



**Analysis - Asset Declaration: Control and Data Accuracy**

# The Breakthrough Crisis

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# Abbreviations:

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**ACA-** Anticorruption Agency

**AD-** Asset Declaration

**RKPC-** Republic of Kosovo Penal Code

**RKPRC** - Republic of Kosovo Penal Procedure Code

**MJ** - Ministry of Justice

**FIU-** Financial Intelligent Unit

**SP-** State Prosecutor

**BP-** Basic Prosecution

**CP-** Contact Points

**EU-** European Union

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# Methodology

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This policy analysis is built through Meso-Analysis,<sup>11</sup> a combined methodology, based on trends of scientific researches on anti-corruption policies and our interest for an independent and qualitative interpretation of data in the context of policy making in Kosovo.

## The Approach

The approach of building of an evaluation model on the implementation of anticorruption policies in Kosovo, hence to measure the effects of these policies is guided by the perspective of interpretation and principles of Pragmatism on Problem Solving. This approach derives from analysis of the legislation and practices of implementation through a combined qualitative-quantitative model, while the analyses itself is done through deduction/inter-dependency. This analysis aims to understand what results from laws when implemented in practice and what are the weaknesses, pretexts and obscurities on asset declaration process and policies to prevent and fight political corruption.

## Methods

Having in consideration analytical and investigative features of this study, empirical data and observations have been used to build the guiding principles that serve as a basis to raise questions and arguments intended to be discussed. Another aspect of the study is normative, in the sense of legislative norms, through which certain segments of non-implementation of laws are interpreted. Comparative analyses on the other hand have been used to touch upon legislative models and principles that are pursued in other countries.

## Sources used for this analysis include:

- a) Primary and secondary legislation on anticorruption in Kosovo;
- b) Documents and analysis of the World Bank, UN, OECD, EU etc;
- c) Statistical reports and other relevant documents treated by the Kosovo Anticorruption Agency;
- d) The statistics from the courts and State Prosecutor's Office;
- e) Research data gathered by Çohu!; (Empirical research done by Çohu! exclusively for this study is based on a sample of 199 asset statements that are aimed at truthfulness of stated assets as compared with the data of the Business Register Agency (ARBK), and the data of the municipal cadastre offices;
- f) Phone-interviews with individuals of interest;
- g) Research visits on relevant institutions on this field.

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<sup>11</sup> The Meso-Analysis correspond to the nature of the study, given that the analyses at such level represent an acceptable reality compared to the individual level on one side, and makro-social level at the other side..

### Case Studies

In order to have an outlook on the practices of other countries we compared the asset declaration framework of Albania, Montenegro, Serbia, Macedonia, Croatia, Slovenia, Estonia, Lithuania, etc. We studied segments of asset declaration laws from the global viewpoint regarding the legislation, methodological approach and instruments used on verification of stated assets.

Furthermore, we picked a few specific case studies to address some issues and aspects of the asset declaration in Kosovo, especially those pertaining the legislative loopholes, deficiencies on implementation of laws, and other obscurities that occur on certain segments of this process.

The Cases selected to argue systematic problems of asset declaration are as follows:

- a) The case of mayor of Mitrovica, Mr. Agim Bahtiri, proceeded by the ACA for suspected conflict of interest, which proves a very narrow perspective used by the Agency to verify business connections of different legal subjects;
- b) The case of deputy-PM Behxhet Pacolli of Kosovo, that proves an impossible task with regards to the verification of assets situated abroad and on the other hand establishes violation of the domestic legislation;
- c) Two cases of Kosovo MPs, Nait Hasani and Dude Balje, which represent the typical situations of Courts turning down cases of the ACA on the basis of violation of the Kosovo Penal Code, more specifically Paragraph 437 on false declaration of assets, a case that also argues what is considered a false declaration of assets by ACA;
- d) Cases of lack of harmonization and systemic failures (material and technical) of the asset registers that hinder the ability of the public and civil society to exercise watch dog functions over the accuracy of asset declaration, thus making it impossible to conduct arithmetic analysis of the wealth of stating subjects relative to their incomes. This part also gives insights as to the mechanisms of preliminary control of the asset registers conducted by the ACA.

Despite the above-mentioned cases, there is a separate chapter of this study on the data collected by Çohu! that sheds light on the violation of anti-corruption laws by public officials pertaining to the non-declaration of assets, false declaration, omission of information, etc.

The core aim of these case studies is to address the methodology of the ACA, which may contribute to the debate over what could be amended in order to ensure a functional Agency, especially with clarification of their mandate, and creation of a working methodology against political corruption in Kosovo. This would occur through the most significant actual tool on this topic, namely the asset declaration and control of assets of public officials.

# 1. Executive Summary

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Kosovo is struggling to build institutional capacities in order to ensure a free and democratic society, accountable institutions, and the rule of law. However, these efforts often are difficult and conflict with different challenges that include the post-socialist mentality of institutions on the one hand, and on the other the prevalence of a parochial political culture that impede the achievement of modern standards of a democratic order. Consequences of this collision emerge in different sectors, which produce a critical lack of trust in public institutions. This lack of trust is generated from people's perception of the prevalence of corruption and the illicit profit of public officials, which clearly are features of the public sector.

This analysis discusses the mechanism of control over assets of public officials in high ranks and the instruments available to prevent misuse of this mechanism. The aim is to analyze trends and practices that ensure the transparency and oversight of the wealth of public officials from within high ranks, in order to establish the legality of their assets and prevent them from taking advantage of possible conflict of interests.

Examples and rationales of this study on asset declaration are built through three main paradigms:

- a) Actual legislation that regulates asset declaration in the Republic of Kosovo;
- b) Methodology of the ACA pertaining to the dilemma over what instruments should be employed to verify Accuracy of stated data on assets; and
- c) Empirical data of Çohu! representing aspects of the Kosovar reality on anti-corruption;

The results, conclusions and recommendations of this analysis aim to contribute to the outset of a discussion over the institutions already established, or continue to be enacted, which are the sources of the perception of political corruption in Kosovo.

Through this study, we bring arguments and examples on specific cases that address the process of asset declaration, while stressing the instruments needed to achieve a successful process with integrity. Some findings and conclusions of this study that are included in this text follow briefly in this section.

## Findings from legislative point of view:

- Legislation has failed to offer an appropriate legal structure to address the needs of socio-cultural and political reality in the fight against corruption, especially against political corruption;
- There are contradictions within basic laws against corruption and other relevant laws, especially the Penal Code of the Republic of Kosovo ;





- A Review of basic legislation on anti-corruption and specifically the Law on the Anti-corruption Agency and Asset Declaration is urgent. Also, appropriation between anti-corruption laws and of the wider anti-corruption framework within the Penal Code of Kosovo is indispensable should we want a functional fight against corruption;

### **Main findings regarding the asset declaration:**

- The whole process of asset declaration, at least structurally has been realized within conditions foreseen by law, though in some cases with serious deficiencies. These substantial deficiencies, such as the Accuracy of stated data, which come mainly from the lack of instruments and competences of the ACA;
- The lack of access to personal accounts in bank and financial institutions undermines the work of the ACA, since it leaves the latter without one of the most important instruments for verification of data stated by subjects, in this case by the public officials;
- A serious deficiency is the inability of the ACA to have any access to the assets of public officials residing abroad;
- Another important aspect is the inability of the ACA to verify the origin of assets;
- Lack of standards to establish the value of stated assets represents a problem since the ACA has none of the tools to evaluate the content or value of the stated assets the public officials from the higher ranks ;
- Lack of standardization of terms and notions that deal with assets establishes a problem in asset declaration, and especially so in establishing the value of the stated assets;
- There exists a critical lack of harmonization of asset registers in the material and technical sense, which represents a serious hindrance to the monitoring of the stated assets for the ACA, but for the civil society organizations as well;
- Despite a development on the aspect of fines and coercion related to false declarations or refusal to declare assets, data shows that these measures are not producing substantial results;
- The trend of non-declaration is increasing between the years 2007 and 2012, while this also comes from the increase of officials that are obliged to state their assets. Within the time-frame of these years, non-declaration of assets has resulted in administrative violations (2007-2010), and with other violations (2010-2012) ;
- In 2013 the new Penal Code has included Paragraph 437 declaring a non-declaration or false declaration of assets a penal act, which in turn has contributed to the decrease of officials that refuse to declare assets within the annual deadline. In the category of annual declaration of assets, the number of officials that did not declare their assets has decreased significantly within the years 2013 and 2014 as compared with previous years (2007-2012), while in 2015, this number has increased significantly compared with the two previous years (2013/14);

- A considerable number of officials that did not declare their assets, on a regular annual basis, are for the first time obliged to declare their assets, especially in 2015. This may have happened due to the lack of information that could have come from the failure of contact-points, or for any other reason regarding the lack of adequate information known to officials pertaining to their obligation to declare and for adequate legal consequences for failing to do so;
- The increase in the number of officials that did not declare their assets may have been caused also by the inability of the ACA to verify the Accuracy of the data, and the failure to control the origin of that same data;

### **Findings on the cases of Paragraph 437 (non-declaration or false declaration) and the nature of fines:**

- For the year 2007-2010, the legislation in power did not foresee penal sanctions since the Penal Code did not consider a false declaration or non-declaration as a penal act;
- The law of 2010 and successive amendments have introduced fines that increased doubly, but this measure did not produce significant effects since the courts of appeal have reduced these fines, rendering them obsolete. As such, these fines are not considered as a hindrance to the non-declaration of assets for highly ranked public officials;
- Since the introduction of the actual Penal Code regarding Paragraph 437 that considers non declaration or false declaration as a penal act, for the years 2013/14, the ACA has initiated 163 cases, while prosecutors have indicted 95 officials. Some of these indictments pertain to the punishment, which itself constitutes a violation since Paragraph 437 of the Penal Code does not foresee alternative sanctions other than fines and incarceration;
- During the years 2013-2014, regarding the violations related to Paragraph 437, courts in total had 193 cases, of which only 30 were proceeded, which is a rate akin to 15%. This shows a very low percentage of proceedings regarding corruption cases, which can be an incentive for the officials to choose to run the risk of refusal to declare or false declaration if a larger interest is at stake;
- Of the total number of 30 verdicts from courts, only one was sentenced to incarceration. Ten court decisions have waived the sanctions, have completely set free public officials, have refused cases, or resulted in a verdict that did not include any consequences for public officials. Of those, 7 cases were included with the mandatory limitation principle, while 12 court decisions have given an alternative character of punishment in a clear violation of the Penal Code, respectively Paragraph 437 which foresees only punishment with fine or incarceration, and excludes any alternative punishment;

- A factor that has contributed to the low profile of fines and punishments (alternative sanctions) is the inadequate preparation of cases by the ACA, specifically in the sense of what this Agency had considered as a false declaration of assets.

### Empirical findings of Cohu!:

- From 199 cases included on research from Cohu!, in 8 of them we found inconsistencies of statements of properties and real estate compared with the register of the ACA and those of municipal cadastre offices;
- Three cases were found that ownership of certain businesses of public officials was not declared, which constitutes a direct violation of Paragraph 437 of the Penal Code;
- In four cases the declaration of businesses was not done within the time frame foreseen by law (the annual deadline is 31<sup>st</sup> of March), though the explanation was that these businesses were not active, or that officials in question did not manage them. However, the law clearly defines declaration of businesses as an unavoidable obligation as long as their ownership exists with the Business Register (ARBK);
- In four cases we identified that information on the forms of asset declaration was missing, meaning that the official has declared income from a company, but they did not declare their ownership over the company, shares in a company, or any other interest related to these companies.

### Findings regarding the mandate of ACA:

- The ACA's mandate does not entail a full investigation of the stated assets of public officials, since it cannot exercise one of the key tools for this function, the access to bank or other financial institutions accounts;
- The ACA has never conducted an arithmetical analysis of the income and wealth stated by the public officials, which would enable us to understand the supposed contrast between the life style of certain public official as compared with their annual income;
- The ACA cannot in any way verify the assets of public officials situated abroad;
- The ACA has no tools at its disposal that can enable it to verify the origin of the assets of highly ranked public officials;
- The ever increasing tendency of the ACA to assume executive competencies was not followed in its approach regarding its mandate. The approach followed until now that aims acquiring of competences through "Memo of Understandings", that are based on the good will of institutions, is inadequate if one wants to achieve a full and clear mandate in the fight against corruption;
- There is a need for immediate review of the Law establishing the ACA, along with other basic anti-corruption laws in order to clarify, complete, and strengthen its mandate. Furthermore, the methodology along with the available instruments of the ACA need to

be defined clearly in order to conduct administrative, investigative, and substantial queries related to asset declaration.

## 2. Introduction

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According to the perception of public opinion and civil society, corruption in Kosovo and especially political corruption is widespread,<sup>2</sup> and that this is the biggest hindrance to Kosovo's prospective for European integration, as well as for the well-being of society. Such perceptions exist in many social, political, and economic spheres.

This study is built upon an analysis and critical review of the implementation of legislation, the practices and results on the anti-corruption agenda of Kosovo, with a focal point on the asset declaration process and the mechanisms for control of this process.

The profiling of the anti-corruption system and the increase of its effectiveness was followed by the actual legislation,<sup>3</sup> in institutional efforts,<sup>4</sup> and also guided by recommendations of the European Union.<sup>5</sup> One can say that these measures have influenced the creation of an overall atmosphere conducive for addressing of anticorruption agenda. In this context, we find it very important to evaluate and measure the methods undertaken, and the results they produced in order to create an understanding on at least three issues:

- a) Whether the actual legislation and the implementing parties<sup>6</sup> have achieved in a successful manner to build instruments and methods needed not only to fight corruption, but to prevent it as well and educate public institutions on strengthening their integrity;
- b) If the asset declaration process has achieved a working standard of asset declaration with Accuracy of data given by public officials in its totality, including those pertaining

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<sup>2</sup> Transparency International (2013) Global Corruption Barometer , p. 33;

<sup>3</sup> In terms of 'basic laws' we have in mind: Law on the Declaration of Assets, Law on Preventing the Conflict of Interest, and the Law for the Anti-Corruption Agency ;

<sup>4</sup> In terms of institutional efforts, we refer to the National Anti-Corruption Council, established on February of 2012, by the President of Kosovo, but also at the Anti-Corruption Task Force under the Special Prosecutors Office

<sup>5</sup> a) European Commission (2014) *Kosovo Progress Report* p.16;

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-kosovo-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf)

b) EU – Kosovo Stabilisation Association Process Dialogue (SAPD), Conclusions, 28-30, January 2014.

[http://eeas.europa.eu/delegations/kosovo/documents/eu\\_kosovo/20140131\\_final\\_conclusions\\_-\\_sapd\\_committee\\_on\\_ifs.pdf](http://eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/20140131_final_conclusions_-_sapd_committee_on_ifs.pdf)

c) EU – Kosovo Stabilisation Association Process Dialogue (SAPD), Conclusions, 24 June, 2014.

Second report on progress by Kosovo\* in fulfilling the requirements of the visa liberalisation roadmap, 24 July, 2014.

[http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/accompanying\\_staff\\_working\\_document\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/accompanying_staff_working_document_en.pdf)

d) Project Against Economic Crime in Kosovo 1 (PKEK), Assessment Report on the Compliance with International Standards on the Fight Against Corruption (KK), Cycle 1, Jun, 10, 2013.

