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Chasing Justice: Asset Recovery in Legal Theory and Practice and Serbia's Path to EU Compliance

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Aleksandar Stevanović[**]

Abstract

Countries lose billions of euros annually due to corruption, economic crime, and illicit financial activities. Europol estimates that between 0.7% and 1.28% of the EU's GDP is linked to suspicious financial transactions, with only 2% of criminal proceeds frozen and 1% confiscated. These figures highlighted the urgent need for robust asset recovery mechanisms to combat crime and uphold justice. Rooted in the principle that "crime should not pay", asset recovery ensures that no one retains gains acquired through unlawful acts, addressing economic, social, and moral harms caused by such activities.

This article examines the key phases of asset recovery: tracing illicit proceeds, implementing legal mechanisms for freezing and confiscation, and managing confiscated assets. The tracing phase highlights challenges in financial investigations, particularly for crime like corruption, where secrecy and collusion hinder evidence collection. Legal mechanisms are analyzed, emphasizing the need for extended, non-conviction based, and third-party confiscation to align Serbian law with EU acquis. Proper management of confiscated assets is essential to prevent depreciation and ensure their use for victim restitution or public benefit.

The article underscores the importance of balancing effective crime deterrence with human rights safeguards. It also examines international standards, with the special focus on EU Directives, and their application to Serbia's legal framework. By addressing the challenges of translational and evolving crime, the article advocates for adaptive legal frameworks and best practices to strengthen the global fight against financial crime and ensure justice.

Keywords*: asset recovery, EU acquis, international standards, financial crime*

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1. Introduction

Countries lose billions euros each year through corrupt practice, funds misappropriation, economic crime in general[1]. Europol estimates that between 0.7% and 1.28% of the EU's annual GDP is linked to suspicious financial activities, amounting to billions of euros each year, while only 2% of criminal proceedings are successfully frozen and even smaller portion, 1% is confiscated across the European Union[2]. This staggering figure reflects the scale of illicit finance circulating with the economy, highlighting the urgency for stronger regulatory frameworks and enforcement mechanisms[3]. As it was stated in the Explanatory Report to the Criminal Law Convention on Corruption[4], the corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behavior, which is inimical to the administration of public affairs. Furthermore, illegal ways for acquiring property are also well-established and rooted when it comes to the private affairs and relations. Due to the fact that the acquiring property with no respect for proposed social regulations undermines the sole base of social and legal order, there is a traditional rule inherent to the criminal, civil and administrative law, that no one may retain material gain obtained by violating norms. When it comes to the civil law, such rule is embodied in the legal institute of acquiring without ground in legal transaction or law while the criminal law norms dictate that no one may retain material gain obtained by criminal offence[5] or in other words, it lays down a principle – *crime should not pay*[6].

To protect the system of providing social services, development projects, human rights, social justice, public moral, to prevent negative economic effects etc. asset recovery mechanisms need to be continuously developing and designed to fit the goal. However, in attempt to prove that the *crime does not pay* and that there is no *safe haven* for illegal property, the governments are facing huge challenges. At first place, the need to ensure that any proposed new legal measures imposing a cost to society should always be balanced against the benefits that will accrue[7]. Furthermore, it has to be said that the process of making criminal law norms and creating criminal justice system is in a certain way the art of balancing between an effective protection of the

[1] See for more details in: J. P. Brun, A. Sotiropoulou, L. Gray, C. Scott, K., Stephenson, K., *Asset recovery handbook: A guide for practitioners*, Second edition, World Bank Publications, 2021.

[2] European Commission (2020) Report from the Commission to the European Parliament and the Council – Asset Recovery and Confiscation, Ensuring that Crime does not Pay, COM(2020)217 final.

[3] M. Matic Boskovic, *Oduzimanje imovinske koristi proistekle iz krivičnog dela – uporednopravna rešenja i iskustva iz Srbije [Confiscation of property benefits resulting from a criminal offense – comparative legal solutions and experiences from Serbia],* in J. Kostić, A. Stevanović (eds.), *Finansijski kriminalitet [Financial crime],* Institute of Criminological and Sociological Research, Institute of Comparative Law, 2018, pp. 175-189.

[4] Explanatory Report to the Criminal Law Convention on Corruption, Strasbourg 27 January 1999.

[5] This is to explain the well rooted legal principle in the three main branches of law. However, in the context of making distinction among criminal, civil and administrative forfeiture, the first one is based on a criminal conviction, the second one is based on unlawful conduct by which the asset was obtained while criminal conviction is not required.

