

## PECULARITIES OF FINANCIAL REGULATION: IDENTIFICATION AND SEIZURE OF CRIMINAL PROPERTY

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**Abstract:** In the present paper, the authors consider the fundamental issues affecting the identification and seizure of criminal property in the context of financial forensics and investigation in practice. One of the considered issues is the identification and seizure of financial assets and their proceeds which are infiltrated into the financial sector by means including the use of financial intermediaries and advisors. The authors identify areas, where it is important that legislation continues to evolve to allow adequate measures to be taken for combating organised crime. There needs to be established a specialised unit for the identification and seizure of property, financial investigations and comprehensive property profiling. A solution for a fast implementation of seizure is the creation of a central register of accounts providing information not only on the current status of accounts but also on their transaction histories.

**Keywords:** financial analysis, property, seizure, confiscation, freezing, financial market, money.

### 1 Introduction

The identification and seizure of offenders' property is not just an issue in economic and property crime but also a wider variety of crimes including the trafficking of drugs, people, weapons, waste and the like, which are important sources of income for organised crime. Organized crime as phenomenon affects significantly security of society and is among threats to sustainable development processes (e.g. Čentěš, J. et al. 2018).

Criminal groups seek above all things to make a profit and structure their criminal enterprises accordingly. In 2011 Europol reported (<https://www.europol.europa.eu/publications-document-s?page=1&t=money%20laundering>) that 70% of all types of crime are driven by an insatiable demand to acquire assets (illicit income). The most effective measure against organised crime is the prompt identification, seizure and subsequent confiscation of criminal assets.

Organised crime habitually crosses international borders. To combat it, the competent law enforcement authorities need high quality, effective cooperation and coordination in the identification and seizure of assets. A comprehensive global system for the identification and seizure of proceeds of crime is also a vital part of protecting the financial sector. The identification of illegally acquired property can also help to unmask links between offenders and other participants in organised crime and can lead to positive fiscal and economic impacts when criminal property is confiscated (Dvořák, 2006, p. 28). The freezing and confiscation of the instrumentalities and proceeds of crime remove the financial incentives for crime (point 16 of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law).

The lawfulness of activities, transactions and proceeds is determined by rules and acts of law. The state's enforcement of the laws can influence, regulate and control the occurrence of some undesirable economic phenomena, increase the cost of crime to the point where it become unprofitable and thus eliminate opportunities for organised crime and terrorism to take root in its territory. Unlawful activities, transactions and proceeds undermine the financial sector's integrity, stability and reputation and go hand in hand with dishonest practices that generate dirty profits.

### 2 The basic legal framework for the identification and seizure of property in international documents

To function well, the financial sector requires a legal framework that defines effective penalties and individual liability for participation in money laundering and transactions with criminal assets. Relevant supranational legislation can be an effective means of protection against money laundering, an activity that undermines the economic stability of the state and destabilises the financial sector (Nováčková, D. 2001). Procedures for identifying and securing criminal assets make up a broad field and the recommendations and legislation discussed below should be considered as examples illustrating the theme of the present paper.

Important recommendations are included in the forty recommendations adopted by the Financial Action Task Force (FATF) and their four revisions (Vondráčková, 2016, p. 29 et seq.). The most important recommendations in the scope of this paper are those defining a financial investigation as an enquiry into the financial affairs related to a criminal activity, with a view to:

- identifying the extent of criminal networks and/or the scale of criminality;
- identifying and tracing the proceeds of crime, terrorist funds or similar assets;
- identifying assets that are, or may become, subject to confiscation; and
- developing evidence which can be used in criminal proceedings.

The basic legal framework for the identification and seizure of assets is set out in legislation on the fight against organised crime, financial forensics and financial investigation. International documents are especially relevant when the seizure of property depends on judicial cooperation in criminal cases based on a request for legal assistance (letters rogatory).

