

CRIMINAL PROPERTY FORFEITURE IN BOSNIA AND HERZEGOVINA: LEGAL OVERVIEW

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Summary

Forfeiture of property obtained through the criminal act is an inescapable segment of modern legal systems and its answer to criminality. This is especially common in cases of organized and other serious forms of crime. Not only that forfeiture exercises one of the fundamental postulates of every criminal justice system, that no one can keep property acquired by criminal offense, but is the most effective way to fight organized crime with the main purpose of gaining property benefits. Undoubtedly, therefore, without the adequate system of criminal property forfeiture there is no adequate mean to fight this type of crime. This article deals with legal provisions implemented in Bosnia and Herzegovina, when it comes to this institute of criminal justice. The subject of the analysis are the provisions of the substantive and procedural criminal laws, but also the *lex specialis* regulations related to this field and applied in Bosnia and Herzegovina at the entity level, and in Brčko District of Bosnia and Herzegovina. A special focus has been placed on the problems Bosnia and Herzegovina faces today in the implementation of this institute. These are the complexity of the legal system, issues related to interpretation of property forfeiture legal provisions and new forms of forfeiture that are not known to earlier jurisprudence such as extended confiscation of property gain.

Key words

criminal offense, criminal procedure, criminal property forfeiture, extended forfeiture

1. INTRODUCTION

The forfeiture of the proceeds of crime is one of the most effective forms of the fight against organized and other most serious forms of crime aimed to asset acquisition. The list is long: economy related crime, different forms of trafficking in person and smuggling crimes, drug related crime and other. Namely, the fundamental characteristic of organized crime is precisely the acquisition of assets and in that sense asset forfeiture presents an effective instrument in

the hands of the state to fight this form of crime. Members of organized crime, whose goal is the acquisition of assets, do not seem to be much afraid of the severe punishments they have been threatened with by criminal codes. However, where severe punishment has been combined with the possibility of asset forfeiture that is completely another perspective. For this very reason, asset forfeiture is of great importance for all modern criminal justice systems, both, on the field of its repressive function and the field of crime prevention. This way, modern societies can accomplish three very important postulates: no one can retain the property acquired through a criminal offense; seized property cannot be used for the perpetration of future criminal offenses; and finally, the potential perpetrator is discouraged in his intention to commit the crimes for the purpose of gaining assets.

In Bosnia and Herzegovina, based on the experiences of other countries, in the past 20 years, much has been done to accept this philosophy. This is particularly noticeable in the field of the acceptance of practically all international treaties aimed to fight organized crime, terrorism, human trafficking, money laundering and other serious crimes, also in the improvement of already existing criminal law provisions, as well as the adoption of completely new laws aimed exclusively on financial investigations, the establishment of institutions for the management of forfeited property and the overall improvement of this field of fight against crime. It should be noted that the seizure of the property gain obtained by a criminal offense is not an unknown legal institute to the Bosnian criminal justice system. It has been in use for almost sixty years since the ex-Yugoslavia era.

This paper presents an overview of the legal framework for regulating the forfeiture of crime proceeds in all jurisdictions in Bosnia and Herzegovina, the state, entities and Brčko District. Methodology that was used is content analysis of relevant literature and normative analysis of legal provisions on the field of asset forfeiture in Bosnia and Herzegovina. Accordingly, the paper presents and discusses some theoretical views and data from recent research. Normative analysis comprised of legal documents related to asset forfeiture and comparison of provisions in different jurisdictions in Bosnia and Herzegovina. In this regard, the paper discusses problems faced by criminal justice professionals in the framework of implementation of those provisions. In the first place, those are issues relating to certain provisions on the property forfeiture, which leave much space for their misinterpretation. Furthermore, there is the issue of complexity of property forfeiture provisions provided by many laws in different jurisdictions. Those provisions are not fully harmonized. Legal jurisdictions in different legal areas in Bosnia and Herzegovina including criminal law, according to Dayton Peace Agreement and subsequent laws are divided on the four different legal authorities. The state level or Bosnia and Herzegovina, two entity levels, Federation of Bosnia and Herzegovina and Republic of Srpska, and finally Brčko district of Bosnia and Herzegovina. Every jurisdiction has its own laws which are not always unified despite establishing provisions regarding identical law matter. Therefore, it is to expect a non-unified judicial and prosecutorial practice. Additionally, some of issues regarding certain forms of forfeiture were also considered, what, in the first place, refers to the so-called extended forfeiture that was not known to the judiciary system of Bosnia and Herzegovina until the last few years, and it has not yet been implemented in practice in its full capacity. Finally, there is an issue of civil forfeiture for which state law provisions establish a legal base, but there is still not a single registered case where this form of forfeiture has been exercised.

