ASSET DECLARATION

THE JUDICIAL ERROR THAT REMOVED ALL ACCOUNTABILITY FROM THOSE WHO VIOLATED THE LAW

15/25

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ABOUT IKD:

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1. Executive Summary

Asset declaration plays an essential role in detecting and preventing corruption, as well as maintaining and strengthening the integrity of public office and public officials in public service. For this reason, the asset declaration of public officials must be strengthened as an effective anti-corruption instrument.

In its early history, asset declaration in Kosovo was regulated by the Anti-Corruption Law. In 2010, a separate law on asset declaration was enacted, followed by another in 2011, which classified the failure to declare assets as a misdemeanor.

In 2013, the non-reporting or false reporting of assets was criminalized through the Criminal Code No. 04/L-082. This criminal offense remained criminalized even in the new Criminal Code. With the aim of harmonizing legislation, the Law on Asset Declaration was amended one year later. The amendment included the reformulation of Article 17 of the basic law, which previously contained misdemeanor sanctions. With this reformulation, the misdemeanor penalties were abolished, and the Anti-Corruption Agency became obligated to refer cases of non-reporting or false reporting of assets to the Prosecution.

On the basis of this legal framework, although an adequate sanctioning policy was not applied, a certain number of public officials were nevertheless convicted for committing such criminal offenses.

This practice continued until 4 April 2024, when the Supreme Court issued judgment Pml. no. 73/2024. This judgment established a new standard that can clearly be characterized as a decriminalization of the criminal offense of non-reporting or false reporting of assets, effectively offering amnesty from the judiciary itself in cases involving such offenses.

The core of the Court's reasoning lies in Article 17 of the 2011 Law on Asset Declaration and not in the same article as reformulated in 2014. In other words, the Supreme Court based its judgment on a legal provision that had been repealed since 2014.

Through this judgment, the Supreme Court emphasized that since non-reporting or false reporting of assets is foreseen as a misdemeanor, it cannot constitute a criminal offense. According to the judgment, the criminal offense of non-reporting or false reporting of assets is committed only when such assets are unlawfully obtained—a standard that contradicts both the wording of the criminal provision and the concept of unlawful gain.

This judgment has produced a domino effect. Based on this new standard, prosecutions have now halted criminal proceedings, and courts have issued acquittals in such cases.

The new Law on Asset Declaration entered into force in 2022. Apart from a warning fine for late submission, it contains no other misdemeanor provisions, meaning that no misdemeanor liability exists for this offense.

In this entire situation, it is clear that the Supreme Court issued a judgment grounded in a serious error that has had wide negative consequences on the treatment of these cases. For this reason, pursuant to Article 102.3 of the Constitution, courts must continue applying the law and not the new Supreme Court standard, until the Supreme Court issues a new decision. Meanwhile, the Supreme Court must adopt a legal position to clarify this situation.

2. Asset Declaration as an Anti-Corruption Tool

In the exercise of their duties, public officials must act in the public interest rather than for private gain. Therefore, transparency, accountability, and integrity are essential in this regard. The asset declaration mechanism plays a critical role in detecting abuses of power and in building broader integrity within the public service.[1] In this way, asset declaration is one of the tools aimed at preventing, detecting, investigating, and combating corruption.[2]

Asset declaration enhances transparency and increases public trust in public administration, as public officials must be subjected to a higher level of scrutiny than the general population.

On the other hand, asset declaration also helps prevent conflicts of interest, primarily by enabling their identification. In this way, asset declaration is one of the mechanisms that promotes integrity within public institutions.

Asset declaration enhances transparency and public trust in public administration, as public officials are required to be subjected to a higher level of scrutiny than the general population.