[6] P.C. Van Duyne, W.S. De Zanger, F.G.H. Kristen, *Greedy of crime money. The reality and ethics of asset recovery*, in *Corruption, Greed and Crime Money: Sleaze and Shady Economy in Europe and beyond*, Oisterwijk, Wolf Legal Publishers, 2014, pp. 235-266.

[7] S. Sittlington, J. Harvey, *Prevention of money laundering and the role of asset recovery*, in *Crime, Law and Social Change*, no. 70(4)/ 2018, pp. 421-441.

fundamental values which are endangered by criminal acts and protection of the fundamental values (ownership rights, due process safeguards etc.) which can be endangered while that goal is being achieved. Finally, asset recovery norms and instruments have to be adequate and adapted to face the current criminality, particularly having in mind increasing transnational crime, online crime, emerging of so-called crypto crime and new-age crime environment in general.

When examining property crime and their perpetrators, it is essential to recognize that these offenses are typically driven by self-interest, with individuals seeking to maximize their personal utility[8]. In other words, the primary objective of rational perpetrators is to acquire as much property as possible, disregarding legal (criminal law) norms. Moreover, the criminal potential of criminal structures is frequently assessed based on their accumulated property and assets[9]. Therefore, taking into account that rational element in conducting property crime, it is a priority task of the law enforcement bodies to tackle the illicitly acquired asset to prevent the crime[10]. As it was stated in the literature there seems a broad consensus among politicians, prosecutors and police officers that using complex financial investigations followed by the seizure of illegal assets is the most powerful tool to control crime[11].

Given the importance and role of asset recovery in the enforcement of the criminal laws, most countries have adopted some form of asset recovery legislation. However, to be effective, every single approach in the combat against the illicit acquired proceeds need to address at least two questions: *How can confiscation of the proceeds of crime be accomplished; Whether the effective confiscation regimes are constitutional or not and do they infringe upon individual rights and liberties*[12]*.*

The focus of the article is to analyze the key elements that underpin asset recovery regulation through the lens of its three essential and interconnected phases:

(1) regulating tracing of illicitly acquired proceeds,
(2) legal mechanisms for freezing and confiscation, and
(3) managing assets post-confiscation. Assessment of the first phase includes assessment of the investigative techniques, international cooperation, and advanced tools for asset tracing, all aimed at uncovering and locating hidden or transferred assets. Furthermore, this phase relates on assessment of information-sharing systems, both domestically and internationally, as well as on institutional capacities to follow complex financial trials. In the assessment

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[8] *Ibidem*.

[9] A. Bulatović, *Imovina kao element infrastrukture organizovanih kriminalnih grupa [Property as an element of the infrastructure of organized criminal groups]*, in J. Kostić, A. Stevanović (eds.) *Finansijski kriminalitet [Financial crime],* Institute of comparative law; Institute of criminological and sociological research, Belgrade, 2018, pp. 205-216.

[10] As Lord Steyn noted in one the of the UK House of Lords landmark judgement on confiscation orders under the Criminal Justice Act 1988, *Regina v Rezvi* (2002) UKHL 1 "*It is a notorious fact that professional and habitual criminals frequently take steps to conceal their profits from crime. Effective but fair powers of confiscating the proceeds of crime are therefore essential*." See more in A. Bacarese, G. Pereira, *Technical Paper on Criminal Assets Recovery System in Serbia and Comparative Analysis with other Systems in Central and Western Europe*, 2010, available at: https://rm.coe.int/16806ebc7a, accessed on 11.12.2024.

[11] R.T. Naylor, *Criminal profits, terror dollars, and nonsense*, in: *Transnational Financial Crime*, Routledge, 2017, pp. 559-566.

[12] See more in: T. Trinchera, *Confiscation and asset recovery: Better tools to fight bribery and corruption crime*, in *Criminal Law Forum*, Vol. 31, No. 1, 2020, pp. 49-79.

of the second phase, authors focus on the procedural and substantive legal frameworks that allow authorize to seize and confiscate identified assets. This includes examining various models of confiscation, specifically EU acquis, and compliance of Serbian legislation with EU requirements. Analysis of the third phase, addressed the often overlooked yet critical process of preserving and utilizing recovered assets. Proper management involves safeguarding the value of confiscated property, mitigating risks of depreciation, and determining their ultimate use, whether through restitution to victims, reinvestment into public funds, or other socially beneficial purposes.

