

## **Forfeiture of proceeds of crime in Bosnia and Herzegovina with special reference to the conduct of a financial investigation**

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An efficient and energetic fight against crime, especially against specific forms of organized crime, which, by its nature, implies the acquisition of property benefits obtained through criminal offenses, at the same time implies and obligates the timely and efficient initiation and conduct of financial investigation. This investigation is an effective means of forfeiture of the proceeds of crime and is usually conducted in the phase of conducting a classic investigation when certain conditions are met, from which it follows that its initiation, implementation and conduct is not conditioned by raising and confirming of an indictment. The competent prosecutor of Bosnia and Herzegovina independently and autonomously decides on the initiation and conduct of financial investigation, so that it is not necessary to obtain any prior consent, approval or order from the competent court. The management and supervisory role during the conduct of financial investigation belongs to the competent prosecutor, who orders its conduct by issuing an order. In the implementation or enforcement sense, authorized police officers have a key and dominant role in timely, efficient and legal conduct of financial investigation, which includes the discovery of proceeds of crime, and the collection of necessary evidence for the efficient conduct and conclusion of criminal proceedings. The Criminal Procedure Code of Bosnia and Herzegovina does not specifically regulate financial investigations. This investigation is prescribed by special laws (*lex specialis*) at the level of the Entities of the Federation of BiH and the Republika Srpska, as well as Brčko District of BiH. However, at the state level, although the law does not directly define the initiation and conduct of financial investigation, it derives from the general concept of the investigation, so that it is applied when it comes to criminal offenses that involve the proceeds of crime.

**KEYWORDS:** property gain, financial investigation, prosecutor, authorized officials.

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## **Forfeiture of proceeds of crime - expediency and justification**

Suppression of crime is still a complex task for competent authorities, subjects and law enforcement agencies, given the numerous and various challenges of modern age (Simović and Šikman, 2016, pp. 85-101). In every historical stage of the development of society, the perpetrators of criminal offenses tried to find the most appropriate ways, that is, certain modalities of committing crimes, trying to "outsmart" the law enforcement authorities (Karović, 2018, p. 836; Armoni, 2022, pp. 109-115; Boersma and Nelen, 2010). Information and communication technology is very useful, and the potential for crime in it is also very large (Syahril, 2023, p. 120).

There are numerous and diverse factors that in a certain way make impossible or difficult prevention and detection of criminal offenses, prosecution of perpetrators and bringing them to justice, and forfeiture of proceeds of crime, in accordance with the restrictive legal requirements and the prescribed procedure (Simović and Šikman, 2017, pp. 404-407; Simović and Simović, 2018, pp. 29-38). For the purposes of this paper, we will list only some of the most important factors that play a key role and have a dominant influence on the emergence and appearance of various criminal activities, which include the acquisition of property resulting from the very nature of certain criminal offenses and their practical operationalization (Chaikin and Sharman, 2009, pp. 140-141). In the first place, special attention deserves the rapid progress of information and communication technologies, including the Internet and all other possibilities made possible by cyber space, then very pronounced internal and external demographic changes, i.e. migrations that include the mobility of modern man but also forced migration of the population due to war and various disasters, very complex political and security relations, both on the internal, regional and international level, numerous and various economic problems, and other conditions and specificities that in a certain way favor the criminal activities that incorporate the acquisition of illegal property benefits (Simović and Simović, 2013, pp. 77-98; Vlastic and Noell, 2010; Webb, 2005; Zagaris, 2015, pp. 152-153). The previous reforms of the criminal procedure were aimed at achieving a higher degree of effectiveness in suppression of crime, considering that the complete eradication of this complex social phenomenon as such is impossible (Karović, 2013, p. 163).

