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## Reaction against amendment of Article 437 of the Criminal Code by the Ministry of Justice

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The Ministry of Justice (MoJ) has recently proposed an amendment to the Criminal Code of the Republic of Kosovo, namely article 437 which regulates the issue of failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations by senior public officials. Article 437<sup>1</sup> is very clear in regulating the sanctions regarding the failure to report or falsely reporting assets by senior public officials.

Organization Çohu!, Kosova Democratic Institute (KDI) and Fol Movement are against changes/interventions in article 435 of the Criminal Code as it was proposed by MoJ.

The proposal from MoJ, adopted by the Government of Kosovo, aims at introducing **a motive** regarding the concealment of assets by senior public officials. This amendment to the Criminal Code would make it impossible to charge and even less to convict senior public officials who do not report (conceal) their assets in conformity with obligations of the Law on Declaration of Assets.

The amendment of the Criminal Code, proposed by MoJ, is essentially tendentious and as such reveals the affinity of the government to reduce transparency and accountability of senior public officials. This is because it would be very difficult in practice for judges to prove the motive behind the 'failure' to report or falsely reporting property given the fact that officials in these cases, always will try to argue that they did not do this in purpose, or that they have forgotten to declare a part of their property.

In this context, with this proposal for amendment, MoJ would contribute more to the amnesty of officials that obtained wealth illegally rather than establishing effective rule in this field.

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<sup>1</sup> Article 437 - Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations:

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.



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The codification of failure to declare and false declaration of assets in the Criminal Code is very clear and does not allow space for misinterpretation. The criminal sanction (failure to report or falsely reporting) is considered that is committed in the moment when the higher public official does not report, or falsely reports (hides) its assets in the time stipulated by the Law (1-31 March), and if the data that is foreseen by law to be reported is not, than it is considered that the criminal sanction of falsely reporting assets is committed.

The reasons that are used by the Minister of Justice, Mr. Hajredin Kuçi to justify the initiative are not based on facts. This is because the problems that emerged with some Members of Assembly of Kosovo regarding the incomplete reporting of assets can be regulated and avoided by the Anti-Corruption Agency alone and not by amending the Criminal Code.

The decision to criminalise 'refusal to report', as well as 'false reporting' of assets in general is one of the most substantial advances of anti-corruption legislation. As a direct result of criminalisation of 'refusal to report' assets by senior public officials, the number of those who fail to meet this obligation has drastically decreased. In 2012, when refusal to report assets by senior public officials was not a criminal offence, the number of those who did not report was 216, whereas in 2013 and 2014, this number has substantially decreased to 35, respectively to only 2 officials who did not report their assets.

According to official data from Kosovo Judicial Council, only during 2014, there were 181 cases involving article 437 of the Kosovo Criminal Code, failure to report or falsely reporting assets. Of these, 28 were reviewed and 153 are left for 2015. Out of 28 resolved cases in 2014 that are subject of Art. 437 (failure to report or falsely reporting assets), the statute of limitations applied to 9 cases (seven in Mitrovica, one in Prishtina and one in Podujeva).

The Ministry of Justice and the government should be concerned about this indicator and should try to draft new norms that would make it possible to verify the accuracy of reported data and controlling of origin of assets, including the enhancement of powers of ACA to verify and control assets that officials have abroad.

*Organisation of Democracy, Anti-Corruption and Dignity, ÇOHU!*

*Kosovo Democratic Institute- KDI*

*Fol Movement*

[www.cohu.org](http://www.cohu.org)

[www.levizjafol.org](http://www.levizjafol.org)

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