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ASSET MANAGEMENT CRIMINAL ORIGIN AND MAIN CAUSES INSUFFICIENT EFFICIENCY MANAGEMENT SYSTEM

Abstract

Implementation of an efficient mechanism seizure of property of criminal origin implies the existence of a functioning system of governance. The construction of special management body - the Directorate of the RS further strengthens and supports the idea of restitution of property crime. Testing its weaknesses and make proposals to address the shortcomings in the work of the target. Insufficient specialization Directorate slow down a special procedure and reduces the effectiveness. Specialty necessarily implies authority and their specialization, which is omitted. The authors analysis of key deficiencies in the management of the assets of criminal origin at all stages of the process - keeping, sales and purposes of the seized property, trying to point out the guidelines to eliminate obstacles in the work of the Directorate, the possibilities of promoting its control activities and raising the efficiency of the entire process of expropriation.

Keywords: confiscation of assets derived from crime, specialization, property management, Directorate for Seized Property Management.

УПРАВЉАЊЕ ИМОВИНОМ КРИМИНАЛНОГ ПОРЕКЛА И ГЛАВНИ УЗРОЧНИЦИ НЕДОВОЉНЕ ЕФИКАСНОСТИ СИСТЕМА УПРАВЉАЊА

Апстракт

Спровођење ефикасног механизма одузимања имовине криминалног порекла подразумева постојање функционалног система управљања. Изградњом специјалног органа управљања - Дирекције у РС додатно се оснажује и подржава идеја реституције криминалне имовине. Испитивање њених слабости и давање предлога за превазилажење недостатака циљ су рада. Недовољна специјализација Дирекције успорова посебан поступак и смањује ефективност како процеса управљања, тако и целог поступка

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одузимања имовине. Специјалност органа нужно подразумева и њихову специјализованост која је изостављена. Аутори анализом кључних недостатака у процесу управљања имовином криминалног порекла, у свим фазама поступка - чувања, продаје и намене одузете имовине, настоје указати на смернице отклањања кочница у раду Дирекције, на могућности поспешивања њених управљачких делатности и подизању ефикасности целокупног поступка одузимања.

Кључне речи: *одузимање имовине проистекле из кривичног дела, специјализованост, управљање, Дирекција за управљање одузетом имовином.*

Introduction

In a series of problems that accompany continuous modernization and progress of society present in many modern countries, and even in our own, there is also the problem of the existence of specific types of crime, including the most dangerous and most devastating phenomena highlights the problem of organized crime. After great difficulties that marked the first steps in forming a system for combating organized crime in Serbia, after the year 2000, the political determination to stop the crime becomes more pronounced. On the way to building an effective system has been first to the legislative reforms in this direction, the formation of new organs with specific responsibilities and adoption of the National Strategy for Combating Organized Crime³. In a series of efforts by Serbia invested to build up an adequate system in place to curb or at least controlled increased level of crime, especially organized, a significant step in that direction by adopting a special law⁴ which introduces new measures of criminal law, a measure of seizure of assets derived from crime. Two key elements are united to that extent; First, its ability to “break” a conglomeration of power concentrated in the hands of the leaders of criminal groups and to destroy their property and other support, efforts to provide it, “material justice” that violated the acquisition of the assets of criminal origin, and through the implementation of the principle of criminal law that a no one can enrich criminal activities. The seriousness and commitment of the state to be in this way to solve the problems of growing criminality shown by the fact that the new measures supported by special legislation (*lexspecialis* for its application), as well as institutional support which included the establishment of special entities with responsibilities aimed at its implementation. One of them is the Directorate of Asset Management where the primary jurisdiction of the jobs provided by a special law, which are mainly focused on the management of the assets of criminal origin. The powers of the Directorate are manifold and include a range of management skills of its employees, and its jurisdiction is wider than the management of seized assets in a separate procedure and involves taking care of the assets of criminal origin originating from ordinary criminal proceedings. This set of powers is quite broad and requires a specialization of personnel working in the Directorate and includes a collection of various knowledge and skills. The aim is to highlight the importance to the whole system of seizure of property and assets of criminal restitution in general, has a Directorate which is the last resort in the system of seizure.

