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Report on the results of application of the Law on confiscation of property derived from a criminal offense, with special reference to the management of seized property

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Abbreviations

AC	Anti-Corruption
ACA	Anti-Corruption Agency
AP	Action Plan
CHU	Central Harmonization Unit
APCH 23	Chapter 23 of the Acquis Communautaire
Council	The Council for the implementation of the Action Plan for Chapter 23
CSO	Civil Society Organization
EC	European Commission
EU	European Union
IPA	Instrument for Pre-Accession Assistance
IT	Information Technology
MoF	Ministry of Finance
MoJ	Ministry of Justice
MPs	Members of Parliament
NACS	National Anti-Corruption Strategy in the Republic of Serbia for the period 2013-2018
NAI	National Audit Institution
NGO	Non-Governmental Organization
NS	National strategy
PM	Prime Minister
PS	Public Sector
SWOT	Strengths, Weaknesses, Opportunities, Threats
UNCAC	United Nations Convention against Corruption
WG	Working Group

1 Introductory notes

The fight against crime, regardless of whether it is a classic crime or modern forms such as organized crime or white-collar crime has a special significance in the criminal systems of almost all countries. The analysis that follows focuses on a specific type of seizing the assets resulting from a criminal offense, commonly referred to as "*extended seizing of assets*."

In essence, this concept is relatively new and could be characterized as administrative seizing of assets, through determining the origin of the property of a natural person, but also as a special way of determining the tax on the increase of property for which the person cannot prove that it was obtained in legal manner.

As far as the Republic of Serbia is concerned, extended confiscation of assets was introduced into the legal system in 2008 (*implementation of the law was postponed to 1 March 2009*) based on the Law on Confiscation of Property derived from a Criminal Offense[1]. A few years later, a new Law on Confiscation of Property derived from a Criminal Offense[2] (hereinafter: the Law) was adopted, which was amended several times, in order to enable its more adequate application in practice, which in turn should contribute to better results in practice, which from the aspect of the mentioned regulation, are most often measured through the ratio of temporary and permanently seized property of a certain person.

Like most modern countries, the Republic of Serbia has started regulating this matter based on international documents, i.e. standards prescribed by them (basic terminology, the concept of seizure, shifting the burden of proof to the defendant in the part concerning the legality of acquiring property, etc.). However, as is the case with majority of international documents, each of the signatory states is enabled to create, in the best possible way, appropriate mechanisms that contribute to the realization of the norms and standards envisaged by them in practice.

Since the Republic of Serbia is undergoing the EU accession process, it seems that monitoring the situation in the field of the rule of law is necessary, especially if we take into account certain assessments concerning the situation in the judiciary, but also the presence of corruption. One of the key negotiating chapters is Chapter 23, which is divided into four thematic units, which consist of: judicial reform, anti-

[1] *Off. Gazette of RS, no. 97/08.*

[2] *Off. Gazette of RS, no. 3212, 94/16 and 35/19*

corruption policy, fundamental rights and the rights of EU citizens. In accordance with the above, the Negotiating Group for Chapter 23, in September 2015, adopted an appropriate Action Plan which, among other things, indicated the need to introduce measures to improve the conduct of financial investigations and activities related to the management of seized property (p. 141) with special emphasis on the National Strategy for the Fight against Corruption for the period from 2013 to 2018.

The recommendation from the screening report indicates that it is necessary to ensure that the legislative and institutional framework allows for effective temporary and permanent confiscation and management of proceeds from crime, which would lead to more confiscation cases. The following impact indicators are foreseen: (1) a positive assessment of the European Commission of the annual progress report for Serbia and (2) a gradual increase in the number of decisions on temporary and permanent confiscation of proceeds from crime and a gradual increase in seized goods. The "adoption of the Law on Amendments to the Law on Confiscation of Property derived from a Criminal Offense" was stated as a basic indicator of a good result (p. 202).

Although the result was achieved in terms of amendments to the Law (*noting that the Law on Determining the Origin of Property and Special Tax was adopted in March 2020*), it seems necessary to consider the essential application and results in practice. For such an analysis, it is necessary to look at statistical indicators, but also to analyze court practice. The report compiled for the needs of the project "*IPA/2017 Countering Serious Crime in the Western Balkans*" points out that the countries of the Western Balkans have a problem with recording data (*statistics*), indicating that it is impossible to draw conclusions on a legal issue, based on one or two examples from practice, which is the manner of the mentioned countries (p. 13).

For example, in the part concerning the Republic of Serbia, it was pointed out that there is no standardized system for temporarily/permanently seized assets. According to the report, none of the six countries in the Western Balkans has adopted a National Strategy to address property restitution. On the other hand, it is pointed out that there is harmonization of norms with the norms prescribed within the framework of international documents. In other words, it could be stated that the above-mentioned Report draws attention to the necessity for the norm to have its application in practice, which should be verifiable through statistical and other data. In relation to the Republic of Serbia, it is pointed out that it is the only country that is not a member of the regional network through which cooperation between states is realized in terms of management and disposal of property derived from crime (BAMIN).

Having in mind these remarks, this Report consists of several basic units: (1) normative framework, with special reference to the Law on Confiscation of Property derived from a Criminal Offense in the part concerning the administration of seized assets, but also the work of the Directorate for Administration of Seized Assets; other regulations of importance for the subject analysis were also

considered, such as the recently adopted Law on Determining the Origin of Property and Special Tax; (2) analysis of the application of regulations in this area through the review of statistical data recorded by the Republic Public Prosecutor's Office and the Directorate for Administration of Seized Assets, from the aspect of the number of temporarily and permanently confiscated property; certain examples from case law and (3) concluding remarks are especially pointed out, within which the basic recommendations of the author are highlighted.

Speaking about the applied methodology, its basis is legal analysis of the applied norms, followed by content analysis and processing of available statistical data.

2 Legal framework

2.1 Overview of international standards

In order to fight crime of international nature more successfully, we need international cooperation. This also required a normative basis because different legal solutions in national legislations were not sufficient for a successful fight against not only organized crime, but also other serious forms of crime. For this reason, such normative basis was adopted through international documents that regulate the most important issues in this area, which contain rules, i.e. standards for the successful fight against crime, and as such represent the basis for regulating national legislation.

When it comes to seizure of assets proceeds from crime, several important international documents, adopted under the auspices of the UN, i.e. the Council of Europe, ratified by the Republic of Serbia, will be pointed out here, noting that for the sake of clarity of the report only some of the provisions that are relevant to the subject matter.

1. The UN Convention against Illicit Traffic of Narcotic Drugs and Psychotropic Substances, 1988 (*Vienna Convention*) [3] - This Convention primarily refers to the profits from organized crime resulting from drug trafficking and provides for the necessary measures to confiscate those profits. In accordance with the provisions of the Convention, confiscation means a penalty or measure ordered by a court following criminal proceedings, which results in the final seizure of assets. It also deals with the issue of the burden of proof and the possibility of introducing the reverse burden of proof during the temporary seizure of assets. The term "freezing" or "confiscation" of property, in order to ensure permanent confiscation, means a temporary ban on the transfer, conversion,

[3] Law on Ratification of the UN Convention against Illicit traffic of Narcotic Drugs and Psychotropic Substances, *Official Gazette of the SFRJ – International agreements*, no. 14/90.

disposal or movement of property or temporary takeover or control of property on the basis of an order issued by a court or other competent authority (Article 1, item 1). On the other hand, confiscation or "seizure" means permanent deprivation of property rights, based on a court order or other state body. The obligation to seize (confiscate) property is regulated within Article 5 which stipulates, *inter alia*, that each Party shall adopt the necessary measures to enable its competent authorities to identify, detect, freeze or seize profits, property, instruments or any other items referred to in Article 5 par. 1 of the Convention, all for the purpose of final seizure.

2. The International Convention for the Suppression of the Financing of Terrorism (1999)[4] (*New York Convention on the Financing of Terrorism*) – This Convention is significant since each signatory state has to define measures for identification, discovery, freezing and seizure of assets used for financing terrorism.
3. The UN Convention against Transnational Organized Crime and Additional Protocols 2000 (*Palermo Convention*)[5] - The Convention entered into force in 2003 and relates to crimes related to organized crime, money laundering, corruption and other serious crimes. Its main purpose is to effectively promote international cooperation in preventing and combating organized crime. Seizure of assets is provided by the provision of Article 12 and States are required to adopt, to the fullest extent permitted by their legal system, measures to enable the confiscation of: (a) proceeds of crime or property the value of which is derived from, and (b) property, equipment or other instruments used; or intended for use in the commission of the offenses set forth in this Convention. Also, it is characteristic of this Convention to define certain terms that are relevant for seizure of assets, such as organized crime groups, property, proceeds of crime, freezing/seizing of property, confiscation, etc. Furthermore, the provisions defining the procedures regarding international cooperation (Article 13) as well as the ways of disposing of confiscated property (Article 14) are also important.
4. The UN Convention against Corruption 2003[6] (*New York Convention on Corruption*) - The UN Convention against Corruption, entered into force in 2005 and relates to the prevention, investigation and prosecution of corrupt crimes in the public and private sectors. It is the obligation of the signatory states to adopt measures relating to the seizure of assets resulting from offenses

[4] Law on ratification of the International Convention on prevention of financing of terrorism, *Official Gazette of SRJ – International Agreements*, no.7/02.

[5] Law on ratification of the UN Convention against transnational organized crime and supplementary protocols, *Official Gazette of SRJ – International Agreements*, no. 6/01.

[6] Law on ratification of the UN Convention against corruption, *Official Gazette of SRJ – International Agreements, no*. 12/05

covered by the Convention, as well as property which has been or should have been used in the commission of such offenses. Also, Articles 53-55 of the Convention regulate international cooperation in this area, from the aspect of mutual recognition of decisions on seizure of assets, between states (e.g. measures for immediate restitution of property, mechanisms for restitution of property through international cooperation in confiscation, as well as international cooperation in order to carry out confiscation).

5. The CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime from 1990[7] (*Strasbourg Convention*) that is, determining the special powers of the investigative bodies, in order to facilitate the tracing of illegal revenues, as well as their identification. Within the provision of Article 1, basic terms are defined, including the term "property", which means property of any description, whether tangible or intangible, movable or immovable, as well as legal documents or instruments proving ownership or interest in relation to such property.
6. The CoE Criminal Law Convention on Corruption, 1999[8] - This Convention emphasizes the fact that corruption threatens the rule of law, democracy and human rights, undermines good governance, justice and social justice, destroys competition, impedes economic development and jeopardizes the stability of democratic institutions and moral foundations of society. For this reason, each signatory state shall adopt such legislative and other measures as may be necessary to enable the confiscation or otherwise deprivation of property rights of the proceeds and profits from crime established in accordance with this Convention, or of property the value of which corresponds to those revenues (Art. 19 para. 3). On the other hand, the provision of Article 23 prescribes measures to facilitate the collection of evidence and confiscation of profits (e.g. use of special investigative techniques, freezing and seizure of instruments and profits from corruption, etc.)
7. The CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism of 2005[9] (*Warsaw Convention*) - The Warsaw Convention replaces Strasbourg, in order to improve the rules and provide for a number of novelties. Within Article 1, defines a number of terms used for the purposes of the Convention (for example, in Article 1, item b, regulates the term property which includes property of any description, tangible or intangible, movable or immovable, and legal documents or instruments which One of the most important

[7] Law on ratification of the Convention on laudering, search, seizing and confiscation of proceeds from crime, *Official Gazette of SRJ – International Agreements*, no. 7/02.

[8] Law on ratification of Criminal Law Convention on Corruption, *Official Gazette of SRJ – International Agreements*, no. 2/02 and *Official Gazette of SMN – International Agreements*, no. 18/05.

[9] Law on ratification of the CoE Convention on laundering, search, seizing and confiscation of proceeds from crime and financing of terrorism, *Official Gazette of RS – International Agreements*, no. 19/09.

innovations in this Convention, in relation to the Vienna, Strasbourg and Palermo Conventions, concerns the burden of proof, namely that the provision of Article 3, paragraph 4, stipulates that each Contracting Party should to enact legal and other measures that may be necessary, to require that, in the case of serious or criminal offenses defined by domestic law, the perpetrator must prove the origin of the alleged proceeds or other property subject to confiscation, to the extent that such a request is consistent Pursuant to the provision of Article 5, the freezing, seizing and confiscation was extended to the property into which the income was transformed or converted, then to the property acquired from lawful sources, if the proceeds have been mixed, in whole or in part, with such assets, up to the estimated value of those "mixed" assets, as well as the profits or other benefits derived from the property derived from a criminal offense, from the proceeds acquired by crime transformed or converted or from the assets with which the proceeds of crime are mixed, up to the estimated value of the "mixed" assets, in the same manner and to the same extent as the property derived from a criminal offense. What is important to point out is that each party has committed itself to adopting the necessary legal and other measures to enable it to ensure the proper management of frozen or confiscated property (Article 6).

