ten) years after the respective officials cease exercising their function. On the other hand, paragraph 3 of Article 22 of the contested Law stipulates that the period specified in paragraph 2 thereof, namely the period within which the verification of assets may be extended even for the period after the official no longer exercises the public function, "*cannot be longer than five (5) years after the end of the public function of the official person,".* Having said that, the above provisions do not precisely define with "*clarity*", nor with sufficient "*foreseeability*," one of the most essential issues of the contested Law, namely the period within which an asset acquired can be subject to verification. Specifically, the joint reading of the two above provisions does not clarify (i) whether verification is subject only to assets acquired during the exercise of the function, and this verification can be done until the expiration of the 10 (ten) year period after the termination of the function; or (ii) whether verification is subject to assets acquired during the function and those acquired for another 10 (ten) years after the termination of the function. Furthermore, the above provisions do not clarify whether the extension of verification for the assets of the respective official after the termination of the function, (i) can include only assets acquired within the 5 (five) year period after the termination of the function; (ii) can include only the above assets and the procedure can be initiated only within the 5 (five) year period after the termination of the function; or (iii) can include only assets acquired within the 5 (five) year period after the termination of the function, but the procedure can be initiated within the 10 (ten) year period according to the provisions of paragraph 2 of Article 2 of the contested Law.

295. In its case-law, the Court has also consistently emphasized that given the above principles related to the "*foreseeability*" and "*clarity*" of the law and the importance of this concept for the principle of legal certainty, based also on relevant opinions of the Venice Commission, in principle, "*rights and obligations*" should be "*prescribed by law*", the provisions of which should be "*clear, accessible, and foreseeable*", to enable the executive power/public authorities to exercise discretion only in areas where such competence has been delegated, and not simply because the law is uncertain or unclear, but also to enable legal entities to appropriately regulate their conduct and expectations (see, the case of the Court KO216/22 and KO220/22, applicants: KO216/22, *Isak Shabani and 10 (ten) other deputies of the Assembly of the Republic of Kosovo; KO220/22, Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, cited above, paragraph 227).

296. In the case of the contested Law, the lack of such clarity enables public authorities, including the State Bureau, to interpret the deadlines specified in paragraph 2 of Article 2 and paragraph 3 of Article 22 of the contested Law at their full discretion, in violation of the principle of legal certainty and the violation of fundamental rights and freedoms of the individual, including by preventing them from appropriately regulating their conduct and expectations.

297. The "*uncertainty*" contained in paragraph 2 of Article 2 and paragraph 3 of Article 22 of the contested Law, (i) on the one hand increases the full discretionary decision-making of public authorities regarding the applicable time periods for extending the asset verification period of officials after the termination of their function; while (ii) on the other hand, violates the necessary "*clarity*" and "*foreseeability*" in the context of the security of fundamental rights and freedoms.

Conclusion

298. Consequently, the Court finds that point 2.2 of paragraph 2 of Article 2 (Scope) in conjunction with paragraph 3 of Article 22 (Asset verification period) of the contested Law is not in compliance with paragraph 1 of Article 7 [Values] of the Constitution.

299. According to the explanations provided in this Judgment, in addressing the contested violation as mentioned above, the Assembly, through amendments and/or supplementation of the aforementioned provision, must ensure that the norms defining the time periods within which the Bureau can verify assets acquired during and after the exercise of the function, including those within which relevant investigations and procedures can be initiated, are fully "*clear*" and "*foreseeable*".

2. Assessment of the constitutionality of Articles 18, 19, 20, and 23 of the contested Law

A. The substance of the parties' allegations/arguments and counter-arguments

300. As detailed in the part of this Judgment related to the applicants' allegations, they essentially argue that Articles 18 (Initiation of the procedure), 19 (Collection of information for the purpose of verification), 20 (Obligation to cooperate), 23 (Procedure in the Bureau), and 34 (Hearing in the first instance) of the contested Law are in contradiction with Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR as well as Article 32 [Right to Legal Remedies] of the Constitution. The applicants essentially claim that (i) the obligation of state institutions, legal and natural persons, including the subject of verification, to cooperate with the Bureau under the threat of criminal prosecution by the State Prosecutor for the criminal offense of "*failure to execute court decisions"* according to the provisions of the Criminal Code, is in contradiction with the right to remain silent and the right not to incriminate oneself and family members; whereas (ii) the standard of proof based on the "*balance of probabilities*" is not sufficient to justify the initiation and development of the verification and confiscation procedure of assets. Furthermore, they argue that the procedure does not include sufficient procedural guarantees, including those related to the principle of equality of arms, namely the right to access documents and the right to be heard, as well as the right to an effective legal remedy.

301. On the other hand, the Ministry of Justice, among others, counter-argues that the Bureau has the right only to collect and verify information regarding the assets of the verification subject and that the final decision for confiscation is made by the court, emphasizing also that the contested Law includes all necessary procedural guarantees, including the fact that all information will be accessible to the party subject to the verification procedure, except in cases where this information *"this information would endanger the verification procedure, would damage the evidence, and may violate the public interest*". In the

context of the standard of proof, the Ministry of Justice, among others, emphasizes that the standard has also been confirmed by the Venice Commission as a standard of proof in civil procedure in both the first and second Opinions of the Venice Commission on the Draft Law on the State Bureau, where it assessed the regulation of the burden of proof in a satisfactory manner.

B. Court's assessment

302. The Court initially emphasizes that Chapter V (Verification of Unjustifiable Assets) of the contested Law regulates the procedure for verifying unjustified assets within the Bureau. More precisely, this chapter contains the following articles: 18 (Initiation of the procedure), 19 Collection of information for the purpose of verification), 20 (Obligation to cooperate), 21 (The right to a representative), 22 (Asset verification period), and 23 (Procedure before the Bureau). On the other hand, Article 34 (Hearing in the first instance) is part of Chapter VIII (Hearing on Examination of the Proposal for Confiscation) of the contested Law, and it mainly relates to the burden of proof, specifically the civil standard of balance of probabilities, which the Court has already elaborated and assessed in the previous part of this Judgment.

303. In the context of these provisions, the Court initially notes that based on paragraph 1 of Article 18 of the contested Law, the Bureau initiates the verification procedure based on "*credible and reliable*" information regarding unjustified assets, namely "*any information, document, evidence, testimony or data, which suggests that there is a discrepancy between the legal income and the assets created*", in cases when: (i) it receives information, document, evidence, proof, or data from various sources, including natural and legal persons; (ii) it receives information, document, evidence, proof, or data from institutions of the Republic of Kosovo or foreign institutions; as well as (iii) it has access to information, document, evidence, proof, or data, but does not receive them officially, and they are public or accessible in any form. Also, this article, in its paragraphs 2 and 3, obliges the institutions of the Republic of Kosovo, including but not limited to (i) the Agency for Prevention of Corruption; (ii) the Tax Administration of Kosovo; (iii) Kosovo Customs; (iv) the Central Bank of Kosovo; (v) the Financial Intelligence Unit; and (vi) Notaries and Private Bailiffs, to "*actively provide the requested information without delay*" upon the request from the Bureau and whenever they possess or come into possession of any information, document, evidence, proof, or data that contains credible and reliable information regarding unjustified assets, to convey the same to the State Bureau without delay.

304. The Court also notes that the Bureau examines whether the collected information refers to the official who is the subject of the contested Law and whether the same is reliable. In accordance with paragraphs 6, 7, and 8 of Article 18 of the contested Law, the Director General of the Bureau assesses prima facie the extent of the discrepancy between assets and lawful income, giving priority to cases with higher values of discrepancy up to the threshold determined by this law, and issues a reasoned decision to initiate the verification procedure or decides not to initiate the procedure when the legal conditions are not met. The legislator has determined in paragraph 10 of this article, the right of the party subject to verification to access all information received and processed by the Bureau, except in cases where this information "*would endanger the verification procedure, would damage the evidence, and may violate the public interest*", a restriction for which the court issues a written decision. The Court emphasizes that Article 19 of the contested Law contains a non-exhaustive list of information that the State Bureau collects during the verification

procedure and stipulates that personal data will be treated and processed in accordance with the applicable legislation.

305. On the other hand, Article 20 of the contested Law further regulates the obligation to cooperate for (i) the institutions of the Republic of Kosovo; (ii) local natural or legal persons exercising public authorizations; and (iii) other local natural and legal persons, cooperation which extends to the extent that "*the right to privacy and the right not to be incriminated* " are not violated, and the requested assistance, information, and documents must be provided to the Bureau no later than 30 (thirty) days from the date of the request, except for information obtained according to a special procedure. The Court also notes that paragraphs 3 to 7 of Article 20 of the contested Law, determine the procedure and consequences in case of non-cooperation. If the aforementioned subjects do not respond to the Bureau's request, the Bureau may request the respective court to issue a ruling requiring the submission of information and documents according to the Bureau's request. If the subject in question does not comply with this ruling within no longer than 5 (five) days, then the State Bureau files a criminal report against the non-cooperative subject to the State Prosecutor for the criminal offense of "*non-execution of court decision*", according to the provisions of the Criminal Code. Finally, the Court also emphasizes that Article 61 (Application of Provisions of Other Laws) of the contested Law, stipulates that for procedural judicial matters not regulated by this law, the relevant provisions of the respective law on civil procedure are applied appropriately.

306. Furthermore, the Court recalls that Article 23 (Procedure before the Bureau) of the contested Law regulates the procedure for verifying unjustified assets within the Bureau, namely before submitting the confiscation proposal to the respective court. More precisely, this article in its paragraph 1 stipulates that the Director General decides on initiating the procedure in accordance with Article 18 (Initiation of the procedure) of this law, and first (i) requests, collects information, and analyzes other relevant information for the case in accordance with Article 19 (Collection of information for the purpose of verification) of the contested Law and requests assistance from the institutions of the Republic of Kosovo in accordance with the applicable legislation; (ii) requests information from the party in the procedure and the subjects specified in Article 20 (Obligation to Cooperate) of this law; (iii) examines the circumstances related to the case; and (iv) may invite the party in the procedure to give testimony, with the aim of identifying other assets or clarifying doubts about the assets under verification. The procedure is conducted by the Bureau officer, to whom the case is assigned by the decision of the Director General, and all information and documents are collected in accordance with the applicable legislation. Furthermore, the State Bureau officer may request the Director General to expand the verification decision to a third party when it is noted that the asset has been transferred to that party. Further, after listing the assets, the Court notes that based on the aforementioned article, the Bureau invites the party in the procedure to provide evidence and data to justify the origin of the listed assets within a period of 60 (sixty) days, and (i) if the Bureau officer notes that there is no discrepancy between the income and the assets, or the value of the discrepancy does not exceed the value of 25,000 (twenty-five thousand) euros, then he proposes the closure of the case and a reasoned proposal is submitted to the Director General, who then closes the case by decision; whereas (ii) if based on the balance of probabilities the aforementioned discrepancy is reached, the State Bureau officer proposes to the Director General the confiscation of the assets, who then submits the confiscation proposal to the court, along with the case file and the evidence provided by the party in the procedure, if any. Further, according to paragraph 9 of Article 23 (Procedure before the Bureau) of the contested Law, if the party in the procedure does not respond to the Bureau's invitation,

and the value of the discrepancy is over 25,000 (twenty-five thousand) euros and *the balance of probabilities* standard is met, then it is presumed that the assets were acquired in an unjustifiable manner and the proposal for their confiscation follows as in the above procedure. Also, paragraph 11 of this article provides that at any time during the verification procedure, the Bureau may submit to the court a request for the imposition of an interim measure for securing the assets under verification according to Article 24 (Interim security measure on the assets) of this law. Further, the contested Law stipulates that the State Bureau must complete the verification procedure within a period of ninety (90) days, and when the case is complicated, the State Bureau officer may request an additional period of no longer than forty-five (45) days. Exceptionally, the verification procedure in the Bureau may last up to 1 (one) year when the procedure is dependent on an international legal cooperation request.

307. Finally, based on Article 34 of the contested Law, (i) first, the Bureau presents the evidence before the respective court regarding the fulfillment of the civil standard of balance of probabilities, that the asset under review is unjustifiable; whereas (ii) the party in the procedure, namely the subject whose asset is claimed to be unjustifiable by the Bureau, must prove the contrary before the respective court.

308. In the context of the above explanations, the Court recalls that the applicants' claims, in principle, relate to (i) the obligation to cooperate with the Bureau concerning the right not to incriminate oneself; and (ii) the right of the party to be informed of all procedures conducted in the context of asset verification, including those related to the imposition of security measures on the contested assets and the right to an effective legal remedy; as well as (iii) the principle of legal certainty, claims which the Court will assess in the following sections.

(i) Obligation to cooperate concerning the right not to incriminate oneself

309. In this context, the Court initially refers once again to Articles 18 and 20 of the contested Law, provisions that contain the obligation to cooperate with the Bureau for (i) state institutions; (ii) natural and legal persons with public authorizations; and (iii) other natural and legal persons, who are obliged to provide the Bureau with the requested data within 30 (thirty) days. As elaborated above, in case of refusal to cooperate, upon the Bureau's request, the respective court issues a ruling requiring the submission of the information, in case of non-compliance with which, within 5 (five) days, the Bureau files a criminal report against the respective subject to the State Prosecutor for the criminal offense of "*failure to execute court decisions*", according to the provisions of the Criminal Code.

310. From this obligation to cooperate under the threat of criminal prosecution, the contested Law also provides exceptions, the application of which is left to the respective court. Specifically, (i) based on paragraph 8 of Article 20 of the contested Law, the ruling for the submission of documents and information to the verification subjects is issued by the court if it assesses that "*the Bureau is grounded and justified*"; (ii) based on paragraph 6 of Article 20 of the contested Law, the court will not issue a ruling for the submission of information and documents according to the Bureau's request, when that request has been sent to the State Prosecutor and when the State Prosecutor notifies that providing such information and documents would jeopardize the investigation of pending criminal cases; and (iii) if the court assesses from the subject's response that the requested information or documents are not available to any other institution, it will issue a ruling for the

submission of information and documents "*to the extent that they do not violate the security of the country or directly violate a constitutional human right, in order to enable the verification of assets",* while any information or document obtained through this procedure is not published, and no one can access it, except in the judicial procedure.

311. It is important to emphasize that any assessment by the competent court related to issuing the ruling through which the respective subject is obliged to cooperate with the State Bureau, must be in accordance with the provisions of paragraph 1 of Article 20 of the contested Law and according to which "*the obligation to cooperate for domestic natural and legal persons extends to the extent that the right to privacy and the right not to be incriminated are not violated*".

312. The Court further clarifies that the aforementioned criminal offense, namely "*failure to execute court decisions*", is sanctioned in Article 394 (Failure to execute court decisions) of the Criminal Code No. 06/074 of the Republic of Kosovo, which in its paragraph 1 stipulates that: "*1. The official or responsible person who refuses to execute any final order, ruling, decision or judgment of any court in the Republic of Kosovo or who fails to execute the decision pursuant to the time frame provided by law or the time frame specified in the decision shall be punished by a fine or imprisonment of up to two (2) years*". Based on the definitions provided in paragraphs 2 and 5 of Article 113 (Definitions) of the aforementioned Criminal Code, this criminal offense can be committed by (i) an official person; or (ii) a responsible person. The first, namely the "*official person",* according to the aforementioned Code, means: (i) a person who performs official duties in a state organ; (ii) a person elected, appointed, or designated in a state organ, in a local government organ, or a person who permanently or temporarily performs official duties or functions in those organs; (iii) a person in an institution, enterprise, or any other entity entrusted with performing public authorizations, who decides on the rights, obligations, or interests of natural or legal persons or on public interest; (iv) a person entrusted with the actual performance of certain official duties or tasks; and (v) a military person, except when the provisions of Chapter XXXIII (Official Corruption and Criminal Offenses against Official Duty) of this Code are in question. Whereas the second, namely the "*responsible person*", is defined as a natural person within a legal person, entrusted with specific duties, or authorized to act on behalf of the legal person and there is a high degree of probability that he/she is authorized to act on behalf of the legal person.

313. Based on the above explanations, the Court emphasizes that the obligation to cooperate, determined in Article 20 of the contested Law, which in case of refusal results in the possibility of criminal prosecution for the aforementioned criminal offense, does not apply to the verification subject, but to (i) state institutions; (ii) natural and legal persons with public authorizations; and (iii) other natural and legal persons, subjects that by definition correspond to the "*official person*" and the "*responsible person*" from paragraphs 3 and 5 of Article 113 (Definitions) of the Criminal Code. Furthermore, any obligation to cooperate is at the assessment of the respective court, which any request from the Bureau for issuing a ruling through which the respective subjects are obliged to cooperate, namely natural and legal persons, must assess in the light of (i) the right to privacy; and (ii) the right not to incriminate oneself, and which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, must be interpreted in harmony with the case-law of the ECtHR.

314. The Court also emphasizes that the protection of the right to privacy, as guaranteed by Article 36 [Right to Privacy] of the Constitution in conjunction with Article 8 (Right to

respect for private and family life) of the ECHR, is very important in the context of civil confiscation of assets, including the obligation to cooperate with the Bureau. The fundamental principles deriving from the aforementioned articles of the Constitution and the ECHR have been elaborated in the Court's cases, which include but are not limited to cases KO55/23 (with applicant the *President of the Assembly of the Republic of Kosovo*, Assessment of the proposed constitutional amendments, referred by the Speaker of the Assembly of the Republic of Kosovo on 2 March 2023, through letter no. 8/3509/Do/1493/1, Judgment of 22 December 2022, paragraphs 415-440); KI56/18 (with applicant *Ahmet Frangu*, Judgment of 22 July 2020, paragraph 83) and KI113/21 (with applicant *Bukurije Xhonbalaj*, Judgment of 20 December 2021, paragraph 71). In this context, the Court initially recalls that paragraph 1 of Article 20 of the contested Law, conditions the obligation for cooperation of the respective subjects in protecting the right to privacy, an assessment which belongs to the respective court, in accordance with the obligations deriving from the case-law of the ECtHR.

315. Furthermore, beyond the aforementioned guarantee, the Court notes that the contested Law includes several other specific provisions related to ensuring this right. More precisely, (i) according to Article 19 of the contested Law, which regulates the collection of information for verification, it is stipulated that "*personal data shall be treated and processed in accordance with the legislation into force*"; while (ii) according to paragraph 11 of Article 20 of the contested Law, which regulates the obligation to cooperate for state institutions, for natural and legal persons with public authorizations, and other natural and legal persons, it also emphasizes the application of *"relevant law on protection of personal data"*.

316. In the context of the aforementioned and more specifically the obligation of the specified subjects in the contested Law to cooperate with the State Bureau, the Court refers to the case-law of the ECtHR. The same in several cases has assessed the obligation of mobile phone operators, internet service providers, banks, elite athletes, and hospitals to provide the authorities with the personal data they have at their disposal, upon the request of the law or an order issued by the authorities. For example, among others, in the case of the ECtHR, *Breyer v. Germany*, the legal obligation of mobile phone operators to register the personal data of prepaid SIM card users and make them available to the authorities, in accordance with the Telecommunications Act, which authorized various public authorities to request the acquisition and communication of such data without any need for a court decision or notification of the interested parties, was not considered in contradiction with Article 8 (Right to privacy) of the ECHR. Whereas, in another case, *Sommer v. Germany*, the inspection of the bank account of a lawyer resulted in a violation of Article 8 (Right to privacy) of the ECHR, considering the low threshold for the inspection of the applicant's bank account, specifically the lawyer, the broad scope of the requests for information, the subsequent disclosure and continued retention of the applicant's personal information, and the insufficiency of procedural safeguards (see, ECtHR cases, *Breyer v. Germany*, no. 50001/12, Judgment of 30 January 2020, and *Sommer v. Germany*, no. 73607/13, Judgment of 27 April 2017). The aforementioned cases, among others and in principle, specify that the obligation to cooperate, based on applicable laws, is not in contradiction with the relevant provisions of the ECHR, as long as there is a proper balance/proportionality between the public interest and fundamental rights and freedoms, including the right to privacy.