The phenomenological number, variety and prevalence of criminal offenses by the nature of things clearly confirm that criminality, or more precisely the operationalization of criminal activities, adapts very quickly and easily to current political, economic, demographic, social and other conditions and specificities (Abbott and Snidal, 2002; All-dridge, 2003, pp. 45-59). The ultimate goal of criminal activities is the acquisition of profit, i.e. property, which consequently results from the very commission of a certain criminal offenses, and thus implies the existence of illegally acquired property benefits (De Beco, 2011; Gathii, 2009; Golovanova, 2016, pp. 78-89). Analogous to the above, an adequate reaction implies and obligates finding proportionally necessary and adequate institutional responses and legal solutions of a substantive and procedural nature in terms of timely, efficient and legal detection of proceeds from crime and collection of necessary evidence

in terms of permanent (and extended) confiscation of proceeds from crime (Simović, 2016, pp. 195-235; Stessens, 2000; Stessens, 2001). Many international legal acts, and above all the Convention on the Suppression of Transnational Organized Crime, insist on the “forfeiture” of proceeds of crime, but it is a particular problem that these acts are of a very general character (Ignjatović, Škulić, 2019, p. 449).

Given the above, the legislator has numerous dilemmas and challenges regarding finding and prescribing adequate legal solutions of a procedural nature that are compatible with real investigative and evidentiary needs (Simović, Simović, Vulin, 2020). Classical or traditional means, methods, manners and institutional responses and legal solutions are insufficient or overcome, so that the competent authorities in charge of criminal prosecution would achieve the expected results (Ivory, 2014; Kamchatov, Timoshenko, Kamchatova and Buzu, 2021, pp. 189-201). In this sense, the initiation and conduct of financial investigation is imposed as an imperative (Pearson, 2001; Olaniyan, 2014; Puckett, 2010), in order to undertake certain activities in a timely and efficient manner, i.e. certain criminal procedural actions (general evidentiary actions and special investigative actions) which are primarily aimed at discovering and proving of these criminal offenses (Simović, 2003, pp. 75-100). Therefore, in addition to establishing or proving criminal liability (guilt) in accordance with procedural provisions, forfeiture of proceeds of crime is a specific criminal law measure that enables no one to retain property benefit, income, profit or other benefit from proceeds of crime (Boucht, 2017, pp. 16-18; Brun, *et al.*, 2011).

Hypothetically observed, if the institute of forfeiture of proceeds of crime was not applied (Simović, 2013a, pp. 114-132), an extremely bad preventive-protective message would be produced and broadcasted in terms of special and general prevention, especially taking into account that, as a rule, it is about the commission of criminal offenses that imply the acquisition of enormous profits, which is practically impossible or difficult to quantify and precisely determine (Lafitskiy, Tsirin and Golovanova, 2014; Messick, 2017; Moiseienko, 2018). Therefore, if, in addition to the implementation of the classic criminal procedure aimed primarily at establishing, that is, proving the existence of criminal liability (guilt), forfeiture of proceeds of crime would not be applied as a specific criminal law measure, in that case the institutional state reaction to crime would not be proportionate or adequate.

The application of the measure of forfeiture of proceeds from crime is justified for both restorative reasons, because no one can acquire or retain the benefit of some form of “wrong” (Rose, 2011; Rose, 2016), as well as for preventive reasons, because the confiscation of property hurts criminals the most, i.e. making it possible that illegally acquired property will be confiscated devalues the motivation of potential perpetrators (Simović, 2013, pp. 9-32). Cumulative connection, expediency and conditioning, establishing or proving the existence of criminal liability (guilt), on the one hand, and the application of this specific criminal law measure in connection with forfeiture of proceeds of crime, on the other hand - practically enables the achievement of a certain purpose - “that crime does not pay” (Saadi and Machado, 2017, pp. 484-519; Shams, 2001, pp. 129-132;

Sharman, 2017). The state, through competent authorities, subjects and agencies for law enforcement, actually directly and practically shows and confirms its commitment and consistency in the plan of suppressing criminal offenses, which, by the nature of things, imply the acquisition of the proceeds of crime. In relation to what he acquired through a criminal offense, the perpetrator can never acquire any right, especially not property right (Stojanović, Kolarić, 2020, p. 100).