2. SHORT HISTORICAL OVERVIEW

The purpose of organized crime and lot of other serious forms of crime with or without relation to it is gain of some form of property. Therefore, today every national system of criminal justice and practically all international treaties related to combating those forms of crime are focused on the creation and implementation of the most effective ways for forfeiture of property gained through perpetration of these crimes. There is some pretty simple logic beside it, if the crime is focused on the property gain and the system has effective way of seizing it, the perpetrators will “think twice” before deciding to commit the crime. So, asset forfeiture nowadays is not only the part of criminal sentences and a repressive function of criminal justice, but one of the most effective ways of crime prevention, specifically in relation to the crimes with the property gain goals. As some authors remarks examples of forfeiture can be traced to Biblical times like the one regarding the bull which gores and kills people and consequently must be stoned irrespective of its owner negligence (Cassella, 2009; Fourie & Pienaar 2017). Derry (2012) in his brief review of the history of this institute states that it was used in the old Admiralty law for the seizure of ships involved in piracy and smuggling of goods. Namely, in the circumstances in which the crew would be deprived of liberty for the mentioned offences, the shipowner would be able, in short term, to engage a new crew that would continue the same activities. By seizing the ship, however, this would no longer be possible. It was a very effective way to counter this kind of criminal behavior. In his detailed analysis, Nelson (2016) also states that long before the American Revolution, the English Parliament and legislatures used threat of forfeiture to encourage compliance with statutes, taking for example the Navigation Act from 1660. In US, according to Doyle (2015), the Congress and state legislators are authorizing forfeiture for more than 200 years.

In the area of former Yugoslavia, property forfeiture has been known for more than fifty years and was a part of the criminal justice systems, but, as Lajić (2012) claims, it never showed its full capacity and effectiveness in the contexts of ordinary criminal offences intended to property gain, not to mention contemporary organized crime. Today, the mechanism of criminal property forfeiture in Bosnia and Herzegovina has been significantly improved, at least at the legislation level, especially by passing *lex specialis* laws, which will be discussed later. It is necessary to specify that criminal property forfeiture, nowadays in Bosnia and Herzegovina, represents a form of specific criminal law measure and it is not considered a form of sanction in the criminal law framework (Ferhatović & Boban, 2017). It is not about the application of the legal principle – restitution or the establishment of an earlier legal and factual state, which acts, at the same time, as a psychological coercion on the perpetrator, that obtaining benefits cannot be a motive for taking criminal activity (Petrović et al, 2016).

Although, forfeiture of assets is one of the most important preconditions for successful fight against crime, regarding the application of this institute in Bosnia and Herzegovina nowadays, it is possible to highlight several issues. Among others: the complexity of legal provisions; issues related to its interpretation; non-application of provisions, insufficient education of judicial actors; the slowness of the judiciary. As Mujanović (2011) emphasizes, in order to be effective, the system of forfeiture of unlawfully acquired property, should make relevant regulations and institutional capacities that will enable effective detection, temporary confiscation and management of seized property, its permanent, complete, seizure with the full guarantee of the protection of human rights and fundamental freedoms (particularly, property rights and

fair trial). The significance of quality normative solutions, in the context of the overall factors affecting the seizure of illegally acquired property, has been emphasized by Kruisbergen et al. (2016) as well. These authors emphasize the importance of four relevant groups of these factors: behavior of perpetrators and witnesses, logistics and the scope of criminal operations, the use of legal and economic infrastructure, and the operational work by which perpetrators can prophesy to exhibit.