317. On the other hand, regarding the right to remain silent and not to self-incriminate, the Court reiterates that the general principles concerning the procedural guarantee of not

self-incriminating oneself and family members, apply (i) in criminal procedure, as a constitutional right of the accused, determined in paragraph 6 of Article 30 [Rights of the Accused] of the Constitution; as well as (ii) in civil procedure, as a right of the witness, determined in paragraph 1 of Article 343 (untitled) of Law No. 03/L-006 on Contested Procedure (hereinafter: LCP). More precisely, the Court recalls that the right to a fair and impartial trial, including the rights of the accused, as guaranteed by Articles 30 and 31 of the Constitution and Article 6 of the ECHR, ensures several minimum guarantees for any person accused of a criminal offense, which based on paragraph 6 of Article 30 of the Constitution, also includes the right not to self-incriminate (see, among others, the Court's case, KI110/19, applicant *Fisnik Bahtijari*, Decision on inadmissibility of 8 October 2019, paragraph 47 and the ECtHR cases, *Saunders v. United Kingdom*, no. 19187/91, paragraphs 68 and 69, Judgment of 17 December 1996, and *John Murray v. United Kingdom [GC]*, no. 18731/91, paragraph 45, Judgment of 8 February 1996). Based on the case-law of the ECtHR, although not specifically mentioned in Article 6 of the ECHR, the right to remain silent and the privilege against self-incrimination are generally recognized international standards, which lie at the heart of the notion of a fair procedure according to Article 6 of the ECHR (see, among others, the ECtHR cases, John Murray v. United Kingdom [GC], cited above, paragraph 45; *Bykov v. Russia [GC]*, no. 4378/02, Judgment of 10 March 2009, paragraph 92). The Court further also recalls that the right not to self-incriminate is not only granted to the accused in criminal procedure, as stipulated in paragraph 6 of Article 30 of the Constitution, but this procedural guarantee also applies to witnesses in civil procedure. In this context, the Court points out paragraph 1 of Article 343 (untitled) of the LCP, according to which, "*the witness can refuse to answer certain questions if there is an important reason to do so. Especially if these questions will have penal consequences for himself/herself, or his/her close relatives; any generation in a vertical line and up to the third generation in a horizontal line. Can deny answering against the spouse, inlaws up to the second generation, even if the marriage ceased to exist, the person that he/she lives with, custodian, or the person under his/her custody*", for which the court is obliged to inform the witness of this right.

318. Furthermore, the Court refers also to paragraph 5 of Article 62 (Effect of other procedures in implementation of provisions of this Law) of the contested Law, which stipulates that "*The statements given as well as the documents provided by the party in the procedure according to this Law cannot be used as evidence in criminal proceedings*". Also, the Court refers to paragraph 1 of Article 20 of the contested Law, which contains a specific procedural guarantee for the category of other natural and legal persons, for whom the obligation to cooperate extends to the extent that their right to privacy and not to self-incriminate is not violated. On the other hand, (i) paragraph 7 of Article 36 (Administration of Evidence) of the contested Law, grants the witness, during the judicial procedure, the right to refuse to give testimony in accordance with the relevant law on civil procedure, specifically, as mentioned above, currently with Article 343 of the LCP; whereas, according to (ii) paragraph 2 of Article 37 (Examination of the party whose assets are proposed to be confiscated) of the contested Law, during the interrogation of the party whose asset is proposed to be confiscated, the party has the right not to answer the posed questions.

319. In the context of the principle of non-self-incrimination, the Court also points out the findings of the first Opinion of the Venice Commission, which emphasizes that *"[...] . In so far as the obligation to cooperate concerns state entities, this is not problematic. In contrast, when it comes to "local natural and legal persons", their human rights, especially the right to privacy and the right not to be forced to self-incrimination, are*

relevant in this context. These human rights do not seem to be adequately addressed. As in the criminal procedure, there might also be the right not to testify, e.g. against family members. The regulation under paragraph 7, according to which in cases of noncooperation by natural or legal persons the Bureau may apply to the court to compel them, might not be compatible with these requirements and should be revised accordingly". (see the first Opinion of the Venice Commission, CDL-AD(2022)014, cited above, paragraph 48). Further, in its second Opinion, the Venice Commission, mentioning the changes in the new draft of the Draft Law on the State Bureau, among others, the obligation of other persons, including natural persons, to provide relevant information and documents, but without violating the right to privacy and the right not to self-incriminate and stipulating that the Court may issue an order for providing such information and documents, but not to the extent that it would endanger national security or constitutional human rights, or affect a criminal investigation, evaluates them as "*very positive*" changes (see, the Second Opinion of the Venice Commission, CDL(2022)053, cited above, paragraph 23). Moreover, in the accompanying information of the Venice Commission, communicated on 14 March 2023 regarding the latest version of the Draft Law on the State Bureau, it evaluates that*"[...] most of the more serious problems identified in the Venice Commission's opinion of June 2022, were addressed, among others in relation to the more precise definition of the preconditions for initiating the verification procedure and improving the guarantees of human rights of those involved in the procedure*".

Conclusion

320. Based on the above explanations, the Court assesses that the contested Law, (i) includes the guarantee according to which, for natural persons, including the verification subject, the obligation to cooperate extends only to the extent that *"the right to privacy and the right not to incriminate oneself are not violated"* and that the assessment of such proportionality is within the competence of the respective court; furthermore, that (ii) the consequence of refusal to cooperate, namely the possibility of criminal prosecution for the offense of "*failure to execute a court decision*" as defined by the Criminal Code, does not apply to natural persons, but only to public authorities and/or natural and legal persons with public authorizations.

(ii) The rights of the party to be informed of all procedures conducted in the context of asset verification, including those related to the imposition of security measures on the contested assets, as well as the right to an effective legal remedy

321. Regarding the claims of violation of procedural guarantees under Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR concerning the notification of the party about the procedures conducted against him/her and the right to an effective legal remedy as defined by Article 32 [Right to Legal Remedies] of the Constitution, the Court recalls that the claims related to the first issue mainly concern the right to have access to documents and the case file, specifically the principle of equality of arms and adversarial proceedings, while those related to the second issue mainly concern the right to an effective legal remedy, specifically the right to challenge the initiation of the asset verification procedure, which the Court will address in the following sections.

(a) Equality of arms and the principle of adversarial proceedings

322. The Court first recalls that based on the case law of the ECtHR and its own case law, there is an obligation for administrative authorities to allow appellants access to relevant documents in the possession of the administrative authorities, if necessary, through a procedure for the disclosure of documents (see, among others, the case of the ECtHR, *McGinley and Egan v. United Kingdom*, no. 10/1997/794/995-996, Judgment of 1 June 1998, paragraphs 86 and 90). Furthermore, according to the aforementioned case law, the denial of this right, without any good reason, would result in the denial of the right to a fair trial, respectively, a violation of paragraph 1 of Article 6 of the ECHR. However, according to the ECtHR, the right to the disclosure of relevant evidence is not absolute. In certain cases, overriding national interests have been presented to deny a party the right to full access to evidence, including for reasons related to national security considerations (see, ECtHR cases, *Regner v. Czech Republic [GC]*, no. 35289/11, Judgment of 19 September 2017 - compared to *Corneschi v. Romania*, no. 21609/16, Judgment of 11 January 2022, *Miryana Petrova v. Bulgaria*, no. 27148/08, Judgment of 21 July 2016, paragraphs 39-40), or the need to keep certain police investigation/surveillance methods secret (*Adomaitis v. Lithuania*, no. 14833/18, Judgment of 18 January 2022, paragraph 68).

323. In the context of the principles summarized above, the Court first highlights paragraph 10 of Article 18 of the contested Law, which stipulates: "*All information received and processed by the Bureau will be accessible to the party who is subject to the verification procedure, except in cases where this information would endanger the verification procedure, would damage the evidence, and may violate the public interest. The Bureau shall officially request the restriction of documents at the Court, where the Court shall issue a decision in writing for such request*".

324. More precisely, based on the aforementioned provision, the party who is the subject of the verification procedure will have access to all documents and information in the possession of the Bureau, except when such access is restricted by the respective court, with the reasoning of (i) jeopardizing the verification procedure; (ii) damaging the evidence; or (iii) the public interest.

325. Furthermore, such a judicial decision is subject to the right to a legal remedy. This must happen despite the fact that the contested Law has not specifically provided for an appeal and it also does not specifically exclude the right to appeal. More precisely, based on paragraph 1 of Article 53 (Appeal against the Ruling) of the contested Law, "*an appeal l shall be permitted against the ruling of the first instance court if this Law does not stipulate that the appeal shall not be permitted*". Regarding the decision related to the restriction of access to the relevant information/documents, the appeal is not excluded by the contested Law, and as a result, an appeal against the decision of the first instance court to restrict the verification subject's access to the information received and handled by the Bureau is allowed, respectively, the verification subject in this case has access to a legal remedy.

Conclusion

326. Consequently, based on the above explanations, the Court considers that paragraph 10 of Article 18 of the contested Law, in principle, provides sufficient guarantees within the principle of equality of arms and adversarial proceedings, as it allows the verification subject access to the information received and handled, while the restriction of their access

can only be determined by the competent court, a decision that can be appealed by the respective subject. Moreover, as emphasized above, in issuing such a decision, the respective court is obliged to act in harmony with the case law of the ECtHR, according to the provisions of Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

(b) The right to legal remedy and judicial protection of rights

327. The Court first recalls that based on the case law of the ECtHR and its own case law, the right to an effective legal remedy against any act of the public authority that may have violated the fundamental rights and freedoms of the individual defined by law and/or the Constitution, in principle, cannot be limited unless the limitation/interference is (i) "*prescribed by law*"; (ii) pursues a "*legitimate aim*"; and (iii) the measure taken has been "*proportionate*" to the aim sought to be achieved (see, among others, the Court's cases, KO100/22 and KO101/22, cited above, paragraph 337; KI214/21, applicant *Avni Kastrati*, cited above, paragraph 124, KO216/22 and KO220/22, cited above, paragraphs 385-387).

328. Having said this and as elaborated above, based on the provisions of the contested Law, during the procedure of verifying the assets of a subject, there is access to legal remedies and this applies in the following situations: (i) when the verification subject requests access to the information and documents received and handled by the Bureau, a restriction that can only be made by the first instance court with a written decision in judicial procedure against which decision, based on paragraph 1 of Article 53 (Appeal against decision) of the contested Law, the verification subject can appeal; as well as (ii) when the subjects obliged to cooperate, namely, to provide information, as defined in paragraph 1 of Article 20 (Obligation to cooperate) of the contested Law, refuse to cooperate, for the assessment of which the obligation to share information is determined by the first instance court by decision to the extent that (a) it does not violate fundamental rights and freedoms; (b) damages evidence in criminal procedure; or (c) jeopardizes the country's security based on paragraphs 4 and 6 of Article 20 (Obligation to cooperate) of the contested Law, these judicial procedures against which, based on paragraph 1 of Article 53 (Appeal against the Ruling) of the contested Law, there is the right to appeal.

329. Furthermore, the Court also notes that through paragraph 7 of Article 18 (Initiation of the procedure) of the contested Law, the Director General of the State Bureau is authorized to issue a reasoned decision for the initiation of the verification procedure. In this regard, the Court highlights the finding of the Venice Commission, which in its first Opinion states that the Director General issues a reasoned decision for the initiation or not of the verification procedure but that the proposed legal provisions do not specify whether the decision should be communicated to the person in question and be subject to possible legal remedies, for which the Venice Commission holds that it should be public or at least communicated to the person in question unless there are justified reasons to fear that the procedure would be obstructed if acted so (see, the first Opinion of the Venice Commission, CDL(2022)014, cited above, paragraph 47). On the other hand, the Court notes that even in its second Opinion, the Venice Commission reiterates that *"[…] it does not seem, however, that there is a separate legal remedy against the initiation of the procedure*" (see, the second Opinion of the Venice Commission, CDL(2022)053, cited above, paragraph 26). In this context, the Court finds that even the current version of the contested Law does not provide provisions with which this decision is communicated to the party or that instructs it on a legal remedy, except for the provisions that request

information from it through subparagraph 1.2 of paragraph 1 of Article 23 (Procedure in the Bureau) of the contested Law.

330. However, considering also the competencies of the Bureau defined in Article 8 (Competencies and responsibilities of the Bureau) of the contested Law, particularly those described in subparagraphs 1.1, 1.2, 1.3., and 1.4 of the aforementioned Article, the Court assesses that the State Bureau up to the stage of submitting the proposal for confiscation collects information from the parties in the procedure, including those subjects that are obliged to cooperate according to the contested Law, but without obliging them to share this information or take specific actions, and that in case there are such obligations defined by law, as mentioned above, in such situations it is the regular court that decides on the delivery of information and documents according to the request of the State Bureau, or even for the imposition of the provisional measure of securing the assets in the verification procedure in accordance with Article 24 (Provisional measure of securing the assets) of the contested Law, as paragraph 11 of Article 23 (Procedure in the Bureau) of the contested Law stipulates that the Bureau can request from the court the imposition of this measure at any time during the verification procedure.

331. Regarding the latter, the Court recalls that paragraph 1 of *Article 24 (Provisional measure of securing the assets) of the contested Law stipulates that: "1. Whenever before or after the presentation of the proposal for confiscation, upon the proposal of the Bureau official, the Court may set the temporary measure of securing the asset, without prior notification and hearing of the party in the procedure, if the Bureau makes a credible claim for the existence of unjustifiable assets and that the temporary measure is based on evidence collected in the verification procedure and is urgent and that if acted otherwise, the assets can be alienated, destroyed or in any form will not be available to that person*". Following this provision through the contested Law, the Court recalls the first Opinion of the Venice Commission for Kosovo, where it states, "*In Chapter VI dealing with interim security measures, Article 22 stipulates that the court shall impose the proposed temporary security measure on assets when it finds that the temporary security measure on the assets is "grounded and urgent and that by acting differently, the assets can be alienated, disposed of or otherwise will not be available to that person" (paragraph 1.1). Moreover, the court may reject the proposal only in case it has not made "credible the claim that the assets can be alienated, disposed of or otherwise will not be available to that person" (paragraph 1.2). This seems to suggest that proposed interim measures must be imposed even if there is no evidence or reasonable suspicion of unjustified assets. Such a regulation might constitute an unjustified interference with the right to peaceful enjoyment of possessions (Article 1, Protocol 1 to the ECHR) and should be amended by introducing an adequate evidentiary threshold".* (paragraph 53 of the first Opinion of the Venice Commission). As a result of the completion of this provision based on the findings of the Venice Commission, the latter through its second Opinion stated that*: "Following the recommendations of the Venice Commission's Opinion concerning the interim measures some very short time-limits have been improved (e.g. appeal within 48 instead of 24 hours; objection against the imposition of interim measures within 15 instead of 5 days). The preconditions for the interim security measures are now clearly set out in Article 23: "Whenever before or after the presentation of the proposal for confiscation, upon the proposal of the Bureau official, the Court may set the temporary measure of securing the asset, without prior notification and hearing of the party in the procedure, if the Bureau makes a credible claim [for] the existence of unjustifiable assets and that the temporary measure is based on evidence collected in the verification procedure and is urgent and that if acted otherwise, the assets can be alienated, destroyed or in any form*

will not be available to that person". (see, paragraph 31 of the second Opinion of the Venice Commission for Kosovo).

332. Following this, and based on paragraph 1 of Article 24 of the contested Law, it results that the imposition of the security measure *ex parte* without prior notification and hearing of the parties, is possible with the aim of preventing "*the assets can be alienated, destroyed or in any form will not be available to that person*". Regarding this, the Court notes that this provision is also regulated through the Directive of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (Directive 2014/42/EU). A similar procedure is also stipulated in the Law of Bulgaria on the confiscation of assets acquired through criminal activity and administrative violations, in which case similar to its Opinions for Kosovo, the Venice Commission also in its Opinions regarding the same law of Bulgaria accepts this as a standard. Having said this, the latter in its Opinion on the sixth amended draft law of Bulgaria had emphasized that: "*As mentioned above, examination proceedings before the CEACAV and applications to court for an injunction are made ex parte. After a precautionary measure has been imposed, the CEACAV's authorities will "invite" the person concerned to present a written declaration in view of counteracting the evidence presented by the CEACAV in its claim for injunction order (Article 65§1). The respondent is not obliged to present such a declaration and will not bear any responsibility in case he or she decides not to present it. Furthermore, Article 67 expressly provides that not presenting a declaration on the side of the respondent "may not be ground for drawing conclusions against the person and his or her family members". In the Venice Commission's opinion, this provision is addressed to both the CEACAV and the Court; it would be useful if this is clearly spelled out in the said article*". (see, paragraph 44 of Opinion CDL-AD(2011)023, of 17-18 June 2011).

333. Moreover, in terms of civil procedure defined by the provisions of the LCP, the Court refers to Articles 305 and 306 of the LCP, respectively. By Article 305 of the LCP, it is stipulated that (i) "*Except in the cases determined by this law, measures of insurance cannot be set if the objector of the insurance had no opportunity to state the proposal for setting the measures*"; and (ii) "*The proposal for setting measures of insurance, together with notes attached are sent by the court to the objector of the insurance followed by info that a short reply can be done within a period of seven (7) days*". However, the Court notes that Article 306 of the LCP in the context of the exception specified by paragraph 1 of Article 305 of the LCP "*except in cases defined by this law [...]*"stipulates that: (i) "*the court can set temporary measures of insurance without a notification or a preliminary hearing of the objector of insurance based on the proposal for the insurance presented, if the proposed insurance shows plausible pretence that measures of insurance is based and urgent, and if acted otherwise it will loose the aim of the insurance measures; (ii) "the verdict from the paragraph 1 of this article is sent by the court to the objector of the insurance immediately. The objector of insurance in his reply within a period of 3 days can contest the causes for setting temporary measures, and after that the court can set a hearing after three days. The answer of the objector should contain a justification part"; and (iii) "after the hearing from the paragraph 2 of this article, the court by a special verdict annuls the verdict that sets temporary measures or replaces it with a new verdict for setting measures in accordance to the article 307 of this law. An appeal against the verdict setting measures of insurance is allowed"*.

334. Based on the above explanations, the Court emphasizes that the imposition of a provisional/security measure even without prior notification of the party is possible based

on the applicable law for the contested procedure, but also the standards derived from EU law and the Venice Commission. Having said this and according to the given explanations, such a possibility defined in the contested Law, is used only exceptionally and in the exact fulfillment of the criteria defined by law and the standards derived from the case law of the ECtHR in the context of fulfilling the necessary criteria enabling the justified and proportional intervention in the property rights of the individual.

335. The Court also reiterates that the judicial procedure for verifying assets is civil, and not administrative, among others, based on Article 61 (Application of the provisions of other laws) of the contested Law, which stipulates that for judicial procedural matters that are not regulated by this law, the provisions of the relevant law on contested procedure apply accordingly. Also, from the provisions of the contested Law, it does not result that the Bureau can compel the verification subjects to cooperate after issuing the decision to initiate the verification procedure, therefore, apart from the request for information, the provision of which is at the discretion of the verification subject as a party in the procedure, consequently, their rights or interests are not violated in the manner defined by law.