In this sense, the results of criminal justice in Bosnia and Herzegovina can and must be better, especially when it comes to the so-called capital cases of corruption, money laundering and other specific forms of organized crime (criminal offenses in the field of drug abuse, human trafficking, etc.), in order to practically confirm the commitment to suppress these criminal offenses in practice by achieving the expected results. The catalog of the mentioned criminal offenses deserves a special attention from the scientific and professional public, the non-governmental sector, but also citizens who, with reason, demand a timely and efficient (re)action of the competent authorities regarding the detection and proving of the existence of criminal offenses, and the prosecution of perpetrators in accordance with restrictive legal requirements.

The contemporary criminal law of Bosnia and Herzegovina, as well as the countries from the immediate environment and the region, has undergone significant and even radical changes in the last two decades, including very pronounced interventions by legislators in all three criminal (sub)systems - substantive, procedural and enforcement legislation (Karović, 2023, p. 639). The contemporary criminal procedure systems in Europe and the world establish and promote the protection of the rights and freedoms of every person, regardless of their national, ethnic, religious, racial or any other affiliation or personal characteristics (Zadorozhnaya, Karović, 2022, pp. 15-16).

In this sense, the question of the success and consistency of the criminal justice reform in terms of crime prevention arises, given that from general reform of the criminal justice system, i.e. drafting, adoption and entry into force of valid criminal laws and laws on criminal procedure at all levels of the exercise of power until today, a sufficient period of time has passed that can serve as a basis for a versatile and comprehensive analysis of the results of the work of criminal justice system and a critical review of existing legal solutions of a substantive and procedural nature. The institution of forfeiture of proceeds from crime is classified as a matter of substantive criminal law and is prescribed in the general part of the Criminal Code of Bosnia and Herzegovina. Therefore, the question arises of the justification and purposefulness of prescribing a special law at the state level that would prescribe provisions of a substantive, procedural and enforcement nature. It follows from the above that Bosnia and Herzegovina must provide and adapt adequate legal, i.e. normative framework in terms of practical application and the achievement of adequate (expected) results in relation to forfeiture of proceeds of crime. The situation is identical with the criminal justice systems of neighboring countries (exYu area) which face the same or similar problems and challenges.

## **Differentiation between temporary, permanent and extended forfeiture of proceeds of crime**

Analyzing the current criminal laws in Bosnia and Herzegovina, the normative legal framework for the forfeiture of proceeds of crime is prescribed in Chapter XII of the Criminal Code of Bosnia and Herzegovina,<sup>1</sup> the Criminal Code of the Federation of BiH,<sup>2</sup> the Criminal Code of the Brčko District of BiH,<sup>3</sup> and Chapter VII of the Criminal Code of the Republika Srpska.<sup>4</sup> Also, at the entity level and Brčko District, there are special laws that regulate this matter, and these are: the Law on Confiscation of Property Resulting from the Commission of a Criminal Offense of the Republika Srpska,<sup>5</sup> the Law on Confiscation of Property Resulting from the Commission of a Criminal Offense of the Federation of BiH<sup>6</sup> and the Law on Confiscation of Property Resulting from Commission of a Criminal Offense of Brčko District of BiH.<sup>7</sup> The legislator has legally standardized the activity of criminal procedural entities starting from the detection phase, i.e. from the initial (preliminary) knowledge that indicates the existence of certain criminal event (criminal matter in the narrower sense), the initiation and conduct of criminal investigation, the conclusion of the investigation and raising of an indictment (criminal matter in the true sense), the main hearing, particularly including the evidentiary procedure as its central part, legal remedies, up to the adoption of a legally binding court decision that fully illuminates and resolves a certain criminal matter (Karović, Simović, 2021, p. 47).