The United Nations Convention against Transnational Organized Crime (Palermo Convention of 15 November 2000) sets a clear line between the "seizing" or "freezing" of assets on the one hand, and their confiscation on the other. "Seizing" or "freezing" property means temporarily prohibiting the transfer, conversion, disposition or movement of the property or temporarily assuming custody or control of the property on the basis of an order issued by a court or other competent authority. "Confiscation" includes forfeiture and means the permanent deprivation of property. Under Article 12 of the Palermo Convention, states must adopt within their domestic legal systems measures to enable the identification, freezing or seizure of property used in or destined for use in offences covered by the Convention and also proceeds of crime. Property means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets and the term proceeds of crime means any property derived from or obtained, directly or indirectly, through the commission of an offence. Article 13 establishes rules for international cooperation for the purposes of confiscation of such property (see more Púry, F., 2004, p. 80).

In the real world, proceeds of crime are often intermingled with legally acquired property. Such intermingled property is liable to confiscation up to the assessed value of the intermingled proceeds of crime (Art. 12(4) of the Palermo Convention). The procedure for the preliminary identification of criminal assets and their subsequent seizure and confiscation must be complemented by rules for disposal of such assets by the state that carried out their confiscation. From a critical perspective, it should be noted that Slovakia does not have a comprehensive

legislative framework to regulate the administration and disposal of such assets.

The most detailed international anti-money laundering document is the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention of 8 November 1991), which lays down definitions of basic terms such as proceeds, property, instrumentalities, and confiscation. The Strasbourg Convention has two fundamental objectives: to oblige states to adopt effective domestic measures to penalise money laundering, including its criminalisation, and to facilitate the broadest possible cooperation between states in investigating crimes and confiscating the proceeds of crime (Púry, F., 2004, p. 80).

Article 11 of the Strasbourg Convention obliges parties to take provisional measures at the request of another party that has instituted criminal proceedings or proceedings for the purpose of confiscation. In such a case, the requested party must take specific provisional measures such as the freezing or seizure of property to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request. Measures may apply to any property. The provisions highlight the importance of taking provisional measures in good time to freeze property before it can be transferred to new owners. The main purpose of seizing or freezing property in the requested state is its subsequent confiscation in criminal proceedings. For the application of Article 11 and related provisions of the Strasbourg Convention, it is vital to satisfy not just the basic requirements such as contractual reciprocity, double criminality, but also to present evidence that the property is in the territory of the requested state and is causally linked to crime (it is proceeds of crime).

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention of 16 May 2005) is another of the international treaties that clarify and enlarge upon the basic concepts in this area. For example, freezing or seizure is defined as temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (Article 1(g) of the Warsaw Convention). International cooperation in seizing property in another state is very important so that all parties can respond appropriately to requests to confiscate a part of some property (proceeds), to assist in an investigation, or to take provisional measures. The basis for transnational assistance in identifying money market property, primarily in banks, is outlined in Articles 18 (Requests for information on banking transactions) and 19 (Requests for the monitoring of banking transactions) and also in the provisions on the disclosure of so-called spontaneous information.

Clear justification for the seizure or freezing of property by means of a provisional measure is established by the need to prevent the transfer, conversion or disposition of property whose confiscation may be required. Measures adopted by Parties under Article 5 of the Warsaw Convention for the identification, tracing, freezing or seizure of property should also encompass property into which criminal proceeds have been transformed or converted, property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds, and income or other benefits derived from proceeds, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

Provisions on the identification and seizure of property are included in several legislative documents of the European Union (for a history of EU anti-money-laundering legislation, see Klimek, 2011, p. 92 et seq).

One of the most important documents on the identification and seizure of property is Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime ("Commission Decision 2007/845/JHA"), which established Asset Recovery Offices on the national level. It requires every Member State to set up or designate a national entity to act as an Asset Recovery Office ("ARO") to facilitate the tracing and identification of proceeds of crime and other crime related property which may become the object of a freezing, seizure or confiscation order made by a competent judicial authority in the course of criminal proceedings. Information exchange should take place not only on request but also spontaneously.

