



GROUP FOR LEGAL
AND POLITICAL
STUDIES

POLICY NOTE

Number 02 – August 2016

Mapping Confiscation of Criminalized Wealth in Kosovo: A statistical case scenario

Policy Note 02/2016

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August 2016

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ABOUT GLPS

Group for Legal and Political Studies is an independent, non-partisan and non-profit public policy organization based in Prishtina, Kosovo. Our mission is to conduct credible policy research in the fields of politics, law and economics and to push forward policy solutions that address the failures and/or tackle the problems in the said policy fields.



This Policy Note is part of the Project entitled: 'Fighting Corruption in Kosovo through Improving the Policy on the Confiscation of Illicit Wealth', supported by British Embassy in Kosovo.

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Introduction

Corruption being a major problem in Kosovo, the fight against it has been lifted to a priority by all rule-of-law institutions. Due to an ineffective fight against corruption, Kosovo has been criticized by several international and national reports, including the annual European Commission Country Report. Therefore, Kosovo vulnerability to high levels of corruption and a culture of impunity is undermining democratic institutions, government stability, and seems to hinder economic development. For these reasons, developing a comprehensive institutional and legislative response to such policy loophole is both challenging and requires an intensive cooperation between all government stakeholders.

Kosovo was continuously ranked low in the Transparency International Corruption Perception Index; the 2015 report ranked Kosovo 103rd out of 168 countries, with a score of 33.¹ This score places Kosovo in the same group with Ethiopia, Moldova and Dominican Republic, a pool wherein it shares problems like poor governance and the lack of an independent judiciary, amongst others. Despite continuous governmental commitments that it will fight corruption and its proclaimed policy on zero tolerance to corruption, the situation has not changed any significantly in the past years, as shown in table.1. Kosovo has been accorded a score of 33 in the last three years and 34 in 2012, but the ranking was the same; this indicates no major changes have taken place in this period.

Year	Score
2015	33
2014	33
2013	33
2012	34

Table.1: Corruption Perceptions Index (2012-2015), Transparency International

In regards to the nature of corruption in Kosovo, corruption of high ranking officials, also referred to as political corruption, is ubiquitous in terms of public perception and debates among civil society. Though, in reality, no complex case of corruption and organized crime, which involves high ranking officials, politicians, or substantial wealth, has been given a final verdict by the competent authorities. As a consequence, the level of credibility and trust on these institutions is further questioned by the media and the general public.

Currently there is sufficient legal and institutional framework to combat corruption and organized crime, which focuses mainly on the conviction of the persons responsible for the crime. The legal framework includes a) the Law on Declaration, Origin, and Control of Property of Senior Public Officials and Declaration, Origin and Control of Gifts of Senior Public Officials, b) the Law on Prevention of Conflict of Interest in Discharge of Public Functions, c) the Law on Management of Sequestered or Confiscated Assets, d) the Law on Extended Powers for Confiscation of Assets Acquired by Criminal Offense. These laws have undergone various amendments from their first approval in the Assembly and several new amendments are also currently being prepared. Full implementation of this package, though, remains a serious problem in Kosovo. The latter is considered to be a consequence of the fact that the laws in question did not take into account the socio-cultural factor; they either simply copied and pasted legal provisions from other countries (particularly European Union countries), or the drafting of laws was managed by international experts, again without properly addressing the local societal context. On the other hand, the institutional framework consists of the Anti-Corruption Strategy (2013-2017) and several mechanisms, namely the Anti-Corruption Agency (2007), the National Anti-Corruption Council (2012), the National Prosecutorial Coordinator against Corruption and Economic Crimes, and the National Prosecutorial Coordinator against Corruption. The main problem with these mechanisms is that they lack proper professional and institutional capabilities to fight complex modes of political corruption, and to coordinate with enforcement institutions to properly investigate them. As of today, there has been no single disciplinary or performance-related measure against those who did not comply with the strategic objectives of these instruments, and no one has been

¹ A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean).

convicted or penalized for not implementing the specific strategic tasks under the above policy instruments.² Not to mention, the lack of political will to fight corruption and organized crime makes the latter policy loopholes even broader in scope; that is reflected by political interference to the work of the respective authorities and the adjudication of specific cases relating to political corruption.