336. Furthermore, the Court recalls that (i) Chapter VI (Provisional and Security Measure); (ii) Chapter VII (Proposal for Confiscation); (iii) Chapter VIII (Hearing on Examination of the Proposal for Confiscation); (iv) Chapter IX (Appellate Proceedings); and (v) Chapter X (Procedure according to extraordinary legal remedies) of the contested Law, define detailed procedures related, among others, to (i) the possibility of imposing a provisional and security measure on the contested assets; (ii) the proposal for the confiscation of assets and the judicial decision related to the same; and (iii) the relevant legal remedies, defining the necessary guarantees for the equality of the parties in the procedure.

Conclusion

337. More precisely and in the context of legal remedies, the Court emphasizes that the contested Law foresees or does not exclude the right to legal remedies at all stages of verifying unjustified assets, including (i) challenging the provisional measure of securing assets according to the provisions of Article 26 of the contested Law; (ii) appealing the decision related to the security measure according to the provisions of Article 28 of the contested Law; (iii) challenging the confiscation proposal according to the provisions of Article 31 of the contested Law; (iv) appealing the judgment according to the provisions of Article 45 of the contested Law; (v) appealing the decision according to the provisions of Article 53 of the contested Law; and (vi) extraordinary legal remedies according to the provisions of Article 55 of the contested Law. Consequently, based on the aforementioned explanations, the Court considers that, in principle, subjects undergoing asset verification have access to legal remedies throughout the procedure. Based on the principles derived from the ECtHR case law, the party must be informed throughout the process, including in the context of the procedures followed concerning the imposition of security measures on contested assets, and that the imposition of a security measure without prior notification of the party is possible only exceptionally under the strict guarantees deriving from the ECtHR case law.

(c) regarding the principle of legal certainty

338. Finally, the Court notes that the legislator, in paragraph 17 of Article 23 (Procedure before the Bureau) of the contested Law, has foreseen that the procedure for verifying unjustified

assets is determined by a sub-legal act. Such a formulation, which stipulates the possibility of determining the asset verification procedure at the level of a sub-legal act, raises issues of compliance with the criteria of clarity and predictability of the norm, which derive from the principle of the rule of law, respectively legal certainty, embodied in paragraphs 1 of Articles 3 [Equality Before the Law] and 7 [Values] of the Constitution.

339. Regarding the principle of legal certainty, the Court recalls the general principles stated in this Judgment and derived from the ECtHR case law, its own case law, and the Venice Commission's Rule of Law Checklist, respectively regarding the criterion of "*prescribed by law,*" "*clarity*," and "*foreseeability*" of a legal norm.

340. Similarly, the Court notes that paragraph 17 of Article 23 of the contested Law does not specify precisely what will be subject to determination by a sub-legal act but only generally refers to the regulation by sub-legal act of the procedure for verifying unjustified assets.

341. The Court also recalls the Venice Commission's first Opinion, which emphasized regarding this provision: "*It is not clear what further matters of procedure not already specified in the draft law are referred to; the scope of this provision should be clarified. This should refer only to matters of internal procedure, as such bylaws cannot create obligations for private persons*" (see, paragraph 51 of the First Opinion of the Venice Commission).

342. Consequently, considering the principle of legal certainty, including the obligation that applicable norms be "*clear*" and "*predictable*," as defined in the aforementioned principles and stated in the Venice Commission's Rule of Law Checklist, the rights and obligations of the parties in the procedure must be defined by law and not through sub-legal acts.

3. Assessment of the constitutionality of Articles 10, 15, and 69 of the contested Law

A. The essence of the allegations/arguments and counter-arguments of the parties

343. As detailed in the part of this Judgment related to the applicants' allegations, the latter essentially allege that Articles 4 (Establishment), 10 (Oversight Committee Composition and Compensation), 15 (Procedure for the selection of the Director General), and 69 (Bureau functionalization) of the contested Law are contrary to Articles 4 [Form of Government and Separation of Power], 7 [Values], 65 [Competences of the Assembly], 132 [Role and Competencies of the Ombudsperson], and 142 [Independent Agencies] of the Constitution. More precisely, the applicants allege, among others, that the contested Law establishes the Bureau as an "*independent and specialized public body*" contrary to the criteria of Article 142 of the Constitution and Law No. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies, arguing essentially that (i) the Bureau is not an institution serving the Assembly for exercising parliamentary oversight/control, as in terms of competencies, it has a prosecutorial function and therefore cannot be regulated outside Chapter VII [Justice System] of the Constitution; (ii) the transfer of oversight competence from the Assembly to Oversight Committee is contrary to Article 142 of the Constitution, related to the functioning of independent agencies in the constitutional order of the Republic of Kosovo and undermines the oversight competence of the Assembly, contrary to paragraph 9 of Article 65 [Competences of the Assembly] of the Constitution and consequently, also undermines Article 4 [Form of Government and Separation of Power] of the Constitution, related to the separation and

balancing of powers; (iii) the participation of a deputy Ombudsperson in the Oversight Committee is contrary to the competencies of the Ombudsperson, according to the provisions of Article 132 [Role and Competencies of the Ombudsperson] of the Constitution and the independence of constitutional independent institutions; (iv) the procedure for selecting the Director General of the Bureau undermines the competencies of the Assembly of the Republic of Kosovo, specifically "*undermines the principle of legal certainty, the rule of law and the electoral competence of the Assembly for this position*"; and (v) the assignment of administrative competences to the Anti-Corruption Agency in support of the State Bureau until its operationalization is contrary to the independence of independent agencies according to the provisions of Article 142 of the Constitution. The claims of the applicants are essentially supported by the Ombudsperson, with emphasis on the composition of the Oversight Committee, specifically the inclusion of a deputy Ombudsperson, which is considered contrary to Article 132 [Role and Competencies of the Ombudsperson] of the Constitution and Law No. 05/L-019 on the Ombudsperson.

344. On the other hand, the Ministry of Justice counters, among others, that (i) the State Bureau in terms of competencies has a prosecutorial function, "*because the State Prosecutor's institution has the constitutional competencies to investigate criminal offenses and perpetrators of criminal offenses, as stipulated in Article 109 of the Constitution, while the Bureau conducts asset verification in a civil context, without interfering in criminal investigation aspects*"; (ii) the Bureau, as an institution established by the Assembly, does not undermine Article 142 [Independent Agencies] of the Constitution, because the basic elements of this article are fulfilled, specifically (a) establishment by law by the Assembly; (b) exercising the function independently and without influence; (c) guarantees of independence through a separate budget; and (d) constitutional guarantees that other state bodies cooperate and respond to the Bureau's requests; (ii) the assignment of a deputy Ombudsperson in the composition of the Oversight Committee should be understood as "*the exercise of the activities of the Ombudsperson institution because the deputy will serve ex officio in this Oversight Committee*", and consequently, is in compliance with paragraph 2 of Article 132 [Role and Competencies of the Ombudsperson] of the Constitution; and (iii) transferring the competence for the election of the Director General from the Assembly to the Oversight Committee, as a de-blocking mechanism if the Director General's election procedure fails twice in the Assembly, is a solution in compliance with the recommendations of the Venice Commission. The arguments of the Ministry of Justice are also supported by the Parliamentary Group of the Vetëvendosje! Movement.

B. Court's assessment

345. The Court initially recalls that the establishment, status, competencies, oversight, issues related to the Director General of the Bureau, and the operationalization of the latter, are specified in Chapters II (Establishment, Legal Status, Powers, and Organization of the State Bureau for Verification and Confiscation of Unjustifiable Assets), III (Oversight of the Bureau), IV (Selection, Mandate, and Responsibilities of the Director General of the Bureau), and XIII (International Legal Cooperation) of the contested Law. There are three essential issues deriving from the provisions of the aforementioned chapters, specifically (i) the status and independence of the Bureau; (ii) oversight of the Bureau and the competencies of the Oversight Committee; and (iii) issues related to the Director General and his/her competencies.

346. Regarding the first issue, specifically the status of the Bureau, the Court recalls that based on Articles 4 (Establishment), 6 (Legal status and organizational structure), and 9 (Status and independence) of the contested Law, the Bureau is established as an "*independent and specialized body for verifying unjustified assets*" and a "*public independent institution that has the status of a legal person*",(i) whose organizational structure is determined by the Regulation on Internal Organization, approved by the Oversight Committee; and (ii) whose officials are considered public officials, in accordance with the relevant Law on Public Officials and during the exercise of official duties, "*enjoy full independence and protection*".

347. Regarding the second issue, specifically the oversight of the Bureau, relevant are Articles 10 (Oversight Committee Composition and Compensation), 11 (Meeting, quorum and decision-making in the Committee), and 12 (Competences of Committee) of the contested Law. More precisely and based on these provisions, the contested Law establishes Oversight Committee composed of five (5) members, including (i) a judge of the Supreme Court of Kosovo, appointed by the President of the Supreme Court, who is also the chairperson of the Commission; (ii) the Auditor General of the Republic of Kosovo; (iii) the Director of the Anti-Corruption Agency; (iv) a deputy of the Ombudsperson, appointed by the Ombudsperson; and (v) the Director of the Financial Intelligence Unit. This Commission makes decisions by the majority of all its members, provided that the necessary quorum is met, which consists of four (4) members of the Commission. The latter is responsible for (i) overseeing the work and activities of the Bureau; (ii) conducting the recruitment procedure for the Director General and proposing the appointment and dismissal of the Director General to the Assembly; (iii) evaluating the performance of the Director General; (iv) approving sub-legal acts specified by this law, based on the proposal of the Director General; (v) reviewing the work reports of the Director General; and (vi) performing other tasks specified by applicable legislation.

348. Considering the aforementioned competencies of the Oversight Committee, including the fact that it is also responsible for (i) overseeing the work and activities of the Bureau; and (ii) overseeing the work and evaluating the performance of the Director General, in the context of the competencies of the Oversight Committee, relevant are also Articles 8 (Powers and responsibilities of the Bureau) and 16 (Powers and responsibilities of the Director General) of the contested Law, concerning (i) the competencies and responsibilities of the Bureau; and (ii) the competencies and responsibilities of the Director General. More precisely, based on Article 8 of the contested Law, the Bureau, among others, has the following responsibilities: (i) initiating and conducting the procedure for verifying assets; (ii) submitting the proposal for asset confiscation; (iii) requesting assistance, information, and relevant documents from all relevant institutions and public authorized persons and analyzing this documentation/information; and (iv) reporting to the Assembly of Kosovo once (1) a year. Whereas, based on Article 16 of the contested Law, the Director General (i) leads and organizes the work of the Bureau; (ii) oversees the work of the Bureau officials; (iii) represents the Bureau domestically and internationally; (iv) manages the Bureau's budget and is responsible for its expenditure, in accordance with relevant legislation; (v) issues decisions in accordance with the mandate and competencies of the Bureau; (vi) drafts and approves the annual work plan within the Bureau's mandate; (vii) establishes cooperation agreements with other domestic and international institutions, in accordance with applicable legislation; (viii) for specific cases and when there is a lack of expertise within the Bureau, decides on the engagement of external experts, in accordance with applicable legislation; and (ix) exercises other duties specified by applicable legislation.

349. The Court also notes two competencies of the Oversight Committee, specified by Articles 15 (Procedure for the Election of the Director General) and 17 (End of mandate of the Director General) of the contested Law, respectively: (i) managing the competition for the election of the Director General, submitting the relevant proposal to the Assembly of Kosovo, and in certain circumstances, when the Assembly fails to elect the Director General twice, the competence to elect the Director General itself; and (ii) proposing the dismissal of the Director General, including for (a) failure to fulfill work duties and responsibilities; (b) poor performance evaluation; (c) serious misconduct; or (d) undermining personal or institutional integrity. The Court finally emphasizes that based on paragraph 2 of Article 12 (Competencies of the Assembly) of the contested Law, the Commission does not have the right to intervene in cases that are in the verification procedure in the Bureau.

350. Finally, regarding the third issue, specifically the election of the Director General and his/her competencies, relevant are Articles: 13 (Director General), 14 (Criteria for the selection of the Director General), 15 (Procedure for the selection of the Director General), and 17 (End of mandate of the Director General) of the contested Law, which are relevant to the circumstances of the specific case, (i) the Bureau is led by the Director General, who is elected for a seven (7) year term, without the right to re-election; and (ii) the Director General is elected and dismissed by a majority vote of the present and voting members of the Assembly. More precisely and in the context of the latter, Articles 15 and 17 of the contested Law, among others, specify that the Oversight Committee, announces the competition for the election of the Director General and manages all aspects of the competition, according to the provisions of the contested Law, including the proposal submitted to the Assembly, which cannot contain less than two (2) or more than five (5) candidates proposed for the position of Director General. The Assembly then, by secret ballot, with a majority vote of all present and voting members, elects the Director General. If the respective Director is not elected in two (2) rounds of voting in the Assembly, the competition is repeated following the same procedure, while if even after the repetition of the competition and after two (2) rounds of voting in the Assembly, the respective Director is not elected, then the competition is repeated again, but this time, the competence for the election of the Director General, passes from the Assembly to the competence of the Oversight Committee. The competence for dismissing the Director remains always with the Assembly, but which acts only based on the proposal of the Oversight Committee and decides with a majority vote of the present and voting members of the Assembly.

351. Based on the above explanations and the claims of the applicants and the arguments and counter-arguments of the parties, the Court notes that there are four essential issues to be addressed in the context of the constitutionality of the contested provisions, specifically: (i) the compatibility of the Bureau's status with the provisions of Articles 65 and 142 of the Constitution, respectively; (ii) the compatibility of the composition of the Oversight Committee with Article 142 and the principle of separation and balance of powers; (iii) the compatibility of the election of the Director General with Article 142 of the Constitution; and (iv) the compatibility of the operationalization of the Bureau with the provisions of Article 142 of the Constitution, issues that the Court will address subsequently.

(i) Compatibility of the Bureau's status with the provisions of Articles 65 and 142 of the Constitution

352. The Court initially recalls that based on Article 4 [Form of Government and Separation of Power] of the Constitution, Kosovo is a democratic Republic, based on the principle of separation of powers and checks and balances between them, as defined by the Constitution. The principles deriving from the aforementioned Article of the Constitution, specifically the separation and interaction of powers, as a fundamental value of the constitutional order of the Republic of Kosovo, the Court has elaborated over the years through judgments that include but are not limited to (i) the Judgment of the Court in case KO73/16, with the applicant the Ombudsperson, in which the Court assessed the constitutionality of Administrative Circular No. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo (hereinafter: Judgment in case KO73/16); (ii) the Judgment of the Court in case KO171/18with the applicant the *Ombudsperso*n, in which the Court assessed the constitutionality of Law No.06/L-048 on the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: Judgment in case KO171/18); (iii) the Judgment of the Court in case KO203/19, with the applicant the *Ombudsperson*, in which the Court assessed the constitutionality of Law No. 06/L-114 on Public Officials (hereinafter: Judgment in case KO203/19); (iv) the Judgment in case KO219/19, with the applicant the *Ombudsperson*, in which the Court assessed the constitutionality of Law No. 06/L-111 on Salaries in the Public Sector (hereinafter: Judgment in case KO219/19); (v) the Judgment in case KO127/21, with the applicant *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, regarding the assessment of the constitutionality of Decision No. 08-V-29 of the Assembly of the Republic of Kosovo of 30 June 2021, for the dismissal of five (5) members of the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: Judgment in case KO127/21); (vi) the Judgment in the case of the Court KO100/22 and KO101/22, with the applicants KO100/22, *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*; and applicants KO101/22, *Arben Gashi and 10 other deputies of the Assembly of the Republic of Kosovo*, assessed the constitutionality of Law No.08/L-136 on Amending and Supplementing Law No.06/L-056 on the Kosovo Prosecutorial Council (hereinafter: Judgment in case KO100/22 and KO101/22); (vii) the Judgment in the case of the Court KO216/22 and KO220/22, with applicants KO216/22, *Isak Shabani and 10 other deputies of the Assembly of the Republic of Kosovo*; and applicants KO220/22, *Arben Gashi and 9 other deputies of the Assembly of the Republic of Kosovo*, assessed the constitutionality of Articles 9, 12, 46, and 99 of Law 08/L-197 on Public Officials (hereinafter: Judgment in case KO216/22 and KO220/22); and (viii) the Judgment in the case of the Court KO79/23, with the applicant the *Ombudsperson*, regarding the assessment of the constitutionality of Law No. 08/L-196 on Salaries in the Public Sector (hereinafter: Judgment in case KO79/23).

353. In the specific circumstances of the present case, relevant are the principles related to (i) the Assembly's oversight competence; and (ii) independent agencies.

354. In the aforementioned context, the Court recalls that based on Article 4 of the Constitution, the Assembly of the Republic of Kosovo exercises legislative power, while based on Article 65 of the Constitution, among others, the Assembly of the Republic of Kosovo (i) adopts laws, resolutions, and other general acts; (ii) oversees the work of the Government and other public institutions, which, based on the Constitution and laws, report to the Assembly; and (iii) decides on issues of general interest, as defined by law. Furthermore, based on Article 142 of the Constitution, the Assembly establishes the

Independent Agencies of the Republic of Kosovo, based on relevant laws approved according to paragraph 1 of Article 65 of the Constitution.

355. More precisely, based on Article 142 of the Constitution, the Independent Agencies of the Republic of Kosovo (i) are institutions created by the Assembly, based on relevant laws, which regulate their establishment, functioning, and competencies; (ii) perform their functions independently from any other body or authority in the Republic of Kosovo; (iii) have their budget, which is administered independently, in accordance with the law; and (iv) each body, institution, or other authority, exercising legitimate power in the Republic of Kosovo, is obliged to cooperate and respond to the requests of independent agencies during the exercise of their legal competencies, in accordance with the law.

356. The Court recalls that Article 142 is part of Chapter XII [Independent Institutions] of the Constitution, but unlike other constitutional institutions specified in the aforementioned chapter and which are established by the Constitution, the Independent Agencies specified by Article 142 of the Constitution are established through laws approved by the Assembly. More precisely, Chapter XII of the Constitution establishes (i) the Ombudsperson; (ii) the Auditor General; (iii) the Central Election Commission; (iv) the Central Bank of Kosovo; and (v) the Independent Media Commission, as independent constitutional institutions, while delegating to the Assembly the competence to establish independent constitutional agencies through Article 142 of the Constitution, under the criteria specified therein. The distinction and/or relationship between independent institutions and independent agencies have also been addressed by the Court through its case law, including through the Judgment in case KO203/19, in which it clarified that Independent Agencies, although established based on Article 142 of the Constitution included in Chapter XII of the Constitution, do not have the same status as that of the independent constitutional institutions specified explicitly in Chapter XII of the Constitution. This is because the establishment, role, and status of independent constitutional institutions are clearly regulated by Chapter XII of the Constitution, while Independent Agencies "*are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies*". Thus, unlike the fact that the Assembly can create and dissolve "*by law*" Independent Agencies, the Assembly can never dissolve "*by law*" any of the five aforementioned independent institutions (see, the Judgment of the Court in case KO203/19, paragraph 117).