Alongside this basic purpose, the AROs serve a secondary purpose of exchanging best practices in improving the effectiveness of Member States' efforts to trace and identify criminal proceeds and assets. Domestic legislation must not prevent asset recovery cooperation with the authorities of other EU Member States. The ARO is the executive operational unit for functions resulting from Council Decision 2007/845/JHA in accordance with the procedures and time limits provided for in Council Framework Decision 2006/960/JHA, which lays down rules for the execution and provision of documentation and information for the needs of the members of the international network of agencies concerned with the cross-border identification, freezing, seizure and confiscation of the proceeds of crime and other crime related property (Šimonová, J, Čentěš, J., Beleš, A., 2019).

The decision also provides a legal basis for the exchange of knowledge between experts from several countries in methods and techniques for identification, freezing, seizure and confiscation of property through the Camden Assets Recovery Inter-Agency Network. Amongst other benefits, the countries can use this network to share best practice based on actual cases. The range of criminal offences benefitting from measures for identification, freezing and confiscation of property is broadened by Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union ("Directive 2014/42/EU"). Directive 2014/42/EU lays down minimum rules for freezing and confiscation of the instrumentalities and proceeds of crime in criminal cases and requires Member States to take the necessary measures to enable the freezing of property with a view to possible subsequent confiscation. The legal basis of the Directive 2014/42/EU is Art. 82 TFEU, which allows the adoption of procedural tools, as well as Art. 83 TFEU, which provides for the competence to determine the criminality of certain acts and to provide for sanctions; the instruments of confiscation under the Directive 2014/42/EU are therefore limited to the areas of criminal offenses set out in Article 83 TFEU (see Mitsilegas, V. 2018, p. 59 and Streinz, R. et al., 2018, p. 957).

Freezing encompasses restrictive measures preventing the disposal of property, including its transfer, destruction or conversion, preventing movement of property or temporarily assuming custody or control of property, the purpose of which is to preserve property de facto without change. Under Article 4 of Directive 2014/42/EU, confiscation of property that is proceeds or instrumentalities of crime shall take place after final conviction for a criminal offence, and is also permitted in cases such as illness or absconding where the suspected or accused person does not attend proceedings for a longer period and thus proceedings cannot continue under regular conditions and a final conviction is impossible.

Directive 2014/42/EU also permits the freezing of a third party's property if the property was transferred to them directly or indirectly by a suspected or accused person free of charge or in exchange for an amount significantly lower than the market value and the third party knew or ought to have known, in the light of all the circumstances, that the purpose of the transfer or acquisition was to avoid confiscation. If frozen property is not

subsequently confiscated, it must be returned to the owner. The effective freezing of property eliminates the financial incentives that interest organised crime. It is now recommended (Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law ) that the freezing of property should be extended to cases where it is not possible to initiate or conclude criminal proceedings (which is already feasible in part). Besides freezing, it is necessary to have an accurate and timely process for identifying property and the competent authorities must have effective financial analysis tools.

Another important document in this area is Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("Directive 2015/849"). The purpose of Directive 2015/849 is to implement measures on the EU level to prevent the financial system being used (misused) for money laundering and terrorist financing. Directive 2015/849 defines the offences that are to be treated as money laundering and terrorist financing and stipulates that they must be prosecuted as such even when the criminal activity that generated the assets for laundering was committed in another Member State or in a third country.

Further steps to use the criminal law to combat money laundering and enable faster and more effective cross-border cooperation in the EU were taken in Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law ("Directive 2018/1673"). Directive 2018/1673 lays down minimum rules for money laundering offences and penalties. This directive is part of the legislation of the so-called European criminal offenses (Klimek, 2017a, p. 67), as well as the so-called 32 categories of mutual recognition offenses (Klimek, 2017b, p. 502).

A further purpose of Directive 2018/1673 is to criminalise money laundering that is committed intentionally and with the knowledge that the property was derived from criminal activity. This means that there should be no distinction between situations where property has been derived directly from criminal activity and situations where it has been derived indirectly from criminal activity, applying the broad definition of "proceeds" laid down in Directive 2014/42/EU.

When considering whether the property is derived from criminal activity and whether the accused person knew it, the specific circumstances of the case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame.