The success in the implementation of measures necessary to the efficient functioning of the Directorate and all shortcomings in his work directly slow down the process of confiscation of property and affect its performance. The paper points to problems that occur due to, on the one hand, the fact that it comes to an area that is unknown in our legal system (regardless of inexperience, forming a system of criminal asset forfeiture application of special measures launched its application without the necessary preparations), as other hand, due to the now perceived inertia of the mechanism of seizure after years of application of the measures and the slow progress of management powers of the Directorate. The analysis of the management and reference to key brake in the work of the Directorate is trying to point out the essential directions of improvements in its work and in general the effectiveness of the criminal restitution of profits.

Management as part of the proceedings of assets of criminal origin

The problem of creating a criminal profits is not new, but it takes a lot larger scale when it comes to organized and especially serious crimes. “Although there is no common understanding of the concept of organized crime, and all his experts agree that it is not just about a particular type of crime, but about extremely dangerous, kind and complex form of delinquent behavior that threatens the foundations of a modern state and the basic principles of a democratic society” (Grubac, 2008 : p. 31) A monopolistic and oligopolistic structures of organized crime, allowing them to acquire high profits, which further reinforces criminal organizations and products likely negative effects such as washing or investing illegal business and corruption”(Williams, 2012: p. 306). Thus gotten profit is extremely difficult to identify, often because it is a web of actions that occur over a longer period of time and involve an organized plan of further property profit that was illegally acquired. “But money can be the Achilles heel of criminal organizations, because it leaves behind a clear trace, and therefore law enforcement authorities sometimes allows you to detect the movement of “dirty money”and thus expose the activities of criminal groups and their members” (Adamoli, Di Nicola, Savona , Zoff, 1998: p. 21)

“Organized crime is extremely difficult to define, and so it is difficult to recognize in this particular case and prove, mainly because at his illegal activity is intertwined with the other, completely legitimate activities” (Grubac, 2009: p. 705). Measures aimed at assets of criminal origin are different and exist in criminal law from the time when there is the state response to crime. Determining the property that has a criminal origin usually traditionally done in the framework of criminal proceedings, when, together with a finding of guilt for committing an offense established and the circumstances related to the height of the realized property and proceeds resulting from the execution of that part of the second approach involves new regulations confiscation of criminal assets the origin of the existence of specific criminal law measures. First, the rate of seizure of property is not only a newly created measures of criminal law, but it is part of the overall system breakthrough ideas to trace criminal enrichment and to the extent possible, seize illegally gained profit. “The structure of national, and international crime today exists a crime aimed at damaging the property of natural and legal persons (even states), in which

individuals, groups and whole organizations when committing crimes is illicit property gain “(Jovasevic, 2008: p. 249). The emergence of the new measures was escorted and institutional support, created the bodies that deal exclusively with implementation of the measure, was passed comprehensive legislation that regulates all the issues relevant to the implementation measures, but even for its application implements a special procedure, with special rules. Regardless of the efficiency of the judicial procedure of seizure of property, the idea of restitution of property crime cannot be achieved without a well thought out and efficient management mechanism. The final purpose is achieved only by the sale of confiscated property or directs the purpose of which is at least partially achieves the principle of restitution. Such partial restitution would include directing funds received from seized property to the persons affected by the actions of a criminal offense or directing the programs that would indirectly provide satisfaction for injured persons. Such restitution is not possible in cases of special procedures, or expediency achieved by the weight of the realization of the idea to provide the highest level of conservation of the property value of its sales and adequate purposes. This final phase of the movement of the underlying assets is extremely important, because the only seizure of assets of criminal origin without her good guidance such enforcement measures were pointless and would represent more than a measures criminal character of restitutionary what they eat and legal nature⁵.

On the other hand, the management responsibility of the Directorate are provided not only with respect to property confiscated under special procedures, but also in relation to the objects of the offense and the material gain acquired by the offense, that is, in relation to the property seized goods in the ordinary Criminal Procedure Code. Although the primary role of the Directorate when it comes to special procedures, clean character she has for ordinary criminal cases, especially if we take into account the situation in practice which shows that the present multi-decade low effectiveness of measures aimed at confiscation of proceeds from criminal offenses. “Fluctuations practice in the application of this institute are being such that this measure is not imposed even in those cases when it was obvious that the criminal activity acquired immense pecuniary gain” (Tomic, 1982 p. 46). There are various reasons for this. The author, for example, lists some reasons why the courts have not imposed this measure, “because the pecuniary gain was of little value because the defendant was indigent, he was unable to determine the precise amount of accrued benefits, which are not placed “necessary proposals” by the Prosecution “(Tomic, 1982, p. 146.) the establishment of a mechanism that would work” post-trial “that would in the course of judicial proceedings acted only as an extra, a major boost towards the imposition practice piloted rate on assets of criminal origin. The fact that the property during the proceedings Directorate care as good hosts assists judges insofar as it will be during the proceedings, the imposition of provisional measures on the best way to preserve its value, and then completing the procedure there is no certainty about its further movement in the direction of settlement damaged and partial or complete just satisfaction.