That said, one should note that the modern global fight against corruption is no longer focused on the conviction of the person/s responsible, but also on the identification and confiscation of criminal proceeds, also referred to as illegally obtained wealth. Confiscation of criminal proceeds has proven to have a dual function, first being the prevention of corrupt officials from enjoying the benefits of their ill-gotten gains, and, second the return of the confiscated wealth to the state budget, respectively to the public at-large. The first attempt made by Kosovo institutions to focus on the confiscation of criminal proceeds consisted in the approval of the Law on Extended Powers for Confiscation of Assets Acquired by Criminal Offenses (henceforth, the Law on Confiscation).³ Although the jurisdictional authority of the rule of law institutions to confiscate is sufficiently embedded in this Law, its proper implementation is challenging due to various legislative and institutional gaps.⁴ Major legislative challenges include the lack of the reversed burden of proof and treatment of confiscation as part of the criminal process (the lack of non-conviction based system).⁵ In terms of institutional challenges, the most serious ones remain the lack of a shared database among key institutions, the lack of prioritization of complex corruption cases and the lack of sound cooperation between prosecution and judiciary.⁶ The Agency for Management of Sequestered or Confiscated Assets was established in 2009 and was entitled to administer the frozen, sequestered and confiscated assets, a function originating in the Law on Management of Sequestered or Confiscated Assets.⁷ According to this law, the Agency is responsible for managing all assets/wealth confiscated which is under legal circulation. This Law is currently being amended because its current form does not clarify the mandate of the Agency, and has various gaps in terminological consistency.

Therefore, this policy note maps and analyzes the data on criminalized wealth and reflects upon the success/failure of this policy in the fight against corruption and organized crime. The first section assesses the data provided by the Agency for Management of Sequestered or Confiscated Assets, and evaluates the trends and peaks evidenced as successes and/or failures. The last section provides a set of recommendations for relevant stakeholders aimed at increasing the effectiveness of the fight against corruption and organized crime through confiscation of illicit wealth.

Assessment of Data on Illicit Wealth

The global fight against illicit enrichment has shifted its focus from the conviction of the person to the confiscation of the illegally obtained wealth, aiming to prevent that proceeds of crime are not laundered and re-injected into the economy as 'legal'. This deprives our societies from millions of Euros and hinders the competitiveness of the formal economy. Confiscation of illegal assets has proven to be a very effective manner to hamper and prevent corruption and organized crime.⁸ This manner is regarded as a dual function activity, which includes the return of wealth to the state budget, and the prevention and disruption of corruption and crime networks originating in financial bases. A well-established legislative framework is a precondition for successfully fighting this illegal activity and the statistics about confiscated illegal assets are a real indicator demonstrating the progress in this process. Since Kosovo institutions and key political figures have continuously declared zero tolerance to

2 Director of the Anti Corruption Agency, Hasan Preteni. Panel Discussion " Fight against Political Corruption in Kosovo: Current Challenges in the view of Future Reforms", 23 February 2015, Swiss Diamond Hotel. Organized by the Group for Legal and Political Studies.

3 Law on Extended Powers for Confiscation of Assets Acquired by Criminal Offense. Official Gazette of the Republic of Kosovo. 2013. Available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=865>

4 Rexha, A. (2015). "Confiscation of Illicit Wealth in Kosovo: Time to think for a new policy" Policy Report. Group for Legal and Political Studies.

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6 For more detailed analysis of these legislative loopholes and institutional challenges, see

Rexha, A. (2015). "Confiscation of Illicit Wealth in Kosovo: Time to think for a new policy" Policy Report. Group for Legal and Political Studies.

Qosaj-Mustafa, A. (2013). "Pandeshkueshmeria ne Kosove : Pasuria e Pajustificueshme" Policy Analysis. KIPRED.