[http://eeas.europa.eu/delegations/kosovo/documents/press\\_corner/2590\\_peck\\_ac\\_final\\_dar\\_17\\_06\\_2013.pdf](http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2590_peck_ac_final_dar_17_06_2013.pdf)

e) Assessment report on the compliance with international standards on the fifth against corruption (LKK), April, 2015.

<http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/PECK-Kos/PUBLICATIONS/AC%20ALB%20WEB.pdf>

<sup>6</sup> Here we refer to the above mentioned anti-corruption laws and institutions that implement them, such as the Anti-Corruption Agency, Prosecution and Courts .

to the interests of the same, enabling in this way prevention of conflicts of interest during the exercise of duties by public officials; as well as

- c) If the Anti-corruption Agency has a strong and clear mandate in the anti-corruption agenda, and which would be viable alternatives for further strengthening of this mandate.

Analysis of the mechanisms and practices of the implementation of anti-corruption laws, as well as analysis of the achieved results, in our point of view is essential in order to understand not only the trend of increase and decrease, but the nature of corruption as well. From this perspective, aspects of models of asset declaration (here and after AD) could be addressed in order to understand what is effective and what is not, and what should be reviewed in future to make sure that the model is synched to the necessities for the fight against corruption. This analysis also considers the changes of the Penal Code of Kosovo and the outcome these changes had in the AD.

Along with the consideration of issues that pertain to methodology of the AD system in Kosovo and legislative aspects, this analysis addresses some issues that must be part of a very important debate, matters that already have taken considerable space in global perspective, though are not very prevalent in Kosovo, among which are:

- The need to measure with accuracy the scale of political corruption, areas it is present, and the physiognomy of manifestation in order to have an successful fight against it;
- The need to review applied legislation and harmonize it based on criteria that would explain fully the aspects that are coercive and those that depend on the good will of institutions, especially in Kosovo. As we shall see, there were cases of initiatives without legal basis, and initiatives with legal rationale, but in absence of inter-institutional will; and
- The need to clarify the methodology of the ACA, since some obscurities on its mandate and role as well as instruments it has in hand to verify and oversee the assets, has caused the failure of some prosecutions.

The main point this analysis puts forward is divided in three plans: 1) Critical review of AD process – legislative aspects, mandate of the ACA, etc; 2) Accuracy of the data stated related to declared assets - analysis of instruments used by the ACA to verify this accuracy ; and 3) Control of assets – the most problematic segment of the verification of public official's assets within the country and abroad.

These sections will be presented from the prism of the actual situation in the fight against corruption, based on statistics of cases initiated by the ACA, cases proceeded by the Prosecutor's office and Courts, and research of Cohu! on alternative verification of wealth stated by 199 highly ranked public officials.

It is worth mentioning that the gathering of necessary information for this research in order to have a proper study on the methodology of the ACA has not always been easy due to the lack of cooperation from the ACA when information was asked for on their work, and especially so on the way in which this mechanism evaluates the false declaration of assets.

However, our commitment as Çohu!, made it possible that, in parallel to our understanding of the importance of addressing the issues that are subject of this analyse as a contribution of civil society on building public institutions with integrity, to reach the call for a wider debate on the aspects of the declaration of assets, thus aiming to stimulate the debate on the review of the aspects in question.

### 3. Asset declaration: Objective, achieved results and challenges of implementation in the case of Kosovo

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Usually, corruption represents a wide topic. As such, it often is veiled by the perception of its omnipresence, but it mainly appears as a perception of public officials getting very rich through misuse of public office and public money. Because of its multifaceted nature and the perceptions that follow it, in our point of view, and in widely accepted approaches, it is important that statistics on corruption be understood only so far as cases of corruption that garner the attention of institutions. Outside this criterion they do not constitute the objective manifestations and penetration of corruption in institutions in general in a given country.<sup>7</sup>

For this reason, we consider that the work and performance of institutions that have as their mandate to fight and prevent political corruption, must be a primary objective in the analysis of this field, guided by an evaluation of the implementation of legislation that addresses this issue.

Institutional efforts and interest to build much needed mechanisms on the prevention and fight of corruption are increased globally, also due to the importance of the public, civil society, and other actors that advocate for the rule of law and order. Because the public sphere is present in many socio-economic and political segments of our daily life, demands and principles of policies that aim for the building of a healthy public sector are guided by:<sup>8</sup> transparency, prevention of conflicts of interest, and monitoring of assets of public officials. The concept of Transparency, conflicts of interest, and asset declaration in this case go beyond the mere statistics, but promote good governance and trust in institutions. Indeed, these concepts in the anti-corruption agenda represent a mechanism of at least three aspects:

- 1) Identification of corruption and its hot-spots;
- 2) Prevention of corruption and education of public institutions regarding their integrity;
- 3) Dissipating the possibilities for political corruption through an adequate effective legal framework, as well as guaranties on the implementation of this legislation through effective and independent institutional mechanisms. This includes the instrument of sanctions that ensure tangible results.

Since Kosovo often has been represented as a place with a high propensity for political corruption, based on an abundances of reports and statistical analysis, the most corrupted institutions are the judiciary, (85% of respondents have perception that judiciary is highly

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<sup>7</sup>Joutsen, M. & Keranen, J. (2009), "*Corruption and the prevention of corruption in Finland*", Ministry of Justice, page 3;

<sup>8</sup> OECD (2011), "*Asset Declarations for Public Officials: A tool to prevent corruption*", OECD Publishing, page. 12;  
<http://www.oecd.org/corruption/anti-bribery/47489446.pdf>



corrupted) and political parties (75% of respondents see political parties as highly corrupted).<sup>9</sup> While these two institutions engulf important aspects of the public sphere, our primary focus in this study is the analysis of practices related to instruments of asset declaration, and especially the origin of the assets and Accuracy of data stated as an argument that will help understand the model of control and monitoring of assets of highly ranked public officials.

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<sup>9</sup> Transparency International - Global Corruption Barometer - 2013.  
<http://www.transparency.org/gcb2013/country/?country=kosovo>

## 4. Main findings

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The asset declaration process in Kosovo started in 2007, at a time when a legacy was codified with the Convention Against Corruption of United Nations,<sup>10</sup> along with other international instruments. At the beginning, though this process was demanded by the Anti-corruption Law, it represented mainly a symbolic, administrative gesture. The Anti-corruption Agency, as an institution that carried out AD, was still in the kick-off period and assertion of its physiognomy. Important changes to the AD process have happened after seven years though, as we shall see the mounting problems that remain to be dealt with represent important aspects to be considered.

### 4.1 Trend of non-declaration of assets:

In the following graph, the statistical data on non-declaration is presented according to the legal categories foreseen for the years 2007-2014. From this graph, we can understand that the trend of non-declaration has remained high during periods up until the introduction of non-declaration as a penal act with Paragraph 437 of Penal Code of Kosovo in 2013.<sup>11</sup>

More concretely, in the year 2007 out of 732 highly ranked public officials obliged to state their assets, 14 of them have failed to do so.<sup>12</sup> For this year, the ACA did not explain the categories foreseen by the Law on asset declaration in which these 14 cases fall. During this period of time, the ACA has initiated cases for non-declaration of assets according to which the proposed measures are:

- a) A fine by 1/5 of their salary; and
- b) Proposal for dismissal from duty;

In 2008 the number of public officials in high positions that did not declare their assets has also been 14, out of a total number of 747,<sup>13</sup> for whom the ACA has proposed the same administrative measures as in the previous year.

In 2009, of the total number of 800 officials legally compelled to declare their assets, 16 of them failed to do so.<sup>14</sup> During these three years, the ACA has processed detailed data on the number of officials that have not declared their assets according to the categories foreseen by

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<sup>10</sup> United Nations Office on Drugs and Crime, UNODC (2004); United Nations Convention Against Corruption: [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>11</sup> Official Gazette of the Republic of Kosovo(2012): Criminal Code of the Republic of Kosovo Article 437 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>

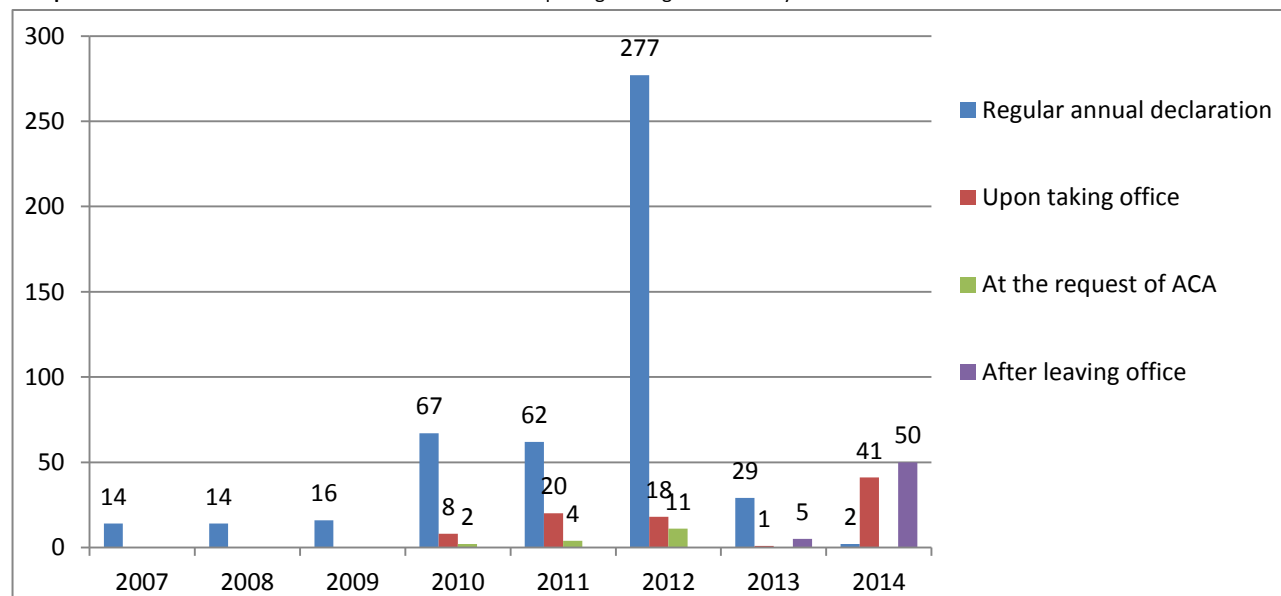
<sup>12</sup> ACA (2008) Annual Report 2007; <http://www.ACA-ks.org/repository/docs/Raporti%20final%20-%2026%20Shkurt%202008-f.pdf>;

<sup>13</sup> ACA (2009) Annual Report 2008; [http://www.ACA-ks.org/repository/docs/Raporti\\_vjetor\\_2008.pdf](http://www.ACA-ks.org/repository/docs/Raporti_vjetor_2008.pdf)

<sup>14</sup> ACA (2010) Annual Report 2009; [http://www.ACA-ks.org/repository/docs/Raporti\\_vjetor%20i\\_Agencise\\_kunderkorrupsionit\\_1\\_Janar\\_31\\_Dhjetor\\_2010.pdf](http://www.ACA-ks.org/repository/docs/Raporti_vjetor%20i_Agencise_kunderkorrupsionit_1_Janar_31_Dhjetor_2010.pdf)

law, respectively: on the assumption of duty, the annual regular declaration, when leaving the position, and when it is asked by the Agency. During this three year period of time, non-declaration of highly ranked public officials in accordance with legislation was followed only with administrative measures.

**Graph 1.** Statistical data for non-declaration of the assets as per legal categories for the years 2007-2014



Source: The processed data from the annual reports of the ACA<sup>15</sup>

**Table 1.** Statistics of the cases of public officials which haven't declared the assets and the measures proposed by the ACA

Year	Number of officials that refused to declare assets	Proposal to decrease salary	Proposal for dismissal from official position
2007	14	21 <sup>16</sup>	14
2008	14	31	14
2009	16	16	6

Source: Annual reports of the ACA for the years 2007-2009

In 2010 the Law on Declaration, Origin and Control of Assets and Gifts of Public Officials was introduced,<sup>17</sup> bringing some minor novelties as for the entities that are obliged to declare their assets, as well as an increase in the scale of material fines for violation of legislation on asset declaration. This move advanced the aspect of refusal to declare assets from administrative fines to minor offence act. Paragraph 16 of this Law foresaw fines for non-declaration that captured the sum between 150 and 1,500 Euros, depending on the category of violation. According to the

<sup>15</sup> The data are processed based on the annual reports of the ACA: <http://www.ACA-ks.org/?cid=1,16>

<sup>16</sup> The cases which the ACA has proposed the measure of cutting the salary for represent the measures provided for the senior public officials who have not declared their assets within the foreseen period, while the measure for removal from the office corresponds with the officials who have not declared their assets at all. Also it is important to clarify that in its reports, ACA did not provide any indication what has been followed with these cases and whether such measures have come to effect.

<sup>17</sup> Official Gazette of Republic of Kosova :<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767>



Report of Agency, in 2010, from the total number of 1,560 officials to declare their assets, 77 of them have failed to do so, including:<sup>18</sup>

- 67 officials that did not declare on the annual regular category;
- 8 officials on the occasion of assumption of office;
- 2 officials after the request of Agency;

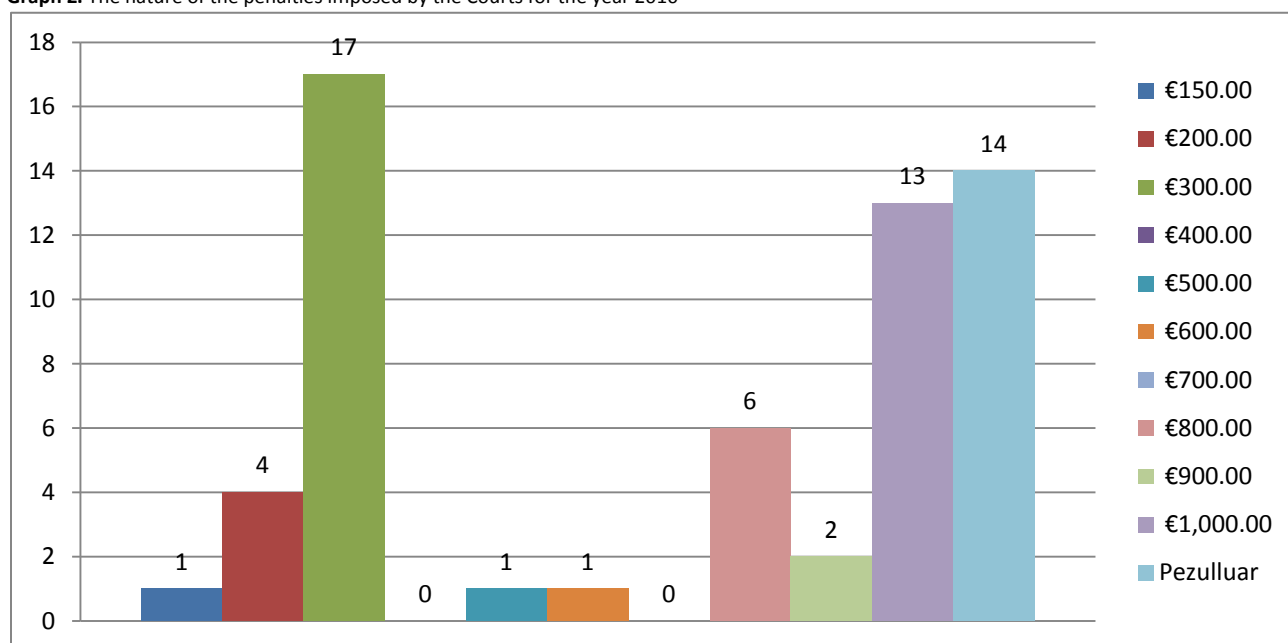
In the implementation of this legislation, the ACA has initiated cases in court that entail fines of up to 1,000 Euros.