When it comes to the forfeiture of the proceeds of crime, the legislator prescribed certain restrictive conditions that must be met in each specific case, so that the forfeiture of the proceeds of crime must be observed, first of all, through the prism of timely initiation and conduct of financial investigation, then undertaking general evidentiary actions and special investigative actions, and other necessary and purposeful activities in the investigation stage. Property benefits are not only money and certain items, but also services, use of certain items without providing an adequate equivalent countervalue, property interest, savings, etc., i.e. everything that has some kind of property benefit, that has financial effects (Stojanović, Škulić, Delibašić, 2018, p. 152).

<sup>1</sup> Official Gazette of Bosnia and Herzegovina, nos. 3/2003, 32/2003., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023 and 47/2023.

<sup>2</sup> Official Gazette of the Federation of BiH, nos. 36/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016, 75/2017 and 31/2023.

<sup>3</sup> Official Gazette of the Brčko District of Bosnia and Herzegovina no. 19/2020 – consolidated text, 3/2024 and 14/2024.

<sup>4</sup> Official Gazette of the Republika Srpska, nos. 64/2017, 104/2018, 15/2021, 89/2021, 73/2023, Official Gazette of BiH, no. 9/2024 – Decision of the Constitutional Court of BiH and Official Gazette of the Republika Srpska 105/2024 – Decision of the Constitutional Court of BiH.

<sup>5</sup> Official Gazette of the Republika Srpska no. 66/2018 of 24 July 2018.

<sup>6</sup> Official Gazette of the Federation of Bosnia and Herzegovina, no. 71/2014.

<sup>7</sup> Official Gazette of the Brčko District of BiH nos. 29/2016 and 13/2019.

However, to properly understand the legal nature and purpose of forfeiture of proceeds of crime, it is necessary to establish a clear differentiation between temporary forfeiture of items and property as a classic evidentiary action, temporary security measure (freezing order), permanent forfeiture, but also extended forfeiture as a specific form of forfeiture that deserves a special attention in terms of evidence. Namely, the temporary forfeiture of items and property is a general evidentiary action which is typically applied when the requirements of substantive and formal nature prescribed by the legislator are met, or more precisely, it is applied on the basis of an order issued by the competent court at the request of the competent prosecutor. Given the above, this evidentiary action is carried out by the competent procedural entities, and it practically results from the application of other evidentiary actions, most often search of the apartment, premises, persons and belongings when it is certain that the application of this evidentiary action will find and confiscate items, that is, property referring to the specific criminal offense which is the subject of interest (for example, by searching business premises, certain items, documentation, etc. are found and confiscated).

The order for confiscation of items is issued by the court, on the proposal of the prosecutor or on the proposal of an authorized official who has approval from the prosecutor<sup>8</sup>. Items can also be temporarily confiscated without a court order, if there is a risk of delay, but the prosecutor (Simović, 2011a, p. 154-172) is obliged to file a request to the judge for subsequent approval within 72 hours.<sup>9</sup> On the other hand, the purpose of temporary security measures is to practically prevent the use, concealment, encumbrance or alienation of proceeds of crime by the perpetrator, his relatives, third parties, etc. At any time during the proceedings, the court may issue, at the proposal of the prosecutor, a temporary measure of forfeiture of property according to the Criminal Code of BiH, a measure of confiscation or other necessary temporary measure to prevent the use, alienation or disposal of that property.<sup>10</sup>

With regard to the application of the temporary security measure, it is necessary to emphasize the timeliness of taking the said measure, in order to prevent unwanted consequences. The timeliness of the application of a certain temporary security measure implies its initiation, proposal and practical application in the early phase of the financial investigation, i.e. in the procedural phase when the suspect, his relatives or third parties, realistically have no knowledge that certain investigative and evidentiary activities are being carried out. In this context, there is also a certain risk when initiating, proposing and applying security measures, given that certain rights (right to property) are restricted, and that the outcome of criminal proceedings is uncertain in terms of establishing or proving the existence of criminal offense and criminal liability (guilt). According to the legal nature, purpose and other specifics of temporary security measures, these measures have the sign of “temporary” for a reason, taking into account the possibility that

<sup>8</sup> Article 65(2) of the Criminal Procedure Code of BiH.