357. Furthermore, in the context of the relationship between Article 65 [Competences of the Assembly] and Article 142 [Independent Agencies] of the Constitution, specifically the Assembly's oversight competence, the Court emphasizes that paragraph 9 of Article 65 of the Constitution specifies that the Assembly oversees (i) the work of the Government; and (ii) other public institutions, which, based on the Constitution and laws, report to the Assembly. In the context of public institutions, consequently, the Assembly exercises oversight competence over those institutions that report to the Assembly based on the Constitution and laws. Article 142 of the Constitution, on the other hand, in the context of Independent Agencies, does not specify that they report to the Assembly and consequently does not specify the Assembly's oversight competence in relation to them, only stipulating that it is within the Assembly's competence to establish Independent Agencies through laws approved by it. Therefore, based on paragraph 9 of Article 65 of the Constitution, as long as the obligation to report to the Assembly is not specified by the Constitution, the Assembly has the competence to specify the reporting obligation of the relevant institution and consequently the Assembly's oversight competence through laws approved by the Assembly itself.

358. In the context of the Bureau, the Court recalls that it is established as an independent institution, specifically an independent agency in the context of Article 142 of the Constitution. The same (i) is established through a law approved by the Assembly according to the provisions of paragraph 1 of Article 142 of the Constitution; (ii) has independence in the context of administering its budget, according to the provisions of paragraph 2 of Article 142 of the Constitution; and (iii) is vested with the authority according to which, every body, institution, or other authority exercising legitimate power in the Republic of Kosovo, is obliged to cooperate and respond to its requests during the exercise of its legal competencies, in accordance with the law, according to the provisions of paragraph 3 of Article 142 of the Constitution. Considering that Article 142 of the Constitution does not specify the reporting obligation of Independent Agencies to the Assembly and neither the Assembly's oversight competence over them, leaving this matter to be regulated at the legal level, through the contested Law, the Assembly has specified the oversight competence of the Bureau to the Oversight Committee specified through Article 10 (Oversight Committee Composition and Compensation) of the contested Law.

359. In this context, the Court also refers to Law No. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies, which in Article 38 (Establishment of Independent Agencies) of it specifies that (i) Independent Agencies are established by law based on Article 142 of the Constitution; (ii) an independent agency may be established, according to paragraph 1 of this Article, to perform competencies, which together meet these conditions: (a) are not part of the executive competencies of the Government according to the Constitution, and (b) serve the Assembly for exercising specialized parliamentary oversight/control of legality and integrity in certain areas of administrative activity; and (iii) the law establishing an independent agency regulates the organization, functioning, and competencies of the independent agency.

360. The Court notes that Article 38 of the Law on the Organization and Functioning of State Administration and Independent Agencies, in principle, includes the oversight and specialized parliamentary control of legality and integrity in certain areas of administrative activity, in the spirit of paragraph 9 of Article 65 of the Constitution. However, paragraph 1 of Article 43 (Supervision and performance of independent agencies) of the Law on the Organization and Functioning of State Administration and Independent Agencies, specifies that: "*Unless otherwise provided by the law, independent agencies shall report to the Kosovo Assembly*". Consequently, considering the interaction of constitutional provisions, including the provisions of the aforementioned Law on the Organization and Functioning of State Administration and Independent Agencies, it results that the Assembly may exclude parliamentary oversight and control through laws approved by it. This is the case concerning the contested Law, through which the Assembly, (i) has specified the oversight of an independent institution/agency to be under the competence of Oversight Committee, established according to the provisions of Article 10 (Oversight Committee Composition and Compensation) of the contested Law; however, (ii) has specified the obligation of the Bureau to report to the Assembly once (1) a year, including the right of the latter to request more frequent reports; and (iii) has specified the competence of the Assembly to elect and dismiss the Director General of the Bureau, based on the proposal of the Oversight Committee.

Conclusion

361. Consequently, and based on the above explanations, the Court concludes that (i) the Bureau is an independent institution/agency established by law, as defined by Article 142 [Independent Agencies] of the Constitution; and (ii) paragraph 9 of Article 65 [Competences of the Assembly] of the Constitution, in conjunction with Article 142 [Independent Agencies] of the Constitution, grants the Assembly the competence to regulate, through the approval of the relevant law, the issue of reporting and/or oversight by the Assembly concerning the respective Independent Agency, including the possibility of excluding the Assembly's oversight competence if the Assembly itself determines so through the approval of the relevant law based on paragraph 1 of Article 65 of the Constitution.

(ii) compatibility of the composition of the Oversight Committee with Article 142 and the principle of separation and interaction of powers

362. The Court recalls that the contested Law assigns the oversight function of the Bureau to Oversight Committee specified through Article 10 of the contested Law. As explained above, despite the fact that the supervisory function of an independent institution/agency is generally exercised by the Assembly of the Republic of Kosovo, paragraph 9 of Article 65 of the Constitution, Article 142 of the Constitution, and Law No. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies, exceptionally, allow for the supervisory function to be exercised by another mechanism as determined by the Assembly itself, based on laws approved through paragraph 1 of Article 65 of the Constitution.

363. In the context of the Bureau, this function is assigned to a Commission composed of (i) a judge of the Supreme Court of Kosovo, appointed by the President of the Supreme Court, who is also the chairperson of the Commission; (ii) the Auditor General of the Republic of Kosovo; (iii) the Director of the Anti-Corruption Agency; (iv) a deputy of the Ombudsperson, appointed by the Ombudsperson; and (v) the Director of the Financial Intelligence Unit. The supervisory competences of this Commission, as detailed above, are specified in Article 12 (Competences of the Commission) of the contested Law, and are also related to the competences of the Bureau, specified in Article 8 (Powers and responsibilities of the Bureau) and the competences of the Director General, specified in Article 16 (Powers and responsibilities of the Director General) of the contested Law.

364. The Court also recalls that, as elaborated in the section of this Judgment related to the facts and the approval procedure of the contested Law, the Venice Commission has adopted two (2) Opinions concerning the content of the respective drafts of the contested Law, through which it has also addressed the method and mechanism of oversight of the Bureau.

365. In its first Opinion, the Venice Commission reviewed the draft law in which the oversight function of the Bureau was proposed to be exercised by a Commission of the Assembly. In this regard, among others, the Venice Commission raised the issue of the competences of the Director General in relation to the substantial role of the Assembly's Oversight Committee in the election of the Director General (paragraph 38 of the First Opinion). In this context, the Commission noted that (i) these procedures foresee a highly politicized election system, without the need for any external technical contribution; and also emphasized that (ii) "*strong guarantees of independence will be necessary to enable the*

Bureau to resist any possible political pressure". In this regard, and concerning the election of the Director General, the Venice Commission recommended the mandatory consultation of independent experts in this process, noting that "*it would be advisable that the Director General either be elected by an external commission composed of independent institutions and experts or that candidates be selected and proposed by such an independent commission to the Assembly for vote*." (paragraph 39 of the First Opinion). A similar recommendation was also given regarding the procedure for the dismissal of the Director General (paragraph 40 of the First Opinion). Finally, it was also noted that "*the establishment of a collegiate and pluralistic governing body of the Bureau, whose members could be delegated from independent institutions, might be another option*". (paragraph 39 of the First Opinion).

366. Furthermore, the same Opinion noted that "*while appropriate oversight of the Bureau is clearly necessary, given that the Oversight Committee is a body of the Assembly itself the draft law represents a strong degree of political control by politicians over the Bureau,"* and that it is also questionable whether the important role of the Oversight Committee is compatible with the definition of the Bureau as an "*independent*" body *(Article 4)*",thus recommending that this institutional structure be reconsidered. In this regard, the Opinion noted that while "*the Bureau must be answerable to the Assembly to a certain extent,"* it *"should be clearly defined that this is limited to the reporting. Performance evaluation, with possible consequences for the Director General's career, should be excluded; if deemed necessary, such an evaluation should be entrusted to an independent expert commission*". (paragraph 42 of the First Opinion).

367. On the other hand, in the Second Opinion, the Venice Commission reviewed the new version of the draft law, in which the oversight function of the Bureau was proposed to be exercised by Oversight Committee. The Second Opinion emphasized that regarding the new composition of the Oversight Committee, "*this seems to be an appropriate solution*". (paragraph 15 of the Second Opinion). It also added that (i) "*the new body proposed in the draft law provides a better guarantee for independence as all Committee members come from outside the political sphere*" (paragraph 15 of the Second Opinion); and (ii) "*the composition of the Oversight Committee and its role in the selection of the Director General*, inter alia, is a significant improvement compared to the previous draft." (paragraph 18 of the Second Opinion).

368. Based on the Venice Commission's evaluations in the two above-mentioned Opinions, the Court notes that, in principle, the Assembly's supervisory function was addressed in the context of the election of the Director General and his/her competences in leading the Bureau, recommending the inclusion of independent experts in the respective election. Stating this, while emphasizing that an oversight role of the Assembly might be necessary, the Venice Commission had also recommended as an alternative the creation of an independent mechanism, whose members would be delegated by independent institutions.

369. The Venice Commission also addressed the issue of exercising the oversight function in its Opinion regarding the draft-law on verification and confiscation of unjustified assets of Bulgaria. Consistently, the Venice Commission had emphasized two issues, specifically (i) that the respective Commission should be overseen by the National Assembly, in terms of general oversight of the functioning of the respective Commission; and (ii) that the selection of the respective members of the Commission be done with two-thirds (2/3) of the National Assembly, regardless of the Constitution stipulating that decisions in the respective Assembly are made by a simple majority, including if necessary with the

condition of constitutional changes (see, paragraphs 16, 17, 18, 19, 21, and 62 of Opinion CDL-AD(2011)023 and also Opinions CDL(2011)036, CDL(2010)103, CDL-AD (2010)019, CDL(2010)041, CDL-AD(2010)010, and CDL(2010)027).

370. Based on the above explanations, the Court reiterates that while based on Article 142 of the Constitution, the Assembly has full competence to regulate the establishment, functioning, and competences of Independent Agencies, including the manner of their oversight, and consequently, the Bureau, the establishment, functioning, and competences of the Bureau must also be in compliance with other constitutional provisions. In the context of the applicants' claims and the parties' arguments and counter-arguments before the Court in this case, the issue before the Court is whether the composition of the Oversight Committee complies with the principle of separation and balance of powers specified in Article 4 of the Constitution. Considering the composition of the Oversight Committee, specifically the participation of (i) a judge of the Supreme Court of Kosovo, appointed by the President of the Supreme Court, who is also the chairperson of the Commission; (ii) the Auditor General of the Republic of Kosovo; (iii) the Director of the Anti-Corruption Agency; (iv) a deputy of the Ombudsperson, appointed by the Ombudsperson; and (v) the Director of the Financial Intelligence Unit, it results that the participation of (i) the deputy of the Ombudsperson; (ii) the Auditor General; and (iii) the Supreme Court judge, whose competences, functions, including the incompatibility of respective functions, are specified by the Constitution of the Republic of Kosovo.

371. In such circumstances, and considering the above-mentioned conclusion that based on Article 142 of the Constitution, the Assembly through relevant laws can also determine/delegate oversight through mechanisms defined by law, however, considering the composition of the Oversight Committee as specified by Article 10 of the contested Law, it must be evaluated whether it complies with (i) the constitutional functions and competences of the Ombudsperson, as specified in Article 132 [Role and Competences of the Ombudsperson] of the Constitution; (ii) the constitutional functions and competences of the Auditor General, as specified in Articles 136 [Auditor-General of Kosovo] and 137 [Competences of the Auditor-General of Kosovo] of the Constitution; and (iii) the incompatibility of the judge's function, as specified in Article 106 [Incompatibility] of the Constitution. The evaluation of the compatibility/incompatibility of their functions as members of the Oversight Committee and the respective constitutional functions and competences as specified in the above-mentioned articles of the Constitution must also be done considering the competences of the Oversight Committee, as specified in Article 12 (Competences of Committee) of the contested Law, which are also related to the competences of the Bureau specified in Article 8 (Powers and responsibilities of the Bureau) and the competences of the Director General specified in Article 16 (Competences and Responsibilities of the Director General) of the contested Law.

372. Based on the above explanations, and reiterating that (i) based on Article 16 [Supremacy of the Constitution] of the Constitution, the Constitution is the highest legal act of the Republic of Kosovo, with which laws and other legal acts must comply and from which the governing authority derives; and (ii) the Constitution consists of a unique set of constitutional principles and values on which the Republic of Kosovo is built and must function and that the norms provided by the Constitution must be read and interpreted in connection with each other and based on the constitutional values of the Republic of Kosovo, including the separation and balance of powers, the Court emphasizing that the composition of the Oversight Committee must ensure the independence of the Bureau in exercising its competences specified by law, while also respecting and not violating the

compatibility of the constitutional functions of its members, will evaluate (a) the compatibility of the function of the Ombudsperson's deputy, as a member of the Oversight Committee with his/her role and competences specified in Article 132 of the Constitution; (b) the compatibility of the function of the Auditor General as a member of the Oversight Committee with his/her role and competences specified in Articles 136 and 137 of the Constitution, respectively; and (c) the compatibility of the judge's function as a member of the Oversight Committee with his/her role concerning the limitations specified in Article 106 of the Constitution, which specifies the incompatibility of the judge's function.

(a)Deputy Ombudsperson

373. In the context of including a deputy of the Ombudsperson in the Oversight Committee of the State Bureau, the Court recalls that the second Opinion of the Venice Commission had evaluated the proposed composition of the above-mentioned Commission as an "*appropriate*" solution and a *"a better guarantee for independence as all Committee members come from outside the political sphere*" (see, paragraphs 15 and 16 of the Second Opinion), despite the fact that the participation of the Deputy Ombudsperson in the Oversight Committee and the incompatibility of the constitutional functions of the Ombudsperson's Institution, respectively, the Deputy Ombudsperson in relation to the competences of the State Bureau specified in the contested Law in particular were not addressed. The Court also recalls that in the first Opinion of the Venice Commission concerning the evaluation of the draft law on the Prosecutorial Council of Kosovo, the Venice Commission had also taken the Ombudsperson as an example of an institution that could be represented in prosecutorial councils (see, Opinion No. 1063/2021, CDL-AD(2021)051on the Draft Law on the Amendment and Supplementation of the Law on the Prosecutorial Council of Kosovo, approved at the 129th plenary session of the Venice Commission, 10-11 December 2021, paragraph 32), however, in the second Opinion of the Venice Commission concerning the above-mentioned draft law, the Commission also drew attention to the fact that "*it is that the Ombudsman's involvement does not compromise his or her ability to make independent determinations concerning matters involving the KPC*" (see, Opinion CDL-AD(2022)006, paragraph 12).

374. Furthermore, the Venice Commission had addressed the incompatibility of the Ombudsperson's function with performing other designated public functions in at least two other opinions, as presented in the Compilation of Venice Commission Opinions concerning the role of the Ombudsperson's Institution. In this context, the Venice Commission, among others, emphasized that "*the function of Public Attorney is incompatible with the performance of another public function and profession or with being a member to a political party. The Public Attorney function should not be compatible with another function or profession, public or private, neither with the belonging to political parties or unions. It could eventually be compatible with lecturing but, even in that case, the activity should be exercised without compensation*". (see, Compilation CDL-PI(2022)22, p. 13). Additionally, the Venice Commission had emphasized that *"[…] drafters might consider to allow the ombudsperson [and] his or her deputies to pursue teaching activities. However, it would be preferable to replace the list of public offices, which cannot be held by an ombudsperson, with a more comprehensive provision stating that the ombudsperson shall not hold any position which is incompatible with the proper performance of his or her official duties or with his or her impartiality and public confidence therein*". (see, the same source).

375. Beyond the above explanations, the Court recalls that it has addressed the role of the Ombudsperson in the legal order of the Republic of Kosovo over the years in several judgments, including but not limited to the Court's Judgments in cases KO29/12 and KO48/12, KO73/16, KO171/18, KO203/19, KO219/19 and KO 79/23.. Specifically, the issue of the Ombudsperson's involvement in other institutions of the Republic of Kosovo was addressed in the assessment of the constitutionality of Law No.08/L-136 on Amending and Supplementing Law No.06/L-056 on the Prosecutorial Council of Kosovo, through the Court's Judgment in cases KO100/22 and KO101/22 (see, the Judgment in cases KO100/22 and KO101/22, paragraphs 239-267). More precisely, in the context of the Ombudsperson's role in "*appointing/electing*" a non-prosecutor member of the Prosecutorial Council of Kosovo, the Court found a violation of paragraph 1 of Article 4 [Form of Government and Separation of Powers], paragraph 10 of Article 65 [Competences of the Assembly] of the Constitution, and Article 132 [Role and Competences of the Ombudsperson] of the Constitution. In this Judgment, the Court, among others, noted that the constitutionality of the contested Law, in the context of determining the Ombudsperson's competence to "*appoint/elect*" a non-prosecutor member of the Prosecutorial Council of Kosovo, must be evaluated in the context of (i) paragraph 10 of Article 65 of the Constitution, which, among others, stipulates that the Assembly elects the members of the Prosecutorial Council; (ii) the constitutional competences of the Assembly to elect holders of functions of independent constitutional institutions specified in Chapters VII and XII of the Constitution, respectively; and (iii) Article 132 of the Constitution, according to which, among others, the Ombudsperson has the competence to oversee all public authorities, including the Prosecutorial Council, in the context of illegal actions or omissions related to fundamental rights and freedoms. While (i) the first two issues are not related to the circumstances of the specific case, because while the Prosecutorial Council of Kosovo is a fully independent constitutional institution regulated at the constitutional level, specifically its Chapter VII, and the Constitution itself specifies the Assembly's competence to elect the members of the Prosecutorial Council, the State Bureau is established through a law approved by the Assembly as an Independent Agency, (ii) the third issue, specifically the Ombudsperson's supervisory competence over all institutions of the Republic of Kosovo as specified in Article 132 of the Constitution, is relevant in the specific circumstances of the case.

376. In the above context, the Court initially recalls that the role and competences of the Ombudsperson are specified in Articles 132 [Role and Competences of the Ombudsperson], 133 [Office of the Ombudsperson], 134 [Qualifications, Election, and Dismissal of the Ombudsperson], and 135 [Ombudsperson Reporting] of the Constitution. Based on the above-mentioned provisions and as far as relevant in the specific circumstances of the case, the Ombudsperson, in the constitutional order of the Republic of Kosovo, has four (4) key characteristics. First, it oversees and protects the rights and freedoms of individuals from illegal and irregular actions or omissions of public authorities. Second, it is independent in exercising its duty and does not accept instructions or interference from other bodies, institutions, or authorities exercising power in the Republic of Kosovo. Third, every body, institution, or other authority exercising legitimate power in the Republic of Kosovo is obliged to respond to the Ombudsperson's requests and present all requested documents and information in accordance with the law. And fourth, the Ombudsperson (i) presents an annual report to the Assembly of the Republic of Kosovo; (ii) has the right to make recommendations and propose measures if it finds violations of human rights and freedoms by public administration bodies and other state bodies; and (iii) has the right to refer cases to the Constitutional Court, in accordance with the provisions of this Constitution.

377. The Court notes that in the specific circumstances of the case, the issue is the incompatibility of the function of the deputy Ombudsperson with the function in another state institution, specifically the member of the Oversight Committee of the State Bureau. In the above context, it is important to determine (i) the role of the Deputy Ombudsperson in the Institution of the Ombudsperson; and (ii) the compatibility of parallel state functions, specifically the function of the Ombudsperson and the member of the Oversight Committee of the State Bureau, an assessment that must be made in the context of the competences and functions of the Ombudsperson and the competences and functions of the member of the Oversight Committee of the State Bureau, respectively.