Comparative review of the basic problems of the management system

The emergence of new forms of crime in the greater or lesser extent affected all modern states and they should not necessarily build defense systems for these negative

social phenomena. The ways in which conducted the seizure of assets of criminal origin are different from country to country but in all observed the same problem and that is the interdependence of several elements necessary for the efficiency of subtraction. Managing it is one of them.

Italy is a country that is among the first adopted legislation on confiscation of assets of criminal origin, and that was a model for many other countries in the implementation of a new vision of combating organized crime. “Italian recipe suggests that it is desirable to have a specialized body with high autonomy ie independence in work, as well as better coordination of police and prosecuting authorities” (Jankovic, 2007: p. 22) As pointed out by Paoli “If we look first quantity, by type of goods confiscated from 1982 to 1993. The statistics are as follows: real estate accounts for 48.1% mobility 29% Securities 16% , companies 5.3% and other 1.6% of the total confiscated property “” If we look at the same parameters as assessed by their greatest value is derived from the value of confiscated real estate (63.5%), followed by companies (23.6%), securities (7.3), mobility (5.4%) and other items make up only 0.8% of the total confiscated assets “(Paoli, 1997: p. 266). If we were still searching for the reasons of insufficient efficiency in the implementation of these measures, we can find them in a reduced staff potential of authorities and their insufficient engagement. “Several police inspectors acknowledged that, particularly in the past, the police authorities have not been given enough energy to creating conditions for the application of preventive measures, because the press work on urgent cases that arrive daily, and that there is a problem of lack of human and material resources with the competent authorities for the implementation of these rate “(Paoli, 1997: p. 266).

France is a country that knows only the confiscation of property that is based solely on the sentence, and it may be imposed only in cases where the person whose goods are deducted as an offender convicted of a criminal offense. “As the shortcomings of the French system at the investigation stage could be cited, first training program attended by financial investigators, which normally consists of general programs where financial aspects are ignored, as in not giving priority to financial services of this type, and their poor material and human resources “(Vettori, 2006: p. 59). The main drawbacks of the French system of seizure of property are precisely in the field of procedural law and legal norms which regulate the procedure of confiscation, because the primacy of the debate on the punishment of any person for a criminal offense with which he is charged, while the issue of seizure and confiscation of profits that the execution of the accused gained, a secondary issue. “Further obstacles to the implementation of standards on Seizure and Confiscation of property in France, arising precisely from the characteristics of their legal solutions, according to which the necessary judgment to crime acquired a good could be seized and where it usually does not allow use of the so-called standards. reverse the burden of proof “(Vettori, 2006: p. 60). Also confiscated property management is not rated as satisfactory. However, the changes in 2012 which introduced the Agency which the special jurisdiction puts these activities, it is hoped that this problem will be solved. All confiscated goods become state property.

Macedonia, like other countries in the region have opted for less reformist approach in the adoption of regulations that would regulate confiscation of assets of criminal origin. She was among the first countries in the region that made the regulations relating to the confiscation of proceeds of crime but opted to do complementing existing measures aimed at confiscation of property. The management of confiscated assets at the beginning

of the implementation of measures of confiscation has not been resolved, but the lack of rectified by passing the Law on the management of confiscated assets, property benefits and items seized in criminal and misdemeanor proceedings⁶ and the establishment of the Agency for the management of seized assets. Confiscation in the Macedonian law, as in other countries of the region has not fully come to life, and how to properly Kambovski concludes, “changes in the substantive and procedural criminal law may remain short of breath moves, if the implementation of the new regime of confiscation not provide the necessary legal and institutional conditions”(Kambovski, 2007: p. 651). Yet the establishment of the governance mechanism of Macedonia demonstrates a firm stand on the commitment to establish an effective system of confiscation of assets and to improve the implementation of existing measures to revoke crime gained profits

