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CRIMINAL OFFENSE OF EMBEZZLEMENT IN THE SERVICE IN THE CRIMINAL LAW OF BOSNIA AND HERZEGOVINA - CRIMINAL LAW AND CRIMINAL PROCEDURE ASPECT (NORM AND CASE LAW)

The focus of the authors' interest is the criminal offense of embezzlement in the service, which we classify in the catalogue of corrupt criminal offences, by its nature, operationalization method, consequences and other specificities. In addition, it is a criminal offense from the catalogue of premeditated criminal offenses, so the paper pays due attention to the interconnection and cumulative conditionality of objective and subjective elements, that is, the action of execution and the subjective component. Special attention is directed to the discovery of the existence of this criminal offense, i.e. the realistic discovery possibilities and capacities, then the objective-subjective concept based on the legal description of this criminal offense, and the aspect of gathering the necessary evidence in connection with establishing the existence of the criminal offense and guilt, considering the restrictive legal requirements. The complexity of discovering and proving this criminal offense arises from the very nature of this criminal offense and certain specificities that are directly

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related to the way it is operationalized. The criminal law autonomy and independence, as well as the clear differentiation of this criminal offense in relation to other related criminal offences, are emphasized in order to avoid (possible) wrong identifications, and with the aim of a better and more comprehensive understanding of the very nature of this criminal offence.

Key words: Embezzlement, criminal offense, detection, appropriation, proof.

1. Introduction

The criminal offense of embezzlement in the service deserves special attention from the professional and scientific public, even though it is a classic or traditional criminal offense in the criminal law of Bosnia and Herzegovina, which is not only characteristic to the modern, i.e. recent times, but a criminal offense that exists and originates practically from the appearance of the first forms of abuse in the context of the proper, legal, efficient and purposeful functioning of the service. From the (most) primitive forms of abuse to date, this criminal offense was present in different historical periods of human activity and existence, but the phenomenological forms of manifestation, i.e. operationalization of criminal activities, changed, modified and adapted to the current political, economic, social, cultural and other conditions, circumstances and specificities.

Special interest and attention of the scientific, professional and general public regarding timely, efficient and legal detection and proving of this criminal offense are present and expressed due to the fact that this criminal offense, given its nature, method of execution, destructive component and other criminal law determinants and specifics, is systematized into a catalog of criminal offenses of corruption, that is, corruption crimes. When it comes to determining the catalog of corruption crimes, we recall that in 2015 the High Judicial and Prosecutorial Council of Bosnia and Herzegovina adopted the List of corruption crimes from all criminal laws in Bosnia and Herzegovina, which, in addition to other criminal offenses, also incorporates the criminal offense of embezzlement in service[1]. Acknowledging that corruption as a complex legal and social phenomenon is

1 For more details, see: Akcioni plan za borbu protiv korupcije 2018-2019, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, available on *https://pravosudje.ba/vstvfo-api/vijest/download/64903*, accessed on 2 July 2023, Svetlana Bijelić, Sabina Sarajlija, Priručnik za izradu elemenata optužnica za koruptivna krivična djela, Visoko sudsko i tužilačko vijeće Bosne i Hercegovine, Sarajevo, 2019, pg. 11.

recognizable by its extremely destructive effect and unpredictable consequences that successively destroy society and the state, it is necessary to observe the criminal offense of embezzlement in the service through the prism of corrupt punishable behavior that, with reason, requires from the legislator adequate legal answers and solutions of material and procedural nature.

Corruption, as a legal and social phenomenon, even today represents a challenge for modern criminal law, and the legislator is faced with a challenging, complex and demanding task in relation to the prescription of adequate legal norms, with the aim of achieving appropriate criminal justice results in the end. In the sense of criminal procedure, special attention is primarily focused on the aspect of timely, efficient and legal detection and proving of the existence of a criminal offense and guilt, appreciating restrictive legal requirements of procedural nature, and it is particularly important to emphasize the legislator's intention to ensure the necessary protection of human rights and freedoms (humanization tendency) which is practically operationalized by adequate and proper application of the catalog of rights and universal guarantees of the suspect or accused person in all stages of the criminal proceedings.