Moreover, asset declaration helps prevent conflicts of interest, primarily by enabling their identification. In this way, asset declaration serves as one of the tools that promotes integrity within public institutions. At the same time, it allows for monitoring changes in the assets of public officials, aiming to deter them from engaging in improper conduct.[3]

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[1] *Asset Declaration: An Effective Tool for Combating Corruption?* Transparency International. Page 1. Working Paper 01/2014. Berlin, Germany, 2014. (See link: https://files.transparencycdn.org/images/2014_1_WP_AssetDeclarations_EN.pdf)

[2] *Asset Declarations for Public Officials: A Tool to Prevent Corruption.* Organisation for Economic Co-operation and Development (OECD). Page 9. 2011. (See link: https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/03/asset-declarations-for-public-officials_g1g11b78/9789264095281-en.pdf)

[3] *Asset Declarations for Public Officials: A Tool to Prevent Corruption.* Organisation for Economic Co-operation and Development (OECD). Page 9, 2011. (See link:

Thus, asset declaration is not an end in itself but a method to achieve objectives such as strengthening the integrity of public administration, preventing and combating conflicts of interest, and preventing and fighting corruption. Accordingly, the obligations associated with this process do not end at the moment a public official submits their asset declaration; institutions must actively and diligently engage in this process to ensure that these objectives are achieved. Furthermore, the strengthening of the asset declaration system was also a recommendation of the Venice Commission to achieve the aforementioned goals.[4]

3. Legal Basis and Its Evolution

Initially, asset declaration was regulated by the Anti-Corruption Law, and failure to comply with this obligation was sanctioned by a requirement to withhold 1/5 of the official's salary until the declaration was submitted. If the declaration was not submitted within three months, the Anti-Corruption Agency would initiate dismissal procedures through the competent institution.[5]

In 2010, the Assembly of Kosovo adopted a separate law specifically regulating asset declaration. Through this law, the number of senior public officials required to submit asset declarations was doubled, and failure to declare was classified as a misdemeanor, sanctioned with fines ranging from €300 to €1,500.[6]

In 2011, there arose a need to further expand the number of senior public officials required to declare assets and to strengthen sanctions for non-compliance. In this context, Law No. 04/L-050 on the Declaration, Origin, and Control of Assets of Senior Public Officials, as well as the Declaration, Origin, and Control of Gifts for all public officials, was adopted. Under this law, failure to declare assets was punishable by fines ranging from €1,000 to €2,500.[7] This law was later amended in May 2014, for reasons elaborated in the following chapter.

To prevent corruption, conflicts of interest, and to strengthen the integrity of public institutions, Law No. 08/L-108 on the Declaration, Origin, and Control of Assets and Gifts was adopted, entering into force in 2023. This law defines the declarants, types of asset declarations, deadlines, and other relevant provisions. It also provides sanctions: in case of failure to submit an asset declaration, the Anti-Corruption Agency (hereinafter: the Agency) is

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https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/03/asset-declarations-for-public-officials_g1g11b78/9789264095281-en.pdf, p. 12)

[4] *Opinion of the Venice Commission on the Draft Concept for the Vetting of Judges and Prosecutors and Draft Amendments to the Constitution.* Venice Commission. Page 16. Strasbourg, 20 June 2022. (See link: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)011-e)

[5] Law No. 2004/34 on Anti-Corruption, Article 43.

[6] Law No. 03/L-151 on the Declaration, Origin, and Control of Assets and Gifts of Senior Public Officials.

[7] 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.

authorized to impose a fine of up to €500. If the declaration is not submitted within 15 days after the legal deadline, the Agency must refer the case to the competent prosecution for criminal proceedings.[8]

4. Criminalization of Failure to Report Assets

The Law on Asset Declaration, adopted in 2011, stipulated that: "*Anyone who violates the obligations set out in this law, which are not criminal offenses, a senior public official commits a misdemeanor and shall be punished….*"[9] At that time, failure to declare assets constituted only a misdemeanor, as the then-applicable Penal Code had not criminalized asset declaration as a criminal offense.

On 1 January 2013, the Criminal Code No. 04/L-082 of the Republic of Kosovo entered into force. Article 437 of this Code criminalized the failure to report assets or the false reporting of assets. According to this article:

 Any person who, under the law, is required to declare assets, income, gifts, other financial benefits, or financial obligations, and fails to do so, shall be punished with a fine and imprisonment of up to three (3) years. The criminal offense under paragraph 1 of this article is considered committed when the declaration is not submitted within the prescribed deadline.

 Any person who, under the law, is required to declare assets, income, gifts, other financial benefits, or financial obligations, and who falsifies or fails to submit the required information in the declaration, shall be punished with a fine and imprisonment from six (6) months to five (5) years.

 The value of undeclared assets, income, or other financial benefits obtained unlawfully shall be confiscated.