Bosnia and Herzegovina is another state in the region has tried to ensure swift national response to organized crime by modifying existing norms relating to the confiscation of material gain. That way is to expand the possibilities for confiscation of material benefits for individual offenses introduced some changes compared to the usual procedure of confiscation orders. Such a move from local experts often evaluated as being insufficient, it is noted that “the legislator should foresee a special procedure or the existing additional detail in the framework of the CPA” (Hananspahic, Halilagic, 2011: p. 320). In support of this it was pointed out that in Bosnia and Herzegovina there are plenty of poor practice in implementing measures confiscation orders. In addition to the consent of the majority that is necessary to create a mechanism of asset management, which at this point in this country does not exist, and expressed the opinion that “may still be the moment to insist on consistent implementation of existing regulations because they often innovation regulation in the beginning to wash inefficiency of their application”(Mujanovic, 2007: p. 10). Without denying the possibility that this position is correct, we still would not agree with him, because if studies show that for decades does not work fighting a particular mechanism, their small corrections can not do much, but the birth of a new mechanism to monitor the new entities procedure to support its operation and safety, are certainly better break the bad tradition. In support of our position is the fact that is raised by the research center of the Parliamentary Assembly of Bosnia and Herzegovina to the “Progress Report on Bosnia and Herzegovina in 2011, in part related to the fight against organized crime and terrorism, the Commission concludes that the legal framework for seizure assets is not fully implemented and seizures of criminally gained assets remain uneven across the country “(Jelec, Osmanovic, 2012: p. 9) Lack of management bodies confiscated property creates another problem of functioning of the entire system extended seizure, which caused the to the courts because of this problem often do not dare to impose the said measure.

Directorate for the management of seized property

One of the key elements for a successful implementation of the measures of seizure of assets derived from crime is the existence of an effective authority that would manage such confiscated property. Inefficiencies in the application of measures of seizure of property greatly contributes to the lack of regulation of the process management and treatment of such confiscated property, and especially after the end of court proceedings.

The essence of the solution to the problem lies in the fact that the seizure of property as the process does not end with the termination of the court proceedings, rather than right after it (but also during it) follow an important step, which is to determine the fate of such confiscated property. At this stage, it is very important to the existence of special managerial skills management, which must have the authority to whom they entrusted the management authority. When passing a special law, and in the tradition of some foreign solutions, as well as the directives of international documents that refer to the obligation to have a mechanism of asset management, the legislature did the right thing by transferring the responsibility for managing assets on a special, independent, specialized body, the Directorate of Management confiscated property. “Legislation on organized crime should be a complex and well-organized set of rules from different branches of law: substantive criminal law, of course, but also the rules of criminal procedure, administrative law, the rules on the organization of courts and government bodies, the rules on enforcement of criminal sanctions, tax law etc. “(Papa, 2008: p. 26).

The Directorate is a central authority for taking care of property that is derived from a criminal offense and it is authorized to conduct, both during the temporary seizure of property, and at the stage of permanent confiscation of assets, whereby, depending on the stage of the proceedings, has a different circle of power. In addition to property that is derived from a criminal offense (which had been taken under the provisions of this Act), the Department has dealt with the property being seized under the Criminal Law, the subjects of a criminal offense (in the sense of Article 87 of the Criminal Code) and material gain that has acquired a criminal offense (Article 91 and 92 of the criminal Code), which is very important and you should have a positive impact on the implementation of these measures in the criminal proceedings. Furthermore, in its area of responsibility includes the property given on bail in criminal proceedings, the exercise of professional judgment seized proceeds from crime and disposal of such funds received in accordance with the law. Activities related to material gain proceeds from economic offense, ie misdemeanor, as well as performing other tasks in accordance with the Law are also under the jurisdiction of the Directorate. Its powers are broader asset management needs of asset management which is taken in accordance with the law, because it wanted to take advantage of large capacity of the Directorate for the needs of ordinary criminal proceedings due to the absence of a successful executive mechanism in these proceedings. However, we are not convinced that the wide range of actions it needs to undertake can be successfully carried out according to the existing organizational and structural composition of the body. The results of the previous work of the Directorate general public knows very little, and we see that even one small part of the professional scientific community dealing with the topic of seizure of assets derived from crime, did not deal with, or is only briefly dealt with the theme of the management of seized assets. Although seemingly Directorate is the “executive” authority, which has no significant impact on the efficiency in the process of restitution of property crime, but has a duty to carry out the decisions taken in the court proceedings, is her initiative is very important. Precisely because the lack of focus on issues of public administration is unjustified, unacceptable and contributes to the omnipresent figure of superficiality in the analysis of the newly created instruments to combat the most serious forms of crime.