For all the listed documents, it can be stated that in their essence they have one basic goal, and that is that no person can keep the property that originated from the crime, i.e. they are based on standards that should facilitate seizure of assets. Uniformity is also reflected in the definition of many terms that are important when confiscating property derived from a criminal offense, such as the terms property, income, property freezing, inversion of the burden of proof, confiscation, organized criminal groups, etc.

2.2 Normative framework in the Republic of Serbia

Legal framework for confiscation of proceeds from crime, in addition to systemic regulations - the Criminal Code[10] (hereinafter: CC) and the Criminal Procedure Code[11] (*hereinafter:* CPC) is governed by the Law on confiscation of property derived from a criminal offense (*marked in the introductory remarks as "Law"*) which in this sense represents a *lex specialis*. In addition to the mentioned regulations, the Law on International Legal Assistance, the Law on the Organization and Jurisdiction of the State Bodies in the Suppression of Organized Crime, Terrorism and Corruption, the Law on Enforcement and Security, etc. are also important. Having in mind the subject of this report, only the mentioned *lex specialis* will be

[10] *Off. Gazette of RS*, no. 85/2005, 88/2005 - amend., 107/2005 - amend., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019

[11] *Off. Gazette of RS*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019

subjected to a detailed analysis, as well as the relevant regulations/ordinances that are the basis in the work of the Directorate for Administration of Seized Assets. On the other hand, other regulations that are important for the seizure of assets will be briefly analyzed, in order to create a general picture.

Overview of the most important provisions of the CC

The Criminal Code prescribes three property-related measures, namely: a fine, seizure of assets, which belong to the system of criminal sanctions and seizure of assets as special measures outside the system of prescribed criminal sanctions. Due to the nature of the security measure of seizure of assets and relation towards special measure of seizure of assets, we shall analyze this measure as well.

Seizure of Assets

In the system of criminal sanctions, this measure is classified as a security measure and it is regulated by the provision of Article 87 of the CC. In order to impose the measure of seizure of assets, it is necessary to meet the conditions determined by law. As a rule, there has to be a court decision by which the perpetrator was found guilty and to whom a criminal sanction was imposed, or according to which the perpetrator was found guilty and acquitted. However, in terms of Article 535 of the CPC, the items which have to be seized according to the CC in order to protect general security or for moral reasons, will be confiscated even when the criminal proceedings are not finalized by a verdict finding the accused guilty or by a decision imposing a security measure of compulsory psychiatric treatment.

It may be determined case-wise: (1) if it was intended as means to commit a criminal offense; (2) if it was used to commit an offense; (3) to which extent it originated from a criminal offense; (4) if there is a danger that it will be used again to commit a criminal offense; or (5) if this is necessary for the protection of general security or for moral reasons.

The application of this security measure does not affect the right of third parties to compensation for damages due to the seizure of assets from the perpetrator of the criminal offense. The imposition of this security measure is optional, although in some cases the law may provide for the mandatory seizure of assets, as well as their mandatory destruction.

Seizure of assets is a specific criminal sanction, which includes elements characteristic for security measures and some elements of property penalty because seizure of assets affects the perpetrator's property, reducing it and as a prescribed security measure has a pronounced preventive character, thus differing from the other two measures.

Seizure of Property Gain

It is regulated within the provisions of Article 91, 92 and 93 of the CC. This measure is classified as a specific criminal measure and its goal is the return of property acquired through the commission of a criminal offense (priority is given to restitution, returning the property to the state which existed before the commission of the criminal offense).

The basis for seizure of property gain is based on the principle that no one can keep the property gain obtained by a criminal offense, which presents general principle of mandatory application of this measure (Article 91, paragraph 1 of the CC).

Property gain obtained by a criminal offense for oneself or another person is confiscated on the basis of a criminal offense committed in criminal proceedings under the conditions and in the manner prescribed by law: that a court decision determines perpetrator's guilt and that cause and consequence relationship between the actual criminal act which is being tried and the property benefits is proven; that no property claim has been filed by the injured party or, if it has been filed, that its amount is less than the property gain.

The perpetrator shall be deprived of money, valuables and any other assets obtained as proceeds of crime, and if confiscation is not possible, the perpetrator shall be obliged to hand over in exchange the proceeds corresponding to the value of the proceeds of crime or derived from the crime or pay the amount of money corresponding to the obtained property benefit (Article 92, paragraph 1 of the CC). The property gain obtained by the criminal offense is also confiscated from the legal or natural person to whom it was transferred without compensation or with compensation that obviously does not correspond to the real value (Article 92, paragraph 2 of the Criminal Code).

Property gain in the criminal and legal sense is any value that the perpetrator or a third person to whom it is transferred, acquires by committing a criminal offense or on the occasion of committing a criminal offense, and which on the basis of Article 112 item 36 of the CC represents and asset of every kind, tangible or intangible, movable or immovable, valuable or invaluable, and a document in any form proving a right or interest in relation to such good.

The rights of an injured party with regard to the property claim are protected by the provision of Article 93 of the CC. A person damaged by a criminal offense has the possibility of asserting a property claim and an advantage in implementation of the measure of seizure of assets gain. If the property claim of the injured party has been accepted in the criminal procedure, the court will order the confiscation of the property gain only if it does not exceed the adjudicated property claim of the injured party in that amount. An injured party who has been referred to litigation in respect of his property claim may request that it be settled from the confiscated property gain if he initiates litigation within six months

from the day on which the decision by which he was referred to litigation becomes final. An injured party who has not filed a property claim in criminal proceedings may request settlement from the confiscated property gain if, in order to determine his/her claim, he/she initiated a lawsuit within three months from the day of being informed about the judgment imposing the confiscation measure, and no later than three years from the day the decision on seizure of assets gain becomes final.

Having in mind different court practice interpretations of the introduction of the measure of confiscation of property derived from a criminal offense, we will point out the similarities and differences of these *sui generis* measures, measures of seizure of property gain and measures of seizure of assets, as well as their relations. They are similar because both measures have the basic goal of implementing the principle that no one can get rich by committing crimes. The measure of seizure of property gain is related to a certain criminal offense and is determined in the regular criminal procedure, as a secondary but obligatory measure. The measure of seizure of assets, of the property resulting from the commission of a criminal offense, is the main subject of the proceedings, its application is not related, although it is conditioned by a specific criminal offense and is mandatory when there is a disproportion in the property of the perpetrator and for which there is no evidence of legal acquisition. Both measures can be imposed on one and the same person, in a regular criminal procedure, a measure of seizure of assets for a specific criminal offense and in another procedure a measure of seizure of property gain. In that sense, the decision of the AC in Belgrade, no. Kz. Poi 8/16 by which the court rejected the appeal of the Higher Public Prosecutor and upheld the decision of the Higher Court in Belgrade rejecting the request for temporary seizure of assets, confirming the position of the Higher Court that assets or property gain gained by committing a specific crime which is tried in regular procedure, cannot be the subject of a request for temporary seizure of assets, but the provisions of Article 91-93 of the Criminal Code are applied to those assets, i.e. property gain as subject of actual criminal offense, and that only the measure of seizure of assets gain in a specific procedure can be applied to those assets.

Law on Confiscation of Property derived from a Criminal Offense

The law prescribes a special property-related measure imposed on perpetrators of criminal offenses, which refers to seizure of assets obtained from a criminal offense and regulates the conditions, procedure and bodies responsible for detecting, confiscating and administering assets of natural and legal persons originating from a criminal offense. The goal of the law is to confiscate the entire property acquired through the commission of criminal acts from an individual by introducing a new measure, i.e. to enable the state to fight the most serious forms of crime in a more efficient way.

The first condition for the application of the Law is defined in Article 2, in such a way that the criminal offenses in relation to which the Law can be applied are listed. Application is possible in relation to acts

of organized crime, and then to other serious crimes: aggravated murder, kidnapping, dispersing, obtaining and possession of pornographic material and exploitation minors for pornography purposes, crimes against intellectual property, against property, against the economy, then the criminal offense of unauthorized production, possession and distribution of narcotics, criminal offenses against public order and peace, against authorized officials, against humanity and other goods protected by international law. What is important to mention is that criminal offences from a specific group to which the Law refers to are detailed within certain groups of criminal offenses. A conviction for one of the listed criminal offenses, with the fulfilment of other legal conditions, creates a presumption that the property of the owner arises from one or more criminal offenses that are not proven, but can be disputed.

Similar as in other international documents, this Law also defines basic definitions (Article 3) in the following manner:

1) an asset is a property of any kind in the Republic of Serbia or abroad, tangible or intangible, movable or immovable, valuable or invaluable, shares in a legal entity and documents in any form proving the right or interest in relation to such asset. Asset is also considered to be income or other benefit realized, directly or indirectly, from a criminal offense, as well as the good into which it has been converted or with which it is mixed;
2) proceeds from a criminal offense is property of an owner which is in obvious disproportion to his/her legal income;
3) seizure is considered temporary or permanent confiscation from the owner of property arising from a criminal offense;
4) an owner is defendant, the accused associate, testator, legal successor or a third party;
5) an accused is a suspect, a person against whom criminal proceedings have been initiated or convicted for a criminal offense referred to in Article 2 of this Law;
6) an accused associate is a witness associate, accused associate and convicted associate;
7) a testator is a person against whom, due to death, criminal proceedings have not been initiated or have been suspended, and in criminal proceedings against other persons it has been established that he/she committed the criminal offense referred to in Article 2 of this Law together with those persons;
8) Third person is a physical or legal person to whom the proceeds from crime were transferred;
9) Legal successor is a successor of the accused, witness associate, testator, third person or their successors.

The law prescribes a special procedure for seizure of proceeds from crime in relation to the CPC. However, many general provisions are not prescribed and the CPC applies to them, which in this field represents a *lex generalis*, as stated in the Law itself.

The provision of Article 4 of the Law, prescribes the possibility of using the evidence collected in criminal proceedings, as well as the possibility of confiscating other property corresponding to the value of property originating from a criminal offense, if seizure of assets derived from a criminal offense is not possible.

The bodies responsible for detecting, confiscating and administration of proceeds from crime are: the public prosecutor, the court, the MoI organizational unit responsible for financial investigation and the Directorate for Administration of Seized Assets within the Ministry of Justice (*hereinafter*: the Directorate). When it comes to the parties in the procedure, they are the public prosecutor and the owner of the property arising from the criminal act. On the other hand, the procedure of seizure of proceeds from crime consists of three phases: financial investigation, temporary seizure of assets and permanent seizure of assets.

In order to expand the possibility of applying the Law, the provision of Article 16a establishes police duty to, when submitting a criminal report to the public prosecutor about a criminal offense within the jurisdiction of the Law, submit data on the property of the suspect and a third party collected in the pre-investigation procedure.

Specific rules on the burden of proof are the most important feature of the procedure of confiscation of proceeds from crime. Namely, the rules of proof have been changed in relation to the criminal procedure in which the burden of proof is exclusively on the prosecutor, into the so-called rules on the reverse burden of proof (which is in line with international standards). More precisely, this type of procedure is about the division of evidence between the public prosecutor and the property owner. The burden of proof for the public prosecutor is the claim that a certain person is the owner of proceeds from crime, i.e. to prove the disproportion between property and legal income, which is based on evidence gathered in the financial investigation, while the property owner is given the opportunity to refute the fact that the proceeds originate from crime.[12]

Financial investigation

The financial investigation is the first and invisible phase in the procedure and is aimed at examining the proceeds that are presumed to have originated from a criminal offense. To initiate a financial investigation, the *grounds for suspicion* that the owner owns significant proceeds from crime are sufficient, while later a higher degree of suspicion is required to file a request for temporary seizure and to pass a decision on temporary seizure of assets - *reasonable suspicion*. Authorities and persons

[12] The Section III of the Law regulates in detail the following items: financial investigation (art. 17-22), temporary seizure of property (art. 23-37) and permanent seizure of property (38-48).

participating in the financial investigation are obliged to act urgently, and the data related to the financial investigation are confidential and represent classified information.

Speaking about significant assets, their value is determined by the provision of Article 25 par. 1 pt. 3 of the Law and the value has to exceed the amount of one million and five hundred thousand dinars.