3. DEFINITION OF „CRIMINAL PROPERTY” AND FORMS OF FORFEITURE

What represents the property gained by criminal offense? What kind of assets it comprises of? There is not an easy answer to it, especially when we bring it to court proceedings. As Kruisbergen et al. (2016) noted, determination of the profits of crime is more complex than what “follow the money” rhetoric implies. In general, it encompasses every aspect of the property of a material nature resulting from the perpetration of a crime, and it is completely irrelevant whether it has been acquired by a criminal offense, or is in a direct or indirect connection with its perpetration as well as what it consists of. Several international documents have been adopted during the last several decades with the aim to point out to the importance of this mechanism and provide specific instruments and measures for criminal property forfeiture. As Mujanović & Datzer (2016) point out, the main motive of (transnational) organized crime is the acquisition of property from criminal offenses, what is particularly emphasized there. From a legal point of view, of our primary interest is the definition contained in the provisions of Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198, 2005). The Conventions “unlawful income” determines as any property gain that has arisen directly or indirectly or is acquired by a criminal offense and may consist of any property (Art. 1. (a)). The Convention also defines the term “property” as any type of property, material and immaterial, movable and immovable, as well as legal documents or documents proving the right or interest in such property (Art. 1. (b)). The Convention, with its definitions was a main precursor for the determination and implementation of similar definitions in the Criminal Code, as well as other laws in Bosnia and Herzegovina.

However, other international documents that are of great importance for criminal property forfeiture should not be forgotten. Those, beside others, are: United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UN, 1988); United Nations Convention Against Transnational Organized Crime (UN 55/25, 2000); United Nations Convention Against Corruption (UN 58/4, 2003); European Union Council Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (2005/212/JHA); Directive on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union (2014/42/EU). In principle, all these documents provide provisions regarding the definition of crime proceeds, obligation to implement national provisions and insist on implementation of an effective criminal property forfeiture system.

There are two main forms of criminal property forfeiture today, in personam and in rem. Forfeiture of property gained through criminal offences is known as in personam, where action is claimed against the perpetrator. It is also known as criminal forfeiture. On the other side, in rem forfeiture is claimed against property, so there is no action against the perpetrator or against any other person. Both forms of forfeiture are recognized in the frame of legal pro-

visions in Bosnia and Herzegovina, at least on the state level, but only one is implemented, the in personam or criminal forfeiture. In the Bosnia and Herzegovina law related to criminal property forfeiture, there are two main forms of forfeiture. The first, so called, regular forfeiture or seizure where forfeiture represents a specific criminal law measure that the court has to pronounce whenever it was found that the criminal act has also resulted in property gain, and the second, extended forfeiture or seizure, which permits the forfeiture of property gained through perpetration of particularly serious criminal offenses or criminal offenses specifically aimed at obtaining such benefits by providing the prosecutor with sufficient evidence that it can be justified to believe that the property was obtained through the perpetration of these criminal offenses, and the perpetrator alone is unable to provide evidence that the property was obtained legally. The fundamental difference between the extended seizure and the regular confiscation of property gained by the criminal offense is that the extended seizure is carried out not only in relation to the proceeds of the criminal offense in respect of which criminal proceedings have been initiated and conducted but also in respect of each other property gains assumed to have been obtained from some other criminal offenses, but which are not the subject to the current proceedings. We have to emphasize that extended forfeiture is not allowed for all criminal offences provided by criminal law provisions in Bosnia and Herzegovina, what will later be discussed in more detail.