Member States should, as a minimum, ensure the freezing and confiscation of the instrumentalities and proceeds of crime in all cases stipulated in Directive 2014/42/EU. Member States should also strongly consider enabling confiscation in all cases where it is not possible to initiate or conclude criminal proceedings, including in cases where the offender has died.

Another important document for confiscations in the EU is Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders ("Regulation 2018/1805"), which becomes directly applicable from 19 December 2020. It will replace the Council Decisions 2003/5777/JHA and 2006/783/JHA.

The aim of Regulation 2018/1805 is to achieve a situation in which it is impossible to profit from criminal activities in the EU. Possible orders include not just confiscation based on a criminal conviction but also extended confiscation and confiscation without prior conviction.

### 3 The basic legal framework for the identification and seizure of property in the Slovak Republic

The legislation laying down the basic legal framework for the identification and seizure of property in the Slovak Republic is described below.

Act No 297/2008 on prevention of the legalisation of proceeds of crime and protection against terrorist financing, and amending certain acts, as amended covers these issues in Section 4 unusual trading operations, Section 5 obliged persons and, for the seizure of property, also the provisions of Section 16 on the freezing of unusual trading operations by an obliged person to prevent the frustration of seizure of the proceeds of crime and Section 26 on the Financial Intelligence Unit which performs tasks necessary for the identification of property where money laundering is suspected (Čentěš, J., Tuchscher, M., 2009a; Čentěš, Tuchscher, 2009b; Stieranka, J., Marko, M., Backa, S., 2018; Klátik, J., 2011).

Act No 171/1993 on the Police Force, as amended regulates the general and special powers of members of the Police Force, including powers under Section 29a by which an officer in the financial police or criminal police is entitled to request, in writing, that a bank or branch of a foreign bank provide information on one of their clients that is protected by bank secrecy (Section 91(4)(g) of Act No 483/2001 on banks and amending certain acts, as amended) if such information is needed for the investigation of tax evasion, illegal financial transactions, money laundering or related offences, or for the identification of the perpetrators of such offences.

Act No 300/2005 the Criminal Code, as amended, regulates the criminal law aspect of the identification and seizure of property in terms of both material and procedural law. The relevant sections of the Criminal Code are Section 60 - Punishment by forfeiture of goods, Section 58 - punishment by forfeiture of property, Section 83 - confiscation of a thing and Sections 233 and 234 regarding the criminal offence of money laundering (Machová, 2017, p. 175 et seq.).

Act No 301/2005 the Code of Criminal Procedure, as amended, defines a range of procedures to regulate the identification and seizure of property. First and foremost of these is the preparation of a property profile for the law enforcement authorities, which is used to ensure the consistent application of Section 119(1)(f) of the Code of Criminal Procedure and other purposes laid down by law such as securing an injured party's claim to compensation for criminal damages. Other relevant provisions include those on the seizure of cash (Section 95) and book-entry securities (Section 96), the seizure of injured party's claims (Section 50) and seizure implementing a sentence of forfeiture of property (Section 425). Operational activities and financial forensics are regulated mainly by the fifth title of the Code of Criminal Procedure, Information Gathering. Identification is impossible without the cooperation of state authorities and legal and natural persons, which is regulated by Section 3 of the Code of Criminal Procedure.

Act No 101/2010 on proof of the origin of property, as amended, lays down conditions and defines the procedure of public authorities for the confiscation of the property of legal and natural persons that a court has judged to have been acquired from an unlawful source and in cases where a sentence of forfeiture of a thing is imposed. If there are grounds to believe that property was acquired from illegal activities, an obliged person must provide such information to the financial police service of the Police Force. The financial police service may also investigate income, the value of property and the method of its acquisition at their own initiative. In addition to the above, it provides all relevant documents that could serve as evidence.

Act No 316/2016 on recognition and enforcement of property decisions in criminal proceedings in the European Union and amending certain acts, as amended, transposes into Slovak law

Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

Based on the Vienna Convention, the Palermo Convention and the Strasbourg Convention, and having regard for European law, it would be more than desirable to be able to seize property without final conviction for a criminal offence, and to require offenders to prove the lawful origin of their property (law on proof of the origin of property) For most part, however, Slovak law on the identification and seizure of property is in accordance with the applicable conventions.