The financial investigation is conducted by a special unit within the Ministry of Interior. The evidence of property, legal income, lifestyle and living expenses of the defendant, accused associate or testator, evidence of property inherited by the legal successor, or evidence of property and compensation for which the property was transferred to a third party and may last until termination of the procedure for permanent seizure of assets are collected during the financial investigation. The Law does not specifically list the evidentiary actions undertaken by the financial investigation unit, since the similar application of the CPC is envisaged, therefore all evidentiary actions envisaged by the provisions of the CPC can be undertaken, which means special evidentiary actions, as well as evidence collected in criminal proceedings. The obligation of state and other bodies, organizations and public services to enable the Financial Investigation Unit to inspect and submit records, documents and other items that can serve as evidence in the financial investigation was emphasized. The law does not prescribe the conditions for the suspension of the financial investigation; however, it derives from the Law itself that it is suspended if a final acquittal for the criminal offense under Article 2 of the Law occurs.

Temporary seizure of assets

The procedure for seizure of assets begins with the request of the public prosecutor for temporary or permanent seizure of assets and it represents the second phase of the procedure, preventive in nature, and is conducted when there is a probability that later confiscation of proceeds from crime would be difficult or impossible.

The request for temporary seizure of assets must contain: information about the owner, the legal title of the crime, specification of the assets to be seized, evidence of the property that the owner possesses or possessed and his/her legal income, circumstances that indicate that there is a reasonable suspicion that the proceeds are from crime, circumstances which indicate the existence of an obvious disproportion between the property owned by that person and legal income, as well as the reasons justifying the need for temporary seizure of assets. The request is decided by the pre-trial judge, i.e. the president of the council before which the main trial is held, depending on the stage of the procedure. The request is delivered to the owner without delay with the legal instruction that he/she can submit a response to the request within fifteen days, evidencing the origin of the property. If there is a likelihood that the owner will dispose of the proceeds from crime before the court decides on the request for temporary seizure of assets, the public prosecutor may issue an order prohibiting the disposition of property and the temporary seizure of movable assets. The ban on disposing of assets and temporary seizure of movable

assets by order of the prosecutor may last until the court reaches a decision upon the request of the prosecutor on temporary seizure of assets, for a maximum of three months.

Upon receiving a reply or upon expiration of the deadline for reply, the court is obliged to decide on the request within eight days. The court decides without a hearing, by passing a decision on the adoption or rejection of the request for temporary seizure of assets. The decision on the adoption of the request is made if certain conditions are met by law: (1) there are grounds for suspicion that a natural or legal person has committed a criminal offense under Article 2 of the Law; (2) there are grounds for suspicion that the property of the owner originated from a criminal offense; (3) the value of the property exceeds the amount of one million and five hundred thousand dinars and (4) there are reasons that justify the need for temporary seizure (Article 23, paragraph 1 of the Law). If the listed conditions are not met, the court will reject the request of the public prosecutor by a decision.

In order to protect conscientious acquirers, it is expressly provided that the court may determine that temporary seizure does not apply to property to be exempted by applying the rules on protection of conscientious acquirer, and may leave the owner with a part of temporarily seized assets, if its confiscation would jeopardize maintenance of the owner or the person he is obliged to support.

The parties may file an appeal against the decision on the request for temporary seizure of assets within eight days, whereby the appeal does not delay the execution. Along with the appeal, the owner may submit evidence of the legal origin of the temporarily seized assets. Upon receipt of the appeal, the second instance court shall schedule a hearing within fifteen days, to which it shall summon the public prosecutor, the owner, his defense counsel or his attorney. The decision on the appeal is made by the second instance court within eight days after the hearing. The appellate court may revoke the decision only once.

Temporary seizure of assets ceases if: the public prosecutor does not submit a request for permanent seizure within six months from the day of delivery of the final judgment which determined that the act referred to in Article 2 of the Law; if it is legally terminated before the expiration of the aforementioned period of six months; be replaced by a measure prohibiting the disposal of temporarily seized assets.

Temporary seizure may last the longest until the court decides on the request for permanent seizure of assets. Namely, the court is obliged to review the decision ex officio at least once a year, and when it deems it justified, it can revoke it or replace it with a measure prohibiting the disposal of temporarily seized assets, at the proposal of the Directorate.

Permanent seizure of assets

The procedure for permanent seizure of proceeds from crime is urgent and it represents the final stage in the decision-making process at the request of the prosecutor. For permanent seizure of proceeds from crime, the public prosecutor shall submit a request within six months from the day of delivery of the final judgment which determined that a criminal offense from the catalogue of criminal offenses prescribed by law was committed. The request must contain: (1) the final judgment; (2) data on the accused or accused associate; (3) the legal name of the offense; (4) specification of assets to be confiscated; (5) evidence of the assets that the defendant, i.e. the accused associate owns or has owned and has legal income; (6) circumstances that indicate that the assets originated from a criminal offense, i.e. circumstances that indicate the existence of an obvious disproportion between the property and legal income, and (7) reasons that justify the need for permanent seizure of assets. The request for permanent seizure against the legal successor must also contain evidence that the legal successor inherited the proceeds from crime, and the request against a third party and additional evidence that the proceeds from crime was transferred in order to prevent seizure.

The extra-procedural council decides upon the request. Upon receipt of the request, the court shall schedule a preparatory hearing within thirty days to propose evidence, and the parties shall be warned that the hearing will be held whether they are present or not, and that they shall present facts and propose evidence on which the public prosecutor's request is based or disputed. The decision on the request is made by the court after the main hearing. The main hearing is scheduled within three months, and if necessary, in order to gather certain evidence, it can be postponed for another three months. After the expiration of a period of six months from the day of the preparatory hearing, the main hearing will be held regardless of the fact that certain evidence has not been obtained. As a rule, the hearing is held without interruption and delay. The task of the prosecutor at the hearing is to present evidence about the property that the defendant, i.e. the accused associate owns, about their legal income and the circumstances that indicate the existence of an obvious disproportion between the property and legal income. The accused and the accused associate, i.e. their proxies, declare themselves on the allegations of the public prosecutor, i.e. they have the opportunity to present their evidence to refute the presumption that the property stated in the request by the prosecutor originated from a criminal act, i.e. their criminal activity. If the request is directed to the property of the legal successor or a third party, the public prosecutor shall present evidence that the legal successor inherited the property derived from the criminal offense, i.e. that the property was transferred to a third party free of charge or with compensation that clearly does not correspond to actual value, for the purpose of hindering confiscation. The legal successor, a third party, or their attorney also have the opportunity to state their views on the allegations of the public prosecutor and to present their evidence.

The decision on permanent confiscation contains the following data: data on the owner, legal title of the criminal offense from the verdict, data on the seized assets, i.e. the value confiscated from the owner if he disposed of the proceeds from crime in order to thwart its confiscation, the decision on costs of administration of temporarily seized assets, property claim of the injured party and representation costs. If a decision on the property claim of the injured party has been made by a final judgment, the court will exclude that amount in the decision on permanent seizure of assets, and if such a decision has not been made, it may exclude a part of the property to settle the property claim. The second instance court decides on the appeal against the decision. The appellate court may revoke the decision only once and after a repeated appeal it must hold a hearing and decide on the appeal. A request for protection of legality, as an extraordinary legal remedy in criminal proceedings, is allowed in cases of temporary and permanent seizure of assets arising from a criminal offense, but this right, the right to file a request for protection of legality, is not available to all owners, considering the definition of an owner as party to the proceedings and an entity authorized to file the request under the CPC. Namely, the right to file this extraordinary legal remedy was given to the defendant as a party in the criminal proceedings and his defense counsel.

2.3 Management of seized assets

The Directorate administers seized assets in accordance with the Law and bylaws adopted on the basis of the Law, acting immediately upon receipt of the decision on temporary or permanent seizure of assets.

The act of the Minister of Justice regulates in more detail the manner of management of seized assets and return of temporarily seized assets, i.e.:

- the manner of compiling the minutes on seized assets, the procedure for assessing the value of seized assets and the content and the manner of keeping records on activities performed by the Directorate (Article 50, paragraph 2 of the Law)
- the manner of determining the costs of storage, maintenance and management of temporarily seized assets (Article 51, paragraph 3 of the Law)
- manner of sale of movable property and securities (Article 56, paragraph 3 of the Law)
- content and layout of the official badge and identification card of the Director and enforcement officers (Article 13 of the Law).

In line with the above mentioned, the following bylaws were issued:

- Ordinance on the detailed content of the minutes on seizure of assets, records kept in the Directorate for Administration of Seized Assets and the method for keeping records[13]
- Instructions on the content and manner of compiling the report on seized assets[14]
- Rulebook on the procedure for assessing the value of seized assets[15]
- Rulebook on official identification card and official badge of directors and employees in the Directorate for Administration of Seized Assets who work on enforcement[16]
- Decree on the manner of managing funds obtained from the lease of temporarily seized immovable assets and temporarily seized passenger vehicles[17]

The manner of terminating the procedure of seizure of proceeds from crime conditions the authorizations for its administration. If the procedure ends with the revocation of the decision on temporary seizure of assets, the assets must be returned to the owner, otherwise the Directorate will administer the seized assets until the court decision on confiscation becomes final. The Directorate is obliged to administer the temporary seized property *with the care of a good owner*, i.e. *a good expert*. At this point, it seems important to point out that there is no sign of equality between these two types of actions (the two mentioned standards), i.e. that a legal solution could be criticized, which e.g. in Article 49 paragraph 2 of the Law prescribes that the Directorate administers the seized assets with the care of a good owner, i.e. good expert. The standard of a good owner is a standard that is related to the individual participant in the obligatory relationship. According to this standard, an individual is required to behave like an averagely diligent person within a certain environment, which is taken as a measure for determining the behavior of an individual - a participant in an obligatory relationship, when he performs his obligation with the care of a good owner. The standard of a good expert, on the other hand, refers to a person who performs an obligation as his professional activity. It is obliged to act with "increased attention", which means that it must act more carefully than a good owner, while the degree of that attention is determined according to the rules of the profession and according to the customs formed during the performance of a given professional activity. For this reason, we believe that it is unnecessary and undesirable to create doubts regarding necessary attention of the Directorate in

[13] *Official Gazette of RS*, no. 17/09.

[14] *Official Gazette of RS*, no. 25/18.

[15] *Official Gazette of RS*, no. 25/18.

[16] *Official Gazette of RS*, no. 113/13 and 83/19.

[17] *Official Gazette of RS*, no. 11/11.

relation to the property entrusted to it, because taking care of the property is its basic duty and it must perform this duty professionally and with special care.[18]

Upon receipt of the decision on temporarily or permanently seized assets, the minutes on seized assets have to be compiled. The law prescribes the obligatory data that are entered in the minutes and it is foreseen that the Minister of Justice prescribes detailed content and the manner of compiling the minutes. Mandatory and basic data entered in the minutes are: data on the owner, on the assets and the condition in which it was taken over, data on the value confiscated from the owner if he had disposed with the proceeds from crime in order to prevent its seizure, whether the assets are being seized temporarily or permanently, whether the temporarily seized assets remained with the owner or were entrusted to another person. The content and form of the minutes, as well as the basic records, are an integral part of the Rulebook. The content of the form is harmonized with the amendments to the Law from 2016. Namely, in accordance with the provision of Article 38 paragraph 2 of the previous Law, the Rulebook on the detailed content of the minutes on seizure of assets, records kept in the Directorate for Administration of Seized Assets and the manner of keeping records was adopted, while in accordance with Article 50 paragraph 2 of the Law, the Instruction on the content and manner of compiling the minutes on seized assets was adopted.

The Rulebook stipulates that the Minutes on seized assets contain the following data: the ordinal number, number and date of the decision and the name of the court that issued the decision on the adoption of the request for temporary or permanent seizure of assets, name and surname, that is residence of the owner, note whether the owner is the defendant, witness, testator, legal successor or third party, information on whether the assets are movable or immovable, information on the condition of the assets, information on the value of the assets, information on the location of assets and notes. Also, it is envisaged that the Directorate keeps the following basic records: (1) records of temporarily seized movable and immovable assets; (2) records on permanently seized movable and immovable assets; (3) records on criminal cases; (4) records on the proceeds from crime; (5) records on assets given as a bail in criminal proceedings; (6) records related to property gains arising from economic offenses and misdemeanors. If necessary, the Directorate may keep auxiliary records. In accordance with the listed types of records, appropriate types of books are prescribed in which data relevant to each of them are entered. The content and form of the minutes on seized assets and basic records (*templates*) are an integral part of the Rulebook.