2. Specifics of detecting the existence of criminal offense

Having respect for the appearance of new and the modification of existing phenomenological forms of criminality, it is more and more complex and demanding to detect the existence of a specific criminal offense, that is, to gather initial or primary information that indicate the existence of a specific criminal offense, as well as to establish the existence of the evidentiary standard, the grounds for suspicion, which must be satisfied in order to initiate and conduct an investigation. In every historical stage of the development of society, the perpetrators of crimes tried to find the most appropriate ways, that is, certain modalities for committing crimes, trying to „outsmart" the criminal prosecution authorities (Karović, 2018:.836). Abuse of new achievements in all areas directly enables criminality to be one step ahead of the criminal prosecution authorities, from which it follows that a continuous search for appropriate or proportionate legal solutions and answers that can meet expectations in terms of an efficient and energetic fight against all forms of crime is necessary (Karović, Simović, 2020:2019).

Discovery of the existence of the criminal offense of embezzlement in the service begins with the collection of initial or primary information that indicate the existence of grounds for suspicion that a criminal offense has been committed. Given the legal nature and other specifics of the criminal proceedings in Bosnia and Herze-

govina, and above all the concept of investigation, the legislator prescribed that it is necessary to satisfy the existence of grounds for suspicion that a certain criminal offense has been committed, in order to initiate and conduct an investigation by the competent prosecutor. By analyzing the legal text, it can be observed that the legislator did not determine or define the meaning of the term „ground for suspicion" in the catalog of basic terms, even though it is a term or evidentiary standard that deserves special attention in the investigation as the first stage of the preliminary procedure. The grounds for suspicion that a specific criminal offense has been committed is the (lowest)lower level of suspicion, which is practically based on indirect factors (indicators) that point to the existence of a specific criminal offense.

Like any other criminal offense, this criminal offense also has its own criminal law autonomy and independence, which follows from the legal description of the criminal offense, that is, the objective-subjective characteristics of crime. Detection of this criminal offense is complex, but also specific as the consequences of the commission of this criminal offense are not noticeable, evident and recognizable in the material world immediately after the commission, as is the case with some other criminal offenses (e.g. murder, sexual crimes etc.), which makes it difficult to gather initial information relating to certain irregularities, deviations from regulations or risky behaviors, in a timely manner, which would serve as a reason for determining the existence of grounds for suspicion that a criminal offense has been committed. Concealment is, therefore, a general characteristic of offenses against official duty (Feješ, Lajić 2014: 267). This practically means that untimely detection of the existence of this criminal offense certainly favors the perpetrator of the crime, which remains undetected for a certain period of time after commission. Practically, this non-detection enables his further continuous or successive appropriation.

Acquiring of illegal property benefits (for oneself or for others) by appropriating money, securities or other movable property entrusted to one's service or in general at a function in the institutions of Bosnia and Herzegovina (at all levels), in the phenomenological sense of manifestation, deserves special attention of practitioners. In addition, it is interesting and important to focus special attention on the motive of the perpetrator of this criminal offense, which may be connected or conditioned with certain socio-pathological phenomena, or more precisely with personal preferences of the perpetrator (e.g. drug addiction, gambling, alcoholism, etc.). The motive of embezzlement is self-interest, and the phenomenon most often occurs where the same person simultaneously performs incompatible work functions - disposal with movable property and business control (Bošković, 1999: 280).

As a rule, initial knowledge of the existence of a criminal offense most often have a certain number of persons who are directly or indirectly connected

with or involved in business processes and activities, that is, persons who, by the nature and affinity of jobs and tasks, know the methodological concept of the work of a certain service, the way of organization and functioning of the service, prescribed authorizations for individual working positions as well as other specific circumstances related to the nature of the regular work process in a certain service or work in general.

However, the aggravating circumstance is that the perpetrator of this criminal offense is aware of the existence of incriminating activities, and that by his actions, that is, by his inaction (omission) in connection with the proper, purposeful and legal performance of tasks and duties under his jurisdiction, he uses available possibilities and tries to cover up in every way illegal activities with the intention of avoiding criminal prosecution (e.g. corrections of the content of certain documents - changes, additions, then forging of certain documents, for example – forgery of payment orders, etc.). In addition to the above, it is quite realistic to expect that the perpetrator of this criminal offense will use every opportunity to justify spotted irregularities or risky behaviors in the early detection stage in a certain way with objective circumstances, in order to present his own behavior, that is, his actions as acceptable and habitual.