For the purpose of harmonizing legislation, the 2011 Law on Asset Declaration was amended and supplemented in May 2014. Article 17 of this law was reformulated. Unlike the 2011 law, which emphasized that "*Anyone who violates the obligations set out in this law, which are not criminal offenses, a senior public official commits a misdemeanor…*" and listed specific misdemeanors, the reformulated article shifted its focus: it required the initiation of criminal reports to the Prosecution in cases of non-declaration of assets.

This change reflected the fact that, unlike before, failure to report or false reporting of assets had now been criminalized as a criminal offense. Specifically, the 2014 amendment emphasized:

[8] Law No. 08/L-108 on the Declaration, Origin, and Control of Assets and Gifts, Article 28.
[9] 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, Article 17.1.

Article 11 – Reformulated Article 17 of the Basic Law

Article 17

1. The Agency shall submit a criminal report to the competent prosecution against any senior public official who violates the obligations prescribed by this law, which constitute a criminal offense under the Criminal Code of the Republic of Kosovo.
2. For the initiation of criminal proceedings, the Agency shall notify the head of the institution in which the senior public official currently works or has worked.
3. The Agency shall publish the names of senior public officials who have failed to declare their assets as required by law.

Through this amendment, the Law on Asset Declaration was harmonized with Criminal Code No. 04/L-082 of the Republic of Kosovo, which had criminalized the failure to declare or the false declaration of assets.

In April 2019, the new Penal Code, namely Criminal Code No. 06/L-074 of the Republic of Kosovo, entered into force.[10] This Code also maintained the criminalization of the failure to report or the false reporting of assets:

Article 430 – Failure to Report or False Reporting of Assets, Income, Gifts, Other Material Benefits, or Financial Obligations

1. Any person who, under the law, is required to declare assets, income, gifts, other financial benefits, or financial obligations, and fails to do so, shall be punished with a fine or imprisonment of up to three (3) years. The criminal offense under paragraph 1 of this article is considered committed when the declaration is not submitted within the prescribed deadline.
2. Any person who, under the law, is required to declare assets, income, gifts, other financial benefits, or financial obligations, and who submits a false declaration or fails to provide the required information in the declaration, shall be punished with a fine and imprisonment from six (6) months to five (5) years. Fines imposed under this article may be daily fines and may continue to be imposed until the full compliance with the order, decision, or final judgment subject to enforcement.
3. The value of undeclared or falsely declared assets, income, gifts, or other financial benefits shall be confiscated.

Thus, the failure to report or the false reporting of assets remained a criminal offense, although certain elements of the offense were modified. Failure to report assets, previously punishable by both a fine and imprisonment, is now punishable by a fine or imprisonment. Regarding false reporting, in addition to

[10] Criminal Code No. 06/L-074 of the Republic of Kosovo, Article 430

changes to certain elements, the new law introduced the possibility for fines to be imposed daily until the offender complies with the order.

Paragraph 3 was also reformulated. While the previous law required the confiscation of the value of undeclared assets obtained unlawfully, the new Code no longer requires "unlawfulness," instead mandating the simple confiscation of the undeclared or falsely declared value.

In this way, the new Penal Code refined the criminal offense of failure to report or false reporting of assets, maintaining it as a distinct criminal offense for all officials who do not act in accordance with the Law on Asset Declaration.

5. Change of the Standard

Although the failure to report or the false reporting of assets was criminalized in 2013 and maintained in the new Penal Code, a Supreme Court judgment [hereinafter: SC] effectively altered the law and decriminalized this criminal offense. This judgment had a system-wide impact on the judiciary, which followed the same approach, thereby creating, unlawfully, unequal treatment for hundreds of public officials previously convicted for failure to declare assets.

The judgment and its effects are elaborated in this chapter, while its unlawfulness will be addressed in subsequent chapters.

a. Supreme Court Judgment

On 4 April 2024, the SC issued judgment Pml.nr.73/2024. Through this ruling, the SC upheld a request for protection of legality submitted by an official previously convicted at first and second instance for incomplete asset declaration. The SC annulled the lower court judgments and acquitted the defendant.

The standard set by the SC in this judgment is that the criminal offense of failing to declare assets is only consummated if the assets were obtained illegally:

"This Court considers that the failure to declare assets or the false declaration of assets constitutes a criminal offense under Article 430 of the Criminal Code of the Republic of Kosovo only when these assets were obtained illegally, but not when the undeclared or incorrectly declared assets were lawfully acquired and the declarant has no reason to conceal them, but due to negligence or carelessness failed to declare them properly."