7 Law on Management of Sequestered or Confiscated Assets. Official Gazette of the Republic of Kosovo. 2009. Available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2648>

8 Transparency International in Bulgaria, Romania, Italy. "Confiscation of Criminal and Illegal Assets: European Perspectives in Combat against Serious Crime" Policy Paper. Available at http://www.transparency.bg/media/publications/Policy_Paper_EN_web.pdf

corruption and criminal activities and have committed themselves to punishing those involved in such activities, this policy note draws upon existing statistical data/values of confiscated illegal assets to assess whether the fight against corruption in Kosovo is being seriously addressed. The data gathered from the Agency for Management of Sequestered or Confiscated Assets, in table.1, shows the total value of frozen, sequestered and confiscated assets in the last five years. It shows that sequestered assets, namely temporary seized assets, represent the largest proportion of all types of assets that the Agency manages. Out of the total amount of all assets managed by the Agency, namely €30,733,449.554, only €1,193,266.19 (4%) have a confiscated status (namely permanently seized). Table.1 also shows that the total amount of assets confiscated is lower compared to returned assets (that are assets which in case after the final verdict of the court the accused was pleaded innocent, his/her previously sequestered assets were returned).

Table.2 The total amount of frozen, sequestered, and confiscated assets during the last five years (2011-2015)

	2011-2015
Frozen Assets	€ 4,430,990.26
Sequestered Assets	€ 25,109,193.10
Confiscated Assets	€ 1,193,266.19
Total	€ 30,733,449.55
Returned Assets	€ 3,328,268.57

Source: Agency for Management of Sequestered or Confiscated Assets, Ministry of Justice, Kosovo

Table.3 shows the total value of frozen, sequestered and confiscated assets per annum for the past five years. If one compares the values, it is observed that there are major discrepancies between the total volume of assets frozen, sequestered and confiscated each year, with the exception of the period 2012-2013. The latter suggests that 2014 is considered as the most successful year in terms of the amount of frozen, sequestered and confiscated assets; nevertheless, a more detailed deconstruction of this amount will portray a clearer picture of the results achieved.

Table.3 Comparative values of frozen, sequestered, and confiscated assets for each year, during the last five years (2011-2015)

Frozen, Sequestered, and Confiscated Assets				
2011	2012	2013	2014	2015
€	€	€	€	€
69,257.66	2,589,608.42	1,563,131.23	23,578,105.22	2,933,347.02

Source: Agency for Management of Sequestered and/or Confiscated Assets, Ministry of Justice, Kosovo

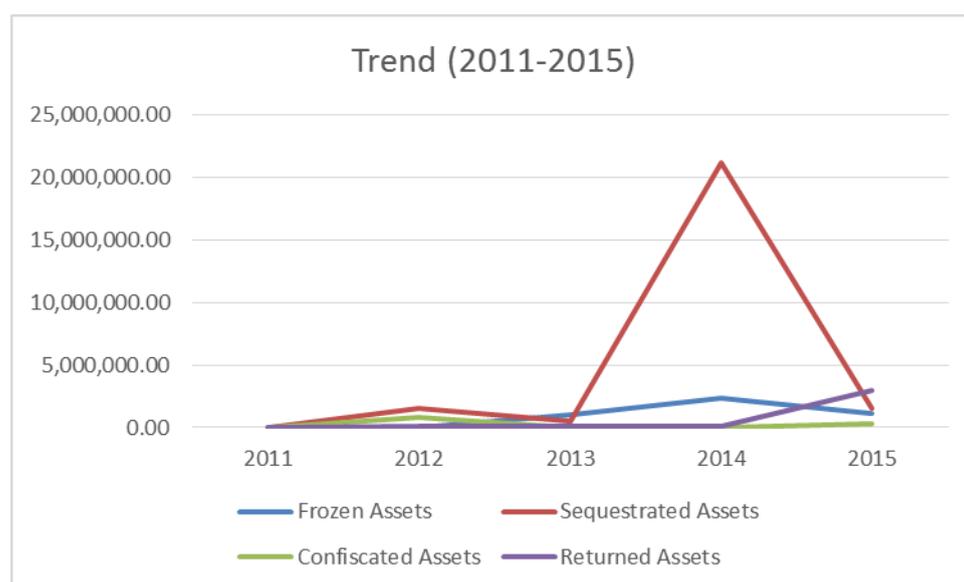
Table.3, on the other hand, reveals that the highest increases were experienced in 2015 and 2014 in the categories of returned assets and sequestered assets, respectively. More precisely, the amount of returned assets increased in 2015 by 4903.57% in comparison to 2014, whereas the amount confiscated in 2014 rose by 3749.99% when compared to 2013. On the other hand, the highest decreases were experienced in 2013 and 2015 in the categories of confiscated and sequestered assets, respectively. On this note, confiscated assets have decreased by 99.18% in 2013 when compared to 2012, whereas sequestered assets decreased by 92.90% between 2014 and 2015. Moreover, graph.1 suggests that the financial-volume trend has not shown any major change in all four categories of assets including frozen, sequestered, confiscated and returned assets, apart from the peak in 2014 when sequestered assets increased to roughly 22 million Euro. However, this increase presents only the side of temporary seized assets, and does not indicate any significant result in fighting corruption and organized crime through confiscation policy.