It is important to notice, for example, that in the American Federal Law, as it was emphasized in legal theory, three possible forms of property forfeiture exist. Cassella (2007) points out to the, so called, administrative, criminal and civil forfeiture. According to the same author, administrative forfeiture comprises of all uncontested forfeiture proceedings and represents the vast majority of all federal forfeitures – it is also known as „nonjudicial“, as there is no involvement of the prosecutor or court; criminal forfeiture represents just a part of the sentence in a criminal case, and only property that belongs to the defendant can be seized; finally, civil forfeiture represents the kind of property forfeiture where government files a separate civil action against the property itself and proves that the property was derived from, or was used to commit a crime – this form of forfeiture does not require criminal conviction so it can be performed before or after indictment or in the absence of indictment at all. Making the comparison between civil and criminal forfeiture Cassella (2007) also points out that, for a variety of reasons, in certain cases civil forfeiture can be a much more powerful tool for law enforcement than criminal forfeiture. In addition, it is worth to mention that, according to Bridy (2013), the government retains the title to civilly forfeited property whether or not prosecutors ever file criminal charges against the property owner, which they fail to do in as many as in 90% cases.

Of course, in Bosnia and Herzegovina, there is still not such a complex, yet quite efficient, system of property forfeiture, as is the case in American law, but as we shall see, at least at the legislative level, some of it has been done.

4. PROPERTY FORFEITURE UNDER BOSNIA AND HERZEGOVINA LAW(S)

Criminal property forfeiture in Bosnia and Herzegovina has been regulated on the four levels of jurisdictions. National, or state level, two entities and one district level. So, there are four criminal codes to regulate this legal area in a sense of substantive criminal law. In addition to substantive criminal provisions, there are also four legislative levels governing the forfeiture procedure, as well as some of the safety measures directed to the property that should

be eventually seized, what is regulated by procedural criminal laws. So, four criminal procedure codes as well. Finally, there are also *lex specialis* laws on the forfeiture of assets acquired through a criminal offense that exist on three levels or jurisdictions, two on entities and one on a district level. A rather complex legal system for a small country like Bosnia and Herzegovina.

4.1. PROPERTY FORFEITURE IN CRIMINAL SUBSTANTIVE LAW PROVISIONS

On the national or state level, the Criminal Code of Bosnia and Herzegovina (CC BiH) prescribes the forfeiture of property gained through criminal offences under its jurisdiction. The code contains provisions regarding the definition of criminal property, obligation to forfeit it for every criminal offence resulted with illegal property gain and under what conditions the forfeiture can be performed.

The definition of property gained through perpetration of criminal offences or illegal property has been established in Art. 1. sub. art. 24. of CC BiH as a property that was directly or indirectly derived from the criminal offense and consists of any property. Under property CC BH in its Art. 25. establishes that it covers property of any kind, whether it consists of things or rights, material or immaterial, movable or immovable, and legal documents or instruments proving the right to property or interest in relation to such property. The obligation on forfeiture of illegal property in criminal cases has been established in Art. 110. of CC BiH with stipulation that no one can retain any property gain, income, profit or other benefit from the proceeds of the criminal offense, and it will be taken by a court decision after finding that the criminal offense was committed.