In view of the above, the question arises as to how it is possible to detect the existence of this criminal offense, the ways of cognition, how to establish the existence of grounds for suspicion, and how to initiate and conduct an investigation by the competent prosecutor as the first stage of the preliminary procedure. The report is often the first source of cognition about the possibility of existence of a criminal offense and the possible perpetrator and participants, as well as available evidence that supports a certain suspicion in a different range of probability or possibility (Simović, M., Simović, V., Govedarica, 2021: 29). The detection of the existence of this criminal offense is most often achieved through operational work of authorized officials, inspection bodies, authorized entities for audit and business control, by associates and colleagues, through internal control by direct managers within certain service, by reporting by the injured party, as well as by collection of initial information by the prosecutor.

During the performance of regular duties and tasks by authorized officials, the prosecutor does not have a supervisory role over their work, until establishing the existence of grounds for suspicion that a specific criminal offense has been committed, in which case the law prescribes the obligation of authorized official to inform the competent prosecutor[2]. Authorized officials have a real possibility

2 For more details, see Article 218 of the Criminal Procedure Code of Bosnia and Herzegovina (supervision of the prosecutor over the work of authorized officials).

to gather initial or primary knowledge pointing out to existence of grounds for suspicion that a certain criminal offense was committed, through their own operational work or indirectly through cooperation or exchange of information and data with other entities, bodies, agencies or individuals. Certain intelligence findings are preliminarily verified, so that the prosecution does not needlessly burden itself with unverified operational information. External sources of information most often refer to: notifications from citizens, information from the media, reports from legal entities, reports from witnesses, anonymous reports, reports from financial institutions, reports from independent and state auditors (Zovko, 2021: 303).

Therefore, authorized officials preliminarily check the validity of initial or primary information about the existence of alleged illegal activities, and after establishing the grounds for suspicion, notify the competent prosecutor with the intention of initiating and conducting the investigation. In addition to authorized officials whose primary activity is to detect and prevent the commission of criminal offenses, in the detection stage a very important detection role have inspection authorities which, according to the nature of control function, have a real possibility to notice, recognize and identify certain illegal activities when performing tasks and duties from their jurisdiction, that is, irregularities in work and deviations that indicate the existence of a certain criminal offense. After detecting the existence of a criminal matter in non-legal sense, i.e. at the level of existence of grounds for suspicion that a certain criminal offense has been committed, the inspection authority is obliged to inform the competent prosecution and submit all available information and data about the existence of a certain criminal offense.

In addition to the inspection body, through business audits, it is possible for authorized entities to determine the existence of certain irregularities that indicate the existence of a certain criminal offense (e.g. audit reports). Audit reports can serve as a basis for additional preliminary checks aimed at determining the correct, efficient, purposeful and legal performance of official duties. Irregularities noted in the auditor's report do not constitute a criminal offense, by their nature, so it is a misunderstanding or generalization that all irregularities observed or recorded by the auditor would automatically constitute a specific criminal offense. With regard to the prosecutor's concept of investigation in the criminal procedural legislation of Bosnia and Herzegovina, on the basis of audit findings, i.e. reports, it is possible to establish the existence of grounds for suspicion that a certain criminal offense has been committed. However, the prosecutor is the only authority authorized by law who, on the basis of the available information, autonomously and independently makes an assessment and makes a decision on the existence of grounds for suspicion that a certain criminal offense has been committed, and if so, issues an order to conduct an investigation which, by its

nature, includes undertaking adequate and proportionate necessary criminal procedural actions on the plan of additional detection of the existence of criminal offense and collection of necessary evidence.