378. In the context of the role of the deputy Ombudsperson in the Institution of the Ombudsperson, the Court emphasizes that the deputy Ombudsperson is a constitutional category specified in (i) Article 133 [Office of the Ombudsperson] of the Constitution, in the context of the Office of the Ombudsperson; and (ii) Article 134 [Qualifications, Election, and Dismissal of the Ombudsperson] of the Constitution, in the context of the qualifications, election, and dismissal of the Ombudsperson. Furthermore, according to Article 133 [Office of the Ombudsperson] of the Constitution, the number, manner of selection, and mandate of the deputy Ombudspersons are regulated by the Law on the Ombudsperson. The latter, in Article 5 (Composition of the Institution of the Ombudsperson), specifies that the Institution of the Ombudsperson consists of (i) the Ombudsperson; (ii) five (5) deputy Ombudspersons; and (iii) the staff of the Institution of the Ombudsperson. Article 10 (Procedure for the Election of Deputy Ombudspersons) of the Law on the Ombudsperson specifies that the deputy Ombudspersons are elected by the Assembly of the Republic of Kosovo, with the majority of the votes of the present and voting deputies, after the proposal of the Ombudsperson based on an open and transparent competition. On the other hand, Article 13 (Dismissal of the Ombudsperson and his/her deputies from their function) of the Law on the Ombudsperson specifies that the Ombudsperson and his/her deputies can be dismissed for (i) physical or mental incapacity causing the inability to perform their functions; (ii) committing a criminal offense punishable under the legislation of the Republic of Kosovo with six (6) or more months of imprisonment based on a final court decision; and (iii) actions in violation of subparagraph 5 of paragraph 1 of Article 6 and paragraph 2 of Article 7 of this law, specifically (a) exercising a function in a political party, a deputy in the legislature of the Assembly of the Republic of Kosovo that elects him/her or a member of the government cabinet and (b) participation in the governing bodies of civil, economic, and commercial organizations. According to the provisions of the above article, the deputy Ombudsperson is dismissed by the Assembly, with the votes of the majority of all deputies of the Assembly, upon the request of the Ombudsperson. The Court also notes that based on Article 14 (End of the function of the Ombudsperson and his/her deputies) of the Law on the Ombudsperson, in case of absence, death, permanent or temporary incapacity, resignation, or dismissal, the Ombudsperson is replaced by the principal deputy or other deputies.

379. The Court notes that the Constitution and the Law on the Ombudsperson do not specify the division of duties and responsibilities between the Ombudsperson and his/her deputies. Saying this, the Court emphasizes that in the context of the incompatibility of functions, the Constitution does not distinguish between the Ombudsperson and his/her deputies. More precisely, while the constitutional articles regulating the status and competences of the Ombudsperson do not necessarily refer to the deputy Ombudspersons, the only constitutional provision that addresses the Ombudsperson and his/her deputies

identically is precisely the one related to the incompatibility of the function. This is paragraph 3 of Article 134 [Qualifications, Election, and Dismissal of the Ombudsperson] of the Constitution, which equates and/or treats the Ombudsperson and his/her deputies identically, specifying that they cannot (i) be members of any political party; (ii) exercise political, state, or private professional activity; and (iii) participate in the governing bodies of civil, economic, and commercial organizations. Furthermore, the Law on the Ombudsperson also treats the Ombudsperson and his/her deputies identically in the context of the incompatibility of functions. More precisely, Article 7 (Incompatibility) of the Law on the Ombudsperson specifies that the Ombudsperson and his/her deputies (i) cannot be members of any political party or exercise political, state, or private professional activity; (ii) do not participate in the governing bodies of civil, economic, and commercial organizations; (iii) do not have the right to exercise any other public or professional duty for which they are compensated, except for teaching in higher education institutions; while (iv) they may engage in scientific, cultural, academic, and other activities that do not conflict with their functions and the legislation in force. Moreover, it is also important to emphasize that the provisions of the Law on the Ombudsperson, which specify the grounds for the dismissal of the Ombudsperson and/or his/her deputies, also specify the incompatibility of the function as one of the reasons based on which the dismissal of the Ombudsperson and/or his/her deputies can be initiated.

380. In the above context, and considering that in the context of the incompatibility of the function, the Constitution and the Law on the Ombudsperson treat the Ombudsperson and his/her deputies identically, the Court cannot differentiate the compatibility of the function between the Ombudsperson and/or his/her deputies. The Constitution specifies that the same rules regarding the incompatibility of functions apply to both the Ombudsperson and his/her deputies and consequently, the Court will evaluate the compatibility of the function of the deputy Ombudsperson and the parallel function of the member of the Oversight Committee of the State Bureau, considering the constitutional competences of the Ombudsperson as specified in the above-mentioned constitutional provisions.

381. In this context, the Court reiterates the constitutional provision which specifies the incompatibility of the function of the Ombudsperson and according to which, as relevant in the circumstances of the specific case, the Ombudsperson and his/her deputies cannot exercise other state activities. Based on this constitutional provision, the Court must evaluate (i) whether the exercise of functions in other state institutions can be qualified as the exercise of another state activity for the purposes of the incompatibility of the function according to the provisions of Article 134 of the Constitution; and (ii) whether the exercise of such activity undermines the competence of the Ombudsperson to oversee and protect the rights and freedoms of individuals from illegal and irregular actions or omissions of public authorities, according to the provisions of Article 132 of the Constitution.

382. In the above context, the Court notes that the exercise of the function in a state institution, a function that is complete, including without restrictions in the context of the time period during which it is exercised, except for the fact that it is related to the mandate of the respective deputy Ombudsperson, cannot be qualified as the exercise of another state activity. However, the Court notes that the exercise of such activity is specified by the contested Law, while according to paragraph 5 of Article 7 of the Law on the Ombudsperson, the Ombudsperson may exercise other functions with the authorization of the Assembly of the Republic of Kosovo. Based on the above provision, it is not contested that the Assembly through laws can assign additional functions and competences to the

Ombudsperson and/or his/her deputies. This, as long as, as emphasized through the above-mentioned Opinions of the Venice Commission, such functions and/or competences do not undermine and/or limit the independence of the Ombudsperson in exercising his/her constitutional competences. In the specific circumstances of the case, consequently, it must be evaluated whether the exercise of parallel functions of the Ombudsperson, in the context of his/her competences, is compatible with the exercise of the function of the member of the Oversight Committee of the State Bureau, in the context of the competences of this member.

383. The Court reiterates the essential constitutional competence of the Ombudsperson to oversee and protect the rights and freedoms of individuals from illegal and irregular actions or omissions of public authorities. A public authority in the Republic of Kosovo is also the State Bureau, and consequently, the Ombudsperson has the constitutional competence to oversee the State Bureau, specifically the illegal and irregular actions or omissions of the Bureau that may infringe individual rights and freedoms.

384. The supervisory competences of the Ombudsperson are further specified in the Law on the Ombudsperson and as relevant in the specific circumstances of the case, based on Articles 16 (Competences) and 18 (Responsibilities) of the Law on the Ombudsperson, include competences/responsibilities (i) to investigate complaints received from any natural or legal person regarding allegations of human rights violations provided by the Constitution, laws, and other acts, as well as international human rights instruments, particularly the ECHR, including actions or omissions that constitute abuse of authority; (ii) to conduct investigations, whether in response to a submitted complaint or on his/her initiative (*ex officio*), if from the findings, evidence, and facts presented in the submission or from other acquired knowledge, there is a basis to result that from the authorities, human rights and freedoms provided by the Constitution, laws, and other acts, as well as international human rights instruments, have been violated; (iii) to draw attention to cases where authorities violate human rights and to recommend that such cases be ended and when necessary, to express his/her opinion on the attitudes and responses of the relevant authorities regarding such cases; and (iv) to take all necessary measures and actions to review submitted complaints according to paragraph 1 of Article 16 of the Law on the Ombudsperson, including direct intervention with competent authorities, from whom it will be requested to respond within a reasonable time set by the Ombudsperson.

385. The Court notes that parallel to exercising the above-mentioned competences, consequently the competence to oversee the State Bureau, among others, in the context of protecting the rights and freedoms of individuals, specifically the subjects of verification from illegal and irregular actions or omissions of the Bureau, the deputy Ombudsperson is also designated as a member of the Oversight Committee of the State Bureau, and in this role, based on the contested Law, among others, is responsible for decision-making related to (i) overseeing the work and activities of the Bureau; (ii) conducting the recruitment procedure and proposing to the Assembly regarding the appointment and dismissal of the Director General; (iii) evaluating the performance of the Director General; (iv) approving sub-legal acts specified by this law, upon the proposal of the Director General; and (v) reviewing the work reports of the Director General. Furthermore, these competences of the members of the Oversight Committee, including the deputy Ombudsperson, must also be addressed in the context of the competences and responsibilities of the State Bureau, which, among others, include (i) initiating and conducting the procedure for verifying assets, to determine whether the official's assets are unjustified assets; and (ii) submitting a proposal for the confiscation of assets to the relevant court.

386. This function, specifically the decision-making and oversight role in a state institution that, among others, will be responsible for verifying unjustified assets and proposing their confiscation in civil procedure, which, including according to the jurisprudence of the ECtHR elaborated in this Judgment, but also the Council of Europe Report on Civil Confiscation, entails fundamental constitutional issues, including balancing between public interest and fundamental rights and freedoms, raises serious compatibility issues with the constitutional mandate of the Ombudsperson to oversee and protect the rights and freedoms of individuals from illegal and irregular actions or omissions of public authorities, including the State Bureau itself. In fact, the exercise of the supervisory competence of the Ombudsperson according to the provisions of Article 132 of the Constitution would include a public authority whose decision-making involved the participation of the Ombudsperson, specifically his/her deputy.

387. In this context, the Court emphasizes that the decision-making of the deputy Ombudsperson, specifically the Office of the Ombudsperson, in exercising the competences of the State Bureau, would undermine the constitutional duties of the Ombudsperson to (i) oversee and protect the rights and freedoms of individuals from illegal and irregular actions or omissions of public authorities, including the actions or omissions of the Bureau, as specified in paragraph 1 of Article 132 of the Constitution; (ii) make recommendations and propose measures, if it finds violations of human rights and freedoms by public administration bodies and other state bodies, including the Bureau, as specified in paragraph 3 of Article 135 [Ombudsperson Reporting] of the Constitution; and (iii) exercise the competences and responsibilities specified by the Law on the Ombudsperson, including in the context of investigating complaints received from any natural or legal person regarding allegations of human rights violations provided by the Constitution, laws, and other acts, as well as international human rights instruments, including actions or omissions that constitute abuse of authority, including by the Bureau.

388. The Court recalls that it is precisely the constitutional "*oversight*" competence of the Ombudsperson in the context of fundamental rights and freedoms and the obligation of every body, institution, or other authority exercising legitimate power in the Republic of Kosovo to respond to the Ombudsperson's requests and present all requested documents and information in accordance with the law as specified in Article 132 of the Constitution, that has resulted in the subsequent constitutional provision, referring to the incompatibility of his/her function with, among others, exercising any other state activity, according to the provisions of Article 134 of the Constitution.

389. Based on the above elaboration, specifically the provisions of the contested Law related to the competences of the Oversight Committee and taking into account the constitutional norms that determine the role and competences, including supervisory, of the Ombudsperson over all public authorities in the context of fundamental rights and freedoms and the international standards referring to the independence of the Ombudsperson's function, it results that the determination of the contested Law to include one of the deputies of the Ombudsperson, appointed by the Ombudsperson himself/herself, in the Oversight Committee of the Bureau, prevents the latter from independently exercising the constitutional role of overseeing fundamental rights and freedoms in relation to the function and competences of the State Bureau.

Conclusion

390. Consequently, taking into account (i) Article 16 of the Constitution, based on which the Constitution is the highest legal act in the Republic of Kosovo and according to which laws and other legal acts must be in accordance with the Constitution; (ii) Article 134 of the Constitution which treats the Ombudsperson and his/her deputies identically in the context of the criteria for the incompatibility of their functions; (iii) Articles 132, 134, and 135 of the Constitution, related to the constitutional competences of the Ombudsperson, including his supervisory function over public authorities, specifically over the State Bureau itself, the Court finds that the role of the deputy Ombudsperson, specifically the Office of the Ombudsperson, as a member of the Oversight Committee of the Bureau, determined by point 1.4 of Article 10 (Oversight Committee Composition and Compensation) of the contested Law, is not in compliance with paragraph 1 of Article 132 [Role and Competences of the Ombudsperson] and paragraph 3 of Article 134 [Qualifications, Election, and Dismissal of the Ombudsperson] of the Constitution.

(b) Auditor General

391. In the context of the inclusion of the Auditor General in the Oversight Committee of the State Bureau, the Court recalls that the second Opinion of the Venice Commission assessed the proposed composition of the aforementioned Committee as an "*appropriate solution*" and a "*a better guarantee for independence as all Committee members come from outside the political sphere*" (see, paragraphs 15 and 16 of the second Opinion), despite the fact that the participation of the Auditor General in the Oversight Committee and the incompatibility of the constitutional functions of the Auditor General with the competences of the State Bureau specified in the contested Law were not addressed. However, regarding the *ex lege* appointment of the members of the Oversight Committee, including the Auditor General, it was specified that: "*as the Auditor General is also a member this responds to the Venice Commission's remark that the General Auditor should be implied in the control of the budget of the Bureau*". (see, paragraph 15 of the second Opinion).

392. That being said, it is not contested that every institution of the Republic of Kosovo, including the State Bureau, is subject to the control of the Auditor General. Such an issue is defined by the Constitution, specifically through Article 137 [Competences of the Auditor General of Kosovo] of the Constitution, which, among others, specifies that the Auditor General of the Republic of Kosovo controls (i) the economic activity of public institutions and other state legal entities; and (ii) the use and protection of public funds by central and local government bodies. Consequently, the competence of the Auditor General to control the activities of public authorities and the use of public funds does not depend on the provisions of the laws and the composition of decision-making bodies, because it is an issue regulated at the constitutional level and applies to all public authorities in the Republic of Kosovo without exception.

393. Furthermore, the Court recalls that the role of the Auditor General in the legal order of the Republic of Kosovo has been addressed by the Court over the years in a number of judgments, including but not limited to the Court's judgments in cases KO29/12 and KO48/12, KO73/16, KO171/18, KO203/19, KO219/19, and KO 79/23.

394. Beyond the principles specified in the above-mentioned judgments, the Court also recalls that the role and competences of the Auditor General are specified in Article 136 [Auditor General of Kosovo], Article 137 [Competences of the Auditor General of Kosovo], and Article 138 [Reporting by the Auditor General of Kosovo] of the Constitution.

395. Based on the above provisions and as relevant in the circumstances of the specific case, the Auditor General in the constitutional order of the Republic of Kosovo has three (3) key characteristics. First, he/she is the highest institution of economic and financial control in the Republic of Kosovo. Second, he/she controls (i) the economic activity of public institutions and other state legal entities; and (ii) the use and protection of public funds by central and local government bodies. Third, he/she submits to the Assembly (i) a report on the implementation of the state budget; (ii) an opinion on the Government's report on the expenditures of the previous financial year, before it is approved by the Assembly; and (iii) information on the results of audits whenever requested by the Assembly.

396. On the other hand, the competences of the Auditor General are further specified in Law no. 05/L-055 on the Auditor General. As relevant in the circumstances of the specific case, based on Article 4 (Auditor General) of the Law on the Auditor General, (i) the Auditor General is functionally, financially, and operationally independent and is not subject to orders or influence from any other person or institution; and (ii) the position of the Auditor General is a full-time job and he/she cannot be employed for remuneration in any other job during the time he/she serves as Auditor General. Furthermore, based on paragraph 5 of Article 9 (Management) of the Law on the Auditor General, the Auditor General and the Deputy Auditor General cannot participate in, or make any decision regarding, the audit of the institution in which they have been members of the management in the past three (3) years. Finally, for the purpose of independently exercising the above-mentioned activities, Article 17 (Incompatibilities) of the Law on the Auditor General, among others, specifies that employees of the Auditor General cannot exercise functions or activities, or hold positions that constitute a conflict of interest with their official duties and cannot hold any other function at any level of the public sector.

397. Furthermore, based on Article 18 (Audit Mandate) of the Law on the Auditor General, the National Audit Office (i) has the right to audit all financial, administrative, and other activities, programs, and projects managed by one or more institutions; and (ii) is obliged to annually conduct mandatory regularity audits of all budget organizations that directly receive a budget through the Annual Budget Law and are obliged to prepare Annual Financial Statements. Further, based on Article 25 (Right to Collect Information) of the Law on the Auditor General, the Auditor General (i) may enter and remain at any reasonable time in an institution or entity subject to audit; (ii) has free and full access to audit at any reasonable time, properties or documents whether in paper or electronic form; and (iii) may examine, make copies, or extract any document.

398. In the context of the above clarifications regarding the constitutional and legal competences of the Auditor General, the Court notes that the contested issue in the specific case is whether the role of the Auditor General in the Oversight Committee of the Bureau, established by the Assembly according to the provisions of Article 142 of the Constitution, is compatible with his function and competences, as specified in Article 136 of the Constitution. The Court emphasizes that the compatibility between the constitutional competences and functions of the Auditor General and his role in the Oversight Committee of the Bureau must also be evaluated in the context of the competences of the aforementioned Commission.

399. In this context, the Court recalls that based on Article 12 (Competences of Committee) of the contested Law, the Oversight Committee, of which the Auditor General is a member, among others, is responsible for (i) conducting the procedure and proposing to the

Assembly the appointment and dismissal of the Director General; (ii) evaluating the performance of the Director General; and (iii) reviewing the work reports of the Director General. The Court recalls that based on Article 16 (Competences and Responsibilities of the Director General) of the contested Law, the Director General, whose performance is overseen and evaluated by the Oversight Committee, including the Auditor General, among others, manages the Bureau's budget and is responsible for the manner of its expenditure, in accordance with the relevant legislation.

400. Based on the above clarifications, the Court notes that the role of the Auditor General in overseeing and decision-making regarding the functions of the State Bureau, including in the context of evaluating the Director General in relation to the management and expenditure of the Bureau's budget, raises fundamental constitutional issues related to the exercise of the independent constitutional function of the Auditor General in the context of economic and financial control of all public institutions in the Republic of Kosovo, including the Bureau itself.

401. In this context, the Court emphasizes that the decision-making of the Auditor General in the capacity of a member of the Oversight Committee regarding the budgetary issues of the Bureau would undermine the constitutional duty of the Auditor General to control the economic activity of public institutions and other state legal entities, including the Bureau, as specified in paragraph 1 of Article 137 of the Constitution. The Court recalls that it is precisely the role of the Auditor General as the highest institution of economic and financial control in the Republic of Kosovo, as specified in Article 136 of the Constitution, that has resulted in the provisions specified by the Law on the Auditor General, and according to which, employees of the Auditor General cannot hold any other function at any level of the public sector.

402. Based on the above elaboration, specifically the provisions of the contested Law related to the competences of the Oversight Committee and taking into account the constitutional norms that determine the role and competences of the Auditor General, it results that the determination of the contested Law to include the Auditor General in the Oversight Committee, prevents him from independently exercising the constitutional role of independent economic and financial control of the institutions of the Republic of Kosovo, including the Bureau.