[18] Gluščević, J. (2015) *Seizure of Assets gained through Criminal Offence – PhD thesis,* Faculty of Law of the Union University, page. 376.

Unlike the Rulebook, the Instruction prescribes in detail all the elements that the Minutes should contain, and these are the following data: (1) the name of the body; (2) the action to be undertaken and the basis for the actions of the Directorate; (3) the place, date and time when the action is taken; (4) names of authorized officials, parties present, their representatives and other persons; (5) a description of the course and content of the action taken and the statements made; (6) the documents used to compile the minutes; (7) the owner of the assets, i.e. the person from whom the assets are seized (name and surname, address of residence or stay, personal identification number, and for a legal entity the address of the registered office, tax identification number and company identification number); (8) data about the assets; (9) the condition of assets during confiscation; (10) the value of seized assets; and (11) notes: whether the assets are temporarily or permanently seized, whether the seized assets remained with the owner, whether it was entrusted to another natural or legal person for safekeeping, and other data relevant to the identification and condition of the confiscated property. Depending on the type of assets to be taken over or returned, the employee in the Directorate in charge of taking over the seized assets shall make a record on the appropriate form, as follows: (1) on taking over/returning the real estate; (2) on taking over/returning the vehicle; (3) on taking over/returning goods and other movables; (4) on takeover/return of commercial companies. The templates for compiling the minutes are printed with the Instruction and as such represent its integral part. The record on the property of a legal entity contains, as a mandatory attachment, the last available inventory lists of the property of that legal entity. Also, in order to confirm the contents of the minutes, if possible, it is necessary to take photographs that confirm each entered description, visual inspection, deficiency or condition of the property.

Regarding the manner of compiling the minutes, the following procedures are prescribed: (1) Upon receipt of the decision on temporary or permanent seizure of assets, the Directorate, without delay, enters data on the decision and property into the Directorate information system. The case is opened in the Directorate information system, the received decision is recorded, the person from whom the assets are being seized is registered and the respective specified property to be confiscated is entered. In the case of receipt of a decision on the return of seized assets, the content of that decision shall be ascertained and recorded in the already opened case; (2) individual assets in the field are being taken over or returned. A record of the seized assets is made. The record is made separately for each location where movable or immovable assets are taken over or returned; (3) the record on the taken over, i.e. returned assets shall be filled in in detail. In the event that there is no precise description of the assets to be taken over or returned, a detailed description of the assets is entered in the note column. The minutes shall contain an indication of the time when the inventory of the assets recorded in the minutes began and when it was completed and the signatures of the persons present; (4) the taken over, i.e. returned assets shall, if possible, be photographed. Each object, group of objects and buildings should be photographed with a digital camera. The photo must have the date and time it was taken; (5) Minutes, photographs and other documents must be entered into the Directorate information system. Upon returning from the field, a list of all actions taken should be made, as well as a list of persons who participated in the

takeover or return of property (employees in the Directorate, hired workers for unloading-loading, locksmith, etc.).

Based on the Rulebook, the assessment of the value of the seized assets should be based on the available data at the time of the assessment. When it comes to assets that are not traded on the market and for which the interested buyer is not expected, they can be assigned a value of zero (Article 2, paragraph 2 of the Rulebook). In the case of complex valuations, the Directorate may request the opinion of a court expert of the appropriate profession (Article 3 of the Rulebook). Valuation is performed within thirty days from the day of taking over the property, and it is checked at least once a year and a record is kept, the content of which is prescribed by the Rulebook (Article 4 and Article 5). The value of immovable assets is determined on the basis of the value determined by the Tax Administration (Article 6). In case the Directorate cannot obtain from the Tax Administration the data on the value of immovable assets, in order to determine the value of that property, the Directorate may request the opinion of an expert or licensed appraiser, who will assess the value of immovable assets using one of four methods depending on the type of the property being valued, namely: (1) fair market value method; (2) construction value method; (3) lease yield method and (4) site construction methods (Art. 7). Movable assets are assessed on the basis of comparison with market prices of similar movable assets (Article 8). The value of motor vehicles is assessed based in the catalogue of the Auto-Moto Association of Serbia or the market value of motor vehicles at the time of takeover. When determining the value, the data about the method for determining it are entered into the minutes: the internet site from which the data on value were taken, model, type, age, mileage, condition, whether it was kept in a garage, service book, etc. (Article 9). Ownership in companies, shares or stocks is valued using the stock market price method, the fair market value of capital method, the yield method. If the acquired company has shares or stakes in other legal entities, those other legal entities are assessed in the same way as the parent legal entity (Articles 9 and 10).

Execution of the decision on temporarily seized assets is carried out by the Directorate on the basis of the provisions of the Law on Enforcement and Security and the Directorate bears the costs of storage, maintenance and administration, unless otherwise provided by law (Article 51 of the Law). Thus, the Law stipulates that, in justified cases, the Director of the Directorate may decide that the temporarily seized assets remain with the owner, with the obligation to take care of the property with the care of a good owner (Article 52 of the Law).

The new provision, Article 52a of the Law, the Directorate is empowered to conclude a lease agreement if the immovable assets are temporarily seized. The law stipulates that the contract is concluded under market conditions with the already existing tenants as well as with the owner of the property if he submits a request for it. In case there is no tenant, the Directorate may publicly announce the offer for leasing real estate and conclude a contract with the best bidder. In case of termination of the lease

contract by the Directorate, the Directorate shall submit a notice of termination of the contract with a request that the lessee move out and hand over the real estate to the Directorate in the condition in which it was received. In the event that the lessee does not act upon the request for eviction, the eviction of the lessee shall be carried out directly by the Directorate no later than 72 hours from the submission of the request. If necessary, the Directorate may also request police assistance. The Director of the Directorate has the authority to give temporarily seized immovable assets for use free of charge, for the purpose of performing socially useful activities at the request of a state body, an autonomous province body or a local self-government unit.

The Directorate has different authorizations, so it can lease real estate, sell movable assets, hand over certain items for safekeeping to various institutions, such as: temporarily confiscated items of historical, artistic and scientific value are handed over by the Directorate for safekeeping to institutions responsible for keeping these items; temporarily confiscated foreign currency and effective foreign currency are paid into the special account of the Directorate kept with the NBS, and temporarily confiscated dinars are deposited in the special account of the Directorate kept with the Ministry of Finance and Economy – Treasury Department; items made of precious metals, precious and semi-precious stones and pearls are handed over by the Directorate to the NBS for safekeeping; temporarily confiscated weapons are handed over for safekeeping to the Ministry of Interior, except for collectors' and trophy specimens which are entrusted to the museum for safekeeping. The Directorate concludes contracts with the institutions in charge of keeping and handing over temporarily seized items.

If we are talking about a temporarily seized legal entity, the Directorate can transfer the administration right to a natural or legal person, on the basis of a contract. The person to whom the administration right has been transferred has powers, obligations and responsibilities as a representative of social capital in accordance with the law governing privatization (based on the Article 42 of the Law on Privatization[19], the representative of capital is especially obliged to take necessary measures to protect property and capital, to take care as a good businessman about the business of the entity, as well as the business necessary to prevent damage to the assets of the entity). Among the documents listed above, upon which the Directorate acts, the Decree on the method of administration of funds obtained from the lease of temporarily seized immovable assets and temporarily confiscated passenger vehicles was also mentioned.

The funds received from the lease of temporarily seized immovable assets are kept in a special account of the Directorate, where they can be used for maintenance of seized assets, as well as for humanitarian and other similar purposes, based on a decision made by the Government, at the proposal of the

[19] *Off. Gazette of RS*, no. 83/2014, 46/2015, 112/2015 i 20/2016 – authentic interpretation

Ministry of Justice. (Articles 1 and 2). A temporarily seized passenger vehicle may be given for use to a state body or other body and organization, with the obligation of regular maintenance of the vehicle, in accordance with the standards established for the maintenance of that type of vehicle. The decision on granting a passenger vehicle for use is made by the director of the Directorate, on the basis of a reasoned request of a state body or other body and organization. Mutual rights and obligations on the provision for use of a passenger vehicle are regulated by a contract concluded between the Directorate and a state body or other body and organization. The state body or other body and organization shall take over the temporarily seized passenger vehicle from the Directorate in the seen condition, with the accompanying documentation related to that vehicle. The confiscated passenger vehicle shall be returned to the owner of the temporarily seized passenger vehicle, which has been determined not to originate from a criminal offense, as soon as possible. In such a situation, if the passenger vehicle is given for use to a state body or other body and organization, the costs of returning the passenger vehicle shall be borne by that body, i.e. organization (Article 3 and Article 4).

In the remaining provisions regulating administration of seized assets, the Law regulates in detail handling of seized assets (temporary or permanent confiscation), disposition of funds obtained on the basis of sale or lease, as well as other details, such as return of assets found to be not originating from criminal offense, compensation for damage that can be awarded to the owner of the property, etc. When we talk about permanently seized assets, after deducting the costs of managing the seized assets and settling the property claim of the injured party, the proceeds from the sale are paid into the budget of the Republic of Serbia, with 30% of the proceeds used to finance social and health needs, in line with the decision of the Government of the Republic of Serbia.

2.4 Directorate for Administration of Seized Assets

Directorate is a body within the Ministry of Justice, whereby it performs tasks within its competence *ex officio* or by a decision of a public prosecutor or a court. An obligation has been established that state and other bodies, organizations and public services are obliged to act without delay at the request of the Directorate. Directorate has the status of a legal entity and its headquarters are in Belgrade, whereat it can have special organizational units outside its headquarters.

The competence of the Directorate is determined in Article 9 of the Law and it shall:

1) manage temporarily and permanently confiscated property arising from a criminal offense, property temporarily confiscated by order of the public prosecutor (Article 24), objects resulting from the commission of a criminal offence (Article 87 of the Criminal Code), material gain obtained by a criminal offence (Articles 91 and 92 of the Criminal Code)), property given as bail in criminal proceedings and objects temporarily seized in criminal proceedings, as well as

property whose disposal is limited in accordance with the decisions of the United Nations and other international organizations of which the Republic of Serbia is a member;
2) conduct professional assessment of the seized proceeds from crime;
3) store, safeguard and sell provisionally the seized proceeds from crime and administer funds thus obtained in accordance with the law;
4) maintain records of assets managed, including the records on court proceedings deciding on such property;
5) participate in mutual legal assistance and manage assets derived from a criminal offense seized pursuant to the decision of a foreign body;
6) participate in training of civil servants and magistrates on seizure of the proceeds from crime;
7) perform other tasks in accordance with this Law.

Directorate performs tasks referred to above also in relation to material gain deriving from commercial felony and/or misdemeanor.

Directorate is managed by a Director, to be appointed and released from office by the Government at the motion of the Minister of Justice. A person meeting general requirements for service in government authorities, who has graduated from the Law School or the Faculty of Economy, and who has minimum of nine years of professional service may be appointed a Director. Director has the status of a civil servant in accordance with regulations on civil servants and may not be a member of any political party. Provisions of regulations governing matters of conflict of interest applies to the Director and Director is accountable for his/her work to the Minister of Justice.

Regulations on public administration shall apply to the functioning, internal organization and job classification in the Directorate, whereas regulations on general administrative procedure shall apply to administrative matters. Regulations on civil servants and state employees shall apply to the rights and duties of the Directorate staff. As mentioned earlier, the director and employees working on enforcement activities have an official badge and identification card, the content and appearance of which are prescribed by the minister in charge of justice (see *Rulebook on official identification card and official badge of directors and employees in the Directorate for Administration of Seized Assets*).

Funds for the Directorate operations shall be secured from the Budget of the Republic of Serbia and other revenues, in accordance with law. Supervision of the Directorate's operations shall be conducted by the Ministry of Justice.

Within the Report on the work of the Directorate for Administration of Seized Assets of 1 June 2020, information is available on the hierarchical structure within the Directorate, where we could talk about three basic categories: at the top of the hierarchy is the director of the Directorate, then Assistant director

and finally the Sector for Takeover and Management of Seized Assets (*which further branches into three appropriate departments, and they further branch into Sections/Units*). See Figure 1 for details.