As already stated, certain persons who are direct collaborators or work colleagues of the perpetrator of this criminal offense can recognize certain risky behaviours that indicate certain abuses and deviations from the prescribed way of working and functioning of the service, and through reports (most often anonymous) inform the competent prosecutor's office or police authority. In this sense, it is important to emphasize that direct managers (bosses, supervisors, etc.) who, based on the legally prescribed authorizations of the position they perform, therefore have an instructive-control function, as well as a real possibility to notice, recognize and identify certain irregularities, i.e. abuses that by their nature, manner of manifestation, scope and other specifics indicate the existence of a criminal offense. On the other hand, if the instructive-control activity by authorized authorities is not timely, proper and adequate, it is evident that the perpetrator of this criminal offense will have a real possibility to realize a greater illegal property benefit, that is, the harmful consequences of the execution will be more significant and greater. Report on certain abuses related to the existence of this criminal offense are also submitted by the injured parties with the intention of revealing the existence of the criminal offense, but also of obtaining possible compensation for the damages caused by the commission of a certain criminal offense.

The prosecutor, as an active participant, i.e., an actor of everyday social events and processes, has the possibility to learn about certain information and data in different ways (e.g., through media, through public talks, anonymous/pseudonymous reports, from acquaintances and friends and in other ways), that is, to gather initial knowledge about the existence of this criminal offense, and to make a decision to initiate and conduct an investigation based on his own assessment. When analyzing Article 35(1) of the Criminal Procedure Code of Bosnia and Herzegovina, we noted that in the catalogue of rights and duties of the prosecutor, the legislator also prescribed the detection of criminal offenses[3].

It follows that for the discovery of the existence of this criminal offense, that is, collection of initial or preliminary information, and the initiation and conduct of the investigation by the competent prosecutor, very important are the instructive-control activities of the competent entities and individuals who, by

3 It is quite clearly recognized in the aforementioned legal provision that the detection activity, i.e. the detection of the existence of criminal offenses is prescribed by the legislator in the catalog of basic rights and duties of the prosecutor. Therefore, the prosecutor has a detection role, given the realistic possibility of direct or indirect collection of certain information and data, i.e. knowledge that indicates the existence of grounds for suspicion that a criminal offense has been committed.

the nature of their duties and tasks, more precisely by powers prescribed under the law, exercise, instructive-control activity over the work. Suppression of all forms of criminality, including crimes against official duty, depends on a number of factors, and for the sake of preventive action, there is a need for strategic, organized and planned monitoring of all problems and phenomena within society, from which potential criminal offenses can arise (Sarajlija, 2018: 17). Given the nature, manner of manifestation and other specifics of this criminal offense, the detection activity is primarily oriented towards timely detection, recognition and identification of all irregularities in work, deviations from regulations and the established methodology of performing duties and tasks, i.e. the development of the regular work process and other anomalies that indicate the existence of incriminating activities.

3. Objective-subjective concept of criminal offense

The criminal law autonomy and independence of the criminal offense of embezzlement in service in the criminal law of Bosnia and Herzegovina is based on the legal description of this criminal offense which incorporates the objective-subjective characteristics of the nature of this criminal offense, and thus the legislator prescribed its criminal law autonomy and independence in relation to other criminal offenses. In order to differentiate more clearly and directly this criminal offense from other (related) criminal offenses, we will perform a short comparative analysis with the intention of recognizing and emphasizing the essential differences, in order to avoid possible wrong identifications of mentioned criminal offenses.In this sense, due to the similarity (relatedness), this criminal offense is most often identified with the criminal offense of service in office, which is completely wrong and unacceptable, given that the legislator has prescribed a very clear differentiation between the said two criminal offenses which follow from the legal descriptions of above mentioned two criminal offenses. A comparative analysis of the legal description, i.e. the characteristics of the criminal offense of embezzlement in the service and service in office, reveals a clear criminal law demarcation line, recognizing that in the criminal offense of embezzlement in service, the perpetrator of the criminal offense appropriated money, securities or other movable property entrusted to him in service or in general in his position in institutions - in distinction from the criminal offense of service in office, where the perpetrator of the criminal offense used himself or gave for use to another person without authorization. In addition, in comparison with other related crimes, it is recognized that the criminal offense of embezzlement in service has certain

similarities with the criminal offense of evasion and theft. Through a comparative analysis of the characteristics of crime, we notice that the differentiation between the criminal offense of embezzlement in service and theft is that in the case of the criminal offense of embezzlement in service, the listed items are entrusted to the person in service, considering the nature and specifics of the specific workplace. Embezzlement occurs when someone steals or alienates what he is entrusted to his management or guarding[4].