By analysing these three dominant components in details, the article aims to provide a structured analysis of the asset recovery process and evaluate its effectiveness in combating financial crime. Through this framework, the study will highlight the challenges, best practice, and policy recommendations necessary to align asset recovery efforts with international standards and national regulatory framework in Serbia.

2. Regulating tracing of illicitly acquired proceeds

Criminal law enforcement bodies are facing problems at the first step when it comes to the fight against economic crime and corruption due to the inherently hidden nature of such activities. Economic crimes, particularly corruption, often operate under a veil of secrecy, shielding them from immediate detection and investigation. In particular, corruption manifests as a "business offer" made to the public authorities, creating mutual benefits for both parties involved in the corrupt relationship. This shared interest fosters a cycle of collusion and confidentiality, as both sides remain incentivized to protect their illicit dealings. Such relationships are built on trust and discretion, making them exceptionally resistant to external scrutiny. The hidden nature of corruption further complicates efforts to detect these crimes, as traditional investigative tools are often insufficient to penetrate these covert networks. Gathering evidence that meets the legal standards required for court proceedings becomes an even greater challenge[13]. Hence, even after dedicating considerable time and resources to investigations it is not uncommon for prosecuting authorities to drop cases due to lack of sufficient evidence[14].

Freezing and confiscation represent two key legal mechanisms in the fight against financial crime, organized crime, corruption, and money laundering. Together, these tools aim to deprive offenders of the financial benefits derived from their illicit activities while protecting the integrity of the legal economy and ensuring justice. Though closely related, freezing and confiscation serve different but complementary purposes within the broader asset recovery process.

Freezing is a preliminary measure applied during ongoing criminal investigation intended to temporarily restrict access, movement, or disposal of property suspected to have been obtained through or used in criminal activities. The purpose of freezing is to ensure that the identified property remains available for potential confiscation at a later stage, as there is a constant risk that offenders might transfer or conceal assets

[13] A. Stevanović, *Lobbying and Corruption: comparative legal analysis of two notions*, Journal of Eastern-European Criminal Law, No. 1, 2019, pp. 110-120.

[14] I. Carr, D. Lewis, *Combating Corruption through Employment Law and Whistleblower Protection*, Industrial Law Journal, no. 39 (1), 2010, pp. 1-30.

to evade law enforcement measures. Once freezing measures secure the assets, ***confiscation*** represents the final, permanent deprivation of property following a judicial or administrative decision. Confiscation can occur under several legal models. The most common is ***conviction-based confiscation***, which requires a criminal conviction to confirm the asset's illicit origin or use in criminal activities. In contrast, ***non-conviction-based confiscation*** allows the seizure of assets without a criminal conviction in specific cases, such as when the suspect absconds, is deceased, or unable to stand trial due to illness. In addition to these mechanisms, many jurisdictions implement ***extended confiscation***, which enables authorities to seize property that appears disproportionate to an individual's lawful income. This approach is particularly effective in tackling organized crime and corruption, where assets are often concealed or laundered through complex financial networks. Extended confiscation does not require direct proof that the specific property resulted from a particular crime; instead, the focus shifts to the inability of the accused to justify the legitimacy of the assets. Another important aspect of modern confiscation frameworks is the ability to target ***third-party assets***. Criminals often transfer illicit proceeds to family members, associates, or shell companies to evade confiscation. Legal mechanisms now allow authorities to seize property held by third parties if it can be proven that they knew, or should have known, that the transfer was intended to circumvent legal measures.

The traditional method employed by the law enforcement bodies is confiscation (conviction-based confiscation) which is limited to the property involved in the particular offence for which the defendant was convicted. Hence, all the relevant information are obtained within the criminal procedure. In addition, there is a possibility for the grounds of asset acquiring to be investigate within the tax law procedure by the tax department. If the investigated person or legal entity failed to prove the legal origin of its property, such property will be tax with special rates which are far more intrusive than the ordinary one.

Undoubtedly, there is a consensus among the scholars and practitioners that those traditional methods turned out to be inadequate to deprive criminals who engaged in corruption offences of their illicitly acquired proceeds based on many relevant empirical indicators. Even the sole experience showed that it is of a great importance to trace the „suspicious assets" at the early stage of an investigation Therefore, difficulties in detecting evidences and initiating anti-corruption proceedings have led many governments, and consequently international organizations, to consider alternative measures that go beyond the classic provisions of criminal law when it comes to the fight against illicitly acquired proceeds. This was the reason for implantation of the concept based on extended confiscation or non-conviction-based confiscation. In line with this, such improved measures are known as a preventive asset recovery instrument employed outside of the criminal law and were developed as a part of anti-mafia legislation to decrease the organized crime profitability[15].