As a specific form of criminal property forfeiture in Art. 110a for some particularly serious criminal offenses, CC BiH establishes an extended confiscation of property gain by giving power to the court to confiscate the property benefit for which the prosecutor provides sufficient evidence that it is reasonably believed that such proceeds have been obtained through the perpetration of these criminal offenses, and the perpetrator did not provide evidence that the benefit was obtained legally. Extended forfeiture of property is possible only for some specific serious crimes, such as: (1) Crimes against humanity and values protected by international law; (2) Criminal offenses against the economy and market unity and crimes in the field of customs; (3) Criminal offenses of corruption and criminal offenses against official and other responsible duties; (4) Criminal offenses of copyright infringement; (5) Criminal offenses against the armed forces of Bosnia and Herzegovina and (6) Criminal offences regarding arrangement, preparation, association and for Organized crime. Extended forfeiture is a powerful tool in the hands of the Bosnia and Herzegovina criminal justice system, but judging by the data, it has not come to life in practice. One of the authors had the opportunity to perform research in this field and to find out that until 2017 only in two criminal cases, counting all jurisdictions in Bosnia and Herzegovina, property was seized by means of extended forfeiture (Halilović, 2017). Extended property forfeiture has been associated with many issues. In the first place, in relation to the traditional form of forfeiture of assets acquired through a criminal offense, extended seizure, as Ivičević-Karas (2010) claims, represents a wider interference in the property of the perpetrator. It is for this reason that this kind of forfeiture can pose a higher level of jeopardy for the right on property and peaceful enjoyment of it guaranteed by international treaties and national laws. Furthermore, there is an issue with the legal definition of extended seizure, as it leaves plenty of room for speculation whether the burden of proof is only on the accused's side

or is shared between him and the prosecutor. This in the process leads to a series of dilemmas especially on the side of the prosecutor. It should also be added to the fact that the prosecutor is at the same time burdened by proving the perpetrator's guiltiness in connection with another criminal offense, which in this case serves as the legal basis for extended forfeiture.

Provision of Art. 110a sub. art. 2. establishes that in cases where the conditions for seizure of property gain, income, profit or other benefit from property gain acquired through a criminal offense in criminal proceedings are not met, the request for its seizure of power will be filed in civil procedure. However, it is not clear what the provision refers to. It could be some form of civil forfeiture but still there is no jurisprudence related to it.

Finally, CC BiH in Art 112. provides the protection of the victim of criminal offence, in circumstances where the victim put a compensation claim during criminal proceedings, on the way that the court shall impose a forfeiture of property only if it exceeds the awarded compensation claim of the victim. The victim, also has the right to request compensation from the amount of the seized property, through civil proceedings.

Beside the CC BiH, criminal property forfeiture has been a part of the provisions of Criminal Code of Federation of Bosnia and Herzegovina (CC FBiH), Criminal Code of Republic of Srpska (CC RS) and Criminal Code of Brčko District of Bosnia and Herzegovina (CC BD BiH) as well. The obligation on criminal property forfeiture has been established in art. 114. of CC FBiH. According to the provisions of Art. 114a extended forfeiture can be initiated related to (1) criminal offenses against the economy, operations and security of payment transactions; (2) criminal offenses against the judiciary; and (3) criminal offenses of bribery and criminal offenses against official and other responsible functions. Within the *lex specialis* provisions in FBiH, the scope of the extended forfeiture has been extended to all criminal offenses for which imprisonment of three years or more can be imposed. CC FBiH, in the same way as the state code, regulates the issues of the manner of taking away property gain and protection of the victim of criminal offence (Art. 115 and 116). However, CC FBiH does not provide the definition of crime proceeds, which was done by a *lex specialis* provision, nor provide the possibility for civil forfeiture. Regarding the CC RS the provisions on extended forfeiture have not been implemented in its frameworks, but was regulated by a *lex specialis* provision. The principle of forfeiture of property has been regulated in the provisions of Art. 83. whereas the manner of forfeiture and protection of interests of victim has been regulated by the provisions of Art. 84 and 85. CC RS provides a definition of property gain in Art. 123. sub. Art. 24. where property acquired through perpetration of criminal offense has been defined as the immediate material gain of the criminal offense consisting of any increase or reduction of the property as a result of criminal offence, as well as the property in which the property gain of the crime was converted or altered, as well as any other property which is obtained from the immediate property gain acquired through criminal offense or property in which the property acquired through the criminal offense has been changed or converted, irrespective of whether it is located in or outside the territory of Republic of Srpska. The definition of property has been given in the same article where property has been defined as a property of any kind, irrespective of whether it is material or immaterial, movable or immovable, or legal documents or instruments proving the right to such property (Art. 123. sub. art. 25). It needs to be said that the provisions of the CC RS only in the basic form define the confiscation of the property gain obtained by a criminal act, but this is mainly the consequence of the existence of a *lex specialis* provision on the property