**Table 2.** The Number of cases initiated by the ACA for non-declaration of assets and the case reviewed by the Courts in 2010

Year	The number of officials foreseen for declaration	The number of cases initiated by the ACA for non-declaration of assets	The number of the cases reviewed y the Courts	Number of convicts	Total amount
2010	1560	77	59	45	26,750 EUR

Source: Annual Report of ACA for the year 2010

**Graph 2.** The nature of the penalties imposed by the Courts for the year 2010



Source: Annual report of the ACA for the year 2010

As it can be seen from this graph on the nature of fines, the highest fine captures 300 Euros, which corresponds with a salary higher than an average Kosovo salary, constituting an easy affordable amount. Though a large number of court decisions capture an amount of 1,000

<sup>18</sup> ACA (2011) Annual Report 2010; [http://www.ACAks.org/repository/docs/Raporti\\_Vjetor\\_2010\\_janar\\_dhjetor.pdf](http://www.ACAks.org/repository/docs/Raporti_Vjetor_2010_janar_dhjetor.pdf)

Euros, most of the fines have been reduced to 300 Euros, or have been ruled null upon the consideration of appeals.<sup>19</sup>

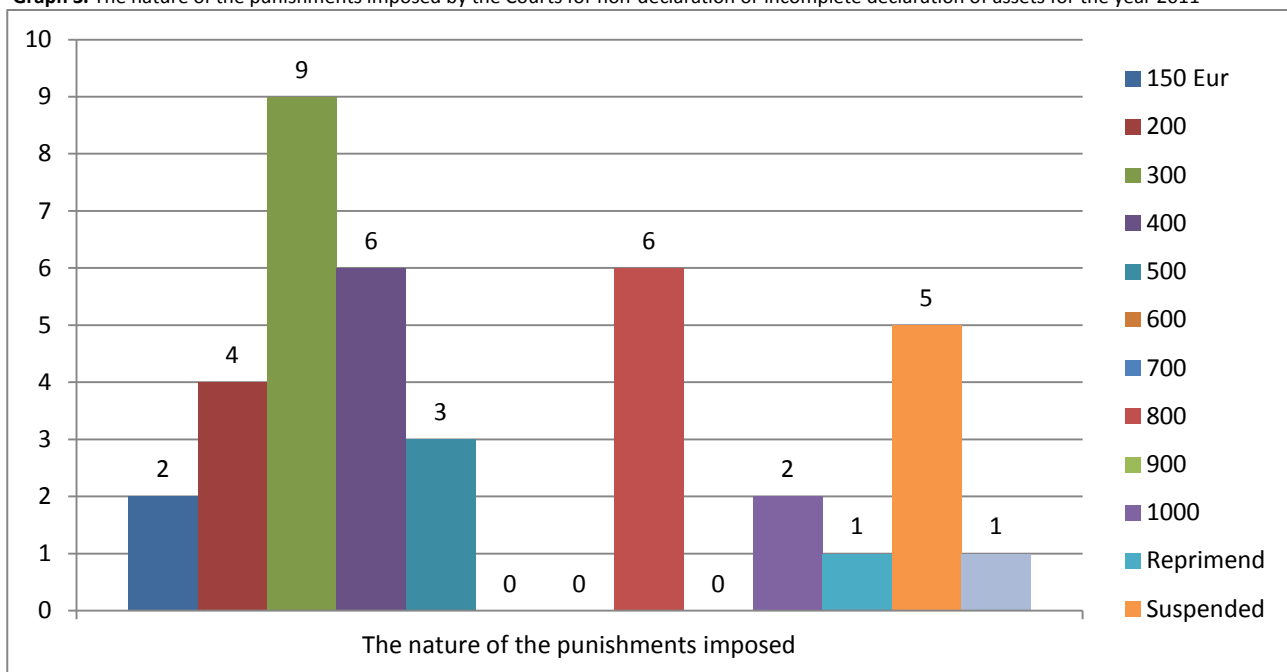
The Law on Asset Declaration promulgated in September 2011 increased the material fines in case of a violation of asset declaration legislation or in case of false declaration from 1,000 Euros as a minimum, to 2,500 Euros. For the year 2011, from a total number of 1830 officials, 62 have failed to declare assets within the category of annual declaration, while in the category of assumption of office, 20 officials did not declare their assets and 4 others did not declare their assets after the request of Agency, which in total makes a number of 86 officials that did not fulfil legal obligations.<sup>20</sup>

**Tabela 3.** The Number of cases initiated by the ACA for non-declaration of assets and the cases reviewed by the Courts in 2011

Year	The number of officials foreseen for declaration	The number of cases initiated by the ACA for non-declaration of assets	The number of the cases reviewed by the Courts	Number of convicts	Total amount
2011	1830	88 <sup>21</sup>	39	33	14,550 EUR

Source: Annual report of ACA for the year 2011

**Graph 3.** The nature of the punishments imposed by the Courts for non-declaration or incomplete declaration of assets for the year 2011



Source: Annual report of ACA for the year 2011

<sup>19</sup> Ibid

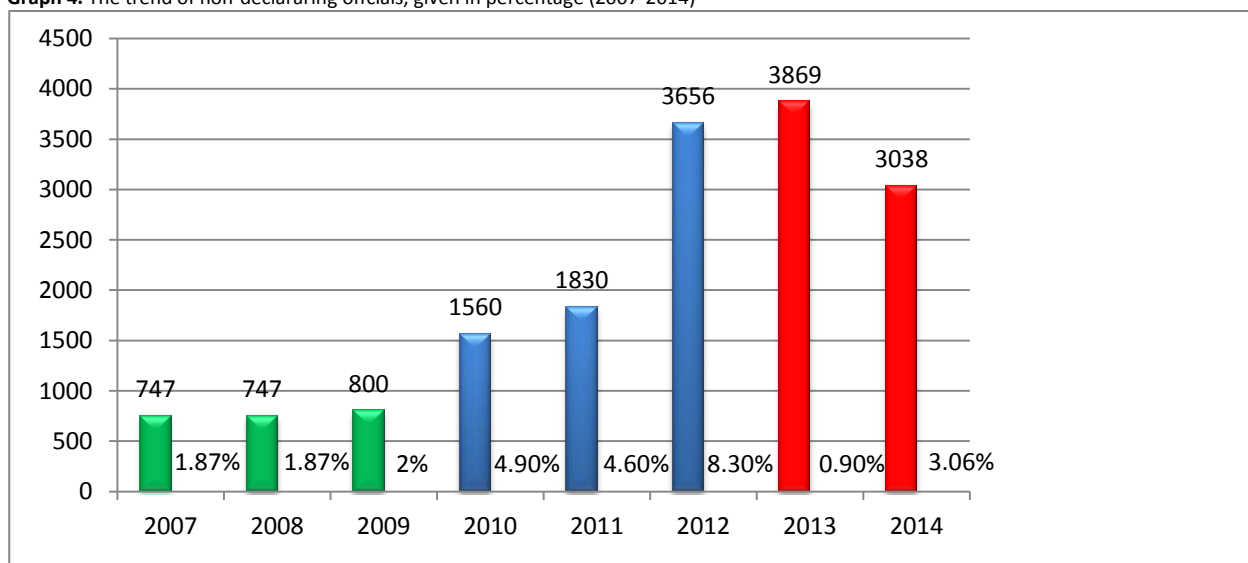
<sup>20</sup> ACA (2012) Raporti Vjetor 2011; [http://www.ACA-ks.org/repository/docs/Raporti\\_Vjetor\\_i\\_Punes\\_2011\\_i\\_ACA-se-VP\\_si%20pdf.pdf](http://www.ACA-ks.org/repository/docs/Raporti_Vjetor_i_Punes_2011_i_ACA-se-VP_si%20pdf.pdf);

<sup>21</sup> For failing to declare assets, 86 cases were initiated, while two other cases were initiated for incomplete declaration of assets. For more, see the annual report of ACA for the year 2011, p. 26; [http://www.ACA-ks.org/repository/docs/Raporti\\_Vjetor\\_i\\_Punes\\_2011\\_i\\_ACA-se-VP\\_si%20pdf.pdf](http://www.ACA-ks.org/repository/docs/Raporti_Vjetor_i_Punes_2011_i_ACA-se-VP_si%20pdf.pdf)

As it can be seen from the comparison of data throughout these years, one can note a trend of an increase of officials that do not declare their assets, regardless of the fact that punishments measures have become more tough. The year that denotes the peak of non-declaration is 2012, when from the total number of 3,565 of public officials that were required to declare assets, 277 did not do so in the category of regular annual declaration, 18 within the category of assumption of office, 11 of the category after been requested by the Agency,<sup>22</sup> which in total gives a number of 306 officials that did not respect the legal requirements. This significant increase in the number of non-declaring officials deserves an analytical observation in order to create an outlook regarding the reasons that may have caused it.

In principle, one has to admit that the number of officials obliged to declare assets has been increasing steadily and in 2012 it reached the peak, which can also coincide with the increase in the number of officials that avoided asset declaration, though this can in no way be the only reason. One of the main reasons for this irresponsibility of public officials that do not declare assets we have identified to be the scarcity of sanctions that courts have applied in cases of such violations. Besides this argument, the deficiencies of contact points, respectively the lack of adequate information on legal duties of public officials may have influenced the trend of non-declaring officials.

**Graph 4.** The trend of non-declaring officials, given in percentage (2007-2014)



**Remark:** The statistical data given in percentage for the years 2007-2009, filled with green color represents the cases when the failing to declare was an administrative violation, while in blue color for the years 2010-2012, failing to declare was an infraction while for the years 2013-2014, filled with red color, it represents the period after the criminalization of the offense for non-declaration of assets

According to data on the nature of sanctions brought by courts, one can clearly see that fines are quite light, and they are further depleted in most cases after the appealing process. These court rulings have unavoidably influenced the lack of conviction and education that serves to

<sup>22</sup> ACA (2013) Annual Report 2012; [http://www.ACA-ks.org/repository/docs/Raporti\\_2013-vp.pdf](http://www.ACA-ks.org/repository/docs/Raporti_2013-vp.pdf)

weaken the Law on asset declaration, for the Law would constitute an act that cannot go without consequences, at least financial ones.

In 2013 the actual Penal Code of Kosovo (PCK) has been promulgated along with Paragraph 437 that entrenched non-declaration and false declaration of assets as a penal act,<sup>23</sup> representing the first step toward strengthening not only the instance of sanctions for non-declaration, but the process of declaration of assets and wealth as well. Effects of such measures can be seen already in the last two years. In 2013 from the total number of 3,869 officials in line for declaration, only 35 have failed the process, from which 29 within the category of regular annual declaration, 1 after assumption of office, and 5 after leaving the office.<sup>24</sup> In addition, in 2014 from 3,038, only two officials did not fill the asset form,<sup>25</sup> representing the lowest ever number of refusals to declare assets in the category of regular annual declaration.

In comparing the year 2012, 2013, and 2014, there is a visibly sharp decrease of non-declaring officials as for the regular annual declaration, and this can be interpreted as a direct result of penalization and sanctions foreseen for non-declaration, which besides fines includes incarceration. However, this analysis is not complete and cannot be done without including other elements that connect with the process of AD in whole, which yields important questions. One such question dwells on the year 2014 with the number of 41 officials that did not declare their assets on the occasion of assumption of office, and 50 officials that did not declare after leaving office.<sup>26</sup> So, in one regard, we have a sharp decrease of the officials that did not declare their assets on the regular annual term as compared with previous years, and yet we encounter the biggest instance of non-declaration of assets on the occasions of assumption or leaving the office.

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<sup>23</sup> Article 437 of the Criminal Code of Republic of Kosovo : <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>

1. Any person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, who fails to do so, shall be punished by a fine or by imprisonment of up to three (3) years. The offense in paragraph 1 of this Article is deemed committed when the deadline for filing the declaration has passed and no report has been filed.

2. Any person, obligated by law to file a declaration of property, income, gifts, other material benefits or financial obligations, who falsifies or omits data or required information on the required declaration shall be punished by a fine and imprisonment of six (6) months to five (5) years.

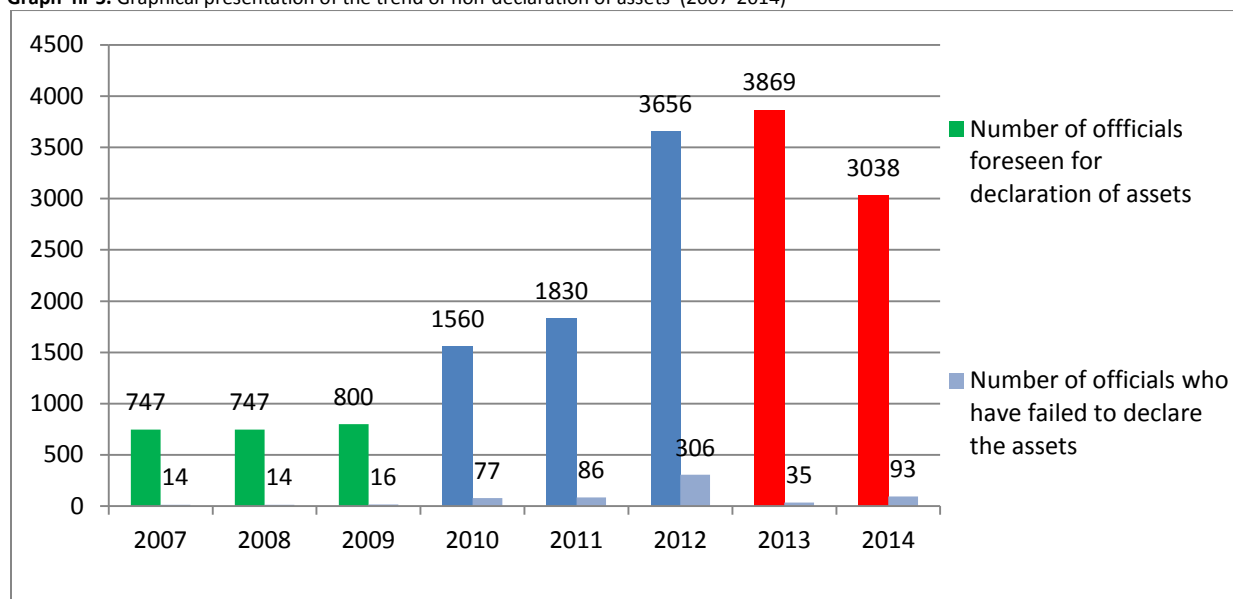
3. The value of the non-reported or the falsely reported property, income, gifts, or other material benefits shall be confiscated.