The previously mentioned conceptual shifting in asset recovery legal framework impacted also the legal terminology. For instance, a distinction between the term confiscation and the term forfeiture should be made since the confiscation refers to the permanent deprivation of the property of any kind derived or obtained directly or indirectly from an criminal offence, by order of the court or other competent authority,

[15] H. Matt, *Criminal law principles should be applied in all asset recovery cases throughout the EU,* in New Journal of European Criminal Law, no. 15 (4), 32024, pp. 73-374.

while the forfeiture means removal of items whose possession constitutes an offence or the items used in the crime commission[16,17]. Mirroring the previously explained trends in the crime control strategy when it comes to the illicitly gain property, there is a certain revival of the strategy focused around the confiscation even though the traditional conviction based forfeiture are still provided for in the laws worldwide[18].

However, in the case of corrupt crimes, the most visible and the most immediate consequence is the fact that persons involved in corruption may gather luxury cars, buy homes that look like palaces and enjoy exotic vacations. Such social, economic and political anomalies could be labelled as "illogicalities" are clear indicators of high degree of corruption in one society[19]. Having in mind the paradoxical situation that individuals show off wealth with disputable origin in terms of legal acquisition, the idea arose to target precisely the amount of wealth that could not possibly have come from official salary or other legal income[20].

International recognition at the regional level, for the concept of illicit enrichment based on targeting unexplained wealth was made when the Inter-American Convention Against Corruption[21] became the first convention to include illicit enrichment under Article 9, describing the concept as a "significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions...". It was in the 1996 and seven years later, in 2003, the African Union Convention on Preventing and Combating Corruption[22] became the second convention to include a provision on illicit enrichment, describing the concept in the same manner[23]. Finally, in the year 2003, the United Nations Convention against Corruption[24] included a provision on illicit enrichment in Article 20 stating that: "Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income". In this regard the international recognition of a concept got a universal dimension and importance.

The illicit enrichment, as proposed in the provisions of UNCAC, is the criminal offence itself when there is an unexplained wealth with no legal basis for it, under certain conditions. Due to the existence of numerous controversies that are reflected in conflicting views when it comes to the violation of important criminal law principles,

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[16] B. Vettori, *Tough on criminal wealth: Exploring the practice of proceeds from crime confiscation in the EU*, Springer Science & Business Media, 2007.

[17] In this context, the term seizure refers to the temporarily prohibiting the transfer, conversion and disposition of property or custody and other means of control over the property by the competent authority.

[18] *Ibidem*.

[19] A. Stevanović, L.M. Stănilă, *Illicit Enrichment as a Criminal Offense: Possibility of Implementation in the National Criminal Legislations*, Institucije i prevencija finansijskog kriminaliteta, Belgrade, December 2021, Institute of comparative law; Institute of criminological and sociological research, Belgrade, pp. 205-218.

[20] *Ibidem*.

[21] Organization of American States. Inter-American Convention against Corruption, 29 March 1996.

[22] African Union Convention on Preventing and Combating Corruption, 11 July 2003.

[23] A. Stevanović, L.M. Stănilă, 2021.

[24] United Nations Convention against Corruption, G.A. Res. 58/4, U.N.

the crime of illicit enrichment is provided as an option and states are only obliged to consider the possibility of introducing it into their legal systems if this is not contrary to its constitution and the fundamental principles of its legal system[25].

As the Human Rights Council[26] observed the promotion and protection of human rights is essential to the fulfilment of all aspects of an anti-corruption strategy. There are a large number of academics and practitioners who argue that criminalizing of illicit enrichment raises serious questions of civil liberties protection and criminal proceedings safeguards[27] and the same situation is when it comes to the extended confiscation or non-conviction-based confiscation or civil confiscation since that measures includes intrusive mechanisms that could be challenged from the perspective of constitutional law and human rights. For instance, there is a statement in the literature that the USA civil asset forfeiture laws at their core deny basic due process safeguards[28]. Considering the previous statements from the available literature, but also a certain view of the courts29, the following problems related to the criminalization of illicit enrichment and extended asset recovery practice stand out:

– violation of the presumption of innocence;
– violation of the right to silence;
– violation of the privilege against self-incrimination;
– violation of the burden of proof principle;
– violation of the *lege certa* principle *and*
– violation of the ownership rights[30].