The Directorate was established as a body within the Ministries of justice and as such has legal personality. Its headquarters is in Belgrade, but there is a possibility of

forming a special organizational units outside the seat. Organisational structure of the rules in this regard are thoroughly regulated by a special law. To perform the tasks within the purview of the Directorate, establishes the Sector for download and management of the assets proceeds from crime. The Department for Management of Seized Assets proceeds from crime, educated three immediate unit - Department download the confiscated property, the Department for confiscated property management and the Department for general and material-financial affairs. The Director who is appointed and dismissed by the Government on the proposal of the Minister of Justice, and with the fulfillment of the conditions for the operation of the Act states. He holds the position of civil servants, and is subject to applicable regulations that exist for civil servants⁷, as well as regulations governing the issues of conflict of interest, which the legislator wanted to strengthen the guarantees that this function is performed by impartial and independent person. The rights and obligations of employees, the regulations on state employees and civil servants.”Civil servants, according to the Law on Civil Servants, employed persons who perform tasks within the scope of state authority” (Perisic, 2009: p. 93). At work, internal organization and systematization of jobs in the Directorate, the regulations on public administration, and if the need arises for resolving administrative matters, the regulations on administrative proceedings.⁸ In addition to the special conditions required for work in state bodies, further specialization of employees was not carried out, and which do not favor further positive legal labor law regulations which are in a constant process of changes. “We must emphasize that the Republic of Serbia, the only announced the revision of privatization, other elements of the post-transition events do not exist, nor is there a general consensus on the fundamental issues of regulation of the economy and society as a whole, which together represent an obstacle for the development and hamper the difficult path of reforms expected” (Perisic, Perisic-Glusevic, Karakas, 2014: p. 43).

The main powers of the Directorate in which he embodied the very purpose of the existence of such a specialized body, is the management of the assets proceeds from crime, which is seized under the provisions of the Act. Also, in the same manner Directorate manages the cases of criminal offenses, and assets given as pledge, which are all values which were seized imposed measures in regular criminal proceedings. It is “the concentration of responsibility for dealing with the assets and objects that stand in a certain relation to criminalis causa” (Ilic et al., 2009: p. 70). Authority, therefore, as a primary authority has confiscated property management, and in its control powers include warehousing, storage and sale of assets, disposal of assets in accordance with the statutory directives, as well as expert evaluation of seized property. The set of enumerated powers makes the whole of its control activities in the strict sense of the word and its core business. There is capacity for further expansion of the powers of the Directorate in cooperation with other relevant authorities of a special procedure. As one of the possible forms of authority would be desirable and activities of the Directorate in the event that the criminal origin of the property is proved in a separate procedure. In this case it would be important to include the tax authorities, which would at least partially compensate for those cases where it is evident that the proceeds of crime but there is no possibility of proving the bar to avoid cases of tax evasion, which “threatens the optimum business environment by putting businesses that pay taxes in a worse situation than those who avoid it” (Marcetic, Curcic, Lazovic: 2016: p.238). Yet questions opportunities taxation of goods on suspicion of criminal origin as a model of seizure of assets of criminal origin is a separate issue.

Problems that cause sluggishness management mechanism - the brake efficiency of the Directorate