#### 4 Procedures for the identification and seizure of property

The reliable detection and investigation of persons accused of predicate offences or money laundering is a condition for prosecuting the perpetrators and other persons involved in the placement, layering and integration of "dirty money" and naturally also for the seizure and confiscation of such proceeds. The final report of the National Assessment of the Risk of Money Laundering and Terrorist Financing in the Conditions of the Slovak Republic indicated that the competent authorities had, in the period under review, seized approximately 12.24% of identified laundered criminal property. Information from law enforcement authorities showed that minimal use was made of direct instruments for confiscation of the proceeds of crime under Section 233 of the Criminal Code ([https://www.min.v.sk/swift\\_data/source/policia/fsj](https://www.min.v.sk/swift_data/source/policia/fsj)).

In the identification and seizure of assets, special attention must be given to financial regulation, which is a very sensitive issue for every business (Chinchalad, N., 2020). It is therefore essential that financial sector entities consistently fulfil their identification-related obligations under Act No 297/2008 to report unusual trading operations to the Financial Intelligence Unit (FIU). The FIU can freeze unusual trading operations and, in cooperation with law enforcement authorities, seize property such as cash, which may be subject to confiscation in subsequent criminal proceedings.

Financial sector entities are constantly making innovations in both regulated and non-regulated forms of financial market investments that can be misused to conceal illegally obtained property. An example is virtual assets, which are a de facto form of property. Innovative financial instruments require regulation, i.e. the service providers should be licensed and registered (Slezáková, A., Šimonová, J., Jedinák, P. et al., 2020). As soon as a financial service provider achieves the level of sophistication to create a system for deliberately avoiding regulation and licensing, it becomes very difficult to identify the source and ownership of virtual assets. The legislation governing regulation of the financial sector and financial markets therefore needs to evolve rapidly. One of the current priorities is determining the registration and jurisdiction of the providers of services related to cryptocurrencies, investment tokens and game tokens. To ensure full identification of this type of property, it would be desirable for the regulatory body (in the case of Slovakia, Národná banka Slovenska) to have access to the relevant databases.

The identification and seizure of property can be subsumed under the concept of financial forensics, i.e. the process of finding and documenting criminal assets and the proceeds of crime. The construction of a property profile is an integral part of this process. A property profile can be prepared for a natural person or legal entity and sets out information on the tangible and intangible assets that the person owns or to which they have a relationship establishing their right to the assets' ownership or co-ownership in future. Profiling begins with a check of databases that clearly point to ownership such as the real estate cadastre, bank accounts and securities accounts but also covers cash and other assets held in other forms of ownership (see Section 130 of the Criminal Code).

#### 4.1 Property identification

A precondition for property identification is to establish the reason for suspecting causal links between the property to be identified and a criminal offence, and between the property and a specific person. The basic resources include the Geodesy, Cartography and Cadastre Authority of Slovak Republic and the district offices (cadastral records for real estate, Sections 2, 68 and 69 of Act No 162/1995 on the real estate cadastre and on registration of ownership and other rights over real estate /the Cadastral Act/), banks with their registered office or a branch in the Slovak Republic (money market or banking instruments such as current accounts, payment cards, loans, safe deposit boxes, banking contracts etc., Sections 38a(4), 91(4)(g) and (b) of Act No 486/2001 on banks and amending certain acts, as amended, Act No 310/1992 on building savings, as amended), insurance companies, branches of foreign insurance companies, reinsurance companies and branches of foreign reinsurance companies (insurance market instruments e.g. investment life insurance, extraordinary life insurance deposits, single-payment life insurance, non-life insurance; Sections 72(3), 166 of Act No 39/2015 on insurance and amending certain acts, as amended), management companies (financial instruments in a part of the capital market, to be precise collective investment such as open, closed and special mutual funds; Section 162(3) of Act No 203/2011 on collective investment), the Central Securities Depository and dealers in securities (capital market financial instruments including shares and other securities of various kinds such as registered securities, securities payable to order, bearer securities; Sections 110(1), 134(3) of Act No 566/2001 on securities and investment services and amending certain acts, as amended, section 17(3) of Act No 429/2002 on the stock exchange, as amended), leasing companies, the companies register (ownership interests in companies and cooperatives), the register of motor vehicles, aircraft register, ships register, guns register.