The matter of fact is that the reverse burden of proof approach was employed when it comes to the extended and particularly civil confiscation, and this is the main reason for denying the positive effect in crime prevention mostly by stating that other values protected by the criminal law are endangered. On the other hand, the illicitly acquired asset is usually the most visible part of the (economic) crime and the process of tracing it must be focused around the „follow the money" principle[31]. In addition, it

[25] A. Stevanović, L.M. Stănilă, 2021.

[26] Human Rights Council Res. 7/11, Rep. of the Human Rights Council, 7th Sess., Mar. 3–Apr. 1, 2008 U.N. Doc. A/HRC/7/78, at 31 (July 14, 2008).

[27] A. Stevanović, L.M. Stănilă, 2021.

[28] D.B. Ross, *Civil forfeiture: A fiction that offends due process*, Regent UL Rev., no. 13, 2000, p. 259.

[29] In Romania, the body in charge of fighting corruption (ANI) was able to directly request from the court the confiscation of assets in cases where it was deemed that there was a significant disproportion (exceeding the amount of EUR 10,000) between the acquired assets and legal wage of a public official. However, in April 2010, the Constitutional Court of Romania found that such legal solution was unconstitutional in terms of several elements. It concluded, among other things, that that way the constitutional presumption that the assets have been legally acquired unless proven otherwise was violated." (Stojanović, 2019, p. 27). In 1994, Italy's Constitutional Court overturned the illicit enrichment provisions of Law no. 356 of 1992 on grounds that a presumption based on the status of the accused violated the presumption of innocence.47 In 2004 in the Arab Republic of Egypt, the Cassation Court addressed the question of whether the illicit wealth offense is compatible with legal principles and held that the second paragraph of Article 2 of the Illicit Enrichment Law, which defines as an offense whenever such increase is not consistent with the public official's resources and the public official fails to prove the legitimate source for it, violated the constitution regarding the genesis and presumption of innocence (Muzila *et al*, 2012, p. 29). More on Anti-corruption bodies in: M. Matic Boskovic, *Effectiveness of Anti-Corruption Bodies in Suppression of Corruption in Selected Countries,* Journal of Criminology and Criminal Law, no. 56 (3), 2018, pp. 73-91.

[30] See more in A. Stevanović, L.M. Stănilă, 2021.

[31] The U.S. was the first to implement a coherent follow-the-money strategy, embodied in the 1970

should be stated that the so called improved asset recovery mechanisms are not the criminal sanctions itself, but manifestations of the core criminal law principle that no one may retain material gain obtained by criminal offence, embodied in certain measures imposed on those who cannot prove the legal grounds of their property when certain legal and factual conditions are fulfilled. Additionally, even during the initial phase of implementing the extended and civil confiscation model in USA, relevant empirical research indicated that the effectiveness of confiscating illegal gains was significantly higher when courts employed civil rather than criminal procedures[32]. This evidence prompted several countries to reform their legal frameworks to incorporate similar approaches[33].

3. Legal mechanisms for freezing and confiscation

3.1. International standards

Legal mechanisms for freezing and confiscation are essential tools for combating financial crime, corruption, and organized crime. By implementing effective frameworks and aligning with international standards, countries can ensure that crime does not pay, while safeguarding the rights of individuals and promoting transparency in asset recovery process. International standards play a key role in guiding states to adopt efficient measures that strike a balance between combating crime and respecting fundamental legal principles.

Instruments such as the United Nations Convention Against Corruption (UNCAC), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), FATF Recommendations and the EU Directives on asset recovery establish standards on strengthening mechanisms for tracing and identifying assets, legal frameworks for confiscation and forfeiture, including non-conviction-based measures, effective asset management to preserve and utilize confiscated property, international cooperation and mutual legal assistance, and ensuring victim restitution and equitable sharing of recovered assets.

UNCAC as the first legally binding global instrument dedicates a full chapter (Chapter V) to asset recovery, specifically on prevention and detection of asset transfers, international cooperation for tracing, freezing, seizing, and confiscating illicit assets, the return of stolen assets to their country of origin or victims, and mutual legal assistance and measures for non-conviction-based confiscation.