Conclusion

403. Therefore, taking into account (i) Article 16 of the Constitution, based on which the Constitution is the highest legal act in the Republic of Kosovo and according to which laws and other legal acts shall be in accordance with this Constitution; and (ii) Articles 136 and 137 of the Constitution, related to the constitutional competences of the Auditor General, including his financial supervisory function over public authorities, specifically over the Bureau itself, the Court finds that the role of the Auditor General, as a member of the Oversight Committee of the State Bureau, determined by point 1.2 of Article 10 (Oversight Committee Composition and Compensation) of the contested Law, is not in compliance with paragraph 1 of Article 136 [Auditor-General of Kosovo] of the Constitution.

(c) Judge of the Supreme Court

404. In the context of the inclusion of a judge of the Supreme Court of Kosovo appointed by the President of the Supreme Court, in the capacity of the chairperson of the Oversight

Committee of the State Bureau, the Court recalls that the second Opinion of the Venice Commission evaluated the proposed composition of the aforementioned Commission as an "*appropriate solution*" and a "*better guarantee for independence as all Committee members come from outside the political sphere*" (see, paragraphs 15 and 16 of the second Opinion), despite the fact that the participation of the judge of the Supreme Court in the capacity of the chairperson in the Oversight Committee and the incompatibility of the constitutional functions of the judge with the competences of the State Bureau specified in the contested Law were not addressed.

405. That being said, the Court recalls that the independence of the judiciary and judges in the legal order of the Republic of Kosovo has been addressed by the Court over the years in a number of judgments, including but not limited to the Court's judgments in cases KO29/12 and KO48/12, KO73/16, KO171/18, KO203/19, KO219/19, KO100/22, KO101/22, KO55/23, and KO 79/23. In the context of constitutional norms and principles derived from the aforementioned judicial practice, the contested issue in the specific case is whether the role and participation of a judge of the Supreme Court in the Oversight Committee of the State Bureau, established by the Assembly according to the provisions of Article 142 [Independent Agencies] of the Constitution, is compatible with the function and competences of a judge according to the provisions of Article 106 [Incompatibility] of the Constitution.

406. In this regard, the Court first recalls that based on Article 4 [Form of Government and Separation of Powers] of the Constitution, the judiciary is unique, independent, and exercised by the courts, while according to Article 102 [General Principles of the Judicial System] of the Constitution, among others, (i) the judiciary in the Republic of Kosovo is exercised by the courts; (ii) the judiciary is unique, independent, fair, apolitical, and impartial and ensures equal access to the courts; and (iii) judges in the exercise of their function must be independent and impartial. Furthermore, based on (i) Article 103 [Organization and Jurisdiction of Courts] of the Constitution, it is specified that the Supreme Court of Kosovo is the highest judicial authority; while (ii) Article 108 [Kosovo Judicial Council] of the Constitution, the Kosovo Judicial Council is a fully independent institution in the exercise of its functions and ensures the independence and impartiality of the judicial system. Finally, the Court recalls Article 106 [Incompatibility] of the Constitution, based on which, (i) a judge cannot exercise any function in state institutions outside the judiciary, be involved in any political activity, or engage in any other activity prohibited by law; and (ii) judges are not allowed to take on responsibilities or hold positions that would, in any way, be contrary to the principles of independence and impartiality of the role of a judge.

407. The Court also points out that the content of paragraph 1 of Article 106 [Incompatibility] of the Constitution in the Serbian language version differs from the content of the Albanian language version, as in the Serbian language version the phrase "*outside of the judiciary*" is missing after the sentence "*A judge may not perform any function in any state institution, […]*". In this context, the Court clarifies that in the following analysis, it has taken into account the content of this provision of the Constitution in the Albanian version, given that the content of paragraph 1 of Article 106 [Incompatibility] of the Constitution in the Albanian language is identical to its version in the English language of the Constitution.

408. The Court emphasizes that based on Article 106 [Incompatibility] of the Constitution, the incompatibility with the function of a judge is specified and in its first paragraph it is

specifically clarified that the judge (i) cannot exercise any function in state institutions "*outside of the judiciary*"; (ii) be involved in any political activity; or (iii) be involved in any other activity prohibited by law. While in its second paragraph, it is clarified that judges are not allowed to take on responsibilities or hold positions that would, in any way, be contrary to the principles of independence and impartiality of the role of a judge.

409. The Court further emphasizes that the incompatibility of the function of a judge with other functions is further specified through Law No. 06/L-054 on Courts, which details in what activities judges can participate. In this sense, Article 38 (Professional Activities) of the Law on Courts specifies that (i) judges, with the prior approval of the Council, have the right to participate in professional organizations, scientific meetings, which promote the independence and protection of the professional interests of judges; (ii) judges, with the approval of the Presidents of the Courts and the Presidents with the approval of the Council, only outside working hours, may participate in activities that are in accordance with the Code of Ethics and Professional Conduct of judges; (iii) in accordance with the provisions of the Code of Ethics and Professional Conduct of judges, judges may engage in professional and scientific writings but cannot publish relevant content from judicial files during or after the end of the judicial function, unless expressly permitted by law or a sub-legal act issued by the Council; and (iv) judges, for the activities provided for in this article, receive compensation, which cannot exceed the value of 25% (twenty-five percent) of the base salary, and for this compensation judges inform the President of the Court while the Presidents of the Courts inform the Council.

410. The Court also notes that the Law on Courts refers to the Code of Professional Ethics for Judges (No. 01/238, of 17 August 2016), which, among others, specifies that: "*The judge, only by decision of the Council and after working hours, can participate in activities that are not related to his judicial function if these non-judicial activities do not question the efficiency, performance, as well as the regular and fair exercise of the judge's function. Such engagements during working hours are not allowed, except in cases where special laws for the purpose of functioning of the system, provide for engagements during working hours, e.g.: holding lectures at KJI for the training of judges and prosecutors, then participation in committees for drafting draft laws. For the purposes of this rule, non-judicial activity means activities where the judge can speak, write, lecture and participate in scientific and professional activities related to law, the legal system, and the administration of justice*".

411. In the context of the above, it is clear that based on the applicable laws of the Republic of Kosovo, judges, in principle, are allowed to participate in scientific, academic activities, including participation in professional organizations, scientific meetings, which promote the independence and protection of the professional interests of judges, with the prior approval of the Council or the Presidents of the Courts and that for these activities, they can receive compensation, which cannot exceed the value of 25% (twenty-five percent) of the base salary, provided that the Council and the Presidents of the Courts are informed. That being said, in the circumstances of the specific case, the contested issue is whether the function of a judge is compatible with chairing another independent state institution, specifically the State Bureau.

412. In this context, the Court recalls that there are two specifics of Article 106 [Incompatibility] of the Constitution that must be evaluated in the context of the compatibility of the function of a judge of the Supreme Court and the parallel function of the same as the chairperson of the Oversight Committee of the State Bureau. The first is

related to the first paragraph of Article 106 of the Constitution and according to which, the judge cannot exercise any function in state institutions "*outside of the judiciary*" and consequently, involves the obligation to evaluate whether the State Bureau is a state institution "*outside the judiciary*" or within its scope. The second is related to the second paragraph of Article 106 [Incompatibility] of the Constitution and according to which, judges are not allowed to take on responsibilities or hold positions that would, in any way, be contrary to the principles of independence and impartiality of the role of a judge and consequently, involves the obligation to evaluate whether exercising the function in the Oversight Committee of the State Bureau, considering the nature and competences of the Bureau specified in the contested Law, may be contrary to the principles of independence and impartiality of the role of a judge.

413. For this purpose, and as relevant in the circumstances of the specific case, the Court will refer to (i) international principles and standards related to the independence and impartiality of the function of a judge and the incompatibility of exercising other functions outside the judicial system, including but not limited to the Bangalore Principles adopted at the United Nations level, the recommendations of the Committee of Ministers of the Council of Europe, the opinions of the Consultative Council of European Judges, and relevant Opinions of the Venice Commission; (ii) comparative analysis of Constitutions in the context of regulating the incompatibility of the function of a judge with other state functions; and (iii) judicial practice of other Constitutional Courts related to the interpretation of the incompatibility of the function of a judge.

- *Principles related to incompatibility of functions at the United Nations and Council of Europe level*

414. As relevant to the circumstances of the present case, the Court refers to the Bangalore Principles of Judicial Conduct adopted at the United Nations level, which, among others, specify that (i) "*the principle of judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects*" (Value 1 (Independence) of the Principles); (ii) "*impartiality is essential to the proper discharge of the judicial office*" (Value 2 (Impartiality) of the Principles); and (iii) "*A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations*" (Value 6 (Competence and Diligence)).

415. Furthermore, the Court notes that according to Recommendation CM/REC (2010)12 on judges: independence, efficiency, and responsibilities, adopted on November 17, 2010, by the Committee of Ministers of the Council of Europe, it is determined that: "*judges may engage in A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations"* (see, point 21 of the Recommendation). The explanatory memorandum of this recommendation specifies that: *"[…] Each member state should determine which activities are incompatible with judges' independence and impartiality. For instance, the following activities are considered, in some member states as being incompatible with judicial office: electoral mandate, profession of a lawyer, bailiff or notary; ecclesiastic or military functions, or plurality of judicial functions. Having regard to the necessity of avoiding actual or perceived conflicts of interest, member states may consider making*

information on additional activities publicly available, for instance, in the form of registers of interests. Furthermore, in order to ensure that judges have time to perform their primary function, that is to adjudicate, the number of their mandates on various commissions should be restricted, and there should be limitations to the situations in which the law provides for judges to sit on a commission, council, etc., " (see, paragraph 29 of the Memorandum). On the other hand, Opinion No. 3 of the Consultative Council of European Judges (CCJE) (2002) on "*The specific nature of the judicial function and the need to maintain the dignity of the office and protect judges from all kinds of pressures mean that judges should behave in such a way as to avoid conflicts of interest or abuses of power. This requires judges to refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner. In some States, incompatibilities with the function of judge are clearly defined by the judges' statute and members of the judiciary are forbidden from carrying out any professional or paid activity. Exceptions are made for educational, research, scientific, literary or artistic activities*" (see, point 27 of the Opinion).

416. The Court also refers to the Report [CDL-AD (2010)004] of the Venice Commission on the independence of the judicial system, Part One: the independence of judges, adopted on March 12-13, 2010, which, besides principles related to the appointment of judges, criteria for their appointment, and compensation, also includes their right to exercise or not other functions outside the judicial system. In this regard, this Report, among others, refers to Opinion No. 1 (2001) of the Consultative Council of European Judges, adopted on November 23, 2001, which in paragraph 161 as a result of the recommendations of the European Charter on the Statute for Judges (of the Council of Europe, July 8-10, 2010), specifies that "*the fundamental principles of the statute for judges are set out in internal norms of the highest level, and rules and norms of at least the legislative level*". This approach through this report is also adopted by the Venice Commission (paragraph 22 of Report CDL-AD (2010)004), which specifies that the basic principles of judicial independence should be set out in the Constitution or equivalent texts. Following this, the same report emphasizes that: "*Moreover, judges should not put themselves into a position where their independence or impartiality may be questioned. This justifies national rules on the incompatibility of judicial office with other functions and is also a reason why many states restrict political activities of judges*" (paragraph 62 of Report CDL-AD (2010)004).

417. Based on the aforementioned principles, it generally results that (i) the independence and impartiality of the judicial function and the courts require the determination of limitations in terms of the incompatibility of the judicial function with other functions and activities; (ii) judges may engage in activities outside their official duties, but to avoid actual or perceived conflicts of interest, their participation should be limited to activities compatible with their impartiality and independence; and (iii) to ensure that judges have time to fulfill their primary function, namely to adjudicate, the plurality of mandates in various commissions and the cases in which the law provides for judges to participate in a commission, council, etc., should be limited.

- *Incompatibility of the judicial function according to other countries' constitutions*

418. The Court emphasizes that the issue of incompatibility of function with other functions and/or activities is an essential matter related to the principle of separation and balance of powers as well as the independence and impartiality of the judge and the judiciary. As a result, most Constitutions of other countries regulate this issue at the constitutional level,

sometimes specifying further details through applicable laws. Examples of Constitutions that regulate the incompatibility of the judicial function with other functions and/or activities include, among others: (i) the Constitution of the Republic of Albania, in Article 143, specifies that being a judge is incompatible with any other political or state activity, as well as professional activity carried out for remuneration, except for teaching, academic, scientific activities, and delegation to justice institutions according to the law; (ii) the Constitution of North Macedonia, in Article 111 and amendments XXVII and XXVIII, among others, specifies that a judicial function is incompatible with membership in a political party or any public office or profession according to the law; (iii) the Constitution of Montenegro, in Article 123, specifies that a judge cannot hold office in Parliament and other public duties or professionally engage in any other activity; (iv) the Constitution of Slovenia, in Article 133, specifies that the judicial function is incompatible with duties in other state bodies, at the local level, and political parties, as well as with other functions and activities according to the law; (v) the Constitution of Croatia, in Article 120, among other things, specifies that a judge cannot hold a position or engage in activities that according to the law are incompatible with the judicial function; (vi) the Constitution of Romania, in Article 125, specifies that the position of a judge is incompatible with any other public or private office, except for teaching positions in higher education; (vii) the Constitution of Poland, in Article 178, among others, specifies that judges cannot be members of political parties, trade unions, or engage in activities that are incompatible with the principles of independence of judges and courts; (viii) the Constitution of the Czech Republic, in Article 82, among others, specifies that the judicial function is incompatible with the office of the President of the Republic, a member of the Assembly, and any other office in public administration; the law will specify other activities incompatible with the judicial function; (ix) the Constitution of Ukraine, in Article 127, among others, specifies that judges cannot be members of political parties, organizations, participate in any political activity, hold representative mandates, hold any other paid office, and engage in any other paid work, except for academic, teaching, and creative activities; (x) the Constitution of Portugal, in Article 216, among other things, specifies that (a) judges cannot exercise any other private or public function, except for unpaid teaching and research according to the law; (b) sitting judges cannot be appointed to judicial functions not related to the courts without prior authorization from the Supreme Council; and (c) the law may specify other incompatibilities related to the exercise of the judicial function; and (xi) the Constitution of Belgium, in Article 155, among others, specifies that a judge cannot accept a position from the Government that is compensated, except if such a position is performed without compensation, and even then, such a position cannot be incompatible with the judicial function according to the provisions of the law.

419. The Court notes that based on the aforementioned constitutional arrangements, it results that (i) a number of Constitutions have the determinations of incompatibility of function categorized at the constitutional level, while some delegate the determination of specific incompatibilities of function also at the legislative level; (ii) in principle, activities related to teaching and scientific and academic activity are allowed; (iii) some Constitutions specify the prohibition of exercising any other function in other state bodies, but refer to the determinations of applicable laws; while (iv) others, including the Constitutions of Albania and Portugal, allow the exercise of functions based on delegation to justice institutions according to legal determinations or appointment to judicial functions not related to the courts, only with prior authorization from the Supreme Council.

- *Case law of other Constitutional Courts*

420. The issue of incompatibility of the judicial function with other duties in state institutions has also been assessed by a number of Constitutional Courts, including (i) the Constitutional Court of the Republic of Albania; (ii) the Constitutional Court of North Macedonia; (iii) the Constitutional Court of Armenia; and (iv) the Constitutional Court of the Czech Republic.

421. Initially, the Court refers to Decision [No. 14], of 22 May 2006, of the Constitutional Court of the Republic of Albania. In this decision, the Constitutional Court assessed the constitutionality of the provisions of a law amending and supplementing the Law on the Organization and Functioning of the High Council of Justice, which, among others, proposed that judges appointed from the ranks of the judges of the Supreme Court to the High Council of Justice (now with the new name: the High Judicial Council), which ensures the independence, accountability, and proper functioning of the judiciary in the Republic of Albania, must choose one of the duties as (i) a sitting judge; or (ii) full-time members of this institution, and in the event of choosing the latter, after the end of their term, they could not return as members of the Supreme Court, unlike judges appointed from the ranks of other courts in Albania. In the aforementioned decision, this Court found that the obligation of a member of the Supreme Court to choose one of the duties, namely either a sitting judge or a full-time member of the High Council of Justice, as well as their exclusion from the right to return as a member of the Supreme Court, was contrary to the content of several constitutional provisions. More precisely, in the aforementioned decision, the Constitutional Court, among others, emphasized that (i) the composition of the High Council was determined by the Constitution, which in its composition included judges of all levels elected by the National Judicial Conference and that for members of the High Council, including judicial members, the Constitution did not set limitations in the context of incompatibility of function; and that (ii) the Constitution itself made an exception regarding the non-permanent activity of judges in the High Council of Justice, in which they represent the body of judges that elected them to this constitutional body, and therefore, the law cannot limit a right determined at the constitutional level (see, Decision No. 14, of 22 May 2006, of the Constitutional Court of the Republic of Albania).

422. Further, the Court notes that the Constitutional Court of North Macedonia in its decision [No.U.216/96] of 23 October 1996, had assessed the constitutionality of paragraph 3 of Article 9 of the Law on Local Elections, which specified, among others, that the Chairman of the Election Commission is appointed from among the judges of the municipal courts, respectively the courts of first instance. In this case, the Constitutional Court assessed whether the function of a judge is incompatible with the function in the Election Commission, and limited the incompatibility of function primarily in the context of judicial decision-making, specifically the inability of a judge to decide on the same issue at the first and second levels, thus finding that there was no incompatibility of function between exercising the function of a judge and appointment to another state body, such as the Election Commission. The Constitutional Court of North Macedonia also emphasized that the constitutional provision that determines the incompatibility of function also refers to legal regulations and that essentially, the exercise of the function of Chairman of the Election Commission was determined in the contested law (see, Decision No. U.216/96, of 23 October 1996, of the Constitutional Court of North Macedonia).

423. On the other hand, the issue of judges' participation in the Central Election Commission was also addressed by the Constitutional Court of Armenia, which reached an opposite

conclusion. Specifically, through Decision [DCC-664] of 7 November 2006, the Constitutional Court of Armenia assessed the constitutionality of certain provisions of the Electoral Code, which specified that after parliamentary elections, the authority to appoint members of the Central Election Commission would be given to the Council of Presidents of Armenian Courts, which included judges of general jurisdiction courts and a judge from the Court of Cassation appointed by the Court of Cassation. This Court, referring to the provisions of the Armenian Constitution, decided that the function of a judge is incompatible with the function in another state body, specifically the Central Election Commission. In this context, the Constitutional Court, among others, emphasized that (i) the solutions determined by laws cannot override the constitutional limitations specified by the Constitution regarding the incompatibility of the judicial function; and (ii) given the specifics of the applicable Armenian law, it is not appropriate to include judges in electoral commissions, as it would conflict with the administration of justice and judicial independence, and could also result in conflicts of interest between judges and make it difficult for judges and courts to remain impartial in resolving electoral disputes (see, Decision DCC-664, of 7 November 2006, of the Constitutional Court of Armenia).

424. Finally, the Court also refers to Decision [Pl. ÚS 39/08] of 6 October 2010, of the Constitutional Court of the Czech Republic, which in this decision, among others, reviewed the constitutionality of the legal regulation of the temporary assignment of judges to the Ministry of Justice and the Judicial Academy according to Article 68 of the Law on Courts and Judges. In the context of the incompatibility of the judicial function, the respective Court, among others, emphasized that (i) the exercise of judicial functions in other state bodies is not in accordance with the principle of separation and balance of powers as well as the independence of the judge; (ii) duality in function for a judge and at the same time an official of the state administration cannot be constructed; and (iii) in exercising other state functions, personal and extrajudicial contacts arising from such activities undoubtedly increase the chances of potential conflicts of interest, thus subjecting the judge's independence to doubt (see, Decision Pl. ÚS 39/08, of 6 October 2010, of the Constitutional Court of the Czech Republic).