Directorate for Seized Property Management as the sole body constituted to manage the assets of criminal origin has quite a complex role and to jobs within the scope of its powers could be considered effectively completed it is necessary to solve a series of complicated tasks. “The reasons for prescribing special rules for temporary seizure of objects and proceeds to the proceedings for organized crime are the need for these measures more easily and more effectively implement than in the general procedure” (Lazin, 2005: p. 554). Specialty in any segment includes support facilitated the performance of tasks in a way that directs the operation of the specific tasks and perform them. First, the Directorate as well as the idea that the mechanism of the build up to the level of the institution and that this segment of criminal issues provide serious support, had an initial problem, which consists in the fact that it is the work began immediately after the establishment of the system of seizure of property. A series of powers vested in it imply the expertise of specialist staff who would have knowledge in individual areas according to the different powers under. Systematization of jobs in the Directorate did not cover the employment of experts in the field of management. “Specialization in any field, including in the judiciary is justified only if the operators which entrust certain, specific tasks, according to a criterion distinguishing themselves in relation to their colleagues, primarily professional and specially trained” (Skulic, 2005: p. 226). Directorate performs quite complex and specific tasks in relation to the whole process of seizure, which although has a specificity takes place according to the rules that apply to criminal proceedings. As pointed out by Nelen, “those who enforce the law are primarily trained for the implementation of the norms of Criminal Code but have little or no general knowledge and experience in the areas of commercial law, banking and other regulations that are relevant for understanding the mechanisms of the financial world.” (Nelen 2004: p. 528). Not only the Directorate, all authorities acting special procedure requiring a certain degree of specialization and expertise, and the principle of specialization has not carried out in any segment of the treatment. The “past experience of our country in the fight against organized crime and corruption and the experience of other countries shows that regular prosecution its standard mode and the organization would not be able to answer the above tasks in the area of organized crime.” (Vazic, 2008: p. 400). Especially, they could be regarded as sufficiently qualified to act in the procedures of seizure of assets, which, apart from the fact that the most serious forms of crime, and contain specifics regarding the property as subject to this procedure. The problem is even greater because as one of the powers of the Directorate states and training of civil servants in the field of seizure of assets, and that the authority Directorate is not done, and it is questionable whether it has the technical capability to perform, as there is no where to be dressed for it. The solution to these problems would be the systematization of jobs within the Directorate which would include recruitment of experts in various fields who would be trained for highly professional activities in the domain of each of its activities, under the authority of the Directorate has. It would be helpful to the Department Directorate There knowledgeable team to deal with all the training of authorities in the process of removal. This would significantly contribute to the first, introducing professional persons on the specifics of special measures, and

secondly, encouragement of authorities to impose measures to deprivation of property of criminal origin.

The Directorate is obliged to store and preserves expropriated property and to manage it as good hosts, and a good expert. The essence of its activities should be reduced to such treatment with the property that would largely maintain the value of the property that she had at the time of seizure, all with minimum costs that will have the Directorate. When selling property, but also its assessment, must strive to be as equivalent to a matter that is subject to obtain the highest possible selling price, while endeavoring not to go below the market value. With things that have specific properties, shall be treated in a special way, according to the provisions laid down in the Act. The basic authority of the Directorate is also its most important powers that as quickly and efficiently preserve the value entrusted her stuff. If the Directorate of this authority entrusted a specialized company that is engaged in the sale of goods, such a company would weigh that has employees who have knowledge of trade activity, to a company which successfully operated, the sale should be conducted as soon as possible in order to preserve the value of things. Following the same principles should act Directorate, no matter what kind of treatment can cause misunderstanding, because in the eyes of the beholder state should not profit by selling the confiscated property. If we analyze the provisions on the method of distribution of funds received such misunderstandings can be expected (according to the Law / 2008 only 20% of the funds received from the sale of the property had a human purpose, while under the Law / 2013 all funds paid into the budget of RS). The problem is that the Department is not used in the best possible way, because his authority is entrusted assets of very different characteristics, in order to preserve its value or to be alienated by the highest possible value, not necessarily the possession of good marketing and sales departments within the government but which it does not.

Next, a very important issue is the issue of preserving the value of forfeited property. There are certain things that are by their nature such as to lose value over time - some minor, some more. The practice, at least so far, shows us that the specific procedures lasted for a year. Assets held during the proceedings the subject keeping the Directorate if it is sold, usually loses its value. Therefore, the legislator gives another authority Directorate, which is that she, with the approval of the competent court without delay can sell movable property or to entrust certain individual or legal entity its sale. In certain situations, if the Department considers it more appropriate solution, this work can be entrusted to another person that is specialized in the sale of certain assets. Very rarely will the business of selling the assets Directorate will be able to do without the help of specialized persons, especially when it comes to specific items that are sold at special markets specialized for certain types of goods. Overall, and bearing in mind the method of sale that is binding for the Directorate, we are faced with the problem of the adequacy of the attribution of powers to the Directorate, which in its composition does not have enough trained staff to work in sales. The legislator has foreseen this possibility only for mobility, while real estate, regardless of the loss of value can not be sold. The problem grows when it comes to managerial responsibilities of the Directorate of legal persons. Is it feasible, according to the current capacity of the Directorate to ensure the continuation of operations of the legal entity which is in the process of removal is transferred to the jurisdiction of the Directorate. Just at this point, we will briefly open the following question: How is the Directorate as the managing seized assets right solution for us?