<sup>24</sup> ACA (2014) Annual Report 2013; <http://www.ACA-ks.org/repository/docs/Raporti-01-Janar-31-Dhjetor-2013-verzioni-shqip.pdf>

<sup>25</sup> ACA(2015) Annual Report 2014; [http://www.ACA-ks.org/repository/docs/Raporti\\_vjetor\\_final\\_2014\\_sq.pdf](http://www.ACA-ks.org/repository/docs/Raporti_vjetor_final_2014_sq.pdf)

<sup>26</sup> Ibid;

**Graph nr 5.** Graphical presentation of the trend of non-declaration of assets (2007-2014)

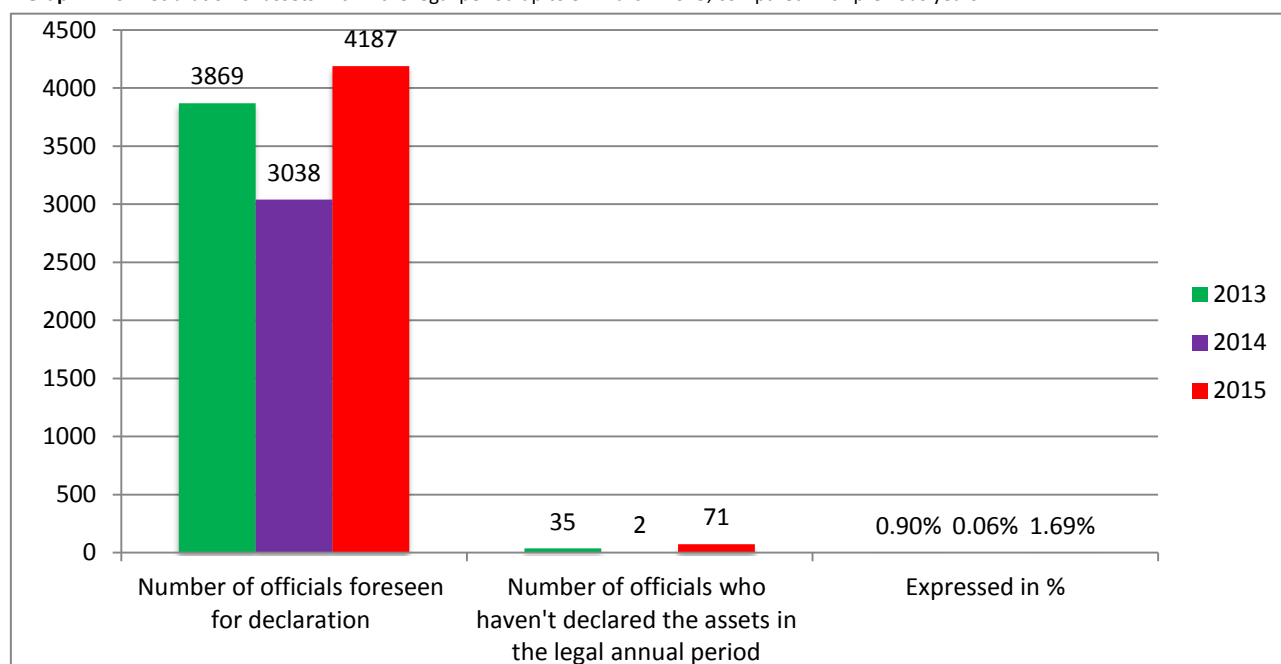


**Source:** Annual reports of the ACA , (2007-2014).

**Remark:** The statistical data given in percentage for the years 2007-2009, filled with green color represents the cases when the failing to declare was an administrative violation, while in blue color for the years 2010-2012, failing to declare was an infraction while for the years 2013-2014, filled with red color, it represents the period after the criminalization of the offense for non-declaration of assets.

Besides this, in 2015 we have another paradox that is worth to be taken into consideration. The following data represent the number of officials not declaring assets according to regular annual declaration for the year 2015, compared with 2013 and 2014.

**Graph nr.6.** Declaration of assets within the legal period up to 31 March 2015, compared with previous years



**Source:** ACA The list of officials that have failed to declare the assets within the legal period for the year 2015 and annual reports for years 2013, 2014.



If we assume that the increase on asset declaration in the category of regular annual term for the years 2013-2014 is an outcome of penalization of non-declaration of assets, then the same can be claimed for other categories of asset declaration. This shall especially influence the sharp decrease of the officials that did not declare their assets for the regular annual declaration of 2015. This lack of logical consistency in our view comes from other aspects that are connected with the system as a whole and with the methodology of the ACA specifically.

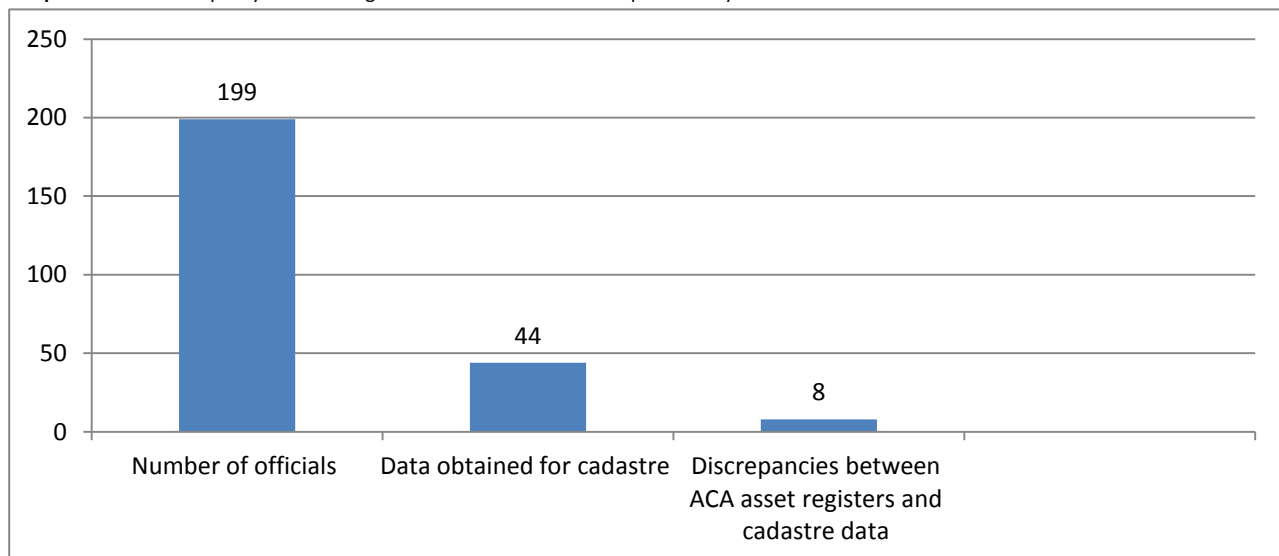
In general, the weak sanctions given by courts is the only argument offered by the ACA regarding the increase of the number of officials that had refused to declare assets for the year 2015 (**71 officials of high ranks among which 33 included in declaration for the first time**). Such an argument, though entailing an important influence, fails to give the complete picture as it is not the only one in the wide range of reasons that may have contributed to the increase of the number of officials that did not declare their assets. Çohu! has managed to identify some loopholes in the system of AD, for which the Agency along with other institutions and mechanisms such as courts and the prosecutor's office have responsibility. This is further elaborated on in chapter seven.

## 5. Empirical findings on the accuracy of declared data

Çohu! in its contribution towards public institutions with integrity has paid specific attention to the accuracy of data declared by public officials of high rank. In this context, after the publication of the list of 20% of officials undergoing full control of assets in 2014, or 584 asset forms,<sup>27</sup> the ACA found discrepancies in 187 cases in which it asked for clarification, while it has initiated 77 cases of possible conflict of interest, and 11 cases have been handed over for court proceedings.

Based on this list of full control, Çohu! conducted empirical research to compare the data stated for 199 officials. Asset registers of these officials have been compared with data from other public institutions, such as the Agency for Business Register (ARBK) and data from the cadaster offices from some municipalities. Of 199 requests, Çohu! acquired data from cadasters for 44 public officials.<sup>28</sup> From this data, Çohu! found that in 8 cases there are discrepancies and inaccuracies regarding declaration of properties and real estate as compared with data taken from the cadaster, and those declared in the registers of the ACA.<sup>29</sup>

**Graph nr 7.** The discrepancy between register of the ACA and the data provided by the cadastral offices



**Source:** Research by Çohu on comparing the assets registers and the cadastral data from the municipalities

On the case of ownership in businesses, findings reveal three cases in which the businesses have not been declared by public officials of high ranking. Also, it was revealed that four high

<sup>27</sup> ACA: List of officials regarding full asset control for the year 2014: [http://ACA-ks.org/repository/docs/Lista\\_perzgjedhese.pdf](http://ACA-ks.org/repository/docs/Lista_perzgjedhese.pdf)

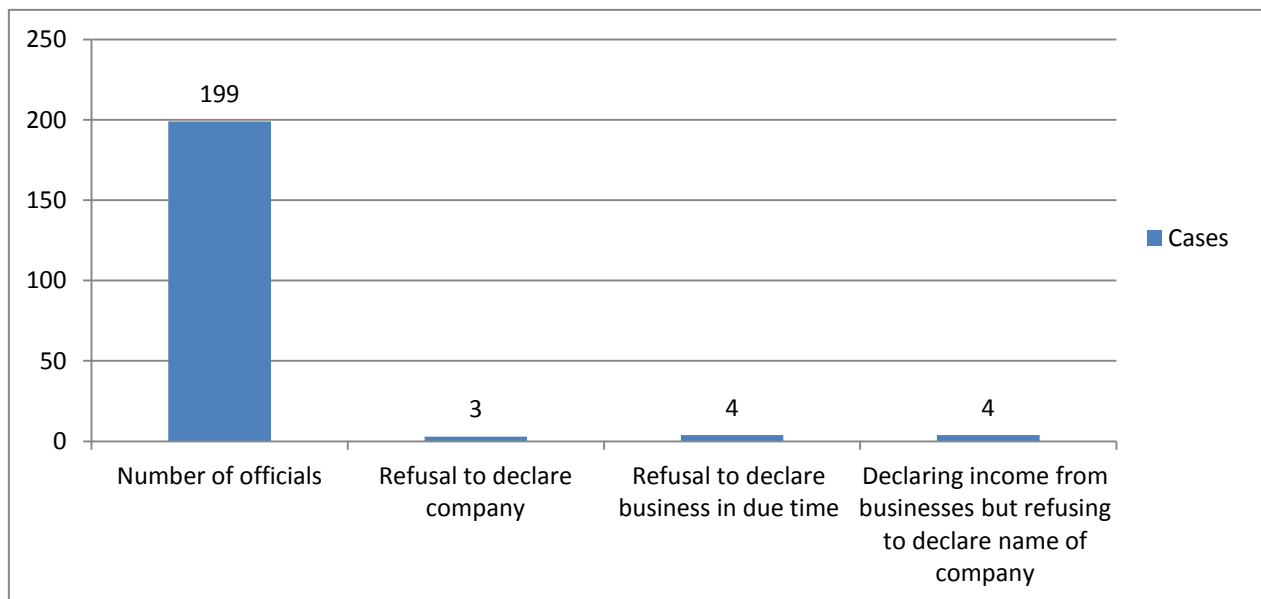
<sup>28</sup> Decisions for access to official documents were issued for Kosovo Center for Investigative Journalism, which functions within organization Çohu!

<sup>29</sup> Kosovo Center for Investigative Journalism - KCIJ; Besnik Boletini and Leonida Molliqaj; "M'rrojte, t'rrojta - Brisku i Hasanit", April, 2015. <http://www.preportr.com/sq/Re-publika/Mrrojte-trrojta-brisku-i-Hasanit-397>

officials did not declare their businesses within the regular term of annual declaration, under the reasoning that the businesses are not active, or that they do not coincide with required declaration, despite the fact that law explicitly requires the businesses to be declared.<sup>30</sup>

Another important piece of data is the inaccuracy of declaration within the category of businesses and incomes. In four cases public officials did not declare ownership stakes in businesses, but they declared income from them, making it difficult to identify their connection with these businesses. In other words, if we look at the asset registers, it is not clear the relation these officials with businesses from which they take incomes. We cannot determine if they are owners, co-owners, shareholders, or whether they have contracted a service with these businesses. Investigation has revealed that four officials have ownership rights over these businesses.<sup>31</sup>

**Graph nr 8.** The cases of discrepancy of declaration and non-declaration of assets



**Source:** Çohu!'s own research based on the comparison of data provided by the registers of assets in ACA, with data provided by the ARBK.

Data collected from empirical research shows that there are certain segments with discrepancies between declared assets as foreseen by law, and the way they were declared in asset registers. There are inaccuracies that the ACA should have verified and take measures against ahead of publication. These inaccuracies come as a consequence of material mistakes and lack of harmonization between registers, but also from the way the ACA insists on how asset registers should be filled out, which creates room for officials to give only partial information on assets. Such disputable statements that we have identified pertain mainly to the values connected with bank loans, and the date of issuance and ending of these loans, a case

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

that also occurred with the head of Agency.<sup>32</sup> On his asset declaration, the loans are written without having the dates of issuance and of the ending, but the mere information regarding the length of loans is considered sufficient information, though the evaluation of the loans is done by the dates in which they are active. Though the head of the ACA in the following years had declared its loans with accuracy, the ACA has allowed exceptions of this nature, as is the case with former-PM, Hashim Thaçi,<sup>33</sup> whose asset register gives only the total amount of loans without the information on which date it was issued, and which it ends, and without the data regarding the payment of these loans.

Though on the Manual for Fight and Prevention of Corruption published by the ACA in 2015,<sup>34</sup> this aspect was roughly standardized by introducing the requirement for exact dates of the loan period, as well as the total amount. This measure falls short in making it possible to verify arithmetically as an outside observer, since another important column was not foreseen, namely the accrued calculation of the loans by years. The lack of the information on the credit plan makes it impossible for a researcher to understand if the loans were paid off by the official, which leaves room for other possible arrangements with the bank, since it is not known from what sources the payments were made.

Research reveals other problems with registers, such as the declaration of income from businesses without a declaration of the relationship between the official and the business. The lack of adequate specifications of the nature of movable assets in values greater than 3,000 Euros without indicators that can help evaluate based on the actual market is also an issue.

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<sup>32</sup> ACA: Declaration of Assets, Hasan Preteni, 2011. [http://ACA-ks.org/2011/Institucionet\\_e\\_Pavarura\\_te\\_Republikes\\_se\\_Kosoves/Agjencia\\_Kunder\\_Korrupsionit/Hasan\\_Preteni.pdf](http://ACA-ks.org/2011/Institucionet_e_Pavarura_te_Republikes_se_Kosoves/Agjencia_Kunder_Korrupsionit/Hasan_Preteni.pdf); This case shows the declaration of a loan for 6 years, without a starting date or end date. In 2012, Hasani declares similarly without accumulative numeration of the exact amount of the loan remained: [http://ACA-ks.org/2012/Institucionet\\_e\\_Pavarura/Agjencia\\_kunder\\_Korrupsionit/Hasan\\_Preteni.pdf](http://ACA-ks.org/2012/Institucionet_e_Pavarura/Agjencia_kunder_Korrupsionit/Hasan_Preteni.pdf)

ACA: Declaration of Assets, Hasan Preteni, 2013; [http://ACA-ks.org/2013/Institucionet\\_e\\_Pavarura/Agjencia\\_kunder\\_Korrupsionit/Hasan\\_Preteni.pdfm](http://ACA-ks.org/2013/Institucionet_e_Pavarura/Agjencia_kunder_Korrupsionit/Hasan_Preteni.pdfm); declaration without deducting the amount of the loan.