<sup>9</sup> Article 66(1) of the Criminal Procedure Code of BiH.

<sup>10</sup> For more details see Article 73 of the Criminal Code of BiH.



certain temporary measure applied in a specific criminal case does not have to grow or transform into a permanent forfeiture of proceeds of crime. The expediency and justification of the application of temporary security measure is temporary restriction in relation to property benefit for which there is a certain degree of suspicion that it stems from a certain criminal offense.

It follows from the above that it is necessary to make a proper assessment and make a decision on the application of certain temporary security measure in each specific criminal case, in order to avoid unjustified restriction of certain rights of citizens, considering the tendency of humanization of modern criminal procedural law, which manifests itself in the protection of basic human rights and freedoms. In this context, when initiating, proposing, making a correct and legal decision and practical application of temporary security measures, the catalog of rights and universal guarantees of a suspect or an accused person in criminal proceedings must not be ignored or disregarded.

Some security measures (prescribed, for example, in the Republic of Croatia and the Federation of BiH) are the prohibition of alienation and encumbrance of real estate or real rights registered on real estate, the prohibition of the suspect, the accused or a related person, to alienate, hide, encumber or dispose of movable property, by confiscating and entrusting these items to the authority responsible for the management of confiscated property, confiscation of cash and securities, an order to bank or other legal entity to give the suspect, the accused or related person to deny, on the basis of their order, the payment of funds from their account in the amount for which a temporary measure, a ban on alienation or encumbrance of shares, securities, shares in funds, etc. has been determined (Mujanović and Datzler, 2016, p. 31). Permanent (regular) forfeiture of proceeds of crime directly depends on and is conditioned by the outcome of the criminal proceedings in the context of establishing or proving the existence of a criminal offense and criminal liability during regular proceedings. Namely, the permanent forfeiture of proceeds of crime directly depends on the decision of the court that resolves the specific criminal matter.

In addition to the regular forfeiture, the legislator also prescribed the extended forfeiture of proceeds of crime (Simović and Simović, 2017, pp. 48-64; Simović, *et al.*, 2017) in the case when criminal proceedings are conducted for criminal offenses from Chapters XVII, XVIII, XIX, XXI, XXIA and XXII of the Criminal Code of BiH, when the court can also confiscate that property benefit, income, profit or other interest from the property benefit for which the prosecutor provides sufficient evidence to reasonably believe that such property benefit, income, profit or other interest from property benefit was obtained by committing these criminal offenses, and the perpetrator did not provide evidence that the benefit was obtained legally.<sup>11</sup> In this case, the burden of proof is (re)directed from the prosecutor to the executor, appreciating that the executor is obliged to provide certain or available evidence that a certain property benefit was obtained legally. In this way, the legislator ensured that the legal axiom is consistently complied with so that no one can keep the proceeds of

<sup>11</sup> Article 110a(1) of the Criminal Code of BiH.

crime, which, from the aspect of general prevention is a very expedient preventive message. This institute implies confiscation, not only of those property benefits for which it is proved in the court proceedings to originate from a specific crime, but also those assets that have not yet been proven in the court proceedings to have been acquired through the commission of a criminal offense, but for justified reasons, based on the evidence provided by the prosecutor, it is believed that these assets are also proceeds of crime (Smajić, 2019, p. 215).