In fact, if we look at comparative solutions, we will see that very often in the capacity of managing and selling assets appear specialized institutions that are specially trained for trade and which have as their task to the confiscated property to the fullest extent possible to preserve its value, and that it as a commodity is sold to the market of and sold at the best possible price. As a shining example in this field, we can cite the example of the Netherlands⁹, where the business of selling the property performed by the Agency, which has no power management than asset sales. The laws in this country in effect allow a quick sale of assets in order to preserve its value, and if the defendant is convicted, the value it returns, thus achieving the lowest loss. Agency fact suggests the court what is the best selling and what is not, until the court accepts this advice. Items that are deducted immediately sold, and the money is immediately placed in a bank deposit. For us, the Directorate is authorized to sell the property, which is managed during the proceedings, following the judgment; However, one can rightly ask whether she, as a specialized body possesses the personnel who have the knowledge of trade skills. What is the interest of the state to provide the highest possible value of the property which was found to originate from criminal activities and of the impact of this issue on the total budget that creates sales? Furthermore, the law provides, and exceptionally, the court may grant that instead of selling certain assets to accept a guarantee offered by the owner or other person, whose value is determined in relation to the value of the confiscated property. This is an initiative of the owner or other person; Therefore, they must offer a guarantee, and the court then considers whether to accept it.

In the event of the sale of forfeited property, whether it is performed in order meet the running costs of the Directorate or in order to preserve its value, it must be done in a legally prescribed manner. Necessary procedure for public auction, which is advertised in the “Official Gazette of the Republic of Serbia” and other media, with the exception of perishable goods and animals that can be sold without such the procedure. The aim of the legislator was to ensure transparency of this process the sale to allow it more competitive bidders. These sales, on the other hand, can cause the opposite effect in certain cases, especially when the owners of the property to be sold were known members of the mafia organization, because buyers reluctant to attend these competitions (if they have information on the origin of such property). The legislator further provides the necessary conditions for the sale of movable property. It must first be sold at the same or higher price than the appraised value, and the assessment by the Directorate ..

Second, the different responsibilities of the Directorate are in various stages and specific and criminal procedure. Acquaintance with the powers of the Directorate we have seen how different management powers actually derives from a basic, management. The costs of keeping and maintaining temporarily seized property shall be borne by the Directorate. However, given that the seized items as they may arise that require huge maintenance costs, the Directorate has the authority to decide such specific assets remains with the owner, with the obligation to take on the old property with due professional care. Some specific types of assets (such as, for example, yachts), require great care costs, and provides for the possibility that in such cases the owner shall bear the costs of storage and maintenance of the property. What is the practice in countries that have a developed system of seizure of property, and especially its management, are its “cost management”. The money will be confiscated temporarily from a specific person, ie the funds are frozen, they should be transferred immediately into the hands of the Directorate, which

would further disposed in such a way that the money they fertilize more, using a variety of benefits of banking. This would avoid the subsequent possible costs that could arise when returning confiscated property, because in addition to legal costs and the aging of the assets that have been seized, the owner needs to pay the interest on the assets which the Directorate had. In practice, it often happens that the cost of storage and maintenance of fixed and certain movable assets may be very high. Therefore, the Directorate data is another option if you do not resort to any of the above, and it is to sell a certain portion of movable property in order to defray the costs incurred certain asset management. In the event that a decision on temporary seizure of assets is terminated, all costs shall be borne by the owner of the Republic of Serbia. This option applies only to the sale of movable property which are less value and only for the purpose of settlement costs of maintaining valuable assets. Until a final decision on the property is temporarily revoked, funds that are obtained its marketable kept in a separate account of the Directorate. In case of rejection of the request of the public prosecutor for confiscation of property, or if there is a decision establishing that the property in question does not arise from a criminal offense, means taken must be returned to its owner, and with interest and the right to compensation for damage that has been caused. The funds from this account until a final decision can be used for damages to third parties whose property was destroyed or for costs which it itself had Directorate in connection with the destruction. So the intention is that this money, other than specified exceptions when it can be taken, stored until a final decision. However, we believe that this solution is extremely uneconomic, because the funds kept in the account of the Directorate instead be deposited in the bank. Sure, money can be deposited for so that at any moment it can raise if necessary, so that we see no justification for such losses which result from keeping money in the account of the Directorate. It is precisely in these examples observes certain inertia mechanism of state management of seized assets, in contrast to solutions in which the business of asset management, or at least its sale, hired specialized bodies who need this kind of regular business operations.