Noted are also similarities with the criminal offense of evasion, assessing that the acts of execution coincide, more precisely that they refer to the illegal appropriation (evasion) of objects or items, but there is an obvious difference, considering that the criminal offense of embezzlement in the service is the primary criminal offense from the catalogue of official criminal offenses. Namely, when performing duties and tasks, a certain person disposes of, uses, does business with certain objects, that is, items, but in accordance with the prescribed authorizations that determine his actions in terms of timely, efficient and legal execution of certain activities. The aforementioned objects must have been entrusted to the perpetrator in his service or at work in general, and the essence of the offense is the abuse of authorities that the perpetrator has in relation to entrusted items (Tomić, 2007: 387).

By analysing the provisions of criminal laws at all four levels in Bosnia Herzegovina (state level, entity level - Federation of Bosnia and Herzegovina[5] and Republika Srpska[6] and Brčko District[7]), appreciating its complex constitutional and legal structure that determines the way of organization and functioning of criminal legislation, it is noted that this is a criminal offense prescribed in Article 221 of the Criminal Code of Bosnia and Herzegovina, Article 384 of the Criminal Code of the Federation of Bosnia and Herzegovina, Article 316 of the Criminal Code of the Republika Srpska and Article 378 of the Criminal Code of the Brčko District of Bosnia and Herzegovina. In addition, in the very name of this criminal offense, certain slight differences are noticed, considering that this criminal offense is prescribed in Article 316 of the Criminal Code of the Republika Srpska and Article 378 of the Criminal Code of the Brčko District of Bosnia

4 For more details, see: Investopedia: What is Embezzlement, and How Does It Happen? By Adam Hayes, available on: *https://www.investopedia.com/terms/e/embezzlement.asp*, accessed on 26 August 2023.

5 Criminal Code of the Federation of Bosnia and Herzegovina, 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.

6 Criminal Code of the Republika Srpska, Official Gazette of the Republika Srpska, nos. 64/2017, 104/2018, 15/2021 and 89/2021.

7 Criminal Code of Brčko District of Bosnia and Herzegovina, Official Gazette of Brčko District of Bosnia and Herzegovina, np.19/2020 – consolidated text.

and Herzegovina as Embezzlement, while in Article 221 of the Criminal Code of the Bosnia and Herzegovina and Article 384 of the Criminal Code of the Federation of Bosnia and Herzegovina, this criminal offense is called Embezzlement in service. The aforementioned legal provisions prescribe basic, milder (over KM 300 and 500) and more serious forms of this criminal offense (over KM 10,000 and 50,000), depending on the amount of property benefit acquired by committing the criminal offense, while different legal solutions, i.e. prescribed ranges of sentence of imprisonment are observed with regard to the prescribed criminal law sanctions (sentence of imprisonment).

It follows from the above, that the qualifying circumstance is manifested in the amount of acquired property benefit. However, one of the complex questions of a practical nature, when determining the qualification, is the method of calculating appropriation, for example multiple appropriation, continuous and successive appropriation of money etc., appreciating that there are different or conflicting opinions and understandings in the professional public, and regarding the method of determining and calculation of the amount of property benefit acquired by committing a criminal offense.

The act of committing this criminal offense is the appropriation of money, securities or other movable things entrusted to a certain person in the service or at work in general. As a rule, these are specific items entrusted to a certain person with the aim of timely, efficient and legal performance of duties and tasks from his jurisdictions. It follows that appropriation refers to money, securities or other movable things entrusted for the purpose of performing a service, i.e. official duties, in terms of performing duties and tasks, considering the nature and certain specificities of the specific workplace. The absence of legal restrictions regarding the nature of that service or work, i.e. not limiting that service or work to certain functions only, indicates that the perpetrator of this criminal offense can be any person who is entrusted with certain movable property in service or at work in general, and in connection with the working process itself or content of the service (Filipović, 2020/21: 379).