Undoubtedly, the most significant innovation is the establishment of the possibility of inversion (shifting) of burden of proof to the perpetrator of the criminal offense in case of suspicion that the property was acquired through criminal activity (shared burden of proof), where the perpetrator must prove the origin of the income, i.e. the property (Radulović, 2014, p. 296). Forfeiture of proceeds of crime can be ordered by the court in the judgment declaring the accused guilty and in the decision on the application of an educational measure, as well as in the procedure in the case of insanity.<sup>12</sup>

### **Conduct of financial investigation: theoretical - implementation aspect**

In the current criminal procedure laws in Bosnia and Herzegovina, the legislator did not directly define the term financial investigation, that is, he did not prescribe its content, structure and stages of action of competent procedural entities. The legal basis for conducting a financial investigation is prescribed under Articles 197 and 392 of the Criminal Procedure Code of Bosnia and Herzegovina. However, financial investigation arises from the classical investigation, which begins from the moment of learning about the existence of grounds for suspicion that a certain criminal offense has been committed (Simović, 2011, pp. 154-172). On the other hand, financial investigation, as a rule, starts from the moment of discovering the existence of certain activities that imply and include, in addition to the existence of certain criminal offense, also the suspicion in the existence of certain proceeds of crime. A comparative analysis of the police systems of neighboring countries (Serbia, Montenegro, Croatia, Slovenia, Macedonia), but also more widely (Simović and Jovašević, 2015, pp. 325-341), it is evident that the prevention and detection of criminal offenses is the primary activity of the police, i.e. authorized officials with an emphasis on crime prevention (Karović, Orlić, 2020, p. 117). The standard of proving the grounds of suspicion, as the lowest level of suspicion that a certain criminal offense has been committed, is based on the existence of a set of indirect facts and represents a starting point and a necessary condition for a certain real event in everyday life to be characterized as a criminal event (Karović, Simović, 2020, p. 210).

The ultimate goal of criminal activities is the acquisition of illegal profit (earnings), so it is quite realistic and justified to expect that numerous and diverse criminal offenses, by the nature of the criminal matter, the method of execution, the motive and other specifics, incorporate and imply the acquisition of proceeds of crime. In academic and professional discussions, it can be observed that there are two positions when it comes

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<sup>12</sup>See Articles 389 and 396 of the Criminal Procedure Code of BiH.



to the understanding of financial investigation: on the one hand, financial investigation is special, and the second position is that the financial investigation arises from and forms an integral element of the classical investigation. In any case, the initiation and conduct of financial investigation is an initial activity that is primarily aimed at the detection, identification and determination of proceeds of crime, with the aim of their temporary and permanent forfeiture, in accordance with restrictive legal requirements.

With regard to the number, volume, complexity, dynamics and variety of investigative and evidentiary activities undertaken in the financial investigation by the competent procedural entities, the following stages of action can be observed: a) collection of information and data as well as the necessary documentation; b) processing and analysis of collected operational material; c) differentiation of legally and illegally acquired property benefits; d) determination of disparity (equalization of net worth), and e) conclusion drawing (results of investigation). A key issue that deserves special attention is when the financial investigation begins, given that the outcome directly depends on the timeliness of the initiation, implementation and conduct of the financial investigation, i.e. the results regarding the detection, identification and determination of proceeds of crime with the aim of their temporary and permanent confiscation in the end.

As a rule, the initiation of financial investigation begins in the early phase of the classic investigation, when certain activities that indicate the existence of certain proceeds of crime are recognized and determined. Therefore, after the commission of a certain criminal offense, the perpetrators most often redirect the proceeds of crime to other accounts of legal and natural persons of related and third parties, with the intention of concealment, but also of investing in certain activities (e.g. construction and sale of real estates, business premises, purchase of expensive items, etc.). Authorized police officials have the primary task of, after recognizing and determining certain activities, when conducting a classic investigation, timely inform the competent prosecutor in order to initiate and conduct a financial investigation that will be conducted in parallel with the classic investigation.

The financial investigation is managed by the competent prosecutor, who has a supervisory role over the work of authorized officials, as is the case with a classic investigation. Therefore, in the financial investigation, the competent prosecutor has a dominant investigative and evidentiary procedural role, as the only authority authorized by the law to initiate and conduct a financial investigation and to undertake adequate criminal procedural actions in order to collect the necessary evidence related to the existence of proceeds of crime. When conducting a financial investigation, it is necessary to ensure an adequate level of inter-institutional, inter-agency and international cooperation with competent authorities, subjects and law enforcement agencies with the aim of obtaining the necessary information and data, official documentation, etc. in a timely and efficient manner.