Ownership is also identified in the case of items of historical, archaeological, collectible and artistic interest, precious metals, other movables, items related to intellectual property rights, receivables, cash etc.

The officer tasked with identification of property may use other criminal investigation procedures (Section 38a of Act No 171/1993 on the Police Force, as amended) for property identification as necessary to obtain the most comprehensive possible property profile. In more complex cases, it is appropriate to go beyond the range of standardised procedures for identifying property from accessible databases and to look at property transferred through an intermediary (while the person whose property is being profiled remains its beneficial owner), virtual assets, crowdfunding investment schemes and the like.

If identification of property is to be carried out abroad, it is necessary to properly define which state is to be addressed and the factors that point to the need for identification of property. In identification of property, the necessary information is obtained primarily from Police Force information systems, then from information sources in the public domain, information provided in response to written requests and criminal investigation procedures.

Identification of persons' property and income is covered by Section 3 of the Code of Criminal Procedure under which state authorities, higher territorial units, municipalities and other legal and natural persons are obliged to cooperate with the law enforcement authorities. Information that is subject to commercial, banking or tax secrecy and information on book-entry securities can be requested by a prosecutor or a police officer under authorisation from a prosecutor (Šramel, B., 2011) in proceedings before the president of a judicial senate. As has been repeatedly pointed out in the present work, property identification is based on financial forensics and most frequently draws on criminal investigation and intelligence activities.

Proper and effective procedures for property identification must take account of shared information on the methods most frequently used to launder the proceeds of crimes such as phishing, pharming, internet fraud, reverse loans, fictitious companies, gambling, “sleeper” accounts, carousel frauds, illegal trafficking (e.g. weapons) etc. Identification is a means for providing society with vital protection against the placement of illegally obtained funds in the legal system. The inadequate identification of property can logically lead to difficulties in confiscation or even the failure of the process. Property identification makes it possible to detect and then prosecute perpetrators not only of money laundering but also of other offences and to detect organised groups. Financial flows can reveal links that are not otherwise apparent. For example, in the Netherlands, property identification exposed an organised child pornography group with links to other countries. Early identification of property permits more frequent and more efficient use of seizure powers and increases the subsequent effectiveness of the prosecution of offenders and the confiscation of their property.

#### 4.2 Property seizure

Seizure of property must always be for a reason defined in law. For example, in criminal proceedings property may be seized if it is proceeds of crime, if it was used in committing a crime, if it is needed to secure a claim for compensation or if it is necessary to secure evidence. Property may also be seized in tax proceedings, in the enforcement of international sanctions and in proceedings on proof of the origin of property. The appropriateness of a property seizure, its extent, timing and other related legal and tactical aspects must be assessed, having regard for other steps in criminal proceedings, by the police officer (as a rule a Police Force investigator) managing the criminal prosecution independently or under instructions from a prosecutor (Šramel, B., 2012). The procedure for seizure of criminal property, proceeds of crime or other items is governed by the Code of Criminal Procedure.

Depending on the purpose, property seizure can be classified as:

- a seizure of moveable items and property for the compensation of injured parties – if there are grounds to suspect that an injured party’s claim for damages caused by a crime will be thwarted or obstructed, it is possible to seize property up to the probable value of the damages under Section 50(1) of the Code of Criminal Procedure. Seizure for such a claim must not include items that are exempt from enforcement of court judgements under the civil law, receivables for payment of remuneration from employment or a similar relationship, receivables for the payment of maintenance, or receivables for the payment of sickness benefit or social security benefits. If it is necessary to seize cash to secure an injured party’s claim for compensation in criminal proceedings, the procedures of Section 95 of the Code of Criminal Procedure are applied, *mutatis mutandis* (Constitutional Court of Slovak Republic, I. ÚS 122/2018). If it is necessary to seize book-entry securities to secure an injured party’s claim for compensation in criminal proceedings, the procedures of Section 96 of the Code of Criminal Procedure are applied, *mutatis mutandis*. Other provisions of the Code of Criminal Procedure relevant to securing an injured party’s claim include Section 89 handover of property, Section 90 seizure of computer data, Section 91 enforcement of seizure, Section 92 takeover of seized property and Section 99 et seq. searching of homes, persons and other premises or land.

Only the property of an accused person can be seized to secure an injured party’s claim. During the investigation phase, decisions on seizure are taken by the prosecutor at the request of the injured party, or without the injured party’s request if it is necessary for protection of the injured party’s interests, especially if there is a danger of delay.

- a seizure of property and things for the forfeiture or confiscation of property – in this case, as a rule, the accused person’s whole property is seized so that it cannot be placed outside the reach of the law enforcement authorities. If an accused person is prosecuted for a crime whose nature and gravity indicate that a sentence of forfeiture should be expected, and there is reason to fear that enforcement of the sentence could be thwarted or obstructed, a court or, during the pre-trial phase, a prosecutor may order the seizure of the accused person’s property. The seizure of an accused person’s property is regulated by Sections 94–96 of the Code of Criminal Procedure *mutatis mutandis*. Other provisions of the Code of Criminal Procedure applicable to the seizure of property for the enforcement of a sentence or protective measures include Section 425 ensuring enforcement of a sentence of forfeiture, Section 461 ensuring enforcement of forfeiture as a protective measure, Section 89 handover of property, Section 90 seizure of computer data, Section 91 enforcement of seizure, Section 92 takeover of seized property, Section 95 seizure of cash, Section 96 seizure of book-entry securities and Section 99 et seq. searching of homes, persons and other premises or land.

Section 231(g) of the Code of Criminal Procedure stipulates that only a prosecutor can order the seizure of an accused person’s property, determine which assets and things should be exempted from seizure and cancel seizure, taking such action at the proposal of a police officer acting in the case.

Proceeds of crime can be seized under a sentence of forfeiture of property, a sentence of forfeiture of goods or the imposition of forfeiture of a thing as a protective measure. Confiscation of proceeds may be linked to the award of damages to an injured party in criminal proceedings where the costs of compensation are borne by the convicted person. An analysis of court decisions in prosecutions for money laundering found that compensation was awarded in 56 cases, a fine was imposed in 27 cases and the injured party had to resort to civil proceedings in 57 cases. The imposition of a fine is a special case by which the proceeds of crime may be secured faster than by a confiscation procedure.

Only a court is entitled to decide on the imposition of fines, forfeiture of property, forfeiture of a thing or the confiscation of a thing as a protective measure.

#### 4.3 Conclusion

Several changes in legislation have been implemented to make the identification and seizure of criminal property and its subsequent confiscation more effective. Nevertheless, organised crime has not been resting either and it is important that legislation continues to evolve to allow adequate measures to be taken. It is possible to identify several areas for improvement in Slovak law. One of these is the lack of statistics reliably quantifying proceeds of crime in a meaningful enough way. Statistics record the level of damages though reported damages are logically higher than the profits or proceeds of crime. The concept of damages also refers to benefits obtained in causal connection with a crime. Section 124(1) of the Criminal Code defines damages as harm to property or a real loss of property or rights of the injured party or any other harm caused to them in connection with a crime, regardless of whether the damage affects property or rights. Damages also refers to benefits obtained in causal connection with a crime.

Another aspect of the legal framework for the identification and seizure of criminal property where there is room for improvement is the seizure of proceeds of crime outside criminal proceedings.