In this judgment, the SC refers to a repealed provision. Specifically, it refers to Article 17 of the 2011 Law on Asset Declaration, which, at the time the alleged criminal offense was supposed to have been committed, had already been repealed:

"According to the provision of Article 17 of the Law on Declaration, Origin, and Control of Assets of Senior Public Officials and the Declaration, Origin, and Control of Gifts for All Public Officials (in force at the time), it is stated that anyone who violates the obligations prescribed by this law, which are not criminal offenses, a senior public official commits a misdemeanor and is punished. From the legal description of the law—specifically Article 17—it is clear that failure to declare or inaccurately declare assets lawfully obtained, due to the declarant's negligence, constitutes an unlawful act but triggers only misdemeanor liability and not a criminal offense, as the provision states 'if it is not a criminal offense.' According to this article, a public official is criminally liable only if the assets were not declared at all or were falsely declared (e.g., falsely claimed to be inherited, gifted, etc.) because they were obtained illegally and cannot be justified as legally acquired."

By again referring to a repealed provision, the SC emphasized:

"Had the legislator intended for every failure to declare assets to be considered a criminal offense, it would not have used the expression 'if it is not a criminal offense' and would not have provided for penalties for misdemeanors, as the same act cannot be both a misdemeanor and a criminal offense."

The judgment continues its analysis based on this repealed article.

Regarding asset confiscation, the SC noted in this judgment that this provision could not be applied under the Penal Code and that, in practice, it has never been applied.

b. Domino Effect

Following this judgment, during 2024 and 2025, based on the SC ruling, the State Prosecutor dismissed criminal charges previously filed by the Agency for the Prevention of Corruption, while courts, relying on the standard set by this judgment, acquitted defendants. This occurred in dozens of cases, where senior public officials were effectively granted amnesty from the criminal offense due to this ruling (see Annex 1 for the officials identified during IKD monitoring and research).

Thus, the SC judgment created a domino effect, whereby the failure to declare or false declaration of assets is practically no longer treated as a criminal offense.

c. Unequal Treatment of Previously Convicted Officials

The SC judgment, which led to a domino effect in other cases, aside from its unlawfulness (to be addressed later), created a situation of inequality. Failure to declare or false declaration of assets has been a criminal offense since 1

January 2013. Over more than 11 years, until the issuance of this ruling, hundreds of officials in Kosovo were convicted for not declaring assets. All these convictions were based on the Penal Code in force at the time.

On the other hand, using the same legal basis, officials are now not held criminally liable. In this situation, since the law has not changed, it is clear that previous convictions of officials were unjust, creating an unequal situation among officials—some were punished for a criminal offense while for others the same act is now considered not to constitute a criminal offense.

6. Unlawful Decriminalization

The Supreme Court (SC) judgment, analyzed in the previous chapter, unlawfully decriminalized the criminal offense of failure to report or falsely reporting assets. This judgment is clearly not grounded in law.

The unlawfulness begins with the fact that the judgment refers to a repealed provision. The provision forming the basis of the standard established by the SC judgment is Article 17 of the 2011 Law on Asset Declarations, which was neither in force at the time the alleged criminal offense was committed nor is it in force today.

As noted, the SC's analysis centers on Article 17 of the 2011 Law on Asset Declarations, which used the expression "if it is not a criminal offense." This article also regulated administrative offenses for non-compliance with asset declaration obligations. However, this provision has not been in force since May 2014, when the Law on Asset Declarations was amended and harmonized with the Penal Code. Therefore, the core of this judgment is based on a repealed provision.

By using the argument that the same act cannot constitute both an administrative offense and a criminal offense, the Court relied on a law that was no longer in force, thereby undermining the law that was actually in effect.

Regarding the legality of assets, the new Penal Code, in paragraph 3, removed "legality" as a condition for confiscation. Nevertheless, the SC added this element through its judgment, stating that the criminal offense of failure to report or falsely reporting assets occurs only when the asset was not acquired lawfully.

This practical decriminalization, conditioned on the asset not being legally acquired, cannot stand under any legal framework. In Kosovo's legal system, the in rem confiscation system—confiscation against the asset itself—has not been established.