In view of the above, appreciating that the legislator did not restrictively determine an official or responsible person as the perpetrator of this criminal offense, embezzlement in service is included in the catalogue of fake criminal offenses. Fake official crimes are those that can be committed both in and out of service (Simović, Jovašević, 2019: 115). One of the key questions to which judicial practice gave a clear answer is the capacity of the perpetrator of the criminal offense, given that the legislator did not clearly and precisely prescribe legal provision regarding the meaning of the term „institution" as characteristic of this criminal offense, which created different interpretations, i.e. understandings when dealing

with specific criminal cases. In this regard, appreciating the imprecision of the legal norm, most often the defence interpreted the meaning of this term restrictively, in such a way that, according to their understanding, this term incorporates only public institutions, i.e. government institutions, while judicial practice gave an unambiguous answer that this term understands any form of legally organized work[8].

When it comes to the subjective component, this criminal offense is classified in the catalog of premeditated criminal offences. Therefore, the perpetrator of this criminal offense can commit a criminal offense with direct intent, i.e. with the intention of appropriating the aforementioned objects entrusted to him in the service or at work in general, with the aim of acquiring illegal property benefits. Taking into account the said objective-subjective characteristics of this criminal offense, i.e. the action of execution (appropriation) and the subjective component (direct intent), the perpetrator of this criminal offense can be a person (e.g. cashier, storekeeper, merchant, etc.) who has been entrusted with the authority in service or at work, as well as money, securities or other movable property.

4. The complexity of collecting evidence and proving the criminal offense and guilt

Valid criminal procedure laws in Bosnia and Herzegovina determine the actions of competent procedural subjects in terms of clarifying and solving of procedural tasks[9]. With the adoption and entry into force of new criminal procedure laws in 2003, reformed criminal procedure legislation of Bosnia and Herzegovina underwent significant changes, which primarily refer to the concept of investigation and radically changed role of criminal procedure subjects (Karović, Orlić, 2020: 122). As already emphasized, in order to initiate and conduct an investigation by the competent prosecutor, it is necessary to satisfy the existence of a material condition, which manifests itself in the existence of grounds for suspicion

8 For more details, see: judgement of the Supreme Court of the Federation of Bosnia and Herzegovina, number: 070-0-Kžk-07-000018 of 18 February 2010, Constitutional Court, Decision No. AP-1284/10 of 9 April 2010.

9 Criminal Procedure Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, nos. 3/2003, 32/2003, 36/2003, 26/2004, 63/2004, 13/2005, 48/2025, 46/2006, 76/2006, 29/2007, 32/2007, 53/2007, 76/2007, 15/2008, 58/2008, 12/2009, 16/2009, 93/2009, 72/2013 and 65/2018; Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, nos. 35/2003, 37/2003, 56/2003, 78/2004, 28/2005, 55/2006, 27/2007, 53/2007, 09/2009, 12/2010, 08/2013, 59/2014 and 74/2020; Criminal Procedure Code of the Republika Srpska, Official Gazette of the Republika Srpska, nos. 53/2012, 91/2017, 66/2018 and 15/2021) and Criminal Procedure Code of Brčko District of Bosnia and Herzegovina, Official Gazette nos. 10/2003, 48/2004, 06/2005, 12/2007, 14/2007, 21/2007, 27/2014, 3/2019 and 16/2020.

that this criminal offense has been committed. Primarily, it is necessary to collect initial or preliminary information that indicates the existence of this criminal offense, which needs to be examined preliminary in terms of validity of allegations, and which, by their content and nature, indicate the existence of criminal offense. We would like to remind you that any established irregularity in the work of a certain person in itself, does not automatically represent grounds for suspicion that a criminal offense has been committed, but can serve as a basis for operational activity of authorized officials in order to subsequently establish the existence of grounds for suspicion. Therefore, it is necessary to establish a very clear line of differentiation, i.e. the line between the violation of official duty (lighter/serious violation), prescribed by internal, i.e. by-laws, on one hand, and the existence of a criminal matter in the fake sense, at the level of existence of grounds for suspicion, on the other side.