ACA: Declaration of Assets, Hasan Preteni, 2014; [http://ACA-ks.org/2014/Agjencite\\_e\\_Pavarura/Agjencia\\_kunder\\_Korrupsionit/Hasan\\_Preteni.pdf](http://ACA-ks.org/2014/Agjencite_e_Pavarura/Agjencia_kunder_Korrupsionit/Hasan_Preteni.pdf); declaration without deducting the amount of the loan

<sup>33</sup> ACA: Declaration of Assets, Hashim Thaçi, 2010; [http://ACA-ks.org/2010/Qeveria%20e\\_Republikes\\_se\\_Kosoves/Zyra\\_e\\_Kreministrit\\_te\\_Republikes\\_se\\_Kosoves/Zyrtaret\\_e\\_Larte\\_ne\\_ZKM/2010\\_Hashim%20Thaci-Kreminister%20i%20Republikes%20se%20Kosoves.pdf](http://ACA-ks.org/2010/Qeveria%20e_Republikes_se_Kosoves/Zyra_e_Kreministrit_te_Republikes_se_Kosoves/Zyrtaret_e_Larte_ne_ZKM/2010_Hashim%20Thaci-Kreminister%20i%20Republikes%20se%20Kosoves.pdf); Declaration of Assets, Hashim Thaçi, 2011; [http://ACA-ks.org/2011/Qeveria\\_e\\_Republikes\\_se\\_Kosoves/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Hashim\\_Thaci.pdf](http://ACA-ks.org/2011/Qeveria_e_Republikes_se_Kosoves/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Hashim_Thaci.pdf)

Declaration of Assets, Hashim Thaçi, 2012; [http://ACA-ks.org/2012/Qeveria/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Hashim\\_Thaci.pdf](http://ACA-ks.org/2012/Qeveria/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Hashim_Thaci.pdf) Declaration of Assets, Hashim Thaçi, 2013; [http://ACA-ks.org/2013/qeveria/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Hashim\\_Thaci.pdf](http://ACA-ks.org/2013/qeveria/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Hashim_Thaci.pdf)

Declaration of Assets, Hashim Thaçi, 2014; [http://ACA-ks.org/2014/Qeveria/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Hashim\\_Thaci.pdf](http://ACA-ks.org/2014/Qeveria/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Hashim_Thaci.pdf) Declaration of Assets, Hashim Thaçi, 2015; [http://ACA-ks.org/2015/Qeveria/Ministria\\_e\\_Puneve\\_te\\_Jashtme/Hashim\\_Thaci.pdf](http://ACA-ks.org/2015/Qeveria/Ministria_e_Puneve_te_Jashtme/Hashim_Thaci.pdf)

<sup>34</sup> ACA (2015), Practical Guide from the field of preventing and combating corruption [http://www.ACA-ks.org/repository/docs/udhezimi%20shqip%20finale%20\(4\).pdf](http://www.ACA-ks.org/repository/docs/udhezimi%20shqip%20finale%20(4).pdf);

These constitute issues that show a lack of preliminary investigation by the ACA in regards to the technical and material aspects of declaration.

These issues and shortcomings of the ACA make the data useless for a substantial analytical research to the extent that they allow the violations that are regulated with the Law on Declaration of Assets and the Penal Code of Kosovo. This situation makes visible to us two main problems:

- **First of all**, A lack of harmonization of asset registers disables analysis on the real state of assets of high ranking public officials, and;
- **Secondly**, the lack of accuracy regarding the value of loans and especially the annual accrual plan makes it impossible to analyze arithmetically the relationship between the declared assets and the income of the given public official. Specification of financial obligations to loan institutions in asset registers is a key to understanding how much a public official owes, if he has paid what he owes, and from what sources.

Another important feature of the issue of non-declaration or false declaration of assets is the fact that the number of high officials that have refused to respond to the legal requirements had existed before and after penalization of non-declaration and false declaration of assets,<sup>35</sup> despite the expectations that after the penalization of non-declaration and false declaration will be introduced, there will be a decrease of this phenomena. Despite the fact that sanctions are harsher now, the trend of non-declaration and false declaration of assets continues to be high and should be viewed seriously.

There are a variety of indicators that contribute to the seemingly impossible task of neutral verification or evaluation from within civil society or from the ACA. These are the following: The material problems with registers, the lack of filling out of registers, or the partial filling and omission of information regarding the ownership of businesses or incomes from them, the lack of proper information regarding ownership of real estate, and a lack of clarification on loans taken by officials from banks stemming from a declaration on the amount of loans but not their accrued value.

Consequently, these problems are of a substantial nature, but also of a material and technical nature. These constitute the basis for an ambiguous interpretation of the form of declaration, since on the one hand there exists an excuse of the officials on the unintentional mistake, and

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<sup>35</sup> Kosovo Center for Investigative Journalism- KCIJ, "Shtatë deputetë fshehin pasurinë", Besnik Boletini, December, 2011; <http://www.preportr.com/sq/Re-publika/Shtat-deputet-fshehin-pasurin-68>  
Kosovo Center for Investigative Journalism – KCIJ, "Sa për sy e faqe", Besnik Boletini, April 2012; <http://www.preportr.com/sq/Re-publika/Sa-pr-sy-e-faqe-94>

on the other hand the same can be interpreted as a violation of laws that should be taken into consideration. This ambiguity represents a noticeable problem in cases of court proceedings against non-declaration or false declaration of assets.

Another important aspect of the process of asset declaration is the mechanism of full control. Since it has only been active for one year, it is difficult to know its effects, however there are high expectations that this instrument of control will make a practical difference in the fight against corruption. In 2014 from the full control of assets of 20% of officials, respectively 598 asset registers, in accordance with its findings on false declaration, the ACA has reported to the prosecutor's office 11 officials.<sup>36</sup>

However, a deficiency in the reporting of statistics on full control is evident. In the annual report of 2014, it is stated that 101 cases were handed over to the Prosecutor's offices for violation of Paragraph 437 of the KPC, from which 93 cases of non-declaration within the annual term, while eight cases of false declaration of assets (point 2 of Paragraph 437 of KPC).<sup>37</sup> In this case we realize a difference in the number stated as proceeded to the Prosecutor's office from 11 stated earlier to eight stated further in this Report. Because the conclusion of cases is connected with full control, meaning that this data diverges from that of full control, the results are thus contradictory.

Despite this, in the annual Report of the ACA except for the statistical data (in some cases contradictory data), it does not produce any other substantial information regarding the nature of findings from the full control of assets of 20% of officials. This information becomes more relevant when we know that the full control of the ACA has resulted in court cases that have ruled down the findings of the ACA.

### 5.1 Declaration and control of assets of officials of the ACA

During 2014 the head of the ACA, Mr. Hasan Preteni, was part of the 20% of public officials previously stated to have undergone full control of assets. It is difficult to trust the mechanism of declaration and control of assets of the ACA officials since these officials have declared and controlled their own assets. Though the Law on the ACA<sup>38</sup> requires that the Committee on the ACA should assume the responsibility to accept forms and control the assets of the officials of the Agency, such a requirement was not met because the Committee has never been established. This oversight was supposed to be done through the Committee on Legislation, to

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<sup>36</sup> ACA (2014) Annual report: [http://www.ACA-ks.org/repository/docs/Raporti\\_vjetor\\_final\\_2014\\_sq.pdf](http://www.ACA-ks.org/repository/docs/Raporti_vjetor_final_2014_sq.pdf)

<sup>37</sup> *ibid*,

<sup>38</sup> Law nr. 03/L -159, for the Anti-Corruption Agency , article 14; [http://www.ACA-ks.org/repository/docs/Ligji\\_per\\_Agencine\\_kunder\\_Korrupsionit\\_nr\\_03\\_L\\_159.pdf](http://www.ACA-ks.org/repository/docs/Ligji_per_Agencine_kunder_Korrupsionit_nr_03_L_159.pdf)

whom the competencies for overseeing of the ACA have been transferred. Officials of the ACA were supposed to declare their assets with the Committee for Legislation, but up to the current year they have never met this requirement.<sup>39</sup> The exception for the year 2011 resulted from a request by Çohu! officials of the ACA to send their forms to the respective Committee. In 2010, 2012, 2013, and 2014, ACA officials had never handed the forms of their assets over to the Committee, and instead they have self-declared and self-controlled their assets and have automatically published their asset registers.

Though the exercise of the legal function from the Parliamentary Committee on the ACA on overseeing of assets of officials in the ACA constitutes a clear conflict of interest due to the fact that these two mechanisms are simultaneously obligated to one another's assets, this function has never been realized. Thus a review over the way in which the ACA officials should declare their assets in a permanent manner should be part of the debate on the process of asset declaration as a whole.

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<sup>39</sup> Kosovo Center for Investigative Journalism - KCIJ; Leonida Molliqaj; "Kush e kontrollon pasurinë e Hasan Pretenit?!" July, 2014; <http://preportr.com/sq/I-Report/Kush-e-kontrollon-pasurin-e-Hasan-Pretenit-383>

## 6. Violations and Sanctions

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In order to understand the extent to which legislation is implemented and to understand the trend of non-declaration, but also the false declaration of assets, it is necessary to understand which the factors that may have influenced this trend are. More exactly, in the following chapter we will go through measures taken against violators of the legislation on asset declaration and effects they might have produced, especially regarding the image of the process of asset declaration.

In 2007-2009 the Law<sup>40</sup> that governed asset declaration did not include monetary sanctions, but it had only two key measures:

- a) Decrease of salary for by 1/5; and
- b) Proposal for dismissal;

Referring to the statistics that were given above that pertain to the number of non-declaring officials, we can understand that the measures that were undertaken did not have the desired effect, since the trend of non-declaration since 2007-2009 has increased. After changes to the legal framework were made in 2010 and promulgation of the Law that exclusively dealt with asset declaration, the punishing measures also increased for non-declaring officials, which included amounts between 150 and 1,000 Euros. However, this measure did not produce the desired effects since the number of officials not declaring assets increased significantly. In 2011, the actual Law on asset declaration was introduced and the fine was increased from 1,000 as a minimum to a maximum of 2.500 Euro. This also has been proven ineffective, since in 2012 the number of officials that did not declare assets has reached its peak.

From this we can understand that measures foreseen by administrative sanctions and fines had no real effect in decreasing the number of officials violating the legislation on asset declaration. If we add to this the fact that after the appeal courts reviewed fines, there was a significant decrease in the monetary amount officials were fined, we can conclude that the punishments with fines in low amounts did not hinder public officials to avoid declarations of their assets. Logically, we can understand that a public official that had unexplained wealth preferred simply to pay the fine instead of declaring their assets that might have opened other suspicions as to its origin. Until 2012, we can say that the reasons for non-declaration did not relate as much with court proceedings and the low sanctions as much as they had with weak laws and weak measures. These measures were non-factors for the officials that do not declare their assets.

But the situation should have changed with the introduction of the new Penal Code in January 2013, which explicitly states the non-declaration and false declaration as a penal act, which

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<sup>40</sup> Law nr. 2004/34 The Suppression of Corruption, article 43: <http://www.kuvendikosoves.org/?cid=2.1,191,154>



meant that for such an act in spite of monetary fines there may be incarceration of 6 months to 5 years, depending from the category of violation. If we visit the statistics of non-declaration, we understand that especially in the category for regular annual declaration of 2013-2014, these measures introduced by Penal Code, which were harmonized with respective Law on asset declaration have produced direct results. The very idea that a public official can be exposed to the possibility of incarceration for not declaring assets could be the main reason for the increase of willingness by public officials for regular annual declaration. However, some indicators may cause less enthusiasm related to this. The scale of decisions related to Paragraph 437 of the KPC has been controversial, and often not based on Penal Code. Further, we provide the following statistics that highlight this problem for the years 2013-2014.

**Table 4.** Cases processed by the ACA for the years 2013-2014 for violation of the law fo Delcaration of Assets, in relation to the article 437 of CCRK

Year	The cases given per persons according to the State Prosecutor
2013	38 persons
2014	125 persons
<b>TOTAL</b>	<b>163</b>

**Source:** The data sent by the ACA to the public prosecutors were gathered by the State Prosecutor, since the impossibility or the lack of will by the ACA for cooperation and communication. **Remark:** The statistics in the table show persons and not cases of criminal charges.

This graphic shows that the ACA for violation of the paragraph in question has initiated cases for 163 officials. However, we can note here we encounter a data inconsistency, since the number of non-declaring officials that are punishable with Paragraph 437 for two years according to statistics of the ACA given on annual reports are in total 128 officials. It is unclear where the number 163 comes from. We can only suppose that this number has increased due to the findings of the ACA after conducting full control, but one cannot confirm this because the Agency has yet to give any explanations related to these cases. This approach makes it impossible for third parties, such as civil society, to conduct analysis and have substantial access to the necessary information in order to evaluate the work of institutions and the material state of the fight against corruption.

The following graph shows the number of cases proceeded by Prosecutor's office for violation of Paragraph 437 for the years 2013-2014:

**Table 5:** Public Prosecutors 2013-2014, cases treated for violation of article 437 of the CCRK

Year	Indicments for awarding the punishment order	Direct indicment	Indicment after investigation	TOTAL
2013	2	17	12	31
2014	3	15	46	64
<b>TOTAL</b>	<b>5</b>	<b>32</b>	<b>58</b>	<b>95</b>

Source: State Prosecutor

We can see that the data on these cases proceeded by the public prosecutor do not represent individuals, but cases. We can see that the number of indictments is 95. But the categorization of indictments show that for the last two years, 5 indictments were amended, which is senseless and goes against the Penal Code that foresees no room for such measures. Paragraph 437 of Penal Code allows only punishment with incarceration and with fine as well as an additional sanction, but does not foresee any room for alternative measures as it was proposed in this case.

The most problematic aspect in the implementation of legislation can be encountered with cases treated for violations of the asset declaration and false declaration from the courts. The following is table 5, which represents cases proceeded by the courts related to violations of Paragraph 437 for the years 2013-2014.