Furthermore, if the focus of review is the "legality" of asset acquisition, within the Penal Code provisions, this cannot be addressed under the criminal

offense of failure to report or falsely reporting assets. This is because the unreported asset does not derive from this criminal offense but must result from another criminal act. This is why the new Penal Code removed the "legality" element in the provision on confiscation of undeclared assets, explicitly stating: "*The undeclared or falsely declared value of assets, income, gifts, or other material benefits shall be confiscated.*"

Incorporating the "legality" element, which was removed in the new Penal Code, is therefore unlawful and unfounded under any interpretation scenario.

In 2014, the Law on Asset Declarations was harmonized with the then-current Penal Code, which criminalized failure to report or falsely reporting assets. The same approach was maintained with the new Law on Asset Declarations, effective February 2023. Under this law, if an official does not declare assets within the legal deadline, a fine of up to 500 euros is imposed. If the official still fails to declare the assets, a criminal complaint is filed. The law explicitly recognizes failure to declare or falsely declaring assets as a criminal offense, stating that the court considers fines previously imposed by the Agency when adjudicating the criminal case.[11]

For all these reasons, the SC judgment, based on a repealed law and incorporating elements removed from the criminal offense, which also produced a domino effect within the justice system, is manifestly unlawful.

7. Criminalization vs. the Elements of a Criminal Offense

Through reasoning based on a repealed law, the Supreme Court (SC) effectively decriminalized, unlawfully, the failure to report or the false reporting of assets as a criminal offense. As elaborated in the previous chapter, the standard set by the SC in this case emphasizes that failure to report or false reporting of assets does not constitute a criminal offense.

This reasoning is clearly unlawful and based on repealed legislation. Beyond this, the SC in this judgment explicitly states that there can be no criminal offense of non-reporting or false reporting if the act occurred due to the negligence of the declarant.[12]

It is crucial to distinguish between the legal definition of a criminal offense and the fulfillment of the elements of that offense. According to this judgment, failure to report or false reporting of assets, when the assets are lawfully

[11] Law No. 08/L-108 on the Declaration, Origin, and Control of Assets and Gifts – Article 28, Paragraph 5

[12] Note: It is also contradictory how the Supreme Court engages in evaluating negligence, carelessness, etc. In this specific case, since the Supreme Court unlawfully concluded that failure to report or false reporting of assets, when the assets were lawfully acquired, does not constitute a criminal offense, there was no need at all to assess whether the act was committed intentionally or through negligence.

acquired, does not constitute a criminal offense. This interpretation is clearly incorrect and should not be followed.

However, disregarding this SC standard does not mean that prosecutors and courts should not verify, in each case, whether all elements of the criminal offense are met. Under the Kosovo Penal Code No. 06/L-074[13], failure to report or false reporting of assets is committed only with intent, which may be direct or eventual.[14]

In each case, considering all factual circumstances[15], prosecutors and courts must assess the perpetrator's intent to commit the offense. Knowledge—at least eventual knowledge—of the criminal nature of the act must be considered, given that the official is informed of the obligation to declare assets upon appointment. This obligation is reinforced by the Officer for Asset Declarations. According to the 2023 Law on Asset Declarations, criminal proceedings for failure to declare are preceded by an administrative fine of up to 500 euros.[16]

Based on all case-specific facts and circumstances the State Prosecutor and courts must assess the defendant's intent to commit the criminal offense. If it is determined that the act occurred due to negligence, the elements of the criminal offense are not fulfilled.

However, the non-fulfillment of the elements of a criminal offense should not be confused with decriminalization of the offense itself. The SC judgment goes beyond the mere lack of elements; it does not find a lack of criminal liability due to lack of intent but, relying on a law that is not in force, asserts that failure to report or false reporting of assets does not constitute a criminal offense at all.

8. Inability to Impose Administrative Sanctions

The Supreme Court, relying on a repealed law, emphasized that failure to report or falsely reporting assets constitutes an administrative offense, for which fines were also prescribed. However, the provision referred to by the Supreme Court, where such fines were set, has long been repealed.

The current Law on the Declaration of Assets provides for the possibility of imposing a fine of up to 500 euros if an official fails to declare assets within the legally prescribed deadline. Nevertheless, if the official still does not submit the declaration after the fine, the law obliges the Agency for the Prevention of

[13] Criminal Code No. 06/L-074 of the Republic of Kosovo, Article 430, in relation to Article 17
[14] Ibid. Article 21.
[15] Ibid. Article 22.
[16] Law No. 08/L-108 on the Declaration, Origin, and Control of Assets and Gifts, Article 28.