Financial Action Task Force (FATF) Recommendations sets global anti-money

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Bank Secrecy Act and the 1986 Money Laundering Control Act. See for more details in Naylor, 2017.

[32] R. Bowles, M. Faure, N. & Garoupa, *Economic analysis of the removal of illegal gains*, International Review of Law and Economics, no. 20(4), 2000, pp. 537-549.

[33] The non-conviction based confiscation model enables an object to be return to the victim after a very long period regardless of the trial or conviction what was the case when it comes to a historic silver pocket watch that travelled the world with Theodore Roosevelt during his presidency, which was returned to his family home at Sagamore Hill National Historic Site in 2024. The watch was missing for 37 years after it was stolen while on loan from the National Park Service (NPS) to a museum in Buffalo, New York, in 1987. See more at: https://www.fbi.gov/investigate/white-collar-crime/asset-forfeiture, accessed on 23.12.2024.

laundering and counter-financing of terrorism standards. Key recommendations include Recommendation 4 on freezing, seizing, and confiscating proceeds of crime; and Recommendation 38 on international cooperation on asset recovery, ensuring mutual assistance in tracing, freezing, and sharing assets. FATF regularly assesses member countries' compliance with these standards.

Warsaw Convention (CETS No. 198) adopted in 2005 remains the only comprehensive international treaty addressing money laundering, financing of terrorism, and asset recovery. It empowers states to halt suspicious transactions, seize and confiscate proceeds of crime, enhance international cooperation and establish effective asset management systems.

3.2. EU acquis and Serbia

The EU has progressively strengthened its legal framework for asset recovery to combat financial crime and organized crime more effectively. Directive (EU) 2014/42 laid the foundation by focusing on freezing and confiscating criminal proceeds, particularly through extended a non-conviction based confiscation measures[34]. Expended on this, the newly adopted Directive (EU) 2024/1260 introduces comprehensive, EU minimum rules for tracing, freezing, confiscation, and management of assets[35]. It includes provisions for third-party confiscation, facilitates cross-border cooperation and mandates robust asset management systems, reinforcing the EU's commitment to depriving criminals of illicit gains while ensuring transparency and efficiency in asset recovery processes.

As a candidate country for European Union (EU) membership, Serbia has an obligation to align its legal framework and practices with the ***EU acquis***, including those provisions related to asset recovery. This alignment is part of ***Chapter 23*** and *Chapter 24* of the accession negotiations, which includes anti-corruption measures, asset recovery, and the fight against organized crime.

The new Directive 2024/1260 mandates key obligations for Member States, including swift tracing and identification of assets linked to substantial economic crimes, freezing and confiscation of instrumentalities, proceeds, or equivalent property, third-party confiscation for assets transferred to avoid seizure, and confiscation in cases where proceedings halt due to circumstances like illness, death, or expired statutes of limitations. Additionally, the Directive includes provisions for confiscating unexplained wealth tied to criminal organizations and emphasises prioritising victims' restitution during asset recovery proceedings.

Member States are required to adopt a national asset recovery strategy by May 2027, with updates every five years. The Directive also allows for the sale of frozen assets before final confiscation under specific conditions, such as perishability or disproportionate maintenance costs.

Institutionally, the Directive strengthens Asset Recovery Offices for cross-border cooperation and access to national databases for asset tracing and mandates the

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[34] A. Sakellaraki, *EU Asset Recovery and Confiscation Regime – Quo Vadis*? *A First Assessment of the Commission's Proposal to Further Harmonise the EU Asset Recovery and Confiscation Laws. A Step in the Right Direction?,* New Journal of European Criminal Law, Vol. 13, No. 4, 2022, pp. 478-501.

[35] T. Wahl, *New Directive on Asset Recovery and Confiscation*, Eucrim, Issue 1, 2024, p. 37.

establishment of Asset Management Offices to oversee the handling of frozen or confiscated property. Member States must transpose the Directive into national legislation by November 2026.

Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders[36] establishes a unified framework for the mutual recognition of freezing and confiscation orders across EU Member States, enhancing judicial cooperation and efficiency in cross-border asset recovery. Adopted in November 2018 and applicable from December 2020, the Regulation replaces earlier mechanisms with streamlined procedures to ensure the swift execution of orders issued in criminal proceedings. A key feature of Regulation is the duty of Member States to recognize and execute freezing and confiscation orders issued by another Member States within the framework of criminal proceedings. The Regulation introduces strict time limits to expedite the process. Confiscation orders must be recognized within 45 days from the receipt of the request and freezing orders within 48 hours, followed by an additional 48 hours for execution. These timeframes are designed to ensure the swift preservation and recovery assets, preventing delays that could result in the dissipation or concealment of criminal property.