**Table nr. 6:** Cases reviewed by the Courts for the violation of article of the CCRK for the years 2013-2014

	<u>Subjects at work</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Suspended Sentence</u>	<u>With Acquittal</u>	<u>Rejecting judgement</u>	<u>Solved in another way</u>	<u>It is prescribed</u>	<u>Cases solved</u>	<u>Unsolved cases</u>
Basic Court of Prishtina	42	1	2	3	1	3	-	-	10	32
Branch in Podujevo	1	-	-	-	-	-	-	-	-	1
Branch in Gllogoc	1	-	-	-	-	-	1	-	1	-
Basic Court in Prizren	9	-	-	-	1	-	2	-	3	6
Basic Court in Peja	3	-	-	1	-	-	-	-	1	2
Basic Court in Gjilan	7	-	-	1	-	-	1	-	2	5
Branch in Kamenica	2	-	-	-	-	-	-	-	-	2
Branch in Vitia	4	-	-	-	-	-	-	-	-	4
Branch in Novobardo	1	-	-	-	-	-	-	-	-	1
Basic Court in Ferizaj	3	-	-	-	-	-	-	-	-	3
Branch in Shtërpçë	2	-	-	-	-	-	-	-	-	2
Basic Court in Gjakova	4	-	4	-	-	-	-	-	4	-
Branch in Rahovec	2	-	-	-	-	-	-	-	-	2
Basic Court in Mitrovica	110	-	-	-	1	-	-	7	8	102
Branch in Vushtrri	1	-	-	-	-	-	-	-	-	1
Branch in Skenderaj	1	-	1	-	-	-	-	-	1	-
<b>TOTAL</b>	<b>193</b>	<b>1</b>	<b>7</b>	<b>5</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>7</b>	<b>30</b>	<b>163</b>

Source: The Kosovo Judicial Council – KJC

The data shows that for the year 2013-2014, in total 193 cases were treated by courts, while the proceedings and verdicts were reached only for 30 cases, or 15% of the total number. This is a very low percentage and visualizes as we argued that the low number of court proceedings may be one of the factors for the increase of non-declaration of assets, even after this act was considered a penal act.

Furthermore, from the whole data we can see that only one case in Prishtina Basic Court ended with incarceration, while in 10 of them the verdicts waived any sort of sanctions. Another

interesting note is that in seven cases were included in mandatory limitation procedure on absolute term by the Basic Court of Mitrovica.

The data on the work of courts for these cases show that contradictions are visible through the whole process. For example, it is surprising how it was possible that seven cases were included with absolute statutory limitation, despite the fact that the term for absolute statutory limitation is double in length from the relative one. According to the RKPC the shortest term for a case to be included in statutory limitation procedure is two years, and that applies also for relative statutory limitation cases. This means that penal acts that may be punished with up to one year incarceration, and the sanctions on fines in relative terms can be included within statutory limitation, while in absolute term they take up to four years. Non-declaration and false declaration are newly introduced penal acts, since the first of January 2013, and it is not clear how these seven cases have been included within absolute statutory limitation procedure before the term of four years has passed.

The other contradiction that may have contributed to the high number of officials that did not declare their assets or to the partial declaration of assets may be the contents of sanctions. While the Penal Code foresees that for violations of Paragraph 437 the only valid punishments are jail and fines, this would mean that enacting alternative sanctions or only fines may be a violation of this paragraph.

Table six shows that there are six cases of financial fines only, and four cases of conditional release. Enacting of conditional release or only with a fine is a violation of Paragraph 437 of the Penal Code. This may have resulted from illegal ruling of judges, which constitutes a penal act of unlawful ruling that is sanctioned with Paragraph 432<sup>41</sup> of the KPC. Furthermore, the mere one ruling with incarceration from 30 cases of non-declaration may encourage public officials who, holding in consideration the weak sanctions from the past, may prefer to avoid declaration of assets whose origin cannot be constituted.

This also goes against the Commentary of the KPC. According to the Commentary, the penal act from Point 1 of this paragraph is 'committed when the person that according to law on declaration, origin and control of assets and gifts does not declare at all its assets or declares after the deadline foreseen by law.'

"Penal act from Point 2 is consumed by the official who in the case of asset declaration, falsifies data or does not declare the necessary data. Meaning that in the case of violation of this point the penal act has two alternative forms: the first one is when the perpetrator falsifies data (declares fewer assets or value than they possess in reality) and the second alternative, when

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<sup>41</sup>Criminal Code of Republic of Kosovo -CCRK ; Article 432, Issuing Unlawful Judicial Decisions:

A judge who, with the intent to obtain any unlawful benefit for himself, herself or another person or cause damage to another person, issues an unlawful decision shall be punished by a fine and imprisonment of six (6) months to five (5) years.

the perpetrator does not give the whole data which is requested from him, with intention to hide assets which the official has created during the time period he was supposed to declare assets”.

A member of the Committee for drafting the Penal Code and Professor of Prishtina University, Mr. Haki Demolli, is convinced that if a judicial measure is put on the terms “and”, meaning “punishment with fine **and** incarceration”, this means that the punishment for the penal act has to include both.<sup>42</sup>

This approach of courts especially when having in consideration the ruling on alternative sanctions besides the substantial nature of the court rulings tell us another aspect as well, namely the methodology of the ACA in the way it establishes violations in the process of asset declaration. These forms of alternative sanctioning given by courts may be reasonable, since the way that the ACA concludes a violation of Paragraph 437 of the Penal Code could produce unreasonable material punishments. As we shall see in the case of MP Mr. Nait Hasani “unintentional” avoiding of declaration of incomes taken as honoraries for parliamentary Committees for the court, was sufficient to waive charges against him, since the honoraries along with his annual salary come from his work in Parliament, and thus they cannot be hidden nor misused. As a consequence, if MP Hasano would have been punished because he failed to explain the exact amount of income, thereby avoiding a declaration of 5,285 Euros (for the reason of considering the declaration of this amount as irrelevant, thus unintentionally violating the law), while amnestying an official that declares his assets abroad only in total amounts because the same amount is subject to the laws of another country, then the textual interpretation of Kosovo Legislation for Mr. Hasani would have been unjust.

In principle, the Law on Declaration, is clear on what has to be declared, while the Penal Code is also clear over when and on what grounds an official may be sanctioned for non-declaration and false declaration. As a result, the court decisions for non-declaration and false declaration could be stronger in substance if the work of Agency and facts presented regarding false declaration would be based on real findings of substantial violations of the KPC. But this did not always happen. In two cases that until now the public had access over, the nature of violations described by the ACA demonstrate perfectly the methodology of work through which the ACA considers a violation of Paragraph 437 for non-declaration or false declaration of assets.

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<sup>42</sup> Kosovo Center for Investigative Journalism - Preportr; "M'rrojte, t'rrojta-brisku i Hasanit"; Besnik Boletini, Leonida Molliqaj, April, 2015; <http://preportr.com/sq/Re-publika/Mrrojte-trrojta-brisku-i-Hasanit-397>

### **6.1 The case of Nait Hasani and Duda Balje accused for penal act related to paragraph 437 of Penal Code on non-declaration and false declaration of assets.**

The case against Mr. Nait Hasanaj was initiated by the ACA during the regular annual declaration, when the ACA after full control found that Hasani did not declare his assets in an accurate manner for the year 2012,<sup>43</sup> therefore a violation Paragraph 437 of the Penal Code. According to the ACA, Hasani declared the annual income of 21,000 Euros from his salary as MP, but in the list acquired from Parliament, the ACA noted that the amount of 26,485 Euros was paid from Parliament to Hasani.

From this, the ACA determined that Hasani failed to declare the amount of 5,285 Euros, which is sufficient to initiate a penal case. During the court proceedings, Hasani pleaded not guilty since the whole of his income came from payments by the Parliament, including additional payments which he also did not declare. He argued that the same cannot be considered as hidden or not declared since all the money was transferred to his account from Parliament, and the required taxes were paid. The only unintentional mistake of his was the lack of knowledge that he should declare this income on the asset register, for which he might have been called by the ACA and asked to clarify why this is.<sup>44</sup>

Furthermore, Hasani has raised this issue on a general perspective claiming that most of Kosovo MPs make such mistakes not intentionally, but as a result of a lack of proper information on the way the form is supposed to be filled out. After proceedings, the court decided to release Hasani of any charges, overruling the pretensions of the ACA for a penal act in this case.

This case proves that the ACA has no unified standards according to which it comes to a conclusion when a penal act has been consumed by an official for non-declaration or false declaration of assets, but instead conducts textual interpretation of laws without even contacting the officials in question for further clarification. Besides the fact that the ACA was in possession of the list of payments by the Parliament to Mr. Hasani, which cannot be hidden or misused, a conclusion was reached on a penal case without taking into consideration the reasons that have contributed to Mr. Hasani deciding to avoid declaration of incomes, and without giving him a chance to explain. In case the ACA would operate in accordance with a standard, then an exclusion of tens of cases should occur on which MPs under the column of

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<sup>43</sup> Jeta në Kosovë: "Nait Hasani Shpallet i Pafajshëm", Petrit Kryeziu, January , 2015. <http://gazetajnk.com/?cid=1,1018,9559>

<sup>44</sup> Ibid.

income declaration have stated only their annual incomes,<sup>45</sup> which does not necessarily mean they have hidden incomes of other kinds from the Parliament.

Another fresh case is that of the MP Duda Balje,<sup>46</sup> charged on the same grounds for avoiding the declaration of income. In a similar manner to the case of Hasani, the case of Balje was proceeded by the ACA under the assumption that Miss Balje did not declare incomes from Parliament that amounted to 6,471.19 Euros. The two cases had occurred during a short period of time, with Balje proceeded soon after Hasani. Though the ACA already had a similar case in which all charges were dropped, the same case was repeated with Balje despite there being a precedent.

Though Çohu! does not intend to judge on court decisions, these two cases teach us that judgements on the two cases were done out of motives, not according to textual interpretation of the legislative dispositions of the Penal Code. In this sense, Çohu! is concerned over the initiative of the Ministry of Justice (MJ) for changes proposed related to Paragraph 437, which aims to introduce the motive for the penal act of non-declaration or false declaration.<sup>47</sup> It is exactly these two cases that make the initiative of the MJ unnecessary, since it is clear that courts are very clear relating to the motives when it comes to the false declaration of assets. Indeed, Çohu! considers that proposals of the MJ related to Paragraph 437 of the KPC could further complicate the verification of false declaration of assets. This is due to a possibility that hypothetically, all accused of violations of this Paragraph would imply motive and unintentional reasons, rendering the paragraph even weaker.

The issues related to the conclusions of the ACA for violations of law should be addressed in line with a standardization of practices of asset evaluation through clear investigative instruments and methods. As far as the willingness of the ACA to report cases as violations, this shall be seen as positive. However, what remains concerning is the need for an urgent review of the practices and methodology of investigation with which the ACA operates, and which according to our analysis is characterized with a range of problems and loopholes which make the work of the ACA almost irrelevant. These loopholes that we identified stem from the

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<sup>45</sup> Some of the registers with similar characteristics include :

- MP Afrim Hoti: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Afrim Hoti.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Afrim_Hoti.pdf)
- MP Vesna Mikic: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Vesna Mikic.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Vesna_Mikic.pdf)
- MP Xhevdet Neziraj: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Xhevdet Neziraj.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Xhevdet_Neziraj.pdf)
- Former MP Skender Hyseni: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Xhevdet Neziraj.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Xhevdet_Neziraj.pdf)
- MP Rustem Mustafa: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Rustem Mustafa.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Rustem_Mustafa.pdf)
- MP Kimete Bytyqi: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Kimete Bytyqi.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Kimete_Bytyqi.pdf)
- MP Haxhi Shala: [http://ACA-ks.org/2014/Kuvendi i Republikes se Kosoves/Haxhi Shala.pdf](http://ACA-ks.org/2014/Kuvendi%20i%20Republikes%20se%20Kosoves/Haxhi_Shala.pdf)

<sup>46</sup> Kallxo.com: Deputetja Duda Balje në Gjykatë për mosdeklarim të pasurisë, Dhejtor, 2014; <http://live.kallxo.com/sq/MTL/Deputetja-Duda-Balje-Ne-Gjykate-Per-Mosdeklarim-Te-Pasurise-3611>

<sup>47</sup> See the reaction of civil society organizations regarding to the article 437 of the CCRP. <http://www.cohu.org/sq/zyre-antikorrupsion-reagime/Reagim-kunder-ndryshimit-te-nenit-437-te-Kodit-Penal-nga-Ministria-e-Drejtësisë-167>

analytical study of international practices as compared with those of the MJ and the findings of Çohu!, given further on this analysis.



## 7. The process of asset declaration as a contributing factor towards for non-declaration

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In principle, the declaration of assets should serve to the anti-corruption agenda through realizing the instrument of transparency, and oversight of the assets of public officials from the high ranks. Every actor of this field should be contributing to this process, including the full statement of assets of public officials. However, in the case of Kosovo, the asset declaration process, along with court rulings of this nature in a considerable measure contribute to the contrary, respectively to the non-declaration or false declaration of assets. Furthermore, we will put forward some arguments that Çohu! considers as indicators of this practice:

- a) **Weak court rulings:** In general, as stated above and as visualized in the graphics, one of the reasons that potentially have influenced the high number of officials that do not declare their assets – especially until the penalization of this act- and particularly for those that falsely declare their assets, may be the weak sanctions given by courts which fail to reflect the severity of this crime;
- b) **Low trend of anti-corruption cases proceeded:** Statistics on cases of corruption treated by courts and prosecutors regarding Paragraph 437 of the Penal Code show a low trend of cases proceeded, and a controversial nature with regards to the treatment of cases that deal with corruption, such as the mandatory limitations of acts covered by Paragraph 437 of the Penal Code. This low trend may have encouraged high public officials to consider the process of asset declaration in a similar manner as other penal acts foreseen by the Penal Code; (During 2013-2014, 193 cases were proceeded by courts of which only 30 have been completed, or roughly 15%).
- c) **The impossible verification of the Accuracy of declared assets:** While positive legislation and the mandate of the ACA, particularly the methodology of their work are characterized with inconsistencies, clarity issues, and a lack of specification of verification instruments for: a) accuracy of assets declared, b) control of their origin, c) verification of the assets situated abroad and, d) lack of an arithmetical analysis of the incomes of officials and the possessed assets. This may have been a contributing factor towards the large number of public officials that did not declare in whole or partially their assets;
- d) **Lack of proper information and functionality of contact points:** In many cases initiated by the ACA for non-declaration, including some 71 officials that did not declare their

assets for the year 2015,<sup>48</sup> Çohu! found that 33 of them were to declare their assets for the first time, meaning they were officials that took the office recently. In this cadre, the failure to declare assets from these 33 officials is to be connected more to the lack of functionality of the contact points within respective institutions on the obligations of officials for asset declaration.

- e) **The approach to establishing as a penal act by the ACA the “false declaration of assets”.** In principle it seems surprising, but the way the ACA establishes a violation of law on declaration of assets, respectively what it calls false declaration, is a reason that could contribute towards non-declaration or partial declaration of assets. As we already saw in two cases of MPs that were tried in court for such an accusation, we can understand that the ACA did not have a standardized method and that an effort to establish a penal act of false declaration of assets, without an effort to avoid possible mistakes makes a perception of lack of good will of the Agency, and consequently officials may ignore it.