Table.4 presents an overview of the total amounts of frozen, sequestrated, confiscated and returned assets within the last five years (2011-2015), and it compares changes for each category in percentage within years. The data does not indicate whether the assets have derived from criminal offences relating to corruption or criminal activities. Neither the Agency for the Management of Sequestrated nor the National Coordinator for the fight against economic crimes possesses this structure of data.⁹ They justify this deficiency with the argument that they record merely the total amounts of each category and do not separate them into data corresponding to different types of criminal offences.

Table.4 The amount and trend of frozen, sequestrated, confiscated, and returned assets during the last five years (2011-2015)

Year	Frozen Assets	% change from year to year	Sequestrated Assets	% change from year to year	Confiscated Assets	% change from year to year	Returned Assets	% change from year to year
2015	€ 1,120,990.26	-51.47%	€ 1,503,978.08	-92.90%	€ 308,378.68	1045.16%	€ 2,984,630.22	4903.57%
2014	€ 2,310,000.00	131%	€ 21,196,492.71	3749.99%	€ 26,928.81	327.25%	€ 59,650.00	-58.13%
2013	€ 1,000,000.00		€ 550,558.43	-63.96%	€ 6,302.80	-99.18%	€ 142,488.35	0.69%
2012	-		€ 1,527,669.76	3573.84%	€ 778,017.45	2711.22%	€ 141,500.00	
2011	-		€ 41,582.31		€ 27,675.35		-	

Source: Agency for Management of Sequestrated and/or Confiscated Assets, Ministry of Justice, Kosovo



⁹ Fazliu, Sh. (2016). "Data on Illicit Wealth" [Email]. Message to: Rexha, A. 04 March 2016.
 Sejdiu, O. (2016). "Data on Illicit Wealth" [Email]. Message to: Rexha, A. 01 March 2016.

Table.5 The Average of Sequestrated Assets that were confiscated (2011-2015)

	Sequestrated Assets (SA)	Confiscated Assets (CA)	% of SA that ended up in Confiscation
2015	€ 1,503,978.08	€ 308,378.68	% 20.5
2014	€ 21,196,492.71	€ 26,928.81	% 0.12
2013	€ 550,558.43	€ 6,302.80	% 1.14
2012	€ 1,527,669.76	€ 778,017.45	% 50.9
2011	€ 41,582.31	€ 27,675.35	% 66.55
	Average		% 27.84
	Median		% 20.5

Source: Agency for Management of Sequestrated and/or Confiscated Assets, Ministry of Justice, Kosovo

To this end, one argues that merely values of confiscated assets do reflect the concrete results achieved in fighting corruption for the mere reason that there is no final fight against corruption without a final court verdict. Thus, the interest is to identify the percentage of sequestrated assets that after the final verdict of the court ended up as confiscated as opposed to returned assets. Table.5 shows that on average 27.4% of all sequestrated assets are eventually confiscated and are therefore returned to the state budget. In 2014, out of €21,196,492.71 of sequestrated assets, only €26,928.81 or 0.12% were confiscated, resulting in the lowest rate of confiscation among all five years. Since these data include two extreme sides, that of 50.9% and 66.55% in 2012 and 2011, respectively, the average is not robust because it is influenced by these two outliers. In order to avoid the influence of the two outliers, we measure the median. The latter is roughly 7% smaller than the average, more precisely 20.5.