In the detection phase, when initial or primary information that indicate the existence of certain illegal activities that imply the existence of proceeds of crime are collected, the prosecutor and authorized police officials, upon approval by the competent prosecutor, have the possibility to collect the necessary information and knowledge from

the banks, which are obliged to act on their request. Namely, in this way, it is possible to preliminarily perform certain checks, and to determine the possible validity and justification for initiation and obtaining of an order from the competent court in connection with the implementation of certain criminal procedural actions (search of apartment and business premises, temporary security measures, etc.). The legal basis for such actions is contained in Article 104(1)(c) of the Law on Banks of the Federation of BiH<sup>13</sup> and Article 128(1)(3) of the Law on Banks of the Republika Srpska,<sup>14</sup> which prescribe an exception from keeping a bank secrecy and practically enable banks to respond to the request of the prosecutor, that is, the request of authorized police officers and provide the requested information.

The key investigative and evidentiary role in the conduct of financial investigation is performed by authorized police officials, to whom the competent prosecutor entrusts the execution of numerous and various criminal procedural actions. After issuing an order to conduct a financial investigation by the competent prosecutor, authorized officials collect, process, and analyze relevant information and data, as well as relevant documentation obtained, primarily, by the competent state authorities (tax administration, Indirect Taxation Administration of BiH, courts, competent ministries, directorates, municipalities, etc.).

The prescription of special investigative actions, as a separate category of evidentiary actions and their application in a practical sense, is proportionate response of the state, i.e. of the criminal prosecution authorities, to the increasingly complex forms of modern organized crime with the aim of more efficient fight against this type of crime and prosecution of criminally responsible persons (Karović, 2012, p. 25). In connection with the implementation of special investigative actions, it is necessary to focus special attention on the collection of useful information and data regarding the purchase and sale of currencies, the transfer of authorizations, etc. All aforementioned activities must be registered, i.e. documented, given that by applying special investigative actions, relevant knowledge can be discovered and collected regarding the way of operationalization of criminal activities, identify certain persons, determine locations, business premises, then conversations between the suspect and his relatives and third parties, mutual agreements, movements, etc.

Whether the state of affairs in the investigation has been sufficiently clarified for an indictment to be raised, is assessed by the prosecutor himself (Simović, Simović, Govedarica, 2021, p. 47). If the competent prosecutor assesses that the state of affairs in the investigation has been sufficiently clarified, he submits an indictment, which he sends to the judge for a preliminary hearing for competent action. Along with the indictment, the competent prosecutor submits the available material on the financial investigation and all the evidence on the proceeds of crime, with a proposal to confiscate it.

<sup>13</sup>Official Gazette of the Federation of Bosnia and Herzegovina, no. 27/17.

<sup>14</sup>Official Gazette of the Republika Srpska, nos. 4/2017, 19/2018, 54/2019 and 65/2024.

## Conclusion

The forfeiture of proceeds of crime is an imperative in terms of suppression of crime, especially specific forms of organized crime and criminality which, by the nature of the criminal matter itself, implies and understands the existence of certain proceeds of crime (corruption crimes, criminal offenses in the field of drug abuse, human trafficking, terrorism, etc.) (Simović and Simović, 2011, pp. 77-99). This paper emphasizes the justification and expediency, but also the forms of forfeiture of proceeds of crime, and the differentiation between temporary and permanent, or extended forfeiture of proceeds of crime.