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<sup>48</sup> ACA, The list of senior public officials who haven't declared the assets in the period foreseen by law for the year 2015: [http://ACA-ks.org/repository/docs/Lista\\_mos\\_deklarimi\\_2015\\_.pdf](http://ACA-ks.org/repository/docs/Lista_mos_deklarimi_2015_.pdf)

## 8. Validity of data: problematic segments

One of the aspects that offers a clearer picture of the AD process and its problems that we encountered as essential to a solution and needed to be addressed is the usability of data possessed by the ACA, respectively comparison and verification of data through arithmetical calculation, the material state of officials, and their overall living standard. Indeed, usability of the data represents a fundamental aspect without which, the whole process of AD would not have much sense. Starting from these parameters, we have researched the practices and methodology of verification employed by the ACA to ensure usability of data, in which case we have seen that in Kosovo usability of data remains one of the largest problems and debates. This is a result of many reasons, among which are mainly:

- a) A lack of a clear verification mandate of the ACA;
- b) A lack of harmonization of the basic anti-corruption laws with other relevant laws and with the Code of Penal Procedure;
- c) A lack of instruments and methods for investigation as a mechanism for verification of the accuracy of data;

The lack of a mandate of the Agency to exercise full verification of the declared assets from high public officials constitutes one of the biggest loopholes. Based on the above-mentioned premises, Çohu! had researched legislative aspects as well as practices of implementation that are related to the mandate of the ACA, and has demonstrated with specific case studies problems of this nature. Starting from practices and based on the Anti-corruption Law, as well as on the Law on Asset Declaration, the ACA assumes two kinds of control:

- a) **Preliminary control**, which means the control of forms in order to identify the so-called “material and technical” mistakes, for which the public official has in disposition a period of 15 days to improve the data. This investigation is of an administrative nature, without going further into analysis and details of asset forms; as well as
- b) **Full control**, which is a more detailed control from the ACA, based mainly on the methodology of comparison of discrepancies of data declared with other public institutions;

From contemporary practices, there are three models of control of assets of high public officials. The first is Basic Verification,<sup>49</sup> which represents control for material mistakes similar with what the ACA does in preliminary control. Simple Verification,<sup>50</sup> which corresponds with full control of the ACA, and goes further to cover the content of the data declared, respectively

<sup>49</sup> Organization for Economic Co-operation and Development- OECD, “Asset Declarations for Public Officials - A Tool to Prevent Corruption”; p. 73; 2011. <http://www.oecd.org/corruption/anti-bribery/47489446.pdf>

<sup>50</sup> Ibid, p. 73.

arithmetical calculation of a match between the stated data and the existing reality on assets of official. In this cadre, the ACA through full control is not succeeding to investigate fully as compared with simple control, due to the fact that it has no authorizations for information on bank accounts and assets situated abroad, as explained above.

The other method is that of Audit Verification,<sup>51</sup> with which the ACA has no corresponding functions due to the deficiencies on its mandate, as compared for example with Albania, which through a High Inspectorate on Asset Declaration and Audit of Wealth,<sup>52</sup> exercises a full audit of assets, including the establishing of the existing state and the origin of assets. In our case, it is important to analyze only the part of competences that the ACA has, in order to bring in focus the method of control and problems that follow this process. In general, the ACA has never done or at least has not published any analysis that comes as a result of arithmetical calculation according to which one may conclude that the assets and spending of a given public official does not correspond with its incomes.

Full control begins after selection of a number of 20% of forms for each year, in which case the ACA generates the data from asset forms of the selected officials and compares them with data acquired from other public institutions, such as: the Business Register Agency, Cadaster Agency, Tax Administration, the Ministry of Finances, etc.<sup>53</sup> In case the ACA encounters a discrepancy of data stated with Agency and those provided by other institutions, a case may be initiated for false declaration of assets. However, in our view the so called full control of assets represents the highest level of competences for the ACA, which compared to the contemporary practices and models of different countries is limited and ineffective due to reasons that we put forward in the next part of this study.

### 8.1 Lack of access to banks and other financial institutions:

In order for the verification of usability of data to be full, the ACA should have in its possession tools of investigation, and especially access to the bank accounts of public officials so that it can analyze transactions, their origin, and their history. In this aspect there are disagreements of legal cadre that fall in complete contradiction. In the Law on Declaration of Assets such a thing is possible with Paragraph 16, point 3,<sup>54</sup> which states:

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<sup>51</sup> Ibid, p. 73;

<sup>52</sup> Law on Declaration and Audit of the Assets, Financial Obligations of the elected and some public officials: <http://www.hidaa.gov.al/ligji-nr/>;

<sup>53</sup> ACA (2015) Practical Guide in the field of preventing and fighting corruption : [http://www.ACA-ks.org/repository/docs/udhezimi%20shqip%20finale%20\(4\).pdf](http://www.ACA-ks.org/repository/docs/udhezimi%20shqip%20finale%20(4).pdf)

<sup>54</sup> Law Nr. 04/L-050: On Declaration, Origin and Control of the Assets of Senior Public Officials and the Declaration, Origin and Control of Gifts for all officials Article 16, paragraph 3;

“that with the request of Agency banks and other legal persona that exercise banking activities in Kosovo are obliged to give data on deposits, accounts and transactions conducted by individuals that according to the law are obliged to declare”, to which later on it was added “in accordance to the Penal Procedure Code.”<sup>55</sup>

On the other hand, the Penal Procedure Code in paragraph 86, point 2, says that for an investigation with secret means there must exist an authorization of a judge of preliminary procedure,<sup>56</sup> while paragraph 87 includes the financial data in the category of secret means.<sup>57</sup> As it can be seen, the dispositions of laws are in contradiction with the Penal Procedure Code, meaning that the Agency in a direct manner may not have an access to the bank accounts of public officials. Indeed the Agency often has tried to exercise access on bank accounts through cooperation with the Financial Intelligence Unit (FIU), but here too exist legal disagreements. The Law on Prevention of Money Laundering foresees that the only institution allowed to have direct access on bank accounts is the FIU. Paragraph 15 of this law states the nature of information that the FIU can offer, while point two in an explicit manner nominates the institutions with which the FIU can share information, among which the ACA is not listed.<sup>58</sup> From this perspective one, can understand that the ACA has no direct access to bank accounts, and as a result does not have in its possession one of the main instruments of verification of data declared by public officials.

### 8.2 Lack of standards for establishing the stated value:

The ACA has no tool at its disposal to evaluate the content or value of the declared assets from public officials. In other terms, the ACA cannot know if the value stated based on the assumptions of officials, in reality reflects the value of market of assets. An example for illustration is the declaration of the member of the Prishtina Assembly, Mr. Visar Arifaj, who when stating his assets upon entering office in the form of declaration under the column of real estate has declared a painting as a personal creation of 1995 to be valued at one Euro.<sup>59</sup>

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<sup>55</sup> Law Nr. 04/L-228: On Ammendment and Supplementing of the Law Nr. 04/L-050: On Declaration, Origin and Control of the Assets of Senior Public Officials and the Declaration, Origin and Control of Gifts for all officials , article 10;

<sup>56</sup> Criminal Procedure Code of the Republic of Kosovo, Article 86, Paragraph 1 and 2;

<sup>57</sup> Ibid, Article 87, Paragraph 1.12;

<sup>58</sup> Law on Prevention of Money Laundering and Financing of Terrorism Article 15, paragraph 2;

<sup>59</sup> ACA, Declaration of Assets 2014: [http://ACA-ks.org/2014/Komunat/Komuna\\_e\\_Prishtines/Visar\\_Arifaj.pdf](http://ACA-ks.org/2014/Komunat/Komuna_e_Prishtines/Visar_Arifaj.pdf)

### 8.3 Lack of standardization of terms and notions of assets:

The ACA has no standard based on which the exact and clear naming of the declared assets would be done. In many cases it happens that for the same content, assets are given different names and terms, which differ in the market value of assets. For example on asset forms we find names such as: acres, land, field, farm land, backyard, parcels, forests, etc, which are presented with the same value. In reality, it is known that the land situated in an urban area is far more valuable than that of forest. Also, there could be an ambiguous meaning of “land”, when there is no adjective that could identify further what is meant.

### 8.4 Lack of detailed declaration of assets valued over 3,000 Euros:

In many cases assets above the value of 3,000 Euros, as foreseen by law is an obstacle for the ACA to evaluate usability of declared data. For example, in many forms of assets we find a quite abstract name for vehicles: **car, vehicle, machine**, which are followed by their value at the side. In our view, it is difficult to know the real value of unless they are declared with more details that explain what sort of vehicle has been declared. This for the fact that a vehicle can be a car produced in 1990, with an insignificant value, but it can also be a car of 2012 that has a much higher value. As a consequence there is a lack of standards of information declared such as for example the data on the make of the car, the year of production and other data relevant for establishing a value.

### 8.5 Lack of harmonization and systematization of the asset registers (material and technical deficiencies).

In the sense of material and technical deficiencies, if we see the asset registers, (and having in consideration the above-mentioned deficiencies, it is worth mentioning that besides the full control, that is impossible to be done due to the reasons presented on next chapter), we can easily conclude that the preliminary control as well has serious deficiencies that render asset declaration almost irrelevant. Problems appear particularly in the way asset forms are filled out, and what conclusions may be drawn from them. More precisely, in many occasions of forms filled out improperly, problems have been identified as follows:

- *The declaring parties in loan debits.* In cases when officials declare loans taken from banks and debits they have, they declare only the year the loans were taken and the year when they are supposed to end. In the consequent years

they do not declare the accrued debt nor a plan of amortization.<sup>60</sup> The required details on loans have even been entrenched with an administrative order from the field of prevention of corruption enacted in March 2015.<sup>61</sup> One has to mention that this way of filling out of asset registers regarding the annual value of debt makes it impossible for an outside observer, and the ACA for that matter, to verify the value of debt of a highly ranked public official, and consequently to exercise the monitoring of the assets of public officials. In this context, the ACA has accepted asset registers when officials put only the amount and the year of the loans without any other details.<sup>62</sup>

- *Lack of data on the year of asset acquirement.* In many cases there is an absence of the year when an asset was acquired by the official in question or other characteristics that pertain to the nature and content of the asset. For example, the declaration of possession of a property of real estate without a date when it was appropriated and without description of characteristics that entail this property which would enable an indicator on the actual market value and outside evaluation of the accuracy of the stated data. This is because if there are no data over the date of appropriation of a property, we cannot analyze the relation between incomes of a public official and the acquirement of that property.<sup>63</sup>
- *Lack of data on origin of assets.* In some cases there is a lack of data on the origin of assets. Thus a public official declares a property, but not the origin of this property. In the case of MP Teuta Sahatqija for example, under the column of real estate are listed: a house, an apartment, and a piece of land under the name of her husband or as a common ownership.<sup>64</sup> The origin of these is not specified.

These aspects connected with a lack of unification of asset registers make monitoring the declaration process difficult for civil society, but also make it difficult for a professional body such as the ACA.

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<sup>60</sup> Register of Assets of the Director of ACA, Hasan Preteni. [http://ACA-ks.org/2014/Agjencite\\_e\\_Pavarura/Agjencia\\_kunder\\_Korrupsionit/Hasan\\_Preteni.pdf](http://ACA-ks.org/2014/Agjencite_e_Pavarura/Agjencia_kunder_Korrupsionit/Hasan_Preteni.pdf)

<sup>61</sup> Anti-Corruption Agency ; Practical Guide on the field of prevention and fighting of corruption , March, 2015. [http://ACA-ks.org/repository/docs/udhezimi%20shqip%20finale%20\(4\).pdf](http://ACA-ks.org/repository/docs/udhezimi%20shqip%20finale%20(4).pdf)

<sup>62</sup> Register of Assets of ex Prime minister of Kosovo , Hashim Thaqi. [http://ACA-ks.org/2014/Qeveria/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Hashim\\_Thaci.pdf](http://ACA-ks.org/2014/Qeveria/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Hashim_Thaci.pdf)

<sup>63</sup> Kosovo Center for Investigative Journalism - Preportr; "M'rrojte, t'rrojta-brisku i Hasanit"; Besnik Boletini, Leonida Molliqaj, April, 2015; <http://preportr.com/sq/Re-publika/Mrrojte-trrojta-brisku-i-Hasanit-397>

<sup>64</sup> ACA: Declaration of Assets 2013 and 2014 from the MP Teuta Sahatqija: [http://ACA-ks.org/2013/Kuvendi/Teuta\\_Sahatqija.pdf](http://ACA-ks.org/2013/Kuvendi/Teuta_Sahatqija.pdf); [http://ACA-ks.org/2014/Kuvendi\\_i\\_Republikes\\_se\\_Kosoves/Teuta\\_Sahatqija.pdf](http://ACA-ks.org/2014/Kuvendi_i_Republikes_se_Kosoves/Teuta_Sahatqija.pdf)

With all problematic spots regardless of pretention that the full control of assets is conducted, it is difficult for the ACA to establish if the values of the stated assets represent trustworthy and reliable data, which would make sense of the asset declaration process. Besides these above-mentioned aspects, we have noted other deficiencies that are of great importance, and if not addressed, will render irrelevant the work of the ACA. These deficiencies pertain to two aspects of usability of data: a) Origin of asset and b) Accuracy of data.



## 9. Verification of the origin of assets and assets situated abroad

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With origins of the assets of high public officials according to the legal requirements and contemporary practices, we understand the offering of information on assets for which public official gives the data as follows:

- 1) Place and time of appropriation;
- 2) Documentations on the transaction through which the official has acquired the asset; and
- 3) The history on the acquiring of goods from the stated assets, through which the public official may have acquired additional assets;

The Anti-corruption Agency through forms of asset declaration and measures of control of assets, upon the basic law should do the verification of origin of assets. But having in consideration the fact that the ACA has no access to bank accounts, the question is raised with what instrument the ACA can verify the origin of assets. In principle, in the form of asset declaration it is required to describe assets and the place and time of appropriation. However, in absence of instruments for verification, cases come about when public officials can give incomplete responses or irrelevant ones for that matter, in which the ACA has no possibility to investigate. Furthermore, the Law on Declaration, Origin and Control of Assets foresees “origin” of assets as a category in itself, but in practice it is not given any attribution to the ACA through which it could realize this legal category. The overall conclusion in this case is that the ACA has no tools at its disposal to verify the origin of assets and as such this category is irrelevant for the work of the ACA in the fight against corruption.

In parallel with the lack of instruments for verifying the origin of assets, the issue becomes more prevailing when we think of verification of assets situated abroad. The most outstanding case which demonstrates the inability of the ACA to verify the origin of assets abroad, is that of former deputy PM Behgjet Pacolli.

### 9.1 The case of Behgjet Pacolli – inability to verify assets situated abroad

In 2011, in the register of asset declaration, Pacolli stated companies with anonymous assets outside Kosovo in the value of 80 Million Euros.<sup>65</sup> Pacolli refers to these entities as “companies” (in plural) which operate outside Kosovo and undergo legislation of respective countries where

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<sup>65</sup>ACA: Declaration of Assets, Behgjet Pacolli, 2011; [http://ACA-ks.org/2011/Qeveria\\_e\\_Republikes\\_se\\_Kosoves/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Behgjet\\_Pacolli.pdf](http://ACA-ks.org/2011/Qeveria_e_Republikes_se_Kosoves/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Behgjet_Pacolli.pdf)

they operate. On this basis, Mr. Pacolli did not give information, neither was it asked by the ACA to give the information he was obliged to give as follows:

- a) The name of these companies,
- b) The place of operation;
- c) Activities they deal with;
- d) The establishing date, or any other valuable information that will help understanding the origin of the 80 million Euros.