425. From the above-mentioned judicial practice and as relevant to the circumstances of the present case, the Court initially notes that the Constitutional Court of Albania had not assessed that the parallel functions of a judge and a member of the High Council are incompatible. However, the above findings should be analyzed in the context of the constitutional arrangements of the Republic of Albania. The Court notes that in the case of Albania, the contested issue was whether the function of a judge is compatible with the function of a member of the High Council, namely the constitutional institution responsible for ensuring the organization and independence of the judiciary. Consequently, beyond the fact that the participation of judges in the High Council is determined by the Constitution of Albania itself, both functions, namely that of a judge and a member of the High Council, were within the scope of the judiciary. Furthermore, it should be reiterated that the Constitution of Albania, in the context of the incompatibility of the judicial function, specifically foresees the possibility of delegating judges to functions at justice institutions according to legal determinations.

426. On the other hand, the Constitutional Courts of North Macedonia and Armenia, always in the context of respective constitutional arrangements, had reached opposite conclusions regarding the participation of judges in Election Commissions. While the Constitutional Court of North Macedonia had limited the compatibility of the judicial function with other state functions only in the context of judicial decision-making, specifically and among

others, the fact that judges exercising functions in Election Commissions are not also responsible for decision-making regarding electoral disputes before the courts, the Constitutional Court of Armenia had assessed the exercise of these two functions as incompatible with the Constitution and the concept of independence and impartiality of the judiciary. Meanwhile, the Constitutional Court of the Czech Republic had also assessed the incompatibility of the judicial function as of primary importance for the principle of separation and balance of powers, considering that the exercise of judicial functions simultaneously with other functions in the state administration undermines the aforementioned principles.

427. In the circumstances of the contested Law and as elaborated above, the contested issue is whether the exercise of the function of a judge of the Supreme Court is compatible with the exercise of the function of the chairperson of the Oversight Commission of the State Bureau. In this aspect, the Court emphasizes that in the context of the incompatibility of the judicial function, Article 106 of the Constitution is specific, and precisely determines (i) that a judge cannot exercise any function in state institutions outside the judiciary; and (ii) judges are not allowed to take on responsibilities or be bearers of functions that in any way would be contrary to the principles of independence and impartiality of the judge's role. The Court also emphasizes that based on the above analysis of other Constitutions in the context of the incompatibility of the judicial function, while most of them have prohibitions in the context of exercising other functions in state institutions for judges, the Constitution of Kosovo specifically contains the prohibition of exercising any function in state institutions outside the judiciary.

428. Consequently, in the above context, it is important to determine whether the exercise of the function of the chairperson of the Oversight Commission of the State Bureau constitutes the exercise of a function "*outside of the judiciary*," a specific prohibition in paragraph 1 of Article 106 of the Constitution. In assessing whether the State Bureau can qualify as an institution or exercise of a function "*within the judiciary*" for the purpose of determining the compatibility of the respective function, relevant are (i) the institutional nature of the State Bureau and its relationship with the courts, specifically the judiciary; and (ii) the nature of the competencies exercised by the chairperson of the Oversight Commission of the Bureau, specifically the judge of the Supreme Court.

429. In the context of the first issue, the Court recalls that the State Bureau is established as an independent agency based on Article 142 of Chapter XII of the Constitution concerning Independent Institutions. The decision-making of independent agencies, in principle, is subject to judicial review, while the decision-making of the State Bureau specifically is subject to court review according to the provisions of the contested Law. Consequently, and beyond the fact that the State Bureau is established as an independent agency in the context of Chapter XII of the Constitution and thus cannot be qualified as an institution or body within the judiciary according to the provisions of Chapter VII of the Constitution, the relationship between the State Bureau and the judiciary, according to the contested Law, is supervisory, specifically the decision-making of the Bureau in the context of asset verification and the proposal for confiscation is always subject to judicial control and decision-making. Therefore, it is not contested that the exercise of the function of a judge in the Oversight Commission of the State Bureau cannot be classified as the exercise of a function in state institutions within the scope of the judiciary according to the provisions of paragraph 1 of Article 106 of the Constitution, but as the exercise of a function in state institutions "*outside of the judiciary*" which, as explained above, is specifically prohibited by Article 106 of the Constitution.

430. The Court recalls that beyond the prohibition specified in paragraph 1 of Article 106 of the Constitution, concerning the impossibility of a judge to exercise any function in state institutions outside the judiciary, paragraph 2 of Article 106 of the Constitution further specifies that judges are not allowed to take on responsibilities or be bearers of functions that in any way would be contrary to the principles of independence and impartiality of the judge's role. The assessment of the incompatibility of the judicial function in the context of Article 106 of the Constitution should also be evaluated in the context of the competencies that the respective function of the judge in the capacity of the chairperson of the Oversight Commission of the State Bureau entails.

431. In this context, the Court recalls the nature of the competencies of the Oversight Commission chaired by the judge of the Supreme Court. Specifically and as elaborated above, the Court recalls that based on Article 12 (Competencies of the Commission) of the contested Law, the Commission is responsible for (i) overseeing the work and activities of the Bureau; (ii) developing the procedure and proposing to the Assembly the appointment and dismissal of the Director-General; (iii) evaluating the performance of the Director-General; (iv) approving the bylaws determined by this law, upon the proposal of the Director-General; (v) reviewing the work reports of the Director-General; and (vi) performing other tasks specified by applicable legislation. Considering that the Commission oversees, evaluates, and can propose the dismissal of the Director-General, the competencies of the latter are also relevant, according to the provisions of Article 16 (Competencies and responsibilities of the Director-General), namely (i) leading and organizing the work of the Bureau; (ii) overseeing the work of the Bureau's officials; (iii) representing the Bureau domestically and abroad; (iv) managing the Bureau's budget and its expenditure; (v) drafting and approving the annual work plan within the Bureau's mandate; and (vi) concluding cooperation agreements with other local and international institutions, in accordance with applicable legislation. Furthermore, it is also relevant to emphasize that based on Article 8 (Competencies and responsibilities of the Bureau) of the contested Law, the Bureau, among others, is responsible for (i) initiating and conducting the procedure for verifying assets and determining whether the assets of an official person are unjustified; and (ii) submitting the proposal for confiscation of assets to the Court.

432. The Court emphasizes that the nature of the competencies exercised by the Oversight Commission according to the provisions of Articles 8, 12, and 16 of the contested Law is executive and substantively relates to the entire function of the State Bureau, which, based on Article 10 of the contested Law, essentially will be led by a judge of the Supreme Court in the capacity of the chairperson of the Oversight Commission. Despite the fact that the respective judge would be excluded from decision-making based on Article 67 of the LCP, when the Supreme Court would decide according to the extraordinary legal remedies specified in Chapter X (Procedure according to Extraordinary Legal Remedies) of the contested Law, the fact that the Chief Justice of the Supreme Court, namely the highest judicial authority in the Republic of Kosovo according to Article 103 [Organization and Jurisdiction of the Courts] of the Constitution, would appoint the chairperson of the Oversight Commission of another state institution outside the judiciary, specifically the State Bureau, whose decision-making is ultimately subject to judicial review, is also related to the limitations specified in paragraph 2 of Article 106 of the Constitution, which states that judges are not allowed to take on responsibilities or be bearers of functions that in any way would be contrary to the principles of independence and impartiality of the judge's role. The Court emphasizes the phrase "*in any way*" in this paragraph, which reflects the intent to prohibit judges from exercising any type of function that could appear to

undermine the principle of independence and impartiality of the judiciary as a fundamental value of the constitutional order of the Republic of Kosovo.

433. The Court emphasizes that the Constitution itself has determined additional functions for judges, through Article 108 [Kosovo Judicial Council] of the Constitution, in the context of the composition of the Kosovo Judicial Council, and through Article 139 [Central Election Commission] of the Constitution, in the context of chairing the Central Election Commission. Beyond these constitutional determinations, Article 106 [Incompatibility] of the Constitution also enables additional functions for judges, as long as they are compatible with the conditions specified in this article. Through paragraph 2 of Article 106 of the Constitution, it allows taking on responsibilities and bearing functions that in any way would not be contrary to the principles of independence and impartiality of the judge's role. The compatibility of these functions with the principles of independence and impartiality of the judge's role should always be assessed in the context of the respective function, including the nature of the competencies it entails. However, Article 106 of the Constitution entails three specific prohibitions in the context of the compatibility of additional functions for judges. First, it clearly prohibits involvement in any political activity. Second, it delegates to the law the possibility of prohibiting additional activities for judges. And third, it specifically prohibits the exercise of any function in state institutions "*outside the judiciary*". While determining whether a function in a state institution can be qualified as within or outside the judiciary is a matter that must be interpreted depending on the nature of the institution and the respective function, in the circumstances of the State Bureau, and considering (i) the competencies of the Chairperson of the Bureau, namely the judge of the Supreme Court according to the elaborated provisions of the contested Law; (ii) the functions and competencies of the Bureau; and (iii) the interaction between the Bureau and the judiciary according to the provisions of the contested Law itself, the Court assesses that it is not contested that the State Bureau is a state institution "*outside the judiciary*" for purposes of the incompatibility of the function according to the provisions of paragraph 1 of Article 106 of the Constitution.

Conclusion

434. Consequently, based on the above elaboration, and considering (i) the fact that based on Article 106 of the Constitution, a judge cannot exercise any function in state institutions "*outside the judiciary*", while the exercise of a function in an institution subject to the control of the judiciary as per the provisions of the contested Law in the context of decision-making on the proposal for confiscation of property cannot be considered as exercising a function within the scope of the judiciary; and (ii) the fact that a judge of the Supreme Court appointed by the President of the Supreme Court as the highest judicial authority in the Republic of Kosovo, would lead the Oversight Committee of a state institution "*outside of the judiciary*" with substantial and executive competencies in relation to the State Bureau for the verification and confiscation of unjustified assets, also raises issues related to the exercise of functions that would be contrary to the principles of independence and impartiality of the judge's role, the Court finds that the role of the judge of the Supreme Court appointed as chairperson of the Oversight Committee of the State Bureau by the Chief Justice of the Supreme Court, as determined by point 1.1 of Article 10 (Oversight Committee Composition and Compensation) of the contested Law, is not in compliance with the limitations specified in Article 106 [Incompatibility] of the Constitution.

435. Finally, in the above context, the Court notes the importance of the independence of the composition of the Oversight Committee of the State Bureau, including the importance of the independence of its members as emphasized by the relevant Opinions of the Venice Commission on Kosovo. That being said, the Court also emphasizes that this composition cannot violate other constitutional norms, which in this case are related to (i) the specific constitutional regulation concerning the incompatibility of the judge's function, specifically the constitutional prohibition that a judge cannot exercise any function in state institutions outside the judiciary; and/or (ii) the oversight competencies of independent constitutional institutions in relation to all public authorities in the Republic of Kosovo, including the State Bureau, such as the Ombudsperson in the context of overseeing the protection of fundamental rights and freedoms or the Auditor General in the context of financial control. The Court emphasizes that it is the duty of all public authorities in the Republic of Kosovo to implement constitutional norms, and that it is up to the Assembly, insofar as it does not exercise the oversight function itself, to determine the composition of the Oversight Committee of the State Bureau in a manner that respects all necessary guarantees for the independence of this institution, while not violating at the same time the constitutional provisions related to the incompatibility of functions and/or the oversight competencies of independent constitutional institutions.

(iii) Election of the Director-General of the Bureau and the de-blocking mechanism

436. The Court initially recalls that based on paragraph 13 of Article 15 (Procedure for the selection of the Director General) of the contested Law, the Assembly has the competence to elect the Director-General by secret ballot, with the majority of votes of all present and voting deputies. Based on the following paragraphs, specifically paragraphs 14 and 15 of the above-mentioned article, if the Assembly fails to elect the Director in two rounds of voting, the competition is re-announced within seven (7) days. Furthermore, based on paragraph 16 of Article 15 of the contested Law, if the Assembly fails to elect the Director in two rounds even in the re-announced competition, the competence to elect the Director-General passes to the Oversight Committee, which elects the candidate with the most points for this position.

437. The Court further recalls that the Venice Commission, in its first Opinion on the contested Law, had warned that the mandate of the Bureau to combat high-level corruption is a politically sensitive matter, also emphasizing that guarantees for the independence of the Bureau are essential for it to resist political pressure. Since the version of the contested Law that was subjected to the Venice Commission's assessment during the first Opinion envisaged the election of the Director by a parliamentary commission composed only of deputies of the Assembly, the Venice Commission had assessed that this constituted a highly politicized election procedure and consequently, among others, had proposed (i) the election of the Director through a qualified majority of two-thirds (2/3) in the Assembly, including a de-blocking mechanism; (ii) the election of the Director through the involvement of an independent commission of experts, which would either directly elect the Director or delegate/nominate candidates for the position of Director; or (iii) the establishment of a collegial governing body of the Bureau, with a pluralistic composition and members delegated by independent institutions (see, paragraph 39 of the First Opinion).

438. The Court also notes that paragraph 16 of Article 15 of the contested Law, which specifies the transfer of the competence to elect the Director to the Oversight Committee in case of

the Assembly's failure to elect the Director in the second round of the re-announced competition for the second time, was added after the draft of the Bill for the State Bureau was subjected to analysis by the Venice Commission, resulting in the second Opinion. In fact, the draft Bill for the State Bureau, submitted for the second Opinion to the Venice Commission, in paragraphs 14 and 15 of Article 14 (Procedure for the Election of the Director-General) of it, specified that: (i) if in the first round, the Assembly does not elect the Director-General, then the second round of voting takes place between the two candidates who received the most votes; and (ii) if the Director-General is not elected even in the second round of voting by the Assembly, the competition for the Director-General is repeated. As a result of this change in the second draft of the Bill, the Venice Commission in its second Opinion had emphasized that: "*The criteria for appointment as Director General are established in Article 13 of the Draft Law and at least two and not more than five candidates are to be recommended. To be recommended a candidate must qualify under all three headings of integrity, competence and managerial ability. It is not expressly stated that the results of the assessment are to be published but the reasons for the priority given to each candidate by the Committee must be stated which seems to have a similar effect. The Assembly then elects one candidate by majority vote in a secret ballot. However, a better solution might be to provide for a qualified majority with an anti-deadlock mechanism being the appointment of the Committee's first choice if the threshold is not reached. A possible solution could be a qualified majority, however, as indicated in previous opinions of the Venice Commission, the number of cases in which the Assembly can vote with a qualified majority is very limited based on Article 65 of the Constitution*".

439. Subsequently, after the approval of the second Opinion of the Venice Commission, the Assembly in the next version, which resulted in the approval of the contested Law, in Article 15 (Procedure for the Election of the Director-General) of it, added paragraph 16, which also includes a de-blocking mechanism, namely: "*In case even after the re-announcement of the competition, the Assembly fails to elect the Director-General in two rounds, then the Commission announces the competition and conducts the procedures according to this article with the only exception that the Commission at the end of the process elects the candidate with the most points as the Director-General*". As such, this provision, which essentially represents a de-blocking mechanism in case the Assembly fails to elect the Director, was not subjected to assessment by the Venice Commission. However, as a result of the approval of the contested Law in the Assembly, the Venice Commission in its Follow-up Information on the contested Law, dated 14 March 2023, had informed that the latest, supplemented, and amended version has addressed the Commission's recommendations in its second Opinion, which among them include "*the establishment of an anti-blocking mechanism for the election of the Director-General*".

440. Based on the above clarifications and considering the claims of the applicants and the arguments and counter-arguments of the interested parties, the Court assesses that in the context of evaluating the constitutionality of Article 15 of the contested Law and specifically the de-blocking mechanism according to which the competence of the Assembly to elect the Director-General of an independent institution/agency, passes to the Oversight Committee, relevant are the connections between Articles 65 [Competences of the Assembly], 80 [Adoption of Laws] and 142 [Independent Agencies] of the Constitution.

441. In the above context, and insofar as it is relevant to the circumstances of the present case, the Court recalls that based on paragraph 1 of Article 65 of the Constitution, the Assembly of the Republic of Kosovo approves laws, resolutions, and other general acts, while based

on Article 80 of the Constitution, laws, decisions, and other acts are approved by the Assembly by a majority of the votes of the deputies present and voting, except in cases where it is otherwise specified by this Constitution. On the other hand, based on paragraph 1 of Article 142 of the Constitution, the Independent Agencies of the Republic of Kosovo are institutions created by the Assembly, based on the respective laws, which regulate their establishment, functioning, and competences.

442. The above-mentioned provisions result in two relevant issues related to the assessment of the constitutionality of Article 15 of the contested Law, concerning the election of the Director-General of the Bureau, namely (i) whether the delegation of the election of the Director-General from the Assembly to the Oversight Committee undermines the competence of the Assembly to elect the Director of an Independent Agency established through Article 142 of the Constitution; and (ii) the election of the Director-General by the majority of the votes of the deputies of the Assembly who are present and voting.

443. Regarding the first issue, the Court emphasizes that neither Article 65 nor Article 142 of the Constitution specifies the competence of the Assembly to elect the heads and/or members of the governing bodies of Independent Agencies. In fact, and as elaborated above, according to Article 142 of the Constitution, the Independent Agencies of the Republic of Kosovo are institutions created by the Assembly, based on the respective laws, which regulate their establishment, functioning, and competences. On the other hand, the competence of the Assembly to elect the above-mentioned officials is not specified either by the Law on the Organization and Functioning of the State Administration and Independent Agencies. The latter, (i) in Article 38 (Establishment of independent agencies) of it, specifies that it is the law on the establishment of an independent agency that regulates the organization, functioning, and competences of the independent agency; while (ii) in Article 46 (Conditions and procedure for the appointment of the head or member of managing body), specifies that (a) the conditions for the appointment of the head or member of the governing body of an independent agency, are determined by the law on the establishment of the agency; and (b) the procedure for selection, approval, or granting of consent for the head and member of the governing body is determined by the law on the establishment and the Assembly's Rules of Procedure. Based on the elaborated provisions above, it results that in the context of Article 142 of the Constitution, it is within the discretion of the Assembly to determine through the respective laws, the establishment, functioning, and competences, and the manner of appointment/election/dismissal of the heads and/or members of their governing bodies.

444. In the above context, the Court also recalls the analysis and findings in its Judgment in cases KO100/22 and KO101/22. Insofar as it is relevant to the circumstances of the present case, in the context of the competence of the Ombudsperson to "*appoint/elect*" a member of the Kosovo Prosecutorial Council which, among others, was reviewed in the above-mentioned Judgment, the Court had emphasized (i) the competence of the Assembly to elect members of the Prosecutorial Council according to the provisions of paragraph 10 of Article 65 of the Constitution, emphasizing that such competence specified by the Constitution cannot be delegated at the legal level; and (ii) the constitutional competences of the Assembly to elect the holders of functions of independent constitutional institutions specified in Chapters VII and XII of the Constitution, respectively. In the context of the independent constitutional institutions specified in Chapter XII of the Constitution, the Court, among others, had emphasized that "*with the exception of the Central Election Commission, whose composition is specified by the Constitution, and Independent Agencies, which are institutions created by the Assembly, based on the respective laws,*

which regulate their establishment, functioning, and competences", in the case of the other four (4) independent institutions, the Constitution either specifies the competence of the Assembly to elect their holders/heads or delegates this issue to the legal level, but even when the Constitution has delegated the election of the holders/heads of independent constitutional institutions specified in Chapter XII at the legal level, all the respective laws regulating independent constitutional institutions specify the competence of the Assembly to elect their heads/holders of functions.