Through this work, it can be seen that financial investigations are an extremely dynamic field that is developing further. Well-conducted financial investigations, which result in the permanent confiscation of illegally acquired property benefits realized through criminal activities are exceptional and an effective tool, and the work of all state authorities, especially prosecutors' offices, should be focused on that path authorized officials. The main reason for this is the constant changes and improvement of concealment methods unlawfully acquired property benefits. Therefore, it is necessary in parallel with criminal investigations to develop proactive management of financial investigations. This implies conducting a criminal investigation with simultaneous use of financial investigation methods, with the intention of detecting illegally acquired assets property benefits and obtaining evidence for existing and new criminal offenses. Financial investigations too should focus on legal entities, which represent a very complex aspect of financial investigations especially due to complex property and cash flows.

In this regard, at the entity level of the Federation of Bosnia and Herzegovina and Republika Srpska, as well as the Brčko District of Bosnia and Herzegovina, there are special laws that regulate this domain. The current legal framework and to some extent the developed practice for the most part enable the implementation of financial investigations, especially when they are integrated into systematic, planned and methodologically structured activities, and as such directly contribute to their realization one of the most important legal postulates according to which no one can keep the benefit he has acquired by committing a criminal act. On the other hand, a small number of initiated financial investigations in relation to the number of initiated criminal investigations, and in relation to the number of defendants - is the result of a lack of proactive approaches in determining modalities for improving financial data research and information about the property of the suspects, i.e. the accused, including legal entities. More effective implementation of financial investigations is a key imperative for better rule of law and in BiH. Although there are expressed institutional ambitions and greater commitment of certain holders of judicial functions, it still cannot be said that financial investigations are carried out at a high level and efficient level. There are still serious shortcomings present at the institutional level, which manifest through insufficient human resources and their inadequate planning.

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## Oduzimanje imovinske koristi pribavljene krivičnim djelom u Bosni i Hercegovini sa posebnim osvrtom na sprovođenje finansijske istrage

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Efikasna i energična borba protiv kriminaliteta, posebno specifičnih oblika organizovanog kriminaliteta, koja, po prirodi stvari, implicira sticanje imovinske koristi pribavljene krivičnim djelom, istovremeno podrazumijeva i obavezuje na blagovremeno i efikasno pokretanje i sprovođenje finansijske istrage. Ova istraga je efikasno sredstvo na planu oduzimanja imovinske koristi pribavljene krivičnim djelom i u pravilu se sprovodi u fazi sprovođenja klasične istrage kada su zadovoljeni određeni uslovi iz čega proizilazi da njeno iniciranje, pokretanje i sprovođenje nije uslovljeno podizanjem i potvrđivanjem optužnice. Nadležni tužilac Bosni i Hercegovini samostalno i autonomno odlučuje o pokretanju i sprovođenju finansijske istrage, tako da nije potrebno prethodno pribaviti bilo kakvu saglasnost, odobrenje ili naredbu od strane nadležnog suda. Rukovodna i nadzorna uloga prilikom sprovođenja finansijske istrage pripada nadležnom tužiocu koji izdavanjem naredbe nalaže njeno sprovođenje. U provedbenom ili izvršnom smislu ovlaštena službena lica policije imaju ključnu i dominantnu ulogu na planu blagovremenog, efikasnog i zakonitog sprovođenja finansijske istrage koja podrazumijeva otkrivanje imovinske koristi od krivičnih djela, te prikupljanje potrebnih dokaza neophodnih za efikasno vođenje i okončanje krivičnog postupka. Zakon o krivičnom postupku Bosne i Hercegovine ne reguliše posebno finansijsku istragu. Ova istraga je propisana u posebnim zakonima (*lex specialis*) na nivou entiteta Federacije BiH i Republike Srpske, kao i Brčko Distrikta BiH. Međutim, na državnom nivou, iako zakonom nije neposredno definisano pokretanje i sprovođenje finansijske istrage, ona proizilazi iz opšteg koncepta istrage, tako da se primjenjuje kada su u pitanju krivična djela koja podrazumijevanju sticanje imovinske koristi pribavljene krivičnim djelom.

KLJUČNE REČI: imovinska korist, finansijska istraga, tužilac, ovlaštena službena lica.

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