After receiving initial or preliminary information, before issuing an order to conduct an investigation, the competent prosecutor may order authorized officials to carry out additional checks in order to establish the validity of allegation, but also to collect additional information, if the initial information is unclear, incomplete, insufficient or similar. After determining the existence of evidentiary standard of grounds for suspicion that a criminal offense has been committed, the competent prosecutor issues an order to conduct an investigation, after which he orders authorized police officers to conduct certain investigative and evidentiary actions, i.e. to conduct certain (proportionate) criminal procedural actions, depending on the nature of the criminal offense, the manner of execution and other specifics related to a specific criminal event and potential perpetrator (suspect) [10].

Given the complexity of detection, investigation of the existence of criminal offenses, as well as the clarification and resolution of a certain criminal matter by procedural entities in criminal proceedings, and the adoption of a court decision, the evidentiary actions have essential importance (Karović, Simović, 2020: 33). As a rule, it is most often about the application of certain general evidentiary actions in criminal proceedings which, by its nature and purpose, are aimed at collecting the necessary evidence regarding the existence of the characteristics of a specific criminal offense. Application or performance of certain evidentiary actions is in essence aimed at collecting, that is, securing the necessary evidence for the efficient conduct and completion of criminal proceedings, such as: employment contracts, decisions, minutes, orders, records kept *ex officio*, schedules,

10 For more details, see: Article 216(2) of the Criminal Procedure Code of Bosnia and Herzegovina, Criminal Procedure Code of the Republika Srpska and Brčko District of Bosnia and Herzegovina and Article 231(2) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina.

notes /correspondence, USB stick, laptops, computers and other items that can serve as evidence for establishing relevant facts. Taking evidentiary actions is a necessary condition for establishing the facts that are the basis for making a court decision (Bugarski, 2014: 10).

In addition, expertise as a general evidentiary action in the criminal proceedings of Bosnia and Herzegovina enables comprehensive and versatile clarification and resolution of a specific criminal case and making of a decision by the court. A concrete and clear procedural task is set before the economic expert, i.e. complex professional questions referring to the nature of the criminal case on which the resolution of the criminal case depends, must be answered. The opinion, which must be founded and explained in its entirety, represents the expert's solution to set problem and the answer to highlighted questions for clarification of important facts in the specific criminal matter (Simović and others, 2020: 85). When it comes to this criminal offense, the most important or crucial question to which the expert is required to answer is the quantification, that is, the determination of the damage caused as a result of the incriminating behaviour of the suspect or the accused person.

With regard to the legal description of this criminal offense, in addition to the act of execution itself, which practically operationalizes certain criminal activities by the suspect, special attention must be directed to establishing, that is, proving the existence of subjective component, i.e. direct intent, taking into account cumulative connection and conditionality of objective and subjective characteristics of the criminal offense. Taking into account the nature, method of operationalization and other specifics of this criminal offense, it can be expected that the suspect will use every opportunity or possibility to make certain changes or corrections to official documents in order to conceal criminal activities or even destroy (completely or partially) certain documents that can be used for efficient conduct and completion of criminal proceedings.

However, during the implementation, i.e. realization of certain criminal procedural actions, it is very important to emphasize the aspect of the legality of collected evidence, which is operationalized through the doctrine of absolute or complete exclusion or separation of illegal evidence from the file, considering the restrictive legal requirements that determine the actions of criminal procedural subjects in the plan of resolving of a specific criminal procedural task. Any deviation or inconsistency in the application of criminal procedure actions in relation to the legal requirements is a path to illegality, from which it follows that all the actions of the competent criminal procedure subjects, primarily authorized officials and prosecutors, but also other subjects or participants to the criminal proceedings, must meet the prescribed legal requirements of a substantive and

formal nature. The tendency of humanizing the modern criminal procedural law, which primarily manifests itself through the prism of protection of fundamental human rights and freedoms of each individual, obliges competent criminal procedural subjects in criminal proceedings to consistently respect, i.e. provide catalog of rights and universal guarantees, of the suspect or the accused person at every stage of the proceedings.