Table.6 The % of sequestrated assets that were returned (2011-2015)

	Sequestrated Assets (SA)	Returned Assets (RA)	% of SA that ended up as Returned Assets
2015	€ 1,503,978.08	€ 2,984,630.22	% 198
2014	€ 21,196,492.71	€ 59,650.00	% 0.28
2013	€ 550,558.43	€ 142,488.35	% 25.88
2012	€ 1,527,669.76	€ 141,500.00	% 9.26
2011	€ 41,582.31	-	-

Source: Agency for Management of Sequestrated and/or Confiscated Assets, Ministry of Justice, Kosovo

Similar to the previous table, table. 6 shows the % of sequestrated assets that ended up as returned assets. In 2015, the amount of returned assets was twice the amount of sequestrated assets. This implies that the amount of returned assets is not necessarily related to the cases of 2015, but it is related to previously sequestrated assets.

In conclusion, the data suggests that the fight against corruption and organized crime in Kosovo did not reach any significant result when measured in terms of the value of confiscated assets. This demonstrates that Kosovo has little adherence to modern global tactics to fight political corruption through confiscation of illicit wealth. The results suggest that out of €29,540,183.36, only €1,193,266.19 (roughly 4%) are confiscated, no distinction being made between the confiscations derived from criminal offenses related to corruption or organized crime as opposed to other types of confiscations; the total amount of assets confiscated is lower compared to the returned assets; the average of sequestrated assets that ended up being confiscated is 27.84%; average-wise, the median of sequestrated assets that ended up being confiscated is 20.5%. Taken as a whole there is a low trend in all assets including frozen, sequestrated, confiscated and returned, apart from year 2014 when sequestrated assets increased to roughly 22 million Euro. Overall, the results indicate that corrupted individual were not prevented from enjoying the benefits of their ill-gotten gains, and competent authorities have not seriously addressed the underlying motivation for corruption. On the other hand, the return of crime proceeds to the state budget is significantly important efforts for law enforcement and combat of corruption and organized crime.

Recommendations

The data suggested that benefits from confiscation of illicit wealth remain very low, thereby indicating the lack of the effective fight by competent and relevant authorities. As such this policy report puts forward a set of policy recommendations that should be addressed promptly by the responsible institutions for combating corruption and organized crime. Our recommendations are the following:

- the Kosovo Prosecutorial Council should adopt a strategy and an action plan related to the confiscation of wealth deriving from criminal offences. Such a plan should include a professional Guideline to assist and direct prosecutors on addressing cases which include confiscations of assets, including an intensive plan for the training of prosecutors. The plan among others should outline the situations when prosecutors are under an absolute obligation to request the sequestration and confiscation as a result of their investigation. The plan should set target values, if possible, for the coming years divided according to the territorial jurisdiction of each prosecutorial unit;

- the Kosovo Judicial Council should adopt a policy to review all judges performance and professional standing with regard to decisions on requests for sequestration and confiscation. The Council should also consider undertaking an overall review of judges dealing with this category of cases every two years;

- the Police, Customs and Tax Administration should be trained to better assess when cases of sequestration and confiscation arise in the context of their investigative function;

- a horizontal coordinating mechanism should be set in place to offer reliable, detailed and explained data on sequestration and confiscation across all line institutions;

- the Agency on Management of Sequestrated or Confiscated Assets should record data separately corresponding to different types of criminal offences, amount of wealth, and public officials involved, if any. Given that, a clearer picture of the results achieved will be available;

- political willingness to fight corruption and organized crime should be expressed through their role in providing sufficient budget to the judiciary and prosecution, refraining from undue political interference in appointing and dismissing judges and prosecutors, respecting court decisions and fully implementing them;

-law on extended powers to confiscate should be amended in order to allow for the shifted burden of proof;

-all mandates and competences of the anti-corruption mechanisms should be revised, in order to prevent any overlap of duties. Given that, it would be easier to hold accountable responsible individuals;

-intensive horizontal collaboration among prosecution, police, and judiciary should be in place, as confiscation is a result of intensive collaboration among the three.

POLICY NOTES

Policy Notes provide short, concise, timely, informative, and policy oriented analysis on specific issues. Policy Notes are short papers which outline the rationale for choosing a particular policy alternative of action in a current policy/issue debate. They are commonly published in response to a specific event and advocate for the professional stand of the Group for Legal and Political Studies. Indeed, the Policy Note is an action and advocacy-oriented document, which provides arguments for the adoption/amendment of a particular policy choice. Policy Notes aim to influence the target audience on the significance/implications/solutions of the current problem, and therefore brings recommendations to policy-makers, civil society and media, and the general public.