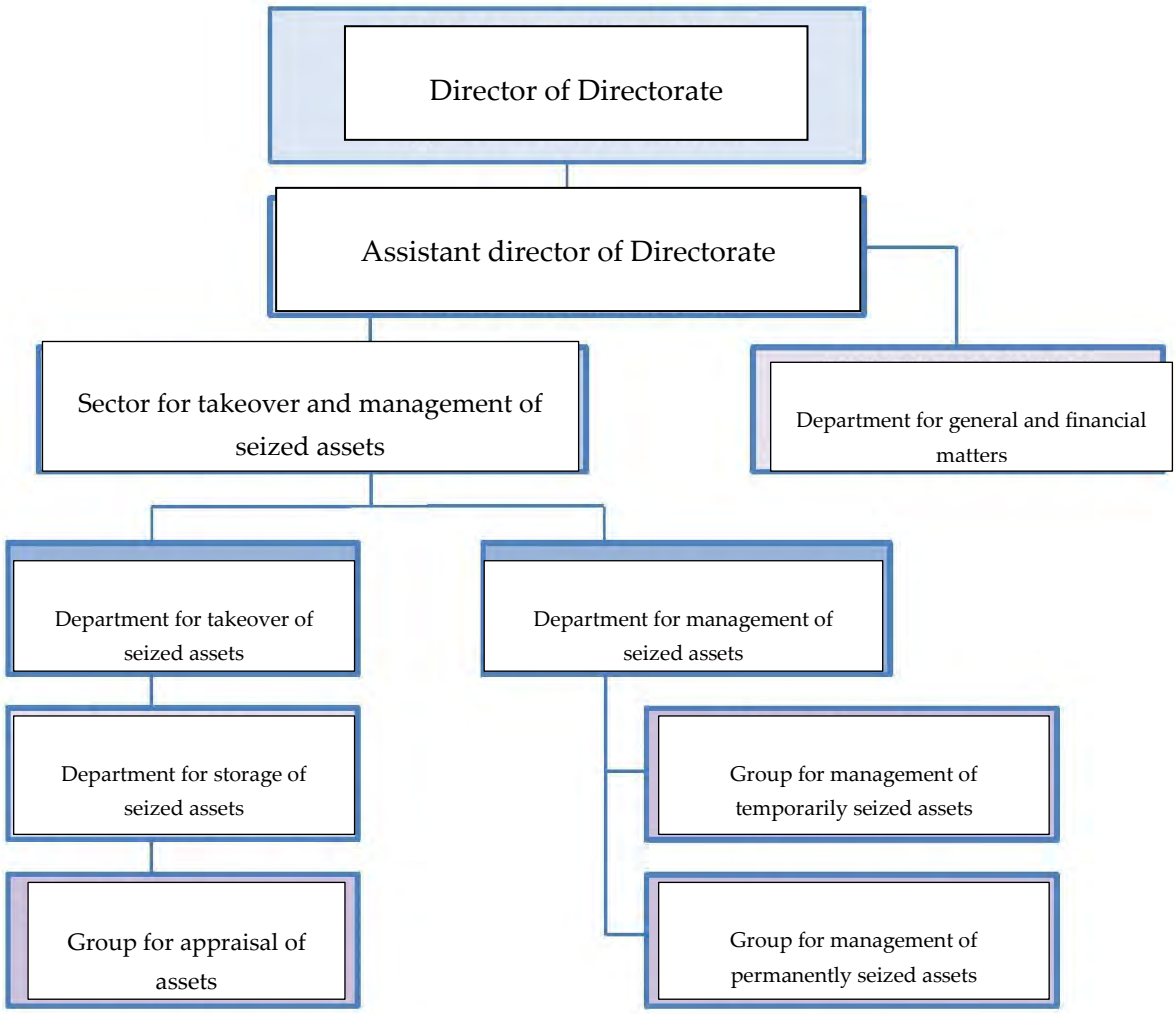


Figure 1. Organizational structure of the Directorate

Although on the basis of this schematic we could talk about the separation of the Sector for takeover and management of seized assets and the Department for general and financial matters, the Report (from which Figure 1 is taken) notes that the Department for general and financial matters, as a third

unit, in addition to the Department for takeover of seized assets and the Department for management of seized assets, belongs to the Sector for takeover and management of seized assets.

According to the Rulebook on Internal Organization and Job Classification number: 110-00-264 / 2019-01 of 8 March 2019, the total number of systematized jobs in the Directorate is 26, with 22 civil servants and 4 employees.

On 1 June 2020, the Directorate employed 2 appointed civil servants, 13 civil servants (executive positions) plus 1 on leave and 4 employees. In addition, 1 person was hired on the basis of a contract for temporary and occasional work.

Director - manages the Directorate, and is appointed and dismissed by the Government, at the proposal of the Minister of Justice. He is appointed for a period of five years, where the director must meet the general conditions for work in state administration bodies, have a law or economics degree, as well as at least nine years of work experience. He cannot be a member of the body of a political party, and is responsible for his work and the work of the Directorate to the minister of justice.

Assistant director - manages affairs in one or more interrelated areas of work of the constituent bodies, and is responsible for his work to the director and the minister of justice. He is appointed by the Government for a period of five years, at the proposal of the Minister of Justice.

Heads of departments, heads of sections and unit leaders - plan, direct and supervise the work of narrower internal units and perform the most complex tasks within the scope of narrower internal units. For their work and for the work of the internal unit they manage, they are accountable to the immediate supervisor, the assistant director of the sector to which the internal unit belongs, and the director. A head of the department that is outside the Sector for taking over and managing confiscated property that is outside the Sector is responsible for its work and the work of the internal unit they manage to the Director.

Sector for takeover and management of seized assets - within this sector, the following internal units are being formed: Department for the takeover of seized assets, the Department for the management of seized assets and the Department for general and financial matters.

The following internal units are established in **Department for the takeover of seized assets**: Section for the takeover and storage of seized assets and the Group for appraisal of seized assets. According to the Regulations, the work in the Department is performed within eleven jobs.

Department for takeover of seized assets performs activities related to the implementation of the procedure for taking over property; supervision, receipt and storage of movable property and accompanying documentation; storage of confiscated property; compiling records and records on confiscated property;

conducting the procedure of assessment of confiscated property and other activities within the scope of the Department.

Section for takeover and storage of seized assets performs activities related to the organization of the procedure for taking over property; property records and storage; conducting the procedure of entrusting the management of confiscated property to the competent institutions in accordance with the law; collecting available documentation on confiscated property and other activities within the scope of the Department.

Group for appraisal of seized assets performs activities related to the valuation of confiscated assets; preparation of reports on the assessment of the value of confiscated property; organizing the engagement of institutions and individuals to assess the value of confiscated property; keeps records and prepares reports related to the assessment of the value of confiscated property and performs other tasks within the scope of the Group.

Internal units are formed in **Department for the management of seized assets**: Group for the management of temporarily seized assets and the Group for the management of permanently seized assets. Within this Department, activities related to the management of temporarily and permanently confiscated property are performed; implementation of the procedure for appointing a commissioner for the management of a business entity; conducting the procedure of selling confiscated property; preparation of a decision on the destruction of confiscated property; coordination of the public bidding procedure; training of civil servants and holders of judicial functions in connection with confiscation of property arising from a criminal offense and other activities within the scope of the Department. The tasks of this department, according to the Rulebook, are performed by 8 employees.

Group for management of temporarily seized assets performs activities related to the implementation of the procedure for the management of temporarily confiscated assets; keeping the necessary records on temporarily confiscated property; implementation of the procedure of preparation of the draft contract on storage of temporarily seized items with the competent institutions and the National Bank of Serbia; preparing a draft decision on the destruction of temporarily confiscated property and a draft decision on the gift of temporarily confiscated property; control of real estate maintenance, payment of bills and records of expenses related to the maintenance of temporarily confiscated property and other activities within the scope of the Group.

Group for management of permanently seized assets performs activities related to the implementation of the permanently confiscated assets management procedure; transfer of permanently confiscated items of historical, artistic and scientific value to the competent institutions for safekeeping; conducting a public bidding procedure for the sale of permanently confiscated property; keeping records of permanently

confiscated property and collections related to permanently confiscated property and performing other tasks within the scope of the Group.

The Department for general and financial matters performs tasks related to: personnel affairs; preparation and drafting of the proposal of the Rulebook on internal organization and classification of jobs in the Ministry; implementation of the procedure for evaluation of civil servants; conducting the procedure of internal and public competitions; conducting public procurement procedures; tasks related to the preparation of the financial plan of the Directorate; monitoring the realization of financial resources of the Directorate; reconciling the state of the Treasury general ledger and auxiliary books; preparation of budget execution reports; realization of payments within the scope of the Directorate and other activities within the scope of the Department. According to the Rulebook, the work in the Department is performed by eight employees.

In the remaining parts of the Informant, the provisions of the Law are described in more detail, as well as the above-mentioned Rulebooks and Regulations, and for that reason there will be no repetition of the previously explained rules and procedures.

2.5 International legal assistance

Within the Law, a special part refers to international cooperation (Article 64 - Article 78) of specialized norms that refer exclusively to the procedure of confiscation of property. The provisions of the law on international cooperation give priority to the norms of international agreements in this area, in relation to the regulations of domestic legislation. Namely, international cooperation for the purpose of confiscating property derived from a criminal offense is realized on the basis of an international agreement and only if such an agreement does not exist or some issues are not settled, international cooperation is realized on the basis of reciprocity and on the basis of the Law on International legal assistance in criminal matters[20], in cases when certain issues are not regulated by law.

International legal assistance includes the provision of assistance in locating criminal assets, the prohibition of disposition and the temporary or permanent confiscation of criminal assets.

Jurisdiction for acting in proceedings for the provision of international legal assistance in proceedings for confiscation of property is determined by reference to the appropriate application of legal provisions on international legal assistance and the execution of international treaties. The competent authorities for providing international legal assistance are domestic courts and public prosecutor's offices.

[20] *Off. Gazette of RS*, no. 20/09.

In Article 66 of the Law, a list of four preconditions that must be met cumulatively for the provision of international legal assistance is presented:

1) that the requested measure is not in conflict with the basic principles of the domestic legal order;
2) that the execution of the request of a foreign body would not harm the sovereignty, public order or other interests of the Republic of Serbia;
3) that the standards of fair trial have been met in the foreign procedure of making a decision on permanent confiscation of property;
4) that there is reciprocity between the Republic of Serbia and a foreign state.

The request of the foreign body for cooperation, the content of which is prescribed, shall be submitted to the domestic competent authority through the ministry in charge of justice and in the same way the request of the domestic authorities shall be submitted to the foreign body. In urgent cases, subject to reciprocity, it may be provided through the Unit.

Temporary confiscation of property lasts until the end of the criminal procedure, i.e. the procedure on the request for permanent confiscation of property in the requesting state, i.e. two years from the decision on temporary confiscation of property, after which the court will ex officio cancel the temporary confiscation of property. Exceptionally, if the foreign body submits the necessary evidence before the deadline, the deadline may be extended for another two years.

Permanently confiscated property resulting from a criminal offense shall be disposed of in accordance with the provisions of this Law, unless otherwise provided by an international agreement.

Law on International Legal Assistance in Criminal Matters - Special provisions on international legal assistance prescribed in the Law are not sufficient for the procedure of international legal assistance in this area and for the successful implementation of international cooperation, it is necessary to apply the Law on International Legal Assistance in Criminal Matters, and to the application of which the Law itself refers.

The said law regulates the procedure for providing international legal assistance in criminal matters in cases when there is no ratified international agreement or when certain issues are not regulated by it.

The bodies responsible for providing international legal assistance are domestic courts and public prosecutor's offices determined by law, and certain actions in the procedure are performed by the ministry in charge of justice, the ministry in charge of foreign affairs and the ministry in charge of internal affairs.

Domestic judicial authorities provide international legal assistance on the condition of reciprocity. At the request of the domestic judicial authority, the ministry in charge of justice shall give notice of the existence of reciprocity. If there is no data on reciprocity, it is assumed that reciprocity exists.

State authorities are obliged to keep confidential the data obtained in the procedure of providing international legal assistance, and personal data may be used only in the procedure in connection with which the letter rogatory for assistance was submitted.

The procedure for providing assistance is conducted in the Serbian language, and before the domestic judicial bodies in whose territory the languages of national minorities are in official use also in their language, in accordance with the Constitution and the law.

2.6 Other relevant regulation

Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Terrorism and Corruption[21]

One of the main goals of this regulation is to strengthen the capacity of the public prosecutor's office to fight corruption more effectively. To that end, the following was introduced:

- the concept of financial forensics, as a multidisciplinary field that unites all economic knowledge. Article 19 prescribes the possibility of educating the financial forensics service in the Prosecutor's Office for Organized Crime and special departments of higher public prosecutor's offices. A financial forensic is a person who assists the public prosecutor in analyzing cash flows and financial transactions for the purpose of criminal prosecution.
- improved system of cooperation of repressive state bodies with other state bodies through introduction of liaison officers and task forces.