forfeiture that will be the subject of our subsequent analysis. The substantive provisions on forfeiture of property obtained by the criminal offense are also contained in CC BD BiH. The provisions of this law on forfeiture of property acquired by the criminal offense mostly correspond to the provisions of the state law, which is the basis for the regular property forfeiture and the extended forfeiture and are contained in Art. 114 and 114a, again with no provision related to civil forfeiture, while the manner of forfeiture and protection of an injured person, or his property claim, is regulated by the provisions of Art. 115 and 116. Neither the CC BD BiH contains definitions of crime proceeds and property, however the same has been regulated by Brčko District *lex specialis* provisions on criminal property forfeiture.

4.2. PROPERTY FORFEITURE UNDER CRIMINAL PROCEDURE PROVISIONS

Unlike the provisions of a substantive criminal law which determine the concept of property gain that is seized, obligation to forfeit, forms of forfeiture and other relevant questions, the provisions of the procedural criminal legislation regulate the procedure of forfeiture and measures to secure the availability of property for eventual forfeiture. It is also of great importance to say that, unlike the criminal substantive, and *lex specialis* provisions, there are no significant differences between different jurisdictions in Bosnia and Herzegovina related to the forfeiting procedure and securing the availability of property that are regulated by codes of criminal procedure at all levels. So for our analysis we will use only the provisions of the Code of Criminal Procedure of Bosnia and Herzegovina (CPC BiH), but it is important to note that the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (CPC FBiH); Code of Criminal Procedure of Republic of Srpska (CPC RS); and the Code of Criminal Procedure of Brčko District of Bosnia and Herzegovina (CPC BD BiH) are also in effect in Bosnia and Herzegovina.

Relating to specific forfeiting procedure, the Art. 392. sub. art. 1. to 3. of the CPC BiH. establishes that: (1) property acquired through a criminal offense in criminal proceedings has to be established *ex officio*, (2) furthermore, the prosecutor has been obliged to collect evidence during the course of the proceedings and to examine the circumstances that are of importance for the determination of the illegal property acquired through the criminal offense; and (3) if the victim filed a property claim in respect of the return of property acquired by a criminal offense, that is, in respect of a monetary amount corresponding to the value of the property, then the property benefit will be determined only in that part which is not covered by the property claim. While the other provisions are rather procedural and not of our main interest in this work, in relation with forfeiture proceeding we will mention Art. 394. Under this article the CPC BiH establishes that if the determination of the property gain was linked to disproportionate difficulties or with considerable delay of the proceedings, then the court may determine the amount of the property gain obtained by a criminal offense based on free assessment. It appears that the above-mentioned provisions with the greatest capacity are intended to ensure that in each criminal case where the proceeds of the criminal act have been realized, the proceeds of the criminal offense come to the detriment of such benefits. It is precisely the fact that subjects in proceedings are obliged to determine the property gain and that in particular is the obligation of prosecutors to pay maximum attention in collecting and providing evidences in favor of property forfeiture.

Regarding the measures targeted to secure property for eventual forfeiture under the provisions of the CPC BiH it should be noted that there are several of them and that the CPC BiH

pays special attention to the same. Otherwise, the issue of securing assets that may be subject to seizure is an area of particular interest for the criminal property forfeiture issue, in general. As Gaumer (2007) notes, the most important part of the forfeiture is the ability to secure the availability of property for confiscation before the trial. If the property is not secured there is a great probability it will be not available after the conviction and the end of the criminal procedure.

According to the provisions of the CPC BiH, measures for securing the availability of property for eventual forfeiture after conviction are: (1) An order to a bank or other legal entity (Art. 72); (2) Temporary seizure of property for security purposes (Art. 73); and (3) Temporary insurance measures (Art. 395).