445. However, as emphasized in the above-mentioned Judgment, Independent Constitutional Agencies are not equivalent to Independent Constitutional Institutions specified in Chapter XII of the Constitution and based on Article 142 of the Constitution, the establishment, functioning, including the manner of election of the holders of Independent Agencies is determined through the respective laws approved by the Assembly itself. The latter, in the context of establishing Independent Constitutional Agencies, has discretion, as long as the constitutional provisions are respected, including the guarantees of Article 142 of the Constitution, which are related to (i) the independent exercise of the functions of Independent Agencies; (ii) the independent administration of the budget; and (iii) the obligation of each body, institution, or other authority exercising legitimate power in the Republic of Kosovo, to cooperate and respond to the requests of independent agencies during the exercise of their legal competences, in accordance with the law.

446. Consequently, based on the above clarifications and considering that the manner of election of the holders/members of Independent Agencies is not specified by constitutional provisions, the Court assesses that the determination of the manner of election of the Director-General of the State Bureau, based on paragraph 1 of Article 142 of the Constitution, is within the competence of the Assembly of the Republic of Kosovo. However, regarding this conclusion, the Court recalls its consolidated judicial practice, based on which, in all cases when a Law of the Assembly is contested before the Court by the authorized parties, the focus of the assessment is always the respect of constitutional norms and human rights and freedoms – and never the assessment of the selection of public policy that has led to the approval of a specific Law (see, Court cases KO73/16, applicant: Ombudsperson, Judgment of 16 November 2016, paragraph 52; case KO72/20, cited above, paragraph 357; KO12/18, applicant: *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 29 May 2018, paragraph 117; KO219/19, cited above, paragraph 259; and KO216/22_KO220/22, applicants: for referral KO216/22 - *Isak Shabani and 10 (ten) other deputies*, and for KO220/22 *Arben Gashi and 9 (nine) other deputies of the Assembly of the Republic of Kosovo*, Assessment of the constitutionality of Articles 9, 12, 46, and 99 of Law No. 08/L-197 on Public Officials, Judgment of 2 August 2023, paragraph 312).

447. Regarding the second issue, specifically, the election of the Director-General by the majority of the votes of the deputies of the Assembly who are present and voting, the Court recalls paragraph 1 of Article 80 of the Constitution, based on which laws, decisions, and other acts are approved by the Assembly by the majority of the votes of the deputies present and voting, except in cases where it is otherwise specified by this Constitution. These exceptions, the Constitution specifies them specifically, dividing them into two (2) categories, namely (i) cases requiring a majority different from the simple majority; and (ii) cases where decision-making is conditioned also with the specified majority of non-majority communities represented in the Assembly of the Republic of Kosovo, and which are elaborated in detail in the Court's Judgment in cases KO100/22 and KO101/22 (see, the Court's Judgment in cases KO100/22 and KO101/22, cited above, paragraphs 275-

277). Considering that the Constitution has not specified otherwise, the election of the Director-General of the State Bureau falls within the scope of Article 80 of the Constitution, namely the election by the majority of the deputies present and voting. Consequently, and considering (i) paragraph 1 of Article 80 of the Constitution, according to which, the Assembly decides by the majority of the votes of the deputies present and voting, except in cases where it is otherwise specified by this Constitution; and (ii) the fact that this is not the case in relation to the establishment and functioning of Independent Agencies according to Article 142 of the Constitution, the election of the Director-General by the majority of the votes of the deputies present and voting in the first two rounds of voting and before delegating this competence to the Oversight Committee in case of failure to elect by the Assembly, is not in contradiction with the above-mentioned articles.

448. That being said, and considering the importance of the independence of the State Bureau, the Court recalls its findings in Judgment KO100/22 and KO101/22, through which it emphasized that regardless of Article 80 of the Constitution, the legislative power has also determined higher majorities for the election of members of independent institutions through laws approved over the years. As clarified in the above-mentioned Judgment, this has been the case related to (i) the election and dismissal of non-prosecutor members of the Prosecutorial Council by the Assembly according to the provisions of Law No. 06/L-056 on the Prosecutorial Council of Kosovo; (ii) the election and dismissal of members of the Judicial Council by the Assembly according to the provisions of Law No. 06/L-055 on the Judicial Council of Kosovo; and (iii) the dismissal of the deputies of the Ombudsperson according to the provisions of Law No. 05/L-019 on the Ombudsperson (Articles 13 and 14 of it). Furthermore, in the same context, the Court also recalls the position of the Venice Commission in the case of Bulgaria in this regard, including in the context of the election of members of the respective Commission responsible for verifying unjustified assets, through which it had counter-argued the claim of the Bulgarian authorities that it could not be required that the deputy chairman and two other members be elected by a qualified majority, namely by two-thirds (2/3) of the National Assembly, as the Constitution specified that the decisions of the National Assembly required only "*a majority more than half of the present members of parliament, except when a qualified majority is required by the Constitution*," emphasizing, among others, that there was the possibility that the Bulgarian Constitutional Court would declare the two-thirds (2/3) qualified majority as unconstitutional. The Venice Commission, in fact, emphasized that a national Constitutional Court generally intervenes when a guarantee is lacking and not when the ordinary law presents a stronger guarantee as in this particular case, which would strengthen the independence and representative character of the Commission, where it was required to foresee the requirement for voting by a qualified majority, adding that it is important that in performing its activity, the Commission be and be seen as impartial (see, paragraphs 16-19 of the fourth Opinion in the case of Bulgaria).

Conclusion

449. Therefore, based on the above explanations, the Court finds that paragraph 16 of Article 15 (Procedure for the selection of the Director General) of the contested Law is not contrary to paragraphs 1 of Articles 65 [Competences of the Assembly] and 142 [Independent Agencies] of the Constitution.

(iv) Functioning of the State Bureau

450. The Court first clarifies that based on Article 71 (Entry into Force) of the contested Law, the latter enters into force six months after its publication in the Official Gazette of the Republic of Kosovo, while based on Article 70 (Sub-legal Acts) of the contested Law, it is specified that the sub-legal acts specified by it are issued within six (6) months after its entry into force.

451. On the other hand, Article 69 (Bureau functionalization) of the contested Law specifies the phases of the functioning of the Bureau, clarifying that (i) the President of the Supreme Court appoints a judge from the ranks of the Supreme Court as a member of the Commission of the Bureau, no later than fifteen (15) days from the entry into force of this Law; (ii) the constitution of the Commission is done no later than thirty (30) days from the entry into force of this Law; (iii) the Commission initiates the procedure for the election of the Director-General no later than fifteen (15) days from the date of constitution; (iv) after the constitution and until the full functioning of the Bureau, the Commission meets regularly and approves the necessary sub-legal acts in the direction of the full functioning of the Bureau; (v) only after the full functioning of the Bureau, but no later than one (1) year after the entry into force of this Law, the Bureau begins to implement the provisions of this Law in the function of verifying unjustified assets; (vi) the functioning of the Bureau means the appointment of the Director-General, the recruitment of staff, and the equipping of the office with the necessary resources for work; (vii) until the functioning of the Bureau, the administrative function is performed by the Agency for the Prevention of Corruption, to which additional budgetary funds are allocated for performing this function; and (viii) the Director-General is obligated to complete the staff and functionalize the Bureau within six (6) months from his election.

452. In the context of the above clarification, the Court first recalls that based on paragraph 1 of Article 142 of the Constitution, Independent Agencies perform their functions independently from any other body or authority in the Republic of Kosovo. Consequently, in the circumstances of the present case, it is contested whether the Agency for the Prevention of Corruption can perform administrative functions in support of the State Bureau until its functioning. That being said, the above article defines the concept/meaning of the functioning of the Bureau in paragraph 6 of it, emphasizing that the functioning of the Bureau means the appointment of the Director-General, the recruitment of staff, and the equipping of the office with the necessary resources for work, while based on paragraph 5 of the above article, the Bureau begins to implement the provisions of this Law in the function of verifying unjustified assets only after its full functioning. Consequently, despite the fact that paragraph 7 of Article 69 of the contested Law specifies that until the functioning of the Bureau, its administrative functions are performed by the Agency for the Prevention of Corruption, the implementation of the provisions of the contested Law related to the verification of property is conditioned on the functioning of the State Bureau itself, with the functioning of which, any administrative support by the Agency for the Prevention of Corruption ceases.

Conclusion

453. Consequently, based on the elaboration and assessment as above, it results that the performance of the administrative function by the Agency for the Prevention of Corruption within the above-mentioned transitional period until the full functioning of the State

Bureau, is not in contradiction with paragraph 1 of Article 142 [Independent Agencies] of the Constitution.

V. Effect of the Judgment

454. Based on the explanation of this Judgment, the Court has found that (i) point 2.1 of paragraph 2 of Article 2 (Scope) in conjunction with paragraph 2 of Article 34 (Hearing in the first instance) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 7 [Values] of the Constitution and paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol No. 1 to the European Convention on Human Rights; (ii) point 2.2 of paragraph 2 of Article 2 (Scope) in conjunction with paragraph 3 of Article 22 (Asset verification period) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 7 [Values] of the Constitution; (iii) point 1.1 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with Article 106 [Incompatibility] of the Constitution; (iv) point 1.2 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 136 [Auditor-General of Kosovo] and paragraphs 1 and 2 of Article 137 [Competences of the Auditor-General of Kosovo] of the Constitution; (v) point 1.4 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 132 [Role and Competences of the Ombudsperson] and paragraph 3 of Article 134 [Qualification, Election, and Dismissal of the Ombudsperson] of the Constitution; (vi) to declare null and void, in its entirety, Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets; and (vii) to reject the request for interim measure.

455. According to the above clarifications, essentially, the Court has found that the contested Law violates constitutional principles in three aspects, namely (i) concerning the scope of the contested Law specified through Article 2 (Scope) in conjunction with Article 34 (Hearing in the first instance) of it and more specifically, in the context of the retroactive application of the law from 17 February 2008, in relation to the necessary guarantees related to the burden of proof of the individual, namely the subject of verification, as explained in the Judgment; (ii) concerning the period of verification of assets specified by Article 2 (Scope) in conjunction with Article 22 (Asset verification period) of the contested Law, in the context of the "*clarity*" and "*foreseeability*" of the norm that determines the competence of the State Bureau for verifying the property of the public official acquired during and after the end of state functions; and (iii) concerning the composition of the Oversight Committee of the State Bureau specified by Article 10 (Oversight Committee Composition and Compensation) of the contested Law and more specifically, concerning the incompatibility of the constitutional functions of a judge of the Supreme Court, the Auditor-General, and the deputy Ombudsperson with the exercise of the functions and competences of overseeing the State Bureau, including in the context of the nature of the competences of the latter.

456. According to the clarifications given in this Judgment, in addressing the contested constitutional violations through amendments and/or supplements to the above-specified

provisions, the Assembly should ensure that (i) the retroactive application of the law is balanced and proportional with the burden of proof, either (a) by determining reasonable retroactive periods based on the analysis and assessment of the applicable laws of the Republic of Kosovo, including in the context of access to data that are relevant for proving the unjustifiability of the property subjected to verification; and/or (b) by specifying procedural guarantees in the context of the individual's burden of proof, namely the subject of verification, which would enable the latter to argue before the relevant courts regarding the objective impossibility to provide the relevant evidence; (ii) the norms that specify the time periods within which the Bureau can verify the property acquired during and after the exercise of the functions of the relevant officials, including the deadlines within which the investigations and relevant procedures can be initiated, should be fully "*clear*" and "*foreseeable*," in accordance with the principle of legal certainty and the rule of law; and (iii) insofar as it does not exercise the supervisory function itself, to determine the composition of the Oversight Committee in such a way that it guarantees the independence that is also guaranteed by Article 142 of the Constitution, ensuring at the same time that the possible determination of members of independent institutions in this committee is in accordance and/or compatible with their constitutional functions and/or the oversight competences of independent constitutional institutions.

457. The Court further emphasizes that despite the fact that in the assessment of the constitutionality of the contested Law, the Court has found only specified parts of the articles of the contested Law to be contrary to the Constitution, considering their nature and importance and the fact that without their amendment and/or supplementation, the contested Law is inapplicable, the Court cannot refer the contested Law to the President of the Republic of Kosovo for promulgation according to the provisions of Article 43 (Deadline) of the Law on the Constitutional Court, but must return the same to the Assembly of the Republic of Kosovo, so that the latter can supplement and/or amend Articles 2 (Scope), 10 (Oversight Committee Composition and Compensation); 22 (Asset verification period) and 34 (Hearing in the first instance) of the contested Law in accordance with the Constitution and the findings of this Judgment.

458. In support of the above finding, the Court recalls that the referrals of the applicants have been submitted to the Court based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution. This category of referrals has a suspensive effect because based on Article 43 (Deadline) of the Law on the Constitutional Court, such a law can be referred to the President of the Republic of Kosovo for promulgation only after the decision of the Court and in accordance with the modalities specified in the final decision of the Court for the contested case. The Court recalls that considering the principle of legal certainty, based on its case law related to the category of referrals with suspensive character submitted according to the provisions of paragraph 5 of Article 113 of the Constitution, the determination of whether the contested Law is declared null and void in its entirety or only the specified provisions of the contested Law are declared null and void, referring the rest of the contested Law for promulgation to the President, depends on the nature of the identified violations, namely whether the contested Law can be implemented without the provisions declared to be in contradiction with the Constitution. In circumstances where the nature of the provisions declared to be in contradiction with the Constitution makes the rest of the contested Law unenforceable, the Court cannot refer for promulgation, namely entry into force, a law that is unenforceable.

459. According to the above explanations, based on the Court's case law, in cases of finding that specific provisions of the contested law are not in compliance with the Constitution and

that the rest of the contested law can be implemented without the same, the Court has declared null and void only the provisions assessed as contrary to the Constitution, while the rest of the law has been referred to the President for promulgation in accordance with the modalities of the Court's Judgment, as is the case with the Court's Judgments in the cases (i) KO01/17, regarding *Constitutional review of the Law on Amending and Supplementing the Law No. 04/L -261 on the War Veterans of the Kosovo Liberation Army*; (ii) KO108/13, constitutional review of the Law, No. 04/L-209, on Amnesty; (iii) KO216/22 and KO220/22, regarding the constitutional review of Law No. 08/L-197 on Public Officials; and (iv) KO79/23 regarding the constitutional review of Law No. 08/L-196 on Salaries in the Public Sector. Whereas, in case of assessing that the provisions declared contrary to the Constitution are of essential importance for the respective law and regardless of the promulgation or entry into force of it, the respective law would be inapplicable, the Court has annulled the respective law in its entirety, as is the case with the Court's Judgments in the cases (i) KO43/19 regarding the constitutional review of the Law on Duties, Responsibilities, and Competences of the State Delegation of the Republic of Kosovo in the Process of Dialogue with Serbia; (ii) KO100/22 and KO101/22, regarding the constitutional review of Law No. 08/L-136 on Amending and Supplementing Law No. 06/L-056 on the Kosovo Prosecutorial Council; and (iii) KO173/22, regarding the constitutional review of Law No. 08/L-179 on Interim Measures of Essential Products in Special Cases of Destabilization in the Market.

460. In the circumstances of the contested Law, and as explained above, the Court has found that essential provisions of the contested Law are in contradiction with the Constitution, namely (i) those related to the very scope of the contested Law, including in the aspect of its retroactive application in relation to the burden of proof related to the unjustifiability of the property; (ii) the period of property verification during the exercise and after the completion of the functions of the relevant officials; and (iii) those that determine the composition of the Oversight Committee, and which, according to the given explanations, beyond the oversight competence, have essential competencies and which are related to the very establishment of the State Bureau, including the election of its Director-General. According to the given explanations, no other provision of the contested Law can be implemented without determining the composition of the Oversight Committee from the exercise of the function of which the establishment of the State Bureau depends and furthermore, no procedure for verifying the property can begin without determining the exact scope of the contested Law and the time periods within which the property can be subject to verification. Consequently, and considering that the contested Law, without the provisions declared in contradiction with the Constitution, cannot be enforceable and therefore cannot be referred to the President for promulgation and entry into force, and considering the principle of legal certainty and its consolidated case law in this context, the Court has held that the contested Law must be declared null and void in its entirety.

V. Request for Interim Measure

461. The Court recalls that the applicants requested the Court to impose an interim measure to suspend the entry into force and implementation of the contested Law until a final decision on the respective referral is rendered.

462. In this context, the Court notes that paragraph 2 of Article 43 (Deadline) of the Law provides for the suspensive effect of the entry into force of laws contested under paragraph 5 of Article 113 of the Constitution, stating that "*in the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with*

Article 113, Paragraph 5 of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest".

463. Based on the aforementioned provision, on 21 February 2023 the Court requested the President, the President of the Assembly, and the Secretary of the Assembly to consider the requirements of paragraph 2 of Article 43 of the Law.

464. Therefore, considering that based on paragraph 2 of Article 43 of the Law, the contested Law under paragraph 5 of Article 113 of the Constitution cannot be decreed, enter into force, or produce legal effects without the issuance of a decision by the Court, and in accordance with Article 27 (Interim Measures) of the Law and Rule 57 [Decision on Interim Measure] of the Rules of Procedure, the request for interim measure is without object of review and, as such, is rejected (see, *inter alia*, the Court's Judgment in case KO100/22 and KO101/22, cited above, paragraph 411).

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113 (5) and 116 (2) of the Constitution, Articles 20, 27, and 42 of the Law, and based on Rules 45, 48 (1) (a), and 72 of the Rules of Procedure, on 20 June 2024:

DECIDES

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, by eight (8) votes for and one (1) against, that item 2.1 of paragraph 2 of Article 2 (Scope) in conjunction with paragraph 2 of Article 34 (Hearing in the first instance) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 7 [Values] of the Constitution and paragraphs 1 and 2 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol No. 1 to the European Convention on Human Rights;

III. TO HOLD, by eight (8) votes for and one (1) against, that item 2.2 of paragraph 2 of Article 2 (Scope) in conjunction with paragraph 3 of Article 22 (Asset verification period) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 7 [Values] of the Constitution;

IV. TO HOLD, by six (6) votes for and three (3) against, that item 1.1 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with Article 106 [Incompatibility] of the Constitution;

V. TO HOLD, by eight (8) votes for and one (1) against, that item 1.2 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified

Assets, is not in compliance with paragraph 1 of Article 136 [Auditor-General of Kosovo] and paragraphs 1 and 2 of Article 137 [Competences of the Auditor-General of Kosovo] of the Constitution;

VI. TO HOLD, by six (6) votes for and three (3) against, that item 1.4 of paragraph 1 of Article 10 (Oversight Committee Composition and Compensation) of Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, is not in compliance with paragraph 1 of Article 132 [Role and Competences of the Ombudsperson] and paragraph 3 of Article 134 [Qualification, Election, and Dismissal of the Ombudsperson] of the Constitution;

VII. TO DECLARE, by five (5) votes for and four (4) against, in its entirety, Law No. 08/L-121 on the State Bureau for the Verification and Confiscation of Unjustified Assets, null and void;

VIII. TO REJECT, unanimously, the request for an interim measure;

IX. TO NOTIFY this Judgment to the parties;

X. TO HOLD that this Judgment enters into force on the day of its publication in the Official Gazette, in accordance with Article 20 (5) of the Law.

Judge Rapporteur **President of the Constitutional Court**

Nexhmi Rexhepi Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.