After conducting all investigative and evidentiary activities in the investigation, as part of preliminary proceedings, the competent prosecutor autonomously and independently makes prosecutorial assessment as to whether, based on the evidence collected, there is evidentiary standard for reasonable doubt, and if this substantive requirement is met, the next procedural phase begins – indictment procedure. The indictment procedure is the second procedural stage or stage of preliminary proceedings. The indictment, as the most important act of the prosecutor in the criminal procedure, must meet legally prescribed requirements in terms of its content and form, taking into account that it is subject to review, or more precisely, to control by the court, i.e. the judge for the preliminary hearing. If the indictment meets all restrictive legal requirements, the judge for the preliminary hearing confirms the indictment, and this confirmation enables the transition to the next stage of the proceedings, i.e. the main proceedings/main trial.

Viewed from the aspect of establishing, that is, proving the existence of criminal offense and guilt, the evidentiary procedure is the most significant or central part of the main trial, but also of the criminal proceedings as a whole. Considering the type, legal nature, division of criminal procedural and evidentiary activities of the basic subjects, and other specifics of the criminal proceedings in Bosnia and Herzegovina, the burden of proof is on the prosecutor who must convince the court „beyond reasonable doubt" of the existence of guilt with regard to accused person or persons. Aforementioned evidentiary standard „beyond reasonable doubt" is a term that is peculiar to the Anglo-Saxon legal tradition, but it can be understood, that is, translated into our legal reality as establishing of facts in a reliable and unquestionable way[11]. During evidentiary procedure, the principle of fairness, that is, adversariness, between two opposing and equal parties, are fully expressed, i.e. between the competent prosecutor who has the burden of proof, on one hand, and the accused person (material defence) and his defence attorney who performs a formal defence, on the other hand.

However, taking into account that the criminal offense of embezzlement in the service is included in the catalogue of corruption criminal offences, one must

11 For more details on the use of term „beyond reasonable doubt", see: Judgement of the Court of Bosnia and Herzegovina, number: S1 1 K 004050 13 Krž 15 of 19 November 2013.

not ignore or forget, in addition to the investigation, the conduct of the financial investigation by authorized police officials upon the order of the prosecution, i.e. the court, and in cooperation with other subjects (banks, tax administration, etc.).

5. Conclusion

The criminal offense of embezzlement in service, as an autonomous and independent criminal offense, is included in the catalog of corruption criminal offenses which is not unique for modern times only. The roots of this criminal offense can be found in the past, practically from the first forms of abuse. In different socio-historical periods, phenomenological forms of manifestation of this criminal offense have changed, modified and adapted to current conditions and circumstances specific to a certain time. In this paper, special attention is dedicated to discovery of the existence of this criminal offense, with regard to the type, nature, method and means of execution, as well as other specifics that directly relate to detection activity.

When we speak about objective-subjective concept of this criminal offense, a comparative analysis of this criminal offense with other related criminal offenses was made in order to clearly differentiate and establish a line of criminal law demarcation, respecting the legal description of the criminal offense (objective-subjective characteristics of criminal offense). In addition, a comparative review of the legal solutions, i.e. legal description of this criminal offense at all levels, was made, with regard to complex constitutional and legal structure of the state of Bosnia and Herzegovina (state level, entity level, Brčko District of Bosnia and Herzegovina), but also certain differences in legal solutions. Taking into account legal description of this criminal offense, as well as cumulative connection and conditionality of the action of execution and the subjective component, in addition to the existence of the action of execution as an objective element, the subjective component, i.e. direct intent, is apostrophized in the paper, which deserves a special attention when proving this criminal offense.

In the context of criminal proceedings, special attention is focused on the complexity of collection of evidence and proving of criminal offense and guilt, given the restrictive legal requirements. In this sense, the most important procedural determinants referring to the conducts of competent criminal procedural entities in terms of resolving of criminal procedural task, i.e. clarifying and resolving of a specific criminal matter, in certain stages of the procedure (investigation, indictment procedure and main hearing - evidentiary procedure) are emphasized. In addition, a brief review was made of some disputable questions of a practical

nature, as well as the answers offered by court case law (e.g. the capacity of the perpetrator, the standard of proof, etc.).

In view of the above, the real and expedient need for a more specific and comprehensive determination of the legal description of the criminal offense of embezzlement in the service in future interventions by the legislator, with the aim of adequacy of legal norm as well as its efficient and lawful application by competent criminal procedure subjects, is recognized.

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