Finally, and in the pursuit of the mechanism of seizure of assets derived from crime in our law is as better, we want to initiate certain issues inevitably arise in the application of the rules of asset management, and its sale and use. One of them is this: who is authorized to carry out valuations of the assets in their sales? How to deal with enterprises that are subject to confiscation, and which is owned by the defendant and whether their work will be suspended until a final decision? We point out the importance of resolving this issue due to the fact that the shutdown of large companies can bring significant losses. When we talk about the extent of confiscation of her rule, which is quite justified to take away everything for which it is determined that a benefit gained by the perpetration of a criminal offense. However, when talking about the seizure of property for which prove that the criminal origin, especially in some complex cases, it is a far greater value of the property that is the subject of the proceedings and it is desirable to make it the occasion of a certain “business-plan” in order to as far as possible preserve its value. Such a system, for example, exists in the Netherlands, where the Agency asset management itself estimates that it is profitable to take away certain things, and that assessment indicates court. This relieves the management body of any costs that would be incurred by deducting actually storing and sale of certain things that can immediately estimate that would bring more harm than good. Also, the question arises:

who is authorized to assess the value of assets in the Directorate? Does the Directorate has staff that is capable of such an assessment, particularly bearing in mind the wide range of items that must be evaluated and whether in certain situations need to hire experts to do the assessment, which would be a logical solution. Law / 2013 regulated the confiscation of property of legal entities, but may ask how we prepared for management companies if they are owned by a person against whom a decision on a temporary or permanent seizure of assets. Suspension of the work of these firms could lead to large losses, so the most appropriate solution was continued operation of the company with the appointment of a new management under the auspices of the state, which would allow for the preservation of the value of confiscated property or change of activity of the company.

Analyzing the regulations of other countries pertaining to the management of assets derived from crime, we note that the domestic asset management model mostly just rewritten the solution of other countries. It seems to us that there were still many segments of legislation in this field remain unapplied in practice, as the main reasons for this is still not enough experience in asset management, but also the still insufficient capacity of employees, in both qualitative and quantitative terms. Namely, as a model for defining the responsibility of the Directorate, was taken primer Belgian legislation even though they do not have extra-long experience in this field, given that the set of rules on the management of seized assets to them adopted in 2003. In order to improve the rules relating to asset management in Belgium has formed an office of the Public Prosecutor's Office which is the main task assigned to asset management - Central Office for the seizure and confiscation. Modeled on the authority granted to the Belgian office, the data and powers of the Directorate of the RS, and their comparative analysis can be seen a great similarity. Asset management, which includes its storage and sale, is a complex task and is the second, both on field an important part of the deal after finding that the property actually has a criminal origin. In our country, if we talk about the confiscation of material gain, expressed the problem of its management, which is influenced by the existence of a small number of cases in which the measure was imposed. Judges have avoided the imposition of these measures, since they were aware of the lack of capacity for managing seized assets. Successful management of the seized assets is a necessary link in the chain of seizure. Without an efficient management mechanism, the effect of seizure of property of the offender has not been fully achieved.

Conclusion

In a series of elements that were indispensable to the whole idea of “aggressive” confiscation of criminal profits realized, the establishment and work of the Directorate is considered to be particularly important. Yet the mere existence of a specific criminal justice institutes do not provide the guarantees for its efficiency. In order for a special procedure to be effective, especially to the criminal forfeiture of any profits must be practical to remove the brakes that exist in the management of property which is temporarily or permanently revoked. These deficiencies are present partly due to the fact that for every novelty necessary time to be able to function properly in a system where it is entered, or on the other side due to a lack of interest in improving key deficiencies mounted system. Perhaps the strongest

support in increasing the efficiency of the Directorate as the managing authority would be in the implementation of narrow specialization and specialties throughout the process of seizing property, a first in the Directorate. We think it is extremely important to work on improving the efficiency of all the powers of the Directorate has, not only in the primary, which is linked to the procedure for management of seized assets. The powers that has been quite different to the domain of action and include good orientation of staff with the necessary specialization. It is necessary to give greater space management issues and its importance in the whole process of taking away property, because we believe it is not enough to control the authority only carried out, it is necessary that it be carried out in the best possible way and with present maximum efficiency in sales, the purpose and keeping the confiscated property.

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