Corruption to refer the case to the competent prosecution authority for criminal proceedings.[17]

Once the criminal referral is made by the Agency, its role is complete. The current law does not provide for any additional administrative fines for failure to declare or for false declaration of assets. This is because the act constitutes a criminal offense, with sanctions established under the Penal Code, making further administrative fines unnecessary.

In this context, the Supreme Court's unlawful decriminalization of failure to declare or falsely reporting assets has also removed the possibility of imposing administrative fines against officials who fail to declare or misreport their assets. Since administrative fines are not established by law, and the legislator has clearly provided that sanctions for this offense fall under the Penal Code, the Court's ruling effectively eliminates both criminal and administrative accountability in these cases.

9. Punitive Policy

As mentioned, prior to the issuance of the Supreme Court judgment in question, a large number of officials were convicted for the criminal offense of failing to report or falsely reporting assets. However, even at the time when the law was applied correctly and criminal liability was established for these individuals, this criminal offense was treated, in terms of punishability, as a "misdemeanor."

In the IKD report titled "*Failure to Declare Assets: Crime on Paper, Misdemeanor in Practice – Analysis of the Punitive Policy in Cases of Non-Declaration of Assets*"[18], IKD found that in 57% of the conviction cases, courts had imposed a fine, while in the remaining 43% of cases, a suspended sentence and a fine were imposed. Thus, despite the criminalization, the report found that courts had not imposed effective imprisonment for the criminal offense of failing to report or falsely reporting assets.

Therefore, alongside the current issues created by the Supreme Court judgment, IKD has also found that, in the past, courts treated this criminal offense as a "misdemeanor," in line with the punitive policy they followed.

10. Summary from the Focus Group

The focus group was organized with representatives from the judiciary, the prosecution, the Agency for the Prevention of Corruption (APC), and the legal

[17] Law No. 08/L-108 on Declaration, Origin, and Control of Assets and Gifts, Article 28(4), Republic of Kosovo.
[18] Zekaj, E. *"Failure to Declare Assets: Crime on Paper, Misdemeanor in Practice – Analysis of the Punitive Policy in Cases of Non-Declaration of Assets."* Kosovo Justice Institute. Pristina, December 2023. (See link: https://kli-ks.org/wp-content/uploads/2023/12/Raporti_Mos-deklarimi-i-pasurise-krim-ne-leter-kundervajtje-ne-praktike.pdf)

community. Discussions during this focus group concentrated on the standard established by the Supreme Court (SC) through judgment Pml.nr.73/2024, specifically the impact of this ruling and the uncertainties created regarding the applicability of Article 430 of the Penal Code and the challenges in interpreting the law. A key challenge in this discussion was the absence of representatives from the Supreme Court.

- Some participants raised concerns about the overreach of the Supreme Court by establishing a new legal standard not supported by the applicable legislation. They emphasized that the judgment was based on a repealed provision of the old Law on the Declaration of Assets and introduced the criterion of "unlawful acquisition of assets," which is not foreseen in the Penal Code.
- The importance of the new legal mechanism, including administrative fines and the additional 15-day period, was highlighted as an instrument for verifying the element of intent, which is essential for criminal liability under Article 430 of the Penal Code.
- Opinions differed regarding the impact of the judgment, with a consensus that the impact should be analyzed in a differentiated manner:
    - Paragraph 1, which governs the complete non-declaration, remains clear and unaffected by the Supreme Court decision.
    - Paragraph 2, which relates to false declarations or failure to provide the requested data, represents the main source of uncertainty.

  In this regard, it was emphasized that the report should avoid concluding that there has been a full "decriminalization" of the offense and should focus on the real impact: the ambiguity of paragraph 2. Other representatives stressed the opposite, noting that the judgment, in both its substance and effects, reflected both forms of the offense.