Within this Law, the bodies and organizations that are obliged to appoint at least one liaison officer are listed, in order to achieve cooperation and efficient submission of data of these bodies and organizations to the Prosecutor's Office for Organized Crime and special departments of higher public prosecutor's offices for combating corruption in order to prosecute for criminal offenses listed in the Law. These are the following bodies and organizations: Tax Administration - Tax Police, Customs Administration, National Bank of Serbia, Administration for the Prevention of Money Laundering, Business Registers Agency, Central Securities Depository and Clearing House, State Audit Institution, Republic Geodetic

[21] *Off. Gazette of RS*, no. 94/2016 and 87/2018 - oth. law

Authority, Anti-Corruption Agency, the Republic Pension and Disability Insurance Fund, Health Insurance Fund, the Republic Directorate for the Property of the Republic of Serbia and the Public Procurement Directorate. At the request of the competent public prosecutor, liaison officers must be appointed in other bodies and organizations. If necessary, liaison officers may be temporarily transferred to the Prosecutor's Office for Organized Crime and a special department of the Higher Public Prosecutor's Office for the Suppression of Corruption (Article 20).

The possibility of forming task forces is also prescribed, with the aim of working on detecting and prosecuting criminal acts that are the subject of the work of task forces (Article 21). The decision on the establishment of the task force regulates the composition of the task force, the manner of work, the task, the period for which it is formed and other issues of importance for the work of the task force. The task force is headed by the Prosecutor for Organized Crime or his deputy, i.e. the public prosecutor, the head of a special department or the deputy public prosecutor assigned to a special department of the higher public prosecutor's office for combating corruption (Article 22). Members from the ranks of employees in state and other bodies are appointed to the task force, depending on the subject of work determined by the decision on the formation of the task force (Article23).

The establishment of a financial forensics service, the existence of liaison officers and the possibility of forming task forces should affect the quality and efficiency of financial investigations in terms of the Law on Confiscation of Property derived from a Criminal Offense.

Law on Enforcement and Security Interest[22]

The LESI, as a lex generalis, is applied accordingly if some issues are not resolved by the provisions of the Law and the Law directly refers to that.

Significant provisions for the procedure of confiscation of property arising from a criminal offense are the provisions on execution, especially the provisions on the exemption of part of the property from execution, as well as the provisions on the sale of property, i.e. movable property and securities. Having in mind the provisions of Article 26 paragraph 3 and Article 45 paragraph 3 of the Law, which prescribe the exemption of property for the purpose of supporting the owner and persons he/she is obliged to support, we refer to the provision of Article 218 of the LESI, which also governs the exemption from enforcement on movable property. The following shall be exempt from enforcement:

1) Clothes, shoes, and other items of personal use, bed linen, dishes, furniture necessary to the enforcement debtor and the members of his household, stove, refrigerator and heating furnace;

[22] *Off. Gazette of RS*, no. 106/15, 106/16 - authentic interpretation, 113/17 - authentic interpretation and 54/19.

2) Food and heating needed by the enforcement debtor and his household members for a period of three months;
3) ash of the enforcement debtor with permanent monthly income up to the monthly amount legally exempted from enforcement, in proportion to time until the next income;
4) Decorations, medals, commemorative medals and other decorations and awards, personal correspondence, manuscripts and other personal documents and family pictures of the enforcement debtor;
5) Orthopedic devices necessary for performing vital functions of a disabled person or other handicapped person;
6) Pet.

Law on Property Origin and Special Tax [23]

This is a new regulation that came into force on 11 March 2020, whereby its application begins after the expiration of one year from the date of entry into force, i.e. on 11 March 2021. The existence of this regulation is justified in the same way as all the previously listed regulations, and that is that no person can keep anything that was acquired by committing a crime. The relief that the competent authorities should have, first of all, derives from the provision of Article 3 which deals with the question of the burden of proof. Namely, the burden of proving the increase of property in relation to the reported income of a natural person is on the Tax Administration, and the burden of proving that he/she legally acquired property in the part where the increase of his/her property is not in accordance with the reported income is on that natural person.

If you analyze the legal text itself, it is inevitable that the application of regulations had to be delayed (for example, employees in the TA Unit, as well as judges, must undergo the necessary training - see Article 21 and Article 22, then a deadline of six months from the date of entry into force of the law to enact appropriate bylaws was left - Article 26 and the head of the TA Unit is appointed after nine months from the date of entry into force of the law - Article 27, while the Ministry of Interior, the National Bank of Serbia, the Administration for the Prevention of Money Laundering, the Anti-Corruption Agency, the Republic Geodetic Authority, the Business Registers Agency and the Central Securities Depository and Clearing House must designate one or more employees to liaise with the TA Unit - Article 28). Such a solution can be considered good, since it should ensure adequate and substantial application of the law. As an interesting solution, which concerns the work of employees in the TA Unit, it could be stated that on the basis of Article 23 of the law the possibility of security screening of such persons is introduced. At the written request of the director of the TA, which states the legal basis, purpose and

[23] *Off. Gazette of RS*, no. 18/20.

scope of checks, security checks are performed on employees of the TA Unit, before starting work, during work in the TA Unit and one year after termination of work in the TA Unit, without the person's knowledge (security checks are performed by the Ministry of the Interior and the BIA). In other words, it could be interpreted that such a provision could have a preventive effect, i.e. to contribute to the fact that every employee, at any time, knows that there is a possibility to carry out a security check in relation to him, without his knowledge, which would realize the basic idea that these jobs are not performed by persons who could easily be corrupted (e.g. from the aspect of the criminal offense of accepting bribes under Article 367 of the Criminal Code). For the stated reason, the employees of the TA Unit are obliged to submit to the Agency for the Prevention of Corruption, in writing, complete and accurate data on their property (Article 22).

Within Article 2, four basic terms that are important for the application of the law are define: (1) „property" means immovable and movable property, registered or unregistered, as well as other property rights in the Republic of Serbia and abroad; (2) „declared income" means the income of a natural person reported to the competent tax authority; (3) „increase in assets" means the positive difference between the value of a natural person's assets at the end of the period and (4) „illegally acquired assets" means the difference between increases in assets and reported income that a natural person does not prove obtaining in a legal manner.

The procedure is entrusted to a special TA Unit, headed by a head appointed by the RS Government, at the proposal of the Minister of Finance, who must have at least ten years of work experience in the field of tax procedure (Article 4 and Article 5).

The TA unit has broad powers, i.e. it has the right to inspect and obtain data from: (1) all types of records and data kept or possessed by the competent authorities and other persons on immovable and movable property, economic entities, financial instruments, savings deposits and accounts with commercial banks, as well as other records and data from which the property of a natural person and (2) books of account and documentation of companies and other persons can be determined, for the purpose of determining the property of a natural person (Article 6). On the other hand, if during the procedure it is determined that the facts indicate the existence of grounds for suspicion that a criminal offense has been committed, the TA Unit is obliged to inform the police, Tax Police, Public Prosecutor's Office and other bodies (Article 9). As in the case of other regulations, there is an obligation to submit the requested data to the TA Unit (Article 7), i.e. to designate one/more liaison officers within the relevant institutions, for more effective cooperation and submission of data required to the TA Unit for conducting the procedure. It is also interesting that, if necessary, liaison officers can, at the request of the director of the TA, be temporarily transferred or sent to work in the TA Unit, where temporary transfer or referral lasts up to one year, with the possibility of extension (Article 8).

The procedure for determining property and special tax is initiated and conducted ex officio, and consists of the previous procedure and the procedure of control and determination of special tax (hereinafter: the procedure of control).

Preliminary procedure - It is carried out in accordance with the annual guidelines issued by the Director of the Tax Administration, based on risk analysis. The annual guidelines are not publicly available. It can also be initiated outside the annual guidelines, based on the application of another body or on the initiative of a natural or legal person (Article 12). In the previous procedure, the TA Unit determines the increase of assets on the basis of available data and data collected from other bodies and organizations, legal or natural persons and compares them with the reported income in a certain period. The TA unit initiates the control procedure, in the manner prescribed by the law governing the tax procedure and tax administration, if in the preliminary procedure it assumes it is probable that in a maximum of three consecutive calendar years in which a natural person has an increase in assets, there is a difference between an increase in property and declared income of the natural person exceeding EUR 150,000 in dinar equivalent at the middle exchange rate of the National Bank of Serbia as at the last day of the calendar year of the verification period (Article 13)

Control procedure - The control procedure determines the illegally acquired property of a natural person and its value, whereby that person has the right to participate in the procedure, as well as to submit evidence proving the legality of the acquisition of property. The non-participation of a natural person in the control procedure does not delay the further conduct of the procedure. In the control procedure, the TA Unit prepares the minutes of the performed control, to which the law governing the tax procedure and tax administration is applied, while after the control procedure, it makes a decision on determining the special tax if it determines the existence of illegally acquired property (Article 14).

Tax base for special tax - Determined in the value of illegally acquired property, which is the sum of the revalued amount of the determined illegally, acquired property for each calendar year that was subject to control. The value of illegally acquired property is revalued by the consumer price index from the last day of the calendar year for which the illegally acquired property was determined until the day of the decision on special tax (Article 15) while special tax is determined for the entire control period, applying a special tax rate of 75% on the tax base determined according to this law (Article 16). If in the criminal procedure a final judgment determines the property gain obtained by the criminal offense, but also the payment a special tax according to this law, the court shall include the amount of the paid special tax in the property gain obtained by the criminal offense. This rule also applies in proceedings for confiscation of property derived from a criminal offense (Article 19).

Appeal against the decision of the Tax Administration Unit - against the decision on the special tax, an appeal may be lodged with the ministry in charge of finance. The appeal postpones the execution of the

decision. The decision of the ministry responsible for finance is final in the administrative procedure and an administrative dispute may be initiated against it (Article 17).

3 Analysis of statistical data

3.1 Reports of RPPO

By analyzing the statistical data contained in the reports on the work of public prosecutor's offices on the suppression of crime and the protection of the constitutionality and legality of the RPPO, made in the period from 2015 to 2020[24] (*covering data from 2014 to the end of 2019*). In that period the methodology of keeping and presenting data on the actions of prosecutors under the Law was changed, so we decided to analyze the data presented according to the number of persons, because these data are presented in all reports and they reflect a more realistic picture in relation to the numbers of orders initiating financial investigations issued or motions for temporary or permanent confiscation of property (*for example, in 2018, public prosecutors filed 44 motions against 79 individuals; namely, one act can be directed towards several persons, which often happens in practice*).

In the observed period, public prosecutors performed the following, according to the data available in the RPPO reports:

- Passed an order for a financial investigation against 2,376 people:
    - against 344 persons in 2014
    - against 469 persons in 2015
    - against 417 persons in 2016
    - against 435 persons in 2017
    - against 394 persons in 2018
    - against 317 persons in 2019
- Filed a motion for temporary confiscation of property against 382 persons:
    - against 107 persons in 2014
    - against 79 persons in 2015
    - against 48 persons in 2016
    - against 44 persons in 2017
    - against 79 persons in 2018
    - against 25 persons in 2019

[24] These are work reports that are published on the RPO website.

- Filed a motion for permanent confiscation of property against 119 persons:
  - against 21 persons in 2014 (adopted 12 / rejected 15)
  - against 12 persons in 2015 (adopted 1 / rejected 3)
  - against 20 persons in 2016 (adopted 5 / rejected 14)
  - against 34 persons in 2017 (adopted 13 / rejected 5)
  - against 15 persons in 2018 (adopted 6 / rejected 2)
  - against 17 persons in 2019 (adopted 10 / rejected 3)

Based on the data submitted for the needs of the Project, which relate to 2018 and 2019, the Prosecutor's Office for Organized Crime acted as follows:

- Financial investigation
  - Number of orders issued to conduct a financial investigation
    - 2018 - 26 orders against 148 persons
    - 2019 - 26 orders against 134 persons
- Temporary confiscation of property
  - Motions for temporary confiscation of property
    - 2018 - 10 motions against 29 persons (defendants and 8 third parties)
    - 2019 - / motions against 11 (4 defendants and 7 third parties) [25]
  - Number of decisions on temporary confiscation of property:
    - 2018 - 5 adopted motions / 1 rejected motion
    - 2019 - 5 adopted motions (5 defendants and 11 third parties) / 1 rejected (against 1 defendant and 3 third parties)
- Permanent confiscation of property
  - Permanent confiscation of property
    - 2018 - 4 motions against 7 persons
    - 2019 - 0 motions
  - Number of decisions on permanent confiscation of property
    - 2018 - 2 adopted motions (4 persons) / 1 decision on rejection
    - 2019 - 0 decisions

Statistics related to the work of the Special Departments for the Suppression of Corruption in Belgrade, Novi Sad, Nis and Kraljevo:

[25] Data on the number of submitted requests is not available in the table.