Serbian Law on Seizure of Assets Derived from a Criminal Offence regulates the legal framework for the identification, freezing, confiscation and management of assets acquired through criminal activities[37]. Financial investigations, as a crucial phase in tracing proceeds of crime, represent a significant challenge for public prosecutors in Serbia[38]. These investigations require specialized skills, access to comprehensive financial data, and robust inter-agency cooperation, all of which are areas where systemic gaps persist.

To achieve full alignment with the EU Directive, Serbian law should address several key areas in its asset recovery framework. First, extended confiscation requires clearer regulation to effectively target assets disproportionate to a perpetrator's lawful income, ensuring they are presumed to have been derived from criminal activity. Second, Serbia should introduce provisions for non-conviction based confiscation, enabling authorities to confiscate assets in cases where a criminal conviction is unattainable due to circumstances such as the suspect's death, abscondence, or expiration of the statute of limitations. Third, the Law must incorporate third-party confiscation, allowing for the seizure of assets transferred to individuals or entities who knowingly participated in efforts to shield the property from confiscation. Some of these issues were overcame by the Supreme Court jurisprudence, but there is a need to be regulated by the Law[39].

In addition, Serbian Law must prioritize the return of assets to victims, particularly

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[36] M. Matic Boskovic, *Krivično procesno pravo EU [EU criminal procedural law],* Institute of Criminological and Sociological Research, Belgrade, 2022.

[37] The Law on Seizure of Assets Derived from a Criminal Offence, Official Gazette of the Republic of Serbia, no. 32/2013, no.94/2016, and no. 35/2019.

[38] M. Matic Boskovic, J. Kostic, *Track Record in Fight Against Corruption in Serbia – How to Increase Effectiveness of Prosecution?*, Journal of the University of Latvia. Law, Vol. 17, 2024, pp. 5-20.

[39] N. Važić, *Pravni stavovi krivičnog odeljenja Vrhovnog kasacionog suda o spornim pravnim pitanjima u praktičnoj primeni Zakona o oduzimanju imovine proistekle iz krivičnog dela – zauzeti na sednici Krivičnog odeljenja 03.02.2020 [Legal positions of the criminal department of the Supreme Court of Cassation on disputed legal issues in the practical application of the Law on confiscation of property resulting from a criminal offense – taken at the session of the Criminal Department on 02/03/2020],* Bilten, No. 2, Supreme Court of Cassation, 2021, pp. 11-18.

foreign nationals, in compliance with international standards. This includes strengthening mechanisms for mutual legal assistance to ensure cross-border cooperation to facilitate the restitution of confiscated assets to rightful owners or victims in other jurisdictions.

4. Managing the assets post-confiscation

There is no doubt that the crime prevention strategy cannot be fruitful without the established legal process for managing the confiscated assets. The effectiveness of freezing and confiscation measures also hinges on institutional capacity and cooperation. Specialized bodies, such as ***Asset Recovery Offices*** and ***Asset Management Offices***, play a critical role in tracing, identifying, and managing seized assets. Poor management can result in asset depreciation, eroding the value of confiscated property and undermining the purpose of recovery efforts. To prevent this, asset management frameworks allow for the sale of frozen property under specific conditions, such as when maintenance costs are excessive, or the asset is perishable.

Regardless of the opted idea behind the concept of asset recovery, that process can go in three directions: returning assets to the victims (restitution), re-allocation of the confiscated assets, and eradication of the illicitly acquired property.

When it comes to the economic crime, the process of asset recovery, particularly the sole returning of the crimes fruits needs to be put in force and employed in order to ensure the fundamental principle and aim of the criminal law reaction that could be in an illustrative way present through the sentence made by the justice Brown who reflected the case *Simon &Schuster*[40] who stated that „the crime should neither impoverish the victim nor enrich the criminal".