The measure referred to in Art. 72. applies if there are grounds for suspicion that a person has committed a criminal offense related to the acquisition of material gain. In such circumstances, the court may, on the basis of a prosecutor's motion, order the bank or other legal entity, to provide information on bank deposits and other financial transactions and the affairs of that person as well as persons for whom it is believed to be involved in such financial transactions or suspect affairs, if such information could be used as evidence in criminal proceedings. The prosecutor, in case of an emergency, is also authorized to undertake the same actions. In order to allow the detection, and detection of illegally acquired property and the collection of evidence, the court may, at the motion of the prosecutor, order the undertaking of special investigative actions. Finally, the court may order a legal or natural person to temporarily suspend the execution of a financial transaction suspected of constituting a criminal offense, or intended to commit a criminal offense, to serve as a cover for criminal offense or concealment of profits made by a criminal offense.

The measure referred to in Art. 73. allows the court, that at any time during the proceedings, on the motion of the prosecutor, to impose a temporary measure of seizure of property that has to be seized pursuant to the provisions of the CC BiH; the seizure measure or any other necessary provisional measure in order to prevent the use, alienation or disposal of such property. Police officials are authorized to undertake this measure if there is a risk of delay.

Finally, the measure referred to in Art. 395. provides the court with the possibility, when conditions for the forfeiture have been fulfilled, that *ex officio*, in accordance with the provisions applicable to the distraint laws, determines the temporary measures for securing a civil claim of a victim arising from the perpetration of a criminal offense. Temporary measures above are aimed to protect the victims request for compensation and encompasses measures related to secure property and to provide unhindered distraint procedure. Those measures are part of distraint laws.

4.3. LEX SPECIALIS LAWS

As an addition to provisions of criminal substantive and procedure codes in Bosnia and Herzegovina there are also three *lex specialis* codes on two entity levels and one district level aimed to strengthen the effectiveness of the criminal justice system on the field of criminal property forfeiture. Those codes are: Criminal property forfeiture Code of Republic of Srpska (CPFC RS), Criminal property forfeiture Code of Federation of Bosnia and Herzegovina (CPFC FBiH) and Criminal property forfeiture Code of Brčko District Bosnia and Herzegovina (CPFC BD BiH). The

said laws provide provisions related to conditions and procedures of forfeiture and authorities responsible for the detection, confiscation and management of property acquired through the perpetration of a criminal offense. Furthermore, all three codes establish provisions for the conduct of financial investigations in order to collect evidence indicating the amount, type, real value as well as other circumstances related to the property for which there are grounds for suspicion that it was obtained by a criminal offense. Also, all three laws provide provisions regarding appropriate measures to ensure the seizure of illegally acquired property as well as enforcement orders in order to seize unlawfully acquired property. Finally, all laws envisage an extended forfeiture of property acquired through the perpetration of a criminal offense, however, without any special provisions on how this extended forfeiture need to be exercised. All the above is of utmost importance for the fight against organized and other serious forms of crime, especially the implementation of financial investigations as a specialized form of criminal investigation that are completely new legal instruments in the criminal justice system of Bosnia and Herzegovina. In that sense, from the standpoint of the entire legal system in Bosnia and Herzegovina, promulgation of those laws was certainly a necessary move that will, in the near or further time, result in improving this area of the fight against crime.