- Financial investigation
    - Number of orders issued to conduct a financial investigation
        - 2018 - 87 orders against 89 persons
        - 2019 - 40 orders against 46 persons
- Temporary confiscation of property
    - Motions for temporary confiscation of property
        - 2018 - 7 motions against 11 persons
        - 2019 - / motions against 4 persons [26]
    - Number of decisions on temporary confiscation of property:
        - 2018 - 1 adopted motion
        - 2019 - 2 adopted motions (2 persons) / 4 rejected motions
- Permanent confiscation of property
    - Motion for permanent confiscation of property
        - 2018 - 0 motions
        - 2019 - 2 motions (two persons)
    - Number of decisions on permanent confiscation of property
        - 2018 - 0 decisions
        - 2019 - 1 decision on adoption (1 person)

Furthermore, for the needs of the Report, data on international cooperation were submitted, through incoming or outgoing letters rogatory. During 2018, international cooperation was achieved in five cases, of which two were exit letters rogatory (*Germany and Hungary*) and three were entry letters rogatory (*Belgium, Italy and Spain*). Only two letters rogatory (no information available on whether it is incoming or outgoing) were sent in 2019 (*Germany and Switzerland*).

The reasons for the small number of requests for permanent confiscation in relation to the total number of cases and orders to initiate a financial investigation are numerous.

One of them and the most important is the length of criminal proceedings, given that the condition for filing a motion for permanent confiscation is the existence of a final judgment (which indicates the long duration of temporary confiscation of property and the effort and role of the Directorate for Administration of Seized Assets).

Another reason for this small number is reflected in the very concept of the Law on Confiscation of Property Derived from a Criminal Offense after the 2016 amendments. Namely, the concept that the

[26] Data on the number of submitted requests is not available in the table.

first instance court makes a decision without a hearing and presentation of evidence, only on the basis of documentation submitted by the public prosecutor and the owner in response, and that only before the second instance court evidence is presented and in fact only then the factual state is determined and a decision is made, to which he has no right of appeal. This decision becomes final without giving the possibility to check the legality of the assessment of the collected and presented evidence before a higher court.[27]

Lack of application of Article 16a of the Law, which prescribes the duty of the police to submit data on the property of the suspect and a third party collected in the preliminary procedure to the public prosecutor when filing a criminal report for any of the criminal offenses under Article 2 of the Law, i.e. that it is necessary to collect evidence related to the existence of property derived from a criminal offense during the collection of evidence for the purpose of proving legal liability. This is supported by the position present in the professional public, according to which the public prosecutor has no authority in the preliminary procedure, although it is prescribed by the provisions of the Criminal Procedure Law.[28]

A special reason is reflected in the existence of the burden of the public prosecutor's office since the beginning of the application of the new Criminal Procedure Law in 2013, because the new responsibility in terms of the introduction of the so-called prosecutorial investigation, is not accompanied by an increase in capacity that would enable efficient and quality performance of work by prosecutors.

If we are talking about international cooperation, it is not possible to draw adequate conclusions based on statistical indicators (*for a more detailed analysis, it is necessary to analyze the content of the letters rogatory themselves, to see the reasons for sending, e.g. whether extradition, obtaining certain evidence, etc. are in question*). Certainly, based on the small number of sent or received letters of request, it should not be concluded that international cooperation is bad, but rather that in the observed years there was no need to cooperate with other countries in relation to specific criminal proceedings.

3.2 Reports of Directorate

Within the normative framework, bylaws on the basis of which the Directorate acts are listed, with special emphasis on rulebooks and instructions, among which in the part of data of importance are the following: (1) Rulebook on detailed content of records on seized assets, records kept in the Directorate

[27]Koštica, J. et al., Handbook, Confiscation of Criminal Proceedings - Challenges and Recommendations for Improving Procedure, Belgrade, p. 38.

[28] *Ibid.*, p. 26.

for management of seized assets and the manner of keeping the records and (2) Instructions on the content and manner of compiling records on seized assets.

Although these acts prescribe in more detail how the records are kept, citing examples of tables, which are printed with these acts and as such represent a whole, the fact is that such records have certain shortcomings and that it is necessary to introduce an adequate electronic database, that would make it easier to monitor cases that are in progress, especially in relation to two basic units: (1) temporarily confiscated property and (2) permanently confiscated property. The databases kept in the *excel* spreadsheets help the employees in the Directorate, but as such they potentially create problems in practice. For this reason, it was explained to us that a program is being developed, which will be harmonized with the needs of the Directorate. Such a program, in addition to facilitating the work of employees and obtaining adequate information from data seekers, should also contribute to easier analysis of the situation regarding the management of confiscated property.

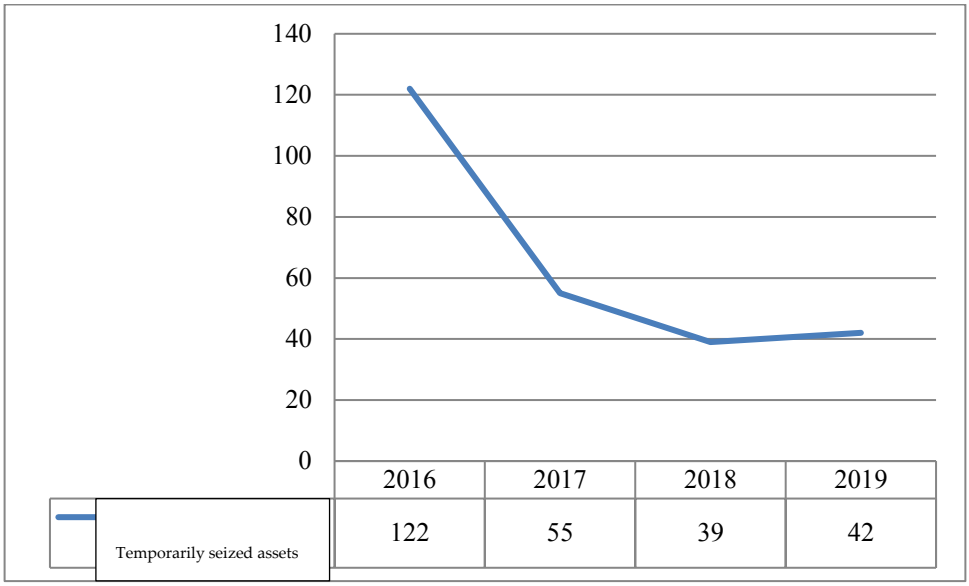
The following data were analyzed on the basis of the submitted excel table databases: (1) temporarily seized real estate; (2) permanently confiscated real estate and (3) a table of confiscated movables in which, according to the Directorate, about 90% of confiscated movables are listed.[29]

In addition to these data, the research team was provided with several interesting examples from case law that were analyzed within a separate unit (see case law).

Temporarily confiscated real estate

The data for the period from 2016, together with the cases processed in 2020 were submitted. Bearing in mind the methodological rules, the period from 1 January 2016 until 31 December 2019 was processed (*a four-year period*).

[29] It was promised that an organised table of movables would be submitted in mid-October 2020.



Graph 1. Movement of the number of temporarily seized real estate 2016-2019

As can be seen in Graph 1, the largest number of temporarily seized real estate was recorded during 2016 (122) and the smallest in 2018 (39) - that is, more than three times. If the first (2016) and last year (2019) are placed in the context of observation, it is noticeable that the number of temporarily seized property is lower by 66%

In the table above, a special column is dedicated to the leasing of real estate, within which the data on the amount of rent paid by the lessee on a monthly basis is available (defendants, third party from whom the property was confiscated or some other person outside criminal proceedings acting as lessees). Data on the amount of the lease are mostly given in EUR, while for only a few real estates the amount is stated in RSD.

Out of the total number of temporarily seized real estate (258), 102 real estates were leased, and the average lease price is EUR 241.62. The range of the lease amount is from EUR 20.00 to EUR 1,750). What is noticeable is that the tables do not contain data on the estimated value of the real estate, but also no data on when the real estate was leased, i.e. whether the real estate is still being leased. If we start from the assumption that all 102 real estates are still issued, we come to the data according to which a monthly income of EUR 24,645.00 is generated on based on the leases. Please note that this is an assumption, since the table does not show two basic parameters: *the first*, from what date the specific real estate was leased and *the second*, whether the lease is still ongoing.

When it comes to real estate appraisal, it is important to point out that the appraisal is not done for one main reason, and that is that the Directorate has limited budget funds, and for that reason is not able to

hire the City Bureau of Expertise. In that sense, employees in the Real Estate Appraisal Department within the Directorate, most often perform appraisals on the basis of data submitted by the Tax Administration (these are the bases on which the Tax Administration determines the amount of tax) or on the basis of data available in court decisions.

The table also shows that the real estate is temporarily confiscated from the defendant or a third party, and that the same person is then temporarily given such real estate for lease or use (*such examples are often encountered in practice*).

Permanently confiscated real estate

Data were submitted for the period from 2009, together with the cases processed in 2020. In the case of permanently confiscated property, all submitted data are taken into account.

In the observed period, a total of 83 real estates (*houses, apartments, shops, garages, fields, meadows, etc.*) were permanently confiscated. Observed by places, the largest number of real estate was confiscated in Belgrade (37), Sombor (10) and Novi Sad (9). These real estates were confiscated in 47 cases, which speak in favor of the fact that during one procedure, several real estates that were derived from a criminal offense were confiscated from one person, as expected.

If we look at 47 proceedings from the aspect of the place of confiscation of real estate (*in order to create a general picture, we will group them in relation to the areas of the Courts of Appeal in RS*), the structure is as follows: Court of Appeals in Belgrade (24) Kragujevac (9) and the Court of Appeals in Nis (1).

When it comes to the purpose of permanently confiscated real estate, a part is given for use to the Directorate, other state bodies, and educational institutions; while one part of the real estate is leased (*data on the amount of rent is not available*). With regard to certain real estates, apart from the data that they have been permanently confiscated, there is no other data (e.*g. whether they have been given for use*).

4 Court practice

The first example from practice

Pursuant to the decision of the High Court in Belgrade, no. TOI 1/16 dated 20 December 2016, the request of the Higher Public Prosecutor's Office in Belgrade for permanent confiscation of property arising from a criminal offense from the owner, BU by the judgment of the Higher Court in Belgrade no. K-1017/10, which was confirmed by the judgment of the Court of Appeals in Belgrade no. Kž1-6192 / 11 due to the criminal offense of abuse of official position under Article 359 paragraph 4 in conjunction

with paragraphs 3 and 1 of the Criminal Code, which proposed permanent confiscation of property from the owner, BU and third parties MJ, BU, BM, PU, VU and MI, by:

- adopting the motion under item 1 of the wording of the decision to permanently confiscate, from the defendant BU (owner) – funds in the amount of EUR 62,174.78 from one of the accounts; from third parties (owners) - MJ – a house in Belgrade, consisting of a basement with garage and utility rooms and a shop in Belgrade of 87m2, from BU (owner), a half of the house and a half of an apartment of 88.77m2 in Belgrade, from BM (owner), a half of the house and a half of an apartment of 88.77m2 in Belgrade and from BUS (owner) house-shop of 147,26m2 and an apartment of 75m2 in Belgrade.
- rejecting the motion under item 2 of the wording of the decision, as unfounded, the request to permanently confiscate from the defendant - owner BU an apartment of 57m2 and funds from the account kept with XX bank in the amount of EUR 15,700.00 and EUR 35,700.00; from third parties (owners) UV – funds from accounts in the amount of 1,359.26 EUR and 16,555.62 EUR, from MJ (owner) Independent Craft Shop in Belgrade and a share in a joint stock company, from MI (owner), a house and three buildings of 4 acres and 83.30m2 and a company, and from BM (owner), a house with a shop of 524.24m2.

The Court of Appeals in Belgrade, deciding on the appeals against the first-instance decision, filed by the Higher Public Prosecutor's Office in Belgrade, the convict and his defense counsel, proxies of third parties and third parties SN, UB and MB, issued a decision. no. Kž. TOI 1/17 dated 17 June 2019, which partially adopted only the appeal of the Higher Public Prosecutor in Belgrade and the decision of the Higher Court in Belgrade no. TOI 1/16 modified by the adoption of the request of the HPP for permanent confiscation of property derived from the crime and from the accused owner BU permanently confiscated funds in the amount of EUR 62,174.78 (as in the first instance decision) and an apartment of 57m2.