Somewhat, managing the confiscated assets is strongly related to the process of its re-allocation, but there is the difference regarding the issue of primary beneficiary, who derives advantage from the re-allocation. First, the criminal laws, particularly criminal procedure laws included the right of the authorized persons, at first place the victims of the crime, to claim for the restitution within the criminal procedure. Therefore, a claim for restitution arising as a result of commission of a criminal offence or of a wrongful act designated by law as a criminal offence shall be considered on a motion by authorized persons in criminal proceedings if those proceedings would not be substantially prolonged thereby. Regarding the structure of the claim, most of the laws provide for the solution that it may relate to the compensation of damage, return of objects or annulment of a certain legal transaction. That model of asset recovery also known as a restitution is a kind of direct reparation for the damage caused by the offence which by its very nature is adequate to be utilized within a wider concept of restorative justice. However, the first mentioned approach could be fruitful when the victim of the offence is known or can be easily determined. Thus, returning assets to victims of crime has to be a top priority of the enforcement bodies and confiscation programs which could be also realized through the granting of petitions for remission.

Re-allocation of the confiscated assets in the narrower sense is opening the issue of the way the confiscated assets is managing and how it can be disposed after the confiscation in terms of legality and morality considering the purpose of the asset

[40] U.S. Reports: *Simon & (and) Schuster, Inc. v. Members of the New York State Crime Victims Board et al.,* 502 U.S. 105 (1991).

recovery within the criminal law principles. In practice, this recovery method based on unknown victim or when the public funds are damaged, needs to be employed to undo the results of the committed crime. Normative framework that regulates this method must include safeguards designated to prevent the situation when one sentenced crime provokes and enables other crime. In other words, the transparency of the process is paramount when it comes to the re-allocation of the confiscated assets mostly derived from the corruption when the public funds are damaged. So far, a few approaches based on this method is established worldwide, but the one developed in Italy stands out for the reason of profound experience in the fight against mafia. In an effort to tackle criminal groups, the Italian State allows the confiscation of properties belonging to individuals convicted for mafia-related crimes and their reallocation to a new use which concept is considered both as an anti-mafia measure and as a way to partially compensate the society for the harm made by the criminal organizations[41].

The so-called new use for the confiscated assets that used to be in hands of mafia is primarily embodied in the process of revitalization of the areas that suffer intensive mafia activities through the mechanisms that contributes to adding value to the social and economic life of the targeted area and society.

Finally, the method set around the eradication of the illicitly acquired property is according to the relevant empirical findings beneficial for the criminal law purpose. For instance, it has been shown that the confiscation orders of organized crimes economic assets are positively associated with entrepreneurial entries at the provincial level, so it is to be expected for the number of firms operating in the market to increase as a response to the reassignment of mafia firms[42]. Furthermore, the confiscation measures against criminal organizations have also been proved to have spillover effects on their legal counterparts in terms of higher performance, turnover, and investments and in addition, removal of a mafia firm is positively correlated with both the number of active firms and the number of firms' employees[43].

5. Conclusions

The immense financial losses incurred by countries through corruption, economic crime and illicit financial activities underscores the critical need for robust asset recovery mechanisms.

Asset recovery plays a vital role in upholding justice by ensuring that illicit gains are removed from offenders and channeled toward victims or public welfare. This necessitates a balance between the effective enforcement of criminal law and the protection of fundamental rights such as due process and ownership. However, the hidden nature of economic crimes and corruption, characterized by collusion and secrecy, poses significant challenges for law enforcement, often resulting in insufficient evidence and unprosecuted cases.

To address these challenges, the regulatory frameworks must include measures for extended confiscation, non-conviction based confiscation, and third-party confiscation,

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[41] F. Boeri, M. Di Cataldo, E. Pietrostefani, *Out of the darkness: Reallocation of confiscated real estate mafia assets,* 2019.

[42] F.M. Calamunci, L. Ferrante, R. Scebba, *Closed for mafia: Evidence from the removal of mafia firms on commercial property values*, Journal of Regional Science, no. 62(5), 2022, pp. 1487-1511.

[43] *Ibidem*.

accompanied by international cooperation and robust asset management systems. However, the implemented legal solutions in terms of recovery mechanisms need to be coordinated with the specific requirements of the socio-economic factors in targeted society and with the other relevant legal provisions in order to be properly fitted in legal system. Additionally, aligning national legislation with international standards, such as the UNCAC and EU Directive, is essential not only for ensuring effective cross-border operations and victim restitution, but also for ensuring that basic criminal (procedure) law principles are not violated.

Proper management of confiscated assets, whether through restitution, reallocation, or eradication, is critical to sustaining public trust and achieving long-term societal and economic benefits. By continuously refining asset recovery mechanisms, governments can disrupt criminal enterprises, deter illicit activities, and reinforce the integrity of the legal and financial systems.

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