He acts similarly in 2012, when he offers the same description, except that the value now is 95 Million Euros.<sup>66</sup> The inability and negligence of the ACA in this case is proved by the fact that this violation was done in 2011 when a notice should be directed to Mr. Pacolli, but no such thing was done despite the fact that the same information was not included in 2012, 2013, and lately in 2014 when he left the office. This exclusive treatment by the ACA in the process of asset declaration did not apply for other officials that had assets abroad, namely for Florin Krasniqi, who in his asset declaration register has offered complete data on the name, time of appropriation, and places where the companies he owns, operate.<sup>67</sup>

In the Pacolli case, the finances from his bank accounts have been declared as the income from abroad without any explanation over the origin of these incomes, or the activity that brought these incomes to him. The only value that is known for public knowledge is the value of shares, which within a period of three years (2011-13) had increased significantly. In 2013, Pacolli declares the anonymous companies worth 125 Million Euros. If we go back to the competences and mandate of the ACA, through this case we can see that the ACA has no possibility to understand which are the companies in question and based on what activities the official has noted such an increase in income. Thus Paragraph 13 of the Law on Asset Declaration was violated, which explicitly states:<sup>68</sup>

“data on asset declaration of the public official include: name, surname, position, name institution, address of institution, date of assumption of office, date of the asset form, functions and activities that the official exercises along with public function, assets as real estate and movable assets, origin, value, the ownership, the year of appropriation, shares on a marketing society, cash, financial obligations of officials to the physical and legal personas and annual incomes. All these information must be published in web-site of the Agency within a time term of sixty days from the day of deadline for declaration of assets of a public official”.

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<sup>66</sup> ACA: Declaration of Assets, Behgjet Pacolli, 2012; [http://ACA-ks.org/2012/Qeveria/Zyra\\_e\\_Kryeministrit\\_te\\_Republikes\\_se\\_Kosoves/Behgjet\\_Pacolli.pdf](http://ACA-ks.org/2012/Qeveria/Zyra_e_Kryeministrit_te_Republikes_se_Kosoves/Behgjet_Pacolli.pdf)

<sup>67</sup> ACA: Declaration of Assets, Florin Krasniqi, 2011; [http://ACA-ks.org/2011/Kuvendi\\_i\\_Republikes\\_se\\_Kosoves/Florin\\_Krasniqi.pdf](http://ACA-ks.org/2011/Kuvendi_i_Republikes_se_Kosoves/Florin_Krasniqi.pdf)

<sup>68</sup> Law on Declaration of Assets...Article 13, paragraph 1;

Besides this violation, an even bigger violation is that of the reference that Pacolli ascribes to the companies, according to which companies obey legislation of the countries where they operate, sidelining in this way the principle of equality before the law.

To prove the inability of the ACA to verify the origin of assets, we can suppose that Pacolli would be selected randomly for a full control within the quote of 20% of the registers of the ACA which is done every year. The ACA would never be able to verify the assets of Mr. Pacolli from the format of asset declaration of his, and would never be able to come to a conclusion what activities can be attributed to the increase in assets from 80 Million in 2011, to 125 Million in 2013, which is an increase of 45 Million.

In general, the case of Pacolli reveals arguments and conclusions that connect with the verification of origin of assets of public officials and some violations that are worth attention:

- 1) Through this case the inability of the ACA to verify origin of assets of public officials is proved and a total vacuum on competences of the ACA is established;
- 2) Since Pacolli asked that his assets should not be made public for the year 2009, asking the sidelining of the principle of equality in front of the law, and when the asset declaration was done in the format explained above we can conclude that violations of the Law on Asset Declaration occurred and that in an analogy to Paragraph 3 of Kosovo Constitution that ensures equality at front of law was ignored. Furthermore, with this behavior of the ACA, a complete passivity has played in the face of serious violations, which can be seen as a violation of the ACA itself;
- 3) Also from this case, we understand that the ACA has no instruments to measure usability of the stated data since it has no access to assets situated abroad. As such, the values declared, and especially the increase of wealth from 45 Million are a complete loss of data, since we cannot know if this is a real addition in assets, or if this is a mere assumption from the declaring party.

This case proves best that in the aspect of verification of data, the ACA has serious deficits, which should be reviewed in total in order to increase expectations for a functional asset declaration process.

### 9.2 Orthodox approach on verification: the case of Agim Bahtiri

Another case as a study that verifies the inability of the ACA to verify the accuracy of data and to understand their content from a qualitative aspect, is the case of head of Mitrovica municipality, Agim Bahtiri.

Bahtiri's case, initiated by the ACA was to establish the conflict of interest in which Bahtiri and his partner, Hee Joo Park were involved as shareholders on the company "Green Mushroom

Farm Kosova Sh.p.k”.<sup>69</sup> In the capacity of mayor, Bahtiri proposed to the Municipality Assembly the lending of a property to “Mushroom Park L.L.C”, which is owned by Mr. Hee Joo Park. On this occasion, the ACA concluded as it follows:<sup>70</sup>

“The case is closed since there is no conflict of interest between head of Mitrovica and Agim Bahtiri and “Mushroom Park LLC” because the decision for lending of the land was taken by the Municipality Assembly.”

Arguments given on the occasion of this decision from the ACA imply on these parameters:

- Based on Paragraph 13 of the Law on Prevention of Conflict of Interest, the mayor did not violate any legislation since he did not have a role in decision-making for lending of the land in question;
- Based on the Law for Lending and Exchange of Property, it is the Municipality Assembly who attains the right to give properties for use to the physical and legal personas. The head of the Municipality may hand over a proposal to the Assembly to lend the property (paragraph 6); (note by Çohu!: *the decision of the ACA even in technical aspect is invalid since it refers to the Law L/03-226 i vitit 2010,*<sup>71</sup> *which is substituted when the new law on lending and exchange of property of municipality was promulgated with number 04/L-144*<sup>72</sup>)

According to the legislation, the ACA has concluded that **“the mayor on this case has no decision-role.”** In this case, from the perspective of verification of conflict of interest, the ACA did not take into consideration some important segments, such as the fact that Bahtiri and Park besides being partners in “Green Mushroom Farm Kosova Sh.p.k”,<sup>73</sup> established four years before Bahtiri took the office, were also partners at another company established by the latter, “Green Mushroom Farm” me bazë në Holandë.<sup>74</sup> On the other hand, Lee Park whom the Municipality property has been lent to, has established “Mushroom Park L.L.C” as a new entity on 22 of May 2014.<sup>75</sup> This was done in knowledge that with the company owned by Bahtiri, there will be conflict of interest.

<sup>69</sup> Agency for Registration of Businesses in Kosovo: “Green Mushroom Farm Kosova Sh.p.k”. <http://www.arbk.org/sq/Rezultatet-e-Bizneseve/70562316?nb=0&eb=GREEN%20MUSHROON%20FARM-KOSOVA>

<sup>70</sup> ACA, Decision on the Conflict of Interest: <http://ACA-ks.org/repository/docs/vendim-mbyllje%20k.i-%20Agim%20Bahtiri.pdf>

<sup>71</sup> Official Gazette of the Republic of Kosovo : <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2729>

<sup>72</sup> Official Gazette of the Republic of Kosovo: <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2858>

<sup>73</sup> See the register of business when the mayor of Mitrovica Agim Bahtiri has co-ownership with mr. Lee Park, in the company , Green Mushroom Farm Kosova SH.P.K”. <http://www.arbk.org/sq/Rezultatet-e-Bizneseve/70562316?nb=0&eb=GREEN%20MUSHROON%20FARM-KOSOVA>

<sup>74</sup> Gazeta JnK; “Agim Bahtiri - Përgatitja e Terrenit për Biznes”; Njomza Salihi dhe Behar Mustafa; Gusht, 2014. <http://www.gazetajnk.com/?cid=1,987,8779>

<sup>75</sup> Agency for Registration of Businesses in Kosovo : [http://www.arbk.org/sq/Rezultatet-e-Bizneseve/71062090?nb=0&eb=mushroom&la=0&lp=0&main\\_acitivity=0&other\\_acitivity=0&page\\_b=0](http://www.arbk.org/sq/Rezultatet-e-Bizneseve/71062090?nb=0&eb=mushroom&la=0&lp=0&main_acitivity=0&other_acitivity=0&page_b=0)

Thus, it can be considered that the ACA in its decision did not go further than a textual interpretation of Law, which shows its inability to acquire information that will show connections between the subjects in matter, who in this case have strong ties outside Kosovo. In other words, the ACA could have verified if the capital of the company that is lending property from the Municipality, namely “Mushroom Park L.L.C,” derives from the capital of the other company, “Green Mushroom Farm Kosova SH.P.K”, with the same owner, in which Bahtiri is a shareholder. Hypothetically, it can be expected that in the future Hee Park may use the capital of the company that is established in Kosovo as an investment to increase capital of the other company where Bahtiri is a partner. This means that indirectly, Bahtiri could profit from the company that has used the land from the Municipality, which would constitute a conflict of interest that is completely ignored by the ACA, due to its inability to verify common interest of subjects in matter.

This and other cases show that the ACA is completely unable to verify the accuracy of the stated data on assets of public officials. In our view, this has to be addressed not only as a simple lack of professionalism from the ACA, but above all as a deficiency in its legal mandate.

## 10. Conclusion

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From the above cases related to asset declaration, we can see that this process is very important in the fight against corruption, but at the same time we understand that it is not yet a fully ripe mechanism capable of producing the desired results. The main issues identified speak to a number of problems, which can be categorized into four groups:

*First of all*, problems of technical a nature represent a wide range of procedural defects. These effects influence the work of the ACA, especially when we consider the fact that some important aspects of asset forms are not yet standardized. This can cause a deviation from the standards of filing that an official may do intentionally or not, such as: the lack of a year for an asset appropriation, the lack of name of the owner, or a lack of information on a loan amortization plan. These defects cause violations of the Law on Asset Declaration, which the ACA did not respond to properly.

Some of these anomalies, such as the cases of MPs Hasani and Balje could be avoided with a proactive approach by the ACA, and primarily through offering a cooperation with parties as long as there is a good will to prevent corruption and conflict of interest. Of course, the standardization of asset registers and of terms and notions used to describe assets is highly necessary in order to avoid time technical and procedural defects;

*Secondly*, there are problems of a substantial nature that represent a range of defects in the way a penal act for non-declaration or false declaration is constituted. These defects connect with the methodology of the work of the ACA and the way it handles violations. As explained in this analysis, the establishing of a penal case on non-declaration or false declaration was not always done by the ACA. We covered two cases, those of MPs Hasani and Balje, in which the conclusion of the ACA was overruled by the court as baseless. These cases show that a clear mandate and methodology should be enshrined with legislation in order to have a declaration process oriented toward results and not structural aspects of it. We also tackled the lack of arithmetic analysis of the incomes of public officials, as opposed to their assets and life-style;

*Thirdly*, there are problems related to the mandate of the ACA that influence directly the process of asset declaration, and its integrity and transparency. We have shown a range of problems, such as the lack of competences on access to bank accounts, or verification of the origin of assets situated abroad. These segments are of such an importance that they may be decisive to the success of the declaration process. As long as the Agency is not equipped with a mandate to cover these essential functions as well, the process remains with deficiencies and without real possibilities to establish when a penal act is constituted as foreseen by law;

*Fourth*, there are problems of a legal nature that represent a lack of clarity over the implementation of the court's decisions and sanctions related to the Penal Procedural Code, the non-implementation of legislation, and the reasons for this. As we argued, the enacting of sanctions in most of the cases did not correspond with the punishments with incarceration and fines as foreseen in Particle 437 of PCRK, but were alienated into "alternative sanctions". This nature of the problem may derive from the three above-mentioned categories. It is needed that the process of asset declaration is not directly associated with the sanctions of courts, but that courts and sanctions should be seen only as independent factors that act based on the evidence that are given to serve the process of asset declaration as a whole.

In general there is a relatively new tradition of asset declaration, and some time will be needed in order to have it fully operational in order to produce the expected results. However, the lack of initiative to have improvements cannot be excused. On the contrary, a process that has been realized in structural instance only, without a focus on its substantial aspects, will not produce effects thus the corruption will thrive and prevail.

## 11. Key recommendations

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In the logical flow of the arguments of this analysis, in which some aspects of policies have been laid out, recommendations of Çohu! are as follows:

### Recommendations on the legislative aspect:

- 1) To review actual legislation in order to harmonize anti-corruption laws with other relevant laws particularly with the Penal Code and the Penal Procedural Code;
- 2) To review and change the Law on Establishing of Anti-corruption Agency in order to address the deficiencies over the mandate of the ACA, particularly the part of the mandate that deals with full control of assets, and in parallel to define the competences and instruments needed for the realization of the full control of assets;
- 3) The future legal reviews should include and pay special attention to the socio-economic and socio-cultural aspects in order to have the anti-corruption fight reflecting the political corruption, including the hot-spots of its presence, physiognomy of this phenomena, and vertical and horizontal prevalence of it;

### Recommendations regarding asset declaration:

- 1) Instruments the extent to which the ACA can verify the origin of assets must be clearly defined;
- 2) To have the verification of assets situated abroad addressed so that the mandate of the ACA has specified mechanisms that are necessary to exercise this function;
- 3) To address the problem of the access to the bank accounts of public officials from the high ranks;
- 4) The anti-corruption Agency should be strengthened with professional staff for investigations and analyses of the arithmetical relations between the incomes and assets, and the life-style of public officials;
- 5) Notions of asset values should be standardized based on the market values in order to have usable data on the value of assets, such as real estate, and not be based on the assumption of declaring parties;
- 6) To have the naming of assets standardized since the chaos on the terms used to represent them create confusion over the real value of declared assets, which often are declared with different names but share the same value, or vise-versa. There is a need to have a precise naming of real estate in order for the ACA to have an easier task of evaluation of these assets;
- 7) To ask for more responsibility at the contact points, since a number of non-declaring officials in cases of assumption of office did not declare their assets, which may be as a result of lack of proper information provided to them;



- 8) To create a real space for civil society to cooperate with the ACA in order to have as much as possible motivation in the fight against corruption;
- 9) The Anti-corruption Agency should have access in a proactive manner to registering the cases of false declaration of assets through contacting the declaring parties, and through offering them a possibility for explanations and additional information in order to contribute to the process of asset declaration. This serves to avoid the usual approach of a direct proceeding of cases to the courts;
- 10) The Anti-corruption Agency should undertake an analysis of the substantial nature on the reasons, the kind the and nature of corruption and identify possible hot-spots;

### **Recommendations related to the tackling of anticorruption cases**

- 1) The trend of anti-corruption cases treated by courts should be increased, particularly so when the specifics of penal cases are connected with non-declaration or false declaration of assets as foreseen by the Penal Code;
- 2) To have sanctions of merit as foreseen by the Penal Code, meaning that sanctions should be with incarceration and monetary fines, but not as it was a practice often to enact alternative sanctions which are not foreseen by Paragraph 437 of the Penal Code;
- 3) To have statistical data harmonized in cases initiated by the ACA, those proceeded by the prosecutor's office and the courts, respectively to have specification of the nature of cases. This will make it clearer as to determine if we are dealing with individuals or cases that may include several regarding the specific acts, as well as if we are dealing with the act of "non-declaration" or "false declaration", since such a representation makes analysis much easier for the interested parties, including the Anti-corruption Agency.