After five hearings, hearing the convicted and the economic and financial expert and his additional expertise and additional expertise of the economic and financial profession - GZ for expertise in Belgrade and considering all the evidence, the second instance court made the said decision with the explanation that the first instance decision was unfoundedly challenged in relation to item of the wording rejecting the request for permanent confiscation of property from third parties, as well as funds of the convicted on two accounts in XX bank, because during the procedure it was not proven that these assets originated from the convicted's criminal act. The Court points out that the third parties VU, JM, IM, LB, MB, SN and VN generated legal income (based on employment, making a profit from the company they founded, from renting apartments and business premises) and that the property listed in this item is not in obvious disproportion to their income as well as that the convicted earned legal income. On the other hand, it is pointed out that the apartment of 57m2 was purchased at the time of

the commission of the crime and that the court concluded from the analysis of income and expenses of the convicted and his wife that it was procured with funds arising from the crime. In order to reliably determine the income of the convicted and his wife and third parties in the period of purchase of real estate, from 1997 to 2000, the court, acknowledging the economic and financial expertise performed in the first instance and that the expert covered the period of income and expenses of the convicted and third parties until the end of 2010, ordered two additional expert examinations. Appreciating the expert's findings and the finding of the first supplementary finding, the Court states that the convicted and his wife have a negative difference in income and expenses in the amount of EUR 43,163.00, or EUR 78,510.00; if a gift to daughter S in the amount of DM 70,000 is added (EUR 38,347.00), especially appreciating that the experts took into account the average consumer basket, which includes the basic living expenses of a certain family, when calculating expenses, that they did not take into account e.g. loan repayment costs, costs of educating children abroad (*daughter J was educated in France*) the cost of summer vacations, the cost of buying a car, the cost of maintaining the real estate they owned (*expenses for electricity, telephone, tax expenses, etc.*), that they did not take into account the statements of the convicted and third parties, including statements about gifts that the accused gave to his daughters.

The decision of the first instance court was also positively regarded and in the case of the decision of the first instance court when the property listed in the wording of the decision was permanently confiscated from third parties, considering the assessment of the expert's findings and that: (a) third party, JM (owner), daughter of the convicted and her husband had a negative difference in the amount of DM 261,854.13, when comparing legal income and expenses, which would have been even higher if the real cost of living had been taken into account, as well as that she was 22 years old and has been employed since 1990; (b) third parties, LB (owners), the convicted’s daughters (who transferred the real estate to her children, with a ½ share each, UB and MB in 2003) and her husband MB, had a negative difference of DM 1,185,513.00 of legal income and expenses, not taking into account the costs of children's education, summer vacations, car purchases, fees for construction land under the contract of 29 February 2000, which amounts to RSD 1,930,771.00, and the fact that this value is reduced by 50%, i.e. by RSD 965,385.50, if paid within 15 days, the cost of construction of a business-residential building estimated by the tax administration in the amount of EUR 279,300.00; (c) third parties, the owners of SN, the convicted 's daughter and her husband VN, also had a negative difference of DM 248,153.98 when comparing the legal income and expenses of this family which would have been even higher had the real cost of living been taken into account, especially given in the form of the purchase of an apartment of 131m2, and that they could not buy the said real estate from legal income, but that the real estate was purchased from funds that the convicted BU obtained by committing a crime, which he transferred to his daughters.

When determining the facts whether the third parties bought the real estate that was permanently confiscated from the legal income, the court also had in mind that the third parties after the observed

period, i.e. until 2003, established a Consortium of natural persons that bought the company at a public auction for the amount of EUR 799,503.00, for which the first instance court determined that it comes from legal income, given that they obtained a significant part of funds by leasing real estate purchased from 1997 to 2000, so that it is therefore clear that their legal income in the period from 1997 to 2000, as well as the savings made from that period, did not enable the purchase of the real estate in question.

The court did not accept as the convicted's income the amount of DM 98,000.00, deriving from the alleged division of property in Montenegro, which is the amount paid to him by VU and IU, which follows from their written and certified statements; VU's income received from renting the house, funds amounting to EUR 20.000,00 obtained at the wedding of LB's family; money in the amount of EUR 39,400.00 obtained from the sale of an apartment in Budva in 1994 which LB allegedly received from her aunt, as well as money in the amount of EUR 130,000.00 which MB allegedly received from his parents; profit or profit from the company without proof that the company has paid the profit; money received at the LOTO won by MB; earnings of DM 27,000.00 earned in Romania, because no adequate evidence was submitted for any of the above allegations.

The court pointed out that it also had in mind the fact that third parties, i.e. daughters of the convicted BU, after criminal proceedings were initiated against their father, transferred certain real estate to their children and their husbands and that most of these gift contracts were concluded in 2003, that the convicted BU himself in 2003 had a house with two apartments sold, and his wife sold a house with three apartments in the same year, while in 2006 she gave the house with two apartments to her daughter, and it is obvious that the convicted and his wife tried to alienate certain real estate, and their daughters tried to thwart the seizure thereof in the ensuing proceedings, by giving them away as presents.

The second example from practice

Pursuant to the Judgment of the High Court in Kraljevo no. Spk-Po4 27/20 dated 24 May 2020, an agreement on the confession of a criminal offense was accepted, concluded between the Higher Public Prosecutor's Office in Kraljevo, the Special Department for the Suppression of Corruption and the accused DK, by which the defendant was found guilty on 22 My 2020, for keeping the property acquired by the criminal offense, i.e., money in the amount of EUR 562,805.00 and transferring it outside the legal flows to Turkey, hiding it in the factory cavities under the upholstery on the floor, in the space provided for the spare wheel and partitions of the passenger door of the car owned by his company in Turkey and directed the money from Montenegro to Turkey through the territory of the Republic of Serbia. The above-mentioned money was found at the border crossing, and thus the criminal offense of money laundering under Article 245 paragraph 3 in conjunction paragraph 1 of the Criminal Code, was committed. The defendant was sentenced to 1 year and 6 months in prison and a fine of RSD 400,000.00. Also, a security measure of confiscation of an object, a passenger vehicle was imposed on him, as well

as money in the amount of EUR 562,805.00 was confiscated from him as a security measure and a measure of confiscation of proceeds of crime.

The second example from practice

Pursuant to the judgment of the High Court in Prokuplje, no. K-8/19 dated 1 October 2019, the accused MZ and AV, were found guilty of committing the crime of unauthorized production and distribution of narcotics under Article 246 paragraph 1, in conjunction with Article 33 of the Criminal Code and sentenced to imprisonment for a term of five and six years, respectively.

To the accused MZ, a security measure was imposed by the seizure of items - narcotics, and to the accused AV, a security measure was imposed by confiscating - an LG mobile phone.

The motion of the Higher Public Prosecutor's Office to impose a security measure of confiscating a VW Tiguan passenger vehicle from the defendant MZ and a HUAWEI mobile phone from the defendant AV, stating that this was decided because criminal-technical documentation it cannot be concluded that these are modifications made to the vehicle, in the sense of making a special hiding place, i.e. a bunker in which the drug was stored, but it is concluded that the drug is placed in the factory cavities of the vehicle under the passenger seat, and that there is no evidence that AV used a HUAWEI phone to commit the crime.

5 Conclusions

As a disputable issue in the application of the Law, there is a possibility of requesting a repetition of the procedure according to the provisions of the Criminal Procedure Law, in the procedure of permanent confiscation of property arising from a criminal offense, on which a uniform position was not taken at the joint session of appellate courts. On 16 June 2014, the answer was given at the session of the Criminal Department of the Supreme Court of Cassation, i.e. the congruous application of the CPL in the procedure of confiscation of property arising from a criminal offense was confirmed.

The court's conclusion reads: repetition of the procedure for confiscation of property derived from a criminal offense terminated by a final decision on permanent confiscation of property derived from a criminal offense is allowed under the rules for reopening criminal proceedings terminated by a final judgment, regardless of calling the form of the decision the decision, due to the fact that such a final decision in the procedure of confiscation of property derived from a criminal offense is, by its legal nature equated with a final judgment in criminal proceedings.

In practice, it was assessed as a bad conception of the Law after the changes in 2016. Namely, on the basis of the Law, the first instance court makes a decision without a hearing and presentation of

evidence, only on the basis of documentation submitted by the public prosecutor and the owner in response, and that evidence is presented before the second instance court, and that the state of the facts is determined only then, and the decision is made to which there is no right of appeal. That decision becomes final, without giving the possibility to check before the higher court the legality of the assessment of the presented evidence.

The problem in practice is the way in which the legislator regulated the conditions for temporary or permanent confiscation of property from third parties, i.e. the way in which it is regulated which facts the public prosecutor should prove in the procedure for temporary confiscation of property, and which facts he proves in the procedure for permanent confiscation of property from third parties.

In Article 23, the Law prescribes the conditions for temporary confiscation of property and what the request should contain, from which it follows that where conditions are concerned; there is no difference as to who the owner of the property (*defendant, accused associate, testator, legal successor or third party*) is. At this stage of the proceedings, the plaintiff has no obligation to prove that the transfer was made in order to thwart the seizure. However, confusion is created by the provisions of the Law that regulate the permanent confiscation of property, which defines in more detail the very concept of transfer of property to a third party. Article 38 paragraph 3 stipulates, *inter alia*, that the request for permanent confiscation of property against a third party should contain evidence that the property derived from the criminal offense was transferred in order to thwart the confiscation, and Article 43 paragraph 3 that the public prosecutor is obliged to present evidence at the hearing that the property was transferred to a third party free of charge or in lieu of consideration that obviously does not correspond to the actual value, in order to prevent confiscation. The outcome of such a solution may be to temporarily confiscate property from a third party for which there is a reasonable suspicion that it originated from a criminal offense, but that during the procedure for permanent confiscation of property the public prosecutor fails to prove that the transfer of property to a third party was carried out in order to thwart seizure, which raises the question of the position of a third party and his/her rights in relation to the property that was temporarily confiscated from him/her with all the consequences. Namely, in the above-mentioned case, the temporarily confiscated property is returned to the owner - a third party. A third party would not be entitled to any compensation for the temporary confiscation of property, provided that the legal procedure of temporary confiscation was followed and the Directorate for Administration of Seized Assets acted in accordance with its powers in managing the above-mentioned property.

The procedure of financial investigation requires more expertise of certain types of property, but according to the case law in order to determine the disproportion between legal income and property available to a person, which causes high costs and is an aggravating factor in the investigation. Therefore, the question arises of the formal engagement of officials of tax and other bodies that participated in the financial investigation as experts and the need to standardize this issue.

The remarks made in the Report prepared for the needs of the project "*IPA/2017 Countering Serious Crime in the Western Balkans*" can still be considered justified, when it comes to statistics and case monitoring. Thus, for example, the current databases do not record data on whether and how many persons submitted claims for damages, what the decision on the submitted claim was; then information on how the amount of the lease is determined in in relation to real estate to be leased, but also whether such contracts are audited, which is an obligation prescribed by the Law. At the meeting held with the representatives of the Directorate, some of the above-mentioned problems were pointed out, with great hopes placed in the new program which, among other things, could more easily group the requested data according to the given criteria. Some of the court decisions that have been submitted are good examples of practice, but they are not enough to draw general conclusions about the way courts and prosecutors' offices act in relation to this type of criminal cases. In that part, some of the following analyses should, apart from the work of the Directorate, primarily focus on the work of the court and the prosecutor's office (*certainly, the practice in that part was not the subject of the current analysis*).

As stated, international cooperation in this field is necessary not only in a formal way, in terms of acting on requests in specific criminal cases, but it should also be directed to another type of international cooperation, such as, e.g. provided by the network *BAMIN* (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo[30], Montenegro, Northern Macedonia and Slovenia are members, unlike Serbia).

Finally, as a conclusion, it could be stated that great efforts are being made to achieve good results in practice in terms of management of confiscated property, but the above remarks stand as key points that should be worked on. The enactment of new regulations, such as the Law on Determining the Origin of Property and the Special Tax, is also a positive thing, but for good results in practice, adequate training should be provided for those who implement such regulations.

[30] The authors view Kosovo in accordance with UN Resolution 1244, i.e. as part of the Republic of Serbia, whereby the data on BAMIN members were taken in integral form from the website of the said network.