- It was confirmed that the interpretation of the Supreme Court decision has led to non-prosecution in these cases, including the dismissal of indictments or acquittals.
- Difficulties were highlighted in creating a new case for review by the Supreme Court, as the State Prosecutor applies the standards set by the Supreme Court while the APC is not a party in the procedure.
- It was emphasized that courts and prosecutors at lower levels are obliged to implement the judgment, regardless of professional reservations.
- Significant challenges in the positive legislation were highlighted, complicating interpretation and applicability. These included ambiguities and contradictions in the provisions, frequent changes without internal coherence, and the absence of commentary or consolidated practice.

- The discussion also addressed the Supreme Court's interpretation regarding confiscation, emphasizing the need to harmonize general provisions in the Penal Code with the specific ones.
- Some participants agreed that the Supreme Court judgment should be challenged through the relevant institutional mechanisms.

It was assessed that, in principle, the report's recommendations are sound and adequately address the need to clarify this situation.

11. Recommendations

1. Pursuant to Article 102.3 of the Constitution, the State Prosecutor and the courts should not follow the interpretation of the Supreme Court in case Pml.nr.73/2024.
2. The Supreme Court should adopt a principled legal position elaborating on the existence of criminal liability in cases of non-declaration or false declaration of assets. This legal position should be based on existing legislation, not on repealed legislation.
3. Prosecutors should pursue legal actions and exercise available legal remedies to allow the Supreme Court to issue a second decision on this matter.
4. Courts should follow an appropriate sanctioning policy, in accordance with the Penal Code and the Supreme Court Guidelines on Sentencing Policy.

Annex 1.

	Position	Criminal act	Number of case
Donika Gërvalla-Schwarz	Minister of Foreign Affairs	False declaration of assets	2022:214650
Goran Lazic	Board Director at the Waste Management Company	False declaration of assets	2024:0077407
Ibadete Leka	External Political Adviser at the Ministry of Defense	Failure to declare assets	2022:0031534
Nora Cimili-Gagica	Chief Executive Officer at the Green Enterprise	False declaration of assets	2024:0077161
Sanije Kelmendi	Deputy Director of the Training and Integration Department at the Kosovo Correctional Service	False declaration of assets	2024:0077181
Nebih Zariqi	Board Member at KOSTT	False declaration of assets	2024:0077185
Almir Veliji	Deputy Minister at the Ministry of Regional Development	False declaration of assets	2023:0007609
Ragip Fetahu	Municipal Councilor at the Municipality of Podujevo	False declaration of assets	2024:0077092
Stefan Petrovic	Adviser to the Deputy Speaker of the Assembly of the Republic of Kosovo	False declaration of assets	2023:0003808
Dilaver Kryeziu	Member of the Board of Directors at the Kosovo Institute for the Protection of Monuments	False declaration of assets	2023:0014772
Granit Geci	Municipal Councilor at the Municipality of Prishtina	False declaration of assets	2023:0004362
Bardhyl Berdynaj	Member of the Board of Directors at the Peja General Hospital	False declaration of assets	2025:0044707
Merxhan Avdyli	Dean at Kadri Zeka University, Gjilan	False declaration of assets	2025:0046976

	Position	Criminal act	Number of case
Musa Hoxha	Medical Director at UCCK	False declaration of assets	2025:0047098
Jehona Bashota- Gallapeni	Member of the Commission, MCKRS	False declaration of assets	2025:0047476
Ratko Perenic	Municipal Councilor at the Municipality of Gračanica	False declaration of assets	2022:0017475
Çerim Bajrami	Political Adviser at the Ministry of Foreign Affairs and Diaspora	False declaration of assets	2025:0047482
Enver Sylejmani	Administrative Officer for Debt Collection at KTA	False declaration of assets	2025:0047101
Ilir Berisha	Director of the Statistics Department at KAS	False declaration of assets	2025:0047105
Fetije Ukaj	Member of the Management Board – FSDK	False declaration of assets	2025:0047076
Gëzim Stavileci	Director of the Directorate for General Administration in South Mitrovica	False declaration of assets	2025:0045463
Teuta Fejza	Director at the Regional Public Health Center in Mitrovica	False declaration of assets	2024:0076548
Nazmi Ismajli	Director at the Municipality of Zvečan	False declaration of assets	2025:0045617
Sherif Sejdiu	Acting Dean of the Faculty of Social Sciences at UFA-Gjakova	Failure to declare assets	2023:020110
Ben Apolloni	Member of the Governing Council at the National Theatre of Kosovo	Failure to declare assets	2022:060836