Still, it needs to be emphasized, generally speaking, that if there are differences between the jurisdictions in Bosnia and Hercegovina regarding criminal property forfeiture, they are the most obvious in the *lex specialis* area. We will list some of them. The CPFC FBiH and CPFC BD BiH provide provisions for establishing of a special procedure for the criminal property forfeiture in circumstances where there is a reasonable suspicion that the proceeds are obtained through the perpetration of a criminal offense, and the conditions for conducting the criminal proceedings due to the death of the suspect or the accused or his escape are not met, and threaten the occurrence of the statute of limitation (Art. 5. of CPFC FBiH and CPFC BD BiH). There is no such provision in CPFC RS. Furthermore, some of the provisions of the CPFC RS represent a specific addition to the Criminal Code of Republic of Srpska because the CC RS did not regulate these issues, which was done, on the other side, by the state CC, CC FBiH and CC BD BiH. Good examples are criminal offenses to which the provisions of CPFC RS apply including the possibility to initiate extended forfeiture. Those are criminal offences: (a) against sexual integrity: trafficking in human beings for the purpose of prostitution; exploitation of children and juveniles for pornography; production and display of child pornography; (b) against human health: unauthorized production and trafficking of narcotic drugs; (c) against economy and payment transactions: falsification and use of securities; falsification of credit cards and non-cash payment cards; falsification of signs for value; money laundering; unauthorized trade; tax evasion and contributions; (d) against official duty: misuse of official position or authority; embezzlement; fraud in service; receiving a bribe; giving a bribe; unlawful mediation; (e) organized crime; (f) against public order and peace: creation and acquisition of weapons and means intended for the perpetration of criminal offenses; unauthorized production and trafficking of weapons or explosives; and (g) against humanity and values protected by international law. In addition to the aforementioned, the law also applies to other criminal offenses by provisions of CC RS if the property gains or value of the objects used or intended to commit or resulting from the perpetration of the criminal offense exceeds 50.000,00 KM (circa 25.000,00 EUR). Finally, unlike two other *lex specialis* laws, the CPFC RS provide provisions for the establishment of special organizational unit within the Ministry of the Interior whose competence is to investigate and disclose the property acquired by committing the criminal offense.

CONCLUSION

As we had the opportunity to notice, criminal property forfeiture in Bosnia and Herzegovina has been regulated by 11 laws in four legal jurisdictions which themselves certainly present a problem in the realization of uniform prosecution and court practice, as well as the practices of other subjects involved in this process. In addition, there are certain differences between provisions of these laws and that could further contribute to criminal property forfeiture inefficiency, and therefore the inadequate fight against crime in general. However, it is not just the complexity of the legal system in Bosnia and Herzegovina that contributes to the inefficiency. We also have seen that many provisions of the laws in different jurisdictions in Bosnia and Herzegovina are quite complementary. Furthermore, even though we have seen that the provisions of the substantive criminal law, at least at state level, recognizes civil forfeiture, still there is no single registered case in which the prosecutor in civil proceedings, as foreseen in the provisions of the state law, has filed a suit for property forfeiture. The experience of other countries, especially those belonging to common law, tells us that civil forfeiture can be a very powerful tool of the legal system in the fight against crime. So, there are also other problems and those problems are not in direct connection with the complexity of Bosnia and Herzegovina legal system. On one hand, we can understand these problems as justified, such is, for example, a civil forfeiture, which is a completely unknown legal instrument to our judicial professionals, and that itself represents a difficulty in the preparing and conduct of legal proceedings of that nature for the prosecutors. On the other hand, we cannot consider it justified that there is no attempt on the field of education of our judges, prosecutors and other law enforcement professionals on this particular issue. Extended forfeiture as an extremely powerful and effective tool in the fight against organized and other serious forms of crime, which has been implemented in the Bosnia and Herzegovina legal system for several years, in practice, has been reduced to only a few successfully achieved forfeitures. The main problem, regarding the extended forfeiture has been issue with a burden of proof. Unfortunately, legal provisions are not completely clear is it on the side of the prosecutor or defendant which can produce lot of uncertainties in proceedings. True, a multitude of issues stems from very inadequate legal formulations, especially in the part concerning the burden of proof, but that problem can be overcome by equating judicial practice and with continuous education of judicial actors. Generally speaking, despite the possibly invested efforts at the legislature level to adequately regulate the criminal property forfeiture legal area in Bosnia and Herzegovina, in practice, still there is no significant progress specifically on the field of extended forfeiture.

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