The problem can be illustrated by comparison with best practices from other countries. Moldova has introduced a two-tier system of confiscation that includes both special and newly introduced extended confiscation applying to both natural and legal persons. Provisional measures are available. At an early stage of the

process, significant amounts are seized by various law enforcement authorities. Serbia considers it important to create a new police organisation to focus on the identification and seizure of property, the acquisition and allocation of information as an alternative means for more effective investigations into organised crime, corruption, money laundering and terrorist financing. Furthermore, it emphasises the importance of analytical centres, not only for general purposes but also for specific aspects of the issue under consideration (e.g. financial forensics). A noteworthy point in this context is the importance of coordination between law enforcement authorities and the prompt exchange of relevant information. It is worth highlighting alternatives that streamline work in this area, i.e. the existence of a specialised unit for the identification and seizure of property, financial investigations and comprehensive property profiling. Such a body would need to have enough training to deal with the dynamic developments in efforts to conceal criminal property outlined above, and should have its own coordination system, special analytical centre etc. Specialisation in this area would streamline the identification and seizure of criminal property and the proceeds of crime, while a secondary benefit would be more effective gathering of statistics in line with international standards in this area.

The seizure of property is also affected by the quality of legislation, its application and law enforcement authorities' procedures. Law enforcement authorities encounter problems applying the law as regards seizing property acquired with proceeds of crime by a third party, in the matter of proving reasonable grounds to suspect that an attempt has been made to obstruct identification of property, or to conceal property, and similar issues. An act on the enforcement of property seizures and the administration of seized property and amending certain acts was drafted to address some of these issues but it was not passed in the National Council of the Slovak Republic in 2019.

It must be borne in mind that every decision on the seizure of property establishes the legal basis for its de facto freezing and restrictions on its disposal, but the decision needs implementation. Implementation involves the enforcement of seizure both de jure and de facto. There is room for improvement not just in implementing decisions but also in securing property and providing for its administration. Slovakia is still in need of a specialist body to manage seized property and implement decisions concerning the property in a way that prevents its impairment. The management of real estate represents a special problem that is not regulated in enough detail, with the result that the provisions of Section 50(2) of the Code of Criminal Procedure establishing this possibility are only rarely applied in practice.

Another challenge for the future is streamlining seizure so that it can be implemented faster. There are even problems with the methods by which the relevant institutions provide and exchange information, which frequently involve use of the postal system. The planned solution to this is the creation of a central register of accounts providing information not only on the current status of accounts but also on their transaction histories. An analysis of the opportunities and potential negative impacts of FinTech measures in the Slovak property identification system is a basic prerequisite for successfully managing the introduction of new information technologies supporting business competitiveness. The use of on-line services will continue to grow in the digital economy and will increase demand for on-line identification with an awareness of the increased risk represented by transactions without direct contact. The key factors in this context are the use and reliability of electronic identification. Cooperation with digital service providers is a good way to exploit the ongoing technological development to simplify the identification and seizure of property in cyberspace.

In conclusion, it should be noted that the professional literature now takes the view that nobody should be allowed to benefit from crime (Williams, S., Hopmeier, M., Jones, R., 2018). The confiscation of proceeds of crime must consider any de facto increase in their value and such proceeds are forfeited through

value-based confiscation. Confiscation in prosecution can be based on value (value-based), property (property-based) or a mixture of the two. Professor Hopmeier emphasises that the way forward is specialisation, not just for police officers involved in financial forensics and property identification but also for investigators, prosecutors and judges. Police officers, investigators, prosecutors and judges need the right training to cope effectively with the demands of a complex process in which identification and seizure of property are the first step.

Professor Hopmeier sees a potentially advantageous approach in the civil confiscation of proceeds of crime (illicit enrichment) without prior conviction since this procedure has been authorised by the European Court of Human Rights. For example, in Ireland property acquired with proceeds of crime has been confiscated using an in rem procedure based on civil law ([www.cepol.europa.eu](http://www.cepol.europa.eu)). The advantage of this form of confiscation is that it can be applied even when the competent authority does not have sufficient evidence to bring a prosecution or is not able to clearly prove the link between income and a criminal offence of which a person is accused, as well as if a prosecution cannot be commenced or charges cannot be brought, e.g. as a result of a suspect's death.

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**Primary Paper Section: A**

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